ATTACHMENTS

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 187-18-19 by Alderpersons Rindfleisch and Bohren. A resolution authorizing the City of Sheboygan to enter into a contract for buildings and property insurance coverage.

REPORT PREPARED BY: Marty Halverson, Finance Director

REPORT DATE: April 3, 2019 **MEETING DATE:** April 8, 2019

FISCAL SUMMARY:

Budget Line Item:	N/A
Budget Summary:	N/A
Budgeted Expenditure:	N/A
Budgeted Revenue:	N/A

STATUTORY REFERENCE:

Wisconsin Statutes:	N/A
Municipal Code:	N/A

BACKGROUND / ANALYSIS:
It is best practice for property owners to carry property insurance. The relationship with Municipal Property Insurance Company (MPIC) to my knowledge has been a positive one with the City. The coverage, rates, and service have met the needs of the City as well as been competitive.

STAFF COMMENTS
At this time I believe this insurance agreement in the amount of $130,000 to be fair and reasonable with respect to past experience with the City and previous rates. The potential process of putting this service out to bid would need to begin at the beginning of the calendar year to allow for proper time for review. This process is something that can and should be considered in a future year.

ACTION REQUESTED
Motion to recommend the Common Council approve Res 187-18-19 by Alderpersons Rindfleisch and Bohren.

ATTACHMENTS:
I. Res. No. 187-18-19
II. MPIC Quote

III

4.1

Res. No. 187 - 18 - 19. By Alderpersons Rindfleisch and Bohren.
March 18, 2019.

A RESOLUTION authorizing the City of Sheboygan to enter into a contract with Municipal Property Insurance Company (MPIC) for building and property insurance coverage.

WHEREAS, state law and the City's Procurement Policy allows the City to join with other purchasing associations in cooperative purchasing plans when the best interest of the City would be served; and

WHEREAS, the Municipal Property Insurance Company (MPIC) was formed by three municipal insurance companies - Wisconsin Municipal Mutual Insurance Company, Cities and Villages Mutual Insurance Company, and the League of Wisconsin Municipal Mutual Insurance Company – to provide a stable, long-term solution for property insurance for Wisconsin local government entities; and

WHEREAS, the City currently obtains its building and property insurance coverage from MPIC; and

WHEREAS, the City has obtained a quote from MPIC for building and property insurance coverage to renew that coverage for the period from June 1, 2019 through May 31, 2020; and

WHEREAS, Staff believes that this cost is reasonable in light of the buildings and properties being insured.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City Officials are hereby authorized to execute a contract with the Municipal Property Insurance Company (MPIC) to provide building and property insurance coverage to the City for the period from June 1, 2019 through May 31, 2020, pursuant to a contract substantially similar to the one attached, at a cost not to exceed One Hundred Thirty Thousand Dollars ($130,000.00).

Finance and Personnel

BE IT FURTHER RESOLVED: That the appropriate City officials are hereby authorized to draw orders on the Prepaid Insurance Account No. 705-155010, in payment of same.

James a. Bohne

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

MUNICIPAL PROPERTY INSURANCE COMPANY
9701 Brader Way, Suite 301, Middleton, WI 53562 - (608) 821-6303

RENEWAL POLICY QUOTE

Policy # 5000130_Q-1
Agent Pallin Allen

Named Insured and Principal Address:

City of Sheboygan
828 Center Avenue
Sheboygan, WI 53081-4497

Contact:

Marty Halverson
920-459-3882

Policy Period: 12:01 am 06/01/2019 to 06/01/2020

Coverage	Deductible	TIV	Rate	Annual Premium
Buildings, Personal Property & Property in the Open	5,000	205,307,075	0.0537	110,245
Contractors Equipment	1,000	6,515,257	0.192	12,509
Contractors Equipment valued under $25,000	1,000	791,087	N/A	0
Monies & Securities	1,000	17,000	0.50	85
Pier and Wharf Limited Coverage		6,716	0.40	50
Specific Limit Coverage	5,000	100,000	0.0724	72
Vacancy Permit	5,000	9,631,458	0.029	2,793
Total Annual Premium	**$125,754**			

Comments

This quote is your estimated renewal policy premium amount with coverages and coverage amounts as shown.

This quote becomes null and void within 30 days of transaction effective date.

MUNICIPAL PROPERTY INSURANCE COMPANY

9701 Brader Way, Suite 301, Middleton, WI 53562 - (608) 821-6303

DECLARATIONS

Policy # 5000130_Q-1
Replaces Policy # 240090
Agent Pallin Allen

Item I. Named Insured and Principal Address:

City of Sheboygan
828 Center Avenue
Sheboygan, WI 53081-4497

Contact:

Marty Halverson
920-459-3882

Item II. Policy Period:

This Policy takes effect at 12:01 A.M., 06/01/2019, and expires at 12:01 A.M., 06/01/2020.

These effective and expiration times are based upon the local times at the principal address of the first named insured stated in Item I. above.

Item III. Coverages:

Coverage	Deductible	TIV	Rate	Annual Premium
Buildings, Personal Property & Property in the Open	5,000	205,307,075	0.0537	110,245
Contractors Equipment	1,000	6,515,257	0.192	12,509
Contractors Equipment valued under $25,000	1,000	791,087	N/A	0
Monies & Securities **Schedule Attached**	1,000	17,000	0.50	85
Pier and Wharf Limited Coverage **Schedule Attached**		6,716	0.40	50
Specific Limit Coverage **Schedule Attached**	5,000	100,000	0.0724	72
Vacancy Permit **Schedule Attached**	5,000	9,631,458	0.029	2,793
Total Annual Premium	**$125,754**	**Billed to Insured**		

Item IV. Forms and Endorsements made part of this policy at time of issue:

Form	Edition Date	Description
MPIC-001	01-2019	Municipal Property Insurance Company Policy
MPIC-004	06-2016	Statement of Values
MPIC-004 CE	06-2016	Contractor's Equipment
MPIC-004 PITO	06-2016	Property in the Open
MPIC-103	06-2016	Specific Limit Endorsement

MPIC-104	06-2016	Vacancy Permit
MPIC-201	06-2016	Monies & Securities Endorsement
MPIC-204	09-2018	Pier and Wharf Limited Coverage Endorsement
MPIC-300	01-2018	Contractor's Equipment Endorsement
MPIC-500	06-2016	Joint Loss Agreement Endorsement
MPIC-502	06-2016	Cap on Losses From Certified Acts of Terrorism
MPIC-506	06-2016	Coverage of Computer-Related Losses Endorsement
MPIC-510	01-2019	Tax Lien Property Coverage
MPIC-511	01-2019	Leased Property Coverage

Item V. Loss Payees:

Item VI. Variable Coverage Schedules:

Monies & Securities	
City Hall	17,000
	17,000
Pier and Wharf Limited Coverage	
HARBOR CENTRE MARINA - FLOATING DOCK	6,716
	6,716
Vacancy Permit	
Social Security Building - Vacancy Permit	285,000
Municipal Armory: 516 Broughton Drive - Vacancy Permit	9,346,458
	9,631,458
Specific Limit Coverage	
1920 Stahl Rd., Sheboygan, WI 53081 - Poth Farm	100,000
	100,000

STATEMENT OF VALUES
MUNICIPAL PROPERTY INSURANCE COMPANY
Coverage Amount - 205,307,075

Site	Bldg	Description	Year Built	Floors	Square Footage	Building CRN	Content CRN
1		***CITY HALL***					
	1	CITY HALL 828 Center Avenue Sheboygan WI 53081	1914	4	25,774	$11,440,000	$1,799,965
	2	POLICE GARAGE 1315 North 23rd Street Sheboygan WI 53081	2008	1	10,719	$702,860	$474,767
	3	POLICE STATION 1211 N 23rd Street Sheboygan WI 53081	2008	1	33,746	$7,272,072	$1,588,204
		Property in the open					$12,913
		CITY HALL (1) Total				**$19,414,932**	**$3,875,849**
2		***FIRE ENGINE HOUSE 1***					
	1	FIRE ENGINE HOUSE 1 833 New York Avenue Sheboygan WI 53081	1907	2	13,664	$2,818,716	$264,700
		FIRE ENGINE HOUSE 1 (2) Total				**$2,818,716**	**$264,700**
3		***FIRE ENGINE HOUSE 2***					
	1	FIRE ENGINE HOUSE 2 2413 South 18th Street Sheboygan WI 53081	1960	1	6,605	$1,386,495	$423,521
		FIRE ENGINE HOUSE 2 (3) Total				**$1,386,495**	**$423,521**
4		***FIRE ENGINE HOUSE 3***					
	1	FIRE ENGINE HOUSE 3 1326 N. 25th Street Sheboygan WI 53081	1971	2	33,077	$6,439,687	$1,588,204
	2	TRAINING FACILITY 1326 NORTH 25TH STREET Sheboygan WI 53081	2000	1	3,100	$372,953	$0
		Property in the open					$809
		FIRE ENGINE HOUSE 3 (4) Total				**$6,812,640**	**$1,589,013**
5		***FIRE STATION # 5***					
	1	FIRE STATION # 5 4504 SOUTH 18TH STREET Sheboygan WI 53081	2006	1	7,005	$850,965	$308,035
		FIRE STATION # 5 (5) Total				**$850,965**	**$308,035**
6		***PLAZA 8 FOUNTAIN***					
	1	PLAZA 8 FOUNTAIN 700 BLOCK OF 8TH Sheboygan WI 53081	1975	1	540	$72,454	$0
		PLAZA 8 FOUNTAIN (6) Total				**$72,454**	**$0**

STATEMENT OF VALUES
MUNICIPAL PROPERTY INSURANCE COMPANY
Coverage Amount - 205,307,075

Site	Bldg	Description	Year Built	Floors	Square Footage	Building CRN	Content CRN
7		***FOUNTAIN PARK***					
	1	FOUNTAIN PARK BANDSHELL ERIE AVENUE AND NORTH 9TH STREET Sheboygan WI 53081	1915	1	2,246	$368,022	$11,088
	2	FOUNTAIN PARK FOUNTAIN ERIE AVENUE AND NORTH 9TH STREET Sheboygan WI 53081	1915	1	84	$48,303	$1,756
		FOUNTAIN PARK (7) Total				**$416,325**	**$12,844**
8		***END PARK***					
	1	COMFORT STATION 13TH STREET AND LOS ANGELES AVENUE Sheboygan WI 53081	2003	1	513	$186,841	$2,609
	2	SHELTER 13TH AND LOS ANGELES AVENUE Sheboygan WI 53081	2005	1	1,140	$143,627	$1,789
		END PARK (8) Total				**$330,468**	**$4,398**
9		***ROOSEVELT PARK***					
	1	LIGHT CONTROL HOUSE S. 11TH ST & MEAD AVENUE Sheboygan WI 53081	1980	1	80	$12,077	$872
	2	SHELTER HOUSE SOUTH 12TH & MEAD AVENUE Sheboygan WI 53081	1980	1	2,040	$274,069	$20,101
		Property in the open					$865,287
		ROOSEVELT PARK (9) Total				**$286,146**	**$886,260**
10		***COLE PARK***					
	1	COMFORT STATION NORTH 4TH AND NORTH 3RD STREET Sheboygan WI 53081	1980	1	408	$57,179	$2,182
		COLE PARK (10) Total				**$57,179**	**$2,182**
11		***DELAND PARK***					
	1	BEACH HOUSE 825 BROUGHTON DRIVE Sheboygan WI 53081	1985	1	4,831	$838,053	$21,096
	2	FISH CLEANING STATION/COMFORT BROUGHTON DRIVE Sheboygan WI 53081	1980	1	801	$125,421	$4,585
	3	GROUP PICNIC SHELTER	1985	1	648	$73,799	$9,245

STATEMENT OF VALUES
MUNICIPAL PROPERTY INSURANCE COMPANY
Coverage Amount - 205,307,075

Site	Bldg	Description	Year Built	Floors	Square Footage	Building CRN	Content CRN
		833 BROUGHTON DRIVE Sheboygan WI 53081					
	4	SOUTH SHELTER - DELAND HOME BROUGHTON DRIVE Sheboygan WI 53081	1920	1	1,320	$184,242	$22,638
		Property in the open					$788,147
		DELAND PARK (11) Total				**$1,221,515**	**$845,711**
12		***KING PARK***					
	1	PARK PAVILION 1601 S 7TH ST Sheboygan WI 53081	2009	1	1,900	$734,594	$7,616
	2	SHELTER LAKESHORE DR AND BROADWAY Sheboygan WI 53081	1934	1	913	$126,970	$4,147
		KING PARK (12) Total				**$861,564**	**$11,763**
13		***VOLLRATH PARK***					
	1	COMFORT STATION PARK AVENUE AND 2ND STREET Sheboygan WI 53081	1980	1	1,485	$196,950	$2,402
	2	CONCESSION STAND PARK AVENUE AND NORTH 2ND STREET Sheboygan WI 53081	1980	1	500	$36,530	$9,732
	3	ELECTRIC SWITCH HOUSE PARK AVENUE AND 2ND STREET Sheboygan WI 53081	1980	1	100	$15,174	$1,316
		Property in the open					$1,205,979
		VOLLRATH PARK (13) Total				**$248,654**	**$1,219,429**
14		***LAKE VIEW PARK***					
	1	COMFORT STATION LAKESHORE DR AND SHOOTING PARKRD Sheboygan WI 53081	1980	1	560	$76,235	$3,057
	2	SHELTER HOUSE LAKESHORE DR AND SHOOTING PARKRD Sheboygan WI 53081	1912	1	1,176	$162,007	$5,240
		LAKE VIEW PARK (14) Total				**$238,242**	**$8,297**
15		***EVERGREEN PARK***					
	1	AREA #1 COMFORT STATION HIGHWAY 42 Sheboygan WI 53081	2001	1	1,500	$307,387	$0
	2	BAR STAND-AREA 1	1917	1	668	$43,352	$14,714

STATEMENT OF VALUES
MUNICIPAL PROPERTY INSURANCE COMPANY
Coverage Amount - 205,307,075

Site	Bldg	Description	Year Built	Floors	Square Footage	Building CRN	Content CRN
		HWY 42 Sheboygan WI 53081					
	3	COMFORT STATION AREA 2 HWY 42 Sheboygan WI 53081	1980	1	800	$71,476	$4,434
	4	COMFORT STATION AREA 4 & 5 HWY 42 Sheboygan WI 53081	1980	1	656	$90,530	$2,839
	5	COMFORT STATION/CONCESSION-ARE HWY 42 Sheboygan WI 53081	1974	1	481	$66,707	$2,662
	6	SHELTER HOUSE-AREA 5 HWY 42 Sheboygan WI 53081	1917	1	846	$117,532	$3,762
	7	TOOL HOUSE-AREA 1 HWY 42 Sheboygan WI 53081	1950	1	192	$9,529	$2,622
	8	SHAW SHELTER HWY 42 SHEBOYGAN WI 53081		0		$200,000	$0
		Property in the open					$831,857
		EVERGREEN PARK (15) Total				**$906,513**	**$862,890**
16		***JAYCEE PARK***					
	1	QUARRY BATH HOUSE BUS 42 N. AND CALUMET DRIVE Sheboygan WI 53081	1979	1	3,854	$628,467	$33,852
		Property in the open					$807,449
		JAYCEE PARK (16) Total				**$628,467**	**$841,301**
17		***KIWANIS PARK***					
	1	COMFORT STATION KIWANIS PARK DRIVE Sheboygan WI 53081	1980	1	1,350	$120,707	$6,111
	2	CONCESSION STAND KIWANIS PARK DRIVE Sheboygan WI 53081	1980	1	558	$41,295	$11,883
	3	FIELD HOUSE KIWANIS PARK DRIVE Sheboygan WI 53081	1924	1	4,680	$782,043	$101,872
	4	SHELTER HOUSE UNION AVENUE AND SOUTH 22ND ST Sheboygan WI 53081	1946	1	1,133	$184,643	$24,372
	5	AREA #8 COMFORT		0		$193,423	$0

STATEMENT OF VALUES
MUNICIPAL PROPERTY INSURANCE COMPANY
Coverage Amount - 205,307,075

Site	Bldg	Description	Year Built	Floors	Square Footage	Building CRN	Content CRN
		STATION/SHELTER KIWANIS PARK DRIVE SHEBOYGAN WI 53081					
		Property in the open					$679,512
		KIWANIS PARK (17) Total				**$1,322,111**	**$823,750**
18		***MUNICIPAL SERVICE SITE***					
	1	MUNICIPAL SERVICE BUILDING 2026 New Jersey Avenue Sheboygan WI 53081	1965	1	125,346	$16,796,444	$3,705,811
	2	POLICE IMPOUND GARAGE 2026 NEW JERSEY AVENUE Sheboygan WI 53081	1990	1	5,400	$356,668	$22,969
		MUNICIPAL SERVICE SITE (18) Total				**$17,153,112**	**$3,728,780**
19		***CLEVELAND PARK***					
	1	Park Open Pavilion 2321 Geele Ave Sheboygan WI 53081	2013	1	864	$74,204	$10,928
	2	Restroom Facility 2321 Geele Ave Sheboygan WI 53081	2013	1	420	$79,461	$6,072
	3	SHELTER HOUSE NORTH 25TH AND GEELE AVENUE Sheboygan WI 53081	1956	1	1,128	$157,237	$6,422
		Property in the open					$7,747
		CLEVELAND PARK (19) Total				**$310,902**	**$31,169**
20		***WILDWOOD BASEBALL COMPLEX***					
	1	COMFORT STATION 22ND & NEW JERSEY Sheboygan WI 53081	1980	1	897	$115,949	$5,091
	2	Concessions, Rest Room Building 2328 Wildwood Ave Sheboygan WI 53081	1981	0	520	$60,676	$0
	3	Dugout 2328 Wildwood Ave Sheboygan WI 53081	2011	1	250	$33,977	$0
	4	Dugout 2328 Wildwood Ave Sheboygan WI 53081	2011	1	250	$33,977	$0
	5	GARAGE 2328 Wildwood Ave Sheboygan WI 53081	1970	1	520	$19,059	$2,842
	6	Garage	2000	1	484	$12,135	$0

STATEMENT OF VALUES
MUNICIPAL PROPERTY INSURANCE COMPANY
Coverage Amount - 205,307,075

Site	Bldg	Description	Year Built	Floors	Square Footage	Building CRN	Content CRN
		2328 Wildwood Ave Sheboygan WI 53081					
	7	Pavillion 2328 Wildwood Ave Sheboygan WI 53081	1990	1	400	$2,427	$0
	8	Press Box/Skybox 2328 Wildwood Ave Sheboygan WI 53081	1997	2	1,280	$182,030	$0
	9	Storage Shed 2328 Wildwood Ave Sheboygan WI 53081	1998	1	96	$2,427	$0
		Property in the open					$372,895
		WILDWOOD BASEBALL COMPLEX (20) Total				**$462,657**	**$380,828**
21		***NELESEN'S FISH***					
	1	NELESEN'S FISH 715 S FRANKLIN Sheboygan WI 53081	1948	1	1,250	$55,589	$0
		NELESEN'S FISH (21) Total				**$55,589**	**$0**
22		***ROTARY RIVERVIEW PARK***					
	1	COMFORT STATION FRANKLIN STREET Sheboygan WI 53081	1980	1	400	$60,387	$2,182
		Property in the open					$303,709
		ROTARY RIVERVIEW PARK (22) Total				**$60,387**	**$305,891**
23		***WILDWOOD CEMETERY***					
	1	GARAGE WILDWOOD AVENUE Sheboygan WI 53081	1920	1	1,920	$96,003	$61,941
	2	STORAGE BUILDING EVANS AVENUE Sheboygan WI 53081	1980	1	1,071	$58,839	$14,756
		WILDWOOD CEMETERY (23) Total				**$154,842**	**$76,697**
24		***MAYWOOD***					
	1	BARN 3615 MUELLER ROAD Sheboygan WI 53081	1950	1	1,500	$111,181	$20,767
	2	EQUIPMENT SHED 3615 MUELLER ROAD Sheboygan WI 53081	1980	1	556	$71,476	$7,651
	3	EQUIPMENT SHED 3615 MUELLER ROAD	1980	1	945	$47,646	$13,116

STATEMENT OF VALUES
MUNICIPAL PROPERTY INSURANCE COMPANY
Coverage Amount - 205,307,075

Site	Bldg	Description	Year Built	Floors	Square Footage	Building CRN	Content CRN
		Sheboygan WI 53081					
	4	GARAGE 3615 MUELLER ROAD Sheboygan WI 53081	1974	1	1,200	$63,532	$38,290
	5	GARAGE 3615 MUELLER ROAD Sheboygan WI 53081	1974	1	712	$36,530	$10,098
	6	STORAGE BUILDING 3615 MUELLER ROAD Sheboygan WI 53081	1980	1	3,360	$171,537	$47,196
		MAYWOOD (24) Total				**$501,902**	**$137,118**
25		***MEAD PUBLIC LIBRARY***					
	1	SHEBOYGAN PUBLIC LIBRARY 710 Plaza 8 Sheboygan WI 53081	1975	3	49,031	$11,967,951	$9,529,228
		Property in the open					$40,966
		MEAD PUBLIC LIBRARY (25) Total				**$11,967,951**	**$9,570,194**
26		***BUS TERMINAL***					
	1	BUS TERMINAL 608 South Commerce Street Sheboygan WI 53081	1975	1	40,734	$6,106,351	$847,042
		Property in the open					$1,218,972
		BUS TERMINAL (26) Total				**$6,106,351**	**$2,066,014**
27		***ENVIRONMENTAL CENTER***					
	1	MAYWOOD 3615 MUELLER ROAD Sheboygan WI 53081	1974	1	3,772	$333,540	$68,359
	2	MAYWOOD WITH ADDITION 3615 Mueller Road Sheboygan WI 53081	2006	2	11,648	$2,295,583	$264,700
		Property in the open					$3,662
		ENVIRONMENTAL CENTER (27) Total				**$2,629,123**	**$336,721**
28		***NORTH SIDE PUMP STATION***					
	1	NORTHSIDE PUMP STATION NORTH 3RD & BLACKSTOCK Sheboygan WI 53081	1970	1	150	$20,841	$152,848
		NORTH SIDE PUMP STATION (28) Total				**$20,841**	**$152,848**
29		***SOUTH SIDE PUMP STATION***					
	1	SOUTHSIDE PUMP STATION 1218 SOUTH 7TH STREET	1950	1	7,500	$473,172	$563,351

STATEMENT OF VALUES
MUNICIPAL PROPERTY INSURANCE COMPANY
Coverage Amount - 205,307,075

Site	Bldg	Description	Year Built	Floors	Square Footage	Building CRN	Content CRN
		Sheboygan WI 53081					
		SOUTH SIDE PUMP STATION (29) Total				**$473,172**	**$563,351**
30		***FIRE DEPARTMENT***					
	1	FIRE DEPARTMENT #4 2622 N. 15th Street Sheboygan WI 53081	1988	2	8,726	$1,753,143	$476,461
		FIRE DEPARTMENT (30) Total				**$1,753,143**	**$476,461**
31		***WASTE WATER TREATMENT PLANT***					
	1	ADMINISTRATION BUILDING 3333 LAKESHORE DRIVE Sheboygan WI 53081	1980	1	19,575	$2,135,945	$409,528
	2	CHEMICAL STORAGE BUILDING 3333 LAKESHORE DRIVE Sheboygan WI 53081	1980	1	20,000	$2,208,634	$80,297
	3	PUMP STATION 3333 LAKESHORE DRIVE Sheboygan WI 53081	1980	1	10,800	$1,215,559	$1,860,023
	4	SOLIDS HANDLING BUILDING 3333 LAKESHORE DRIVE Sheboygan WI 53081	1980	1	3,096	$374,123	$17,756
	5	WASTEWATER TREATMENT PROCESS N3333 LAKESHORE DRIVE Sheboygan WI 53081	2006	0	0	$75,206,567	$0
		Property in the open					$1,685,881
		WASTE WATER TREATMENT PLANT (31) Total				**$81,140,828**	**$4,053,485**
32		***YOUTH BOATING FACILITY***					
	1	YOUTH BOATING FACILITY 619 BROUGHTON DRIVE Sheboygan WI 53081	2004	1	1,780	$287,598	$6,947
		YOUTH BOATING FACILITY (32) Total				**$287,598**	**$6,947**
33		***HARBOR CENTRE MARINA***					
	1	ADMINISTRATION BUILDING 821 Broughton Drive Sheboygan WI 53081	2004	2	11,322	$1,951,002	$137,644
	2	FUEL ATTENDANT'S BUILDING 821 BROUGHTON DRIVE Sheboygan WI 53081	2004	1	780	$123,355	$55,617
		Property in the open					$6,716

STATEMENT OF VALUES
MUNICIPAL PROPERTY INSURANCE COMPANY
Coverage Amount - 205,307,075

Site	Bldg	Description	Year Built	Floors	Square Footage	Building CRN	Content CRN
		HARBOR CENTRE MARINA (33) Total				**$2,074,357**	**$199,977**
34		***DELAND PARK COMMUNITY CENTER***					
	1	DELAND PARK COMMUNITY CENTER 901 BROUGHTON DRIVE Sheboygan WI 53081	1994	1	2,481	$531,305	$24,507
		DELAND PARK COMMUNITY CENTER (34) Total				**$531,305**	**$24,507**
35		***SENIOR CENTER***					
	1	SENIOR CENTER 428 Wisconsin Ave. Sheboygan WI 53081	1969	1	14,346	$2,387,882	$211,760
		SENIOR CENTER (35) Total				**$2,387,882**	**$211,760**
36		***LIFT STATION INDIANA AVE.***					
	1	INDIANA AVE. LIFT STATION 2827 INDIANA AVENUE Sheboygan WI 53081	1997	1	648	$752,322	$648,941
		LIFT STATION INDIANA AVE. (36) Total				**$752,322**	**$648,941**
37		***LIFT STATION 29TH & GEELE***					
		Property in the open					$281,111
		LIFT STATION 29TH & GEELE (37) Total				**$0**	**$281,111**
38		***POTH FARM***					
	1	POTH FARM 1920 STAHL ROAD Sheboygan WI 53081	1900	2	2,500	$332,118	$0
		POTH FARM (38) Total				**$332,118**	**$0**
39		***FISH CLEANING STATION/RESTROOMS***					
	1	FISH CLEANING STATION / RESTROOM SOUTH PIER DRIVE Sheboygan WI 53081	2005	1	1,262	$390,468	$5,942
		FISH CLEANING STATION/RESTROOMS (39) Total				**$390,468**	**$5,942**
40		***SHERIDAN PARK***					
		Property in the open					$178,367
		SHERIDAN PARK (40) Total				**$0**	**$178,367**

STATEMENT OF VALUES
MUNICIPAL PROPERTY INSURANCE COMPANY
Coverage Amount - 205,307,075

Site	Bldg	Description	Year Built	Floors	Square Footage	Building CRN	Content CRN
41		***VETERANS PARK***					
	1	Park Open Pavilion 2220 Union Ave Sheboygan WI 53081	2013	1	864	$51,944	$10,928
	2	Rest Room facilities 2220 Union Ave Sheboygan WI 53081	2013	1	480	$89,664	$6,072
		VETERANS PARK (41) Total				**$141,608**	**$17,000**
42		***OPTIMIST PARK***					
	1	Park Open Pavilion 2004 Carmen Ave Sheboygan WI 53081	2013	1	864	$51,944	$10,928
	2	Restroom Facility 2004 Carmen Ave Sheboygan WI 53081	2013	1	420	$80,388	$6,072
		Property in the open					$158,820
		OPTIMIST PARK (42) Total				**$132,332**	**$175,820**
43		***VOIGHT PARK***					
		Property in the open					$27,021
		VOIGHT PARK (43) Total				**$0**	**$27,021**
44		***Sports Complex (Butzen Estate)***					
	1	Farmstead Garage 3936 S Business Dr Sheboygan WI 53081	1890	1	548	$13,082	$0
	2	Garage [1B] 3936 S Business Dr Sheboygan WI 53081	1960	1	507	$11,892	$0
	3	House 3936 S Business Dr Sheboygan WI 53081	1960	1	1,194	$106,439	$5,935
	4	Original Farm Home 3936 S Business Dr Sheboygan WI 53081	1890	2	1,131	$101,088	$0
	5	Pole Barn 3936 S Business Dr Sheboygan WI 53081	1970	1	786	$23,784	$0
	6	Storage Shed 3936 S Business Dr Sheboygan WI 53081	1900	1	726	$8,920	$0
	7	SUMMER KITCHEN 3936 S Business Dr Sheboygan WI 53081	1920	1	250	$5,946	$0
		Sports Complex (Butzen Estate)				**$271,151**	**$5,935**

STATEMENT OF VALUES
MUNICIPAL PROPERTY INSURANCE COMPANY
Coverage Amount - 205,307,075

Site	Bldg	Description	Year Built	Floors	Square Footage	Building CRN	Content CRN
		(44) Total					
45		***999 PITO THROUGHOUT / CE***					
		Property in the open					$1,284,802
		999 PITO THROUGHOUT / CE (45) Total				**$0**	**$1,284,802**
46		***PARK CE***					
		Property in the open					$117,718
		PARK CE (46) Total				**$0**	**$117,718**
47		***Social Security Building***					
	1	Social Security Building (vacant) 606 N 9th St Sheboygan WI 53081	0	0	0	$296,400	$0
		Social Security Building (47) Total				**$296,400**	**$0**

Building Subtotal	**$**168,261,727
Contents Subtotal	**$**26,165,008
Property in the Open Subtotal	**$**10,880,340
Building, Contents and PITO Total	**$**205,307,075

PROPERTY IN THE OPEN
MUNICIPAL PROPERTY INSURANCE COMPANY

Site	Description	New Cost of Replacement
1	***CITY HALL***	
	COMMUNICATIONS TOWER	$12,913
	CITY HALL (1) TOTAL	**$12,913**
4	***FIRE ENGINE HOUSE 3***	
	LADDER,HORIZONTAL	$809
	FIRE ENGINE HOUSE 3 (4) TOTAL	**$809**
9	***ROOSEVELT PARK***	
	PLAYSTRUCTURE,WOOD LRG	$503,673
	TENNIS COURT,TWO	$361,614
	ROOSEVELT PARK (9) TOTAL	**$865,287**
11	***DELAND PARK***	
	BENCHES	$12,431
	PLAYSTRUCTURE	$28,337
	STAGING	$47,094
	TENNIS COURT,FOUR	$77,488
	BOUNCER,ANIMAL	$1,612
	CONTROL GATE	$40,425
	OUTDOOR LIGHTING	$423,378
	PICNIC PAVILION	$22,472
	PICNIC SHELTERS	$25,525
	PICNIC SHELTERS	$25,525
	PICNIC TABLES	$22,617
	PLAYSTRUCTURE	$61,244
	DELAND PARK (11) TOTAL	**$788,147**
13	***VOLLRATH PARK***	
	GOAL,BASKETBALL DOUBLE	$16,141
	Nucleus Play Structure	$34,742
	OUTDOOR LIGHTING	$1,132,623
	PICNIC PAVILION	$22,472
	VOLLRATH PARK (13) TOTAL	**$1,205,979**
15	***EVERGREEN PARK***	
	PICNIC PAVILION	$22,472
	PLAYGROUND EQUIPMENT TRI ACTIVE	$9,385
	SHAW PLAYGROUND	$800,000
	EVERGREEN PARK (15) TOTAL	**$831,857**
16	***JAYCEE PARK***	
	RETAINING WALL	$770,537
	RUNNING TRACKS - VITA COURSE	$36,912
	JAYCEE PARK (16) TOTAL	**$807,449**
17	***KIWANIS PARK***	

PROPERTY IN THE OPEN
MUNICIPAL PROPERTY INSURANCE COMPANY

Site	Description	New Cost of Replacement
	PICNIC PAVILION	$22,472
	Skate Park	$657,040
	KIWANIS PARK (17) TOTAL	**$679,512**
19	***CLEVELAND PARK***	
	JUNGLE GYM(BAR CLIMBER)	$7,747
	CLEVELAND PARK (19) TOTAL	**$7,747**
20	***WILDWOOD BASEBALL COMPLEX***	
	BACKSTOP BASEBALL	$72,326
	BENCH,PARK WOOD	$113,002
	BLEACHER ALUMINUM	$104,933
	BLEACHER ALUMINUM	$8,395
	KOMPAN PLAYGROUND EQUIPMENT	$9,667
	SCOREBOARD,LRG	$64,573
	WILDWOOD BASEBALL COMPLEX (20) TOTAL	**$372,895**
22	***ROTARY RIVERVIEW PARK***	
	PICNIC PAVILION	$89,912
	PICNIC TABLE	$150,671
	PLAYSTRUCTURE, LG WOOD	$38,743
	PLAYVENTURE	$15,772
	SEESAW	$8,611
	ROTARY RIVERVIEW PARK (22) TOTAL	**$303,709**
25	***MEAD PUBLIC LIBRARY***	
	LIBRARY SCULPTURES - FOUR	$40,966
	MEAD PUBLIC LIBRARY (25) TOTAL	**$40,966**
26	***BUS TERMINAL***	
	BUS SHELTER	$209,702
	BUS SHELTER	$862,365
	PARKING METER	$146,904
	BUS TERMINAL (26) TOTAL	**$1,218,972**
27	***ENVIRONMENTAL CENTER***	
	FIRE TOWER	$3,662
	ENVIRONMENTAL CENTER (27) TOTAL	**$3,662**
31	***WASTE WATER TREATMENT PLANT***	
	FENCE,CHAINLINK OVER 6FT.	$281,377
	VERDESIS MICRO-TURBINS (TWO - 2)	$1,404,503
	WASTE WATER TREATMENT PLANT (31) TOTAL	**$1,685,881**
33	***HARBOR CENTRE MARINA***	
	FLOATING DOCK	$6,716

PROPERTY IN THE OPEN
MUNICIPAL PROPERTY INSURANCE COMPANY

Site	Description	New Cost of Replacement
	HARBOR CENTRE MARINA (33) TOTAL	**$6,716**
37	***LIFT STATION 29TH & GEELE***	
	6TH ST & PERSHING PKG LIFT STN	$115,755
	INDIAN MEADOWS PKG LIFT STN	$118,829
	LIFT STATION	$46,526
	LIFT STATION 29TH & GEELE (37) TOTAL	**$281,111**
40	***SHERIDAN PARK***	
	Picnic Pavilion - steel	$94,314
	SWING,ANIMAL	$26,152
	SWING,BELT	$39,605
	WHIRL	$18,296
	SHERIDAN PARK (40) TOTAL	**$178,367**
42	***OPTIMIST PARK***	
	Splashpad	$158,820
	OPTIMIST PARK (42) TOTAL	**$158,820**
43	***VOIGHT PARK***	
	Nucleus Play Structure	$27,021
	VOIGHT PARK (43) TOTAL	**$27,021**
45	***999 PITO THROUGHOUT / CE***	
	STREET LIGHTING	$1,284,802
	999 PITO THROUGHOUT / CE (45) TOTAL	**$1,284,802**
46	***PARK CE***	
	DINO CLIMBER	$7,219
	PLAYGROUND EQUIPMENT	$67,339
	PLAYGROUND EQUIPMENT	$19,453
	PLAYSTRUCTURE, WD SMALL	$9,591
	TRACK RIDE	$14,116
	PARK CE (46) TOTAL	**$117,718**
PROPERTY IN THE OPEN TOTAL		**$10,880,340**

CONTRACTOR'S EQUIPMENT
MUNICIPAL PROPERTY INSURANCE COMPANY

Description	RCN Subject
2009 JOHN DEERE 624K LOADER	$169,003
2009 JOHN DEERE 624K LOADER	$169,003
2007 ASPHALT ZIPPER X00012-0 AZ500 48 HD ASPHALT ZIPPER	$116,495
2007 FALCON Hot Patcher PAVING EQUIPMENT(TAR KETTLE)	$16,312
2007 SMITHCO SUPER RAKE MOWER	$14,469
2007 ARROW 1350 ROAD EQUIPMENT(ROLLER)	$101,677
2012 YES 2CX-12 BACK HOE	$81,629
2012 BAY VERTE REDML5435E TRAILER	$31,574
2011 BOBCAT 5600 Turbo Toolcat F-Series EARTH MOVING EQUIPMENT(RUBBER TIRED	$54,173
2011 DOOSAN G30P-5 6000# Fortklift FORK LIFT	$29,991
2010 EXCEL HUSTLER MODEL 796623 MOWER	$10,567
2004 JOHN DEERE 310SG M150 LOADER	$70,569
2004 SEWER EQUIPMENT M239 VACUUM TRAILER	$109,717
2002 JACOBSEN 628D TURFCAT M355 MOWER	$23,921
2001 COMP AIR FIRE COMPRESSOR	$19,399
2001 FELLING 420 M420 TRAILER	$7,948
2001 BOMAG 120AD3 M152 ROLLER	$42,116
1999 NEW HOLLAND TC33D TRACTOR	$16,835
2001 RAYCO RG50 M282 GRINDER	$38,880
2001 TARGET CH0267 M234 CONCRETE SAW	$23,847
2001 HYUNAI F42033 M148 EXCAVATOR	$187,988
2001 EAST HT300 M125A TRIAXLE TRAILER	$23,357
1988 GIANT VAC 6800 281 LEAF MACHINE-TR20	$29,649
1981 FMC D050E 0284 SPRAYER	$48,604
1981 INGERSOLL-RAND P175WD 0253 AIR COMPRESSOR	$22,724
1987 DYNAPAC LR100 0153 ROLLER/COMPACTOR	$33,089
1988 POWER BOSS SW88HD TRANSIT SWEEPER	$33,860
1986 CUSHMAN 22 TRACTOR-FRONTLINE 3WHEEL	$10,858
1975 KLAUER MP-30 SNOGO BLOWER 180A	$73,133
1990 EAGER BEEVER 290 M287 CHIPPER	$26,593
1990 EAGER BEEVER 290 M286 CHIPPER	$26,593
1991 LONGYEAR 6500 M233 CONCRETE SAW	$27,951
1988 SCHMIDT HF-2 M181A SNOW CUTTER	$130,862
2004 KOHLER 30RZG FIRE GENERATOR	$36,001
1990 JOHN DEERE M163 TRACTOR	$26,242
1978 KOHLER 100RHZ81 GENERATOR	$45,731
1976 KOHLER 7.5RMK62 EMERGENCY GENERATOR	$13,505
2006 VOLVO L110E WHEEL LOADER	$209,577
2006 BOBCAT 5600C TOOLCAT UTILITY WORK MACHINE	$63,184
2006 LEEBOY 8515 PAVER	$128,679
2006 BANDIT 250C53 CHIPPER	$30,713
2006 BANDIT 250C53 CHIPPER	$30,713
2006 TENNANT 8210 SWEEPER/SCRUBBER	$49,102
2006 BOBCAT DHAM DROP HAMMER	$7,125
2006 DEWEZE 05A59 SLOPE MOWER	$37,843
2006 HUSTLER SUPER Z 23KAW MOWER	$7,378
2006 HUSTLER SUPER Z 23KAW MOWER	$7,378
2006 JOHN DEERE 6420 UTILITY TRACTOR	$88,073
2006 BOBCAT s185 SKIDSTEER LOADER	$34,431
2006 COMMERCIAL SSM38-720 SLOPE MOWER	$55,735
2006 PACE AMERICAN CS716TA3 TRAILER	$9,437

CONTRACTOR'S EQUIPMENT
MUNICIPAL PROPERTY INSURANCE COMPANY

Description	RCN Subject
2005 SIMPLICITY STALLION C MOWER AND MULCH KIT, 25HP	$8,242
1991 KNOWLES 24FT. F018 TRAILER	$29,684
2005 HURST JL F RAM UNIT	$14,405
2006 KOHLER 30RZG F GENERATOR	$25,682
1998 Zodiac MK2 Boat	$12,947
1994 KUBOTA CEM1 TRACTOR	$12,223
1995 DEWEZE ATM70C M343 MOWER	$25,143
1995 VERMEER 1102 M285 STUMP GRINDER	$48,592
1995 CRAFCO EX100D M230 MELTER	$31,674
1995 CRAFCO 200 M227 ROUTER	$10,802
1995 JOHN DEERE 2105 M156 BACKHOE	$63,561
1993 FORD M169 TRACTOR MOTT MOWER	$50,799
1992 JOHN DEERE 544E M183 WHEEL LOADER	$164,909
1992 EXCEL HUSTLER 440ST M342 MOWER/SNOW GROOMER	$63,861
1994 GPX 20E 0130 FORKLIFT	$23,696
1994 SMITHCO 0176 SUPER RAKE	$16,157
1994 CASE 621B 0186 LOADER	$122,187
1994 CASE 821B 0187 LOADER	$192,358
1994 GIANT VAC 6800-TR 0279 LEAF LOADER	$25,468
1996 HOWARD-PRICE 727 M345 MOWER	$21,947
1996 HOLDER MTC9700 0166 TRACTOR	$68,007
1996 SULLIVAN 1850PQJD 0254 AIR COMPRESSOR	$14,814
1990 MFD M159 TRACTOR, CAB, LOADER	$44,248
1997 NEW HOLLAND 1620A4 M162 TRACTOR	$14,266
1997 NEW HOLLAND 3430 M161 TRACTOR	$17,556
1998 M121 VERSALIFT	$82,491
1997 LEACH M122 VAC-ALL	$237,496
1995 SIMON M123 TELELECT	$102,767
1997 DAEWOO M131 FORK TRUCK	$28,901
1997 JOHN DEERE M154 BACKHOE	$96,193
2003 JOHN DEERE X595 M170 TRACTOR	$12,989
2003 SKID 00-SKB700 VACUUM	$18,467
2003 SHANDIC SKI-DOO SNOWMOBILE	$13,375
2003 HONDO BLITZ SCREED	$11,353
2003 BOBCAT S185 M137 SKIDSTEER	$44,710
2005 BOBCAT 5600C M139 TOOLCAT	$66,151
2005 BOBCAT 5600C M138 TOOLCAT	$66,151
2005 BEACH TECH 3000 M BEACH TECH	$115,798
2005 KAWASAKI M167 MULE	$11,763
2005 KAWASAKI M339 MOWER, HUSTLER MINI SUPER Z	$8,662
2005 CIMLINE 110DC M CRACK FILLING MELTER/APPLICATOR	$43,207
2012 ODB ODLCT650 Leaf Collector	$22,440
2012 ODB ODLCT650 Leaf Collector	$22,440
2012 ODB ODLCT650 Leaf Collector	$22,440
2012 ODB ODLCT650 Leaf Collector	$22,440
2011 Bobcat 5600 Bobcat Toolcat F-Series	$44,132
2011 Doosan G30P-5 Forklift Truck	$30,385
2012 Radar THL/SRO Trailer W/Traffic Collector	$9,315
2012 Hustler Excel 929927 Mower	$13,360
2012 Hustler Excel 929927 Mower	$13,360
2011 Ferris IS3100Z Mower	$14,147

CONTRACTOR'S EQUIPMENT
MUNICIPAL PROPERTY INSURANCE COMPANY

Description	RCN Subject
2011 Ferris IS3100Z Mower	$14,147
2011 Bobcat 5600 Turbo Bobcat	$53,134
2011 Bay Verte REDML5435E Trailer	$31,967
2011 Doosan G309-5 Forklift Truck	$30,385
2011 HYD ATSRX6 Breaker	$8,097
2011 JCB 2CX-12 Backhoe	$80,266
2010 DEWEZE ATM72LC MOWER	$36,728
2010 FRUEHAUF Rock Tub 7 cu yd TRAILER	$16,203
2010 VOLVO EW180C EXCAVATOR	$167,023
2010 KUBOTA V3300T MOWER	$74,289
2010 SPAULDING RMV-2 PAVING EQUIPMENT(TAR KETTLE)	$30,122
2010 SPAULDING RMV-2 PAVING EQUIPMENT(TAR KETTLE)	$30,122
2009 HUSTLER Z4 MOWER	$8,092
2008 FERRIS M330 MOWER	$10,051
2008 FERRIS M331 MOWER	$10,051
2009 FERRIS M318 MOWER	$8,975
2010 HUSTLER 24 M322 MOWER	$7,742
2008 AERWAY TURF M347 AERATOR	$10,593
2009 ARTICULATED M520 TRACTOR	$139,619
2009 ARTICULATED M521 TRACTOR	$139,619
2007 LINELAZER IV5900 PAINTING MACHINE	$7,206
2015 Case 821F Wheel Loader	$223,660
2017 Bomag CR352 Bomag CR352 Paver	$361,053
2005 CUB CADET 4X2TRAIL UTILITY VEHICLE 4 X 2	$10,167
1998 TORO 3200 UTILITY TRUCK WORKMAN	$23,499
2009 KAWASAKI 4010 Mule TRACTOR	$11,267
2009 SCHWARZE A7000 ROAD EQUIPMENT(SWEEPER)	$169,003
2008 TURFCAT 628D MOWER	$45,067
2008 WAUSAU MP 3-D SNOWBLOWER	$123,936
2010 JOHN DEERE 2020A PRO GATOR TRACTOR	$12,853
2010 SCHWARZE A7000 Sweeper STREET SWEEPER	$197,768
2010 SCHWARZE A7000 Sweeper STREET SWEEPER	$197,768
2005 CONFLICT PCMT2600 M248 MONITOR TESTER	$13,478
CONTRACTOR'S EQUIPMENT TOTAL	**$6,515,257**

MUNICIPAL PROPERTY INSURANCE COMPANY

TABLE OF CONTENTS

SECTION I - PERILS "COVERED”	**2**
SECTION II – DEDUCTIBLE	**2**
SECTION III - AMOUNT OF COVERAGE	**2**
SECTION IV - "COVERED" PROPERTY; LIMIT OF COVERAGE	**2**
SECTION V - PROPERTY NOT "COVERED"	**10**
SECTION VI - LOSSES EXCLUDED	**10**
SECTION VII - BASIS OF RECOVERY	**12**
SECTION VIII - CONDITIONS	**13**
SECTION IX - DEFINITIONS	**16**
SECTION X - DEFINITION OF "CONTRACTORS EQUIPMENT”	**20**

MUNICIPAL PROPERTY INSURANCE COMPANY

9701 Brader Way, Suite 301, Middleton, WI 53562

Policy Provisions

Read the entire policy carefully to determine rights, duties, and what is and what is not “covered.” Several provisions in this policy restrict coverage.

Throughout this policy, the words “you” and “your” refer to the Named Insured shown on the Declarations page. The words “we”, “us” and “our” refer to Municipal Property Insurance Company. Other words and phrases that appear in quotation marks have special meaning. Refer to Section IX, Definitions, and Section IV. Definition of "Contractors Equipment".

In consideration of the provisions of this policy, the payment of premium, receipt of a statement of values, “Property in the Open” schedule and/or contractors equipment detail, we insure those named on the Declaration page for the coverages defined in this policy, during the policy term stated on the Declarations Page.

SECTION I – PERILS “COVERED” Coverage: This policy insures against sudden and accidental direct physical loss or damage except as limited or excluded in the following sections.

SECTION II – DEDUCTIBLE

The amount shown as deductible on the Declarations page shall be deducted from the claim for each “occurrence”.

If more than one coverage under this policy applies to the same “occurrence”, then the deductible will be calculated as follows: we will determine which coverage accounts for the largest proportion of the loss, and only the deductible associated with the largest portion of the loss will apply, unless otherwise stated.

SECTION III – AMOUNT OF COVERAGE

With regard to “buildings”, personal property regardless of its location, and “Property in the Open”:

The amount of coverage shall be limited as stated in Sections IV, V and VII.

Unless limited by other provisions of this policy or by endorsement, ”buildings”, personal property, and “Property in the Open”, are subject to an “occurrence” limit of 125% of the Total Insured Value shown on the Statement of Values.

SECTION IV – “COVERED” PROPERTY; LIMIT OF COVERAGE

Subject to the terms, conditions, limitations and exclusions in the policy, this policy covers:

A. “Buildings” and structures listed on the Statement of Values.

B. Non-Owned Property. “Buildings” and structures listed on the Statement of Values for which you may be contractually liable in the event of damage or destruction and which are in your care, custody or control and being used for a legitimate governmental purpose.

C. Personal property you own or are legally responsible for insuring.

D. “Property in the Open”. The amount we will pay for “Property in the Open” is limited to $10,000 per “occurrence”. However, this $10,000 limitation per “occurrence” does not apply to items listed separately on the Statement of Values “Property in the Open” detail list.

E. Leased property improvements and betterments at locations listed on the Statement of Values. In the event improvements or betterments made by you are damaged or destroyed during the term of this policy by an insured peril, our liability will be determined as follows:

1. If you elect to repair or replace a damaged improvement or betterment, actual repair or replacement must be made as soon as reasonably possible after the loss or damage occurs, but not to exceed two (2) years unless the time is extended in writing by us.

2. If the improvements or betterments are not repaired or replaced, we will pay a fraction of the original cost of the improvement. The fraction will be proportional to the remaining term of the lease as of the date of loss.

F. The cost of removing debris when “covered” property is destroyed or damaged by an insured peril. However, unless otherwise provided for in this policy, debris removal does not apply to costs:

1. To extract "pollutants" or “contaminants” from land or water; or

2. To remove, restore or replace land or water containing or affected by “pollutants” or “contaminants”; or

3. For asbestos cleanup, removal or abatement.

G. The cost to repair or replace foundations of “buildings”, structures, machinery or boilers if their foundations are at or below:

1. The lowest basement floor; or

2. The surface of the ground if there is no basement.

The most we will pay for any “occurrence” under this section is $100,000.

H. The cost of excavation, grading or filling related to an “occurrence”, the most “we” will pay under this coverage is $50,000

I. Lawns, trees, shrubs, and plants if within 100 feet of an insured “building”. The amount we will pay is limited to $500 for any one tree, shrub, or plant and $1,000 for lawn damage up to a maximum of $5,000 per “occurrence”

J. Contractors Equipment", as defined in Section X., that you own or are legally responsible for insuring up to a limit of $25,000 for each item including its attachment(s). Equipment not listed in Section X. is considered personal property and is “covered” the same way as your other personal property. See Section IV.C.

Coverage, in excess of the $25,000 per item, is provided only if the equipment is scheduled and a premium for the coverage is shown on the Declarations page, unless the equipment is newly acquired during the current policy period, provided your interest is not covered under any other policy of insurance.

K. “Valuable Records” that are your property or property of others in your care, custody, or control.

We will also pay for:

1. Expenses necessary to research and recreate lost “valuable records”; and

2. Expenses necessary for transcribing or copying lost “valuable records” from available secondary sources.

We will not pay for losses caused by errors, omissions, or negligence in processing or copying.

L. Employees' Personal Property. We will cover personal property owned by your employees while on your premises if that employee's property is not covered by other insurance. The maximum coverage for property owned by any one employee is $500. The coverage limit for each "occurrence" is $10,000.

M. Personal property owned by someone other than you or your employees, if the personal property is not covered by other insurance, while it is in your care, custody, or control and while it is on the premises described in the Statement of Values. The coverage limit per "occurrence" for all such property is $10,000.

N. "Extra Expense". Provided a loss or damage to "covered" property is caused by an insured peril we will pay up to a maximum of $10,000,000 (unless a higher limit has been established by Endorsement) under this "extra expense" coverage subject to the following:

We will pay "Extra Expense" to allow you to continue "operations" at:

1. Your insured premises; or

2. Replacement premises; or

3. Temporary premises you use while your insured premises are being restored.

Costs to relocate, or to equip and operate the premises in N.2 or N.3, are covered.

Adjustment of any loss under this coverage will reflect the salvage value of property that you obtained for use while your property was being restored and that you retain after the resumption of normal "operations".

O. "Buildings" or structures acquired by you during the policy period at any location, provided your interest is not covered under any other policy of insurance.

P. Remodeling and repairs to existing buildings listed on the Statement of Values unless the work involves an increase in square footage or a change in the footprint of the building or foundation.

Q. Underground fiber optic cable. We will pay for the repair or replacement of underground fiber optic cable within 1000 feet of your "building" when loss of or damage to the cable is caused by a "covered" peril.

R. Refrigerated Property. We will pay for loss or damage you sustain from spoilage of refrigerated or perishable property you own or are legally responsible to insure, if the spoilage is due to:

1. Contamination by a refrigerant; or

2. Temperature change due to:

   a. Mechanical breakdown or failure of refrigeration systems;

   b. Burning out of electric motors;

   c. Blowing of fuses or circuit breakers;

   d. The breakdown or malfunction of the equipment or apparatus connecting or controlling refrigeration systems, electrical motors, or electrical power; or

   e. Complete or partial lack of power to operate the refrigeration systems.

S. Ordinance or Law Coverage.

Provided a loss or damage to "covered" property is caused by an insured peril we will pay up to a maximum of $5,000,000 (unless a higher limit has been established by endorsement) for the increased cost to repair, rebuild

or reconstruct “covered” property caused by enforcement of or compliance with a building, zoning or land use ordinance or law subject to the following:

1. We will also pay for loss or damage to the undamaged portion of a “covered” “building” or structure caused by enforcement of or compliance with any ordinance or law that:

    a. Requires the demolition of parts of the same “building” or structure not damaged by an insured peril;

    b. Regulates the construction or repair of “buildings” or structures, or establishes zoning or land use requirements at the described premises; and

    c. Is in force at the time of loss or damage.

2. We will not pay under this coverage:

    a. Until the property is actually repaired or replaced; and

    b. Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two (2) years unless the time is extended in writing by us.

3. If the property is repaired or rebuilt, it must be intended for similar occupancy as the current property, unless otherwise required by zoning or land use ordinance or law.

4. The most we will pay under this coverage is the increased cost of construction at the same premises, unless an ordinance or law requires relocation to another **premises**, in which case the most we will pay is the increased cost of construction at the new premises.

5. If the property is repaired or replaced on the same or another **premises,** we will not pay more for loss or damage to “covered” property, including loss caused by enforcement of or compliance with an ordinance or law, than the amount you actually spend to repair, rebuild or reconstruct the “building” or structure to the minimum standards required by the ordinance or law. In no event will we pay more than the following:

    a. For a “historical building”, the amount it would cost to repair, rebuild or reconstruct the “building” or structure on the same premises and to the same height, square footage and style with a less costly “building” or structure that is:

        1) Functionally equivalent to the damaged “building” or structure; or

        2) The cost to repair or replace the damaged portion of the “covered” property with less costly material, if available, in the architectural style that existed before the loss or damage occurred.

    b. For all other “covered” “buildings” or structures, the amount it would cost to repair, rebuild or reconstruct the “building” or structure on the same premises and to the same height, square footage, style and comparable quality of the “covered” property at the time of the loss or damage.

6. If the property is not repaired or replaced, we will not pay more for loss or damage to “covered” property, including loss caused by enforcement of or compliance with an ordinance or law, than the “actual cash value” of the “covered” property at the time of the loss or damage.

7. We will not pay for the cost of compliance with any ordinance or law that requires:

    a. Repairing, remediating, or tearing down property due to “contaminants” or “pollutants” or resulting from the presence or spread of “fungus”, wet or dry rot, viruses, bacteria, or other microorganisms; or,

    b. Testing for, monitoring, or cleaning up “pollutants”, “contaminants”, wet or dry rot, “fungus”, viruses, bacteria, or other microorganisms.

T. Limited Coverage for Unscheduled “Buildings” and “Property in the Open”.

For unscheduled "buildings" and “Property in the Open” not on the Statement of Values, coverage will be provided up to $1,000,000 for a covered loss.

It is a condition of this coverage that the “buildings” and “Property in the Open” be scheduled when discovered. In addition, you must pay any unpaid premium on the unscheduled “building” or “Property in the Open” back to policy inception.

This coverage does not apply when:

1. The insured intentionally left the "buildings and "Property in the Open" unscheduled; or

2. The insured could have discovered with reasonable diligence that the "buildings and "Property in the Open" had unintentionally been left unscheduled.

This provision does not apply to “buildings” or structures acquired by you during the policy period as coverage for these items is provided in Section IV.O.in this policy.

U. Electronic data processing equipment, “electronic data” and “computer programs” consisting of the following:

1. Electronic data processing equipment owned by or leased to you, including its component parts and similar property of others for which you are legally liable;

2. Your “electronic data”, “computer programs” and similar property of others for which you are legally liable.

3. Accounts, bills, evidences of debt, valuable papers, records, abstracts, deeds, manuscripts or other documents that were converted to “electronic data”.

4. We will also pay for:

   a. Expenses necessary to research and recreate lost “electronic data”;

   b. Expense for copying lost “electronic data” from available secondary sources.

5. We will not cover:

   a. “Electronic data” or “computer programs” which cannot be replaced with others of the same kind or quality;

   b. Losses caused by errors, omissions, or negligence in processing or copying; or,

   c. Accounts that are your records of accounts receivables.

V. Fire Department Charges.

We will reimburse you up to $25,000 at each **premises** for charges of each fire department involved in containing a fire or other “covered” loss to which this insurance applies. No deductible applies to this reimbursement.

W. Asbestos Cleanup, Abatement and Removal.

We will pay up to $5,000,000 for your expense to clean up, abate, or remove from “covered” property asbestos particles that are discharged, dispersed, or released, subject to the following conditions:

1. The discharge, dispersal, or release must occur as a result of a covered peril.

2. Covered damages before the cost of the asbestos cleanup, removal, or abatement must exceed the policy deductible.

3. The discharge, dispersal, or release must occur accidentally and begin and end within 72 hours.

4. The discharge, dispersal, or release must not be the result of planned building renovation, remodeling or demolition activities.

X. Police Dogs and Horses.

Police dogs and horses are considered to be destroyed if because of injury the dog or horse is not able to perform the dog's or horse's normal functions and there is no reasonable prospect that the dog or horse will be able to do so.

1. For police dogs and horses that are destroyed, we will pay for the cost to replace the dog or horse and the cost of any necessary training.

2. We will pay the cost of necessary treatment and care to enable the dog or horse to resume performing the dog's or horse's normal functions. But we will not pay the cost of treatment and care to treat and prevent disease. It is not the intent to provide mortality or sickness coverage for causes outside the scope of duties of the police dog or horse.

   The maximum amount we will pay per police dog or horse is the lesser of $25,000 or the total of the expenses related to the replacement of the dog or horse plus expenses for the care or treatment of the police dog or horse. A deductible of $1,000 will apply to this coverage on a per "occurrence" basis.

Y. We will pay the reasonable and necessary expenses we require you to incur for the documentation of an "occurrence". The most we will pay for these expenses is $50,000.

This coverage does not apply to any expenses incurred by "you" for any insurance adjusters, consultants, attorneys retained by you or any work performed by their subsidiary or affiliate.

Z. We will pay for reasonable and necessary architectural design and engineering fees associated with an "occurrence". The most we will pay for this coverage is $100,000.

AA. Limited Coverage For "Fungus", Wet Rot, Dry Rot, Virus, Bacterium And Other Microorganism.

1. The coverage described in Paragraph 2. below only applies when: a) the "fungus", wet or dry rot, virus, bacterium or other microorganism is the result of one or more of the "specified causes of loss", other than fire or lightning; b) the "specified causes of loss" occurs during the policy period; and c) you took all reasonable measures to protect the property from additional damage during and after the "occurrence".

2. We will pay for direct physical loss or damage caused by "fungus", wet or dry rot, virus, bacterium or other microorganism subject to the coverage limits specified in Paragraph 3 of this Limited Coverage. For purposes of this paragraph, the term "loss or damage" includes costs necessarily incurred to:

   a. Eradicate the "fungus", wet or dry rot, virus, bacterium or other microorganism;

   b. Access the part of the "building" or other property where the "fungus", wet or dry rot, virus, bacterium or other microorganism is located; and

   c. Test to ensure that the "fungus", wet or dry rot, virus, bacterium or other microorganism has been successfully eliminated.

3. The coverage described under Paragraph 2. of this Limited Coverage is limited to $25,000 for each "covered" loss and $50,000 during any policy period. Regardless of the number of claims, this limit is the most we will

pay for the total of all loss or damage arising out of all occurrences of “specified causes of loss” (other than fire or lightning) which take place in a 12-month policy period. With respect to a particular “specified causes of loss” which results in "fungus", wet or dry rot, virus, bacterium or other microorganism, we will not pay more than a total of $25,000 even if the fungus", wet or dry rot, virus, bacterium or other microorganism continues to be present or active, or recurs, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular “specified causes of loss” results in loss or damage by "fungus", wet or dry rot, virus, bacterium or other microorganism and other loss or damage, we will not pay more for the total of all insurance on the affected Covered Property.

   If there is “covered” loss or damage to Covered Property, not caused by "fungus", wet or dry rot, virus, bacterium or other microorganism loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet rot or dry rot, virus, bacterium or other microorganism causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The following additional condition applies to losses “covered” under **Limited Coverage For “Fungus", Wet Rot, Dry Rot, Virus, Bacterium And Other Microorganism** when the policy includes the Business Income Endorsement: The “specified causes of loss” definition will apply to any loss arising from "fungus", wet or dry rot, virus, bacterium or other microorganism that is “covered” under Paragraph **B**. **Limited Coverage For “Fungus", Wet Rot, Dry Rot, Virus, Bacterium And Other Microorganism** and under the Business Income Endorsement.

BB. “Fine Arts”. We will only provide coverage for “Fine Arts” subject to the following:

1. We will not pay more than $50,000 for any one “Fine Arts” unless you insure those items for specific amounts by purchasing an Agreed Value Fine Arts endorsement.

2. The most we will pay for each item covered under this additional coverage shall not exceed the lesser of the following amounts:

   a. $50,000;

   b. The cost of replacing the damaged property at the time of loss with property of like kind and quality to be used for the same purpose on the same site; or

   c. The amount actually spent repairing your damaged property as soon as reasonably possible after the loss or damage, but within a time not to exceed two (2) years from the date of the loss or damage, unless the time is extended in writing by us.

3. **SECTION VII-Basis of Recovery** does not apply to this additional coverage.

CC. “Flood”. We will provide coverage for loss due to “flood”, subject to the following limitations:

a This Additional Coverage does not apply to loss at any property located in a designated flood plain, special flood hazard area (SFHA) or 100 year flood plain with a prefix of “A” or “V” – as specified and defined by the National Flood Insurance Program (NFIP).

The most we will pay under this Coverage – “Flood” is $5,000,000 per “occurrence”.

DD. “Pollutants” or “Contaminants”. We will pay no more than $2,000,000 for reasonable and necessary expenses incurred for removal, disposal or clean-up of actual “pollutants” or “contaminants” from land or water at an insured location and due to “specified causes of loss”. The discharge, dispersal, seepage, migration, release or escape of “pollutants” or “contaminants” must be caused by a loss not otherwise excluded.

However, the most we will pay in each annual policy period under this Additional Coverage is $1,000,000 for all “specified causes of loss” losses.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants" or “contaminants”. But we will pay for testing which is performed in the course of extracting the "pollutants" or “contaminants” from the land or water.

This coverage does not apply unless such expenses are reported to us within 180 days after the date of the “specified causes of loss” loss.

EE. Emergency Response Equipment

Emergency response equipment contained within or on an emergency response vehicle that is not affixed or attached is covered as personal property subject to a $1,000 deductible per occurrence regardless of any other applicable deductible.

FF. “Buildings” and structures, including property contained within a “building” or structure, “vacant” for more than sixty (60) consecutive days before the loss or damage occurs. However, this paragraph only applies to the perils of: vandalism; sprinkler leakage or “water damage”, unless you have used reasonable means to protect the sprinkler or plumbing system against freezing; building glass breakage; theft; or attempted theft. For all other perils “covered”, loss adjustment shall be on an "actual cash value" basis for the "vacant" building, personal property and “Property in the Open” within 1,000 feet of the "vacant" building.

GG. We will pay not more than $5,000,000 per occurrence of earth movement including, but not limited to, earthquake including tremors and aftershocks, landslide, mudslide, earth sinking, earth rising or shifting. We will also provide coverage for fire or explosion not excluded in this policy when resulting from a covered earth movement event.

SECTION V – PROPERTY NOT "COVERED"

The following are not "covered" property unless specifically added or endorsed to this policy:

A. Land (including land on which the property is located), water, crops, and standing or cut timber, wherever located.

B. Cost of excavation, grading or filling not related to an "occurrence".

C. Underground and buried cables, pipes, flues or drains, including those that are part of your storm, water or sewer systems, located more than 1,000 feet, on the horizontal, from a "covered" "building" or structure, except underground and buried pipes, flues or drains that are:

   1. Part of the water treatment plant, wastewater treatment plant, lift station or gas reduction station premises; or

   2. Part of a geothermal heating and cooling system.

D. Those portions of sidewalks, bridges (including roadway bridges and railroad bridges), roadways, culverts, paved surfaces, and associated guard rails located more than 100 feet from a "covered" "building" or structure, except for bridges that are:

   1. Bridges used exclusively for pedestrian traffic.

E. Dams, pavements, swimming pools and related equipment, retaining walls, bulkheads, piers, bridges, wharves and docks for damage caused by any of the following: freezing; thawing; impact of watercraft; the pressure or weight of ice or water, whether driven by wind or not; and, erosion or deterioration, whether gradual or sudden.

F. Railroads, meaning trackage, beds, ties and railroad bridges; however, amusement park rail systems are "covered", and railroads, meaning trackage, beds, ties and railroad bridges, are "covered" if within 100 feet of a "covered" "building" or structure.

G. Aircraft, except for drones, and vehicles licensed for road use.

H. Animals and livestock, except for police dogs and horses.

I. "Money" and "securities", including postage stamps and food stamps, deeds, evidence of debt, or accounts receivable.

SECTION VI – LOSSES EXCLUDED

A. We will not pay for loss or damage caused directly or indirectly by, based upon, or arising out of any of the following:

   1. Wear and tear; extremes of temperatures unless you exercised due diligence with respect to maintaining the proper temperature for the property involved; dampness or dryness of atmosphere; deterioration; rust or corrosion; disease; inherent vice; inherent or latent defect; contamination; smog; smoke, vapor or gases from agricultural or industrial operations; error, omission, or deficiency in design, specifications, workmanship or materials; settling, cracking, shrinkage, bulging or expansion of pavements, sidewalks, foundations, walls, floors, roofs, or ceilings; insects, or birds; unless loss by a peril not excluded in this policy results, and then we will be liable for only such resulting loss.

   2. Unexplained or mysterious disappearance of any property or shortage disclosed upon taking inventory.

   3. Dishonest or criminal act committed by you or any "employee(s)" acting alone or in collusion with others whether or not occurring during the hours of employment. However, if a criminal act results in a "specified causes of loss", we will pay for the loss or damage caused by that "specified causes of loss".

   4. Discharge, dispersal, release or escape of "pollutants" or "contaminants", subject to the following:

a. This exclusion does not apply:

1)If the discharge, dispersal, release or escape of "pollutants" or “contaminants” is caused by a “specified causes of loss”; or

2)To chemical damage to glass;

b. When a discharge, dispersal, release or escape of "pollutants" or “contaminants” results in a “specified causes of loss”, the loss or damage caused by that "specified causes of loss” is a “covered” loss.

5. Loss by any “occurrence” or condition within or explosion of steam boilers, steam pipes, steam engines, or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

6. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment; except when such condition results from a fire or explosion. However, if a loss by a peril not otherwise excluded in this policy results, we will be liable for only such resulting loss.

   Electrical or mechanical breakdown including rupture or bursting caused by centrifugal force. However, if a loss by a peril not otherwise excluded in this policy results, we will then be liable for only such resulting loss EXCEPTION: If mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

7. Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

8. Any loss arising out of any act committed:

   a. By or at the direction of an insured; and

   b. With the intent to cause a loss.

9. Interruption of utility services related to overhead transmission lines or satellites

B. Loss or damage based upon or arising out of any of the following causes is excluded, whether such cause is direct or indirect. This exclusion applies even when another cause contributes concurrently or in any sequence to the loss or damage.

   1. Nuclear reaction, nuclear radiation, or radioactive contamination. But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

   2. Wet rot, dry rot, or “fungus”. But we will pay for loss or damage caused by:

      a. “specified causes of loss” that resulted from wet rot, dry rot or “fungus”;
      b. fire; or
      c. lightning.

      For causes of loss other than fire or lightning, coverage is governed by **SECTION IV – “COVERED” PROPERTY; LIMIT OF COVERAGE** Item AA. **Limited Coverage For "Fungus", Wet Rot, Dry Rot, Virus, Bacterium and Other Microorganism.**

   3. Virus, Bacterium, or other microorganism, except to the extent that coverage is provided in Item AA. **Limited Coverage For “Fungus", Wet Rot, Dry Rot, Virus, Bacterium And Other Microorganism.**

4. “Flood”, including spray from any “flood”, whether driven by wind or not, unless otherwise provided under **SECTION IV – “COVERED” PROPERTY; LIMIT OF COVERAGE.**

5. Water below the surface of the ground including water which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basements, or other floors, or through doors, windows, or any other openings in such sidewalks, driveways, foundations, walls, or floors; unless loss by fire, sprinkler leakage or explosion (not excluded in this policy) results, then we will pay for only such resulting loss.

   EXCEPTION: We will provide coverage for sewer, septic system or sump pump backup that is contained within a “building” or structure.

6. War, warlike action, insurrection, rebellion, and revolution, or action taken by governmental authority in hindering or defending against any of these.

7. Failure of the insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

SECTION VII – BASIS OF RECOVERY

Replacement of property “covered” by Section IV of this policy shall be based upon “replacement cost” (without deduction for depreciation) of those items to which this policy applies unless otherwise limited by other provisions of this policy, by endorsement or the following:

A. The most we will pay for loss or damage to “covered property” other than a “historical building” shall not exceed the lesser of the following amounts:

   1. The policy limits of your coverage under this agreement.

   2. The amount incurred to repair or replace the damaged property at the time of loss with property of like kind and quality to be used for the same purpose on the same site.

   3. The amount incurred to repair or replace the damaged property as soon as reasonably possible after the loss or damage, but within a time not to exceed two (2) years unless the time is extended in writing by us.

   4. The “actual cash value” of the property at the time of loss or damage unless it is repaired or replaced subject to the following.

      a. If you do not provide us with written notice of your intent to repair or replace the damaged “covered” property within 180 days of the date of loss, then you will receive “actual cash value”.

      b. If you receive a settlement on an “actual cash value” basis, you may make a written request within 180 days of the date of loss to repair or replace the damaged “covered” property; or

      c. If there were plans for disposal or demolition of the property prior to the loss or damage, you will receive the “actual cash value” of the property at the time of loss or damage.

B. With respect to a “historical building”, our liability for “covered” loss or damage shall not exceed the lesser of the following amounts:

   1. The policy limits of your coverage under this agreement.

   2. In the event of a total loss, the amount incurred cost to repair or replace the damaged property on the same site (or on a different site if relocation is required due to the enforcement of or compliance with an ordinance or law) with a less costly “building” that is functionally equivalent to the damaged “historical building”.

3. In the event of a partial loss the amount incurred to repair or replace the damaged portion of the "covered" "historical building" with less costly material in the architectural style that existed before the loss or damage occurred but within a time not to exceed two (2) years unless the time is extended in writing by us.

4. The "actual cash value" of the property at the time of the loss or damage unless it is repaired or replaced subject to the following:

   a. If you do not provide us with written notice of your intent to repair or replace the damaged "covered" property within 180 days of the date of loss, then you will receive "actual cash value."

   b. If "you" receive a settlement on an "actual cash value" basis, you may make a written request within 180 days of the date of loss to repair or replace the damaged "covered" property; or.

   c. If there were plans for disposal or demolition of the property prior to the loss or damage, you will receive the "actual cash value" of the property at the time of loss or damage.

C. The most we will pay for diminution of value to property caused by "cosmetic damage" from a "covered" peril, shall not be more than 5% of the "actual cash value" of the damage, subject to the following:

1. No payment shall be made under this provision if any other payment is made for any other damage associated with the insured property.
2. Payments made under this provision shall only be paid one time per insured building, regardless of the number of occurrences during the policy period.
3. Any payment for damages under this provision, in any prior policy period, precludes all future payments under this provision.

SECTION VIII – CONDITIONS

This policy is subject to the following conditions:

A. **Other Insurance**

1. If there is other insurance covering loss to the property from any peril(s) insured against under this policy, we will not be liable under this policy until such other insurance has been exhausted. We shall not be liable for payment of deductibles under other policies.

B. **Cancellation and Nonrenewal.** You may cancel this policy at any time by giving us written notice or returning the policy to us and stating at what future date coverage is to stop.

We may cancel or not renew this policy by written notice to you at the address shown on the declarations. If the notice is mailed, it will be by first class mail. Proof of delivery of mailing is sufficient proof of notice.

If this policy is in effect for less than 60 days, we may cancel you for any reason.

If this policy has been in effect 60 days or more or if it is a renewal of a policy issued by us, we may cancel or not renew only at the anniversary date unless:

1. The premium has not been paid when due;

2. We discover material misrepresentation made by you or with your knowledge in obtaining the policy, continuing the policy, or presenting a claim under the policy,

3. There has been a substantial change in risk assumed that we could not have reasonably foreseen or contemplated in writing the policy; or

4. There have been substantial breaches of contractual duties, conditions or warranties.

If we cancel this policy, we will give you notice at least ten days before cancellation is effective.

If we cancel or non-renew this policy at the anniversary date, we will give you at least 60 days' advance notice.

Your return premium, if any, will be calculated on a pro rata basis and refunded at the time of cancellation or as soon as practical. Payment or tender of the unearned premium is not a condition of cancellation.

C. **Renewal.** If we decide to renew or amend this policy at the anniversary date with terms less favorable to you or at a higher premium, we will give you notice of the altered terms at least 60 days prior to the renewal or anniversary date. Our notice will be delivered or mailed by first class mail.

A notice is not needed if it involves a premium increase and the premium increase:

1. Is less than 25% and is generally applicable to the class of business to which this policy belongs; or

2. Results from a change based on your action that alters the nature or extent of the risk insured against, including but not limited to a change in classification or the units of exposure, or increased policy coverage.

D. **Change in Use or Occupancy**. If your use or occupancy of any “building” or structure “covered” by this policy changes, you must notify “us” of such change in use or occupancy at renewal.

E. **Appraisal.** In the event that you and we disagree as to the value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser within twenty days of such demand. These two appraisers will then select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of you or we, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located.

The appraisers will appraise the loss, stating separately the value and damage. Failing to agree, they will submit their differences to the umpire. A decision agreed to, in writing and filed with us, by any two will be binding. Each party will:

1. Pay its chosen appraiser; and

2. Bear the other expenses of appraisal and umpire equally.

If there is an appraisal, we still retain our right to deny the claim.

F. **Options.** In the event of a loss or damage to “covered” property we will, at our option, decide whether to:

1. Pay based on the cost to repair or replace the damaged “covered” property; and/or

2. Retain salvage rights to the damaged “covered” property.

G. **Abandonment.** There may be no abandonment of any property to us.

H. **When Losses Will Be Paid.** We will pay for covered loss or damage within 30 days after we receive the Sworn Statement in Proof of Loss, provided you have complied with all of the terms of this policy, and (1) we have reached agreement with you on the amount of loss; or (2) a valid Appraisal Award has been rendered.

I. **Loss Payable.** Loss will be adjusted with and payable to you except with regard to loss of property in which others have an insurable interest identified in this policy as owner(s), mortgagee(s), or loss payee(s), at which time the loss will be adjusted with you and payable to you and such other owner(s), mortgagee(s), or loss payee(s) as designated.

J. **Subrogation.** Upon payment to you by us, we acquire all rights of recovery you have or may have against any party, to the extent of such payment. We will not be entitled to recover until you have been made whole. Any

waiver of subrogation made by you on or after the effective date of your resolution to insure your property through us is not binding on us and will not affect our rights of recovery against any party to the extent of any payment by us to you. However, any waiver of subrogation made by you which is in effect prior to the effective date of your resolution to insure your property through us may be given effect provided such waiver of subrogation is made in writing before the loss.

K. **Liberalization.** If we adopt any revision that would broaden the coverage provided by this policy without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this policy.

L. **Suit Against Us.** No suit to recover any loss may be brought against us unless:

1. The terms of the property coverage have been fully complied with; and

2. The suit is commenced within one year after the loss.

If any applicable law makes this limitation invalid, then suit must begin with the shortest period permitted by the law.

M. **Assignment.** Assignment of this policy will not be valid except with the written consent by us.

N. **Premium Adjustment:**

Only endorsements adding or deleting a coverage components, during the policy period, resulting in a net premium adjustment will be charged or credited to the insured. These premium adjustments will be charged or credited on a pro-rata basis from the effective date of the endorsement.

O. **No Benefit To Bailee**:

No person or organization, other than you, having custody of “covered” property will benefit from this insurance.

P. **Inspections and Surveys.** You grant us the right to have rating, advisory, rate services or similar organizations conduct insurance inspections, surveys, reports or recommendations on our behalf. However, we are not obligated to make any inspections, surveys, reports or recommendations and any such actions these organizations provide relate only to the premiums to be charged or possible improvements to your business activities.

We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We, or any other organization performing an inspection, survey, report or recommendation on our behalf, do not warrant that conditions are safe or healthful, or in compliance with laws, regulations, codes or standards.

Q. **Duties In The Event Of Loss or Damage**

1. You must see that the following are done in the event of loss or damage to "covered" property:

   a. Notify the police if a law may have been broken.

   b. Give us prompt notice of the loss or damage. Include a description of the property involved.

   c. As soon as possible, give us a description of how, when and where the loss or damage occurred.

   d. Take all reasonable steps to protect the "covered" property from further damage, and keep a record of your expenses necessary to protect the "covered" property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a "covered" peril. Also, if feasible, set the damaged property aside and in the best possible order for examination.

e. At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.

f. As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

g. Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

h. Cooperate with us in the investigation or settlement of the claim.

1) We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

SECTION IX – DEFINITIONS

A. "Actual cash value" means the cost (new) to replace the structure with one of like kind and quality less physical depreciation and obsolescence as determined by Wisconsin's Broad Evidence Rule.

B. "Builders risk property" means:

1. "Buildings", structures or "Property in the Open" in the course of construction;

2. "Building materials";

3. Foundation of a "building", structure or "Property in the Open" in the course of construction;

4. Addition to an existing "building", structure or "Property in the Open";

5. Temporary structures built or assembled on the premises", including cribbing, scaffolding, signs, fences, and construction forms used in the course of construction or alterations or repairs of the "builders risk property"; and

6. Underground and buried pipes, flues or drains but not including those that are part of your storm, water or sewer systems.

C. "Building" or "buildings" means:

1. Any structure that exhibits two or more of the following characteristics;

a. Structural walls and roof covering

b. Some form of permanent foundation (Post, block, slab or sub-grade)

c. Permanent utility services (electrical service, Heating Ventilation or air conditioning or plumbing)

2. Completed additions;

3. Permanently installed fixtures, machinery and equipment;

4. Communication towers 100 feet or greater in height;

5. Electrical substations, including control structures, transformers, distribution equipment and related structures located within the substation area;

6. Lift stations, wells or pumping locations;

7. Permanent water storage tanks and towers;

8. Wastewater lagoons, including: plastic, synthetic, clay or other lagoon liners, lagoon riprap and soil/subsoil embankments;

9. Gas reduction or odorizing stations; or

10. Underground and buried pipes, flues or drains that are part of a geothermal heating or cooling system, or part of the water treatment plant, wastewater treatment plant, lift station or gas reduction station, but not including those that are part of your storm, water or sewer systems.

D. "Building materials" means unattached materials and supplies, fixtures and machinery, and equipment used to service the "buildings", structures or "Property in the Open" that are intended for use in the construction or occupancy of the "buildings", structures or "Property in the Open". "Building materials" also include "building materials" in the custody of the contractor or subcontractor intended for use in the construction or occupancy of the "building", structure or "Property in the Open" if not covered by other insurance.

E. "Computer program(s)" means a sequence of instructions that performs a specific task when executed by a computer or device connected to it.

F. "Contaminants" means mixture or contact with an impure or a foreign substance which, when introduced to the property, injures the property's usefulness.

G. "Cosmetic Damage" means the disfiguring, blemishing, tarnishing, denting or other outward damage that changes the appearance of insured property, but does not impair its' ability to function as intended.

H. "Covered" means insured by us under this policy.

I. "Electronic data" means facts, information, documents, records or "computer programs" stored on, used on, or transmitted to or from electronic devices, equipment or media.

J. "Employee(s)" means any partner, member, officer, manager, employee (including leased employees), director, trustee, or official.

K. "Extra Expense" means the excess (if any) of the total cost incurred during a reasonable time period while the property is being restored, chargeable to your "operations", over and above the total cost that would normally have been incurred to conduct your "operations" during the same period had no damage or destruction occurred.

L. "Fine Arts" means works of art, museum collections, limited production collectibles, historical value items, antiques or rare articles, including etchings, pictures, photographs (negatives and positives), lithographs, gallery proofs, original records, and similar property.

M. "Flood" means a general and temporary condition of partial or complete inundation of 2 or more acres of normally dry land area or of 2 or more properties (at least 1 of which is the policyholder's property) from:

1. Overflow of inland or tidal waters; or

2. Unusual and rapid accumulation or runoff of surface waters from any source; or

3. Mudflow; or

4. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.

N. "Fungus" means mold, mildew, or any other type of fungus, including mycotoxins, spores, odors or byproducts arising out of the current or past presence of a fungus.

O. “Historical building” means any “building” or structure listed by the Wisconsin State Historical Society on the Wisconsin State and National register of historic places.

P. “Money” means currency, coins, bank notes and bullion, and travelers checks, registered checks and money orders (including those held for sale to the public).

Q. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions within a 72-hour period, which results in property damage during the policy period.

R. “Operations” means the performance of your functions and duties at the insured premises.

S. “Property in the Open” means mobile or permanently affixed personal property designed to be left exposed to the elements and outside of a covered building.

T. “Pollutants” means largely undesirable substances, irritants, “contaminants”, chemicals or waste products that interfere with human comfort or health or that adversely affect the air, soil, water or other natural resources.

U. “Replacement Cost” means the cost to repair or replace (new) the property with like kind and quality.

V. “Securities” means all negotiable and nonnegotiable instruments or contracts representing either “money” or other property and includes revenue stamps, food stamps, and other stamps in current use; tokens and tickets.

W. “Sinkhole collapse” means the abrupt settlement, systematic weakening or collapse of the land supporting a covered “building” that results from simultaneous movement of soil, sediment or rock into subterranean voids created by the effect of water on a limestone or similar rock formation. "Sinkhole collapse" does not include collapse of the land into manmade underground cavities or ordinary settling or cracking of the covered “building” or its foundation.

X. “Specified causes of loss” means the following: aircraft; civil commotion; explosion; fire; hail; leakage from fire extinguishing equipment; lightning; riot; “sinkhole collapse”; smoke; vandalism; vehicles; volcanic action; “water damage”; weight of snow, ice or sleet; windstorm. It also means falling objects, not including loss or damage to “Property in the Open” or to the interior of a “building” or its contents if the exterior of the “building” remains undamaged by the falling objects.

Y. “Vacant” means:

1. If you are a tenant, a unit or suite leased to you that does not house sufficient personal property to allow you to conduct your normal business “operations”.

2. If you are an owner or general lessee of a “building”, less than 31 % of the total square footage of your “building” is used by an owner, a lessee, or a sub-lessee to conduct its normal business “operations”.

   “Buildings”, units, suites or structures under construction or renovation are not considered “vacant”.

   A suspension of “operations” or period of inactivity during part of each year which is usual and incidental to the described occupancy of the “building”, unit, suite or structure shall not be deemed “vacant”.

   Change of occupancy shall be recognized by us only if formal action changing the occupancy of the “building”, unit, suite or structure was taken by your governing board prior to the loss.

Z. “Valuable Records” means inscribed, printed, or written documents; manuscripts or records, including abstracts, books, deeds, drawings, films, maps, and mortgages. “Valuable Records” does not mean your accounts receivables, “money” or “securities”.

AA. “Water damage” means the accidental escape of water or steam from a plumbing system, HVAC system, or appliance on your insured premises as a direct result of the breakdown or failure of that system or appliance. “Water damage” does not include accidental discharge or overflow of water from a sump system.

This policy is made and accepted subject to the foregoing provisions together with such other provisions and agreements as may be added by endorsement.

SECTION X. DEFINITION OF "CONTRACTORS EQUIPMENT"

The following items are "Contractors Equipment" and must be scheduled to have coverage in excess of the $25,000 provided in **Section IV.J**:

- Airport Equipment
  - Aircraft Servicing Equipment
  - Fire Fighting Equipment
  - Snow Removal
- Equipment
- Asphalt/concrete Plants
- All-Terrain Vehicles
- Augerminer
- Back Hoes
- Boats/Motors
- Booster Heaters
- Boring Machines
- Brush Burners
- Cement Mixers
- Chippers
- Choppers
- Compaction Equipment Pneumatic
  - Rollers
  - Steel Wheel Rollers
  - Tamping Compactors
  - Vibratory Compactors
- Concrete Saws
- Conveyors
- Core Drill
- Cranes
- Crack Melter
- Crushing & Aggregate
- Discs
- Ditchers
- Draglines
- Drones
- Earth Moving Equipment
  - Crawler Loaders
  - Loader - Backhoes
  - Motor Graders
  - Motor Scrapers
  - Rubber-tired Loaders
  - Wheel Tractors
- End Loader Type
- Equipment Derricks
- Equipment Excavating
- Pumps
- Excavators
- Farm Equipment
  - Balers
  - Combines
  - Cultivators
  - Harvesters
  - Haybines
  - Planters
  - Spreaders
  - Fork Lifts
- Golf Carts
- Grinders
- Hauling Equipment (off Highway)
  - End Dumps
  - Hoisting Machines
  - Honey Wagons
- Hydraulic Breaker
- Lake Treatment Equipment
  - Barges
  - Lake Sprayers
  - Weed Harvesting Equipment
- Leaf Suckers
- Lifts
- Loaders
- Mowers
- Mulchers
- Painting Machines
- Paving Equipment
  - Base Plants
  - Distributors
  - Profilers
  - Rippers
  - Spreaders
  - Scarafiers
  - Tar Kettles
  - Transit Mixers
  - Finishers
  - Mixers
  - Plants
  - Screeners
  - Surge Bins
  - Asphalt Heaters
  - Tumblers
- Personal Watercraft
- Pile Driving Equipment
- Pipeline Equipment
- Plow Blades
- Plow Wings
- Portable Equipment
  - Compactors
  - Compressors
  - Excavators
  - Generators
  - Pumps
  - Scales
  - Stages
  - Tanks
  - Turbines
  - Water Blaster
- Pulvi-mixers
- Railroad Equipment
  - Railroad Cars
  - Railroad Engines
  - Track Service Vehicles
- Road Equipment
  - Flushers
  - Oilers
  - Rollers
  - Spreaders
  - Graders
  - Scrapers
  - Sweepers
  - Shoulder Machines
- Robots
- Rock Pickers
- Road Wideners
- Sand Blasters
- Seeders
- Sewer Jetters
- Sewer Rodders
- Shovels
- Sludge Trucks
- Sludge Injectors
- Snow Grooming Equipment
- Snow blowers
- Snowmobiles
- Sprayers
- Street Sweepers
- Stump Cutters
- Stump Pullers
- Surge Bins
- Tractors (including riding lawnmowers)
- Trailers
- Tree Movers/Planters
- Valve Operator
- *Vehicles
- Water Wagons
- Welders
- Windrow Eliminators
- Windrower

Attachments related to the operation of the property listed above need not be scheduled. They are covered as part of the basic power unit.

*Vehicles designed for road use, but not licensed, because of specialized use. Attachments to vehicles licensed for road use such as wing blades, snowblades, and sanders are Contractors Equipment.

MUNICIPAL PROPERTY INSURANCE COMPANY

SPECIFIC LIMIT ENDORSEMENT

This endorsement supersedes the following coverage provisions of policy number 5000130_Q-1; Section III; Section IV; Section V, Paragraph J; Section VII; and Section VIII, Paragraph E.

The most that we will pay in the event of loss for the property described in this endorsement is the amount of coverage designated by the insured, as identified in the declaration page of this policy. Coverage is limited to the items promulgated in the following schedule.

Description of property - include addresses, site and building numbers as noted on Statement of Values	Building Values	Contents Values	Miscellaneous Coverage Values
1920 Stahl Rd., Sheboygan, WI 53081 - Poth Farm	100,000	0	

Miscellaneous coverages include items such as valuable papers, extra expense, pollution clean up, etc., due to losses caused by "covered" perils to property described in this endorsement. In no event shall coverage be greater than that provided in the policy to which this endorsement is attached.

Coverage does apply to buildings and structures that are vacant beyond a period of 60 consecutive days providing those structures are heated or plumbing fixtures and apparatus drained of water or other liquids to prevent loss due to freezing.

MUNICIPAL PROPERTY INSURANCE COMPANY

VACANCY PERMIT

This endorsement modifies insurance provided under:

MUNICIPAL PROPERTY INSURANCE COMPANY POLICY MPIC-001

SCHEDULE

Site.

No.

Per schedule on Declarations Page

A. We issue this Vacancy Permit subject to the following:

The following do not apply to a "covered" loss arising from "vacant" property at the locations shown on the declarations page under Vacancy Permit or in the Schedule above:

Item J. **SECTION V – PROPERTY NOT COVERED UNLESS SPECIFICALLY ENDORSED TO THE POLICY** of the **MUNICIPAL PROPERTY INSURANCE COMPANY POLICY MPIC-001**.

B. **Other Policy Provisions** All exclusions, limitations and other provisions of the policy to which this endorsement is attached that does not conflict with the language in this endorsement apply to this endorsement.

Any liberalized terms of this endorsement supersede the policy to which this endorsement is attached.

MUNICIPAL PROPERTY INSURANCE COMPANY

MONIES AND SECURITIES ENDORSEMENT

This endorsement modifies insurance provided under:

M**UNICIPAL PROPERTY INSURANCE COMPANY POLICY MPIC-001**

A. Coverage A - Loss Inside the Premises

This endorsement provides coverage to pay for loss of money, securities, and food stamps by the actual destruction, disappearance or wrongful abstraction thereof within your premises or within any banking premises or similar recognized places of safe deposit.

B. Coverage B - Loss Outside the Premises

This endorsement provides coverage to pay for loss of money, securities, and food stamps by the actual destruction, disappearance or wrongful abstraction thereof outside your premises while being conveyed by a "messenger" or any armored motor vehicle company, or while within the living quarters in the home of any "messenger".

C. Deductible See **Section II** of basic policy.

D. Exclusions

This endorsement does not apply:

1. To loss due to any fraudulent, dishonest or criminal act by any insured, an officer, employee, director, trustee or authorized representative thereof, while working or otherwise and whether acting alone or in collusion with others; provided, this exclusion does not apply to "safe burglary" or "robbery" or attempt thereat by other than an insured;
2. To loss due to:
   a. The giving or surrendering of money or securities in any exchange or purchase, or
   b. Accounting or arithmetical errors or omissions;
3. To loss of manuscripts, books of account or records;
4. Under Coverage A, to loss of money contained in coin operated amusement devices or vending machines, unless the amount of money deposited within the device or machine is recorded by a continuous recording instrument therein;
5. To loss due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
6. To loss due to nuclear reaction, nuclear radioactive contamination, or to any act or condition incident to any of the foregoing.

E. Definitions. The following definitions apply to this endorsement:

1. "Money" means currency, coins, bank notes and bullion; and travelers checks, registered checks and money orders held for sale to the public.
2. "Securities" means all negotiable and non-negotiable instruments or contracts representing either money or other property and includes revenue stamps, food stamps, and other stamps in current use, tokens and tickets, but does not include money.

3. "Messenger" means you or any employee of yours who is authorized by you to have the care and custody of the insured property outside the premises.

4. "Custodian" means you or any employee of yours who is authorized by you to have the care and custody of the insured property within the premises, excluding any person while acting as a watchman, porter or janitor.

5. "Robbery" means the taking of insured property (1) by violence inflicted upon a "messenger" or a "custodian"; (2) by putting him/her in fear of violence; (3) by any other overt felonious act committed in his/her presence and of which he/she was actually cognizant, provided such other act is not committed by your employee; (4) from the person or direct care and custody of a "messenger" or "custodian" who has been killed or rendered unconscious; or (5) under Coverage A. (a) from within the premises by means of compelling a "messenger" or "custodian" by violence or threat of violence while outside the premises to admit a person into the premises or to furnish him with means of ingress in the premises, or (b) from a showcase or show window within the premises while regularly open for business, by a person who has broken the glass thereof from outside the premises.

6. "Safe Burglary" means (1) the felonious abstraction of insured property from within a vault or safe, the door of which is equipped with a combination lock, located within the premises by a person making felonious entry into such vault or such safe and any vault containing the safe, when all doors thereof are duly closed and locked by all combination locks thereon, provided such entry shall be made by actual force and violence, of which force and violence there are visible marks made by tools, explosives, electricity or chemicals upon the exterior of (a) all of said doors of such vault or such safe and any vault containing the safe, if entry is made through such doors, or (b) the top, bottom or walls of such vault of such safe and any vault containing the safe through which entry is made, if not made through such doors, or (2) the felonious abstraction of such safe from within the premises.

7. "Loss" includes damage.

F. Ownership of Property; Interests Covered

The insured property may be owned by you, or held by you in any capacity whether or not you are liable for the loss thereof, or may be property as respects which you are legally liable; provided, the insurance applies only to your interest in such property, including your liability to others, and does not apply to the interest of any other person or organization in any property unless included in the insured's proof of loss.

G. Books and Records

You shall keep records of all the insured property in such manner that we can accurately determine the amount of loss.

H. Limits of Liability; Settlement Options

The limit of our liability for loss shall not exceed the applicable limit of insurance stated in the declarations, nor what it would cost at the time of loss to repair or replace the property with other of like kind and quality, nor as respects securities the "actual cash value" thereof at the close of business on the business day next preceding the day on which the loss was discovered, nor as respects other property the "actual cash value" thereof at the time of loss; provided, however, the "actual cash value" of such other property held by you as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by you when making the advance or loan, nor in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The applicable limit of insurance stated in the declarations is the total limit of our liability with respect to all loss of property of one or more persons or organizations arising out of any one occurrence. All loss incidental to an actual or attempted fraudulent, dishonest or criminal act or series of related acts at the premises, whether committed by one or more persons, shall be deemed to arise out of one occurrence.

We may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with you or the owner thereof. Any property so paid for or replaced shall become our property. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. You or we, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

I. Conditions See the section of the basic policy entitled **CONDITIONS**.

J. Additional Condition

Coverage Period, Territory, Discovery - This endorsement applies only to loss which occurs during the policy period within any of the States of the United States of America, the District of Columbia, or Canada, and is discovered not later than one year from the end of the policy period.

MUNICIPAL PROPERTY INSURANCE COMPANY
PIER AND WHARF LIMITED COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under:

MUNICIPAL PROPERTY INSURANCE COMPANY POLICY MPIC-001

The following PROPERTY NOT COVERED policy provisions are replaced;

A. Item E. of **SECTION V – PROPERTY NOT COVERED, UNLESS SPECIFICALLY ENDORSED TO THIS POLICY**, of the **MUNICIPAL PROPERTY INSURANCE COMPANY MPIC-001**

by the following excluded causes of loss:

When covered under this policy:

1. Piers and wharves that are scheduled on the declarations page for loss or damage caused by:
   a. Freezing or thawing; or,
   b. Erosion or deterioration whether gradual or sudden.
2. Piers and wharves (not scheduled on the declarations page), bridges, dams, pavements, swimming pools and related equipment, retaining walls, bulkheads, and docks: for loss or damage caused by:
   a. Freezing or thawing;
   b. Impact of watercraft;
   c. The pressure or weight of ice or water whether driven by wind or not; and,
   d. Erosion or deterioration whether gradual or sudden.

Losses covered under this endorsement are subject to the following:

a Coverage under this endorsement is not extended or amended by any other limit or sublimit of coverage provided under any other part of the policy or endorsements

b A per occurrence coverage limit equal to not more than $250,000

c A per occurrence deductible equal to the greater off 10% of the total covered loss or $1,000 applies regardless of any other deductible, covered loss or damage provisions

MUNICIPAL PROPERTY INSURANCE COMPANY

CONTRACTORS EQUIPMENT ENDORSEMENT

This endorsement modifies insurance provided under:

MUNICIPAL PROPERTY INSURANCE COMPANY POLICY MPIC-001

Property "Covered"

This endorsement provides coverage only for the items which are shown on the attached schedule you provided. Coverage applies regardless of the location of the property.

Perils "Covered": This endorsement insures against “covered” losses, except as limited or excluded in the following sections.

Additional Exclusion: This endorsement does not insure against loss or damage to tires or tubes unless the loss is coincidental with other loss or damage insured by this policy.

Basis of Recovery:

(1) Replacement Cost – See Section **VII** of basic policy. The recovery basis for property of others shall be "actual cash value" unless you have agreed to the replacement cost basis in a written contract.

For Contractors Equipment on the statement of value, we will pay the current Replacement Cost at the time of the loss even if the value shown was higher or lower than the current value at the time of loss.

New Acquisitions/Replacements/Disposals:

(1) Individual items which are acquired or replaced during the policy period are automatically covered with no premium charge.

(2) Individual items which are disposed of during the policy period will not receive a premium credit.

MUNICIPAL PROPERTY INSURANCE COMPANY

JOINT LOSS AGREEMENT ENDORSEMENT

This endorsement applies in the event of damage to or destruction of property at a location designated in this policy and also designated in a Boiler and Machinery Insurance Policy(ies) and there is a disagreement between the insurers with respect to:

1. Whether such damage or destruction was caused by a peril insured against by this policy or by a peril insured against by such Boiler and Machinery Insurance Policy(ies) or
2. The extent of participation of this policy and of such Boiler and Machinery Insurance Policy(ies) in a loss which is insured against, partially or wholly, by any or all of said policies.

We shall, upon written request of you, pay you one-half of the amount of the loss which is in disagreement, but in no event more than we would have paid if there had been Boiler and Machinery Insurance Policy(ies) in effect, subject to the following conditions:

The amount of the loss which is in disagreement, after making provisions for any undisputed claims payable under the said policies and after the amount of the loss is agreed upon by you and the insurers, is limited to the minimum amount remaining payable under either this or the Boiler and Machinery Policy(ies);

1. The Boiler and Machinery insurer(s) shall simultaneously pay to the insured one-half of said amount which is in disagreement;
2. The payments by the insurers hereunder and acceptance of the same by you signify the agreement of the insurers to submit to and proceed with arbitration within 90 days of such payments; the arbitrators shall be three in number, one shall be appointed by the Boiler and Machinery insurer, one shall be appointed by us, and the third appointed by consent of the other two. The decision by the arbitrators shall be binding on the insurers and judgement upon such award may be entered in any court of competent jurisdiction;
3. You agree to cooperate in connection with such arbitration but not to intervene therein;
4. The provisions of this endorsement shall not apply unless such other policy(ies) issued by the Boiler and Machinery insurance company(ies) is similarly endorsed; and
5. Acceptance by you of some payment pursuant to the provisions of this endorsement, including an arbitration award, shall not operate to alter, waive, surrender or in any way affect the rights of you against any of the insurers.

MUNICIPAL PROPERTY INSURANCE COMPANY

CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

MUNICIPAL PROPERTY INSURANCE COMPANY POLICY MPIC-001

A. Cap On Certified Terrorism Losses

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of $5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed $100 billion in a Program Year (January 1 through December 31) and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds $100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

B. Application Of Exclusions

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Policy, such as losses excluded for nuclear reaction, radiation or contamination; losses due to war, warlike action, insurrection, rebellion and revolution; or, action taken by governmental authority.

MUNICIPAL PROPERTY INSURANCE COMPANY
COVERAGE OF COMPUTER-RELATED LOSSES ENDORSEMENT

This endorsement modifies coverage provided under**:**

Municipal Property Insurance Company Policy MPIC-001

We will pay up to $25,000 for the cost to recover or replace your "electronic data" due to loss caused by the following:

A. Impairment of computer services through inside attack. We will pay for the actual expenses you incur due to the impairment of your operations during the "period of recovery" caused by the loss of "electronic data" due to "malicious programming" by an employee, contractor, or other authorized person to whom you have granted permission to access your computer system.

B. Impairment of computer services through outside attack. We will pay for the actual expenses you incur due to the impairment of your operations during the "period of recovery" caused by the loss of "electronic data" due to "malicious programming" by any person to whom you have not granted permission to access your computer system.

C. Loss of communications services. We will pay for the actual expenses you incur due to the impairment of your operations during the "period of recovery' caused by the loss of "electronic data" due to an interruption in communications services to the described premises. The interruption must result from direct physical loss or damage caused by a "covered" peril to communications transmission lines, including fiber optic transmission lines, but excluding overhead transmission lines.

This coverage does not apply to losses caused by the following:

A. Governmental action relating to, or seizure of, the affected property.

B. War, warlike action, insurrection, rebellion, and revolution, or action taken by governmental authority in defending against any of these.

C. Nuclear reaction, nuclear radiation, or radioactive contamination.

The following definitions apply to this coverage:

A. "Electronic data" means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

B. "Malicious programming" means an illegal or unauthorized entry into an "electronic data" or computer system that results in the distortion, corruption, manipulation, copying, deletion, destruction or slowing down of that "electronic data" or computer system. It does not mean physical loss or damage to computers or computer systems.

C. "Period of recovery" means the period of time that:

a. Begins at the time of direct loss of or damage to "electronic data" caused by or resulting from any peril "covered" by this endorsement; and

b. Ends on the earlier of:

i. The date when your operations are restored, with reasonable speed and diligence, to the condition that would have existed in the absence of the loss of "electronic data"; or

ii. Sixty days after the date when, with reasonable speed and diligence, your computer system is restored to the functionality that existed prior to the loss.

c. The expiration date of this policy will not cut short the "period of recovery."

MUNICIPAL PROPERTY INSURANCE COMPANY

Tax Lien Property Coverage

This endorsement modifies insurance provided under:

MUNICIPAL PROPERTY INSURANCE COMPANY POLICY MPIC-001.

SECTION VII – BASIS OF RECOVERY is amended to include:

E. The most we will pay for a loss of property acquired through foreclosure, tax lien, tax deed or any statutory taking process is “actual cash value”. This coverage restriction eliminates all sub limits and other coverage provisions that may otherwise apply to a “covered loss”.

MUNICIPAL PROPERTY INSURANCE COMPANY

Leased Property Coverage

This endorsement modifies insurance provided under:

MUNICIPAL PROPERTY INSURANCE COMPANY POLICY MPIC-001.

SECTION VII – BASIS OF RECOVERY is amended to include:

D. The most we will pay for a loss of leased property is “actual cash value”, unless the insured is contractually responsible for a different amount.

II

4.3

R. O. No. 239 - 18 - 19. By CITY ADMINISTRATOR. April 3, 2019.

Submitting for your information the 2020 Budget Schedule.

2020 Budget Schedule

April 3, 2019	City Administrator submits 2020 Budget Schedule to Council.
May 13, 2019	City Administrator discusses budget parameters with Finance and Personnel Committee.
May 20, 2019	City Administrator communicates to Management Team the parameters for 2020 budget submittals.
July 15, 2019	Preliminary department budget submittals due.
July – August, 2019	City Administrator review of preliminary department budgets.
September 3, 2019	City Administrator submits Budget Resolution to Common Council.
September 4 – 13, 2019	Standing Committee review 2020 Executive Budget and submit recommendations to the Common Council on September 16, 2019.
September 13, 2019	Publish Notice of Public Hearing on 2020 Executive Budget.
September 16, 2019	Common Council refers 2020 Executive Budget and Standing Committee recommendations to the Committee of the Whole.
September 30, 2019	Committee of the Whole review of the 2020 Executive Budget.
October 7, 2019	Committee of the Whole review of the 2020 Executive Budget.
October 14, 2019	Committee of the Whole refers final 2020 Executive Budget to Common Council.
October 14, 2019	Public Hearing on 2020 Proposed Budget.
November 4, 2019	Common Council to adopt the Budget Resolution.

Finance
Personnel

CITY ADMINISTRATOR

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 203-18-19 by Alderpersons Rindfleisch and Bohren. A resolution to authorize a transfer of appropriations in the 2019 budget.

REPORT PREPARED BY: Marty Halverson, Finance Director

REPORT DATE: April 3, 2019 **MEETING DATE:** April 8, 2019

FISCAL SUMMARY:

Budget Line Item:	10133170 521900
Budget Summary:	N/A
Budgeted Expenditure:	N/A
Budgeted Revenue:	N/A

STATUTORY REFERENCE:

Wisconsin Statutes:	N/A
Municipal Code:	N/A

BACKGROUND / ANALYSIS:
The Eighth Street Bridge requires an emergency hydraulic oil repair due to equipment failure. The high temperature switch failed to turn off the tank reservoir heater resulting in over heating the hydraulic oil to the point of compromising the viscosity. Failure to replace hydraulic oil and necessary equipment could result in further damage to hydraulic operating system rendering the bridge inoperable.

STAFF COMMENTS
This event was not anticipated and would be difficult to absorb into the Public Works Department's existing budget. This is an unexpected malfunction which requires immediate attention to keep the bridge operational and on schedule to reopen on May 1, 2019. Additional equipment and safeties will be built into this repair to further protect the system in the future. The request is to transfer the $78,495 from account Unclassified Reserve for contingency 10199020 810103 to Bridges-Contracted Services 10133170 521900.

ACTION REQUESTED
Motion to recommend the Common Council approve Res. No. 203 -18-19 by Alderpersons Rindfleisch and Bohren.

ATTACHMENTS:
I. Res. No. 203-18-19

5.2

Res. No. 203 - 18 - 19. By Alderpersons Wolf and Sorenson.
April 3, 2019.

A RESOLUTION to authorize a transfer of appropriations in the 2019 Budget.

RESOLVED: That the Finance Director be and is hereby authorized and directed to make the following transfer of appropriations in the 2019 Budget for the purposes of:

Establishing appropriations for the emergency hydraulic oil repair and related equipment for the Eighth Street Draw Bridge resulting from the malfunctioning high temperature switch compromising the viscosity of hydraulic oil. Piper Automation will provide services in the amount of $78,495.00 to replace hydraulic oil and necessary equipment to complete repairs:

FROM:	TO:	AMOUNT:
General Fund Contingency Reserve 10199020-810103	Bridges-Contracted Services 10133170-521900	$78,495.00

Finance & Personnel

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 204-18-19 Resolution by Alderpersons Wolf, Rindfleisch and Bohren authorizing the appropriate City Officials to enter into contract for the demolition of the Sheboygan Municipal Auditorium and Armory contingent upon the City Attorney affirming that all legal requirements have been satisfied.

REPORT PREPARED BY: Bernard Rammer, Purchasing Agent

REPORT DATE: April 1, 2019 **MEETING DATE:** April 8, 2019

FISCAL SUMMARY:

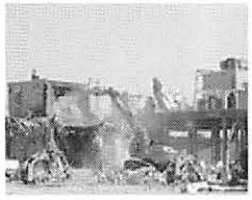
Budget Line Item:	Land Improvements
Budget Summary:	TID 16 Fund
Budgeted Expenditure:	N/A
Budgeted Revenue:	N/A

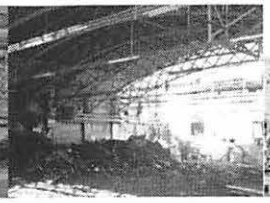
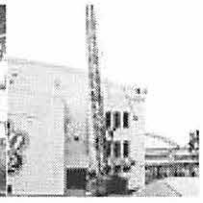
STATUTORY REFERENCE:

Wisconsin Statutes:	N/A
Municipal Code:	N/A

BACKGROUND / ANALYSIS:
The Common Council previously authorized the appropriate City Officials to negotiate a contract with Best Enterprises, LLC of DePere for the demolition of the Sheboygan Municipal Auditorium and Armory. In early December 2018, Request for Bids #1926-18 was issued and bids were received on December 21, 2018.

Contractor Name	City	Base Bid
American Demolition Inc.	Elgin, IL	$ 557,700.00
Badgerland Demolition, Inc.	De Pere, WI	$ 328,500.00
Best Enterprises, LLC	De Pere, WI	$ 319,500.00
Robinson Brothers Environmental	Waunakee, WI	$ 478,970.00



STAFF COMMENTS:
In addition to demolition and related restoration of the site, the requested funding includes the removal of the remaining asbestos containing materials prior to demolition and an allowance of $5,000 for a third party civil engineering firm to verify proper backfill compaction as well as a modest contingency allowance (5 percent) to deal with unanticipated site or other conditions, should they arise.

Demolition may not begin until the City Attorney provides a written opinion to the City Administrator confirming that all legal requirements associated with the State of WI Historic Preservation Officer and those contained in Ordinance 15.916 of the Sheboygan Zoning Ordinance have been met.

ACTION REQUESTED:
Motion to recommend the Common Council approve Res. No. 204-18-19 to enter into contract with Best Enterprises LLC for demolition and subsequent restoration of the site with Best Enterprises, LLC, De Pere, WI in the amount of $ 319,500.00 and an additional amount of $20,975.00 for third party testing and a modest contingency for a total request of $ 340,475.00.

ATTACHMENTS:
I. Res. No. 204-18-19

III

5.3

Res. No. 204 - 18 - 19. By Alderpersons Wolf, Rindfleisch and Bohren. April 3, 2019.

A RESOLUTION authorizing the demolition of the armory, contingent upon completion of legal requirements.

WHEREAS, the common council previously authorized the appropriate city officials to negotiate a contract with Best Enterprises, LLC, of De Pere Wisconsin, for the demolition of the Sheboygan Municipal Auditorium and Armory and restoration of the site in the amount of $319,500.00, with an additional allowance of $20,975.00 for third party testing and a modest contingency; and

WHEREAS, before demolition can begin, city officials are required to complete the process or review by the State Historic Preservation Officer, including negotiation, if required; and

WHEREAS, before demolition can begin, city officials must also complete compliance with the historic preservation regulations contained within Section 15.916 of the Sheboygan Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are authorized to enter into a contract with Best Enterprises, LLC, of De Pere, Wisconsin, for the demolition of the Sheboygan Municipal Auditorium and Armory and restoration of the site, a copy of which is attached and incorporated by reference.

BE IT FURTHER RESOLVED: That funds for the contracted demolition, associated third party testing, and contingency in the sum of $340,475.00 shall be drawn from Account 42661100-611200—TID 16 Capital Project Fund - Land Improvements.

Finance + Personnel

BE IT FURTHER RESOLVED: That demolition shall not begin until the City Attorney provides a written opinion to the City Administrator confirming that a) review by the State Historic Preservation Officer, including negotiation with the officer if required, has been completed and b) demolition may occur in compliance with the historic preservation regulations contained within Section 15.916 of the Sheboygan Zoning Ordinance.

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

AGREEMENT
BETWEEN THE CITY OF SHEBOYGAN, WISCONSIN AND
BEST ENTERPRISES, LLC

REGARDING THE DEMOLITION OF THE SHEBOYGAN MUNICIPAL AUDITORIUM AND ARMORY

This Agreement ("Agreement") is made and entered into effective this ____ day of _____, 2019 (the "Effective Date"), by and between the City of Sheboygan (the "City"), a municipal corporation, and BEST Enterprises, LLC ("Contractor").

WITNESSETH:

WHEREAS, the City desires to have the Sheboygan Municipal Auditorium and Armory ("Sheboygan Armory") demolished, and requires a responsible contractor to provide it with these demolition services; and

WHEREAS, Contractor is willing and able to provide the City with the necessary demolition services under the terms set forth in this Agreement.

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

Article 1. Scope of Services
Contractor shall provide all services, materials, labor, and tools necessary to demolish, remove, and dispose of the Sheboygan Armory, located at 516 Broughton Drive in Sheboygan, Wisconsin (the "Services") and to restore 516 Broughton Drive (the "Site") to a dust free condition.

For the avoidance of doubt, the Services shall include, but not be limited to, the following:

- Any necessary abatement of materials—due to asbestos, lead paint, or any other reason—at the Sheboygan Armory
    - It is expected that this will include the following:
        - Windows with glazing
        - Miscellaneous exterior caulking on concrete including around windows, doors, and in vertical wall expansion joints
        - Pipe insulation in penetration through the wall in Room #6 (Basement Shower Room)
        - Pipe insulation in wall penetration above the bullet trap in Room #7 (Rifle Range)
        - Pipe insulation above the performance stage near the ceiling in Room #119 (Stage)
        - Marble pattern floor tile in Room #129 (Office)

        - Pipe insulation in floor penetration by pipe chase in Room #134 (NE Women's Rest Room)
- The demolition of the building and basement areas directly under the building and the underground coal storage area on the west side of the building ("Demolition").
    - For the avoidance of doubt, Demolition shall include the following:
        - The entire building and its foundations, floors, loading docks, basements, sump pits, retaining walls, sub-basement footings and other improvements, including walkways and patios inside the City-owned sidewalks. These shall be removed from the project site.
        - The removal of:
            - All oil containing ballasts, electrical transformers, elevator cars and hydraulic machinery, HID lamps, fluorescent lamps, emergency lighting batteries, fire extinguishers, mercury switches, and EXIT signs.
            - Any and all roofing materials.
            - Equipment with CFC (Freon) or HCFC materials.
            - The removal of the gravel parking lot and the north to south driveway. This land shall be restored—including topsoil, grass seed and mulch—to a dust free condition.
                - Note: Contractor may use the gravel parking lot for staging during the Demolition, so long as the gravel parking lot is removed and restored to a dust free condition at the end of the Services.
    - Demolition shall not include the following:
        - Street pavements, public sidewalks, and street curbs.
- All materials from the Demolition, including all contents of the property, shall become the property of the Contractor, who shall have the sole responsibility for lawfully removing and disposing of the materials.
    - Disposal of razed materials, including possible placement of clean, crushed on site concrete (if applicable) shall be done in accordance with the Wisconsin Department of Natural Resources (WDNR) regulations, Wisconsin Administrative Code NR500 and City of Sheboygan Ordinances.
    - Any and all materials to be disposed of off-site that will not be recycled shall be disposed of at an EPA/WDNR approved and licensed disposal facility. Receipt of each disposal transaction shall be retained and presented to the City of Sheboygan before final payment will be made.
    - Note: The City makes no guarantee of salvable materials.
- Mobilization and suitable preparation of the building and Site to allow for the work to be done in a safe manner. This includes furnishing, erecting, and maintaining suitable barricades, warning signs, flashers, and fencing to properly protect and safeguard Contractor's personnel and the general public during all phases of the Services.
- Providing at least three days' notice—excluding weekends and legal holidays—to the proper authorities in charge of streets, gas and water pipes, electric and other conduits, railroad, poles, catch basins, sewers, and all other property that may be affected by the contractor's

operations. Contractor shall not hinder or interfere with any persons in the protection of such property or with the operations of utilities at any time. Contractor must obtain all necessary information in regard to existing utilities. Contractor shall protect such utilities from damage and unnecessary exposure. Any cost of repairing any damage to utilities shall be the responsibility of the contractor causing said damage.

- Disconnecting electricity, natural gas, water, storm sewer, sanitary sewer services, and any other utility running to the building. Disconnection and permanent capping of the water and storm sewer laterals shall be done to the satisfaction of the City of Sheboygan Plumbing Inspector.
- Providing and installing any erosion curtains as may be required by WDNR.
- Protecting all storm sewer inlets around the site to protect against the entry of soils or other materials during the provision of the Services.
- Removal of all driveway aprons.
- Replacement of City-owned concrete curb and gutter at all seven (7) driveway openings at the Site in accordance with City specifications.
- The backfilling and restoration of the Site—including where all sidewalks, driveways, and parking lots inside the City owned sidewalk are currently present—which shall include:
    - Backfilling all areas below grade on the site with clean fill materials, including suitable compaction of the clean fill materials (as determined by the Civil Engineering Firm) so as to provide for future excavation for construction of new improvements on the site in the near future.
        - Any necessary mechanical removal of water during backfilling in order to achieve the desired compaction rates.
    - The City will separately contract with a Civil Engineering Firm to provide compaction testing during the backfill process. The Contractor shall work with the City's Civil Engineering Firm to allow for proper testing.
    - Rough grading of the Site
    - Finish grading of the Site so that the area inside the perimeter sidewalk, including the gravel parking lot, shall be completely leveled to a grade equal to the sidewalks and the area restored with grass shall be able to be mowed with a finish cut lawnmower.
    - Placement of pulverized / screened topsoil free from rocks, stones, clumps, clay, sand, wood, and any other foreign materials including trash, metal, glass, or other debris
    - Seeding with quality grass seed that does not contain weed seeds, pursuant to the seed manufacturer's recommendations
    - Placement of mulch
    - All areas around the building that are currently grass and that are disturbed or damaged during the demolition process shall be properly repaired and seeded and mulched by the Contractor.
    - All areas to which grass seed is applied shall be properly mulched or covered with straw so as to retain moisture and encourage germination and grass growth.
    - Installation of temporary stakes and barriers along the perimeter sidewalk so as to prevent entry onto the newly planted grass.

Contractor shall be responsible for replacement of any concrete sidewalks around the perimeter of the Site that are damaged during the provision of the Services.

Contractor shall obtain all applicable City permits and licenses, and pay all applicable City fees prior to beginning demolition. Contractor shall ensure any permitted sub-contractor has also obtained any and all applicable City permits and licenses, and paid all applicable City fees.

Contractor notes that Contractor is fully acquainted with the existing conditions at the Armory and fully understands the difficulties and restrictions in performing the Services.

Contractor shall promptly make payment to each and every person or entity entitled to payment for work or labor performed or materials furnished in the performance of this Agreement.

Article 2. Standard of Care

Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The City shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the City shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

Contractor shall be responsible to repair any damage incurred during the Services.

The materials installed as a result of this Agreement shall be fully warranted against defects by the Contractor for one (1) year from date of final acceptance. Upon receipt of notice of defect from the City, the Contractor shall promptly correct or replace any and all materials or workmanship found to be defective. All manufacturer's warranties shall also apply and be honored by Contractor.

Article 3. Responsibilities of the City

The City designates Bernie Rammer as its designated project manager for purposes of this Agreement.

Article 4. Compensation

The City shall pay Contractor for all fees and expenses in an amount not to exceed Three Hundred Nineteen Thousand Five Hundred Dollars ($319,500).

Upon completion of the Services, Contractor shall submit an invoice to the City.

Unless additional services are added to the Services, pursuant to the process set forth in this Article, in no event shall the invoiced amount exceed the not to exceed amount.

The invoice shall be sent to:

Bernie Rammer
City of Sheboygan
828 Center Ave.
Sheboygan, Wisconsin 53081

Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice.

Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the City or its designated project manager prior to such work being performed, or expenses incurred. The City shall not make payment for any unauthorized work or expenses.

The City may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following:

- Defective work.
- Evidence indicating the probable filing of claims by other parties against Contractor which may adversely affect the City.
- Failure of Contractor to make payments due to subcontractors, material suppliers, or employees.
- Damage to the City or a third party.

The submission of any request for payment shall be deemed a waiver and release by Contractor of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.

Article 5. Appropriation of Funds
Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity, including the City itself, to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty.

Article 6. Performance and Payment Bond
Contractor shall, within ten (10) days of the approval of this Agreement by the Common Council of the City of Sheboygan, provide the City with a Performance Bond and a Payment Bond in the amount of one hundred percent (100%) of the contract amount.

Failure by Contractor to perform the work in a timely or satisfactory fashion may result in forfeiture of Contractor's Performance Bond.

If the Surety on any bond furnished by Contractor becomes a party to supervision or liquidation, or its right to do business in the State of Wisconsin is terminated, Contractor shall, within thirty (30) calendar days thereafter, substitute another bond or surety, both of which must be acceptable to the City.

Article 7. Schedule

The Services may begin as soon as this Agreement has been fully executed, the Contractor has completed all conditions precedent to beginning the Services, and the City has provided the Contractor with a Notice to Proceed.

All Services shall proceed according to the schedule agreed to by the City's Project Manager and the Contractor.

All Services, and all invoices for all Services, shall be complete by December 31, 2019. Completion of services shall mean the Services have been performed and are satisfactory to the City. Therefore, any "punch list" items shall also be complete by December 31, 2019.

The Parties agree that no charges or claims for damages shall be made by Contractor for any delays or hindrances, from any cause whatsoever, during the progress of any portion of the services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for a reasonable period as may be mutually agreed upon between the Parties, it being understood however, that permitting Contractor to proceed to complete any service, or any part of the services / project, after the date to which the time of completion may have been extended shall, in no way operate as a waiver on the part of the City of any of its rights herein.

Article 8. Liquidated Damages

In the event the Contractor fails to complete the Services pursuant to the Schedule set forth in this Agreement, there shall be deducted from any monies due or that may become due the contractor, for each and every calendar day that the work remains uncompleted, Two Hundred Fifty Dollars ($250.00).

This sum shall be considered and treated not as a penalty but as fixed, agreed, and liquidated damages due the City from the Contractor by reason of inconvenience to the public and the resulting delay in redevelopment of the underlying site.

Permitting the contractor to continue and finish the Services or any portion of the Services after the time set forth in the Schedule shall in no way be construed as a waiver on the part of the City of any of its rights under this Agreement.

Article 9. Quality of Materials

All materials used by Contractor shall be new, newest model year, and free from defects. Items which are used, demonstrators, obsolete, seconds, of which have been discontinued are unacceptable without prior written approval by the City.

Article 10. Safety Requirements

Contractor shall be responsible for the safety of employees at all times and shall provide all equipment necessary to insure their safety. Contractor shall ensure the enforcement of all applicable safety rules, regulations, ordinances and laws, whether federal, state, or local.

Contractor's Superintendent of Safety shall make daily inspections upon the arrival and leaving of the site at the close of each workday.

Article 11. Open Records
Both parties understand that the City is bound by the Wisconsin Public Records Law and, as such, this contract is subject to that law. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the contract, and that Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under the Agreement.

Article 12. Termination
The City may terminate or suspend performance of this Agreement at the City's prerogative at any time upon written notice to Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the City and the City shall pay Contractor for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Contractor's compensation and the schedule of services.

If Contractor defaults or fails to fulfill in a timely and proper manner its obligations pursuant to this Agreement, the City may, seven (7) days after written notice has been delivered to Contractor, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to Contractor. In the alternative the City may, at its option, terminate this Agreement and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor, and may finish the project by whatever method it may deem expedient. In case the expenses incurred by the City (including payments previously made to Contractor) shall be less than the sum which would have been payable under the Agreement if it had been completed by Contractor, Contractor shall be entitled to receive the difference. However, in case such expense shall exceed the sum which would have been payable under the Agreement, Contractor will be liable and shall pay to the City the amount of said excess. By taking over prosecution of the work, the City does not forfeit the right to recover damages from Contractor or its surety for failure to complete the work in the time specified.

Article 13. Default
If Contractor breaches this Agreement or fails to perform the work in an acceptable manner, it shall be considered in default. Any one or more of the following will be considered a default:

- Failure to begin the work under this Agreement within the time specified.
- Failure to perform the work with sufficient supervision, workers, equipment and materials to insure prompt completion of said work within the time limits allowed.
- Unsuitable performance of the work as determined by City.
- Neglecting or refusing to remove defective materials or failure to perform anew such work as shall have been rejected.

- Discontinuing the prosecution of the work or any part of it.
- Inability to finance the work adequately.
- If, for any other reason, Contractor breaches this Agreement or fails to carry on the work in an acceptable manner.

The City shall send Contractor a written notice of default. If Contractor, within a period of seven (7) days after such notice, fails to remedy the default, then the City shall have full power and authority, without violation of the Agreement, to take the prosecution of the work out of the hands of Contractor, as set forth in this Agreement.

Article 14. Identity of Contractor

Contractor acknowledges that one of the primary reasons for its selection by the City to perform the Services is the qualifications and experience of Contractor. Contractor thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Contractor. Contractor shall not subcontract any part of the Services without the prior written permission of the City. The City's project manager shall have the ability to provide this written permission. The City reserves the right to reject any of the Contractor's personnel or proposed outside professional sub-consultants, and the City reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 15. Independent Contractor Status

During the entire term of this Agreement, Contractor shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the City. Contractor shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of its employees.

Article 16. Indemnification

Contractor shall indemnify, defend, and hold the City—including its Officials, Agents, and Employees—free and harmless from all liability, including, but not limited to, losses, damages, costs, attorney's fees, expenses, causes of action, claims, or judgments resulting from claimed injury, death, damage to property, or loss of use of property or any person or legal entity arising out of or in any way connected with the performance of work or work to be performed under this Agreement.

Contractor shall reimburse the City for any costs, expenses, judgments, and attorney's fees paid or incurred, by or on behalf of the City, its Officials, Agents, or Employees, or paid for on behalf of the City, its Officials, Agents, or Employees by insurance purchased or self-insurance provided by the City arising out of or in any way connected with the performance of work or work to be performed under this Agreement.

Contractor shall further indemnify, defend, and hold harmless the City, its Officials, Agents, and Employees from liability or claims for any injuries to or death of Contractor's employees (or the employees of any authorized subcontractor) arising out of or in any way connected with the work or work to be performed under this Agreement, including protection against any claim of the

contractor or subcontractor for any payments under any worker's compensation law or any expenses of or any payments made by any worker's compensation insurance carrier on behalf of said contractor or sub-contractor and the contractor shall indemnify the City for any costs, expenses, judgments, and attorney's fees with respect to any above referenced workers' compensation claims incurred or paid by the City or paid on its behalf or on behalf of its Officials, Agents, or Employees by insurance purchased or self-insurance provided by the City of Sheboygan.

Article 17. Insurance

Contractor shall not commence work under this Agreement until it has obtained all insurance required under this Article. Additionally, Contractor shall not allow any approved subcontractor to commence work on its subcontract until the subcontractor has obtained all insurance required under this Article.

During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect, and shall provide proof of insurance to the Purchasing Agent listing the City of Sheboygan as an additional insured:

a. Workers' Compensation Insurance — Contractor shall acquire and maintain, for the duration of the Agreement, Workers' Compensation Insurance that meets all statutory requirements. In the event this Agreement authorizes any work to be sublet, Contractor shall require any subcontractor to similarly provide Workers' Compensation Insurance in accordance with all statutory requirements.

b. Public Liability and Property Damage Insurance — Contractor shall acquire and maintain, for the duration of the Agreement, Public Liability and Property Insurance with a policy limit of at least $2,000,000 for injuries (including accidental death to any one person), and a policy limit of at least $2,000,000 for property damage.

c. Commercial General Liability Insurance — Contractor shall acquire and maintain, for the duration of the Agreement, Commercial General Liability Insurance with a policy limit of at least $1,000,000 per occurrence and $2,000,000 in the aggregate.

All insurance must be primary and non-contributory to any insurance or self-insurance carried by the City.

Approval of the insurance by the City shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from Contractor's provision of the Services or its operations under this Agreement. If Contractor fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the City the required proof that the insurance has been procured and is in force and paid for, the City shall have the right at its election to terminate the Agreement.

Article 18. Conflict of Interest
Contractor declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services under this Agreement. Contractor agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 19. Waiver
No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

Article 20. Severability
The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Article 21. Assignment
Neither the City nor Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party.

Article 22. Third Party Rights
Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Contractor.

Article 23. Governing Law and Venue
This Agreement shall be governed by the laws of the State of Wisconsin. Venue of any disputes arising under this Agreement shall be in the Sheboygan County Circuit Court, Wisconsin.

Article 24. Non-Discrimination
In connection with the performance of work under this Agreement, Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability (as defined in Wis. Stat. 51.01(5)), sexual orientation (as defined in Wis. Stat. 111.32(13m)), or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to take affirmative action to ensure equal employment opportunities.

Article 25. Compliance with Laws
In performing the Services under this Agreement, Contractor shall comply with any and all applicable federal, state and local statutes, ordinances, plans, and regulations which in any manner affect the work or its conduct.

The City reserves the right to cancel this Agreement if Contractor fails to follow the requirements of Wis. Stat. 77.66 and related statutes regarding certification for collection of sales and use tax. The City also reserves the right to cancel this Agreement with any state or federally debarred contractor.

Contractor shall have any and all licenses and permits required to perform the work specified, and shall furnish proof of such licensing authorization and permits upon request.

Article 26. Notices
Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below:

City:	**Contractor:**
City Clerk	Jesse Juedes
City of Sheboygan	BEST Enterprises, LLC
828 Center Ave.	3230 Eiler Road
Sheboygan, Wisconsin 53081	DePere, Wisconsin 54115

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the City and Contractor.

Article 27. Intent to be Bound
The City and Contractor each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

Article 28. Force Majeure
Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, the failure to perform must be beyond the reasonable control and without the fault or negligence of the party.

Article 29. Integration and Modification
This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the City and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written,

relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

Article 30. Non-Collusion
Contractor is certifying, under penalty of perjury, that to the best of its knowledge and belief:

a. The prices in its bid, as incorporated into Article 4, were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition as to any other matter relating to such prices with any other bidder, or with any other competitor.

b. The prices quoted in its bid were not knowingly disclosed—directly or indirectly—by the bidder to any other bidder or competitor prior to the bid opening.

c. No attempt was made to induce any other person, partnership, or corporation to submit or not submit a quote for the purpose of restricting competition.

Article 31. Other Provisions

a. Material Safety Data Sheet. If any item(s) on an order(s) resulting from this Agreement is a hazardous chemical, as defined under 29 C.F.R. 1910.1200, Contractor shall provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

b. Advertising and News Releases. Reference to or use of the City, or any of its departments, officials, or employees, for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the City. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the City.

c. Foreign Corporation. A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Wis. Stat. 180 relating to a foreign corporation, and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority.

d. Neither Party the Drafter. Despite the possibility that one party or its representatives may have prepared the initial draft of this Agreement (or any provision thereof), or played a greater role in the preparation of subsequent drafts, the parties agree that neither of them shall be deemed the drafter of this Agreement.

e. Authority. Each person executing this Agreement on behalf of a party hereto represents and warrants to the other party: That the execution and delivery of this Agreement has been duly authorized, that the person or persons executing this Agreement have the full power,

authority, and right to do so, and that such execution is sufficient and legally binding on such party to enable this Agreement to be enforceable in accordance with its terms.

f. Solvency. Contractor warrants that it is financially solvent, and agrees to provide any documents reasonably requested by the City in order to confirm that Contractor is financially solvent.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

CITY OF SHEBOYGAN, WISCONSIN	**CONTRACTOR**
BY: _____	**BY:** _____
Michael J. Vandersteen, Mayor	
ATTEST: _____	**ATTEST:** _____
Meredith DeBruin, City Clerk	
DATE: _____	**DATE:** _____

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 207-18-19 by Alderpersons Rindfleisch and Bohren to authorize the appropriate City Officials to enter into contract for the purchase and installation of new floor coverings at Mead Public Library

REPORT PREPARED BY: Bernard R. Rammer Purchasing Agent

REPORT DATE: April 4, 2019 **MEETING DATE:** April 8, 2019

FISCAL SUMMARY:

Budget Line Item:	47851100-621200 25551100-521900
Budget Summary:	Capital Imp. MPL Contracted Services
Budgeted Expenditure:	$ 40,000.00
Budgeted Revenue:	N/A 40,492

STATUTORY REFERENCE:

N/A

Wisconsin Statutes:

Municipal Code: N/A

BACKGROUND / ANALYSIS:

The Capital Improvement Fund includes 40,492

The Mead Public Library is in the final year of a three year programmed replacement of floor coverings throughout the public areas of the building. The Library budgeted $40,000 in 2019 in Capital Improvements with the expectation that any cost overruns would be funded with library reserve accounts.

STAFF COMMENTS:

The Floor coverings to be installed are all of a commercial grade and able to withstand years of foot traffic commonplace to the Library. In addition, the main staircase will receive new coverings from the first to the third floor a Request for Bids was issued and the City received 2 vs three competitive bids.

H.J Martin, Green Bay, WI.....$ 123,825.00
Precision Floor & Décor, Plymouth WI... $ 117,847.64

Following a review of the bids, the low bid received from Precision Flooring and Decor of Plymouth meets all of the requirements and the Mead Library Board recommends award.

ACTION REQUESTED:

Motion to recommend the Council approve Res. No. 207-18-19 to authorize the appropriate City Officials to enter into contract with Precision Floor and Décor of Plymouth, WI for the purchase and installation of new floor coverings ~~for all public & semi-public areas of the second floor and to include the main public staircase~~ at a total cost of $117,847.64

ATTACHMENTS:

I. Res. No. 207- 18/19

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 206-18-19 by Alderpersons Rindfleisch and Bohren. A resolution directing the Purchasing Agent to seek Requests for Proposal for an Operational and Departmental Structure Study of the City of Sheboygan Finance Department and Human Resource Department.

REPORT PREPARED BY: Darrell Hofland, City Administrator

REPORT DATE: April 1, 2019 **MEETING DATE:** April 8, 2019

FISCAL SUMMARY:		**STATUTORY REFERENCE:**	
Budget Line Item:	N/A	Wisconsin Statutes:	N/A
Budget Summary:	N/A	Municipal Code:	N/A
Budgeted Expenditure:	N/A		
Budgeted Revenue:	N/A		

BACKGROUND / ANALYSIS:
As part of the discussion to proceed with the 2018 operational and departmental structure study of the Fire Department, several Common Council member expressed their desire that every city department be reviewed, over time, by an outside consultant.

Following the 2018 retirement of Finance Director Nancy Buss and the subsequent hiring of Marty Halverson, it is an appropriate time to review current job duties, responsibilities, and personnel levels of the Finance Department.

Duties of the Finance Department are closely linked to the Human Resources Department. Within the past 10 years, duties (and assigned staff) relating to payroll and benefits were transferred from the Finance Department to the Human Resources Department.

With the plans to move back into City Hall in June, the office suites for the Finance Department and Human Resources Department are a joint space with one public counter.

STAFF COMMENTS:
Attached is a copy of a draft scope of services for the operational and departmental structure study of the Finance Department and Human Resources Department.

ACTION REQUESTED:
Motion to recommend the Common Council approve Res. No. 206-18-19 directing the Purchasing Agent to seek Requests for Proposal for an Operational and Departmental Structure Study of the City of Sheboygan Finance Department and Human Resource Department.

ATTACHMENTS:

I. Res. No. 206-18-19

II. Scope of services for an Operational and Departmental Structure Study of the City of Sheboygan Finance Department and Human Resource Department.

III Other Matters

8.3

Res. No. 206 - 18 - 19. By Alderpersons Rindfleisch and Bohren.
April 3, 2019.

A RESOLUTION directing the Purchasing Agent to seek Requests for Proposal for an Operational and Departmental Structure Study of the City of Sheboygan Finance Department and Human Resources Department.

WHEREAS, the Common Council has expressed an interest in systematically conducting an outside review of each city department; and

WHEREAS, the Common Council initiated its review effort by conducting an Operational and Departmental Structure Study of the Fire Department in 2018; and

WHEREAS, the City Administrator has suggested the following items be included in the operational and departmental structure study:

- Review background information;
- Stakeholder input;
- Document and review information;
- Develop benchmark analysis;
- Develop Organizational Structure and Staffing Plan; and
- Prepare and issue Report of Findings.

NOW, THEREFORE, BE IT RESOLVED: That the Purchasing Agent is directed to seek Requests for Proposal for an Operational and Departmental Structure Study of the City of Sheboygan Finance Department and Human Resources Department for city consideration.

Finance + Personnel

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

City of Sheboygan, Wisconsin

I. Scope of services for an Operational and Departmental Structure Study of the City of Sheboygan Finance Department and Human Resource Department.

The purpose of this study is to perform a review of the operational and departmental structure of the City's Finance and Human Resources Departments, including the possible combination of the departments.

Task I **Review background information**

- Organizational structure of City and of Finance and Human Resources Departments.
- Organizational Strategic Plan and department strategic plans if available.
- Staffing levels by position for each department
- Position descriptions.
- Current workload and workload trend information.
- Other relevant information.

Task II **Stakeholder input**

- Meet with City Administrator to gain an understanding of the current organizational structure, operations, management, and any areas of concerns, comparable cities, and other relevant information
- Individual interviews will be held with each department head to gain an understanding of their department's operations, service levels, staffing levels and deployment, available resources and other relevant data.
- Conduct meetings with department employees to provide an opportunity for employee input into the analysis.

Task III **Document and review information**

- Using the information gained from prior tasks, the consultant team will analyze information collected and develop the factual profile that will include the following distinct but interactive steps:
  - Review the information obtained through interviews, stakeholder input, document reviews, and observations and organize by issue
  - Analyze the information to identify omissions or inconsistencies and collect additional information, as needed
  - Document existing services, service levels, staffing levels, organizational structure, benchmarks, and performance data. The analysis process will include "brainstorming" sessions among our team to take full advantage of the experience and

perspective of each consultant. A profile will be developed containing the following:

- The objectives, priorities and programs of each department
- To the extent available, the current workload and workload trend information
- The services and service levels provided by each department
- Potential staffing benchmark to be used in comparisons
- Existing resources available for providing services

  - Develop factual profile to document the current organizational structure, staffing levels, workload, service levels, staffing level benchmarks and workload indicators for each department. The profile will be reviewed with the City Administrator and appropriate staff. Based on this review, the profile will be amended as appropriate, and will be included in the final report.

Task IV **Develop Benchmark Analysis**

- Develop a list of comparable cities for benchmarking purposes and the rationale for their selection.
  - Develop a list of benchmarks to be used for comparing staffing levels and operations.
  - Review and confirm comparison cities and benchmarks to be used with the City Administrator and appropriate staff.
- Conduct and document benchmark data.
  - Survey comparable cities and compile results
  - Gather data relative to national benchmarks
- Develop comparative benchmark analysis.

Task V **Develop Organizational Structure and Staffing Plan**

- Consultant will develop a recommended organizational structure for the combined department that is logical, organized to maximize efficiency and effectiveness, and provides appropriate spans of control.
- Using the data collected, observations and benchmark analysis data, consultant will develop a staffing analysis and determine the staffing levels needed for the combined department for the efficient and effective delivery of services at their current levels.
  - The staffing plan will detail the number of positions needed
  - The rationale for the staffing
  - A description of the process so the City can update and maintain the staffing plan going forward as growth and development, technology, the economy, and other changes affect the need for staffing

Task VI **Prepare and Issue Report of Findings**

- Consultant will prepare a Report of Finding which will include the consulting team's findings and conclusions. Consultant will provide the City of Sheboygan with an electronic copy of the Report in pdf format.
- Consultant will present the Report of Findings to the City of Sheboygan in a meeting of the City's choice.

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 207-18-19 by Alderpersons Rindfleisch and Bohren to authorize the appropriate City Officials to enter into contract for the purchase and installation of new floor coverings at Mead Public Library

REPORT PREPARED BY: Bernard R. Rammer Purchasing Agent

REPORT DATE: April 4, 2019 **MEETING DATE:** April 8, 2019

FISCAL SUMMARY:

Budget Line Item:	47851100-621200 25551100-521900	**STATUTORY REFERENCE:**
Budget Summary:	Capital Imp. MPL Contracted Services	Wisconsin Statutes: N/A Municipal Code: N/A
Budgeted Expenditure:	$40,492.00 $40,000.00	
Budgeted Revenue:	N/A	

BACKGROUND / ANALYSIS:
The Mead Public Library is in the final year of a three year programmed replacement of floor coverings throughout the public areas of the building. The Capital Improvement Fund includes $40,492. The Library budgeted $40,000 in 2019 in Capital Improvements with the expectation that any cost overruns would be funded with library reserve accounts.

STAFF COMMENTS:
The floor coverings to be installed are all of a commercial grade and able to withstand years of foot traffic commonplace to the Library. In addition, the main staircase will receive new coverings from the first to the third floor a Request for Bids was issued and the City received two competitive bids.

H.J Martin, Green Bay, WI..... $ 123,825.00
Precision Floor & Décor, Plymouth WI... $ 117,847.64

Following a review of the bids, the low bid received from Precision Flooring and Decor of Plymouth meets all of the requirements and the Mead Library Board recommends award.

ACTION REQUESTED:
Motion to recommend the Council approve Res. No. 207-18-19 to authorize the appropriate City Officials to enter into contract with Precision Floor and Décor, Plymouth, WI for the purchase and installation of new floor coverings at a total cost of $117,847.64.

ATTACHMENTS:
I. Res. No. 207- 18/19

III

Other Matters

8.4

Res. No. 207 - 18 - 19. By Alderpersons Rindfleisch and Bohren.
April 3, 2019.

A RESOLUTION authorizing the appropriate City Officials to enter into a contract for the installation of new floor coverings at Mead Public Library.

WHEREAS, Mead Public Library is in the final year of a multi-year initiative to replace carpeting and flooring in most of the public and semi-public spaces of the Building; and

WHEREAS, in 2019, the Library wishes to replace all of the carpeting and floor coverings on the second floor and on the main staircase that serves all three floors (the "Project"); and

WHEREAS, the Library included $40,000 in the 2019 Capital Improvements Budget for the Project, with the expectation that it would fund the excess with reserves; and

WHEREAS, City Staff has obtained and reviewed competitive bids for the Project; and

WHEREAS, upon reviewing the bids, the Mead Public Library Board has elected to use reserves to fund the portion of the Project in excess of the budgeted funds included in the 2019 Capital Improvements Budget; and

WHEREAS, the lowest bid, from Precision Floor and Décor, meets all the requirements from the bid documents.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are hereby authorized to enter into a contract with Precision Floor and Décor in substantially similar form to that attached, for the installation of new floor coverings at Mead Public Library.

Finance + Personnel

BE IT FURTHER RESOLVED: That the appropriate City officials are hereby authorized to draw funds in the amount of $40,000.00 from the Capital Improvement Fund-Mead Library-Building Improvement account #47851100-621200 and $77,847.64 from the Mead Library-Administration-Contracted Services account #25551100-521900 in payment of same.

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

AGREEMENT
BETWEEN THE CITY OF SHEBOYGAN, WISCONSIN AND
PRECISION FLOOR AND DÉCOR, INC.

REGARDING THE REMOVAL AND INSTALLATION OF CARPET AT MEAD PUBLIC LIBRARY

This Agreement ("Agreement") is made and entered into effective this ____ day of _____, 2019 (the "Effective Date"), by and between the City of Sheboygan (the "City"), a municipal corporation, and Precision Floor and Décor, Inc. ("Contractor").

WITNESSETH:

WHEREAS, Mead Public Library is in the final year of a multi-year initiative to replace carpeting and flooring in most of the public and semi-public areas of the Library; and

WHEREAS, in 2019, the Library wishes to replace all of the carpeting and floor coverings on the second floor and on the main staircase that serves all three floors; and

WHEREAS, Contractor is willing and able to remove the existing flooring in those areas and replace the flooring under the terms set forth in this Agreement.

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

Article 1. Scope of Services
Contractor shall provide all services[1], materials, labor, and tools necessary to remove and replace the floor coverings on the second floor of the Mead Public Library and on the main staircase that serves all three floors (the "Services").

Contractor shall assist the City's Project Manager with the selection of the products, including providing samples.

"Materials" includes all carpet, vinyl flooring, carpet nosing, vinyl cove base, transition strips, and glues and adhesives as may be necessary for a complete turnkey installation. Use of more than one dye lot in the same room or open area is not permitted. Contractor shall also provide a minimum of one carton each of attic stock for each kind of Carpet Module and Luxury Vinyl Plan, in addition to all full pieces left over following installation.

[1] This includes measurement and inspection of the areas designated to receive floor coverings. Contractor shall be wholly responsible for the measurement of these areas.

Replacement of the floor coverings includes proper preparation of the substrate to accept the new floor coverings and the installation of new floor coverings, which shall include:

- Generally:
  - Contractor shall follow manufacturer's instructions and recommendations. This includes completing all cutting in accordance with manufacturer's recommendations, using tools specifically designed for the purpose.
  - The entire floor area shall be covered with flooring materials. This includes installation of floor coverings under open-bottom obstructions and under removable flanges and furnishings, and into alcoves and closets as may be present in each space. It also includes installing floor coverings tight against walls, columns, and cabinets, and installing edging guard at all openings and doors wherever flooring terminates or meets dissimilar coverings.
  - All carpet shall be installed with the pile-lay in the same direction, except when instructed otherwise by the City's Project Manager.
  - All carpet and vinyl shall be adhered directly to the existing prepared floor surfaces (in accordance with the manufacturer's recommendations).
  - All vinyl base shall be adhered directly to the designated surfaces after installation of the floor coverings (in accordance with manufacturer's recommendations).
  - All edges shall be butted together with the proper pressure to produce the tightest joint possible without distortion.
  - When necessary, Contractor shall utilize levelling compound.
  - Metal nosing strips shall be used as required. Installation of metal nosing on concrete or stone shall be done by drilling and inserting plastic anchors and non-corrosive drive screws. All screws used shall have a shallow head profile.
- For Carpet and Vinyl:
  - Following removal of existing carpet, Contractor shall prepare existing floors to receive carpet or vinyl.
  - Prior to filling, the floors must be swept clean of all loose debris. Filler, if used, shall be allowed to dry completely.
  - Floor then should be damp mopped and allowed to dry.
  - Floor then should be vacuumed to assure a substrate free from materials.
  - Any cracks, holes, or imperfections should be corrected in accordance with manufacturer's instructions.
- For Vinyl Base:
  - Designated surfaces to receive vinyl base shall be structurally sound, smooth, clean, and dry. The surfaces should be free of dirt, dust, oil, wax, previous adhesives, and any matter which would negatively impact a solid bond.
  - The back of the vinyl base shall be free of mold release agents or other contaminants that could adversely affect adhesion.
- Broadloom Carpet and Vinyl:
  - Contractor shall layout and plan the area to be covered by providing a seaming plan approved by the City's Project Manager prior to the commencement of work. Seaming plans shall reflect the minimum amount of seams possible. No perpendicular seams shall occur at door openings. Seams should be planned to run with the traffic flow.

    - Contractor shall ensure that all rolls and modules are of the same dye lot. Use of more than one dye lot in the same room or open area is not permitted.
- For Carpet Tiles or Modules:
    - Contractor shall install carpet according to manufacturers' printed instruction.
    - Installation shall be done with full coverage adhesives approved by and in accordance with manufacturer's directions.
    - Contractor shall use fixed reducer strips as required to secure the area.
- For Vinyl Cove Base:
    - All bases shall be cove cut on the inside corner.
    - No seams shall be permitted on outside corners.
    - Use of more than one dye lot in the same room or open area is not permitted.
- Adhesive Application:
    - Adhesives shall be compatible with the products being installed. Contractor shall follow manufacturers' recommendations for application to ensure proper adhesion and compliance with warranty terms and conditions.

Cleanup shall immediately follow installation, and shall be completed in phases. This shall include removal of visible adhesive, seam sealer, and other surface blemishes using cleaners recommended by the manufacturer(s), removal of protruding yarns from the carpet surface, and removal and disposal of all debris and all carpet / vinyl scraps less than one square yard or one complete module. All items removed shall be disposed of appropriately.

The Services will be performed in phases. Contractor and Library Staff shall establish and agree upon a work plan in advance of the actual work being performed. This will assure that all materials, furnishings, fixtures, book collections, and other items can be adequately removed from the work area prior to installation commencing.

The work will be done while the building is open to the public, which will require Contractor to engage in careful planning and communication with Library Staff in order to avoid disruption in the delivery of services to the Library's patrons. Contractor shall ensure that each installation area is sufficiently blocked from foot traffic while the work is underway so as to assure the safety of library patrons.

Contractor's Project Manager shall meet with Library Staff as often as required to review work progress, provide necessary guidance, and ensure sufficient communication.

Contractor shall subcontract with Quasius Construction, Inc. to provide the labor and materials necessary to prepare the main staircase to accept a new flooring.

Contractor shall be responsible for obtaining any and all applicable City permits and paying any and all applicable permit fees prior to beginning work.

Contractor shall promptly make payment to each and every person or entity entitled to payment for work or labor performed or materials furnished in the performance of this Agreement.

Article 2. Standard of Care
Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The City shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the City shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

Contractor shall be responsible to repair any damage incurred during the Services.

The materials installed as a result of this Agreement shall be fully warranted against defects by the Contractor for one (1) year from date of final acceptance. Upon receipt of notice of defect from the City, the Contractor shall promptly correct or replace any and all materials or workmanship found to be defective. All manufacturer's warranties shall also apply and be honored by Contractor.

Article 3. Responsibilities of the City
The City's Library Staff will move all materials, furnishings, fixtures, book collections, and other items from the work area prior to installation of the relevant area, and shall move all materials, furnishings, fixtures, book collections, and other items back after the installation of the relevant area is completed.

The City designates Bernie Rammer as its designated project manager for purposes of this Agreement.

Article 4. Compensation
The City shall pay Contractor for all fees and expenses in an amount not to exceed One Hundred Seventeen Thousand Eight Hundred Forty Seven Dollars and Sixty Four Cents ($117,847.64).

Upon completion of the Services, Contractor shall submit an invoice to the City which shall be based upon the following fee schedule:

Main Area – Second Floor	$75,357.10
Teen Center	$ 4,702.98
Quiet Study Room	$ 8,400.00
Staff Work Room	$ 8,186.56
Grand Staircase	$18,406.00
Quasius Subcontract	$ 2,795.00

Unless additional services are added to the Services, pursuant to the process set forth in this Article, in no event shall the invoiced amount exceed the not to exceed amount.

The invoice shall be sent to:

Bernie Rammer
City of Sheboygan
828 Center Ave.
Sheboygan, Wisconsin 53081

Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice.

Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the City or its designated project manager prior to such work being performed, or expenses incurred. The City shall not make payment for any unauthorized work or expenses.

The City may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following:

- Defective work.
- Evidence indicating the probable filing of claims by other parties against Contractor which may adversely affect the City.
- Failure of Contractor to make payments due to subcontractors, material suppliers, or employees.
- Damage to the City or a third party.

The submission of any request for payment shall be deemed a waiver and release by Contractor of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.

Article 5. Appropriation of Funds
Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity, including the City itself, to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty.

Article 6. Schedule
All Services shall proceed according to the schedule agreed to by the City's Project Manager and the Contractor.

All Services, and all invoices for all Services, shall be complete by October 30, 2019. Completion of services shall mean the services have been performed and are satisfactory to the City. Therefore, any "punch list" items shall also be complete by October 30, 2019.

The Parties agree that no charges or claims for damages shall be made by Contractor for any delays or hindrances, from any cause whatsoever, during the progress of any portion of the services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for a reasonable period as may be mutually agreed upon between the Parties, it

being understood however, that permitting Contractor to proceed to complete any service, or any part of the services / project, after the date to which the time of completion may have been extended shall, in no way operate as a waiver on the part of the City of any of its rights herein.

Article 7. Quality of Materials

All materials used by Contractor shall be new, newest model year, and free from defects. Items which are used, demonstrators, obsolete, seconds, of which have been discontinued are unacceptable without prior written approval by the City.

All materials shall meet or exceed the specifications set forth below:

a. Carpet Modules
    a. Location: Main Area, Staff Work Room, Quiet Study Area, Teen Center
    b. J&J Flooring Group "Evolve #7981" or equal
    c. Construction: Patterned Loop
    d. Standard Module Size: 24" x 24"
    e. Face Weight: 20 oz. / square yard
    f. Special Treatments: Pro Tex Soil Release
    g. Standard Adhesive: Commercialon Premium Modular Adhesive (full coverage)
    h. Adhesive Installation: Full Spread
    i. Usage: Moderate to Heavy Foot Traffic
b. Luxury Vinyl Plank
    a. Location: Teen Center
    b. J&J Commercial or equal
    c. Thickness: 3 mils
    d. Finish / Coating: Enhanced UV Urethane with Ceramic Bead
    e. Nominal Dimensions (Plan): 9" x 48"
    f. Pattern: Plank, Random
    g. Backing Class: Commercial
    h. Traffic Class: Commercial
    i. Additives: Anti-Microbial ZPT
    j. Standard Adhesive: J&J LVT Adhesive
    k. Install Method: Full Spread
c. Grand Staircase
    a. Tarkett Johnsonite or equal
    b. Material: Resilient Rubber Flooring and Resilient Rubber Stair Treads with Integrated Risers
    c. Approvals: ADA and Visually Impaired
    d. Style: Round Raised or Square Raised or Diamond Raised
    e. Color: To Be Determined by the City in its sole discretion
    f. Landings: Resilient Rubber Flooring
    g. Wall Base: Matching

Article 8. Safety Requirements
Contractor shall be responsible for the safety of employees at all times and shall provide all equipment necessary to insure their safety. Contractor shall ensure the enforcement of all applicable safety rules, regulations, ordinances and laws, whether federal, state, or local. Contractor's Superintendant of Safety shall make daily inspections upon the arrival and leaving of the site at the close of each workday.

Article 9. Open Records
Both parties understand that the City is bound by the Wisconsin Public Records Law and, as such, this contract is subject to that law. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the contract, and that Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under the Agreement.

Article 10. Termination
The City may terminate or suspend performance of this Agreement at the City's prerogative at any time upon written notice to Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the City and the City shall pay Contractor for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Contractor's compensation and the schedule of services.

If Contractor defaults or fails to fulfill in a timely and proper manner its obligations pursuant to this Agreement, the City may, seven (7) days after written notice has been delivered to Contractor, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to Contractor. In the alternative the City may, at its option, terminate this Agreement and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor, and may finish the project by whatever method it may deem expedient. In case the expenses incurred by the City (including payments previously made to Contractor) shall be less than the sum which would have been payable under the Agreement if it had been completed by Contractor, Contractor shall be entitled to receive the difference. However, in case such expense shall exceed the sum which would have been payable under the Agreement, Contractor will be liable and shall pay to the City the amount of said excess. By taking over prosecution of the work, the City does not forfeit the right to recover damages from Contractor or its surety for failure to complete the work in the time specified.

Article 11. Default
If Contractor breaches this Agreement or fails to perform the work in an acceptable manner, it shall be considered in default. Any one or more of the following will be considered a default:

- Failure to begin the work under this Agreement within the time specified.

- Failure to perform the work with sufficient supervision, workers, equipment and materials to insure prompt completion of said work within the time limits allowed.
- Unsuitable performance of the work as determined by City.
- Neglecting or refusing to remove defective materials or failure to perform anew such work as shall have been rejected.
- Discontinuing the prosecution of the work or any part of it.
- Inability to finance the work adequately.
- If, for any other reason, Contractor breaches this Agreement or fails to carry on the work in an acceptable manner.

The City shall send Contractor a written notice of default. If Contractor, within a period of seven (7) days after such notice, fails to remedy the default, then the City shall have full power and authority, without violation of the Agreement, to take the prosecution of the work out of the hands of Contractor, as set forth in this Agreement.

Article 12. Identity of Contractor

Contractor acknowledges that one of the primary reasons for its selection by the City to perform the Services is the qualifications and experience of Contractor. Contractor thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Contractor. Contractor shall not subcontract any part of the Services without the prior written permission of the City. The City's project manager shall have the ability to provide this written permission. The City explicitly consents to the use of Quasius Construction as set forth in Article 1 of this Agreement. The City reserves the right to reject any of the Contractor's personnel or proposed outside professional sub-consultants, and the City reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 13. Independent Contractor Status

During the entire term of this Agreement, Contractor shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the City. Contractor shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of its employees.

Article 14. Indemnification
Contractor shall indemnify, defend, and hold the City—including its Officials, Agents, and Employees—free and harmless from all liability, including, but not limited to, losses, damages, costs, attorney's fees, expenses, causes of action, claims, or judgments resulting from claimed injury, death, damage to property, or loss of use of property or any person or legal entity arising out of or in any way connected with the performance of work or work to be performed under this Agreement.

Contractor shall reimburse the City for any costs, expenses, judgments, and attorney's fees paid or incurred, by or on behalf of the City, its Officials, Agents, or Employees, or paid for on behalf of the City, its Officials, Agents, or Employees by insurance purchased or self-insurance provided by the City arising out of or in any way connected with the performance of work or work to be performed under this Agreement.

Contractor shall further indemnify, defend, and hold harmless the City, its Officials, Agents, and Employees from liability or claims for any injuries to or death of Contractor's employees (or the employees of any authorized subcontractor) arising out of or in any way connected with the work or work to be performed under this Agreement, including protection against any claim of the contractor or subcontractor for any payments under any worker's compensation law or any expenses of or any payments made by any worker's compensation insurance carrier on behalf of said contractor or sub-contractor and the contractor shall indemnify the City for any costs, expenses, judgments, and attorney's fees with respect to any above referenced workers' compensation claims incurred or paid by the City or paid on its behalf or on behalf of its Officials, Agents, or Employees by insurance purchased or self-insurance provided by the City of Sheboygan.

Article 15. Insurance
Contractor shall not commence work under this Agreement until it has obtained all insurance required under this Article. Additionally, Contractor shall not allow any approved subcontractor to commence work on its subcontract until the subcontractor has obtained all insurance required under this Article.

During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect, and shall provide proof of insurance to the Purchasing Agent listing the City of Sheboygan as an additional insured:

a. Workers' Compensation Insurance — Contractor shall acquire and maintain, for the duration of the Agreement, Workers' Compensation Insurance that meets all statutory requirements. In the event this Agreement authorizes any work to be sublet, Contractor shall require any subcontractor to similarly provide Workers' Compensation Insurance in accordance with all statutory requirements.

b. Commercial General Liability Insurance — Contractor shall acquire and maintain, for the duration of the Agreement, Commercial General Liability Insurance with a policy limit of at least $1,000,000 per occurrence and $2,000,000 in the aggregate.

All insurance must be primary and non-contributory to any insurance or self-insurance carried by the City.

Approval of the insurance by the City shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from Contractor's provision of the Services or its operations under this Agreement. If Contractor fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the City the required proof that the insurance has been procured and is in force and paid for, the City shall have the right at its election to terminate the Agreement.

Article 16. Conflict of Interest
Contractor declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services under this Agreement. Contractor agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 17. Waiver
No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

Article 18. Severability
The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Article 19. Assignment
Neither the City nor Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party.

Article 20. Third Party Rights
Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Contractor.

Article 21. Governing Law and Venue
This Agreement shall be governed by the laws of the State of Wisconsin. Venue of any disputes arising under this Agreement shall be in the Sheboygan County Circuit Court, Wisconsin.

Article 22. Non-Discrimination
In connection with the performance of work under this Agreement, Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability (as defined in Wis. Stat. 51.01(5)), sexual orientation (as defined in Wis. Stat. 111.32(13m)), or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to take affirmative action to ensure equal employment opportunities.

Article 23. Compliance with Laws
In performing the Services under this Agreement, Contractor shall comply with any and all applicable federal, state and local statutes, ordinances, plans, and regulations which in any manner affect the work or its conduct.

The City reserves the right to cancel this Agreement if Contractor fails to follow the requirements of Wis. Stat. 77.66 and related statutes regarding certification for collection of sales and use tax. The City also reserves the right to cancel this Agreement with any state or federally debarred contractor.

Contractor shall have any and all licenses and permits required to perform the work specified, and shall furnish proof of such licensing authorization and permits upon request.

Article 24. Notices
Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below:

City:	**Contractor:**
City Clerk	Brian Zurn
City of Sheboygan	Precision Flooring & Decor
828 Center Ave.	24 South Highland Ave.
Sheboygan, Wisconsin 53083	Plymouth, Wisconsin 53073

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the City and Contractor.

Article 25. Intent to be Bound
The City and Contractor each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

Article 26. Force Majeure
Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may

include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, the failure to perform must be beyond the reasonable control and without the fault or negligence of the party.

Article 27. Integration and Modification
This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the City and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

Article 28. Non-Collusion
Contractor is certifying, under penalty of perjury, that to the best of its knowledge and belief:

a. The prices in its bid, as incorporated into Article 4, were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition as to any other matter relating to such prices with any other bidder, or with any other competitor.

b. The prices quoted in its bid were not knowingly disclosed—directly or indirectly—by the bidder to any other bidder or competitor prior to the bid opening.

c. No attempt was made to induce any other person, partnership, or corporation to submit or not submit a quote for the purpose of restricting competition.

Article 29. Other Provisions

a. Material Safety Data Sheet. If any item(s) on an order(s) resulting from this Agreement is a hazardous chemical, as defined under 29 C.F.R. 1910.1200, Contractor shall provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

b. Advertising and News Releases. Reference to or use of the City, or any of its departments, officials, or employees, for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the City. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the City.

c. Foreign Corporation. A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Wis. Stat. 180 relating to a foreign corporation, and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority.

d. Neither Party the Drafter. Despite the possibility that one party or its representatives may have prepared the initial draft of this Agreement (or any provision thereof), or played a greater role in the preparation of subsequent drafts, the parties agree that neither of them shall be deemed the drafter of this Agreement.

e. Authority. Each person executing this Agreement on behalf of a party hereto represents and warrants to the other party: That the execution and delivery of this Agreement has been duly authorized, that the person or persons executing this Agreement have the full power, authority, and right to do so, and that such execution is sufficient and legally binding on such party to enable this Agreement to be enforceable in accordance with its terms.

f. Solvency. Contractor warrants that it is financially solvent, and agrees to provide any documents reasonably requested by the City in order to confirm that Contractor is financially solvent.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

CITY OF SHEBOYGAN, WISCONSIN	**CONTRACTOR**
BY: _____ Michael J. Vandersteen, Mayor	**BY:** _____
ATTEST: _____ Meredith DeBruin, City Clerk	**ATTEST:** _____
DATE: _____	**DATE:** _____

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 208 by Alderpersons Rindfleisch and Bohren. A resolution to authorize the appropriate City Officials to enter into contract for certain roof repairs at Mead Public Library.

REPORT PREPARED BY: Bernard R. Rammer Purchasing Agent

REPORT DATE: April 4, 2019 **MEETING DATE:** April 8, 2019

FISCAL SUMMARY:

Budget Line Item:	25551100-521900
Budget Summary:	Mead Public Library Contracted Services
Budgeted Expenditure:	$ 35,000.00
Budgeted Revenue:	N/A

STATUTORY REFERENCE:

Wisconsin Statutes:	N/A
Municipal Code:	N/A

BACKGROUND / ANALYSIS:
The City relies on a third-party roofing consultant to assist with the management of the roof surfaces of all City-owned Buildings. The recommendation of the consultant was to include funding in the 2019 budget for repair/replacement of specific roof areas of the Mead Public Library.

STAFF COMMENTS:
The project was put to bid. The City received only one bid from Kaschak Roofing Inc., Milwaukee, WI in the amount of $ 58,000.00.

The lack of other bids can be attributed to several factors including a bad winter and a strong economy. The Mead Library Board has approved the additional funding required to assure the roof integrity is maintained and recommends award.

ACTION REQUESTED:
Motion to recommend that the Council approve Res. No. 208-18-19 to authorize the appropriate City Officials to enter into contract with Kaschak Roofing Inc., Milwaukee, WI for the certain roof repairs at Mead Public Library in the amount of $58,000.00

ATTACHMENTS:
I. Res. No. 208-18-19

III

Other Matters

8.5

Res. No. 208 - 18 - 19. By Alderpersons Rindfleisch and Bohren.
April 3, 2019.

A RESOLUTION authorizing the appropriate City Officials to enter into a contract for certain roof repairs at the Mead Public Library.

WHEREAS, the City of Sheboygan engages Tremco Inc. as a consultant to assist the city in the management and oversight of roofing systems on various City buildings including Mead Public Library; and

WHEREAS, one item that Tremco Inc. identified for 2019 was repairs to the Mead Public Library roof in order to maintain roof integrity (the "Project"); and

WHEREAS, the City has obtained and reviewed competitive bids for the Project; and

WHEREAS, the bids came in higher than expected, and higher than was budgeted for the Project; and

WHEREAS, it is believed that the bid responses are higher than expected due to several factors, including the relatively small size of the project, a winter season that was harder than normal on roof surfaces, and a strong economy creating a backlog of work for roofing contractors; and

WHEREAS, in light of this belief, the Mead Public Library Board wishes to use reserves to fund the portion of the Project in excess of the budgeted funds included in the 2019 Budget; and

WHEREAS, the lowest bid, from Kaschak Roofing, Inc., meets all the requirements from the bid documents.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are hereby authorized to enter into a contract with Kaschak Roofing Inc. in substantially similar form to that attached, for the repair of various roof systems at Mead Public Library.

Finance & Personnel

BE IT FURTHER RESOLVED: That the appropriate City Officials are hereby authorized to draw funds in the amount of $54,000 from the Mead Library-Administration-Contracted Services account #25551100-521900 in payment of same.

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

AGREEMENT
BETWEEN THE CITY OF SHEBOYGAN, WISCONSIN AND
KASCHAK ROOFING INC.

REGARDING THE REPAIR OF THE ROOF AT MEAD PUBLIC LIBRARY

This Agreement ("Agreement") is made and entered into effective this ____ day of _____, 2019 (the "Effective Date"), by and between the City of Sheboygan (the "City"), a municipal corporation, and Kaschak Roofing, Inc. ("Contractor").

WITNESSETH:

WHEREAS, the City has determined that certain repairs are necessary at the Mead Public Library in order to maintain roof integrity; and

WHEREAS, Contractor is willing and able to provide the City with the necessary roof repair services under the terms set forth in this Agreement.

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

Article 1. Scope of Services
Contractor shall provide all services, materials, labor, and tools necessary to repair the roof at the Mead Public Library (the "Services") pursuant to the Tremco Plans that are attached to this Contract as Exhibit A. Exhibit A is hereby incorporated herein by reference.

Contractor shall be responsible for obtaining any and all applicable City permits and paying any and all applicable permit fees prior to beginning work.

Contractor shall promptly make payment to each and every person or entity entitled to payment for work or labor performed or materials furnished in the performance of this Agreement.

Article 2. Standard of Care
Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The City shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the City shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

Contractor shall be responsible to repair any damage incurred during the Services.

The materials installed as a result of this Agreement shall be fully warranted against defects by the Contractor for one (1) year from date of final acceptance. Upon receipt of notice of defect from the City, the Contractor shall promptly correct or replace any and all materials or workmanship found to be defective. All manufacturer's warranties shall also apply and be honored by Contractor.

Article 3. Responsibilities of the City
The City designates Bernie Rammer as its designated project manager for purposes of this Agreement.

Article 4. Compensation
The City shall pay Contractor for all fees and expenses in an amount not to exceed Fifty Four Thousand Dollars ($54,000.00).

Upon completion of the Services, Contractor shall submit an invoice to the City.

Unless additional services are added to the Services, pursuant to the process set forth in this Article, in no event shall the invoiced amount exceed the not to exceed amount.

The invoice shall be sent to:

Bernie Rammer
City of Sheboygan
828 Center Ave.
Sheboygan, Wisconsin 53081

Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice.

Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the City or its designated project manager prior to such work being performed, or expenses incurred. The City shall not make payment for any unauthorized work or expenses.

The City may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following:

- Defective work.
- Evidence indicating the probable filing of claims by other parties against Contractor which may adversely affect the City.
- Failure of Contractor to make payments due to subcontractors, material suppliers, or employees.
- Damage to the City or a third party.

The submission of any request for payment shall be deemed a waiver and release by Contractor of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.

Article 5. Appropriation of Funds
Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity, including the City itself, to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty.

Article 6. Schedule
All Services shall proceed according to the schedule agreed to by the City's Project Manager and the Contractor.

All Services, and all invoices for all Services, shall be complete by October 30, 2019. Completion of services shall mean the services have been performed and are satisfactory to the City. Therefore, any "punch list" items shall also be complete by October 30, 2019.

The Parties agree that no charges or claims for damages shall be made by Contractor for any delays or hindrances, from any cause whatsoever, during the progress of any portion of the services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for a reasonable period as may be mutually agreed upon between the Parties, it being understood however, that permitting Contractor to proceed to complete any service, or any part of the services / project, after the date to which the time of completion may have been extended shall, in no way operate as a waiver on the part of the City of any of its rights herein.

Article 7. Quality of Materials
All materials used by Contractor shall be new, newest model year, and free from defects. Items which are used, demonstrators, obsolete, seconds, of which have been discontinued are unacceptable without prior written approval by the City.

Article 8. Safety Requirements
Contractor shall be responsible for the safety of employees at all times and shall provide all equipment necessary to insure their safety. Contractor shall ensure the enforcement of all applicable safety rules, regulations, ordinances and laws, whether federal, state, or local. Contractor's Superintendant of Safety shall make daily inspections upon the arrival and leaving of the site at the close of each workday.

Article 9. Open Records
Both parties understand that the City is bound by the Wisconsin Public Records Law and, as such, this contract is subject to that law. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the contract, and that Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under the Agreement.

Article 10. Termination

The City may terminate or suspend performance of this Agreement at the City's prerogative at any time upon written notice to Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the City and the City shall pay Contractor for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Contractor's compensation and the schedule of services.

If Contractor defaults or fails to fulfill in a timely and proper manner its obligations pursuant to this Agreement, the City may, seven (7) days after written notice has been delivered to Contractor, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to Contractor. In the alternative the City may, at its option, terminate this Agreement and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor, and may finish the project by whatever method it may deem expedient. In case the expenses incurred by the City (including payments previously made to Contractor) shall be less than the sum which would have been payable under the Agreement if it had been completed by Contractor, Contractor shall be entitled to receive the difference. However, in case such expense shall exceed the sum which would have been payable under the Agreement, Contractor will be liable and shall pay to the City the amount of said excess. By taking over prosecution of the work, the City does not forfeit the right to recover damages from Contractor or its surety for failure to complete the work in the time specified.

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If Contractor breaches this Agreement or fails to perform the work in an acceptable manner, it shall be considered in default. Any one or more of the following will be considered a default:

- Failure to begin the work under this Agreement within the time specified.
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- Unsuitable performance of the work as determined by City.
- Neglecting or refusing to remove defective materials or failure to perform anew such work as shall have been rejected.
- Discontinuing the prosecution of the work or any part of it.
- Inability to finance the work adequately.
- If, for any other reason, Contractor breaches this Agreement or fails to carry on the work in an acceptable manner.

The City shall send Contractor a written notice of default. If Contractor, within a period of seven (7) days after such notice, fails to remedy the default, then the City shall have full power and authority, without violation of the Agreement, to take the prosecution of the work out of the hands of Contractor, as set forth in this Agreement.

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During the entire term of this Agreement, Contractor shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the City. Contractor shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of its employees.

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Contractor shall indemnify, defend, and hold the City—including its Officials, Agents, and Employees—free and harmless from all liability, including, but not limited to, losses, damages, costs, attorney's fees, expenses, causes of action, claims, or judgments resulting from claimed injury, death, damage to property, or loss of use of property or any person or legal entity arising out of or in any way connected with the performance of work or work to be performed under this Agreement.

Contractor shall reimburse the City for any costs, expenses, judgments, and attorney's fees paid or incurred, by or on behalf of the City, its Officials, Agents, or Employees, or paid for on behalf of the City, its Officials, Agents, or Employees by insurance purchased or self-insurance provided by the City arising out of or in any way connected with the performance of work or work to be performed under this Agreement.

Contractor shall further indemnify, defend, and hold harmless the City, its Officials, Agents, and Employees from liability or claims for any injuries to or death of Contractor's employees (or the employees of any authorized subcontractor) arising out of or in any way connected with the work or work to be performed under this Agreement, including protection against any claim of the contractor or subcontractor for any payments under any worker's compensation law or any expenses of or any payments made by any worker's compensation insurance carrier on behalf of said contractor or sub-contractor and the contractor shall indemnify the City for any costs, expenses, judgments, and attorney's fees with respect to any above referenced workers' compensation claims incurred or paid by the City or paid on its behalf or on behalf of its Officials, Agents, or Employees by insurance purchased or self-insurance provided by the City of Sheboygan.

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All insurance must be primary and non-contributory to any insurance or self-insurance carried by the City.

Approval of the insurance by the City shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from Contractor's provision of the Services or its operations under this Agreement. If Contractor fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the City the required proof that the insurance has been procured and is in force and paid for, the City shall have the right at its election to terminate the Agreement.

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Contractor declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services under this Agreement. Contractor agrees that no person having any such interest shall be employed in the performance of this Agreement.

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No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

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The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes

as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

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Neither the City nor Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party.

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This Agreement shall be governed by the laws of the State of Wisconsin. Venue of any disputes arising under this Agreement shall be in the Sheboygan County Circuit Court, Wisconsin.

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In connection with the performance of work under this Agreement, Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability (as defined in Wis. Stat. 51.01(5)), sexual orientation (as defined in Wis. Stat. 111.32(13m)), or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to take affirmative action to ensure equal employment opportunities.

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In performing the Services under this Agreement, Contractor shall comply with any and all applicable federal, state and local statutes, ordinances, plans, and regulations which in any manner affect the work or its conduct.

The City reserves the right to cancel this Agreement if Contractor fails to follow the requirements of Wis. Stat. 77.66 and related statutes regarding certification for collection of sales and use tax. The City also reserves the right to cancel this Agreement with any state or federally debarred contractor.

Contractor shall have any and all licenses and permits required to perform the work specified, and shall furnish proof of such licensing authorization and permits upon request.

Article 24. Notices
Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below:

City: **Contractor:**

City Clerk		Jason Kaschak
City of Sheboygan		Kaschak Roofing, Inc.
828 Center Ave.		2301 W. Purdue Street
Sheboygan, Wisconsin 53083		Milwaukee, Wisconsin 53209

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the City and Contractor.

Article 25. Intent to be Bound
The City and Contractor each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

Article 26. Force Majeure
Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, the failure to perform must be beyond the reasonable control and without the fault or negligence of the party.

Article 27. Integration and Modification
This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the City and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

Article 28. Non-Collusion
Contractor is certifying, under penalty of perjury, that to the best of its knowledge and belief:

a. The prices in its bid, as incorporated into Article 4, were arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition as to any other matter relating to such prices with any other bidder, or with any other competitor.

b. The prices quoted in its bid were not knowingly disclosed—directly or indirectly—by the bidder to any other bidder or competitor prior to the bid opening.

c. No attempt was made to induce any other person, partnership, or corporation to submit or not submit a quote for the purpose of restricting competition.

Article 29. Other Provisions

a. Material Safety Data Sheet. If any item(s) on an order(s) resulting from this Agreement is a hazardous chemical, as defined under 29 C.F.R. 1910.1200, Contractor shall provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

b. Advertising and News Releases. Reference to or use of the City, or any of its departments, officials, or employees, for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the City. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the City.

c. Foreign Corporation. A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Wis. Stat. 180 relating to a foreign corporation, and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority.

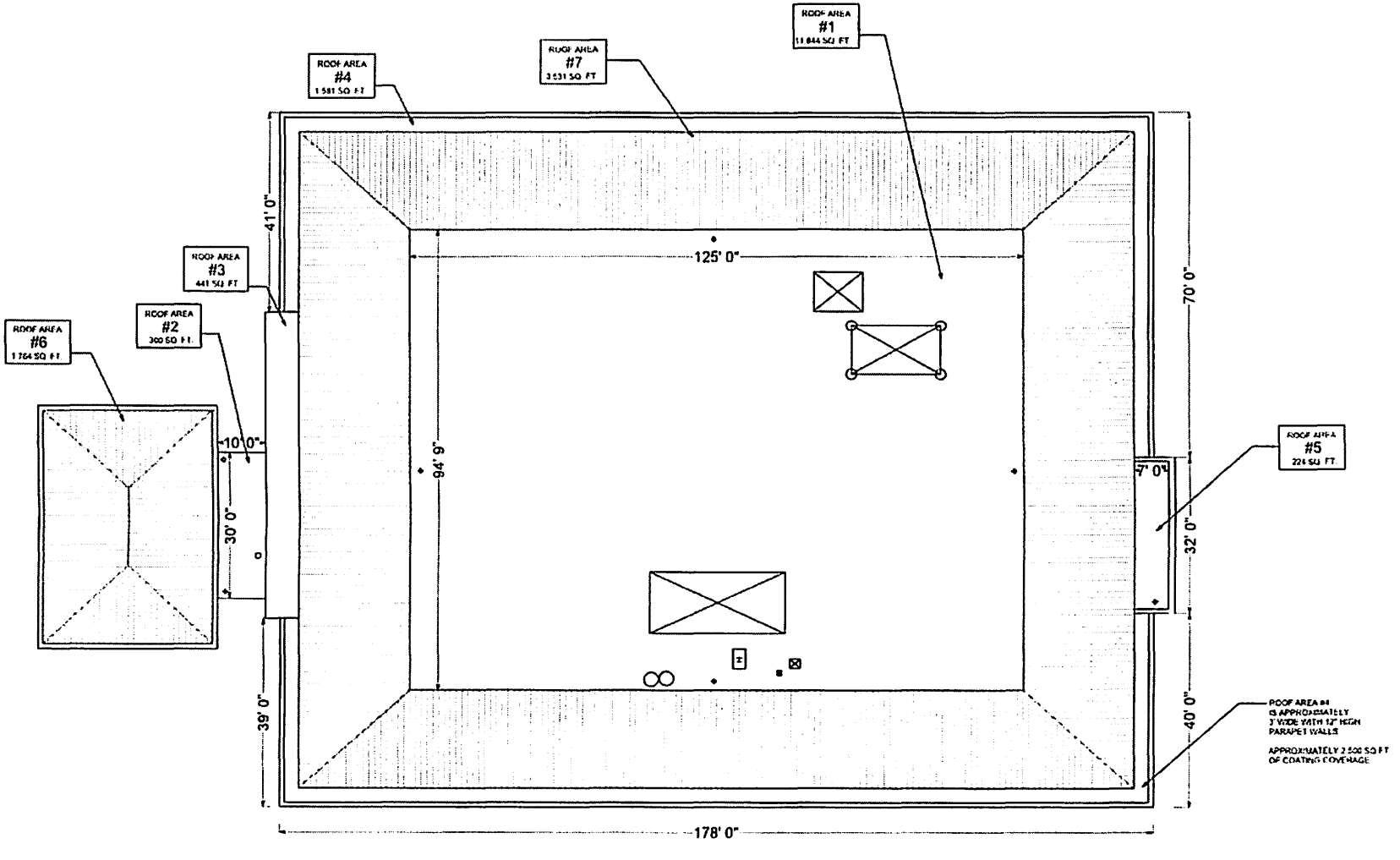
d. Neither Party the Drafter. Despite the possibility that one party or its representatives may have prepared the initial draft of this Agreement (or any provision thereof), or played a greater role in the preparation of subsequent drafts, the parties agree that neither of them shall be deemed the drafter of this Agreement.

e. Authority. Each person executing this Agreement on behalf of a party hereto represents and warrants to the other party: That the execution and delivery of this Agreement has been duly authorized, that the person or persons executing this Agreement have the full power, authority, and right to do so, and that such execution is sufficient and legally binding on such party to enable this Agreement to be enforceable in accordance with its terms.

f. Solvency. Contractor warrants that it is financially solvent, and agrees to provide any documents reasonably requested by the City in order to confirm that Contractor is financially solvent.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

CITY OF SHEBOYGAN, WISCONSIN	**CONTRACTOR**
BY: _____ Michael J. Vandersteen, Mayor	**BY:** _____
ATTEST: _____ Meredith DeBruin, City Clerk	**ATTEST:** _____
DATE: _____	**DATE:** _____



ROOF PLAN

ALL DIMENSIONS TO BE VERIFIED BY THE CONTRACTOR

REVISIONS	NO.	DATE	BY

NOTES:

SQUARE FOOTAGES:

ROOF #1: 11,844
ROOF #2: 300
ROOF #3: 441
ROOF #4: 1,581
ROOF #5: 225
ROOF #6: UNDETERMINED
ROOF #7: UNDETERMINED

WORK TO BE COMPLETED

ROOF #1 & #2:
CUT AND RELAX THE EXISTING PERIMETER EPDM FLASHINGS WITH NEW

ROOF #3: NO WORK

ROOF #4:
REPAIR 200 SQ FT OF WET INSUL AND RESTORE ROOF SYSTEM WITH POLYURETHANE FLUID APPLIED COATINGS

ROOF #5:
REPLACE ROOF SYSTEM AS SPECIFIED. COPING CAP TO REMAIN IN PLACE

ROOF #6: NO WORK

ROOF #7: NO WORK

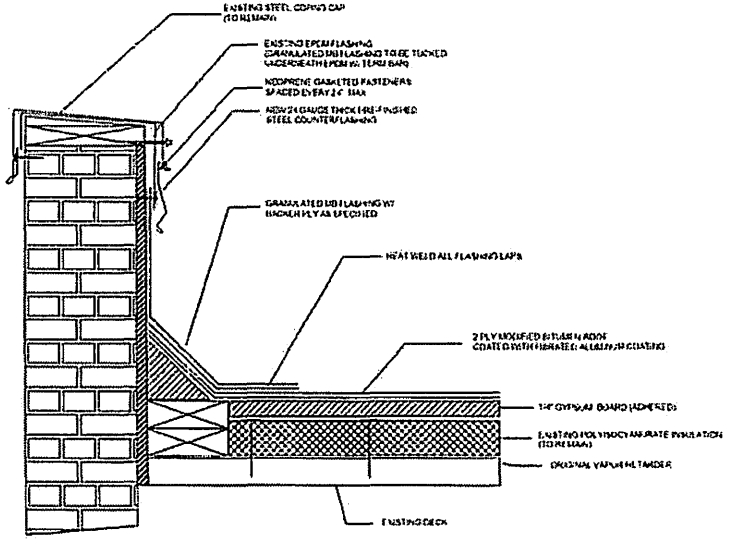
LEGEND:

- DRAIN ASSEMBLY
- SCUPPER ASSEMBLY
- CURB UNIT
- SURFACE PENETRATION
- PIPE PENETRATION
- ACCESS HATCH (H)

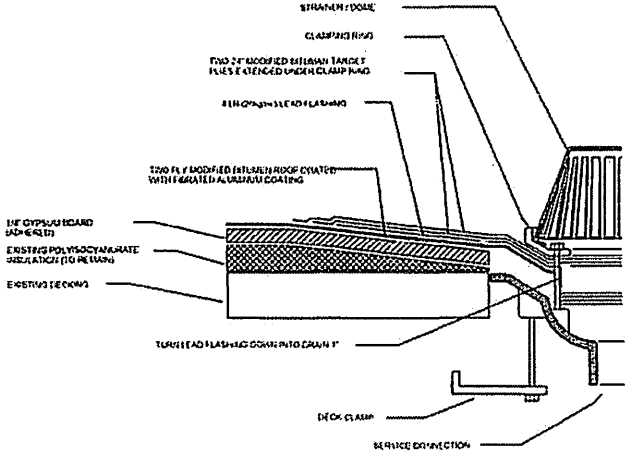
TREMCO

CUSTOMER: CITY OF SHEBOYGAN
BUILDING: MEAD PUBLIC LIBRARY
LOCATION: SHEBOYGAN, WI

DRAWN BY: | DATE DRAWN: | R1.1
APPROVED BY:



#1 COPING DETAIL



#2 DRAIN DETAIL

NOTES:

SQUARE FOOTAGES:

ROOF #1: 11,044
ROOF #2: 300
ROOF #3: 441
ROOF #4: 1,581
ROOF #5: 225
ROOF #6: UNDETERMINED
ROOF #7: UNDETERMINED

WORK TO BE COMPLETED:

ROOF #1 & #2:
CUT AND RELAX THE EXISTING PERIMETER EPDM FLASHINGS WITH NEW.

ROOF #3: NO WORK

ROOF #4:
REPAIR AND RESTORE ROOF SYSTEM WITH POLYURETHANE FLUID APPLIED COATINGS

ROOF #5:
REPLACE ROOF SYSTEM AS SPECIFIED. COPING CAP TO REMAIN IN PLACE

ROOF #6: NO WORK

ROOF #7: NO WORK

LEGEND.

- DRAIN ASSEMBLY
- SCUPPER ASSEMBLY
- CURBED RTU
- SURFACE REST CURB
- PIPE PENETRATION
- ACCESS HATCH

TREMCO

CITY OF SHEBOYGAN

MEAD PUBLIC LIBRARY - MJ DETAILS

SHEBOYGAN WI

R2.0

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Claims to be referred to the Finance and Personnel Committee of the new Common Council.

REPORT PREPARED BY: Laurie Suhrke, Auditor/Analyst

REPORT DATE: April 4, 2019 **MEETING DATE:** April 8, 2019

FISCAL SUMMARY:

Budget Line Item:	N/A
Budget Summary:	N/A
Budgeted Expenditure:	N/A
Budgeted Revenue:	N/A

STATUTORY REFERENCE:

Wisconsin Statutes:	N/A
Municipal Code:	N/A

BACKGROUND / ANALYSIS:
City staff has reviewed the following claims:
R.O. 241-18-19 Pending claim from Caleb Sanders for alleged injuries received when he slipped and fell on ice.
R.O. 240-18-19 Notice of claim from Sonia Garay for alleged damages to vehicle.
R.O. 231-18-19 Claim from Margaret A. Bulkow for alleged damages to vehicle.
R.O. 225-18-19 Claim from Zachory T. Felsinger for alleged damages to vehicle.
R.O. 219-18-19 Claim from Progressive Insurance on behalf of Phyllis Barthel for alleged damages to vehicle.
R.O. 215-18-19 Claim from Ryan, LLC on behalf of O'Reilly Automotive Stores, Inc., for alleged incorrect assessed value on their property tax purposes.
R.O. 214-18-19 Claim from Kailee Ridenour for alleged injuries from slip and fall.
R.O. 213-18-19 Claim from Jacob Lingl for alleged damages to vehicle.
R.O. 212-18-19 Claim from Skogen's Festival Foods for recovery of alleged unlawful taxes.
R.O. 208-18-19 Claim from Michael J. Skelton for alleged injuries from fall on ice.
R.O. 202-18-19 Claim from Christina Latifi for alleged unlawful Personal Property
R.O. 199-18-19 Claim from State Farm Insurance Agency on behalf of Ken Phillip for alleged damages to vehicle.
R.O. 183-18-19 Claim from Joe Burgarino regarding alleged damages to scooter.
R.O. 176-18-19 Claim from Phyllis T. Barthel for alleged vehicle damage.
R.O. 139-18-19 Claim from American Family Insurance on behalf of Carol S. Klein.
R.O. 140-18-19 Claim from Larry Schoemer for alleged damages to vehicle.
R.O. 143-18-19 Notice of Claim from the Department of Natural Resources for alleged noncompliance.
R.O. 124-18-19 Claim from Robert Kummer for alleged damages from sewer backup.
R.O. 110-18-19 Claim from Sperling Law Offices LLC on behalf of Vicki Vugrinovich for alleged injuries.

R.O. 96-18-19 Notice of Claim from Debra Zahner for alleged injuries from fall.
R.O. 314-17-18/R.C. 303-17-18 Notice of Claim from Gendlin, Liverman & Rymer, SC on behalf of Willard Jepsen.
R.O. 311-17-18/R.C. 301-17-18 Notice of Claim from Cincinnati Insurance Companies on behalf Schenck SC
R.O. 303-17-18/R.C. 298-17-18 Claim from Amica Mutual Insurance Company on behalf of Linda Shimon for alleged sewer damage.
R.O. 252-17-18/R.C. 288-17-18 Claim from Gendlin, Liverman & Rymer SC. for alleged damages.
R.O. 251-17-18/R.C. 287-17-18 Claim from Gendlin, Liverman & Rymer SC. for alleged damages.
R.O. 47-17-18/R.C. 284-17-18 Notice of claim from WPS for alleged damages.
R.O. 46-17-18/R.C. 279-17-18 Claim from J. Richard Law Offices LLC on behalf of Darlene Jesion for alleged injuries.
R.O. 162-16-17/R.C.414-16-17/R.C. 282-17-18 Notice of Claim for damages of Mary Heitzmann.
R.O. 161-16-17/R.C.413-16-17/R.C. 281-17-18 Notice of Claim for damages of Kurt Klessig.

STAFF COMMENTS:
These claims need additional information and to be referred to the Finance and Personnel Committee of the new Common Council.

ACTION REQUESTED:
Motion to recommend the Common Council refer the following documents to the Finance and Personnel Committee of the new Common Council.
R.O. 241-18-19 Pending claim from Caleb Sanders.
R.O. 240-18-19 Notice of claim from Sonia Garay.
R.O. 231-18-19 Claim from Margaret A. Bulkow.
R.O. 225-18-19 Claim from Zachory T. Felsinger.
R.O. 219-18-19 Claim from Progressive Insurance on behalf of Phyllis Barthel.
R.O. 215-18-19 Claim from Ryan, LLC on behalf of O'Reilly Automotive Stores, Inc.
R.O. 214-18-19 Claim from Kailee Ridenour.
R.O. 213-18-19 Claim from Jacob Lingl.
R.O. 212-18-19 Claim from Skogen's Festival Foods.
R.O. 208-18-19 Claim from Michael J. Skelton.
R.O. 202-18-19 Claim from Christina Latifi.
R.O. 199-18-19 Claim from State Farm Insurance Agency on behalf of Ken Phillip.
R.O. 183-18-19 Claim from Joe Burgarino.
R.O. 176-18-19 Claim from Phyllis T. Barthel.
R.O. 139-18-19 Claim from American Family Insurance on behalf of Carol S. Klein.
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R.O. 143-18-19 Notice of Claim from the Department of Natural Resources.
R.O. 124-18-19 Claim from Robert Kummer.
R.O. 110-18-19 Claim from Sperling Law Offices LLC on behalf of Vicki Vugrinovich.
R.O. 96-18-19 Notice of Claim from Debra Zahner.
R.C. 303-17-18/R.O. 314-17-18 Notice of Claim from Gendlin, Liverman & Rymer, SC on behalf of Willard Jepsen.
R.C. 301-17-18/R.O. 311-17-18 Notice of Claim from Cincinnati Insurance Companies on behalf Schenck SC
R.C. 298-17-18/R.O. 303-17-18 Claim from Amica Mutual Insurance Company on behalf of Linda Shimon.

R.C. 288-17-18/R.O. 252-17-18 Claim from Gendlin, Liverman & Rymer SC.
R.C. 287-17-18/R.O. 251-17-18 Claim from Gendlin, Liverman & Rymer SC.
R.C. 284-17-18/R.O. 47-17-18 Notice of claim from WPS.
R.C. 279-17-18/R.O. 46-17-18 Claim from J. Richard Law Offices LLC on behalf of Darlene Jesion.
R.C. 282-17-18/R.C.414-16-17/R.O. 162-16-17 Notice of Claim for damages of Mary Heitzmann.
R.C. 281-17-18/R.C.413-16-17/R.O. 161-16-1 Notice of Claim for damages of Kurt Klessig.

ATTACHMENTS:
None

VI

5.10

R. C. No. 285 - 17 - 18. By FINANCE AND PERSONNEL COMMITTEE.
April 4, 2018.

Your Committee to whom was referred R. O. No. 174-17-18 by City Clerk submitting a Summons and Complaint in the matter of the Town of Wilson v City of Sheboygan, Sheboygan County Case No. 2017CV490; recommends referring to Finance and Personnel Committee of the new council.

Finance Personnel
2018 2019

James A Bohren

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

II

3.2

R. O. No. 174 - 17 - 18. By CITY CLERK. October 2, 2017.

Submitting a Summons and Complaint in the matter of the Town of Wilson v City of Sheboygan, Sheboygan County Case No. 2017CV490.

City Clerk

Finance + Personnel
Finance + Personnel
of new Council

S·B·R
LAW GROUP
Sorrentino Burkert Risch LLC

SEP 21 '17 PM 3:48

September 21, 2017

VIA HAND DELIVERY

City Clerk Susan Richards
City of Sheboygan
828 Center Ave, Suite 100
Sheboygan, WI 53081

Re: Town of Wilson v. City of Sheboygan
Sheboygan County Case No. 2017CV490

Dear Ms. Richards:

Enclosed please find the following, which are being formally served via process per the request of City Attorney Adams:

- Authenticated Summons and Complaint
- Electronic Filing Notice
- Appendix to Complaint (Exhibits A – I)
- Motion for Temporary Injunction
- Exhibit A to Motion
- Brief in Support of Motion for Temporary Injunction
- Exhibit 1 to Brief

Very Truly Yours,

SORRENTINO BURKERT RISCH LLC

Michael D. Huitink
mhuitink@sbrlaw.us

FILED
09-18-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490
Honorable Rebecca L.
Persick
Branch 4

STATE OF WISCONSIN
CIRCUIT COURT
SHEBOYGAN COUNTY

TOWN OF WILSON
5935 S. Business Drive
Sheboygan, WI 53081,

Plaintiff,

v.

Case No. _____
Case Code: 30301

CITY OF SHEBOYGAN
828 Center Avenue
Sheboygan, WI 53081,

Defendant.

SUMMONS

THE STATE OF WISCONSIN, to the above-named Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Sheboygan County Courthouse, Clerk of Circuit Court, 615 North 6th Street, Sheboygan, Wisconsin, 53081 and to Michael D. Huitink, Plaintiff's attorney, whose address is Sorrentino Burkert Risch LLC, 675 North Barker Road, Suite 300, Brookfield, Wisconsin 53045. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you and for the award of money or other legal action requested in the complaint,

and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 18th day of September, 2017.

SORRENTINO BURKERT RISCH LLC

By: _____

Michael D. Huitink
State Bar No. 1034742
675 N. Barker Road, Suite 300
Brookfield, WI 53045
Phone: (262) 513-3315
Fax: (262) 513-3318
Email: MHuitink@sbrlaw.us

Co-Counsel:
TIERNEY & CORREA, P.C.
Robert Zeinemann
State Bar No. 1042940
Michael Tierney
(pro-hac vice motion to be filed)
719 Second Avenue
Suite 701 Millennium Tower
Seattle, WA 98104
Phone: (206) 232-3074
Fax: (206) 232-3076
Email: Zeinemann@tierneylaw.com

Attorneys for Plaintiff, Town of Wilson

FILED
09-18-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490
Honorable Rebecca L.
Persick
Branch 4

STATE OF WISCONSIN
CIRCUIT COURT
SHEBOYGAN COUNTY

TOWN OF WILSON
5935 S. Business Drive
Sheboygan, WI 53081,

Plaintiff,

v.

Case No. _____
Case Code: 30301

CITY OF SHEBOYGAN
828 Center Avenue
Sheboygan, WI 53081,

Defendant.

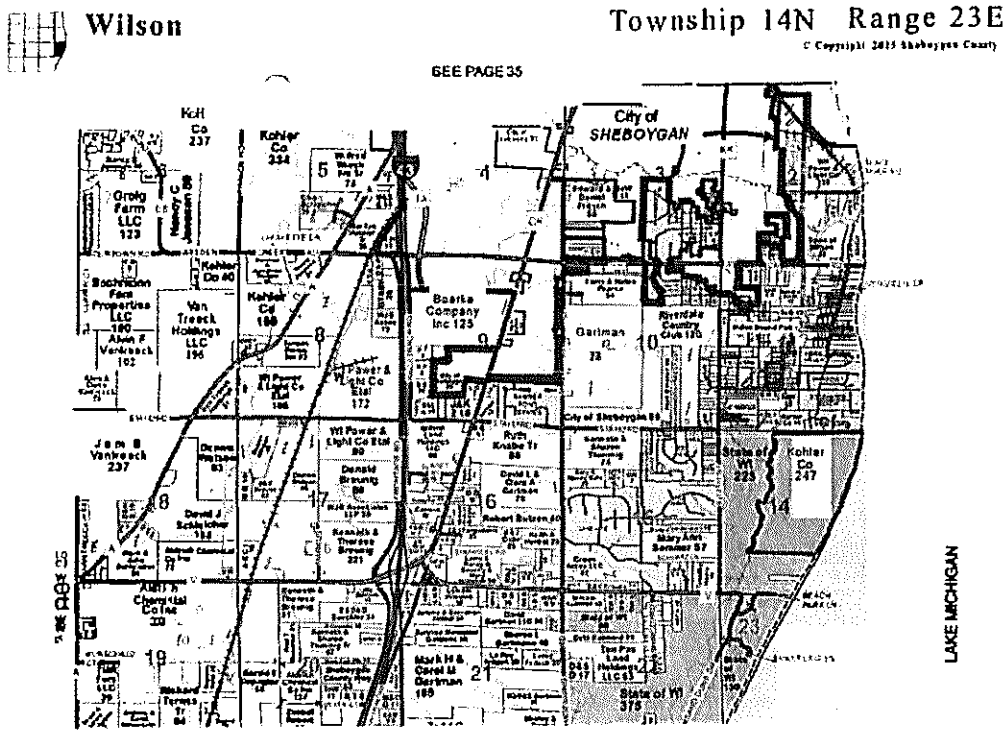
VERIFIED COMPLAINT

The Town of Wilson (the "Town"), through its counsel, states for its Complaint against the City of Sheboygan ("Sheboygan") as follows:

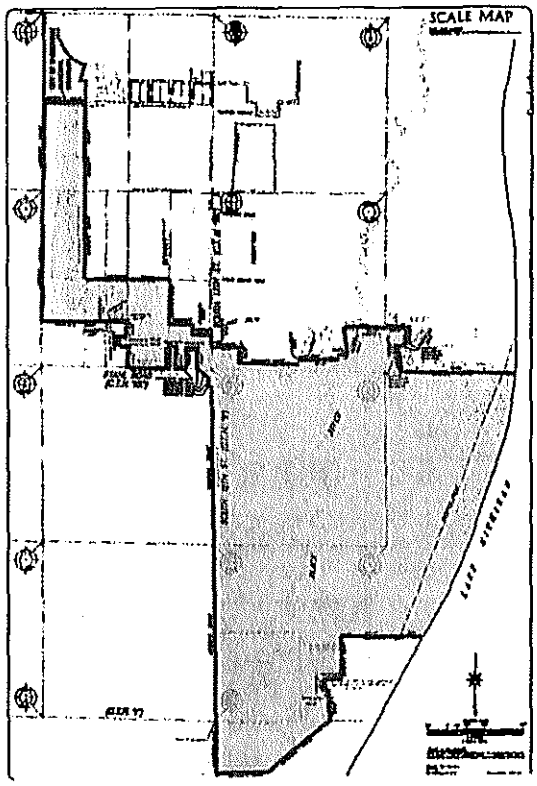
INTRODUCTION

1. Sheboygan has improperly annexed land from the Town. Sheboygan, at the behest of and in cooperation with Kohler Co. ("Kohler"), has reached more than a mile beyond its border to annex approximately 250 acres of land in the Town, on which Kohler wants to develop a golf course. This annexation was sprung on the Town without notice, and while it was waiting for Kohler to complete its pending Conditional Use Permit ("CUP") application with the Town for this development – something that Kohler initiated in 2014, but has yet to complete. And, immediately upon annexation, Sheboygan rezoned the land to High Density Single Family Residential ("SR-5") which allows up to five residences per acre in the midst of the Town, in spite of that being in violation of both the Town and city land use.

2. Kohler's land – the site of the proposed golf course and the target of the annexation – cannot be annexed on its own, as it falls squarely within the Town is not contiguous to Sheboygan:

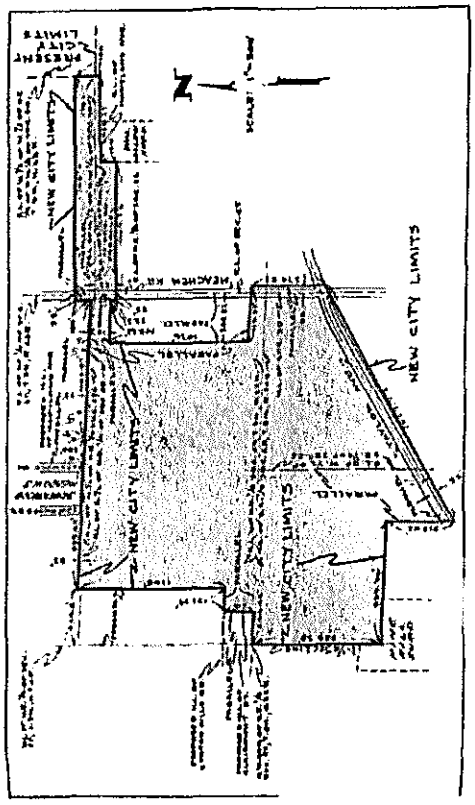


3. Sheboygan improperly reached to this land via an irregularly-shaped annexation – commonly referred to as a "balloon-on-a-string" or "gerrymandered" annexation – in which targeted land is "connected" to a city through a gerrymandered, narrow "string" of land that is contrived solely to create a small border with a city:

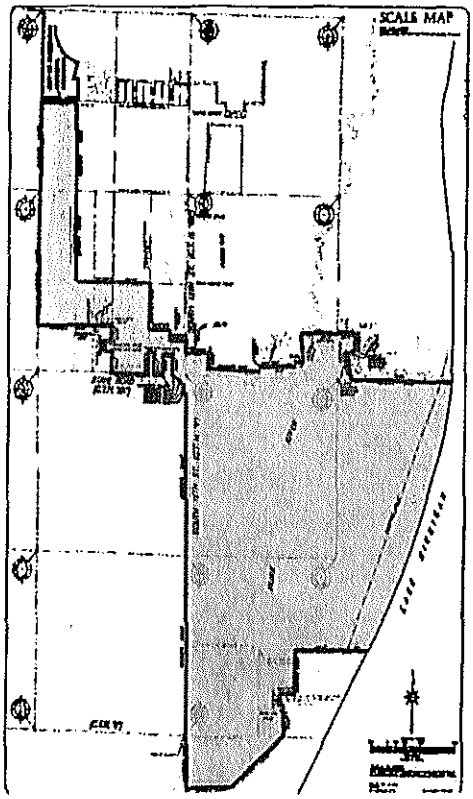


4. This annexation is improper. This type of annexation must involve land contiguous to a city, and the Wisconsin Supreme Court long ago rejected as improper a virtually identical annexation configuration in its seminal *Mt. Pleasant* decision:

Mt. Pleasant



This Case



The annexed property is largely rural, includes the most natural land in the area, is not homogenous with Sheboygan's urban landscape, can be more than capably serviced by the Town, and was never the subject of an annexation request by Kohler until it, apparently, wished to avoid the Town and County's government, rules, and decision making by having Sheboygan take the land.

5. The Town and its residents have been circumvented, and now have no vote or representation in the Sheboygan government that is making decisions for this land in their midst. To protect its autonomy, its residents and its future, the Town now seeks a declaration from this Court that Sheboygan's annexation is improper and void, as well as temporary and permanent

injunctive relief to preserve the *status quo* and prevent irreparable harm from this improper annexation.

PARTIES TO THE ACTION

6. The Town of Wilson (the "Town") is a town located within Sheboygan County.

7. The City of Sheboygan ("Sheboygan") is a city located within Sheboygan County.

BACKGROUND FACTS

The Land at Issue

8. The Kohler family, now Kohler, owns approximately 250 acres of undeveloped, natural land in the Town along the shore of Lake Michigan and adjacent to the Kohler-Andrae state park. Since approximately 1927, the land has been preserved as a forest and wildlife refuge, with various portions of the land given, at times, to the state for that purpose. Included in the Appendix as **Exhibit A** is a true and correct illustration of this Kohler-owned land.

9. The land is located completely within the Town of Wilson, and is more than a mile from Sheboygan.

10. The Town, like other Wisconsin municipalities, has a comprehensive development plan, which it began in 1997. In its comprehensive plan, the Town designates the Kohler land as "Park and Open" space, which was re-affirmed by Kohler in 2009.

11. The Town also has ordinances protecting its environment and the more rural, natural state of much of its land. This includes, without limitation, Town ordinances include a mature set of land use and zoning ordinances appropriate to the subject and surrounding lands which differ from ordinances in Sheboygan and other urban areas.

Kohler Proposes a Golf Course for the Town's Consideration

12. In or about 2011, Kohler proposed to the Town a project knows as the "Tented Forest Project," whereby Kohler's approximate 250 acres of land along Lake Michigan would be

developed into an upscale, but very low intensity camping site as a "permitted" (undeniable) use in this parcel (Town) zoned as P-1 (Parks and open space).

13. In March, 2014, while Kohler's Tented Forest proposal was pending, Kohler informed the Town it no longer wished to move forward with the Tented Forest Project, and that it and had a new proposal for the land – a golf course.

14. On March 24, 2014, the Town received from Kohler an initial, incomplete application for a CUP application to develop the Kohler Land into a golf course.

15. On April 7, 2014, Kohler introduced the golf course proposal to the public at a Town Plan Commission meeting.

16. On July 16, 2014, the Town held a public meeting to obtain public comment on Kohler's proposal.

17. On that same date, the Town and Kohler agreed to an indefinite extension for Kohler to complete the environmental and other studies required to proceed with the CUP.

18. This included the Town deferring to the Wisconsin Department of Natural Resources ("DNR") and the United States Army Corp. of Engineers ("ACOE") to evaluate Kohler's proposals, utilizing the DNR's expertise, objectivity and resources.

19. Over the course of the next two years, the Town waited for Kohler to complete its work and obtain necessary DNR, ACOE, and other permissions and permits.

20. During this time, and in consultation with Kohler, the Town retained consultants from three independent and reputable engineering firms to evaluate Kohler's CUP, when completed; to provide input to the Town as to compliance with the Town's environmental and other ordinances, and to provide guidance on the impact of Kohler's proposals on the Town and its residents; and to provide input from the Town to the DNR, the ACOE, and other governmental

bodies as they evaluated the project.

21. The Town consulted and worked with Kohler throughout this process. For example, when Kohler objected to one of the Town's proposed consulting firms as "biased" against Kohler, the Town consented to the objection and hired a different consulting firm recommended by Kohler.

22. In 2016, the Town and Kohler began negotiating an agreement for the Town to be reimbursed for expenses incurred in the evaluation process.

23. During this time (2014 through 2016, and into 2017) Kohler did not express any concerns about the Town's financial stability or its ability to deliver services to the golf course. Kohler's own proposals included, for example, using well water within the Town for the proposed course. Included in the Appendix as **Exhibit B** is a true and correct Kohler document relating to the golf course development, which states "potable water and irrigation water will be from onsite wells."

24. The Town's water supply has been sufficient for even heavy industry, the Town has had sanitary sewer services available to the land since 1988 (which lies in Town Sanitary District #1), and another golf course – Riverdale Country Club – has operated successfully in the Town for over 80 years.

25. As of June 24, 2016, Kohler had still not completed its CUP application.

26. On June 24, 2016, the Town sent Kohler correspondence clarifying that the CUP was still incomplete, and identifying areas that still needed to be completed.

27. Kohler's work to obtain the necessary federal and state approvals and complete its work continued into 2017.

28. On February 27, 2017, Kohler's attorney informed the Town Board Chairman, John

Ehmann, that Kohler was ready to complete its application to the DNR as soon as March or April, 2017.

29. As of April, 2017, the Town was waiting for this promised completion, including with consultants paid and ready to evaluate Kohler's proposal.,

30. To date, to the best of the Town's knowledge, Kohler has not yet completed supply of information required by the DNR.

Kohler Seeks Annexation from Sheboygan

31. On April 28, 2017, to the complete shock of the Town Board, which was waiting for the completed CUP, Kohler published an annexation petition, requesting that Sheboygan non-unanimously annex land within the Town.

32. This petition included the Kohler land that was more than a mile from Sheboygan's border.

33. At no time prior to this announcement had Kohler given the Town any notice or warning that it was going to petition for a non-unanimous annexation.

34. And, as of April 28, 2017, Kohler's had not expressed a need or desire for annexation or municipal service.

35. A non-unanimous annexation, if granted, forces certain Town property owners to be subject to an annexation to Sheboygan and, as such, has certain requirements and safeguards including:

a. A requirement that the annexed land be contiguous with Sheboygan, the annexing city;

b. Be signed by at least as many electors as 50% of the votes case in the last gubernatorial election from the land sought to be annexed; and

c. Contain signatures from either one-half of the land within the territory, or one-half of the assessed value within the territory.

36. Kohler's land on which the golf course was proposed is not contiguous with Sheboygan and, therefore, cannot be annexed by Sheboygan on its own.

37. While Kohler was purportedly working with the Town and completing its CUP, Kohler was clandestinely designing a plan for this type of annexation by Sheboygan.

38. Beginning in 2016, Kohler concocted a more-than-mile-long "string" of land to connect its land to Sheboygan, which was carefully constructed to appear to meet the minimum requirements for an annexation.

39. Utilizing Kohler employees or agents, Kohler clandestinely purchased two properties in the Town of Sheboygan -- 5721 Sherwood Dr. (purchased January 17, 2017) and 131 Zientek Lane (purchased April 7, 2017) – both of which lay between Kohler's Town land and Sheboygan.

40. Kohler then rented the properties to its employees or agents.

41. Kohler used the properties to create a "string" of land to connect its proposed golf course to Sheboygan:

a. Kohler designed a pathway – or "string" of land – that included 5721 Sherwood Dr. and 131 Zientek Lane, but which excluded adjacent identical land in a manner to ensure that those properties were sufficient, when combined with its golf course land, to satisfy the minimum elector and assessed-value requirements of the statute.

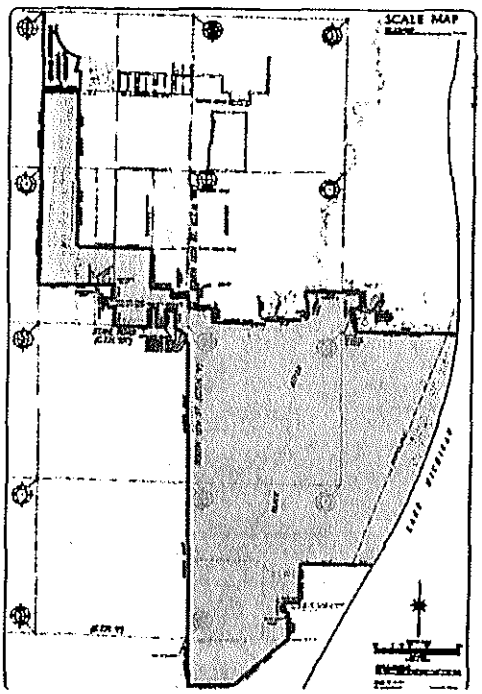
b. Kohler included state park land in the annexation petition, which represented a substantial portion of land but added "zero" assessed-value to

be counted under the statute and has no electoral representation.

c. Kohler shaped the "string" to avoid other properties with owners that opposed annexation, or other impediments to the annexation requirement.

d. Kohler constructed the "string" to end on a property with a small border with Sheboygan, allowing it to claim the annexation was "contiguous" Sheboygan.

42. This resulted in a "balloon-on-a-string" and gerrymandered shape for the proposed annexation, which contained a small border with Sheboygan at the end its "string":



43. Kohler constructed this "string" solely to connect its land to Sheboygan for the purpose of annexation.

44. Dirk Willis, group director of golf for Kohler Co.'s Hospitality and Real Estate Group, issued a written statement, reported by the Milwaukee Business Times: "By state law it must be a connection. It could be 10 feet (wide) or a half mile, it just has to be a connection."

Included in the Appendix as **Exhibit C** is a true and correct copy of a Business Times article quoting Mr. Willis.

45. The "string" is as narrow as 190 feet in several locations.

46. The "string" is 5,448 long, and extends more than a mile past Sheboygan's border before reaching any property for which an owner signed the annexation petition.

47. The "string" divides individual parcels between the Town and Sheboygan, sometimes three ways (Town/Sheboygan/Town).

48. The "string" cuts the town in two, creating a Town island which cuts off the northeast portion of the Town, including the fire department, from the rest of the Town.

49. The string does not provide a straight-line connection to Sheboygan, but irrationally changes directions in ways solely in effect to nominally qualify as a petition:

a. The "string" starts by appropriating two holes of the Riverdale Country Club, whose owners oppose the annexation and did not sign the petition;

b. The "string" then proceeds to capture some vacant wetland, and moves further to take portions of additional golf holes from the existing Riverdale Country Club, before hopscotching east over or around several properties;

c. Finally, the "string" engulfs approximately 230 acres of Kohler-Andrae State Park, before it at last reaches its ultimate goal – the Kohler property on the shore of Lake Michigan. This land has no electors or assessed value representation and was included to make the string appear less contrived and less narrow. It provides the City a connection to land to the West of the Town for which the city has previously announced annexation plans.

50. The "string" includes properties owned by Town residents who do not want to be

annexed into Sheboygan, but who are forced to do so by the petition. This includes, without limitation, a more than 80-year-old man who has lived in the Town for decades, and who does not want to be annexed.

51. The string further annexes partial privately owned parcels such that parts of individual parcels are located in the Town and other parts are located in the City.

52. Town residents who border this proposed annexation have no vote or representation in the Sheboygan government.

Sheboygan Agrees to Annex the Land in Exchange for Money from Kohler

53. As of April, 2017, Sheboygan had not included any of the land in Kohler's annexation proposal as a target for annexation or development in its master comprehensive plan.

54. On April 24, 2017 Sheboygan held a closed session meeting to discuss what was described as a "south-side business presentation."

55. The referenced business presentation was, in fact, Kohler's proposal for annexation.

56. The Town was not given notice of the annexation discussion, and was continuing its work on Kohler's pending CUP.

57. In fact, the Town was continuing work on Kohler's pending CUP which Kohler never indicated they were not intending to complete. Only two days after this meeting (April 26, 2017), the Town's consultant completed its review of Kohler's wetland permit application to the DNR and submitted public input to both the DNR and ACOE on behalf of the Town.

58. On information and belief, Kohler's attorney assisted Sheboygan employees in preparing a Power Point presentation to support the annexation. The presentation included statements that Kohler was to identify the golf course as being "in Sheboygan," and that Kohler

would pay to extend Sheboygan's water lines into the Town via the annexation "string" – each statement was thereafter deleted.

59. Kohler then announced its annexation proposal on April 28.

60. Sheboygan employees assisted Kohler in explaining its justifications for the annexation to the Sheboygan government and/or the Department of Administration ("DOA"), which had to evaluate the petition.

61. In addition, members of the Sheboygan Common Council have financial ties to Kohler through employment of themselves or relatives. Nonetheless, Sheboygan has taken the position that this is not a "conflict of interest".

62. For example, on May 19, 2017, Sheboygan's Steve Sokolowski assisted Kohler with how to write the justifications for the annexation, warning Kohler to "Be Aware, this information will be available for all to see" and warning there would be opposition to the annexation from Town residents who did not want to be annexed.

63. This was done while Sheboygan claimed it did actively seek or advocate for annexations, but simply evaluated them when they were proposed.

64. Kohler and Sheboygan also negotiated a pre-annexation agreement, whereby:

a. Sheboygan would annex the entire "balloon-on-a-string" configuration, taking control away from the Town;

b. Kohler would pay to extend Sheboygan's water lines into the Town along the annexation's "string," purportedly because the golf course needed Sheboygan's water, which in fact the city's stated modification is to subsequently extend municipal water even further into the town for future aggressive annexation opportunities; and

c. Kohler would pay a sum (currently, $200,000) to reimburse Sheboygan for legal costs to defend any challenge to the annexation.

65. The annexation sets up Sheboygan for future annexations into the Town by extending its water system beyond its border and into the to-be-annexed property at Kohler's expense, and by creating a large, Sheboygan-controlled border with the Town to the west of the golf course, which is "contiguous" to Sheboygan to support future annexations.

Sheboygan and Kohler Lobby the DOA to Recommend the Annexation

66. As required by the annexation process, the annexation petition was submitted to the DOA for evaluation and non-binding recommendation as to whether the annexation was proper and in the public interest.

67. The Wisconsin Supreme Court and the DOA have, for years, rejected "balloon-on-a-string" annexations, annexations that are not homogenous to the bordering area of the annexing city, and annexations that were not consistent with a city's development strategy.

68. For example, in 2012, the DOA rejected a proposed annexation by the City of Stevens Point, as the annexation split the town, "created a functional town island," was "not compact or rational in shape," was not "homogenous with the boundaries of the existing City," and created city-town borders which were "haphazard, confusing, inefficient to serve, and very difficult to correct." Included in the Appendix as **Exhibit D** is a true and correct copy of the DOA's ruling on Petition File No. 13631 regarding this annexation.

69. The DOA's rejections of these types of annexations effectuate, in part, the law and policy set forth by the Wisconsin Supreme Court in *Town of Mt. Pleasant v. City of Racine*, 24 Wis.2d 41, 127 N.W.2d 757 (1964):

> Shoestring or gerrymander annexation is not a rare phenomenon. The tendency of subdividers to reach far out into the countryside for vacant land, and their desire

> to attach it to the city of services, is natural; however, this can lead to annexations which in reality are no more than isolated areas connected by means of a technical strip a few feet wide. Such a result does not coincide with legislative intent, and tends to create crazy-quilt boundaries which are difficult for both city and town to administer.

Id. at 46.

70. The Town opposed this annexation with the DOA, including as an improperly configured "balloon-on-a-string" annexation that irrationally splits the town for a contrived, *de minimus* border with Sheboygan; as based on a false claim of "need" for City services; and, as taking large portions of undeveloped, natural land that is not homogenous with the south-side of Sheboygan to which the land was purportedly to be annexed. Included in the Appendix as **Exhibits E, F and G** are true and correct copies of the Town's submissions to the DOA, with exhibits thereto.

71. Kohler and/or Sheboygan successfully lobbied the DOA to depart from precedent and recommend the annexation.

72. On May 22, 2017, for example, Kohler met with the DOA and other State officials regarding its annexation petition. The Town was excluded from the meeting.

73. Freedom of Information Act requests also revealed communications between Kohler and the current gubernatorial administration to "expedite" DNR permits.

74. The DOA suspended its review and gave Kohler two extensions to file supporting papers for its annexation with no advance notice to the Town, and beyond the statutorily-imposed deadline.

75. On June 8, 2017, the Town received an e-mail from DOA issuing a non-binding recommendation in favor the annexation, and stating as follows:

a. Land uses within the "balloon-on-a-string" configuration, much of which is

natural, undeveloped land, "***are urban in nature and much more consistent with the developed City lands***" than with the Town;

b. "The land use proposed by the petitioners is also ***urban in nature***";

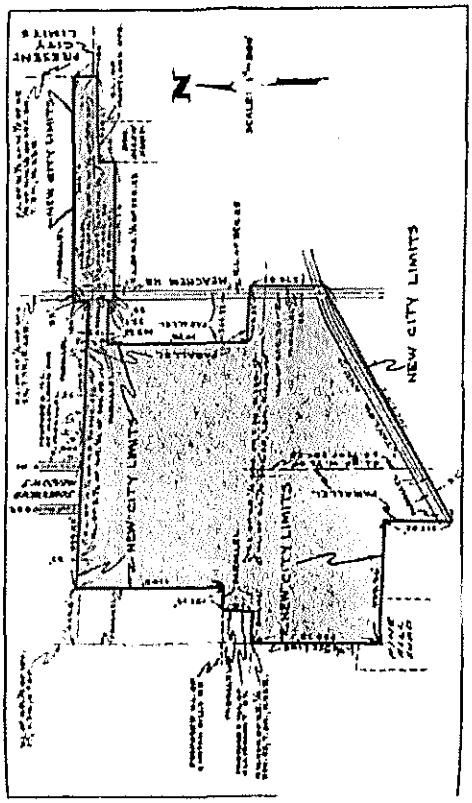
c. This configuration was not sufficiently shaped like or similar to the "balloon-on-a-string" configuration that was rejected in the Supreme Court's *Mt. Pleasant* case, so it could be recommended.

See **Exhibit D** (emphasis added).

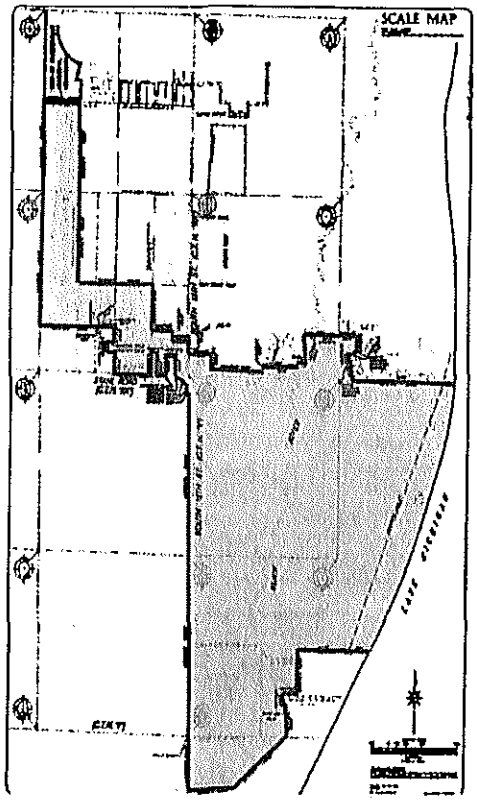
76. The largely natural, undeveloped land in the Town and along the proposed "balloon-on-a-string" configuration – including state park land, forest area, and wetland – is not urban in nature or consistent with "developed City lands."

77. Nor is the irregular "balloon-on-a-string" configuration in this case different in any material way from the annexation in *Mt. Pleasant*:

Mt. Pleasant



This Case



Sheboygan Annexes the "Balloon-on-a-String" and Rezones the Land for Kohler's Golf Course

78. On August 7, 2017, the Sheboygan City Council passed Ordinance 6-17-18 (the "Annexation Ordinance"), annexing the land. **Exhibit H**.

79. The Annexation Ordinance included the above depiction of the annexation, which included the referenced notation of the border with Sheboygan:

80. The Annexation Ordinance passed by a single vote over the required 2/3 majority (11 votes for and 5 votes against).

81. Although the Town and the DNR had spent years on Kohler's still incomplete CUP application and development proposals, Sheboygan's Common Council passed the Annexation

Ordinance only weeks after it was submitted by Kohler.

82. The approved petition for annexation did not specify via the last federal census, by any subsequent population estimate certified as acceptable by the department, or by an actual count certified as acceptable by the department.

83. At that same meeting, by the same vote (11 votes for and 5 votes against), the Sheboygan City Council rezoned the land to allow Kohler to high density (5 homes per acre) SR-5 even though not a single home is proposed to be built.

84. And, at that same meeting, the Sheboygan City Council approved the pre-annexation agreement with Kohler.

85. This pre-annexation agreement includes, without limitation, Kohler's payment to extend Sheboygan's water system into the annexed land, Kohler's payment of up to $200,000 in attorneys' fees, and prospective granting of rights to Kohler to develop its golf course, without Sheboygan City Council's further evaluation of Kohler's proposals.

86. Town residents have no vote or representation in Sheboygan government which, under the Annexation Ordinance, now controls the annexed land.

87. Town residents have been annexed into Sheboygan against their will.

88. Sheboygan is now moving forward to effectuate the annexation and expedite Kohler's development.

89. On September 11, 2017, the Town of Wilson Board and Town of Wilson Planning Committee held a public meeting to gather Town residents' input regarding Sheboygan's annexation.

90. Based, in part, on that meeting, and in order to protect the interest and rights of the Town and its residents, the Town Board passed a September 11, 2017 resolution regarding

Sheboygan's annexation, and a separate resolution authorizing legal action to protect those rights and interests. Included in the Appendix as **Exhibits I and J** are true and correct copies of those resolutions.

FIRST CAUSE OF ACTION:
(DECLARATORY JUDGMENT)

91. The Town re-alleges the allegations contained in paragraphs 1 through 89 of this Complaint.

92. Sheboygan's annexation, effectuated by the Annexation Ordinance, is improper under Wisconsin law, including without limitation Chapter 66, Wis. Stats.

93. The annexation does not satisfy the "rule of reason," as required by existing law.

94. The annexation does not strictly comply with the conditions precedent of Wisconsin's annexation statutes.

95. The annexation is, in sum, arbitrary, capricious, non-contiguous, an abuse of discretion, and otherwise procedurally and substantively non-compliant with Sheboygan's annexation authority under Chapter 66, Wis. Stats, and existing Wisconsin caselaw.

96. There exists an actual controversy between the Town and Sheboygan regarding the annexation, a controversy which will be settled by a declaration of the legality of the annexation by this Court.

97. The Town has brought this action within the required 90-day period under Chapter 66, Wis. Stats.

98. Thus, the Town is entitled to a declaration that Sheboygan's annexation is null and void, and is of no further legal effect.

COUNT II:
INJUNCTIVE RELIEF

99. The Town re-alleges the allegations contained in paragraphs 1 through 97 of this Complaint.

100. Sheboygan's annexation is illegal and improper.

101. The annexation has dismembered land from the Town or County and constitutes an irreparable injury to the Town for which there is not adequate legal remedy.

102. Sheboygan is moving forward with effectuating the annexation and allowing Kohler, without the Town's approval, to develop the annexed land (or a substantial portion of it) under terms and conditions that have not received the Town's approval. These activities threaten immediate and irreparable harm to the Town.

103. A temporary and permanent injunction is necessary to preserve the last, peaceable *status quo* and protect the Town from irreparable harm, a harm for which monetary damages are inadequate.

104. Thus, the Town is entitled to a temporary and permanent injunction prohibiting the Town from taking actions and further effectuating its improper annexation.

WHEREFORE, the Town requests judgment:

(1) Declaring Sheboygan's Annexation Ordinance invalid and void, as well as the annexation, rezoning, and other ordinances passes pursuant thereto;

(2) For a temporary and permanent injunction enjoining Sheboygan, and anyone acting in concert with it, from effectuating the Annexation Ordinance or taking action thereunder;

(3) For its costs, including its reasonable attorneys' fees, incurred in this matter; and

(4) For all further relief to which it is legally or equitably entitled, or to which this Court deems just and proper.

Dated this 18th day of September, 2017.

SORRENTINO BURKERT RISCH LLC

By: _____

Michael D. Huitink
State Bar No. 1034742
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Brookfield, WI 53045
Phone: (262) 513-3315
Fax: (262) 513-3318
Email: MHuitink@sbrlaw.us

Co-Counsel:
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Robert Zeinemann
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Michael Tierney
(pro-hac vice motion to be filed)
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Seattle, WA 98104
Phone: (206) 232-3074
Fax: (206) 232-3076
Email: Zeinemann@tierneylaw.com

Attorneys for Plaintiff, Town of Wilson

VERIFICATION

I attest, under penalty of perjury, that the facts alleged above are, to my knowledge and belief, and after reasonable investigation, true and correct.



John Ehmann
Town of Wilson, Board Chairperson

STATE OF WISCONSIN	CIRCUIT COURT	SHEBOYGAN COUNTY

Town of Wilson vs. City of Sheboygan

Electronic Filing Notice

Case No. 2017CV000490
Class Code: Money Judgment

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490
Honorable Rebecca L. Persick
Branch 4

CITY OF SHEBOYGAN
828 CENTER AVENUE
SHEBOYGAN WI 53081

Case number 2017CV000490 was electronically filed with/converted by the Sheboygan County Clerk of Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means.

You may also register as an electronic party by following the instructions found at **http://efiling.wicourts.gov/** and may withdraw as an electronic party at any time. There is a $ 20.00 fee to register as an electronic party.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: 786fce

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 920-459-3068.

BY THE COURT:

Electronically signed by Melody Lorge
Clerk of Circuit Court

09-19-2017
Date

UNREDACTED

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490

STATE OF WISCONSIN
CIRCUIT COURT
SHEBOYGAN COUNTY

TOWN OF WILSON,

Plaintiff,

v.

Case No. 2017CV490
Case Code: 30301

CITY OF SHEBOYGAN,

Defendant.

APPENDIX TO VERIFIED COMPLAINT

Illustration of Kohler-Owned Land in the Town of Wilson.....**Exhibit A**

Kohler Document Relating to the Golf Course Development.....**Exhibit B**

Business Times Article Quoting Mr. Dirk Willis.....**Exhibit C**

Department of Administration Ruling on Petition File No. 13631..... **Exhibit D**

Town of Wilson's First Submittal for DOA Petition File No. 14018..... **Exhibit E**

Town of Wilson's Second Submittal for DOA Petition File No. 14018..... **Exhibit F**

Town of Wilson's Third Submittal for DOA Petition File No. 14018..... **Exhibit G**

Sheboygan General Ordinance No. 6-17-18.....**Exhibit H**

Wilson Town Council Resolution Authorizing Litigation ..... **Exhibit I**

Wilson Town Council Resolution Regarding the Annexation of Territory From the Town of Wilson, Sheboygan County, Wisconsin..... **Exhibit J**

Dated this 18th day of September, 2017.

SORRENTINO BURKERT RISCH LLC

By: _____

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675 N. Barker Road, Suite 300
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Co-Counsel:
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(pro-hac vice motion to be filed)
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Attorneys for Plaintiff, Town of Wilson

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490

WISCONSIN DEPARTMENT OF ADMINISTRATION

SCOTT WALKER
GOVERNOR
MIKE HUEBSCH
SECRETARY

Municipal Boundary Review
PO Box 1645, Madison WI 53701
Voice (608) 264-6102 Fax (608) 264-6104
Email: winunicipalboundaryreview@wi.gov
Web: http://doa.wi.gov/municipalboundaryreview/

October 16, 2012

PETITION FILE NO. 13631

JOHN MOE, CLERK
CITY OF STEVENS POINT
1515 STRONGS AVE
STEVENS POINT, WI 54481

JANET R WOLLE, CLERK
TOWN OF HULL
4550 WOJCIK MEMORIAL DR
STEVENS POINT, WI 54481

MARIE HELMINIAK
TOWN OF STOCKTON
7252 6TH STREET
CUSTER, WI 54423

JOAN SCHEIDER
TOWN OF PLOVER
5081 HOOVER AVE
PLOVER, WI 54467

Subject: BILL SCHOFIELD ET AL ANNEXATION

The proposed annexation submitted to our office on September 26, 2012, has been reviewed and found, in the Department's opinion, to be against the public interest.

We recognize the City's desire to create a commerce center in this area which is consistent with its development strategy and would be a benefit for the region. In order for this to occur the city needs to expand, thereby altering its municipal boundary as represented on this proposed annexation.

In determining whether an annexation is in the public interest, s. 66.0217 (6), Wis. Stats. requires the Department to examine "[t]he shape of the proposed annexation and the homogeneity of the territory with the annexing village or city and any other contiguous village or city...." so as unincorporated land transitions to city or village status, the resulting boundaries are rational and easy for jurisdictions and residents to follow.

In this case, the chosen configuration of this annexation leaves a 40 acre parcel in the Town of Plover which is connected to the rest of the town by a 15' foot strip of town land, over one-quarter of mile in length. This parcel is essentially surrounded by the City of Stevens Point creating a functional town island. It results in boundaries that are difficult for both the City and the Town to administer, for state, federal, and regional jurisdictions to follow, and for local residents and businesses to understand. The shape of the annexation cannot be said to be compact and rational in shape or to be homogenous with boundaries of the existing City and does not coincide with the legislative intent of ch. 66, Wis. Stats..

Annexations that create these types of municipal boundaries, while seemingly harmless by themselves, when taken together with other similarly configured annexations by a city or village that occur over time, result in problematic municipal boundaries that are haphazard, confusing, inefficient to serve, and very difficult to correct.

EXHIBIT D

State and federal aids based on population and equalized value may be significantly affected through failure to file with the Secretary of State. Please file a copy of your annexing ordinance, including a statement certifying the population of the annexed territory. **Please also include the MBR number with your ordinance as this assists with record keeping. Your MBR number is: 13631**
The address of the Office of the Secretary of State is:

Annexations and Railroads
Division of Government Records
Office of the Secretary of State
PO Box 7848
Madison WI 53707-7848

Please call me at (608) 264-6102, should you have any questions concerning this annexation review letter.

Sincerely,

Erich Schmidtke
Municipal Boundary Review

cc: petitioner

XI

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490

Gen. Ord. No. 6 - 17 - 18. By Alderpersons Bohren and Sorenson.
June 5, 2017.

AN ORDINANCE annexing territory to the City of Sheboygan, Wisconsin.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. **Territory Annexed.** In accordance with sec. 66.0217 of the Wisconsin Statutes and the petition for direct annexation by one-half approval filed with the City Clerk on the 15th day of May, 2017, signed by five qualified electors residing in the territory to be annexed (being a number of such electors consisting of at least the majority of votes cast for governor in the territory at the last gubernatorial election) and signed by the owners of at least one-half of the real property in assessed value within the territory to be annexed, the following described territory in the Town of Wilson, Sheboygan County, Wisconsin, is hereby annexed to the City of Sheboygan, Wisconsin:

Lot 2 in Sherwood Forest Estates, part of Outlot 1 in Certified Survey Map recorded in Volume 21, Pages 102-103 as Document No. 1753833, part of Lot 1 in Certified Survey Map recorded in Volume 8, Page 323, Lots 1, 9, 10, 11 and Outlots 1 and 5 in the Plat of River Trails, Tract 1 in Certified Survey Map recorded in Volume 5, Page 198 and lands all being part of the Northwest 1/4, Southwest 1/4 and Southeast 1/4 of the Southeast 1/4, and part of the Southwest 1/4 of the Northeast 1/4 all in Section 10; part of the Southwest 1/4 and Southeast 1/4 of the Southwest 1/4 and part of Government Lot 4 all in Fractional Section 11; part of the Northeast 1/4 of the Northeast 1/4 of Section 15; all of the Northwest 1/4, Northeast 1/4, Southwest 1/4 and Southeast 1/4 of the Northwest 1/4, all of the Northwest 1/4 and Southwest 1/4 of the Southwest 1/4 and all of Government Lots 1, 2 and 3 and part of Government Lot 4 all in Fractional Section 14; part of Government Lot 1 in Fractional Section 23, all in Town 14 North, Range 23 East, in the Town of Wilson, Sheboygan County, Wisconsin bounded and described as follows:
Beginning at the Southwest corner of the Southwest 1/4 of Section 14, thence North 00°25'21" West along the West line of the Southwest 1/4 aforesaid 2655.02 feet to the West 1/4 corner of said Section; thence North 00°25'18" West 2394.66 feet to a point, said point being South 00°25'18" East 260.50 feet from the Northwest corner of the Northwest 1/4 of Section 14; thence North 88°25'50" West 55.03 feet to a point on the West line of C.T.H. "V" said point being 55.00 feet West of as measured normal to the West line of the Northwest 1/4 of Section 14, thence North 00°25'18" West and parallel to said West line

Lies over to June 19th (2/3 vote)

Held to July 17 CC mtg

11/7/17 - Wolf motion to hold

EXHIBIT H

149.44 feet to a point; thence North 53°49'12" West 195.42 feet to a point on the South line of the Southeast 1/4 of Section 10; thence North 88°25'50" West along said South line 37.99 feet to a point; thence North 00°23'58" East 300.00 feet to a point; thence North 88°25'50" West 130.00 feet to a point; thence South 00°23'58" West 300.00 feet to a point on the South line of the Southeast 1/4 of Section 10; thence North 88°25'50" West along said South line 170.00 feet to a point; thence North 00°23'58" East 310.00 feet to a point; thence North 88°25'50" West 80.00 feet to a point; thence South 00°23'58" West 310.00 feet to a point on the South line of the Southeast 1/4 of Section 10; thence North 88°25'50" West along said South line 671.60 feet to a point on the East line of Sherwood Forest Estates, a recorded plat; thence North 00°34'26" East along said East line 313.00 feet to a point on the South line of Lot 2 in Sherwood Forest Estates; thence North 89°25'50" West along said South line 129.23 feet to a point on the East line of Sherwood Drive; thence North 00°34'10" East along said East line 140.00 feet to a point on the North line of said Lot 2; thence South 89°25'50" East along said North line 129.23 feet to a point on the East line of Sherwood Forest Estates; thence North 00°34'26" East along said East line 268.08 feet to a point on the South line of Outlot 1, Certified Survey Map recorded in Volume 21, Page 102-103 as Document No. 1753833; thence North 89°25'50" West along said South line 222.65 feet to a point; thence South 59°56'10" West along said South line 66.00 feet to a point; thence North 89°25'50" West along said South line 45.96 feet to a point on the West line of Sherwood Forest Estates; thence South 00°34'10" West along said West line 17.99 feet to a point; thence North 88°31'19" West 966.83 feet to a point on the West line of the Southeast 1/4 of Section 10; thence North 00°37'13" East along said West line 1986.69 feet to the center of Section 10; thence North 00°15'24" East along the West line of the Northeast 1/4 of Section 10 a distance of 1332.63 feet to a point on the North line of the Southwest 1/4 of the Northeast 1/4 of Section 10, said point also being the South line of lands described in Warranty Deed recorded as Document Number 1225355, Volume 1181, Pages 918-919 and the Southerly corporate limits of the City of Sheboygan; thence South 88°40'25" East along said line 649.17 feet to a point on the East line of the West 1/2 of the Southwest 1/4 of the Northeast 1/4 of Section 10; thence South 00°23'33" West along said East line 1331.17 feet to a point on the South line of the Southwest 1/4 of the Northeast 1/4 of Section 10; thence South 00°33'53" West along the East line of the West 1/2 of the Northwest 1/4 of the Southeast 1/4 of Section 10 a distance of 1326.55 feet to a point on the North line of the South 1/2 of the Southeast 1/4 of Section 10;

thence South 88°36'49" East along said North line 1294.59 feet to a point on the East line of the West 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 10; thence South 00°27'16" West along said East line 681.51 feet to a point marking the Northwest corner of lands described in Quit Claim Deed Document No. 1052237; thence South 89°17'42" East along the North line of said lands 367.95 feet to the Northeast corner of said lands; thence South 00°24'04" West 140.47 feet to a point marking the Northwest corner of lands described in Quit Claim Deed Document No. 1052238; thence South 88°26'12" East along the North line of said lands 279.99 feet to a point on the East line of the Southeast 1/4 of Section 10; thence South 00°23'58" West along said East line 181.34 feet to a point on the North line of Tract 1 in Certified Survey Map Volume 5, Page 198; thence South 88°42'12" East along said North line 429.00 feet to a point on the East line of said Tract 1; thence South 00°23'58" West along said East line 231.73 feet to a point on the North line of the Plat of River Trail, a recorded plat; thence South 88°39'06" East along said North line 904.00 feet to a point marking the Northeast corner of Lot 9, Plat of River Trail; thence North 00°43'00" East along the West line Plat of River Trail 93.05 feet to a point marking the Southwest corner of Lot 8, Plat of River Trail; thence South 88°37'41" East along said South line and its extension, (said line also being the North line of Lot 1, Plat of River Trail and its extension) 734.81 feet to a meander corner, said point being South 88°37'41" East 111 feet more or less from the thread of Black River; thence North 22°00'00" East along a meander line 508.14 feet to a meander corner on the North line of the South 1/2 of the Southeast 1/4 of the Southwest 1/4 of Section 11, said point being South 88°45'21" East 217 feet more or less from the thread of Black River; thence South 88°45'21" East along said North line 409.00 feet to a point marking the Southwest corner of Lot 19 in Edgewater Beach, a recorded plat; thence South 89°16'46" East along the South line of said Lot 296.14 feet to a point; thence South 01°23'32" East parallel to and 50 feet West of Lot 27 in Timberlake, a recorded plat, 272.76 feet to a point on the North line of Timberlake Road; thence Southwesterly 171.98 feet along said North line and arc of a curve, whose center lies to the North, whose radius is 550.00 feet and whose chord bears South 81°37'16" West 171.28 feet to a point; thence South 00°34'44" West along Timberlake Road 66.00 feet to a point on the South line of said Road; thence Northeasterly 43.00 feet along said South line and arc of a curve, whose center lies to the North, whose radius is 616.00 feet and whose chord bears North 88°34'44" East 43.00 feet to a point on the West line of Lot 26 in Timberlake; thence South 06°58'30" East along the West line

of said Lot 26 and 25 a distance of 310.73 feet to the Southwest corner of said Lot 25; thence South 89°13'44" East along the South line of the Southeast 1/4 a distance of 1616.21 feet to a meander corner, said point being North 89°13'44" West 194 feet more or less from the shore of Lake Michigan; thence South 22°12'00" West along said meander line 4257.36 feet to a meander corner, said point being North 89°02'42" West 357 feet more or less from the shore of Lake Michigan; thence North 89°02'42" West 902.55 feet to a point; thence South 00°17'46" East 684.53 feet to a point on the North line of lands described in Document Number 1964431; thence North 89°21'46" West along said North line 304.57 feet to the Northwest corner of said lands; thence South 00°17'46" East along the West line of said lands 172.14 feet to the Southwest corner of said lands; thence South 89°21'46" East along the South line of said lands 112.12 feet to a point; thence South 00°17'46" East 455.02 feet to a point; thence South 51°00'00" West 1201.92 feet to a point; thence South 87°57'52" West 800.00 feet to a point on the West line on Government Lot 1 in Section 23; thence North 02°02' 08" West along the West line of said Government Lot 800.00 feet to the point of beginning. Including those lands lying between the aforesaid meander line and the thread of Black River. Also including those lands lying between the aforesaid meander line and the shore of Lake Michigan.

Section 2. **Effect of Annexation.** From and after the date of this ordinance, the territory described in Section 1 shall be a part of the City of Sheboygan for any and all purposes provided by law and all persons coming or residing within such territory shall be subject to all ordinances, rules and regulations governing the City of Sheboygan.

Section 3. **Payment to Town of Wilson.** In accordance with sec. 66.0217(14) of the Wisconsin Statutes, the City of Sheboygan agrees to pay annually to the Town of Wilson, for five (5) years, an amount equal to the amount of property taxes that the Town levied on the annexed territory, as shown by the tax roll under sec. 70.65 of the Wisconsin Statutes, in the year in which the annexation is final.

Section 4. **Ward Designation.** The territory described in Section 1 of this ordinance is hereby made a part of the 26th Ward and 8th Aldermanic District of the City of Sheboygan, subject to the ordinances, rules and regulations of the City governing wards.

Section 5. **Severability.** If any provision of this ordinance is invalid or unconstitutional, or if the application of this ordinance to

any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid or unconstitutional provision or application.

Section 6. **Effective Date.** This ordinance shall take effect upon passage and publication as provided by law.

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

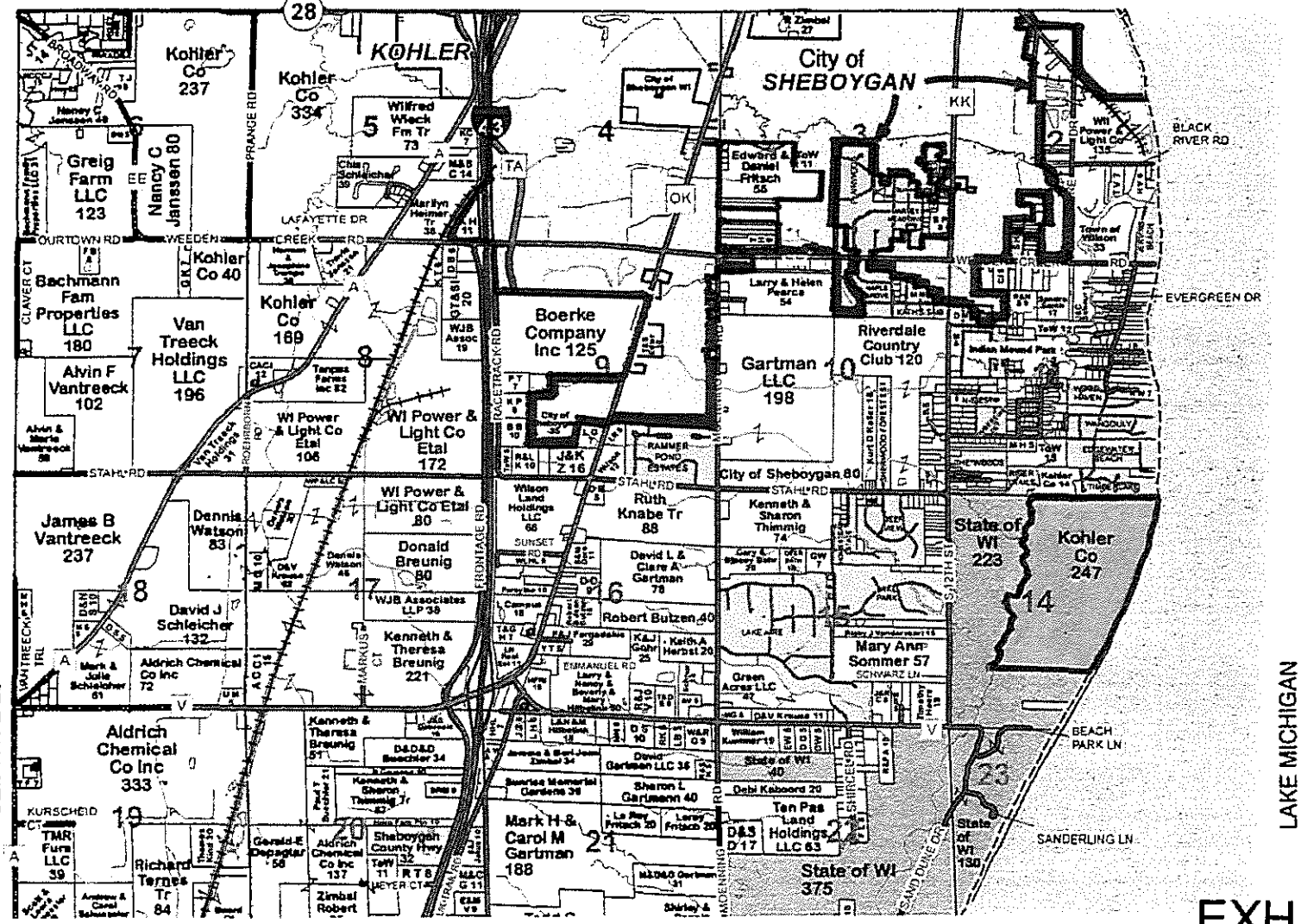
FILED
09-19-2017
Sheboygan County
Circuit Court
2017CV000490

Wilson

Township 14N - Range 23E

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SEE PAGE 35



SEE PAGE 25

EXHIBIT A

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490

City of
Sheboygan
spirit on the lake.

May 22, 2017

SENT VIA EMAIL ONLY

Mr. Erich Schmidtke
Municipal Boundary Review
101 East Wilson Street, 9th Floor
Madison, WI 53703

Re: Petition file no. 14018

Dear Mr. Schmidtke:

My office has been directed to supplement the response of the City of Sheboygan (the "City") to the proposed annexation in file no. 14018 from the Town of Wilson (the "Town") to the City. Specifically, this letter supplements the City's response to Section 12 of the Annexation Review Questionnaire and provides other relevant information bearing upon the public interest in the proposed annexation referenced in your letter dated May 4, 2017 to City Clerk Susan Richards.

After a careful review of the relevant legal standard, I believe the proposed annexation satisfies the definition of the public interest under Wis. Stat. sec. 66.0217(6)(c). I ask that you concur.

1. Governmental services, including zoning, to the territory to be annexed can clearly be better supplied by the City as opposed to the Town.

(a) Zoning. The City offers extensive planning and zoning services. As noted in our response to Section 11(b) of the Questionnaire, the City appropriates $368,000 annually for planning services. The City maintains a professional staff of four full-time planners as well as professional engineering staff. Most importantly, the City has included the territory in its Comprehensive Plan adopted December 5, 2011. Current uses and potential development within the area are consistent with both the Comprehensive Plan and the City's Zoning Maps.

By contrast, the Town's budget for planning services is $4,000 per year, and the Town relies on hiring outside experts to assist in any significant planning matters.

CITY ATTORNEY'S OFFICE

CITY HALL
828 CENTER AVE., SUITE 304
SHEBOYGAN, WI
53081-4442

920/459-3917
FAX 920/459-3919

www.sheboyganwi.gov

EXHIBIT E

(b) Sanitary Sewer Service. The City alone is able to process sanitary waste, not just in the area proposed for annexation, but in all areas north and south of the City. Sanitary sewer is supplied to the territory, as well as the entirety of the Town and the Town of Sheboygan, pursuant to a 1975 Joint Sewerage Treatment Agreement for the Sheboygan Region.

While the Town owns some sewer pipes near the territory proposed to be annexed, all area waste feeds into the City's pipes and is treated by the City. Any sanitary sewer services offered by the Town are obtained solely via the Town's agreement with the City.

(c) Water Service. The City alone is able to provide water service to the territory proposed to be annexed. The City has its own Water Utility, under the direction of the Sheboygan Board of Water Commissioners. The Water Utility maintains some of the lowest water rates in the State of Wisconsin and is able to service a wide range of customers, including customers with heavy use needs, at very affordable rates. Consistent with *Town of Hallie v. City of Chippewa Falls*, 105 Wis. 2d 533, 542, 314 N.W.2d 321, 326 (1982), the City permissibly conditions extension of water services upon annexation. The City has been approached by many potential customers, both within and near to the territory proposed for annexation, who desire to connect to City water service. These potential customers have expressed concerns that Town wells will fail in the near future. The City expects that several of these customers will seek annexation to the City to be able to connect to water service if the annexation at issue is successful.

Currently, there is a 12-inch water line available at the intersection of Riverdale and 12th Street. This line is less than one-half mile away in two directions from the territory proposed to be annexed. There also is a 16 inch water line available on the west side of the proposed annexation at approximately 340 feet south of Creekview Court and Moenning Road. Over the next one to three years, the Water Utility plans to extend its water service south along South 12th Street and west along Stahl Road (CTH KK) to create a loop to service all interested customers who annex to the City.

By contrast, the Town does not have any municipal water service and has no plans to provide municipal water service anytime in the future. Indeed, in the past, Town officials have expressed concern that additional high capacity wells in the area could undermine existing private residential wells.

(d) Police and Fire Services. The City has well-established, well-funded emergency services, including full-time professional police, fire and EMS staff. While the Town contracts with the Sheboygan County Sheriff's Department for law enforcement services, the City maintains its own police department. Similarly, the City maintains its own fire department. City Fire Station 5 is located at 4504 South 18th Street, just north of the area proposed for annexation and is staffed full time 24/7 by three firefighter/paramedics with an aerial truck and a pumper. Emergency response time from that station would be 60 seconds for dispatch time and 180 seconds for drive time. The Town acknowledges that it avails itself of a Mutual Aid Box Alarm System to ensure that the City's fire department responds (in addition to Town fire personnel) in the event of an emergency. Accordingly, the City is well positioned to provide emergency services, and the Mutual Aid Box Alarm System ensures that all area fire personnel respond in the event of an emergency--avoiding any confusion as to which personnel should respond.

For these reasons, it should be self-evident that the City can better supply governmental services, not just to the area currently proposed to be annexed, but also to areas likely to annex in the near future if this annexation is successful. City officials would be happy to provide your office additional information at your request.

2. The territory proposed to be annexed is contiguous to existing City boundaries, and the shape of the territory is more homogeneous with the City than with the Town.

(a) Territory is Contiguous to Existing City boundaries. While Wis. Stat. sec. 66.0217(3) requires territory proposed for annexation to be contiguous to the annexing City, "contiguity" is not specifically defined in the statute. The court in *Town of Lyons v. City of Lake Geneva*, 56 Wis. 2d 331, 336, 202 N.W.2d 228, 231 (1972) adopted Black's Law Dictionary's definition of contiguous, meaning "in close proximity; near, though not in contact; neighboring; adjoining; near in succession; in actual close contact; touching; bounded or traversed by." That court held that "contiguous" does not even have to mean "touching" and upheld an annexation ordinance where a gap existed between the limits of the annexing city and the annexed area.

Notwithstanding, that rather broad definition, the territory proposed to be annexed in this petition actually physically touches the existing City boundaries, and is thereby contiguous to the City boundaries.

(b) Connection with City Boundaries is Substantial. It is true that an annexation failed in *Town of Mt. Pleasant v. City of Racine*, 24 Wis. 2d 41 (1964) where the property touched Racine city limits only by a corridor (which was established as a street) varying in width from 152 to 306 feet. However, it is important to note that substantially the same annexation was accomplished and upheld in *Town of Mt. Pleasant v. City of Racine*, 28 Wis. 2d 519 (1965) when more land was annexed at the territory's juncture with the city.

The area proposed for annexation here is more like that in the second Mt. Pleasant case and subsequent annexations upheld by the courts than the annexation in the first Mt. Pleasant case. The juncture of this territory with the existing City boundary is 650 feet (not 250 feet as suggested by the Town).

(c) Territory is Not a "Balloon on a String". One of the key holdings of the first Mt. Pleasant case was its invalidating of what the court characterized as a "shoestring" annexation because it created "crazy quilt boundaries" which were "difficult for both the city and the town to administer." But, later courts have upheld irregular, serpentine annexations and distinguished them from the shoestring annexation in the first Mt. Pleasant case--especially when such annexations resulted in better provision of governmental services, facilitated planning objectives or arose from irregular existing municipal boundaries.

- In *Town of Vernon v. Village of Big Bend*, 2001 Wis. Ct. App. 00-1007 (2001), the annexation of property which moved "in a serpentine fashion along Highway 164, excluding existing subdivisions and parcels before expanding to include commercial properties at a highway interchange" was found to be contiguous and of "an acceptable shape."

- *Town of Baraboo v. Village of West Baraboo*, 2005 WI App. 96 (2005) held that an "armlike extension of the northern municipal boundary of the Village of West Baraboo" was not a "shoestring or balloon on a stick" when the village did not rely "solely on the highway right-of-way to capture a distant prized parcel" and the

corridor consisted of parcels flanking both sides of a highway corridor.

- *Town of Medary v. City of LaCrosse*, 88 Wis.2d 101, 117, 277 N.W.2d 310, (1978) upheld an irregularly shaped annexation, concluding that "While the shape of the annexation is somewhat irregular, the irregularity is partly necessitated because of the irregularity of the LaCrosse city limits..."

As these cases subsequent to the first Mt. Pleasant case demonstrate, the shape and homogeneity of the territory must be evaluated in context—the context of availability of governmental services, the context of plans by both the municipalities and the petitioners, and the context of existing municipal boundaries.

Town of Sugar Creek v. City of Elkhorn, 231 Wis. 2d 473, 479, 605 N.W.2d 274 (1999) favorably quoted George Hall, former Director of Municipal Boundary Review, in explaining that "homogeneity in shape requires looking beyond mere physical boundaries and considering the economic uses proposed..." Similarly, the Town of Baraboo court considered relevant that the corridor annexed had experienced increased traffic flow and development pressure in recent years and that the annexation allowed the village to plan for orderly development served by appropriate municipal services.

Courts respect the will of owners and electors petitioning for annexation. "The general rule is that where direct annexation proceedings are initiated by property owners, the annexing municipality may not be charged with arbitrary action in drawing the boundary lines...the choice of boundaries is a matter of discretion by the petitioners...They have the right under the statute to act in light of their desires and their best interests... [and]...are under no obligation to include areas in the annexation that are of no concern to them...They may determine the boundaries so as to insure the annexation's success." *Town of Campbell v. City of LaCrosse*, 268 Wis.2d 253, 673 N.W.2d (2003). The Town of Campbell court noted that the first Mt. Pleasant case "is a difficult case to harmonize with subsequent supreme court cases that recognize the right of petitioning property owners to include only their own properties..."

Here, the bulk of the territory proposed to be annexed consists of 10, 20 and 40 acre parcels. No connection is proposed solely via right of way. Further, the City has received inquiries about annexation from additional owners

abutting and near to this territory, so the City expects that additional annexations to square City boundaries are likely in the future.

The City has planned for the area subject to this annexation petition and abutting areas to be included in, and served by, City services. The City's 2011 Comprehensive Plan for this area provides not only the recreational development proposed by this petitioner, but also desperately needed land for additional residential development. The City currently only has 61acres available for new single family home development within its existing boundaries. It bears noting that, although the City has not signed any annexation petition, the City owns a 20 acre parcel included within the territory proposed for annexation as well as 60 acres of vacant land abutting the territory further to the west—all of which currently lies within the Town. The City acquired this land to facilitate additional residential development in the City and anticipates annexing it as soon as possible—connecting this territory with the existing City boundary to the west of Moenning Road.

Similarly, plans of petitioners to develop a championship golf course in this area also are consistent with City plans. The City anticipates significant economic benefits from the petitioners' development, including significant increases in property tax base and hotel tax revenue. As established in case law, petitioners' desires to advance their best interests should be respected and the City cannot be charged with any arbitrariness in the boundaries of this annexation proposed by the petitioners. Similarly, any arbitrariness in proposed annexation boundaries arising from existing City/Town municipal boundaries should be excused. Indeed, this annexation presents the means of realizing the City's long term planning objectives.

(d) Territory Does Not Create a Town Island. The Town's charge that this annexation would create a functional town island ignores applicable law. Wis. Stat. sec. 66.0221(1) prohibits a city or village from creating "by annexation, a town area which is *completely surrounded* by the city of village." *Wagner Mobil, Inc. v. City of Madison*, 190 Wis. 2d 585, 593, 527 N.W.2d 301 (1995) holds that a town island is created under Wis. Stat. sec. 66.0221(1) only when a portion of the town is entirely encircled by the corporate boundaries of the annexing city or village. The annexation in that case was upheld although a functional town island was created by the City of Madison on two sides and by two different towns and a village on other sides.

Here, a casual review of the existing City/Town boundary displays several more significant isolated areas than that proposed with this annexation. But, more importantly, any isolation of areas that would remain in the Town following this annexation would be caused, not just by proximity to the City, but also by Lake Michigan. This is the exact circumstance upheld by the Wagner Mobil court.

While the shape of the proposed annexation and the homogeneity of the territory may be somewhat irregular, they are not usual for the City's existing southern boundary. Further, this annexation facilitates the City's long term planning objectives and accommodates extension of City services. The desires of the petitioners in drawing their boundaries should be respected and found to satisfy the public interest as they did in the Town of Vernon, Town of Baraboo and Town of Medary cases.

For all of the reasons in our original questionnaire and in this letter, we urge you to find that the proposed annexation satisfies the definition of the public interest under Wis. Stat. sec. 66.0217(6)(c).

Sincerely,

Charles C. Adams
CITY ATTORNEY

Enclosures

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490

TOWN OF WILSON
SHEBOYGAN COUNTY, WISCONSIN

Resolution Authorizing Litigation

RESOLVED, that the Town's attorneys are authorized and directed to file a lawsuit in Sheboygan County Circuit or other appropriate venue against the City of Sheboygan and any other parties identified by the Town's attorneys as necessary or appropriate to be included in the lawsuit including, but not limited to, Kohler Co., seeking to contest the annexation by the City of Sheboygan of property formerly located in the Town of Wilson pursuant to the annexation petition submitted by Kohler Co and the annexation ordinance known as City of Sheboygan General Ordinance No. 6-17-18. The Town's attorneys are further authorized to take such action deemed necessary in their judgment to give effect to the intent of this Resolution.

Dated this 11th day of September, 2017.

TOWN OF WILSON

By: _____
John Ehmann, Town Chairperson

Attest:
_____
Georgene Lubach, Town Clerk

EXHIBIT I

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490

US Army Corps of Engineers
St Paul District

Public Notice

APPLICANT: Kohler Company

ISSUED: April 6, 2017
EXPIRES: May 6, 2017

REFER TO: 2015-01213-JLK

SECTION:404 - Clean Water Act

1. APPLICATION FOR PERMIT TO discharge dredged and fill material into 3.69 acres of wetlands adjacent to the Black River and Lake Michigan for the purpose of constructing an 18-hole golf course and related facilities in the Town of Wilson, Sheboygan County, Wisconsin.

2. SPECIFIC INFORMATION

APPLICANT	Kohler Company 444 Highland Drive Kohler, Wisconsin 53044
AGENT	Stantec Consulting Services, Inc. 1165 Scheuring Road De Pere, Wisconsin 54115

PROJECT LOCATION: The project site is located in Section 14, Township 14 North, Range 23 East; Sheboygan County, Wisconsin. Latitude 43.6813760, Longitude -87.7093660.

DESCRIPTION OF PROJECT:

GOLF COURSE AND SUPPORT AMENITIES: The applicant has applied for a Department of the Army permit to discharge dredged or fill material into waters of the United States in association with construction of an 18-hole public golf course and related support amenities on a 247 acre parcel of land owned by Kohler Company. Support amenities include a centrally located 9,000 square foot multi-level club house, parking near the club house, practice range, caddie/cart barn, cart paths, and two resting stations. The project also includes an irrigation pond, entrance road, and maintenance facility which are described below.

ENTRANCE ROAD AND MAINTENANCE FACILITIES: The applicant is proposing to construct an entrance road to the golf course from the existing Kohler-Andrae State Park entrance on Beach Park Lane. As part of this project, the applicant would modify Beach Park Lane from the bridge over the Black River east to the State Park entrance by adding a roundabout design that includes two dedicated lanes for park visitors while golf course traffic and exiting park visitors would utilize the roundabout. The entrance road would then be routed north through a portion of the State Park onto Kohler Property to the proposed club house and parking area. A 22,000 square foot maintenance facility is proposed adjacent to the existing State Park maintenance building and has been designed to avoid all wetland impacts. The maintenance facility and portions of the entrance road would require an easement from the State of Wisconsin on approximately 4 acres of the State Park.

UTILITIES: It is anticipated that utilities (gas, electric, and communications) would connect to existing services located along County Trunk Highway V (CTH V) right-of-way approximately one-half mile west of the project area. To minimize impacts, new services would be bound beneath State Park property including all wetlands and the Black River within an agreement

EXHIBIT B

easement less than one acre in size. Approximately 1,500 square feet of temporary wetland disturbances would occur in the CTH V right-of-way for the bore pit. Potable water and irrigation water would be from onsite wells. Conventional onsite septic field systems would be used to treat domestic wastewater.

IRRIGATION: A high capacity irrigation well would supply water to a 5.7-acre irrigation pond constructed in the northcentral portion of the site. Water from the pond would be distributed via an underground irrigation system to the appropriate areas of the golf course. The applicant has indicated that irrigation water Best Management Practices (BMPs) and a computer controlled system would be utilized to reduce volume and maximize efficiency.

AREA OF FILL AND AFFECTED WETLANDS: The proposed project is situated east of the Black River and west of Lake Michigan on approximately 247 acres of undeveloped land dominated by hardwood forests. The site contains approximately 48 acres of wetlands that includes alder thicket, hardwood swamp, interdunal wetland, Great Lakes ridge and swale complex, and wet meadow wetland.

The project would involve the discharge of dredged and fill material within and direct affects to 3.69 acres of wetlands (7.7% of all wetlands present on the site). The directly affected wetlands include 2.23 acres of floodplain wetland associated with the Black River, 1.36 acres of ridge and swale wetland associated with Lake Michigan, and 0.10 acre of fresh (wet) meadow.

Potential secondary effects have been identified and include indirect wetland impacts from storm water runoff and nutrient loading; forested wetland conversion to herbaceous communities, hydrologic alterations, shading from bridges, and drawdown of water table from wells.

SOURCE OF FILL MATERIAL: Fill material is anticipated to primarily come from on-site materials resulting from site grading. As needed engineered soil material would be obtained from an off-site source identified by the construction contractor.

SURROUNDING LAND USE: The project area is bordered on the north by residential developments, east by Lake Michigan, and to the west and south by the Kohler-Andrae State Park. The property is zoned appropriately for land use as a golf course.

PROJECT ALTERNATIVES: During project planning, the applicant identified and evaluated 17 different on-site design alternatives, including a No Build alternative. The applicant also considered off-site alternatives but was unable to identify any properties with comparable characteristics to meet the overall project purpose.

With consideration to technical, logistical, and economic constraints, the applicant has attempted to design a project that, to the maximum extent practicable, would avoid and/or minimize environmental impacts including limiting tree clearing, preserving natural dunes/contours, and avoiding direct impacts to Lake Michigan near-shore wetlands and interdunal wetlands. The applicant also attempted to avoid and/or minimize impacts to all other aquatic resources, the Kohler-Andrae State Park, plant and animal species, historic properties, and local residents. The applicant has also considered potential secondary effects to wetlands and has incorporated measures such as vegetated buffer strips designed to capture and filter runoff to reduce nutrient loading in wetlands and minimizing and mitigating for wetland conversion.

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490

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Robert D. Zeinemann
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Phone: (206) 232-3074
Facsimile: (206) 232-3076
*ALSO ADMITTED IN WISCONSIN

June 1, 2017

Via Email to wimunicipalboundaryreview@wi.gov and mark.herman@wisconsin.gov

Erich Schmidtke
Municipal Boundary Review
Department of Administration
P.O. Box 1645
Madison, WI 53701

Re: Town of Wilson's Second Submittal for DOA Petition File No. 14018

Dear Erich:

In addition to the Town of Wilson's submittal to DOA on May 18, 2017, please consider this second supplement that responds to the City of Sheboygan.

I. Territory Petitioned for Annexation is Not Contiguous to the City of Sheboygan

1. MBR's Moment of Truth

The review of this annexation petition becomes simple when this fact is considered: The proposed Kohler annexation is likely the largest gerrymandered, balloon-on-a-string annexation submitted to Municipal Boundary Review in decades. I reviewed thousands of annexations over six and one-half years and never saw a more egregiously gerrymandered, balloon-on-a-string annexation. These types of annexations are very seldom submitted to MBR for review, because most petitioners and cities understand that an annexation with this shape and characteristics is against the public interest. The City of Sheboygan and Kohler apparently believe they can make their own rules. This is a moment of truth for Municipal Boundary Review. If MBR cannot muster the courage to find against this annexation, then MBR's annexation review function is broken, and it might as well stop reviewing annexations.

EXHIBIT F

2. Shape of Proposed Annexation Worse than in Controlling Precedent

Town *of Mount Pleasant v. City of Racine*, 24 Wis. 2d 41 (1964) is directly on all fours with the proposed Kohler annexation. Kohler and the City will attempt to argue that it does not apply and will quote phrases from other cases to create the illusion that the proposed annexation is lawfully contiguous—it is not. No other court case is more applicable here than *Town of Mt. Pleasant*.

The shape of the proposed Kohler annexation is more irrational and gerrymandered than the annexation in *Town of Mount Pleasant v. City of Racine*, 24 Wis. 2d 41 (1964). The cases the City cites do not resuscitate the proposed Kohler annexation. The annexed territories in the cases cited by the City have more rational shapes than the proposed Kohler annexation. *Town of Mount Pleasant* is directly on point here, whereas the decisions cited by the City are distinguishable, and often irrelevant as explained in detail below.

In *Town of Mt. Pleasant*, the string of the balloon was 1,705 feet long with a width ranging from 152 feet to 300 feet. That is a length to width ratio of 11.2 at the string's narrowest point, and a ratio of 5.6 at the widest point. In other words, the length of the connecting string in *Town of Mt. Pleasant* ranges from 5.6 to 11.2 times its width. The string of the balloon in the proposed Kohler annexation is about 5,448 feet long with a width ranging from about 190 feet to about 650 feet. That is a length to width ratio of 28.6 at the narrowest point, and a ratio of 8.3 at the widest point. For the proposed Kohler annexation, the length of the connecting string ranges from 8.3 to 28.6 times its width. Therefore, the Kohler property's gerrymandered connection to the City of Sheboygan is substantially more tenuous than the connection to the City of Racine ruled not contiguous in *Town of Mt. Pleasant*. Further, the "balloon" portion of the proposed

Kohler annexation is roughly 5,000 feet by 3,000 feet,[1] and the balloon portion in *Town of Mt. Pleasant* was roughly 2,950 feet by 2,800 feet. Thus, not only is the "string" longer, but the balloon portion of the proposed Kohler annexation is significantly larger than the balloon in *Town of Mt. Pleasant*.

Based on the comparative ratios for the strings, and relative sizes of the balloons, the shape of the proposed Kohler annexation is significantly more irrationally gerrymandered and egregious than the annexation struck down by the Wisconsin Supreme Court in *Town of Mt. Pleasant*, 24 Wis. 2d 41 (1964). If *Town of Mt. Pleasant* represents the threshold of an annexation that is not contiguous and against the intent of Wis. Stat., § 66.0217(3), the shape of the proposed Kohler annexation is well-beyond that threshold for what constitutes an unlawful annexation.

The cases the City cites do not free the proposed Kohler annexation from the controlling precedent of *Town of Mt. Pleasant*. None of those cases contain a balloon-on-a-string with a shape as egregious as the annexation in *Town of Mt. Pleasant*, much less the even more egregious shape of the proposed Kohler annexation.

3. Cases Cited By City Do Not Revive Proposed Annexation

Town of Lyons v. City of Lake Geneva, 56 Wis. 2d 331 (1972), offers no support for the proposed Kohler annexation. The Black's Law Dictionary definition of "contiguity" quoted by the City merely strengthens the Town of Wilson's position that the proposed Kohler annexation is not contiguous. The on-the-ground relationship between the City of Sheboygan boundary and the land containing the people who actually signed the annexation petition is not "in close proximity," not "near," not "adjoining," not "in actual close contact," and not "touching."

---

1 The required map sent to the Town of Wilson by Kohler contained barely legible numbers labeling distances.

Something that *Town of Lyons*, *Town of Mt. Pleasant*, and other annexation cases make clear is that only examining whether or not territory touches municipal limits does not by itself determine if territory is contiguous pursuant to Wis. Stat., § 66.0217(3). Shape, size, land characteristics, homogeneity, and location also matter.

The fact that the territory in *Town of Lyons* was separated from the City of Lake Geneva by a 23-foot wide section of public road does not bear on whether Kohler's balloon-on-a-string annexation, with a meandering mile-long corridor, is contiguous. Crossing standard-width public roads and narrow water bodies does not break contiguity, but arbitrarily meandering a mile to contrive a "string" connection to a "balloon" territory does break contiguity. There is no inconsistency in those two positions. Further, the shape of the annexation in *Town of Lyons* was not at issue, and that annexation was by unanimous consent.

The City's contention that the proposed annexation here is "more like that in the second *Mt. Pleasant* case" is untrue. In that second case, *Mount Pleasant v. City of Racine*, 28 Wis. 2d 519 (1965), the petitioners added a substantial amount of land to the "string" portion of the territory to make it contiguous. In fact, the *Mt. Pleasant II* annexation contained about 20% more land than the first—and most of that land was added to the "string" to create a more substantial connection to the City of Racine. *Id.* at 521. The Court described the changes from the first to the second Mt. Pleasant annexation:

> (1) The area covered by the annexation was increased from 144 to 172 acres. (2) The strip connecting the territory to the city was widened from 186 to 1,023 feet. (3) All of Marlyland avenue was included instead of just one-half. (4) A 424-by-1,059-foot area was added north of Maryland avenue. (5) A 17-foot strip south of Taylor avenue was eliminated by making that avenue the southern boundary for the area. (6) A 22-foot strip east of Meachem road was removed by making that road the eastern boundary. (7) A 292-by-397-foot section lying west of Meachem was added.

Mt. Pleasant II, 28 Wis. 2d at 521 (references to exhibits omitted).

Those changes made the annexation in *Mt. Pleasant II* acceptable by lessening the balloon-on-a-string shape found in the first *Mt. Pleasant* case. The Town of Wilson has shown above that the proposed Kohler annexation is more egregiously gerrymandered than the annexation in the first *Mt. Pleasant* case. Thus, given the boundary changes that improved the annexation's shape from the first to second *Mt. Pleasant* annexation, it is impossible that the proposed Kohler annexation is more like *Mt. Pleasant II* than the *Mt. Pleasant I*. The shape of the proposed Kohler annexation is even **worse** than the annexation struck down in *Mt. Pleasant I*. And that is only the shape. The land characteristics and homogeneity of the territory in the proposed Kohler annexation, e.g., state park lands, forests, wetlands, sand dunes, lands with endangered species, outdoor recreational land, native-American burial sites (see Town's previous submittal), are not urban and have more in common with lands in the Town of Wilson than in the City of Sheboygan. In contrast, in *Mt. Pleasant II*, 132 acres were already platted out of 172 total acres annexed. *Id.* at 528. There is no truth to the City's assertion that the proposed Kohler annexation is more like the annexation upheld *Mt. Pleasant II* than the annexation struck down in *Mt. Pleasant I*.

The City's contention that the proposed Kohler annexation is not a balloon-on-a-string does not correspond with basic reality—anyone who views a map of the proposed annexation will see that it resembles a balloon-on-a-string. Not surprisingly, all of the cases on that issue cited by the City are irrelevant to the proposed Kohler annexation.

Town of Vernon v. Village of Big Bend, is an unpublished decision that is not legal precedent and should be ignored. If Municipal Boundary Review chooses to rely on unpublished cases, the Town proffers *City of La Crosse v. City of Onalaska*, 178 Wis. 2d 314 (Ct. App.

1993). *City of La Crosse* is on point here and uses *Town of Mt. Pleasant* as controlling authority. In *City of La Crosse*, the Wisconsin Court of Appeals struck down the Pralle annexation, which was a 295-acre "gerrymandered shoestring" in the Town of Medary that was "three-quarters mile long and 250 feet wide." Compared to the annexation struck down in *City of La Crosse*, the proposed Kohler annexation is a hyper-gerrymandered behemoth.

The shape of the annexation in *Town of Baraboo v. Village of West Baraboo*, 2005 WI App. 96 (2005), does not resemble the proposed Kohler annexation, which is why the court in *Town of Baraboo* stated that annexation was "not a shoestring or balloon on a stick." The ratio of its length to width was reasonable and the annexed lands were, or about to become, commercially developed along State Highway 12.

The City's reliance on *Town of Medary v. City of La Crosse*, 88 Wis. 2d 101 (1978), is misplaced. The annexation in *Town of Medary* was not a balloon-on-as-string and not located over a mile from city limits and city services. In *Town of Medary*, the shape, characteristics, and location of that annexed territory substantially differ from those of the proposed Kohler annexation. 88 Wis. 2d at 105-107. The annexed territory in *Town of Medary* was sandwiched between the City of La Crosse and the City of Onalaska in an area rapidly transitioning to urban uses near a major shopping center. The annexation in *Town of Medary* was contiguous to La Crosse and directly adjacent to Onalaska—it had homogeneity with the surrounding urban landscapes in those cities. The opposite is true of the territory petitioned by Kohler here. Its characteristics have more homogeneity with the Town of Wilson—the territory belongs in the Town, not the City.

The City relies on the Court of Appeals case *Town of Sugar Creek v. City of Elkhorn*, 231 Wis. 473 (Ct. App. 1999); however, that annexation was not a balloon-on-a-string as is the

proposed Kohler annexation. The court's opinion described the annexation there as having the "normal, customary and usual shape for annexations." *Id.* at 479. As in the *Town of Baraboo* case described above, the annexation in *Town of Sugar Creek* was adjacent to a state highway (STH 12/67), and state highways form the economic base for many small cities, such as Elkhorn. *Id.* at 481-482. No state highways are near the proposed Kohler annexation. Finally, Kohler petitioned for annexation via the one-half approval method and many landowners did not sign the petition, which produced an arbitrarily and irrationally drawn boundary. In contrast, the annexation in *Town of Sugar Creek* was by unanimous consent as the court stated that "all the landowners in the annexed area signed the petition." *Id.* at 475.

4. City Misunderstands Role of Functional Town Island

The City misunderstands the Town's reasons for pointing out that the proposed annexation creates a functional town island. The Town never claimed that a functional town island is unlawful. A functional town island by itself does not render an annexation invalid; however, a functional town island, such as the one created by the proposed Kohler annexation, contributes to a finding that the proposed annexation arbitrarily creates crazy-quilt municipal boundaries that inhibit governmental service delivery. Though functional town islands are lawful, gerrymandered annexations that create crazy-quilt municipal boundaries are not, and dividing the Town would make the boundary quilt even crazier.

II. <u>Town Is Better Able to Serve the Territory</u>

1. Proposed Zoning Does Not Follow City's Comprehensive Plan

The City of Sheboygan's Future Land Use map from its Comprehensive Plan is attached as <u>Exhibit 1</u>. It designates the Kohler property as "public park and open space." Similarly, the Town of Wilson's Comprehensive Plan has it designated as conservation and park lands.

At Kohler's request, the City would bring the territory into the City under a zoning designation of SR-5, including for the state park lands. On May 30th, the City Plan Commission quickly approved zoning the annexation territory as SR-5. The SR-5 zoning allows residential development at five dwelling units per gross acre, with lots as small as 6,000 square feet. That zoning for the territory is not in keeping with the City's Future Land Use Map in its Comprehensive Plan. SR-5 zoning does, no surprise, allow private golf courses as conditional uses. Remarkably, City planning staff's report to City Plan Commission said the SR-5 zoning for the annexation territory is consistent with the City's Comprehensive Plan, which is a blatant falsehood. Further, what backward rationale could the Plan Commission have to zone state park land at 5 units per acre residential? That will, perplexingly, make the existing state park land a nonconforming use. If those are examples of the quality of the "extensive planning and zoning services" the City gets for its $369,000 annual planning budget, the Town surely can better provide planning and zoning services to the petitioned territory. The City's zoning for the territory is solely to give Kohler the opportunity to do whatever it wants irrespective of any standards that are actually appropriate for the subject land.

The Town of Wilson began formal comprehensive planning in 1997, a decade before state law made it mandatory. The Town's Land Use Map shows the same types of future land uses as the City's Future Land Use Plan; with Kohler's land being Park and Open space (green on both the City and Town maps), not yellow for residential. The proposed SR-5 zoning does not conform to either the City's or the Town's Comprehensive Plans.

Also relevant is Map 1-2 Opportunities and Focus Areas in the City Comprehensive Plan, attached as Exhibit 2. The territory proposed for annexation is not shown as a "focus" for City growth and investment. To the contrary, that City planning document labels the subject Kohler

properties as "Kohler Company Forest Preserve State Wildlife Refuge." That is an accurate description of the land, which on Tuesday the City Plan Commission approved for SR-5 zoning.

2. Town Can Better Provide Sanitary Sewer Service to the Territory

The City's submittal to DOA muddies the water on the sanitary sewer situation in the Sheboygan Area. The Sheboygan Regional Wastewater Treatment Facility is not a facility the City can use anyway it wishes, as the City implies in its briefing. The Regional Wastewater Treatment Facility serves the City of Sheboygan, City of Sheboygan Falls, Village of Kohler, Town of Lima, Town of Sheboygan, Town of Sheboygan Falls, and Town of Wilson. The Town of Wilson Sanitary District #1 has served areas within the proposed annexation since 1988. The Town can immediately provide sanitary sewers to the petitioned territory, and is in a better position to do so than the City of Sheboygan. By the City's flawed logic, the entire Village of Kohler and City of Sheboygan Falls should be annexed to the City because sewer pipes serving those municipalities flow through the City to reach the Regional Wastewater Treatment Facility.

3. City States it Needs Housing—Kohler Seeks a Golf Course

The City wrote that the petitioned territory would provide "desperately needed land for additional residential development." However, the largest portion of the land in the proposed annexation is slated to become a golf course, and the next largest portion is an existing state park. The environmentally sensitive land owned by Kohler could support some residential development, but a density of five units per acre under SR-5 is wholly inappropriate to preserve the rare landscapes, such as sand dunes, coastal forests, beaches, and interdunal wetlands, along Lake Michigan that contain documented threatened and endangered species, and documented native-American burial mounds and artifacts. But more to the point, Kohler has no intention of building housing—all plans submitted to the Town of Wilson, Wisconsin Department of Natural

Resources, and Army Corps of Engineers solely show a golf course with no residential component. This is not surprising because there is barely enough room for a "minimalist" golf course, much less residential development. If the City has a "desperate need" to provide housing, it makes no sense to allow this annexation to be driven by a company with no interest in having housing on its property.

4. Extending City Water to the Kohler Property is Impractical

Kohler and the City have no plan to extend City water to the Kohler property. And such an extension of water service may not even be feasible given the isolated location of the Kohler property. But even if it is feasible, it makes no sense economically to extend water over a mile to the Kohler property. Unsurprisingly, the May 31st email from Kohler Company's attorney to DOA offers no concrete statement as to whether City water will be extended to the Kohler property, only that it is Kohler's intention to seek City water "subject to detailed engineering and feasibility analysis." The chair of the Town's Plan Commission, Roger Miller, is a civil engineer, and he believes it is likely not feasible that City water can serve the Kohler property.

Further, it is doubtful that the reason Kohler has not discussed water service with the City is because it is worried about an appearance of undue influence.[2] Kohler and the City have a pre-annexation agreement that obviously required detailed discussion to produce, and Kohler representatives have met with the City Council in closed session. The issue of City water to the Kohler property is a red herring. The Town has already shown that Kohler has represented to federal and state agencies that it intends to use well water for the proposed golf course.

---

2 "Kohler and the City have not discussed the details relating to provision of water service—to avoid assertions of undue influence." Email from Deborah Tomczyk, Kohler Atty to Mark Herman, DOA May 31, 2017.

Sincerely,

/s/ Robert Zeinemann

Robert Zeinemann
TIERNEY & CORREA, P.C.

cc: Mark Herman, DOA Legal Counsel

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490

TOWN OF WILSON
SHEBOYGAN COUNTY, WISCONSIN

RESOLUTION REGARDING THE ANNEXATION OF TERRITORY FROM THE TOWN OF WILSON, SHEBOYGAN COUNTY, WISCONSIN

WHEREAS, the Town of Wilson conducted a joint Town Board and Plan Commission meeting on September 11, 2017, the City of Sheboygan's annexation of territory petitioned by the Kohler Company;

WHEREAS, public comment about this annexation of Town territory was heard by the Town Board and Plan Commission during the September 11, 2017 meeting;

WHEREAS, the Town Board, Plan Commission, and Town staff analyzed and discussed the issue of this annexation of Town territory to the City of Sheboygan;

NOW, THEREFORE, having heard from Town residents and staff, the Town Board of the Town of Wilson, Sheboygan County, Wisconsin does hereby resolve that some of the pertinent facts are as follows:

1. The residents of the Town of Wilson at the September 11, 2017 meeting were overwhelmingly opposed to the City of Sheboygan's annexation of Town territory described in the Kohler Company's petition for annexation.

2. Residents of the Black River area have overwhelmingly expressed that they have no intention or desire of ever annexing into the City of Sheboygan.

3. The natural landscape and character of the Town, including the Black River area, is not urban, and is intentionally less densely developed than territory in the City of Sheboygan.

4. The Town of Wilson, including the Black River area, has a distinct identity and history that arises from its rural and semi-rural natural landscape.

5. The Town of Wilson, including the Black River area, is not urban and is separate and distinct from, rather than homogenous to, the City of Sheboygan.

6. Residents of the Town of Wilson, including the Black River area, overwhelmingly expressed that the Town presently provides all governmental services needed by Town residents and needed for the Kohler Company's proposed country club in the annexed territory.

7. The governmental services provided by the Town of Wilson include fire service, first responders, two sanitary sewer districts, numerous parks, cemeteries,

EXHIBIT J

planning and zoning, constables, building permits and inspection, garbage and recycling disposal, dog licensing, liquor licensing, road construction, road maintenance and snow plowing.

8. The Sheboygan County Sheriff provides more than adequate police service to Town residents and businesses.

Dated this 11th day of September, 2017.

TOWN OF WILSON

By: _____
John Ehmann, Chairman

By: _____
Nancy DesJardins, Supervisor

By: _____
Daniel J. Rostollan, Supervisor

By: _____
Brian Hoffmann, Supervisor

By: _____
Tom Stoelb, Supervisor

Attest:

_____
Georgene Lubach, Town Clerk

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490

Kohler Co. wants Sheboygan to annex proposed golf course site

500 acres in Town of Wilson located along Lake Michigan

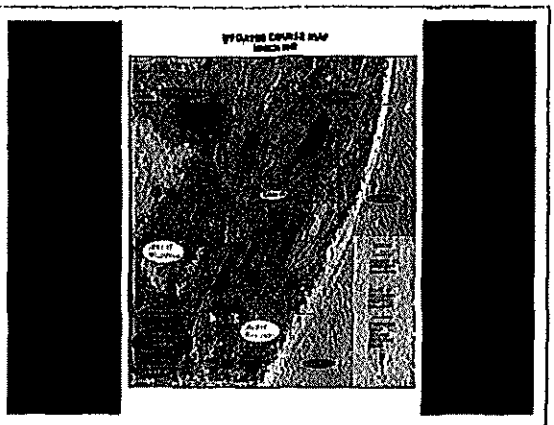
by Corinne Hess | May 01, 2017, 1:23 PM

https://www.bizjtimes.com/2017/industries/arts-entertainment-sports/kohler-co-wants-sheboygan-to-annex-proposed-golf-course-site/

The Kohler Co. (http://www.corporate.kohler.com/) wants 500 acres of land, including the site of a golf course it wants to develop along Lake Michigan, annexed into the city of Sheboygan from the Town of Wilson.

The company published a notice of intent in the Sheboygan Press on Friday, saying the city is more fiscally stable to serve as a host for a "world-class golf destination."

"Our 18-hole, public golf course will be a tremendous economic benefit to the region, creating hundreds of jobs and an annual, multimillion dollar positive economic impact," said Dirk Wills, group director of golf for Kohler Co.'s Hospitality and Real Estate Group in a written statement. "It is in the public's best interest to have the project be located in a financially stable municipality like the City of Sheboygan, which is able to provide on a long-term basis the appropriate level of services to both the project and residents."



Kohler Co. golf course plans. Photo by Army Corps. of Engineers.

Kohler Co. has been planning an 18-hole course since 2015. It will be built on 247 acres of land along Lake Michigan that the company has owned in the Town of Wilson, south of the city of Sheboygan, for 75 years.

The course has been designed by Hall of Fame golf course architect Pete Dye and will join Kohler Co.'s two other courses in Sheboygan County, Whistling Straits (http://www.americanclubresort.com/golf/whistling-straits) and Blackwolf Run (http://www.americanclubresort.com/golf/blackwolf-run).

In March, Kohler Co. submitted permit applications for its proposed golf course to the Wisconsin Department of Natural Resources and the U.S. Army Corps of Engineers. The updated plans reduced the wetland impact from 25 acres to 3.69 acres.

The potential annexation would not have any impact on the ongoing review by the DNR and the Army Corps of Engineers, Kohler Co., Wills said.

"People understand that Kohler Co. has an established track record of good business and environmental stewardship, and we are committed to being a good neighbor following all of the municipal, state and federal regulations that apply," Wills said.

The Sheboygan city administrator Darrell Hofland said Kohler Co. will submit its completed annexation petition by mid-May and it will be on the city's plan commission agenda for discussion May 30.

Kohler Co. has expressed its desire to host at least two informal public meetings on the project and the Common Council has also indicated it would host a public meeting, Hofland said.

The plan commission will likely vote on the matter in June before the full council votes on the rezone request related to the annexation and a development agreement in June or July, Hofland said.

Hofland said the city is appealing to Kohler Co. because it can provide police, fire and water service to the property, which the town cannot. Water mains would need to be extended to the property.

"The city does not actively pursue annexations," Hofland said. "It is at a property owner's request to join a city or village."

The Town of Wilson will discuss the proposal in closed session tonight and likely make a decision in open session, although what that will be is still unknown, said Town Chairman John Ehmann.

Ehmann was cautious to speak without being advised by the town attorney. He said there are still many unanswered questions because the parcel Kohler Co. is seeking to annex does not border the city of Sheboygan.

"They are proposing a path through the town," Ehmann said. "It also looks like they are annexing some state land. This is a very unusual type of annexation they are seeking."

Hofland said in the annexation petition submitted to the Sheboygan Press, there is a connection identified where the township property and the city connect. It is on the city's southeast border near the Riverdale Country Club, he said.

"By state law it must be a connection," he said. "It could be 10 feet (wide) or a half mile, it just has to be a connection."

EXHIBIT C

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490

TIERNEY & CORREA, P.C.
719 Second Avenue
701 Millennium Tower
Seattle, WA 98104

Robert D. Zeinemann
Attorney At Law
Email: zeinemann@tierneylaw.com
Phone: (206) 232-3074
Facsimile: (206) 232-3076
*ALSO ADMITTED IN WISCONSIN

June 7, 2017

Via Email to wimunicipalboundaryreview@wi.gov and mark.herman@wisconsin.gov

Erich Schmidtke
Municipal Boundary Review
Department of Administration
P.O. Box 1645
Madison, WI 53701

Re: Town of Wilson's Third Submittal for DOA Petition File No. 14018

Dear Erich:

This letter and its exhibits provide additional information to assist you in reviewing the proposed Kohler Company annexation to the City of Sheboygan.

Attached as Exhibit 3, is an opinion letter by Municipal Boundary Review, dated October 5, 2009, Petition File No. 13411 (13429), which was a proposed annexation to the Village of Mount Horeb. This letter is posted on Municipal Boundary Review's website as an example, presumably as guidance to the public. That opinion letter states: "this annexation is essentially a "balloon on a string," a form of annexation prohibited by annexation law...." As authority, that letter cites the primary court decision relied on by the Town of Wilson in its briefing, *Town of Mt. Pleasant v. City of Racine,* 24 Wis. 2d 41, 127 N.W.2d 757 (1964). That letter is entirely consistent with how Municipal Boundary Review treats balloon-on-a-string annexations—they are found to be contrary to the public interest.

Attached as Exhibit 4, is a contiguity review conducted by Municipal Boundary Review on June 18, 2015, for an annexation ordinance adopted by the City of Whitehall. The result was that "the Department of Administration finds that this annexation territory is not 'contiguous' to the City of Whitehall." (emphasis original). The Department again cited *Town of Mt. Pleasant*, 24 Wis. 2d 41 (1964) as controlling authority. Regarding the City of Whitehall's annexation, the Department wrote:

> This type of configuration has been referred to by the Wisconsin Supreme Court in Mt. Pleasant v. Racine as a "Balloon-on-a-String configuration which is contrary to annexation law because it fails to constitute appropriate contiguity. It is worth noting that both the "Balloon" and "String" aspects of this annexation are significantly more substantial in terms of size and distance than was the case in *Mt. Pleasant v Racine*...,"

EXHIBIT G

The Town also refers you to DOA Petition File Nos. 13631 and 13648 for further support of the Town's case that the proposed Kohler annexation is against the public interest. The Town is highly confident that if it extensively searched the Department's municipal data system website, made public records requests for documents at DOA and in the state archives, and visited the State Historical Society library (the final resting place for annexation files), the Town would find bountiful and consistent examples of balloon-on-a-string annexations being given against the public interest findings from Municipal Boundary Review.

It would be arbitrary and capricious of MBR to reverse its past practices and precedents with regard to its treatment of proposed annexations that are balloons-on-a-string. Thus, MBR must find the proposed Kohler annexation to be against the public interest.

Another problem with this proposed balloon-on-a-string annexation is that the "balloon" portion of the annexation is far removed from the City. Because Town of Wilson residents surround the Kohler property territory on three sides (Lake Michigan is on the fourth side), the Town government should make the permit decisions because it's the Town residents who are affected, not City residents. Elected representatives of a far-away jurisdiction would make land use decisions that significantly impact more residents in the Town than the City. The City's conditional use (CUP) code provides an example of that dynamic.

Under both the City and Town's land use codes, Kohler would be required to seek a conditional use permit (CUP) to build a golf course. Both CUP codes have similar standards. The City's CUP standards state that it must find that "the proposed Conditional Use will not create major undesirable impacts on nearby properties." Sheboygan Code section 15.905(1)(d). The problem with that language is no City residents are nearby the Kohler property. Of course the City can find no impacts on nearby residents—there are no nearby City residents. Thus, the City officials won't pay a political price for upsetting the nearby Town residents and property owners. This is a reason why Sheboygan is the wrong local government to do the local land use review and permitting. The proposed annexation would create a situation where a more distant government makes decisions with the potential to create large negative impacts on residents who don't reside in the City.

Attached as Exhibit 5, is an exhibit City staff presented to the City Plan Commission in May. It is the SR-4 zoning recommended by the Plan Commission that evening. Compare Town Exhibit 5 to Exhibit 1 submitted to you on June 1st. As evidence that the Town can better provide zoning services, it is worth noting that the City's planning staff ludicrously wrote the following in its materials to the City Plan Commission:

> The proposed Suburban Residential (SR-5) zoning designation that is to be established for the parcels that are to be annexed into the City is consistent with the City of Sheboygan Future Land Use Map in the City of Sheboygan Comprehensive Plan.

Sincerely,

/s/ Robert Zeinemann

Robert Zeinemann
TIERNEY & CORREA, P.C.

cc: Mark Herman, DOA Legal Counsel

WISCONSIN DEPARTMENT OF
ADMINISTRATION

JIM DOYLE
GOVERNOR
MICHAEL MORGAN
SECRETARY

Municipal Boundary Review
PO Box 1645, Madison WI 53701
Voice (608) 264-6102 Fax (608) 264-6104
Email: wimunicipalboundaryreview@wi.gov
Web: http://doa.wi.gov/municipalboundaryreview/

October 5, 2009

PETITION FILE NO. 13411 (13429)

CHERYL SUTTER, CLERK
VILLAGE OF MOUNT HOREB
138 E MAIN ST
MT HOREB, WI 53572-2138

HELEN KAHL, CLERK
TOWN OF BLUE MOUNDS
10566 BLUE VISTA RD
BLUE MOUNDS, WI 53517-9701

Subject: MT. HOREB AREA SCHOOL DISTRICT ANNEXATION

The proposed annexation submitted to our office on September 09, 2009, has been reviewed and found to be contrary to the public interest, as none of the concerns expressed in our previous determination letter have been addressed. To wit:

The subject petition is for territory that is reasonably shaped and technically contiguous to the Village of MOUNT HOREB. However, as filed, this annexation is essentially a "balloon on a string," a form of annexation prohibited by annexation case law:

> Section 66.0217 (6), Wis. Stats., requires the Department to advise the annexing municipality whether or not an annexation petition is in, or against, the public interest considering s. 66.0217 (6) (c), including shape and contiguity of the proposed annexation. In *Incorporation of the Town of Pewaukee,* 186 Wis. 2d 515, 525, the Wisconsin Court of Appeals opined "...that the DOD (now DOA) reviews annexations only in consideration of the objectives recognized by the legislature--to prevent haphazard, unrealistic and competitive expansion of municipalities which disregards the overall public interest." As a "balloon on a string"-type annexation, this petition does not meet the minimum standard for contiguity established by the Wisconsin Supreme Court in *Town of Mt. Pleasant v. City of Racine*, 24 Wis.2d 41, 127 N.W.2d 757 (1964). Balloon-on-a-string type annexations that use road right-of-way or other isolated strips of land for contiguity create bizarre and unworkable municipal boundaries that are difficult to serve and are confusing for area residents, businesses, emergency response personnel, and others.

The Town has reiterated its concern that representatives of the Mount Horeb Schools previously appeared before the Town Board in September of 2005, proposing that the site be used for a school bus garage, a use that the Town Board did not favor, expressing concerns over traffic and other safety issues. The Town Board requested that a traffic study be prepared before agreeing to any rezoning of the parcel, and the study was never submitted. The Town believes these concerns have yet to be addressed. The Village states that this property will likely be used for future school expansion, but that the plan commission has not reviewed any development proposals, and that municipal services may be available within the next 2-10 years. The "balloon on a string," (in this case an approximately 500' long string) configuration of this annexation petition, if adopted as an ordinance, could potentially present future problems for the Village as other parcel owners seek annexation in the future.

Given the configuration of Town and Village parcels in this area, including the CTH JG and USH 18/151 right-of-way at this location, I would recommend that the Village and Town jointly try to resolve the potential policy and service issues, either through a reworked annexation petition and subsequent rezoning, or preferably by an intergovernmental agreement using s. 66.0301 or s. 66.0307, Wis. Stats.

The Department reminds clerks of annexing municipalities of the requirements of s. 66.0217 (9)(a), Wis. Stats., which states:

"The clerk of a city or village which has annexed shall file immediately with the secretary of administration a certified copy of the ordinance, certificate and plat, and shall send one copy to each company that provides any utility service in the area that is annexed. The clerk shall record the ordinance with the register of deeds and file a signed copy of the ordinance with the clerk of any affected school district..."

State and federal aids based on population and equalized value may be significantly affected through failure to file with the Department of Administration. Please file a copy of your annexing ordinance, including a statement certifying the population of the annexed territory. **Please also include the MBR number with your ordinance as this assists with record keeping. Your MBR number is: 13411**

Mail these documents to:

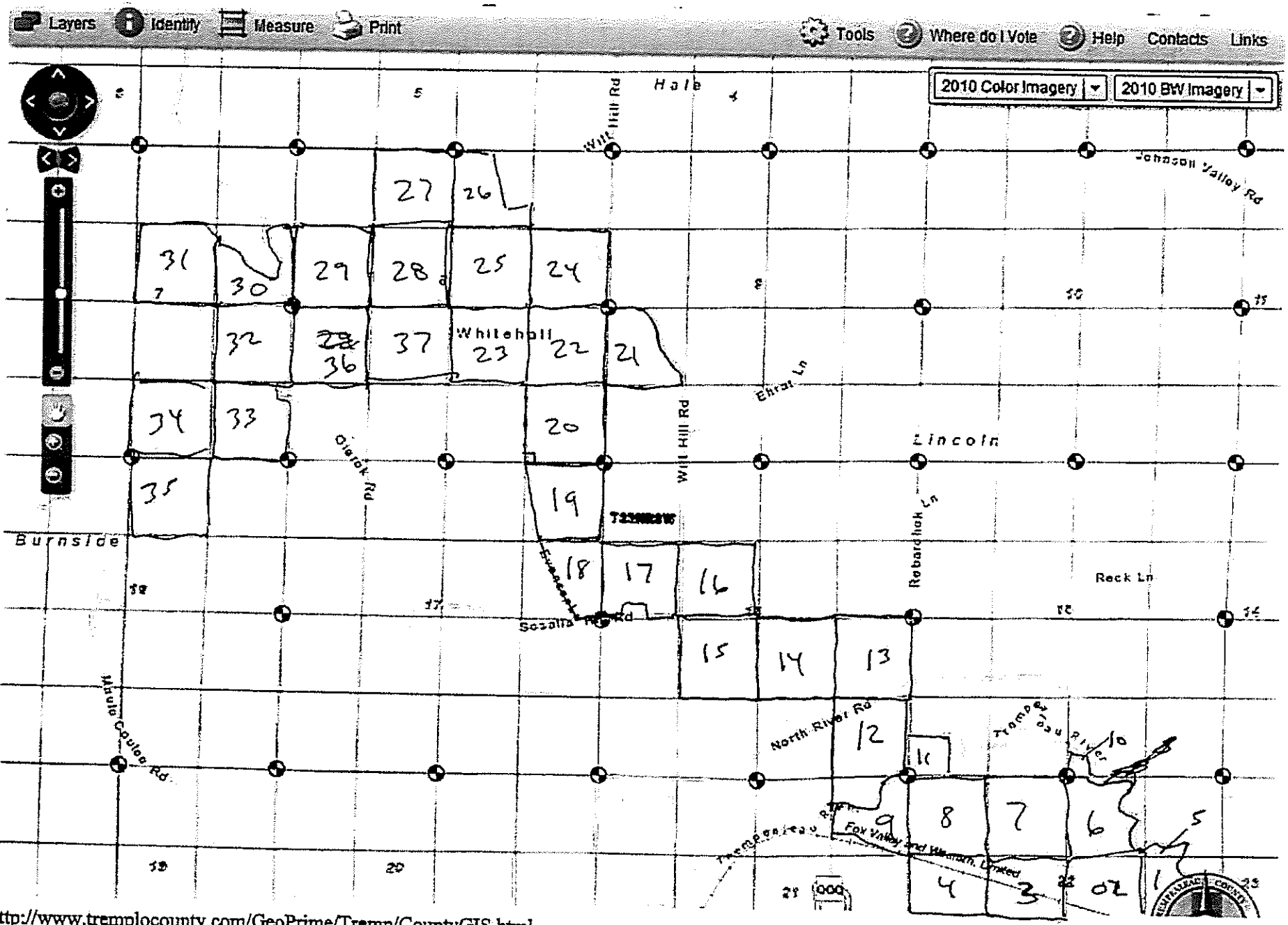
Wisconsin Department of Administration,
Municipal Boundary Review
PO Box 1645
Madison WI 53701-1645

The petition file is available for viewing at: http://mds.wi.gov/View/Petition?ID=192
Please call me at (608) 264-6102, should you have any questions concerning this annexation review.

Sincerely,

Erich Schmidtke, Municipal Boundary Review

cc: petitioner


Layers
Identify
Measure
Print
Tools
Where do I Vote
Help
Contacts
Links
2010 Color Imagery
2010 BW Imagery
Hale
Will Hill Rd
Johnson Valley Rd
Whitehall
Ehrat Ln
Lincoln
Olerok Rd
Burnside
Robardhok Ln
Reck Ln
Minnie Coulee Rd
North River Rd
Trempealeau River
Fox Valley and Western Limited
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WISCONSIN DEPARTMENT OF ADMINISTRATION

SCOTT WALKER
GOVERNOR
SCOTT A. NEITZEL
SECRETARY
Municipal Boundary Review
PO Box 1645, Madison WI 53701
Voice (608) 264-6102 Fax (608) 264-6104
Email: wimunicipalboundaryreview@wi.gov
Web: http://doa.wi.gov/municipalboundaryreview/

June 18, 2015

JACK SPEERSTRA, CHAIRPERSON
TOWN OF LINCOLN
N35677 CTH D
WHITEHALL, WI 54773

Subject: City of Whitehall Annexation Ordinance

On May 29, 2015 the Department received a request per Wis. Stats. s. 66.0217(6)(d) to review an annexation which was adopted by the City of Whitehall for territory from the Town of Lincoln. Based upon the analysis detailed below, the Department of Administration finds that this annexation territory is not "contiguous" to the City of Whitehall.

In determining whether an annexation ordinance complies with s. 66.0217(6)(d), Wis. Stats., the Department considers:

1) Contiguity requirement - the annexation territory must be contiguous to the annexing city or village.

2) Same-County requirement – if no part of the annexing city or village is located within the same county as the annexation territory, then the town board whose territory is being annexed must first adopt a resolution approving the proposed annexation.

The Department finds that the City of Whitehall annexation ordinance meets the same-county requirement but not the contiguity requirement.

The City of Whitehall adopted an annexation ordinance on April 29, 2015 for territory from the Town of Lincoln in Trempealeau County. The City adopted the annexation in four "phases", with a separate ordinance adopted for each phase. Phase 1 lies immediately adjacent to the City's northern boundary, while Phases 2, 3, and 4 extend further and further out into the northwest part of the Town of Lincoln, with Phase 4 lying more than three miles from Whitehall's municipal limits.

The fact that the City chose to annex this territory via four separate ordinances on the same day does not in any way affect the Department's analysis. To limit its administrative inquiry to only certain phases or segments of this annexation would be to put form over substance. Lacking clearer guidance from the judiciary and the Legislature, the Department will examine the annexation in its entirety.

However, we will utilize the City's four phases for purposes of describing the annexation territory and analyzing its overall contiguity. Here then is each of the specific phases comprising this annexation:

- Phase 1 – consisting of over 1000 acres, Phase 1 territory adjoins the City's northern municipal boundary for a distance of approximately 1 mile;

- Phase 2 – consisting of over 1000 acres, Phase 2 territory constitutes a narrow ribbon, varying in width from 370-400 yards, which snakes out into the Town of Lincoln in a northwesterly direction for a distance over 1.5 miles before connecting with Phase 3;

- Phase 3 – consisting of roughly 1500 acres, Phase 3 territory adjoins with Phase 2 at a connection of roughly 380 yards before expanding considerably both east-west and north-south, and

- Phase 4 – consisting of approximately 1200 acres, Phase 4 territory adjoins with Phase 3 along Phase 3's western boundary at a connection distance of ½ mile and then extends to the west and south in an irregular fashion.

Were this annexation limited to the territory in Phase 1, it might be found to be contiguous because of Phase 1's compactness and lengthy connection to the City. However, this annexation also includes additional territory in Phases 2, 3, and 4, and it is with regards to this territory that there exists a contiguity problem. Specifically, Phase 2 constitutes a long and narrow corridor of territory which primarily serves to connect the much larger territory in Phases 3 and 4. This type of configuration has been referred to by the Wisconsin Supreme Court in *Mt. Pleasant v. Racine*[1] as a "Balloon-on-a-String" configuration which is contrary to annexation law because it fails to constitute appropriate contiguity. It is worth noting that both the "Balloon" and "String" aspects of this annexation are significantly more substantial in terms of size and distance than was the case in *Mt. Pleasant v. Racine*, particularly considering the relationship of the annexation to the City of Whitehall's existing primary core area.

Based upon the foregoing it is the finding of the Department of Administration that the territory annexed from the Town of Lincoln is not "contiguous" to the City of Whitehall.
The Department's finding is advisory in nature, and is not binding upon any party. However, the Department's finding does entitle the Town of Lincoln to challenge the annexation in circuit court, pursuant to Wis. Stats. s. 66.0217 (6) (d) 2., should the Town choose to do so.

If the Town of Lincoln does in fact decide to contest this annexation in court, the Department reminds the City of Whitehall of its statutory obligation to file notice of the pending litigation with the Secretary of State's Office, as required by s. 66.0231 Wis. Stats.

The address of the Office of the Secretary of State is:

Annexations and Railroads
Division of Government Records
Office of the Secretary of State
PO Box 7848
Madison WI 53707-7848

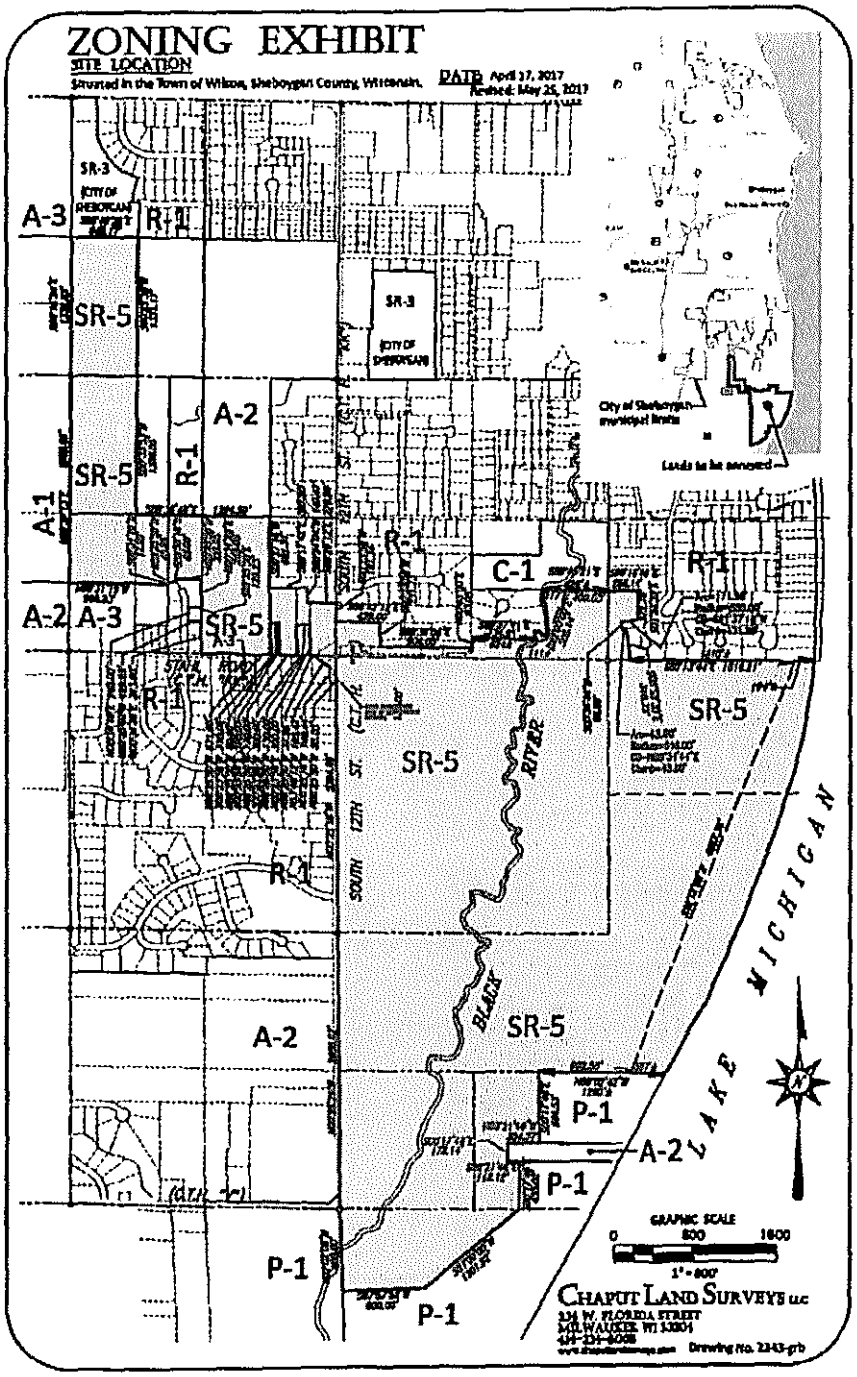
Please call me at (608) 264-6102, should you have any questions concerning the review of these annexation ordinances.

Sincerely,

Erich Schmidtke, Municipal Boundary Review

cc: Ashley Slaby, Clerk, City of Whitehall
Sharon Sosalla, Clerk, Town of Lincoln
Gregory Przybilla

[1] 24 Wis.2d 41, (1963).


ZONING EXHIBIT
SITE LOCATION
Situated in the Town of Wilson, Sheboygan County, Wisconsin.
DATE April 17, 2017
Revised: May 25, 2017
A-3
R-1
SR-3
CITY OF SHEBOYGAN
SR-5
A-2
A-1
C-1
SOUTH 12TH ST.
BLACK RIVER
LAKE MICHIGAN
P-1
GRAPHIC SCALE
0
800
1600
1" = 800'
CHAPUT LAND SURVEYS LLC
324 W. FLORIDA STREET
MILWAUKEE WI 53204
Drawing No. 2343-grb

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490

STATE OF WISCONSIN
CIRCUIT COURT
SHEBOYGAN COUNTY

TOWN OF WILSON,

Plaintiff,

v.

Case No. 2017CV490
Case Code: 30301

CITY OF SHEBOYGAN,

Defendant.

TOWN OF WILSON'S MOTION FOR TEMPORARY INJUNCTION

The Town of Wilson (the "Town"), through its counsel, and pursuant to Section 813.02, Wis. Stats., and the equitable power of this Court, moves for a temporary injunction enjoining the City of Sheboygan (the "City"), and in anyone acting with notice of the injunction and in concert with it, as follows:

1. Taking any action to effectuate or enforce Ordinance No. 6-17-18, attached as **Exhibit A**;

2. This includes, without limitation:

   a. Permitting or authorizing any activity or development on the annexed land, or any other action which is inconsistent with the Town of Wilson's jurisdiction over, and zoning of, the land as it existed prior to the passage of the Ordinance.

   b. Taking any action to effectuate any rezoning of the annexed, including allowing any development on the land consistent with that rezoning;

zoning of, the land as it existed prior to August 7, 2017.

Dated this 18th day of September, 2017.

SORRENTINO BURKERT RISCH LLC

By: _____

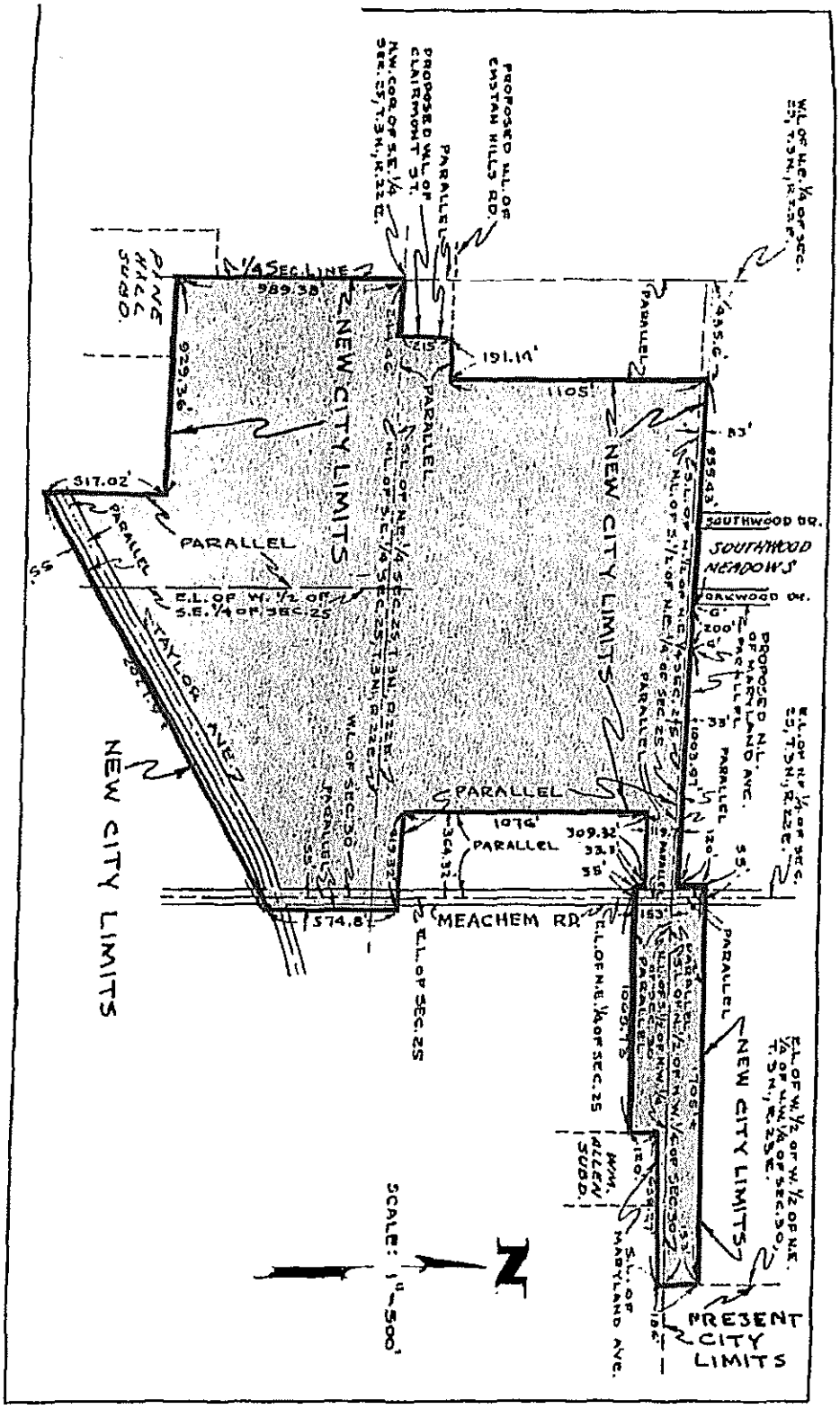
Michael D. Huitink
State Bar No. 1034742
675 N. Barker Road, Suite 300
Brookfield, WI 53045
Phone: (262) 513-3315
Fax: (262) 513-3318
Email: MHuitink@sbrlaw.us

Co-Counsel:
TIERNEY & CORREA, P.C.
Robert Zeinemann
State Bar No. 1042940
Michael Tierney
(pro-hac vice motion to be filed)
719 Second Avenue
Suite 701 Millennium Tower
Seattle, WA 98104
Phone: (206) 232-3074
Fax: (206) 232-3076
Email: Zeinemann@tierneylaw.com

Attorneys for Plaintiff, Town of Wilson

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490

EXHIBIT 1



XI

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490

8.5
2.6

Gen. Ord. No. 6 - 17 - 18. By Alderpersons Bohren and Sorenson.
June 5, 2017.

AN ORDINANCE annexing territory to the City of Sheboygan, Wisconsin.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. **Territory Annexed.** In accordance with sec. 66.0217 of the Wisconsin Statutes and the petition for direct annexation by one-half approval filed with the City Clerk on the 15th day of May, 2017, signed by five qualified electors residing in the territory to be annexed (being a number of such electors consisting of at least the majority of votes cast for governor in the territory at the last gubernatorial election) and signed by the owners of at least one-half of the real property in assessed value within the territory to be annexed, the following described territory in the Town of Wilson, Sheboygan County, Wisconsin, is hereby annexed to the City of Sheboygan, Wisconsin:

Lot 2 in Sherwood Forest Estates, part of Outlot 1 in Certified Survey Map recorded in Volume 21, Pages 102-103 as Document No. 1753833, part of Lot 1 in Certified Survey Map recorded in Volume 8, Page 323, Lots 1, 9, 10, 11 and Outlots 1 and 5 in the Plat of River Trails, Tract 1 in Certified Survey Map recorded in Volume 5, Page 198 and lands all being part of the Northwest 1/4, Southwest 1/4 and Southeast 1/4 of the Southeast 1/4, and part of the Southwest 1/4 of the Northeast 1/4 all in Section 10; part of the Southwest 1/4 and Southeast 1/4 of the Southwest 1/4 and part of Government Lot 4 all in Fractional Section 11; part of the Northeast 1/4 of the Northeast 1/4 of Section 15; all of the Northwest 1/4, Northeast 1/4, Southwest 1/4 and Southeast 1/4 of the Northwest 1/4, all of the Northwest 1/4 and Southwest 1/4 of the Southwest 1/4 and all of Government Lots 1, 2 and 3 and part of Government Lot 4 all in Fractional Section 14; part of Government Lot 1 in Fractional Section 23, all in Town 14 North, Range 23 East, in the Town of Wilson, Sheboygan County, Wisconsin bounded and described as follows:
Beginning at the Southwest corner of the Southwest 1/4 of Section 14, thence North 00°25'21" West along the West line of the Southwest 1/4 aforesaid 2655.02 feet to the West 1/4 corner of said Section; thence North 00°25'18" West 2394.66 feet to a point, said point being South 00°25'18" East 260.50 feet from the Northwest corner of the Northwest 1/4 of Section 14; thence North 88°25'50" West 55.03 feet to a point on the West line of C.T.H. "V" said point being 55.00 feet West of as measured normal to the West line of the Northwest 1/4 of Section 14, thence North 00°25'18" West and parallel to said West line

Lies over to June 19th (2/3 vote)

Held to July 17 CC mtg.

11/17/17 - W+F motion to hold

EXHIBIT A

149.44 feet to a point; thence North 53°49'12" West 195.42 feet to a point on the South line of the Southeast 1/4 of Section 10; thence North 88°25'50" West along said South line 37.99 feet to a point; thence North 00°23'58" East 300.00 feet to a point; thence North 88°25'50" West 130.00 feet to a point; thence South 00°23'58" West 300.00 feet to a point on the South line of the Southeast 1/4 of Section 10; thence North 88°25'50" West along said South line 170.00 feet to a point; thence North 00°23'58" East 310.00 feet to a point; thence North 88°25'50" West 80.00 feet to a point; thence South 00°23'58" West 310.00 feet to a point on the South line of the Southeast 1/4 of Section 10; thence North 88°25'50" West along said South line 671.60 feet to a point on the East line of Sherwood Forest Estates, a recorded plat; thence North 00°34'26" East along said East line 313.00 feet to a point on the South line of Lot 2 in Sherwood Forest Estates; thence North 89°25'50" West along said South line 129.23 feet to a point on the East line of Sherwood Drive; thence North 00°34'10" East along said East line 140.00 feet to a point on the North line of said Lot 2; thence South 89°25'50" East along said North line 129.23 feet to a point on the East line of Sherwood Forest Estates; thence North 00°34'26" East along said East line 268.08 feet to a point on the South line of Outlot 1, Certified Survey Map recorded in Volume 21, Page 102-103 as Document No. 1753833; thence North 89°25'50" West along said South line 222.65 feet to a point; thence South 59°56'10" West along said South line 66.00 feet to a point; thence North 89°25'50" West along said South line 45.96 feet to a point on the West line of Sherwood Forest Estates; thence South 00°34'10" West along said West line 17.99 feet to a point; thence North 88°31'19" West 966.83 feet to a point on the West line of the Southeast 1/4 of Section 10; thence North 00°37'13" East along said West line 1986.69 feet to the center of Section 10; thence North 00°15'24" East along the West line of the Northeast 1/4 of Section 10 a distance of 1332.63 feet to a point on the North line of the Southwest 1/4 of the Northeast 1/4 of Section 10, said point also being the South line of lands described in Warranty Deed recorded as Document Number 1225355, Volume 1181, Pages 918-919 and the Southerly corporate limits of the City of Sheboygan; thence South 88°40'25" East along said line 649.17 feet to a point on the East line of the West 1/2 of the Southwest 1/4 of the Northeast 1/4 of Section 10; thence South 00°23'33" West along said East line 1331.17 feet to a point on the South line of the Southwest 1/4 of the Northeast 1/4 of Section 10; thence South 00°33'53" West along the East line of the West 1/2 of the Northwest 1/4 of the Southeast 1/4 of Section 10 a distance of 1326.55 feet to a point on the North line of the South 1/2 of the Southeast 1/4 of Section 10;

thence South 88°36'49" East along said North line 1294.59 feet to a point on the East line of the West 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 10; thence South 00°27'16" West along said East line 681.51 feet to a point marking the Northwest corner of lands described in Quit Claim Deed Document No. 1052237; thence South 89°17'42" East along the North line of said lands 367.95 feet to the Northeast corner of said lands; thence South 00°24'04" West 140.47 feet to a point marking the Northwest corner of lands described in Quit Claim Deed Document No. 1052238; thence South 88°26'12" East along the North line of said lands 279.99 feet to a point on the East line of the Southeast 1/4 of Section 10; thence South 00°23'58" West along said East line 181.34 feet to a point on the North line of Tract 1 in Certified Survey Map Volume 5, Page 198; thence South 88°42'12" East along said North line 429.00 feet to a point on the East line of said Tract 1; thence South 00°23'58" West along said East line 231.73 feet to a point on the North line of the Plat of River Trail, a recorded plat; thence South 88°39'06" East along said North line 904.00 feet to a point marking the Northeast corner of Lot 9, Plat of River Trail; thence North 00°43'00" East along the West line Plat of River Trail 93.05 feet to a point marking the Southwest corner of Lot 8, Plat of River Trail; thence South 88°37'41" East along said South line and its extension, (said line also being the North line of Lot 1, Plat of River Trail and its extension) 734.81 feet to a meander corner, said point being South 88°37'41" East 111 feet more or less from the thread of Black River; thence North 22°00'00" East along a meander line 508.14 feet to a meander corner on the North line of the South 1/2 of the Southeast 1/4 of the Southwest 1/4 of Section 11, said point being South 88°45'21" East 217 feet more or less from the thread of Black River; thence South 88°45'21" East along said North line 409.00 feet to a point marking the Southwest corner of Lot 19 in Edgewater Beach, a recorded plat; thence South 89°16'46" East along the South line of said Lot 296.14 feet to a point; thence South 01°23'32" East parallel to and 50 feet West of Lot 27 in Timberlake, a recorded plat, 272.76 feet to a point on the North line of Timberlake Road; thence Southwesterly 171.98 feet along said North line and arc of a curve, whose center lies to the North, whose radius is 550.00 feet and whose chord bears South 81°37'16" West 171.28 feet to a point; thence South 00°34'44" West along Timberlake Road 66.00 feet to a point on the South line of said Road; thence Northeasterly 43.00 feet along said South line and arc of a curve, whose center lies to the North, whose radius is 616.00 feet and whose chord bears North 88°34'44" East 43.00 feet to a point on the West line of Lot 26 in Timberlake; thence South 06°58'30" East along the West line

of said Lot 26 and 25 a distance of 310.73 feet to the Southwest corner of said Lot 25; thence South 89°13'44" East along the South line of the Southeast 1/4 a distance of 1616.21 feet to a meander corner, said point being North 89°13'44" West 194 feet more or less from the shore of Lake Michigan; thence South 22°12'00" West along said meander line 4257.36 feet to a meander corner, said point being North 89°02'42" West 357 feet more or less from the shore of Lake Michigan; thence North 89°02'42" West 902.55 feet to a point; thence South 00°17'46" East 684.53 feet to a point on the North line of lands described in Document Number 1964431; thence North 89°21'46" West along said North line 304.57 feet to the Northwest corner of said lands; thence South 00°17'46" East along the West line of said lands 172.14 feet to the Southwest corner of said lands; thence South 89°21'46" East along the South line of said lands 112.12 feet to a point; thence South 00°17'46" East 455.02 feet to a point; thence South 51°00'00" West 1201.92 feet to a point; thence South 87°57'52" West 800.00 feet to a point on the West line on Government Lot 1 in Section 23; thence North 02°02' 08" West along the West line of said Government Lot 800.00 feet to the point of beginning. Including those lands lying between the aforesaid meander line and the thread of Black River. Also including those lands lying between the aforesaid meander line and the shore of Lake Michigan.

Section 2. **Effect of Annexation.** From and after the date of this ordinance, the territory described in Section 1 shall be a part of the City of Sheboygan for any and all purposes provided by law and all persons coming or residing within such territory shall be subject to all ordinances, rules and regulations governing the City of Sheboygan.

Section 3. **Payment to Town of Wilson.** In accordance with sec. 66.0217(14) of the Wisconsin Statutes, the City of Sheboygan agrees to pay annually to the Town of Wilson, for five (5) years, an amount equal to the amount of property taxes that the Town levied on the annexed territory, as shown by the tax roll under sec. 70.65 of the Wisconsin Statutes, in the year in which the annexation is final.

Section 4. **Ward Designation.** The territory described in Section 1 of this ordinance is hereby made a part of the 26th Ward and 8th Aldermanic District of the City of Sheboygan, subject to the ordinances, rules and regulations of the City governing wards.

Section 5. **Severability.** If any provision of this ordinance is invalid or unconstitutional, or if the application of this ordinance to

any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid or unconstitutional provision or application.

Section 6. **Effective Date.** This ordinance shall take effect upon passage and publication as provided by law.

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

FILED
09-19-2017
Sheboygan County
Clerk of Circuit Court
2017CV000490

STATE OF WISCONSIN
CIRCUIT COURT
SHEBOYGAN COUNTY

TOWN OF WILSON,

Plaintiff,

v.

Case No. 2017CV490
Case Code: 30301

CITY OF SHEBOYGAN,

Defendant.

TOWN OF WILSON'S BRIEF IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION

INTRODUCTION

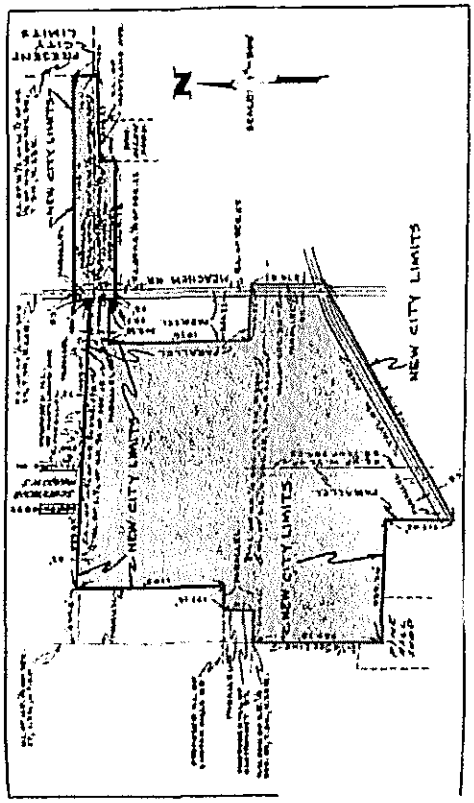
Annexation cases are "textbook" cases for temporary injunctions, and this is such a case. The City of Sheboygan ("Sheboygan") has improperly reached more than a mile beyond its border to annex land in the Town of Wilson (the "Town"). Sheboygan reached deep within the Town's borders to by taking an irregular, "balloon-on-a-string"-shaped annexation, which was contrived solely to "connect" non-contiguous land on which Kohler Co. ("Kohler") wanted to develop a golf course. Sheboygan then immediately rezoned this land to allow Kohler to develop a golf course within Town, circumventing the Town's Board and moving the decision on the golf course to Sheboygan, where Town residents affected by the development have no vote or representation. This development will proceed, and the land will be irreparably altered (without the input or authority of the Town or is residents), unless the Court temporarily enjoins Sheboygan from effectuating the ordinance pending a decision on the annexation's merits.

Under Wisconsin law, annexation cases almost *per se* meet the first three requirements of a preliminary injunction – preserving the *status quo*, avoiding irreparable harm, and the lack of a

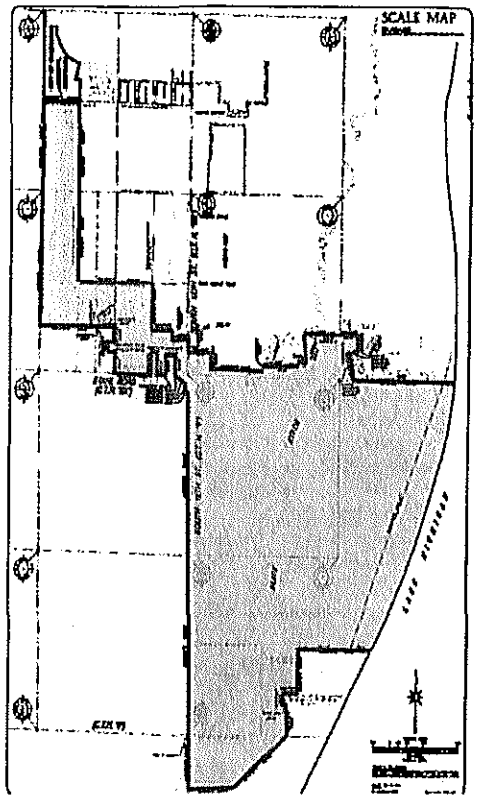
legal (monetary) remedy. There is nothing distinguishing this case from prior cases on these requirements. And, in this case, there is a pre-annexation agreement between Sheboygan and Kohler that creates a virtually-vested contractual for Kohler to develop the land if the city effectuates the ordinance by granting a conditional use permit. Thus, it is "well-nigh an imperative duty of the court" to grant a temporary injunction while it decides whether the annexation was proper in the first place, unless the Town shows no reasonable probability of success on its claim.

Sheboygan's annexation is improper on its face, and the Town has more than a reasonable probability of success of voiding it. An annexation must satisfy all three factors of the so-called "rule of reason" -- (1) it must be contiguous to the city and not irregularly shaped; (2) there must be some reasonable present or demonstrable future need for the annexed property; and (3) no other factors must exist which would constitute an abuse of discretion on the part of the municipality. The Supreme Court's seminal and binding *Mt. Pleasant* decision renders the shape of Sheboygan's annexation invalid on its face -- this type of "balloon-on-a-string" annexation, by which a city takes non-contiguous land (the "balloon") that is "connected" to the city only via a narrow pathway that creates a small border (the "string"), is irrational, non-contiguous and void as a matter of law:

Mt. Pleasant
Rejected "Balloon-on-a-String"



This Case



There is no distinction between these two, virtually-identical "balloon-on-a-string" annexations that would save Sheboygan's attempt to grab this non-contiguous golf course development from the Town.

Sheboygan's annexation also fails the other "rule of reason" requirements. There is no shown "need" for this annexation – since 2014, Kohler has proposed this golf course to the Town, applied for a conditional use permit ("CUP") from the Town, represented the golf course would be served by water infrastructure within the Town, and never raised any concerns about the Town's financial stability or ability to govern this development. To the contrary, as recently as February, 2017, Kohler promised the Town it would complete its CUP to the Town. Kohler's newly-founded "need" for Sheboygan to take over its development is nothing more than an

attempt to circumvent the Town, the Town's citizens, and the Town's ordinances and evaluation of its proposal, in favor of paying Sheboygan to take the land and approve its development.

Sheboygan's annexation also fails the final rule-of-reason requirement, as the facts demonstrate that this annexation is contrived, illegitimate, and an abuse of discretion. Kohler created a "string" to connect its proposed to golf course to Sheboygan by clandestinely purchasing select properties in the Town, renting those properties to its employees or agents, then building the string" around those properties – winding, weaving, and excluding opposition to ensure it controls enough of the "string's" assessed value to force an annexation. And, the facts show an illegitimate "*quid pro quo*" between Sheboygan and Kohler, whereby Kohler subsidizes Sheboygan's future ability to annex Town land by paying for Sheboygan's extension of water systems into the Town, shaping the annexation to create a larger border between the Town and Sheboygan, and paying Sheboygan's attorneys' fees (up to $200,000) to fight any challenges to this annexation. Members of Sheboygan's Common Council have financial and employment ties to Kohler. Not surprisingly, Sheboygan almost immediately approved Kohler's annexation petition and rezoned the land for Kohler's golf course, without any legitimate evaluation of the proposed development.

In sum, Sheboygan's annexation fails the "rule of reason," does not comply with annexation statutes, and improperly circumvents the Town and its citizens. In *Mt. Pleasant*, the Supreme Court warned against these tactics by cities and developers:

> Shoestring or gerrymander annexation is not a rare phenomenon. The tendency of subdividers to reach far out into the countryside for vacant land, and their desire to attach it to the city of services, is natural; however, this can lead to annexations which in reality are no more than isolated areas connected by means of a technical strip a few feet wide. Such a result does not coincide with legislative intent, and tends to create crazy-quilt boundaries which are difficult for both city and town to administer.

Town of Mt. Pleasant v. City of Racine, 24 Wis.2d 41, 48, 171 N.W.2d 757 (1964). And, Kohler itself confirmed the tactic this "balloon-on-a-string" annexation:

> By state law it must be a connection. It could ten feet [wide] or a half mile, it just has to be a connection.

(Business Time Article quoting Dirk Willis, group director of golf for Kohler's Hospitality and Real Estate Group, attached to the Appendix to the Verified Complaint as **Exhibit C**).

In other words, this annexation is a sham. Under established and binding Wisconsin law, the Court should grant the Town's motion for a temporary injunction.

FACTS

The relevant facts are set forth in the Town's Verified Complaint and, for the purposes of brevity, are not repeated here.

ARGUMENT

A court may issue a temporary injunction when the moving party demonstrates four elements: (1) the movant is likely to suffer irreparable harm if a temporary injunction is not issued; (2) the movant has no other adequate remedy at law; (3) a temporary injunction is necessary to preserve the status quo; and (4) the movant has a reasonable probability of success on the merits. *Milwaukee Deputy Sheriffs' Ass'n v. Milwaukee County*, 2016 WI App 56, ¶ 20, 370 Wis.2d 644, 883 N.W.2d 154 (*citing Werner v. A.L. Grootemaat & Sons, Inc.*, 80 Wis.2d 513, 520–21, 259 N.W.2d 310 (1977)). If the first three elements are satisfied, "the complaint states a cause of action, and the motion papers disclose a reasonable probability of plaintiff's ultimate success, it is well-nigh an imperative duty of the court to preserve the *status quo* by temporary injunction." *Shearer v. Congden*, 25 Wis.2d 663, 668, 131 N.W.2d 377, 381 (1964).

The Town's pleadings and motion papers establish every one of these elements, and a temporary injunction should be granted while the Court decides the merits of this case.

I. THE FIRST THREE PREREQUISITES ARE EASILY SATISFIED AND STRONGLY FAVOR A TEMPORARY INJUNCTION.

A temporary injunction is the proper remedy to enjoin enforcement of an annexation ordinance while that ordinance is challenged in litigation:

> ...a trial court in the exercise of its equitable power should not hesitate to preserve the status quo and to restrain the enforcement of the annexation as an incidental remedy in the declaratory judgment action. Such declaration of the status should govern the rights of all parties and the public in relation to the annexation until the final determination on the merits is made. Not only private rights but public rights demand this certainty of status.

Town of Fond du Lac v. City of Fond du Lac, 22 Wis.2d 525, 532, 126 N.W.2d 206 (1964) (emphasis added). This remedy is available to both parties, during trial and on appeal, because preventing either parties' activities on disputedly-annexed land is necessary to preserve the *status quo* until the rights regarding the land are finally determined. *See Town of Mt. Pleasant v. City of Racine*, 28 Wis.2d 519, 137 N.W.2d 656 (1965) (Circuit Court's granting of an injunction pending appeal in an annexation case "was proper in that it was merely preserving the *status quo* as suggested in *Town of Fond du Lac v. City of Fond du Lac.*"); *Town of Fond du Lac*, 22 Wis.2d at 532 (affirming the Circuit Court's temporary injunction restraining enforcement of an annexation ordinance). This flows, in part, from the long-recognized proposition that a town's loss of land is an irreparable injury. *Town of Blooming Grove v. City of Madison*, 275 Wis. 328, 337, 81 N.W.2d 713 (1957) ("[i]njunctive relief may be granted in aid of a declaratory judgment" challenging an annexation, as the "unauthorized dismemberment of the town is an injury to the town's interest. Such injury is of course irreparable").

This case is indistinguishable from the above-cited cases on the issues of *status quo*, adequacy of legal remedy, and irreparable harm. Town of Wilson is seeking to have the annexation ordinance declared invalid and contrary to law. An injunction is necessary to

preserve the *status quo* while this challenge is adjudicated, and to prevent the irreparable harm of the loss and alteration of land within the Town. The Town is unaware of any case law denying injunctive relief on a challenged annexation based on these three elements.

And, lest there is any doubt about the need for an injunction, Sheboygan is moving forward to effectuate the annexation and allow the Kohler development. Sheboygan immediately rezoned the disputedly-annexed land to permit the golf course. On August 17, 2017, Sheboygan's Election Specialist, Sherrill Smith, sent a letter to the Town of Wilson requesting forms and applications for "completing the Annexation Checklist required by the Wisconsin Elections Commission."

Additionally, Kohler has scheduled to commence the clear cutting of coastal forestry that does not comply with the County Shoreland Ordinance. An injunction is the proper remedy to halt these and other activities intended to effectuate the annexation pending the resolution of this lawsuit.

These three factors weigh strongly in favor of a temporary injunction in any annexation case, including this one.

II. THE TOWN HAS A SUFFICIENT LIKELIHOOD OF SUCCESS TO WARRANT AN INJUNCTION TO PRESERVE THE *STATUS QUO.*

Because a temporary injunction will preserve the *status quo* and prevent the irreparable harm, "it is well-nigh an imperative duty of the court" to grant an injunction unless the Town has no reasonable probability of success on the merits. *Shearer*, 25 Wis.2d at 668. The Town has more than enough chance of success to warrant an injunction pending a final resolution of this case, as the City's annexation is an invalid, irregular "balloon-on-a-string" annexation, and because it did not strictly comply with the requirements of the annexation statute.

A. Standards for Review of Annexations.

Annexation procedures in Wisconsin are established by statute. Sheboygan's annexation in this case is a non-unanimous annexation under Wis. Stat. § 66.0217 (3) (2015). With this type of annexation, a city may force an annexation over the objections of some property owners, but only if the annexation is for "contiguous" territory that is supported by a requisite amount of other property owners in the to-be-annexed territory.[1]

Courts must void these types of annexations if they do not strictly comply with the mandatory procedures established by statute. "[S]ubstantial compliance will not save an annexation that is not accomplished in 'strict conformity' with statutory mandates." *Town of Baraboo v. Village of W. Baraboo*, 2005 WI App 96, ¶ 7, 283 Wis. 2d 479, 488, 699 N.W.2d 610, 615 (2005). After an annexation is adopted, a city "cannot correct mistakes" later by "re-enacting correcting ordinances." *Town of Windsor v. Village of Windsor*, 2003 WI App 114, ¶ 15, 265 Wis. 2d 591, 602-03 (2003).

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[1] The statute provides, in part, as follows:

(3) Other methods of annexation. Subject to ss. 66.0301 (6) (d) and 66.0307 (7), and except as provided in sub. (14), territory contiguous to a city or village may be annexed to the city or village in the following ways:

(a) direct annexation by one-half approval. A petition for direct annexation may be filed with the city or village clerk if it has been signed by either of the following

1. A number of qualified electors residing in the territory subject to the proposed annexation equal to at least the majority of votes cast for governor in the territory at the last gubernatorial election, and either of the following:

a. The owners of one-half of the land in area within the territory.

b. The owners of one-half of the real property in assessed value within the territory.

2. If no electors reside in the territory subject to the proposed annexation, by either of the following:

a. The owners of one-half of the land in area within the territory.

b. The owners of one-half of the real property in assessed value within the territory.

Courts must also void these types of actions if they are otherwise arbitrary and capricious or an abuse of the municipality's discretion, notwithstanding procedural compliance. *Town of Menasha v. City of Menasha*, 170 Wis. 2d 181, 189 (Wisc. App. 1992). To evaluate this, courts apply a three-part "rule of reason":

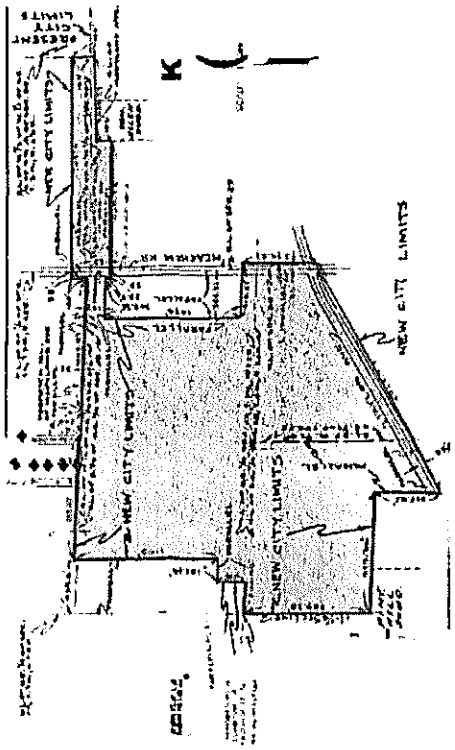
> (1) exclusions and irregularities in boundary lines must not be the result of arbitrariness;
> (2) some reasonable present or demonstrable future need for the annexed property must be shown; and
> (3) no other factors must exist which would constitute an abuse of discretion on the part of the municipality.

Id. at 190. Where the proposed boundaries of an annexation are greatly irregular – for example, shaped as a "balloon-on-a-string" or "gerrymandered" – the shape alone renders the annexation non-contiguous, arbitrary and capricious, an abuse of discretion, and void. *Mt. Pleasant*, 24 Wis.2d at 48; *Town of Menasha* 170 Wis.2d at 197, n. 3; *Town of Baraboo*, 283 Wis.2d at 497-98.

B. This is an improper "Balloon-on-a-String" or "Gerrymandered" Annexation That Fails the Rule of Reason.

1. The Shape of the Annexation Renders It Void.

The seminal case regarding the arbitrariness of "balloon-on-a-string" or "gerrymandered" annexations is *Town of Mt. Pleasant v. City of Racine*. There a private company owned land within the Town of Mt. Pleasant, and which was not contiguous to the City of Racine. *Mt. Pleasant*, 24 Wis.2d at 42-46. At the company's request, the City of Racine attempted to annex Kohler's 145 acres of land via an irregular-shaped parcel, which was "connected" to Racine only by a narrow pathway over 1,700 feet long, and ranging from 152 to 306 feet wide. *Id.* at 43. The Supreme Court embedded this annexation map into its opinion:



Id. (*Mt. Pleasant* annexation map also attached hereto as **Exhibit 1**). It termed this type of annexation a "corridor annexation," "strip annexation," "shoestring," "gerrymander," and "crazy quilt." *Id.* at 46. Subsequent courts, discussing the *Mt. Pleasant* annexation, referred to it as a "balloon on a string," *Town of Waukechon, Shawano County v. City of Shawano*, 53 Wis.2d 593, 597, 193 N.W.2d 661 (1972), or "balloon on a stick." *Town of Baraboo,* 283 Wis.2d at 498.

Whatever the label, the Supreme Court in *Mt. Pleasant* voided the annexation, holding that this shape of annexation violated the first prong of the rule of reason, and was not a "contiguous" annexation under the statute:

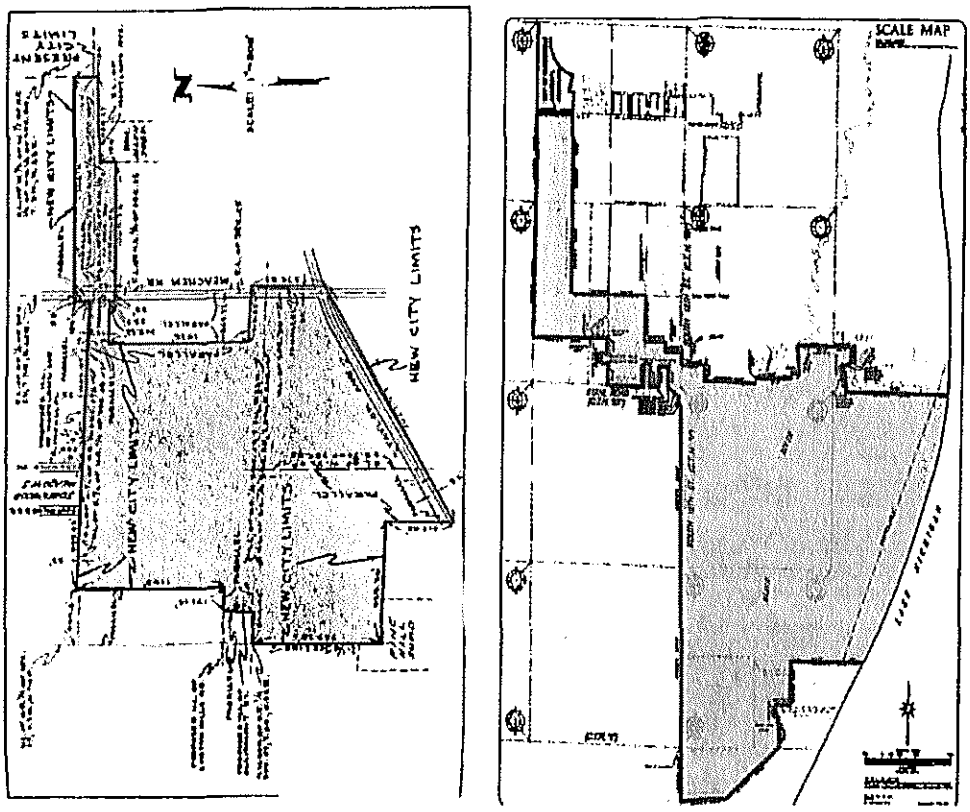
> ...Such a result does not coincide with legislative intent... [A]nd application thereto of the rule of reason... compels us to conclude that the annexation of the area in question does not meet the statutory requirement of contiguity.

Mt. Pleasant, 24 Wis. 2d at 46-47. The Court noted that it was not uncommon for private developers to ask cities to reach into towns in this manner, but that it was improper. *Id.*

Mt. Pleasant has never been overruled, and is the law of this State. Subsequent courts, have further held that an annexation is particularly suspect if its borders have been drawn in an irregular fashion solely for the purpose meeting statutory requirements—for example, when a "string" of land is constructed to include electors in favor of the annexation while excluding neighbors who are opposed, or when the annexation includes properties that do not need municipal services, but are added to the annexation solely to reach the property of the annexation's primary supporter. *See, e.g., City of Beloit v. Towns of Beloit, Turtle & Rock*, 47 Wis. 2d 377, 391, 177 N.W.2d 361, 370 (1970) (holding that an annexation violated the rule of reason and was void; it was "designed solely to assure its success and therefore the annexation is arbitrary and capricious").

There is no material distinction between the annexation in *Mt. Pleasant* and the annexation here. A private party developer—Kohler—petitioned for annexation of land it owns in the Town, on which it wants to develop a golf course. That land is not contiguous with Sheboygan, and is only "connected" to Sheboygan through a "balloon-on-string" configuration that is similar to, but even more extreme than, the *Mt. Pleasant* annexation:

Mt. Pleasant *This Case*



There is no distinction between these two configurations that render Sheboygan's annexation any less arbitrary, capricious, or non-contiguous than the annexation in *Mt. Pleasant*, or remove it from the rule of that case.

To the extent there is any distinction between the two annexations, Sheboygan's is more arbitrary, capricious, and irrational. The *Mt. Pleasant* "string" connected a 145 acre "balloon" to the City of Racine via a relatively straight, albeit narrow, connection; in this case, the "balloon" is larger, and the "string" is just narrow but is longer, is jagged, and avoids other, more straightforward connections to Sheboygan:

	Sheboygan Annexation	Mt. Pleasant Annexation
"Balloon" Size	480 acres (approx.)	145 acres
"String" Length	5,448 feet	1,705 foot
"String" width	As narrow as 190 feet in several locations [See larger maps in appendix]	As narrow as 152 feet in one location

Here, Sheboygan's "string" splits several properties into three parts (city/town/city), and physically divides the northeast portion of the Town, isolating things such as its fire department from the rest of the Town. *Id.* It is irrationally designed solely to make a connection to Sheboygan and support an annexation.

Under the binding *Mt. Pleasant* precedent, this annexation fails the first prong of the rule of reason, and is for that reason alone invalid.

2. The Annexation Does Not Serve a Reasonable Present or Demonstrable Future Need.

The annexed land includes land that has absolutely no need for Sheboygan services, such as previously-developed parcels, fragments of an existing country club, and wetlands that cannot be developed. The Town has had sanitary sewer services available in the annexed territory since 1988, already provides sanitary services to the subdivision immediately north of the "balloon" portion of the annexation, and includes Kohler's territory in the annexation with its Sanitary District #1. The bedrock aquifer in the area allows for both low and high capacity wells in the Town which are sufficient to supply even heavy industry, such as Sigma-Millipore (formerly Aldrich Chemical). And, another golf course, Riverdale Country Club, has operated within the town for over 80 years.

The history of Kohler's proposed golf course itself shows the "needs" are newly-concocted and pretextual. For example, Kohler announced its golf course plans in 2014, applied for a CUP from the Town in 2014, and released plans in 2015 for irrigation and consumptive

water services from wells in the Town. Kohler did not claim a need for Sheboygan's "financial stability" in 2014, 2015, or 2016, or even into 2017, when it was working with the Town on the development. Nor does Sheboygan have a legitimate need for this annexation—this territory was not included in Sheboygan's comprehensive master plan as a target for annexation or development.

The annexation fails the second prong of the rule of reason as well.

3. Other Facts Exist to Demonstrate the Annexation Is Arbitrary and Capricious, and an Abuse of Discretion.

Aside from the annexation's irregular shape and the lack of need for it, there are other facts to show how, and to what extent, this annexation is arbitrary and capricious, and an abuse of discretion. Beyond its simple dimensions, the path of the "string" is, as in the *City of Beloit* annexation, entirely illogical and arbitrary:

- The "string" starts by appropriating two holes of the Riverdale Country Club, whose owners oppose the annexation and did not sign the petition;
- The "string" then proceeds to capture some vacant wetland, and moves further to take portions of additional golf holes from the existing Riverdale Country Club, before hopscotching east over or around several properties;
- Finally, the "string" includes a large portion Kohler-Andrae State Park, before it at last reaches its ultimate goal – the Kohler property on the shore of Lake Michigan.

Beyond what is obvious from the shape (as in *Mt. Pleasant*) and the irrational property inclusion and exclusion (as in *City of Beloit*), Kohler's own statements note the annexation was designed to create a bare minimum connection to Sheboygan to support an annexation: "By state law it must be a connection. It could ten feet [wide] or a half mile, it just has to be a

connection." (Business Time Article quoting Dirk Willis, group director of golf for Kohler's Hospitality and Real Estate Group, attached to the Appendix to the Verified Complaint as **Exhibit C**).

Kohler only managed to comply with the statutory requirements for annexation by gerrymandering the string to include two renters who were placed by Kohler in two Kohler-owned residences for the sole purpose of serving as electors to achieve the annexation. Furthermore, the annexation includes a large portion of state park land which is not represented by either electors and does not add assessed value, but was only included to provide a connection to additional Town land to the west of Sheboygan for additional annexation efforts. This is contrary to the intent of the statute which is to seek adequate representation of the land and the residents affected by the annexation.

This annexation is not even consistent with standards usually imposed by the DOA. For example, the DOA rejected a City of Stevens Point annexation in 2012, stating:

> The proposed annexation submitted to our office on September 26, 2012, has been reviewed and found, in the Department's opinion, to be against the public interest.
> We recognize the City's desire to create a commerce center in this area ***which is consistent with its development strategy*** and would be a benefit for the region....
> In determining whether an annexation is in the public interest, s. 66.0217(6), Wis. Stats. requires the Department to examine "[t]he shape of the proposed annexation and ***the homogeneity of the territory with the annexing village or city*** and any other contiguous village or city..." so as unincorporated land transitions to city or village status, the resulting boundaries are rationale and easy for jurisdictions and residents to follow.
> In this case, the chosen configuration of this annexation leave a 40-acre parcel of land in the Town of Plover which is connected to the rest of the town by a 15' foot strip of town land, over one-quarter of mile in length. The parcel is essentially surrounded by the City of Stevens Point ***creating a functional town island***. It results in boundaries that are difficult for both the City and the Town to administer, for state, federal, and regional jurisdictions to follow, and for local residents and businesses to understand. ***The shape of the annexation cannot be said to be compact or rational in shape or to be homogeneous with the boundaries of the existing City*** and does not coincide with the intent of ch. 66, Wis. Stats.

> Annexations that create these types of municipal boundaries, while seemingly harmless by themselves, result in problematic municipal boundaries that are haphazard, confusing, inefficient to serve, and very difficult to correct.

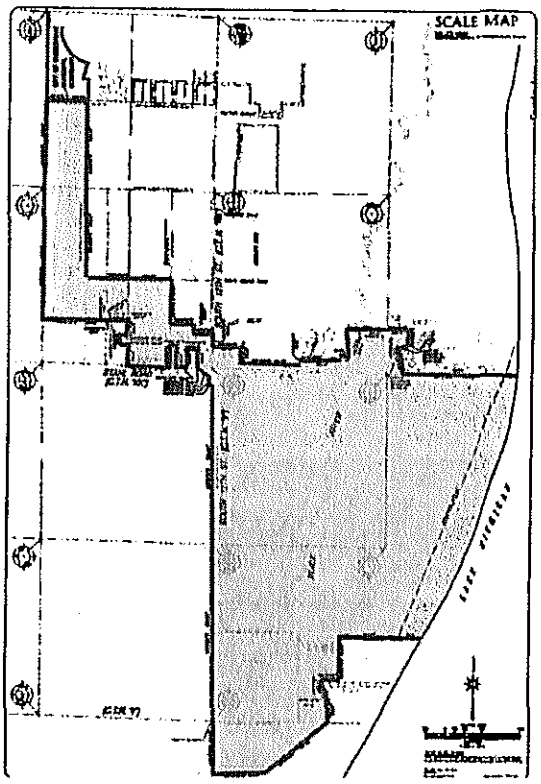
(DOA Decision on Petition File No. 13631, attached to the Appendix to Complaint as **Exhibit D** (emphasis added)). The concerns expressed by the DOA in that matter track the Wisconsin annexation statutes, and each policy issue expressed their weighs against annexation here.

These above-emphasized factors even more warrant a rejection here. This annexation is not consistent with any development strategy—Sheboygan never targeted this annexation land for development in its master development plan. It is not homogenous with Sheboygan or, in particular, the *de minimus* portion of Sheboygan it borders—the annexation is comprised of largely rural land, undeveloped wetland, forests and other natural land. This annexation creates a functional Town island—it separates a portion of the Town, including its Fire Department, from the rest of the Town. This annexation is, as discussed above, not "compact or rational in shape"—it is an improper "balloon-on-a-string" and "gerrymandered" shape that stretches more than a mile to reach its desired, Kohler-owned land proposed for the golf course.

Under the rule of reason, Sheboygan has a reasonable probability of success on the merits, and an injunction is proper.

4. **Conclusion.**

This annexation fails all of the rule of reason factors but, in this case a picture is worth much more than a thousand words:



It is difficult to realistically fathom an annexation more analogous to *Mt. Pleasant* than is this one; in fact, the shape and contents of Sheboygan's annexation is self-evidently more egregious than was the annexation the Supreme Court invalidated in that case. The binding precedent of *Mt. Pleasant* alone provides the Town with more than a reasonable probability of success on the merits to warrant a temporary injunction.

1. Sheboygan Did Not Receive DOA Certification of the Annexation's Population.

The annexation statutes require a city to include in its Petition the DOA's certification of the population in the annexed territory, unless the city presents a federal census count of the population for that territory:

> An annexation petition under this section shall state the purpose of the petition, contain a legal description of the territory proposed to be annexed and have attached a scale map. The petition shall also specify the population of the territory. In this paragraph, "population" means the population of the territory as shown by the last federal census, by any subsequent population estimate certified as acceptable by the department or by an actual count certified as acceptable by the department.

Wis. Stat. § 66.0217(5)(a) (2015).

The Town is unaware of any federal census specific to the annexed territory that was used in the annexation petition, and nor was there any population estimate or actual population count certified by the DOA. This is a failure to strictly comply with the annexation statutes, and renders the annexation void. *See Town of* Windsor, 2003 WI App at ¶ 14 (requiring strict compliance with annexation statutes).

CONCLUSION

Annexations like this should be enjoined until the Court decides the case on the merits. This annexation is substantively and procedurally improper, and the Town has more than a sufficient reasonable probability of success on the merits to warrant a temporary injunction. The Court should grant the Town's Motion for a Temporary Injunction.

Dated this 18th day of September, 2017.

SORRENTINO BURKERT RISCH LLC

By: _____

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Email: Zeinemann@tierneylaw.com

Attorneys for Plaintiff, Town of Wilson

VI

5.7

R. C. No. 283 - 17 - 18. By FINANCE AND PERSONNEL COMMITTEE.
April 4, 2018.

Your Committee to whom was referred R. C. No. 416-16-17 by Finance and R. O. No. 199-16-17 by City Clerk submitting a Complaint and four (4) Summons in the matter of Kurt R. Klessig and Mary A. Heitzmann v Anthony Hamilton, Brandon Kehoe, City of Sheboygan, City of Sheboygan Police Department and Wilson Mutual Insurance Company; recommends referring to Finance and Personnel Committee of the new council.

Finance + Personnel
2018-2019

James A Bolin

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

VII

5.7

R. C. No. 416- 16 - 17. By FINANCE. April 17, 2017.

Your Committee to whom was referred R.O. No. 199-16-17 by City Clerk submitting a Complaint and four (4) Summons in the matter of Kurt R. Klessig and Mary A. Heitzmann v Anthony Hamilton, Brandon Kehoe, City of Sheboygan, City of Sheboygan Police Department and Wilson Mutual Insurance Company; recommends referring to Finance of the new council.

Finance of new Council
2018 Finance + Personnel of new Council

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

II

3.3

R. O. No. 199 - 16 - 17. By CITY CLERK. January 16, 2017.

Submitting a Complaint and four (4) Summons in the matter of Kurt R. Klessig and Mary A. Heitzmann v Anthony Hamilton, Brandon Kehoe, City of Sheboygan, City of Sheboygan Police Department and Wilson Mutual Insurance Company.

Finance

City Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KURT R. KLESSIG
1731 S. 13th Street
Sheboygan, WI 53081

MARY A. HEITZMANN
2206 Sunflower Ave
Sheboygan, WI 53081

PLAINTIFFS,

v.

ANTHONY HAMILTON
City of Sheboygan Police Department
828 Center Avenue
Sheboygan, WI 53081

BRANDON KEHOE
City of Sheboygan Police Department
828 Center Avenue
Sheboygan, WI 53081

CITY OF SHEBOYGAN
828 Center Avenue
Sheboygan, WI 53081

CITY OF SHEBOYGAN POLICE DEPARTMENT
Chief Christopher Domagalski
828 Center Avenue
Sheboygan, WI 53081

WILSON MUTUAL INSURANCE COMPANY
C/O Registered Agent:
Christopher R. Bandt
1425 Memorial Drive
Manitowoc, WI 54220,

XYZ INSURANCE COMPANY

DEFENDANTS.

COMPLAINT

JURISDICTION

1. PLAINTIFFS bring this action pursuant to 42 USC §1983, and as a State law negligence cause of action, as more particularly described herein. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331.

2. Upon information and belief, each Defendant has at all times material hereto been a citizen and resident of the Eastern District of Wisconsin. The Defendants' conduct described below all took place in the Eastern District of Wisconsin. Venue in this action is appropriately in the U. S. District Court for the Eastern District of Wisconsin pursuant to U.S.C. §1391(b) (1) and (2).

PLAINTIFFS PLEAD

3. PLAINTIFF KURT KLESSIG is an adult individual residing at 1731 South 13th Street Sheboygan, WI 53081.

4. MARY HEITZMANN is an adult individual residing at 2206 Sunflower Avenue, Sheboygan, WI 53081.

5. Upon information and belief, ANTHONY HAMILTON is an adult individual and at all times material hereto was an employee of the City of Sheboygan and the City of Sheboygan Police Department, and a resident of the City of Sheboygan, WI.

6. Upon information and belief, BRANDON KEHOE is an is an adult individual and at all times material hereto was an employee of the City of Sheboygan and the City of Sheboygan Police Department, and a resident of the City of Sheboygan, WI.

7. Upon information and belief, the CITY OF SHEBOYGAN is a municipal body organized under and subject to the laws of the State of Wisconsin with its principal place of business located at 828 Center Street, Sheboygan, WI 53081.

8. Upon information and belief, at all times material hereto, the CITY OF SHEBOYGAN POLICE DEPARTMENT is a Department of the City of Sheboygan with its principal place of business located at 828 Center Street, Sheboygan, WI 53081.

9. Upon information and belief, at all times material hereto, WILSON MUTUAL INSURANCE COMPANY (Wilson) is a domestic insurance company doing business at 3330 Stahl Rd in Sheboygan, WI 53081.

10. Upon information and belief, Wilson may have paid worker's compensation benefits to the Plaintiff Kurt Klessig for the injuries caused to him by the Defendants and by reason of such payment Wilson may have a subrogated claim against the Defendants.

11. Upon information and belief, at all times material hereto, the City of Sheboygan and the City of Sheboygan Police Department are charged by the State of Wisconsin, Federal Law and the constitutions of the United States and of the State of Wisconsin with providing security and protection to the citizens and frequenters of the City of Sheboygan and to protect each citizen's constitutional right to life, liberty and the pursuit of happiness under the Due Process clause of the 14th Amendment of the United States Constitution.

12. Upon information and belief, the XYZ INSURANCE COMPANY, (XYZ), is a foreign liability insurance company with its principal place of business located outside of Wisconsin and engaged in substantial, not isolated business in the State of Wisconsin. Prior to July 17, 2016 XYZ issued its policy of liability insurance providing liability insurance to the Defendants for their conduct as alleged herein. Such policy was in full force and effect at all times material hereto. By reason of such policy and the laws of the State of Wisconsin XYZ is a proper party Defendant hereto.

13. Upon information and belief, Plaintiffs are not required to exhaust any administrative remedies as to their claims against the Defendants because substantial Wisconsin and U. S. Constitution questions are involved.

14. Upon information and belief, Plaintiffs are not required to exhaust any administrative remedies as to their claims against the Defendants because any such administrative remedy is inadequate to avoid irreparable harm to the Plaintiffs.

15. Upon information and belief, each of the Plaintiffs have a constitutional right to life liberty and the pursuit of happiness under the Due Process clause of the 14th Amendment of the United States Constitution.

16. Upon information and belief, on or about July 17, 2016 the Plaintiffs were present as innocent bystanders inside the Union Ave Tap, 1401 Union Avenue, Sheboygan, WI at which time an armed, masked robber entered the Union Ave Tap.

17. Upon information and belief, Plaintiff Kurt Klessig dialed 911 and contacted law enforcement authorities in the City of Sheboygan to advise that an armed robbery was in progress at the Union Ave Tap.

18. Upon information and belief, the law enforcement authorities of the City of Sheboygan radioed and advised two of its police officers, Officer Anthony Hamilton and Officer Brandon Kehoe, that an armed robbery was in progress at the Union Ave Tap.

19. Upon information and belief, at all times material hereto, Officers Hamilton and Kehoe were employees of the City of Sheboygan Police Department and were operating under color of law.

20. Upon information and belief, Officers Hamilton and Kehoe drove to the Union Ave Tap and approached the building knowing that an armed robbery was in progress inside the Union Ave Tap.

21. Upon information and belief, as they approached the Union Ave Tap Officers Hamilton and Kehoe were familiar with the interior layout of the Union Ave Tap including the entries and exits on the north side and southeast corner of the premises.

22. Upon information and belief, Officers Hamilton and Kehoe looked into the interior of the Union Ave Tap through a window and saw four individual innocent bystanders inside the bar and where they were located - one individual innocent bystanders seated at the video game machines on along the south wall, the Plaintiffs, located on either side of the bar at the south end of the bar, and one customer at the north end of the bar in a seated position.

23. Upon information and belief, Officers Hamilton and Kehoe observed the 4 innocent bystanders all looking towards the southeast exit from the Union Tap.

24. Upon information and belief, Officers Hamilton and Kehoe knew or should have known that the armed robber was approaching the southeast exit from the Union Tap.

25. Upon information and belief, Officers Hamilton and Kehoe could not see the armed masked robber and assumed that the armed masked robber was near the doorway at the southeast corner of the Union Ave Tap where the innocent bystander inside the Union Ave Tap were looking.

26. Upon information and belief, Officers Hamilton and Kehoe knew from the radio transmissions they received from the City of Sheboygan Police law enforcement authorities and from their observations through the window into the Union Ave Tap that immediate intervention in the armed robbery in progress in the Union Ave Tap was not required.

27. Upon information and belief, Officers Hamilton and Kehoe knew that they could have called for backup and waited, or taken cover and waited, until the armed masked robber exited the Union Ave Tap.

28. Upon information and belief, at no time did Officers Hamilton or Kehoe call for backup before proceeding.

29. Upon information and belief, nothing prevented Officers Hamilton and Kehoe from calling for backup.

30. Upon information and belief, at no time did Officers Hamilton or Kehoe take cover and waited until the armed masked robber exited the premises through the southeast door.

31. Upon information and belief, nothing prevented Officers Hamilton and Kehoe from taking a covered, secured position and waiting to confront the armed masked robber until the armed masked robber had completely exited the Union Ave Tap.

32. Upon information and belief, Officers Hamilton and Kehoe positioned themselves in front of the southeast exit door, expecting the armed robber to exit through that door.

33. Upon information and belief, as Officers Hamilton and Kehoe were so positioned, the armed masked robber opened the southeast door from the inside and began to exit.

34. Upon information and belief, Officers Hamilton and Kehoe then stepped in front of the door, confronted the robber and placed themselves in a direct line of fire at the armed masked robber and towards the innocent bystander Plaintiffs located inside the Union Ave Tap.

35. Upon information and belief, in so positioning themselves, Officers Hamilton and Kehoe knew or should have known that if they were compelled to fire towards the armed masked robber exiting the building through the southeast door, they would be firing directly towards the

innocent bystanders Kurt Klessig and Mary Heitzmann inside the Union Ave Tap.

36. Upon information and belief, Officers Hamilton and Kehoe then discharged their guns towards the robber and towards the innocent bystander Plaintiffs, Kurt Klessig and Mary Heitzmann.

37. Upon information and belief, in so positioning themselves, knowing that their line of fire towards the exiting armed masked robber required them to shoot towards innocent bystanders, the Plaintiffs, Officers Hamilton and Kehoe created an officer-created jeopardy by putting themselves in a position where they had no other option in confronting the armed masked robber other than to shoot towards innocent bystanders, the Plaintiffs Kurt Klessig and Mary Heitzmann.

38. Upon information and belief, such conduct on the part of Officers Hamilton and Kehoe was in violation of the City of Sheboygan Police Department's rules and regulations.

39. Upon information and belief, such conduct on the part of Officers Hamilton and Kehoe was in violation of every industry standard concerning police officers' discharging weapons under the circumstances described.

40. Upon information and belief, such conduct on the part of Officers Hamilton and Kehoe was negligence.

41. Upon information and belief, every reasonable police officer would understand that the conduct of Officers Hamilton and Kehoe in not calling for or waiting for backup, and not waiting for the armed masked robber left the premises and cleared the southeast doorway, and/or positioning themselves immediately outside the southeast exit doorway from Union Ave Tap would require that if they had to confront and shoot at the armed masked robber exiting that door, they would have to shoot directly towards innocent bystanders.

42. Upon information and belief, every reasonable police officer would understand that such conduct described in paragraphs 17-41 above would violate the constitutional rights of Kurt Klessig and Mary Heitzmann to life, liberty and the pursuit of happiness they are entitled to under the Due Process clause of the 14th Amendment of the United States Constitution.

43. Upon information and belief, every reasonable police officer would understand that the conduct of Officers Hamilton and Kehoe described in paragraphs 17-41 above violate clearly-established, non-discretionary law, policies and procedures applicable to them as police officers in the City of Sheboygan.

44. Upon information and belief, the conduct of Officers Hamilton and Kehoe in not calling or waiting for backup, and not waiting until the armed masked robber left the premises and cleared the southeast exit doorway of the Union Ave Tap, and in positioning themselves immediately outside the southeast exit door from the Union Ave Tap such if they had to confront and shoot at the robber exiting the door, they would have to shoot directly towards innocent bystanders, the Plaintiffs, demonstrated reckless and callous indifference to the constitutional rights of Kurt Klessig and Mary Heitzmann to life, liberty and the pursuit of happiness they were entitled to under the due process clause of the 14th Amendment of the US Constitution which shocks the conscience.

45. Upon information and belief, the City of Sheboygan and the City of Sheboygan Police Department failed to provide training to Officers Hamilton and Kehoe which instructed them that under the circumstances described in ¶¶ 17-41 infra. they should call and wait for backup, should wait until the armed masked robber had come out of the Union Ave Tap and cleared the doorway of the southeast exit door of the Union Ave Tap before confronting the robber, and they should not position themselves such that

if they confronted the armed masked robber exiting the Union Ave Tap through the southeast exit doorway and were compelled to shoot at that robber, they would be also be shooting at the innocent bystander Plaintiffs inside the Union Ave Tap.

46. Upon information and belief, such failure by the City of Sheboygan and the City of Sheboygan Police Department to train Officers Hamilton and Kehoe amounts to a deliberate indifference to the rights of innocent bystanders, including Plaintiffs Kurt Klessig and Mary Heitzmann, to life, liberty and the pursuit of happiness guaranteed to them by the due process clause of the 14th Amendment of the US Constitution.

47. Upon information and belief, such conduct described above on the part of each of the Defendants was at all times material hereto done under the color of law and violated the constitutional rights of Kurt Klessig and of Mary Heitzmann to life, liberty and the pursuit of happiness guaranteed to them by the due process clause of the 14th Amendment of the US Constitution.

48. Upon information and belief, such conduct on the part of each of the Defendants described above caused Officers Hamilton and Kehoe to shoot Plaintiff Kurt Klessig, causing him to incur severe, permanent physical and mental injury to Kurt Klessig, causing him to incur expenses in the past and which he reasonably believes he will continue to incur in the future on a permanent basis to treat such injuries, causing him to incur a permanent disability and disfigurement, causing him to incur a loss of earning capacity in the past and which he reasonably believes he will incur in the future on a permanent basis, causing him to incur severe permanent disfigurement, causing him to incur the loss of the ability to enjoy life, in an amount in excess of $75,000.00.

49. Upon information and belief, such conduct on the part of each of the Defendants described above caused Officers Hamilton and Kehoe to shoot towards Plaintiff Mary Heitzmann which caused her to fear for her life and to witness the bloody aftermath of their shooting of Plaintiff Kurt Klessig, which caused Plaintiff Mary Heitzmann severe permanent mental injury, causing her to incur expenses for the treatment of such mental injury in the past and which she reasonably believes she will incur on a permanent basis, causing her to incur a loss of income, and causing her to incur the loss of the ability to enjoy life, in an amount in excess of $75,000.00.

FIRST CAUSE OF ACTION - NEGLIGENCE

50. The allegations, statements and denials set forth in the Paragraphs above are restated and incorporated by referenced herein as more fully set forth.

51. Upon information and belief, such conduct on the part of each of the Defendants was negligence which caused compensatory damages to each of the Plaintiffs, entitling each of the Plaintiffs to judgment for such compensatory damages against each of the Defendants, jointly and severely, together with attorney's fees and taxable costs and disbursements.

SECOND CAUSE OF ACTION - 42 U.S.C. §1983

52. The allegations, statements and denials set forth in the Paragraphs above are restated and incorporated by referenced herein as more fully set forth.

53. Upon information and belief, such conduct on the part of each Defendant was done under color of law and has diminished each Plaintiff's constitutionally-protected right to life, liberty and the pursuit of happiness guaranteed to them by the Due Process clause of the 14th Amendment of the Constitution of the United States, entitling each Plaintiff to

judgment against each Defendant, jointly and severely, for the Plaintiffs' compensatory damages, actual attorney's fees and costs.

WHEREFORE, Plaintiffs demand Judgment:

A. Under the FIRST CAUSE OF ACTION against each Defendant, jointly and severally, on behalf of each Plaintiff for such Plaintiffs' compensatory damages, together with attorney's fees and taxable costs and disbursements;

B. Under the SECOND CAUSE OF ACTION in favor of each Plaintiff against each Defendant, jointly and severally, for each Plaintiff's compensatory damages and actual attorney's fees and costs.

DEMAND IS MADE FOR A TRIAL IN THIS MATTER BY A 12 PERSON JURY.

Dated this 6th day of January, 2017.

ROBERT L. ELLIOTT
Attorney for Plaintiffs

/s/ ROBERT L. ELLIOTT
SBN: 1013862

P.O. ADDRESS:
735 North Water St., #1212
Milwaukee, WI 53202
414-225-9000
rle@attorneyelliott.com

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Wisconsin

Kurt Klessig and Mary Heitzmann

Plaintiff(s)

v.

Civil Action No. 17-CV-31

Anthony Hamilton, et al.

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* City of Sheboygan
828 Center Avenue
Sheboygan, WI 53081

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are: Attorney Robert L. Elliott
735 N. Water Street, Suite 1212
Milwaukee, WI 53202-4105

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JOSEPH [illegible], CLERK OF COURT

Date: 01/10/2017

s/ [illegible], By

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 17-CV-31

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

This summons and the attached complaint for *(name of individual and title, if any):* Kurt Klessig, et al.

were received by me on *(date)*

☐ I personally served the summons and the attached complaint on the individual at *(place):*

_____ on *(date)* _____ ; or

☐ I left the summons and the attached complaint at the individual's residence or usual place of abode with *(name)*

_____, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

☐ I served the summons and the attached complaint on *(name of individual)* _____

who is designated by law to accept service of process on behalf of *(name of organization)*

_____ on *(date)* ; or

☐ I returned the summons unexecuted because ; or

☐ Other *(specify):*

My fees are $ for travel and $ for services, for a total of $ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Wisconsin

Kurt Klessig and Mary Heitzmann

Plaintiff(s)

v.

Civil Action No. 17-CV-31

Anthony Hamilton, et al.

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Anthony Hamilton
City of Sheboygan Police Department
828 Center Avenue
Sheboygan, WI 53081

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are: Attorney Robert L. Elliott
735 N. Water Street, Suite 1212
Milwaukee, WI 53202-4105

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JOSEPH W. SANFILIPPO, CLERK OF COURT

Date: 01/10/2017

s/Toni Bay
Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 17-CV-31

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

This summons and the attached complaint for *(name of individual and title, if any):* Kurt Klessig, et al.

were received by me on *(date)*

☐ I personally served the summons and the attached complaint on the individual at *(place):*

_____ on *(date)* _____ ; or

☐ I left the summons and the attached complaint at the individual's residence or usual place of abode with *(name)*

_____, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

☐ I served the summons and the attached complaint on *(name of individual)* _____

who is designated by law to accept service of process on behalf of *(name of organization)*

_____ on *(date)* ; or

☐ I returned the summons unexecuted because ; or

☐ Other *(specify):* _____

My fees are $ for travel and $ for services, for a total of $ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Wisconsin

Kurt Klessig and Mary Heitzmann

Plaintiff(s)

v.

Civil Action No. 17-CV-31

Anthony Hamilton, et al.

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Brandon Kehoe
City of Sheboygan Police Department
828 Center Avenue
Sheboygan, WI 53081

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are: Attorney Robert L. Elliott
735 N. Water Street, Suite 1212
Milwaukee, WI 53202-4105

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JON W. SANFILIPPO, CLERK OF COURT

Date: 01/10/2017

Signature of Clerk or Deputy Clerk

Civil Action No. 17-CV-31

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

This summons and the attached complaint for *(name of individual and title, if any):* Kurt Klessig, et al.

were received by me on *(date)* _____

☐ I personally served the summons and the attached complaint on the individual at *(place):*

_____ on *(date)* _____; or

☐ I left the summons and the attached complaint at the individual's residence or usual place of abode with *(name)*

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons and the attached complaint on *(name of individual)* _____

who is designated by law to accept service of process on behalf of *(name of organization)*

_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify):* _____

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Wisconsin

Kurt Klessig and Mary Heitzmann	)	
Plaintiff(s)	)	
v.	)	Civil Action No.
Anthony Hamilton, et al.	)	
Defendant(s)	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* City of Sheboygan Police Department
828 Center Avenue
Sheboygan, WI 53081

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are: Attorney Robert L. Elliott
735 N. Water Street, Suite 1212
Milwaukee, WI 53202-4105

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JOSEPH W. SANFILIPPO, CLERK OF COURT

Date: 01/10/2017 s/Tony Byal
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

This summons and the attached complaint for *(name of individual and title, if any):* Kurt Klessig, et al.

were received by me on *(date)*

☐ I personally served the summons and the attached complaint on the individual at *(place):*

_____ on *(date)* _____ ; or

☐ I left the summons and the attached complaint at the individual's residence or usual place of abode with *(name)*

_____, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

☐ I served the summons and the attached complaint on *(name of individual)* _____

who is designated by law to accept service of process on behalf of *(name of organization)*

_____ on *(date)* ; or

☐ I returned the summons unexecuted because ; or

☐ Other *(specify):*

My fees are $ for travel and $ for services, for a total of $ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

II

3.1

R. O. No. 101 - 18 - 19. By CITY CLERK. August 20, 2018.

Submitting a Summons and Complaint in the matter of Wal-Mart Stores, Inc. v. City of Sheboygan.

Finance + Personnel

CITY CLERK

FILED
08-09-2018
Sheboygan County
Clerk of Circuit Court
2018CV000441
Honorable Kent
Hoffmann
Branch 2

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

WAL-MART STORES, INC.,
702 SW 8th Street
Bentonville, Arkansas 72716,

Plaintiff,

v.

CITY OF SHEBOYGAN,
828 Center Avenue, Suite 100
Sheboygan, Wisconsin 53081,

Defendant.

AUG 13 '18 PM 2:47

Case No.: 18-CV-
Case Code: 30301
(Money Judgment: Over $10,000)

Process Server
Date: 8/13/18 Time: 2:27 am/pm
( ) Personal
( ) Posted
( ) Substitute
(X) Corporate

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is 615 North 6th Street, Sheboygan, Wisconsin 53081, and to Gimbel, Reilly, Guerin & Brown LLP, plaintiff's attorney, whose address is 330 East Kilbourn Avenue, Suite 1170, Milwaukee, Wisconsin 53202. You may have an attorney help or represent you.

Process Server _____

Date_____ Time_____ am/pm

( ) Personal ( ) Substitute

( ) Posted ( ) Corporate

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 9th day of August, 2018.

GIMBEL, REILLY, GUERIN & BROWN LLP

By: *Electronically signed by Christopher L. Strohbehn*

CHRISTOPHER L. STROHBEHN
State Bar No. 1041495
cstrohbehn@grgblaw.com
RUSSELL J. KARNES
State Bar. No. 1054982
rkarnes@grgblaw.com
Attorneys for Plaintiff

POST OFFICE ADDRESS:
330 East Kilbourn Avenue, Suite 1170
Milwaukee, Wisconsin 53202
Telephone: 414/271-1440

FILED
08-09-2018
Sheboygan County
Clerk of Circuit Court
2018CV000441
Honorable Kent
Hoffmann
Branch 2

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

WAL-MART STORES, INC.,
702 SW 8th Street
Bentonville, Arkansas 72716,

Plaintiff,

v.

CITY OF SHEBOYGAN,
828 Center Avenue, Suite 100
Sheboygan, Wisconsin 53081,

Defendant.

Case No.: 18-CV-
Case Code: 30301
(Money Judgment: Over $10,000)

COMPLAINT

Plaintiff, Wal-Mart Stores, Inc. (Walmart), by its undersigned counsel, Gimbel, Reilly, Guerin & Brown LLP, for its complaint against defendant, City of Sheboygan (the City), alleges as follows:

Nature of Action and Parties

1. This action is brought under Wis. Stat. §74.37(3)(d), for a declaration by this court that the 2018 value with respect to the parcel of real property in the City known as parcel #59281479120 (the Property), is no more than $6,250,000, and, if necessary, for a refund of the excessive real estate taxes due to be imposed on Walmart by the City for the Property in 2018, plus statutory interest.

2. Walmart is a foreign corporation duly licensed to conduct business in the State of Wisconsin. Walmart is located at 702 SW 8th Street, Bentonville, Arkansas 72716. Walmart is the tenant on the Property and is responsible for the payment of property taxes, as well as for the prosecution of property tax disputes involving the Property.

3. The City is a body politic, duly organized as a municipal corporation under Wisconsin law, with its principal office located at 828 Center Avenue, Suite 100, within the City.

4. The Property is located at 3711 South Taylor Drive, within the City.

Background Facts

5. The 2018 value of the Property was set by the City Assessor's office at $13,265,000.

6. Walmart timely filed an objection to the 2018 assessment of the Property with the City's Board of Review (BOR) pursuant to Wis. Stat. §70.47. The Board granted a Waiver of Board of Review Hearing (Waiver) in accordance with the provisions of Wis. Stat. §70.37(3). See attached Exhibit A.

7. Based on the BOR's Waiver determination, Wis. Stat. §70.37(3)(d) requires Walmart to commence an action within sixty days of its receipt of the Waiver. In this case, notice was provided to Walmart's agent-in-fact, Paradigm Tax Group, on June 12, 2018.

8. Walmart timely brings this action and seeks review of the assessment as set forth below.

First Claim for Relief – Excessive Tax Assessment

9. The allegations of paragraphs 1-8 are incorporated as if fully re-alleged herein.

10. The value of the Property as of January 1, 2018 was no higher than $6,250,000.

11. The 2018 assessment of the Property was excessive. As a result, the tax imposed on the Property for 2018 was excessive.

12. Walmart is entitled to a refund of 2018 taxes paid as may be determined to be due to Walmart, plus statutory interest.

Second Claim for Relief – Non-Uniform Tax Assessment

13. The allegations of paragraphs 1-12 are incorporated as if fully re-alleged herein.

14. The value of the Property as of January 1, 2018 was no higher than $6,250,000.

15. Upon information and belief, the 2018 assessment was not uniform with the assessment of other properties in the City and State and therefore, violates the Uniformity Clause of the Wisconsin Constitution.

16. Walmart is entitled to a refund of 2018 taxes paid as may be determined to be due to Walmart, plus statutory interest.

Third Claim for Relief – Declaratory Judgment

17. The allegations of paragraphs 1-16 are incorporated as if fully re-alleged herein.

18. As alleged above, the City's BOR delegated its authority to determine the 2018 value of the Property to this Court for its determination.

19. An actual and justiciable controversy exists as to Walmart right to a reduction in the 2018 value of the Property as set forth in Wis. Stat. §70.47.

20. Walmart seeks a declaratory judgment construing Wis. Stat. §70.47 to mandate a reduction in the 2018 value of the Property from $13,265,000 to $6,250,000, in accordance with Wisconsin statutory and case law as well as generally accepted appraisal principles.

21. If the Court rules that a hearing is mandated, Walmart seeks an order scheduling an evidentiary hearing from which this Court may make an administrative determination of the value of the Property.

WHEREFORE, plaintiff Walmart seeks the following relief:

A. A determination that the value of the Property as of January 1, 2018 was no higher than $6,250,000 and Walmart is entitled to a refund of all taxes paid on the portion of the tax assessment that was excessive.

B. An award of all litigation costs incurred by Walmart in this action, including the reasonable fees of its attorneys; and

C. Any such other and further relief as the Court deems appropriate and just.

Dated this 9th day of August, 2018.

GIMBEL, REILLY, GUERIN & BROWN LLP

By: *Electronically signed by Christopher L. Strohbehn*

CHRISTOPHER L. STROHBEHN
State Bar No. 1041495
cstrohbehn@grgblaw.com
RUSSELL J. KARNES
State Bar No. 1054982
rkarnes@grgblaw.com
Attorneys for Plaintiff

POST OFFICE ADDRESS:
330 East Kilbourn Avenue, Suite 1170
Milwaukee, Wisconsin 53202
Telephone: 414/271-1440
tc/Walmart/Walmart-Sheboygan-City/p-2018/complaint2018-08-09

Request for Waiver of Board of Review (BOR) Hearing

Section 70.47 (8m), Wis. Stats., states, "The board may, at the request of the taxpayer or assessor, or at its own discretion, waive the hearing of an objection under sub. (8) or, in a 1st class city, under sub. (16) and allow the taxpayer to have the taxpayer's assessment reviewed under sub. (13). For purposes of this subsection, the board shall submit the notice of decision under sub. (12) using the amount of the taxpayer's assessment as the finalized amount. For purposes of this subsection, if the board waives the hearing, the waiver disallows the taxpayer's claim on excessive assessment under sec. 74.37(3) and notwithstanding the time period under sec. 74.37(3)(d), the taxpayer has 60 days from the notice of hearing waiver in which to commence an action under sec. 74.37(3)(d)."

NOTE: The legal requirements of the Notice of Intent to Appear must be satisfied and the Objection Form must be completed and submitted as required by law prior to the Request for Waiver of Board of Review Hearing being submitted.

NOTE: Request for Waiver must be presented prior to the commencement of the hearing.

Municipality		County	
City of Sheboygan		Sheboygan	
Requestor's name		Agent name (if applicable)*	
Wal-Mart Stores Inc		Brendan Douylliez/Robert Hill	
Requestor's mailing address P.O. Box 8050 Bentonville, AR 72712		Agent's mailing address Paradigm Tax Group 30 N LaSalle St. #3520 Chicago, IL 60602	
Requestor's telephone number (479) 204 - 3835	☒ Land Line ☐ Cell Phone	Agent's telephone number (312) 252 - 0322	☒ Land Line ☐ Cell Phone
Requestor's email address brandon.caplena@walmart.com		Agent's email address bdouylliez@paradigmtax.com	

Property address 3711 S Taylor Dr. Sheboygan, WI 53081	
Legal description or parcel number 59281479120	
Taxpayer's assessment as established by assessor – Value as determined due to waiving of BOR hearing $ 13,265,000	
Property owner's opinion of value $ 6,250,000	
Basis for request Pending Matters in Circuit Court for 2017	
Date Notice of Intent to Appear (NOI) was given 06 - 04 - 2018	Date Objection Form was completed and submitted 06 - 04 - 2018

All parties to the hearing understand that in granting of this waiver there can be no appeal to the Department of Revenue under sec. 70.85, Wis. Stats. An action under sec. 70.47(13), Wis. Stats., must be commenced within 90 days of the receipt of the notice of the waiving of the hearing. An action under sec. 74.37(3)(d), Wis. Stats., must be commenced with 60 days of the receipt of the notice of the waiving of the hearing.

Requestor's / Agent's Signature

***If agent, attach signed Agent Authorization Form, PA-105**

Decision

☑ Approved ☐ Denied

Reason City of Sheboygan Board of Review voted unanimously to approve the Request for Waiver of BOR hearing at their June 12, 2018 meeting.

Board of Review Chairperson's Signature

MD
City Clerk

6/12/18
Date

☐ Taxpayer advised _____
Date

PA-613-R (R-10-18) Wisconsin Department of Revenue

EXHIBIT A

STATE OF WISCONSIN	CIRCUIT COURT	SHEBOYGAN COUNTY

Wal-Mart Stores, Inc. vs. City of Sheboygan

Electronic Filing Notice

Case No. 2018CV000441
Class Code: Money Judgment

FILED
08-09-2018
Sheboygan County
Clerk of Circuit Court
2018CV000441
Honorable Kent
Hoffmann
Branch 2

CITY OF SHEBOYGAN
828 CENTER AVENUE, SUITE 100
SHEBOYGAN WI 53081

Case number 2018CV000441 was electronically filed with/converted by the Sheboygan County Clerk of Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at **http://efiling.wicourts.gov/** and may withdraw as an electronic party at any time. There is a $ 20.00 fee to register as an electronic party.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: 8389de

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 920-459-3068.

BY THE COURT:

Electronically signed by Melody Lorge
Clerk of Circuit Court

08-09-2018
Date

VI

5.11

R. C. No. 286 - 17 - 18. By FINANCE AND PERSONNEL COMMITTEE.
April 4, 2018.

Your Committee to whom was referred R. O. No. 242-17-18 by City Clerk submitting a Summons and Complaint in the matter of Wal-mart Stores, Inc. vs the City of Sheboygan; recommends referring to Finance and Personnel Committee of the new council.

Finance + Personnel
2018 2019

James A Bohn

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

II

3.5

R. O. No. 242 - 17 - 18. By CITY CLERK. December 4, 2017.

Submitting a Summons and Complaint in the matter of Wal-mart Stores, Inc. vs the City of Sheboygan.

Finance + Personnel.
Finance + Personnel
& new Council

CITY CLERK

FILED
11-22-2017
Sheboygan County
Clerk of Circuit Court
2017CV000616
Honorable Kent
Hollister
Branch 2

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

WAL-MART STORES, INC.
702 SW 8TH STREET
BENTONVILLE, ARKANSAS 72716,

Plaintiff,

v.

CITY OF SHEBOYGAN
828 CENTER AVENUE
SHEBOYGAN, WI 53081,

Defendant.

Case No.:
Case Code: 30301
(Money Judgment: Over $10,000)

Process Server
Date 11/30/17 Time 11:0 A.M. - P.M.
Served Upon Susan Richards
828 Center Ave, Sheboygan
( )Personal ( ) Substitute
( )Posted (X) Corporate

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose

address is 615 N. Sixth Street, Sheboygan, Wisconsin 53081-4612, and to Gimbel, Reilly, Guerin & Brown LLP, plaintiff's attorney, whose address is 330 East Kilbourn Avenue, Suite 1170, Milwaukee, Wisconsin 53202. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 22nd day November, 2017.

GIMBEL, REILLY, GUERIN & BROWN LLP

By:
Electronically signed by Russell J. Karnes
CHRISTOPHER L. STROHBEHN
State Bar No. 1041495
cstrohbehn@grgblaw.com
RUSSELL J. KARNES
State Bar No. 1054982
rkarnes@grgblaw.com
Attorneys for Plaintiff

POST OFFICE ADDRESS:

330 East Kilbourn Avenue, Suite 1170
Milwaukee, Wisconsin 53202
Telephone: 414/271-1440

NATIONAL TRIAL COUNSEL
Robert A. Hill (Minn. Lic. #217165)
ROBERT HILL LAW, LTD
1339 County Road D East
Maplewood, MN 55109
(952) 426-7373 – Phone
bob@roberthilllaw.com

civil/Walmart – City of Sheboygan/P//2017/Summons

FILED
11-22-2017
Sheboygan County
Clerk of Circuit Court
2017CV000616
Honorable Kent
Hoffman
Branch 2

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

WAL-MART STORES, INC.
702 SW 8th STREET
BENTONVILLE, AR 72716,

Plaintiff,

v.

CITY OF SHEBOYGAN
828 CENTER AVENUE
SHEBOYGAN, WI 53081,

Defendant.

Case No.:
Case Code: 30301
(Money Judgment: Over $10,000)

COMPLAINT

Plaintiff Wal-Mart Stores, Inc. ("Walmart"), by its undersigned counsel, Christopher L. Strohbehn and Russell J. Karnes, Gimbel, Reilly, Guerin & Brown LLP, and Robert A. Hill and Robert Hill Law, Ltd., for its complaint against Defendant City of Sheboygan ("the City"), alleges as follows:

Nature of Action and Parties

1. This action is brought under WIS. STAT. §74.37(3)(d), for a declaration by this court that the 2017 fair market value with respect to the parcel of real property in the City known as parcel # 59281479120 ("the Property"), is no more than $9,689,490, and, if

necessary, for a refund of the excessive real estate taxes due to be imposed on Walmart by the City for the Property in 2017, plus statutory interest.

2. Walmart is a foreign corporation duly licensed to conduct business in the State of Wisconsin. Walmart is located at 702 SW 8th Street, Bentonville, Arkansas 72716. Walmart is the tenant on the Property and is responsible for the payment of property taxes, as well as for the prosecution of property tax disputes involving the Property.

3. The City is a body politic, duly organized as a municipal corporation under Wisconsin law, with its principal office located at 828 Center Avenue within the City.

4. The Property is located at 3711 S Taylor Drive within the City.

Background Facts

5. The 2017 Total Estimated Fair Market Value ("EFMV") of the property was set by the City Assessor's office at $13,265,000.

6. Walmart timely filed an objection to the 2017 assessment of the Property with the City's Board of Review ("BOR") pursuant to WIS. STAT. §70.47. The Board granted a Waiver of Board of Review Hearing ("Waiver") in accordance with the provisions of WIS. STAT. §70.37(3). See attached Exhibit "A".

7. Based on the BOR's Waiver determination, WIS. STAT. §70.37(3)(d) requires Walmart to commence an action within sixty days of its receipt of the Waiver. In this case, notice was received by Walmart's agent-in-fact, Paradigm Tax Group, on September 28, 2017.

First Claim for Relief – Excessive Tax Assessment

8. The allegations of paragraphs 1-7 are incorporated as if fully re-alleged herein.

9. The fair market value of the Property as of January 1, 2017 was no higher than $9,689,490.

10. The 2017 assessment of the Property was excessive. As a result, the tax imposed on the Property for 2017 was excessive.

11. Upon information and belief, the 2017 assessment was not uniform with the assessment of other properties in the City and State and therefore, violates the Uniformity Clause of the Wisconsin Constitution.

12. Walmart is entitled to a refund of 2017 as may be determined to be due to Walmart, plus statutory interest.

Second Claim for Relief – Declaratory Judgment

13. The allegations of paragraphs 1-12 are incorporated as if fully re-alleged herein.

14. As alleged above, the City's BOR delegated its authority to determine the 2017 EFMV for the Property to this court for its determination.

15. An actual and justiciable controversy exists as to Walmart's right to a reduction in its 2017 EFMV as set forth in WIS. STAT. §70.47.

16. Walmart seeks a declaratory judgment construing WIS. STAT. §70.47 to mandate a reduction in its 2017 EFMV for the Property from $13,265,000 to $9,689,490, in

accordance with Wisconsin statutory and case law as well as generally accepted appraisal principles.

17. If the Court rules that a hearing is mandated, Walmart seeks an order scheduling an evidentiary hearing from which this court may make an administrative determination of the EFMV for the Property.

WHEREFORE, plaintiff Walmart, seeks the following relief:

A. A determination that the total estimated fair market value of the Property as of January 1, 2017 was no higher than $9,689,490.

B. An award of all litigation costs incurred by Walmart in this action, including the reasonable fees of its attorneys; and

C. Any such other and further relief as the Court deems appropriate and just.

Dated this 22nd day November, 2017.

GIMBEL, REILLY, GUERIN & BROWN LLP

By:
Electronically signed by Russell J. Karnes
CHRISTOPHER L. STROHBEHN
State Bar No. 1041495
cstrohbehn@grgblaw.com
RUSSELL J. KARNES
State Bar No. 1054982
rkarnes@grgblaw.com
Attorneys for Plaintiff

POST OFFICE ADDRESS:

330 East Kilbourn Avenue
Suite 1170
Milwaukee, Wisconsin 53202
Telephone: 414/271-1440

DOCUMENT DRAFTED BY
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Wayzata, MN 55391
(952) 426-7373 – Phone
bob@roberthilllaw.com

civil/Walmart – City of Sheboygan/P//2017/Complaint

Request for Waiver of Board of Review (BOR) Hearing

Section 70.47 (8m), Wis. Stats., states, "The board may, at the request of the taxpayer or assessor, or at its own discretion, waive the hearing of an objection under sub. (8) or, in a 1st class city, under sub. (16) and allow the taxpayer to have the taxpayer's assessment reviewed under sub. (13). For purposes of this subsection, the board shall submit the notice of decision under sub. (12) using the amount of the taxpayer's assessment as the finalized amount. For purposes of this subsection, if the board waives the hearing, the waiver disallows the taxpayer's claim on excessive assessment under sec. 74.37(3) and notwithstanding the time period under sec. 74.37(3)(d), the taxpayer has 60 days from the notice of hearing waiver in which to commence an action under sec. 74.37(3)(d)."

NOTE: The legal requirements of the Notice of Intent to Appear must be satisfied and the Objection Form must be completed and submitted as required by law prior to the Request for Waiver of Board of Review Hearing being submitted.

NOTE: Request for Waiver must be presented prior to the commencement of the hearing.

Municipality		County	
City of Sheboygan		Sheboygan	
Requestor's name		Agent name (if applicable)*	
Wal-Mart Stores Inc.		Brendan Douyilliez/Robert Hill	
Requestor's mailing address		Agent's mailing address	
P.O. Box 8050 Bentonville, AR 72712		Paradigm Tax Group 30 N. LaSalle #3520 Chicago, IL 60602	
Requestor's telephone number	☒ Land Line ☐ Cell Phone	Agent's telephone number	☒ Land Line ☐ Cell Phone
(479) 204 - 3835		(312) 252 - 0322	
Requestor's email address		Agent's email address	
brandon.caplena@walmart.com		bdouyilliez@paradigmtax.com	

Property address	
3711 S. Taylor Dr. Sheboygan, WI 53081	
Legal description or parcel number	
59281479120	
Taxpayer's assessment as established by assessor – Value as determined due to waiving of BOR hearing	
$ 13,265,000	
Property owner's opinion of value	
$ 9,689,490	
Basis for request	
Take matters directly to Circuit Court	
Date Notice of Intent to Appear at BOR was given	Date Objection Form was completed and submitted
6-13-17	6-13-17

All parties to the hearing understand that in granting of this waiver there can be no appeal to the Department of Revenue under sec. 70.85, Wis. Stats. An action under sec. 70.47(13), Wis. Stats., must be commenced within 90 days of the receipt of the notice of the waiving of the hearing. An action under sec. 74.37(3)(d), Wis. Stats., must be commenced with 60 days of the receipt of the notice of the waiving of the hearing.

Requestor's / Agent's Signature

***If agent, attach signed Agent Authorization Form, PA-105**

Decision

☑ Approved ☐ Denied

Reason City of Sheboygan Board of Review voted unanimously to approve the Request for Waiver of BOR hearing at their June 21, 2017 meeting.

Kenneth King
Board of Review Chairperson's Signature

-for- Lucy Richards
Secretary

6/21/17
Date

☑ Taxpayer advised 9/28/17
Date

PA-813 (R. 10-16)

EXHIBIT A

Wisconsin Department of Revenue

STATE OF WISCONSIN	CIRCUIT COURT	SHEBOYGAN COUNTY

Wal-Mart Stores, Inc. vs. City of Sheboygan

Electronic Filing Notice

Case No. 2017CV000616
Class Code: Money Judgment

FILED
11-22-2017
Sheboygan County
Clerk of Circuit Court
2017CV000616
Honorable Kent
Hoffmann
Branch 2

CITY OF SHEBOYGAN
828 CENTER AVENUE
SHEBOYGAN WI 53081

Case number 2017CV000616 was electronically filed with/converted by the Sheboygan County Clerk of Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at **http://efiling.wicourts.gov/** and may withdraw as an electronic party at any time. There is a $ 20.00 fee to register as an electronic party.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: 4a1755

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 920-459-3068.

BY THE COURT:

Electronically signed by Melody Lorge
Clerk of Circuit Court

11-22-2017
Date

II

3.3

R. O. No. 175- 18 - 19. By CITY ATTORNEY. November 19, 2018.

Submitting, for information, the Notice of Appeal filed by the Plaintiff/Appellant, Town of Wilson, in the matter of *Town of Wilson vs. City of Sheboygan*, Sheboygan County Circuit Court Case No. 17CV490, along with a copy of the Order for Dismissal and Judgment dated November 6, 2018.

Finance + Personnel.

City Attorney

STATE OF WISCONSIN, CIRCUIT COURT, SHEBOYGAN COUNTY	For Official Use
Town of Wilson, (party designation) Plaintiff -vs- City of Sheboygan, (party designation) Defendant.	**Notice of Appeal** Case No. 17-CV-490

Notice is hereby given that (name of party filing appeal) Town of Wilson appeals to the Court of Appeals, District II, from [choose one] ☒ the whole ☐ a part of the final judgment or order, entered on (date) November 6, 2018 in the circuit court for Sheboygan County, the Honorable (name of Judge) Daniel J. Borowski, presiding, in favor of (name of party opposing appeal) City of Sheboygan, and against (name of party filing appeal) Town of Wilson, wherein the court (describe judgment or order) entered an order upholding the City of Sheboygan's annexation of Town of Wilson land sought by Kohler Co. to develop a golf course.

NOTE: If this is an appeal under §809.30 or §809.32, also include the following (*see* §809.10(1)):

- If a postconviction motion was not filed, state the date of service of the last transcript or service of a copy of the circuit court case record.

  If a postconviction motion was filed, state the date of the order deciding the postconviction motion(s).
- If the Court of Appeals established any other filing deadline, state it.

If counsel is appointed under ch. 977, a copy of the order appointing counsel should be attached to the notice of appeal.

This [choose one] ☐ is ☒ is not an appeal within Wisconsin Statutes §752.31(2).

This [choose one] ☐ is ☒ is not an appeal to be given preference in the circuit court or court of appeals pursuant to statute.

Date: November 8, 2018

Signature of Filing Attorney or Party	Telephone Number
	262-513-3315
Name Printed or Typed Michael D. Huitink	State Bar Number (if applicable) 1034742
Address 675 N. Barker Road Suite 300 Brookfield, WI 53045	

This completed form must be *filed* with the clerk of the circuit court in which the judgment or order appealed from was entered. In addition, copies of this completed form must be served upon the following:

1. the Clerk of the Court of Appeals;
2. opposing counsel; and
3. any other party.

FILED
11-06-2018
Sheboygan County
Clerk of Circuit Court
2017CV000490

BY THE COURT:

DATE SIGNED: November 6, 2018

Electronically signed by Daniel J. Borowski
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

TOWN OF WILSON,
Plaintiff,
vs.
CITY OF SHEBOYGAN,
Defendant.

Case No. 17 CV 490

ORDER FOR DISMISSAL AND JUDGMENT

On November 6, 2018, the Court issued a Decision and Order dismissing with prejudice the Town of Wilson's action to have the City's Ordinance annexing certain properties within the Town of Wilson declared invalid.. Based on the Court's decision, which is incorporated by reference as if fully set forth herein, the Court hereby orders that the Town of Wilson's complaint and any and all claims and causes of action therein are dismissed on the merits and with prejudice and that the Clerk of Courts enter a final judgment dismissing the Town of Wilson's case.

THIS IS A FINAL ORDER AND JUDGMENT FOR PURPOSES OF APPEAL UNDER WIS. STAT. § 808.03(1).

FILED
11-06-2018
Sheboygan County
Clerk of Circuit Court
2017CV000490

BY THE COURT:

DATE SIGNED: November 6, 2018

Electronically signed by Daniel J. Borowski
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

TOWN OF WILSON,

Plaintiff

v.

Case No. 2017CV490
Case Code: 30301

CITY OF SHEBOYGAN.

Defendant.

DECISION AND ORDER ON ANNEXATION

I. INTRODUCTION

This matter is before the Court for decision on the validity of City of Sheboygan ("City") Ordinance No. 6-17-18 ("Ordinance") which annexed certain portions of the Town of Wilson (hereinafter "Town" or "Town of Wilson"). The Ordinance was enacted by the City in response to a non-unanimous petition for annexation (hereinafter "Petition") filed by Kohler Company (hereinafter "Kohler") pursuant to the provisions of Wis. Stat. § 66.0217(3). The Petition requested the City to annex, among other properties, 247 acres of land in the Town of Wilson which Kohler seeks to develop into a world championship golf course (hereinafter "Kohler Land" or "Land").

The Town filed an action against the City seeking to have the court declare the Ordinance invalid and to enjoin the annexation. As grounds for its action, the Town alleged that the

annexation: is improper under Wisconsin law; violates the "rule of reason"; did not strictly comply with the conditions precedent for annexation under Wis. Stat. § 66.0217; is non-contiguous in violation of Wisconsin law; constitutes an impermissible "balloon on a string" configuration; and is otherwise arbitrary, capricious and an abuse of discretion.

Under Wisconsin law, annexation ordinances must strictly comply with the procedural requirements of the annexation statute in order to be valid. A validly enacted ordinance enjoys a presumption of validity and will not be overturned unless the party challenging the ordinance demonstrates that the ordinance violates the judicially created "rule of reason." Under the "rule of reason," exclusions and irregularities in boundary lines of the annexed property must not be the result of arbitrariness; some reasonable present or demonstrable future need for the annexed property must be shown; and no other factors must be present which constitute an abuse of discretion on the part of the annexing municipality. The land which is the subject of an annexation must also be "contiguous" to the annexing municipality.

The matter was ultimately tried before the Court. The Court has reviewed the testimony of the parties and witnesses at trial as well as the exhibits entered into evidence. Based on the Court's review of the evidence, the Court upholds the City's Ordinance. The Court finds that the Ordinance complied with all statutory requirements under Wis. Stat. § 66.0217. The Court further finds that the lands involved in the annexation are "contiguous" to the City and that the Town has not otherwise shown that the Ordinance violates the rule of reason. The Court dismisses the Town's declaratory judgment action and all claims and causes of action therein with prejudice.

II. PROCEDURAL BACKGROUND

The Court denied the Town's request to enjoin the annexation. The Court found that the Town did not demonstrate a reasonable degree of probability of success on the merits that the Ordinance violated the rule of reason or was otherwise invalid.[1]

The parties subsequently filed cross-motions for summary judgment relative to the validity of the Ordinance under Chapter 66 and the rule of reason. The Court denied summary judgment on the grounds that there were disputed issues of material fact regarding the City's and/or Kohler's need for the annexed properties; whether the configuration of the annexed lands rendered the annexation invalid; and whether Kohler's petition strictly complied with the annexation statutes.[2]

With the permission of the Court, the City filed a supplemental motion for summary judgment on the issue of whether Kohler's petition strictly complied with the annexation statutes. Based upon the pleadings and affidavits filed by the parties, the Court granted the City's partial motion for summary judgment.[3]

A court trial was held on May 9, 2018 and May 10, 2018 on the Town's claims that the Ordinance violated the "rule of reason" and that the annexed properties were not contiguous to the City. A total of 12 witnesses testified at the trial. The witnesses included officials and employees from the Town and the City as well as a representative from Kohler. The Court admitted forty-seven (47) exhibits into evidence.[4]

---

[1]The Court issued a written decision denying the Town's petition for a temporary injunction on November 3, 2017. The Court incorporates by reference, as if fully set forth herein, its previous decision denying injunctive relief.
[2]The Court issued a written decision denying summary judgment to the parties on March 1, 2018.
[3]The Court issued a written decision granting the City's motion for partial summary judgment on May 10, 2018.
[4]The parties stipulated to the introduction into evidence of several exhibits which were not admitted through witnesses at trial but provided necessary background regarding the annexed territory. These exhibits consisted of most of those included in the parties' summary judgment affidavits as well as joint exhibits which the parties agreed should be admitted into evidence. The Court ultimately prepared, and the parties approved, a combined "Exhibit Order" dated June 18, 2018. The Exhibit Order is comprised of all of the exhibits entered into evidence at trial.

At the Court's direction, the parties filed post-trial briefs and proposed findings of facts and conclusions of law. The following is the Court's decision on the merits.

III. FACTS

The Court heard hours of testimony and has reviewed hundreds of pages of exhibits admitted into evidence at trial. The following is the Court's findings of fact based on the testimony of the witnesses and the exhibits admitted into evidence, including the parties' Stipulated Facts.

A. The Kohler Property.

1. General History.

Kohler owns approximately 247 acres of land located along Lake Michigan ("Land"). The Company has owned the land for more than 75 years. Until the City's annexation of the Land in 2017, the Land was part of the Town of Wilson.

Kohler leased the Land to the State for State park use through the 1970's. Thereafter, Kohler used the Land for an outdoor trail park.

2. The "Tented Forest Project."

In 2010, Kohler proposed developing the Land for use as a "Tented Forest Project," whereby the Land would be developed into an upscale camping site. Kohler submitted a conditional use permit application with the Town for the development of the Tented Forest which was ultimately approved by the Town's Plan Commission.

As part of its due diligence for the Tented Forest, Kohler enlisted public comment from the Town's residents. The public expressed opposition to Kohler's development of the Land. Public concerns regarding the Tented Forest included potential adverse impact of the project on the local wells, wetlands and the environment, increased traffic in the Town and the extent of

deforestation required for the project.

Prior to moving forward to the Town Board approval of the Tented Forest, Kohler determined that the Tented Forest was not a profitable venture. Kohler therefore abandoned the Tented Forest project and withdrew the conditional use permit application with the Town.

3. Kohler Proposes A Golf Course Development on the Land.

Kohler ultimately determined that the Land was best suited for the development of a world class or championship golf course similar to the Black Wolf Run and Whistling Straits courses Kohler previously developed in the Village of Kohler and the Town of Mosel.[5] In March of 2014, Kohler informed the Town of its desire to develop a golf course on the Land.

B. Kohler's Files a Conditional Use Permit Application with the Town for a Golf Course and the Town's Response.

On March 24, 2014, Kohler submitted an application for a conditional use permit with the Town for the golf course development. Kohler's application included a proposed design for the golf course development.

Conditional use permit applications such as Kohler's are initially forwarded to the Town's Plan Commission. The Plan Commission is responsible for reviewing the applications and making recommendations to the Board on those applications.

The normal process for a conditional use permit begins with a pre-application meeting between the applicant and the Plan Commission in which any issues regarding the application are addressed and the application is completed. The application is then presented at a Plan Commission meeting for a hearing on whether the Commission will recommend approval of the application to the Town Board. In applications involving large projects with multiple technical issues, the Plan Commission generally will retain technical consultants to assist the Plan

[5]Kohler envisioned the development of a golf course that would be rated one of the top 50 in the world.

Commission in reviewing and making recommendations to the Board on the application.

The Town reviewed Kohler's application and determined that it was incomplete. The Town specifically noted that the application did not include a grading plan or a site plan. Notwithstanding the deficiencies in the application, the Plan Commission began its review process. Because of the size and complexities involved in Kohler's development, the Town retained three consultants to evaluate the application and provide input on whether the proposed development complied with the Town's ordinances; provide guidance on the impact of Kohler's proposals on the Town and its residents; and provide input from the Town to the DNR, the Army Corps of Engineers and other governmental bodies as they evaluated the project.[6]

The Town acknowledged that it was going to be challenging for Kohler to succeed with its conditional use permit application. One of the Town's primary concerns with Kohler's application was the extent of deforestation required for the golf course and the collateral impact of deforestation on surface water quantity and quality, groundwater quantity and quality, the ecosystem and wildlife corridors.[7] There was also a concern as to whether the level of deforestation required for the project would be permitted under the Town's Comprehensive Plan and its zoning ordinances.

Ultimately, the Plan Commission suspended the conditional use permit process indefinitely while Kohler sought approval from the DNR for the construction of the golf course. The Town concluded that it would be inefficient to independently evaluate the environmental impact of the golf course on the surrounding properties and the Town when the DNR was going to conduct the same environmental impact studies in connection with Kohler's DNR permit

[6] When Kohler objected to one consultant (Hey and Associates), and recommended the Town use another consultant (Ruekert Mielke), the Town complied with Kohler's request.

[7] The challenges facing Kohler's conditional user permit application were identified by Roger Miller, who was appointed to the Chair of the Planning Commission in 2015. Miller was retained as a litigation expert by the Town and testified at the court trial.

application.

According to Town officials, Kohler never provided the information the Town required to complete Kohler's conditional use permit application. As discussed below, Kohler ultimately decided to pursue annexation with the City rather than moving forward with its application for a conditional use permit with the Town.

C. Kohler Becomes Concerned About Moving Forward With A Golf Course Development in the Town of Wilson.

Following the filing of its application for a conditional use permit, Kohler became concerned with whether the Town would approve the golf course development and whether developing a golf course in the Town was in Kohler's best interests. Kohler's concerns regarding the viability of the project in the Town were divided into four categories: political opposition; water; fire; and boundary agreement.[8]

1. Political Opposition.

The response from the Town's residents to Kohler's proposed golf course development was highly unfavorable. Several of the Town's residents, in fact, banded together to form a group, Friends of the Black River Forest (hereinafter "Friends"), to stop the development. The stated reasons for the Friends' opposition included environmental damage resulting from golf course construction, the deforestation required to build the golf course on the Kohler Land and drawdowns of the water available for nearby residential wells caused by Kohler's operation of a high capacity well to supply water to the golf course.

The Friends were vigorous in their opposition to the golf course and, by all appearances, politically influential. The Friends initiated several lawsuits to prevent Kohler's construction of

[8]Kohler's Hospitality Construction Portfolio Manager, Jonathan Hoekstra, testified at trial as to Kohler's concerns regarding the construction of a golf course development in the Town.

a golf course in the Town. The Friends further endorsed candidates for election to the Town Board who opposed the golf course development.

Kohler needed to secure the votes of three of the five members of the Board to obtain approval of Kohler's application for a conditional use permit. In the months following its conditional use permit application, the make-up of the Board changed resulting in a Board composed of historic opponents to the golf course development, most of whom were the preferred candidates of the Friends. In April of 2014, Nancy DesJardins, who opposed the golf course development, was elected to the Board. In 2015, John Ehmann, a vocal opponent of Kohler's golf course development, was elected Chairman of the Town Board. In 2015, Thomas Stoelb, who was a preferred candidate of the Friends and opponent of the golf course development, was elected to the Board.

Ehmann and Stoelb made their opposition to the golf course development well known before taking positions on the Board. In June of 2014, Ehmann and Stoelb were among several Town of Wilson residents who sent a letter to the Town Board and Plan Commission opposing the golf course development.[9] The letter, which was admitted into evidence at trial as City Exhibit C10, detailed the residents' belief that the Board and Plan Commission had the authority to, and should deny, Kohler's application for a conditional use permit. The residents took the position, among others, that the golf course was not a permitted use under the P-1 zoning governing the Kohler Land and, further, that the deforestation required for the construction of the golf course was inconsistent with the Town's Comprehensive Plan.

Town Board Chair Ehmann was a particularly strong opponent of Kohler's proposal to build a golf course in the Town. In 2015, Ehmann gave a presentation to the Friends at a

[9]The heading of the letter stated that it was from the Friends of the Black River Forest to the Town of Wilson Board and Plan Commission.

"Kohler Golf Course Informational Meeting"[10] in which he again set forth the position that the Board should not permit Kohler to build a golf course on the Kohler Land. Ehmann pointed to the following as support for his position:

- Construction of a golf course was not permitted under the Town's 20 year comprehensive plan which mandates preservation, rather than development of the Kohler woodlands;
- Kohler's proposed golf course was not an allowable conditional use under the Town's P-1 zoning because it is a commercial rather than a recreational development;
- Kohler's golf course otherwise violated the P-1 zoning code because the golf course would not increase recreational opportunities for Town residents, unduly disturb the environmental corridor and would have an adverse impact on local wells

In the same presentation, Ehmann outlined his belief that the construction of the golf course would have significant and undesirable environmental impacts including deforestation, destruction of wetlands, compromised waterways and fragmentation of the environmental corridor. Ehmann further expressed his belief that the construction of a golf course would invite unwanted tourism into the Town and would have no long term positive economic impact on the Town or its residents.[11]

Like Ehmann and Stoelb, DesJardins believed that Kohler's golf course development was in conflict with the Town's Comprehensive Plan. She further opposed Kohler's use of State park land in connection with the operations of the proposed golf course.

In addition to the election of three Board members who expressed opposition to the golf course, Ehmann appointed Roger Miller ("Miller") to serve as the Town's Plan Commission

[10]Exhibit 1, which was entered into evidence, is an audio-visual recording of Ehmann's speech to the Friends.
[11]A trial, Ehmann denied that he remained an opponent of Kohler's development after being elected to the Board. Ehmann testified that Kohler addressed many of his concerns regarding the golf course following his presentation to the Friends in 2015. Ehmann stated that Kohler significantly reduced the wetland impact and setbacks for the golf course, changed the plan for accessing the golf course and significantly reduced the amount of State land to be included in the annexation.

Chairman 2015. Like Ehmann, Miller expressed his concern over the deforestation that would be required to build a golf course on the Kohler Land as well as the adverse impact to the shoreline and environment that would result from the development and generally opposed the golf course development. Miller informed representatives of Kohler that he did not believe the Kohler Land was "a good place for a golf course."[12]

Kohler monitored the Board elections and was aware of the opposition of DesJardins, Ehmann, Stoelb and Miller to the golf course development. Considering the composition of the majority of the Board, Kohler was skeptical that the Board would approve its conditional use permit and allow Kohler to build a golf course in the Town of Wilson.

2. Water.

It is undisputed that the Town does not provide municipal water to its businesses and residents. As a result, those who live and operate businesses within the confines of the Town are required to rely on wells for their water supply.

In 2015, Kohler commissioned Excel Engineering to study the impact of operating a high capacity well on the wells of surrounding property owners. Excel Engineering concluded that there would be no material impact on neighboring wells. The Town also retained its own expert, John Jansen, to conduct a well impact study. Jansen similarly concluded that Kohler's operation of a high capacity well would have a minimal impact on surrounding wells.

Notwithstanding the opinions of Excel and Jansen, Kohler remained concerned that that the Town's inability to provide a municipal water source would detrimentally impact the golf course development. Kohler identified three adverse impacts: (1) insufficient volume of water for the golf course operations; (2) exposure to well damage claims from neighboring landowners;

[12]The Town separately retained Miller in this litigation to act as an expert on its behalf relating to the nature and topography of the lands which are the subject of the annexation. Miller testified at trial.

and (3) the potential for an inadequate water source for the Town's volunteer fire department in the event of a fire on the golf course development.

a. Insufficiency of Water for the Development.

Kohler was concerned that if it proceeded with the development in the Town, it would be required to rely exclusively on a high capacity irrigation well to provide water to the golf course development.[13] Kohler believed that having a supplemental municipal water source, such as the City's municipal water, in addition to a high capacity well, would ensure Kohler had sufficient water to meet the needs of the golf course as well as the clubhouse and other buildings constructed as part of the golf course development.[14]

b. Exposure to Claims from Surrounding Landowners.

Kohler was also concerned that moving forward with the golf course development in the Town would expose the Company to significant liability from surrounding landowners who relied on wells to supply water to their properties. Kohler anticipated that the surrounding landowners would assert claims against Kohler for water drawdowns and damage to their wells resulting from Kohler's operation of a high capacity well. This raised the specter of long term litigation related to the golf course operation.

Kohler also expected that the Town would require any conditional use permit issued by the Town for the golf course to require Kohler to pay for the cost of repairing neighboring wells which experienced problems in conjunction with the development and operation of the golf course, i.e., a "well protection plan." Kohler determined that a well protection plan would unduly expose Kohler to excessive claims and repair costs from citizens living in the vicinity of

[13]Kohler admitted that the golf course would be operated on well, rather than municipal water. The only expert to testify at trial, hydrogeologist John Jansen, concluded the aquifer in the area was more than sufficient for Kohler's proposed golf course and would not have an adverse impact on surrounding wells.

[14]Kohler understood that the City would not extend municipal water to the golf course development unless the Kohler Land was annexed by the City.

the development, many of whom opposed construction of the golf course.[15]

3. Fire Protection.

Kohler was concerned with the ability of the Town's volunteer fire department to adequately protect the clubhouse and other buildings constructed on the golf course development due to the lack of a municipal water source in the Town. Because the Town did not have a municipal water source, the Town's fire department was required to transport its own water to a fire. Kohler believed that a municipal water source such as the City's would ensure adequate water was available to protect the buildings in the event of a fire and reduce the risk of loss to the Kohler properties.

4. Possible Border Agreement between the City and the Town.

As the concerns regarding a golf course development in the Town multiplied, Kohler also became at risk of losing the ability to have the City annex the Kohler Land. Kohler became aware that the Town approached the City with a "border agreement" proposal. Under the proposal, the Town would agree to the City's annexation of certain lands in the Town in exchange for the City's agreement not to annex other lands in the Town, including the Kohler Land. The potential for such a "border agreement" created the risk that Kohler may never be able to development the land for a golf course and increased Kohler's urgency to pursue annexation from the City.

D. Kohler Elects to Seek Annexation from the City.

As a result of Kohler's concerns about its ability to successfully move forward with a golf course development in the Town, Kohler decided to pursue a petition for annexation with

[15]Kohler's concern regarding the impact of operating the golf course on a high-capacity well was based on the opposition of neighbors with wells, not scientific evidence that Kohler's golf course development would unduly drawdown or harm adjacent wells. Kohler financed a study which showed that the operation of a high-capacity well for the golf course would not have a significant impact on the wells of neighboring property owners.

the City in late 2016. Kohler's Hospitality Construction Portfolio Manager, Jonathan Hoekstra ("Hoekstra"), summarized Kohler's reasons for moving forward with the City rather than the Town:

> Q: So what, if any, role did that understanding of the potential of boundary agreement locking you out of the city play in your determination to annex these lands to the City?
>
> A Again, over the period of time there were a number of things that were happening ultimately making it appear and seem to be more and more difficult to get this project approved, and that would have, in our opinion, ended the project because with the number of town board members we believed were not going to vote for the project, with the neighbors and neutral observers, I will call them, residents concerned about wells, et cetera, and then with an agreement, we would be left with no project. So that was probably the culmination of all of those issues that led to the annexation occurring.

Prior to moving forward with the City, Kohler did not inform the Town that Kohler believed the Town lacked sufficient services for its golf course development. For example, Kohler never claimed it needed municipal water from the City for the course. Kohler also did not express any concern to the Town about any of the Town's other services being insufficient for the golf course.

E. Preliminary Discussions Between Kohler and the City Regarding Annexation.

In late 2016, an outside corporate attorney from Kohler approached the City Administrator, Darrell Hofland, regarding Kohler's desire to have the City annex the Kohler Land. Kohler advised the City that it was considering annexation for purposes of moving forward with the development of a world championship golf course. Hofland was aware that Kohler had an application for a conditional use permit pending with the Town when Kohler approached the City regarding the potential for annexation.

Hofland was receptive to Kohler's annexation proposal. Hofland noted that the proposed annexation of the Kohler Land was consistent with the City's plan for future growth which included expansion south from the City into the Town of Wilson. Hofland further emphasized

that the long term financial viability of the City is substantially dependent on the City's ability to expand through annexation such as the Kohler proposal.

In addition to the benefits the City could receive from the golf course, the City viewed the annexation as an opportunity to expand municipal services south into the Town of Wilson along 12th and 18th Streets. The extension of municipal services facilitated the ability of the City to develop residential subdivisions in the Town which was also part of the City's strategic growth plan.

The City and Kohler continued to discuss the proposed annexation over the next several months. The discussions focused on the benefits which the City would receive if Kohler proceeded forward with its plan to build a world championship golf course on the Kohler Land. In this regard, Kohler retained a consultant to conduct an economic impact study of the annexation. The study revealed that annexation of lands which included a world championship golf course would provide the City with a significant increase in its tax base and also provide a substantial benefit to the City's businesses, restaurants and hotels.

The mutual interest between Kohler and the City in the proposed annexation was reflected in the terms of a proposed Pre-annexation Development Agreement ("Agreement") which was negotiated between City officials and Kohler before Kohler's formal filing of the petition for annexation on April 28, 2017.[16] The recitals in the Agreement recognize Kohler's intent to develop a championship golf course on its vacant land located in the Town of Wilson as well as the City's authority to annex that land under Wis. Stat. § 62.0217. The recitals further recognize that Kohler's planned use of the property was "consistent with the City's

[16]The Pre-Annexation Agreement was not executed by the parties until after the Common Council approved the annexation as well as the Pre-Annexation Agreement in August of 2017. A signed copy of the Pre-Annexation Agreement was offered and admitted into evidence as Joint Exhibit 2.

Comprehensive Plan adopted December 5, 2011" and would provide land needed for growth of the City. The recitals state:

> The City specifically acknowledges that Developer's proposed development and use of the Property as described herein, is compatible with and will further the City's planning objectives, will be of substantial benefit to the City, will extend the corporate limits and jurisdiction of the City, will promote orderly growth, planning and development of the City, will increase the tax base of the City, and will promote and enhance the general welfare of the City and its residents.

The Agreement established proposed mutual obligations of the City and Kohler as it relates to the proposed annexation. The City agreed to, among other things, cooperate in obtaining the necessary permits for the golf course; extend water utility to the golf course property at Kohler's expense; provide police, fire and emergency services to the property; connect sanitary sewer service to the property; and consider rezoning the property to SR-5 Residential so as to permit the construction of an 18 hole championship golf course.

Kohler correspondingly agreed to, among other things, construct storm water facilities on the property and connect all buildings developed on the property to the City's sanitary sewer system. Kohler also assumed an obligation to connect to and utilize the City's municipal water service for all proposed improvements on the property including the clubhouse, irrigation system, maintenance building and cart building, to the City's municipal water service within three years of development and to pay the cost of extending municipal water to its property.[17] Finally, Kohler agreed to reimburse the City's actual costs incurred in connection with the annexation, including litigation costs and attorney's fees, up to $200,000.

Kohler's annexation proposal was introduced to the Common Council in early spring of 2017. On April 24, 2017 the City convened into closed-session to discuss annexing the Kohler

[17] Kohler's agreement to connect its improvements to the City's water service was required under any conditional use permit for the 18 hole championship golf course.

Land, which was described in the minutes of that meeting as a "Southside Development Opportunity." This presentation, which was marked as Town Exhibit 16 at trial, confirms that Kohler intended to petition the City to annex parcels of land in the Town that would, upon completion of the annexation, incorporate Kohler's proposed golf course development within City limits.

The presentation included a summary of the City's obligations under the Pre-Annexation Development Agreement. The presentation then discussed the benefits that the City anticipated receiving from the golf course development. These benefits included the following:

- Up to 11 additional parcels of land within City limits;
- An additional $6 to $8 million in new assessed valuation to the City;
- Future opportunity for additional annexations along South 12th Street;
- Up to 200 new jobs; and
- The opportunity to annex the Poth Farm into the City for the development of single family residences.

F. Kohler's Petition for Annexation.

1. Procedural History.

On April 28, 2017, Kohler published a notice of intention to circulate annexation petition in the Sheboygan Press. The Petition included signatures from five of the six qualified electors (the five signatories defined as a majority of the votes cast for governor in the Annexation territory at the last gubernatorial election), and the owners of 91 percent of the Annexation territory (measured by assessed value).

The five signatures on the Petition represented three parcels within the annexation. Two of these properties were recently purchased by Kohler. One of the signatures on the annexation

petition was from one of Kohler's outside litigation attorneys, Jessica Polakowski of Reinhart Boerner, on behalf of the LLC that recently had purchased a parcel included in the annexation.

Kohler also mailed (by certified mail with return receipt requested) copies of the notice to the City Clerk, Town Clerk, the Clerk of Sheboygan Area School District, the owners of the property in the Territory, and the Wisconsin Department of Administration ("DOA"). Kohler mailed a completed Request for Annexation Review to DOA on April 28, 2017 listing a population of 8 in the Annexation.

On about May 3, 2017, DOA published on its Municipal Data System the annexation materials submitted by Kohler, and listed the population of the Annexation as 8. On or about May 22, 2017, the City and Town submitted annexation questionnaires to the DOA. Both the City and the Town's questionnaires included population estimates for the annexation.

2. The Configuration of the Lands included in the Annexation.

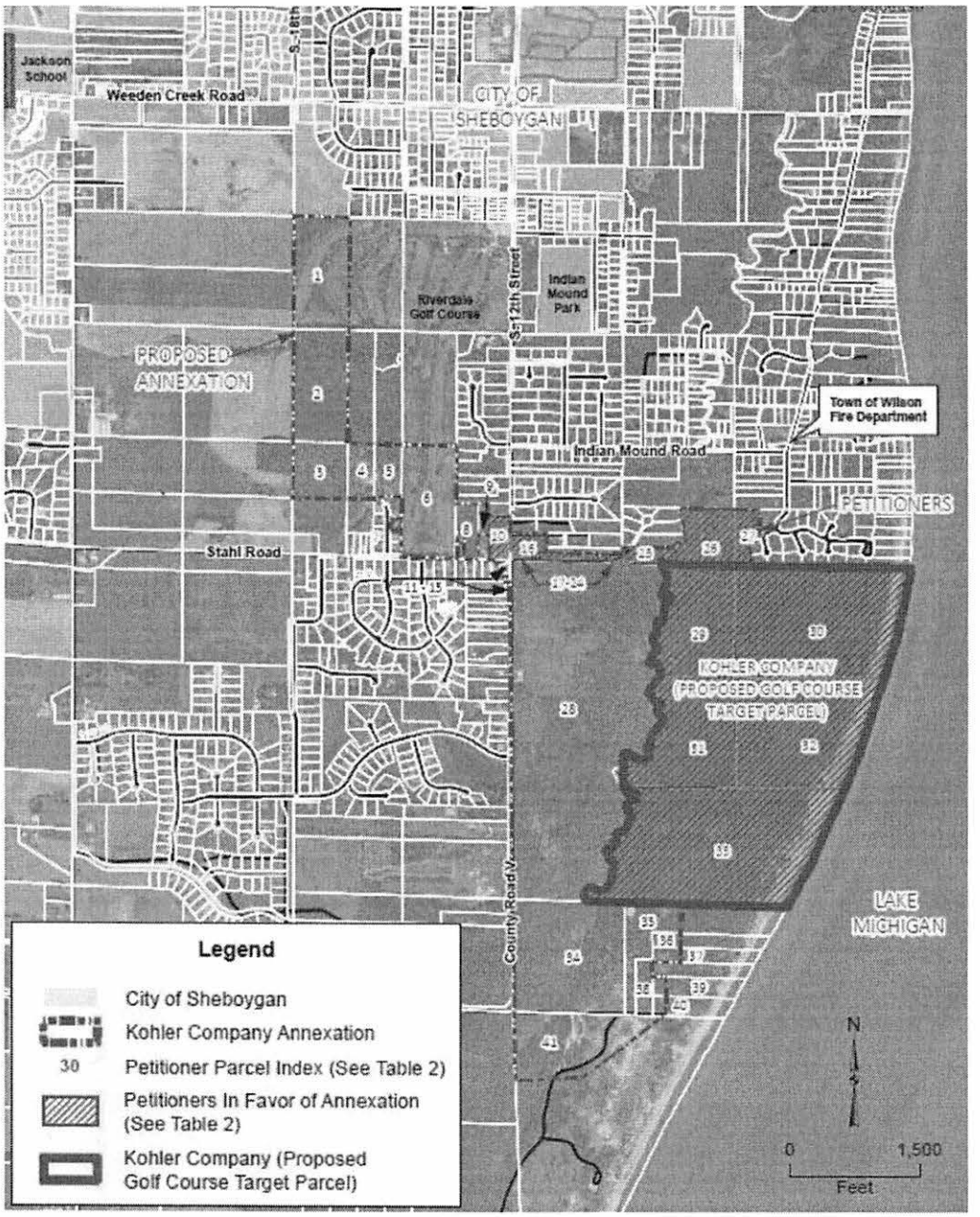
Kohler designed the boundaries of the annexation to connect the Kohler Land to the City. The annexation consists of several parcels moving from the connection point with the City to the south and east to the Kohler Land. The City had no input or involvement whatsoever in determining the boundaries for the annexation.[18]

According to the annexation review which was conducted by the Department of Administration ("DOA") and admitted into evidence as City Exhibit 2, the connection point between the City and Parcel 1 of the annexation is 650 feet in width. From the connection point, the annexed land proceeds in a southeast direction toward the Kohler land. *Id.* The proposed annexed land varies in size from approximately 1,450 feet wide, to approximately 190 feet wide at a point between neighboring residential developments before expanding at the Kohler land. A

[18]The City did not independently investigate the properties included within Kohler's annexation or whether the owners of those properties had any independent desire to become part of the City.

map of the territory included in the annexation appears below followed by a chart which describes the parcels included in the annexation including their respective dimensions.[19]

Annexation Map



[19]The map outlining the dimensions of the parcels in the annexation was attached to the Affidavit of Roger Miller which was admitted into evidence as Town Exhibit 65. The parcel details were taken from Town Exhibit 67 which was admitted into evidence at trial.

Parcel Descriptions

Parcel	Dimensions Included in Annexation	Description
1	19.2 acres	Western half of a larger parcel that compromises the northwestern end of the Riverdale golf course. The parcel is owned by Sheboygan Town and Country Corporation.
2	19.68 acres	Parcel which was part of the Poth Farm which is owned by the City. The parcel is presently forested and undeveloped.
3	9.85 acres	Eastern end of a parcel owned by the City. The parcel is presently forested and undeveloped.
4	4.86 acres	Southern one-third of a parcel held by the Koller Living Trust. Two thirds of the parcel are in the Town and one-third of the parcel is in the City. The land is predominantly wooded but does include a residence. The parcel is included in a managed forestry program with the State of Wisconsin which precludes development of the parcel.
5	4.61 acres	Southern portion of a parcel held by the Koller Living Trust. The southern one-third of the parcel is in the City and the northern two thirds of the parcel are in the Town. The parcel is included in the managed forestry program with the State of Wisconsin which precludes development of the parcel.
6	19.89 acres	Riverdale golf course parcel.
7	.2 acres	Single lot in an eight lot Deerfield subdivision. The parcel was purchased by Wilson/Sheboygan County LLC. Jessica Polakowski, an outside attorney retained by Kohler, signed the Petition on behalf of LLC.
8	3.5 acres	Wooded lot with a residence owned by John Siegworth.
9	1.51 acres	Wooded parcel owned by John Siegworth.
10	2.58 acres	Lot with a single residence located at the intersection of South 12th Street and Stahl Road and owned by Nina Stapel.
11-13	11: .36 acres 12: .19 acres 13: .18 acres	Portion of County owned land which comprises a public road right-of-way.
14-15	14: .15 acres 15: .09 acres	Portion of Town owned land which comprises a public road right-of-way.
16	2.4 acres	2.5 acre parcel with a single family home on the east side of South 12th Street just north of a drive into the River Trail subdivision. The parcel is presently owned by Kohler Company.
17	.04 acres	River Trails subdivision Out lot consisting of forested wetland. Owned by River Trails Owners Association, Inc.
18	.15 acres	Driveway into the River Trails subdivision and River Trails subdivision Out lot 3. Owned by River Trails Owners Association, Inc.
19	.46 acres	Driveway into River Trails subdivision and River Trails Subdivision Out lot 4
20	.15 acres	River Trails subdivision Out lot 2 consisting of .13 acres of forested wetland. Owned by River Trails Owners Association Inc.

21	.91 acres	River Trails Subdivision Lot 11, undeveloped, partially forested. Owned by Kohler Company.
22	.39 acres	River Trails Subdivision Lot 10, undeveloped, partially forested. Owned by Kohler Company.
23	.36 acres	River Trails Subdivision Lot 9. Undeveloped, partially forested. Owned by Kohler Company.
24	.15 acres	River Trails Subdivision Lot 5. Undevelopable, entirely forested.
25	2.25 acres	River Trails Subdivision Lot 1. Undeveloped, entirely forested lot. Owned by River Trails Owners Association.
26-27	26: 10.37 acres 27: 3.62 acres	Undeveloped forested parcels owned by Kohler Company.
28	140 acres	Kohler-Andrae State Park with development prohibition
29-33	29: 26.3 acres 30: 63 acres 31: 29.7 acres 32: 49.5 acres 78.44 acres	Undeveloped forested land owned by Kohler Company
34-41	34: 40.1 acres 35: 9.3 acres 36: 1.1 acres 37: 1.2 acres 38: 3 acres 39: .5 acres 40: .6 acres 41: 23 acres	Kohler-Andrae State Park

Evidence was introduced at trial regarding each of the parcels included within the annexation. As noted in the chart above, certain of the parcels included in the annexation are parts or portions of larger parcels of land, i.e., Kohler did not include the area of the larger parcel in the boundaries of the annexation. Following the enactment of the City's ordinance, these larger parcels are subject to both Town and City regulations: the portion of the parcel located in the Town is subject to Town regulation and the portion of the parcel located in the City is subject to City regulation.

G. The City's Response to Kohler's Annexation Proposal.

Kohler's Petition for annexation was received positively by City officials.[20] The City, like many other cities across the nation, has watched jurisdictions surrounding the City experience substantial increases in their economic growth and expansion of their tax bases. The growth of surrounding jurisdictions has allowed these jurisdictions to provide high quality of life at lower tax rates than their municipal counterparts. The City, in contrast, has experienced increased demand for services as well as the cost of those services with less corresponding high end economic growth. This has resulted in economic disparity between the City and the areas that surround it.

In order to address this disparity, the City has employed a strategy of expanding its boundaries through annexation to capture economic growth in areas surrounding the City. The City, by its own admission, aggressively pursues annexation opportunities in order to achieve economic growth. The City generally views opportunities to expand its borders through annexation as a positive and in its best interests. Expansion into surrounding areas facilitates the ability to continue to provide services at a reasonable tax rate.

The City's desire to achieve economic growth through expansion is summarized in the City's 2000 Comprehensive Plan which provides in pertinent part[21]:

> The City of Sheboygan is facing problems similar to many Wisconsin cities. The nearby towns, are generally becoming upper income enclaves, and are growing in more healthy socio-economic patterns than the City, simply because the City is providing the range of goods, services, employment opportunities and housing opportunities typical of urban communities, while capturing virtually nothing near the top end of the residential or commercial market. There is a growing income, and housing disparity between residents of the City and those located in the

[20] The City's reasons for pursuing the annexation with Kohler, and ultimately, bringing Kohler's Petition to the Common Council for vote, were established through the trial testimony of, among others, City Administrator Hofland, the City's Manager of Planning and Zoning, Steve Sokolowski, the City's Director of Planning and Development, Chad Pelishek and the City's Water Utility Superintendent, Joe Trueblood.

[21] *See* City Exhibit 4, p. R-148.

> surrounding area. The City is providing more services, including many that benefit the entire region, while other jurisdictions are realizing a significantly increasing share of the region's growth and the resulting economic and tax benefits. As these disparities grow, it will become more difficult for the City to effectively compete with its neighbors for new growth and development. To continue to provide quality services with a reasonable tax rate and maintain the City's quality of life, it is necessary for the City to capture a fair share portion of the area's future growth.

The City did not specifically consider annexing the Kohler Land prior to Kohler's Petition for Annexation. However, the City had historically targeted the lands within the annexation, including the Kohler Land, for future City expansion, development and economic growth as part of the City's 2011 Comprehensive Plan.[22] The Comprehensive Plan specifically targeted zoning the Kohler Land for recreational use.

The City analyzed Kohler's Petition and concluded that Kohler's Petition presented the City with significant opportunities for economic growth and expansion. In his "Request for City Plan Commission Consideration," dated May 26, 2017, the City's Manager of Planning and Zoning, Steven Sokolowski, identified the following economic opportunities for the City presented by Kohler's proposed golf course development:

- New tax revenues generated annually for local and state governments in the amount of $1.267 million;
- The creation of 227 new, full time equivalent jobs;
- 22,000 additional room nights per year for Sheboygan County hotels and increased expenditures for the local hospitality, retail, food and beverage industries by $6.5 million;
- Total annual economic output resulting from the new golf course in Sheboygan County in the estimated amount of $20.6 million; and
- Annual increase of $87,000 in school property taxes.

[22]The City prepared the 2000 and 2011 Comprehensive Plans pursuant to Wisconsin's Comprehensive Planning Law, often referred to as the "Smart Growth" law. This law requires local governments to adopt a Comprehensive Plan in order to engage in certain land use regulations, such as subdivision regulation and zoning.

The City further determined that the Petition provided the City the opportunity to increase single family residential housing for which the City had (and continues to have) an immediate and critical need. The City was, and is, significantly behind other cities in the construction of new single family residences which are needed to house those who live and/or desire to relocate to the City. Sheboygan County's rate of home construction per 5,000 residents was measured at 3.4 new homes per year compared to a statewide average of 8.6 homes per year.[23] Outagamie County which is similar to Sheboygan County in job market maintained a rate of 11.6 homes per year. Sheboygan County's issuance of housing permits for new homes also significantly behind State of Wisconsin averages.

The absence of available single family housing in the City was detrimental to the City's economic growth. Sheboygan County has minimal unemployment and a significant number of job openings. As such, many jobs will be filled by those coming from outside of the County. When families relocate for employment, they often seek single family residential homes. Due to the City's shortage of single family residential housing, the City was unable to effectively compete in recruiting prospective employees to the City and capture the economic growth associated with employee relocations to the City. The City estimated that it would be required to build 73 homes each year to keep up with the demand for single family residences.

The Kohler annexation facilitated the City's ability to immediately address its housing needs. The lands in the annexation included the Poth Farm property which the City purchased in May of 2001 for the specific purpose of developing residential housing. The Poth Farm is located along 18th Street, south of the connection point between the City and the annexed properties. The City planned to develop 110 lots on the Poth Farm for the construction of single

[23]The statistics related to the City's single family residential housing shortage are incorporated within the trial testimony and summary judgment affidavit of Chad Pelishek. Pelishek's summary judgment affidavit and attachments were marked as City Trial Exhibit 19 and admitted into evidence.

family residences.[24] The lots range in size from 11,000 square feet to 28,000 square feet. The proposed development also included an eight acre park.

The City had not previously developed the farm due to the cost of extending roads, water and utilities to a relatively small area with a limited tax base. The Kohler annexation provided the City with additional revenues from which the City could more cost effectively extend roads, water and sewer to the Poth Farm and other areas within the annexation.

The City further determined that residential development in the Poth Farm area would spur additional residential development in areas in and around the annexed lands. The City observed that extending municipal water and other services to one area often prompts developers to consider residential developments in surrounding areas where municipal services were not previously available and were cost prohibitive to provide.[25]

In addition to economic benefits, the Kohler annexation also provided benefits to the City's Water Utility. Expansion of the City's borders through annexation allows the City to increase usage of the City's existing water utility services. In this respect, the City's water utility is capable of pumping and treating up to 34 million gallons of water per day. Prior to the annexation, however, the City was only utilizing one-half of the utility's rated pumping and treating capacity. The Kohler annexation provides the City with the opportunity to extend water service south along 12th Street and 18th Street into the residential and commercial areas of the annexed lands. The extension of this service will increase the number of users on the City's system and, as a result, provides greater economies of scale for operating the City's water utility.

[24]The City's plan to develop the Poth Farm for the development of single family residences originated when the City purchased the Poth Farm in 2000. The City's intent in purchasing the Poth Farm is reflected in a May 11, 2000 memo from the former City Planner, Ronald French, to the Common Council. The memo is included within City Exhibit 11 which was admitted into evidence at trial.

[25]The City's Administrator, Hofland, acknowledged that the City did not know how many parcels outside of the annexation could be developed.

H. The Town's Reaction to the Petition.

The Town was surprised by Kohler's filing of the Petition. Kohler did not inform the Town that it was considering annexation with the City prior to filing the Petition nor had Kohler expressed concerns over moving forward with a golf course development in the Town before seeking annexation from the City. The City similarly did not inform the Town of its interest in annexing the lands included in the annexation before the Petition was filed.

The Town strongly opposed Kohler's Petition. The Town took the position that the proposed annexation usurped the Town's ability to determine the impact of Kohler's development on the Town and to protect the Town's residents from the adverse impacts from the development. The Town further believed that the Petition deprived the Town's residents of a voice in determining whether Kohler should be permitted to develop a golf course in the Town. Finally, the Town believed that Kohler's Petition, and any ordinance enacted by the City approving the Petition, violated the rule of reason.

I. The DOA's Review of the Annexation.

An annexation initiated by property owners or electors such as Kohler must be reviewed by the Department of Administration ("DOA") as part of the procedural requirements for approval of an annexation. The DOA is required to issue an opinion as to whether the annexation is in the public interest. *Wis. Stat. § 66.0217(6).* The DOA's opinion is forwarded to the municipal clerk and must be reviewed by the annexing body before final action is taken on an annexation. *Id.* The language of Wis. Stat. § 66.0217(6), which governs the DOA's public interest review, provides:

> **(6)** DEPARTMENT REVIEW OF ANNEXATIONS.
> **(a)** *Annexations within populous counties.* No annexation proceeding within a county having a population of 50,000 or more is valid unless the person publishing a notice of annexation under sub. (4) mails a copy of the notice to the clerk of each municipality affected and the department,

> together with any fee imposed under s. 16.53 (14), within 5 days of the publication. The department shall within 20 days after receipt of the notice mail to the clerk of the town within which the territory lies and to the clerk of the proposed annexing village or city a notice that states whether in its opinion the annexation is in the public interest or is against the public interest and that advises the clerks of the reasons the annexation is in or against the public interest as defined in par. (c). The annexing municipality shall review the advice before final action is taken.

In determining whether an annexation is in the public interest under Wis. Stat. § 66.0217 (6), the DOA is required to examine: (1) the shape of the proposed annexation and the homogeneity of the territory with the annexing village or city and any other contiguous village or city; and (2) whether the town could clearly better supply needed municipal services to the territory than the annexing city or village. *Wis. Stat. § 66.0217(6).*

Consistent with these statutory requirements, Kohler submitted its petition for annexation to the DOA. In anticipation of the DOA's review, the Town provided the DOA with several submissions in opposition to the annexation. The Town argued, among other things, that the annexation was an impermissible "balloon-on-a-string" annexation that irrationally splits the town for a "contrived, de minimis border with Sheboygan"; that the annexation was not "contiguous" under the Wisconsin Supreme Court's decision in *Town of Mt. Pleasant v. City of Racine,* 24 Wis. 2d 41, 127 N.W.2d 57 (1964) ("Mt. Pleasant I"); that the annexation was based on a false claim of "need" for City services; and that the annexation includes large portions of undeveloped, natural land that are not homogeneous with the south side of the City.

The DOA found the Kohler annexation was in the public interest.[26] In reaching its decision, the DOA rejected the Town's claim that the annexation was an impermissible "balloon-on-a-string" configuration under *Mt. Pleasant I.* Instead, the DOA found that the dimensions and configuration of the annexation, "while not ideally shaped," were closer to the dimensions of

[26]The DOA's letter decision relative to the annexation was admitted into evidence at trial as City Exhibit 2.

the annexation that the Wisconsin Supreme Court approved in *Town of Mt. Pleasant v. City of Racine*, 28 Wis. 2d 519, 137 N.W.2d 656 (1965). ("Mt. Pleasant II").

The DOA further determined that the proposed land use of the annexation territory for a golf course and the adjacent land to the north was "more homogeneous with the City than it is with the Town." *Id.* The DOA noted that the annexed lands were immediately adjacent to fully developed, rather than rural, areas of the Town which are "urban in nature and much more consistent with the developed City lands than with the bulk of Town of Wilson lands to the southwest which tends to be more rural in nature."

The DOA likewise found that Kohler's proposed use of the land for a golf course required City services such as sewer and water, police and fire protection and planning and zoning services. *Id., p. 2.* The DOA rejected any claim that the Town could better provide these services than the City:

> The City indicates in its submitted questionnaire that it can provide these desired services. Petitioner has committed to using City water for the proposed development's clubhouse, irrigation system, maintenance building and cart building within three years of development. It cannot be said that the Town can "better" provide services such as water.

Id.

J. The City Approves the Petition and Enacts and Annexation Ordinance.

On May 30, 2017, the City of Sheboygan Plan Commission held a public hearing on the proposed annexation and rezoning. At the conclusion of the hearing, the Plan Commission unanimously recommended the Annexation and rezoning the land in the annexation to Suburban Residential.

On August 7, 2017, the full City Common Council adopted, by a vote of 11 of its 16 (11-5) members – representing 2/3 of its members – an ordinance annexing the territory included in the Kohler Annexation. The Ordinance is identified as 6-17-18. On that same date, the City

Common Council adopted Ordinance 4-17-18, zoning the Annexation to SR-5, Suburban Residential. On August 7, 2017, the City Common Council approved the Pre-Annexation Agreement between Kohler Co. and the City.

IV. STANDARD OF REVIEW

The legislature has conferred broad authority to cities and villages to annex unincorporated lands under Chapter 66. *Town of Pleasant Prairie v. City of Kenosha,* 75 Wis.2d 322, 326-27, 249 N.W.2d 581 (1977). Annexation ordinances, like other legislative enactments, enjoy a presumption of validity. *Id.* A party challenging an annexation ordinance has the burden of overcoming the presumption with proof that an ordinance is invalid. *Id.*

Wisconsin annexation law permits landowners or electors to initiate a petition for annexation to become part of a municipality pursuant to Wis. Stat. § 66.0217. Kohler's Petition was one for direct annexation by one-half approval, i.e., a non-unanimous annexation. Direct annexation by non-unanimous approval is governed by Wis. Stat. § 66.0217(3) which provides as follows:

> **(3)** OTHER METHODS OF ANNEXATION. Subject to ss. 66.0301 (6) (d) and 66.0307 (7), and except as provided in sub. (14), territory contiguous to a city or village may be annexed to the city or village in the following ways:
>
> > **(a)** *Direct annexation by one-half approval.* A petition for direct annexation may be filed with the city or village clerk if it has been signed by either of the following:
> >
> > **1.** A number of qualified electors residing in the territory subject to the proposed annexation equal to at least the majority of votes cast for governor in the territory at the last gubernatorial election, and either of the following:
> > **a.** The owners of one-half of the land in area within the territory.
> > **b.** The owners of one-half of the real property in assessed value within the territory.
> >
> > **2.** If no electors reside in the territory subject to the proposed annexation, by either of the following:
> > **a.** The owners of one-half of the land in area within the territory.

> **b.** The owners of one-half of the real property in assessed value within the territory.
>
> * * * * *

A. Substantive Requirements of a Non-Unanimous Annexation under Wis. Stat. § 66.0217(3).

The statutory language of Wis. Stat. § 66.0217(3) imposes one substantive requirement. In order for a municipality to annex a property based on a non-unanimous petition, the territory must be "contiguous" to a city or village. *Wis. Stat. § 66.0217(3).*

The remaining substantive requirements for a non-unanimous annexation are found in the common law. *Town of Pleasant Prairie*, 75 Wis. 2d at 326-327. In determining whether an annexation ordinance is valid, courts apply the "rule of reason." *Id.* The rule of reason is designed to determine whether the power delegated by the legislature under Chapter 66 has been abused by a city or village under the facts and circumstances of a given case. *Id.* In order to survive a challenge under the "rule of reason," an annexation must satisfy the following three requirements:

> (1) Exclusions and irregularities in boundary lines of an annexation must not be the result of arbitrariness;
>
> (2) Some reasonable present or demonstrable future need for the annexed property must be shown;
>
> (3) No other factors must be present which constitute an abuse of discretion.

Id.

The rule of reason does not authorize a court to inquire into the wisdom of an annexation or determine whether the annexation is in the best interest of the parties or the public. *Id.* Decisions on these issues are for the legislature, not the courts to make. *Id.* As stated by the Wisconsin Supreme Court in *Town of Pleasant Prairie:*

> In annexation proceedings the city council in the first instance

> determines the suitability or adaptability of the area proposed to be annexed and the necessity of annexing the same for the proper growth and development of the city. Upon a review the courts cannot disturb the council's determination unless it appears that it is arbitrary and capricious or is an abuse of discretion.

Id. at 327-328 *quoting Town of Brookfield v. City of Brookfield*, 274 Wis. 638, 646, 80 N.W.2d 800 (1957).

B. Procedural Requirements.

Section 66.0217, Wis. Stats. imposes a series of procedural requirement with which an annexation must comply. These include the requirement that a petition for non-unanimous annexation be signed by a specified number of the qualified electors or landowners residing in the territory which is the subject of the proposed annexation. *Wis. Stat. § 66.0217(3).* The statute also sets forth requirements for: filing the petition; the content of the notice for annexation; the content of the annexation petition; and DOA review the annexation. *See* Wis. Stat. §§ 66.0217(4), (5), (6) and (10). An annexation ordinance must be approved by two-thirds vote of the members of the governing municipality. Wis. Stat. § 66.0217 (10).

Under Wisconsin law, an annexation ordinance must be enacted in strict compliance with these procedural requirements. *Town of Baraboo v. Village of West Baraboo*, 2005 WI App 96, ¶7, 283 Wis.2d 479, 699 N.W.2d 610; *Town of Blooming Grove v. City of Madison*, 70 Wis.2d 770, 774, 235 N.W.2d 493 (1975). An ordinance which does not comply with the statutory procedures for annexation is void. *Id.* Substantial compliance will not save an annexation that is not accomplished in "strict conformity" with statutory requirements. *Id.* The rationale for the strict conformity rule was explained by the Court in *Town of Blooming Grove*:

> The numerous cases coming to this court over they years reflect the difficulties annexation cases present to various governmental entities. The city argues that they have 'substantially complied' with the statute, and the town has shown 'no prejudice' as a result of the procedures followed by the city. To add such considerations to or substitute them for

> the established rule of strict conformity in annexation cases would only compound the already perplexing problems that exist among governmental units in this type of case.
>
> ...Annexation of territory from a township may in fact have serious consequences to the town, not the least of which may be its tax base. In annexation cases. we see no reason why the annexing municipality should not be required to comply strictly with the mandate of the statute. In this case, the city did not do so.

V. ANALYSIS

In its post-trial brief, the Town claims that it proved at trial that the subject annexation "fails virtually every legal test for an annexation." In support of this proposition, the Town claims that the City and the annexed lands are not "contiguous" in violation of Wis. Stat. § 66.0127(3). Next, the Town claims that no need has been shown by the City or Kohler for the annexation. Finally, the Town claims that the City abused its discretion by, among other things, "rubber stamping" the annexation "in exchange for money, without any serious evaluation of the environmental or other laws and impacts surrounding it, and by delegating its judgment and discretion to a private company."

The Town has the burden of overcoming the presumption of validity of the City's Ordinance and demonstrating the Ordinance is invalid. The Town has failed to meet its burden of proof with respect to any of the challenges to the Ordinance. The City's Ordinance is, in all respects, valid. The Court dismisses the Town's action for declaratory judgment with prejudice.

A. The Annexation Satisfies the Procedural Requirements of Wis. Stat. § 66.0217.

The Town previously challenged the validity of the City's Ordinance on the basis that the petition did not comply with Wis. Stat. § 66.0217(5)(a) which requires a petition for annexation to, among other things, "specify" the population of the annexed territory. The Town asserts that the petition failed to satisfy Wis. Stat. § 66.0217(5)(a) because the petition did not include a federal census of the annexed area or evidence that the DOA "certified as acceptable" the

population estimate or actual population count included in the petition.

On May 10, 2018, the Court granted the City's partial motion for summary judgment dismissing the Town's claims under Wis. Stat. § 66.0217(5)(a). The Court found that the undisputed facts demonstrate that the DOA "certified as acceptable" the population in Kohler's petition based on its review of the petition and ultimate acceptance of the petition for public interest review. The Court incorporates by reference, as if fully set forth herein, it's May 10, 2018 written decision on the City's partial summary judgment.

At trial, the Town did not raise any new issues regarding whether Kohler's Petition or the City's Ordinance strictly complied with the procedural requirements for an annexation under Wis. Stat. § 66.0217. The trial centered on whether the Ordinance satisfied the "contiguity" requirement in Wis. Stat. § 66.0217(3) and the rule of reason.

For purposes of the record, the Court finds that the Petition and the Ordinance complied with the procedural requirements of Wis. Stat. § 66.0217. The Petition, among other things, was properly noticed and included the signatures of five of the six qualified electors and the owners of 91% of the territory measured by assessed value. The DOA reviewed the annexation and found the annexation was in the public interest. Finally, the Ordinance was approved by a supermajority of the Common Council. The Ordinance complied with the procedural requirements of Wis. Stat. § 66.0217 and is valid.

B. The Boundaries of the Annexation Are Not Arbitrary Under the Rule of Reason.

The first requirement in the "rule of reason" inquiry is that the exclusions and irregularities in an annexation must not be the result of arbitrariness on the part of a municipality. *Town of Baraboo*, 2005 WI App 96, ¶21; *Town of Campbell v. City of La Crosse*, 2003 WI App. 247, ¶21, 268 Wis. 2d 253, 673 N.W.2d 696. When, as in this case, annexation proceedings are

initiated by a private property owner, the general rule is that municipalities cannot be charged with arbitrary action in drawing the boundary lines of an annexation. *Id.; see also Town of Pleasant Prairie,* 75 Wis. 2d at 339. As recognized by the Court in *Town of Baraboo:*

> As to the first requirement, that "the exclusions and irregularities in boundary lines of annexations must not be the result of arbitrariness[,] ... *[t]he general rule is that where direct annexation proceedings are initiated by property owners, the annexing municipality may not be charged with arbitrary action in drawing the boundary lines."*

Town of Baraboo, 2005 WI App 96, ¶21 quoting *Town of Campbell*, 2003 WI App. 247, ¶21 (emphasis added).

In owner initiated petitions, the choice of the boundaries is a matter of discretion by the private petitioners. *Town of Baraboo*, 2005 WI App 96, ¶21; *Town of Campbell*, 2003 WI App. 247, ¶21. Private petitioners have the right under the annexation statutes to act "in light of their desires" and in their best interests when they initiate a direct annexation. *Town of Campbell*, 2003 WI App. 247, ¶21; *Town of Waukesha v. City of Waukesha,* 58 Wis.2d 525, 530, 206 N.W.2d 585 (1973). Petitioning property owners are under no obligation to include areas in an annexation which are of no concern to them and may include only their own property. *Id.,* at 532. Private property owners may also determine the boundaries so as to ensure the success of the annexation. *Town of Campbell*, 2003 WI App. 247, ¶21; *Town of Pleasant Prairie*, 75 Wis. 2d at 342.

When a direct annexation is initiated by a private property owner, a municipality is in no position to negotiate when it is presented with a petition for annexation. *Town of Medary v. La Crosse*, 88 Wis. 2d 101, 122-123, 277 N.W.2d 310 (1978). There is not much that a municipality can do other than accept or reject the entire petition. *Id.* As recognized by the Court in *Town of Medary*:

> A municipality is in no position to negotiate or pick and choose when it is presented with a petition for annexation. Section 66.021, Stats., which provides for annexations, does not make any provision for a city to annex only that portion of territory described in an annexation petition for which it has a need. It must annex all of the territory or none of it. The city is prohibited from coercing or giving special economic consideration to those circulating annexation petitions. Town of Pleasant Prairie v. City of Kenosha, 75 Wis.2d 322, 331, 249 N.W.2d 581 (1977).

Id.

There is an exception to the "general rule" regarding owner-petitioned annexations: a municipality may be charged with arbitrariness in the boundaries of an owner-petitioned annexation where it can be established that the municipality is the real controlling influence in selecting the boundaries for the annexation. *Town of Campbell*, 2003 WI App. 247, ¶22; *Town of Pleasant Prairie*, 75 Wis. 2d at 339. As explained by the Court in *Town of Pleasant Prairie*:

> As regards annexations under sec. 66.021(2)(a), Stats., it is only where the annexing municipality itself is one of the petitioning landowners or where the municipality otherwise is shown to be the real controlling influence in the proceedings, that the boundaries of an annexation will be scrutinized for an abuse of municipal discretion by the courts. Town of Fond du Lac v. City of Fond du Lac, supra.

Id., at 339-340. "Influence" by a municipality means more than simply providing technical assistance or recommendations to the petitioner. *Town of Campbell*, 2003 WI App. 247, ¶22. Influence means conduct by which the annexation authority dominates the petitioner so as to have effectively selected the boundaries for the annexation. *Id.*

Applying the foregoing authorities to the present case, the City cannot be charged with any irregularities in the boundaries of the subject annexation. There is absolutely no evidence in the record supporting any claim that the City selected the boundaries for the Kohler annexation. To the contrary, the evidence points only to the fact that Kohler selected the lands to be included in the annexation and established the boundaries for the annexation. Kohler did not seek the

City's input regarding the boundaries of the annexation prior to filing its petition and the City gave no such input.

The only evidence introduced at trial regarding the City's involvement in the annexation occurred after Kohler advised City officials that Kohler would be pursuing the annexation. The record shows that City officials, including Sokolowski, assisted in the presentation of the concept of the annexation to the Common Council. Kohler and City officials further prepared a draft Pre-annexation Development Agreement which discussed the mutual benefits of the annexation as well as the parties' obligations in the event the Common Council approved the petition.

The City's involvement in presenting the annexation to the Common Council and in preparing a Pre-annexation Development Agreement does not rise to the degree of influence and control necessary to impute the boundaries of the annexation to the City. The City's involvement in the annexation had nothing to do with determining the boundaries for the annexation. Therefore, any irregularities in the boundaries of the annexation cannot be imputed to the City.

In its post-trial brief, the Town concedes the absence of any City control or influence over the annexation boundaries or its configuration. The Town claims, in fact, that the City took a "blind eye" to the properties that Kohler included in the annexation so as to avoid having the boundaries of the annexation imputed to the City and that City officials agreed to advocate for Kohler's petition without allegedly knowing what would be included within the annexation. *See Town Post-Trial Brief, pp. 11-12.*

In sum, the only evidence offered at trial demonstrates that Kohler, and only Kohler, determined the boundaries for the annexation and the properties to be included in the petition. The City exercised absolutely no influence or control whatsoever in selecting the boundaries for

the annexation. As a result, cannot be charged with any arbitrary action in drawing the boundary lines. *Town of Baraboo*, 2005 WI App 96, ¶21; *Town of Campbell*, 2003 WI App. 247, ¶21. The City's Ordinance satisfies the first prong of the rule of reason.

C. The Annexed Lands Are Contiguous to the City.

The Town focuses its challenge at trial on whether lands included in the Kohler petition are contiguous to the City under Wis. Stat. § 66.0217(3). As it did in connection with its request for injunctive relief, the Town insists that the annexation is invalid under the Wisconsin Supreme Court's decision in *Mt. Pleasant I* because the City and the lands included in the Kohler annexation are not "contiguous." The Town claims that since 1964, a "gerrymandered" or "corridor" annexation, whereby a private developer attempts to reach a targeted, non-contiguous property by a string of properties to a city, does not meet the statutory requirement of contiguity.

The Town's continued insistence that *Mt. Pleasant I* controls on the issue of contiguity in owner-petitioned annexations is without support. Although contiguity and the alleged arbitrariness in the boundaries or configuration of annexed property remain a proper consideration in a challenge to an owner-initiated annexation, the circumstances in which this factor may be invoked has been significantly circumscribed by decisions of the Wisconsin Supreme Court and Court of Appeals. Since *Mt. Pleasant I*, the Wisconsin Supreme Court and Court of Appeals have refused, absent egregious circumstances, to impute irregularities in the boundaries of an owner-petitioned annexation to a municipality so as to render an annexation unreasonable and arbitrary or non-contiguous under the rule of reason. Only in those circumstances when an annexation adds territory that represents an "island"—either in actuality or in essence—apart from the municipality's existing territory, can an annexation be rendered invalid on grounds that the municipality is not "contiguous" to the lands that are the target of an

annexation. *See Town of Lincoln v. City of Whitehall*, 2018 WI App. 33, 382 Wis. 2d 112, 912 N.W.2d 403 *review granted,* 2018 WL 5269315.

The decision in *Mt. Pleasant I* has been so significantly limited that the Court of Appeals has questioned whether an owner-petitioned annexation can ever be rendered invalid on contiguousness grounds based on irregularities in the boundaries of the annexation. *Town of Campbell*, 2003 WI App. 247, ¶27. As observed by the Court of Appeals in *Town of Campbell*:

> *Town of Mt. Pleasant* is a difficult case to harmonize with subsequent supreme court cases that recognize the right of petitioning property owners to include only their own properties and state that in such situations the annexing municipality is not charged with arbitrariness, as long as it is not a controlling influence.

Town of Campbell, 2003 WI App. 247, ¶27.

In *Town of Lincoln*, the Court of Appeals again questioned the viability of the contiguity requirement announced in *Mt. Pleasant I* in an owner-initiated annexation. *Town of Lincoln*, 2018 WI App. 33, ¶¶39, 47, fn. 7. In fact, the Court of Appeals requested clarification from the Wisconsin Supreme Court as to whether an owner-initiated annexation may be challenged on arbitrariness grounds due to the "exceptional shape" of the annexed territory. *Id.* The Court stated:

> We acknowledge that in *Town of Campbell v. City of La Crosse*, 2003 WI App 247, 268 Wis. 2d 253, 673 N.W.2d 696, we expressed skepticism as to whether the general shape of the annexed territory remained susceptible to challenge in an owner-initiated annexation. *Id.*, ¶27 & n.7. Consequently, we called on our supreme court to clarify whether *Town of Mt. Pleasant v. City of Racine*, 24 Wis. 2d 41, 127 N.W.2d 757 (1964), remained valid given the subsequent case law. *Town of Campbell*, 268 Wis. 2d 253, ¶27 n.7. Nonetheless, despite our professed skepticism in *Town of Campbell*, we appear to have subsequently analyzed a direct annexation's shape under the rule of reason in *Town of Baraboo v. Village of W. Baraboo*, 2005 WI App 96, ¶¶21-22, 283 Wis. 2d 479, 699 N.W.2d 610. We therefore assume an annexation of an "exceptional shape" may trigger further scrutiny for arbitrariness, but we renew our call for the supreme court to clarify the law in this area.

Id.

The general rule remains that irregularities in the boundaries of an owner-initiated annexation may not be imputed to an annexing municipality absent controlling influence by the municipality. The decisions of the Wisconsin Supreme Court and Court of Appeals recognize the right of petitioning property owners to include in their annexation only those properties which the owners deem necessary and in their best interests.

It is against the backdrop of the limited viability and applicability of *Mt. Pleasant I* in owner-initiated annexations that the Court must analyze whether the City's annexation of the Kohler Land violates the rule of reason on contiguity grounds. The Court concludes, as it did at the injunction stage in this action, that the City's annexation satisfies the contiguity requirement. By annexing the Kohler Land, the City did not in actuality or in essence create an island entirely separate and apart from the City's existing territory. The boundaries, size and shape of the annexation are not so egregious as to warrant invalidation of the annexation on contiguity grounds. The Town's claim that the City's Ordinance is invalid on contiguity grounds under *Mt. Pleasant I* is rejected.

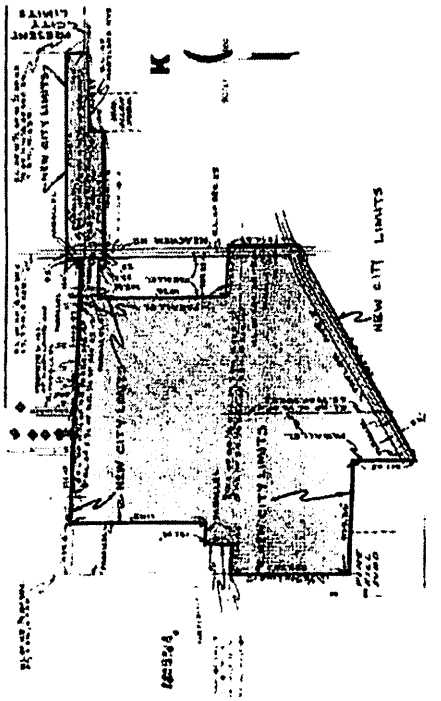
1. The Law on Contiguity.

a. The *Mt. Pleasant I* Decision.

The Town bases its challenge to the City's Ordinance on the Wisconsin Supreme Court's decision in *Mt. Pleasant I.* In *Mt. Pleasant I*, the issue before the Court was whether an ordinance of the City of Racine annexing certain lands in the Town of Mt. Pleasant was void because the proposed area to be annexed was not contiguous to the City of Racine under the statutory provisions then in effect for annexations. The annexation at issue was initiated, like the present case, by a private petitioner.

The petitioner in *Mt. Pleasant I* sought to have the City annex a 145 acre tract of non-

contiguous land. The landowner filed a petition for annexation with the City. In order to satisfy the statutory contiguity requirements and connect the tract of land to the City, the landowner included within its petition for annexation a "corridor" of land which connected the land to the City. A diagram of the *Mt. Pleasant I* annexation is shown below:



The corridor was approximately 1,705 feet long, and varying in width from approximately 306 feet to 152 feet. The corridor was 153 feet wide where it touched the southwest corner of the Racine city limits and also where it connected with the boundaries of the annexed area. When the annexation ordinance was enacted, there was no dedicated street in existence through the corridor and there were no city streets giving access to the corridor.[27]

The trial court upheld the City's ordinance. The trial court found the corridor contains a full width street and that the area within the corridor contained or would provide all of the

[27]The main portion of the annexed property was platted for 328 residential lots. Prior to the annexation, the town had entered into a contract with the city providing for sewage disposal. The town had also received authorization to construct water public service to the area with water supplied by the city. The Town maintained a police force, was part of a school district and had an agreement for fire protection with the city and an adjacent village.

necessary services to the entire annexed area. Likewise, the trial court determined that the corridor provided a natural and practical connection whereby the area as a whole may be developed as an integral and homogeneous part of the city of Racine. Finally, the trial court determined that the city has a need for additional residential and shopping areas to provide for its expanding population. The trial court concluded that the annexation satisfied the statutory requirements, that the tract in question is contiguous to the city of Racine and that the tract is reasonably suitable or adaptable to city uses and needs.

On appeal, the Wisconsin Supreme Court reversed the trial court's decision, holding that the annexed area was not "contiguous" to the City under the annexation statute. In determining whether the annexation was "contiguous," the Mt. Pleasant Court developed a "rule of reason" standard to be applied to municipal annexations. *Id.*, at 46. [28] Under the "rule of reason standard," a circuit court is charged with determining whether the proposed boundary lines of an annexation are reasonable, i.e., they were not fixed arbitrarily, capriciously, or in the abuse of discretion. *Id.* at 46.

In developing the rule of reason standard, the Court recognized that the discretionary authority of a city to determine its own boundaries is not wholly without limitation. *Id.* at 45-46. The Court observed that the legislative intent of a municipal corporation is of a collective body and of compactness or contiguity. *Id.* The Court stated that an annexation which connects a municipality to an annexed area only by a corridor a "few feet wide" is inconsistent with this legislative intent:

> Shoestring or gerrymander annexation is not a rare phenomenon. The tendency of subdividers to reach far out into the countryside for vacant land, and their desire to attach it to the city of services, is natural; however, this can lead to annexations which in reality are no more than

[28]The dissent in *Mt. Pleasant I* observed that the majority engrafted the "rule of reason" requirement on whether the contiguity requirement is met under an annexation statute. *Id.*, at 48-49.

> isolated areas connected by means of a technical strip a few feet wide. Such a result does not coincide with legislative intent, and tends to create crazy-quilt boundaries which are difficult for both city and town to administer.

Id.

Based on the narrow dimensions of the corridor connecting the City of Racine to Mt. Pleasant, the Court found that the City of Racine's annexation of the Mt. Pleasant lands was unreasonable and constituted an abuse of discretion. *Id.*, at 47. The Court concluded that the annexation did not satisfy the contiguity requirement in the annexation statute and remanded the case to the trial court with instructions to enter judgment declaring the City of Racine's annexation order void and of no effect. *Id.*

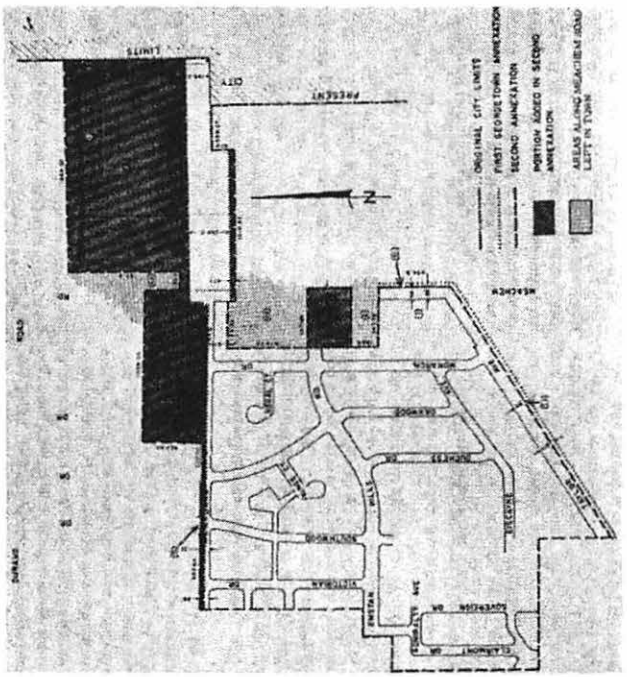
b. *Mt. Pleasant II* and its Progeny.

(1) *Mt. Pleasant II.*

Soon after *Mt. Pleasant I* was decided, the lands included in the proposed annexation were reconfigured by the landowner and made the subject of another petition for annexation. The concerns of the *Mt. Pleasant I* Court regarding the narrow corridor connecting the annexation were addressed by widening the annexed area. *Mt. Pleasant II,* 28 Wis. 2d at 521. The border of the annexation was expanded from 186 to 1,023 feet and the annexation was widened in various other areas as the annexation proceeded southbound toward the "balloon" or largest part of the annexation. *Id.* The changes to the initial annexation are summarized below:

> The important changes from the first attempted annexation are: (1) The area covered by the annexation was increased from 144 to 172 acres. (2) The strip connecting the territory to the city was widened from 186 to 1,023 feet (see A on map). (3) All of Maryland (sic) Avenue was included instead of just one-half (see B). (4) A 424-by-1,059-foot area was added north of Maryland Avenue (see C). (5) A 17-foot strip south of Taylor Avenue was eliminated by making that avenue the southern boundary for the area (see D). (6) A 22-foot strip east of Meachem Road was removed by making that road the eastern boundary (See E.) (7) A 292-by-397-foot section lying west of Meachem was added (see F).

Id. As shown in the following diagram taken from *Mt. Pleasant II,* the annexation continued to include relatively narrow areas of land and also remained relatively irregular in its shape. The portions added to the annexation following *Mt. Pleasant I* are shaded in black:



The Town again challenged the annexation under the rule of reason. *Id.*, at 524. Although the Town no longer challenged whether the dimension of the border between the City of Racine and the annexation was sufficient, the Town asserted that the annexation was void because the boundary lines were drawn so as to "arbitrarily eliminate electors from participating in the annexation proceedings and without regard for city needs and purposes." *Id.*

The trial court found that the City's annexation continued to violate the rule of reason notwithstanding the change in the dimensions of the annexation. *Id.* The Court determined that the ordinance inappropriately excluded at least twenty electors and further that the boundary lines remained unreasonable and unrealistic. *Id.* at 525.

The Wisconsin Supreme Court reversed the trial court's decision and upheld the City's annexation ordinance. *Id.* at 529. The Court found that the Town failed to demonstrate that the exclusion of electors from the annexed area was arbitrary, capricious, or unreasonable.[29] *Id.*, at 526. The Court, likewise, found that the Town failed to demonstrate that the configuration of the annexed area was arbitrary or capricious. *Id.*, at 528-529. In reaching its decision, the Court determined that the annexation did not impermissibly create any "islands" of Town property. *Id.*

The Court in *Mt. Pleasant II* also declined to impute any irregularities in the shape and configuration of the annexation to the City of Racine. *Id.* The Court emphasized that the shape of the annexation was attributable to the private party petitioner which the City was bound to accept:

> *Second*, in Fond du Lac the annexation proceedings were commenced by the city while in the present case the city was bound to accept the plan 'as is' since Racine Properties, Inc., was the petitioner.

Id.

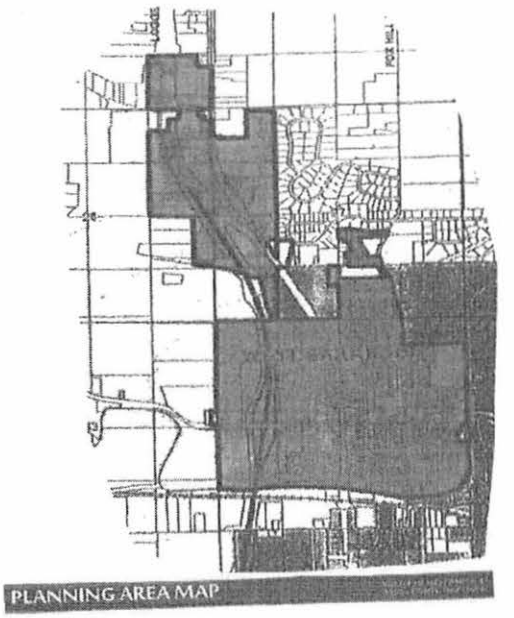
In upholding the configuration, the Court recognized that the annexation statute does not impose any requirements on the territory to be included in an annexation or require the boundaries to be established according to any pattern. *Id.* at 529. The Court emphasized that the boundaries of an owner initiated petition are discretionary to the petitioner. *Id.*

(2) *Town of Baraboo.*

The decision of the Court of Appeals in *Town of Baraboo,* 2005 WI App 96, ¶21 is further instructive. In *Town of Baraboo,* the north-south extension of an owner-initiated annexation by the Village of Baraboo was one and one-half times longer than the Village prior to the annexation. The annexation was connected to the Village "by a sliver of land just over 200

[29]The Court noted that the trial court impermissibly shifted the burden of proof to the City once the annexation was attacked as being unreasonable by requiring the City to demonstrate that there was a "sound municipal reason" for the exclusion of each and every piece of property not covered by the annexation. *Id.*

feet wide, at its southern tip." The town brought suit against the Village to have the annexation ordinance declared invalid. The town contended that the annexation at issue constituted an impermissible "gerrymandered" or "crazy quilt" municipal boundary. *Town of Baraboo*, 2005 WI App 96, ¶22. The annexed area appeared as shown below:



Source: Village of Baraboo's website; see also City's Brief in Opposition to the Town's Motion for a Temporary Injunction, p. 20.

On appeal from the circuit court's grant of summary judgment in favor of the Village, the Court of Appeals rejected the town's claim that the configuration of the annexation was invalid under *Mt. Pleasant I* and concluded that the boundaries and shape of the annexation did not violate the rule of reason. *Id.*, ¶23. The court found that although the annexation created an "arm like" extension of the northern boundary of the Village of Baraboo, the annexation was not a "shoestring" or "balloon on a stick" annexation "whereby the Village relied solely on a highway right-of-way to 'capture' a distant prized parcel." *Id.* The court emphasized that the annexation consisted of parcels flanking both sides of a highway corridor whose owners sought

annexation and that the corridor in question had experienced increased traffic flow and development pressure in recent years. *Id.* The court further emphasized that the annexation allowed the Village to plan for orderly commercial and industrial development served by appropriate municipal services. *Id.*

The court concluded that under the facts before it, there was no reason to deviate from the general rule that owner-initiated petitions should not be invalidated based on the arbitrary or irregular shape of the annexation:

> As in *Town of Campbell,* we do not find the present annexation to be of a kind that removes it from the "general rule" that owner-petitioned annexation should not be invalidated under the first component of the rule of reason. *See Town of Campbell,* 268 Wis.2d 253, ¶ 27, 673 N.W.2d 696 (concluding that it is "the better course to follow" more recent supreme court analysis of the issue as opposed to that in *Town of Mt. Pleasant).*

Id.

c. The Most Recent Statement of the Law: The *Town of Lincoln* Decision.

The requirements to satisfy the statutory contiguity requirement in a private party annexation were recently addressed by the Court of Appeals in *Town of Lincoln,* 2018 WI App. 33.[30] In *Town of Lincoln*, the ordinance at issue involved a "direct annexation by unanimous approval" under Wis. Stat. § 66.0217. The annexation was initiated by Whitehall Sand and Rail ("Whitehall Sand"). Whitehall Sand worked with property owners in the area and determined the properties to be included in the annexation petition.

Following the filing of the petition, the City's Mayor questioned the lands included in the petition because he believed that the boundaries created an impermissible island. Thereafter,

[30]As noted above, the Wisconsin Supreme Court accepted a petition for review of the Court of Appeals' decision in *Town of Lincoln.* The petition was accepted by the Court in early September of 2018.

Whitehall Sand discussed the matter with property owners and revised the annexation to include additional properties so as to address the Mayor's concern.

The annexation was ultimately made up of four phases. Phase one consisted of approximately 277 acres extending northward from the City's northern boundary, where the annexed territory and the City shared a border of approximately three-quarters of one mile. Phase two consisted of 292 acres, arranged in a ribbon approximately one-fourth mile wide, extending northwesterly from the northwestern corner of the phase one territory. Phase three consisted of approximately 380 acres, connected to phase two at its southern edge for approximately one-fourth mile before expanding both to the north and to the west. Finally, phase four consisted of approximately 300 acres located to the west of phase three. Phases three and four shared a boundary of approximately one-half mile.

The Town brought an action for declaratory relief against the City to have the annexation ordinance invalidated on the grounds, among others, that the annexed lands were not contiguous to the municipality as required by Wis. Stat. §§ 66.0217(2). The Town claimed that the annexation was not contiguous because the annexation constituted an impermissible "balloon on a string annexation" and the boundaries were "impermissibly gerrymandered." The Town further contended that the irregularities in the boundaries could be charged to the City because the City, not Whitehall Sand, established the properties included in the annexation.

The City moved for summary judgment dismissing the Town's claims that the annexation did not satisfy the statutory contiguity requirements.[31] The circuit court granted the City's motion and dismissed the Town's complaint. In reaching its decision, the circuit court

[31]The Town asserted several other challenges to the annexation ordinance at issue. *Id.*, ¶¶*8-10.* The circuit court dismissed these challenges as being beyond the scope of judicial review of a direct annexation. *Id.*, ¶11. The Court of Appeals upheld the trial court's dismissal of the Town's claims with the exception of the contiguity requirement. *Id.*, ¶27.

determined that contiguity under Wis. Stat. § 66.0217 required only that the annexed territory was in physical contact with an existing City boundary. The Court found that the City and the annexed areas were in physical contact with each other and therefore dismissed the Town's claims.

The Court of Appeals subsequently affirmed the circuit court's decision. *Id.*, at ¶50. In reaching its decision, the Court reviewed the contiguity requirement and ruled, contrary to the circuit court, that a finding of statutory contiguity requires more than physical contact between a municipality and the annexed territory. *Id.*, at ¶30. The Court determined that "contiguity" also requires a finding that the boundaries and configuration of the annexed territory in relation to the existing municipal boundaries are not "arbitrary under the first prong of the rule of reason." *Id., citing Mt. Pleasant I,* 24 Wis. 2d at 45–46.

As to the first requirement for statutory contiguity, the Court observed that there is no single definition of the term "contiguity" in Wis. Stat. § 66.0217. *Id.*, ¶32. The Court found that under Wisconsin Supreme Court decisions, the trend was to "require at a minimum some significant degree of physical contact between the properties in question." *Id., quoting Town of Delevan v. City of Delevan*, 176 Wis. 2d 516, 528, 500 N.W.2d 268 (1993). The Court observed, however, that the absence of physical contact between two properties does not necessarily preclude a finding of statutory contiguity. *Id.* The Court noted that the Wisconsin Supreme Court found statutory contiguity despite a twenty-three foot gap between the municipality and the annexed properties *Town of Lyons v. Lake Geneva*, 56 Wis. 2d 331, 335-336, 202 N.W.2d 228 (1972) and despite a 400 foot stretch of water which divided the municipality from the annexed lands in *Town of Delevan. Id.*, ¶33.

The Court held there are two circumstances in which a town may challenge the

boundaries of an annexation on contiguity. The first circumstance is where the annexing municipality is one of the petitioning landowners or where the municipality is shown to be the true controlling influence in selecting the boundaries for an annexation. *Id.*, ¶39. The Court observed that "influencing" in the context of an annexation, means more than providing mere technical assistance or recommendations to the petitioners. *Id.* "Influencing," the Court determined, refers to conduct by which the "annexing authority dominates the petitioners so as to have effectively selected the boundaries" of the annexation. *Id.*

The second circumstance is when boundaries of the annexation are of an "exceptional shape" demonstrating shoestring, gerrymandered or crazy quilt municipal boundaries. *Id.* The Court recognized that a Town may challenge contiguity in this circumstance even when a private landowner initiates the annexation and sets the boundaries for the lands to be annexed. *Id.*

The Court ruled, however, that a Town's ability to challenge an ordinance based on the boundaries of a private party petition is limited to only the most egregious situations in which the land connecting the municipality to the target of the annexation is so narrow that the target of the annexation represents an "island"—either in actuality or in essence—apart from the municipality's existing territory. *Id.*, ¶¶39, 46-47. Mere irregularities in shape or the presence of an "arm-like extension" from the municipal boundary are insufficient, in and of themselves, to invalidate an annexation on grounds of arbitrariness. *Id.*, ¶46. The Court explained:

> To elaborate, our understanding of existing law is that, to the extent an arbitrariness/exceptional shape analysis still applies to owner-initiated annexations, *see supra* n.7, the analysis is designed to protect against only the most egregious configurations. Specifically, annexations cannot add territory that represents an "island"—either in actuality or in essence—apart from the municipality's existing territory. *See, e.g., Town of Mt. Pleasant*, 24 Wis. 2d at 46, 127 N.W.2d 757 (discussing the need to avoid "annexations which in reality are no more than isolated areas connected by means of a technical strip a few feet wide"). *All of the various, colorful metaphors used to describe what constitutes an arbitrary configuration seem concerned with this type of extreme result.*

> *So long as no part of the annexed territory is so narrow as to effectively create such an island, the petitioners' choice of boundaries is not unreasonable.*

Id., ¶47 (emphasis added).

Applying the contiguity standards to the case before it, the Court first held that the annexation at issue in *Town of Lincoln* satisfied the statutory physical contiguity standard. *Id.*, ¶34. The Court found that the connection point between the annexed lands and Whitehall Sand in Phase 1, which was three-quarters of one mile, constituted a "significant degree of physical contact" so as to satisfy the contiguity requirement. *Id.* The Court noted that the connection point in Phase 1 gave "physical contiguity to the entire annexed area." *Id.*

The Court next found there was no evidence in the record that the Whitehall had any involvement in, or influence over, setting the boundaries of the annexation such that irregularities in the annexation could be imputed to Whitehall Sand. *Id.*, ¶43. The Court determined that the mayor's advice to Whitehall Sand regarding the legality of the boundaries selected by the private landowner did not constitute "influence" over the selection of the boundaries such that Whitehall could be charged with any arbitrary action in drawing of the boundary lines. *Id.* The Court reasoned that a municipality's provision of technical assistance or suggestion of land to be included in an annexation to comply with legal requirements does not, as a matter of law, rise to the level of influence required to impute the boundaries selected to the City. *Id.*

Finally, the Court held that the annexation was not of an "exceptional shape" so as to render the boundaries arbitrary and in violation of the contiguity requirement. *Id.*, ¶46. The Court initially determined that the boundaries of the annexation did not create a gerrymandered island nor was the annexation of a "crazy quilt" configuration." *Id.*

The Court likewise found that the subject annexation did not constitute an impermissible

"balloon on a string." *Id.*, ¶48. In so finding, the Court compared the configuration of subject annexation with the shape of the annexation in *Mt. Pleasant I*. *Id.*, ¶48. The Court observed that the 145 acre target of the annexation in *Mt. Pleasant I* was connected to the city by a long, narrow corridor or "string" of approximately 1700 feet in length that varied in width between 150 and 300 feet with its narrowest point where the annexed territory connected to the municipality. *Id.* In contrast, the Court found that the "balloon" or target of the Whitehall Sand annexation was 300 acres and was connected to Whitehall by lands which totaled nearly 950 acres. *Id.* The narrowest point of the annexation was over 1,000 feet and was part of a 300 acre parcel in Phase 2 of the annexation. *Id.*, ¶49. Based on its analysis, the Court concluded that the Whitehall Sand annexation, unlike the annexed lands in *Mt. Pleasant I,* did not constitute a "shoestring configuration" whereby the annexed territory included "isolated areas connected by means of a technical strip a few feet wide." *Id.* [32]

2. The City's Annexation Satisfies the Contiguity Requirement As Established under the *Town of Lincoln* Decision.

a. There Is a Significant Degree of Contact Between the City and the Lands Which Are the Subject of the Petition.

In the present case, the connection point between the City and the annexed lands unquestionably meets the contiguity requirement in Wis. Stat. § 66.0217(3). The border between the City and the annexed areas is in excess of 200 yards. The contact area plainly constitutes a "significant degree of physical contact" between the City and the annexed properties. *Town of Delevan*, 176 Wis. 2d at 528. It also most certainly meets the expanded definition of "contiguous" adopted by the Court in *Town of Lyons*. As such, the first prong of the "contiguity" test set forth in the *Town of Lincoln* is satisfied in this case.

[32]The Court further observed that there was no evidence that the "string" territory in the annexation at issue was included merely as a means of reaching the alleged "balloon territory." *Id.* The evidence showed that all phases of the annexed territory were going to be used for mining operations. *Id.*

b. The City Did Not Influence Selection of the Annexation Boundaries.

The second part of the *Town of Lincoln* test for contiguity is whether there is evidence that the City influenced selection of the boundaries for the annexation such that any irregularities may be imputed to the City. As discussed at length above, there is absolutely no evidence that the City had any involvement in, or influence over, setting the boundaries of the annexation. As a result, there is no basis to impute any irregularities in the boundaries of the annexation to the City. The second prong of the *Town of Lincoln* test has been satisfied.

c. The Configuration of the Annexation Satisfies the Contiguity Requirement for an Owner Petitioned Annexation.

The annexation further meets the contiguity standard in *Town of Lincoln*. There is no part of the annexed territory that is so narrow that the target of the annexation, i.e., the Kohler Land, represents an "island"—either in actuality or in essence—apart from the City. Stated differently, the City, through the annexation, did not add an island, either in actuality or in essence, apart from the City's existing territory. Likewise, the shape and configuration of the annexation is not so irregular so as to provide any basis to overturn the City's Ordinance on contiguity grounds.

This conclusion is borne out by the overall dimension and shape of the annexed lands in the Kohler annexation. The connection point between the City and the annexed lands is in excess of two football fields in width. The connection point is more than three times the width of the connection point in the annexation upheld by the Court of Appeals in the *Town of Baraboo* and four times greater than width of the connection point at issue in *Mt. Pleasant I.*

The overall width of the lands in the Kohler annexation is substantially greater than *Mt. Pleasant I.* As the annexation proceeds south and east toward the Kohler Land from the

connection point, the annexation area ranges from 190 feet wide at its narrowest point, which is two-thirds of the widest point in the *Mt. Pleasant I* annexation, to 1,450 feet wide, which is almost five times the widest dimension of the *Mt. Pleasant I* annexation.

Viewed individually, the component parts of the lands connecting the Kohler Land to the City are also substantially larger and different in their composition from their counterparts in *Mt. Pleasant I.* The vertical arm attaching Kohler's annexation to the City, which is comprised of Parcels 1 through 3, is significantly larger in dimension than any aspect of the corridor in *Mt. Pleasant I.* Parcel 1 of the Kohler annexation, which is part of the Riverdale golf course, is over 19 acres in size. Parcels 2 and 3, which are owned by the City, combined are over 29 acres. The Kohler annexation is in stark contrast to the extremely narrow and long corridor in *Mt. Pleasant I* which measured which measured 1,705 feet in length and varied in width from approximately 152 feet to approximately 306 feet.

Moving beyond the arm in the Kohler annexation and traveling south and east toward the Kohler Land, there is no segment of the annexation which can reasonably be described as a "technical strip a few feet wide" which the Court in *Mt. Pleasant I* found objectionable or which is so narrow so as to add an island apart from the City. While smaller "out lots" and "rights of way" are incorporated into the Kohler annexation in areas such as parcels 11 through 15 and 17 through 25, these parcels are bordered by additional and larger parcels of land which are included in the annexed lands. The combination of the parcels results in a significantly larger overall territory.

The overall shape and appearance of the Kohler annexation is likewise not so arbitrary or unreasonable that it can or should be invalidated. The configuration of the Kohler annexation is similar in shape and dimension to the annexation the Wisconsin Supreme Court upheld in *Mt.*

Pleasant II. Like the *Mt. Pleasant II* annexation, the Kohler annexation consists of an "arm" of land which proceeds in a southbound direction from the City. The annexation then moves to the east and south where it eventually connected with the annexation "target", i.e., the Kohler Land. The parcels included in the Kohler annexation, while varying in dimension, are substantial in dimension and similar to the annexation approved by the Wisconsin Supreme Court in *Mt. Pleasant II.*

The character and utility of the properties connecting the City to the Kohler Land are also significantly different than the properties in the corridor connecting Mount Pleasant to the target of the annexation in *Mt. Pleasant I.* The corridor in *Mt. Pleasant I* did not have an identified current or future purpose. The corridor did not have a dedicated street within it and no city streets provided access to it. The corridor's only identified value or purpose was to serve as the "string" connecting Mount Pleasant to the target of the annexation.

The parcels included in the Kohler annexation have far greater utility and purpose and are akin to those lands upheld by the Court of Appeals in *Town of Baraboo.* Parcels 2 and 3 of the "arm" of the Kohler annexation were purchased by the City prior to the annexation for the express purpose of the development of single family residences. Parcel 2, the former Poth Farm property, exceeds 19 acres in size and is capable of accommodating 110 single family residences as well as a small park. Parcel 1, which is also in the arm, is part of the Riverdale golf course. The balance of the land from Parcel 3 of the annexation to the Kohler Land is likewise developed or capable of being developed. The land includes parcels with existing single family residences, undeveloped subdivision parcels and segments of the Riverdale golf course. The City has a need to annex these properties and the Kohler annexation facilitates the orderly development of the City as envisioned in the City's 2000 and 2011 Comprehensive Plans.

The *Mt. Pleasant II*, *Town of Baraboo* and *Town of Lincoln* mandate upholding the City's Ordinance and annexation of the Kohler Land in this case. The City's annexation of the Kohler Land does not create in essence or actuality an island. Likewise the presence of an "arm like" extension in the annexation and the somewhat irregular shape of the annexation are insufficient, in and of themselves, to invalidate the annexation. The lands included in the City's annexation are substantial in dimension and are significantly different than the narrow corridor which the Wisconsin Supreme Court invalidated in *Mt. Pleasant I.*

The Town's repeated insistence throughout this case and in its post-trial brief that the Kohler annexation is factually "indistinguishable" from the annexation overturned in *Mt. Pleasant I* are unsustainable. There is no basis to overturn the City's Ordinance annexing the Kohler Land on contiguity grounds.

In its post-trial brief the Town does not discuss in any meaningful way or distinguish the decisions which substantially limit the applicability of the *Mt. Pleasant I* decision in owner-petitioned annexations. The Town's post-trial brief does not even mention the 2018 Court of Appeals decision in the *Town of Lincoln,* which, similar to the decades of decisions before it, questions not only the applicability of *Mt. Pleasant I* to an owner initiated annexation but the viability of *Mt. Pleasant I* in owner initiated annexations. The Town also does not reference or in any way attempt to distinguish the *Town of Baraboo* or *Mt. Pleasant II* decisions which support the validity of the Kohler annexation.

The Town's remaining arguments in its post-trial brief for invalidating the annexation on contiguity grounds similarly provide no basis in law or in fact to overturn the City's Ordinance. The Town first argues that the Kohler annexation is not contiguous to the City because "Kohler built an annexation string" solely for the purpose of connecting the Kohler Land to the City. The

Town claims, without any supporting authority, that any time a private property owner such as Kohler files a petition for annexation in which the target land is connected by a "corridor" of land, the annexation violates the contiguity requirement:

> Regardless of the label, however, the rationale is the same. "Contiguity is not satisfied when a private party targets non-contiguous land for annexation and creates a corridor of land for the purpose of "connecting" to a city or its services.

Town Post-Trial Brief, p. 27.

The Town's position is unsupported in Wisconsin law. There is nothing in Wisconsin statutes or the common law which prevents a landowner seeking annexation from designing the boundaries of an annexation to achieve a physical connection between the target of the annexation and a municipality. The annexation statute, Wis. Stat. § 66.217 *et. seq.* allows private property owners to pursue petitions for annexation with a municipality. In so doing, Wis. Stat. § 66.217 does not does not control or restrict how a private petitioner designs the boundaries of the lands connecting the target of an annexation to a municipality. The statutory language only requires that the municipality is contiguous to the land to be annexed. *Wis. Stat. § 66.217.*

Likewise, Wisconsin courts do not prohibit landowners from designing the boundaries of an annexation to connect the target of an annexation to a municipality. In the decisions since *Mt. Pleasant I*, Wisconsin courts have given great deference to the desires of landowners to become part of a municipality. Private landowners are granted broad discretion in designing the boundaries of an annexation so as to ensure the success of an annexation petition. Private party petitioners are not required to include any specific amount of territory in a petition nor are they required to draw the boundaries according to any set pattern. *Mt. Pleasant II*, 28 Wis. 2d at 529. Private property owners are likewise under no obligation to include areas in an annexation which are of no concern to them and may design the boundaries so as to ensure the success of the

annexation. *Town of Campbell*, 2003 WI App. 247, ¶21; *Town of Pleasant Prairie*, 75 Wis. 2d at 342; *Town of Waukesha,* 58 Wis. 2d at 532.

Private party petitioners may, as Kohler did in this case, even include a portion of a parcel in an annexation while excluding the remainder of the parcel from the annexation. Again, as a private landowner, Kohler had the right to design the boundaries of the annexation as Kohler saw fit. As recognized by the Court of Appeals in the *Town of Lincoln*:

> The Town also argues the annexation divides certain properties that were originally subject to a single legal description, such that those properties are now partly inside the annexed territory and partly outside the annexation boundaries. Yet, in a direct annexation by unanimous approval, such matters are left to the discretion of the petitioning landowners, who have the right to act in their best interests as they see them. *See Town of Campbell*, 268 Wis. 2d 253, ¶ 21, 673 N.W.2d 696. As such, their decision to include or exclude certain portions of their property does not per se demonstrate arbitrariness. *See Town of Baraboo*, 283 Wis. 2d 479, ¶¶ 21–22, 699 N.W.2d 610.

Town of Lincoln, 2018 WI App. 33, ¶46, fn. 8.

In its post-trial brief, the Town further suggests that Kohler's annexation should be scrutinized more carefully because the petition was a non-unanimous petition. *See Town Post-Trial Brief, pp. 17, 23.* The Town emphasizes that Kohler's annexation petition was supported by "only five" signatures. *Id.* The non-unanimous nature of the annexation is of no consequence to the validity of the annexation.

Section 66.0217(3) expressly recognizes the ability of a municipality to annex territory contiguous to a municipality based on a "direct annexation by one-half approval." The legislature, in crafting the language for direct annexation by one-half approval, did not impose any additional requirements on non-unanimous annexations. The statutory language for a non-unanimous direct annexation, like that of a unanimous direct annexation, requires only that the land to be annexed be "contiguous." *See* Wis. Stat. §§ 66.0217(2), (3).

Wisconsin courts also do not distinguish between unanimous and non-unanimous owner-initiated in reviewing annexations under the rule of reason. *Town of Pleasant Prairie*, 75 Wis.2d at 341-342. In *Town of Pleasant Prairie*, the Wisconsin Supreme Court upheld the right of a landowner in a non-unanimous direct annexation to design an annexation as the landowner saw fit notwithstanding the presence of dissenting landowners included in the properties to be annexed. *Id.* at 342. The Court found that where direct annexation proceedings are initiated by a property owner in a non-unanimous annexation, any irregularities or arbitrary action in drawing the boundary lines cannot be imputed to the annexing municipality despite the presence of dissenting landowners. *Id.*, at 339-340. In finding that the existence of objecting landowners does not provide a basis to invalidate an annexation, the Court stated:

> The mere existence of objections to annexation among some affected landowners does not invalidate the annexation. Where no electors reside on the land to be annexed, the legislature has provided that annexation may be accomplished on the basis of a petition signed by the owners of half the land in area or half the real estate in assessed value. Sec. 66.021(2)(a)2, Stats. Where all landowners (and electors if any) are in favor of annexation and sign the petition, the special streamlined procedure created by sec. 66.021(12) may be employed. It is implicit in these provisions that under sec. 66.021(2)(a) the property of minority landowners may be annexed without their acquiescence. The legislature would not have made separate provision for the case of annexation by unanimous approval if it were intended that unanimous approval be required where annexation is sought under the general provisions of sec. 66.021(2), Stats. As we recognized in the Town of Madison Case, majority rule may be a hardship upon minority landowners. However, the statute is clear and unambiguous in requiring this result. If a different result is to be achieved the remedy lies with the legislature, not with the courts.

Id. at 342-343.

In the present case, the presence of landowners who do not support the annexation does not provide any legal basis to invalidate it. Kohler had the right, as the property owner did in *Town of Pleasant Prairie*, to avail itself of the provisions in Wis. Stat. § 66.0217(3) which permit "direct annexation by one-half approval."

In sum, the Town has not demonstrated anything about the boundaries of the Kohler annexation which would warrant invalidating the annexation on contiguity grounds. The Town has not shown that any portion of the lands between the City and the Kohler Land are so "egregious" and narrow so as to render the Kohler Land, either in actuality or in essence, an island apart from the City's existing territory. Likewise, the Town has not pointed to anything in terms of the shape or size of the annexation which supports any claim that the annexation is invalid. The Town's insistence that *Mt. Pleasant I* controls in this case is legally and factually unsupported. As in *Town of Baraboo*, this Court finds nothing about the City's Ordinance annexing the Kohler Land which supports deviating from the general rule that irregularities in an owner-initiated petition cannot be imputed to the City under the rule of reason. The Kohler annexation satisfies the contiguity requirement. The Court upholds the City's ordinance.

D. The City and Kohler Demonstrated a Present or Demonstrable Future Need for the Annexed Property.

In reviewing an annexation, the rule of reason requires the court to consider whether the City has some reasonable present or demonstrable future need for the annexed territory. *Town of Pleasant Prairie*, 75 Wis. 2d at 334. As a corollary to this requirement, an annexation must be reasonably suitable or adaptable to City needs. *Id.*

The need requirement furthers public policy favoring orderly growth of urban areas by preventing irrational and arbitrary annexation of territory. *Town of Sugar Creek v. City of Elkhorn*, 231 Wis. 2d 473, 483, 605 N.W.2d 274 (Ct. App. 1999). When a municipality initiates the annexation proceeding, the factors deemed relevant to establishing need must be scrutinized closely by the court. *Id.* Where, however, a property owner such as Kohler initiates an annexation proceeding, courts must be responsive to the desire of a property owner to be located in a particular municipality. *Id.* In cases involving direct annexation initiated by a private

property owner, the court is required to consider factors in the need analysis including applicable zoning ordinances, development goals, and available services. *Id.*

To sustain the validity of an annexation the annexing municipality need not have a pressing, imperative need for the territory. *Town of Pleasant Prairie*, 75 Wis. 2d at 334. A showing of a reasonable need is sufficient to sustain annexation. *Id.* In *Town of Pleasant Prairie,* the Court provided the following non-exclusive list of factors which are relevant to the question of reasonable need:

- the necessity for reasonable and orderly plans for municipal development;
- an increase in population and the existence of growth overflowing existing boundaries;
- a need for additional area for industrial or residential construction to accommodate present and reasonably anticipated future growth;
- extension of police, fire, sewer and other services to a substantial number of residents of adjacent areas;
- and the avoidance of pollution problems that might result from reliance on septic tanks in developing the annexed area.

Id., at 335-336.

In *Town of Sugar* Creek, the Court of Appeals held that a City's desire to expand its zone of economic interest as relevant to determining reasonable need.[33] *Town of Sugar* Creek, 231 Wis. 2d at 482-483. The factors which the Court recognized as supporting a municipality's zone of economic interest include future benefits to a city; the necessity for sensible and systematic plans for urban development; the need for more land to accommodate present and future industrial development; commercial or residential construction; and the goals for the development of the annexed parcel as all supporting reasonable need. *Id.* In recognizing the

[33]In *Town of Sugar Creek*, the Court found that the list of factors relevant to reasonable need identified by the Court in *Town of Pleasant Prairie* was not all inclusive. *Id.*

zone of economic interest as a need supporting municipal annexation, the Court in *Town of Sugar Creek* approved the following testimony from the city's expert:

> [C]ities have a need and in a sense they also have an obligation to their residents to enhance and protect the economic growth and social well-being of the community, and that economic well-being in particular rests on the economic base, activities in the communities. By economic base, we're talking about the basic industries and manufacturing institutions that bring jobs and economic money into the committee [sic]. In this case we have really two situations reverting economic base. We have both the existing economic base represented by the Mann Brothers and other ongoing business. We also have the potential for additional economic base activities that's implied by the likely expansion of economic activity along the [state trunk highways] 12–67 aerial [sic]....
>
> This is fairly well-known in the area but when you have an economic base activity; it helps the community in several ways. It's not just the taxes that it pays, it's the...salaries and wages it pays to it's employees that support local businesses. It's the direct transfer of funds to other businesses in the area that they may use and the multiplier of all of those effects. So from the standpoint of the City's need to protect their current and future economic needs, the annexation is needed. It's also needed not just for the existing activities, but for the potential future activities along, ah, that highway corridor.

Id. at 481.

In cases of direct annexation, a property owner's need may be sufficient, in and of itself, to meet the need factor under the rule of reason. *Town of Pleasant Prairie*, 75 Wis. 2d at 334; *Town of Campbell v. City of La Crosse*, 2003 WI App. 247, ¶30, 268 Wis. 2d 253, 673 N.W.2d 696; *Town of Lafayette v. City of Chippewa Falls,* 70 Wis.2d 610, 629-30, 235 N.W.2d 435 (1975). Accordingly, a property owner's need for municipal services that the annexing municipality alone can satisfy meets the need factor. *Town of Pleasant Prairie*, 75 Wis. 2d at 334; *Town of Campbell v. City of La Crosse*, 2003 WI App. 247, ¶30, 268 Wis. 2d 253, 673 N.W.2d 696; *Town of Lafayette*, 70 Wis.2d at 629-30. A property owner's desire to obtain a change of zoning on its land or to develop that land also satisfies the need requirement. *Town of Pleasant Prairie*, 75 Wis. 2d at 329. A property owner may seek annexation from a municipality

to pursue what is in the owner's best interests. *Id.* The Court in *Town of Pleasant Prairie* explained:

> We find nothing in this state of affairs which would justify invalidating the annexation now before the court. The Town's assertion that the sole purpose behind the annexation was to obtain a change in zoning is misleading. The Ganglers' purpose was to develop their land, preferably for industrial use, which required zoning and municipal services not available in the Town. It cannot be doubted that a purpose to develop one's land is legitimate, and this court has stated that property owners may seek annexation in pursuit of their own perceived best interests. Town of Lafayette v. City of Chippewa Falls, 70 Wis.2d 610, 629, 630, 235 N.W.2d 435 (1975); Town of Waukesha v. City of Waukesha, 58 Wis.2d 525, 530, 206 N.W.2d 585 (1973). Cf. Town of Madison v. City of Madison, 12 Wis.2d 100, 106 N.W.2d 264 (1960), in which the court recognized that removal of the burden of town zoning ordinances on property in the town owned by the city of Madison was a legitimate goal of the annexation proceeding. We hold that a direct annexation not otherwise in conflict with the rule of reason is not invalidated because the petitioners are motivated by a desire to obtain a change in the zoning of their land.

Id. at 329-330 (internal citations omitted).

Applying the foregoing authorities to the present case, the Court finds that the "need" factor under the rule of reason has been satisfied. First, and foremost, the City showed a present or demonstrable future need for the annexed property. The most obvious example is in the expansion of residential housing. The City has historically lagged behind other municipalities in developing single family residential housing for those who moved to and/or work in the City. The City estimates it needs to add approximately 73 single family housing units per year to accommodate the demand.

The subject annexation allows the City to expand its available residential housing by bringing the Poth Farm, which the City purchased several years earlier for the express purpose of expanding its available residential housing, within the City's boundaries and jurisdiction. By means of the annexation, the City can now more efficiently and cost-effectively bring municipal services to the Poth Farm area which lowers the entry cost for residential development in the

area. Expansion into the Poth Farm area provides the City with an additional 110 single family residential sites. The City's need to expand residential housing to accommodate population growth and expand economic opportunity, alone, meets the reasonable need standard *Town of Pleasant Prairie*, 75 Wis. 2d at 335-336; *Town of Sugar* Creek, 231 Wis. 2d 473 at 482-483.

Likewise, residential development in the Poth farm land further increases the potential for the expansion of residential housing in other areas of the annexation. Expansion of municipal services into an area lowers the entry cost for other developers to move forward with residential development in other areas. The City's interests in expanding its population and to annex land to facilitate future population growth also satisfies the need requirement. *Id.*

Annexation further provides the City with the ability to achieve its long term economic planning and goals. In its 2000 and 2011 Comprehensive Plans, the City realized that its future viability depends upon its ability to capture a portion of the economic growth occurring outside of the City's boundaries. Like other municipalities, the City is faced with the cost of providing greater services, including those that benefit the entire region, while surrounding jurisdictions realize the region's growth and economic benefits.

The City's annexation of the lands in the Kohler petition allows the City to realize the economic benefits associated with the expansion of residential single family housing as well as Kohler's development and operation of a world class golf course. These economic benefits include substantially increased tax revenues, the creation of 227 new full time jobs, significant increased expenditures for local hospitality, retail, food and beverage and an $87,000 increase in the school property tax base. The City's desire to effect a reasonable and orderly plan for municipal expansion, development and economic growth satisfy the need requirement under the rule of reason. *Id.*

The annexation further benefits the City's Water Utility by creating greater economies of scale in the operation of the existing water utility infrastructure. The expansion of the water utility in a southerly direction along 12th Street and 18th Street in the annexed lands increases residential and commercial users who, in turn, fund the operation of the water utility. This is also a recognized need for an annexation. *Id.*[34]

Kohler also demonstrated need for annexation. Kohler owns a substantial portion of the lands subject to the annexation and has an economic interest in developing those lands into a world championship golf course. Like any other business, Kohler was in need of a partner to help it achieve its business and economic goals.

Kohler first sought to work with the Town of Wilson on the golf course development. Over time, however, Kohler's prospects of achieving approval of its application for a conditional use permit for the development of a golf course decreased significantly. The Town's residents, many of whom opposed the construction of a golf course in the Town, elected a majority to the Town Board that opposed the golf course development including the Town Board Chair, Ehmann, Stoelb and DesJardins.

Ehmann and Stoelb were affiliated with the Friends of the Black River which is a group that was organized to oppose the golf course and which filed lawsuits to stop the golf course from being built. Before being elected to the Board, Ehmann and Stoelb publicly opposed the golf course. They participated in campaigns, both written and oral, to inform the public as to why the Kohler's golf course development was not permitted under the Town's 20 year

[34]In finding the City demonstrated a reasonable present or future need, the Court is not relying solely on the apparent ability of the City to provide services to the annexed area. *See City of Beloit v. Town of Beloit*, 47 Wis. 2d 377, 389-391, 177 N.W.2d 361 (1970). The court recognizes that because a particular city is better able to provide services does not, in and of itself, satisfy the rule of reason. *Id.* The record in this case, however, contains substantially more. The record demonstrates that the annexed land has been in the City's long range growth plans for future economic growth, expansion and development for several years. Moreover, the evidence in this case demonstrates that the City stands to gain economically by extending services to the annexed lands as the addition of lands offsets the cost of the City's water utility.

comprehensive plan as well as the Town's zoning code. DesJardins similarly opposed the golf course development and believed that a golf course development was inconsistent with the Town's Comprehensive Plan.

Ehmann appointed another opponent of the golf course development, Roger Miller, as Chair of the Town's Plan Commission. The Plan Commission was responsible for evaluating Kohler's application for a conditional use permit and making recommendations to the Board regarding the application.

In light of these developments, Kohler reasonably believed that it may never obtain Town Board approval of its proposed golf course development. If Kohler wanted to develop its land in the manner which Kohler believed was in its best interests, it needed a new partner which shared in its vision, a partner which it found in the City. Kohler had a right to move forward with the City, rather than the Town, and pursue its economic best interests and to proceed in a manner which would allow Kohler to develop its land as it chose to do. *Town of Pleasant Prairie*, 75 Wis. 2d at 329.

Kohler also had the right to pursue the annexation in order to seek zoning which would allow for construction of the golf course on the Kohler Land. *Id.*, at 329. Although the Town Board never formally rejected Kohler's application for a conditional use permit, the Town Board members historically opposed the golf course development as being inconsistent with the Town's Comprehensive Plan and its zoning ordinances. Kohler reasonably believed that Ehmann, Stoelb, DesJardins and Miller would not take a different approach when it came time to finally address and vote on Kohler's application for a conditional use permit.[35]

[35]Kohler was not bound to accept the Board members' later claims that they would approach voting on Kohler's application in an open and unbiased manner.

Kohler's other stated reasons for the annexation also satisfy the reasonable needs standard. Kohler expressed doubt over the Town's ability to provide needed services to the golf course development. While Kohler intended to provide water to its golf course through a high capacity well, Kohler determined that it would benefit from the availability of the City's municipal water source. Municipal water ensured that there would be sufficient water available for the club house and other buildings constructed in conjunction with the golf course development.

Likewise, the availability of municipal water for the City's full-time professional fire department, including local hydrants on the Kohler premises, provided Kohler with better fire protection for the buildings on the golf course development than the Town's volunteer fire department, which relied on transporting water to fire scenes. Kohler's desire for municipal water which the City could provide, but the Town could not, satisfies the need requirement. *Town of Campbell*, 2003 WI App. 247, ¶31.

Kohler's concern that reliance on a high capacity well to provide water for a golf course development in the Town would unreasonably expose Kohler to damage claims from local property owners further justifies Kohler's need for the annexation. Although the various experts opined that Kohler's operation of a high capacity well would not unreasonably drawdown the aquifer or jeopardize the availability of water for surrounding residents, Kohler nonetheless faced the risk that the Town's residents, many of whom opposed Kohler's construction of a golf course, would assert claims for damages to their wells due to Kohler's operation of its golf course. Kohler was entitled to consider the potential of future claims and the cost of litigating those claims. Kohler was further entitled to conclude, notwithstanding the opinions of the experts, that the risk of numerous claims and litigation from the Town's residents was

prohibitive and supported Kohler's need to petition for annexation with the City. Again, Kohler was entitled to act in its own best interests in pursuing annexation with the City. *Town of Pleasant Prairie*, 75 Wis. 2d at 329.

The Town seeks to challenge the credibility of the needs set forth by the City and Kohler. The Town asserts that the needs set forth by Kohler and the City were mere creations of Kohler and the City and not based on any real need on behalf of either party to the annexation. The Town's efforts to undercut the stated needs of Kohler and the City are unsupported.

The Court had the opportunity to observe Hoekstra from Kohler and Sokolowski and Pelishek as well as the other witnesses from the City, who provided the primary testimony at trial regarding the reasonable need factor and found these witnesses and their testimony to be credible. The witnesses did not appear in any way to be engaging in revisionist history to demonstrate need.

The testimony of the City witnesses as to need was corroborated by the historical factual record. The 2000 and 2011 Comprehensive Plans document the City's desire, long prior to Kohler's annexation petition, to pursue economic opportunities in the annexed lands including the development of single family housing on these lands.

Kohler's concerns regarding moving forward with a golf course in the town were based on events occurring contemporaneous to its application for a conditional use permit. The newly elected majority of the Town Board historically opposed Kohler's development of a golf course in the Town of Wilson. It is further unquestioned that the Town could not provide a municipal water source for either operation of the golf course or to protect Kohler's assets in the event of a fire, and had no plan to provide such a water source. Hoekstra's testimony regarding the negotiations between the City and the Town over a border agreement was also uncontested.

The Town's claim that the needs of Kohler and the City were manufactured for purposes of litigation is further contradicted by the terms of the proposed Pre-annexation Agreement which was negotiated *before* Kohler filed its Petition. The Agreement memorializes the City's and Kohler's respective wants and needs relative to the proposed annexation and corroborates the testimony of the witnesses.[36]

The Town next challenges the City's stated needs for the scope of the lands included in the annexation. The Town asserts that if the City's need for the annexation was to increase the availability of single family residential housing, it would only "need" parcels 2 and 3 of the annexation as the remainder of the land is either already developed or cannot be developed.

The Town's challenge to the scope of the land included in the annexation is in conflict with the law on annexation in Wisconsin. In an owner initiated annexation such as Kohler's, the City cannot pick and choose the lands in the annexation it wants and does not want—the choice of the boundaries of an annexation and the lands included in an annexation are matters of discretion of the private petitioners. *Town of Baraboo*, 2005 WI App 96, ¶21 quoting *Town of Campbell*, 2003 WI App. 247, ¶21. The City had no choice other than to accept or reject the entire petition. *Town of Medary*, 88 Wis. 2d at 122-123.

The Town next claims that the City's failure to pursue annexation of the Kohler Land in the past bars the City from now claiming that it has a "need" to annex those properties. As established by the City's witnesses, however, annexation was not economically feasible before Kohler's petition. Sokolowski and other City witnesses testified that although the City never previously considered annexing the Kohler Land, the City always targeted the Land for future

[36] The Agreement is especially telling as to Kohler's need for municipal water: Kohler agreed as a condition of a permit for its development of a golf course to utilize municipal water in the club house and all other buildings on the development within three years and agreed to pay the cost of extending municipal water to its property.

expansion should the opportunity arise as reflected in the City's 2000 and 2011 Comprehensive plans. Kohler's petition for annexation provided just such an opportunity: by annexing the Kohler Land, the City could realize economic benefits, including the development of additional single family housing, the incorporation of a world championship golf course and the benefits of an increased tax base.

The Town likewise asserts that Kohler's need for the City's municipal water source is not a real, demonstrable need. In doing so, the Town points to the fact that the Town's and Kohler's experts found that Kohler's operation of a golf course on the Land utilizing a high capacity well would not unreasonably drawdown or damage the wells of neighboring residents.

Kohler was not bound to the opinions of water experts in determining how to proceed with the golf course development. Kohler operates a business and it does so in order to maximize its revenues and profits while minimizing the risk of losses. Kohler was, and is, entitled to look beyond the expert reports and determine that it did not want to take the risk of exposing itself to meritorious and potentially unmeritorious claims from neighboring property owners for damage to their wells. Kohler was also entitled to evaluate what would occur if the experts were wrong and its operation of a golf course did impact the aquifer and damage the wells of surrounding property owners. Moving forward with the annexation with the City provided Kohler with the opportunity to operate the golf course development on municipal water which could minimize the possibility of damage to the wells of surrounding properties as well as claims from surrounding property owners.

The same is true with respect to the Town's volunteer fire department. Kohler was entitled to determine that its development would be better served by a full-time professional firefighting service which has access to a municipal water source rather than a volunteer service

that relies on transporting water to a fire scene. In assessing its need, Kohler need not take the risk of moving forward with the Town's fire service notwithstanding the Town Fire Department's claims of competence. Kohler could reasonably conclude, as it did, that a municipal water service with hydrants located on the golf course development provides Kohler with the best protection for its assets. A direct annexation which is not otherwise in conflict with the rule of reason is not invalidated because the petitioners, such as Kohler, are motivated by a desire to obtain city sewer or water services. *Town of Sugar Creek*, 231 Wis. 2d at 485.

In the end, while the Town may question the City's expressed needs for the annexation, the Town has failed to meet its burden of proving the City has no reasonable present or future need for the annexation. The "reasonable need" prong of the rule of reason has been satisfied in this case.

E. There Are No Other Factors Present That Constitute an Abuse of Discretion.

In its post-trial brief, the Town sets forth a series of "facts" which, according to the Town, demonstrate that the City abused its discretion in enacting the annexation Ordinance. Those "facts" are as follows:

- Sheboygan believes that any annexation adding land and tax revenue to Sheboygan should be supported;
- Sheboygan's employees began lobbying for this golf course development even before it knew what other properties would be included in the annexation (i.e., supported the golf course regardless of any other issues or needs);
- Sheboygan allowed Kohler to write and even dictate the advocacy position for the golf course, both to its officials and the DOA;
- Sheboygan knew this plan was "controversial" and could not be supported by references to its Comprehensive Plan, and asked Kohler to provide justifications for it;
- Sheboygan admitted the benefit of a golf course would benefit the entire region, regardless of whether it was controlled by the Town or

> Sheboygan, but wanted the extra tax revenue generated by the development;
>
> - Sheboygan had no concern about ripping this land use conditional use permit decision away from the Town and residents that surround the subject parcel; and
>
> - Sheboygan, in expectation of a legal challenge, negotiated a Pre-Annexation Agreement for Kohler to pay the City to defend this annexation.

The Town concludes that the City abused its discretion by:

> essentially "rubber stamping" the annexation and agreeing to support the golf course simply to get more money, with no regard for City of Sheboygan or Sheboygan County environmental ordinances, the Town's jurisdiction, or even the plans for Kohler's golf course (which it claims it still does not have). Not a single Sheboygan employee evaluated the relevant ordinances, or the judicial rule of reason, before recommending this annexation for the sole municipal desire to take money from the Town.

The Court finds no merit to the Town's claims that the City abused its discretion in enacting the annexation Ordinance based on any of the facts or reasons outlined above. The Town does not cite one case or other legal authority that supports its contention that the City's alleged acts, whether taken individually or collectively, constitute an abuse of discretion under Wisconsin annexation law. Speculative and unsupported contentions such as those advanced by the Town cannot overcome the presumed validity of the annexation ordinance. *Town of Sugar Creek,* 231 Wis. 2d at 485. For this reason alone, the Court denies the Town's abuse of discretion claims.

The Court independently finds that none of the facts or reasons given by the Town show the City abused its discretion in enacting the Ordinance. Initially, many of the alleged "bad acts" which the Town identifies are taken out of context and unsupported by the factual record. The City did not, as the Town contends, "rubber stamp" the annexation without first investigating it and determining whether the annexation fit within the City's Comprehensive Plans and needs.

To the contrary, City officials, including Sokolowski and Pelishek, conducted a thorough analysis of the petition before recommending it to the Common Council for adoption.

The best evidence of this is Sokolowski's May 30, 2017 memo recommending the annexation which was prepared *after* Kohler filed the petition for annexation and two months *prior* to the Common Council's vote to adopt the Ordinance. The memo reflects that the City was aware of the lands to be included in the annexation (Kohler's petition already had been filed); that the City analyzed how those lands fit within the City's plan for strategic economic growth, including the development of needed single family residences in the Poth Farm area; and how the annexation would economically benefit the City. The factors Sokolowski considered in the memo and the City's identified needs for the annexation are all, notwithstanding the Town's claims, legitimate considerations in establishing need for the annexation and do not, in any way, constitute an abuse of discretion. *Town of Pleasant Prairie*, 75 Wis. 2d at 335-336; *Town of Sugar Creek*, 231 Wis. 2d at 482-484.

The Town's assertion that the City abused its discretion by taking advantage of the economic and growth opportunities presented by Kohler's annexation is similarly without merit. The Court of Appeals in *Town of Sugar* Creek expressly recognized a municipality's desire to expand its zone of economic interest as a legitimate need to support an annexation. *Town of Sugar* Creek, 231 Wis. 2d at 482-483.

The Town's claim that the City abused its discretion by "ripping" the golf course opportunity from the Town is without merit. The Town does not cite to any supporting authority under Wisconsin law for the proposition that a city may not consider or act on a private party petition for annexation when the private party has a pending application for a conditional use permit with a town. Correspondingly, the Court is unaware of any case or other authority, and

the Town provides none, which holds that a town has a vested right to resolve a pending conditional use permit application before an applicant can pursue annexation with a municipality relative to the same lands.

The Court likewise finds no legal support to find an abuse of discretion in this case. Kohler determined in its business judgment that it wanted to pursue annexation with the City rather than move forward with the Town. This was well within Kohler's discretion and legal right to do under Wis. Stat. § 66.0217 as a private land owner. Likewise, there is nothing in the statutory scheme under Wis. Stat. § 66.0217 or common law decisions on annexation which holds the City could not proceed forward and consider Kohler's petition notwithstanding Kohler's pending application with the Town.

The Town's claim that the golf course development was taken from the Town is not factually supported. Other than hiring consultants to review Kohler's petition, the Town had not taken material steps to move forward on the application. The Town, in fact, had suspended action on Kohler's application. Moreover, the Town took the position that Kohler's application failed to meet the Town's requirements and that Kohler needed to provide further information before the Town could act on the application.

The Town's claim that Kohler acquired certain lands for purposes of pursuing annexation with the City does not invalidate the legality of the annexation. As referenced throughout this decision, Kohler had the right to design the annexation in a manner which was in its best interests and to include within the annexed lands only those lands which it deemed necessary and appropriate. The Town cites to no authority stating that Kohler could not acquire land to pursue an annexation or that the City could or did abuse its discretion in considering Kohler's Petition based upon the lands that were included in the Petition.

The efforts of City officials to work with Kohler in defining and crystallizing the opportunities offered by the annexation and to effectively present those opportunities to the Common Council likewise were legal and appropriate. The provision of technical assistance and recommendations to the petitioners in an annexation is permissible and does not constitute an abuse of discretion under the rule of reason. *Town of Campbell*, 2003 WI App. 247, ¶22.

The Town's claim that the City abused its discretion by entering a Pre-Annexation Development Agreement with Kohler in which Kohler agreed to indemnify the City for its attorney's fees in this litigation is unsupported. In *Town of Brockway v. City of Black River Falls*, 2005 WI App. 174, ¶¶18-42, 285 Wis. 2d 708, 702 N.W.2d 418, the Court of Appeals held that a pre-annexation agreement between a municipality and a petitioner does not constitute an unauthorized contractual delegation of governmental authority or otherwise violate the rule of reason.

Likewise, there is nothing about Kohler's agreement to indemnify the City for its attorney's fees in this action which runs afoul of the decision in the *Town of Brockway*. Kohler and the City anticipated various costs with the annexation, including the extension of water to the Kohler land. The parties negotiated terms into the pre-annexation agreement which shifted a portion of those costs from the City to Kohler. The attorney's fees provision was one of those provisions. As this was an owner-petitioned annexation, and Kohler designed the boundaries of the annexation, it made sense that the City would require Kohler to pay the City's costs of litigation, up to $200,000. The City's decision to do so is not an abuse of discretion, but rather, a smart economic decision and one that saves taxpayer money.

The final piece of evidence which demonstrates the absence of any abuse of discretion or arbitrary action on the part of the City is the DOA's opinion finding the annexation to be in the

public's interest. Wisconsin courts have recognized that when an annexation is challenged on the ground that it is arbitrary and capricious, the DOA's position is evidence to be considered by the trial court in analyzing the proposed annexation. *See generally, City of Beloit v. Towns of Beloit, Turtle & Rock*, 47 Wis. 2d 377, 383-384, 177 N.W.2d 361 (1970); *Mt. Pleasant II,* 28 Wis. 2d at 527.

The DOA's opinion regarding the annexation supports the conclusion that the City did not abuse its discretion in enacting the Ordinance. The DOA rejected the Town's argument that the annexed territory was not contiguous to the City; determined that the proposed land use of the annexation territory for a golf course and the adjacent land to the north was "more homogeneous with the City than the Town"; and found that the City could provide municipal services such as sewer, water, police and fire protection and planning that the Town could not. The DOA concluded that the annexation was in the public interest.[37]

The Town has failed to overcome the presumption of validity of the City's ordinance by demonstrating that the City engaged in other arbitrary conduct or misused its discretion under the rule of reason. The Town's challenge to the City's ordinance is denied.

VI. CONCLUSION

The Town failed to satisfy its burden of proving the City's Ordinance annexing the Kohler Land is invalid. The City's Ordinance complies with the statutory requirements of Wis. Stat. § 66.0217. The Ordinance further complies with the common law rule of reason and the contiguity requirement discussed in the *Town of Lincoln*. The annexed lands are contiguous to

[37]In referencing the DOA's opinion, the Court is mindful of the recent decision of the Wisconsin Supreme Court in *Tetra Tech EC, Inc. v. Wisconsin Department of Revenue*, 2018 WI 75, 382 Wis. 2d 496, 914 N.W.2d 21 (2018) which held that an administrative agencies opinions and conclusions are entitled to no deference. To the extent that *Tetra Tech* applies to the DOA's analysis in this case, this Court's decision upholding the City's Ordinance is no way dependent on the DOA's findings—the DOA's decision is merely additional evidence supporting the Court's conclusion. The Court would uphold the City's Ordinance even if the DOA's opinion is disregarded in its entirety.

the City; any and all irregularities and exclusions in the boundary lines of the annexed property are not the result of arbitrariness; the City has shown reasonable present or demonstrable future need for the annexed property; and no other factors are present which constitute an abuse of discretion on the part of the City. Accordingly, the Town's action to have the Ordinance declared invalid is dismissed on the merits and with prejudice.

II

3.2

R. O. No. 203 - 18 - 19. By CITY CLERK. January 7, 2019.

Submitting a Summons and Complaint in the matter of Accurate Repair, LLC vs City of Sheboygan.

Finance + Personnel

CITY CLERK

DEC 17 '18 PM 1:21
FILED PM 1:22
12-13-2018
Sheboygan County
Clerk of Circuit Court
2018CV000671
Honorable Angela W. Sutkiewicz
Branch 3

STATE OF WISCONSIN: CIRCUIT COURT: SHEBOYGAN COUNTY

Case Code: 30703
Unclassified

ACCURATE REPAIRS, LLC
a Domestic Limited Liability Company
1509 North Ave.
Sheboygan, WI 53083

CASE NO.:

Plaintiff,

vs.

Process Server
Date 12/17/18 Time: 1:20 am/pm
( ) Personal ( ) Substitute
( ) Posted ( ) Corporate
~ Government

CITY OF SHEBOYGAN
a Wisconsin Municipal Corporation
828 Center Avenue
Sheboygan, WI 53081

Defendant.

SUMMONS

THE STATE OF WISCONSIN, To each person named above as Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this Summons, you must respond with a written answer, as that term is used in Wis. Stat. ch. 802, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court, whose address is Sheboygan County Clerk of Courts, 615 North 6th Street, Sheboygan, Wisconsin 53081, and to Rohde Dales LLP, Plaintiff's attorneys, whose address is 909 North 8th Street, Suite 100, Sheboygan, Wisconsin 53081. You may have an attorney help or represent you.

If you do not provide a proper Answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 13th day of December, 2018.

ROHDE DALES LLP

By: s/Kyle Borkenhagen
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State Bar No. 1084544
Attorneys for Plaintiff
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Facsimile: (920) 458-5874

FILED
12-13-2018
Sheboygan County
Clerk of Circuit Court
2018CV000671
Honorable Angela W. Sutkiewicz
Branch 3

STATE OF WISCONSIN: CIRCUIT COURT: SHEBOYGAN COUNTY

Case Code: 30703
Unclassified

ACCURATE REPAIRS, LLC
a Domestic Limited Liability Company
1509 North Ave.
Sheboygan, WI 53083-4614

CASE NO.:

Plaintiff,

vs.

CITY OF SHEBOYGAN
a Wisconsin Municipal Corporation
828 Center Avenue
Sheboygan, WI 53081

Defendant.

COMPLAINT

Plaintiff Accurate Repairs, LLC, through its attorneys, Rohde Dales LLP, as a Complaint against Defendant, states as follows:

1. Plaintiff Accurate Repairs, LLC ("Accurate Repairs"), is a Wisconsin Limited Liability Company with its principal place of business located at 1509 North Avenue, Sheboygan, Wisconsin.

2. Defendant City of Sheboygan ("the City") is a Wisconsin Municipal Corporation with its principal place of business located at 828 Center Avenue, Sheboygan, Wisconsin.

3. Accurate Repairs owns commercial real estate located at 1509 North Avenue, Sheboygan, Wisconsin.

4. On or about November 13, 2018, the City served a jurisdictional offer on Accurate Repairs. A copy of the jurisdictional offer is attached to this complaint as Exhibit A and is incorporated herein by reference.

5. The jurisdictional offer states that the City proposes to purchase a portion of Accurate Repairs's commercial real estate for Thirty-Four Thousand One Hundred Twenty-Five and 00/100 Dollars ($34,125.00).

6. Of the Thirty-Four Thousand One Hundred Twenty-Five and 00/100 Dollar ($34,125.00) offer, a Twenty Thousand and 00/100 Dollar ($20,000.00) portion is allocated to severance damages and a Fourteen Thousand One Hundred Twenty-Five Dollar ($14,125.00) portion is allocated to the taking of a temporary limited easement.

7. The jurisdictional offer provides no payment for the market value of the property remaining after the partial taking of Accurate Repairs's property.

8. The City's taking of the portion of Accurate Repairs's property described in the jurisdictional offer will make the rest of Accurate Repairs's property an uneconomic remnant because the property remaining is of such size, shape, or condition as to be of little value or of substantially impaired economic viability.

9. Per Wis. Stat. § 32.05(3m) and *Waller v. American Transmission Co., LLC*, 2013 WI 77, 350 Wis. 2d 242, the City must offer to purchase the remaining portion of Accurate Repairs's property.

10. The city has failed to do so, as the jurisdictional offer provides no payment for the market value of the property remaining (that is, the uneconomic remnant) after the partial taking of Accurate Repairs's property.

WHEREFORE, Plaintiff Accurate Repairs, LLC, demands judgment against Defendant City of Sheboygan, as follows:

A. For an order declaring that the portion of the Plaintiff's property not covered by the Defendant's jurisdictional offer is an uneconomic remnant and requiring the Defendant to condemn the entirety of the Plaintiff's property and pay just compensation therefor;

B. For litigation expenses pursuant to Wis. Stat. § 32.28;

C. For costs and disbursements of this action; and

D. For such other and further relief as the court deems just and equitable.

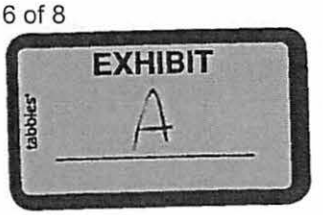
PLAINTIFF HEREIN DEMANDS TRIAL BY A 6-PERSON JURY.

Dated this 13th day of December, 2018.

ROHDE DALES LLP

By: s/Kyle Borkenhagen
A Member of the Firm
State Bar No. 1084544
Attorneys for Plaintiff
kborkenhagen@rohdedales.com

P.O. Address:
909 North 8th Street, Suite 100
Sheboygan, WI 53081
Telephone: (920) 458-5501
Facsimile: (920) 458-5874



JURISDICTIONAL OFFER

lpa1786 09/2011 (Replaces 3029) s.32.05 Wis. Stats.

Date
November 13, 2018

To
Accurate Repairs Acquisition, LLC, Bank First National hereinafter referred to as Owner.

Relocation Order Date	Relocation Order	County	Public Purpose for Property
July 27, 2018	Filed in the office of the County Clerk	Sheboygan	North Ave. Reconstruction

City of Sheboygan hereinafter referred to as Purchaser, offers to purchase a parcel of real estate and/or rights therein in which you own an interest all as particularly described on attached page, and agrees to pay the sum of:
Thirty Four Thousand One Hundred Twenty Five and no/100 dollars | $ 34,125.00
within 60 days from the acceptance of this offer.

A. The said property, and/or rights as described, are required by the City of Sheboygan for the public purpose stated above, as more fully described in City of Sheboygan Relocation Order, date and place of filing specified above. The City of Sheboygan in good faith intends to use the above-described property for such public purpose.

B. The City of Sheboygan proposes to occupy and the Owner will vacate the premises on December 11, 2018 (date).

C. Pursuant to s.32.05(3)(d) Wis. Stats., the above purchase price is allocated as follows:

(a)	Loss of land, including improvements and fixtures actually being acquired	$
(b)	Damages caused by loss of existing rights of access	$
(c)	Damages caused by loss of air rights	$
(d)	Damages caused by loss of legal nonconforming use	$
(e)	Damages resulting from actual severance of land including damages resulting from severance of improvements or fixtures and proximity damage to improvements remaining on Owner's land	$ 20,000.00
(f)	Damages to property abutting on a highway right of way due to change of grade	$
(g)	Cost of fencing reasonably necessary to separate land taken from remainder	$
(h)	Market value of uneconomic remnant	$
(i)	Other – Temporary Limited Easement, Highway Easement, Paving	$ 14,125.00

Compensation for additional items of damage listed in s.32.19 Wis. Stats. has not been included. If any such items are shown to exist the owner may file claims as provided in s.32.20 Wis. Stats.

D. The purchase price is based upon an appraisal of the owner's property of which a copy of the appraisal report has been provided to the owner.

E. Owner has 20 days from the date of personal service of this offer, if personally served, or 20 days from the date of postmark of the certified mail envelope transmitting this offer, if transmitted by mail, or 20 days from the date of publication of this offer, if published, in which to accept this offer, unless such time is extended by mutual written consent of Owner and Purchaser. Acceptance shall be as follows: Owner must execute the acceptance clause on back of this offer on or prior to December 4, 2018; and the offer and acceptance must be delivered to Purchaser at 2026 New Jersey Ave., Sheboygan, WI 53081 not later than regular office closing time on December 4, 2018, or mailed to Purchaser at the last above stated address in an addressed, postage prepaid envelope bearing postmark of not later than 12:00 midnight on December 4, 2018.

F. If the Owner does not accept this offer as set forth, Owner has 40 days from the date of service, postmark or publication of this offer to commence a court action to contest the right of condemnation as provided in s.32.05(5) Wis. Stats. provided that the acceptance and retention of any compensation resulting from an award made prior to the commencement of such an action shall be an absolute bar to such action.

G. If owner agrees to accept the Jurisdictional Offer, it is considered a negotiated purchase; therefore, the condemnor must record the conveyance with the Register of Deeds in the county where the land is located. Also, all owners of record should receive by certified mail a copy of the conveyance and a notice of their right to appeal within 6 months after the

date of the recording of the conveyance. Such an appeal would challenge the amount of compensation received by the property owner from an accepted Jurisdictional Offer.

H. Owner has 2 years from the date of the recording of an award, as described in s.32.05(7) Wis. Stats., in the office of the Register of Deeds in which to appeal for greater compensation without prejudice to Owner's right to use the compensation given to Owner by the award. Owner's right of appeal is subject to the provisions of s.32.05(9)(a) and (11), Wis. Stats.

I. The law provides for the payment of litigation expenses by the condemner and these costs are defined in Ch. 814 of Wisconsin Statutes.

J. If this offer is accepted by Owner, the transfer of title shall be accomplished within 60 days after acceptance including the payment to Owner of said purchase price, provided however, that notwithstanding any provision herein to the contrary, said 60-day period may, at the request of the Owner, be extended by mutual written agreement of the Owner and Purchaser.

K. This offer may be withdrawn by Purchaser at any time prior to its acceptance by Owner.

L. Real estate taxes for the current year shall be prorated as of the date of proposed occupancy set forth, said proration to be based upon the latest available tax assessment.

M. Purchaser will prepare necessary instruments to accomplish said transfer. Transfer shall be by Warranty Deed unless a lesser conveyance is accepted by Purchaser. Transfer shall be free of defects and encumbrances but subject to ordinances and restrictions of record.

N. If all persons or entities designated as Owner do not accept this offer within the time specified, this offer will be deemed to have been rejected by all such persons or entities notwithstanding the acceptance by one or more of such persons or entities.

O. Included in the purchase price is payment in full for the acquisition of the following items now on the described property: Description on additional page(s).

P. This offer, if accepted by Owner, shall constitute a binding contract.

Randy Moss

Moss & Associates, LLC

Negotiator/Consultant for City of Sheboygan

Title

If owner is not a firm or corporation, check and sign here:

☐ Accepted ☐ Rejected

Owner Signature Date

Owner Signature Date

Owner Signature Date

Owner Signature Date

If owner is a firm or corporation, check and sign here:

☐ Accepted ☐ Rejected

Accurate Repairs Acquisition, LLC

Name of firm or corporation

Officer Signature Date

Title

Officer Signature Date

Title

Legal Description

Highway Easement:

A part of Lot 41 J. Schubert's Subdivision, located in the Northwest ¼ of the Northeast ¼ of Section 15, Township 15 North, Range 23 East, City of Sheboygan, Sheboygan County, Wisconsin containing 0.013 acres of land and described as follows:

Beginning at the Southeast corner of said Lot 41; Thence, N24°03'49"W, 54.09 feet to the South right-of-way line of North Avenue; Thence, S89°33'59"E, 22.27 feet along said North right-of-way line to the East line of said Lot 41; Thence, S00°15'11"W, 49.22 feet along said East line to the Point of Beginning.

Temporary Limited Easement:

A part of Lot 41 J. Schubert's Subdivision, located in the Northwest ¼ of the Northeast ¼ of Section 15, Township 15 North, Range 23 East, City of Sheboygan, Sheboygan County, Wisconsin and described as follows:

Beginning at the Southeast corner of said Lot 41; Thence, N 89° 44' 49" W, 5.00 feet along the South line of said Lot 41; Thence, N 24° 39' 56" W, 41.39 feet; Thence N 89° 33' 59" W, 27.60 feet to the start of a 444.41 foot radius curve to the right; Thence 50.08 feet along the arc of said curve with a chord distance of 50.05 feet which bears N 86° 20' 18" W; Thence N 00° 15' 11" E, 12.25 to the South right-of-way line of North Avenue and the start of a 378.50 foot radius curve to the left; Thence 50.17 feet along the arc of said curve and said North right-of-way line with a chord distance of 50.14 feet which bears S 85° 46' 12" E; Thence, S 89° 33' 59" E, 49.98 feet along said North right-of-way line to the East line of said Lot 41; Thence, S 00° 15' 11" W, 49.22 feet along said East line to the Point of Beginning.

Containing 0.037 acres of land more or less

This easement shall terminate upon completion of the construction project for which this instrument is given.

FILED
12-13-2018
Sheboygan County
Clerk of Circuit Court
2018CV000671
Honorable Angela W. Sutkiewicz
Branch 3

STATE OF WISCONSIN **CIRCUIT COURT** **SHEBOYGAN COUNTY**

Accurate Repairs, LLC vs. City of Sheboygan

Electronic Filing Notice

Case No. 2018CV000671
Class Code: Unclassified

CITY OF SHEBOYGAN
828 CENTER AVENUE
SHEBOYGAN WI 53081

Case number 2018CV000671 was electronically filed with/converted by the Sheboygan County Clerk of Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at **http://efiling.wicourts.gov/** and may withdraw as an electronic party at any time. There is a $ 20.00 fee to register as an electronic party.

If you are not represented by an attorney and would like to register as an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: fdeba5

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 920-459-3068.

Sheboygan County Circuit Court
Date: December 14, 2018

II

3.1

R. O. No. 56 - 18 - 19. By CITY CLERK. June 18, 2018.

Submitting a Summons and Complaint in the matter of Tyler Jones v. City of Sheboygan.

CITY CLERK

Finance Personnel

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Wisconsin

TYLER JONES

Plaintiff(s)

v.

CITY OF SHEBOYGAN

Defendant(s)

Civil Action No. 18-CV-0709

Gen. Service
6-8-16 11:10 AM
By Ret Ops

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* CITY OF SHEBOYGAN, c/o Mayor Michael Vandersteen
Sheboygan City Hall
828 Center Avenue, Suite 100
Sheboygan, WI 53081

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you receive it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

Janet L. Heins, Esq.
Heins Employment Law Practice LLC
1001 West Glen Oaks Lane, Suite 103
Mequon, Wisconsin 53092

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

STEPHEN C. DRIES, CLERK OF COURT

Date: 05/29/2018

s/Mary Murawski, Deputy Clerk
Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

received
6-8-18

Civil Action No. 18-CV-0709

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

This summons and the attached complaint for *(name of individual and title, if any):*

_____

were received by me on *(date)* _____.

☐ I personally served the summons and the attached complaint on the individual at *(place):*

_____

_____ on *(date)* _____ ; or

☐ I left the summons and the attached complaint at the individual's residence or usual place of abode with *(name)*

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons and the attached complaint on *(name of individual)* _____

who is designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):* _____

_____.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

TYLER JONES
1918 Kaat Lane
Sheboygan, WI 53081

Plaintiff,

vs.

Case No. 18-CV-0707

CITY OF SHEBOYGAN
828 Center Avenue, Suite 100
Sheboygan, WI 53081

JURY TRIAL DEMANDED

Defendant.

COMPLAINT

COMES NOW the Plaintiff, Tyler Jones, by his counsel, HEINS EMPLOYMENT LAW PRACTICE LLC, by Attorneys Janet L. Heins and Alan Freed, Jr., as and for a claim against the Defendant, alleges and shows to the court as follows:

JURISDICTION AND VENUE

1. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1346, as this case is brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, *et seq.*

2. The unlawful employment practices giving rise to the Plaintiff's claims occurred within the Eastern District of Wisconsin, and venue is therefore proper in this District pursuant to 28 U.S.C § 1391(b), *inter alia.*

THE PARTIES

3. Plaintiff, Tyler Jones, is an adult male white resident of the State of Wisconsin,

residing at 1918 Kaat Lane, Sheboygan, WI 53081.

4. Defendant, City of Sheboygan, is a municipal governmental entity with its principal address located at 828 Center Avenue, Suite 100, Sheboygan, WI 53081.

THE FACTS

5. Plaintiff began his employment with Defendant on or about March 20, 2017.

6. At all times material herein, Plaintiff worked for Defendant as a Maintenance Worker 1.

7. At all times material herein, Plaintiff performed his work duties in accordance with the reasonable expectations of Defendant.

8. On or about June 8, 2017, Plaintiff was slowly backing Defendant's garbage truck onto a scale in accordance with his training by Defendant.

9. Despite Defendant's policy requiring a spotter for Plaintiff when he was backing up a garbage truck, no one assisted him as a spotter and no one was available to do so.

10. Another of Defendant's garbage trucks, driven by African American employee James Gilliam, approached the scale more quickly while Plaintiff was backing onto the scale, did not stop and wait for Plaintiff to back up onto the scale, and subsequently struck Plaintiff's truck.

11. Defendant's Bruce Matdorf, a white manager, ordered Plaintiff to get drug tested after the accident and then go home.

12. Defendant did not order Mr. Gilliam to get a drug test or to go home after the accident, or even speak to him about the accident to Plaintiff's knowledge.

13. Plaintiff's drug test was negative.

14. Defendant's Human Resources Director, Sandy Rohrick, terminated Plaintiff's employment on June 20, 2017.

15. Defendant did not terminate Mr. Gilliam.

16. Mr. Gilliam's truck sustained significant damage but Plaintiff's did not.

17. On information and belief, no employee other than Plaintiff has ever been terminated for the same alleged infraction.

18. A few months after Plaintiff's termination, on January 16, 2018, Mr. Gilliam sideswiped a citizen's parked car on the street with the plow truck he was driving.

19. Defendant did not terminate Mr. Gilliam for the January 16, 2018 accident.

20. Plaintiff filed his administrative charge of race and color discrimination in the terms and conditions of his employment and termination on or about July 18, 2017 with the Wisconsin Equal Rights Division as ERD Case No. CR201702370, which was cross-filed with the Equal Employment Opportunity Commission as EEOC Case No. 26G201701246.

21. EEOC issued its Notice of Right to Sue on this charge on February 7, 2018.

22. Plaintiff has exhausted his administrative remedies and satisfied all conditions precedent in this case.

CLAIM FOR RELIEF – TITLE VII RACE & COLOR DISCRIMINATION

23. Plaintiff realleges and incorporates paragraphs 1-22 of this complaint by reference.

24. Defendant discriminated against Plaintiff in the terms and conditions of his employment on the basis of race and color, white, and in terminating his employment, in intentional and/or reckless disregard of his federally protected rights under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, *et seq.*

25. As a result of Defendant's intentional discrimination, Plaintiff has suffered damages

in the form of lost wages, lost employment benefits, pain and suffering, and emotional distress.

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Order Defendant to make Plaintiff whole by providing appropriate back pay, front pay and/or reinstatement, compensatory and punitive damages, liquidated damages, pre-judgment and post-judgment interest, and reimbursement for other benefits and expenses in an amount to be shown at trial;

2. Grant to Plaintiff his attorney fees, costs and disbursements provided by 42 U.S.C. 2000e-5 and all other applicable statutes and provisions; and

3. Grant to Plaintiff whatever other relief this Court deems just and equitable.

PLAINTIFF DEMANDS A TRIAL BY A JURY OF TWELVE.

Dated this 4th day of May, 2018.

HEINS EMPLOYMENT LAW PRACTICE LLC
Counsel for the Plaintiff

s/ Janet L. Heins

Janet L. Heins, State Bar No. 1000677

HEINS EMPLOYMENT LAW PRACTICE LLC
1001 West Glen Oaks Lane, Suite 103
Mequon, WI 53092
(262) 241-8444 voice
(262) 241-8455 facsimile
e-mail: jheins@heinslawoffice.com

VI

5.18

R. C. No. 293- 17 - 18. By FINANCE AND PERSONNEL COMMITTEE.
April 4, 2018.

Your Committee to whom was referred R. O. No. 274-17-18 by City Clerk submitting a Summons and Complaint in the matter of US Bank et al vs. Jennifer A. Scheele et al; recommends referring to Finance and Personnel Committee of the new council.

Finance+Personnel
2018-2019

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

II

3.1

R. O. No. 274 - 17 - 18. By CITY CLERK. February 5, 2018.

Submitting a Summons and Complaint in the matter of US Bank et al vs. Jennifer A. Scheele et al.

Finance/Personnel
Finance/personnel of new Council

CITY CLERK

STATE OF WISCONSIN | CIRCUIT COURT | SHEBOYGAN COUNTY

JAN 31 '18 PM 3:53

US Bank et al vs. Jennifer A Scheele et al

Electronic Filing Notice

Case No. 2017CV000325
Class Code: Foreclosure of Mortgage

FILED
01-26-2018
Sheboygan County
Clerk of Circuit Court
2017CV000325
Honorable Kent Hoffmann
Branch 2

CITY OF SHEBOYGAN - DEPARTMENT OF CITY DEVELOPMENT
828 CENTER AVENUE
SHEBOYGAN WI 53081

Process Server
Date: 1/31/18 Time: 3:50 am/pm
( ) Personal ( ) Substitute
( ) Posted (X) Corporate

Case number 2017CV000325 was electronically filed with/converted by the Sheboygan County Clerk of Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at **http://efiling.wicourts.gov/** and may withdraw as an electronic party at any time. There is a $ 20.00 fee to register as an electronic party.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: c0de5f

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 920-459-3068.

BY THE COURT:

Electronically signed by Melody Lorge
Clerk of Circuit Court

01-26-2018
Date

FILED
01-26-2018
Sheboygan County
Clerk of Circuit Court
2017CV000325
Honorable Kent
Hoffmann
Branch 2

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

US Bank, National Association successor
by merger to U.S. Bank National Association, N.D.
4801 Frederica Street
Owensboro, KY 42301

Plaintiff,

Case No. 2017CV000325

v.

Jennifer A. Scheele
824 Wilson Avenue
Sheboygan, WI 53081

U.S. Bank, National Association N.D.
4325 17th Avenue S.
Fargo, ND 58103,

Capital One Bank
c/o Corporation Service Company, Registered Agent
1111 E. Main Street, Suite 1600
Richmond, VA 23219,

Currahee Financial LLC
c/o Scott M. Israel, Registered Agent
250 Sunnyslope Road, Suite 300
Brookfield, WI 53005,

Citibank
701 E. 60th Street N.
Sioux Falls, SD 57104,

Defendants,

City of Sheboygan –
Department of City Development
828 Center Avenue
Sheboygan, WI 53081

Added Defendant.

AMENDED SUMMONS

Foreclosure Of Mortgage: 30404
The Amount Claimed Exceeds $10,000.00

THE STATE OF WISCONSIN,

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 20 days, or within 45 days if you are the State of Wisconsin or an insurance company, or within 60 days if you are the United States of America, after receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, which address is Sheboygan County Courthouse 615 N 6th St, Sheboygan, WI 53081-4692, and to Codilis, Moody & Circelli, P.C., plaintiff's attorneys, whose address is 15W030 North Frontage Road, Suite 200, Burr Ridge, IL 60527. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, or within 45 days if the defendant is the State of Wisconsin or an insurance company, or within 60 days if the defendant is the United States of America, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything

that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future and may also be enforced by garnishment or seizure of property.

Dated: January 18, 2018.

Codilis, Moody & Circelli, P.C.
Attorneys for Plaintiff
Electronically signed by
Shawn R. Hillmann
WI State Bar No. 1037005
Emily Thoms
WI State Bar No. 1075844
Matthew Comella
WI State Bar No. 1096303
Codi C. Gratz
WI State Bar No. 1086257

Codilis, Moody & Circelli, P.C.
15W030 North Frontage Road, Suite 200
Burr Ridge, IL 60527
(630) 794-5200
pleadings@il.cslegal.com
50-17-02349
NOTE: This law firm is a debt collector.

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

US Bank, National Association successor by merger to U.S. Bank National Association, N.D.
4801 Frederica Street
Owensboro, KY 42301

Plaintiff, Case No. 2017CV000325

v.

Jennifer A. Scheele
824 Wilson Avenue
Sheboygan, WI 53081

U.S. Bank, National Association N.D.
4325 17th Avenue S.
Fargo, ND 58103,

Capital One Bank
c/o Corporation Service Company, Registered Agent
1111 E. Main Street, Suite 1600
Richmond, VA 23219,

Currahee Financial LLC
c/o Scott M. Israel, Registered Agent
250 Sunnyslope Road, Suite 300
Brookfield, WI 53005,

Citibank
701 E. 60th Street N.
Sioux Falls, SD 57104,

Defendants,

City of Sheboygan –
Department of City Development
828 Center Avenue
Sheboygan, WI 53081

Added Defendant.

AMENDED COMPLAINT

Foreclosure Of Mortgage: 30404
The Amount Claimed Exceeds $10,000.00

Now comes the plaintiff, by its attorneys, and alleges:

1. Plaintiff is a National Association organized and existing under the laws of the United States of America and is engaged in the lending business with offices at the address stated in the captions of these pleadings.

2. Jennifer A. Scheele ("Mortgagor") is an adult whose last-known address is the address stated in the captions of these pleadings.

3. Mortgagor executed and delivered a Note and Mortgage to the originating lender for the consideration expressed therein, copies being attached as Exhibits.

4. The Mortgage was recorded in the office of the Register of Deeds on 05/25/2004 as Document #1734485, and has been assigned to plaintiff as evidenced by that Assignment attached as an Exhibit.

5. The property has a common address of 824 Wilson Avenue, Sheboygan, WI 53081 and is further described in the Mortgage document as recorded.

6. Pursuant to Chapter 846 of the Wisconsin Statutes, the Court previously entered a judgment of foreclosure and sale in this action. A copy of the order for judgment and judgment is attached as an Exhibit.

7. Plaintiff has leave to amend the Summons and Complaint and all the proceedings in this action, pursuant to Wis. Stat. § 846.09, by making as a defendant any person who is a proper or necessary party thereto.

8. The above named added defendant is joined as a party defendant pursuant to the order for judgment and judgment previously entered in this matter and any interest held by said party, named or unnamed, is subordinate to that held by plaintiff. The party holds the following identified interests:

> City of Sheboygan – Department of City Development, by virtue of a Mortgage executed by Jennifer A. Scheele, dated 04/09/2004, and Recorded/registered on 05/25/2004 in the office of the Recorder/Registrar of Deeds of Sheboygan County, Wisconsin, as Document No. 1734485, to secure a note in the original principal sum of $94,777.33.

WHEREFORE, the Plaintiff demands judgment as follows:

(1) Pursuant to Wis. Stat. § 846.09, entry of an amended judgment of foreclosure and sale foreclosing the rights of each added defendant so as to bar and foreclose each of them from all right, title, and interest in and to the property subject to this action, except the right to apply for surplus in accordance with Wis. Stat. § 846.162.

(2) Any other relief that is just and equitable to the plaintiff.

Date: January 18, 2018.

Codilis, Moody & Circelli, P.C.
Attorneys for Plaintiff
Electronically signed by
Shawn R. Hillmann
WI State Bar No. 1037005
Emily E. Thoms
WI State Bar No. 1075844
Matthew Comella
WI State Bar No. 1096303
Codi C. Gratz
WI State Bar No. 1086257

Codilis, Moody & Circelli, P.C.
15W030 North Frontage Road, Suite 200
Burr Ridge, IL 60527
(630) 794-5200
pleadings@il.cslegal.com
50-17-02349
NOTE: This law firm is a debt collector.

Borrower(s)	Lender	Loan
JENNIFER A SCHEELE 824 WILSON AVE SHEBOYGAN WI 53081-6908 "I" means each Borrower above, jointly and severally.	U.S. Bank National Association ND 1450 S 12TH ST SHEBOYGAN WI 53081 "You" means the Lender, its successors and assigns.	Number [redacted] Date 04/09/2004 Maturity Date 4/01/2034 Loan Amount $ $94,777.33 Renewal Of

Note - For value received, I promise to pay to you, or your order, at your address above, the principal sum of: $94,777.33 Dollars $ $94,777.33, plus interest from 4/09/2004 at the rate of 6.240 % per year until maturity.

☐ Additional Finance Charge - I also agree to pay a nonrefundable fee of $_____ and it will be ☐ paid in cash. ☐ withheld from the proceeds. (If this fee is withheld from the proceeds, the amount is included in the principal sum.)

☐ Variable Rate - The (annual) interest rate above may change so as to be _____.

Timing and Frequency of Interest Rate Changes - The rate can first change on _____ and can change as often as _____ after that.

Lifetime Rate Change Limitations - The rate cannot ever exceed _____. The rate cannot ever be less than _____.

Payment Changes - A change in the interest rate will cause a change in: ☐ The amount of each scheduled payment. ☐ The amount due at maturity.

Post Maturity Interest - Interest will accrue after maturity on the unpaid balance of this note on the same basis as interest accrues before maturity.

Payments - I will pay this note as follows:

(a) ☐ Interest payments will be due _____
Principal payments will be due _____.

(b) ☒ This note has 360 payments. The first payment will be in the amount of $ 622.07 and will be due 5/01/2004. A payment of $ 622.07 will be due on the 1st day of each month thereafter. The final payment of the entire unpaid balance of principal and interest will be due 4/01/2034.

The Purpose Of This Loan Is Debt consolidation.

☒ Late Charge - I agree to pay a late charge if any scheduled payment (or part thereof) is made more than 5 days after it is due equal to $29.00.

☒ Early Closure Fee - If I prepay this loan in whole, I will pay you an early closure fee equal to 1% of the original loan amount with a minimum of $100 and a maximum of $350 if closed within the first three years.

☒ Returned Payment Charge - I agree to pay a fee of $ $25.00 for each check, negotiable order of withdrawal, draft or electronic payment I arrange in connection with this loan that is returned because it has been dishonored.

Security - (If neither of the next two options are checked, this loan is not specifically secured except: 1. through cross collateralization from other loans; and 2. a security interest in all deposit accounts with U.S. Bank, N.A.)

☒ Separate Security - This loan is secured by separate Mortgage, dated 4/09/2004.

☐ Security Agreement - I give you a security interest in the Property described below. The rights I am giving you in this Property and the obligations this agreement secures are defined on page 4 of this agreement.

824 WILSON AVE
SHEBOYGAN, WI 53081

This property will be used for Consumer purposes.

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EXHIBIT A

Loan number [redacted]

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost me.	AMOUNT FINANCED The amount of credit provided to me or on my behalf.	TOTAL OF PAYMENTS The amount I will have paid when I have made all scheduled payments.
6.2400 %	$ $120,457.60	$ $94,777.33	$ $223,945.20

My Payment Schedule will be:

Number of Payments:	Amount of Payments:	When Payments Are Due:
360	622.07	monthly beginning 5/01/2004

☐ Variable Rate

☐ This note contains a variable rate feature. Disclosures about the variable rate feature have been provided to me earlier.

☐ The annual percentage rate may increase during the term of this transaction if _____

A rate increase will take the form of _____.

If the rate increases by _____% in _____ the _____ will increase to _____. The interest rate may not increase more often than _____, and may not increase more than _____ % each _____.

The interest rate will not go above _____ %.

Security - I am giving a security interest in

☐ the Goods or Property being purchased.

☒ my deposit accounts and other rights to the payment of money from U.S. Bank, NA.

☒ Collateral securing other loans with you may also secure this loan.

☒ (description of other property)
824 WILSON AVE
SHEBOYGAN,WI 53081

☒ Late Charge - I agree to pay a late charge if any scheduled payment (or part thereof) is made more than 5 days after it is due equal to $29.00.

Prepayment - If I pay off this note early, I ☒ may ☐ will not have to pay a penalty.

☒ Assumption - Someone buying the property securing this loan cannot assume this loan on its original terms.

☐ Required Deposit - The annual percentage rate does not take into account my required deposit.

Filing Fees $ _____ Non Filing Insurance $ _____

I can see my contract documents for any additional information about nonpayment, default, and any required repayment before the schedule date, and prepayment refunds and penalties.

Credit Insurance - Credit life, credit accident and sickness (disability) are not required to obtain credit and you will not provide them unless I sign and agree to pay the additional premium. If I want such insurance, you will obtain it for me (if I qualify for coverage). My (Our) signature(s) below means I (we) want the coverages signed for, and only those coverages.

CREDIT LIFE:

☒ Single. Premium: $ 6,175.18 Term 120
Date of Birth 8/02/1960 Insured: JENNIFER A SCHEELE X Jennifer A Scheele Date 4/9/04

☐ Joint. Premium: $ _____ Term _____
Date of Birth _____ 1st Insured: _____ X _____ Date _____

Date of Birth _____ 2nd Insured: _____ X _____ Date _____

CREDIT DISABILITY:

☒ Single. Premium: $ 2,535.07 Term 120
Date of Birth 8/02/1960 Insured: JENNIFER A SCHEELE X Jennifer A. Scheele Date 4/9/04

See the section titled "Monthly Outstanding Balance Insurance Premiums" below for any transaction secured by (a) real estate, or (b) any personal property that is a dwelling, such as a mobile home.

NONE: I/We do not desire credit insurance of any kind on this account. (All borrowers/debtors sign below)

X _____ Date _____ X _____ Date _____

☒ Property Insurance - Property insurance is required. I may obtain property insurance from anyone I want that is acceptable to you.

☐ Single Interest Insurance - Single interest insurance (sometimes referred to as VSI) is required. I may obtain single interest insurance from anyone I want that is acceptable to you. If I get the insurance from or through you, I will pay $ _____ for _____ of coverage.

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EXHIBIT A

ADDITIONAL TERMS OF THE NOTE

[redacted]

DEFINITIONS - "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW - You are a National bank located in North Dakota. The interest rate, fees and related charges that you can charge for this loan are pursuant to the law of the state of North Dakota, regardless of where this loan is made or where I live. As for other issues, the law of my state of residence and the law of the state where any property is located will apply.

The fact that any part of this note cannot be enforced will not affect the rest of this note. Any change to this note or any agreement securing this note must be in writing and signed by you and me.

THIS FORM - This form is designed to be used for many types of transactions. A paragraph or section that begins with a "☐" that is not checked does not apply to this loan.

PAYMENTS - Each payment I make on this loan will be applied (to the extent of the payment) as follows: (1) monthly outstanding balance insurance premiums (for loans secured by real estate or a personal property residence, if I elect to buy such insurance); (2) accrued interest; (3) principal (as explained below); (4) charges other than interest or principal, if any; and (5) principal. The portion applied to principal in step (3) above will be the difference between the *scheduled* payment amount and the sum of any monthly outstanding balance insurance premium and the accrued interest.

No late charge will be assessed on any payment when the only delinquency is due to a late charge assessed on earlier payments. The actual amount of my final payment will depend on the interest rates (if variable) and my payment record.

PREPAYMENT - I may prepay this loan in whole or in part at any time. If I prepay in part, I must still make each later payment in the original amount as it becomes due until this note is paid in full.

INTEREST - Interest accrues on the principal remaining unpaid from time to time, until paid in full. If "Variable Rate" is checked on page 1, I will pay interest at the rates in effect from time to time. If a payment is not sufficient to pay the accrued interest, as of a scheduled payment date, the accrued and unpaid interest will be added to principal, and itself earn interest.

Decreases in the interest rate for this note will have the opposite effect on payments that increases would have. The interest rate(s) and other charges on this loan will never exceed the highest rate or charge allowed by law for this loan. Changes in the index between scheduled changes in the interest rate will not affect the interest rate. If the index specified on page 1 ceases to exist, I agree that you may substitute a similar index for the original.

THE SECTIONS IN THIS BOX WILL APPLY IF THIS IS A LOAN TO ONE OR MORE INDIVIDUALS FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES AND THE AMOUNT FINANCED IS $25,000.00 OR LESS.

DEFAULT - I will be in default on this agreement if either (a) or (b) occurs:

(a)
- (1) If the interval between scheduled payments is 2 months or less,
  - (A) I have outstanding an amount exceeding one full payment which has remained unpaid for more than 10 days after the scheduled or deferred due dates; or
  - (B) I fail to pay the first payment or the last payment, within 40 days of its scheduled or deferred due date;
- (2) If the interval between scheduled payments is more than 2 months, I have all or any part of one scheduled payment unpaid for more than 60 days after its scheduled or deferred due date; or
- (3) If the transaction is scheduled to be repaid in a single payment, I have all or any part of the payment unpaid for more than 40 days after its scheduled or deferred due date.

For purposes of this paragraph (a) the amount outstanding shall not include any delinquency or deferral charges and shall be computed by applying each payment first to the installment most delinquent and then to subsequent installments in the order they come due;

(b) I fail to observe any other covenant of the transaction, breach of which materially impairs the condition, value or protection of or the your right in any collateral securing the transaction, or materially impairs my ability to pay amounts due under the transaction.

DEFAULT CHARGES - If I default, I agree to pay the statutory costs as specifically authorized by Wis. Stat. § 422.413 which you incur in the disposition of any collateral and any other such charges you incur as authorized by Wis. Stat. Chaps. 421 to 427.

I also agree to pay your reasonable attorney's fees

(a) in the event I voluntarily or involuntarily seek relief under the United States Bankruptcy Code; and/or

(b) under the conditions for attorney's fees as provided in Wis. Stat. § 422.411.

RIGHT TO CURE - Your right to exercise your remedies, as provided below, is subject to my limited right to cure a default and to receive notice of such right. You will provide the notice when required, which will explain my rights. I understand I may have the right to redeem collateral under some conditions.

THE SECTIONS IN THIS BOX WILL APPLY IF THE AMOUNT FINANCED IS MORE THAN $25,000

DEFAULT - I will be in default on this loan and any agreement securing this loan if:

1. I fail to make a payment in full when due; or
2. Your prospect of payment, performance, or ability to realize upon any collateral is significantly impaired.

If any of us is in default on this note or any security agreement, you may exercise your remedies against any or all of us.

DEFAULT CHARGES - If I default, I agree to pay the costs you incur to collect this note and to realize on any collateral, including your reasonable attorney's fees.

REMEDIES - Subject to the RIGHT TO CURE section above (if applicable), if I am in default on this loan or any agreement securing this loan, you may exercise your rights provided by law and this agreement. I also understand and agree to the following:

1. You may accelerate the due date of the unpaid principal balance of the loan, plus accrued interest and charges, making it due in its entirety before the scheduled due date.
2. You may realize on any property securing this transaction.
3. You may demand more security or new parties obligated to pay this loan (or both) in return for not using any other remedy.
4. You may make a claim for any and all insurance benefits or refunds that may be available.

If I default and you choose not to exercise a remedy, you do not lose the right to treat the event as a default if it happens again.

SECURITY INTEREST IN DEPOSIT ACCOUNTS AT U.S. BANK, N.A. -

Governing law: For purposes of this security interest, we agree that the law of the state of North Dakota will control as to the creation, perfection, and effect of perfection of the interest granted in this paragraph. (Technically speaking, we are agreeing that North Dakota is your jurisdiction, as provided in N.D. Stat. § 41-9-24.)

Grant: I grant to you a security interest in any and all deposit accounts (demand, time, savings, passbook, and specifically including but not limited to any certificated time accounts) I currently have or hereafter create with U.S. Bank, N.A. (your affiliate).

Exception: This grant does not apply to accounts that constitute a part of any qualified retirement plan (such as an Individual Retirement Account), any retail repurchase agreement, or any account where my only right is clearly and solely in a representative capacity.

Secures: This security interest secures the payment of this debt and any other debt I may owe you, now or hereafter.

Usage: You have the right to direct the U.S. Bank, N.A. to restrict or prohibit further withdrawals from my accounts, and to comply with your instructions directing disposition of funds in my accounts, including, to apply such funds toward payment of the secured debts. While you have the right to do this at any time, and without notice, it is your present intention to exercise these rights only in the event of my default on this or any other secured obligation, and to provide notice to me.

U.S. Bank, N.A. agrees to comply with your instructions for disposition of funds in my accounts without first obtaining my consent (other than the consent contained and expressed in this agreement).

I understand that U.S. Bank, N.A. is your affiliate.

Setoff: I also acknowledge that U.S. Bank, N.A. has a right of setoff in the event I owe money to U.S. Bank, N.A. This right of setoff, in the event of a conflict with the security interest granted here, will be subordinate to this security interest.

MONTHLY OUTSTANDING BALANCE INSURANCE PREMIUMS - This section applies to any transaction secured by (a) real estate, or (b) any personal property that is a dwelling, such as a mobile home.

The insurance premiums for credit life and credit disability insurance are calculated on the monthly outstanding balance method. This means that each month you multiply the loan principal balance by the monthly premium rate (which is a rate per $100 of debt per month).

Each of the premiums quoted above for credit life and credit disability are the total of all the monthly premiums for the respective insurance, based on the assumed monthly principal balances. These assumed monthly principal balances assume that the interest rate will remain the same throughout the term of the transaction (which is not likely if this is a variable rate transaction), and that I will make all my payments in full and on time.

If the interest rate increases, and my periodic payment does not increase each month (as is normally how you schedule payments for variable rate transactions) then the amount I will pay for insurance I have bought from you will be more. Likewise, if the interest rate declines, or if I prepay, the amount for insurance will decline, as will the amount and length of coverage. In either case, this effect on premium is because the actual monthly principal balances will not be as assumed.

If I buy insurance from you for credit life or credit disability, the premiums are included in my periodic payments, and in the **TOTAL OF PAYMENTS** section. If I cancel the insurance before the scheduled maturity date, my periodic payment

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EXHIBIT A

amounts will remain as originally scheduled. This means that more of my payment will be available for the principal than otherwise would be true, and the number of payments, or the amount of my final payment, will be less than it otherwise would be. (See the paragraph titled PAYMENTS above.)

OBLIGATIONS INDEPENDENT - This paragraph applies if there are multiple parties (for example, a maker and a guarantor or co-maker) who are obligated to pay this loan. We understand that the obligation of each of us to pay this loan is independent of the obligation of the others to pay this loan. You may, without notice, release or give up any right you may have, extend new credit, renew or change this obligation, as to any of us, without affecting the obligation of any others (until this loan is paid in full).

You may fail to perfect your security interest in, impair, or release any security and I (we) will still be obligated to pay this loan.

WAIVER - I waive (to the extent permitted by law) demand, presentment, protest, notice of dishonor and notice of protest.

FINANCIAL STATEMENTS - I will give you any financial statements or information that you feel is necessary. All financial statements and information I give you will be correct and complete.

PURCHASE MONEY LOAN - If this is a Purchase Money Loan, you may include the name of the seller on the check or draft for this loan.

NAME AND LOCATION - My name and address indicated on page 1 are my exact legal name and my principal residence. I will provide you with at least 30 days' notice prior to changing my name or principal residence.

SKIP PAYMENTS - From time to time, you may offer me the chance to skip a payment on this loan. If I choose to accept this offer, I agree to pay a fee up to $50.00, and the term of this loan will be extended one month.

ADDITIONAL TERMS OF THE SECURITY AGREEMENT

SECURED OBLIGATIONS - This security agreement secures this loan (including all extensions, renewals, refinancings and modifications).

It also secures any other debt I have with you now or later. Property described in this security agreement will not, however, secure other such debts if:

(1) the Property is my principal dwelling;

(2) this security interest is in household goods and the other debt is a consumer loan; or,

(3) this Property is described in Wis. St. § 422.417(3).

This security agreement will last until it is discharged in writing.

For the sole purpose of determining the extent of a purchase money security interest arising under this security agreement:

(a) Payments on any nonpurchase money loan also secured by this agreement will not be deemed to apply to the Purchase Money Loan; and

(b) Payments on the Purchase Money Loan will be deemed to apply first to the nonpurchase money portion of the loan, if any, and then to the purchase money obligations in the order in which the items were acquired.

No security interest will be terminated by application of this formula. "Purchase Money Loan" means any loan of which the proceeds, in whole or in part, are used to acquire any property securing the loan and all extensions, renewals, consolidations and refinancings of such loan.

PROPERTY - The word "Property," as used here, includes all property that is listed in the security agreement on page 1. If a general description is used, the word "Property" includes all my property fitting the general description. Property also means all benefits that arise from the described Property (including all proceeds, insurance benefits, payments from others, interest, dividends, stock splits and voting rights). It also means property that now or later is attached to, is a part of, or results from the Property, and all supporting obligations. "Proceeds" includes anything acquired on the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising out of the Property; and any collections and distributions on account of the Property.

OWNERSHIP AND DUTIES TOWARD PROPERTY - Unless a co-owner(s) of the Property signed a third party agreement, I represent that I own all the Property. I will defend the Property against any other claim. I agree to do whatever you require to perfect your interest and keep your priority. I will not do anything to harm your position. I will not use the Property for a purpose that will violate any laws or subject the Property to forfeiture or seizure.

I will keep the Property in my possession (except if pledged and delivered to you). I will keep it in good repair and use it only for its intended purposes. I will keep it at my address unless we agree otherwise in writing.

I will not try to sell or transfer the Property, or permit the Property to become attached to any real estate, without your written consent. I will pay all taxes and charges on the Property as they become due. I will inform you of any loss or damage to the Property. You have the right of reasonable access in order to inspect the Property.

If the Property is a motor vehicle, I represent that it is not a vehicle seized pursuant to any federal, state or local forfeiture law.

INSURANCE - I agree to buy the insurance coverages required on page 2 covering the Property against the risks and for the amounts you require. I will name you as loss payee on any such policy. If there is an insured loss, you may require added security on this loan if you agree that insurance proceeds may be used to repair or replace the Property. I agree that if the insurance proceeds do not cover the amounts I still owe you, I will pay the difference. I will buy the insurance from a firm authorized to do business in the appropriate state. The firm will be reasonably acceptable to you. I will keep the insurance until all debts secured by this agreement are paid.

COLLATERAL PROTECTION INSURANCE - [redacted] provide you with evidence of the insurance coverage required by my agreement with you, you may purchase insurance at my expense to protect your interests in my collateral. This insurance may, but need not, protect my interests. The coverage that you purchase may not pay any claim that I make or any claim that is made against me in connection with the collateral. I may later cancel any insurance purchased by you, but only after providing you with evidence that I have obtained insurance as required by our agreement. If you purchase insurance for the collateral, I will be responsible for the costs of that insurance, including interest and any other charges you may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to my total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own. I agree that the cost of such insurance will be due immediately.

FILING - I authorize you to file a financing statement covering the Property. I agree to comply with and facilitate your requests in connection with obtaining possession of or control over the Property until this security agreement is terminated. A copy of this security agreement may be used as a financing statement when allowed by law.

DEFAULT AND REMEDIES - If I am in default, in addition to the remedies listed in the note portion of this document and subject to any of the limitations in the RIGHT TO CURE paragraph, you may (after giving notice and waiting a period of time, if required by law):

(a) Pay taxes or other charges, or purchase any required insurance, if I fail to do these things (but you are not required to do so). You may add the amount you pay to this loan and accrue interest on that amount at the interest rate(s) in effect from time to time, on this note until paid in full;

(b) Require me to gather the Property and any related records and make it available to you in a reasonable fashion;

(c) Take immediate possession of the Property, but in doing so you may not breach the peace or unlawfully enter onto my premises. You may sell, lease or dispose of the Property as provided by law. (If the Property includes a manufactured home, you will begin the repossession by giving me notice and an opportunity to cure my default, as required by law.) You may apply what you receive from the sale of the Property to your expenses and then to the debt. If what you receive from the sale of the Property is less than what I owe you, you may take me to court to recover the difference (to the extent permitted by law); and

(d) Keep the Property to satisfy the debt.

I agree that when you must give notice to me of your intended sale or disposition of the Property, the notice is reasonable if it is sent to me at my last known address by first class mail 10 days before the intended sale or disposition. I agree to inform you in writing of any change in my address.

ASSUMPTIONS - This security agreement and any loan it secures cannot be assumed by someone buying the Property from me. This will be true unless you agree in writing to the contrary. Without such an agreement, if I try to transfer any interest in the Property, I will be in default on all obligations that are secured by this security agreement.

THIRD PARTY AGREEMENT

For the purposes of the provisions within this enclosure "I," "me" or "my" means the person signing below and "you" means the Lender identified on page 1.

I agree to give you a security interest in the Property that is described on page 1. I agree to the terms of this note and security agreement but I am in no way personally liable for payment of the debt. This means that if the Borrower defaults, my interest in the Property may be used to satisfy the Borrower's debt. I agree that you may, without releasing me or the Property from this Third Party Agreement and without notice or demand upon me, extend new credit to any Borrower, renew or change this note or security agreement one or more times and for any term, or fail to perfect your security interest in, impair, or release any security (including guaranties) for the obligations of any Borrower.

I HAVE RECEIVED A COMPLETED COPY OF THIS NOTE AND SECURITY AGREEMENT.

NAME

X

NOTICE TO COSIGNER

You (the cosigner) are being asked to guaranty this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You also may have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become part of your credit record.

This notice is not the contract that makes you liable for the debt.

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EXHIBIT A

AUTOMATIC WITHDRAWAL:

I ☐ DO ☒ DO NOT want Automatic Withdrawal.

By signing below I authorize you to automatically withdraw my regular payment from my transaction account listed below on each payment date.

Account number for automatic payment:

x Jennifer A Schell x

ACH CANCELLATION FEE: I agree that if I arrange for automatic payments on this loan, either on this form or otherwise, and if my automatic payments are stopped for any reason not your fault, I agree to pay you an ACH cancellation fee of $ _____. I understand that automatic payments stop, and must be re-contracted for, if, for example, I close my account (without arranging for automatic payment from another account), there is insufficient funds in the account, or I stop payment on an automatic payment.

This note is a "transferable record" as defined in applicable law relating to electronic transactions. Therefore, the holder of this note may, on behalf of the maker of this note, create a microfilm or optical disk or other electronic image of this note that is an authoritative copy as defined in such law. The holder of this note may store the authoritative copy of such note in its electronic form and then destroy the paper original as part of the holder's normal business practices. The holder, on its own behalf, may control and transfer such authoritative copy as permitted by such law.

SIGNATURES - I agree to the terms set out on pages 1 thru 5 of this agreement. I have received a copy of this document on today's date.

Cosigners - see notice above before signing.

In this notice, "you" refers to the borrowers.
NOTICE TO BORROWER:
(a) DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON ALL PAGES
(b) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
(c) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
(d) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REDUCTION OF THE FINANCE CHARGE.

Signature Jennifer A. Schell 4/9/04
Date

Signature _____
Date

Signature _____
Date

Loan number: [redacted]

AUTHENTICATION BY U.S. BANK, N.A.:
U.S. Bank, N.A. affiliate of and agent for the lender on this loan, acknowledges and agrees to the control agreement contained in the Security Interest in deposit accounts, and the subordination of its right of setoff to this security interest if and to the extent of a conflict. This is intended as an authentication. U.S. BANK N.A.

FOR WISCONSIN RESIDENTS ONLY

☐ Marital purpose. If checked, the obligation evidenced by this note and any agreement securing this note is incurred in the interest of my marriage or family.

☐ Management and Control. If checked, I can act alone to assign, create a security interest in, mortgage, or otherwise encumber any property securing this note.

x _____

Nonsigning Spouse. The undersigned is married to the borrower signing this note and waives any notice of this extension of credit.

x _____

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EXHIBIT A

1734485

SHEBOYGAN COUNTY, WI
RECORDED ON

05/25/2004 08:39AM

DARLENE J. NAVIS
REGISTER OF DEEDS

RECORDING FEE: 23.00
TRANSFER FEE:

STAFF ID 7
TRANS # 43595

OF PAGES: 7

Return Address:
First American Equity Loan Services, Inc.
1228 Euclid Avenue, 4th Floor
Cleveland, OH 44115
[redacted]

FACT Order #: [redacted]
ALS #: [redacted]

Parcel Number: 59281-312650

MORTGAGE
(With Future Advance Clause)

☐ Construction Mortgage. This is a Construction Mortgage which secures an obligation incurred for the construction of an improvement on the Property, which may include the Property's acquisition cost. This obligation provides for future advances made for the completion of the contemplated improvement on the mortgaged Property.

State of Wisconsin — Space Above This Line For Recording Data

1. DATE AND PARTIES. The date of this Mortgage (Security Instrument) is April 9, 2004 and the parties, their addresses and tax identification numbers, if required, are as follows:

MORTGAGOR: JENNIFER A SCHEELE - SINGLE

LENDER: U.S. Bank, National Association N.D.
4325 17th Avenue S.W.
Fargo, ND 58103

2. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

The real estate mortgage herein is described in Exhibit "A" which is attached hereto and hereby incorporated herein by reference.

The property is located in SHEBOYGAN (County) at 824 WILSON AVE (Address) SHEBOYGAN (City) Wisconsin 53081 (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

[redacted]

7

EXHIBIT B

3. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time shall not exceed $.....94,777.33..... This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security.
4. SECURED DEBT AND FUTURE ADVANCES. The term "Secured Debt" is defined as follows:
   A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. *(When referencing the debts below it is suggested that you include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)*

   B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt executed by Mortgagor in favor of Lender after this Security Instrument whether or not this Security Instrument is specifically referenced, and whether or not the purpose of the future advances or future obligations is related to the purpose of the Secured Debt. If more than one person signs this Security Instrument, each Mortgagor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.
   C. All obligations Mortgagor owes to Lender, which may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
   D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

   This Security Instrument will not secure any other debt if Lender fails to give any required notice of the right of rescission.
5. PAYMENTS. Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.
6. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.
7. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:
   A. To make all payments when due and to perform or comply with all covenants.
   B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
   C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.
8. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.
9. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. § 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.

   If Lender exercises this option, Lender shall give Mortgagor notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Mortgagor must pay all sums secured by this Security Instrument. If Mortgagor fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Mortgagor.

[redacted]

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EXHIBIT B

10. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor shall not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims and actions against Mortgagor, and of any loss or damage to the Property.
Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform the covenants and agreements contained in this Security Instrument regarding preserving or insuring the Property, then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's right in the Property, and after sending Mortgagor written notice and allowing Mortgagor a reasonable opportunity for performance, when legally required. Notice is not required for an agricultural transaction where the collateral is perishable and threatens to decline speedily in value.
If there is a legal proceeding that may significantly affect Lender's right in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), the Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property, after sending Mortgagor a written notice of the right to cure and waiting 15 days, if applicable.
Lender's actions under this section may include paying any sums secured by a lien that has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this covenant, Lender does not have to do so, nor does it preclude Lender from exercising any other of Lender's rights under the law or this Security Instrument.
Any amount paid by Lender to protect Lender's security interest, in accordance with the terms of this Security Instrument, shall be secured by this Security Instrument. These sums will be due on demand and will accrue interest at the highest rate in effect from time to time on the Secured Debt from the date of payment until paid in full.

12. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (all referred to as "Property"): all existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including any extensions, renewals, modifications or replacements (all referred to as "Leases"); and rents, issues and profits (all referred to as "Rents"). In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided with this Assignment, and all future Leases and any other information with respect to future Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default.
Upon default, Mortgagor will receive any Rents in trust for Lender and will not commingle the Rents with any other funds. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants.

13. **LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Mortgagor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium, time share estate or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium, time share estate or planned unit development.

14. **DEFAULT.** Mortgagor will be in default if any of the following occur with regard to the Secured Debt which is secured by this Security Instrument: (1) with respect to a transaction other than one pursuant to an open-end plan, (a) if the interval between scheduled payments is 2 months or less, to have an outstanding amount exceeding one full payment which has remained unpaid for more than 10 days after the scheduled or deferred due dates, or the failure to pay the first payment or the last payment, within 40 days of its scheduled or deferred due date, (b) if the interval between scheduled payments is more than 2 months, to have all or any part of one scheduled payment unpaid for more than 60 days after its scheduled or deferred due date, (c) if the transaction is scheduled to be repaid in a single payment, to have all or any part of the payment unpaid for more than 40 days after its scheduled or deferred due date; (2) with respect to a transaction pursuant to an open end plan, failure to pay when due on 2 occasions within any 12-month period; or (3) if any other condition in this Security Instrument is violated, and such breach materially impairs the condition, value or protection of or Lender's right in the Property, or materially impairs Mortgagor's ability to pay amounts due.

[redacted]

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EXHIBIT B

15. NOTICE OF DEFAULT AND RIGHT TO CURE. Where required by law, Lender will send Mortgagor written notice of default and right to cure. The notice shall specify (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 15 days from the date the notice is mailed to Mortgagor, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and the sale of the Property. The notice shall further inform Mortgagor of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of Mortgagor to acceleration and sale. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.
16. ACCELERATION. If the breach is not cured on or before the date specified in the notice of default, Lender, at Lender's option, may declare all of the sums secured by this Security Instrument to be immediately due and payable without further demand and may invoke the power of sale and other remedies permitted by applicable law.
17. DEFAULT CHARGES AND ATTORNEYS' FEES. Lender shall be entitled to collect all statutory collection expenses incurred in the disposition of the Property and such other charges as are specifically authorized by Wis. Stat. Ch. 421 to 427, or if the Property is secured by a first lien real estate mortgage or its equivalent security interest as defined in Wis. Stat. Ch. 428, those expenses authorized by that chapter, including attorneys' fees, to the extent permitted. Mortgagor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. After Mortgagor has paid all sums secured by this Security Instrument, and Lender has terminated any commitments for future advances, Lender shall release this Security Instrument without charge to Mortgagor. Mortgagor agrees to pay for any recordation costs of such release.
18. POWER OF SALE. If Lender invokes the power of sale, Lender shall give notice of sale in the manner prescribed by applicable law to Mortgagor and to the other persons prescribed by applicable law. Lender shall publish the notice of sale and the Property shall be sold in the manner prescribed by applicable law. Lender or Lender's designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all statutory collection expenses as described in section 17 above; (b) to all sums secured by this Security Instrument; and (c) the excess, if any, to the clerk of the Circuit Court of the County in which the sale is held.
19. MORTGAGOR'S RIGHT TO REINSTATE. The Mortgagor may redeem the Property at any time before the sale by paying the following: (a) the amount of the judgment, with interest and statutory collection expenses as described in section 17 above; (b) any statutory collection expenses incurred after the judgment; and (c) any taxes paid by the Lender after the judgment, with interest from the date of payment. The rate of interest paid will be the same rate of interest as found in the Secured Debt.
20. FORECLOSURE WITHOUT DEFICIENCY. If this Property is a 1-4 family residence that is owner-occupied at the beginning of a foreclosure action, a farm, a church or a tax-exempt nonprofit charitable organization, then Mortgagor agrees to the provisions of Wis. Stat. § 846.101, as amended, permitting Lender to waive its right to a judgment for a deficiency on real estate of 20 acres or less, and to hold a sale of the Property six months after the foreclosure judgment is entered. If this Property is not a 1-4 family residence that is owner-occupied at the beginning of a foreclosure action, a farm, a church or a tax-exempt nonprofit charitable organization, then Mortgagor agrees to the provisions of Wis. Stat. § 846.103, as amended, permitting Lender to waive its right to a judgment for a deficiency, and to hold a sale of the Property three months after a foreclosure judgment is entered. Regardless of terms to the contrary, if Mortgagor abandons the Property, then the sale of the Property shall be after two months from the date a foreclosure judgment is entered.
21. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state of Wisconsin and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
C. Mortgagor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor shall take all necessary remedial action in accordance with any Environmental Law.
D. Mortgagor shall immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.

[redacted]

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EXHIBIT B

22. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.
23. INSURANCE. Mortgagor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding sentence can change during the term of the secured debt(s). The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument, after sending Mortgagor written notice and allowing Mortgagor a reasonable opportunity for performance, when legally required. Notice is not required for an agricultural transaction where the collateral is perishable and threatens to decline speedily in value.
All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.
Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Mortgagor. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.
24. ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.
25. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Lender's lien status on the Property.
26. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Security Instrument are joint and individual. If Mortgagor signs this Security Instrument but does not sign an evidence of debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Lender.
27. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Security Instrument is governed by the laws of the state of Wisconsin, except that repossession will be governed, to the extent permitted by Wis. Stat. § 421.201(5), as amended, by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed from the remaining provisions to the extent not prohibited by the Wisconsin Consumer Act and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
28. NOTICE. Any statutorily required notice may be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to the last address furnished to Lender by Mortgagor. Such a notice may be sent to only one address if all parties reside at that address and the notice is addressed to each party or, if required by Wis. Banking Rule 80.37, any party who resides at a different address shall be sent a separate notice.
29. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all appraisement and homestead exemption rights relating to the Property.
30. MORTGAGOR'S COPY. Mortgagor shall be furnished an exact copy of the Note and of this Security Instrument at the time of execution.

[redacted]

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EXHIBIT B

31. OTHER TERMS. If checked, the following are applicable to this Security Instrument:

☐ Line of Credit. The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until Lender has terminated all commitments for future advances.

☐ Fixture Filing. Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.

☐ Additional Terms.

FOR WISCONSIN RESIDENTS ONLY:
The Secured Debt is incurred in the interest of the undersigned Mortgagors' marriage or family.

..... [Seal] ..... [Seal]
(Signature) JENNIFER A SCHEELE (Date) (Signature) (Date)

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

NOTICE TO CUSTOMER

(a) DO NOT SIGN THIS IF IT CONTAINS BLANK SPACES.
(b) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
(c) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED A PARTIAL REFUND OF THE FINANCE CHARGE.

Jennifer A. Scheele 4/9/04 [Seal] ..... [Seal]
(Signature) JENNIFER A SCHEELE (Date) (Signature) (Date)

..... [Seal] ..... [Seal]
(Signature) (Date) (Signature) (Date)

..... [Seal] ..... [Seal]
(Signature) (Date) (Signature) (Date)

ACKNOWLEDGMENT:
STATE OF Wisconsin, COUNTY OF Sheboygan) ss.
(Individual) This instrument was acknowledged before me this 9th day of April, 2004
by JENNIFER A SCHEELE

My commission expires: 3/9/08 (Seal)

Amanda Fuhrman
AMANDA FUHRMAN (Notary Public)

This instrument was drafted by Diane Delia of First American Equity Loan Services, Inc. (name).
1228 Euclid Avenue, 4th Floor
Cleveland, OH 44115
800-598-0208

NOTARY PUBLIC AMANDA FUHRMAN STATE OF WISCONSIN

EXHIBIT B

EXHIBIT "A"

LEGAL DESCRIPTION

A PARCEL OF LAND SITUATED IN THE STATE OF WISCONSIN, COUNTY OF SHEBOYGAN, WITH A STREET LOCATION ADDRESS OF 824 WILSON AVE; SHEBOYGAN, WI 53081-6908 CURRENTLY OWNED BY JENNIFER A SCHEELE HAVING A TAX IDENTIFICATION NUMBER OF 59281-312650 AND FURTHER DESCRIBED AS LAKE VIEW PARK SUBD. LOTS 13 & 14 BLK 21 & S 1/2 OF VACATED E-W ALLEY ADJ SD LOTS.

[redacted]
824 WILSON AVE; SHEBOYGAN, WI 53081-6908
[redacted]

The use of this Legal Description is limited by the terms and conditions of the FACT Title Report, the FACT Service Level Agreement, and the FACT Master Loan Policy.

EXHIBIT B

FILED
01-09-2018
Sheboygan County
Clerk of Circuit Court
2017CV000325

50-17-02349

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

U.S. Bank, National Association successor by merger to
U.S. Bank National Association, N.D.

Plaintiff

v. Case No. 17 CV 325

Jennifer A. Schoele
824 Wilson Avenue
Sheboygan, WI 53081

U.S. Bank, National Association, N.D.
4325 17th Avenue S.
Fargo, ND 58103

Capital One Bank
c/o Corporation Service Company
1111 E. Main Street, Suite 1600
Richmond, VA 23219

Currence Financial LLC
c/o Scott M. Israel
250 Sunnyslope Road, Suite 300
Brookfield, WI 53005

Citibank
701 E. 60th Street N.
Sioux Falls, SD 57104

Defendants

ORDER FOR JUDGMENT AND JUDGMENT

For informational purposes:

Occupancy	Owner occupied
Statute	846.101
Redemption	Six months
Deficiency	No
Receiver	No

50-17-02349

The plaintiff having filed the Complaint and proof of service of the Summons on the defendants and an affidavit that the defendants are in default for failure to join issue, and

The plaintiff having moved the Court for judgment according to the demand of the Complaint, and

Each defendant appearing in the action having been served with a notice of motion for judgment, and

Due notice of the pendency of the action was filed in the Office of the Register of Deeds for this County more than twenty (20) days prior to the date of this hearing, and

The Court having received the proof of facts necessary for the Court to render judgment and the Court having determined that the material allegations of the Complaint are true, and
It Appearing that:

1. The name and place of residence of each party to the action is:

   Jennifer A. Scheele
   824 Wilson Avenue
   Sheboygan, WI 53081

   U.S. Bank, National Association, N.D.
   4325 17th Avenue S.
   Fargo, ND 58103

   Capital One Bank
   c/o Corporation Service Company
   1111 E. Main Street, Suite 1600
   Richmond, VA 23219

   Currahee Financial LLC
   c/o Scott M. Israel
   250 Sunnyslope Road, Suite 300
   Brookfield, WI 53005

   Citibank
   701 E. 60th Street N.
   Sioux Falls, SD 57104

2. That the mortgaged premises consists of a one-to-four family residence that was owner occupied at the commencement of this action, located at 824 Wilson Avenue, Sheboygan, WI 53081, and that said premises cannot be divided for sale in parcels without injury to the interests of the parties.

3. That there is now due and owing to the plaintiff:

Unpaid Principal Balance	$90,945.18
Accrued Interest	$27,279.21
Escrow Balance	$9,805.40
Escrow – Taxes	$11,493.79
Escrow – Hazard Insurance	$4,551.00
Escrow – Payments	$-2,367.80
Property Preservation	$45.00
Attorney Fees	$100.00
Grand Total	$141,851.78

4. That none of the defendants are in the military service or are under guardianship.

NOW, on motion of the Plaintiff's attorney, IT IS FOUND, DETERMINED and ADJUDGED THAT:

5. The material allegations of the Complaint are proven true.
6. That there is due to the Plaintiff from the mortgagor defendant the sum of $141,751.78, plus attorneys' fees in the amount of $100.00, which the Court determines to be reasonable, on in all, the sum of $141,851.78.
7. That all sums hereafter advanced by the Plaintiff for insurance, necessary repairs, and taxes, not included in the judgment total listed above, may be added to the judgment by Order at any time after the entry of judgment.
8. That the mortgaged premises are described as follows:

   LOT THIRTEEN (13) AND FOURTEEN (14) AND THE SOUTH ONE-HALF (S1/2) OF VACATED EAST-WEST ALLEY, BLOCK TWENTY-ONE (21) LAKE VIEW PARK SUBDIVISION IN THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN, ACCORDING TO THE RECORDED PLAT THEREOF.

   Tax Key No. 59281-312650

9. That the mortgaged premises consists of twenty (20) acres or less in area and was owner occupied at the commencement of this foreclosure action, and that said premises cannot be divided for sale into parcels without injury to the rights of the parties, and must be sold as a whole.

10. That the premises, unless sooner redeemed, be sold at public auction by and under the direction of the Sheriff at any time upon the expiration of six (6) months from the date when judgment is entered for the amounts due the plaintiff, and said Sheriff shall give public notice of the time and place of such sale in the manner provided by law and by publication in a newspaper published in this County.

11. Said premises shall be sold subject to taxes and assessments, general or special, and any prior liens and encumbrances of record, if any, and free and clear of all claim, right or equity of redemption thereof, of all parties to this action, their heirs, successors and assigns, and all persons claiming under them subsequent to the filing of the pendency of this action, EXCEPT, if the United States of America is a defendant, it has the right to redeem after sale within the period provided by 28 U.S.C. §2410, and that all of the defendants be forever barred and foreclosed of any right, title, or interest in and to said premises after the confirmation of a sheriff's sale.

12. That after deducting Sheriff's fees and expenses of sale, the proceeds shall first be applied to the amounts due the plaintiff, with interest at the rate of 6.24% per annum, the minimum rate prevailing immediately prior to the default on which the foreclosure is based, and that the surplus, if any, shall be subject to the further Order of this Court.

13. That the Sheriff, after sale, shall make a report to the Court.

14. That the mortgagor defendant may remain entitled to possession of the premises and is entitled to all rents, issues and profits therefrom to the date of confirmation of sale, unless they should abandon the same.

15. That no deficiency judgment shall be entered against the mortgagor defendant.

16. That the defendants and persons claiming under them are enjoined from committing waste or doing any act that may impair the value of the mortgaged premises.

17. Pursuant to Wis. Stat. § 846.09 of the Wisconsin Statutes, the plaintiff is hereby granted leave to amend the Summons, Complaint, and all the proceedings in this action by making as defendant any person who is a proper or necessary party hereto.

18. That there is no such party as JOHN DOE SCHEELE; that all claims against said party are hereby dismissed, and the caption shall reflect accordingly.

19. That the Clerk of this Court will enter the judgment. This order for judgment and judgment is a final order for purposes of appeal.

Dated this 9th day of January, 2018

BY THE COURT:
Electronically signed by Kent Hoffmann
Circuit Court Judge

Judgment of foreclosure entered: _____

BY THE COURT:

By: _____
Judgment Clerk

50-17-02349

VII

5.14

R. C. No. 289 - 17 - 18. By FINANCE AND PERSONNEL COMMITTEE.
April 4, 2018.

Your Committee to whom was referred R. O. No. 257-17-18 by City Clerk submitting a Summons and Complaint in the matter of Cheryl H. Bilgrien vs City of Sheboygan; recommends referring to Finance and Personnel Committee of the new council.

Finance + Personnel
2018 2019

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

II

3.1

R. O. No. 257 - 17 - 18. By CITY CLERK. January 2, 2018.

Submitting a Summons and Complaint in the matter of Cheryl H. Bilgrien vs City of Sheboygan.

Finance/Personnel
Finance+Personnel
& new Council

CITY CLERK

STATE OF WISCONSIN, CIRCUIT COURT, SHEBOYGAN COUNTY

For Official Use

Plaintiff: (Name [first, middle, last], Address, City, State, Zip)

CHERYL H BILGRIEN
9 Seneca Trail
Sheboygan WI 53081

☐ See attached for additional plaintiffs

Hon. Angela W. Sutkiewicz

☐ Amended

-vs-

To: Defendant(s): (Name [first, middle, last], Address, City, State, Zip)

832 Center Ave
Sheboygan WI 53081

☐ See attached for additional defendants

Summons and Complaint Small Claims

Case No. 17SC2730

☒ Claim for money ($10,000 or less)	31001
☐ Return of property (replevin)	31003
☐ Eviction	31004
☐ Eviction due to foreclosure	31002
☐ Arbitration award	31006
☐ Return of earnest money	31008
☐ Tort/Personal Injury ($5,000 or less)	31010

If you require reasonable accommodations due to a disability to participate in the court process, please call 920-459-3070 at least 10 working days prior to the scheduled court date. Please note that the court does not provide transportation.

SUMMONS

To the Defendant(s):

You are being sued as described below. If you wish to dispute this matter:

☒ You must appear at the time and place stated.

AND/OR (Clerk will circle one)

☒ You must file a written answer and provide a copy to the plaintiff or plaintiff's attorney on or before the date and time stated.

If you do not appear or answer, the plaintiff may win this case and a judgment entered for what the plaintiff is asking.

When to Appear/File an Answer

Date JAN - 8 2018 Time 8:30 a.m.

Place to Appear/File an Answer

APPEAR: B-10 Lower Level
ANSWER: Clerk of Circuit Courts Office

ADDRESS FOR BOTH: 615 North Sixth Street
Sheboygan WI 53081

Clerk/Attorney Signature	Date Summons Issued	Date Summons Mailed
Melody Hotz	DEC - 8 2017	DEC - 8 2017

COMPLAINT

Plaintiff's Demand:

The plaintiff states the following claim against the defendant(s):

1. Plaintiff demands judgment for: *(Check as appropriate)*

☒ Claim for Money $ 2500.00
☐ Return of Earnest Money ☐ Eviction
☐ Return of property (replevin) *(Describe property in 2 below.)*
(Not to include Wis. Stats. 425.205 actions to recover collateral.)
☐ Tort/Personal Injury $
☐ Eviction due to foreclosure
☐ Confirmation, vacation, modification or correction of arbitration award

Plus interest, costs, attorney fees, if any, and such other relief as the court deems proper.

2. Brief statement of dates and facts: (If this is an eviction action and you are seeking money damages, you must also state that claim on this form.)

1-19-17 Hit Pothole by 2001 Camelot Blvd my tire exploded called city and police no one showed up waited 1½ hrs for tow truck.

☒ See attached for additional information. Provide copy of attachments for court and defendant(s).

Verification: Under oath, I state that the above complaint is true, except as those matters stated upon information and belief, and as to those matters, I believe them to be true.

I am: ☒ plaintiff. ☐ attorney for the plaintiff.

Signature of Plaintiff or Attorney	Date	Attorney's State Bar Number
▶ Cheryl B Olgrien	12-7-17	
Plaintiff's/Attorney's Telephone Number	Law Firm and Address	
920-682-2783		

State of WISCONSIN
County of SHEBOYGAN
Subscribed and sworn to before me on 12/7/17

Notary Public/Court Official

Name Printed or Typed

My commission/term expires: Deputy Clerk

WI DL

CLERK CIRCUIT COURT FILED 2017 DEC 12 P 2:20 SHEBOYGAN COUNTY WI

received 12-15-17

SC-500, 08/11 Summons and Compliant – Small Claims — Chapter 799, Wisconsin Statutes

This form shall not be modified. It may be supplemented with additional material.

SCF-3521

II

Other Matters

8.1

R. O. No. 167 - 18 - 19. By CITY CLERK. November 5, 2018.

Submitting a Summons and Complaint in the matter of TCF National Bank vs. Brett J. Lettenberger et al.

Finance + Personnel

CITY CLERK

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

FCF National Bank vs. Brett J. Lettenberger et al

Electronic Filing Notice

Case No. 2018CV000592
Class Code: Foreclosure of Mortgage

FILED
10-29-2018
Sheboygan County
Clerk of Circuit Court
2018CV000592
Honorable L Edward Stengel
Branch 1

Private Server
Date: 11/2/18 Time: 1045 am/pm
( ) Personal ( ) Substitute
( ) Posted (X) Corporate

CITY OF SHEBOYGAN
828 CENTER AVENUE
C/O CITY CLERK
SHEBOYGAN WI 53081

NOV 2 '18 AM10:44

Case number 2018CV000592 was electronically filed with/converted by the Sheboygan County Clerk of Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at **http://efiling.wicourts.gov/** and may withdraw as an electronic party at any time. There is a $ 20.00 fee to register as an electronic party.

If you are not represented by an attorney and would like to register as an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: 3c2cdd

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 920-459-3068.

Sheboygan County Circuit Court
Date: October 29, 2018

Date _____
Time _____
_____
Private Process Service

FILED
10-29-2018
Sheboygan County
Clerk of Circuit Court
2018CV000592
Honorable L Edward
Stengel
Branch 1

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

TCF NATIONAL BANK
800 Burr Ridge Parkway
Burr Ridge, IL 60527

Plaintiff,

vs.

Case No.
Code No. 30404
Foreclosure of Mortgage
Dollar Amount Greater Than $10,000.00

BRETT J. LETTENBERGER and CARRIE J. LETTENGERGER
husband and wife
914 Logan Avenue
Sheboygan, WI 53083

TD Bank USA, National Association
c/o Its President
2035 Limestone Road
Wilmington, DE 19808

KOHLER CREDIT UNION
c/o Its President
850 Woodlake Road
Kohler, Wisconsin 53044;

MIDLAND FUNDING, LLC
c/o Corporation Service Company
8040 Excelsior Drive Suite 400
Madison, WI 53717

PREVEA HEALTH SERVICES, INC.
c/o Michael Cottrell
2710 Executive Drive
Green Bay, WI 54304

CACH LLC
c/o An Officer/Director
1675 Broadway, Suite 1200
Denver, CO 80202

HEALTH PAYMENT SYSTEMS, INC.
c/o Corporation Service Company
8040 Excelsior Drive Suite 400
Madison, WI 53717

CITY OF SHEBOYGAN
c/o City Clerk
828 Center Avenue
Sheboygan, Wisconsin 53081
Defendants.

SUMMONS

THE STATE OF WISCONSIN. To each person named above as a Defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within (20) days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. In the event State of Wisconsin is a defendant, it has (45) days within which to answer. In the event that the United States of America is a defendant, it has (60) days within which to file its responsive pleading to the complaint. The answer must be sent or delivered to the court, whose address is:

Clerk of Circuit Court
Sheboygan County Courthouse
615 North Sixth Street
Sheboygan, WI 53081

and to O'Dess and Associates, S.C., Plaintiff's attorneys, whose address is:

O'Dess and Associates, S.C.
Suite 403
1414 Underwood Avenue
Wauwatosa, Wisconsin 53213

You may have an attorney help or represent you.

If you do not provide a proper answer within (20) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated at Wauwatosa Wisconsin, this October 29, 2018.

ODESS and ASSOCIATES, S.C.
Attorneys for Plaintiff

By: M. ABIGAIL ODESS
State Bar No. 1017869
~~CHAD F. KOWALEWSKI~~
~~State Bar No. 1032968~~

POST OFFICE ADDRESS:
Suite 403
1414 Underwood Avenue
Wauwatosa, Wisconsin 53213
(414) 727-1591

FILED
10-29-2018
Sheboygan County
Clerk of Circuit Court
2018CV000592
Honorable L Edward Stengel
Branch 1

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

TCF NATIONAL BANK
800 Burr Ridge Parkway
Burr Ridge, IL 60527

Plaintiff,

vs.

Case No.
Code No. 30404
Foreclosure of Mortgage
Dollar Amount Greater Than $10,000.00

BRETT J. LETTENBERGER and CARRIE J. LETTENGERGER
husband and wife
914 Logan Avenue
Sheboygan, WI 53083

TD Bank USA, National Association
c/o Its President
2035 Limestone Road
Wilmington, DE 19808

KOHLER CREDIT UNION
c/o Its President
850 Woodlake Road
Kohler, Wisconsin 53044;

MIDLAND FUNDING, LLC
c/o Corporation Service Company
8040 Excelsior Drive Suite 400
Madison, WI 53717

PREVEA HEALTH SERVICES, INC.
c/o Michael Cottrell
2710 Executive Drive
Green Bay, WI 54304

CACH LLC
c/o An Officer/Director
1675 Broadway, Suite 1200
Denver, CO 80202

HEALTH PAYMENT SYSTEMS, INC.
c/o Corporation Service Company
8040 Excelsior Drive Suite 400
Madison, WI 53717

CITY OF SHEBOYGAN
c/o City Clerk
828 Center Avenue
Sheboygan, Wisconsin 53081
Defendants.

COMPLAINT

Now Comes the above named plaintiff, by its attorneys, O'Dcss and Associates, S.C., and as and for a complaint against the defendants, alleges and shows to the Court as follows:

1. That plaintiff is described and identified in Schedule 1 which is attached hercto and incorporated herein by reference as if set forth in full herein.

2. That Brett J. Lettenberger and Carrie J. Lettenberger, husband and wife, identified in Schedule 1 which is attached hereto and incorporated herein by reference as if set forth in full herein and who are referred to herein as mortgagor(s), duly executed and delivered a note and mortgage, for the consideration as expressed therein, copies of which are annexed hereto as Exhibit 1 and Exhibit 2, respectively, and by reference made a part hereof. That said mortgage was duly recorded in the office of the Register of Deeds for this County.

3. That plaintiff is the lawful holder of said note and mortgagec of record.

4. That the defendants, identified in the attached Schedule 1 may have or claim to have an interest in the premises as set forth in said Schedule, but that all such interests are subordinate to plaintiff's mortgage and plaintiff's claim made herein.

5. That the mortgage premises arc known and legally described as follows:

A parcel of land being Lot 20, REINEKING BROTHERS ADDITION, according

to the recorded plat thereof, in the City of Sheboygan, Sheboygan County, Wisconsin. More commonly known as 914 Logan Avenue. Tax Key No. 59281717920
Note: Tax Key Number and Address are shown for informational purposes only.

6. That according to its terms, there is now due and owing to plaintiff on said mortgage note and mortgage as of October 26, 2018 the following:

Principal	$86,897.12
Interest	$2471.84
Late Charges	$300.00
Misc. Fees	$40.00
Extension Fees	$5053.50
PMI Protect Fee	$130.00
Total	$94,892.46

After October 26, 2018 this amount may increase by the accrual of additional interest, fees, costs and/or advances.

That payments pursuant to said mortgage note and mortgage are due from May 16, 2018.

7. That by reason of the aforesaid default on the part of the defendants, plaintiff heretofore and before the commencement of this action, exercised the option as provided in the note and mortgage to declare the whole of the principal and interest thereof due and payable forthwith; that notice of the exercise of such option is expressly waived in said mortgage note and mortgage. That no proceedings have been had at law or otherwise for recovery of the sums secured by said note and mortgage except the present action and that no part thereof has been paid or collected except as set forth herein.

8. That the plaintiff has elected to proceed to foreclosure pursuant to §846.101, formerly §816.101, formerly §278.101, or §846.103(2) or §846.102 Wisconsin Statutes, that the premises covered by the mortgage are twenty acres or less in area, and are owner occupied, and that pursuant to said section plaintiff hereby elected to waive judgment for any deficiency which may remain due the plaintiff after sale of the mortgaged premises, against every party who is personally liable for the debt secured by the mortgage, and consents that the mortgagor(s), unless they abandon the property, may remain in possession of the mortgaged property and be entitled to

all of the rents, issues and profits therefrom to the date of confirmation of sale by the Court.

WHEREFORE, plaintiff demands judgment:

1. For the foreclosure and sale of the mortgaged premises in accordance with §846.101 or §846.103(2) or §846.102 Wisconsin Statutes depending upon occupancy status upon service of process;

2. That the amount due to the plaintiff in principal and interest, costs, disbursements and attorneys' fees be adjudged and determined;

3. That the defendants and all persons claiming under them be barred and foreclosed from all right, claim, lien, title, and equity of redemption in or to said premises, except the right to redeem the same before sale as provided by law;

4. That the mortgagor defendants or persons occupying the premises be enjoined and restrained from committing waste during the pendency of the action; and

5. That the plaintiff may take all necessary steps to secure and winterize the subject property in the event it is abandoned by the defendants and becomes unoccupied during the redemption period or until such time as this matter is concluded; and

6. That the plaintiff seeks permission, pursuant to §846.09, Wisconsin Statutes, to amend its pleadings to add any other parties it determines are necessary; and

7. That plaintiff have such other and further relief as may be just and equitable.

O'DESS and ASSOCIATES, S.C.
Attorneys for Plaintiff

By: M. ABIGAIL O'DESS
State Bar No. 1017869

POST OFFICE ADDRESS:
Suite 403
1414 Underwood Avenue
Wauwatosa, Wisconsin 53213
(414) 727-1591

O'Dess and Associates, S.C., is attempting to collect a debt and any information obtained will be used for that purpose.

If you have previously received a Chapter 7 Discharge in Bankruptcy, this correspondence should not be construed as an attempt to collect a debt.

October 29, 2018

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT, (the Act), 15 U.S.C. Section 1692 As Amended

1. O'Dess and Associates, S.C. is the creditor's law firm and is attempting to collect a debt for TCF National Bank. Any information the debtor provides to O'Dess and Associates, S.C. will be used for that purpose.

2. The amount of the debt as of October 26, 2016, is:

Principal	$86,897.12
Interest	$2471.84
Late Charges	$300.00
Misc. Fees	$40.00
Extension Fees	$5053.50
PMT Protect Fee	$130.00
Total	$94,892.46

Since interest, late charges, and other charges may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write the undersigned or call (414) 727-1591 and ask for attorney M. Abigail O'Dess.

3. The plaintiff as named in the attached summons and complaint is the creditor to whom the debt is owed.

4. The debt described in the complaint attached hereto and evidenced by the copy of the mortgage note attached hereto will be assumed to be valid by O'Dess and Associates, S.C., unless the debtor, within thirty days after the receipt of this notice, disputes the validity of the debt or some portion thereof.

5. **The law does not require O'Dess and Associates, S.C. to wait until the end of the thirty-day period before suing you to collect this debt. If, however, you request proof of the debt or the name and address of the original creditor within the thirty-day period that begins with your receipt of this notice, the law requires our law firm to suspend efforts (through litigation or otherwise) to collect the debt until we mail the requested information to you.**

6. If the debtor notifies O'Dess and Associates, S.C. in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, O'Dess and Associates, S.C. will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by O'Dess and Associates, S.C.

7. If the creditor named as plaintiff in the attached summons and complaint is not the original creditor, and if the debtor makes a written request to O'Dess and Associates, S.C. within the thirty days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor by O'Dess and Associates, S.C.

8. Written requests should be addressed to Attorney M. Abigail O'Dess, O'Dess and Associates, S.C., Suite 403, 1414 Underwood Avenue, Wauwatosa, Wisconsin 53213.

If you have previously received a Chapter 7 Discharge in Bankruptcy, this correspondence should not be construed as an attempt to collect a debt.

SCHEDULE 1

Plaintiff

1. That the plaintiff, TCF National Bank, is a national bank, duly organized and existing under the laws of the United States of America, with its offices located in care of John P. Harris, at 800 Burr Ridge Parkway, Burr Ridge, IL 60527.

Defendants

2. That the defendants, Brett J. Lettenberger and Carrie J. Lettenberger, husband and wife, are adult residents of the City of Sheboygan, County of Sheboygan, State of Wisconsin, residing at 914 Logan Avenue; that defendants' occupations are unknown.

3. That the defendant, TD Bank, USA, National Association, is a national bank, duly organized and existing under the laws of the State of Maine, with its main offices located in care of its President at 2035 Limestone Road, Wilmington, DE 19808; that said defendant, has, or may have, or may claim to have, an additional interest or lien in the subject premises by virtue of the following:

> Judgment docketed in the Office of the Clerk of Courts for Sheboygan County on July 14, 2015, No. 15SC001307 in favor of TD Bank USA, 3701 Wayzata Boulevard, Minneapolis, MN 55416 plaintiff, vs. Brett J. Lettenberger, 914 Logan Avenue, Sheboygan, WI 53083-4851 defendant, in the sum of $9,232.51.

4. That the defendant, Kohler Credit Union, is a state chartered credit union, duly organized and existing under the laws of the State of Wisconsin, with its main offices located in care of its president at 850 Woodlake Road, Kohler, Wisconsin; that said defendant has, or may

have, or may claim to have, an interest or lien in the subject premises by virtue of the following:

Judgment docketed in the Office of the Clerk of Courts for Sheboygan County on October 12, 2015, No. 15SC002028 in favor of Kohler Credit Union, 905 South Taylor Drive, Sheboygan, WI 53081 plaintiff, vs. Carrie J. Lettenberger, 914 Logan Avenue, Sheboygan, WI 53083 defendant, in the sum of $5,644.88.

5. That the defendant, Midland Funding LLC, is a foreign limited liability company, duly organized and existing under the laws of the State of Delaware, licensed to do business in the State of Wisconsin, with its registered agent being Corporation Service Company, located at 8040 Excelsior Drive, Suite 400, Madison, Wisconsin 53717; that said defendant has, or may have, or may claim to have, an interest or lien in the subject premises by virtue of the following:

Judgment docketed in the Office of the Clerk of Courts for Sheboygan County on November 16, 2016, No. 16SC002175 in favor of Midland Funding LLC, 2365 Northside Drive, Suite 300, San Diego, CA 92108 plaintiff, vs. Carrie Lettenberger, 914 Logan Avenue, Sheboygan, WI 53083 defendant, in the sum of $2,548.82.

Judgment docketed in the Office of the Clerk of Courts for Sheboygan County on August 22, 2018, No. 18SC001592 in favor of Midland Funding LLC, 2365 Northside Drive, Suite 300, San Diego, CA 92108 plaintiff, vs. Carrie Lettenberger, 914 Logan Avenue, Sheboygan, WI 53083 defendant, in the sum of $1,178.77.

6. That the defendant, Prevea Health Services, Inc., is a domestic business, duly organized and existing under the laws of the State of Wisconsin, with its registered agent being Michael Cottrell, located at 2710 Executive Drive, Green Bay, Wisconsin; that said defendant has, or may have, or may claim to have, an interest or lien in the subject premises by virtue of the following:

Judgment docketed in the Office of the Clerk of Courts for Sheboygan County on January 3, 2018, No. 17SC002490 in favor of Prevea Health, PO Box 19041,

Green Bay, WI 54307 plaintiff, vs. Carrie Lettenberger and Brett Lettenberger, 914 Logan Avenue, Sheboygan, WI 53083 defendant, in the sum of $1,921.21.

7. That the defendant, Cach LLC, is a foreign corporation, duly organized and existing under the laws of the State of Colorado with its principal place of business located in care of its president or director at 1675 Broadway, Suite 1200, Denver, CO 80202; that said defendant has, or may have, or may claim to have, an interest or lien in the subject premises by virtue of the following:

Judgment docketed in the Office of the Clerk of Courts for Sheboygan County on July 19, 2018, No. 18CV000086 in favor of CACH, LLC, 3033 Campus Drive, Suite 250, Plymouth, MN 55441 plaintiff, vs. Carrie Lettenberger, 914 Logan Avenue, Sheboygan, WI 53083-4851 defendant, in the sum of $21,153.75.

8. That the defendant, Health Payment Systems, Inc., is a domestic business, duly organized and existing under the laws of the State of Wisconsin, with its principal place of business located in care of Corporation Service Company, located at 8040 Excelsior drive Suite 400, Madison, Wisconsin; that said defendant has, or may have, or may claim to have, an interest or lien in the subject premises by virtue of the following:

Judgment docketed in the Office of the Clerk of Courts for Sheboygan County on August 8, 2018, No. 18SC001565 in favor of Health Payment Systems, Inc., 613 Williamson Street, Suite 201, c/o McDonnan Law Office, Madison, WI 53703 plaintiff, vs. Brett Lettenberger, 914 Logan Avenue, Sheboygan, WI 53083 defendant, in the sum of $3,452.72.

9. That the defendant, City of Sheboygan, is a body politic and a body corporate, duly organized and existing under the laws of the State of Wisconsin, with its offices located in care of the City Clerk at 828 Center Avenue, Sheboygan, WI 53081; that said defendant has, or may have, or may claim to have, an interest or lien in the subject premises by virtue of the following:

Judgment docketed in the Office of the Clerk of Courts for Sheboygan County on August 16, 2018, No. 18TJ000186 in favor of the City of Sheboygan, 828 Center Avenue, Sheboygan, WI 53081 plaintiff, vs. Carrie J. Lettenberger and Brett J. Lettenberger, 914 Logan Avenue, Sheboygan, WI 53083 defendant, in the sum of $691.00.

Judgment docketed in the Office of the Clerk of Courts for Sheboygan County on August 16, 2018, No. 18TJ000187 in favor of the City of Sheboygan, 828 Center Avenue, Sheboygan, WI 53081 plaintiff, vs. Carrie J. Lettenberger and Brett J. Lettenberger, 914 Logan Avenue, Sheboygan, WI 53083 defendant, in the sum of $691.00.

Judgment docketed in the Office of the Clerk of Courts for Sheboygan County on August 16, 2018, No. 18TJ000188 in favor of the City of Sheboygan, 828 Center Avenue, Sheboygan, WI 53081 plaintiff, vs. Carrie J. Lettenberger and Brett J. Lettenberger, 914 Logan Avenue, Sheboygan, WI 53083 defendant, in the sum of $691.00.

Real Estate and Non-Real Estate Secured and Unsecured
Fixed or Variable Rate Note & Security Agreement
CLOSED END

TCF NATIONAL BANK

Borrower(s): CARRIE J LETTENBERGER Co-Borrower(s): BRETT J LETTENBERGER
Date of this Agreement: 06/08/2007 Account Number: [redacted]

Definitions. This Note and Security Agreement ("Agreement") states the terms of your loan with us. By signing below, you agree to all the terms of this Agreement. Terms following a checkbox apply only if the box is checked. The words "you" and "your" mean the Borrower and all persons signing this Agreement as Co-Borrowers. The words "we," "us," "our," and "TCF" mean TCF National Bank, 801 Marquette Avenue, Minneapolis, MN 55402 and its successors and assigns. "Successor" means a legal entity or person who by law succeeds to our legal rights and obligations under this Agreement. "Assigns" means an entity or person to whom we assign our legal rights and obligations under this Agreement. "Principal Balance" means the unpaid loan amount outstanding from time to time. "Mortgage" means any mortgage securing this Agreement as described on page 2 in the section labeled "Security."

Your Promise to Pay. To repay the loan we have made to you, you promise to pay us the Principal Balance plus interest on the Principal Balance. You also promise to pay funds for Escrow Items in any Mortgage securing this Agreement as described on page 2 in the section labeled "Security," if required. We may direct you to pay someone else (this means that this Agreement is payable to us or our order). You must make all payments at our address shown on the statement or payment coupon, or at such other address we designate in a written notice to you that states the address is for the purpose of making payments ("Payment Address"). All payments must be made in U.S. Dollars. Payments you deliver to any address other than the Payment Address will not be considered made until we receive them at the Payment Address. The initial Principal Balance of this loan is $ 93,450.00 . We will begin charging interest on 06/13/2007 ("Interest Start Date").

Interest Rate. You will pay us interest on the Principal Balance at:

☒ A fixed annual interest rate of 7.390 %.

☐ A variable annual interest rate equal to the Index rate described below ("Index Rate") _____ percentage points (the "Margin"). At the end of each month, we calculate the interest you owe for the month. The interest amount you owe for the month is the sum of the interest you owe for each day of that month.

To calculate the interest you owe for each day of a month, we multiply the daily interest rate for that day by the Principal Balance at the end of the day. To determine the daily interest rate, we divide the annual interest rate for the day by 365 (366 in a leap year). The annual interest rate will be based on, and will change according to, the Index Rate as described below. We calculate the Principal Balance at the end of the day by taking the Principal Balance at the beginning of the day, subtracting any reduction in the Principal Balance due to the application of payments or credits to your loan that occurred that day, and adding any amounts allowed by law to the Principal Balance that occurred that day.

The Index Rate for all days during a calendar month is the highest U.S. prime rate published in *The Wall Street Journal* (currently under the label "Money Rates") any time during that calendar month. If more than one U.S. prime rate is published, or if a range of rates is published, we will use the highest rate. If *The Wall Street Journal* discontinues publishing the Index Rate, we will pick a new index rate and margin, and we will send you notice of the new index rate and margin. The new index rate will be the Index Rate and the new margin will be the Margin. The Index Rate may not be the lowest or best rate offered by us or other lenders.

The minimum "ANNUAL PERCENTAGE RATE" that can apply is 1.76 percentage points (1.76%) below your initial interest rate, or 5.99%, whichever is greater. The annual interest rate will never be higher than as stated below in the section labeled "Maximum Annual Interest Rate." The Index Rate published the previous business day is _____%. Therefore, the estimated beginning annual interest rate is _____% (unless the Index Rate changes on the date of this Agreement or before the Interest Start Date or before the end of the first calendar month after the date of this Agreement).

Maximum Annual Interest Rate. The maximum annual interest rate on this Agreement is _____%. However, the interest rate on this Agreement will never exceed the maximum rate permitted by applicable law, if any. If the maximum permitted rate is exceeded, we will refund the excess interest already collected from you. We may choose to make this refund by applying it to the Principal Balance or by making a direct payment to you.

☒ **Discount for Automated Clearing House Payments (ACH) From Your TCF Checking or Savings Account**

The annual interest rate has been reduced by one-quarter of one percentage point (0.25%) from what it otherwise would have been because you have agreed to make the payments by automatic withdrawal from a TCF Checking or Savings Account ("TCF Account"). If you or we cancel the automatic withdrawal (including cancellation because you or we close the TCF Account), the annual interest rate will be increased as of the date of cancellation by 0.25%. If this is a variable interest rate loan, the increase will also apply to all future interest rate changes. We will determine the annual interest rate increase by adding 0.25% to the annual interest rate (if the annual interest rate is fixed), or by adding 0.25% to the Margin (if the annual interest rate is variable). If this is an installment loan with a fixed annual interest rate, we will change the monthly payment to an amount that would be large enough to:

☒ repay the Principal Balance plus interest on the Principal Balance at the new interest rate in full by the final payment due date.

☐ result in the same balloon payment on the final payment due date as the original payment schedule.

We will give you at least 25 days' notice of the change in payment before the new payment due date. If this is a single payment loan, we will increase the amount of the payment as necessary to pay the additional interest. If this is a variable interest rate loan, we will change the payments as described on page 2 in the section labeled "Changes in Payment Schedule Due to Changes in Annual Interest Rate."

Our Right to Cancel this Agreement. You have provided us with certain information regarding the real property securing this Agreement. We may cancel this Agreement without advance notice to you if we discover that any of the information you provided to us in your application or on your Affidavit of Borrower or Owner is inaccurate, fraudulent, incomplete or misleading in any manner, including, but is not limited to, information regarding: the ownership of any real property securing this Agreement; any Mortgages, liens or other encumbrances on the real property; the amount you owe for any items that could create liens or other encumbrances on the real property; the legal description of the real property; and any contracts or other agreements affecting the real property. If we cancel this Agreement, you must immediately repay the Principal Balance plus all unpaid interest, other charges, and other amounts you owe under this Agreement. If you fail to do so, you will be in default under this Agreement. If we cancel this Agreement, we are not required to loan you any part of the Principal Balance that has not already been loaned at the time of cancellation.

BY SIGNING BELOW, YOU STATE THAT YOU HAVE RECEIVED A COMPLETE COPY OF THIS AGREEMENT. BY SIGNING BELOW, YOU ALSO STATE THAT YOU HAVE READ AND AGREED TO ALL THE TERMS OF THIS AGREEMENT INCLUDING THE TERMS ON PAGES 2, 3, 4, 5, 6, 7 AND 8 OF THIS AGREEMENT. YOU AGREE THAT THE TERMS ON PAGES 2, 3, 4, 5, 6, 7 AND 8 ARE PART OF THIS AGREEMENT.

NOTICE TO CUSTOMER
(a) DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON ALL EIGHT PAGES, EVEN IF OTHERWISE ADVISED.
(b) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
(c) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
(d) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE AS SET FORTH IN THIS AGREEMENT.

Borrower CARRIE J LETTENBERGER Co-Borrower BRETT J LETTENBERGER

You agree that this Agreement is subject to arbitration as set forth in a separate arbitration agreement dated the same day as this Agreement. You also acknowledge that you received and agree to the separate arbitration agreement.
Initials Initials

EXHIBIT 1

Payment Schedule. You will repay the Principal Balance plus interest at the Payment Address according to the following schedule:

☒ **Installment Loan.** (a) 359 equal monthly payments of $648.03, on 07/16/2007, and on the 16th day of each succeeding month, beginning August 2007; plus (b) one final payment of the remaining Principal Balance and all other amounts that you owe under this Agreement on 06/16/2037.

☐ If checked, this final payment is a large balloon payment because you have selected:

☐ monthly payments based on an amortization term longer than the term of this Agreement.
☐ monthly payments which result in a specific final payment amount that you have selected.

☐ **Single Payment Loan.** The Principal Balance, together with all interest and any other amounts that you owe under this Agreement, are due and payable in one payment on _____.

The Finance Charge shown in the separate Truth-In-Lending Disclosure Statement that we give you and the payment schedule shown above are based in part on our estimate of the interest you will owe. For variable interest rate loans, if the annual interest rate changes due to changes in the Index Rate, the interest you will actually pay will be different from our estimate and the payments will change as described below in the section labeled "Changes in Payment Schedule Due to Changes in Annual Interest Rate." For fixed and variable interest rate loans, if the annual interest rate changes due to cancellation of automatic withdrawal from a TCF Account, the interest you will actually pay will be different from our estimate and your payments will change as described on page 1 in the section labeled "Discount for Automated Clearing House Payments (ACH) From Your TCF Checking or Savings Account." For fixed and variable interest rate loans, if you make early or late payments, the interest you will actually pay will be different from our estimate because we accrue interest on the Principal Balance for each day any Principal Balance remains outstanding. This is true even if the annual interest rate does not change. For fixed interest rate loans, the last payment will be adjusted up or down to make up for any difference due to early or late payments. For variable interest rate loans, the last payment will be adjusted up or down to make up for any difference due to early or late payments since the last payment change, and any difference due to early or late payment for prior years will be reflected in each payment change described below in the section labeled "Changes in Payment Schedule Due to Changes in Annual Interest Rate."

Application of Payments. We may apply each of your payments first to any Escrow Items in the Mortgage securing this Agreement as described below in the section labeled "Security," then to any late charges, then to any TCF Convenient Protection charges, then to any returned payment charges, then to any other charges you owe, then to the interest you owe, and then to reduce the Principal Balance (including any points and other charges you have financed).

☐ **Changes in Payment Schedule Due to Changes in Annual Interest Rate.** If this is a variable interest rate loan, changes in the annual interest rate will affect the payments as follows. If this is an installment loan, the monthly payment will change annually on each anniversary date of the first payment due date (each anniversary of the first payment due date is called a "Payment Change Date"). For each Payment Change Date, we will determine the amount of the monthly payment that would be large enough to repay the Principal Balance and interest on the Principal Balance in full by the final payment due date. We will use the annual interest rate in effect on the date shown in the notice of payment change (referred to below) to make this calculation. The annual interest rate will continue to adjust between Payment Change Dates as described on page 1 in the section labeled "Interest Rate." Because the annual interest rate can change each month and the payment changes annually, it is possible that the regular monthly payment will not pay all interest that accrues on the Principal Balance. If the annual interest rate changes after the last Payment Change Date and before the final payment due date, the final payment will be adjusted so that the Principal Balance and interest you owe will be paid in full. If this is a single payment loan, the single payment consisting of the Principal Balance together with all interest and other amounts you owe under this Agreement will be adjusted to reflect the increased or decreased annual interest rate. We will give you at least 25 days' (but no more than 120 days') notice of any change in the payment. The annual interest rate in effect on the date 120 days before the final payment due will be the rate we charge after that date.

Prepayment of Principal Balance. You have the right to pay all or part of the Principal Balance at any time. If you prepay only part of the Principal Balance, you will still have to make the full scheduled monthly payments until this Agreement is paid in full. There is no additional charge or fee for prepayment.

Points and Other Prepaid Finance Charges. In addition to the interest you pay, we may have charged you "points" (sometimes called "loan discount") and other prepaid finance charges in this transaction. For real estate secured Agreements subject to the Real Estate Settlement Procedures Act, the points and other prepaid finance charges are shown on the HUD settlement statement we give you in connection with this Agreement. For all other Agreements, the points and other prepaid finance charges are shown on the itemization of Amount Financed. If this Agreement is secured by a first mortgage on real estate and you prepay this Agreement in full, we will calculate a refund of the discount points and other prepaid finance charges according to Wisconsin Statute Section 138.052. If this Agreement is secured by a mortgage on real estate, other than a first mortgage, and the initial Principal Balance of this Agreement is $25,000 or less, and you prepay this Agreement in full, we will calculate a refund of the discount points and other prepaid finance charges according to Wisconsin Statute Section 422.209. If this Agreement is secured by a mortgage on real estate, other than a first mortgage, and the initial Principal Balance of this Agreement is more than $25,000, and you prepay this Agreement in full, you will not receive a refund of the discount points and other prepaid finance charges.

Late and Returned Payment Charges. If we do not receive a required payment in full on or before the 16th day after the due date at the Payment Address, you must pay a late charge equal to 5% of the unpaid portion of the payment amount (if the initial Principal Balance of this Agreement is $25,000 or less, the late charge will not be more than $10.) If the 16th day is a Saturday, Sunday or legal holiday as specified in 5 U.S.C. §6103(a) ("Legal Holiday"), we will not charge you a late charge if we receive the payment in full on the next day that is not a Saturday, Sunday or Legal Holiday. We apply payments in the order in which they are due. We will not charge you a late charge on any payment when the only delinquency is due to late charges assessed on earlier payments and the payment is otherwise a full payment. You must pay $10 for each check, automatic payment withdrawal request or other payment instrument that is returned unpaid. We will not assess the late charge on the single payment due on a single payment loan.

Furnishing Negative Information to Credit Reporting Agencies. We may report information about your Account to credit bureaus. Late payments, missed payments, or other defaults on your Account may be reflected in your credit report.

SECURITY

To protect us if you default under this Agreement, or any change, extension or renewal of this Agreement:

☒ **Mortgage.** You give us a Mortgage dated the same date as this Agreement. You agree to comply with the terms of the Mortgage. The Mortgage will cover the real property located at:

914 LOGAN AVE. SHEBOYGAN WI 53083

We will not release the Mortgage until you have paid us everything you owe under this Agreement. The Mortgage contains additional terms regarding your and our duties and obligations.

☐ **Security Agreement.** You give us a security interest in the following property ("Collateral"):

This security agreement does not apply to personal property that is your principal dwelling if we fail to provide any required notice of right to rescind.

Accessions and Proceeds. To protect us if you default under this Agreement and any changes or extensions to or renewals of this Agreement, you also give us a security interest in any "accessions" to and "proceeds" of any Collateral described above, all of which will be included in the term "Collateral." "Accessions" means any goods installed in or attached to the Collateral. "Proceeds" means any money or property due you from the loss, destruct on or sale of the collateral. Accessions and Proceeds are further defined in Article 9 of the Uniform Commercial Code.

Ownership of the Collateral. You represent that you and any Collateral Owner signing this Agreement have full ownership of all the Collateral. You represent that no one else has an interest in the Collateral, including a lien, other than an acceptable interest of which we have been advised in writing in our inspection of the title to the Collateral (for example, a first-lien on your car that is already noted on the title). You will not sell or give anyone else an interest in any of the Collateral without our written permission. You will keep the Collateral free from all other claims (such as taxes and liens). You will assist us and sign any documents necessary to perfect our security interest in the Collateral (such as ensuring that financing statements or certificate of title documents are filed on the Collateral).

Care of the Collateral. You will:

- Keep all the Collateral in good repair and working order.
- Replace broken and worn parts.
- Allow us to inspect the Collateral as we wish.
- Notify us in writing immediately of any loss or damage to the Collateral.

Insurance. This section only applies if the Initial Principal Balance of this Agreement is more than $800. You will keep the Collateral insured against:

- Fire (including extended coverage).
- Theft and collision (for motor vehicles).
- Any other risks we name.

You may buy the insurance from anyone you want, but the insurance company and the amount of the insurance must be acceptable to us. You will have the insurance company name us in the policy as a secured party, and you will give us a copy of the policy. You will instruct each issuer of an insurance policy to pay any claims directly to us and to notify us in writing at least 30 days before ending coverage. You assign any insurance payments to us as additional security.

Notice: Unless you provide us with evidence of the insurance coverage required by this Agreement, we may purchase insurance at your expense to protect our interests in the Collateral. This insurance may, but need not, also protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the Collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by this Agreement. If we purchase insurance for the Collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Principal Balance. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

Location of Property. You will not remove any Collateral from the United States. You will not keep Collateral in any county or state unless a financing statement has been filed there showing us as the secured party. If one is required to be filed there to perfect our security interest. You will not remove Collateral from the state where you currently live without our written permission. If there is a certificate of title showing title to any Collateral, you will file any amendment or other documentation required to protect our security interest.

Our Right to Take Action. You will:

- Take care of the Collateral as required under "Care of the Collateral."
- Keep the Collateral insured as we ask as required under "Insurance."
- Cooperate with us in making sure that necessary financing statements or certificate of title documents are filed.
- Fulfill every other promise you have made in this Agreement.

If you do not do any one of these, then we may (if we choose) take the necessary steps to protect our interest in the Collateral. For example, we may pay taxes, insure the Collateral, file financing statements, or make repairs. If we advance any money, you agree to pay us the amount advanced with interest at the same annual interest rate you pay on this Agreement (as that annual interest rate may change from time to time), but not more than the maximum rate allowed by law.

Special Rules for Securities. If any of the Collateral consists of stocks, bonds or other types of securities, the following conditions will apply:

- You will endorse those securities at our request so that we can transfer them. If we ask you to, you will also deliver to us anything that you receive from the issuer of those securities. For example, you will deliver any money, notices and additional securities that you receive from the issuer because you own the securities. Whatever you deliver to us will be Collateral subject to this Agreement.
- We may notify the issuers of those securities of our security interest. We may require the issuers to make any payments to us directly, and we may sue the issuers if they do not pay as required.
- If your securities are issued by or held by another party, such as your broker, you will obtain from such party a signed control agreement that we may require to perfect or enforce our security interest in the Collateral.

ADDITIONAL TERMS OF YOUR LOAN

Financial Information. Whenever we ask, you will furnish us with current information about the value of any Collateral or real property securing this Agreement. You agree that we may obtain and use credit information about you from others as described in the loan application. You agree that we may report information about your credit to others at any time. See TCF's Privacy Policy for information on your right to direct us not to share certain information.

Other Promises. You will:

- Provide us with financing statements at our request.
- Assist us and do whatever is necessary to perfect our security interest in the Collateral or real property securing this Agreement.
- Make sure our security interest is properly shown on the certificate of title, if the Collateral includes a motor vehicle or other property represented by a certificate of title.
- Notify us immediately in writing if you change your address.
- Not use any Collateral or real property securing this Agreement for any unlawful purposes.

Setoff. To protect us if you default under this Agreement, and any amendment, extension, or renewal of this Agreement, we may use any of your property in our possession or control to pay what you owe under this Agreement (called "setoff"). This includes any money you have on deposit with us. We may use this property or money without giving you any notice. We will not be liable for the dishonor of any check, automatic payment withdrawal request or other payment instrument if the dishonor occurs because we exercised our setoff rights. You will assume the liability and relieve us of all responsibility for any claims, damages, or liabilities that occur because we exercised our setoff rights.

Changes, Waivers and Delay in Enforcement. This Agreement cannot be changed unless we agree in writing. We can elect not to enforce or delay enforcement of our rights under this Agreement without losing them. For example, we may accept late payments from you without waiving our right to require that future payments be made on time. If we release any of you from this Agreement, the rest of you will not be released. If we exchange or release any Collateral or real estate that secures this Agreement, you will not be released. We do not have to use our legal remedies against one of you before we use our legal remedies against any of you. You agree to any changes, renewals and any extensions we give to you of this Agreement. You agree to give up your rights to require us to: (1) demand payment of amounts due (presentment); (2) obtain official certification of nonpayment (protest); (3) notify you that amounts due have not been paid (notice of dishonor); or (4) give you any other notice except as required in this Agreement.

Notice Regarding TCF Command Protection Purchases. If you purchase TCF Command Protection, you understand that we or an affiliate of ours may receive something of value from the purchase.

Tax Deductibility. You should consult a tax advisor regarding the deductibility of interest and charges for this Agreement.

Costs and Attorneys' Fees. To the extent not prohibited by law, you will pay all of our reasonable costs and attorneys' fees in collecting, foreclosuring, or taking any other legal actions if you are in default. To the extent permitted by the United States Bankruptcy Code, you will also pay the reasonable attorneys' fees and costs we are charged to collect this debt as awarded by any court under the Bankruptcy Code.

Default and Remedies. If the Initial Principal Balance of this Agreement is $25,000 or less and this Agreement is secured by a mortgage, other than a first mortgage, or it is unsecured, you agree that you will be in default if any of the following events occur:

(1) (a) If the interval between scheduled payments is two months or less: you have outstanding an amount exceeding one full payment which has remained unpaid for more than ten days after the scheduled or deferred due dates, or you fail to pay the first payment or the last payment within forty days of its scheduled or deferred due date;
(b) If the interval between scheduled payments is more than two months: you have all or any part of one scheduled payment unpaid for more than sixty days after its scheduled or deferred due date;
(c) If this Agreement is scheduled to be repaid in a single payment: you have all or any part of the payment unpaid for more than forty days after its scheduled or deferred due date; or
(d) If this Agreement is for an agricultural purpose: you fail to pay the first or the only payment when due or to pay any other payment within forty days of its original or deferred due date. (For purposes of this paragraph, the amount outstanding shall not include any delinquency or deferral charges and shall be computed by applying each payment first to the installment most delinquent and then to subsequent installments in the order they come due.)
(2) You fail to observe any other provision or covenant of this Agreement, the breach of which materially impairs the condition, value or protection of our right in any collateral securing this Agreement, or materially impairs your ability to pay amounts due under this Agreement.

If you are in default, we may:

(1) declare your entire unpaid balance due and payable, following notice of your right to cure any default and an opportunity to cure, if required by Wisconsin statute section 425.105; and
(2) exercise any rights provided by this Agreement, any security Agreement provided in connection with this Agreement; or any applicable federal or state law. If the principal of your Agreement is more than $25,000 or is secured by a first mortgage, you agree that you will be in default if any of the following events occur:

- You do not make any payment under this Agreement promptly when the payment is due.
- You fail to perform any other part of this Agreement.
- You fail to perform any part of (or are in default under) any Mortgage securing this Agreement or any other agreement you have with us, whether or not related to this Agreement.
- You make a false or misleading statement to us in any credit application, whether or not related to this Agreement.
- You or any guarantor of this Agreement files a petition under the bankruptcy laws, or someone files a bankruptcy petition against you or any guarantor of this Agreement.
- You die or any guarantor of this Agreement dies (our rights in this instance may be limited as set out in Title 12 of the Code of the Federal Regulations Section 591.5).
- Someone tries to take the Collateral or real property securing this Agreement from you by legal proceedings.
- The value of any Collateral or real property securing this Agreement goes down substantially.
- We feel in good faith that you are not able or willing to live up to the terms of this Agreement.
- You sell or give anyone else an interest in any of the Collateral without written permission from us.

If there is a default, we may demand immediate payment, and you agree to pay the entire amount you owe us under this Agreement. If we do demand immediate payment in full, the Finance Charge will be figured by using the Annual Percentage Rate that is in effect on the day we demand immediate repayment. If there is a default we may also exercise our rights under any separate security Agreement that secures this Agreement or any rights we have under any federal or state law.

If we choose any one of these remedies, we do not give up our right to use any other remedy later.

Agreement Binding. You understand that this Agreement is binding on your heirs and your legal representatives. This Agreement, the Arbitration Agreement, and any Mortgage securing this Agreement, as described on page 2 in the section labeled "Security," are the final and complete expression of the agreement between you and us.

More Than One Signer. Whether you sign this Agreement as an individual or as one of a group, you are each fully responsible for all the obligations owed to us.

Severability. If any provision of this Agreement is found to be unenforceable, all other provisions will remain in full force and effect.

Governing Law. You agree that this Agreement will be governed and interpreted by federal law applicable to national banks. Federal law governs all fees and charges, including interest, that relate to this Agreement. Under Section 85 of the National Bank Act, we refer to Wisconsin substantive law to determine the highest rate of interest permissible for any competing lender.

Service of Process. If a dispute arises and you file a lawsuit against us, service of process must be made on TCF at the following address:

TCF NATIONAL BANK
ATTN LEGAL DEPARTMENT
MAIL CODE 360-05-O
800 BURR RIDGE PARKWAY
BURR RIDGE IL 60527

☐ If this box is checked, the following notice applies:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

CREDIT INFORMATION

If at any time you feel that any information we may furnish to any consumer reporting agency is inaccurate, you can send us written notice of the inaccurate information to:

TCF NATIONAL BANK
ATTN CUSTOMER SERVICE
MAIL CODE 002-01-P
101 EAST FIFTH STREET STE 101
ST PAUL MN 55101

Please include the account number(s), a description of the inaccurate information, and the nature of the inaccuracy of the information.

GUARANTEE

By signing below, you agree to pay this Agreement if the Borrower or Co-Borrower does not. You will pay this Agreement when it becomes due, whether or not we have made any effort to collect this Agreement from any Borrower or Co-Borrower or repossess or foreclose any Collateral or real property securing this Agreement. You will continue to be responsible even if we exchange or release any Collateral or real property securing this Agreement, agree to any changes in this Agreement (including an extension of the required time for payment), or release any other person from responsibility for this Agreement. You will pay our reasonable attorneys' fees to collect this guarantee, unless prohibited by law. By signing below, you acknowledge that you received and agree to the separate arbitration agreement dated the same day as this Agreement.

Guarantor (Signature) (Print Name) (Date)

COLLATERAL OWNER

By signing below as Collateral Owner, you give us a security interest in any Collateral and a separate Mortgage on any real property described on page 2 in the section labeled "Security" to protect us if the Borrower or Co-Borrower defaults under this Agreement. If this Agreement is secured by Collateral, you agree to the terms on page 2 in the section labeled "Security Agreement." If this Agreement is secured by your interest in real property, you agree to the terms of the Mortgage. You will have no personal obligation to repay this Agreement, but you agree that we have all of the rights in any Collateral or any real property securing this Agreement as provided in this Agreement and the Mortgage, as applicable. By signing below, you acknowledge that you received and agree to the terms of the separate arbitration agreement dated the same day as this Agreement.

Collateral Owner (Signature) (Print Name) (Date)

Collateral Owner (Signature) (Print Name) (Date)

NOTICE REGARDING USE OF CREDIT REPORT

If this Agreement is secured by your residence or other residential real property, the interest rate and initial Principal Balance of this Agreement are based in whole or in part on information obtained from the credit bureau below. If this Agreement is unsecured, the initial Principal Balance of this Agreement is based in whole or in part on information obtained from the credit bureau below.

☒ TransUnion
2 Baldwin Place
P.O. Box 1000
Chester, PA 19022
(800) 888-4213

☐ Experian
701 Experian Parkway
P.O. Box 2002
Allen, TX 75013-0036
(888) 397-3742
www.experian.com/reportaccess

☐ Equifax
P.O. Box 105873
Atlanta, GA 30348
(800) 685-1111

☐ Other: _____

You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons as to how we determined your interest rate or the initial Principal Balance of this Agreement. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

By initialing, you acknowledge receipt of this notice on 06/08/2007 (date).

CARRIE J LETTENBERGER
Borrower

BRETT J LETTENBERGER
Co-Borrower

TCF® COMMAND PROTECTION

If you elect to purchase TCF Command Protection, these terms and conditions are included as part of the terms of this Agreement. The monthly fee and Escrow items will not be waived (they will be due) during any deferment period for the deferment events described below. The monthly fee is waived for the months covered by an approved Death Waiver request, but Escrow items will not be waived (they will be due) during that period. TCF Command Protection is not available on unsecured or non-real estate secured loans or on real estate secured loans with an original Principal Balance of $10,000 or less, or after the Borrower and, if applicable, Co-Borrower turns 71.

Death Waiver. For the monthly fee shown on page 8, TCF will waive the principal and interest portion of up to six (6) monthly payments (up to a maximum of $25,000) owing under this Agreement upon death of Borrower or, if applicable, Co-Borrower resulting from any cause except as explained below. Important exclusions apply; see the following paragraph and Important Exclusions.

We agree to waive the monthly principal and interest payment you owe to us under this Agreement as of the date of your death, up to a maximum of six (6) monthly payments for Borrower or, if applicable, Co-Borrower up to $25,000 (this means that the maximum waiver would be $50,000 if both Borrower and Co-Borrower died and were under 71 at the date of death), in the event of your death subject to the limitations stated in this TCF Command Protection provision. TCF Command Protection is subject to any one or more of the following exclusions:

Important Exclusions

- Death resulting from suicide while sane or insane.
- Death resulting from intentionally self-inflicted bodily injury while sane or insane.
- Death resulting from war or act of war, whether declared or undeclared unless serving in active military duty on the date of death.
- Death after the Borrower turns 71. If there is both a Borrower and a Co-Borrower, the Death Waiver and deferment features apply only to each until they turn 71. After that time, the Death Waiver and deferment features only apply to the other Borrower until they turn 71, at which time the TCF Command Protection is not in effect for any party.
- If you have a preexisting condition, we will not waive any payments if you die and the death occurs within six months after the date of this Agreement and is caused or substantially contributed to by an illness, injury or condition that required medical advice, diagnosis or treatment within six months prior to the date of this Agreement.
- You cannot request a Death Waiver and a deferment based on the same event.

Waiver means that the monthly principal and interest is no longer due to TCF. No payments are made to you or any other party. You, your estate, or heirs may incur a federal, state and/or local income tax as a result of the Principal Balance and Finance Charge waiver. Any waiver will be applied in the same manner described on page 2 in the section labeled "Application of Payments." You should consult your tax advisor.

Disability, Involuntary Unemployment, Family Leave, Military Leave, Life Event and Identity Theft Deferment. In addition, for no additional charge, TCF will defer (but not waive) the interest on the scheduled monthly principal and interest payments during periods of total disability [1], involuntary unemployment [2], family leave [3], military leave [4], life events [5] or identity theft [6] ("deferment events") subject to the limitations below. Deferment means that once approved and during an approved period(s) of deferment, you do not need to make the scheduled monthly payment(s) during the period of deferment. The monthly fee for TCF Command Protection will be added to the scheduled monthly payments and will not be waived but will be due during deferment periods. In addition, the amount due each month for any Escrow items will be due during deferment periods. This is a payment deferral feature only. Interest will continue to accrue according to this Agreement on the unpaid Principal Balance and the Principal Balance is not reduced. Because of the deferral, you will have a remaining balance due on the final due date shown on page 2 in the section labeled "Payment Schedule." After the final due date, you will continue to make monthly payments to us until your debt is paid in full. The amount of each monthly payment will be equal to the amount of the last regularly scheduled monthly payment. Deferrals will not cure any prior payment or other delinquency. If any prior delinquency is not cured, we may continue to pursue our remedies based on the prior delinquency, and the Principal Balance, including any payments that have been deferred, may be accelerated. If you pay off your loan before the scheduled final due date, and you have received a deferment of any monthly payment(s), your payoff balance will include the interest that accrued during the deferment period(s), any unpaid fees and charges, and the remaining Principal Balance.

Here is an example of how the deferral works. Assume that you:

- Have a 15-year loan with an Interest Start Date of January 1, 2000 and a first payment date of February 1, 2000.
- Have an annual interest rate of 7% that remains constant until the final due date.
- Have an original Principal Balance of $50,000.
- Make your regular scheduled monthly payment of $449.41.
- Have a final due date of January 1, 2015.
- Were ill and could not work for five months beginning January 15, 2002, and the Principal Balance was then $45,771.30.
- Were approved for a deferment period of five months.
- Do not make any principal payments during the deferral.

If all of these are true, the scheduled monthly payments for February, March, April, May and June 2002 would be deferred and interest would continue to accrue on the Principal Balance. In addition, the Principal Balance of $45,771.30 would stay the same. After January 1, 2015, you will continue to make monthly payments, in the same amount as your last regularly scheduled monthly payment, until your loan is paid in full. Assuming that after the deferral in this example you resumed regular and timely monthly payments in July 2002, you will have to make eight more payments of $449.41 beginning with the January 1, 2015 payment, and a final payment of $417.88 on September 1, 2015 to pay your loan in full.

Conditions and Exclusions. Normal pregnancy or self-inflicted injury is not a disability. You must be disabled at least 14 consecutive days to qualify for a disability deferment, and must be working for 30 or more hours per week. You must be completely unemployed for at least 30 consecutive days and qualify for unemployment benefits under state unemployment law, and register to work with a state employment office or a recognized employment agency to qualify for a deferment for involuntary unemployment. If you are not eligible for unemployment benefits under state unemployment law for any reason (for example, you lack a social security number, are terminated for cause or are self-employed and do not receive a W-2), you will not be eligible for this deferment event. You must not have been notified, either orally or in writing, of pending layoff, employment termination, strike or lockout prior to the date of this Agreement to qualify for a deferment for involuntary unemployment. The maximum total number of months of deferment under this provision is 12 months for disability, 12 months for involuntary unemployment, six months for family leave (no more than three per family leave event), 12 months for military leave, six months for life events (no more than two months per life event), and two months for identity theft, counting all periods of deferment that might occur during the term of this Agreement. The maximum number of months for a single family leave event is three months and for a single life event is two months, and the total number of months of deferment during the term of this Agreement for all deferment events counting all periods of deferment that might occur during the term is 24 months.

1 That is, you must be unable to perform the duties of your occupation for wage or profit because of sickness or accidental injury to qualify for disability deferment.
2 Involuntary unemployment includes involuntary layoff, termination by employer, and inability to work as a result of a general strike or unionized labor dispute.
3 Family leave is defined in the Federal Family and Medical Leave Act of 1993.
4 Military leave is being called to active military duty after the date of this Agreement. If you are on active military duty on the date of this Agreement, military leave deferment is not available unless you leave active military duty and are called back to active military duty. Note: A request for deferment of the scheduled monthly payments during periods of military leave does not waive or invoke any rights that you may have under the Servicemembers Civil Relief Act.
5 Life event includes death or hospitalization of a spouse, child, step-child, parent or legal guardian of the Borrower or Co-Borrower. It also includes a change in marital status of the Borrower or Co-Borrower, or the birth or adoption of a child by the Borrower or Co-Borrower. NOTE: A request for both family leave and life event deferment cannot be made based on the same event.
6 Identity theft is use or theft of your personal information by another without your permission to commit fraud or other crimes.

If you have a preexisting condition, we will not defer any payment if you become disabled and the disability occurs within six months after the date of this Agreement and is caused or substantially contributed to by an illness, injury or condition that required medical advice, diagnosis or treatment within six months prior to the date of this Agreement.

You may initiate a waiver or deferment request by calling 800-445-8192 or such other number if we notify you in writing of the other number. Until your request is approved, you must continue to make any scheduled payment that becomes due. Scheduled payments prior to approval of your request will not be deferred. All deferments will be applied to scheduled payments after the date of our approval of your request. The number of monthly payments approved for deferment is determined by counting the number of full or partial months after the waiting period, if any, to mail. Assuming all other requirements are met:

- For involuntary unemployment deferments, a deferral of one monthly payment will be approved for a period of unemployment of 30 days.
- For disability deferments, a deferral of one monthly payment will be approved for periods of total disability continuing from 14 - 30 days.
- For military leave and family leave deferments, a deferral of one monthly payment will be approved for a deferment event continuing from 1 - 30 days.
- For life event deferments due to hospitalization, a deferral of one monthly payment will be approved for a deferment event continuing from 5 to 30 days.
- For all identity theft deferments and life event deferments other than due to hospitalization, a deferral of two monthly payments will be approved for a deferment event. For all other deferment events, a deferral of two monthly payments will be approved for deferment event periods continuing from 31 - 60 days.
- For all deferment events except life events or identity theft, a deferral of three monthly payments will be approved for deferment event periods continuing from 61 - 90 days, and so forth (subject to the maximum number of monthly payments eligible for deferment by type and total described on page 8 in the section labeled "Conditions and Exclusions").

Notice of your request must be furnished within 180 days after death, disability, involuntary unemployment, family leave, military leave, life event or identity theft occurs, and you must return any forms and provide any information we request within 60 days of our request. We require written proof of death (such as a certified copy of a death certificate). We require written proof of disability, involuntary unemployment, family leave, military leave, life event or identity theft for the entire period of the deferment event. We reserve the right to require you to give us proof of your continuing disability, involuntary unemployment, family leave or military leave at reasonable intervals in order to justify the continuance of the deferment. We will require information for each type of request you make.

Information we require from you will include, but is not limited to, the following:

- If requesting death waiver or a life event deferment due to death, we must be furnished with a certified copy of the death certificate;
- If requesting deferment due to disability, you will be sent an information request form within 15 days after your notice is given, and proof of disability must include the date and cause of the total disability; the signature of treating physician; and verification from your employer that you are working 30 or more hours per week.
- If requesting deferment due to a period of involuntary unemployment, you must qualify for unemployment benefits under state unemployment law and register to work with a state employment office or a recognized employment agency within fifteen (15) days after the last day employed and remain so registered during the request period if the unemployment occurred as a result of either layoff or employer termination. In the event that registration occurs after the first fifteen (15) days of unemployment, you will not be eligible for payment deferment for the time that you were not registered, but requests will be processed retroactively to the date of registration. You must provide us with a copy of your registration.
- If requesting deferment due to family leave, we must be furnished with a copy of your employer's grant of family leave under the Federal Family and Medical Leave Act of 1993. (If your employer is not subject to the Federal Family and Medical Leave Act of 1993 we will require documentation from your employer similar to that required by the Act.)
- If requesting deferment due to military leave, we must be furnished with a copy of your orders to active duty.
- If requesting life event deferment due to hospitalization, we must be furnished with a proof of stay completed by a doctor or the hospital.
- If requesting life event deferment due to change in marital status, we must be furnished with a copy of a marriage certificate, filed legal separation papers, or divorce decree.
- If requesting life event deferment due to birth or adoption of a child, we must be furnished with a copy of the birth certificate or the adoption papers.
- If requesting identity theft deferment, we must be furnished with a copy of the police report or the identity theft paperwork filed with the credit bureaus or your financial institution.

Eligibility for Features (subject to the limitations in this TCF Command Protection provision).
If you are employed (30 hours or more a week and received a form W-2), you are eligible for all seven features (death waiver, disability deferment, involuntary unemployment deferment, family leave deferment, military leave deferment, life event deferment and identity theft deferment) on the date of this Agreement if Borrower, or, if applicable, Co-Borrower are not 71 on the date of this Agreement.

If you are self-employed, you are eligible for the death waiver, and the disability, family leave, military leave, life event and identity theft deferment features if Borrower, or, if applicable, Co-Borrower are not 71 on the date of this Agreement, but not the involuntary unemployment deferment feature on the date of this Agreement. However, if you become employed (30 hours or more a week and receive a form W-2) at any time during the term of this Agreement, you become eligible for the involuntary unemployment deferment feature for a future period. You may then request to defer your monthly payment obligation for a future period of involuntary unemployment.

If you are unemployed, disabled, or retired, you are eligible for the death waiver, and the military leave, life event and identity theft deferment features if Borrower, or, if applicable, Co-Borrower are not 71 on the date of this Agreement, but not the involuntary unemployment, disability, and family leave deferment features on the date of this Agreement. However, if you become employed (30 hours or more a week and receive a form W-2) at any time during the term of this Agreement, you become eligible for the involuntary unemployment, disability and family leave deferment features for a future period. You may then request to defer the scheduled monthly payment obligation for a future period of involuntary unemployment, for a future period of disability, or for a future period of family leave.

Refinanced Agreement. If TCF Command Protection is purchased as part of this Agreement, and this Agreement refinances an existing TCF loan agreement ("old loan"), and you purchased TCF Command Protection or Debt Waiver in connection with the old loan, then any deferment event which existed at the time of this Agreement ("preexisting event") will be eligible for deferment under this Agreement without regard to the limitation for preexisting conditions discussed in the paragraph above beginning with "If you have a preexisting condition."

[redacted] CARRIE J LETTENBERGER

THE FOLLOWING TABLE SUMMARIZES THE ABOVE EMPLOYMENT ELIGIBILITY REQUIREMENTS. THE "X" REPRESENTS WHICH FEATURE(S) YOU ARE ELIGIBLE TO RECEIVE AT THE DATE OF THIS TCF COMMAND PROTECTION PROVISION.

	Death Waiver	Disability Feature	Involuntary Unemployment Feature	Family Leave Feature	Military Leave Feature	Life Event Feature	Identity Theft Feature
Fully Employed	X	X	X	X	X	X	X
Self Employed	X	X		X	X	X	X
Unemployed	X				X	X	X
Disabled	X				X	X	X
Retired	X				X	X	X

Date of Birth

I certify that my current age and date of birth on the date of this Agreement is:

Borrower's Age 32 Date of Birth [redacted]

Co-Borrower's Age 28 Date of Birth [redacted]

Employment Status

I have NOT been notified, either orally or in writing, of pending layoff, employment termination, strike or lockout and my employment status at the present time is:

Borrower	Co-Borrower
☒ Fully Employed	☒ Fully Employed
☐ Unemployed	☐ Unemployed
☐ Retired	☐ Retired
☐ Self-employed	☐ Self-employed
☐ Disabled	☐ Disabled

IF YOU MISSTATE ANY OF THE ABOVE INFORMATION, TCF MAY NOT BE OBLIGATED UNDER THIS TCF COMMAND PROTECTION PROVISION.

All statements by you for TCF Command Protection have been made to the best of your knowledge and belief. After two years from the date of this Agreement, no statement made by you for TCF Command Protection can be used to void TCF Command Protection or to deny any death waiver or payment deferral request unless that statement was made fraudulently. Prior to that time and at any time if a statement was fraudulently made by you, we may use the statements by you to void TCF Command Protection or deny any death waiver or payment deferral request.

TCF COMMAND PROTECTION NOTICE

TCF COMMAND PROTECTION IS NOT REQUIRED TO OBTAIN CREDIT, AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COST. ONLY THE BORROWER(S) SHOWN BELOW ARE INCLUDED.

BASED ON THE INFORMATION YOU HAVE PROVIDED TO US, UNLESS TCF COMMAND PROTECTION IS CANCELED, THE MONTHLY FEE FOR TCF COMMAND PROTECTION IS $32.50 EACH MONTH OF THE TERM OF THIS AGREEMENT FOR THE BORROWER AND, IF APPLICABLE, CO-BORROWER. THE TOTAL COST FOR ONE YEAR WOULD BE $390. THE MONTHLY FEE WILL BE ADDED TO THE SCHEDULED MONTHLY PAYMENT AMOUNT LISTED IN THIS AGREEMENT AND WILL NOT BE INCLUDED IN YOUR LOAN AMOUNT. NO MONTHLY FEES WILL BE DUE FOR TCF COMMAND PROTECTION AFTER THE ANNIVERSARY DATE OF THIS AGREEMENT THAT OCCURS AFTER THE PRINCIPAL BALANCE BECOMES LESS THAN $10,000.

AMOUNT OF DEATH WAIVER. The amount of the death waiver may be less than the amount you owe under this Agreement. You understand that we will waive the principal and interest portion of up to six monthly payments not to exceed $25,000 in the event of Borrower's (or Co-Borrower's, if applicable) death (this means that the maximum waiver would be $50,000 if both Borrower and Co-Borrower died and were under 71 at the date of death). If the waived principal and interest does not fully pay the loan, the excess will still be due in the event of your death. This means that you (or your estate) would owe a balance on this Agreement even if the death waiver is applied to the amount owing on this Agreement.

CANCELLATION/TERMINATION. You may cancel TCF Command Protection at any time. We may cancel TCF Command Protection if this Agreement becomes 150 days delinquent or we charge off this Agreement. TCF Command Protection is automatically canceled after both Borrower, and, if applicable, Co-Borrower turn 71.

DEFERRAL FEATURES. You understand that the disability, involuntary unemployment, family leave, military leave, life event and identity theft features are deferrals and not waivers. You understand that you will still have to pay the payments deferred, that interest continues to accrue during the deferral period(s), that the final due date will be extended due to the deferral(s), and that the Principal Balance is not reduced by the deferral(s). This means that you will have a remaining balance on the scheduled final due date. After the scheduled final due date, you will continue to make monthly payments to us until your debt is paid in full. You understand that TCF Command Protection only allows 12 total months of deferment for disability, 12 total months of deferment for involuntary unemployment, six total months of deferment for family leave, 12 total months of deferment for military leave, six total months of deferment for life events, and two total months of deferment for identity theft during the term of this Agreement. The 12-month, six-month, and two-month limits include all periods of deferment that occur during the term of this Agreement. In addition, you understand that TCF Command Protection only allows a total of two total months of deferment for any single life event, three total months of deferment for any single family leave event and a total of 24 months of deferment for all deferment events.

REFUND. You understand that the monthly fee is paid with each monthly payment for a prior period to which it applies (in arrears). If you prepay this Agreement, no fee will be charged for days after the date of prepayment. Therefore, no portion of the fee will be refunded in the event you prepay this Agreement in full because no portion of the fee for TCF Command Protection is unearned.

☒ I/We want TCF Command Protection. This will make my initial total monthly payment equal to $679.33, plus any escrow amounts, if applicable.

ELECTION. By signing below, you state that you DO want TCF Command Protection for the Borrower(s) indicated by the box checked above. You also state that you have received a filled-in copy of this form before signing it. You also state that you understand that you, your estate, or heirs may incur a federal, state and/or local income tax as a result of the waiver of the indebtedness, and that you should consult your tax advisor. ☒ You also state that you understand that TCF Command Protection is canceled after Borrower and, if applicable, Co-Borrower turn 71, and that the Death Waiver and deferment features are not available for the death or deferment events of either Borrower or Co-Borrower at the age of 71. The Death Waiver and deferment features are not available to Borrower after 11/ 3/2045 and, if applicable, Co-Borrower after 4/14/2050; or earlier if your loan is paid off before this date, or TCF Command Protection is cancelled.

Borrower CARRIE J LETTENBERGER 10-8-07 Date Co-Borrower BRETT J LETTENBERGER 10-8-07 Date

☐ I/We decline TCF Command Protection.

☐ I/We understand that I/we do not qualify for TCF Command Protection because it is not available on unsecured or non-real estate secured loans or on real estate secured loans with an original balance of $10,000 or less and that we cannot obtain TCF Command Protection.

☐ I/We understand that I/We do not qualify for TCF Command Protection because of age.

DECLINE. By signing below, you state that you DO NOT want, or do not qualify for, TCF Command Protection.

Borrower Date Co-Borrower Date

[redacted] Page 8 of 8 6/2007

1829778

SHEBOYGAN COUNTY, WI
RECORDED ON
06/25/2007 11:30AM

ELLEN R. SCHLEICHER
REGISTER OF DEEDS

RECORDING FEE: 19.00
TRANSFER FEE:
EXEMPTION #

STAFF ID #
TRANS # 100324
OF PAGES: 5

CONSUMER LOAN MORTGAGE

Return To:
TCF National Bank
P.O. Box 170995
Milwaukee, WI 53217-8095
Attn: Consumer Lending

TCF NATIONAL BANK Account Number: [redacted]

WISCONSIN CONSUMER LENDING DEPARTMENT

pin no. 59281-717920

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED BY THIS MORTGAGE IS
NINETY THREE THOUSAND FOUR HUNDRED FIFTY DOLLARS AND 00 CENTS
Dollars ($93,450.00).

This CONSUMER LOAN MORTGAGE ("Mortgage") is made this 6th day of June, 2007, by CARRIE J LETTENBERGER and BRETT J LETTENBERGER
Wife and Husband,
whose address is 914 LOGAN AVE, SHEBOYGAN WI 53083
(the "Borrower"), who grants, conveys, mortgages and warrants to TCF National Bank, a national banking association, 801 Marquette Ave, Minneapolis, Minnesota 55402 (the "Lender"), land and property in Sheboygan County, Wisconsin, described as:

This Property is / is not the homestead of the Borrower.

[redacted]

SEE ATTACHED EXHIBIT "A"

street address: 914 LOGAN AVE, SHEBOYGAN WI 53083
together with all buildings, improvements, and fixtures on the property, whether now on the property or added in the future, and all easements and other rights that pertain to the property (collectively the "Property"). This Mortgage secures performance and payment under the terms of this Mortgage and Borrower's note dated the same date as this Mortgage in the principal amount of
NINETY THREE THOUSAND FOUR HUNDRED FIFTY DOLLARS AND 00 CENTS
Dollars ($93,450.00), subject to any written amendments to the note agreed to by Lender and Borrower ("Note"), and any additional amounts advanced by Lender to protect its rights under paragraph 6 below. In addition to the indebtedness due under the Note, this Mortgage secures Protective Advances which may be in excess of the maximum principal amount stated above with interest thereon (collectively "Debt") and the performance of all covenants and agreements of the Borrower contained herein. "Protective Advance" is defined as a payment made by Lender for performance of covenants of Borrower pertaining to insuring or preserving the Property upon Borrower's failure to perform. The full Debt, if not paid earlier, is due and payable on 06/10/2037.

☐ If the box preceding this sentence is checked, the interest rate under the Borrower's Note is variable and can change daily, as described in the Note.

Borrower promises and agrees:

1. To keep the Property in good repair, and to comply with all laws and ordinances, which affect the Property.
2. To pay all taxes, assessments, and water bills levied on the Property, and any other amounts which could become a senior Security Interest against the Property. "Security Interest" includes any lien, mortgage or other encumbrance.
3. To perform all obligations under any Security Interest on the Property. As of the date hereof, there exists no other Security Interest on the Property, other than as disclosed to Lender on the title search and report or other title evidence obtained by Lender prior to accepting this Mortgage, or on Borrower's loan application.
4. To keep the Property insured against fire, windstorm, flood, and such other hazards as Lender may require, in an amount and manner acceptable to Lender, and with the proceeds made payable to the policies to Lender as mortgagee, and to deliver such proof of insurance as Lender may require. Borrower may obtain insurance from the insurance company of Borrower's choice as long as the insurance company is reasonably acceptable to Lender. Lender will apply any insurance proceeds to pay the Debt, unless Lender agrees in writing that the proceeds can be used differently. If Lender uses the proceeds to reduce the Debt, Borrower will still have to make regular monthly payments until the Debt is satisfied. If Borrower fails to keep the Property insured, Lender may, but is not required to, obtain such insurance to protect Lender's interest. Such insurance obtained by Lender may not protect Borrower's equity interest in the Property. Lender is not required to obtain the lowest cost insurance that might be available.
5. That if all or part of the Property is condemned or taken by eminent domain, Borrower directs the party condemning or taking the Property to pay all of the money to Lender. Lender will apply the money to pay the Debt, unless Lender agrees in writing that the money can be used differently. If Lender uses the money to reduce the Debt, Borrower will still have to make regular monthly payments until the Debt is satisfied.

[redacted] page 1 of 4 5/06

EXHIBIT 2

6. That if Borrower fails to pay or perform any of Borrower's obligations under this Mortgage, Lender may pay or perform such obligations. Any amount so paid and the cost of any title search and report made after any Default, may be added to the Debt. To the extent not prohibited by law, Mortgagor shall pay all reasonable costs and expenses before and after judgment, including without limitation, attorneys' fees and expenses of obtaining title evidence, incurred by Lender in protecting or enforcing its rights under this Mortgage.
7. That the term "Default" means (a) Borrower's failure to comply with the terms of this Mortgage; or (b) Borrower's failure to comply with the terms of the Note; or (c) Borrower's failure to comply with the terms of any Security Interest having priority over this Mortgage.

The term "Lender" includes Lender's successors and assigns, and the term "Borrower" includes and binds the heirs, personal and legal representatives, successors, and assigns of the undersigned. If this Mortgage is signed by two or more persons, the obligations and Security Interest granted by this Mortgage shall be cumulative and in addition to any other remedies provided by law. Each person who signs this Mortgage is responsible for keeping all of the promises made by Borrower. Lender may choose to enforce its rights against any person signing this Mortgage or against all of them. However, if someone signed this Mortgage, but signed the Note as collateral owner only, then that person will not be required to pay any amount under the Note, but will have signed only to grant, convey, mortgage and warrant any rights that person has in the Property. Also, Borrower may agree to extend, modify, forbear, or make any accommodations with regard to the Note or Mortgage without such collateral owner's consent.

8. If (a) there is a Default under any Debt secured by this Mortgage, or (b) Mortgagor fails to timely observe or perform any of Mortgagor's covenants or duties contained in this Mortgage, then, at the option of Lender each Debt will become immediately payable (called "acceleration") unless notice to Mortgagor or Borrower and an opportunity to cure are required by Section 425.105, Wis. Stats., or the document evidencing the Debt and, in that event, the Debt will become payable if the Default is not cured as provided in that statute or the document evidencing the Debt or as otherwise provided by law. If Lender exercises its option to accelerate, the unpaid principal and interest owed on the Debt, together with all sums paid by Lender as authorized or required under this Mortgage or any Debt, shall be collectible in a suit at law or by foreclosure of the Mortgage by action, or both, or by the exercise of any other remedy available at law or equity. In the event of foreclosure, Lender may sell the Property at public sale and execute and deliver to the purchasers deed of conveyance pursuant to statute.

If the Property is a one to four family residence that is owner-occupied at the commencement of a foreclosure, a farm, a church or owned by a tax exempt charitable organization, Mortgagor agrees to the provision of Section 846.101 Wis. Stats., and as the same may be amended or renumbered from time to time, permitting Lender, upon waiving the right to judgment for deficiency; or less six months after a foreclosure judgment is entered. If the Property is other than a one to four family residence that is owner-occupied at the commencement of a foreclosure, a farm, a church, or a tax exempt charitable organization, Mortgagor agrees to the provision of Section 846.103, Wis. Stats., and as the same may be amended or renumbered from time to time, permitting Lender, upon waiving the right to judgment for deficiency, to hold the foreclosure sale of real estate three months after a foreclosure judgment is entered.

9. That Borrower shall not assign or transfer the Property or any beneficial interest in the Property by deed, bond for deed, contract for deed, installment sales contract, escrow agreement, or other instruments, or in any manner whatsoever, without Lender's prior written consent. Lender's written consent is not required in the following circumstances:
   (a) the creation of a lien or other encumbrance subordinate to Lender's Security Interest which does not relate to a transfer of rights of occupancy in the Property (provided that such lien or encumbrance is not created pursuant to a contract for deed);
   (b) the creation of a purchase-money Security Interest for household appliances;
   (c) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
   (d) the granting of a leasehold interest which has a term of three years or less and which does not contain an option to purchase (that is, either a lease of more than three years or a lease with an option to purchase violates this provision);
   (e) a transfer, in which the transferee is a person who occupies or will occupy the Property, which is:
      (i) a transfer to a relative resulting from the death of Borrower;
      (ii) a transfer where the spouse or child(ren) becomes an owner of the Property; or
      (iii) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse becomes an owner of the Property; or
   (f) a transfer into an inter vivos trust in which Borrower is and remains the beneficiary and occupant of the Property, unless, as a condition precedent to such transfer, Borrower refuses to provide Lender with reasonable means acceptable to Lender by which Lender will be assured of timely notice of any subsequent transfer of the beneficial interest or change in occupancy.
10. That the Borrower shall pay to Lender on the day the scheduled monthly payments are due under the Note, until the Agreement is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over the Mortgage as a lien or encumbrance on the Property; and (b) premiums for any and all flood insurance required by Lender, if any. These items are called "Escrow Items." At origination or at any time during the term of the Agreement, Lender may require that Borrower provide escrow for hazard insurance premiums, Community Association Dues, Fees, and Assessments, if any, and such premiums, dues, fees and assessments shall be an Escrow Item.

Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section 10. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be an obligation of the Borrower in this Mortgage, as the phrase is used in Section 6. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 6 and pay such amount and Borrower shall then be obligated under Section 6 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a written notice to Borrower by Lender and, upon such revocation, Borrower shall pay to Lender Funds in such amounts that are then required under this Section 10.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with the law governing the Note.

The Funds may be commingled with other funds of the Lender. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Unless an agreement is made in writing, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender.

11. That Borrower shall not assign or transfer the Property or any beneficial interest in the Property by deed, land contract, or other instruments in any manner whatsoever, without Lender's prior written consent or unless authorized by applicable law.
12. That Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.
13. That if the loan secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charge collected or to be collected in connection with the loan exceeds the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the outstanding Debt or by making a direct payment to Borrower. If a refund reduces the Debt, the reduction will be treated as a partial prepayment, without any prepayment charge under the Note.
14. That this Mortgage, and any actions arising out of this Mortgage, are governed by Wisconsin law to the extent not preempted by federal law. If any provision of this Mortgage is found to be unenforceable, all other provisions will remain in full force and effect. Lender's failure to exercise any right or remedy under this Mortgage will not waive Lender's rights in the future. Under the exemption laws, Borrower's homestead is usually free from the claims of creditors. Borrower gives up the homestead exemption right for all claims arising out of this Mortgage. This includes Borrower's right to demand that property other than Borrower's homestead that has been mortgaged to Lender be foreclosed first, before the homestead is foreclosed.

Riders. The following Riders are to be executed by the Borrower:

☐ Condominium Rider ☐ Planned Unit Development Rider ☐ Balloon Rider

BY SIGNING BELOW, BORROWER HAS SIGNED AND DELIVERED THIS MORTGAGE AS OF THE DATE FIRST WRITTEN ABOVE.
The undersigned acknowledges receipt of an exact copy of this Mortgage.

NOTICE TO CUSTOMER IN A TRANSACTION GOVERNED BY THE WISCONSIN CONSUMER ACT
(a) DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON ALL PAGES, EVEN IF OTHERWISE ADVISED.
(b) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
(c) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
(d) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

Borrower:

(Signature)
CARRIE J LETTENBERGER
(type or very clearly print name)

(Signature)
BRETT J LETTENBERGER
(type or very clearly print name)

State of Wisconsin
County of Fond du Lac) ss.

This instrument was acknowledged before me on 8th day of June, 2007
by CARRIE J LETTENBERGER and BRETT J LETTENBERGER
Wife and Husband

Daniel R. Svoboda Notary Public
Sheboygan County, WI
My commission expires: January 03, 2010

This instrument Drafted by: Daniel R. Svoboda
TCF National Bank
801 Marquette Ave
Minneapolis, MN 55402

EXHIBIT A

SITUATED IN THE CITY OF SHEBOYGAN, COUNTY OF SHEBOYGAN AND STATE OF WISCONSIN:

A PARCEL OF LAND BEING LOT 20, REINEKING BROTHERS ADDITION, ACCORDING TO THE RECORDED PLAT THEREOF, IN THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN.

Permanent Parcel Number: 59281717920
BRETT J. LETTENBERGER AND CARRIE J. LETTENBERGER, HUSBAND AND WIFE

914 LOGAN AVENUE, SHEBOYGAN WI 53083
Loan Reference Number :
First American Order No:
Identifier: FIRST AMERICAN LENDERS ADVANTAGE

First American Title Insurance Co.
Lenders Advantage
1100 Superior Avenue, Suite 200
Cleveland, Ohio 44114
Attn: FACT

Sheboygan County Courthouse
615 North Sixth Street
Sheboygan, Wisconsin
WI 53081

Sheboygan County
Foreclosure Mediation Program
Request for Mediation

Finding Solutions

To request a mediation conference with the lender, please answer the questions below, sign this request enclose the required $25 application fee payable to:SCFMP Clerk of Circuit Courts and mail or return to:

SCFMP
Clerk of Circuit Court
615 north Sixth Street
Sheboygan WI 53081

You should submit the request within 15 days of receiving the Summons and Complaint, or as early in the foreclosure process as possible. One application per household. The information you provide will be used by the Sheboygan County Mediation Program to make an initial determination of whether your case is suitable for mediation. A non-refundable $25 fee must accompany the application. Once the case has been accepted for mediation, a non-refundable $75 fee is charged to the homeowner and a non-refundable fee of $100 is charged to the lender.

Requesting Mediation does not halt the foreclosure process. You are still required to comply with all mandatory deadlines, including the time to answer the Complaint.

Sheboygan County Case Number (located on your Summons): 20___CV_____

Name of Homeowner(s):_____

Property Address: _____
(street, city or town, zip code)

Mailing address, if different from above: _____
(street, city or town, zip code)

Best telephone number to reach you during the day: _____

Alternate telephone number: _____

Name of Lender/Plaintiff in your case: _____

1. Is the property being foreclosed your primary residence? _____Yes _____No
2. Does the property consist of four or fewer dwelling units? _____Yes _____No

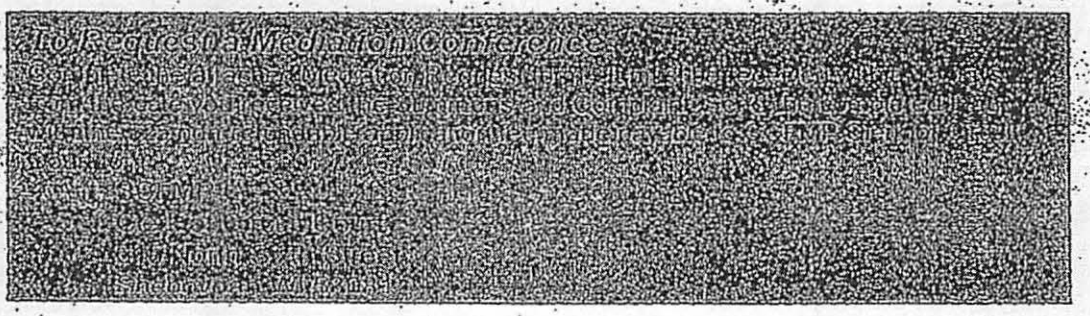
Sheboygan County Courthouse
615 North Sixth Street
Sheboygan, Wisconsin
53081

Sheboygan County
Foreclosure Mediation Program
Finding Solutions

Notice of Availability of Mediation

Mediation is a confidential and voluntary process where you and the lender seeking to foreclose on your home may discuss ways to resolve your foreclosure case, including reinstatement of the loan and modification of the loan terms.

You must live in and own the property that is subject to this foreclosure action to qualify for mediation under this program and the property must be four or fewer residential units.



- A Mediation Request is not a response to the Summons.

A foreclosure action has been started against you. Please read the Summons and Complaint. Make sure you understand your rights and the time period for filing an Answer or Responsive Pleading. If you do not file an Answer or Responsive Pleading the court may grant judgment against you and you may lose your home and your right to object to anything that you disagree with in the complaint.

What happens after you apply for Mediation?

The Mediation Program Coordinator will review your application and notify you and the lender whether the case has been accepted in the program. If the case is accepted, the balance of your non-refundable $100 fee will be charged and a non-refundable fee of $100 will also be charged to the lender. You will then be required to meet with a certified Housing Counselor. Following that, the mediation conference between you and the lender will be scheduled with a mediator.

3. Have you started a Bankruptcy action that is still ongoing? ____Yes ____No

4. Have you met with a housing counselor? ____Yes ____No

If yes, with whom have you met? _____

5. What is your monthly income from all sources? _____

6. Do you expect your income to change for any reason? If so, please explain:

_____

_____

_____

7. Check all items that have caused you to miss your mortgage payments:

____ Injury or illness ____Adjustable interest Rate / Balloon

____Loss of Employment ____Expenses exceed income

Other: _____

_____

8. Is there any other information that would be helpful in determining whether your case would be suitable for mediation? If so, please describe:

_____

_____

_____

9. If English is not your primary language, do you need an interpreter? ___Yes ___No

What language? _____

Authorization of Research and Evaluation. Marquette University Law School is compiling anonymous aggregate case file or results information for the purpose of evaluating our services, gathering valuable research information, designing future programs and engaging in academic research, analysis and publication. I consent to the use of my information for these purposes.

I certify that I am the owner of the property that is subject to this foreclosure action and I currently reside in this property.

_____ _____

Property Owner's Signature Date

II

3.2

R. O. No. 158 - 18 - 19. By CITY CLERK. November 5, 2018.

Submitting a Summons and Complaint in the matter of Nationstar Mortgage LLC vs. Bobby C. Wildman et al.

Finance + Personnel.

CITY CLERK

3:00

FILED
10-17-2018
Sheboygan County
Clerk of Circuit Court
2018CV000580
Honorable Kent Hoffmann
Branch 2

STATE OF WISCONSIN **CIRCUIT COURT** **SHEBOYGAN COUNTY**

Nationstar Mortgage LLC vs. Bobby C. Wildman et al

Electronic Filing Notice

Case No. 2018CV000580
Class Code: Foreclosure of Mortgage

CITY OF SHEBOYGAN
1211 N 23RD ST
SHEBOYGAN WI 53081-3103

OCT 23 '18 PM 3:01

Case number 2018CV000580 was electronically filed with/converted by the Sheboygan County Clerk of Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at **http://efiling.wicourts.gov/** and may withdraw as an electronic party at any time. There is a $ 20.00 fee to register as an electronic party.

If you are not represented by an attorney and would like to register as an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: b0ccf3

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 920-459-3068.

10-23-18
2:59

Sheboygan County Circuit Court
Date: October 17, 2018

FILED
10-17-2018
Sheboygan County
Clerk of Circuit Court
2018CV000580
Honorable Kent Hoffmann
Branch 2

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

Nationstar Mortgage LLC d/b/a Mr. Cooper
8950 Cypress Waters Blvd.
Coppell, TX 75019

Plaintiff,

vs.

Bobby C. Wildman
816 High Ave
Sheboygan, WI 53081-5865

Theresa A. Wildman
816 High Ave
Sheboygan, WI 53081-5865

Jane Doe Wildman
816 High Ave
Sheboygan, WI 53081-5865

John Doe Wildman
816 High Ave
Sheboygan, WI 53081-5865

Sheboygan County Clerk of Circuit Court
615 N 6th St
Sheboygan, WI 53081-4612

Anesthesiology Associates LTD
3100 Superior Ave
Sheboygan, WI 53081-1948

10-23-18
2:23p

Aldag/Honald Mechanical Inc.
3509 S Business Dr
Sheboygan, WI 53081-7023

Discover Bank
502 E Market St
Greenwood, DE 19950-9700

Sheboygan Internal Medicine Association
2920 Superior Ave
Sheboygan, WI 53081-1944

City of Sheboygan
1211 N 23rd St
Sheboygan, WI 53081-3103

Defendants.

SUMMONS

Case No.

The Honorable

Case Code 30404
(Foreclosure of Mortgage)
The amount claimed exceeds $10,000.00

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons (60 days if you are the United States of America, 45 days if you are the State of Wisconsin or an insurance company), you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is set forth below, and to the plaintiff's attorney, at the address set forth below. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days (60 days if you are the United States of America, 45 days if you are the State of Wisconsin or an insurance company), the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 16th day of October, 2018.

Gray & Associates, L.L.P.
Attorneys for Plaintiff

By: 
Ian J. Thomsen
State Bar No. 1076280

16345 West Glendale Drive
New Berlin, WI 53151-2841
(414) 224-1987
079316F01

Address of Court:
Sheboygan County Courthouse
615 N. Sixth Street
Sheboygan, WI 53081-4612

Gray & Associates, L.L.P. is attempting to collect a debt and any information obtained will be used for that purpose. If you have previously received a discharge in a chapter 7 bankruptcy case, this communication should not be construed as an attempt to hold you personally liable for the debt.

FILED
10-17-2018
Sheboygan County
Clerk of Circuit Court
2018CV000580
Honorable Kent Hoffmann
Branch 2

STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY

Nationstar Mortgage LLC d/b/a Mr. Cooper
8950 Cypress Waters Blvd.
Coppell, TX 75019

Plaintiff,

vs.

Bobby C. Wildman
816 High Ave
Sheboygan, WI 53081-5865

Theresa A. Wildman
816 High Ave
Sheboygan, WI 53081-5865

Jane Doe Wildman
816 High Ave
Sheboygan, WI 53081-5865

John Doe Wildman
816 High Ave
Sheboygan, WI 53081-5865

Sheboygan County Clerk of Circuit Court
615 N 6th St
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Sheboygan Internal Medicine Association
2920 Superior Ave
Sheboygan, WI 53081-1944

City of Sheboygan
1211 N 23rd St
Sheboygan, WI 53081-3103

Defendants.

COMPLAINT

Case No.

The Honorable

Case Code 30404
(Foreclosure of Mortgage)
The amount claimed exceeds $10,000.00

Plaintiff, by its attorneys, Gray & Associates, L.L.P., pleads as follows:

1. The plaintiff is the current holder of a certain note and recorded mortgage on real estate located in this county, a true copy of the note is attached hereto as Exhibit A and is incorporated by reference. A true copy of the mortgage is attached hereto as Exhibit B and is incorporated by reference.

2. The mortgaged real estate is owned of record by Bobby C. Wildman and Theresa A. Wildman.

3. There has been a failure to make contractual payments as required, and there is now due and owing to plaintiff the principal sum of $52,726.70 together with interest from the 1st day of May, 2018.

4. The plaintiff has declared the indebtedness immediately due and payable by reason of the default in the payments and has directed that foreclosure proceedings be instituted.

5. The mortgaged premises is real estate which is 20 acres or less; with a one to four family residence thereon which is occupied as the homestead of the defendants; said premises cannot be sold in parcels without injury to the interests of the parties.

6. The mortgagors expressly agreed to the reduced redemption period provisions contained in Chapter 846 of the Wisconsin Statutes; the plaintiff hereby elects to proceed under Section 846.101(2)(b) with a six month period of redemption, thereby waiving judgment for any deficiency against every party who is personally liable for the debt, and to consent that the owner, unless he or she abandons the property, may remain in possession and be entitled to all rents and profits therefrom to the date of confirmation of the sale by the court.

7. No proceedings have been had at law or otherwise for the recovery of the sums secured by said note and mortgage except for the present action, and all conditions precedent to the commencement of this action are satisfied.

8. That the names of all defendants herein are set forth in the Lien Report annexed hereto and incorporated by reference; that the defendants have or claim to have an interest in the mortgaged premises, as more particularly set forth in the said Lien Report, but that said interests are subject and subordinate to the plaintiff's mortgage.

9. That Jane Doe Wildman has or may claim to have an interest in the subject encumbered property by virtue of being the present spouse of Bobby C. Wildman and any such interest is subject and subordinate to the plaintiff's mortgage.

10. That John Doe Wildman has or may claim to have an interest in the subject encumbered property by virtue of being the present spouse of Theresa A. Wildman and any such interest is subject and subordinate to the plaintiff's mortgage.

WHEREFORE, the plaintiff demands.

1. Judgment of foreclosure and sale of the mortgaged premises in accordance with the provisions of section 846.101(2)(b) of the Wisconsin Statutes, with plaintiff expressly waiving its right to obtain a deficiency judgment against any defendant in this action.

2. That the amounts due to the plaintiff for principal, interest, taxes, insurance, costs of suit and attorney fees be determined.

3. That the defendants, and all persons claiming under them be barred from all rights in said premises, except that right to redeem.

4. That the premises be sold for payment of the amount due to the plaintiff, together with interest, reasonable attorney fees and costs, costs of sale and any advances made for the benefit and preservation of the premises until confirmation of sale.

5. That the defendants and all persons claiming under them be enjoined from committing waste or doing any act that may impair the value of the mortgaged premises; and

That the plaintiff have such other and further judgment order or relief as may be just and equitable.

Dated this 16th day of October, 2018.

Gray & Associates, L.L.P
Attorneys for Plaintiff

By: _____
Ian J. Thomson
State Bar No. 1076280

16345 West Glendale Drive
New Berlin, WI 53151-2841
(414) 224-1987

Gray & Associates, L.L.P. is attempting to collect a debt and any information obtained will be used for that purpose. If you have previously received a discharge in a chapter 7 bankruptcy case, this communication should not be construed as an attempt to hold you personally liable for the debt.

FILED
10-17-2018
Sheboygan County
Clerk of Circuit Court
2018CV000580
Honorable Kent Hoffmann

NOTE

WILDMAN [redacted] 2

MAY 17, 2010 [Date] | SHEBOYGAN [City] | WISCONSIN [State]

816 HIGH AVE/ SHEBOYGAN/ WI 53081
[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means CHERRY CREEK MORTGAGE CO., INC. and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of SEVENTY THOUSAND THIRTY FIVE AND 0000/100 Dollars (U.S. $70,035.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of FIVE AND ONE-HALF percent (5.500%) per year until the full amount of principal has been paid.

Solely for the purpose of computing interest, a monthly payment received by the Note Holder within 30 days prior to or after the date it is due will be deemed to be paid on such due date.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." That Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on JULY 1, 2010. Any principal and interest remaining on the first day of JUNE, 2040, will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at 7600 E. ORCHARD RD #250-N, GREENWOOD VILLAGE, CO 80111 or at such place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. $397.65. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box.]

☐ Graduated Payment Allonge ☐ Growing Equity Allonge ☐ Other [Specify] _____

5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial

EXHIBIT A

prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

6. BORROWER'S FAILURE TO PAY

(A) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of 15 calendar days after the payment is due, Lender may collect a late charge in the amount of FOUR percent (4.000%) of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

EXHIBIT A

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

Bobby C. Wildman 5-17-18
- BORROWER - BOBBY C WILDMAN - DATE -

Theresa A Wildman 5-17-18
- BORROWER - THERESA A WILDMAN - DATE -

[Sign Original Only]

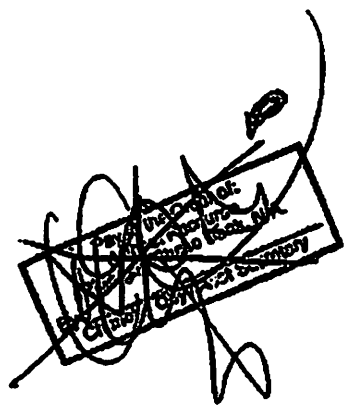


EXHIBIT A

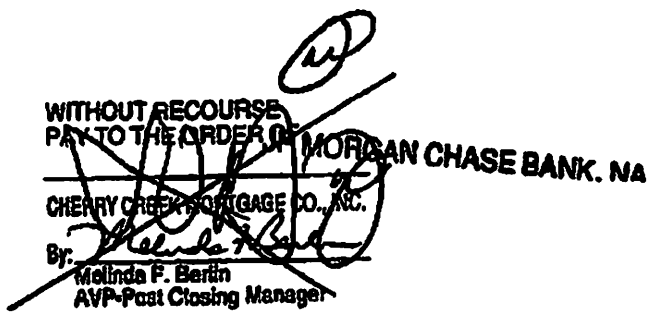

WITHOUT RECOURSE
PAY TO THE ORDER OF MORGAN CHASE BANK, NA
CHERRY CREEK MORTGAGE CO., INC.
By:
Melinda F. Berlin
AVP-Post Closing Manager

EXHIBIT A

NOTE ALLONGE

Allonge to that certain Promissory Note dated: 05/17/2010 in the amount of $70,035.00 (seventy thousand thirty-five and xx / 100)

FROM: Bobby C Wildman
Theresa A Wildman

TO: CHERRY CREEK MORTGAGE CO., INC., A COLORADO CORPORATION

PROPERTY ADDRESS: 816 High Ave
Sheboygan, WI 53081

PAY TO THE ORDER OF:

Bank of America, N.A.

WITHOUT RECOURSE

CHERRY CREEK MORTGAGE CO., INC., A COLORADO CORPORATION

Melinda F Berlin

BY: MELINDA F. BERLIN, AVP-POST CLOSING MANAGER

PAY TO THE ORDER OF

WITHOUT RECOURSE
BANK OF AMERICA, N.A.

BY Michele Sielander
MICHELE SIELANDER
SENIOR VICE PRESIDENT

CHERRY CREEK
MORTGAGE COMPANY

EXHIBIT A

7600 E. Orchard Road, Suite 250-N • Greenwood Village, CO 80111

[redacted]
UNOFFICIAL COPY

1901605

SHEBOYGAN COUNTY, WI
RECORDED ON
05/25/2010 09:41AM

EILEEN R. SCHLEICHER
REGISTER OF DEEDS

RECORDING FEE: 21.00
TRANSFER FEE:
EXEMPTION #

STAFF ID 5
TRANS # 156739
OF PAGES: 6

MORTGAGE

After Recording Return To:
CHERRY CREEK MORTGAGE CO., INC.
7600 EAST ORCHARD ROAD #250-N
GREENWOOD VILLAGE, CO 80111

Parcel ID Number: 59281316410

(Space Above This Line For Recording Data)

[redacted]

PIN: 59281316410

[redacted]

THIS MORTGAGE ("Security Instrument") is given on MAY 17, 2010. The mortgagor is BOBBY C WILDMAN AND THERESA A WILDMAN, HUSBAND AND WIFE, AS SURVIVORSHIP MARITAL PROPERTY ("Borrower"). This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS") (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as mortgagee. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of PO Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS. CHERRY CREEK MORTGAGE CO., INC. ("Lender") is organized and existing under the laws of THE STATE OF COLORADO, and has an address of 7600 E. ORCHARD RD #250-N, GREENWOOD VILLAGE, CO 80111. Borrower owes Lender the principal sum of SEVENTY THOUSAND THIRTY FIVE AND 0000/100 Dollars (U.S. $70,035.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on JUNE 1, 2040. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property located in SHEBOYGAN County, Wisconsin:

LOT 10, BLOCK 6, AND THE S1/2 OF ADJACENT VACATED ALLEY, ACCORDING TO THE RECORDED PLAT OF OTTEN AND HAEMANN'S ADDITION, IN THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN.

which has the address of 816 HIGH AVE, SHEBOYGAN, Wisconsin 53081 ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on,

EXHIBIT B

6

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the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under Paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under Paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in Paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in Paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application;

EXHIBIT B

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Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in Paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in Paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in Paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in Paragraph 2.

Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement at the Note rate, and at the option of Lender shall be immediately due and payable.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:
(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) Sale Without Credit Approval. Lender shall, if permitted by applicable law (including section 341(d) of the Garn-St Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:
(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent) and
(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

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EXHIBIT B

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(e) Mortgage Not Insured. Borrower agrees that should this Security Instrument and the Note are not to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that is secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the property under the terms of this security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substances or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic

EXHIBIT B

pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. Assignment of Rents. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 16.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. Foreclosure Procedure. If Lender requires immediate payment in full of all sums under Paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give notice of sale in the manner provided in Paragraph 13. Lender shall publish the notice of sale, and the Property shall be sold in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the clerk of the circuit court of the county in which the sale is held.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to Lender under this Paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. Accelerated Redemption Periods. If (a) the Property is 20 acres or less in size, (b) Lender in an action to foreclose this Security Instrument waives all right to a judgment for deficiency and (c) Lender consents to Borrower's remaining in possession of the Property, then the sale of the property may be 6 months from the date the judgment is entered if the Property is owner-occupied at the time of the commencement of the foreclosure action. If conditions (b) and (c) above are met and the Property is not owner-occupied at the time of the commencement of the foreclosure action, then the sale of the Property may be 3 months from the date the judgment is entered. In any event, if the Property has been abandoned, then the sale of the Property may be 2 months from the date the judgment is entered.

21. Attorneys' Fees. If this Security Instrument is subject the Chapter 428 of the Wisconsin Statutes, "reasonable attorneys' fees" shall mean only those attorneys' fees allowed by that Chapter.

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

EXHIBIT B

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The Following Rider(s) are to be executed by Borrower and are attached hereto and made a part thereof [check box as applicable]:

☐ Condominium Rider ☐ Growing Equity Rider ☐ Adjustable Rate Rider
☐ Planned Unit Development Rider ☐ Graduated Payment Rider
☐ Other(s) [specify]

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Bobby C Wildman 5-17-10
- BORROWER - BOBBY C WILDMAN - DATE -

Theresa A Wildman 5-17-10
- BORROWER - THERESA A WILDMAN - DATE -

[Space Below This Line For Acknowledgment]

STATE OF Wi

COUNTY OF Sheboygan

This instrument was acknowledged before me on 5-17-10 by BOBBY C WILDMAN AND THERESA A WILDMAN, HUSBAND AND WIFE, AS SURVIVORSHIP MARITAL PROPERTY.

Hollie R O'Neil
(Signature of person taking acknowledgment)

My Commission Expires: 7/15/12

HOLLIE R. O'NEIL
NOTARY PUBLIC
STATE OF WISCONSIN

This instrument was drafted by:

CHERRY CREEK MORTGAGE CO., INC.
7600 E. ORCHARD RD #250-N
GREENWOOD VILLAGE, CO 80111
[redacted]

EXHIBIT B

[redacted]

10. Outstanding sewer and water charges, if any.
11. Judgments and liens, if any, against the proposed insured.
12. Rights of the spouse of the proposed insured, if married and if the property is to be homestead or marital property.
13. Federal Tax Liens, if any, against the spouse of the proposed insured, if married, and if the property is to be homestead or marital property.
14. Rights of the spouse of BOBBY C. WILDMAN and THERESA A. WILDMAN, if married, and if the property is homestead or marital property.
15. Federal Tax Liens, if any, against the spouse of BOBBY C. WILDMAN and THERESA A. WILDMAN, if married, and if the property is homestead or marital property.
16. Minerals, Mineral rights, drainage rights, easements, restrictions, covenants, party wall agreements, and conditions of record, any assessments arising from membership in and/or use of area subject to assessment by homeowner's association or similar body, including but not limited to any of the foregoing cited in this commitment/policy.
17. Public or private rights, if any, in such portion of the insured premises as may be used, laid out, platted, dedicated or reserved in any manner for street and/or alley and/or highway purposes and/or lying below the ordinary high water mark of any adjacent body of water or stream.
18. Easements, if any, of the public or any school district, utility, municipality or person, as provided in Sect. 66.1005(2)(a) of the Statutes for the continued use and right of entrance, maintenance, construction and repair of underground structures, improvements or service in that portion of the premises described under description of real estate hereof, which was formerly part of a now vacated or partially vacated street/alley.
19. A Mortgage from Bobby C. Wildman and Theresa A. Wildman, husband and wife, as survivorship marital property to Mortgage Electronic Registration Systems, Inc., "MERS" acting solely as a nominee for Cherry Creek Mortgage Co., Inc. in the original amount of $70,035.00.
    Dated: May 17, 2010 Recorded: May 25, 2010
    Document No: 1901805
20. Judgment Case: 09CM644
    Docketed: May 24, 2011
    Debtor: Bobby C. Wildman
    Creditor: Sheboygan County Clerk of Circuit Court, 615 N. Sixth Street, Sheboygan, WI
    Amount: $16.00
21. Judgment Case: 14SC2570
    Docketed: December 1, 2014
    Debtor: Bobby Wildman
    Creditor: Anesthesiology Associates LTD, 225 S Executive Drive, Brookfield, WI
    Amount: $1,706.50
    Attorney: Zachary Jonathon Gnas

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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LIEN REPORT

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22. Judgment Case: 16SC1070
Docketed: June 9, 2016
Debtor: Bobby C. Wildman AND Theresa A. Wildman
Creditor: Aldag/Honald Mechanical Inc. 3507 S. Business Drive, Sheboygan, WI
Amount: $446.39
Attorney: Andrew H. Morgan, Esq

23. Judgment Case: 16SC1768
Docketed: September 27, 2016
Debtor: Theresa A. Wildman
Creditor: Discover Bank, 6500 New Albany Road, New Albany, OH
Amount: $5,343.03
Attorney: Lucas P. Bennewitz

24. Judgment Case: 16SC1860
Docketed: September 28, 2016
Debtor: Bobby C. Wildman, Jr.
Creditor: Sheboygan Internal Medicine Association, 2920 Superior Ave., Sheboygan, WI
Amount: $317.11
Attorney: Andrew H. Morgan, Esq

25. Judgment Case: 17SC623
Docketed: April 10, 2017
Debtor: Bobby Wildman
Creditor: Anesthesiology Associates LTD, 225 S Executive Drive, Brookfield, WI
Amount: $1,681.65
Attorney: Meghan Patricia Mackelly

26. Judgment Case: 18TJ82
Docketed: July 27, 2018
Debtor: Bobby C. Wildman AND Theresa A. Wildman
Creditor: City of Sheboygan, 828 Center Ave., Sheboygan, WI
Amount: $250.00

27. Judgment Case: 18TJ83
Docketed: July 27, 2018
Debtor: Bobby C. Wildman AND Theresa A. Wildman
Creditor: City of Sheboygan, 828 Center Ave., Sheboygan, WI
Amount: $691.00

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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LIEN REPORT

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28. Judgment Case: 18TJ84
Docketed: July 27, 2018
Debtor: Bobby C. Wildman AND Theresa A. Wildman
Creditor: City of Sheboygan, 828 Center Ave., Sheboygan, WI
Amount: $691.00

The following is being shown for informational purposes only:

Judgment of Divorce granted July 7, 2014 in the Circuit Court of Sheboygan County as Case No. 14Fa9.
PETITIONER: Theresa Ann Wildman, 832 N 10th Street, Apt. 206, Sheboygan, WI
RESPONDENT: Bobby Cleve Wildman, 816 High Ave., Sheboygan, WI

Said case file is unavailable for review. We reserve the right to include additional exceptions and/or requirements upon examination.

This report is issued upon the understanding that the amount of insurance will be increased to the amount of the sale price after said sale price has been determined and the additional premium will be billed at that time.

NOTE: This commitment is solely for the purpose of guaranteeing a purchaser at sheriff's sale. Consult the company for additional exceptions or requirements before using this for other purposes.

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LIEN REPORT