



**Whitewater CDA - Agenda**  
**Wednesday, May 18, 2011**  
**4:30 PM – CDA Board of Directors**  
**2<sup>nd</sup> Floor Lakefront Conference Room**  
**312 W Whitewater Street**  
**Whitewater, WI 53190**

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- 1. Call to order and roll call**
- 2. Election of Officers**
- 3. Approval of the Agenda**
- 4. HEARING OF CITIZEN COMMENTS.** *No formal CDA Action will be taken during this meeting although issues raised may become a part of a future agenda. Items on the agenda may not be discussed at this time.*
- 5. Approval of the May 2, 2011 Minutes**
- 6. CDA Coordinator Updates**
  - a. Retention Visits**
  - b. Site Inquiries**
  - c. WUP 0033 & WSS 00060 – North Jefferson Street**
  - d. Housing Study Update**
- 7. Discussion and Possible Action on Proposals for Listing of Vacant Parcels for Sale in the Whitewater Business Park Future Agenda Items**
- 8. Adjourn**

*It is possible that a quorum of Common Council and Technology Park Board members may attend this meeting. Even if a quorum is present, no Common Council and/or Technology Park Board business will be conducted at this meeting. Anyone requiring special arrangements is asked to call the office of the City Manager/ City Clerk at least 24 hours prior to the meeting.*



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## MEMORANDUM

DATE: 05/17/2011  
TO: Whitewater CDA Board of Directors  
FROM: Mary S. Nimm, Coordinator  
**RE: Notes on the May 18, 2011 Board of Directors Meeting**

### **Retention Visits**

During the month of April, the Retention Team visited with Executives at Generac.

I am still contacting these businesses in an attempt to schedule future visits:

Universal Electronics

Polymer Tech

Provisor

Randix

Schenk Accurate

### **Site Inquiries**

I received inquiries on available lease spaces to include office and labs.

### **WUP 0033 & WSS 00060 - North Jefferson Street**

**Appraisal Status** - A copy of the summary statement is in the packet.

**Brownfield Status** -the package of materials for the DNR has been submitted. I am working to assemble information as it relates to disturbed soil and how to handle with future developments.

### **Housing Study Update**

We met with Russ Kashian to discuss the initial steps in the Housing Study and Survey process. Russ and I will be meeting the week of 5/23 to review the draft study prior to distribution.

### **Proposals for Listing of Vacant Parcels for Sale in the Whitewater Business Park**

A copy of the RFP is included as well as the only response received by MLG.



## Whitewater CDA - MINUTES

Monday, May 2, 2011

4:30 PM – CDA Board of Directors

1st Floor Community Room - 312 W Whitewater Street  
Whitewater, WI 53190

### 1. Call to order and roll call

Tom Miller called the meeting to order at 4:32PM

Present: Tom Miller, Jeff Knight, Donna Henry, Jim Stewart, Laurence Kachel, Patrick Singer, Jim Allen (@ 4:50pm)

Absent: None

Others Present: Mary Nimm, Kevin Brunner, Cameron Clapper, Doug Saubert, Alan Marshall, Jim Caldwell

### 2. Approval of the Agenda

Knight motioned to approve the agenda. Singer seconded.

Ayes: Miller, Knight, Henry, Stewart, Kachel, Singer

Nays: None

Absent: Allen

The motion to approve the agenda passed on a voice-vote.

### 3. HEARING OF CITIZEN COMMENTS. *No formal CDA Action will be taken during this meeting although issues raised may become a part of a future agenda. Items on the agenda may not be discussed at this time.*

**Alan Marshall, 1609 Turtle Mound Circle** – Mr. Marshall noted that he served on the CDA board full 2-year terms. He wanted to pass information to the CDA. *“This has been rewarding. I have gained knowledge in Economic Development and all items encompassing. We (the CDA) kept positive attitude and tried to move forward no matter the Economic condition of the community. The CDA has done a tremendous job overall to make Whitewater viable in Walworth County. All members have been positive about Economic Development in Whitewater. The CDA has great leadership with Brunner and Nimm. Thanks to the CDA for the opportunity to give 8 years of service.”*

### 4. Approval of the March 28, 2011 Minutes

Singer motioned to approve the minutes. Knight seconded.

Ayes: Miller, Knight, Henry, Stewart, Kachel, Singer

Nays: None

Absent: Allen

The motion to approve the minutes passed on a voice-vote.

### 5. February and March CDA Financials

Saubert commented, that he can be called at anytime if there are questions. Noting that there are two new CDA members, Saubert highlighted the CDA finances and noted that there are two funds for CDA. There is the 900 fund for Operations and 910 funds used for Programs. At year end, Innovation Center asset was added to the books. New loans made at first of year.

Knight – UDAG funds from the CDA \$ lent for UTP – where is that shown?

Saubert – shown as an advance to be repaid.

Nimm – has been in contact with the Learning Depot. Intent is to get account caught-up in April. Will confirm payments upon receipt of the bank statements.

### 6. Consideration of Request from Downtown Whitewater to Participate in Partnership of Sponsoring TV Commercials

Nimm noted that the CDA has contributed towards the sponsorship of the TV Commercials organized by Downtown Whitewater for two years prior. Nimm also noted that Downtown Whitewater declined our offer to share in funding of the photo-simulation project in hopes that those funds might be re-directed to sponsor the TV commercials.

Knight – has there been a monitoring of commercials to see if customers and sales have increased?

Brunner – the DT board is happy with the success of the program, do not believe that any analytics have been done to quantify the measurement of success.

Knight – motioned to commit \$400 to the commercials. Singer seconded.

Singer – marketing plan for the City? This may work it's way into the plan, may as well budget for in the future.

Ayes: Miller, Knight, Henry, Stewart, Kachel, Singer

Nays: None

Absent: Allen

The motion to sponsor the TV commercials at \$400 passed on a roll-call vote.

## 7. Review of City Municipal Code, Chapter 2.48 Industrial Development Commission

McDonell – the Chapter 2 committee when reviewing Chapter 2 decided to hold off on revising and passing 2.48 because the City/CDA were in the middle of large projects and didn't see a need to change names of entities to avoid confusion with granting agencies. This Draft attempts to bring the language of the ordinance consistent with the actual use of the CDA name. No substantive change. The changes mostly update and refresh. This was created by Charter Ordinance. Instead of calling it the Industrial Development Commission, suggest renaming.

Stewart – concerned about relationship between Common Council and CDA, is this reflected?

McDonell – could work some of the MOU into the ordinance, but don't want to lose flexibility.

Stewart – example of funding?

Knight – thought there is a need to have independence between CDA and City. Top of page 3 – terms, citizen member term and/or other board terms?

Allen – if the other boards do not have the same terms, then not necessary

Singer – typo on bottom of page 2 – 2.48.060?

McDonell – page 3 at top has language to be cleaned up. Will look at interactions to see if there are things that can be put into 2.48 for direction and definition.

Stewart – could it be two ordinances? Keep mechanics?

McDonell – will work with Brunner and Nimm to bring back a revised draft for CDA review.

## 8. CDA Coordinator Updates

### a. Retention Visits

**Nimm noted that** During the month of April, the Retention Team visited with Executives at Golden State Foods and HUSCO.

Upcoming scheduled visits:

Generac

Nimm is still attempting to contact:

Universal Electronics

Polymer Tech

### b. Site Inquiries

Nimm noted that she had been working with a real estate broker on a possible use and bringing a new company into the former Sallie Mae/Arrow financial space. She also noted that she and Brunner have been working with an individual to assist in the recruitment of a new business into the former Winkhaus space at the corner of Universal and Technology. She has been asked by the company not to release names at this time. That company is expected to move in this June.

### c. Photo-Simulation Neighborhood Meeting E Main/Milwaukee St Corridor

### d. WUP 0033 & WSS 00060 – North Jefferson Street

Stewart – notice the neighbors?

Brunner – notification will be to let the neighborhood know we received closure, putting up for sale for the established zoning purposes. Any sale of public property will ultimately have to go to the CC for approval.

Allen – no notification until projects are in the works. I would like to see notification.

Brunner – we can send letter now indicating steps we are taking.

Knight – the neighborhood shall be happy under keeping current zoning.

Stewart – some neighbors wanted to see as a park.

Allen – send out letter with plans.

Henry – update on where we are and expectations.

### e. Attendance at International Council of Shopping Centers Idea Exchange Conference in Milwaukee

Nimm reported that she attended the ICSC conference in Milwaukee. At the conference she had the opportunity to speak with representatives from GNC, Dunkin Donuts, Halloween Spirit Stores, and other Commercial Brokers. As follow-up she has been working with and sharing Retail information with the owners of vacant properties in Whitewater. Nimm also been in contact with Save-A-Lot regarding Whitewater and the East Town Market site.

### f. Energy Event

Nimm reported that on April 18<sup>th</sup> she worked with the City to host the first Community Outreach Energy Event at the Whitewater Innovation Center. The program included speakers representing energy savings improvements from the City, Whitewater Unified School District, University of Wisconsin-Whitewater and

was followed by a short presentation from Focus on Energy. The final portion of the program included tours of the Innovation Center. Participants received a “green” reusable bag filled with a compact fluorescent light bulb, a shower timer, information sheets from Focus on Energy and WE Energies as well as other miscellaneous promotional items from Focus and ECO Fair360. Catering was provided to approximately 35 attendees. The event was funded by the Grant.

**g. TID**

Nimm reported that the TID 4 Distressed Designation package is prepared and ready to send to the Wisconsin Department of Revenue. Final two pieces include sign-off by the City Clerk and a check payable to the Wisconsin Department of Revenue.

**9. Discussion on Development of City of Whitewater Commercial Property Real Estate Database**

Brunner – as economy is turning around, we think it’s important that we have a better commercial property database. We would like to develop this locally and host on the CDA website. Other local communities have this available.

Nimm noted that she has been discussing the ability to create such a page on our website with IT. Nimm noted the importance of having the Real Estate Agents responsible for the updates as it is next to impossible to always be on top of what is for sale and what has sold and changes in pricing, ect.

Henry – doesn’t the DTW do this?

Knight – how do you maintain and keep accurate?

Singer – if you have properties that are out of date, how do you keep accurate?

Stewart – is there software available that we can use/adapt?

Singer – conceptually, good idea, must be kept fresh and current

Brunner – DTW could also maintain the DT properties

**10. EDA Project No 06-01-05479 Updates**

**a. Enhancement Requests**

Brunner – stated there are issues to iron out. The building is not finished as there is approx 550 sq ft with dirt floor, unfinished walls and unfinished ceiling. University will put in two labs and lease for 10years. EDA will pay for shell. EDA will not participate in the actual lab build-out. All three projects should come in under budget, but still working on how to complete the shell build-out to complete the project. EDA will not pay for overhead and profit for the general contractor at 10%. EDA did agree to pay for the construction manager fees at our meeting over a year ago but are declining to reimburse those fees now. We are working on clarification. At this point we want to build out shell.

**b. Tenant Status**

University will take two labs and two suites, private tenant will take two labs.

Private tenant Blackthorne has signed a lease.

Tenant application now developed along with marketing materials.

**11. Future Agenda Items**

Knight – structure of pricing in industrial park, proposal on survey of surrounding municipalities on land prices

Brunner – consideration of MLG/NAI as business park listing agent

Knight – RFP for Listing Agent

Nimm – election of officers, action on Dan’s Meat Market

**12. Adjourn to closed session at approximately 6:00PM not to reconvene per Wisconsin State Statutes 19.85(1)(c) considering employment, promotion, compensation or performance evaluation data of any public employee over which the government body has jurisdiction or exercises responsibility and Per Wisconsin Statute 19.85 (1)(e). Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session**

**a. ED Loan – Dan’s Meat Market**

**b. Performance Review - CDA Coordinator**

Present: Tom Miller, Jeff Knight, Jim Stewart, Laurence Kachel, Patrick Singer, Jim Allen (@ 4:50pm)

Absent: Donna Henry

Others Present: Mary Nimm (for item a), Kevin Brunner, Cameron Clapper

*Respectfully Submitted,*

*Mary S Nimm  
CDA Coordinator*

**SUMMARY OF IMPORTANT CONCLUSIONS**

Level of Report Provided: Summary Appraisal Report

Property Appraised: Approximately 5.6 acres of vacant land located at the southwest corner of Jefferson Street and Starin Road, Whitewater, Wisconsin

Appraisal Purpose and Intended Use: To provide an opinion of the market value of the fee simple estate of the real estate only as described in the report, with the intended use for possible sale of the subject property.

Extraordinary Assumption: Please note that although we do know that contamination has been found on the subject site and that the contaminated soils are capped, this appraisal is subject to the extraordinary assumption that no adverse environmental conditions exist on the subject site.

Date of Appraisal Report: May 3, 2011

Effective Date of Appraisal: April 27, 2011

Land Size: Approximately 5.6 acres

Improvements: None; vacant land only

Zoning: R-2 (One and Two Family Residences)

Highest and Best Use: Hold for future medium-density residential development

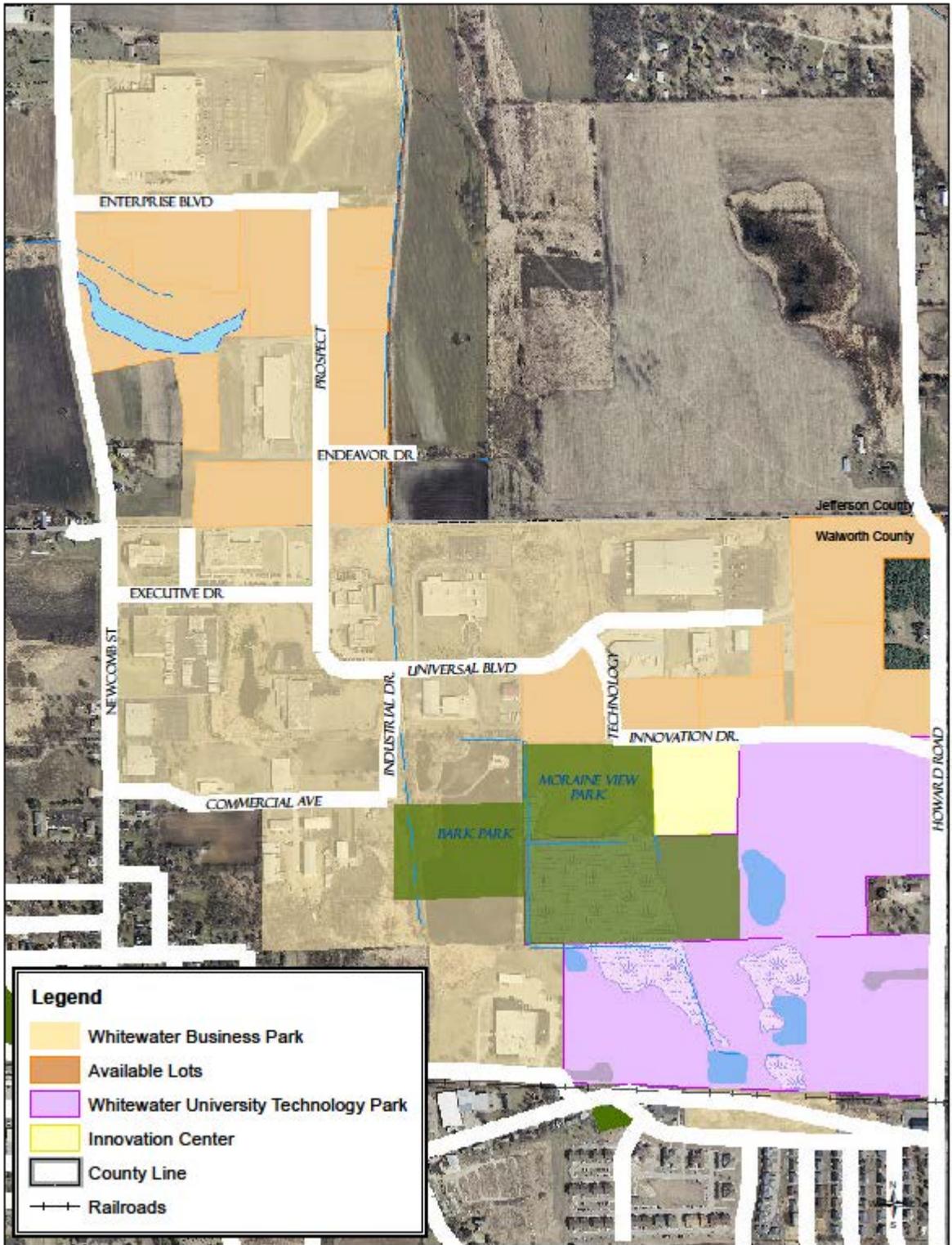
Indication of Value Approaches: Cost Approach = N/A  
Direct Sales Comparison Approach = \$202,000  
Income Approach = N/A

Opinion of Market Value of Fee Simple Estate: \$202,000



REQUEST FOR  
REAL ESTATE LISTING  
PROPOSALS

**Whitewater Business Park**





DESCRIPTION: Seeking Listing Agent for Vacant Industrial Property

DUE DATE: May 16, 2011  
4:00 PM

General Information:

- a. The City of Whitewater owns the property commonly referred to as the Whitewater Business Park, situated in the City of Whitewater and in the Counties of Walworth and Jefferson.
- b. The Whitewater Business Park has available approximately 84 acres of vacant property located in the north east section of the City east of Newcomb Street /HWY 59 and west of Howard Road.
- c. The parcels range in size from 1 to 11 acre sites. The CDA does offer custom fit parcels for the appropriate use.
- d. The property is zoned as M-1 and shall be limited to trades or industries of a restrictive character which are not detrimental to the Business Park or to the adjoining residential areas by reason of appearance, noise, dust, smoke, or odor, or similar condition.
- a. The property has Restrictive Covenants for each the Walworth County Parcels and Jefferson County Parcels.
- b. The Whitewater University Technology Park is located south of the Whitewater Business park.
- c. The Wisconsin Southern Railroad is located south of the Whitewater University Technology Park.

The purpose of this RFP is to seek proposals from qualified individuals or firms to list the Premises for sale for fair market value.

Responses must be organized in a manner that allows for complete review of each project element.

- a. Letter of Intent;
- b. Project Name;

- c. Company name, address, telephone number, and contact person; A one-page statement of interest and qualifications for this project;
- d. Key personnel proposed as project team members;
- e. Marketing Plan to include:
  - i. Presentation of Property Listing
  - ii. Listing resources such as: Internet, Mobile, News Paper
  - iii. Reporting to the CDA
- f. Descriptions of recent and related projects completed by your firm;
- g. A brief (maximum two-page) project understanding description;
- h. Fees to include commission and co-brokerage commissions.

The City of Whitewater CDA reserves the right to fully investigate all references, and to communicate with and investigate other references regardless of the source from which it was secured.

Reference information must include:

Name of owner

- \*Project name
- \*Brief description of firm's involvement
- \*Contact person
- \*Address
- \*Telephone number
- \*Firm's key personnel assigned to the referenced project

Proposals shall be delivered to and Inquiries along other communications about this Request for Proposals shall be made through the City's Community Development Authority. Direct inquiries to:

Mary Nimm  
Coordinator, Community Development Authority  
312 W Whitewater Street  
Whitewater, WI 53190  
262-473-0148  
[mnimm@whitewater-wi.gov](mailto:mnimm@whitewater-wi.gov)

Questions from all Agents will be accumulated and answers sent simultaneously to all Agents to ensure that identical responses are received to the same questions. Any clarifications made, or additional information will be provided to all Agents.

Proposals shall be delivered to the Community Development office no later than 4:00 PM on May 16, 2011. The City reserves the right not to consider proposals received after this date and time.



Submit one (1) original and nine (9) copies of the proposal in a sealed envelope. On the front of the envelope, place the following information:

Listing of Vacant Residential Property For Sale - Whitewater Business Park

Proposals will be reviewed on May 18, 2011.

Board members of the Community Development Authority and Staff members of the City of Whitewater will review all proposals soon after their opening. Selected Agents may be asked to give an oral presentation to the CDA and City Council describing their proposals. If an oral presentation is requested, at least a five (5) working day lead time will be allowed for the Agent to prepare. Presentations by Agent's, at the discretion of the CDA and City Council, may be held in closed session. All proponents will be invited to the public hearing, which will be held by the Community Development Authority and the City of Whitewater on the selected development proposals for the purchase and redevelopment of this block of three connected buildings in the downtown district.

- A. The CDA will review all proposals. Selection will be based upon the evaluation criteria set forth. The terms, conditions, and other material provisions of the contract are also subject to approval by the Whitewater Common Council prior to entering into a contract.
- B. The CDA has the right to reject any and all proposals received, reserving the right to utilize any ideas or concepts contained with the proposals, without any obligation or permission of the Agent(s). All Agent's, by submitting a proposal; agree to all terms and conditions of this Request for Proposal. The Whitewater Common Council has final approval.

Law Compliance - It is expected that all respondents are thoroughly conversant with, and will perform work in conformance with, all applicable federal and state regulatory requirements. If applicable, the respondent must be licensed to transact business in the State of Wisconsin.

Final sales require the appropriate plan reviews and permits from local permitting authority, and will be reviewed by the Whitewater Common Council.

Public Records - Public records containing this Request for Proposal and each response received, together with copies of all documents pertaining to the award of contracts, will be on file with the City of Whitewater CDA and shall be open to public inspection after the selection process is completed.

**ANY DEVIATION FROM THE ABOVE INSTRUCTIONS AND REQUIREMENTS MAY BE GROUND FOR DISQUALIFICATION AND REJECTION OF AN OFFER. IN ADDITION, THE COMMUNITY DEVELOPMENT AUTHORITY HAS THE STATUTORY RIGHT TO REJECT OR WAIVE ANY AND ALL PROPOSAL REQUIREMENTS OR PROPOSALS OR TO IMPOSE ADDITIONAL REDEVELOPMENT REQUIREMENTS.**

## Whitewater Business Park Revised Listing Proposal

Please include the enclosed information with our previous proposal:

1. Revised Cover Letter – Intent
2. Project Understanding
3. Commission & Co-Brokerage Explanation
4. References
5. Draft Listing Contract

# NAI MLG Commercial

Commercial Real Estate Services Worldwide.

[www.mlqcommercial.com](http://www.mlqcommercial.com)

**Brookfield**  
13400 Bishop's Lane  
Suite 100  
Brookfield, Wisconsin 53005  
**tel 262 797-9400**  
fax 262 797-8940

**Milwaukee**  
1110 North Old World Third Street  
Suite 400  
Milwaukee, Wisconsin 53203  
**tel 414 347-9400**  
fax 414 347-9401

Offices also in Madison and  
the Fox Valley

May 10, 2011

Mary S. Nimm  
Coordinator  
City of Whitewater, Community Development Authority  
312 W. Whitewater Street  
Whitewater, WI 53190

Dear Mary:

NAI MLG Commercial is very much interested in, and qualified to serve as the exclusive marketing agent for the Whitewater Business Park in the City of Whitewater. We are familiar with the Business Park as well as the surrounding community and would like to market it with pride and professionalism.

NAI MLG Commercial is the exclusive marketing agent for 16 Wisconsin business parks. Currently, John and Vytav are marketing The Gateway Business Park in Beloit, Edgerton Business Park, East Troy Business Park, Clinton Industrial Park, Robert L. Klement Business Park in Fort Atkinson, the Elkhorn Business Park, the Delavan Industrial Park and the Darien Business Park. Between 2002 and 2008, NAI MLG Commercial sold 1,500 acres of business park land for MLG Development, which resulted in the creation of nearly 16,000 jobs. Furthermore, NAI MLG Commercial has sold in excess of 5,000 acres of land since 2001.

As your exclusive agents, we will provide the needed focus for this project. We are prepared to implement an aggressive marketing plan in order to sell the property at the highest possible rate and in the shortest time frame possible. We are proponents of co-brokerage and will encourage other brokers to make their prospects aware of this opportunity.

We pride ourselves in taking an active role in communities when involved with the sale of City owned land. This includes appropriate attendance at meetings for economic development or others that our expertise would be beneficial, even when not directly related to land sales.

Our basic proposal was provided to you in March and we would ask that you use that proposal along with the additional information included here. This proposal outlines our real estate marketing plan and will familiarize you with NAI MLG Commercial and the team responsible for the project.

We appreciate the opportunity to be considered for this project and look forward to hearing from you soon to discuss any questions you may have. We are confident in our ability to deliver your property to the marketplace and are ready to begin our efforts today!

Sincerely,



John H. Henderson, SIOR  
Senior Vice President



Vytav Barcas  
Vice President

Enclosure

## WHITEWATER BUSINESS PARK PROJECT UNDERSTANDING

We understand the project to be the marketing and sale of 84 acres vacant industrial zoned land in the Whitewater Business Park in partnership with the City of Whitewater and the Whitewater CDA. The quality construction of recent developments in the park are good examples of what we would envision for new projects. Having the adjacent Technology Park and the amenities it brings would likely bring additional interest for companies to locate here.

Our experience working with communities and their business parks has always been a theme of our brokerage firm. While we have been successful over time of selling thousands of acres of industrial land in Wisconsin it has been equally important to have a trusted advisor role in the communities. The partnerships we build pay benefits to both the communities and to our firm as new opportunities and projects beyond the listed land often arise that we work together on.

We have experience in working with this type of property and would bring suggestions to speed and smooth the transactions that have proven beneficial in other locations.

## Commissions

We have included a draft Listing Contract for review including our fee structure but want to be clear on what is proposed so have outlined it below.

1. Fees are based on a 10% commission of the sale price with a minimum of \$4,500 per acre. This allows us to cover our marketing time and expense without a separate budget for normal marketing and allows Whitewater to be flexible with pricing for projects that justify incentives through land price reductions. Payment is due upon closing of the transaction.
2. Co-Brokerage is normally handled on a 50/50 split of the commission between NAI MLG Commercial and the Co-Brokerage Firm bringing the Buyer. We do reserve the right to make the decision on what the split is when either the Broker or Brokerage Firm is not qualified in commercial transactions. When that happens we typically offer a split from 10% to 40% of the fee depending on circumstances.
3. It is important to have a clear fee structure and a significant fee available to attract other Brokers to bring their prospects and clients to the property.

# **NAI MLG Commercial**

Commercial Real Estate Services Worldwide.

[www.mlgcommercial.com](http://www.mlgcommercial.com)

13400 Bishop's Lane  
Suite 100  
Brookfield, Wisconsin 53005  
**tel 262 797-9400**  
fax 262 797-8940

*Offices also in Milwaukee, Madison  
and the Fox Valley, Wisconsin*

## **Business Park References**

John Henderson and Vytas Barcas as Lead Agents  
NAI MLG Commercial as the Exclusive Listing Broker

### **East Troy Business Park**

Owner – MLG Development  
Judy Weter, Village Administrator  
2015 Energy Drive  
East Troy, WI 53120  
(262) 642-6256 X225

### **Elkhorn Business Park**

Owner – City of Elkhorn  
Sam Tapson, City Administrator  
95 S. Broad Street  
Elkhorn, WI 53121  
(262) 741-5111

### **Delavan Industrial Park**

Owner – City of Delavan  
Joe Salitros, City Administrator  
123 S. 2<sup>nd</sup> Street  
Delavan, WI 53115  
(262) 728-5585 X7

### **Gateway Business Park**

Owner – MLG Development  
Andrew Janke, Economic Development Corporate Director  
100 State Street  
Beloit, WI 53511  
(608) 364-6748

**WB-3 VACANT LAND LISTING CONTRACT - EXCLUSIVE RIGHT TO SELL**

1 **SELLER GIVES BROKER THE EXCLUSIVE RIGHT TO SELL THE PROPERTY ON THE FOLLOWING TERMS:**  
2 ■ **PROPERTY DESCRIPTION:** Street address is: Whitewater Business Park; approximately 84 Acres  
3 in Section \_\_\_\_\_ in the City of Whitewater, County of Jefferson/Walworth,  
4 Wisconsin. Insert additional description, if any, at lines 254-261 or attach as an addendum per lines 262-264.  
5 ■ **LIST PRICE:** \_\_\_\_\_ Dollars (\$ See Addendum ).  
6 ■ **INCLUDED IN LIST PRICE:** Seller is including in the list price the Property, all Fixtures not excluded on lines 10-11,  
7 and the following items: None  
8 \_\_\_\_\_  
9 ■ **NOT INCLUDED IN LIST PRICE: CAUTION:** Identify Fixtures to be excluded by Seller or which are rented and will  
10 continue to be owned by the lessor. (See lines 212-217): None  
11 \_\_\_\_\_  
12 ■ **GOVERNMENTAL AND CONSERVATION PROGRAMS:** Seller represents that all or some of the Property is  
13 enrolled in the following governmental conservation, farmland, environmental, land use or use restricting programs,  
14 agreements or conservation easements, (county, state or federal): Subject to Smart Growth Comprehensive  
15 Plan  
16 ■ **USE VALUE ASSESSMENT:** Seller represents that (all or some of the Property) (none of the Property) [ STRIKE  
17 ONE ] has been assessed as agricultural property under use value law.  
18 ■ **SPECIAL ASSESSMENTS:** Seller represents that the Property is subject to the following special assessments:  
19 to be disclosed by Seller, as may be applicable, to each Lot listed in this Contract.----  
20 ■ **SPECIAL ZONING, LAND USE OR DEVELOPMENT RESTRICTIONS:** Seller represents that the Property is  
21 subject to the following special zoning, land use, development restrictions or other conditions affecting the Property:  
22 as documented in the Declaration of Protective Covenants, and any amendments thereto.----  
23 ■ **MARKETING:** Seller authorizes and Broker agrees to use reasonable efforts to procure a buyer for the Property.  
24 Seller agrees that Broker may market Seller's personal property identified on lines 7-8 during the term of this Listing.  
25 Broker's marketing may include: \_\_\_\_\_  
26 \_\_\_\_\_  
27 Broker may advertise the following special financing and incentives offered by Seller: if applicable, see  
28 Whitewater Revolving Loan Fund.----- Seller has a duty to cooperate with Broker's marketing  
29 efforts. See lines 84-90 regarding Broker's role as marketing agent and Seller's duty to notify Broker of any potential  
30 buyer known to Seller. Seller agrees that Broker may market other properties during the term of this Listing.  
31 ■ **OCCUPANCY:** Unless otherwise provided, Seller agrees to give buyer occupancy of the Property at time of closing.  
32 Unless otherwise agreed, Seller agrees to have the Property free of all debris and personal property except for  
33 personal property belonging to current tenants, sold to buyer or left with buyer's consent.  
34 ■ **COOPERATION, ACCESS TO PROPERTY OR OFFER PRESENTATION:** The parties agree that Broker will work  
35 and cooperate with other brokers in marketing the Property, including brokers from other firms acting as subagents  
36 (agents from other companies engaged by Broker - See lines 148-151) and brokers representing buyers. Cooperation  
37 includes providing access to the Property for showing purposes and presenting offers and other proposals from these  
38 brokers to Seller. Note any brokers with whom Broker shall not cooperate, any brokers or buyers who shall not be  
39 allowed to attend showings, and the specific terms of offers which should not be submitted to Seller: None.-----  
40 \_\_\_\_\_  
41 **CAUTION:** Limiting Broker's cooperation with other brokers may reduce the marketability of the Property.  
42 ■ **EXCLUSIONS:** All persons who may acquire an interest in the Property as a Protected Buyer under a prior listing  
43 contract are excluded from this Listing to the extent of the prior broker's legal rights, unless otherwise agreed to in writing.  
44 Within seven days of the date of this Listing, Seller agrees to deliver to Broker a written list of all such prospective buyers.  
45 The following other buyers are excluded from this Listing until \_\_\_\_\_ [ INSERT DATE ] :  
46 \_\_\_\_\_  
47 These other buyers are no longer excluded from this Listing after the specified date unless, on or before the specified date,  
48 Seller has either accepted an offer from the buyer or sold the Property to the buyer.  
49 ■ **COMPENSATION TO OTHERS:** Broker offers the following commission to cooperating brokers: To be determined  
50 by MLG Commercial, LLC . (Exceptions if any): \_\_\_\_\_  
51 ■ **COMMISSION:** Broker's commission shall be See Addendum attached hereto  
52 Seller shall pay Broker's commission, which shall be earned, if, during the term of this Listing:  
53 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Property;  
54 2) Seller grants an option to purchase all or any part of the Property which is subsequently exercised;  
55 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property;  
56 4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property; or

57 5) A buyer is procured for the Property by Broker, by Seller, or by any other person, at no less than the price and on  
 58 substantially the same terms set forth in this Listing and in the standard provisions of the current WB-13 VACANT  
 59 LAND OFFER TO PURCHASE, even if Seller does not accept this buyer's offer. (See lines 222-225 regarding  
 60 procurement.)

61 A percentage commission, if applicable, shall be calculated based on the purchase price if commission is earned under 1)  
 62 or 2) above, or calculated based on the list price under 3), 4) or 5). A percentage commission shall be calculated on the  
 63 fair market value of the Property exchanged under 3) if the exchange involves less than the entire Property or on the fair  
 64 market value of the Property to which an effective change in ownership or control takes place, under 4) if the transaction  
 65 involves less than the entire Property. Once earned, Broker's commission is due and payable in full at the earlier of closing  
 66 or the date set for closing, unless otherwise agreed in writing. Broker's commission shall be earned if, during the term of  
 67 the Listing, one owner of the Property sells, conveys, exchanges or options an interest in all or any part of the Property to  
 68 another owner, except by divorce judgment.

69 NOTE: A sale, option, exchange or procurement of a buyer for a portion of the Property does not terminate the Listing as to  
 70 any remaining Property.

71 ■ **EXTENSION OF LISTING:** The Listing term is extended for a period of one year as to any Protected Buyer. Upon  
 72 receipt of a written request from Seller or a broker who has listed the Property, Broker agrees to promptly deliver to  
 73 Seller a written list of those buyers known by Broker to whom the extension period applies. Should this Listing be  
 74 terminated by Seller prior to the expiration of the term stated in this Listing, this Listing shall be extended for Protected  
 75 Buyers, on the same terms, for one year after the Listing is terminated.

76 ■ **TERMINATION OF LISTING:** Neither Seller nor Broker has the legal right to unilaterally terminate this Listing absent a  
 77 material breach of contract by the other party. Seller understands that the parties to the Listing are Seller and the Broker  
 78 (firm). Agents (salespersons) for Broker (firm) do not have the authority to enter into a mutual agreement to terminate the  
 79 Listing, amend the commission amount or shorten the term of this Listing, without the written consent of the agent(s)'  
 80 supervising broker. Seller and Broker agree that any termination of this Listing by either party before the date stated on  
 81 line 269 shall be indicated to the other party in writing and shall not be effective until delivered to the other Party in  
 82 accordance with lines 206-211. CAUTION: Early termination of this Listing may be a breach of contract, causing the  
 83 terminating party to potentially be liable for damages.

84 ■ **SELLER COOPERATION WITH MARKETING EFFORTS:** Seller agrees to cooperate with Broker in Broker's  
 85 marketing efforts and to provide Broker with all records, documents and other material in Seller's possession or control  
 86 which are required in connection with the sale. Seller authorizes Broker to do those acts reasonably necessary to  
 87 effect a sale and Seller agrees to cooperate fully with these efforts which may include use of a multiple listing service,  
 88 Internet advertising or a lockbox system on Property. Seller shall promptly notify Broker in writing of any potential buyers  
 89 with whom Seller negotiates during the term of this Listing and shall promptly refer all persons making inquiries  
 90 concerning the Property to Broker.

91 ■ **LEASED PROPERTY:** If Property is currently leased and lease(s) will extend beyond closing, Seller shall assign  
 92 Seller's rights under the lease(s) and transfer all security deposits and prepaid rents (subject to agreed upon prorations)  
 93 thereunder to buyer at closing. Seller acknowledges that Seller remains liable under the lease(s) unless released by  
 94 tenant(s). CAUTION: Seller should consider obtaining an indemnification agreement from buyer for liabilities under the  
 95 lease(s) unless released by tenants.

96 ■ **BROKER DISCLOSURE TO CLIENTS:**

97 **UNDER WISCONSIN LAW, A BROKER OWES CERTAIN DUTIES TO ALL PARTIES TO A TRANSACTION:**

- 98 (a) The duty to provide brokerage services to you fairly and honestly.  
 99 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.  
 100 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request  
 101 it, unless disclosure of the information is prohibited by law.  
 102 (d) The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the  
 103 information is prohibited by law. (See Lines 218-221)  
 104 (e) The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential  
 105 information or the confidential information of other parties. (See Lines 157-173)  
 106 (f) The duty to safeguard trust funds and other property the broker holds.  
 107 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the  
 108 advantages and disadvantages of the proposals.

109 ■ **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A BROKER, YOU ARE THE  
 110 BROKER'S CLIENT. A BROKER OWES ADDITIONAL DUTIES TO A CLIENT:**

- 111 (a) The broker will provide, at your request, information and advice on real estate matters that affect your transaction,  
 112 unless you release the broker from this duty.  
 113 (b) The broker must provide you with all material facts affecting the transaction, not just adverse facts.  
 114 (c) The broker will fulfill the broker's obligations under the agency agreement and fulfill your lawful requests that are  
 115 within the scope of the agency agreement.  
 116 (d) The broker will negotiate for you, unless you release the broker from this duty.  
 117 (e) The broker will not place the broker's interests ahead of your interests. The broker will not, unless required by

118 law, give information or advice to other parties who are not the broker's clients, if giving the information or advice is  
119 contrary to your interests.

120 (f) If you become involved in a transaction in which another party is also the broker's client (a "multiple representation  
121 relationship"), different duties may apply.

122 ■ **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY:**

123 ■ A multiple representation relationship exists if a broker has an agency agreement with more than one client who is a  
124 party in the same transaction. In a multiple representation relationship, if all of the broker's clients in the transaction  
125 consent, the broker may provide services to the clients through designated agency.

126 ■ Designated agency means that different salespersons employed by the broker will negotiate on behalf of you and the  
127 other client or clients in the transaction, and the broker's duties will remain the same. Each salesperson will provide  
128 information, opinions, and advice to the client for whom the salesperson is negotiating, to assist the client in the  
129 negotiations. Each client will be able to receive information, opinions, and advice that will assist the client, even if the  
130 information, opinions, or advice gives the client advantages in the negotiations over the broker's other clients. A  
131 salesperson will not reveal any of your confidential information to another party unless required to do so by law.

132 ■ If a designated agency relationship is not in effect you may authorize or reject a multiple representation relationship.  
133 If you authorize a multiple representation relationship the broker may provide brokerage services to more than one  
134 client in a transaction but neither the broker nor any of the broker's salespersons may assist any client with  
135 information, opinions, and advice which may favor the interests of one client over any other client. If you do not  
136 consent to a multiple representation relationship the broker will not be allowed to provide brokerage services to more  
137 than one client in the transaction.

138 **INITIAL ONLY ONE OF THE THREE LINES BELOW:**

139 \_\_\_\_\_ I consent to designated agency.

140 \_\_\_\_\_ I consent to multiple representation relationships, but I do not consent to designated agency.

141 \_\_\_\_\_ I reject multiple representation relationships.

142 **NOTE: YOU MAY WITHDRAW YOUR CONSENT TO DESIGNATED AGENCY OR TO MULTIPLE REPRESENTATION**  
143 **RELATIONSHIPS BY WRITTEN NOTICE TO THE BROKER AT ANY TIME. YOUR BROKER IS REQUIRED TO DISCLOSE TO**  
144 **YOU IN YOUR AGENCY AGREEMENT THE COMMISSION OR FEES THAT YOU MAY OWE TO YOUR BROKER. IF YOU HAVE**  
145 **ANY QUESTIONS ABOUT THE COMMISSION OR FEES THAT YOU MAY OWE BASED UPON THE TYPE OF AGENCY**  
146 **RELATIONSHIP YOU SELECT WITH YOUR BROKER YOU SHOULD ASK YOUR BROKER BEFORE SIGNING THE AGENCY**  
147 **AGREEMENT.**

148 ■ **SUBAGENCY:** The broker may, with your authorization in the agency agreement, engage other brokers who assist  
149 your broker by providing brokerage services for your benefit. A subagent will not put the subagent's own interests  
150 ahead of your interests. A subagent will not, unless required by law, provide advice or opinions to other parties if doing  
151 so is contrary to your interests.

152 **PLEASE REVIEW THIS INFORMATION CAREFULLY. A broker or salesperson can answer your questions about**  
153 **brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact an**  
154 **attorney, tax advisor, or home inspector. This disclosure is required by section 452.135 of the Wisconsin statutes**  
155 **and is for information only. It is a plain language summary of a broker's duties to you under section 452.133 (2) of**  
156 **the Wisconsin statutes.**

157 ■ **CONFIDENTIALITY NOTICE TO CLIENTS:** Broker will keep confidential any information given to Broker in  
158 confidence, or any information obtained by Broker that he or she knows a reasonable person would want to be kept  
159 confidential, unless the information must be disclosed by law or you authorize Broker to disclose particular information.  
160 Broker shall continue to keep the information confidential after Broker is no longer providing brokerage services to you.  
161 The following information is required to be disclosed by law:

- 162 1) Material adverse facts, as defined in section 452.01 (5g) of the Wisconsin statutes (lines 218-221).
- 163 2) Any facts known by the Broker that contradict any information included in a written inspection report on the property  
164 or real estate that is the subject of the transaction.

165 To ensure that the Broker is aware of what specific information you consider confidential, you may list that information  
166 below (see lines 168-170). At a later time, you may also provide the Broker with other information you consider to be  
167 confidential.

168 **CONFIDENTIAL INFORMATION:** \_\_\_\_\_

169 \_\_\_\_\_

170 \_\_\_\_\_

171 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by Broker): \_\_\_\_\_

172 \_\_\_\_\_

173 \_\_\_\_\_

174 ■ **SELLER'S DISCLOSURE REPORT:** Wisconsin Administrative Code Chapter RL 24 requires listing brokers to  
175 make inquiries of the Seller on the condition of the Property and to request that Seller provide a written response to  
176 Broker's inquiry. ~~Seller agrees to complete a seller's disclosure report to the best of Seller's knowledge. Seller agrees~~  
177 ~~to amend the report should Seller learn of any defect(s) after completion of the report but before acceptance of a buyer's~~  
178 ~~offer to purchase. Seller authorizes Broker to distribute the report to all interested parties and their agents inquiring~~  
179 ~~about the Property and acknowledges that Broker has a duty to disclose all material adverse facts as required by law.~~

180 ■ **SELLER REPRESENTATIONS REGARDING DEFECTS:** Seller represents to Broker that as of the date of this  
 181 Listing, if a seller's disclosure report or other form of written response to Broker's inquiry regarding the condition of the  
 182 Property has been made by the Seller, the Seller has no notice or knowledge of any defects affecting the Property other  
 183 than those noted on Seller's disclosure report or written response.

184 **WARNING: IF SELLER REPRESENTATIONS ARE INCORRECT OR INCOMPLETE, SELLER MAY BE LIABLE FOR**  
 185 **DAMAGES AND COSTS.**

186 ■ **OPEN HOUSE AND SHOWING RESPONSIBILITIES:** Seller is aware that there is a potential risk of injury, damage  
 187 and/or theft involving persons attending an "individual showing" or an "open house." Seller accepts responsibility for  
 188 preparing the Property to minimize the likelihood of injury, damage and/or loss of personal property. Seller agrees to  
 189 hold Broker harmless for any losses or liability resulting from personal injury, property damage, or theft occurring  
 190 during "individual showings" or "open houses" other than those caused by Broker's negligence or intentional  
 191 wrongdoing. Seller acknowledges that individual showings and open houses may be conducted by licensees other  
 192 than Broker, that appraisers and inspectors may conduct appraisals and inspections without being accompanied by  
 193 Broker or other licensees, and that buyers or licensees may be present at all inspections and testing and may  
 194 photograph or videotape Property unless otherwise provided for in additional provisions at lines 254-261 or in an  
 195 addendum per lines 262-264.

196 ■ **DEFINITIONS:**

197 **ADVERSE FACT:** An "adverse fact" means any of the following:

198 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

- 199 1) Significantly and adversely affecting the value of the Property;
- 200 2) significantly reducing the structural integrity of improvements to real estate; or
- 201 3) presenting a significant health risk to occupants of the Property.

202 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her  
 203 obligations under a contract or agreement made concerning the transaction.

204 **DEADLINES - DAYS:** Deadlines expressed as a number of "days" from an event are calculated by excluding the day the  
 205 event occurred and by counting subsequent calendar days.

206 **DELIVERY:** Delivery of documents or written notices related to this Listing may only be accomplished by:

- 207 1) giving the document or written notice personally to the party;
- 208 2) depositing the document or written notice postage or fees prepaid or charged to an account in the U.S. Mail or a  
 209 commercial delivery system, addressed to the party, at the party's address (See lines 275, 281 and 287.);
- 210 3) electronically transmitting the document or written notice to the party's fax number (See lines 277, 283 and 289.); or,
- 211 4) as otherwise agreed in additional provisions on lines 254-261 or in an addendum to this Listing.

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

217 **CAUTION: Annual crops are not part of the purchase price unless otherwise agreed.**

218 **MATERIAL ADVERSE FACT:** A "material adverse fact" means an adverse fact that a party indicates is of such  
 219 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable  
 220 party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction  
 221 or affects or would affect the party's decision about the terms of such a contract or agreement.

222 **PROCURE:** A buyer is procured when, during the term of the Listing, an enforceable contract of sale is entered into  
 223 between the Seller and the buyer or when a ready, willing and able buyer submits to the Seller or the Listing Broker a written  
 224 offer at the price and on substantially the terms specified in this Listing. A buyer is ready, willing and able when the buyer  
 225 submitting the written offer has the ability to complete the buyer's obligations under the written offer. (See lines 57-60)

226 **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 2-4.

227 **PROTECTED BUYER:** Means a buyer who personally, or through any person acting for such buyer: 1) delivers to Seller or  
 228 Broker a written offer to purchase, exchange or option on the Property during the term of this Listing; 2) negotiates directly  
 229 with Seller by discussing with Seller the potential terms upon which buyer might acquire an interest in the Property; or 3)  
 230 attends an individual showing of the Property or discusses with Broker or cooperating brokers the potential terms upon  
 231 which buyer might acquire an interest in the Property, but only if Broker delivers the buyer's name to Seller, in writing, no  
 232 later than three days after the expiration of the Listing. The requirement in 3), to deliver the buyer's name to Seller in writing,  
 233 may be fulfilled as follows: a) If the Listing is effective only as to certain individuals who are identified in the Listing, by the  
 234 identification of the individuals in the Listing; or, b) if a buyer has requested that the buyer's identity remain confidential, by  
 235 delivery of a written notice identifying the broker with whom the buyer negotiated and the date(s) of any showings or other  
 236 negotiations.

237 ■ **NON-DISCRIMINATION:** Seller and Broker agree that they will not discriminate against any prospective buyer on  
 238 account of race, color, sex, sexual orientation as defined in Wisconsin Statutes, Section 111.32 (13m), disability,  
 239 religion, national origin, marital status, lawful source of income, age, ancestry, familial status, or in any other unlawful  
 240 manner.

241 ■ **EARNEST MONEY:** If Broker holds trust funds in connection with the transaction, they shall be retained by Broker in  
 242 Broker's trust account. Broker may refuse to hold earnest money or other trust funds. Should Broker hold the earnest money  
 243 Seller authorizes Broker to disburse the earnest money as directed in a written earnest money disbursement agreement  
 244 signed by or on behalf of all parties having an interest in the trust funds. If the transaction fails to close and the earnest  
 245 money is disbursed to Seller, then upon disbursement to Seller the earnest money shall be paid first to reimburse Broker for  
 246 cash advances made by Broker on behalf of Seller and one half of the balance, but not in excess of the agreed commission,  
 247 shall be paid to Broker as Broker's full commission in connection with said purchase transaction and the balance shall belong  
 248 to Seller. This payment to Broker shall not terminate this Listing.

249 ■ **UTILITY AVAILABILITY:** Seller represents that the following utility connections are located as follows: (e.g. at the  
 250 lot line, on the property, across the street, unknown, etc.): electricity Lot Line; gas Lot Line;  
 251 municipal sewer Lot Line; municipal water Lot Line; telephone Lot Line;  
 252 other Infrastructure; **STRIKE AND COMPLETE AS APPLICABLE**

253 ■ **ZONING:** Seller represents that the property is zoned: M-1

254 ■ **ADDITIONAL PROVISIONS:** 1) The Parties shall indemnify and hold each other harmless for  
 255 any claim, loss, or damage, including attorney fees, incurred by the other in connection  
 256 with offering the Listed Property caused by any act, omission, statement or failure to  
 257 disclose information by the other Party. 2) Line 44: "Within seven days of the date" is  
 258 replaced with "Upon execution". 3) Line 232: "three" is changed to "fourteen". 4) Line  
 259 176: Sentence crossed out is replaced with: "The attached Seller Disclosure Report is  
 260 incorporated by reference to this Listing Contract and represents Broker's compliance with  
 261 Wisconsin Administrative Code Chapter RL 24. If Seller completes this form, and".

262 ■ **ADDENDA:** The attached addenda Seller Disclosure Report-Vacant Land and Addendum D -  
 263 Electronic Document Delivery

264 \_\_\_\_\_ is/are made part of this Listing.

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

268 ■ **TERM OF THE CONTRACT:** From the 16th day of May, 2011,  
 269 up to and including midnight of the 31st day of May, 2012.

270 ■ **READING/RECEIPT: BY SIGNING BELOW, SELLER ACKNOWLEDGES RECEIPT OF A COPY OF THIS**  
 271 **LISTING CONTRACT AND THAT HE/SHE HAS READ ALL FIVE PAGES AS WELL AS ANY ADDENDA AND ANY**  
 272 **OTHER DOCUMENTS INCORPORATED INTO THE LISTING.**

273 (x) \_\_\_\_\_ City of Whitwater \_\_\_\_\_  
 274 Seller's Signature ▲ \_\_\_\_\_ Print Name Here: ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_  
 312 West Main Street  
 275 Whitewater, WI 53190 \_\_\_\_\_ (262) 473-0525  
 276 Seller's Address ▲ \_\_\_\_\_ Seller's Phone # ▲ \_\_\_\_\_

277 (262) 473-0509 \_\_\_\_\_  
 278 Seller's Fax # ▲ \_\_\_\_\_ Seller's E-Mail Address ▲ \_\_\_\_\_

279 (x) \_\_\_\_\_  
 280 Seller's Signature ▲ \_\_\_\_\_ Print Name Here: ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_

281 \_\_\_\_\_  
 282 Seller's Address ▲ \_\_\_\_\_ Seller's Phone # ▲ \_\_\_\_\_

283 \_\_\_\_\_  
 284 Seller's Fax # ▲ \_\_\_\_\_ Seller's E-Mail Address ▲ \_\_\_\_\_

285 (x) \_\_\_\_\_ John H. Henderson \_\_\_\_\_ MLG Commercial, LLC \_\_\_\_\_  
 286 Agent for Broker ▲ \_\_\_\_\_ Print Name Here: ▲ \_\_\_\_\_ Broker/Firm Name ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_  
 13400 Bishops Lane, Suite 100  
 287 Brookfield, WI 53005 \_\_\_\_\_ Vytautas Barcas \_\_\_\_\_ (262) 797-9400  
 288 Broker/Firm Address ▲ \_\_\_\_\_ Broker/Firm Phone # ▲ \_\_\_\_\_

289 (262) 797-8940 \_\_\_\_\_ jhenderson@naiglobal.com \_\_\_\_\_  
 290 Broker/Firm Fax # ▲ \_\_\_\_\_ Broker/Firm E-Mail Address ▲ \_\_\_\_\_

**ADDENDUM WB-3 VACANT LAND LISTING CONTRACT-EXCLUSIVE RIGHT TO SELL**  
**By and between City of Whitewater, as Seller**  
**And**  
**MLG Commercial, LLC, as Broker**

The following terms and conditions shall be deemed to be a part of the foregoing attached WB-3 Vacant Land Listing Contract – Exclusive Right to Sell (the “Listing Contract”), as dated below, for the real estate described as the Whitewater Business Park located in the northeast section of City of Whitewater east of Newcomb Street and Hwy 59 and west of Howard Road, in the City of Whitewater, Walworth County and Jefferson County, WI, as further described below (the “Property”).

**PROPERTY FOR SALE/LIST PRICE:** The Seller has the authority to modify the List Price below by entering into an Amendment to the Listing Contract. The Property for Sale is described as approximately 84 Acres and is further defined by Lot, Acreage and List Price per Acre as follows:

<b>LOT</b>	<b>ACRES</b>	<b>Price Per Acre</b>	<b>TOTAL PRICE</b>
2A	8	\$34,900	\$279,200
2B	8	\$34,900	\$279,200
2C	3	\$34,900	\$104,700
2D	7	\$34,900	\$244,300
3A	4	\$34,900	\$139,600
3B	4	\$34,900	\$139,600
3C	4	\$34,900	\$139,600
3D	3	\$34,900	\$104,700
4	4	\$34,900	\$139,600
6	11	\$34,900	\$383,900
7	6	\$34,900	\$209,400
8A	4	\$34,900	\$139,600
8B	4	\$34,900	\$139,600
8C	1	\$34,900	\$34,900
9	8	\$34,900	\$279,200
10	5	\$34,900	\$174,500

**COMMISSION:** Broker’s commission shall be Ten Percent (10%) of the sale price or a minimum of Four Thousand Five Hundred Dollars (\$4,500.00) per acre purchased whichever is greater, payable at closing. Broker’s commission will only be due and owing should a transaction close.

**PROTECTIVE COVENANTS:** All Property in the Whitewater Business Park is subject to Protective Covenants and any amendments thereto.

**ZONING CONFIRMATION:** The Property is zoned M-1 General Manufacturing District, with additional overlay zoning districts that include Flood Fringe (FF), Shore land Wetland (C-1) and Non-Shore land Wetland (C-2) designations.

**ENTIRE AGREEMENT:** This Listing Contract constitutes the entire agreement between the parties and no modification shall be binding unless in writing and signed by all parties.

IN WITNESS WHEREOF, Seller and Broker have caused this Addendum to be effective as of the fully executed date of the Listing Contract.

Seller: CITY OF WHITEWATER

Broker: MLG COMMERCIAL, LLC

By: \_\_\_\_\_  
Named: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
John H. Henderson

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

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

By: \_\_\_\_\_  
Named: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Vytautas Barcas

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

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

**ADDENDUM D - ELECTRONIC DOCUMENT DELIVERY**

1 This Addendum pertains to the (~~Offer to Purchase~~) (Listing Contract) (~~Buyer Agency Agreement~~)  
2 (Other [specify]: \_\_\_\_\_) the ("Form")  
3 [STRIKE AND COMPLETE AS APPLICABLE] dated May 16, 2011, for a  
4 transaction relative to the following Property: 84 AC/NE Sec East of Newcomb/Hwy 59,  
5 Whitewater, WI  
6 [leave blank for a buyer agency agreement unless a specific property has been identified].

7 **E-MAIL DELIVERY:** The undersigned parties agree that the delivery standards and definitions  
8 set forth in the Form are supplemented to add delivery of documents or written notices relating to  
9 the Form by e-mail. E-mail delivery of documents and written notices is effective upon the  
10 electronic transmission of the document or notice to the e-mail address specified below for the  
11 party.

12 If this is a consumer transaction whereby the property being purchased is used primarily for  
13 personal, family or household purposes, each consumer (buyer, seller, etc.) has consented  
14 electronically to the use of electronic documents, e-mail delivery, and electronic signatures in the  
15 transaction, as required by federal law.

16 Seller's Initials: \_\_\_\_\_ Electronic Consent Given:  Yes  
17 Seller's e-mail address for delivery of electronic documents: \_\_\_\_\_  
18 \_\_\_\_\_

19 Buyer's Initials: \_\_\_\_\_ Electronic Consent Given:  Yes  
20 Buyer's e-mail address for delivery of electronic documents: \_\_\_\_\_  
21 \_\_\_\_\_

22 Listing Broker's Initials: \_\_\_\_\_  
23 Listing Broker's e-mail address for delivery of electronic documents:  
24 jhenderson@naiglobal.com vbarcas@mlgcommercial.com

25 Cooperating Broker's Initials: \_\_\_\_\_  
26 Cooperating Broker's e-mail address for delivery of electronic documents:  
27 \_\_\_\_\_

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No representation is made as to the legal validity of any provision or the adequacy of any provision in any specific transaction.

**SELLER DISCLOSURE REPORT - VACANT LAND**

PROPERTY OWNER: \_\_\_\_\_ City of Whitwater , \_\_\_\_\_

PROPERTY ADDRESS: \_\_\_\_\_ 84 AC/NE Sec East of Newcomb/Hwy 59, Whitewater, WI \_\_\_\_\_

OWNER HAS OWNED THE PROPERTY FOR \_\_\_\_\_ YEARS.

Wis. Admin. Code § RL 24.07(1)(a) requires listing brokers to inspect the property and to "make inquiries of the seller on the condition of the structure, mechanical systems and other relevant aspects of the property. The licensee shall request that the seller provide a written response to the licensee's inquiry." Wis. Admin. Code § RL 24.07(2) requires listing brokers to disclose all material adverse facts discovered in Broker's inspection or disclosed by Owner, in writing, in a timely manner, to all parties. This Seller Disclosure Report is a tool designed to help the licensee fulfill these license law duties. Owner's statements are a representation of Owner's knowledge of the Property's condition. It is not a property condition warranty by the Owner or any agent of the Owner, nor is it a substitute for any inspections or testing Buyer may wish to have done. Buyer may, however, rely upon this information in deciding whether or not, or upon what terms, to purchase the Property. In this form, "defect" means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

**Are you aware of any of the following with regard to the Property?** "Aware" means to have notice or knowledge.

**CIRCLE ONE ANSWER:** Explain any "yes" or "unsure" answers to items (1)-(30) in the blank lines following item (31).

- |   |     |    |        |
|---|-----|----|--------|
| 1. Proposed, planned or commenced public improvements or public construction projects which may result in special assessments or otherwise materially affect the Property or the present use of the Property?   | yes | no | unsure |
| 2. Government agency or court order requiring repair, alteration or correction of any existing condition?   | yes | no | unsure |
| 3. Land division or subdivision for which required state or local approvals were not obtained?  | yes | no | unsure |
| 4. A portion of the Property in a floodplain, wetland or shoreland zoning area under local, state or federal regulations?   | yes | no | unsure |
| 5. All, or a part, of the Property is subject to, or in violation of, a Farmland Preservation Agreement under a County Farmland Preservation Plan (also see item (32)), or enrolled in, or in violation of, a Forest Crop, Managed Forest (see disclosure requirements in Wis. Stat. § 710.12), Conservation Reserve or comparable program?   | yes | no | unsure |
| 6. Boundary or lot disputes, encroachments or encumbrances, a joint driveway or violation of fence laws (Wis. Stat. ch. 90) (where one or both of the properties is used and occupied for farming or grazing)?  | yes | no | unsure |
| 7. Material violations of environmental rules or other rules or agreements regulating the use of the Property?  | yes | no | unsure |
| 8. Conditions constituting a significant health risk or safety hazard for occupants of the Property?  | yes | no | unsure |
| 9. Underground storage tanks presently or previously on the Property for storage of flammable or combustible liquids, including but not limited to gasoline and heating oil?  | yes | no | unsure |
| 10. A defect or contamination caused by unsafe concentrations of, or unsafe conditions relating to, pesticides, herbicides, fertilizer, radon, radium in water supplies, lead or arsenic in soil or other potentially hazardous or toxic substances on the premises?  | yes | no | unsure |
| 11. Production of methamphetamine (meth) or other hazardous or toxic substances on the Property?  | yes | no | unsure |
| 12. High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property?   | yes | no | unsure |
| 13. Defects in any well, including unsafe well water due to contaminants such as coliform, nitrates and atrazine, and out-of-service wells and cisterns required to be abandoned (Wis. Adm. Code § NR 812.26) but that are not closed/abandoned according to applicable regulations?  | yes | no | unsure |
| 14. Defects in any septic system or other sanitary disposal system on the Property or out-of-service septic systems not closed/abandoned according to applicable regulations?   | yes | no | unsure |
| 15. Subsoil conditions which would significantly increase the cost of development including, but not limited to, subsurface foundations or waste material; organic or non-organic fill; dumpsites where pesticides, herbicides, fertilizer or other toxic or hazardous materials or containers for these materials were disposed of in violation of manufacturer's or government guidelines or other laws regulating said disposal; high groundwater; adverse soil conditions (e.g. low load bearing capacity, earth or soil movement, slides) or excessive rocks or rock formations? | yes | no | unsure |
| 16. Brownfields (abandoned, idled or under-used land which may be subject to environmental contamination) or other contaminated land, or soils contamination remediated under PECFA, the DNR Remediation and Redevelopment Program, the Agricultural Chemical Cleanup Program or other similar program?   | yes | no | unsure |
| 17. Lack of legal vehicular access to the Property from public roads?   | yes | no | unsure |
| 18. Homeowners' associations, common areas shared or co-owned with others, zoning violations or non-conforming uses, conservation easements, restrictive covenants, rights-of-way, easements, easement maintenance agreements, or use of a part of Property by non-owners, other than recorded utility easements?   | yes | no | unsure |
| 19. Special purpose district, such as a drainage district, lake district, sanitary district or sewer district, that has the authority to impose assessments against the real property located within the district?  | yes | no | unsure |

- 20. Federal, state or local regulations requiring repairs, alterations or corrections of an existing condition? yes no unsure
- 21. Property tax increases, other than normal annual increases; completed or pending property tax reassessment of the Property, or proposed or pending special assessments? yes no unsure
- 22. Burial sites, archeological artifacts, mineral rights, orchards or endangered species? yes no unsure
- 23. Flooding, standing water, drainage problems or other water problems on or affecting the Property? yes no unsure
- 24. Material damage from fire, wind, floods, earthquake, expansive soils, erosion or landslides? yes no unsure
- 25. Significant odor, noise, water intrusion or other irritants emanating from neighboring property? yes no unsure
- 26. Substantial crop damage from disease, insects, soil contamination, wildlife or other causes; diseased trees; or substantial injuries or disease in livestock on the Property or neighboring properties? yes no unsure
- 27. Existing or abandoned manure storage facilities on the Property? yes no unsure
- 28. The Property is subject to a mitigation plan required by DNR rules related to county shoreland zoning ordinances that obligates the Property owner to establish or maintain certain measures related to shoreland conditions, enforceable by the county? yes no unsure
- 29. A pier attached to the property that is not in compliance with state or local pier regulations? See <http://dnr.wi.gov/> for information. yes no unsure
- 30. Impact fees, or other conditions or occurrences that would significantly increase development costs or reduce the value of the Property to a reasonable person with knowledge of the nature and scope of the condition or occurrence? yes no unsure
- 31. **Use Value Assessments:** The use value assessment system values agricultural land based on the income that would be generated from its rental for agricultural use rather than its fair market value. When a person converts agricultural land to a non-agricultural use (e.g., residential or commercial development), that person may owe a conversion charge. To obtain more information about the use value law or conversion charge, contact the Wisconsin Department of Revenue's Equalization Section at 608-266-2149 or visit <http://www.revenue.wi.gov/faqs/slf/useassmt.html>.
  - (a) All or part of the land has been assessed as agricultural land under Wis. Stat. § 70.32 (2r)? yes no unsure
  - (b) The owner has been assessed a use-value conversion charge under Wis. Stat. § 74.485(2)? yes no unsure
  - (c) The payment of a use-value conversion charge has been deferred under Wis. Stat. § 74.485(4)? yes no unsure
- 32. **Farmland Preservation:** Rezoning a property zoned farmland preservation to another use or the early termination of a farmland preservation agreement or removal of land from such an agreement can trigger payment of a conversion fee equal to 3 times the class 1 "use value" of the land. Call 608-224-4500 or visit <http://www.datcp.state.wi.us/workinglands/index.jsp> for more information. The Property is in a certified farmland preservation zoning district or subject to a farmland preservation agreement? yes no unsure
- 33. **Utility Connections:** The Property is connected to the following utilities on the Property or at the lot line:
 

a. Electricity? <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> unsure	b. Municipal water? <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> unsure	c. Telephone? <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> unsure
d. Cable? <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> unsure	e. Gas? <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> unsure	f. Municipal sewer? <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> unsure

**EXPLANATIONS OF "YES" OR "UNSURE" ANSWERS**

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**Notice:** You may obtain information about the sex offender registry and persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at <http://www.widocoffenders.org> or by phone at 608-240-5830.

The Owner certifies that the information in this report is true and correct to the best of the Owner's knowledge as of the date below.

(X) \_\_\_\_\_  
Signature ▲ Date ▲

(X) \_\_\_\_\_  
Signature ▲ Date ▲

Broker certifies that Broker has inspected the Property and that unless otherwise indicated, Broker is not aware of any defects other than those disclosed by this report or of information inconsistent with this report.

MLG Commercial, LLC  
Broker/Firm Name ▲

(X) \_\_\_\_\_  
By ▲ Date ▲  
John H. Henderson

I acknowledge receipt of a copy of this report.

(X) \_\_\_\_\_  
Buyer's Signature ▲ Date ▲

(X) \_\_\_\_\_  
Buyer's Signature ▲ Date ▲

WISCONSIN REALTORS® ASSOCIATION  
4801 Forest Run Road  
Madison, Wisconsin 53704

**SELLER REFUSAL TO COMPLETE CONDITION REPORT**

SELLER'S NAME: City of Whitwater

PROPERTY ADDRESS: 84 AC/NE Sec East of Newcomb/Hwy 59

CITY: Whitewater, WI

LISTING AGENT: John H. Henderson

LISTING BROKER: MLG Commercial, LLC

Wisconsin Administrative Code Chapter RL 24 requires the Listing Broker to make inquiries of the Seller on the condition of the Property and to request that the Seller provide a written response to Broker's inquiry.

The Seller hereby acknowledges that the Seller has refused to provide the Listing Broker with a completed real estate condition report or a seller's disclosure report for the above Property. The Seller understands that this refusal may be disclosed to potential purchasers. The Seller acknowledges that the Seller has been advised that the Seller's refusal to provide this report does not release the Seller of any disclosure obligations under the Wisconsin Statutes or common law. The Seller should consult with legal counsel regarding the Seller's disclosure obligations in an "as-is" sale.

Wisconsin real estate licensees have a legal duty to disclose material adverse facts and information suggesting the possibility of material adverse facts to all parties in writing. The Listing Broker/Agent shall accordingly disclose any condition the Agent or the Broker becomes aware of to prospective purchasers.

SELLER'S INITIALS: \_\_\_\_\_ DATE: \_\_\_\_\_

This form was delivered to Seller by \_\_\_\_\_ on \_\_\_\_\_  
Agent Name ▲ Date ▲  
John H. Henderson

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