

COMMUNITY DEVELOPMENT AUTHORITY  
OF THE CITY OF STEVENS POINT

1300 Briggs Court, Stevens Point, WI 54481

ADMINISTRATIVE OFFICE:  
TDD Relay: 1-800-947-3529  
FAX: 715-341-4656  
PHONE: 715-341-3444  
www.stevenspoint.com

HI-RISE MANOR  
MADISON VIEW  
SCATTERED SITES  
EDGEWATER MANOR

Agenda

Thursday, September 27, 2012, 5:00 PM

Hi-Rise Dining Area, 1300 Briggs Court, Stevens Point, WI 54481

1. Roll call.

Discussion and possible action on the following:

2. Report of the August 21, 2012 meeting.
3. Approval of payments for July and August 2012.
4. Appeal by Steve and Stephanie Johnson for a rehabilitation loan for 1816 Ellis Street.
5. Meal/Dining site funding and potential alternatives.
6. Consideration of making CDA owned properties smoke free.
7. Authorization to execute the Amended & Restated Reciprocal Easements, Parking and Operating Agreement and Declaration of Restrictions governing the former CenterPoint MarketPlace site.
8. Authorization to transfer a portion of the property located at 1201 Third Court (soon to be 1201 Third Street) from the Community Development Authority of the City of Stevens Point to Mid-State Technical College.
9. Authorization to execute the offer to purchase from Sara Investments Real Estate for the property located at 1101 Centerpoint Drive (Parcel ID 2408-32-2029-61) and the adjacent property (portions of Parcel IDs 2408-32-2029-65 and 2408-32-2029-66).
10. Authorization to hire and appropriate funds for outside janitorial/maintenance/prep work services.
11. Authorization to refill a maintenance position.
12. Review of trust fund accounts and Edgewater operating account balances.
13. Adjourn.

Maps further defining the above area(s) may be obtained from the City of Stevens Point Department of Community Development, 1515 Strongs Avenue, Stevens Point, WI 54481, or by calling 715-346-1567, during normal business hours.

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**PLEASE TAKE NOTICE** that any person who has special needs while attending these meetings or needs agenda materials for these meetings should contact the Community Development Authority Office at 1300 Briggs Ct., Stevens Point, WI 54481, (715) 341-3444 Ex. 24 as soon as possible to ensure a reasonable accommodation can be made.

**PLEASE TAKE FURTHER NOTICE** that a quorum of the Common Council may attend this meeting.





# Memo

**Michael Ostrowski, Director**  
Community Development Authority  
City of Stevens Point  
1515 Strongs Avenue  
Stevens Point, WI 54481  
Ph: (715) 346-1567 • Fax: (715) 346-1498  
mostrowski@stevenspoint.com

## **Community Development Authority of the City of Stevens Point**

To: Community Development Authority Board of Directors  
From: Michael Ostrowski  
CC:  
Date: 9/21/2012  
Re: Agenda Item Summaries for September 27, 2012 CDA Board Meeting

1. Roll call.

Discussion and possible action on the following:

2. Report of the August 21, 2012 meeting.

The Board needs to review and approve the report from the previous meeting.

3. Approval of payments for July and August 2012.

The Board needs to review and approve the payments for July and August 2012.

4. Appeal by Steve and Stephanie Johnson for a rehabilitation loan for 1816 Ellis Street.

Steve and Stephanie Johnson are looking to appeal the decision by our loan administrator regarding the denial of their loan request. The Johnsons have provided an appraisal that takes into account the work that they are going to have done to their home. After the improvements, the appraisal indicates the property would be worth approximately \$180,000. After looking at the proposed improvements, the City Assessor indicates that he feels that the property would be assessed at \$141,800 and have a maximum fair market value of \$150,900. Under the program, applicants have the right to appeal.

5. Meal/Dining site funding and potential alternatives.

Survey results and further recommendations will be presented at the meeting.

6. Consideration of making CDA owned properties smoke free.

Survey results and further information will be presented at the meeting. I have also attached the previous materials that were provided to you.

7. Authorization to execute the Amended & Restated Reciprocal Easements, Parking and Operating Agreement and Declaration of Restrictions governing the former CenterPoint MarketPlace site.

As part of the redevelopment project, the CDA will need to approve revisions to the REA. Spirit (Shopko) has already signed the amended agreement and the City will be reviewing the matter in October. The amended agreement is attached.

8. Authorization to transfer a portion of the property located at 1201 Third Court (soon to be 1201 Third Street) from the Community Development Authority of the City of Stevens Point to Mid-State Technical College.

As part of the MSTC redevelopment project, the CDA needs to officially approve the transfer of property to MSTC. Please see the attached CSM that indicates what property will be transferred.

9. Authorization to execute the offer to purchase from Sara Investments Real Estate for the property located at 1101 Centerpoint Drive (Parcel ID 2408-32-2029-61) and the adjacent property (portions of Parcel IDs 2408-32-2029-65 and 2408-32-2029-66).

In August 2012, the CDA Board authorized the signing of a letter of intent from Sara Investment Real Estate to the purchase the above described property. Since then we have worked with Sara Investment Real Estate on finalizing a formal offer to purchase. The offer to purchase will be provided to you prior to the meeting.

10. Authorization to hire and appropriate funds for outside janitorial/maintenance/unit prep work services.

The CDA recently lost an employee in the maintenance division. At this time, we are looking for approval to hire some outside contractors and/or a temp employee to help provide general janitorial/cleaning services and/or painting/unit prep work services. Costs will be covered within the operating budget.

11. Authorization to refill a maintenance position.

The CDA recently lost an employee in the maintenance division and I am looking for approval to refill this position. Refilling this position will be based on the need, subject to the approval of item 10 above. If we determine that the outside services are enough to cover the need, I would not fill the position at this time. However, if outside services are not enough to cover the need, or if they are not cost effective, I would then start the process to refill the position. Given the length of time it can take to fill a position, with advertising, interviews, etc., I am seeking approval at this time.

12. Review of trust fund accounts and Edgewater operating account balances.

A spreadsheet indicating the current and projected balances is included in the packet.

13. Adjourn.

Report of the Community Development Authority of the City of Stevens Point

Tuesday, August 21, 2012 – 6:00 PM  
Lincoln Center – 1519 Water Street, Stevens Point, WI 54481

PRESENT: Chairperson Halverson, Alderperson Beveridge, Commissioner Hansen, Commissioner Cooper, Commissioner Onstad, and Commissioner Molski.

EXCUSED: Commissioner Adamski

ALSO PRESENT: Executive Director Michael Ostrowski, Public Housing Manager Donna Bella, Maintenance Supervisor John Niedbalski, Pam Gecan, Peter Clifford, Janet Zander, Jonnie Smith, and Matthew Brown. Hi-Rise Manor Residents: Sr. Leone Juszczuk, Pat Cornwell, Mary Pichelman, Fritz Kastner

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INDEX:

1. Roll call.

Discussion and possible action on the following:

2. Approval of the report from the July 31, 2012 meeting.
3. Award bid for Third Street reconstruction/improvement project.
4. Presentation of public housing study.
5. Funding for meal site.
6. Adjourn.

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1. Roll call.

**Present: Halverson, Beveridge, Hansen, Cooper, Onstad, and Molski.**

**Not Present: Adamski.**

2. Approval of the report from the July 31, 2012 meeting.

Commissioner Molski indicated that item 10 needed to have the vote count added to the report.

**Motion by Alderperson Beveridge to approve the minutes with the change to add the vote count; seconded by Commissioner Molski. Motion carried 6-0.**

3. Award bid for Third Street reconstruction/improvement project.

Chairperson Halverson said that in regards to the Third Street Construction Project, bids were submitted and contract alternatives were selected. After review of the bids, Rettler Corporation has recommended the following:

- Pember Companies:
  - Contract "A" Base Bid – General Construction \$276,794.30

Includes deduct for planter curbs, ornamental fencing, and sidewalk area outside ROW at former Dunham's Building.

- Contract "A" Alternate "A1" – Additional Area \$43,493.50
- Contract "A" Alternate "A2" – Concrete Roadway \$20,180.50
- Contract "A" Alternate "A3" – Brick Pavers \$30,712.50

Sidewalk area only, no crosswalks.

**Total Contract "A" .....\$371,180.80**

- Willems Landscaping:

- Contract "B" Base Bid – Landscape and Irrigation \$ 52,778.50

Includes deduct for landscape and irrigation outside ROW at former Dunham's Building.

- Contract "B" Alternate "B1" – Additional Area \$ 8,369.50

**Total Contract "B" .....\$61,148.00**

- Van Ert Electric Company Inc.:

- Contract "C" Base Bid – Electrical \$ 97,600.00

- Contract "C" Alternate "C1" – Additional Area \$ 9,000.00

**Total Contract "C" .....\$106,600.00**

**Motion by Commissioner Hansen to accept the recommended bids:**

- **Pember Companies - Contract "A" with the recommended alternatives, in the amount of \$371,180.80,**
- **Willems Landscaping - Contract "A" with the recommended alternatives, in the amount of \$61,148.00, and**
- **Van Ert Electric Company Inc. - Contract "A" with the recommended alternatives, in the amount of \$106,600.00.**

**seconded by Commissioner Onstad.**

**Roll Call:**

- **Ayes: Halverson, Beveridge, Hansen, Cooper, Onstad, and Molski.**
- **Nays: None.**

**Motion carried 6-0.**

4. Presentation of public housing study.

Pam Gecan and Peter Clifford from American Marketing Services (AMS) presented the results of the public housing study and need analysis that they recently completed.

*The presentation is attached to these minutes.*

5. Funding for meal site.

Director Ostrowski said that he and other agency staff met with Portage County representatives about future funding of the meal site at the Hi-Rise. He said that he was informed that the County is having budget difficulties and is recommending eliminating the meal site manager at the Hi-Rise location. The County would still provide the meals to the site; however, they would no longer fund the meal site manager. The cost of the meal site manager is approximately \$19,000 per year. Ms. Bella said that she would put together some numbers for the commissioner's next meeting regarding funding the meal-site manager for 2013.

6. Adjourn.

**Meeting adjourned at 8:01 PM.**

\_\_\_\_\_

Chairperson

\_\_\_\_\_

Date

\_\_\_\_\_

Secretary

\_\_\_\_\_

Date

# Steve & Stephanie Johnson

Mailing Address: 1816 Ellis St. Stevens Point, WI 54481 Phone: (715) 342-0571 Email: slsajohn@sbcglobal.net

September 12, 2012

CAP Services, Inc.  
Attn: Assistant Director of Housing  
1725 W. River Dr.  
Stevens Point, WI 54481

Kris Pethick,

Please accept this letter as the supporting document for the appeal process we wish to enter in response to your letter from September 10, 2012. We do believe that our Rehabilitation Loan Program application should be accepted for the following reasons:

1. The appraisal we gave you regarding our home, dated April 13, 2012, firmly attests to the value that our house would have after the project is completed. The appraisal was completed while following the uniform standards of the industry with the appraiser attesting to the validity of the \$180,000 final value of our post-project home (see pages 6 and 7 of the appraisal for details).
2. It seems that the final denial letter was arbitrary and directly sets aside a key financial and legal document that was created with true objectivity and vast amounts of justification for the information contained in it.
3. Six comparable homes in our neighborhood were used to validate the appraisal (see pages 3 and 8 of the appraisal for details). We have no concerns that the value determined by the appraiser would not be met after the entire proposed project is completed. Our home will be worth \$180,000 and that added value will increase the tax base for Stevens Point.
4. We are more than willing to sign off on the addition loan against our property without hesitation because we are confident in the appraisal completed by Roxanne Wappler of R&R Appraisal in Wisconsin Rapids. In fact, if necessary, we will contact Ms. Wappler and invite her to defend her work and findings concerning our home (although she attested to the validity of her work repeatedly in the pages of the appraisal).
5. The three people that have walked through our house regarding this proposed construction project have commented positively on the assumed benefit this rehabilitation would be to our home while complimenting the quality condition of the rest of the house. Those individuals are the previously mentioned appraiser (Roxanne Wappler), James Barrett of CAP Services, and Robert Goszkowicz of Freeway Construction – the lowest bidder of the project and contractor who will complete the work).
6. It is safe to assume that another appraisal will not be any different from the one we offered you from April. Similar procedures will be followed for the appraisal process, the new appraiser would not vary substantially from an appraisal done only five months ago, and that the added cost would not be a good investment of the city's money nor ours.

We respectfully request an audience before the Housing Committee of the City of Stevens Point in order to hear justification from the City Assessor and the Department of Community Development regarding why "the work being completed does not support the increased value per the provided appraisal" (as quoted from the September 10<sup>th</sup> denial letter). We are convinced that the appraisal is valid and that there is no reason to doubt its accuracy.

Thank you,

Steve and Stephanie Johnson





CAP SERVICES, INC.  
 1725 West River Drive  
 Stevens Point, WI, 54481  
 715-343-7135 office  
 715-343-7178 fax

## HOUSING WORK PLAN

Date: 7/11/12

Client Name: Steve and Stephanie Johnson  
 Address: 1816 Ellis St  
 City / State / Zip: Stevens Point, WI 54481  
 Phone: 715-572-0343

<b>DESCRIPTION OF WORK</b>	
<b>Front Entryway:</b>	
1. Replace inefficient exterior door/jamb with new Energy Star rated insulated steel or fiberglass door to include new handleset per client's choice of style and color using lead safe measures	
<b>Kitchen:</b>	
1. Refinish hardwood flooring or replace with new mid-grade underlayment and vinyl per client's choice of style and color	
<b>West Entryway:</b>	
1. Replace inefficient exterior door/jamb with new Energy Star rated insulated steel or fiberglass door to include new handleset per client's choice of style and color using lead safe measures	
<b>2nd Floor Bathroom:</b>	
1. Remove damaged paint on ceiling, apply primer and two coats of interior-grade paint per client's choice of style and color using lead safe measures	
<b>3rd Floor Stairway and Landing:</b>	
1. Replace existing broken pull-down ladder and install code-compliant stairway to 3rd floor to include demolition, installation of bearing wall and doorway into 2nd Floor Right Front Bedroom, stairway / handrail, railing at landing, trim and finish work, and cleanup using lead safe measures	
2. Install new battery operated smoke detector and CO detector	
<b>3rd Floor Right Rear Bedroom:</b>	
1. Install partition walls to define Bedroom, insulate ceiling and wall cavities, install drywall to include tape, texture, primer and two coats of interior grade paint, trimwork to include pre-finished window, door casing and base, one interior 6 panel pre-finished door and jamb for room, one 6 panel pre-finished door and jamb or bifold doors for closet, new mid-grade carpet and pad, and door stops	
<b>3rd Floor Family Room:</b>	
1. Remove all damaged insulation from floor, remove damaged chimney and seal off bypass to basement, repair any damaged framing, re-insulate walls and ceilings, install vapor barrier, drywall, tape, texture to match existing, primer and two coats of interior grade paint, install pre-finished window casing and base trimwork, install mid grade carpet and pad per client's choice of style and color	

<b>3rd Floor Bathroom:</b>	
1. Remove all damaged insulation from floor, remove damaged cast iron main stack pipe and replace with pvc, repair any damaged framing, re-insulate walls and ceilings, install vapor barrier, drywall, tape, texture to match existing, primer and two coats of interior grade paint, install pre-finished door and jamb to include handleset, window casing and base trimwork, install mid grade underlayment and vinyl per client's choice of style and color	
<b>Basement:</b>	
1. Install new continuous handrail on stairway	
2. Install new battery operated smoke detector and CO detector	
<b>Energy Conservation Measures:</b>	
1. Insulate wall cavities to maximum structurally allowable with cellulose insulation	
<b>Plumbing:</b>	
1. Replace existing inefficient gas boiler with new gas high efficiency boiler sized to properly supply heat to all levels of the home to include all necessary gas, electrical and plumbing connections, zone valves for each floor of the home, a programmable thermostat and removal of old boiler include warranty information with bid	
2. For 3rd Floor Bathroom, install new with new mid-grade pedestal sink, faucet, and drain per client's choice of style and color	
3. For 3rd Floor Bathroom, install new mid-grade corner fiberglass bathroom shower, surround, and metal faucet/shower head/drain per client's choice of style and color	
4. For 3rd Floor Bathroom, install new mid-grade water conserving toilet per client's choice of style and color	
5. For 3rd Floor Bathroom, install new pex supply lines and schedule 40 PVC waste lines to basement for proper drainage	
<b>Electrical:</b>	
1. In Kitchen, replace all existing receptacles above countertop with new GFCI receptacles to match existing color	
2. In 3rd Floor Bathroom, install exhaust fan with 60 min timer, light fixtures and GFCI receptacles to code	
3. In 3rd Floor Stairway/Landing, Bedroom and Family room, install receptacles and lighting to code	
4. In Basement, replace all accessible K and T wiring with romex and land open splices in junction boxes with covers	
5. Install 100 amp subpanel to power 3rd Floor from Basement 200 amp service	
<b>Estimated Cost:</b>	<b>\$42,775.00</b>

I agree that the measures listed above includes all desired measures and further agree to have all measures completed if loan is closed. I will make no changes to the work write-up during the bid process and will not undertake any other rehabilitation work on my property until ALL measures listed are completed.

\_\_\_\_\_  
Date                      Applicant

\_\_\_\_\_  
Co-Applicant

**LOAN APPLICATION**

Client Name Steve and Stephanie Johnson  
 Address 1816 Ellis St  
 City/Zip Stevens Point, WI 54481  
 County Portage  
 Municipality City of Stevens Point  
 CMI: 64%  
 Program Application Date: 6/7/2012

**MORTGAGE SECURITY**

**Documentation/Sources**

Estimated Market Value:	\$112,800.00	
Outstanding Mortgage Amounts:	\$136,964.00	Mortgage amount(s)
	\$0.00	DP/Closing Costs
Owner Contribution:	\$0.00	
Available Equity:	-\$24,164.00	
Rehab Cost Estimate:	\$49,900.00	
Estimated After Rehab Value:	\$179,464.00	*Appraised value based on work being completed
After Rehab Equity Available-100%:	\$42,500.00	
Loan To Value:	166%	
Loan To After Rehab Value:	104%	

<b>Recording Fees:</b>	\$0.00	
<b>Asbestos Test Fees:</b>	\$350.00	test plaster
<b>Clearance Test Fees:</b>	\$54.00	
<b>Management/Development Fee:</b>	\$0.00	
	\$50,304.00	<b>TOTAL PROJECT COST</b>
	Job #	

Authorized Loan Amount:

Funding Source      Activity      Contract #

**Approved/Denied**  
 (circle one)

\_\_\_\_\_  
 Authorizing signature

\_\_\_\_\_  
 Date

APPRAISAL OF



LOCATED AT:

1816 Ellis Street  
Stevens Point, WI 54481

FOR:

Compass Mortgage, Inc.  
27755 Diehl Rd, Ste 300  
Warrenville, IL 60555

BORROWER:

Johnson, Steven

AS OF:

April 13, 2012

BY:

Roxane M. Wappler

# Uniform Residential Appraisal Report

280011  
File No. 581-443529

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address <b>1816 Ellis Street</b>	City <b>Stevens Point</b>	State <b>WI</b> Zip Code <b>54481</b>
Borrower <b>Johnson, Steven</b>	Owner of Public Record <b>Johnson, Steven/Stephanie</b>	County <b>Portage</b>
Legal Description <b>See Attached Addendum</b>		
Assessor's Parcel # <b>2408.32.1027.10</b>	Tax Year <b>2011</b>	R.E. Taxes \$ <b>2,525</b>
Neighborhood Name <b>Boy &amp; Atwell Addition</b>	Map Reference <b>Stevens Point</b>	Census Tract <b>9609</b>
Occupant <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant <input type="checkbox"/> Vacant	Special Assessments \$ <b>0</b>	<input type="checkbox"/> PUD HOA \$ <b>0</b> <input type="checkbox"/> per year <input type="checkbox"/> per month
Property Rights Appraised <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold <input type="checkbox"/> Other (describe)		
Assignment Type <input type="checkbox"/> Purchase Transaction <input checked="" type="checkbox"/> Refinance Transaction <input type="checkbox"/> Other (describe)		
Lender/Client <b>Compass Mortgage, Inc.</b> Address <b>27755 Diehl Rd, Ste 300, Warrenville, IL 60555</b>		
Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Report data source(s) used, offering price(s), and date(s). <b>Subject has not been listed or offered for sale in the past 12 months as per Central Wisconsin Multiple Listing Service as verified by the appraiser.</b>		

I <input type="checkbox"/> did <input type="checkbox"/> did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed.
Contract Price \$ _____ Date of Contract _____ Is the property seller the owner of public record? <input type="checkbox"/> Yes <input type="checkbox"/> No Data Source(s) _____
Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? <input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes, report the total dollar amount and describe the items to be paid. _____

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics	One-Unit Housing Trends	One-Unit Housing	Present Land Use %
Location <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban <input type="checkbox"/> Rural	Property Values <input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Declining	PRICE _____ AGE _____	One-Unit <b>85 %</b>
Built-Up <input checked="" type="checkbox"/> Over 75% <input type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	Demand/Supply <input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply	\$(000) _____ (yrs) _____	2-4 Unit <b>2 %</b>
Growth <input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow	Marketing Time <input type="checkbox"/> Under 3 mths <input type="checkbox"/> 3-6 mths <input checked="" type="checkbox"/> Over 6 mths	<b>60</b> Low <b>0</b>	Multi-Family <b>1 %</b>
Neighborhood Boundaries <b>The area is bounded by Stanley Street to the north, Frontenac Avenue to the east, Patch Street to the south and the Wisconsin River to the west.</b>		<b>450</b> High <b>125</b>	Commercial <b>7 %</b>
Neighborhood Description <b>See Attached Addendum</b>		<b>140</b> Pred. <b>80</b>	Other Vac <b>5 %</b>

Market Conditions (including support for the above conclusions) **See Attached Addendum**

Dimensions <b>51 x 125</b>	Area <b>6375 sf</b>	Shape <b>Rectangular/Typical</b> View <b>N;Res;</b>
Specific Zoning Classification <b>R-3 Two Family</b> Zoning Description <b>Two Family Residential</b>		
Zoning Compliance <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Legal Nonconforming (Grandfathered Use) <input type="checkbox"/> No Zoning <input type="checkbox"/> Illegal (describe) <b>N/A</b>		
Is the highest and best use of the subject property as improved (or as proposed per plans and specifications) the present use? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe. <b>N/A</b>		
Utilities Public Other (describe)	Public Other (describe)	Off-site Improvements—Type Public Private
Electricity <input checked="" type="checkbox"/> <input type="checkbox"/>	Water <input checked="" type="checkbox"/> <input type="checkbox"/>	Street <b>Bituminous/Typical</b> <input checked="" type="checkbox"/> <input type="checkbox"/>
Gas <input checked="" type="checkbox"/> <input type="checkbox"/>	Sanitary Sewer <input checked="" type="checkbox"/> <input type="checkbox"/>	Alley <b>None</b> <input type="checkbox"/> <input type="checkbox"/>
FEMA Special Flood Hazard Area <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No FEMA Flood Zone <b>X</b> FEMA Map # <b>55097C0214D</b> FEMA Map Date <b>07/20/2009</b>		
Are the utilities and off-site improvements typical for the market area? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe. <b>N/A</b>		
Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, describe. <b>No adverse environmental conditions are known or suspected in the area. The site is located in the city limits of Stevens Point with no hazardous waste or the contaminated sites in the area.</b>		

GENERAL DESCRIPTION	FOUNDATION	EXTERIOR DESCRIPTION materials/condition	INTERIOR materials/condition
Units <input checked="" type="checkbox"/> One <input type="checkbox"/> One with Accessory Unit	<input type="checkbox"/> Concrete Slab <input type="checkbox"/> Crawl Space	Foundation Walls <b>Stone/Average</b>	Floors <b>Oak,Vinyl/Avg</b>
# of Stories <b>2</b>	<input checked="" type="checkbox"/> Full Basement <input type="checkbox"/> Partial Basement	Exterior Walls <b>Vinyl/Good</b>	Walls <b>Plaster,Dry/Av-G</b>
Type <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/> S-Det./End Unit	Basement Area <b>984 sq. ft.</b>	Roof Surface <b>Aspht Shg/Good</b>	Trim/Finish <b>Painted/Good</b>
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Under Const.	Basement Finish <b>0 %</b>	Gutters & Downspouts <b>None/Adequate</b>	Bath Floor <b>Vinyl/Good</b>
Design (Style) <b>Traditional</b>	<input type="checkbox"/> Outside Entry/Exit <input type="checkbox"/> Sump Pump	Window Type <b>DbI Hung/Good</b>	Bath Wainscot <b>Fiberglass/Avg</b>
Year Built <b>1910</b>	Evidence of <input type="checkbox"/> Infestation	Storm Sash/Insulated <b>Aluminum/Gd</b>	Car Storage <input type="checkbox"/> None
Effective Age (Yrs) <b>15 Years</b>	<input type="checkbox"/> Dampness <input type="checkbox"/> Settlement	Screens <b>Aluminum/Gd</b>	<input checked="" type="checkbox"/> Driveway # of Cars <b>6</b>
Attic <input type="checkbox"/> None	Heating <input type="checkbox"/> FWA <input checked="" type="checkbox"/> HWBB <input type="checkbox"/> Radiant	Amenities <input type="checkbox"/> WoodStove(s) #0	Driveway Surface <b>Bitum,Concrete</b>
<input type="checkbox"/> Drop Stair <input type="checkbox"/> Stairs	<input type="checkbox"/> Other Fuel <b>Nat. Gas</b>	<input type="checkbox"/> Fireplace(s) # <b>0</b> <input type="checkbox"/> Fence <b>None</b>	<input checked="" type="checkbox"/> Garage # of Cars <b>2</b>
<input type="checkbox"/> Floor <input checked="" type="checkbox"/> Scuttle	Cooling <input type="checkbox"/> Central Air Conditioning	<input checked="" type="checkbox"/> Patio/Deck <b>Deck</b> <input checked="" type="checkbox"/> Porch <b>Enclosed</b>	<input type="checkbox"/> Carport # of Cars <b>0</b>
<input type="checkbox"/> Finished <input type="checkbox"/> Heated	<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Other <b>None</b>	<input type="checkbox"/> Pool <b>None</b> <input type="checkbox"/> Other <b>None</b>	<input type="checkbox"/> Att. <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Built-in
Appliances <input type="checkbox"/> Refrigerator <input type="checkbox"/> Range/Oven <input type="checkbox"/> Dishwasher <input type="checkbox"/> Disposal <input type="checkbox"/> Microwave <input type="checkbox"/> Washer/Dryer <input checked="" type="checkbox"/> Other (describe) <b>Hood</b>			
Finished area above grade contains: <b>8 Rooms 3 Bedrooms 2.1 Bath(s) 2,855 Square Feet of Gross Living Area Above Grade</b>			
Additional features (special energy efficient items, etc.) <b>See Attached Addendum</b>			

Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.). **C3;Kitchen-not updated;Bathrooms-updated-six to ten years ago;The dwelling is average in terms of quality and appeal with the condition to be good after completion. The home has a functional floor plan without obsolescence or buyer resistance. No external obsolescence was observed. The home has newer siding, windows, doors and insulation with newer roof and garage. The 2nd story has been updated throughout over the past 8 years. There is to be a new hydronic furnace and water heater with the attic to be finished with a play area, den and bathroom.**

Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property?  Yes  No If Yes, describe. **The home does not appear to have any deficiencies or adverse conditions with the home appearing to be solid and sound.**

Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)?  Yes  No If No, describe. **The area is located in the City of Stevens Point with the area being mostly single family homes with these being average in terms of quality and appeal. Most homes in the area are older one and two story dwellings with scattered multi family homes in the area as well. There are a variety of ages and values of homes in the area with no unfavorable aspects observed.**

# Uniform Residential Appraisal Report

280011  
File No. 581-443529

There are **11** comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ **164,900** to \$ **229,500**.  
There are **9** comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ **167,000** to \$ **235,000**.

FEATURE	SUBJECT	COMPARABLE SALE NO. 1		COMPARABLE SALE NO. 2		COMPARABLE SALE NO. 3	
1816 Ellis Street Address Stevens Point, WI 54481		2141 Main Street Stevens Point, WI 54481		2211 Shadowview Circle Plover, WI 54467		712 South Maple Bluff Court Stevens Point, WI 54482	
Proximity to Subject		0.22 miles ENE		4.32 miles SSE		2.83 miles E	
Sale Price	\$	\$ 177,000		\$ 175,400		\$ 187,000	
Sale Price/Gross Liv. Area	\$ 0.00 sq. ft.	\$ 79.98 sq. ft.		\$ 64.75 sq. ft.		\$ 72.59 sq. ft.	
Data Source(s)		MLS #1101396;DOM 346		MLS #1004431;DOM 461		MLS #1106589;DOM 174	
Verification Source(s)		Assessor		Assessor/Inspection		Assessor	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) \$ Adjustment	DESCRIPTION	+(-) \$ Adjustment	DESCRIPTION	+(-) \$ Adjustment
Sale or Financing Concessions		ArmLth Conv;0		ArmLth Conv;0		ArmLth Conv;0	
Date of Sale/Time		s02/12;c02/12		s10/11;c10/11		s03/12;c01/12	
Location	N;Res;	N;Res;		N;Res;		N;Res;	
Leasehold/Fee Simple	Fee Simple	Fee Simple		Fee Simple		Fee Simple	
Site	6375 sf	12000 sf	-1,000	20350 sf	-1,500	1 ac	-3,000
View	N;Res;	N;Res;		N;Res;		N;Res;	
Design (Style)	Traditional	Traditional		Traditional		Traditional	
Quality of Construction	Q4	Q4		Q4		Q4	
Actual Age	102	89	0	22	-1,500	32	-1,500
Condition	C3	C3		C4	5,000	C3	
Above Grade	Total Bdrms Baths	Total Bdrms Baths	0	Total Bdrms Baths	0	Total Bdrms Baths	0
Room Count	8 3 2.1	9 4 3.1	-1,500	7 4 2.1	0	9 4 2.1	0
Gross Living Area 18	2,855 sq. ft.	2,213 sq. ft.	11,500	2,709 sq. ft.	2,500	2,576 sq. ft.	5,000
Basement & Finished Rooms Below Grade	984sf0sfin	1214sf0sfin	0	1252sf180sfin 0rr1br0.0ba0o	-2,000	1324sf420sfin 1rr0br0.0ba0o	-4,000
Functional Utility	Average	Average		Average		Average	
Heating/Cooling	Hydron/None	FHA/Central	-1,000	FHA/Central	-1,000	FHA/Central	-1,000
Energy Efficient Items	None	None		None		None	
Garage/Carport	2-Car Det.	2-Car Att.	0	2-Car Att.	0	2-Car Att.	0
Porch/Patio/Deck	EnPchs,Deck	Pch,Dck,Patio	0	Porch, Patio	2,000	Pch,Deck,Patio	0
Fireplace	None	Fireplace	-2,500	Fireplace	-2,500	Fireplace	-2,500
Net Adjustment (Total)		<input checked="" type="checkbox"/> + <input type="checkbox"/> -	\$ 5,500	<input checked="" type="checkbox"/> + <input type="checkbox"/> -	\$ 1,000	<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ 7,000
Adjusted Sale Price of Comparables		Net Adj. 3.1%		Net Adj. 0.6%		Net Adj. -3.7%	
		Gross Adj. 9.9%	\$ 182,500	Gross Adj. 10.3%	\$ 176,400	Gross Adj. 9.1%	\$ 180,000

I  did  did not research the sale or transfer history of the subject property and comparable sales. If not, explain N/A

My research  did  did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data source(s) Central Wisconsin Multiple Listing Service/Public Tax Records.

My research  did  did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data source(s) Central Wisconsin Multiple Listing Service/Public Tax Records.

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

ITEM	SUBJECT	COMPARABLE SALE NO. 1		COMPARABLE SALE NO. 2		COMPARABLE SALE NO. 3	
Date of Prior Sale/Transfer							
Price of Prior Sale/Transfer							
Data Source(s)	Assessor	Assessor		Assessor		Assessor	
Effective Date of Data Source(s)	04/13/2012	04/13/2012		04/13/2012		04/13/2012	

Analysis of prior sale or transfer history of the subject property and comparable sales The subject has not sold in the past three years. The sales have no other sales history over the past year as per research done by the appraiser with all information verified by the Central Wisconsin Multiple Listing Service and Public Tax Records.

Summary of Sales Comparison Approach. See Attached Addendum

Indicated Value by Sales Comparison Approach \$ **180,000**

Indicated Value by: Sales Comparison Approach \$ **180,000** Cost Approach (if developed) \$ **224,100** Income Approach (if developed) \$ **0**

**The sales approach is given the most weight as it best reflects current buyer attitudes and market trends. The income approach is not applicable with the cost approach being most effective for new construction.**

This appraisal is made  "as is,"  subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed,  subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or  subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair: The appraisal is subject to completion per plans and specifications.

Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ **180,000** as of **04/13/2012**, which is the date of inspection and the effective date of this appraisal.

SALES COMPARISON APPROACH

RECONCILIATION

# Uniform Residential Appraisal Report

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ADDITIONAL COMMENTS

1. No employee, director, officer, or agent of the lender, or any other third party acting as a joint venture partner, independent contractor, appraisal management company, or partner on behalf of the lender has influenced or attempted to influence the development, reporting, result, or review of this assignment through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery or in any other manner. I have not been contacted by anyone other than the intended user (Lender/client as identified on the first page of the report), borrower, or designated contact to make an appointment to enter the property. I agree to immediately report any unauthorized contacts either personally by phone or electronically.

2. The appraiser has not provided any services related to the subject property in the 36 months prior to the effective date.

COST APPROACH

### COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the below cost figures and calculations.  
Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) Land value is based on sales of sites in the general area.

ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input checked="" type="checkbox"/> REPLACEMENT COST NEW Source of cost data <u>Marshall &amp; Swift Valuation Manual</u> Quality rating from cost service <u>Average</u> Effective date of cost data <u>04/13/2012</u> Comments on Cost Approach (gross living area calculations, depreciation, etc.) <u>Replacement cost is based on Marshall &amp; Swift Valuation Manual.</u> <u>Physical depreciation is based on typical age/life method of 70 year life. Land value is based on sales of sites in the general area. No functional or external obsolescence was observed.</u>	OPINION OF SITE VALUE ..... = \$ <b>14,000</b> Dwelling <u>2,855</u> Sq. Ft. @ \$ <u>78</u> ..... = \$ <b>222,690</b> Bsmt: <u>984</u> Sq. Ft. @ \$ <u>20</u> ..... = \$ <b>19,680</b> Mechanicals/Extras ..... = \$ <b>10,000</b> Garage/Carport <u>432</u> Sq. Ft. @ \$ <u>20</u> ..... = \$ <b>8,640</b> Total Estimate of Cost-New ..... = \$ <b>261,010</b> Less <u>70</u> Physical   Functional   External Depreciation <u>\$55,930</u>   <u>\$0</u>   <u>\$0</u> = \$ ( <b>55,930</b> ) Depreciated Cost of Improvements ..... = \$ <b>205,080</b> "As-is" Value of Site Improvements ..... = \$ <b>5,000</b> Estimated Remaining Economic Life (HUD and VA only) <u>55</u> Years INDICATED VALUE BY COST APPROACH ..... = \$ <b>224,100</b>
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INCOME

### INCOME APPROACH TO VALUE (not required by Fannie Mae)

Estimated Monthly Market Rent \$ 0 X Gross Rent Multiplier 0 = \$ 0 Indicated Value by Income Approach  
 Summary of Income Approach (including support for market rent and GRM) 0

PUD INFORMATION

### PROJECT INFORMATION FOR PUDs (if applicable)

Is the developer/builder in control of the Homeowners' Association (HOA)?  Yes  No Unit type(s)  Detached  Attached  
 Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.  
 Legal name of project N/A  
 Total number of phases N/A Total number of units N/A Total number of units sold N/A  
 Total number of units rented N/A Total number of units for sale N/A Data source(s) N/A  
 Was the project created by the conversion of an existing building(s) into a PUD?  Yes  No If Yes, date of conversion. N/A  
 Does the project contain any multi-dwelling units?  Yes  No Data source(s) N/A  
 Are the units, common elements, and recreation facilities complete?  Yes  No If No, describe the status of completion. N/A  
 Are the common elements leased to or by the Homeowners' Association?  Yes  No If Yes, describe the rental terms and options. N/A  
 Describe common elements and recreational facilities. N/A

# Uniform Residential Appraisal Report

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This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

**SCOPE OF WORK:** The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

**INTENDED USE:** The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

**INTENDED USER:** The intended user of this appraisal report is the lender/client.

**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions\* granted by anyone associated with the sale.

\*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

**STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS:** The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

# Uniform Residential Appraisal Report

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**APPRAISER'S CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.
20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.
21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

# Uniform Residential Appraisal Report

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22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

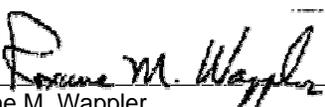
24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

**SUPERVISORY APPRAISER'S CERTIFICATION:** The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

**APPRAISER**

Signature   
 Name Roxane M. Wappler  
 Company Name R & R Appraisal, Inc.  
 Company Address 660 East Grand Avenue  
Wisconsin Rapids, WI 54494  
 Telephone Number 715-421-3614  
 Email Address rwappler@charter.net  
 Date of Signature and Report 04/17/2012  
 Effective Date of Appraisal 04/13/2012  
 State Certification # 1765-9  
 or State License # \_\_\_\_\_  
 or Other (describe) \_\_\_\_\_ State # \_\_\_\_\_  
 State WI  
 Expiration Date of Certification or License 12/14/2013

ADDRESS OF PROPERTY APPRAISED  
1816 Ellis Street  
Stevens Point, WI 54481

APPRAISED VALUE OF SUBJECT PROPERTY \$ 180,000

LENDER/CLIENT  
 Name IRR-Residential  
 Company Name Compass Mortgage, Inc.  
 Company Address 27755 Diehl Rd, Ste 300  
Warrenville, IL 60555  
 Email Address \_\_\_\_\_

**SUPERVISORY APPRAISER (ONLY IF REQUIRED)**

Signature \_\_\_\_\_  
 Name \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 Company Address \_\_\_\_\_  
 Telephone Number \_\_\_\_\_  
 Email Address \_\_\_\_\_  
 Date of Signature \_\_\_\_\_  
 State Certification # \_\_\_\_\_  
 or State License # \_\_\_\_\_  
 State \_\_\_\_\_  
 Expiration Date of Certification or License \_\_\_\_\_

SUBJECT PROPERTY  
 Did not inspect subject property  
 Did inspect exterior of subject property from street  
 Date of Inspection \_\_\_\_\_  
 Did inspect interior and exterior of subject property  
 Date of Inspection \_\_\_\_\_

COMPARABLE SALES  
 Did not inspect exterior of comparable sales from street  
 Did inspect exterior of comparable sales from street  
 Date of Inspection \_\_\_\_\_



## Condition Ratings and Definitions

C1 The improvements have been very recently constructed and have not previously been occupied. The entire structure and all components are new and the dwelling features no physical depreciation.\*

*\*Note: Newly constructed improvements that feature recycled materials and/or components can be considered new dwellings provided that the dwelling is placed on a 100% new foundation and the recycled materials and the recycled components have been rehabilitated/re-manufactured into like-new condition. Recently constructed improvements that have not been previously occupied are not considered "new" if they have any significant physical depreciation (i.e., newly constructed dwellings that have been vacant for an extended period of time without adequate maintenance or upkeep).*

C2 The improvements feature no deferred maintenance, little or no physical depreciation, and require no repairs. Virtually all building components are new or have been recently repaired, refinished, or rehabilitated. All outdated components and finishes have been updated and/or replaced with components that meet current standards. Dwellings in this category either are almost new or have been recently completely renovated and are similar in condition to new construction.

C3 The improvements are well maintained and feature limited physical depreciation due to normal wear and tear. Some components, but not every major building component, may be updated or recently rehabilitated. The structure has been well maintained.

C4 The improvements feature some minor deferred maintenance and physical deterioration due to normal wear and tear. The dwelling has been adequately maintained and requires only minimal repairs to building components/mechanical systems and cosmetic repairs. All major building components have been adequately maintained and are functionally adequate.

C5 The improvements feature obvious deferred maintenance and are in need of some significant repairs. Some building components need repairs, rehabilitation, or updating. The functional utility and overall livability is somewhat diminished due to condition, but the dwelling remains useable and functional as a residence.

C6 The improvements have substantial damage or deferred maintenance with deficiencies or defects that are severe enough to affect the safety, soundness, or structural integrity of the improvements. The improvements are in need of substantial repairs and rehabilitation, including many or most major components.

## Quality Ratings and Definitions

Q1 Dwellings with this quality rating are usually unique structures that are individually designed by an architect for a specified user. Such residences typically are constructed from detailed architectural plans and specifications and feature an exceptionally high level of workmanship and exceptionally high-grade materials throughout the interior and exterior of the structure. The design features exceptionally high-quality exterior refinements and ornamentation, and exceptionally high-quality interior refinements. The workmanship, materials, and finishes throughout the dwelling are of exceptionally high quality.

Q2 Dwellings with this quality rating are often custom designed for construction on an individual property owner's site. However, dwellings in this quality grade are also found in high-quality tract developments featuring residences constructed from individual plans or from highly modified or upgraded plans. The design features detailed, high-quality exterior ornamentation, high-quality interior refinements, and detail. The workmanship, materials, and finishes throughout the dwelling are generally of high or very high quality.

Q3 Dwellings with this quality rating are residences of higher quality built from individual or readily available designer plans in above-standard residential tract developments or on an individual property owner's site. The design includes significant exterior ornamentation and interiors that are well finished. The workmanship exceeds acceptable standards and many materials and finishes throughout the dwelling have been upgraded from "stock" standards.

Q4 Dwellings with this quality rating meet or exceed the requirements of applicable building codes. Standard or modified standard building plans are utilized and the design includes adequate fenestration and some exterior ornamentation and interior refinements. Materials, workmanship, finish, and equipment are of stock or builder grade and may feature some upgrades.

Q5 Dwellings with this quality rating feature economy of construction and basic functionality as main considerations. Such dwellings feature a plain design using readily available or basic floor plans featuring minimal fenestration and basic finishes with minimal exterior ornamentation and limited interior detail. These dwellings meet minimum building codes and are constructed with inexpensive, stock materials with limited refinements and upgrades.

Q6 Dwellings with this quality rating are of basic quality and lower cost; some may not be suitable for year-round occupancy. Such dwellings are often built with simple plans or without plans, often utilizing the lowest quality building materials. Such dwellings are often built or expanded by persons who are professionally unskilled or possess only minimal construction skills. Electrical, plumbing, and other mechanical systems and equipment may be minimal or non-existent. Older dwellings may feature one or more substandard or non-conforming additions to the original structure.

## Definitions of Not Updated, Updated, and Remodeled

### Not Updated

Little or no updating or modernization. This description includes, but is not limited to, new homes.

Residential properties of fifteen years of age or less often reflect an original condition with no updating, if no major components have been replaced or updated. Those over fifteen years of age are also considered not updated if the appliances, fixtures, and finishes are predominantly dated. An area that is 'Not Updated' may still be well maintained and fully functional, and this rating does not necessarily imply deferred maintenance or physical /functional deterioration.

### Updated

The area of the home has been modified to meet current market expectations. These modifications are limited in terms of both scope and cost.

An updated area of the home should have an improved look and feel, or functional utility. Changes that constitute updates include refurbishment and/or replacing components to meet existing market expectations. Updates do not include significant alterations to the existing structure.

### Remodeled

Significant finish and/or structural changes have been made that increase utility and appeal through complete replacement and/ or expansion.

A remodeled area reflects fundamental changes that include multiple alterations. These alterations may include some or all of the following: replacement of a major component (cabinet(s), bathtub, or bathroom tile), relocation of plumbing/gas fixtures/appliances, significant structural alterations (relocating walls, and/or the addition of square footage). This would include a complete gutting and rebuild.

## Explanation of Bathroom Count

The number of full and half baths is reported by separating the two values by a period. The full bath is represented to the left of the period. The half bath count is represented to the right of the period. Three-quarter baths are to be counted as a full bath in all cases. Quarter baths (baths that feature only toilet) are not to be included in the bathroom count.



## ADDENDUM

Borrower: Johnson, Steven

File No.: 581-443529

Property Address: 1816 Ellis Street

Case No.: 280011

City: Stevens Point

State: WI

Zip: 54481

Lender: Compass Mortgage, Inc.

### Legal Description

Lot 11 & West 1' of Lot 12 Block 5 Boy & Atwell 1st Addition Being Part Southeast Northeast, Section 32, Town 24, Range 8.

### Neighborhood Description

The area is located in the City of Stevens Point with the immediate area being mostly single family homes with these being average in terms of quality and appeal. The immediate area is mostly upper valued newer homes with the city limits offering a variety of ages and values of homes. Buildings in the area harmonize with each other and their physical surroundings. Homes in the area have been maintained and for the most part updated. There are favorable surroundings of open sites pleasing views with streets laid out with proper drainage, land contour and low traffic flow. There is mobility and economic growth with average shopping, recreation, places of worship, schools and places of employment with easy access. The area is surrounded by supporting communities which include the smaller communities of Plover, Whiting and Park Ridge with all of these areas aiding in supporting the local market and contribute to community services and amenities.

### Neighborhood Market Conditions

The area has stable values with most homes selling within 180 days and having close list price to sale price. The area has low turnover of homes with the market having been slower than average in the past 18 months with limited listings and sales. There is a balanced supply and demand with a stable market appeal. Stevens Point has a major university with major employment offered in the area with industrial, professional and service jobs. There are favorable interest rates and good buyers market with no unfavorable aspects observed.

### Additional Features

There is a gas hydronic furnace, a gas water heater and a 200 ampere electrical service. There is a full basement with laundry area with the home having three bedrooms and with there to be 2.5 baths. There is a 10 x 10 enclosed porch on the first and second levels with a rear 10 x 12 wood deck. There is also a newer two car detached garage.

### FHA Comments

There is adequate insulation and proper ventilation in both attic and crawl spaces with the appraiser having performed a head and shoulders inspection with all inspections having been performed per HUD/FHA guidelines. The home meets all components of safety, security and structural integrity. There is municipal water and sewer services with these appearing to be in proper working condition. The property meets all HUD and FHA requirements per handbook 4150.2 & 4905.1. The home is limited to minor deficiencies with normal wear and tear which result from differed maintenance. No major repairs appearing to be needed with the property meeting minimum FHA/HUD requirements.

All utilities were on and functioning at the time of inspection.

### Comments on Sales Comparison

The appraiser's comparable search parameters began by searching the Central Wisconsin MLS for single family homes sold within the past 90 days, within a 1/2 mile proximity from the subject property, built between 1850 to 1950 and containing 2500 to 4000 square feet of living area with no similar sales available. Due to the lack of recent sales activity the comparable search parameters were expanded to a 12 month sales history with a 5 mile radius with the sales used being best to determine market value.

The sales data is average for the area with the appraiser having used four sales and two active listings from the subject area. All six comparables are average quality homes of similar in appeal with all being located in the subject area. The subject is located in the City of Stevens Point with the immediate area being mostly single family homes of average quality and appeal with scattered multi family homes in the area as well. Sales are limited in the immediate area with the market having been slow over the past 18 months. The appraiser used a 12 month sales history which is common for the area with the sales used being best to determine market value. All four sales are from within the past 12 months with sales one and three being the most recent with no other similar sales within the past 6 months. (see Market Conditions Report) Values have remained stable over the past year with no time adjustment needed. Comparables five and six are active listings with a 2% adjustment given for list to sale price. The subject is an older two story home with it having three bedrooms and 2.5 baths with there to be a newly finished third level of an office, bathroom and family area. The subject has many updates with it having the effective age of a 15 year old home with a minimal adjustment given for actual age with the comparables used being most similar in overall appeal. Sale one is most similar in actual age with this sale being a smaller home of similar appeal. Sale two is most similar in size with this sale being average in overall condition. Sales two and four are large two story homes located in the Village of Plover which is located adjacent to the city limits of Stevens Point with all having similar location appeal with each having varied size sites. Sales are very limited with the appraiser having to exceed the 1 mile proximity guidelines with sale one being located in the immediate area. The comparables used are best to determine market value with all being similar in quality, appeal and location which are good indicators to value.

The City of Stevens Point has a total amount of 143 active listings and 184 actual sales in the past 12 months with values ranging from \$15,000 to \$485,000. This includes all listings and sales with there being a wide variety of ages and values of homes in the area. Market trends have shown a ratio of sale to list prices as:

96.26% for 7-12 months of 116 sales

96.23% for 4-6 months of 33 sales

93.64% for Current to 3 months of 35 sales

The trends show that the area has a slower market with stable values over the past year with sales being slower over the winter months which is typical with no indication of declining market for the immediate area. This information is based on all sales in the city limits and not just sales that are comparable to the subject property.

The immediate subject area is urban in overall location appeal with there being few sales of a specific type of property. The sales selected are located in the Stevens Point market with similar location appeal. There are few sales in the immediate area with it being customary to search wider perimeters. The market has become slow over the past several years with the comparables used being most similar in overall appeal with each varying slightly in size and amenities.

**Market value is conservative due to the lack of similar sales at the time of inspection. Exposure time is less than 180**

**ADDENDUM**

Borrower: Johnson, Steven	File No.: 581-443529	
Property Address: 1816 Ellis Street	Case No.: 280011	
City: Stevens Point	State: WI	Zip: 54481
Lender: Compass Mortgage, Inc.		

**days which is based on sales in the general area.**

My comparable search and results were viewing all sales and listings throughout all of the City of Stevens Point with the subject compared to homes similar in age, size and location appeal. The appraiser has considered all sales including varied styles and not limited to two story homes with all being similar in overall quality and appeal. All six comparables are located in the Stevens Point area within a 4 mile radius with sales closer to each other in proximity not possible as the market does not experience numerous sales in the immediate perimeters of each other.

**Predominant Value**

The appraised market value may be higher or lower than the average sale in the subject neighborhood, this does not have a negative effect on the marketability or value of the subject property with the area having a wide range of values.

**Aerial Photo**

There is an aerial photo of the subject area. It is not possible to zoom in on the neighborhood or to make the photo more clear. Aerial views are provided by google maps and the appraiser has no ability to change the map other than it is viewed on-line with the best available aerial photo having been used.

**The Definitions section of the 2012-2013 version of USPAP has a definition for Exposure Time for the first time.**

**"Exposure Time: estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal."**

**Additional Comments/Value**

The appraisal is based on completion of plans and specifications for a 3rd story familyroom, den and bathroom with an "as completed" value of \$180,000.

The subject has an "as is" value of \$135,000 which is based on sales and listings from the general area.

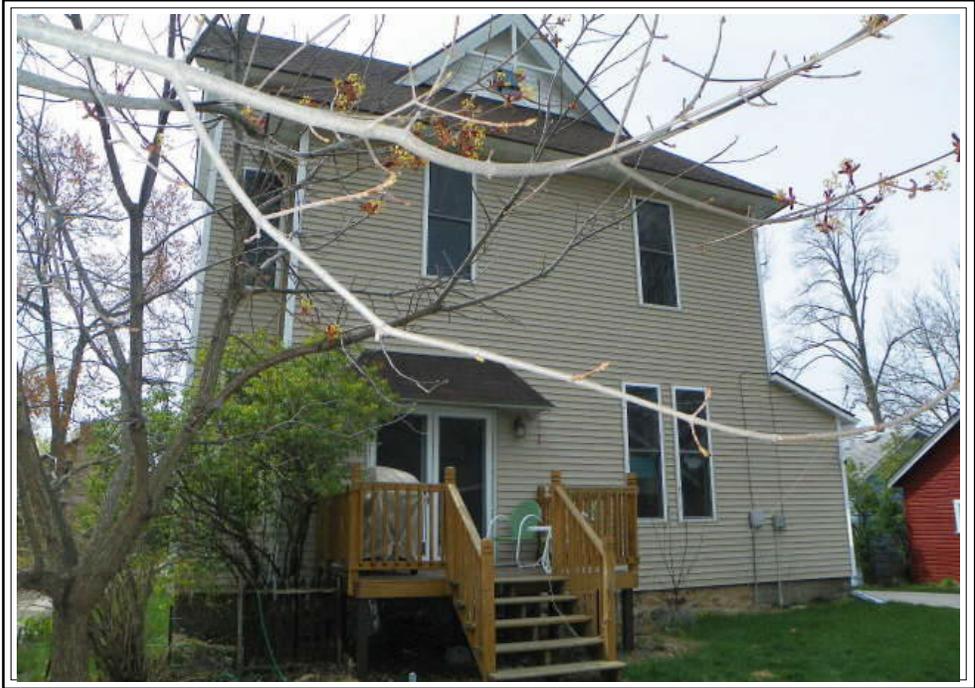
SUBJECT PROPERTY PHOTO ADDENDUM

Borrower: Johnson, Steven	File No.: 581-443529
Property Address: 1816 Ellis Street	Case No.: 280011
City: Stevens Point	State: WI
Lender: Compass Mortgage, Inc.	Zip: 54481



FRONT VIEW OF  
SUBJECT PROPERTY

Appraised Date: April 13, 2012  
Appraised Value: \$ 180,000



REAR VIEW OF  
SUBJECT PROPERTY



STREET SCENE

Borrower: Johnson, Steven  
Property Address: 1816 Ellis Street  
City: Stevens Point  
Lender: Compass Mortgage, Inc.

File No.: 581-443529  
Case No.: 280011  
State: WI  
Zip: 54481



Kitchen



Livingroom



1/2 Bathroom

Borrower: Johnson, Steven  
Property Address: 1816 Ellis Street  
City: Stevens Point  
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File No.: 581-443529  
Case No.: 280011  
State: WI  
Zip: 54481



Dining Room



Bathroom



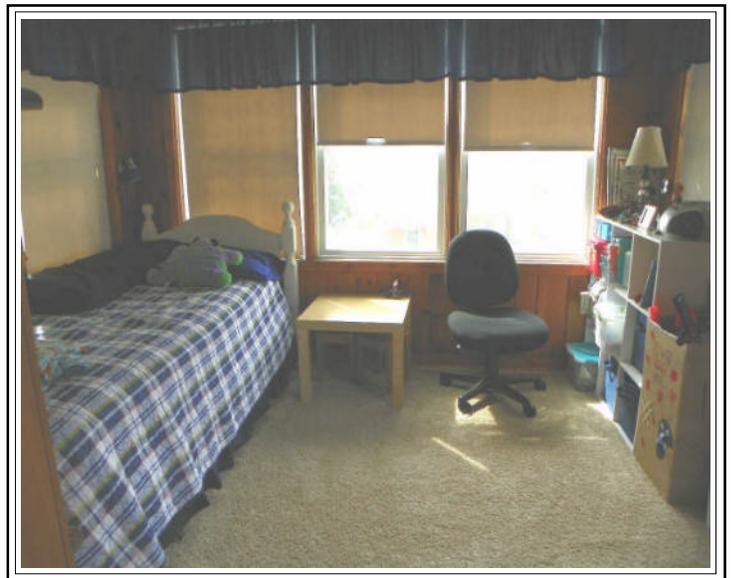
Bedroom



Bedroom



Bedroom



Enclosed Porch/2nd Story

Borrower: Johnson, Steven  
Property Address: 1816 Ellis Street  
City: Stevens Point  
Lender: Compass Mortgage, Inc.

File No.: 581-443529  
Case No.: 280011  
State: WI  
Zip: 54481



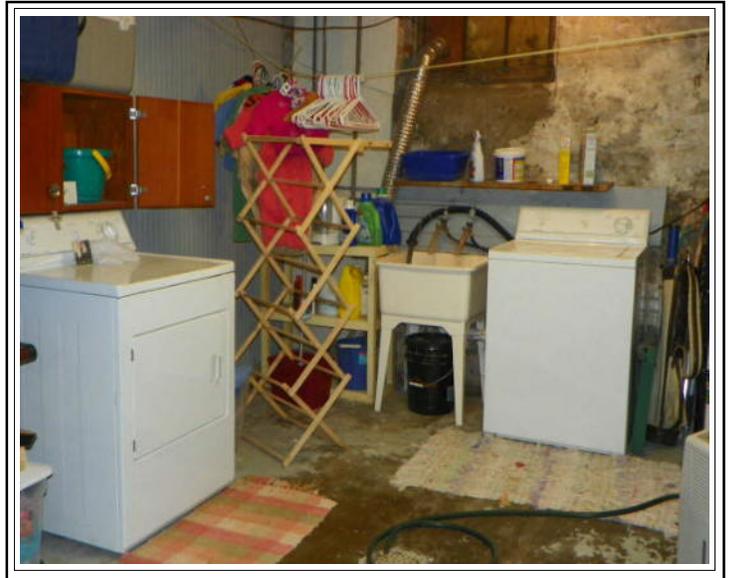
Enclosed Porch/Main Floor



Attic/Future Finished Family Room



Attic/Future Bathroom



Basement/Laundry Area



Furnace & Water Heater



Electrical Service

Borrower: Johnson, Steven  
Property Address: 1816 Ellis Street  
City: Stevens Point  
Lender: Compass Mortgage, Inc.

File No.: 581-443529  
Case No.: 280011  
State: WI  
Zip: 54481



Addt. Front View



Addt. Rear View



Detached Garage



Rear/Side View



Front/Side View



Addt. Street Scene

COMPARABLE PROPERTY PHOTO ADDENDUM

Borrower: Johnson, Steven	File No.: 581-443529	
Property Address: 1816 Ellis Street	Case No.: 280011	
City: Stevens Point	State: WI	Zip: 54481
Lender: Compass Mortgage, Inc.		



COMPARABLE SALE #1

2141 Main Street  
Stevens Point, WI 54481  
Sale Date: s02/12;c02/12  
Sale Price: \$ 177,000



COMPARABLE SALE #2

2211 Shadowview Circle  
Plover, WI 54467  
Sale Date: s10/11;c10/11  
Sale Price: \$ 175,400



COMPARABLE SALE #3

712 South Maple Bluff Court  
Stevens Point, WI 54482  
Sale Date: s03/12;c01/12  
Sale Price: \$ 187,000

COMPARABLE PROPERTY PHOTO ADDENDUM

Borrower: Johnson, Steven	File No.: 581-443529	
Property Address: 1816 Ellis Street	Case No.: 280011	
City: Stevens Point	State: WI	Zip: 54481
Lender: Compass Mortgage, Inc.		



COMPARABLE SALE #4

1471 Ashwood Drive  
Plover, WI 54467  
Sale Date: s04/11;c04/11  
Sale Price: \$ 235,000



COMPARABLE SALE #5

1926 Center Street  
Stevens Point, WI 54481  
Sale Date: Active  
Sale Price: \$ 164,900



COMPARABLE SALE #6

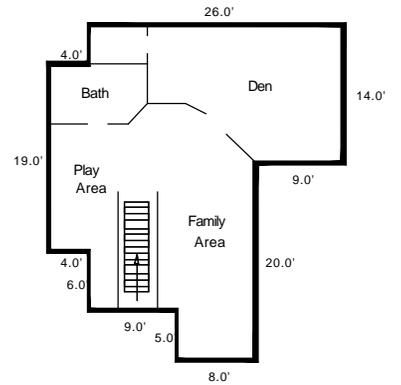
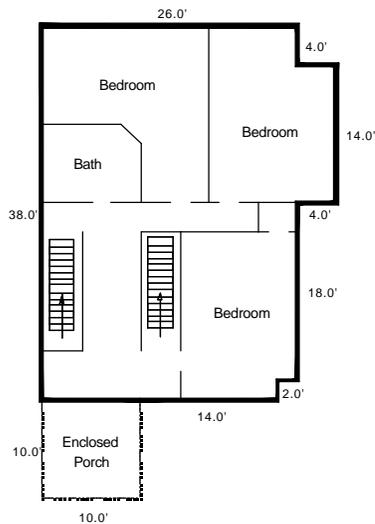
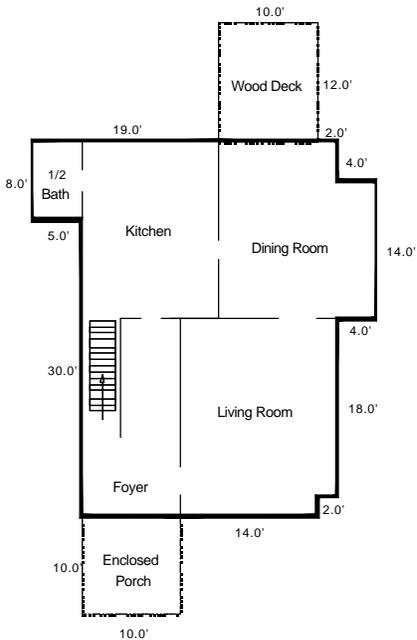
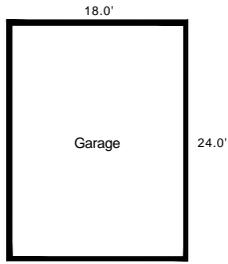
618 Lindbergh Avenue  
Stevens Point, WI 54481  
Sale Date: Active  
Sale Price: \$ 185,000



FLOORPLAN SKETCH

Borrower: Johnson, Steven  
 Property Address: 1816 Ellis Street  
 City: Stevens Point  
 Lender: Compass Mortgage, Inc.

File No.: 581-443529  
 Case No.: 280011  
 State: WI  
 Zip: 54481



SeabhyApex/™

Comments:

AREA CALCULATIONS SUMMARY			
Code	Description	Size	Net Totals
GLA1	First Floor	1080.00	1080.00
GLA2	Second Floor	1040.00	1040.00
GLA3	Third Floor	735.00	735.00
P/P	Enclosed Porch	100.00	
	Wood Deck	120.00	
	Enclosed Porch	100.00	320.00
GAR	Garage	432.00	432.00
TOTAL LIVABLE (rounded)			2855

LIVING AREA BREAKDOWN		
Breakdown		Subtotals
<b>First Floor</b>		
4.0 x	14.0	56.00
2.0 x	36.0	72.00
10.0 x	38.0	380.00
5.0 x	8.0	40.00
10.0 x	38.0	380.00
4.0 x	38.0	152.00
<b>Second Floor</b>		
4.0 x	14.0	56.00
14.0 x	38.0	532.00
10.0 x	38.0	380.00
2.0 x	36.0	72.00
<b>Third Floor</b>		
4.0 x	19.0	76.00
8.0 x	34.0	272.00
9.0 x	29.0	261.00
9.0 x	14.0	126.00
14 Calculations Total (rounded)		2855

LOCATION MAP

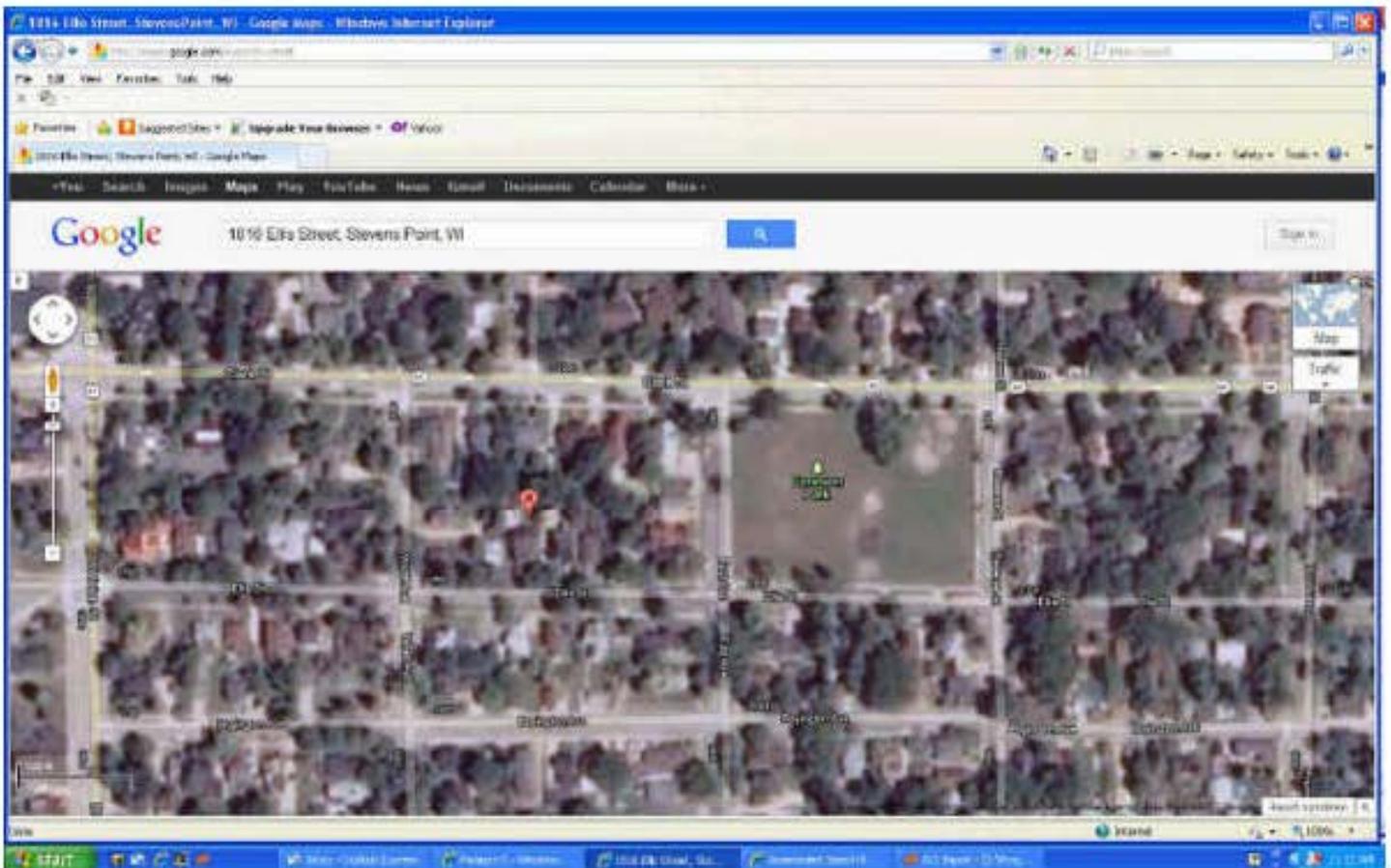
Borrower: Johnson, Steven  
Property Address: 1816 Ellis Street  
City: Stevens Point  
Lender: Compass Mortgage, Inc.

File No.: 581-443529  
Case No.: 280011  
State: WI  
Zip: 54481



Borrower: Johnson, Steven  
Property Address: 1816 Ellis Street  
City: Stevens Point  
Lender: Compass Mortgage, Inc.

File No.: 581-443529  
Case No.: 280011  
State: WI  
Zip: 54481



Borrower <b>Johnson, Steven</b>		File No. <b>581-443529</b>	
Property Address <b>1816 Ellis Street</b>			
City <b>Stevens Point</b>	County <b>Portage</b>	State <b>WI</b>	Zip Code <b>54481</b>
Lender <b>Compass Mortgage, Inc.</b>			

**APPRAISAL AND REPORT IDENTIFICATION**

This Appraisal Report is one of the following types:

Self Contained (A written report prepared under Standards Rule 2-2(a), pursuant to the Scope of Work, as disclosed elsewhere in this report.)

Summary (A written report prepared under Standards Rule 2-2(b), pursuant to the Scope of Work, as disclosed elsewhere in this report.)

Restricted Use (A written report prepared under Standards Rule 2-2(c), pursuant to the Scope of Work, as disclosed elsewhere in this report, restricted to the stated intended use by the specified client or intended user.)

**Comments on Standards Rule 2-3**

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions and conclusions were developed and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification (if there are exceptions, the name of each individual providing significant real property appraisal assistance is stated elsewhere in this report).
- Unless otherwise indicated, I have performed no services regarding the subject property within the prior three years, as an appraiser or in any other capacity.

**Comments on Appraisal and Report Identification**

Note any USPAP related issues requiring disclosure and any State mandated requirements:

This report is intended for the use only by the client and/or assigns. Use of this report by others is not intended by the appraiser with this report intended only for mortgage lending purposes or related transactions if applicable. Appraisal reports made for lenders are technical documents specifically made to the lender requirements and specific technical needs of the client.

1. The scope of work and the analysis applied in completing the attached report is usually, but not limited to the following:

A. The appraiser has completed a physical inspection of the subject property both on the interior and exterior.

B. Comparable property data is acquired from one or more of the following: appraiser files, physical inspection, MLS data, buyers, sellers, brokers and assessment records. The appraisal may contain electronically printed pictures.

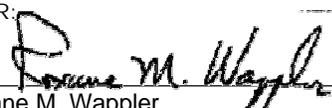
C. Some comparable photos may be from the appraiser data base.

D. Neighborhoods are observed during the inspection of the subject property and analysis of the market history reviewed on the Multiple Listing Service to review physical or economic factors that could affect the subject property value.

E. Site size is determined by the legal description given on the Tax Receipt for the subject property. The appraiser is not a licensed land surveyor and only uses County Land Description Data.

F. Cost data is obtained from the Marshall & Swift Cost Handbook along with local builders and suppliers.

APPRAISER: \_\_\_\_\_

Signature: 

Name: Roxane M. Wappler

Date Signed: 04/17/2012

State Certification #: 1765-9

or State License #: \_\_\_\_\_

State: WI

Expiration Date of Certification or License: 12/14/2013

Effective Date of Appraisal: 04/13/2012

SUPERVISORY APPRAISER (only if required): \_\_\_\_\_

Signature: \_\_\_\_\_

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

Date Signed: \_\_\_\_\_

State Certification #: \_\_\_\_\_

or State License #: \_\_\_\_\_

State: \_\_\_\_\_

Expiration Date of Certification or License: \_\_\_\_\_

Supervisory Appraiser inspection of Subject Property:

Did Not     Exterior-only from street     Interior and Exterior

Borrower: Johnson, Steven	File No.: 581-443529
Property Address: 1816 Ellis Street	Case No.: 280011
City: Stevens Point	State: WI Zip: 54481
Lender: Compass Mortgage, Inc.	



**State of Wisconsin  
Department of Safety and Professional Services**

**CERTIFIED RESIDENTIAL APPRAISER**

**ROXANE M WAPPLER**

**WISCONSIN RAPIDS, WI 54494**

The person whose name appears on this document has complied with the provisions of the Wisconsin Statutes and holds the credential specified.

Credential No. 1765-9

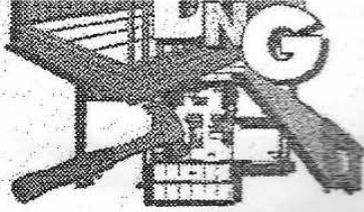
Expiration Date: 12/14/2013

To verify the current status of this credential, use "Lookup a License" at [dsps.wi.gov](http://dsps.wi.gov)

Appraiser License

Borrower: Johnson, Steven  
 Property Address: 1816 Ellis Street  
 City: Stevens Point  
 Lender: Compass Mortgage, Inc.

File No.: 581-443529  
 Case No.: 280011  
 State: WI  
 Zip: 54481



Dave Grawey  
 1820 Woodridge Circle  
 Custer, WI. 54423  
 (715) 592-6552

DATE	ESTIMATE #
2/28/02	109

**NAME / ADDRESS**  
 Steve Johnson  
 1816 Ellis St.  
 StevensPoint, WI. 54481

**PROJECT**  
 ATTIC REMODEL

DESCRIPTION	QTY	TOTAL
WE HEREBY PROPOSE THE FOLLOWING FOR ATTIC ADDITION OF 748 SQ. FT, LIVING SPACE		
LABOR TO REMOVE OLD INSULATION, & CHIMNEY AREA	6.5	1,027.00
DISPOSAL OF OLD MATERIALS		450.00
MATERIALS TO ROUGH-IN ATTIC TO PLAN 748 SQ. FT.		2,487.28
LABOR FOR ROUGH - IN	9.5	1,501.00
PLUMBING FOR BATH INCLUDES LABOR & MATERIALS		0.00
BATH FIXTURES ( angle shower w/ door, toilet, pedestal sink, faucets		2,285.00
ELECTRICAL - FOR BATH ROOM, OFFICE, AND PLAY AREA TO PLAN		1,065.00
-DISHER ELECTRIC		2,515.00
HVAC- BOILER REPLACEMENT & ADDITIONAL HEATING FOR ATTIC REMODEL ( CHEYS PLUMBING INC		0.00
BUILDING PERMITS		10,640.00
INSULATION- R-30 & R-22		300.00
INSULATION- R-30 & R-22		1,200.00
DRYWALL - MATERIALS & LABOR TO HANG MUD TAPE, FINISH, PRIME		6,311.45
FINISHING MATERIALS- PRIME PAINTED SIX PANEL DOORS, BASE, WINDOW TRIM, STAIR RAILS, HALF WALL LEDGING TO BE OAK ONLY		1,377.55
LABOR - DOORS & TRIM WORK	13	2,054.00
FLOORING ALLOWANCE- for attic remodel and stair ways and hallway		1,500.00
		0.00
STAIR WAY see estimate #1536		3,200.00
ON SITE CONTACTS-DAVE 715-340-3698		
<b>TOTAL</b>		<b>\$38,013.28</b>

## Michael Ostrowski

---

**From:** Kris Pethick <kpethick@capmail.org>  
**Sent:** Tuesday, September 18, 2012 2:24 PM  
**To:** Michael Ostrowski  
**Subject:** Johnson appeal

I feel that the work on this property is warranted & necessary, I'm just not confident that the increased value per the appraisal is supported by the work being completed. My fear is the funds would potentially be lost if the home had to be sold in the near future, but it is still a valid use of the funds & an investment in the community.

Kris Pethick (NMLS #247481)  
CAP Services, Inc  
1725 W River Dr, Stevens Point, WI, 54481  
715/343-7142 (office)  
715/340-1154 (cell)

Parcel: 240832102710  
Parcel Type: Residential  
Owner: Steven & Stephanie Johnson  
Prop. Address: 1816 Ellis St  
Living Area: 2,008.0

Neighborhood: 29 Central (Residential)  
Zone: R3-TWO FAMILY  
Land Use: Residential  
Dwelling #: 1 (1 of 1)  
Effective Age: 62

*Current*

Description	Calculated Area	Value
First Story	1,024.0	\$94,468
Second Story	984.0	\$24,203
Additional Story		
Attic / Finished		
Half Story / Finished		
<b>Base Price</b>		<b>\$118,671</b>
Room / Unfinished		
Attic / Unfinished		
Half Story / Unfinished		
Basement Adjustment	984.0	-\$432
Finished Basement Living Area		
Heating/AC	2,008.0	
Plumbing	2,008.0	\$2,000
Features		\$2,000
Attachments		\$3,400
<b>Adjusted Base Price</b>		<b>\$125,639</b>
Grade Adjustment	10.00%	\$138,202
Cost & Design Adjustment		\$138,202
Local Modifier Adjustment		\$138,202
CDU Adjustment	38.00%	\$85,685
Percent Complete	100.00%	\$85,685
<b>Dwelling Value</b>		<b>\$85,700</b>
Detached Improvements	\$7,500	\$93,200
Adjustments		\$93,200
Overrides		\$93,200
<b>Total Improvement Value</b>	<b>\$46.41</b>	<b>\$93,200</b>
<b>Total Land Value</b>		<b>\$11,500</b>
<b>Total Assessed Value</b>	<b>\$52.14</b>	<b>\$104,700</b>

Parcel: 240832102710  
Parcel Type: Residential  
Owner: Steven & Stephanie Johnson  
Prop. Address: 1816 Ellis St  
Living Area: 2,618.0

Neighborhood: 29 Central (Residential)  
Zone: R3-TWO FAMILY  
Land Use: Residential  
Dwelling #: 1 (1 of 1)  
Effective Age: 42

*After  
Proposed  
Improvements*

Description	Calculated Area	Value
First Story	1,024.0	\$89,452
Second Story	984.0	\$22,918
Additional Story		
Attic / Finished	610.0	\$13,834
Half Story / Finished		
<b>Base Price</b>		<b>\$126,204</b>
Room / Unfinished		
Attic / Unfinished		
Half Story / Unfinished		
Basement Adjustment	984.0	-\$432
Finished Basement Living Area		
Heating/AC	2,618.0	
Plumbing	2,618.0	\$5,000
Features		\$2,000
Attachments		\$3,400
<b>Adjusted Base Price</b>		<b>\$136,172</b>
Grade Adjustment	10.00%	\$149,789
Cost & Design Adjustment		\$149,789
Local Modifier Adjustment		\$149,789
CDU Adjustment	18.00%	<del>\$122,827</del>
Percent Complete	100.00%	\$122,827
<b>Dwelling Value</b>		<b>\$122,800</b>
Detached Improvements	\$7,500	\$130,300
Adjustments		\$130,300
Overrides		\$130,300
<b>Total Improvement Value</b>	<b>\$49.77</b>	<b>\$130,300</b>
<b>Total Land Value</b>		<b>\$11,500</b>
<b>Total Assessed Value</b>	<b>\$54.16</b>	<b>\$141,800</b>

*Attic  
Finish*

*Xmas Both Added*

*Updated!*

*MAX  
Fair Market Value*

*\$150,900*

Sale Count: 6	Subject	Sale 1	Sale 2	Sale 3
Image				
Property Address	1816 Ellis St	2008 Illinois Ave	2109 Church St	1524 Clark St
Street Name	ELLIS	ILLINOIS	CHURCH	CLARK
Parcel	240832102710	240833301528	240832402715	240832100622
Weight			13.43755	
Subdivision	Metes And Bounds	Central Addn	Certified Survey Map	Certified Survey Map
Style	X 05 Two Story	051 Colonial - Pre WWII	X 05 Two Story	X 05 Two Story
Year Built	1910	1926	1925	1930
Effective Year	1960	1970	1950	1930
Effective Age	52	42	62	82
Living Area	2008.0	2056.0	2597.0	1770.0
Unfinished Area	0.0	0.0	0.0	0.0
Stories	2.00	2.00	2.00	2.00
Exterior Wall	Alum / Vinyl / Steel	Slate/Asphalt	1/2 Masonry / 1/2 Frame	Brick
Total Rooms	6	7	10	7
Family Rooms	0	1	0	0
Bedrooms	3	3	5	3
Full Baths	1	1	1	1
Half Baths	1	1	1	1
Grade	C+	C+	C+	C+
CDU	Good	Very Good	Very Good	Good
Features	\$2,400	\$5,600	\$10,400	\$6,800
Acreage	0.146	0.218	0.121	0.236
Attachments	\$5,400	\$9,100	\$1,500	\$600
Improvements	\$7,100	\$2,600	\$2,600	\$8,900
Land Use	Residential	Residential	Residential	Residential
Neighborhood	294 Main & Clark Neighborhoo	29 Central (Residential)	291 Strng Ellis & O Boy & Atwell	294 Main & Clark Neighborhoo
Zone	R3-TWO FAMILY	R3-TWO FAMILY	R3-TWO FAMILY	R5-MULTI-FAMILY II
Basement	Full	Full	Full	Full
Exposed Basement	No	No	No	No
Heating	Basic	A/C	Basic	A/C
Fuel	Gas	Gas	Gas	Gas
System	Hot Water	Warm Air	Warm Air	Warm Air
Kitchen Rating	Average	Good	Good	Average
Bathroom Rating	Average	Good	Average	Average
Interior Condition	Interior Same As Exterior	Interior Same As Exterior	Interior Same As Exterior	Interior Same As Exterior
Physical Condition	Average	Average	Average	Average
Topography	Level	Level	Level	Level
Utilities	All Public	All Public	All Public	All Public
Street	Paved	Paved	Paved	Paved
Dwelling Setback	Same As Nbhd	Same As Nbhd	Same As Nbhd	Same As Nbhd
Fronting Traffic	Light	Light	Light	Heavy
Sale Date		4/27/2012	12/9/2011	11/22/2011
Sale Amount		\$139,500	\$133,400	\$149,000
Time Adjustment				
Adjusted Price	\$104,700 (Assessment)	\$139,500	\$133,400	\$149,000
Square Foot Price	\$52.14	\$67.85	\$51.36	\$84.18
Sequence				

**Global Valuation System**  
**Comparable Sales Analysis**

Sale Count: 6	Subject	Sale 4	Sale 5	Sale 6
Image				
Property Address	1816 Ellis St	1917 Strong's Ave	1717 Fremont St	1824 Welsby Ave
Street Name	ELLIS	STRONGS	FREMONT	WELSBY
Parcel	240832102710	240832401006	240833200913	240833300333
Weight		27.34385		
Subdivision	Metes And Bounds	Strong's Second Addn	Certified Survey Map	Millers Sub
Style	X 05 Two Story	X 05 Two Story	07 Old Style	08 Bungalow
Year Built	1910	1900	1915	1916
Effective Year	1960	1930	1980	1940
Effective Age	52	82	32	72
Living Area	2008.0	1776.0	1510.0	1131.0 (677) φ
Unfinished Area	0.0	0.0	0.0	232.5
Stories	2.00	2.00	2.00	1.50
Exterior Wall	Alum / Vinyl / Steel	Alum / Vinyl / Steel	Alum / Vinyl / Steel	Alum / Vinyl / Steel
Total Rooms	6	8	5	6
Family Rooms	0	0	0	0
Bedrooms	3	4	3	4
Full Baths	1	2	3	2
Half Baths	1	0	0	0
Grade	C+	C+	C+	C+
CDU	Good	Good	Very Good	Good
Features	\$2,400	\$2,400	\$3,000	
Acreage	0.146	0.187	0.219	0.236
Attachments	\$5,400	\$4,400	\$7,100	\$27,600
Improvements	\$7,100	\$3,200	\$5,300	\$1,000
Land Use	Residential	Residential	Residential	Residential
Neighborhood	294 Main & Clark Neighborhood	291 Strng Ellis & O Boy & Atwell	29 Central (Residential)	29 Central (Residential)
Zone	R3-TWO FAMILY	R3-TWO FAMILY	R3-TWO FAMILY	R2-SINGLE
Basement	Full	Partial	Full	Full
Exposed Basement	No	No	No	No
Heating	Basic	Basic	A/C	A/C
Fuel	Gas	Gas	Gas	Oil
System	Hot Water	Warm Air	Warm Air	Warm Air
Kitchen Rating	Average	Average	Good	Average
Bathroom Rating	Average	Average	Good	Average
Interior Condition	Interior Same As Exterior	Interior Same As Exterior	Interior Same As Exterior	Interior Same As Exterior
Physical Condition	Average	Average	Good	Average
Topography	Level	Level	Level	Level
Utilities	All Public	All Public	All Public	All Public
Street	Paved	Paved	Paved	Paved
Dwelling Setback	Same As Nbhd	Same As Nbhd	Same As Nbhd	Same As Nbhd
Fronting Traffic	Light	Light	Light	Light
Sale Date		4/13/2012	5/29/2012	7/29/2011
Sale Amount		\$129,500	\$139,500	\$148,000
Time Adjustment				
Adjusted Price	\$104,700 (Assessment)	\$129,500	\$139,500	\$148,000
Square Foot Price	\$52.14	\$72.91	\$92.38	\$130.85
Sequence				

## HUD issues smoke-free 'toolkit'

By Mark S. Alper, RHM, vice president of compliance

HUD has issued a 63-page publication it is referring to as a "toolkit" for smoke-free housing. The cover letter in the toolkit is signed by executives of HUD, the American Lung Association, the American Academy of Pediatrics, and the Center for Disease Control, and complements notices H2010-21 (multifamily housing) and PIH2009-21 (public housing).

HUD states that it believes 75 percent of residents in both multifamily and public housing will support living in a smoke-free environment. Nevertheless, the agency is placing "winning resident support" at the forefront of any effort to make housing smoke-free. HUD's notices on the desirability for smoke-free housing make clear that pursuit of this goal is a voluntary one. The reason it is voluntary is that there is no federal law that mandates that public and assisted housing be smoke-free.

In addition to asserting that the use of tobacco products is not a legal right, and that smoke-free housing initiatives do not involve Constitutional issues, HUD has included some interesting statistics. For example, HUD states that the average cost of rehabilitating a dwelling unit occupied by a non-smoker is \$560 as opposed to \$1,810 for a household with a light smoker and a whopping \$3,515 for a household occupied by a heavy smoker.

The toolkit recommends the following steps:

1. Survey Residents
2. Establish a timeframe for change
3. Inform residents of the benefits of a smoke-free environment
4. Include new policies with respect to leases and house rules
5. Promote and enforce smoke-free policies
6. Accommodate smokers, providing information and resources for residents who would like to quit smoking

In an important disclaimer, HUD notes that existing regulations and guidelines will take precedence over the contents of the toolkit and, because the toolkit was designed for multifamily housing, PHA requirements may involve different sets of procedures.

The toolkit can be accessed [here](#).

## ~~Fair Housing and how it applies to LIHTC~~

~~By Jo Ikelheimer, MPA, RHM~~

~~Perusing over my archived HMU articles from the past few years, I found that usually, in the fair month of June, I write about highlights from the National Council of State Housing Agencies (NCSHA) annual Housing Credit Conference. This year, with the conference not until the last week of the month, I am going to be mixing it up a little and touching upon an issue that I haven't written about before in this forum: fair housing laws as applied to the Low-Income Housing Tax Credit Program. (I will also be speaking on this topic at the upcoming conference.)~~

~~Starting with the basics, LIHTC practitioners should know that for "stand alone" tax credit properties, only two out of the three federal fair housing laws apply. These are the Fair Housing Act as amended in 1988 (CFR Part 8) and the Americans with Disabilities Act (ADA). If, however, the tax credit property is blended with another program that has federal assistance, then Section 504 of the Rehabilitation Act of 1973 (CFR Part 100 Et Seq) is also applicable. So if you are managing a tax credit property blended with HUD project-based assistance, it is pretty obvious that Section 504 applies. One cautionary note, however, is that the HOME Program, which is blended with around forty-percent of LIHTC properties, is also considered to be a federal assistance program. Please take heed if your property falls into that category.~~

~~Another thing that I would like to point out for LIHTC is HUD's Final Rule on equal access to HUD programs regardless of sexual orientation or gender identity, which was published earlier this year. I have had several students in recent classes confuse this with a new protected class under the Fair Housing Act, which it is not! This is considered to be a new HUD program rule, but not an amendment to the Fair Housing Act. It is applicable to all HUD programs, however, so again if your tax credit property has HOME and/or project-based HUD assistance then it will be worth your while to review the particulars of this Final Rule.~~

# SMOKE FREE HOUSING



A Toolkit for **Owners/Management Agents** of  
Federally Assisted Public and Multi-family Housing



U.S. Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control

*Produced by North American Management with funding from the US Department of Housing and Urban Development, Contract No. C-PHI-01063.*



Dear Reader:

The U.S. Department of Housing and Urban Development, the Department of Health and Human Services, the American Academy of Pediatrics, and the American Lung Association are joining together to protect everyone living in federally assisted multifamily housing from the dangers of secondhand smoke. Since 2009, HUD has strongly encouraged Public Housing Agencies to adopt smoke-free buildings to protect the health of residents, and now urges federally assisted multifamily property owners to go smoke-free. To assist you in this process, HUD has developed smoke-free housing toolkits to provide user-friendly information on making all buildings smoke-free. There are materials for landlords, including Public Housing Agencies, and for resident organizations.

The U.S. Surgeon General has warned that breathing secondhand smoke for even a short time is dangerous. Children, the elderly and disabled, and low-income and other disadvantaged individuals and families are the most likely to suffer from breathing secondhand smoke. Secondhand smoke causes heart attacks and lung cancer and it makes asthma worse. Smoke-free housing is especially important for kids. Secondhand smoke can hurt their growing lungs, and kids and teens with asthma have difficulty breathing. Secondhand smoke is also associated with Sudden Infant Death Syndrome (SIDS). Research has demonstrated that smoke does not stay contained within individual apartments and as a result can harm residents in non-smoking apartments. For more information on the harmful effects of secondhand smoke on children, please visit the website of the American Academy of Pediatrics at [www.aap.org/richmondcenter](http://www.aap.org/richmondcenter).

Smoke-free housing benefits landlords and managers as well. It reduces fires caused by smoking. In 2007, over 140,000 fires were started by cigarettes, cigars and pipes in the U.S. causing \$530 million in property damage, according to the National Fire Protection Association. Twenty-five percent of people killed in smoking-related fires are not the actual smokers, with many being children of the smokers, neighbors or friends. Smoke-free housing also saves on property maintenance costs from cleaning and painting stained walls and ceilings and repairing burn marks left by smoking. Less damage means less expense to get a unit ready for a new resident. It is completely legal to go smoke-free, and all smoke-free policies don't have to look alike.

Smoking is a powerful addiction and people who smoke need help to quit. There are ways for smokers to get help quitting, including by calling 1-800-QUIT-NOW (1-800-784-8669/TTY 1-800-332-8615). Smokers can also talk with their doctors and other healthcare providers, or visit the American Lung Association's website at [www.lung.org](http://www.lung.org).

Everyone deserves the right to breathe clean air. Please join us by going smoke-free and making sure that smokers know how to get help quitting. While there will be challenges along the way, everyone will benefit from smoke-free multifamily housing!

Sincerely,

Jon L. Gant  
Director, Office of Healthy Homes  
and Lead Hazard Control  
U.S. Department of Housing and Urban Development

Charles D. Connor  
President and CEO  
American Lung Association

Robert W. Block, M.D., FAAP  
President  
American Academy of Pediatrics

Tim A. McAfee, M.D., M.P.H.  
Director, Office on Smoking and Health  
National Center for Chronic Disease Prevention and  
Health Promotion, Centers for Disease Control and  
Prevention

## **ACKNOWLEDGMENTS**

It is well-documented that cigarette smoking and related secondhand tobacco smoke together are the number one cause of preventable disease in the United States. Because exposure to any amount of secondhand smoke can be hazardous and smoke migrates between units in multifamily housing, the U.S. Department of Housing and Urban Development (HUD) is encouraging owners and public housing authorities to implement smoke-free housing policies and programs.

HUD's commitment to the health and safety of families in assisted housing, as well as to aiding agencies with meeting the goal of smoke-free housing, is the catalyst for creating toolkits to assist the process. In this toolkit, HUD's Office of Healthy Homes and Lead Hazard Control and its contract partner, North American Management, have assembled fact sheets, brochures, and resources to guide the process of going and living smoke-free.

We wish to thank our partners for this initiative: The U.S. Department of Health and Human Services, The American Academy of Pediatrics and The American Lung Association. Special appreciation also goes to the myriad agencies and organizations listed in the Resource section of this toolkit, especially the U.S. Environmental Protection Agency (EPA), which provided quantities of its publications.

We also would like to acknowledge our advisory panel, which assisted the process of selecting the materials ultimately included in the toolkits. Members include the EPA, Campus Firewatch, the Smoke-Free Environments Law Project, the Home Safety Council, Smokefree Housing New England, Tenant and Workers United, the Portland Housing Authority, the National Center for Healthy Housing, the National Association of Housing Redevelopment Officials, National Alliance of Resident Services in Affordable and Assisted Housing, and the National Organization of African Americans in Housing.

HUD does not guarantee the accuracy and currency of non-Federal websites that are referred to in this toolkit.

**U.S. Department of Housing and Urban Development**  
**Office of Healthy Homes and Lead Hazard Control**  
451 7<sup>th</sup> Street, S.W., Suite 8236  
Washington, D.C. 20410



## CONTENTS

### Smoke-Free Housing: A Toolkit for Owners/Management Agents

This Smoke-Free Housing Toolkit is provided by the U.S. Department of Housing and Urban Development (HUD) in partnership with the American Academy of Pediatrics, the American Lung Association, and the U.S. Department of Health and Human Services. It is a compilation of educational, “how-to” and resource brochures, pamphlets and other information designed to assist owners/management agents of public and assisted multi-family housing who want safer and healthier homes for residents.

The Toolkit contents include:

#### *A Note for Public Housing Agencies*

**1. Reasons To Explore Smoke Free-Housing**

Detailed brochure outlining reasons to consider smoke-free housing published by the National Center for Healthy Housing, 2009.

**2. The Health Consequences of Involuntary Exposure to Tobacco Smoke**

Cover page of *The Health Consequences of Involuntary Exposure to Tobacco Smoke, A Report of the Surgeon General, Executive Summary*, 2006, U.S. Department of Health and Human Services, Public Health Service, Rockville, MD.

Also included here is a synopsis of the 2006 U.S. Surgeon General's findings of the harmful effects associated with exposure to secondhand smoke.

**3. There Is No Constitutional Right to Smoke**

Fact sheet provides guidance for possible legal challenges from smokers; produced by the Public Health Institute Technical Assistance Legal Center, 2004.

**4. Frequently Asked Questions**

FAQs about benefits of smoke-free housing.

**5. Going Smoke Free: Steps for Landlords**

A brochure highlights the benefits of smoke-free housing, including tips for owners/management agents of federally assisted properties.

**6. A Landlord's Guide to No-Smoking Policies**

A publication of the Smoke Free Housing Project, it provides detailed justification for instituting smoke-free policies. Reprinted with permission from the Portland-Vancouver Metro Area Smokefree Housing Project, a partnership between the American Lung Association of Oregon, Multnomah County Health Department and Clark County Public Health.

**7. Sample Resident Letter and Secondhand Smoke Survey**

**8. Possible Changes to an Owner's House Rules or a PHA's Lease Addendum**

## **9. HUD Notices**

**(a) Notice H-2010-21—HUD Assistant Secretary for Housing—Federal Housing Commissioner**

**(b) PIH-2012-25 (HA) –HUD Office of Public and Indian Housing and Office of Healthy Homes and Lead Hazard Control**

Each HUD notice encourages federally assisted multi-family housing (H-2010-21) and federally assisted Public Housing (PIH-2009-21) to implement smoke-free housing policies.

## **10. Housing Authorities/Commissions with Smoke-Free Policies**

Smoke-Free Environments Law Project, The Center for Social Gerontology, listing updated 1/20/11.

## **11. Select Resource Organizations and How Each Can Help**

## **NOTE for PUBLIC HOUSING AGENCIES**

U.S. Department of Housing and Urban Development (HUD), in Notices PIH-2009-21 and PIH-2012-25 and by issuing this toolkit, encourages Public Housing Agencies (PHAs) to implement smoke-free housing policies and programs.

Towards that end, the Department has created this toolkit, composed of fact sheets, brochures, and other resources that our partners have created to help guide PHAs and Multifamily owners and property managers through the process of implementing smoke-free policies. PHAs should note that because this toolkit is also intended to be useful for participants in HUD's Multifamily Housing program, not all portions of this toolkit are applicable to PHAs.

For example, *A Landlord's Guide to No-Smoking Policies*, created by the Smoke Free Housing Project, states "Just as you might prohibit pets, you can prohibit smoking..." While Multifamily owners and property managers may prohibit pets, PHAs may not.

Accordingly, where there is information that conflicts with HUD's Public Housing regulations and notices, the regulations and notices supersede this toolkit.

Also, there are PHA-specific steps that PHAs should follow when implementing smoke-free policies. While HUD's Office of Multifamily Housing encourages owners to add their smoke-free policy to their house rules, the Office of Public Housing encourages PHAs to engage with their residents when considering a new policy, consult with their resident boards and revise their PHA Plans, lease agreements and/or lease addendums to reflect their new policy.

**These steps are detailed in Notice PIH-2012-25, which is included in this toolkit for easy reference.** Additionally, if PHAs institute smoke-free policies, they should ensure that there is consistent application among all projects and buildings in their housing inventory in which smoke-free policies are being implemented.

# REASONS TO EXPLORE SMOKE-FREE HOUSING

## WHY PURSUE SMOKE-FREE HOUSING?

This document is for property owners, landlords, and property managers who are interested in exploring a smoke-free policy for their multi-unit buildings. Read on, if you are interested in a policy that can help you save money, reduce tenant complaints, improve the health of your tenants and building, and increase your market share.

Smoke-free apartment policies are quickly becoming the standard for multi-unit housing in the U.S. A smoke-free policy is simple and straightforward. There is no Federal or State law that prohibits a property owner from implementing a smoke-free policy for their buildings or grounds, and instituting a policy does not preclude someone who smokes from living in the building. It simply requires that all tenants abide by the policy while on the property. Going smoke-free in your multi-unit buildings is one of the best moves you can make for your tenants and your bottom line. The Smoke-Free Environments Law Project conducted an analysis of federal and state laws, HUD rules, and legal cases and found “unequivocally that a ban on smoking for new tenants who move into public or section 8 housing is permissible in all 50 states.”<sup>1</sup>

### Reduces Operating Costs

- Apartment turnover costs can be two to seven times greater when smoking is allowed, compared to the cost of maintaining and turning over a smoke-free unit.
- Some insurance companies offer discounts on property casualty insurance for multi-unit owners with a

100% smoke-free policy. Ask your carrier today!

- Smoking is a leading cause of residential fire and the number one cause of fire deaths in the U.S..

### Tenants Prefer Smoke-Free Housing

- Several statewide surveys demonstrate that as many as 78% of tenants, including smokers, would choose to live in a smoke-free complex.<sup>2,3,4</sup>
- Secondhand smoke complaints and requests for unit transfers drop following the implementation of a smoke-free policy. Nationwide, less than 21% of the general population smokes<sup>5</sup>, so it makes sense that a vast majority of tenants want to live in a smoke-free environment.

### Tenant Health Improves with Smoke-Free Housing

- There is **no** risk-free level of exposure to secondhand smoke<sup>6</sup> and the EPA has identified secondhand smoke as a Class A carcinogen, the most toxic class of chemicals that are known to cause cancer in humans.<sup>7</sup>
- Secondhand smoke is a leading trigger of asthma attacks and other respiratory problems, and a known cause of Sudden Infant Death Syndrome (SIDS).<sup>8</sup>
- Secondhand smoke is classified as a “toxic air contaminant,” putting it in the same class of other contaminants

Some insurance companies offer discounts on property casualty insurance for multi-unit owners with a 100% smoke-free policy.



National Center for  
Healthy Housing

## REASONS TO EXPLORE SMOKE-FREE HOUSING

EARLY FALL 2009

## CONTENTS

- > WHY PURSUE SMOKE-FREE HOUSING?
- > EXISTING LAWS ALLOW FOR SMOKE-FREE HOUSING
- > KEY DECISIONS AND STEPS
- > RESOURCES



# The Monetary Impact

Cost to Rehabilitate a Unit Where Smoking is Prohibited vs. a Unit Where Smoking is Allowed

	Non-Smoking	Light Smoking	Heavy Smoking
General Cleaning	\$240	\$500	\$720
Paint	\$170	\$225	\$480
Flooring	\$50	\$950	\$1,425
Appliances	\$60	\$75	\$490
Bathroom	\$40	\$60	\$400
<b>TOTAL</b>	<b>\$560</b>	<b>\$1,810</b>	<b>\$3,515</b>

Data reflects surveys from housing authorities and subsidized housing facilities in New England. Collected and reported by Smoke-Free Housing New England, 2009.



including asbestos, lead, vehicle exhaust and a host of other chemicals strictly regulated in the U.S.<sup>9</sup>

- Ventilation systems do not protect families from secondhand smoke. Most air filter systems are designed to remove odors, not the toxic particles from tobacco smoke. According to the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), "At present, the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking."<sup>10</sup>
- Research demonstrates that up to 65% of air can be exchanged between units and that smoke travels through tiny cracks, crevices and chasing, involuntarily exposing individuals in adjacent units.<sup>11</sup>

## Other Policy Benefits

### Self enforcing.

Smoke-free policies are largely self-enforcing. Because tenants expect and tend to prefer a smoke-free environment, they will abide by the policy. Guardian Management, a group managing over 12,000 smoke-free units nationwide, recently released survey results showing that more than three-quarters of their residents are "happy" with the smoke-free policy.<sup>12</sup>

### Gain green building credits.

Numerous "Green Building" programs, such as the U.S. Green Building Council's LEED program and the Enterprise Community Partner's Green Communities initiative, provide credit in their programs for smoke-free properties.

### Access to state affordable housing tax incentives.

Several states (Maine, California and New Hampshire) currently offer tax credit

incentives to developers of low-income housing for new housing projects that include a smoke-free policy.

### HUD strongly encourages public housing authorities to pursue smoke free housing.

On July 31, 2009 HUD issued a notice that unequivocally stated the Department's support for non smoking policies at public housing authorities (PIH-2009-21 (HA)).

## EXISTING LAWS ALLOW FOR SMOKE-FREE HOUSING

- There are no federal, state, or local laws that prohibit a landlord, housing authority or condominium association from adopting a 100% smoke-free policy. You can make your entire property smoke-free, including all apartment units and outdoor spaces.<sup>13</sup>
- Smoking is not a legal right. Smoke-free policies do not infringe on the legal rights of individuals.<sup>14</sup>
- Smokers are not a protected class under any state or federal law.<sup>15</sup> Smoke-

free policies are like any other lease provision, such as trash disposal or pet restrictions, and should be implemented and enforced as any other lease policy.

- Both public and private facilities have the right to adopt smoke-free policies. If you are a public housing authority, or owner of a subsidized facility, ensure your tenants receive adequate notice (30 days or more) of lease change and that HUD and/or your local housing authority approve of any changes to the model lease.<sup>16,17</sup>

Smoking is not a legal right. Smoke-free policies do not infringe on the legal rights of individuals.

## KEY DECISIONS AND STEPS

### For New Buildings

#### Start Fresh.

The easiest way to implement a smoke-free policy is to make buildings 100% smoke-free as you develop them. Include explicit language in your lease that notifies incoming tenants of the policy. You can view sample lease language by visiting [www.smokefreehousingne.org](http://www.smokefreehousingne.org).

#### Modify leases.

When adopting a smoke-free policy, include a lease provision or addendum that outlines the restrictions and penalties under your policy. When new or renewing tenants sign the lease, have them initial that they have read and understand the policy.

#### Advertise as smoke-free.

Include “smoke-free” in all advertisements for your vacant units. Smoke-free policies are amenities, no different than the inclusion of heat or hot water. Approximately 75% of tenants want to live in a smoke-free environment, and including a notice that your building is smoke-free can attract more attention to your listing.

#### Inform potential tenants.

Include information regarding your smoke-free policy on all housing applications to ensure incoming tenants are aware of the rules before they move in to your building. Also, include adequate signage and communication to remind existing tenants, incoming guests and maintenance workers of the policy.

### For Existing Structures with Tenants

#### Build tenant support.

When you're not sure how tenants feel about a smoke-free policy, and you want their input, a brief survey might be in order. Asking questions such as “has secondhand smoke from another

unit ever bothered you” or “if available, would you prefer to live in a smoke-free environment”, can help you determine what type of policy to implement. For sample survey language, visit [www.smokefreehousingne.org](http://www.smokefreehousingne.org).

#### Communicate widely.

The success of your smoke-free policy will be relative to how well you communicate the policy with your tenants. This does not have to be complicated, or overly time consuming, but things like including articles in your tenant newsletter, holding tenant meetings so opinions can be voiced, sending a letter to tenants, providing adequate signage and supplying information on the harmful effects of secondhand smoke will all help with policy enforcement down the road.

#### Offer support.

Many existing developments offer some type of cessation services (quit smoking support) to their tenants. Look to your State or municipal health department, Lung Association, Cancer Society or local hospital for free cessation support. Though you are not asking people to quit smoking with a smoke-free policy, this type of policy provides incentive and support to those who were considering quitting. Providing tenants with local cessation information is a way to show that you care about their well-being.

#### Give plenty of notice.

Notifying residents about your policy well in advance of making it effective isn't only a good idea—it's the law. Neglecting to tell both your new and old residents about your smoking policy is a breach of the duty to provide notice. You may only be required to give 30 days notice per your lease agreement when implementing a smoke-free policy, but it is recommended that you provide at least 90 days advance warning. This extra time will give those who smoke a chance to adjust their lifestyle to the new policy. Your posted

notifications should include the wording that will be in your leases or covenants. Providing poorly worded or incomplete lease provisions in these notices is also considered a breach of duty.

#### Consider your options.

There are many options to consider with a new policy. Will you prohibit smoking on the entire property grounds, 25 feet from doorways/entrances/windows or only in the building? If you allow smoking on the grounds, where will those tenants go to smoke? Will you provide a space?



Approximately 75% of tenants want to live in a smoke-free environment.

What about patios and balconies? All these questions and more need to be thought through with staff, administrators and possibly tenants as well.

## Leases

### Follow the rules.

With existing buildings, be sure to follow the rules of your lease before adopting new

policies. After a lease has been signed by both parties, it cannot be modified without the consent of both of the parties. Therefore, residents who have fixed term leases will be exempt from the smoke-free policies.

### Start with new and renewing tenants.

When new tenants sign a lease include a clear smoke-free provision in your contract.

## All Buildings

### Implications for workers and guests.

Remember, smoke-free policies not only impact residents, but their guests and your employees. When you adopt a smoke-free policy, make it clear that all guests, maintenance workers and staff are prohibited from smoking as well. ■

## RESOURCES

For more detailed information about how to implement a smoke-free policy in your new or existing development, including for example sample surveys, notification letters, and lease addenda, visit any of the following websites.

- Capital District Tobacco Free Coalition [www.smokefreecapital.org](http://www.smokefreecapital.org)
- Smoke-Free Housing New England [www.smokefreehousingne.org](http://www.smokefreehousingne.org)
- Michigan Smoke-Free Apartments [www.mismokefreeapartments.org](http://www.mismokefreeapartments.org)
- Smoke-Free Housing Coalition of Maine [www.smokefreeforme.org](http://www.smokefreeforme.org)
- Minnesota Smoke-Free Housing [www.mnsmokefreehousing.org](http://www.mnsmokefreehousing.org)
- Tobacco Technical Assistance Consortium [www.ttac.org](http://www.ttac.org)

## REFERENCES

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- <sup>4</sup> Oregon Smoke Free Housing Project, *2006 Market Surveys*. American Lung Association of Oregon. (Tigard, OR: 2006).
- <sup>5</sup> United States, Center for Disease Control and Prevention. *Prevalence of Current Smoking among Adults Aged 18 Years and Over: United States, 1997–June 2008*. (Atlanta: Department of Health and Human Services, 2008).
- <sup>6</sup> United States, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke*. (Atlanta, GA: Department of Health and Human Services, 2006).
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- <sup>8</sup> United States, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke*. (Atlanta, GA: Department of Health and Human Services, 2006).
- <sup>9</sup> California Environmental Protection Agency. *Environmental Tobacco Smoke: A Toxic Air Contaminant*. (Sacramento, CA: California Air Resource Board, 2006).
- <sup>10</sup> American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE). *Environmental Tobacco Smoke Position Document*. (Atlanta: June 30, 2005).
- <sup>11</sup> Center for Energy and Environment. *Reduction of Environmental Tobacco Smoke Transfer in Minnesota Multifamily Buildings Using Air Sealing and Ventilation Treatments*. (Minneapolis, MN: 2004).
- <sup>12</sup> Oregon Public Health, Guardian Management. "Guardian Management, LLC Tenant Survey Reveals Majority of Residents Please with No Smoking Policy." (Portland, OR: November 18, 2008).
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- <sup>14</sup> Technical Assistance Legal Center. *There is no constitutional right to smoke*. Public Health Institute (Oakland, CA: 2005).
- <sup>15</sup> Ibid.
- <sup>16</sup> Public Housing Occupancy Guidebook, HUD, Part 5, Chapter 17.5.
- <sup>17</sup> Public Housing Occupancy Guidebook, HUD, Part 5, Chapter 17.3.

**Remember, smoke-free policies are about the smoke, not the smoker. Smoke-free policies do not preclude someone who smokes from living in the building; rather, they simply require that all tenants abide by the policy while on the property.**

# The Health Consequences of Involuntary Exposure to Tobacco Smoke

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A Report of the Surgeon General

2006

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Public Health Service  
Office of the Surgeon General  
Rockville, MD

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# **The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General, U.S. Department of Health and Human Services**

## **6 Major Conclusions of the Surgeon General Report**

Smoking is the single greatest avoidable cause of disease and death. In this report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*, the Surgeon General has concluded that:

1. Many millions of Americans, both children and adults, are still exposed to secondhand smoke in their homes and workplaces despite substantial progress in tobacco control.

### Supporting Evidence

- Levels of a chemical called cotinine, a biomarker of secondhand smoke exposure, fell by 70 percent from 1988-91 to 2001-02. In national surveys, however, 43 percent of U.S. nonsmokers still have detectable levels of cotinine.
  - Almost 60 percent of U.S. children aged 3-11 years—or almost 22 million children—are exposed to secondhand smoke.
  - Approximately 30 percent of indoor workers in the United States are not covered by smoke-free workplace policies.
2. Secondhand smoke exposure causes disease and premature death in children and adults who do not smoke.

### Supporting Evidence

- Secondhand smoke contains hundreds of chemicals known to be toxic or carcinogenic (cancer-causing), including formaldehyde, benzene, vinyl chloride, arsenic, ammonia, and hydrogen cyanide.
  - Secondhand smoke has been designated as a *known human carcinogen* (cancer-causing agent) by the U.S. Environmental Protection Agency, National Toxicology Program and the International Agency for Research on Cancer (IARC). The National Institute for Occupational Safety and Health has concluded that secondhand smoke is an occupational carcinogen.
3. Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma. Smoking by parents causes respiratory symptoms and slows lung growth in their children.

### Supporting Evidence

- Children who are exposed to secondhand smoke are inhaling many of the same

cancer-causing substances and poisons as smokers. Because their bodies are developing, infants and young children are especially vulnerable to the poisons in secondhand smoke.

- Both babies whose mothers smoke while pregnant and babies who are exposed to secondhand smoke after birth are more likely to die from sudden infant death syndrome (SIDS) than babies who are not exposed to cigarette smoke.
  - Babies whose mothers smoke while pregnant or who are exposed to secondhand smoke after birth have weaker lungs than unexposed babies, which increases the risk for many health problems.
  - Among infants and children, secondhand smoke cause bronchitis and pneumonia, and increases the risk of ear infections.
  - Secondhand smoke exposure can cause children who already have asthma to experience more frequent and severe attacks.
4. Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.

#### Supporting Evidence

- Concentrations of many cancer-causing and toxic chemicals are higher in secondhand smoke than in the smoke inhaled by smokers.
  - Breathing secondhand smoke for even a short time can have immediate adverse effects on the cardiovascular system and interferes with the normal functioning of the heart, blood, and vascular systems in ways that increase the risk of a heart attack.
  - Nonsmokers who are exposed to secondhand smoke at home or at work increase their risk of developing heart disease by 25 - 30 percent.
  - Nonsmokers who are exposed to secondhand smoke at home or at work increase their risk of developing lung cancer by 20 - 30 percent.
5. The scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke.

#### Supporting Evidence

Short exposures to secondhand smoke can cause blood platelets to become stickier, damage the lining of blood vessels, decrease coronary flow velocity reserves, and reduce heart rate variability, potentially increasing the risk of a heart attack.

- Secondhand smoke contains many chemicals that can quickly irritate and damage the lining of the airways. Even brief exposure can result in upper airway changes in healthy persons and can lead to more frequent and more asthma attacks in children who already have asthma.
6. Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and

ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke.

#### Supporting Evidence

- Conventional air cleaning systems can remove large particles, but not the smaller particles or the gases found in secondhand smoke.
- Routine operation of a heating, ventilating, and air conditioning system can distribute secondhand smoke throughout a building.
- The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), the preeminent U.S. body on ventilation issues, has concluded that ventilation technology cannot be relied on to control health risks from secondhand smoke exposure.

*The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* was prepared by the Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC). The Report was written by 22 national experts who were selected as primary authors. The Report chapters were reviewed by 40 peer reviewers, and the entire Report was reviewed by 30 independent scientists and by lead scientists within the Centers for Disease Control and Prevention and the Department of Health and Human Services. Throughout the review process, the Report was revised to address reviewers' comments.

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## There Is No Constitutional Right to Smoke<sup>1</sup>

February 2004

### I. INTRODUCTION

Laws that limit how and where people may smoke should survive a legal challenge claiming that smoking is protected by the state or federal constitution. Smoking is not mentioned anywhere in either constitution. Nevertheless, some people may claim that there is a fundamental “right to smoke.”<sup>2</sup> These claims are usually made in one of two ways: (1) that the fundamental right to privacy in the state or federal constitution includes the right to smoke, or (2) that clauses in the state and federal constitutions granting “equal protection” provide special protection for smokers. Neither of these claims has any legal basis. Therefore, a state or local law limiting smoking usually will be judged only on whether the law is rational, or even plausibly justified, rather than the higher legal standard applied to laws that limit special constitutionally protected rights.

### II. THERE IS NO FUNDAMENTAL RIGHT TO SMOKE

The argument that someone has a fundamental right to smoke fails because only certain rights are protected by the constitution as fundamental, and smoking is not one of them. The U.S. Supreme Court has held that “only personal rights that can be deemed ‘fundamental’ or ‘implicit in the concept of ordered liberty’ are included in the guarantee of personal liberty.”<sup>3</sup> These rights are related to an individual’s bodily privacy and autonomy within the home.

Proponents of smokers’ rights often claim that smoking falls within the fundamental right to privacy, by arguing that the act of smoking is an individual and private act that government cannot invade. Courts consistently reject this argument. The privacy interest protected by the U.S. Constitution includes only marriage, contraception, family relationships, and the rearing and educating of children.<sup>4</sup> Very few private acts by individuals qualify as fundamental privacy interests, and smoking is not one of them.<sup>5</sup>

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<sup>1</sup> This material was made possible by funds received from the California Department of Health Services, under contract # 99-85069. This fact sheet was created to provide general information only and is not offered or intended as legal advice.

<sup>2</sup> Common usage of the term “rights” conflates two distinct legal meanings: those rights that are specially provided for or protected by law (e.g., free speech); and those rights that exist simply because no law has been passed restricting them (e.g., the right to use a cell phone while driving). The latter type of right is always subject to potential regulation. Therefore, this memo addresses only those rights provided for or protected by law. This memo also does not address whether an employer may refuse to employ someone who smokes. While prohibiting smoking at work is permissible, Cal. Labor Code §96(k) protects employees from discrimination based on off-work conduct, though one court held that this statute does not create new rights for employees but allows the state to assert an employee’s independently recognized rights. *Barbee v. Household Auto. Finance Corp.*, 113 Cal. App. 4th 525 (2003).

<sup>3</sup> *Roe v. Wade*, 410 U.S. 113, 152 (1973).

<sup>4</sup> See, for example, *Griswold v. Connecticut*, 381 U.S. 479, 484 (1964) (recognizing the right of married couples to use contraceptives); *Meyers v. Nebraska*, 262 U.S. 390 (1923) (recognizing the right of parents to educate children

**Example:** A firefighter trainee challenged a city fire department requirement that trainees must refrain from cigarette smoking at all times, by arguing that “although there is no specific constitutional right to smoke, [there is an] implicit . . . right of liberty or privacy in the conduct of [ ] private life, a right to be let alone, which includes the right to smoke.”<sup>6</sup> The court, however, disagreed and distinguished smoking from the recognized fundamental privacy rights.<sup>7</sup> The court went on to find that the city regulation met the fairly low standard for regulating non-fundamental rights because there was a perfectly rational reason for the regulation, namely the need for a healthy firefighting force.

### III. SMOKERS ARE NOT A PROTECTED GROUP OF PERSONS

The second common constitutional claim made by proponents of smokers’ rights is that laws regulating smoking discriminate against smokers as a particular group and thus violate the equal protection clause of the U.S. or the California constitutions. No court has been persuaded by these claims.

The equal protection clauses of the United States and California constitutions, similar in scope and effect,<sup>8</sup> guarantee that the government will not treat similar groups of people differently without a good reason.<sup>9</sup> Certain groups of people – such as groups based on race, national origin and gender – receive greater protection against discriminatory government acts under the U.S. and California constitutions than do other groups of people.<sup>10</sup> Smokers have never been identified as one of these protected groups.<sup>11</sup> Generally, the Supreme Court requires a protected group to have “an immutable characteristic determined solely by the accident of birth.”<sup>12</sup> Smoking is not an “immutable characteristic” because people are not born as smokers and smoking is a behavior that people can stop. Because smokers are not a protected group, laws limiting smoking must only be rationally related to a legitimate government purpose.<sup>13</sup>

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as they see fit); and *Moore v. East Cleveland*, 431 U.S. 494 (1977) (protecting the sanctity of family relationships).

<sup>5</sup> *City of North Miami v. Kurtz*, 653 So.2d 1025, 1028 (Fla. 1995) (city requirement that job applicants affirm that they had not used tobacco in preceding year upheld because “the ‘right to smoke’ is not included within the penumbra of fundamental rights protected under [the federal constitution’s privacy provisions]”).

<sup>6</sup> *Grusendorf v. City of Oklahoma City*, 816 F.2d 539, 541 (10th Cir. 1987).

<sup>7</sup> *Id.* The court relied heavily on the U.S. Supreme Court decision *Kelley v. Johnson*, 425 U.S. 238 (1976). In *Kelley*, the Court held that a regulation governing hair grooming for male police officers did not violate rights guaranteed under the Due Process Clause even assuming there was a liberty interest in personal appearance.

<sup>8</sup> U.S. Const. amend. XIV, Cal. Const. art.1 §7. See *Serrano v. Priest*, 5 Cal. 3d 584, 597 n.11 (1971) (plaintiff’s equal protection claims under Article 1 §11 and §21 of state constitution are “substantially equivalent” to claims under equal protection clause of Fourteenth Amendment of U.S. Constitution, and so the legal analysis of federal claim applies to state claim).

<sup>9</sup> Equal protection provisions generally permit legislation that singles out a class for distinctive treatment “if such classification bears a rational relation to the purposes of the legislation.” *Brown v. Merlo*, 8 Cal. 3d 855, 861 (1973).

<sup>10</sup> See, for example, *Brown v. Board of Education*, 347 U.S. 483 (1954) (race); *Sugarman v. Dougall*, 413 U.S. 634 (1973) (exclusion of aliens from a state’s competitive civil service violated equal protection clause); *Craig v. Boran*, 429 U.S. 190 (1976) (classifications by gender must serve important governmental objectives and must be substantially related to the achievement).

<sup>11</sup> Even some potentially damaging classifications, such as those based upon age, mental disability and wealth, do not receive any special protections. See, for example, *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985) (mentally disabled adults are not protected under Equal Protection Clause); *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973) (education and income classifications are not protected).

<sup>12</sup> *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

<sup>13</sup> *Fagan v. Axelrod*, 550 N.Y.S. 2d 552, 560 (1990) (rejecting the argument that a state statute regulating tobacco smoking in public areas discriminated against members of a subordinate class of smokers on the basis of nicotine

The equal protection clause not only protects certain groups of people, the clause also prohibits discrimination against certain fundamental “interests” that inherently require equal treatment. The fundamental interests protected by the equal protection clause include the right to vote, the right to be a political candidate, the right to have access to the courts for certain kinds of proceedings, and the right to migrate interstate.<sup>14</sup> Smoking is not one of these recognized rights.

**Example:** In upholding a high school campus ban on smoking, a North Carolina court stated that “[t]he right to smoke in public places is not a protected right, even for adults.”<sup>15</sup> The court upheld a school regulation that permitted smoking by teachers in the teachers’ lounge but prohibited students from smoking. The smoking students claimed they were a discrete group suffering from discrimination (since teachers, another group, could smoke under the ban but students could not). The court found that the rule did not violate equal protection principles because of rational, reasonable differences in prohibiting smoking by minors and not by adults.

If a government classification affects an individual right that is not constitutionally protected, the classification will be upheld if there is any reasonably conceivable set of facts that could provide a rational basis for it.<sup>16</sup> So long as secondhand smoke regulations are enacted to further the government goal of protecting the public’s health from the dangers of tobacco smoke, the regulation should withstand judicial scrutiny if challenged.<sup>17</sup>

#### IV. CONCLUSION

There is no constitutional right to smoke. Claims to the contrary have no legal basis. The U.S. and California constitutions guarantee certain fundamental rights and protect certain classes of persons from all but the most compelling government regulation. However, no court has ever recognized smoking as a protected fundamental right nor has any court ever found smokers to be a protected class. To the contrary, every court that has considered the issue has declared that no fundamental “right to smoke” exists. So long as a smoking regulation is rationally related to a legitimate government objective such as protecting public health or the environment, the regulation will be upheld as constitutional.

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addiction by holding that “the equal protection clause does not prevent state legislatures from drawing lines that treat one class of individuals or entities differently from others, unless the difference in treatment is ‘palpably arbitrary’”). Note, too, that nonsmokers also are not recognized as a protected class, so equal protection claims brought by nonsmokers exposed to smoke in a place where smoking is permitted by law are unlikely to succeed.

<sup>14</sup> See, for example, *Baker v. Carr*, 369 U.S. 186 (1962) (improper congressional redistricting violates voters’ rights under equal protection); *Turner v. Fouche*, 396 U.S. 346 (1970) (all persons have a constitutional right to be considered for public service); *Shapiro v. Thompson*, 394 U.S. 618 (1969) (residency requirement for receipt of state benefits violates equal protection).

<sup>15</sup> *Craig v. Buncombe County Bd. of Educ.*, 80 N.C.App. 683, 685 (1986).

<sup>16</sup> *People v. Leung*, 5 Cal. App. 4th 482, 494 (1992).

<sup>17</sup> *Dutchess/Putnam Restaurant & Tavern Ass’n, Inc. v. Putnam County Dep’t of Health*, 178 F. Supp. 2d 396, 405 (N.Y. 2001) (holding that County code regulating smoking in public places does not violate equal protection rights); *City of Tuscon v. Grezaffi*, 23 P.3d 675 (2001) (upholding ordinance prohibiting smoking in bars but not in bowling alleys because it is rationally related to legitimate government interest); *Operation Badlaw v. Licking County Gen. Health Dist. Bd. of Health*, 866 F.Supp. 1059, 1064-5 (Ohio 1992) (upholding ordinance prohibiting smoking except in bars and pool halls); *Rossie v. State*, 395 N.W.2d 801, 807 (Wis. 1986) (rejecting equal protection challenge to statute that banned smoking in government buildings but allowed it in certain restaurants).



# Frequently Asked Questions

- 1. *What is considered a smoke-free dwelling or apartment?*** A smoke-free apartment is one where smoking is not permitted in the unit and adjacent units sharing the same common air handling or HVAC system. This assures that cigarette smoke will not drift from one unit to another.
- 2. *Is it illegal for a landlord or owner to designate units smoke-free?*** It is legal for a landlord or apartment building owner or manager to designate rental units as smoke-free. Because increasingly renters prefer smoke-free properties, it is also an economic advantage for landlords and owners to market at least some properties as smoke-free. In some cases, residents are willing to pay a premium to rent smoke-free apartments.
- 3. *What is the US Department of Housing and Urban Development's (HUD) position regarding smoke-free dwellings?*** In July 2009, HUD issued PIH-2009-21, and in May 2012, issued PIH-2012-25, which strongly encourage PHAs to adopt smoke-free housing policies. On September 15, 2010, the Assistant Secretary for Housing issued Notice H 2010-21 to encourage owners and management agents in HUD's Multifamily Housing rental assistance programs to also implement smoke-free housing policies.
- 4. *Don't individuals have a "right" to smoke in their homes if they choose?*** There is no legal right to smoke. Smokers are not a protected class under the Civil Rights Act of 1964 or other federal law.
- 5. *Why aren't all assisted housing, multi-family and rental apartments smoke-free?*** Currently, there is no federal law requiring assisted housing to be smoke-free. The Smoke-Free Environments Law Project notes that as of January, 2011, there are at least 230 federally assisted properties in 27 states that have adopted smoke-free policies.
- 6. *What is the landlord and/or owner's role in protecting residents from second-hand smoke?*** Reasonable accommodation for a resident with a disability made worse by exposure to secondhand tobacco smoke may be required under the Fair Housing Act.



# Frequently Asked Questions

7. ***Won't a landlord's or owner's insurance protect him/her from liability for residents' injuries resulting from second-hand smoke?*** If a resident is injured or made seriously ill by involuntary exposure to smoke and chooses to take legal action, insurance might not cover that liability, especially if there is a pollution exclusion in the owner's commercial general liability policy.
8. ***Why is there such concern about secondhand smoke in workplaces, public places and living spaces?***
- According to the Centers for Disease Control and Prevention (CDC), approximately 50,000 deaths occur annually in the United States as a result of secondhand smoke-related illnesses, including from heart disease, asthma, lung cancer and other respiratory ailments.
  - It is a Group A carcinogen – a substance known to cause cancer in humans for which there is no safe level of exposure.
  - Increased risk of Sudden Infant Death Syndrome and middle ear infections in children have also been linked to second-hand smoke.
  - According to the American Association of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), the only means of effectively eliminating health risks associated with indoor exposure to tobacco smoke is to ban smoking activity.

*For more information, see HUD Notices and Resources included in this Toolkit.*

## Common Myths

### ***Myth 1: If I implement a smoke-free policy, I will lose money.***

Not only have there been documented maintenance savings resulting from reduced wear and tear on units, there are considerable savings on cleaning and re-painting costs.

### ***Myth 2: A smoke-free policy will alienate residents.***

Surveys conducted across the country document a preference by a majority of renters to live in smoke-free housing.

### ***Myth 3: Enforcing a smoke-free policy will be too difficult.***

Enforcing a smoking policy is a lot less of a headache than mediating disputes between smokers and non-smokers without a policy in place. Landlords must be prepared to follow through with all legal consequences.

## What's in It for Me?

### **Safety and Health:**

- More people die in fires started by smoking materials than in any other type of fire.
- Second-hand smoke is extremely hazardous, especially to children and the elderly.

### **Legal:**

- There is no legal right to smoke in federally subsidized housing .
- Fair housing laws may be applicable when second-hand smoke infiltrates non-smoking housing units. For more information, see: <http://www.hud.gov/offices/ftheo/library/huddojstatement.pdf>

### **Savings (\$):**

- Fewer instances of burned counter tops, floors and carpets.
- Reduced labor and materials needed to turn over a unit after smoking occupants move out.
- Reduced risk of property destruction by fire, smoke and water damage.

***For more information and resources, see the Resources listing in this Toolkit.***

## Going Smoke-Free:

## Steps for Owners/ Management Agents Making the Transition to Smoke-Free Housing



## ***Survey Residents***

Conduct a survey, which will serve two purposes:

- gathering information
- alerting residents of possible changes

## ***Set a Timeframe for Change***

Well ahead of your target date, notify residents that you want to make the building(s) smoke-free by a certain date. Let them know that there will be meetings to discuss the benefits of smoke-free housing.

## ***Inform Residents of Benefits***

Let residents know the merits of smoke-free housing. Reasons typically include a combination of health, safety and business concerns, such as:

- Protecting residents from secondhand smoke
- Reducing the danger of fires
- Reducing maintenance and cleaning costs



## ***Include New Policies in Lease or House Rules***

Include language in your House Rules to make residents aware of any new policies or changes to existing leases.

If you allow smoking on a specific part of the property, specify in the lease or House Rules where smoking is allowed and advise leaseholders that they must inform their guests of non-smoking policies.

Sample smoke-free House Rules/Lease Addendum is included in this Smoke-Free Housing Toolkit.

## ***Promote Smoke-Free Policies***

In addition to working with residents to implement smoke-free policies and changes to leases, keep all residents informed with regular updates using announcements and postings in common areas; letters that are addressed and mailed to each lease holder; flyers and notices on bulletin boards, in newsletters and posted in all common areas.

Signs and notices should also be posted in appropriate exterior locations and on the grounds to advise residents where smoking is permitted.

## ***Accommodate Smokers***

Although you are under no obligation to provide outdoor smoking areas, if your policy allows outdoor smoking, it is advisable to assign smoking areas for residents and visitors, especially if your policy is new.

Because many smokers would like to quit but are addicted to nicotine, provide them with cessation resources to assist them.

Organizations to assist smokers are included in this toolkit.

## ***Enforce the Policy***

In worksites and other public areas, smoking policies have been largely self-enforcing.

To ensure that smoke-free policies are enforced, it is important to let violators know that there will be consequences, including possible eviction, should no-smoking policies be ignored.

## ***Enjoy the Benefits***

Smoke-free policies may offer benefits:

- Fewer complaints from nonsmokers
- Reduced risks of fires
- Protection from secondhand smoke
- Decreased maintenance and clean-up costs
- Greater appeal to prospective renters

A Landlord's  
Guide to

# No-Smoking Policies



**HIGHER PROFITS**

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**HAPPIER TENANTS**

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**SAFER HOUSING**



“For me it was the repainting each time,  
the extent of cleaning, professional carpet  
cleaners, hoping you would get the smell out.  
I just finally decided it wasn’t worth it.”



The Portland-Vancouver Metro Area Smokefree Housing Project is a partnership between the American Lung Association of Oregon, Multnomah County Health Department and Clark County Public Health. Together with our Advisory Board, we want to show landlords how no-smoking rules are a win-win for business and for health.

## NON-SMOKING HOUSING

**"... being an early implementer of smoke-free policies, a property management company could earn a reputation in the market for doing a better job of recognizing and offering the amenities tenants want, while at the same time ensuring higher retained earnings as a result of lower maintenance and related costs."**

— John Campbell, national landlord trainer and consultant

### **Good for Business and Health**

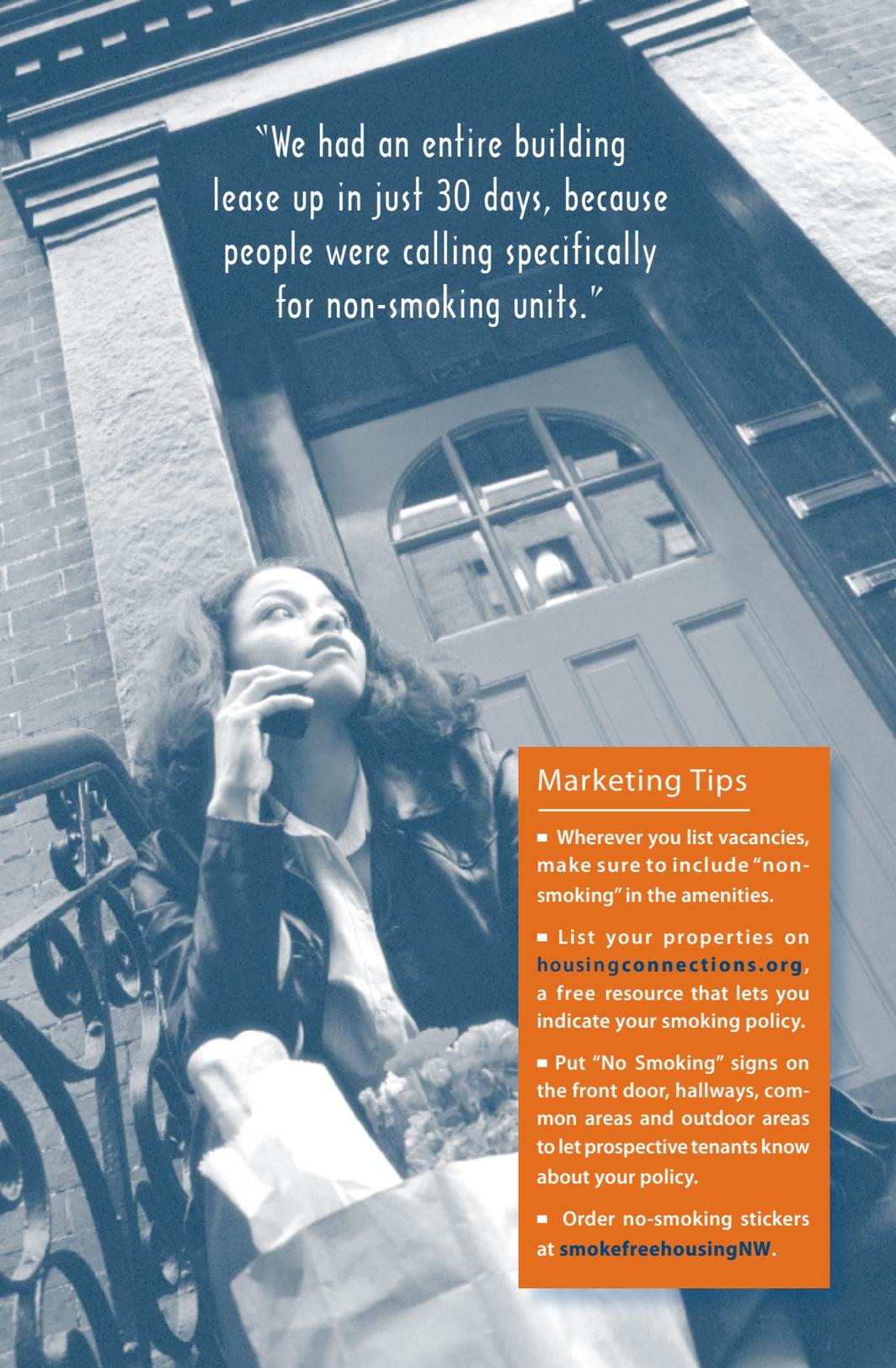
Have you been thinking about a no-smoking rule for your rentals? If you are like other landlords, you are sick and tired of the time and money it takes to repaint, replace carpet, and turn over apartments where tenants have been smoking indoors. You know that smoking is a major fire hazard and a liability. Maybe your tenants have complained about tobacco smoke drifting from neighboring units. You have heard that other landlords have eliminated these headaches by adopting a no-smoking rule, and you are wondering if it will work for you, too.

Well, good news! You can adopt a no-smoking rule. Just as you might prohibit pets, you can prohibit smoking at your rental properties, even inside individual units and in outdoor areas. It is entirely legal.

On our website, [www.smokefreehousingNW.com](http://www.smokefreehousingNW.com), we have additional resources for landlords and tenants to help address this issue. See the last page of this booklet for a list of helpful articles and handouts that can be found on our website.

**"The debate is over. The science is clear: secondhand smoke is not a mere annoyance, but a serious health hazard."**

— U.S. Surgeon General Richard Carmona, 2006

A low-angle, black and white photograph of a woman with long, dark, curly hair. She is looking upwards and to the right, holding a mobile phone to her ear with her right hand. In the foreground, she is holding a large, crumpled paper shopping bag. The background shows the entrance of a brick building with a large, arched window in the door. The overall tone is professional and aspirational.

“We had an entire building lease up in just 30 days, because people were calling specifically for non-smoking units.”

## Marketing Tips

- Wherever you list vacancies, make sure to include “non-smoking” in the amenities.
- List your properties on [housingconnections.org](https://www.housingconnections.org), a free resource that lets you indicate your smoking policy.
- Put “No Smoking” signs on the front door, hallways, common areas and outdoor areas to let prospective tenants know about your policy.
- Order no-smoking stickers at [smokefreehousingNW](https://www.smokefreehousingNW.com).

## MARKET DEMAND

## Non-smoking housing is an exciting market opportunity for Portland-Vancouver metro area landlords.

*In the summer of 2006, we commissioned research on both landlords and tenants in the Portland-Vancouver metro area. Here is what we found:*

### Most renters would prefer non-smoking buildings

- Three-quarters would rather live in a non-smoking building.
- 52% would even pay extra rent.
- Three-quarters say it is okay for landlords to prohibit smoking inside rental units to keep secondhand smoke from drifting into other units.
- Most renters, regardless of income, age, or gender, would prefer a no-smoking rule.
- Over a third of renters in multi-unit buildings say they are regularly exposed to a neighbor's secondhand smoke.

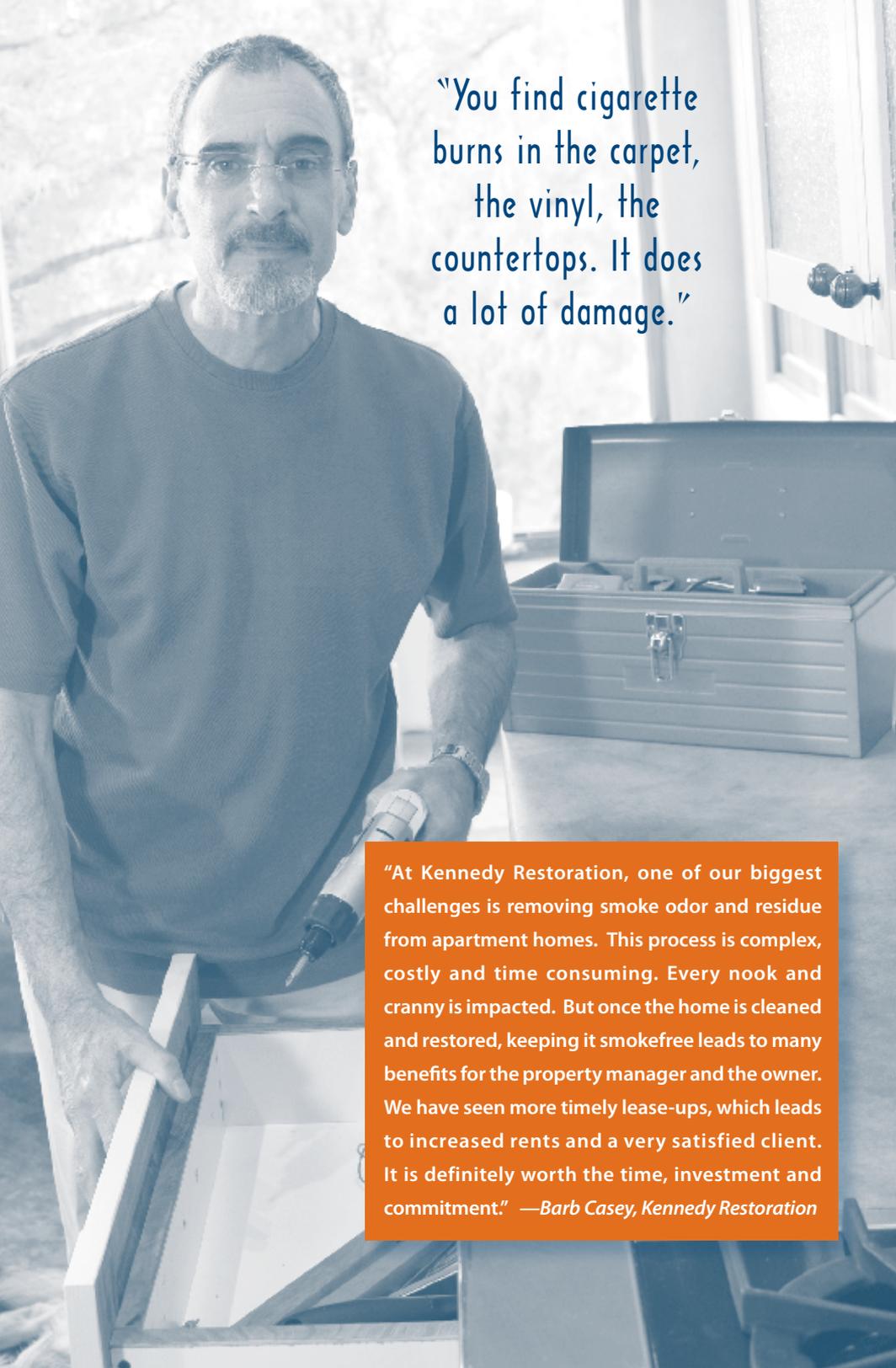
### Most renters don't smoke and most smokers smoke outside

- Three-quarters of renters do not smoke at all.
- 19% of renters smoke daily—but only 11% smoke inside regularly.
- Two-thirds of smokers agree that even small amounts of secondhand smoke are hazardous to your health.

*Statistics are from the market survey report, "Smoke-free Rental Housing in the Portland Metro Area." Campbell DeLong Resources, Inc, 2006.*



**Many landlords say that a no-smoking rule helps them attract and keep tenants who take good care of their units.**



“You find cigarette burns in the carpet, the vinyl, the countertops. It does a lot of damage.”

“At Kennedy Restoration, one of our biggest challenges is removing smoke odor and residue from apartment homes. This process is complex, costly and time consuming. Every nook and cranny is impacted. But once the home is cleaned and restored, keeping it smokefree leads to many benefits for the property manager and the owner. We have seen more timely lease-ups, which leads to increased rents and a very satisfied client. It is definitely worth the time, investment and commitment.” —Barb Casey, Kennedy Restoration

## ASSET MANAGEMENT

**Your property is an important investment. Protect it! A no-smoking rule will help you save money by reducing damage to your property, preventing fires, and avoiding liability.**

**A no-smoking rule is one of the easiest ways to reduce damage to your units and keep your costs down:**

If you have tenants who smoke, you know what it does to your property: burn marks on the counters, yellow walls, trashed carpets, a horrible odor, and worse. A no-smoking rule will help you spend less time and money on cleaning, repairs and painting. It will keep your units in better condition, making them more attractive to prospective tenants and to buyers if you decide to sell.

**A no-smoking rule will also protect your property from fires:**

The Hartford Insurance Company reports that more people die in fires caused by smoking than by any other type of fire. Smoking is the #1 cause of residential fire deaths in Oregon and Washington, causing more expensive property damage than most other types of fires. A no-smoking rule will reduce the risk of fires at your rental properties and you may even be able to get an insurance discount. Ask your broker.

**A no-smoking rule will help you avoid potential legal liability due to nonsmoking tenants' exposure to secondhand smoke:**

Several common law theories, including constructive eviction and breach of the warranty of habitability, have been used to bring successful legal action against landlords and smoking tenants. Tenants with certain disabilities may also be able to request reasonable accommodations to protect them from secondhand smoke. Ventilation and air sealing technologies are not effective ways to eliminate secondhand smoke according to the American Society of Heating, Refrigerating and Air Conditioning Engineers.



**Landlords who adopted no-smoking rules tell us they would never go back.**



“It started with a couple floors. We told people that in a year it would be non-smoking, and we’d give them resources to help them quit.”

## Policy Checklist

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- List the places where smoking is and is not allowed.
- State who the policy applies to (tenants, guests, staff, service persons).
- Set the effective date of the policy.
- Define smoking.
- Optional: Designate a smoking area outside at least 25 feet away from doors, windows, and major walkways.

## DEVELOPING YOUR NO-SMOKING RULE

When you are opening a new building or complex, the easiest thing to do is prohibit smoking from the beginning. When converting an existing building or complex, you may need to phase in the policy as you fill vacancies or as leases are renewed. You can also “go smokefree” after a certain date if you follow landlord-tenant law requirements, including giving advance notice and having tenants agree to the changes in writing.

### Use our sample lease language or order forms through:

- [www.metromultifamily.com](http://www.metromultifamily.com) 800-632-3007
- [www.oregonrentalhousing.com](http://www.oregonrentalhousing.com) 503-364-5468
- [www.stevensness.com](http://www.stevensness.com) 503-223-3137

### Sample Lease Language



**SMOKING:** Due to the increased risk of fire, increased maintenance costs, and the known health effects of secondhand smoke, smoking is prohibited in any area of the property, both private and common, indoors and within 25 feet of the building(s) including entryways, balconies

and patios. This policy applies to all owners, tenants, guests and service persons. Tenants are responsible for ensuring that family members, roommates and guests comply with this rule.

#### (If you are “phasing in” the policy)

All new and renewed leases in your building prohibit smoking as described here. Please be aware that, until all leases have been renewed, you may have neighbors whose current lease does not prohibit smoking.

#### DEFINITION

**SMOKING:** The term ‘smoking’ means any inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, or other tobacco product in any manner or any form.

Please visit our website [www.smokefreehousingNW.com](http://www.smokefreehousingNW.com) for additional resources.

“We do an addendum to the lease, and tenants have to sign it.”



## Helpful Talking Points

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- Tenants and their families will be safer from fires.
- The air will be healthier for everybody who lives in a non-smoking building.
- There will be less damage to the units.
- A no-smoking rule is not a 'no-smoker rule.' Smokers will simply have to step outside (as most smokers already do), and away from the building.
- If a smoker is ready to quit, free resources include the Tobacco Quit Line at 1-800-QUIT-NOW and Freedom From Smoking at [lungusa.org](http://lungusa.org).

## HOW TO ENFORCE YOUR NO-SMOKING RULE

**A no-smoking rule is just like any other rule you enforce.**

### Tips for Getting Tenants to Comply:

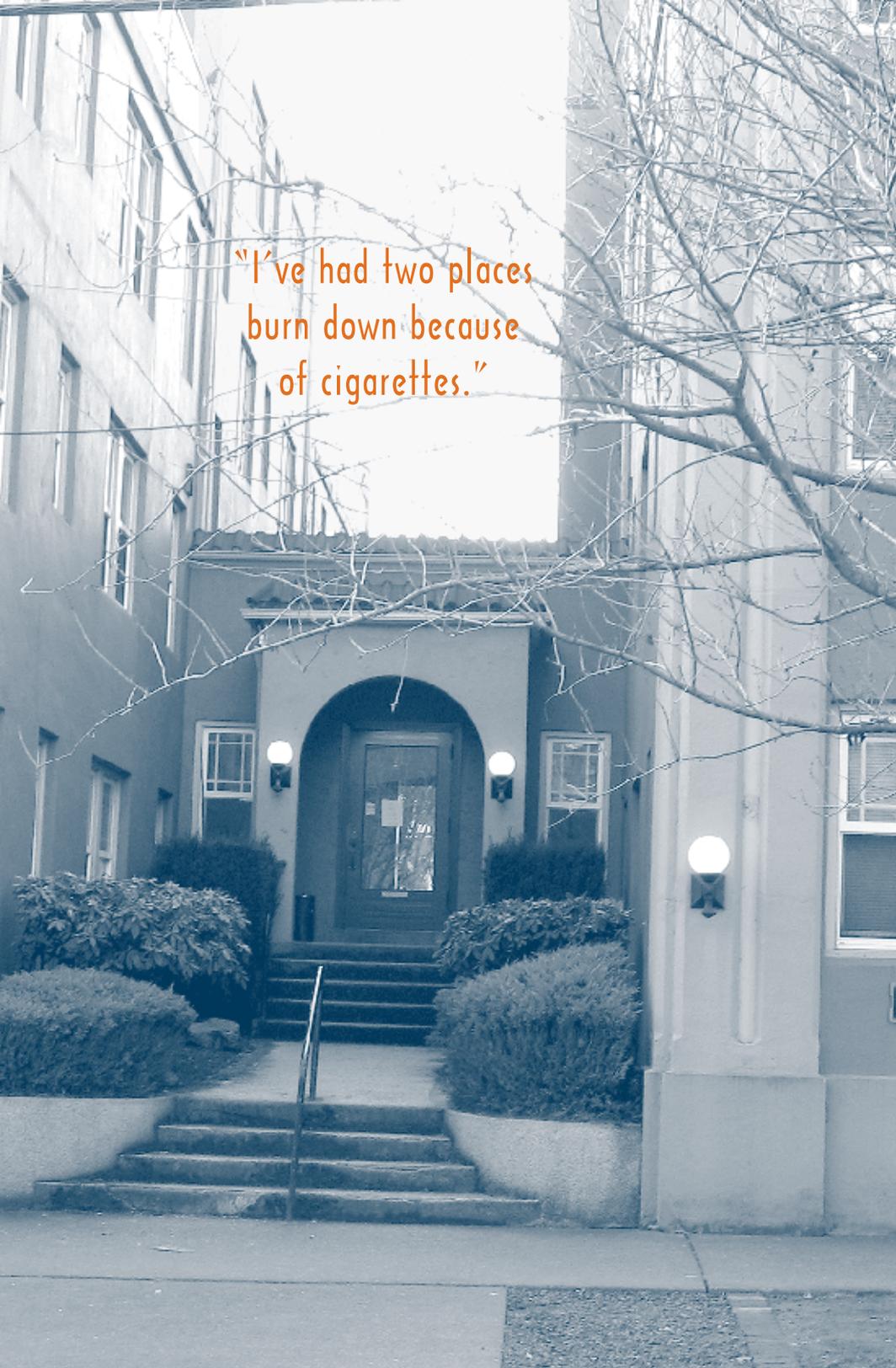
1. Advertise the units as non-smoking to attract tenants who either don't smoke or only smoke outside. Talk to prospective tenants about it when showing the property.
2. Put the no-smoking rule in the lease agreement and read through the rule with tenants as they sign their lease.
3. Post signs in the building and on the property.
4. Inform tenants that if they smoke in their units, they will be financially responsible for bringing the unit back to rentable condition, which could cost thousands of dollars.
5. Use the same warning/enforcement methods for smoking rule violations that you use for any other rule.
6. Visit the properties regularly and perform inspections, just as should always be done for all rentals.
7. Optional: Provide a designated smoking area outside, away from windows and doors (25 feet is a good distance).



### Talking to Your Tenants:

Giving your tenants advance notice about the no-smoking rule will help you gain compliance with the policy. You might want to go “over and above” your normal procedures for announcing rule changes. A little bit of extra work at the beginning could help you avoid headaches later on. Some landlords choose to survey their tenants to find out how many smoke inside their units, how many would prefer a no-smoking rule, and how many would want to move. [SmokefreehousingNW.com](http://SmokefreehousingNW.com) has sample survey questions and a sample tenant handout to help you explain your rule to tenants.

**Enforce your no-smoking rule just like any other rule.**

A blue-tinted photograph of a building entrance. The entrance features a central arched doorway with a glass door, flanked by two windows. There are two sets of concrete steps leading up to the door, with a metal handrail on the left. The building is surrounded by bare tree branches in the foreground. The text "I've had two places burn down because of cigarettes." is overlaid in orange in the upper center of the image.

"I've had two places  
burn down because  
of cigarettes."

## FREQUENTLY ASKED QUESTIONS

### **Q. What do I have to gain from a no-smoking rule?**

**A.** A no-smoking rule will help protect your property from damage and fires. You will save money on turnover expenses because apartments will cost less to clean, repair, and repaint. As more people become aware of the health hazards of secondhand smoke, no-smoking is an amenity that most Portland-Vancouver metro area tenants want.

### **Q. Is a no-smoking rule legal?**

**A.** Yes. It is legal to prohibit smoking at your properties, inside and out. It is your property and you have the right to set reasonable rules to protect it. It is not discrimination to prohibit smoking. Keep in mind a no-smoking rule is not a no-smoker rule. Smoking is a behavior, not an inborn characteristic. It is not a disability and smokers are not a protected class. As when changing any rule, be sure to follow landlord-tenant law (give notice, have tenants sign their agreement with the rule change, apply it equally, etc.).

### **Q. Can I adopt a no-smoking rule in HUD-assisted housing?**

**A.** Yes. You can adopt a no-smoking rule for new tenants at HUD-assisted housing, but you may have to “grandfather” existing tenants until their leases renew. If you want to change the model lease, you will have to get HUD approval, but changes can be made to “House Rules” without HUD approval.

### **Q. Do no-smoking rules work only in higher end properties?**

**A.** No. Many local landlords are already enjoying success with no-smoking rules at all kinds of properties, in all sections of the metro area. Three quarters of renters, even those with household incomes under \$25,000, would rather live in a non-smoking building. Three out of four metro area renters are nonsmokers. Our survey found that only 19% of metro area renters smoke on a daily basis, but only 11% smoke inside.

### **Q. My tenants are complaining about secondhand smoke. What can I do about it until the no-smoking rule goes into effect?**

**A.** Ask tenants to smoke outside or away from the building. You could try to reduce the secondhand smoke drifting between your tenants’ units by sealing the units off or by improving the ventilation, but be aware that neither will eliminate the problem.

## **REFERENCES:**

### **LOCAL RESEARCH**

Smokefree Rental Housing in the Portland Metropolitan Area, Campbell DeLong Resources, July 2006. [www.smokefreehousingNW.com](http://www.smokefreehousingNW.com)

Opinions of Experienced Metro-Area Landlords Regarding Smoking Policies & Practices, Campbell DeLong Resources, Inc. November 2006. [www.smokefreehousingNW.com](http://www.smokefreehousingNW.com)

### **HOUSING REGULATIONS**

"The Americans with Disabilities Act: Effective legal protection against secondhand smoke exposure" Clifford Douglas. 2004. [www.wmitchell.edu/tobaccolaw/resources/douglas.pdf](http://www.wmitchell.edu/tobaccolaw/resources/douglas.pdf)

"Analysis of the authority of Housing Authorities and Section 8 multiunit housing owners to adopt smoke-free policies in their residential units" Susan Schoenmarklin, Esq. May 2005. [www.tcsg.org/sfelp/public\\_housing24E577.pdf](http://www.tcsg.org/sfelp/public_housing24E577.pdf)

"The Federal Fair Housing Act and the protection of persons who are disabled by secondhand smoke in most private and public housing" Smokefree Environments Law Project. Sept. 2002. [www.tcsg.org/sfelp/fha\\_01.pdf](http://www.tcsg.org/sfelp/fha_01.pdf)

### **LEGAL ANALYSES**

"Infiltration of secondhand smoke into condominiums, apartments and other multi-unit dwellings" Susan Schoenmarklin. April 2004. [www.wmitchell.edu/TobaccoLaw/resources/SchoenmarklinWeb.pdf](http://www.wmitchell.edu/TobaccoLaw/resources/SchoenmarklinWeb.pdf)

"There is no constitutional right to smoke" Public Health Institute, Technical Assistance Legal Center. February 2004. [www.talc.phlaw.org/pdf\\_files/0074.pdf](http://www.talc.phlaw.org/pdf_files/0074.pdf)

### **SECONDHAND SMOKE**

"The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General." June 27, 2006. [www.surgeongeneral.gov/library/secondhandsmoke/](http://www.surgeongeneral.gov/library/secondhandsmoke/)

"Environmental Tobacco Smoke Position Statement." The American Society of Heating, Refrigerating, and Air-Conditioning Engineers. June 2005. [www.ashrae.org/doclib/20058211239\\_347.pdf](http://www.ashrae.org/doclib/20058211239_347.pdf)

### **FIRES**

"2005 Annual Report." The Oregon State Fire Marshall. 2005. [www.oregon.gov/OSP/SFM/docs/Data\\_Services/2005\\_Annual\\_Report\\_FINAL.pdf](http://www.oregon.gov/OSP/SFM/docs/Data_Services/2005_Annual_Report_FINAL.pdf)

"Fire in Washington." The Washington State Fire Marshal. 2004. [www.wsp.wa.gov/fire/2004firpt.pdf](http://www.wsp.wa.gov/fire/2004firpt.pdf)

## RESOURCES FOR LANDLORDS



Visit [www.smokefreehousingNW.com](http://www.smokefreehousingNW.com) for the following resources:

- Order form for signs & stickers.
- Tenant Handout—to explain the benefits of a no-smoking rule.
- Sample Tenant Survey—to find out how many tenants would prefer a no-smoking rule.
- Market Survey Report: “Smoke-free Rental Housing in the Portland Metro Area.”
- Landlord Focus Group Report “Opinions of Experienced Metro-Area Landlords Regarding Smoking Policies and Practices.”
- Fact sheet on Secondhand Smoke.
- Articles about HUD-assisted housing, the Fair Housing Act, the American with Disabilities act, legal cases and how they relate to secondhand smoke and no-smoking policies.

### Secondhand Smoke Facts

- Secondhand smoke kills 53,000 non-smoking Americans and 800 non-smoking Oregonians every year.
- Secondhand smoke contains more than 43 cancer-causing agents and many other toxins, including formaldehyde, cyanide, carbon monoxide and arsenic.
- Secondhand smoke exposure causes heart disease and lung cancer in adults and sudden infant death syndrome and respiratory problems in children.
- There is no risk-free level of secondhand smoke exposure: even brief exposure adversely affects the cardiovascular and respiratory systems.
- Only smokefree environments effectively protect people from secondhand smoke exposure indoors.

## Smokefree Housing Advisory Board:

Metro Multi-Family Housing Association  
Oregon Rental Housing Association  
City of Portland Bureau of Housing & Community  
Development, Healthy Homes Initiative  
HousingConnections.org  
Fair Housing Council of Oregon  
Tualatin Valley Fire & Rescue  
Kennedy Restoration  
Housing Authority of Portland  
Vancouver Housing Authority  
Portland Development Commission  
Tobacco Free Coalition of Clark County  
Tobacco-Free Coalition of Oregon  
Tobacco Free Tri-Counties  
IRCO/Asian Family Center  
Lifeworks  
Native American Rehabilitation Association  
Oregon Human Development Corporation

*This project is funded by generous grants in **Oregon** from American Legacy Foundation, Kaiser Permanente Community Fund at Northwest Health Foundation and the Oregon Public Health Division and in **Washington** from Community Choices 2010 and Steps to a Healthier Clark County.*



503.924.4094



503.988.4163



360.397.8000 ext 7378

*The information and materials contained in this brochure are for informational purposes only and are not offered or intended to be and should not be construed to be legal advice nor to be a substitute for obtaining legal advice from a licensed attorney.*



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

## Sample Resident Letter and Secondhand Smoke Survey for Use by Owners and Property Managers

[Date]

Dear Residents:

We are pleased that you have chosen to reside at [name of building/property]. The [name of management company, apartment building or Public Housing Agency] has been studying the changes that are occurring in the management of apartments. Many owners are deciding to regulate the use of tobacco products within their properties.

Apartment building owners are adopting smoke-free policies for a number of reasons. Secondhand smoke is a health hazard, especially for children, the elderly and persons with chronic diseases. There is no safe level of exposure to secondhand smoke. (Source: US Surgeon General, 2006). In addition, smoking materials are the leading cause of fire deaths in the United States. (Source: US Fire Administration/National Fire Data Center).

To ensure the health and safety of all persons living here, we are considering adopting a no-smoking policy for our building(s) and individual units. We would like to hear from you! Let us know what you think about having rules about tobacco use in the building and on the grounds. Please fill out the short survey below and return it to [name of office, etc.]. As a thank you for returning the survey, enclosed [insert incentive, if desired].

Sincerely,

[Property Manager's name]



Cut here

### Do you smoke in your unit?

- Yes, I smoke in my unit or I allow others to smoke in my unit.
- No, I do not smoke or allow others to smoke in my unit.

### Can you smell smoke in your unit? Check all that apply.

- Yes, I can smell secondhand smoke coming into my unit from another unit.
- The smoke smell bothers me/The smoke smell makes me ill.
- I'm worried about the effects the secondhand smoke has on my health or the health of people who live with me.

### Would you like to live in a smoke-free building?

- Yes, I would like our building to be smoke-free, including the units.
- No, I would like our building to continue to allow smoking in the units.
- I have no preference.
- Building Name: \_\_\_\_\_

### Comments:

### Optional Information:

Name: \_\_\_\_\_ Unit #: \_\_\_\_\_ Phone: \_\_\_\_\_

## Possible Additions to an Owner's House Rules or a PHA's Lease Addendum

*Property managers, owners or PHAs may adjust this document depending on the scope and details of the smoke-free policy.*

**1. Purpose of Smoke-Free Housing:** The parties desire to mitigate (i) the irritation and known health effects caused by secondhand smoke; (ii) the maintenance, cleaning, and redecorating costs attributable to smoking; (iii) and the increased risk of fire from smoking.

**2. Definition of Smoking:** "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other plant.

**3. Smoke-Free Complex:** Resident agrees and acknowledges that the premises to be occupied by Resident and members of Resident's household have been designated as a smoke-free living environment. Resident and members of Resident's household shall not smoke anywhere in the unit rented by Resident, in the building where the Resident's dwelling is located or in any of the common areas (or adjoining grounds of such building or other parts of the rental community), nor shall Resident permit any guests or visitors under the control of Resident to do so.

**4. Property Manager/Owner to Promote No Smoking Policy:** Property Manager/Owner shall post no smoking signs at entrances and exits, common areas, and hallways (and in conspicuous places on the grounds adjoining the apartment complex).

**5. Property Manager/Owner Not a Guarantor of Smoke Free Environment:** Resident acknowledges that Property Manager/Owner's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke free, do not make the Property Manager/Owner or any of its managing agents the guarantor of Resident's health or of the smoke-free condition of the Resident's unit and the common areas. However, Property Manager/Owner shall take reasonable steps to enforce the smoke-free terms of its Leases/House Rules and to make the (designated areas of the) complex smoke-free.

Property Manager/Owner is not required to take steps in response to smoking unless Property Manager/Owner knows of said smoking or has been given a report of said smoking.

**6. Effect of Breach and Right to Terminate Lease:** A breach of this Addendum/House Rules shall give each party all the rights contained herein, as well as the rights provided for in the Lease. A material breach of this Addendum by the Resident shall be a material

breach of the Lease and grounds for immediate termination of the Lease by the Property Manager/Owner.

Property Manager/Owner acknowledges that in declaring this building (or portion of the building) to be smoke-free, the failure to respond by Property Manager/Owner to a complaint filed by the Resident shall be treated as equivalent to failure to respond to a request for maintenance.

**7. Disclaimer by Property Manager/Owner:** Resident acknowledges that Property Manager/Owner's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, does not in any way change the standard of care that the Property Manager/Owner would have to a Resident household to render buildings and premises designated as smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental premises. Property Manager/Owner specifically disclaims any implied or express warranties that the building, common areas, or Resident's premises will have any higher or improved air quality standards than any other rental property. Property Manager/Owner cannot and does not warranty or promise that the rental premises or common areas will be free from secondhand smoke. Resident acknowledges that Property Manager/Owner's ability to police, monitor, or enforce the agreements of the Addendum is dependent in significant part on voluntary compliance by Resident and Resident's guests. Residents with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that Property Manager/Owner does not assume any higher duty of care to enforce this Lease Addendum/House Rules than any other Property Manager/Owner obligation under the Lease.

***Paragraph for existing rental communities adopting smoke-free policies that grandfather residents for a period of time:***

**8. Grandfathering Current Residents:** Resident acknowledges that current residents residing in the complex under a prior Lease will not be immediately subject to the smoke-free policies. As current residents move out, or enter into new Leases, the smoke-free policy will become effective for their new unit or new Lease.

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Property Manager/Owner

\_\_\_\_\_  
Date



# U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

## U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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### Special Attention of:

NOTICE: H 2010-21

Multifamily Hub Directors  
Multifamily Program Center Directors  
Rural Housing Services (RHS) Directors  
Supervisory Housing Project Managers  
Housing Project Managers  
Contract Administrators  
Multifamily Owners and Management Agents

Issued: September 15, 2010

Expires: September 30, 2011

Cross References:

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### Subject: **Optional Smoke-Free Housing Policy Implementation**

#### I. **Purpose**

The purpose of this Notice is to encourage owners and management agents (O/As) participating in one of the Multifamily Housing rental assistance programs listed in Section III of this Notice to implement smoke-free housing policies in some or all of the properties they own or manage. This Notice provides instructions to O/As on the requirements for implementing smoke-free housing policies and only applies to O/As who choose to establish such policies.

#### II. **Background**

It has been proven that exposure to smoke, whether direct or secondhand, causes adverse health outcomes such as asthma and other respiratory illnesses, cardiovascular disease, and cancer. In 2006, the U.S. Department of Health and Human Services published *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. This document expounds on health effects due to involuntary exposure to tobacco smoke. The report defines secondhand smoke, in the past referred to as environmental tobacco smoke (ETS), as smoke composed of sidestream smoke (the smoke released from the burning end of a cigarette) and exhaled mainstream smoke (the smoke exhaled by the smoker). The report lists several major conclusions, all based on scientific data, including the following: 1) The scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke; and 2) Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke.

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Below are relevant statistics and conclusions from *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*.

- According to a 2005 estimate by the California Environmental Protection Agency, Office of Environmental Health Hazard Assessment, approximately 50,000 excess deaths result annually in the United States from exposure to secondhand smoke.
- Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome, acute respiratory infections, ear problems, and more severe asthma.
- Secondhand smoke has been designated as a known human carcinogen (cancer-causing agent) by the U.S. Environmental Protection Agency, National Toxicology Program and the International Agency for Research on Cancer.
- Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.
- Nonsmokers who are exposed to secondhand smoke at home or at work increase their risk of developing heart disease by 25-30 percent.
- Nonsmokers who are exposed to secondhand smoke at home or at work increase their risk of developing lung cancer by 20-30 percent.
- The National Toxicology Program estimates that at least 250 chemicals in secondhand smoke are known to be toxic or carcinogenic (cancer causing).

In addition to the negative health effects of secondhand smoke, smoking is a proven hazard to physical structures. The United States Fire Administration (USFA) indicates smoking as the number one cause of home fire deaths in the United States. Furthermore, about 1,000 people are killed every year in their homes by fires caused by cigarettes and other smoking materials. The USFA states 25 percent of people killed in smoking-related fires are not the actual smokers; of this percentage, 34 percent of the victims were children of the smokers, and 25 percent were neighbors or friends of the smokers.

### **III. Applicability**

This Notice applies to:

- A. Project-based Section 8
  1. New Construction
  2. State Agency Financed
  3. Substantial Rehabilitation
  4. Section 202/8
  5. Rural Housing Services Section 515/8
  6. Loan Management Set-Aside (LMSA)
  7. Property Disposition Set-Aside (PDSA)
- B. Rent Supplement
- C. Section 202/162 Project Assistance Contract (PAC)
- D. Section 202 Project Rental Assistance Contract (PRAC)
- E. Section 811 PRAC

- 
- F. Section 236
  - G. Rental Assistance Payment (RAP)
  - H. Section 221(d)(3) Below Market Interest Rate (BMIR)

#### **IV. Update to House Rules/Policies and Procedures**

O/As choosing to implement a smoke-free housing policy must update their House Rules and Policies and Procedures, as applicable, to incorporate the smoke-free housing requirements. O/As are encouraged to establish smoke-free policies that pertain specifically to their building and grounds including any common areas, entry ways, openings to the building (e.g. windows), and/or playground areas.

In carrying out any smoke-free housing policy, O/As must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105, including, but not limited to, the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title II of the American Disabilities Act; Section 109 of the Housing and Community Development Act of 1974.

#### **V. Requirements for Implementing Smoke-free Housing Policies**

O/As who choose to establish smoke-free housing policies may establish policies that allow smoking in individual units but prohibits smoking in all common areas or policies to create a totally smoke-free property.

A. The O/A's policies must:

1. Be in accordance with state and local laws.
2. Address smoking in a tenant's unit, common areas, playground areas, areas near any exterior window or door, and areas outside a tenant's unit.
3. Designate specific smoking areas and identify these areas with clear signage unless the O/A establishes a totally smoke-free policy.

B. The O/A must not have policies that:

1. Deny occupancy to any individual who smokes or to any individual who does not smoke who is otherwise eligible for admission.
2. Allow the O/A to ask at the time of application or move-in whether the applicant or any members of the applicant's household smoke. However, if the O/A has established a smoke-free building as of a certain date, the O/A must inform applicants after that date that the building is a totally smoke-free building. The O/A must not maintain smoking or nonsmoking specific waiting lists for the property.

- 
3. Allow the O/A to ask at the time of recertification, whether the tenant or any members of the tenant's household smoke.
  4. Require existing tenants, as of the date of the implementation of the smoke-free housing policies, to move out of the property or to transfer from their unit to another unit.

C. Grandfathering

O/As are not required to grandfather current tenants living at their property, however, they do have the option to do so. Such policies must be clearly defined (e.g. whether current tenants are allowed to smoke in their units).

D. Non-smoking wings, buildings, floors, or units

O/As are not restricted from establishing smoke-free wings, buildings, floors, and/or units at their property. When a unit becomes available, regardless of where this unit is located, it must be offered to the first eligible household on the waiting list. Waiting lists must be maintained according to existing procedures found in HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, Chapter 4 and the removal of names from the waiting list according to HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, paragraph 4-20.

O/As who have already established smoke-free policies may continue to enforce their current policies so long as the policies do not violate state or local laws or any of the above guidance.

## **VI. Implementation**

O/As must implement any new smoking-related House Rules in accordance with HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, paragraphs 6-9 and 6-12.

- A. **New admissions.** O/As are required by existing HUD policies to provide the House Rules to all new tenants.
- B. **Existing tenants.** O/As must notify existing tenants, who have completed their initial lease term, of the modifications to the House Rules 30 days prior to implementation. Notification is accomplished by forwarding a copy of the revised House Rules to existing tenants. For those tenants who have not yet completed their initial lease term, the owner must provide the tenant with 60 days notice, prior to the end of their lease term, of the change in the House Rules.

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## **VII. Penalties for Violating the House Rules**

Repeated violations of the non-smoking policy may be considered material noncompliance with lease requirements and may result in termination of tenancy. When pursuing eviction due to material noncompliance with lease requirements, existing HUD procedures found in HUD Handbook 4350.3, REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, Chapter 8 must be followed.

## **VIII. Further Information**

If you have any questions regarding the requirements in this Notice as they pertain to the Office of Housing's programs, please contact your local HUD Field Office.

/s/

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David H. Stevens  
Assistant Secretary for Housing -  
Federal Housing Commissioner



**U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing  
Office of Healthy Homes and Lead Hazard Control**

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**SPECIAL ATTENTION OF:**

NOTICE: PIH-2012-25

Regional Directors; State and Area  
Coordinators; Public Housing Hub  
Directors; Program Center Coordinators;  
Troubled Agency Recovery Center Directors;  
Special Applications Center Director;  
Administrators; Resident Management  
Corporations Public Housing Agencies;  
Healthy Homes Representatives

Issued: May 29, 2012

Expires: Effective until amended,  
revoked or superseded

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Cross Reference:  
24 CFR 903.7 (e)(1)  
24 CFR 966.3

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Subject: Smoke-Free Policies in Public Housing

1. **Purpose.** This notice is a reissuance of PIH Notice 2009-21 which strongly encourages Public Housing Authorities (PHAs) to implement smoke-free policies in some or all of their public housing units. According to the American Lung Association, cigarette smoking is the number one cause of preventable disease in the United States. The elderly and young populations, as well as people with chronic illnesses, are especially vulnerable to the adverse effects of smoking. This concern was addressed by the Family Smoking Prevention and Tobacco Control Act, P.L. 111-31, signed by the President on June 22, 2009. It is possible for Environmental Tobacco Smoke (ETS) to migrate between units in multifamily housing, causing respiratory illness, heart disease, cancer, and other adverse health effects for those living in neighboring residences. Therefore the Department is encouraging PHAs to adopt smoke-free policies. By reducing the public health risks associated with tobacco use, this notice will enhance the effectiveness of the Department's efforts to provide increased public health protection for residents of public housing. The Department is currently developing additional guidance to assist PHAs with the consideration and adoption of smoke-free policies.

2. **Applicability.** This notice applies to Public Housing.

3. **Background.** Secondhand smoke, also known as Environmental Tobacco Smoke, is the smoke that comes from the burning end of a cigarette, pipe or cigar, and the smoke exhaled from the lungs of smokers. ETS is involuntarily inhaled by non-smokers, and can cause or worsen adverse health effects, including cancer, respiratory infections and asthma. According to the U.S. Environmental Protection Agency (EPA) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke ([www.epa.gov/smokefree/healtheffects.html](http://www.epa.gov/smokefree/healtheffects.html)). Also the 2006 Surgeon General's report identified hundreds of chemicals in secondhand smoke that are known to be toxic. The report

*(The Health Consequences of Involuntary Exposure to Secondhand Smoke)* can be found at <http://www.surgeongeneral.gov/library/smokeexposure/report/fullreport.pdf>. According to this report, secondhand smoke causes an estimated 50,000 deaths in adult non-smokers in the United States each year, including approximately 3,400 from lung cancer and approximately 46,000 from heart disease. This can have a significant impact on people who live in close proximity to smokers.

Currently there are more than 1.2 million families who reside in public housing. Residents between the ages of 0-17 represent approximately 39 percent of public housing residents, with those over the age of 62 representing approximately 15 percent of public housing residents. Residents in these age groups account for at least 54 percent of public housing residents, and represent a population that could be at increased risk to the adverse effects of ETS. Additionally, there are a considerable number of residents with chronic diseases such as asthma and cardiovascular disease who may also be particularly vulnerable to the effects of ETS as secondhand smoke lingers in the air hours after cigarettes have been extinguished and can migrate between units in multifamily buildings.

Smoking is the leading cause of fire deaths in multifamily buildings with 26 percent of these casualties reported in 2005 [www.usfa.dhs.gov/downloads/pdf/publications/Residential\\_Structure\\_and\\_Building\\_Fires.pdf](http://www.usfa.dhs.gov/downloads/pdf/publications/Residential_Structure_and_Building_Fires.pdf). Data from the U.S. Fire Administration of the Department of Homeland Security estimates that in 2006 there were 18,700 smoking-material fires in homes. These fires resulted in 700 civilian deaths (not including firefighter casualties), 1,320 civilian injuries, and \$496 million in direct property damage [www.nfpa.org/assets/files/PDF/OS.Smoking.pdf](http://www.nfpa.org/assets/files/PDF/OS.Smoking.pdf).

4. **Indoor Air Quality (IAQ).** According to the U.S. Green Building Council (USGBC), toxin free building materials used in green buildings help combat indoor air pollution. Achieving good IAQ involves minimizing indoor pollutants such as ETS; therefore it would be advantageous for a PHA to restrict indoor smoking as it would be easier for a property to achieve good IAQ in its buildings. During construction or renovation of projects, PHAs should consider the following actions: installing direct vent combustion equipment and fireplaces; providing for optimal, controlled, filtered ventilation and air sealing between living areas and garage or mechanical areas, and the use of paints and other materials that emit no or low levels of volatile chemicals (volatile organic compounds or VOCs). Sixty-five percent of the public housing inventory was built prior to 1970. In order for a PHA to implement retrofits that would improve IAQ significantly, it would be likely that renovation would need to take place. If a PHA performs renovations to improve IAQ without also implementing a non-smoking policy, the IAQ benefits of the renovation would not be fully realized. Therefore, a non-smoking policy is an excellent approach for those PHAs that are trying to achieve improved IAQ without additional retrofit costs.

5. **Maintenance.** It is well known that turnover costs are increased when apartments are vacated by smokers. Additional paint to cover smoke stains, cleaning of the ducts, replacing stained window blinds, or replacing carpets that have been damaged by cigarettes can increase the cost to make a unit occupant ready. Therefore, a non-smoking policy is another good approach for reducing maintenance costs. View the Sanford Maine Housing Authority case study at

<http://www.smokefreeforme.org/landlord.php?page=Save+Money%2C%3Cbr%3ESave+Your+Building>.

6. **Policy Discretion.** PHAs are permitted and strongly encouraged to implement a non-smoking policy at their discretion, subject to state and local law. Some PHAs have established smoke-free buildings. Some PHAs have continued to allow current residents who smoke to continue to do so, but only in designated areas and only until lease renewal or a date established by the PHA. Some PHAs are prohibiting smoking for new residents. According to a state-funded anti-smoking group, the Smoke-Free Environment Law Project of the Center for Social Gerontology, there are more than 225 PHAs and housing commissions across the country that have implemented non-smoking policies. PHAs should consult with their resident boards before adopting non-smoking policies at their properties.

7. **PHA Plans.** PHAs opting to implement a non-smoking policy should update their PHA plans. According to 24 CFR 903.7(e), their plan must include their statement of operation and management and the rules and standards that will apply to their projects when the PHA implements their non-smoking policy. PHAs are encouraged to revise their lease agreements to include the non-smoking provisions. If PHAs institute non-smoking policies, they should ensure that there is consistent application among all properties and buildings in their housing inventory in which non-smoking policies are being implemented.

8. **Smoking Cessation National Support.** Smoking tobacco is an addictive behavior, therefore PHAs that implement non-smoking policies should provide residents with information on local smoking cessation resources and programs. Local and state health departments are sources of information on smoking cessation. The toll-free number of the National Network of Tobacco Cessation Quitlines, 1-800-QUIT-NOW (1-800-784-8669), connects users directly to their State quitline, the National Cancer Institute's website [www.smokefree.gov](http://www.smokefree.gov) provides tips on quitting tobacco use, and the American Lung Association's Web page on State Tobacco Cessation Coverage [www.lungusa2.org/cessation2](http://www.lungusa2.org/cessation2) provides information on cessation insurance programs, both public and private, in all states and the District of Columbia. In addition, information on quitting from National Cancer Institute counselors can be accessed by calling the toll-free number 1-877-44U-QUIT (1-877-448-7848). Hearing or speech-challenged individuals may access these numbers through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339. PHAs that implement non-smoking policies should be persistent in their efforts to support smoking cessation programs for residents, adapting their efforts as needed to local conditions.

9. **Further Information.** For further information related to this notice, please contact Shauna Sorrells, Director, Office of Public Housing Programs at (202) 402-2769.

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/s/  
Sandra B. Henriquez  
Assistant Secretary for Public and Indian  
Housing

\_\_\_\_\_  
/s/  
Jon L. Gant,  
Director, Office of Healthy Homes  
and Lead Hazard Control

**Smoke-Free Environments Law Project  
The Center for Social Gerontology**

2307 Shelby Avenue  
Ann Arbor, Michigan 48103-3895  
734 665-1126 Fax 734 665-2071  
sfelp@tcs.org  
<http://www.tcs.org/sfelp/home.htm>

***Public Housing Agencies that have adopted smoke-free policies\****  
(updated 1/20/11)

The Smoke-Free Environments Law Project maintains this updated listing of all the Public Housing Agencies in the United States that have adopted smoke-free policies for one or more of their apartment buildings. As of January 20, 2011, at least 230 Public Housing Agencies had adopted smoke-free policies for some or all of their apartment buildings, with about 214 being adopted since the beginning of January 2005; an average of about 2.9 per month. The 27 states with such policies, with the number of individual Public Housing Agencies with smoke-free policies in parentheses, include: Michigan (55), Minnesota (34), Nebraska (24), Maine (20), Colorado (16), Washington (14), Oregon (14), New Hampshire (10), New Jersey (9), California (8), Alaska (4), Idaho (3), Utah (3), Wisconsin (2), Arkansas (2), Florida, Montana, Indiana, Kentucky, Pennsylvania, Texas, Massachusetts, Connecticut, Vermont, Illinois, New York and Kansas. Access the listing in pdf format at <http://www.tcs.org/sfelp/SFHousingAuthorities.pdf>.

**Alaska**

Aleutian Housing Authority, AK June 1, 2009 66 units total: 31 elderly and 35 family  
North Pacific Rim Housing Authority, AK September 7, 2007 83 units in all  
elderly/disabled/family housing in 8 communities  
Petersburg Indian Association, AK September 1, 2008 12 units family  
Tlingit and Haida Regional Housing Authority, AK Effective May/June, 2010; several  
hundred units

**Arkansas**

Little Rock, AR November 2009 Effective January 1, 2010; 3 buildings 596 units (428  
age 50+ and 168 family)  
Polk County, AR November, 2009 Effective January 1, 2010 6 buildings, 182 units

**California**

Alameda, CA April, 2008 3 buildings, 298 units elderly & family  
Madera, CA  
Oxnard, CA March 25, 2008 2 buildings, 150 units elderly  
Port Hueneme, CA April 2, 2008 60 units elderly/disabled, 30 units family  
Plumas County, CA October, 2008

## California *(continued)*

Rancho Mirage, CA December 7, 2006 4 complexes, 228 units  
San Joaquin County, CA Adopted July 1, 2010; effective fall, 2010. All properties  
Santa Barbara, CA Nov. 16, 2005 36 units elderly

## Colorado

Aurora, CO November, 2010 1 building w/ 121 units for elderly; phasing in by 2012  
Boulder (city), CO April, 2008 9 buildings  
Boulder County, CO April 29, 2008; 126 buildings by 12/09  
Carbondale, CO March, 2009 64 units elderly  
Delta, CO November, 2010 1 building w/ 48 units  
Denver, CO Effective January, 2010 2 buildings w/ 90 units  
Estes Park, CO 1 building, 24 units elderly  
Fort Collins, CO October, 2008 27 units elderly now smoke-free; other elderly units by 11/09; all units by 7/1/10  
Grand County, CO 6 buildings, 64 units  
Lakewood, CO 2 buildings, 188 units smoke-free by end of 2009  
Littleton, CO Effective sometime in 2009. 1 assisted living building w/110 units  
Longmont, CO Effective sometime in 2009. 3 buildings w/172 units  
Loveland, CO date unknown 1 building, 49 units elderly  
Rifle, CO February, 2009 4 buildings, 28 units  
Salida, CO 17 buildings, 50 units smoke-free by June, 2009  
Wellington, CO October, 2008 14 elderly units by 11/09; 28 family units by 7/10/10

## Connecticut

Milford, CT Adopted March 16, 2010; Effective 3/17/10 for all new residents; 11/1/10 for all current residents. 465 units, elderly/family

## Florida

Fort Pierce, FL 1996

## Idaho

Boise City/Ada County, ID Nov. 1, 2009 All 214 units; elderly, disabled & family  
Caldwell, ID January 1, 2009 234 units family/elderly/disabled  
Nampa, ID August 8, 2007 142 units elderly/disabled/family

## Illinois

Winnebago County, IL Adopted July 5, 2010

## Indiana

Kokomo, IN May 21, 2007 560 units in 6 buildings, 2 duplexes and 45 scattered site houses

## Kansas

Lawrence-Douglas County, KS; adopted June 28, 2010; effective 1/1/11, all 6 properties w/ 823 units

## Kentucky

Danville, KY April, 2008 1 building, 5 units disabled

## Maine

Auburn, ME September, 2004

Bangor, ME May, 2007

Bath, ME July, 2008 Effective for everyone on 1/1/09

Brewer, ME June, 2006; in January, 2009, all buildings were made smoke-free

Bar Harbor, ME May, 2006 (Mount Desert Island and Ellsworth Housing Authority)

Brunswick, ME June, 2007

Ellsworth, ME June, 2006 (Mount Desert Island and Ellsworth Housing Authority)

Fort Fairfield, ME September, 2006

Lewiston, ME September, 2008 Effective 11/1/08; grandfathering until 4/1/09

Mount Desert Island, ME June, 2006 (Mount Desert Island and Ellsworth Housing Authority)

Old Town, ME July, 2006

Pleasant Point Passamaquoddy Reservation, ME adopted in 2008 (new building with 60 units, family)

Portland, ME Adopted October 7, 2010. Effective July 1, 2011. 10 buildings w/ 574 family units & 418 elderly/disabled units; total, 992 units. Plus a 169-unit elderly/disabled building it manages

Presque Isle, ME March 31, 2009

Sanford, ME September, 2005

South Portland, ME July, 2008 Effective 1/1/09; grandfathering until 7/1/09 Sanford, ME September, 2005

Southwest Harbor, ME June, 2006 (Mount Desert Island and Ellsworth Housing

Tremont, ME March, 2008

Waterville, ME March 1, 2007

Westbrook, ME March, 2008 Effective 1/09; no grandfathering

## Massachusetts

Boston, MA Effective October, 2009 for 14 units; plan to have all 12,000+ units smoke free in 3-4 years

## Michigan

Algonac, MI October 28, 2008 Effective 1/1/09 for all residents; 50 elderly/disabled & 20 family townhouses

Allen Park, MI September 5, 2006 60 units

## Michigan *(continued)*

Alma, MI October 31, 2006 2 buildings, 59 units  
Bangor, MI April, 2007 24 units elderly/disabled & 20 units family  
Bedford Township, MI April 16, 2007 97 units elderly/disabled  
Belding, MI Jan. 25, 2007 4 buildings/complexes 140 units - 30 family, 110 elderly/disabled  
Bessemer, MI April 16, 2007 30 units elderly/disabled  
Big Rapids, MI Adopted January 13, 2011; effective April 1, 2011; current residents who smoke are grandfathered until April 1, 2016. 1 building w/23 units  
Boyne City, MI Effective 2008, 2 buildings w/ 30 elderly & 53 elderly/disabled  
Cadillac, MI July 20, 2005 Kirtland Terrace 84 units; elderly & disabled; March 15, 2010  
Caseville, MI Adopted April 28, 2010; effective immediately, 11 buildings, 47 units elderly/disabled  
Charlevoix, MI October 20, 2009 1 building w/ 62 units elderly/disabled  
Cheboygan, MI Effective 2010, 1 elderly building w/ 8 units  
Coldwater, MI Adopted October 7, 2010. Effective 1/1/11. 1 building w/ 97 units elderly/disabled; Cornerstone Apartments w/ 50 units, 40 family & 10 elderly  
Detroit, MI Adopted December 16, 2010; effective January 1, 2011. 15 buildings (10 elderly w/1440 units & 5 family) w/ 678 units) w/ 2118 total units  
Dundee, MI Adopted April 20, 2010; effective June 20, 2010. 1 building, 75 units elderly  
East Jordan, MI June 13, 2006 Lakeview Manor 20 units  
East Tawas, MI Effective October 1, 2010 for 1 building w/ 44 units, and effective Nov 20, 2010 for 1 building w/ 41 units, 2 buildings w/ 85 units total  
Eastpointe, MI May 23, 2007 164 units elderly/disabled  
Elk Rapids, MI June 20, 2006 20 units  
Escanaba, MI December 17, 2007 174 units elderly/disabled/family  
Ewart, MI July 24, 2007 53 units elderly/disabled  
Gladstone, MI Adopted on July 13, 2010; effective August 1, 2010, but current smokers grandfathered for as long they live in unit. 2 buildings w/ 102 units for elderly & disabled  
Grand Rapids, MI June 26, 2007 about 9 developments w/ 900 units elderly/disabled/family  
Hancock, MI Adopted March 17, 2010; effective April 1, 2010, 2 buildings w/ 94 units elderly/disabled. New 24-unit building for disabled to be constructed soon will open smoke-free.  
Hillsdale, MI Adopted January 20, 2011; effective immediately, w/current smokers grandfathered as long as they live in unit. 1 building w/60 units- family, elderly, disabled  
Ishpeming, MI Jan. 11, 2007 1 building, 88 units elderly/disabled  
Kingsford MI July 16, 2008 2 buildings, 41-unit elderly/disabled, 2-unit family duplex  
Lansing, MI Adopted July 28, 2010; effective July 1, 2011. 834 total units in 4 buildings/developments and 250 scattered site units  
Livonia, MI August 17, 2006 388+ units  
Match-E-Be-Nash-She-Wish-Band of Pottawatomi Indians, a.k.a. Gun Lake Tribe, MI Effective 2010. 9 houses  
Manistee, MI Adopted November 24, 2009; effective Jan. 1, 2010. 2 duplexes & all future substantially repaired units  
Marquette, MI April 24, 2007 a portion of 140 units elderly/disabled  
Marysville, MI March 15, 2007 132 units elderly/disabled

## Michigan *(continued)*

Melvindale MI July 10, 2006 199 units  
Menominee, MI August 1, 2009 83 elderly & 44 family units  
Middleville, MI November 18, 2007 50 units elderly/disabled  
Monroe, MI Effective Nov. 1, 2009 All 293 units: 148 elderly/disabled; 115 family;  
30 scattered site  
Montcalm County, MI Adopted May 25, 2010; effective June 1, 2010 & Dec. 1, 2010 for  
current smokers. 20 units elderly/disabled and 20 family scattered site units  
Negaunee, MI September 11, 2007 80 units elderly/disabled/family  
Niles, MI Adopted November 18, 2010. 1 high-rise w/ 129 units elderly/disabled/family  
& 50 scattered site family homes. Effective 1/1/11 for all indoor and outdoor common  
areas; effective 1/1/12 for all indoor areas, including living units  
Northville MI July, 2008 1 building w/ 100 units elderly/disabled  
Nottawaseppi Huron Band of Potawatomi Indian Housing Authority, MI Effective 2010.3  
single family homes; plus 5 homes to be built in 2011  
Paw Paw, MI March, 2007, 81 units elderly/disabled  
Plymouth, MI Jan. 18, 2006 Tonquish Creek Manor 108 units  
Pokagon Band Housing Authority, MI Effective 2010. 13 houses  
Reed City, MI Adopted September 16, 2010. Effective January 1, 2012. 7 buildings w/  
101 total units: 6 family with 33 units, and 1 elderly building w/ 68 units  
Rogers City, MI May 15, 2008 1 building, 38 units elderly/disabled/family  
Sault Ste. Marie, MI December 13, 2006 3 buildings, 120 units  
Sault Tribe, MI Adopted April 19, 2010; effective May, 2010 for 4 existing duplexes; 3  
elderly triplexes to be built in 2011  
South Haven, MI May 31, 2007 80 units elderly/disabled  
Sturgis, MI Adopted August 24, 2010; effective Dec. 1, 2010 for new residents & Sept. 1,  
2011 for all residents. 1 building w/ 71 units for elderly & disabled  
Traverse City, MI Dec. 19, 2006 2 buildings, 116 units elderly/disabled; 20 units family  
Wakefield, MI Adopted November, 2010. Effective December 20, 2010. Totally smoke-free  
on 12/20/11. 1 building w/ 30 units elderly.  
West Branch, MI Adopted July 21, 2010; effective August 1, 2010, 2 buildings w/ 87 units  
for elderly/disabled; Jan. 1, 2011 for current smokers

## Minnesota

Austin, MN January 1, 2005 2 buildings w/ 159 units  
Benson, MN October 1, 2005  
Breckenridge, MN September 1, 2008  
Cambridge, MN Dec., 2005 45 units  
Carver County, MN sometime in 2006 2 elderly, market-rate buildings, 65-units in  
Chanhassen & 68 units in Waconia  
Cloquet/Carlton, MN 2003 2 properties  
Columbia Heights, MN September 15, 2009 2 properties w/ 145 units Dakota County, MN  
September 1, 2008 1 building, with another in 9/09  
Dakota County, MN September 1, 2008 1 building, with another in 9/09  
Delano, MN May, 2006 1 building 16 units elderly, 1 building 30 units family  
Detroit Lakes, MN July 1, 2009 1 building w/ 60 units

## Minnesota *(continued)*

Duluth, MN November 25, 2009 Effective May 1, 2010  
Ely, MN October, 2009 145 units  
Fergus Falls, MN April 10, 2002  
Frazee, MN 2007 8 units elderly  
Jackson, MN July 1, 2009  
Little Falls, MN January 1, 2008  
Long Prairie, MN January 1, 2009  
Melrose, MN February, 2002  
Minneapolis, MN March 1, 2006 102 units in 1 building for elderly  
Montevideo, MN June 1, 2009 1 building w/ 58 units  
Montgomery, MN October 1, 2007  
Mountain Lake, MN September 12, 2007 42 units  
North Mankato, MN March 29, 2004  
Northwest Multi-County Housing Authority, MN October 1, 2007  
Pequot Lakes, MN 2007 4 buildings  
Perham, MN December 1, 2008  
Plymouth, MN Effective May 1, 2010, 2 buildings w/ 195 units total for elderly  
Sauk Center, MN April 22, 2003  
Sleepy Eye, MN March 1, 2008  
Swift County, MN January 1, 2010 36 townhouses  
Two Harbors, MN Effective October 1, 2009 1 building w/ 58 units  
Wadena, MN September 1, 2009 1 building w/ 120 units  
Windom, MN January 1, 2007 implemented for 1 building w/ 30 units elderly/disabled  
Winona, MN April 1, 2009 2 buildings w/ 39 senior/disabled units

## Montana

Helena, MT March 27, 2007 366 units

## Nebraska

Ainsworth, NE December 7, 2009 All 8 buildings w 30 units  
Aurora, NE 2008 2 buildings w/ 30 units  
Bassett, NE September 1, 2003 5 buildings w/ 16 units  
Blair, NE September 13, 2006 3 buildings, 12 units  
Bridgeport, NE May, 2010 2 buildings w/ 8 units  
Broken Bow, NE June 1, 2010 1 building w/ 40 units  
Cambridge, NE August 11, 2009 1 building w 4 units  
Chappell, NE May, 2010 4 buildings w/ 19 units  
Coleridge, NE Effective May 11, 2004. 6 buildings w/ 20 units  
Douglas County, NE 2005 103 buildings w/ about 200 units  
Fremont, NE October, 2007  
Friend, NE January 13, 2010 6 buildings w/ 25 units  
Gibbon, NE  
Hall County, NE March, 2010 All, 1 building w/ 60 units  
Henderson, NE May 5, 2008 All 5 buildings w/ 20 units

## Nebraska *(continued)*

Imperial, NE January 1, 2010 All 11 buildings w/ 44 units  
Kearney, NE 1996 15 buildings w/ 90 units  
Lincoln, NE January 10, 2008 2 buildings, 211 units elderly  
McCook, NE July 1, 2010 4 buildings w/ 34 units  
Minden, NE  
Nebraska City, NE April 6, 2005 2 buildings w/67 units  
St. Paul, NE 2008 All 15 buildings w/ 82 units  
Sutherland, NE May 1, 2010 1 building w/ 4 units  
Syracuse, NE January 1, 2010 2 buildings w/ 11 units

## New Hampshire

Claremont, NH  
Dover, NH Effective July, 2010  
Exeter, NH June 6, 2008 1 building, 85 units elderly/disabled  
Keene, NH Effective April 1, 2010 for all 546 units  
Laconia, NH Effective August 1, 2010 for new residents; effective August, 2011 for all other residents  
Lebanon, NH 2004  
Newmarket, NH Effective July, 2010  
Portsmouth, NH June 11, 2008 Effective Jan. 1, 2009, w/ grandfathering until July 1, 2009, 284 family/elderly/disabled units in 5 buildings, & 3 managed buildings w/150 units  
Rochester, NH Effective January 1, 2009  
Salem, NH Effective October, 2008

## New Jersey

Cliffside Park, NJ Effective October, 2009 354 units elderly  
Highlands, NJ Effective January 2, 2010 95 units elderly  
Ocean City, NJ 2004 (not sure of month)  
Madison, NJ Effective October 1, 2010  
Middletown, NJ Effective November 1, 2010 252 units  
Newton, NJ Summer, 2010 80 units  
Paterson, NJ Effective Dec. 31, 2009  
Summit, NJ 2009 123 units elderly  
Woodbridge, NJ about September, 2007

## New York

Gloversville, NY Adopted May, 2010; effective September 1, 2010. All buildings

## Oregon

Clatsop County, OR Effective January, 2009. All 15 buildings w/ 104 units  
Columbia Cascade, OR Effective March, 2010. All properties.  
Coos-Curry, OR October, 2009 Effective March 1, 2010 for all buildings  
Grand County, CO 6 buildings, 64 units

## Oregon *(continued)*

Jackson County, OR Effective December, 2009. 3 buildings w/ 224 units  
Lane, OR (Housing & Community Services Agency) Effective January, 2011; 28 properties w/1,426 units  
Linn-Benton, OR Effective January 1, 2010; 8 buildings w/ 185 units  
Marion County, OR November 1, 2008 28 units; 242 other units will go SF in early 2010  
North Bend, OR October, 2009 Effective March 1, 2010 for all buildings  
Northwest Oregon, OR Effective March , 2010. 7 properties w/ 218 units  
Portland, OR on August 1, 2009 37 properties with 1,993 units of public housing; possibly in August, 2010, an additional 3,760 units of other affordable housing  
Salem, OR Effective February, 1992. 1 building w/ 54 units for elderly. Their 7 more buildings will become totally smoke-free, phased in from Sept., 2009 thru Sept. 2011  
Umatilla County, OR Effective May 1, 2010. All 8 properties w/ 364 units  
Washington County, OR Effective January, 1, 2010 for 12 buildings w/ 521 units & effective July, 2010 for 243 units (131 units are single family homes)  
West Valley/Polk County, OR Effective August, 2010. All properties w/ 378 units

## Pennsylvania

Titusville, PA Effective August 1, 2009 for 1 building; effective June 1, 2010 for another

## Texas

Decatur, TX Effective October, 2009 All 28 units

## Utah

Davis Community Housing Authority in Farmington, UT August 1, 2009 158 units, plus 28 Section 8 units  
Provo, UT June 1, 2005 203 units  
Tooele County, UT Effective January 1, 2010 22 units

## Vermont

Burlington, VT Adopted February, 2010; Effective Nov. 1, 2010 3 buildings, 274 units

## Washington

Bellingham/Whatcom County, WA June, 2010 1 building & new properties  
Bremerton, WA 2009 all buildings  
Clallam County, WA Effective January 1, 2010 all properties, 480 units  
Everett, WA Adopted March 22, 2010; Effective for all 1,047 units on June 30, 2011  
Franklin County, WA January 1, 2008 280 units  
Island County, WA 2005 all buildings, 166 units  
Kennewick, WA Adopted February, 2010; all units and buildings effective July 1, 2010, 205 units (72 units - elderly & disabled; 9 units - HIV/AIDs; 124 - multifamily housing)  
King County, WA December 17, 2007 222 units  
Pierce County, WA 1 building  
Seattle, WA 2001

## Washington *(continued)*

Tacoma, WA 1 elderly high-rise

Vancouver, WA May, 2009 1 elderly/disabled building; another in June, 2009

Walla Walla, WA March 17, 2008 all buildings and units – about 300+ units

Yakima, WA sometime in 2005 for elderly units

## Wisconsin

Baraboo, WI August 2, 2005 2 buildings; about 80 units; elderly & disabled

DePere, WI Nov. 13, 2003

\* Note: many of the smoke-free policies grandfather current residents who are smokers for as long as they remain living in their apartment unit. Thus, many of these buildings are transitioning to being totally smoke-free. Others are already totally smoke-free.

## Select Resource Organizations

### **Nationwide Tobacco Quitline**

This nationwide toll-free telephone number connects you to counseling and information about quitting smoking in your state.

[1-800-QUIT-NOW](tel:1-800-QUIT-NOW)

### **Health**

#### **American Academy of Pediatrics**

Julius B. Richmond Center of Excellence  
Department C, ETS, PO Box 927, Elk Grove Village, IL 60009  
Phone: (847) 228-5005

[www.aap.org](http://www.aap.org)

[richmondcenter@aap.org](mailto:richmondcenter@aap.org)

The mission of the AAP Julius B. Richmond Center of Excellence is to improve child health by eliminating exposure to tobacco and secondhand smoke. See also <http://www.kidslivesmokefree.org> and [http://www2.aap.org/richmondcenter/Smoke\\_freeHousing.html](http://www2.aap.org/richmondcenter/Smoke_freeHousing.html).

#### **American Cancer Society**

1599 Clifton Rd, NE, Atlanta, GA 30329  
Phone: (800) 227- 2345

[www.cancer.org](http://www.cancer.org)

The American Cancer Society (ACS) provides information learn about the health hazards of smoking and how to become an ex-smoker. Check online or call1-800-227-2345 to find your local office.

#### **American Heart Association**

7272 Greenville Avenue, Dallas, TX 75231  
Phone: (214) 373-6300  
(800) 242-8721 (for local chapter)

[www.americanheart.org](http://www.americanheart.org)

The American Heart Association (AHA) provides books, tapes, and videos on how smoking affects the heart and also has a guidebook on weight control in quit-smoking programs.

#### **American Legacy Foundation**

1001 G Street, NW, Suite 800, Washington, DC 20001  
Phone: (202) 454-5555

[www.americanlegacy.org](http://www.americanlegacy.org)

The American Legacy Foundation® develops programs that address the health effects of tobacco use, especially on vulnerable populations.

#### **American Lung Association**

1301 Pennsylvania Avenue, NW, Suite 800, Washington, DC 20004  
Phone: (202) 785-3355

1-(800) LUNG-USA for local chapter

[www.lungusa.org](http://www.lungusa.org)

The American Lung Association helps smokers who want to quit through its Freedom From Smoking® self-help quit-smoking program available online at [www.ffsonline.org](http://www.ffsonline.org). The Lung Association also provides public information on the health effects of smoking on its website above or by calling 1(800) LUNG-USA.

### **Asthma and Allergy Foundation of America**

1233-20<sup>th</sup> Street, NW, Suite 402, Washington, DC 20036

Phone: (202) 466-7643

(800) 727-8462

[www.aafa.org](http://www.aafa.org)

The Asthma and Allergy Foundation of America (AAFA) and its volunteers work to develop and implement public policies to improve the quality of life for people with asthma and allergies.

### **Public Health Institute**

555 12<sup>th</sup> Street, 10<sup>th</sup> Floor, Oakland, CA 94607

Phone: (510) 285-5500

Fax: (510) 285-5501

[www.phi.org](http://www.phi.org)

The Public Health Institute (PHI) is an independent, nonprofit organization dedicated to promoting health, well-being and quality of life for people throughout California, across the nation and around the world.

## **Housing and Legal**

### **The Centers for Social Gerontology**

Smoke-Free Environments Law Project

2307 Shelby Avenue, Ann Arbor, MI 48103

Phone: (734) 665-1126

Fax: (734) 665-2071

[www.tcsq.org/sfelp/home](http://www.tcsq.org/sfelp/home)

The Smoke-Free Environments Law Project (SFELP) is a project that provides information, consultation and advice for businesses, government, and individuals in Michigan on policies and practices to protect employees and the general public from the harmful effects of environmental tobacco smoke.

### **Global Advisors on Smokefree Policy (GASP)**

7 Cedar St., Suite A

Summit, NJ 07901

Karen Blumenfeld, Esq.

Executive Director

908-273-9368 phone

908-273-9222 fax

karen.blumenfeld@verizon.net

[www.njgasp.org](http://www.njgasp.org)

Global Advisors on Smokefree Policy promotes 100% smokefree environments and provides customized technical assistance including up-to-date educational materials on the health, economic and environmental benefits of smokefree housing policies.

### **National Center for Healthy Housing**

10320 Little Patuxent Parkway, Suite 500, Columbia, MD 21044

Phone: (877) 312-3046

[www.nchh.org](http://www.nchh.org)

The National Center for Healthy Housing is a nonprofit corporation dedicated to creating healthy and safe homes for children with a focus on indoor health hazards.

### **National Consumer Law Center**

7 Winthrop Square, Boston, MA 02110-1245

Phone: (617) 542-8010

Fax: (617) 542-8028

[www.nclc.org](http://www.nclc.org)

The National Consumer Law Center is a nonprofit advocacy organization for economically disadvantaged Americans.

### **Public Health Law & Policy**

2201 Broadway, Suite 502, Oakland, CA 94612

Phone: (510) 302-3380

Fax: (510) 444-8253

[www.phlpnet.org](http://www.phlpnet.org)

Public Health Law & Policy (PHLP) partners with government, advocates, and other community leaders to provide practical solutions to a wide range of public health problems.

### **Rental Protection Agency**

Phone: (866) 828-9101

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

The Rental Protection Agency is the consumer protection agency for the rental industry and provides free resources for the remediation of landlord/resident disputes.

### **Tobacco Control Legal Consortium**

875 Summit Avenue, St. Paul, Minnesota 55105

Phone: (651) 290-7506

[www.tclconline.org](http://www.tclconline.org)

The Tobacco Control Legal Consortium is a network of legal programs supporting tobacco control policy change throughout the United States.

## **Government**

### **Centers for Disease Control and Prevention**

Office on Smoking and Health

Mailstop K-50, 4770 Buford Highway, NE, Atlanta, GA 30341

Phone: (770) 488-5705

(800) 232-4636

[www.cdc.gov/tobacco/osh](http://www.cdc.gov/tobacco/osh)

The Office on Smoking and Health, a program office within the Centers for Disease Control and Prevention (CDC), funds booklets on smoking topics such as relapse, helping a friend or family member quit smoking, the health hazards of smoking, and the effects of parental smoking on teenagers.

### **National Cancer Institute**

Building 31, Room 10A24, 9000 Rockville Pike, Bethesda, MD 20892

Phone: (877) 448-7848

[www.cancer.gov](http://www.cancer.gov)

The National Cancer Institute (NCI) website provides two key tools to help you quit smoking: *LiveHelp*, an online text messaging service, and the toll-free number to NCI's Smoking Quitline (877-44U-Quit). Also see "Clearing the Air, Quit Smoking Today," [http://www.smokefree.gov/pubs/clearing-the-air\\_acc.pdf](http://www.smokefree.gov/pubs/clearing-the-air_acc.pdf).

### **Smokefree.gov**

[www.smokefree.gov](http://www.smokefree.gov)

The information and professional assistance available on this website can help to support both your immediate and long-term needs as you become, and remain, a nonsmoker.

### **United States Department of Housing and Urban Development**

Office of Healthy Homes and Lead Hazard Control  
451- 7<sup>th</sup> Street, SW, Room 8236, Washington, DC 20410  
202-755-1785, Ext. 7698

[www.hud.gov/lead](http://www.hud.gov/lead)

The office enforces HUD's lead-based paint regulations, provides public outreach and technical assistance to help protect children and their families from other health and safety hazards in the home.

### **United States Environmental Protection Agency (EPA)**

Indoor Air Quality Information Clearinghouse  
P.O. Box 37133, Washington, DC 20013-7133  
Phone: (703) 356-4020 ▪ (800) 438-4318

[www.epa.gov/smokefree](http://www.epa.gov/smokefree)

EPA has developed a number of free resources, including the *Smoke-free Homes Community Action Kit*, *Planning Guide for Pledge Events*, and *Local Programs Promoting Smoke-free Homes Booklets*, that are designed to help you start a local smoke-free homes program and educate the public about the health risks associated with exposure to secondhand smoke.

## **Other**

### **Americans for Nonsmokers' Rights**

Publications & Merchandise Order Form  
2530 San Pablo Avenue, Suite J, Berkeley, CA 94702  
(510)-841-3060

[www.no-smoke.org](http://www.no-smoke.org)

Americans for Nonsmokers' Rights is the leading national lobbying organization dedicated to nonsmokers' rights and protecting nonsmokers from exposure to secondhand smoke.

### **Rent Control and Drifting Smoke**

(Article for Landlords)

[www.smokefreeapartments.org](http://www.smokefreeapartments.org)

Smoke-free Apartments is an on-line registry for apartment owners who have chosen to establish a total or partial non-smoking policy in their buildings.

**AMENDED & RESTATED  
RECIPROCAL EASEMENTS,  
PARKING AND OPERATING  
AGREEMENT AND  
DECLARATION OF  
RESTRICTIONS**

DOCUMENT NO.

DOCUMENT TITLE

**After Recording Return Document to:  
Jennifer S. McGinnity, Esq.  
Shopko Stores Operating Co., LLC  
700 Pilgrim Way  
Green Bay, WI 54304**

**Tax Parcel Nos.:**  
**281-2408-32-2029-62**  
**281-2408-32-2029-51**  
**281-2408-32-2029-61**  
**281-2408-32-2029-50**

**THIS INSTRUMENT WAS DRAFTED BY**

**Louis J. Molepske, City Attorney  
1515 Strongs Avenue  
Stevens Point, WI 54481  
(715) 346-1556**

**AMENDED AND RESTATED RECIPROCAL  
EASEMENTS, PARKING AND OPERATING  
AGREEMENT AND DECLARATION OF  
RESTRICTIONS**

**Between**

**THE COMMUNITY DEVELOPMENT AUTHORITY  
OF THE CITY OF STEVENS POINT, WISCONSIN, THE  
CITY OF STEVENS POINT, WISCONSIN, and SPIRIT  
SPE PORTFOLIO 2006-1, LLC**

**AMENDED AND RESTATED RECIPROCAL EASEMENTS, PARKING AND  
OPERATING AGREEMENT AND DECLARATION OF RESTRICTIONS**

THIS AMENDED AND RESTATED RECIPROCAL EASEMENTS, PARKING AND OPERATING AGREEMENT AND DECLARATION OF RESTRICTIONS is made this \_\_\_\_ day of \_\_\_\_\_, 2012, by and among the COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF STEVENS POINT, WISCONSIN, a separate body corporate and politic authorized and created under Section 66.4325 of Wisconsin Statutes, 1516 Church Street, Stevens Point, Wisconsin 54481 (herein called the "**Authority**"); the CITY OF STEVENS POINT, WISCONSIN, a separate body politic and corporate, 1515 Strongs Avenue, Stevens Point, Wisconsin 54481 (herein called the "**City**"); and SPIRIT SPE PORTFOLIO 2006-1, LLC, a Delaware limited liability company, 14631 North Scottsdale Road, Suite 200, Scottsdale, AZ 85254 (herein called "**Spirit**") (Spirit, Centerpoint, the City, and the CDA are hereinafter referred to individually as an "**Owner**" and collectively as "**Owners**");

WITNESSETH:

WHEREAS, the City, the Authority, and Spirit's predecessor in interest (Shopko Stores, Inc.) entered into that certain Reciprocal Easement, Parking and Operating Agreement and Declaration of Restrictions dated October 5, 1984, recorded in Volume 457 on Page 817, as Document Number 380726 with the Portage County Recorder's office, as amended by an Agreement recorded as Document Number 380735 and as further amended by an Agreement recorded as Document Number 382847 (the "**Original Agreement**");

WHEREAS, the Original Agreement was part of the revitalization in the 1980s of the multi-block site lying south of relocated Highway 10, west of Church Street extended north, north of Main Street and east of First Street, together with certain peripheral areas;

WHEREAS, in 2011 the Authority has acquired or controls the following parcels covered by the Original Agreement: (1) the former Penney Store consisting of a building with approximately 33,817 square feet of gross leasable area, (2) the enclosed mall area consisting of a building with approximately 130,606 square feet of gross leasable area of mall shops, which areas identified at (1) and (2) are legally described in the attached Exhibit A (collectively the "**Mall**"); (3) the former Dunham's site consisting of a building with approximately 22,626 square feet of leasable area, which area is legally described in the attached Exhibit B (the "**Dunham Site**") and is now under the control of the Authority;

WHEREAS Spirit owns the existing Shopko store consisting of a building with approximately 90,370.5 square feet of leasable area, which area is legally described in the attached Exhibit C (the "**Shopko Site**"). Spirit currently leases the Shopko Site to Shopko Stores Operating Co., LLC ("**Shopko**");

WHEREAS, the Mall, the Shopko Site and the Dunham Site are surrounded by approximately 4.65 acres of parking and other common areas, which area is described in the attached Exhibit D (the "**Common Area**"), and is owned by the Authority;

WHEREAS, that portion of the Common Area used for parking spaces is herein after referred to as the "**Parking Spaces**"; and

WHEREAS, the Owners wish to amend and restate the Original Agreement in order to facilitate the re-development of the Mall, and to further the future operation of areas remaining subject to this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, covenants, easements and restrictions herein contained and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each and every party hereto, it is agreed as follows:

## **ARTICLE I** **GENERAL**

1.1. **Original Agreement.** The Original Agreement is hereby amended and restated in its entirety by this Agreement. Any portions of the Original Agreement which are not restated herein are hereby terminated and shall be of no further force or effect. The Original Agreement is hereby replaced in its entirety by this Agreement.

1.2. **Exhibits.** The exhibits mentioned herein have been annexed to this Agreement and are hereby incorporated by reference and made a part hereof as fully and if set forth in full at each place of reference.

## **ARTICLE II** **PLANNING OF THE DEVELOPMENT**

2.1. **Plans and Specifications.** The City intends to adopt new plans for the Mall, which will call for new uses beyond the retail uses contemplated by the Original Agreement. For instance, the City anticipates conveying the former JCPenney's site and a portion of the Mall site and all parking areas west of Third Street to Mid-State Technical College ("MSTC") for use as a technical college. Owners hereby agree that the City may extend both Third Street and Strongs Avenue (to the west of the Shopko Site) in order to connect Main Street to Centerpoint Drive, and that the City may demolish the enclosed mall building between the extended Third Street and Strongs Avenue. Except as to the Released Property (as defined at Section 2.4), any new development or construction within areas remaining subject to this Agreement (such remaining areas, collectively, the "**Development**," and each individual area identified within the Development, a "**Tract**") shall be subject to the prior written consent of all Owners as to size, layout (including but not limited to the provision of adequate parking for the proposed uses), location and height, which consent shall not be unreasonably withheld and shall be deemed granted by an Owner if such Owner does not disapprove said development or construction in writing within sixty (60) days after receipt of a request for consent. For the purposes of this section, new development or construction shall be deemed to refer to any new buildings or other new improvements, and shall not include the reconstruction of the rear of the current Fox Theatre or the repairing (without expansion) or refacing of the former Dunham's building.

2.2. **Construction.** All plans and specifications referred to in this Section shall comply with the building and zoning laws of the municipality or other governmental subdivisions wherein the Development is situated and with all laws, ordinances, orders, rules regulations, and requirements of all federal, state, and municipal governmental authorities. Exterior changes shall

follow Chapter 22 - Historic Preservation/Design Review, or as updated, of the Stevens Point Municipal Code. All construction, improvements, or alterations shall be completed with reasonable diligence.

2.3. Common Area. The Common Area within the Development shall contain enough Parking Spaces for the buildings constructed within the Development as required by this Agreement and by law. The Common Area shall also contain such access lanes, service courts, lighting and landscaping required by law. The Authority shall have the right to make changes with respect to the Common Area provided that such changes are consistent with the City's zoning code and this Agreement.

2.4. Removal of Property from Development Area. The portions of the Mall west of to-be-reestablished Third Street, including such right-of-way, as legally described in the attached Exhibit E, and all peripheral/outlot parking areas as legally described in the attached Exhibit F (together, the "Released Property"), are hereby released and removed from the Original Agreement and this Agreement. Notwithstanding the foregoing, so long as the Shopko Site is being used for the operation of a general retail department store with pharmacy and optical services, no portion of the Released Property may be used for a: (i) retail pharmacy or drugstore; (ii) optical center; (iii) nutritional, health or wellness center (similar to a GNC store); (iv) toy store; (v) lawn and garden center; or (vi) general merchandise store, discount department store or similarly defined business (as general merchandise and discount department stores are listed in the most current edition from time to time of the Directory of Discount & General Merchandise Stores published by Business Guides, Inc., Division of Lebar-Friedman, Inc., or a like successor publication); provided, however, such use restrictions shall not in any way prevent or interfere with use of those portions of the Released Property as conveyed to MSTC for a coffee shop or other establishment offering beverages or food for on-premises or off-premises consumption, or for a bookstore or similar store not more than 1,000 square feet in size primarily catering to MSTC's student population. Immediately upon recordation of this Agreement, the Authority shall execute and record a declaration of restrictions affecting the Released Property which sets forth the use restrictions described in this Section 2.4.

2.5. Shopko Mall Entrance. If the mall structure adjacent to the Shopko Site is demolished, then the City/Authority will pay, at a reasonable cost, for the mall entrance to the building on the Shopko Site to be enclosed or converted to an exterior door, at Spirit's option.

### **ARTICLE III** **COVENANTS AND USE RESTRICTIONS**

3.1. Manner of Operation. The Owners agree that all reasonable means be taken to prevent any manner of operation or use within the Development not in accordance with high quality standards, including, but without limitation, the use thereof for solicitation or demonstration. Without limitation, it is expressly covenanted and agreed that the Owners will not use or suffer or knowingly permit any person to use in any manner whatsoever, their respective Tracts or the buildings or improvements thereon for any purpose calculated to injure the reputation of the Development. No provision of this Agreement is intended, however, to infringe upon any constitutional right of any person.

### 3.2. Types of Business.

(a) The Owners agree that all uses permitted by the City's zoning code shall be allowed in the Development, except as provided in section 3.2(b).

(b) Notwithstanding any terms to the contrary contained elsewhere in this Agreement, for so long as the Shopko Site is being used for the operation of a general retail department store, no portion of the Development may be used for a retail pharmacy or drugstore; optical center; toy store; lawn and garden center; or a general merchandise store, discount department store or similarly defined business (as listed in the most current edition from time to time of the Directory of Discount & General Merchandise Stores published by Business Guides, Inc., Division of Lebhar-Friedman, Inc., or a like successor publication). These restrictions shall not be deemed to prevent or prohibit any sale of items which are customarily sold from other types of retail stores nor shall it be deemed to prevent the remainder of the Development from being leased, occupied, or used for the sale of miscellaneous items similar to those which may be sold by Shopko in the Shopko store. These restrictions may be limited by Federal and state anti-trust laws and regulations, and to the extent said restrictions are limited by such laws or regulations neither the City nor the Authority joins in the agreements or restrictions contained in such sentence and Spirit covenants and agrees to indemnify and hold the City and the Authority harmless from all loss, expense (including reasonable attorneys fees) and claims arising out of or related in any manner to any violation of Federal or state anti-trust laws or regulations arising out of such agreements or restrictions, provided that notice of such claims be given to Spirit and Spirit be entitled to defend such claims at its sole cost and expense with counsel of its choice. These restrictions are declared to be solely for the benefit of Spirit and the Shopko Site and only enforceable by Spirit, and these restrictions may be unilaterally waived or made less onerous or restrictive by Spirit in its uncontrolled discretion at any time or times hereafter of its choosing and without the agreement, consent or approval of any other parties. These restrictions shall otherwise become null and void and of no further force and effect, upon cessation of operation of a general merchandise discount department store on the Shopko Site and the continuation of such non-operation for a period of not less than two (2) years.

In addition, no portion of the Development shall be used or operated:

- (i) In violation of applicable laws or rules.
- (ii) In a dangerous or hazardous manner.
- (iii) As a nuisance, or as an obnoxious use by reason of unsightliness or excess emission of odors, dust, fumes, smoke, liquid waste, noise, glare, vibration or radiation; provided, however, that nothing contained in this subsection shall limit or prohibit the erection of business communications satellite dishes on the roof of any building.
- (iv) As an adult book store, massage parlor, or any other establishment which provides adult entertainment or which sells, rents or exhibits pornographic or obscene materials.
- (v) For any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (provided that any Owner or occupant that goes out of business shall be entitled to hold one going out of business sale not exceeding four weeks in duration).

(vi) As a check-cashing, title or payday loan business, second-hand store, flea market, pawn shop, government surplus store, Goodwill Store, salvage store, Salvation Army Store, surplus or liquidation store.

(vii) As a liquor store (or any other establishment where beer, wine or liquor is sold for off-premises consumption); provided, however, that this restriction shall not apply to the Shopko Site and shall not prohibit a store where not more than 20% of sales are from alcohol.

(viii) As a bar or tavern (or any other establishment where beer, wine or liquor is served for on-premises consumption); provided, however, that this restriction shall not prohibit establishments where not more than 60% of sales are from alcohol, and shall not prohibit the construction or the expansion of taverns or businesses into this area that operate on Main Street.

(ix) As an automobile, truck, trailer or recreational vehicle sales, leasing, display or repair facility.

(x) As a theater or cinema (except for the current Fox Theater), circus, carnival, bowling alley, funeral parlor or mortuary, car wash, game room or arcade, billiard or pool hall, bingo parlor, casino, off-track betting facility, or any betting establishment (except that the sale of state lottery tickets is not prohibited or restricted).

(xi) As an industrial, manufacturing, or warehouse operation as defined in the City's Zoning Ordinance.

(xii) For residential purposes, except on second or higher floors.

3.3. Discrimination. The Owners agree not to discriminate on the basis of race, color, religion, sex, age, physical handicap or national origin in the sale, lease, or rental or in the use or occupancy of the Tracts or any improvements located thereon, in violation of any applicable law or regulation; provided, however, that a violation of this covenant will not result (and any subsequent lease or deed shall so provide) in a reversion or forfeiture of title, but will entitle the other Owners to such injunctive relief or other remedies as may be available at law.

3.4. Assignments. In the event of any assignment, sale or other transfer of interest in this Agreement or any one of the Tracts by any party hereto, each transferring party from and after the date of such transfer shall be relieved of all liability and obligations on its part thereafter arising or to be performed by it under this Agreement; provided (1) that said transferring party shall not then be in default in the performance of any covenant or obligation to be performed by it under this Agreement, (2) the transferee shall expressly assume and covenant with the nontransferring parties or their successors in title to perform and be bound by all terms, covenants and conditions in this Agreement, and (3) written notice shall be provided to the other parties hereto.

#### **ARTICLE IV** **EASEMENTS**

4.1. Grant of Easements. The Owners hereby grant each to the other and to each individual, partnership, joint venture, corporation, trust, unincorporated association,

governmental agency or other business entity now or hereafter holding an ownership interest in fee in a Tract, the following easements for use by the Owners and their respective permittees (as defined below), without payment of any fee or charge, except as otherwise provided herein:

(a) Pedestrian Easements. Nonexclusive easements for the purpose of pedestrian traffic between each Tract within the Development and: (i) each other Tract which is contiguous thereto; (ii) the public streets and alleys now or hereafter abutting or located on any portion of the Development; and (iii) the parking areas now and hereafter located on the Common Area; limited, however, to those portions of the Development which are improved by the Owner thereof from time to time for pedestrian walkways and made available by such Owner for general use, as such portions may be reduced, increased or relocated from time to time by each such Owner in conformity with the City's zoning and the plans and specifications approved pursuant to Section 2.1.

(b) Vehicular Easements. Nonexclusive easements for the purpose of vehicular traffic over, upon, across and between each Tract in the Development and the public streets and alleys now and hereafter abutting or located on any portion of the Development; limited, however, to those portions of the Development which are improved by the Owner thereof from time to time for vehicular accessways as such portions may be relocated from time to time by such Owner in accordance with the City's zoning and the plans and specifications approved pursuant to Section 2.1.

(c) Common Component Easements. Nonexclusive easements for the purpose of furnishing connection, support and attachment to walls, footings, foundations, slabs, roofs and other structural systems of any improvement now and hereafter constructed on each Tract, the encroachment of common components of improvements and the maintenance, repair and replacement of the same; limited however, to those portions of each Tract on which an improvement is contiguous to an improvement constructed on another Tract. Any Owner of a Tract (the "Benefited Tract") which desires to claim the benefit of the foregoing easement for common components and encroachments will be entitled to exercise such right on the following conditions:

(i) With respect to any improvements or alterations performed on a Benefited Tract after the date hereof, the Owner of the Benefited Tract will submit plans and specifications showing the improvements or alterations proposed to be constructed on the Benefited Tract to the Owner of the Tract (the "Burdened Tract") which will be burdened by the easements hereby created for approval of such plans and specifications by the Owner of the Burdened Tract.

(ii) Approval of such plans and specifications by the Owner of the Burdened Tract will constitute a designation of the portion(s) of the Burdened Tract to be used for the purposes therein described.

(iii) The construction of the improvements or alterations on the Benefited Tract will be diligently prosecuted by the Owner thereof with due care and in accordance with sound design, engineering and construction practices in a manner which is customary for such improvements or alterations and which will not unreasonably interfere with

the use of the Burdened Tract or the improvements thereon or impose an unreasonable load on such improvements.

(iv) The Owner of the Benefited Tract will indemnify and hold the owner of the Burdened Tract harmless from all loss, cost and expense arising from the construction use, maintenance, repair, replacement and removal of the improvements or alterations on the Benefited Tract and the exercise of the rights of the Owner of the Benefited Tract hereunder. When the exercise of the rights hereby granted to the Owner of the Benefited Tract requires entry upon the Burdened Tract or the improvements thereon, the Owner of the Benefited Tract will give due regard to the use of the Burdened Tract and the improvements thereon in the exercise of such rights and will promptly repair, replace or restore any and all improvements on the Burdened Tract which are damaged or destroyed in the exercise of such rights.

(v) Absent a definitive agreement to the contrary, subsequent to the completion of the improvements or alterations to the Benefited Tract, the Owner of the Burdened Tract and the Owner of the Benefited Tract will share proportionately the cost of maintenance, repair and replacement of any common component constructed by either of them which provides vertical or lateral support to contiguous improvements, in accordance with that ratio which the load contributed by the improvements of each Owner bears to the total load on such common components; and the cost of maintenance, insurance, property taxes, repair and replacement of any common wall, roof or structural joinder constructed by the owner of the Benefited Tract (other than components providing support) will be paid solely by the Owner of the Benefited Tract (except that each Owner shall bear the costs of routine maintenance, repair and decoration of its side of any common wall).

(vi) The Owner of the Burdened Tract agrees on the written request of the Owner of the Benefited Tract, to execute and deliver an instrument in recordable form legally sufficient to evidence the grant of the easements herein described, the location thereof and such other conditions affecting the grant of such easements, as might have been approved by such Owners.

(d) Utility Easements. Nonexclusive easements for the installation, use, operation, maintenance, repair, replacement and removal of: water lines and systems; telephone and/or cablevision lines and systems; gas lines and systems; sanitary sewer lines and systems; electrical lines and systems; storm sewers, drainage lines and systems; and other utility lines or systems hereafter developed to serve one or more of the Tracts; provided, however, that all pipes, wires, lines, conduits, mains, sewers, systems and related equipment (hereafter called "**Utility Facilities**") will be installed underground or otherwise enclosed and will be installed, operated and maintained in a manner which will not unreasonably interfere with the use of the Development or improvements on which such Utility Facilities are located. The Owner of any burdened Tract affected by any of such utility easements will have the right, at any time, and from time to time, to relocate any Utility Facilities when located on the burdened Tract on the conditions that: (i) such right of relocation will be exercisable only after thirty (30) days' prior written notice of the intention to relocate has been given to all Owners using the Utility Facilities to be relocated; (ii) such relocation will not unreasonably interrupt any utility service to the

improvements then located on the benefited Tract(s); (iii) such relocation will not reduce or unreasonably impair the usefulness or function of the Utility Facilities to be relocated; and (iv) all costs of such relocation will be borne by the Owner relocating the Utility Facilities.

(e) Access Easements. Nonexclusive easements between each Tract and the public streets and ways abutting or crossing any portion of the Tracts for the purpose of providing ingress, egress and access to the easements hereby created.

(f) Construction Easements. Nonexclusive easements for the purpose of constructing improvements on the Development, including reconstruction, installation, replacement, modification, care and maintenance, provided such use of a burdened Tract is reasonably necessary, will be diligently prosecuted in accordance with sound construction practices and will not unreasonably interfere with the use of the burdened Tract or the improvements thereon.

(g) Parking Easements. Nonexclusive easements in and to the Common Area for access to and to use for vehicular parking purposes. Such parking easements shall consist of a minimum of 437 spaces within the Development area or the minimum number of spaces required by law, whichever is greater. Notwithstanding any provisions to the contrary contained in this Agreement: (i) there shall be no reduction in the number or size of the parking spaces currently existing in the lots immediately to the south and immediately to the east of the Shopko Site without the prior written consent of the Owner of the Shopko Site, and (ii) such parking areas shall be at grade.

The Authority will provide signage that indicates that the 110 spaces immediately to the south of the Shopko Site and the 52 spaces immediately to the east of the Shopko Site as shown on Exhibit G are for use by Shopko customers and employees only. Shopko will be responsible for the enforcement of these spaces. The reserved spaces shall not be segregated by any means other than the aforementioned signage. No plowed snow will be placed in these spaces. The Owner of the Shopko Site shall be permitted to operate an outdoor lawn and garden sales area in the parking lot immediately to the east of the Shopko Site.

(h) Self-Help Easements. Nonexclusive rights of entry and easements over, across and under each parcel in Development for all purposes reasonably necessary to enable any party or Owner of a Tract to perform any of the provision of this Agreement which a defaulting Owner has failed to perform.

4.2. Unimpeded Access. The Owners agree that no barricade or other divider will be constructed between the Tracts and the Owners will do nothing to prohibit or discourage the free and uninterrupted flow of pedestrian traffic throughout the Development in the areas designated for such purposes; provided, however, that each Owner will have the right to temporarily erect barriers to avoid the possibility of creating prescriptive rights therein. The City and the Authority hereby waive all prescriptive and dedication rights.

4.3. Use of Easements. The use of all easements created by this Agreement will, in each instance, be nonexclusive and for the use and benefit of the Owners, their representatives, successors, assigns, and such agents, customers, invitees, licensees, employees, servants, contractors, mortgagees, tenants and tenants' customers, invitees, employees, servants, licensees, contractors and agents as might be designated by each Owner from time to time (all of which persons are herein called "permittees").

4.4. Maintenance of Easement Areas. The Owner of each Tract will operate and maintain all of the areas of such parcel which are subject to the pedestrian and Vehicular easements created by Sections 4.1(a) and 4.1(b) of this Agreement in sound structural and operating condition at the sole expense of the Owner of such Tract. The operation and maintenance of the common component easements created by Section 4.1(c) of this Agreement and the payment of the expenses associated therewith will be governed by the terms of Section 4.1(c) in the absence of a specific agreement between the Owners of the Benefited Tract(s) and the Burdened Tract(s). The Owner of each Tract subject to the easements created pursuant to Section 4.1(d) will operate and maintain all Utility Facilities located within the boundaries of such Tract in sound structural and operating condition (except to the extent that such operation and maintenance is performed by public authorities or utilities) and any expenses occasioned thereby will be borne by the Owners of the Tract(s) which are serviced by such Utility Facilities in the ratio which the gross floor area of the improvements located on each Tract bears to the total gross floor area of the improvements located on all Tracts benefited by said easement; provided, however, that each Owner will pay all costs associated with the operation and maintenance of Utility Facilities and the consumption of utility services which relate solely to the improvements located on a single Tract and no other Owner will have any liability with respect thereto. No costs of operation and maintenance are associated with the easements provided by Sections 4.1(e) and 4.1(h). The costs of operation and maintenance of the easements provided by Section 4.1(f) shall be borne by the Owner of the benefited Tract.

The costs of operation and maintenance of the easements provided by Section 4.1(g) shall be borne by Authority and repaid semiannually by the remaining Owners as follows:

(a) The reimbursable costs and expenditures covered by this subparagraph shall consist of all costs of operating, maintaining, managing, equipping, insuring, protecting, correcting, repairing and/or replacing such parking facilities, including its landscaping, plus an administrative charge equal to five percent (5%) of the total foregoing costs. Such reimbursable costs and expenditures shall be paid by the 15th day of the third and ninth months of each year or, if later, 30 days after receipt of the Authority's bill therefor.

(b) The reimbursable costs and expenditures covered by Subparagraph (a) (the "Parking Costs") to be paid by Spirit shall be allocated based on the ratio of the total number of parking spaces reserved exclusively for Shopko customers and employees as provided in Section 4.1(g) above to the total number of parking spaces on the Development area from time to time. As of the date of this Agreement: (i) Spirit shall pay 37% of the Parking Costs and the Authority shall pay 63% of the Parking Costs if no costs or expenditures related to the parking areas to the west of the Shopko Site are included; and (ii) Spirit shall pay 29.5% of the Parking Costs and the Authority shall pay

70.5% of the Parking Costs if costs or expenditures related to the parking areas to the west of the Shopko Site are included. The Authority agrees to do crack filling and restriping of the parking area immediately to the south and east of the Shopko Site in calendar year 2012, and agrees to repave and restripe that same area in two phases in calendar years 2013 and 2014; notwithstanding any provisions to the contrary elsewhere in this Agreement, Spirit shall pay 19% of the costs of the aforementioned 2012, 2013 and 2014 repairs.

(c) Beginning January 1, 2013, Spirit shall, until January 1, 2030, pay to the City an annual sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) plus an escalator of 1% per year, which payment is in lieu of City real estate taxes on the Common Area.

4.5. Duration. Each easement created hereunder will continue for a term ending January 1, 2030, and will thereafter continue in full force and effect so long as any easement created hereby is used by any Owner (or its permittees); this Agreement will terminate as to each easement on nonuse of such easement for a period of twelve (12) consecutive months following notice by an Owner to the other Owners of an intention to claim termination and no resumption of use occurs within such period.

4.6. Indemnity. Each Owner agrees to indemnify and hold harmless each other Owner from all claims arising from the use of the easements hereby created to the extent that such use occurs within the boundaries of the Tract of such Owner. Each Owner's public liability insurance shall include coverage of such Owner's indemnity covenants in this Agreement, including without limitation this Section 4.6.

4.7. Legal Effect. Each of the easements and rights created by this Agreement are appurtenant to the Tract to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such Tract. For the purpose of each such easement and right, the benefited Tract will constitute the dominant estate and the burdened Tract will constitute the servient estate. Each covenant contained in this Agreement:

- (a) is made for the direct, mutual and reciprocal benefit of each other Tract;
- (b) creates mutual equitable servitudes on each Tract in favor of each other Tract;
- (c) constitutes a covenant running with the land;
- (d) binds every Owner now having or hereafter acquiring an interest in any Tract; and
- (e) will inure to the benefit of each Owner and each Owner's successors and assigns (the phrase "successors and assigns" includes without limitation mortgagees and purchasers at foreclosure sales, their successors and assigns).

Each Owner agrees that on conveyance of its Tract or any portion thereof, the grantee, by accepting such conveyance will thereby become a new party to and be bound by this Agreement,

and shall be required to deliver to the other Owners a written assumption and agreement to perform all of the terms, covenants and conditions on its transferor's (or a predecessor of such transferor) part contained in this Agreement to which its transferor or predecessor was a party, in form and substance satisfactory to the other Owners. In each such instance the Owner conveying its interest in the Tract agrees:

(i) to require the grantee to assume and agree to perform each of the obligations of the conveying Owner under this Agreement to which its transferor or predecessor is a party with respect to the Tract conveyed to such grantee by means of a written instrument executed, acknowledged and recorded in Portage County, Wisconsin; and

(ii) to give notice of each such conveyance and agreement to each other Owner within ten (10) days after the execution thereof, which notice will be accompanied by a copy of such conveyance and agreement.

On such assumption by a grantee and the giving of notice thereof, the conveying Owner will thereafter be released from any obligation under this Agreement arising thereafter with respect to the Tract so conveyed. Each Owner agrees on the written request of the conveying Owner to execute and deliver any appropriate documents or assurances to evidence such release. In the event an Owner is not released, it shall remain personally liable for performance of all of the terms, covenants and conditions on its (or a predecessor's) part contained in this Agreement, for the balance of the term hereof.

4.8. No Dedication. Nothing contained in these grants of easements will be deemed to constitute a gift, grant or dedication of any portion of a Tract to the general public, it being the intention of the Owners that this Agreement will be strictly limited to the use of the parties and Owners, and their respective permittees. This Agreement is intended to benefit the parties and Owners and their respective successors and assigns, and is not intended to constitute any person which is not a party or Owner, a third-party beneficiary hereunder, or to give any such person any rights hereunder, except otherwise provided herein.

4.9. Condemnation. In the event the whole, or any part, of a Tract is taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, an Owner benefited by an easement created by this Agreement will not share in any award, compensation, or other payment made by reason of the taking of a portion of any Tract which is subject to such easement, and such award, compensation or other payment will belong entirely to the Owner of that portion of the Tract which is taken, and such Owner will have no further liability to any other Owner for the loss of such easements, or portion thereof, located on the Tract so taken, subject to Section 6.3 hereof.

## **ARTICLE V** **MAINTENANCE**

5.1. Building Maintenance. The Owners each agree that all buildings and other improvements on the respective Tracts shall be kept and maintained by it at no expense to the others in good, safe and sanitary order, condition and state of repair continuously throughout the

entire term of the easements. In the event that an Owner fails to discharge its obligations under this article within the applicable time periods specified in Section 7.3 after receiving written notice thereof, the other parties and Owners (subject to Section 7.4 hereof) shall have the right to perform such repairs and maintenance and charge the defaulting party or Owner the cost thereof.

5.2. Common Area Maintenance. The Authority agrees to perform or cause to be performed all maintenance of the Common Area and facilities subject to reimbursement from the other Owners as provided for above. "Maintenance" shall mean that all Common Area, facilities and improvements including the Parking Spaces and walkways will be kept at all times in good order and condition in state of repair and well-lighted all in accordance with present reasonable standards of operations, including without limitation keeping the same in a clean, safe and sanitary condition, the prompt removal of all rubbish, litter, snow and surface waters and the resurfacing, stripping, marking and repair and replacement of all malls, service areas, walkways, and landscaping.

5.3. Parking Maintenance. The Authority agrees to maintain, repair and replace the Common Area, including but not limited to the surface and subsurface of the parking facilities, access lanes, and service courts; lighting; and landscaping, and to maintain all such areas reasonably level, smooth and evenly covered with the type of materials originally constructed thereon or such substitutes as will in all reasonable respects be substantially equal to such materials in quality, appearance and durability, continuously throughout the entire term of the easements per Section 4.5 hereof. The Authority's maintenance shall include such appropriate parking area entrance, exit and directional signs, markers and lights as will reasonably be required from time to time and such painting and repainting as may be required to maintain the parking facilities and Parking Spaces and improvements and equipment included thereon in high-quality condition.

## **ARTICLE VI**

### **INSURANCE, CONDEMNATION AND DAMAGE**

6.1. Insurance. Prior to commencing any construction, improvements or alterations upon the Development, each party or Owner, except the City or Authority, shall obtain and keep in full force and effect during such activities an all risk builders risk insurance policy as to such party's or Owner's portion of the site with coverage equal to the total amount of such party's construction contract or contracts for all improvements being constructed. Any such insurance policy shall include the other Owners as additional insureds. Such policies of insurance mentioned in this Section 6.1 shall be written by responsible insurance companies authorized to do business in the State of Wisconsin and all such policies shall contain or permit a waiver of the insured's rights to which the insurer may succeed by subrogation, and this Agreement constitutes each party's or Owner's waiver of such rights. Prior to commencement of construction, each party or Owner shall file with the City Clerk an insurer's certified copy of its insurance policies demonstrating that all coverages required herein are in full force and effect and providing written notice will be given to each of the other parties and Owners at least thirty (30) days prior to termination or cancellation or reduction of such coverage. The City and the Authority shall obtain construction bonds with respect to all construction, improvements or alterations upon the Development.

Each party or Owner shall maintain all risk insurance covering all of the buildings and improvements located in its portion of the Development in an amount equal to the full replacement cost thereof (ninety percent (90%) of full replacement cost in the case of the Shopko Site) without deduction for depreciation or obsolescence, with a deductible of not greater than One Hundred Thousand Dollars (\$100,000.00). All such policies shall contain a waiver of subrogation and this Agreement constitutes each party's or Owner's waiver. Each party and Owner shall maintain comprehensive public liability insurance naming each of the other parties and Owners as insureds with coverage of at least One Million Dollars (\$1,000,000.00) per occurrence and at least Three Million Dollars (\$3,000,000.00) in the aggregate. Each party and Owner shall also supply all other parties with an insurer's certified copy of such policies of insurance. At least 30 days before the expiration of an insurance policy, the party or Owner who originally obtained same shall deliver to the other parties and Owners reasonably satisfactory proof of continuation or replacement of such insurance coverage. Such minimum insurance coverages shall be adjusted each five years to respond to changes in risks and coverages per an independent insurance consultant's advice. Such insurance coverages shall continue to be maintained by such party or Owner, or its successor or assign, continuously throughout the term of the easements contained herein.

6.2. Mutual Indemnification. Each party and Owner with respect to its portion of the Development shall comply with all applicable laws, rules, regulations and requirements of all public authorities and shall indemnify, defend and hold each other party and Owner harmless from and against any and all claims, demands, losses, damages, liabilities and expenses and all suits, actions and judgments (including, but not limited to, costs and reasonable attorneys fees) arising out of or in any way related to the failure by such party or Owner to maintain and operate its Tract in a safe and proper condition. Each party and Owner shall give each other parties and Owners prompt and timely notice of any claim made, or suit or action commenced which in any way could result in indemnification hereunder. No party or Owner shall be required to indemnify another party or Owner against such other party's or Owners own negligence or willful acts, or those of its agents, employees or contractors, although the public-liability insurance required to be carried by each party or Owner on its part of the Development is required to include all parties and Owners as additional insured, and hence covers their negligence on the property of the named insured.

6.3. Condemnation. If any buildings or improvements located in the Development are taken or condemned by any duly constituted authority or are voluntarily conveyed to such an authority pursuant to the threat of condemnation, then each party or Owner as to their portion of the Development shall promptly cause to be rebuilt and restored the remainder thereof to the extent practicable to the condition and general appearance immediately prior to such taking without contribution from any other party or Owner. If such condemnation or taking is so extensive as to make it impracticable in the reasonably exercised business judgment of the condemned party or Owner to continue to transact business in the remaining portion of said party's or Owner's portion of the Development, then such party or Owner shall have the right to terminate its rights and obligations under this Agreement by notice thereof given to the other parties and Owners, such termination to occur on the sixtieth (60th) day following the giving of such notice. The party or Owner whose property is condemned shall have the sole right to any and all the award proceeds resulting from the condemnation, and the other parties and Owners waive any and all rights with respect to such award proceeds; provided, however, that any party

or Owner may claim and collect consequential damages, if any, to its own portion of the Development resulting from the taking.

6.4. Damage and Destruction. The parties covenant and agree that in the event of the destruction or damage to the buildings and/or improvements on the site by fire or other casualty, any such party or Owner whose property has been so damaged shall either: (i) cause the same to be rebuilt, repaired or replaced, the same to at least as good a condition and to the same general appearance as existed prior to the damage or destruction, or (ii) raze the remaining portion of the building, remove the debris, and cover the area from which the building was removed with landscaping, asphalt, or some other dust cap material.

## **ARTICLE VII** **UNAVOIDABLE DELAYS, DEFAULTS AND REMEDIES**

7.1. Unavoidable Delays. The time for performance of any term, covenant, condition or agreement of this Agreement shall be extended by any period of Unavoidable Delays. In this Agreement "Unavoidable Delays" means a cause beyond the reasonable control of the party or Owner obligated to perform the applicable covenant, condition or agreement under this Agreement and shall include without limiting the generality of the foregoing, delays attributable to acts of God, any other party or Owner (for example, a delay in transfer of possession) strikes, lockout, labor disputes, explosion, governmental restrictions, court injunctions, riot, civil commotion, war, invasion, insurrection, sabotage, malicious mischief, inability (notwithstanding good faith and diligent efforts) to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of power, failure of transportation, fires, epidemics, quarantine restrictions, freight embargos, unusually severe weather for Stevens Point, Wisconsin, inability (notwithstanding good faith and diligent efforts) to obtain governmental permits or approvals or delays of contractors or subcontractors due to such causes, acts of a public enemy and casualty (and not caused by any act or failure to act by the party or Owner hereby delayed in such performance). Notwithstanding the foregoing, Unavoidable Delays shall not include delays attributable to financial difficulties of such party or Owner who is delayed in such performance. In the event any party or owner intends to avail itself of this Section, it shall give written notice of such intent to the other parties or Owners, such notice to be given not more than 30 days after the date when the prevention, interruption or delay caused by the Unavoidable Delay began.

7.2. Injunctive Relief. In the event of any violation or threatened violation by any party or Owner of any of the provisions of this Agreement, in addition to the right to collect damages, each party or Owner will have the right to enjoin such violation or threatened violation in a court of competent jurisdiction, unless the remedies for breach of the specific covenant expressly negate the availability of injunctive relief. Prior to the commencement of any such action, written notice of the violation will be given to the party or owner claimed to have committed such violation.

7.3. Self Help. In the event any party or Owner fails to perform any of the provisions of this Agreement, any other party or Owner will have the right, without being obligated to do so, to enter upon the Tract and improvements of such defaulting Owner and perform the obligations of the defaulting Owner hereunder; provided, however, that written notice of such

intention, specifying the nature of the alleged default and the actions to be performed, has been given to the defaulting Owner not less than ten (10) days in the case of a default in the payment, or thirty (30) days in the case of any other defaults, prior to the commencement of such action, or not less than twenty-four (24) hours prior to such commencement if, in the reasonable judgment of the party or Owner giving notice, such default is of an emergency nature. During such ten (10) or thirty (30) day or-twenty-four (24) hour period, as the case may be, the defaulting party or Owner will have the right to perform or commence performance of action appropriate to remedy such default, and provided such action is diligently carried to completion the right of such other party or Owner to perform the obligation, of the defaulting party or Owner will terminate. If an Owner or party elects to perform the action to have been performed by a defaulting Owner or party, on completion of such an action, or from time to time, if the action is of a continuing nature, an itemized statement of the cost thereof will be submitted to the defaulting Owner, and the amount thereof will be immediately due and payable by the defaulting Owner or party, which amount will bear interest at the rate of eighteen percent (18%) per annum until paid. In the case of defaults which cannot reasonably be cured with due diligence within thirty (30) days, the grace period shall continue for a reasonable period provided that the curing process is commenced and prosecuted with due diligence to completion by the defaulting party or Owner. The parties and Owners agree that snow and debris removal defaults shall be regarded as defaults of an emergency nature under this Section 7.3.

7.4. Notice to Lender and Right to Cure Defaults. From and after the date upon which the holder of a mortgage on a Tract has provided written notice and a mailing address to the other parties and Owners, and thereafter for so long as such mortgagee is the holder of a note secured by a lien (or a leasehold estate in the case of a sale and leaseback financing) on all of the Tract of a party or Owner (hereinafter called the "**Mortgaged Premises**"), the parties and Owners agree that in the event of any default by a party or Owner in the full performance of any obligation agreed to be performed or imposed upon such party or Owner pursuant to this Agreement or any other agreement made by such party or Owner with or for the benefit of the other parties and Owners, each other party and Owner hereto agrees that such default shall not constitute grounds for, give rise to, or result in the invocation by any such other party or Owner of any of its rights hereunder or thereunder to terminate any of its obligations under this Agreement or any other such agreement with such party or Owner, to withdraw all or any portion of its Tract from the operation hereof or to refuse to fully perform each and every one of its agreements hereunder or under any other such agreement with such party or Owner unless prior to invoking any such rights the aggrieved party or Owner shall notify the mortgagee in writing (which notice may be given simultaneously with notice of the default to such defaulting party or Owner) of the alleged default on the part of such party or Owner in the performance of its obligations to said aggrieved party or Owner and shall afford the mortgagee the right and privilege to cure or to effect a cure of the default within any period of time, measured from the date the mortgagee has notice of each such default, afforded such party or Owner under this Agreement or any other such agreement to cure the alleged default or within an additional period of sixty (60) days thereafter.

**ARTICLE VIII**  
**TERM**

8.1. **Term.** Unless otherwise specifically provided in this Agreement, this Agreement shall continue and the obligations hereunder shall remain binding from the date hereof until January 1, 2030. Upon any termination of this Agreement, all rights and privileges derived from and duties and obligations created or imposed by the terms of this Agreement shall terminate and thereafter cease to exist and all burdens in favor of any of the benefited Tracts upon any of the burdened Tracts; referred to herein shall likewise terminate and thereafter cease to exist, except that (i) easements granted pursuant to Section 4 shall not so terminate; and (ii) such termination shall not limit or affect any remedy at law in equity or under this Agreement of any party or Owner with respect to any liability and obligation on the part of such other party or Owner arising or to be performed under this Agreement prior to the date of such termination.

**ARTICLE IX**  
**MISCELLANEOUS**

9.1. **Amendment.** This Agreement and any provision herein contained may be terminated, extended, modified, or amended as to all Tracts or any Tract, only with the express written consent of all of the parties and Owners of the real property included within all Tracts. No amendment, modification, extension or termination of this Agreement will affect the rights of the holder of any mortgage constituting a lien on any Tract unless such mortgagee consents to the same, nor will any amendment, modification, extension or termination be effective against any mortgagee subsequent to such mortgagee's acquiring title to a Tract by foreclosure or deed in lieu of foreclosure, unless the mortgagee has so consented in writing. No tenant, licensee or other person having only a possessory interest in the improvements constructed on a Tract will be required to join in the execution of or consent to any action of the Owners taken pursuant to this Agreement.

9.2. **Notice of Default.** An Owner or party will not be in default under this Agreement unless the Owner or party has received written notice specifying the nature of such default and has failed to cure or commence appropriate action to cure such default within the grace periods herein provided.

9.3. **No Termination.** No breach of this Agreement will entitle any party or Owner to cancel, rescind or otherwise terminate this Agreement. The foregoing limitation will not affect, in any manner, any other right or remedy which any party or Owner might have by reason of any breach of this Agreement.

9.4. **Approvals.** When approval by any party or Owner is required hereunder, such approval will not be unreasonably withheld. Unless provision is made for a specific period of time, the period of time in which approval will be granted will be thirty (30) days, and if a party or Owner neither approves nor disapproves a proposed action within that period, such Owner or party will be deemed to have given such its approval. If an Owner or party disapproves any action proposed by another Owner or party hereunder, such disapproval will not be effective unless the reasons for such disapproval are stated in writing.

9.5. Attorneys' Fees. If any Owner or party institutes any action or proceeding against another Owner or party relating to the provisions of this Agreement or any default hereunder, the unsuccessful Owner or party in such action or proceeding will reimburse the successful Owner or party therein for the reasonable expenses of attorneys' fees and disbursements incurred by the successful Owner or party.

9.6. Waiver of Default. No waiver of any default by any Owner or party will be implied from the failure by any other Owner or party to take any action in respect of such default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the performance of any provision of this Agreement will not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any Owner or party will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. The rights and remedies provided by this Agreement are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any Owner or party might otherwise have by virtue of a default under this Agreement and the exercise of any right or remedy by any Owner or party will not impair such Owner's or party's standing to exercise any other right or remedy.

9.7. No Partnership. Nothing contained in this Agreement and no action by the Owners or parties will be deemed or construed by the Owners or parties or by any third person to create the relationship of principal and agent, or a partnership, or a joint venture, or any association between or among any of the Owners or parties.

9.8. Severability. If any provision of this Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

9.9. Governing Law. This Agreement will be construed in accordance with the laws of the State of Wisconsin.

9.10. Captions. The captions of the paragraphs of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.

9.11. Time. Subject to Unavoidable Delays, time is of the essence of this Agreement.

9.12. Binding Effect. The provisions of this Agreement will be binding on the Owners and parties and their respective successors and assigns to the extent herein provided. The phrase "successors and assigns" when used herein includes any Mortgagee who acquires title to a Developer Tract by foreclosure of its mortgage or otherwise, as well as any purchaser of a Developer Tract at a foreclosure sale, together with their successors and assigns.

9.13. Third Parties. This Agreement is made for the exclusive benefit of the parties hereto and their successors and assigns herein permitted and not for any third person; nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns; herein permitted, any rights, or remedies under or by reason of this Agreement, except as expressly herein provided otherwise.

9.14. Notices. Notices required or permitted under or given with respect to this Agreement shall be in writing and either delivered personally to a party or Owner or sent by registered or certified mail, return receipt requested, to a party or Owner at its address set forth above, with a copy to the party's or Owner's counsel at the address set out at the end of this Agreement. Notices so sent by mail shall be deemed received by the addressee five days after mailing. A party or Owner may change its address, counsel or counsel's address by written notice to the other parties and Owners, at any time and from time to time, and may also add additional persons to receive copies of notices to it (up to, but not in excess of a total of six copies).

9.15. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

9.16. Payment of Real Estate Taxes. The parties and Owners hereto each agree that they will pay all real estate taxes and assessments, both general and special, which are levied or assessed against such party's or Owner's Tract. All such taxes and assessments shall be paid promptly when due by the party or Owner liable therefor hereunder. Any party or Owner may contest the amount or legality of any tax or assessment on its Tract, in accordance with applicable law, but shall pay same before any other party's or Owner's rights under this Agreement are lost.

9.17. Remedy Not Exclusive. It is understood and agreed by and among the parties and Owners, that the remedies of the parties and Owners provided for in this Agreement are not the sole remedies of a party or Owner and shall not be construed to be, by way of limitation, the only remedy available to them, but in addition either party shall be entitled to all remedies available in law or in equity for a breach by another party or Owner.

9.18. Estoppel Certificates. At any time and from time to time, the parties and Owners agree, upon request in writing from one to the other, to execute, acknowledge and deliver a statement in writing and in form reasonably satisfactory to the requesting and responding party or Owner, certifying to all or any part of the following information: that this Agreement is unmodified and in full force and effect (or if there has been modification, that the same is in full force and effect as modified and stating the modifications that to the best of the knowledge of the person signing the certificate), there is no uncured default under this Agreement by the requesting party or Owner, or if there is a default, the nature thereof; that there are no offsets under this Agreement which the responding party or Owner has against the requesting party or Owner, or if there is an offset, the nature and amount thereof.

9.19. Limitation on Liability. The parties agree that in the event a party or Owner fails to observe, fulfill or perform any covenant, term or condition of this Agreement upon its part to

be observed, fulfilled or performed and, as a consequence of such a default, a party or Owner recovers a money judgment against such other party or Owner, such judgment shall be satisfied (subject to any prior rights of any mortgagee, its successors or assigns) only out of the right, title and interest of such party or Owner in a Tract and out of rents or other income from such property accruing to such party or Owner, and such party or Owner shall not be personally liable for any deficiency. This Section shall not be deemed to limit or otherwise affect the parties' or Owners' right to seek and obtain injunctive relief or specific performance or to avail itself of any other right or remedy not expressly limited above in this Section.

9.20. Merchants' Association. The Merchants' Association created under the Original Agreement shall be dissolved.

9.21. References of Record. The parties recognize that by virtue of Section 893.33 of the Wisconsin Statutes currently in effect, easements, covenants and restrictions on use of real estate set forth in any recorded instrument may be barred or rendered unenforceable after various periods from the date of recording as set forth in the statutes, unless an instrument as prescribed by such statutes is filed for record. It is agreed that, as to any restriction, easement, condition or covenant which is by the terms of this Agreement to be extended beyond its applicable period as provided in the statute, any party or Owner or any successor or assign of a party or Owner may file for record the proper instrument for the purpose of extending the same beyond the statutory period so that the same shall terminate only as provided in this Agreement. In the event any party, Owner or successor or assign shall fail or refuse to join in the execution of any such instrument, then each and every other party and Owner and their successors and assigns are hereby appointed an attorney-in-fact for such party or Owner failing or refusing to join in such a request to execute and file such an instrument, which power shall be deemed coupled with an interest.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

*(Signature pages follow)*

**COMMUNITY DEVELOPMENT AUTHORITY OF  
THE CITY OF STEVENS POINT, WISCONSIN**

By: \_\_\_\_\_  
Honorable Andrew J. Halverson, its Chairperson

Attest:

\_\_\_\_\_  
Michael R. Ostrowski  
By: Its Executive Director

**Counsel for the Authority:**  
Louis J. Molepske, City Attorney  
1515 Strongs Avenue  
Stevens Point, WI 54481

STATE OF WISCONSIN)

:ss

COUNTY OF PORTAGE)

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, Andrew J. Halverson, Chairperson, and Michael R. Ostrowski, Executive Director, of the above-named Community Development Authority of the City of Stevens Point, Wisconsin, to me known to be the persons who executed the foregoing instrument and to me known to be such Chairperson and Executive Director, and acknowledged that they executed the foregoing instrument as such officers as the deed of said Community Development Authority of the City of Stevens Point, by its authority.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires: \_\_\_\_\_

THE CITY OF STEVENS POINT, WISCONSIN

By: \_\_\_\_\_  
Honorable Andrew J. Halverson, its Mayor

Attest:

\_\_\_\_\_  
John V. Moe  
By: Its City Clerk

**Counsel for the City:**  
Louis J. Molepske, City Attorney  
1515 Strongs Avenue  
Stevens Point, WI 54481

STATE OF WISCONSIN)

:ss

COUNTY OF PORTAGE)

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012,  
Andrew J. Halverson, Mayor, and John V. Moe, City Clerk, of the above-named City of Stevens  
Point, Wisconsin, to me known to be the persons who executed the foregoing instrument and to  
me known to be such Mayor and City Clerk, and acknowledged that they executed the foregoing  
instrument as such officers as the deed of said City of Stevens Point, by its authority.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires: \_\_\_\_\_

SPIRIT SPE PORTFOLIO 2006-1, LLC,  
A Delaware Limited Liability Company

By: *[Signature]*  
Joni G. Barrett, its Member  
Vice President

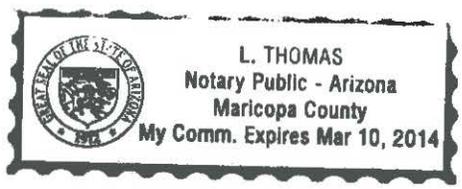
~~Counsel for Spirit:  
Linda M. Mitchell  
Lewis and Roca, LLP  
40 North Central Avenue, Suite 1900  
Phoenix, Arizona 85004~~

STATE OF ARIZONA        )  
  :SS  
COUNTY OF Maricopa )

Personally came before me this 14 day of September, 2012,  
Joni G. Barrett, Vice President, of the above-named Limited Liability Company, to  
me known to be the person who executed the foregoing instrument and to me known to be such  
Vice President of said Limited Liability Company, and acknowledged that he executed  
the foregoing instrument as such officer as the deed of said Limited Liability Company, by its  
authority.

*[Signature]*  
Notary Public, State of Arizona  
My commission expires: 3/10/14

**This instrument drafted by:**  
Louis J. Molepske, City Attorney  
City of Stevens Point  
1515 Strongs Avenue  
Stevens Point, WI 54481  
(715) 346-1556



## EXHIBIT A

### LEGAL DESCRIPTION OF THE MALL

A parcel being that part of Blocks 3, 4, 13 and Outlot 1 of Strongs, Ellis and Others Addition, of Blocks 27, 28, 29 and 32 of Valentine Brown's Addition to the City of Stevens Point, and of vacated College Avenue, Second Street and Third Street, located in Government Lot 1 and the Northeast quarter of Northwest quarter, Section 32, Township 24 North, Range 8 East, City of Stevens point, Portage County Wisconsin, described as follows:

Commencing at the Southwest corner of said Block 13; thence South 89 degrees 25 minutes 17 seconds East a distance of 79.93 feet; thence South 00 degrees 00 minutes 00 seconds East a distance of 27.83 feet to the point of beginning; thence South 90 degrees 00 minutes 00 seconds East a distance of 60.00 feet; thence North 00 degrees 00 minutes 00 seconds West a distance of 112.00 feet; thence South 90°00 minutes 00 seconds East a distance of 238.00 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 5.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 227.08 feet; thence South 00 degrees 00 minutes 00 seconds East a distance of 30.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 217.00 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 30.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 93.08 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 13.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 80.00 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 13.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 75.00 feet; thence South 00 degrees 00 minutes 00 seconds East a distance of 154.84 feet; thence South 45 degrees 00 minutes 00 seconds East a distance of 12.25 feet; thence South 45 degrees 00 minutes 00 seconds West a distance of 22.25 feet; thence South 45 degrees 00 minutes 00 seconds East a distance of 10.00 feet; thence South 00 degrees 00 minutes 00 seconds East a Distance of 50.70 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 180.65 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 4.62 feet; thence North 88 minutes 50 minutes 48 seconds West a distance of 60.25 feet; thence North 00 degrees 55 minutes 58 seconds East a distance of 17.91 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 241.48 feet; thence North 00 degrees 00 minutes 00 seconds West a distance of 92.50 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 21.00 feet; thence North 00 degrees 00 minutes 00 seconds West a distance of 8.00 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 128.00 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 10.00 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 10.00 feet; thence South 45 degrees 00 minutes 00 seconds West a distance of 12.73 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 11.00 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 42.08 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 5.00 feet; thence South 90 degrees 00 minutes 00 seconds West a distance of 298.00 feet; thence North 00 degrees 00 minutes 00 seconds West a distance of 30.00 feet to the point of beginning and there terminating.

Said parcel contains approximately 168,437 square feet or 3.87 acres

Bearings referenced to the South line of said Block 13, Strongs, Ellis and Others Addition having a grid bearing of South 89 degrees 25 minutes 17 seconds East, Wisconsin State Plane Coordinate System, Central Zone.

Parcel No. 281-2408-32-2029-51

**EXHIBIT B**

**LEGAL DESCRIPTION OF THE DUNHAM SITE**

Lot 1 of Portage County Certified Survey Map Number 6808-25-31, being a part of Block 32 of Valentine Brown's Addition to the City of Stevens Point, located in the Northeast Quarter of the Northwest Quarter of Section 32, Township 24 North, Range 8 East, City of Stevens Point, Portage County, Wisconsin.

Said Lot 1 contains approximately 23,414 square feet or 0.537 acres.

Parcel No. 281-2408-32-2029-61

## EXHIBIT C

### LEGAL DESCRIPTION OF THE SHOPKO SITE

That part of the Blocks 29, 30, 31, and 32 and of vacated Union Street and College Avenue of Valentine Brown's Addition to the City of Stevens Point, located in the Northeast Quarter of the Northwest Quarter of Section 32, Township 24 North, Range 8 East City of Stevens Point, Portage County, Wisconsin, described as follows:

Commencing at the northeast corner of said Block 29 of Valentine Brown's Addition; thence South 00 degrees 57 minutes 46 seconds West 18.65 feet to the point of beginning; thence East 198.50 feet; thence South 10.00 feet; thence East 80.00 feet; thence North 139.00 feet; thence West 30 feet; thence North 37.00 feet; thence West 50.00 feet; thence North 95.00 feet thence West 341.00 feet; thence South 261.00 feet; thence East 142.50 feet to the point of beginning and there terminating.

Said parcel contains approximately 101,971 square feet or 2.34 acres.

Parcel No. 281-2408-32-2029-50

## EXHIBIT D

### LEGAL DESCRIPTION OF THE COMMON AREA

That part of Blocks 29, 30, 31, and 32 of Valentine Brown's Addition and of vacated Union Street, Third Street and College Avenue located in the Northeast Quarter of the Northwest Quarter of Section 32, Township 24 North, Range 8 East, City of Stevens Point, Portage County, Wisconsin described as follows:

Commencing at the southwest corner of said Block 13, thence South 89 degrees 25 minutes 17 seconds East 2.97 feet to the east right of way line of Water Street; thence northeasterly along said right of way line and the arc of a 369.76 foot radius curve, center to the east a distance of 78.99 feet, the chord bears North 12 degrees 36 minutes 16 seconds East 78.84 feet; thence continuing North 18 degrees 43 minutes 27 seconds East along said right of way line 114.78 feet; thence North 56 degrees 15 minutes 07 seconds East 106.14 feet to the south right of way line of CenterPoint Drive; thence continuing South 89 degrees 10 minutes 56 seconds East along said south right of way line 63.26 feet to the west right of way line of vacated Second Street, said Second Street vacated August 23, 1984 document number 381320; thence North 79 degrees 37 minutes 05 seconds East along the south right of way line of said CenterPoint Drive 50.94 feet to the east right of way line of vacated Second Street; thence South 88 degrees 35 minutes 19 seconds East along the south right of way line of said CenterPoint Drive 293.37 feet to the west right of way line of vacated Third Street, said Third Street vacated September 25, 1984 document number 378930 and the **point of beginning**; thence South 89 degrees 21 minutes 12 seconds East 50.00 feet to the east right of way line of vacated Third Street; thence continuing North 89 degrees 52 minutes 02 seconds East along said south right of way line of CenterPoint Drive 271.79 feet; thence continuing South 78 degrees 49 minutes 22 seconds East along said south right of way line 61.19 feet; thence continuing North 89 degrees 52 minutes 02 seconds East along said south right of way line 393.01 feet; thence continuing southeasterly along said south right of way line 48.78 feet along the arc of a 286.50 foot radius curve, center to the south, the chord bears South 85 degrees 15 minutes 31 seconds East 48.72 feet to a point of compound curve; thence continuing southeasterly along said south right of way line 260.01 feet along the arc of a 1116.42 foot radius curve, center to the south, the chord bears South 73 degrees 42 minutes 45 seconds East 259.42 feet; thence southwesterly along the west right of way line of Church Street 162.20 feet along the arc of a 303.92 foot radius curve, center to the west, the chord bears South 14 degrees 48 minutes 19 seconds West 160.29 feet; thence continuing South 00 degrees 29 minutes 04 seconds East along said west right of way line 317.60 feet to the north right of way line of Main Street; thence South 89 degrees 32 minutes 19 seconds West along said north right of way line 377.74 feet to the west line of vacated Union Street said Union Street vacated September 25, 1984 document number 378931; thence South 89 degrees 49 minutes 37 seconds West along said north right of way line 95.08 feet; thence North 147.97 feet; thence West 42.34 feet to the face of the east wall of the enclosed mall building and its southerly extension; thence North along said east wall 72.01 feet; thence North 45 degrees 00 minutes 00 seconds West along said east face 10.00 feet; thence North 45 degrees 00 minutes 00 seconds East 22.25 feet to the face of the south wall of the Shopko building; thence East along said south wall and its easterly extension 395.66 feet; thence North and parallel with the face of the east wall of said Shopko building 230.33 feet; thence West 63 feet to said east wall; thence North 31.00 feet to the northeast corner of said Shopko Building; thence West along the face of the

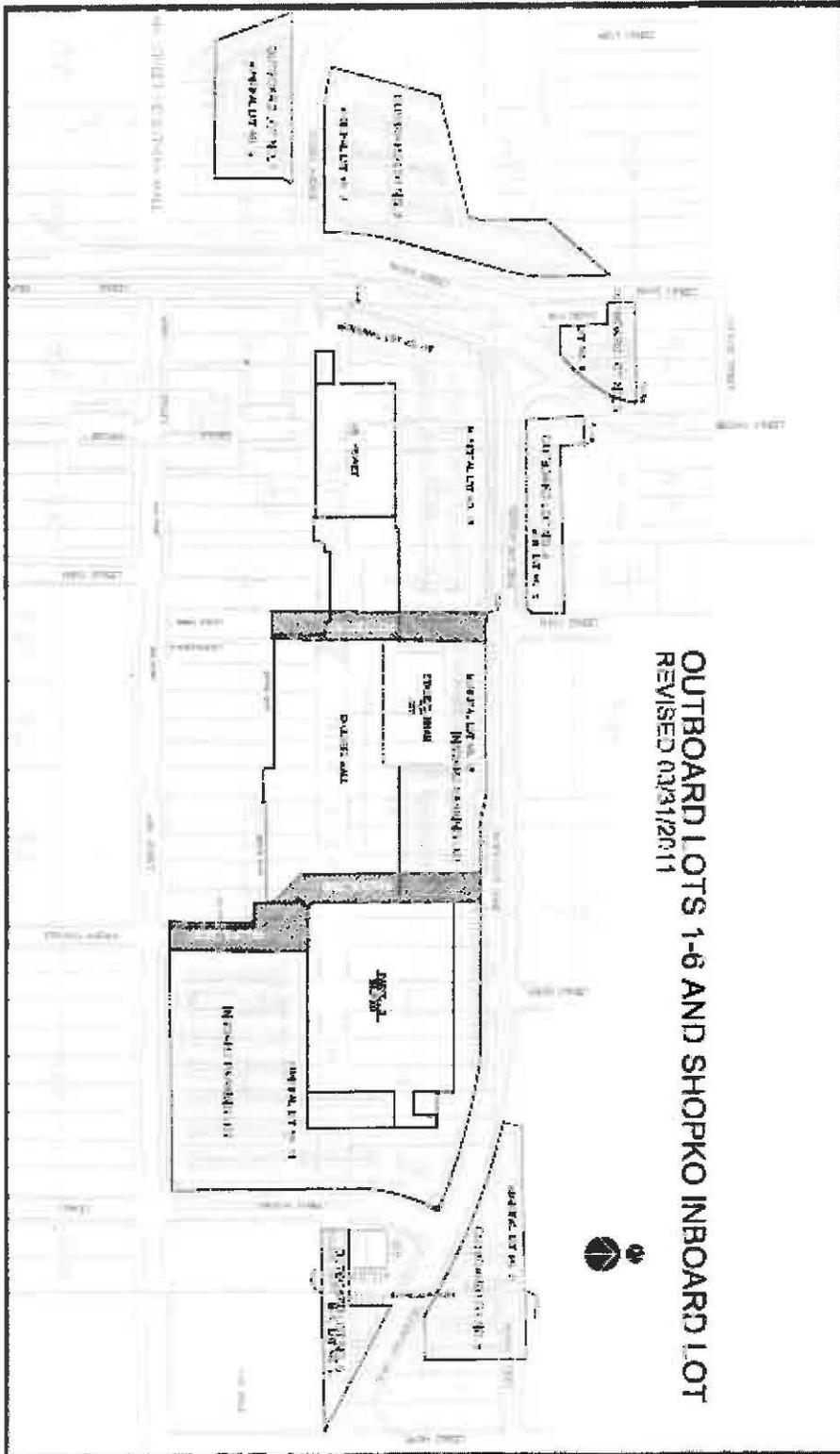
north wall of said Shopko building 341.33 feet to its northwest corner; thence South along the face of the west wall of said Shopko building 97.83 feet to the face of the north wall of the enclosed mall building; thence West along said north wall 248.08 feet to a building corner; thence South along said north wall 30.00 feet to a building corner; thence West along said north wall 217.00 feet to a building corner; thence North along said north wall 30.00 feet to a building corner; thence continuing West along said north wall of the enclosed mall building 55.63 feet to the west right of way line of said vacated Third Street; thence North 00 degrees 54 minutes 42 seconds East along said west right of way line 157.30 feet to the point of beginning and there terminating.

Excepting there from the Stage Store/Dunham Store described as follows:

Lot 1 of Portage County Certified Survey Map Number 6808-25-31, document number 536128 located in the Northeast Quarter of the Northwest Quarter of Section 32, Township 24 North, Range 8 East, City of Stevens Point, Portage County, Wisconsin.

And further excepting there from that portion of the future extensions of Third Street and Strongs Avenue between Main Street and CenterPoint Drive.

**Said Common Area contains approximately 202,670 square feet or 4.65 acres.**



**OUTBOARD LOTS 1-6 AND SHOPKO INBOARD LOT**  
 REVISED 03/31/2011

## **EXHIBIT E**

### **LEGAL DESCRIPTION OF PROPERTY REMOVED FROM THIS AGREEMENT**

Lot 1 of Portage County Certified Survey Map No. 10287-46-17 as recorded in Volume 46 of Survey Maps, page 17, located in part of Lots 2, 3, and 4 of Block 3, Lots 1, 2, 3, and 4 of Block 4, Lots 1, 2, 3, 4, 5, 6, 7, and 8 of Block 13 and Outlot 1 of Strong, Ellis, and Others Addition, and part of Lots 1, 2, 3, 4, and 5 of Block 27 of Valentine Brown's Addition to the City of Stevens Point, and part of vacated College Avenue and Second Street, located in Government Lot 1 and the NE 1/4 of the NW 1/4 of Section 32, Township 24 North, Range 8 East, City of Stevens Point, Portage County, Wisconsin.

## EXHIBIT F

### LEGAL DESCRIPTION OF OUTBOARD/PERIPHERAL PARKING AREAS THAT ARE REMOVED FROM THIS AGREEMENT

#### **OUTBOARD PARKING LOT NO. 1**

(A/k/a Municipal Parking Lot 4)

Lot 2 of Portage County Certified Survey Map Number 3878-13-236 being a part of Lots 1, 2, and, 3, Block 1, part of Lots 1, 2, 9, and 10 of Block 2 of Strong, Ellis and Others Addition, part of the Old Slough and part of vacated Crosby Avenue, Volume 481, page 637 of Micro-Records, located in Government Lot One, Section 32, Township 24 North, Range 8 East, City of Stevens Point, Portage County, Wisconsin.

Outboard Lot No. 1 contains approximately 36,218 square feet or 0.83 acres.

#### **OUTBOARD PARKING LOT NO. 2**

(A/k/a Municipal Parking Lot 2)

Lot 1 of Portage County Certified Survey Map Number 3878-13-236 being a part of Block 12 of Strong, Ellis and Others Addition, part of the Old Slough and part of vacated College Avenue located in Government Lot One, Section 32, Township 24 North, Range 8 East, City of Stevens Point, Portage County, Wisconsin.

Outboard Lot No. 2 contains approximately 85,210 square feet or 1.96 acres.

#### **OUTBOARD PARKING LOT NO. 3**

(A/k/a Municipal Parking Lot 6)

That part of Block 15 of Strong, Ellis and Others Addition and part of vacated River Street located in Government Lot One, Section 32, Township 24 North, Range 8 East, City of Stevens Point, Portage County, Wisconsin described as follows:

Commencing at the northeast corner of Block 17 of said Strong, Ellis and Others Addition; thence South 00 degree 59 minutes 08 seconds East along the west right of way line of Second Street 51.93 feet; thence continuing along said right of way line South 13 degrees 01 minutes 26 seconds West 83.47 feet to the north right of way line of River Street, now vacated and the point of beginning; thence continuing South 13 degrees 00 minutes 19 seconds West along the westerly right of way line of Second Street 38.98 feet; thence continuing along said right of way line southwesterly 103.40 feet along the arc of a curve, concave to the northwest, radius 266.48 feet, central angle 22 degrees 13 minutes 54 seconds, the chord bears South 36 degrees 56 minutes 27 seconds West 102.75 feet; thence continuing along said right of way line southwesterly 21.10 feet along the arc of a curve, concave to the southeast, radius = 308.48 feet, central angle = 03 degrees 56 minutes 38 seconds, the chord bears South 46 degrees 05 minutes 05 seconds West along said right of way line 21.09 feet; thence South 89 degrees 30 minutes 47 seconds West 53.10 feet to the east line of Lot 1 of Portage County Certified Survey Map

Number (PCCSMN) 5639-20-210; Thence North 01 degree 32 minutes 35 seconds West along said east line of Lot 1 a distance of 84.02 feet to the northeast corner of said Lot 1; thence South 89 degrees 30 minutes 47 seconds West along the north line of said Lot 1 a distance of 38.00 feet to the east right of way line of First Street; thence North 01 degree 32 minutes 35 seconds West along said east right of way line 5.90 feet; thence continuing North 00 degrees 37 minutes 57 seconds West along said east right of way line 44.10 feet to the north line of vacated River Street; thence North 89 degrees 30 minutes 47 seconds East along the north right of way line of vacated River Street 179.73 feet to the point of beginning and there terminating.

Outboard Lot No. 3 contains approximately 16,500 square feet or 0.38 acres.

#### **OUTBOARD PARKING LOT NO. 4**

(A/k/a Municipal parking Lot 8)

That part of Lot 1 of Portage County Certified Survey Map Number (PCCSMN) 2209-8-67, that part of Outlot 1 of Strong, Ellis and Others Addition, that part of the "Old Slough" and that part of Second Street located in Government Lot 1 and the Northeast Quarter of the Northwest Quarter of Section 32, Township 24 North, Range 8 East, City of Stevens Point, Portage County, Wisconsin described as follows:

Commencing at the northwest corner of Block 16 of said Strong, Ellis and Others Addition; thence South 00 degrees 59 minutes 08 seconds East along the east right of way line of Second Street 147.68 feet; thence continuing South 02 degrees 16 minutes 20 seconds East along said right of way line 78.75 feet to the point of beginning; thence continuing South 02 degrees 16 minutes 20 seconds East along said right of way line 43.20 feet to the northwest corner of said Lot 1 of PCCSMN 2209-8-68; thence North 88 degrees 43 minutes 00 seconds East along the north line of said Lot 1 and its easterly extension 301.50 feet to the west right of way line of Third Street; thence South 00 degrees 36 minutes 17 seconds West along said right of way line 56.69 feet; thence South 45 degrees 14 minutes 22 seconds West 14.23 feet to the north right of way line of CenterPoint Drive; thence South 89 degrees 52 minutes 27 seconds West along said right of way line 287.61 feet to the east right of way line of Second Street; thence continuing South 89 degrees 52 minutes 27 seconds West 50 feet to the west right of way line of Second Street; thence North 03 degrees 07 minutes 16 seconds West along said right of way line 58.80 feet; thence continuing North 02 degrees 16 minutes 20 seconds West along said right of way line 43.20 feet; thence North 87 degrees 43 minutes 40 seconds East 50 feet to the point of beginning and there terminating.

Outboard Lot No. 4 contains approximately 24,150 square feet or 0.55 acres.

#### **OUTBOARD PARKING LOT NO. 5**

(A/k/a Municipal Parking Lot 11)

That part of Lots 3, 4, and 5, Block 3 of Smith, Briggs and Phillips Addition, that part of Briggs Street and that part of the Northeast Quarter of the Northwest Quarter and the Northwest Quarter of the Northeast Quarter all in Section 32, Township 24 North, Range 8 East, City of Stevens Point, Wisconsin described as follows:

Beginning at the intersection of the north right of way line of Briggs Street and the north-south quarter line of said Section 32 ; thence westerly along said north right of way line of Briggs Street 294 feet; thence southwesterly on a line normal to the northerly right of way line of CenterPoint Drive to its intersection with said northerly right of way line; thence southeasterly along said northerly right of way line of CenterPoint Drive to its intersection with the south line of Lot 5 of Block 3 of said Smith, Briggs and Phillips Addition; Thence easterly along said south line of said Lot 5 and the south line of Lots 4 and 3 of said Block 3 to the east line of the west half of said Lot 3; thence northerly along said east line and its extension to its intersection with the north right of way line of Briggs Street; thence westerly along said north right of way line to the point of beginning and there terminating.

Outboard Lot No. 5 contains approximately 47,875 square feet or 1.10 acres.

**OUTBOARD PARKING LOT NO. 6**  
(A/k/a Municipal Parking Lot 10)

That Part of Lots 6, 7, and 8 of Block 3, of Smith, Briggs and Phillips Addition, that part of College Avenue and that part of the Northeast Quarter of the Northwest Quarter and the Northwest Quarter of the Northeast Quarter all in Section 32, Township 24 North, Range 8 East, City of Stevens Point, Wisconsin described as follows:

Beginning at the intersection with the south right of way line of said College Avenue (n/k/a College Court) and the north-south quarter line of said Section 32; thence westerly along said south right of way line 112 feet; thence northerly at right angles to said south right of way line to the north right of way line of College Avenue; thence easterly along said north right of way line to a line 25.5 feet easterly of and parallel with said north-south quarter line; thence northerly along said parallel line to the southwesterly right of way line of CenterPoint Drive; thence southeasterly along said southwesterly right of way line to its intersection with the south right of way line of said College Avenue; thence westerly along said south right of way line to the point of beginning and there terminating.

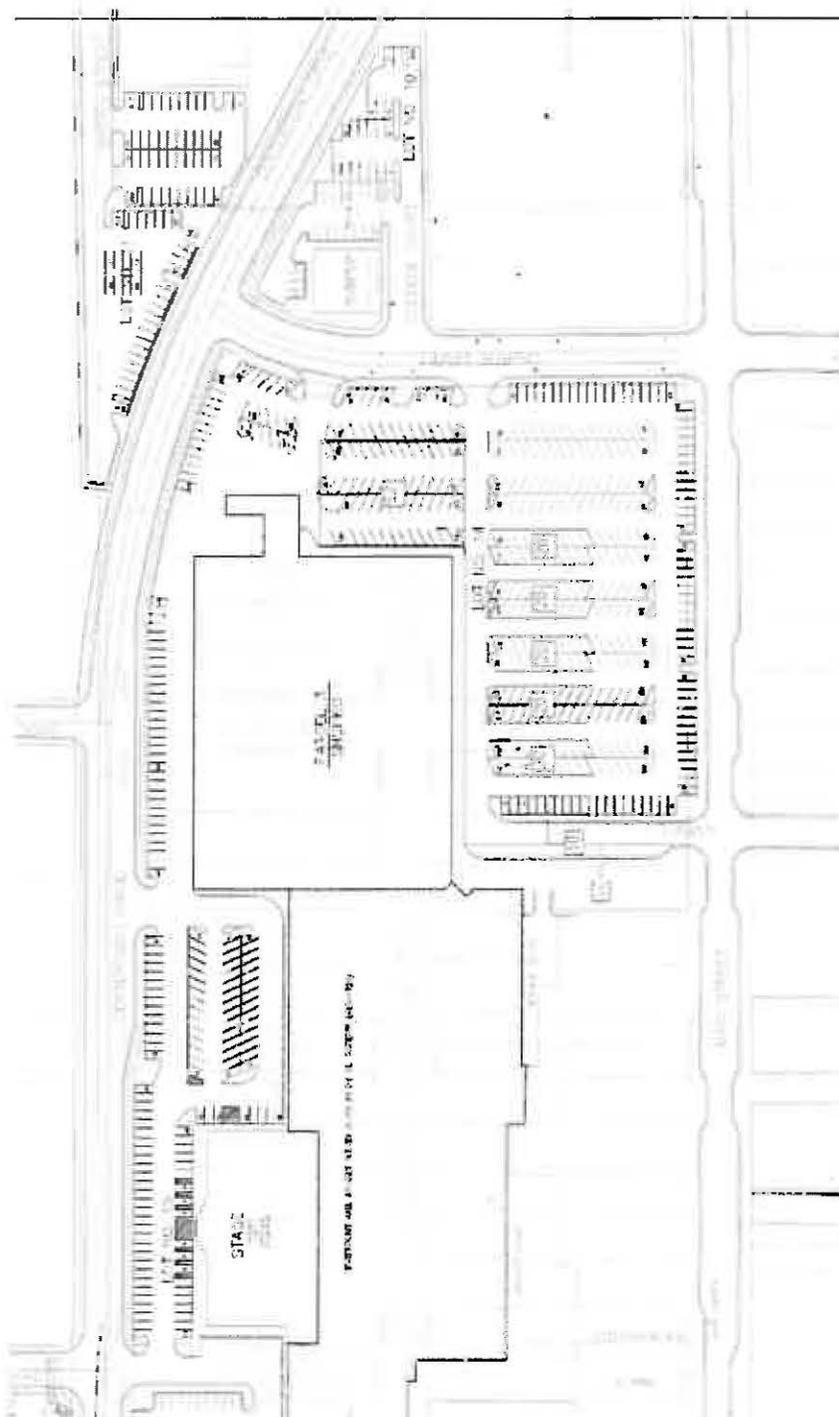
Outboard Lot No. 6 contains approximately 20,640 square feet or 0.47 acres.

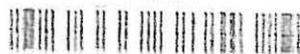
**Outboard Parking Lot Square Footage Summary:**

Outboard Lot No. 1=	36,218
Outboard Lot No. 2=	85,210
Outboard Lot No. 3=	16,500
Outboard Lot No. 4=	24,150
Outboard Lot No. 5=	47,875
Outboard Lot No. 6=	<u>20,640</u>
	230,593 Square Feet or 5.29 acres



**EXHIBIT G**  
**PARKING AREA RESERVED FOR SHOPKO**





CSM #10287-46-17

CYNTHIA A WISINSKI  
PORTAGE COUNTY REGISTER OF DEEDS  
RECEIVED FOR RECORD  
July 30, 2012 AT 07:45AM

*Cynthia A. Wisinski*

CYNTHIA A WISINSKI, REGISTER OF DEEDS  
Fee Amount: \$30.00  
Total Dues: 3

# CERTIFIED SURVEY MAP NO.

## CERTIFIED SURVEY MAP FOR CITY OF STEVENS POINT

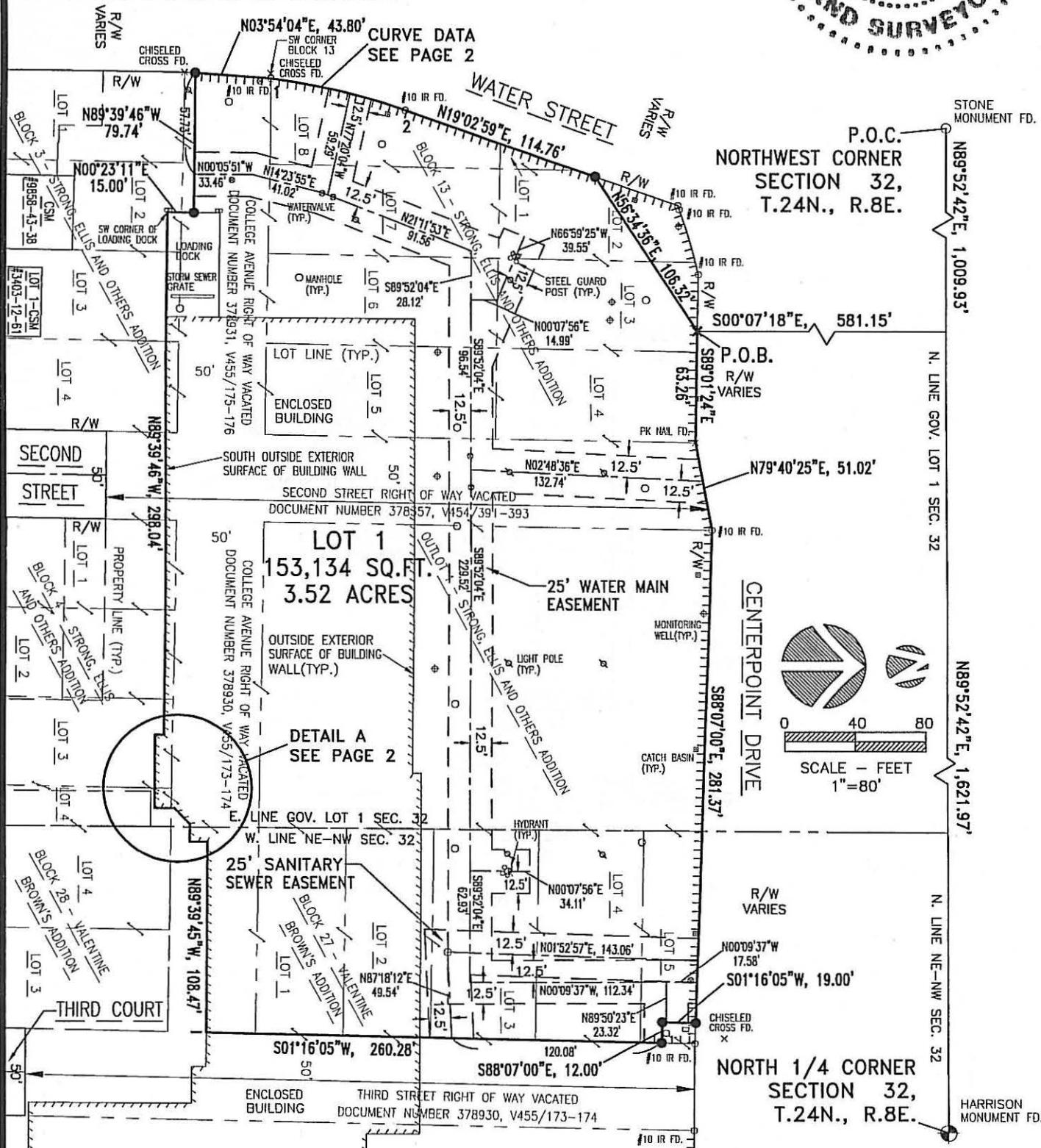
LOCATED IN PART OF LOTS 2,3, AND 4 OF BLOCK 3, LOTS 1,2,3, AND 4 OF BLOCK 4, LOTS 1,2,3,4,5,6,7, AND 8 OF BLOCK 13, AND OUTLOT 1 OF STRONG, ELLIS AND OTHERS ADDITION, AND PART OF LOTS 1,2,3,4, AND 5 OF BLOCK 27 OF VALENTINE BROWN'S ADDITION TO THE CITY OF STEVENS POINT, AND PART OF VACATED COLLEGE AVENUE AND SECOND STREET, LOCATED IN GOVERNMENT LOT 1 AND THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 24 NORTH, RANGE 8 EAST, CITY OF STEVENS POINT, PORTAGE COUNTY, WISCONSIN.

### NOTES:

THIS INSTRUMENT WAS DRAFTED BY PATRICK J. FUEHRER.  
THE BEARINGS HEREIN ARE REFERENCED TO THE WISCONSIN COUNTY COORDINATE SYSTEM-PORTAGE COUNTY-NAD 1983.  
THE SOUTH OUTSIDE EXTERIOR SURFACE OF THE BUILDING WALL AND THE SOUTH BOUNDARY LINE ARE CONTERMINOUS.

### LEGEND

- 3/4" X 18" IRON REBAR SET-1.5#/FT.
- ✕ CROSS SET IN CONCRETE
- NOTCH SET IN EXTERIOR SURFACE OF CONCRETE BUILDING WALL
- ▬ NO VEHICULAR ACCESS

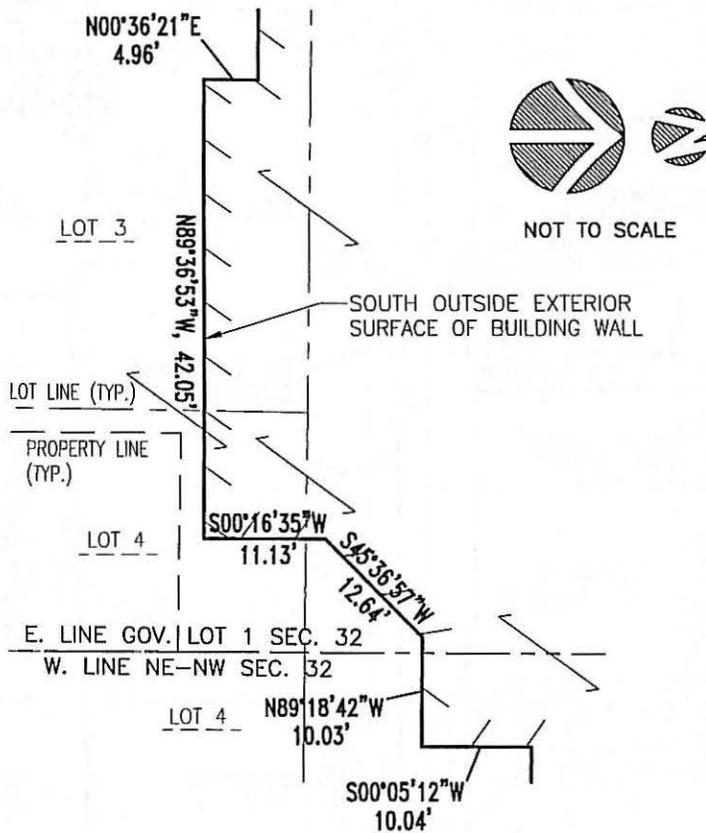


CERTIFIED SURVEY MAP NO.

CURVE DATA

CURVE NO.	RADIUS	CHORD BEARING	CHORD LENGTH	ARC LENGTH	CENTRAL ANGLE	TANGENT BEARING
1-2	369.76'	N12°55'48"E	78.84'	78.99'	12°14'22"	N06°48'37"E N19°02'59"E

DETAIL A



CERTIFIED SURVEY MAP NO.

SURVEYOR'S CERTIFICATE

I hereby certify this map and accompanying information is (approved) (conditionally approved) pursuant to the Building and Safety Ordinances of Stevens Point on the basis of the following (facts) (conditions):  
*Patrick J. Fuehrer*  
Community Development Office

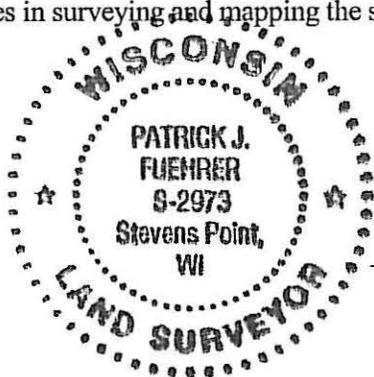
I Patrick J. Fuehrer, Registered Land Surveyor, do hereby certify:

That I have surveyed, divided, and mapped the land described and represented by this Certified Survey Map being part of Lots 2, 3, and 4 of Block 3, Lots 1, 2, 3, and 4 of Block 4, Lots 1, 2, 3, 4, 5, 6, 7, and 8 of Block 13, and Outlot 1 of Strong, Ellis and Others Addition, and part of Lots 1, 2, 3, 4, and 5 of Block 27 of Valentine Brown's Addition to the City of Stevens Point, and part of vacated College Avenue document number 378930 and 378931 and vacated Second Street document number 378357, located in Government Lot 1 and the Northeast Quarter of the Northwest Quarter of Section 32, Township 24 North, Range 8 East, City of Stevens Point, Portage County, Wisconsin.

Commencing at the northwest corner of said Section 32; thence North 89 degrees 52 minutes 42 seconds East along the north line of said Government Lot 1 a distance of 1,009.93 feet; thence South 00 degrees 07 minutes 18 seconds East 581.15 feet to the south right-of-way line of Centerpoint Drive and the **point of beginning**; thence South 89 degrees 01 minute 24 seconds East along said south right-of-way line 63.26 feet to the west right-of-way line of said vacated Second Street; thence continuing North 79 degrees 40 minutes 25 seconds East along said south right-of-way line 51.02 feet to the east right-of-way line of said vacated Second Street; thence continuing South 88 degrees 07 minutes 00 seconds East along said south right-of-way line 281.37 feet; thence South 01 degree 16 minutes 05 seconds West and parallel with the west right-of-way line of said vacated Third Street 19.00 feet; thence South 88 degrees 07 minutes 00 seconds East and parallel with said south right-of-way line of Centerpoint Drive 12.00 feet to said west right-of-way line of vacated Third Street; thence South 01 degree 16 minutes 05 seconds West along said west right-of-way line 260.28 feet to the south outside exterior surface of the building wall (herein referred to as building wall); thence North 89 degrees 39 minutes 45 seconds West along said building wall 108.47 feet; thence continuing South 00 degrees 05 minutes 12 seconds West along said building wall 10.04 feet; thence continuing North 89 degrees 18 minutes 42 seconds West along said building wall 10.03 feet; thence continuing South 45 degrees 36 minutes 57 seconds West along said building wall 12.64 feet; thence continuing South 00 degrees 16 minutes 35 seconds West along said building wall 11.13 feet; thence continuing North 89 degrees 36 minutes 53 seconds West along said building wall 42.05 feet; thence continuing North 00 degrees 36 minutes 21 seconds East along said building wall 4.96 feet; thence continuing North 89 degrees 39 minutes 46 seconds West along said building wall 298.04 feet to the southwest corner of the loading dock; thence North 00 degrees 23 minutes 11 seconds East along the west line of said loading dock 15.00 feet; thence North 89 degrees 39 minutes 46 seconds West 15.00 feet north of and parallel with said building wall 79.74 feet to the east right-of-way line of Water Street; thence North 03 degrees 54 minutes 04 seconds East along said east right-of-way line 43.80 feet; thence northeasterly 78.99 feet along the arc of a 369.76 foot radius curve, not tangent with the last described course, center to the east, the chord bears North 12 degrees 55 minutes 48 seconds East 78.84 feet; thence North 19 degrees 02 minutes 59 seconds East along said east right-of-way line of Water Street 114.76 feet; thence North 56 degrees 34 minutes 36 seconds East 106.32 feet to said south right-of-way line of Centerpoint Drive and the **point of beginning** and there terminating.

That I have made such survey, and map at the direction of the City of Stevens Point; that such map is a correct representation of all the exterior boundaries of the land surveyed. That I have fully complied with the provisions of Chapter 236.34 of the Wisconsin Statutes in surveying and mapping the same.

Dated: *July 26*, 2012



*Patrick J. Fuehrer*  
Patrick J. Fuehrer, R.L.S. 2973

<b>Account Balance</b>	
HOORA-balance 8/31/12	38,514.28
HTF-balance 8/31/12	31,628.51
	<u>70,142.79</u>

**Thru 9/20/12 known deposits/withdrawls**

A/R Deposit on 9/11-HOORA	3,000.00
A/R Deposit ACH on 9/17-HOORA	16.67
A/R Deposit ACH on 9/10-HTF	200.00
A/R Deposit on 9/14-HTF	168.68
Ck #1267-ED wage/ben for August	(6,510.41)
	<u>(3,125.06)</u>

**HOORA**

*CDA ED wage/ben reimbursement (5155.75*4)	(20,623.00)
A/R ACH Deposits (16.67*3)	50.01
**Baird Transfers In for Interest (1221.74*4)	4,886.96
	<u>(15,686.03)</u>

**HTF**

3rd Qtr Admin Fee Check Paid to CAP Services (4th qtr is invoiced in Jan)	(500.00)
Bank Service Fees (10.00*4)	(40.00)
**Baird Transfer In (3720.10*4)	14,880.40
A/R ACH Deposits (200.00*3)	600.00
A/R Deposits (168.68*3)	506.04
	<u>15,446.44</u>

**EW Operating**

COCC owes EW as of 8/31/12-EW A/R	17,529.52
***Sept thru Dec OP Expenses	(80,269.72)
****Sept thru Dec OP Revenue	121,042.80
Last Bond Payment	(86,870.00)
PILOT Payment-based off last year	(35,430.35)
	<u>(63,997.75)</u>

Projected YE Balance 2012	<u>2,780.39</u>
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\*Took the average of the last **three** months and multiplied it by the remaining four months

\*\* Interest income from the principal balance. This is not guaranteed funds.

\*\*\*Based off of average for June, July, August

\*\*\*\*Estimated based on current numbers