



February 9, 2016 – Walworth County Board of Supervisors

**Report of the County Clerk Regarding
Communications Received After the Agenda Mailing**

The following items were placed on Supervisors' desks and are attached to this cover sheet:

County Clerk

Kimberly S. Bushey
County Clerk

- Res. No. 71-02/16 – Approving a Contract Settlement Agreement by and between Walworth County and the Deputy Sheriffs Association for the Period of January 1, 2016 to December 31, 2018 – *Vote Required: Majority* (Recommended by the Human Resources Committee 3-0)
- Order for Dismissal of Adversary Action – Michael & Christine Scholl vs Walworth County and ONE90H90H LLC – To be placed on file
- Answer to Plaintiff's Second Amended Complaint – LSCG Fund 17, LLC vs Mann Bros., Inc., et al – To be referred to the Executive Committee
- Answer to State of Wisconsin's Cross Claim – LSCG Fund 17, LLC vs Mann Bros., Inc., et al – To be referred to the Executive Committee
- Bayfield County Amendatory Ordinance No. 2016-03 – Amending Bayfield County Ordinance to Create Chapter 6 [Large-Scale Concentrated Animal Feeding Operations Ordinance] of Title 5 [Public Safety] of the Bayfield County Code of Ordinances, Bayfield County, WI – To be referred to the County Zoning Agency
- Bayfield County Amendatory Ordinance No. 2016-04 – South Fish Creek Watershed Animal Waste Storage and Management Ordinance – To be referred to the County Zoning Agency
- Door County Resolution No. 2016-07 – Recommendations as to Legislation that Impacts Planning, Zoning, and Land Use Laws – To be referred to the County Zoning Agency
- Correspondence from State Representative David Craig acknowledging receipt of Walworth County Resolutions:
 - No. 63-01/16 – Opposing Expansion to the Subpoena Process as Proposed in Wisconsin Assembly Bill 90
 - No. 65-01/16 – Urging the State Legislature to Include Fourth Time OWI Offenders in 2009 Wisconsin Act 100 Funding– To be placed on file
- *Walworth County Aging & Disability Resource Center News*, February 2016 – To be placed on file

These items were received after the agenda mailing before the meeting. Other items that were placed on the Supervisors' desks at the meeting are not included on this report. Please contact the County Clerk's office for information regarding those items.

WALWORTH COUNTY
2016-18 DEPUTY SHERIFF NEGOTIATIONS

TERMS OF TENTATIVE 2016-18 CONTRACT SETTLEMENT

All terms in the current collective bargaining agreement to remain status quo except as provided below.

1. **9.01 – Wage Rates**

Revise as follows:

- A. The County will pay the rates set forth in the Classification and Rate Schedule “A” attached hereto and made a part hereof. The County agrees to pay each employee on a biweekly salary basis. The biweekly salary for an employee on a 5-2 schedule is equal to the base hourly rate times 80 hours. The biweekly salary for an employee on a 5-2/5-3 schedule and 8.25 hour workday is equal to the base hourly rate times 77.2 hours. The biweekly salary for an employee on a 5-2/5-3 schedule and 8.5 hour workday is equal to the base hourly rate times 79.6 hours. The base hourly rates shall be in accordance with the Classification and Rate Schedules. It is agreed that the basic rate for computing overtime pay is equal to the base hourly rate plus any longevity rate plus any shift differential.
- B. The County may pay over the starting rate for any new hires, based on their prior law enforcement experience and pay rate. If the new hire’s hourly rate at his/her prior sworn law enforcement position was higher than the starting hourly rate, the new hire may be placed on the rate schedule at the step equal to or immediately higher than the hourly rate paid by the prior employer. The new hire will then be moved forward from that rate until he or she reaches the 4 year rate.

Side letter regarding Deputies hired since January 1, 2012 (see attached).

2. **Section 13.02 – Retiree Health Insurance**

Rename Section **Retiree/Duty Disability Insurance**. Revise Section as follows.

- A. Retiree Health Insurance. To qualify under this section, a protective occupation employee must be hired prior to January 1, 2005, retire on a Wisconsin Retirement System (WRS) retirement at age 54 or older, at age 53 with a minimum of 25 years of WRS service, or have a minimum of 20 years of continuous County service upon becoming an annuitant at age 50 to 53. “Retirement” means the employee will receive a monthly retirement

from the WRS upon termination from Walworth County employment. The County shall pay 50% of the health insurance premium for the retiree until the retiree is eligible for Medicare coverage. The insurance coverage shall be the same as provided to active employees under the current contract.

- B. Duty Disability Insurance. To qualify under this section, a protective occupation employee must be hired prior to January 1, 2005, have at least 10 years of continuous County service and, as defined by WRS, be “permanently and totally” disabled. “Duty Disability” means the employee will receive a monthly duty disability annuity from the WRS. The County shall pay 50% of the health insurance premium for the former employee until he/she is eligible for Medicare coverage. The insurance coverage shall be the same as provided to active employees under the current contract.
- C. Eligibility. Any employee hired after January 1, 2005 shall not be eligible to continue health insurance under any plan offered by the County except as required by law. Section 13.02 does not apply to any employee hired after January 1, 2005.

3. **Section 16.01 – Clothing Allowances**

Increase the semi-annual clothing allowance from \$315.00 to \$407.50.

4. **Section 20.01 – Contract Duration**

Revise all dates to reflect a 3-year agreement, effective January 1, 2016 through December 31, 2018.

5. Continue Exhibit D.

6. Delete Side Letter of Agreement dated May 18, 2015.

7. **Wage Increase:**

Effective January 1, 2016 across the board increase of 1.5%.

Effective January 1, 2017 across the board increase of 2%.

Effective January 1, 2018 across the board increase of 2.5%.

8. **Pending Litigation:** The Association and Robert Schiltz agree that they will not appeal the summary judgment decision issued by the Court on December 18, 2015 in Walworth County Deputy Sheriff's Association, Inc. and Robert Schiltz v. Walworth County, Case No. 12CV01232, and will take any action necessary to dismiss the case with prejudice.

SIDE LETTER OF AGREEMENT

The parties agree that all deputies hired between January 1, 2012 and January 1, 2016 will be reviewed to determine what the deputy's wage rate was at his/her sworn law enforcement position immediately prior to being employed by the Sheriff's Department. The deputy must provide written documentation of his/her prior hourly wage rate to initiate the review. If the deputy's hourly rate at his/her prior sworn law enforcement position was higher than the starting hourly rate in the deputy's year of hire, the Deputy will be placed on the rate schedule for his/her year of hire at the step equal to or immediately higher than the hourly rate paid by the prior employer. The Deputy will then be moved forward from that rate until the Deputy reaches the 4 year rate. This movement will affect the Deputy's placement on the salary schedule as of January 1, 2016; there shall be no back pay for any period of time prior to January 1, 2016 as a result of this side letter.



RECEIVED
WALWORTH COUNTY CLERK
2016 FEB -1 AM 9:12

THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:

DATED: January 26, 2016

Margaret Dee McGarity
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF WISCONSIN

In re:

MICHAEL SCHOLL
CHRISTINE SCHOLL

Case No. 14-35100 MDM
Chapter 13

Debtors

MICHAEL SCHOLL
CHRISTINE SCHOLL
Plaintiffs,

Adversary No. 14-2697

vs

WALWORTH COUNTY
ONE90H90H LLC
Defendants

ORDER FOR DISMISSAL OF ADVERSARY ACTION

This document prepared by:
Attorney Michael F Dubis
208 E Main St
Waterford WI 53185
Ph. 262-534-6950
Fax 262-534-7367
mdubis@tds.net

IT IS ORDERED that the Stipulation of the parties for dismissal is approved.

BASED UPON, the Stipulation for Dismissal of the above adversary action on file herein, and based upon the debtors' and all parties understanding that the closing of the land contract will take place as agreed upon,

IT IS ORDERED that the above adversary action is hereby dismissed with prejudice and without costs.

HOWEVER, notwithstanding that stated above, IT IS FURTHER ORDERED that in the event the closing does not take place within 30 days of execution of this Order, the debtors/plaintiffs have the right to file a Motion to Vacate the dismissal of this adversary action and the parties stipulate that the adversary action will be reopened and set for further proceedings.

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RECEIVED
WALWORTH COUNTY CLERK
WALWORTH COUNTY
2016 FEB -3 PM 4:53

STATE OF WISCONSIN

CIRCUIT COURT

LSCG Fund 17, LLC,
a Delaware limited liability company,
13949 Ventura Blvd.
Suite 300
Sherman Oaks, CA 91423;

ANSWER TO PLAINTIFF'S
SECOND AMENDED
COMPLAINT
File No.: 15-cv-032513949

Plaintiff,

FILED

JAN 26 2016

CIRCUIT COURT
WALWORTH COUNTY
BRIDGETTE LEPIANKA

Case Code: 30404; 30405
Case Type: Foreclosure of
Land Contract Mortgage

vs.

Mann Bros., Inc.,
a Wisconsin corporation,
1950 N. Wisconsin Street
Elkhorn, WI 53121;

Mann Ventures, LLC,
a Wisconsin limited liability company,
1950 N. Wisconsin Street
Elkhorn, WI 53121;

D&M Enterprises, LLC,
a Wisconsin limited liability company,
1950 N. Wisconsin Street
Elkhorn, WI 53121;

Mann Development Company, Inc.,
a Wisconsin corporation,
1950 N. Wisconsin Street
Suite 8C
Elkhorn, WI 53121;

R. Mann Investments, LLC,
a Wisconsin corporation,
1950 N. Wisconsin Street
Suite 8C
Elkhorn, WI 53121;

State of Wisconsin
c/o Brad D. Schimel,
2 East Main Street
Madison, WI 53703;

Dodge Concrete, Inc.,
a Wisconsin corporation,
c/o Joseph F. Marx
W6911 Silver Creek Road
Watertown, WI 53098;

Bore Master, Inc.,
a Wisconsin corporation,
c/o Daniel Olson
N50W23076 Betker Road
Pewaukee, WI 53072;

Fabco Equipment, Inc.,
a Wisconsin corporation,
Kenton B. Oren
11200 W Silver Spring Road
Milwaukee, WI 53225;

Gerda Ameristeel US, Inc.,
a Florida corporation,
c/o Corporation Service Company
8040 Excelsior Drive
Suite 400
Madison, WI 53717;

City of Elkhorn, Wisconsin
c/o Cairie L. Virrueta
9 South Broad Street
Elkhorn, WI 53121;

Growmark, Inc.,
a Delaware corporation,
c/o Corporation Service Company
8040 Excelsior Drive
Suite 400
Madison, WI 53717;

RFH Jr, Inc.,
a Wisconsin corporation,
c/o Robert F. Huml, Jr.
4220 N. Newville Road
Janesville, WI 53545;

H. James & Sons, Inc.,
a Wisconsin corporation,
c/o Donna M. James
4624 Ideal Road
Fennimore, WI 53809;

American State Equipment Co.,
a Wisconsin corporation,
c/o Stephen D. Kraut
2055 South 108th Street
West Allis, WI 53227;

Wisconsin Department of Workforce Development;
201 E. Washington Avenue
Madison, WI 53703;

Frawley Oil Company, Inc.,
a Wisconsin corporation,
c/o Michael J. Frawley,
600 E Milwaukee Street
Whitewater, WI 53190;

Vulcan Construction Materials LP,
a Delaware limited partnership,
c/o Corporation Service Company
8040 Excelsior Drive
Suite 400
Madison, WI 53717;

BT Equipment, LLC,
a Wisconsin limited liability company,
c/o Timothy Otterstatter
N9220 Donald Lane
Watertown, WI 53094;

Zenith Tech, Inc.,
a Wisconsin corporation,
c/o Mark E. Filmanowicz
N6 W23633 Bluemound Road
Waukesha, WI 53188-1741;

Wisconsin Bell, Inc.,
a Wisconsin corporation,
c/o CT Corporation System
8020 Excelsior Drive
Suite 200
Madison, WI 53717;

Wingra Redi-Mix, Inc.,
a Wisconsin corporation,
c/o Robert M. Shea
2975 Kapec Road
Madison, WI 53744;

Citizens Insurance Company of America
c/o CT Corporation Systems
8020 Excelsior Drive
Suite 200
Madison, WI 53717;

Middlesex Insurance Company
c/o CT Corporation Systems
8020 Excelsior Drive
Suite 200
Madison, WI 53717;

Hudson Insurance Company,
a Delaware corporation,
c/o Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801;

James T. Callahan,
as Trustee of the Central Pension Fund
of the International Union of Operating Engineers,
c/o Michael R. Fanning,
4115 Chesapeake Street, NW
Washington, DC 20016;

Michael R. Murphy,
as Trustee of the Central Pension Fund
of the International Union of Operating Engineers,
c/o Michael R. Fanning
4115 Chesapeake Street, NW
Washington, DC 20016;

Terrance E. McGowan,
as Trustee of the Central Pension Fund
of the International Union of Operating Engineers,
c/o Michael R. Fanning
4115 Chesapeake Street, NW
Washington, DC 20016;

Brian E. Hickey,
as Trustee of the Central Pension Fund
of the International Union of Operating Engineers,
c/o Michael R. Fanning
4115 Chesapeake Street, NW
Washington, DC 20016;

John Duffy,
as Trustee of the Central Pension Fund
of the International Union of Operating Engineers,
c/o Michael R. Fanning
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Robert P. McCormick,
as Trustee of the Central Pension Fund
of the International Union of Operating Engineers,
c/o Michael R. Fanning
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Washington, DC 20016;

Noel C. Borck,
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of the International Union of Operating Engineers,
c/o Michael R. Fanning
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Paul O. Gehl,
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of the International Union of Operating Engineers,
c/o Michael R. Fanning
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J. Patrick Tielborg,
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of the International Union of Operating Engineers,
c/o Michael R. Fanning
4115 Chesapeake Street, NW
Washington, DC 20016;

Paul C. Bensi,
as Trustee of the Central Pension Fund
of the International Union of Operating Engineers,
c/o Michael R. Fanning
4115 Chesapeake Street, NW
Washington, DC 20016;

William Kahl,
as Trustee for the Joint Labor Management
Work Preservation Fund,
c/o Rita Becker
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Barry Scholz,
as Trustee for the Joint Labor Management
Work Preservation Fund,
c/o Rita Becker
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

William Buglass,
as Trustee for the Joint Labor Management
Work Preservation Fund,
c/o Rita Becker
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Murray Luedtke,
as Trustee for the Joint Labor Management
Work Preservation Fund,
c/o Rita Becker
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Terrance E. McGowan,
as Trustee for the Joint Labor Management
Work Preservation Fund,
c/o Rita Becker
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Steve Buffalo,
as Trustee for the Joint Labor Management
Work Preservation Fund,
c/o Rita Becker
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Shane Griesbach,
as Trustee for the Joint Labor Management
Work Preservation Fund,
c/o Rita Becker
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Len Shelton,
as Trustee for the Joint Labor Management
Work Preservation Fund,
c/o Rita Becker
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Steven Buffalo,
as Trustee of the Operating Engineers
Local 139 Health Benefit Fund,
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Len Shelton,
as Trustee of the Operating Engineers
Local 139 Health Benefit Fund,
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Dan Sperberg,
as Trustee of the Operating Engineers
Local 139 Health Benefit Fund,
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Mary Jane DeBattista,
as Trustee of the Operating Engineers
Local 139 Health Benefit Fund,
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Tom Wolf,
as Trustee of the Operating Engineers
Local 139 Health Benefit Fund,
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

David Bohl,
as Trustee of the Operating Engineers
Local 139 Health Benefit Fund,
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Tim Peterson,
as Trustee of the Operating Engineers
Local 139 Health Benefit Fund,
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

John Topp,
as Trustee of the Operating Engineers
Local 139 Health Benefit Fund,
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Richard Wanta,
as Trustee of the Operating Engineers
Local 139 Health Benefit Fund,
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Terrance E. McGowan,
as Trustee of the Operating Engineers
Local 139 Health Benefit Fund,
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Terrance E. McGowan,
as Trustee of the Wisconsin Operating Engineers
Skill Improvement and Apprenticeship Fund,
c/o Rita Becker
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Patrick B. Nelson,
as Trustee of the International Union
of Operating Engineers Local 139,
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Terrance E. McGowan,
as Trustee of the International Union
of Operating Engineers Local 139,
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Tim Goetz,
as Trustee of the International Union
of Operating Engineers Local 139,
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Shaun McHugh,
as Trustee of the International Union
of Operating Engineers Local 139,
N27W23233 Roundy Drive
Pewaukee, WI 53072-0160;

Gary F. Caldwell,
as Trustee of the Central States,
Southeast and Southwest Areas Pension Fund
9377 West Higgins Road
Rosemont, IL 60018;

Arthur H. Bunte, Jr.,
as Trustee of the Central States,
Southeast and Southwest Areas Pension Fund
9377 West Higgins Road
Rosemont, IL 60018;

Ronald DeStefano,
as Trustee of the Central States,
Southeast and Southwest Areas Pension Fund
9377 West Higgins Road
Rosemont, IL 60018;

Greg R. May,
as Trustee of the Central States,
Southeast and Southwest Areas Pension Fund
9377 West Higgins Road
Rosemont, IL 60018;

Charles A. Whobrey,
as Trustee of the Central States,
Southeast and Southwest Areas Pension Fund
9377 West Higgins Road
Rosemont, IL 60018;

George J. Westley,
as Trustee of the Central States,
Southeast and Southwest Areas Pension Fund
9377 West Higgins Road
Rosemont, IL 60018;

Marvin Kropp,
as Trustee of the Central States,
Southeast and Southwest Areas Pension Fund
9377 West Higgins Road
Rosemont, IL 60018;

William D. Lichtenwald,
as Trustee of the Central States,
Southeast and Southwest Areas Pension Fund
9377 West Higgins Road
Rosemont, IL 60018;

Christopher J. Langan, as Trustee of the
Central States, Southeast and Southwest
Areas Pension Fund
9377 West Higgins Road
Rosemont, IL 60018;

Gary F. Caldwell,
as Trustee of the Central States,
Southeast and Southwest Areas Health and Welfare Fund
9377 West Higgins Road

Rosemont, IL 60018;

Arthur H. Bunte, Jr.,
as Trustee of the Central States,
Southeast and Southwest Areas Health and Welfare Fund
9377 West Higgins Road
Rosemont, IL 60018;

Greg R. May,
as Trustee of the Central States,
Southeast and Southwest Areas Health and Welfare Fund
9377 West Higgins Road
Rosemont, IL 60018;

Christopher J. Langan,
as Trustee of the Central States,
Southeast and Southwest Areas Health and Welfare Fund
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Rosemont, IL 60018;

Charles A. Whobrey,
as Trustee of the Central States,
Southeast and Southwest Areas Health and Welfare Fund
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Rosemont, IL 60018;

George J. Westley,
as Trustee of the Central States,
Southeast and Southwest Areas Health and Welfare Fund
9377 West Higgins Road
Rosemont, IL 60018;

Marvin Kropp,
as Trustee of the Central States,
Southeast and Southwest Areas Health and Welfare Fund
9377 West Higgins Road
Rosemont, IL 60018;

William D. Lichtenwald,
as Trustee of the Central States,
Southeast and Southwest Areas Health and Welfare Fund
9377 West Higgins Road
Rosemont, IL 60018;

Ronald DeStefano, as Trustee of the
Central States, Southeast and Southwest

Areas Health and Welfare Fund
9377 West Higgins Road
Rosemont, IL 60018;

Walworth County, Wisconsin,
c/o Kimberly S. Bushey
100 West Walworth Street
Elkhorn, WI 5312;
Mann Complex Condominium Owners Association, Inc.,
1950 N. Wisconsin Street
Suite 8C
Elkhorn, WI 53121;

The Stone Specialists, LLC
c/o Kathleen Hanley
W3507 Wildwood Drive
Lake Geneva, WI 53147

Stone Specialty Company, LLC
c/o Kathleen Hanley
W3507 Wildwood Drive
Lake Geneva, WI 53147

Anthony Hanley
W3507 Wildwood Drive
Lake Geneva, WI 53147

Kathleen Hanley
W3507 Wildwood Drive
Lake Geneva, WI 53147

All successors and assigns of the
above-named Defendants; and

All other persons or parties unknown, claiming
any right, title, estate, lien or interest in the real
property described in the Complaint;

Defendants.

FILED

JAN 26 2015

**CIRCUIT COURT
WALWORTH COUNTY
BRIDGETTE LEPIANAK**

CENTRAL STATES' ANSWER TO SECOND AMENDED COMPLAINT

Defendants, Central States, Southeast and Southwest Areas Pension Fund ("Pension Fund") and Central States Southeast and Southwest Areas Health and Welfare Fund ("Health and

Welfare Fund,” and collectively with the Pension Fund, the “Funds”) answer Plaintiff LSGC Fund 17, LLC’s (“LSGC”) Second Amended Complaint as follows:

PARTIES

1. Plaintiff LSCG Fund 17, LLC (“Plaintiff”) is a Delaware limited liability with offices located at 13949 Ventura Blvd., Suite 300, Sherman Oaks, CA 91423. Plaintiff brings this action as assignee under the Mortgage, underlying note and renewals, and Security Agreement (each hereinafter described).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 1 and therefore deny the same.

2. Defendant Mann Bros., Inc. (“Mortgagor”) is a Wisconsin corporation with a principal office located at 1950 N. Wisconsin Street, Elkhorn, WI 53121. Mortgagor executed the Mortgage at issue in this action.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 2 and therefore deny the same.

3. Defendant Mann Ventures, LLC is a Wisconsin limited liability company with principal offices located at 1950 N. Wisconsin Street, Elkhorn, WI 53121. The registered agent and address is Lisle W. Blackbourne, Esq., Godfrey, Leibsle, Blackbourn & Howarth, S.C., 354 Seymour Court, Elkhorn, WI 53121. Mann Ventures, LLC is a named borrower on a loan secured by the Mortgage at issue in this action.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 3 and therefore deny the same.

4. Defendant D&M Enterprises, LLC is a Wisconsin limited liability company with principal offices located at 1950 N. Wisconsin Street, Elkhorn, WI 53121. The registered agent

is Lisle W. Blackbourne, Esq., Godfrey, Leibsle, Blackbourn & Howarth, S.C., 354 Seymour Court, Elkhorn, WI 53121. D&M Enterprises, LLC is a named borrower on a loan secured by the Mortgage at issue in this action.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 4 and therefore deny the same.

5. Defendant Mann Development Company Inc. is a Wisconsin corporation with principal offices located at 1950 N. Wisconsin Street, Suite 8C, Elkhorn, WI 53121. The registered agent is Robert E. Mann. Mann Development Company, Inc. is a named borrower on a loan secured by the Mortgage at issue in this action.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 5 and therefore deny the same.

6. Defendant R. Mann Investments, LLC is a Wisconsin limited liability company with a principal office located at 1950 N. Wisconsin Street, Suite 8C, Elkhorn, WI 53121. The registered agent is Robert E. Mann. R. Mann Investments, LLC is a named borrower on a loan secured by the Mortgage at issue in this action.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 6 and therefore deny the same.

7. Defendant State of Wisconsin, in care of Brad D. Schimel, Attorney General, 2 East Main Street, Madison, WI 53703. The State of Wisconsin is the judgment lien creditor on a judgment against Mortgagor for an originally stated amount of \$75,000.00, dated November 4, 2008, and docketed on November 11, 2008 as case number 2008CX000002 ("Wisconsin Judgment").

ANSWER: The Funds have insufficient knowledge to either admit or deny the

allegations in Paragraph 7 and therefore deny the same.

8. Defendant Dodge Concrete, Inc. is a Wisconsin corporation with a principal office and registered agent office located at W6911 Silver Creek Road, Watertown, WI 53098. The registered agent is Joseph F. Marx. Dodge Concrete, Inc. is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$5,179.50, dated March 8, 2012, and docketed March 8, 2012 as Case No. 2012SC000336. Dodge Concrete, Inc.'s interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 8 and therefore deny the same.

9. Defendant Bore Master, Inc. is a Wisconsin corporation with a principal office and registered agent office located at N50W23076, Betker Road, Pewaukee, WI 53072. The registered agent is Daniel Olson. Bore Master, Inc. is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$18,172.00, dated July 3, 2012, and recorded July 3, 2012 as Case No. 2012CV000794. Bore Master, Inc.'s interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 9 and therefore deny the same.

10. Defendant Fabco Equipment, Inc. is a Wisconsin corporation with a principal office and registered agent office located at 11200 W. Silver Spring Road, Milwaukee, WI 53225. The registered agent is Kenton B. Oren. Fabco Equipment, Inc. is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$172,034.48, dated July 2, 2012, and docketed July 16, 2012 as Case No. 2012TJ000059. Fabco Equipment, Inc.'s interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 10 and therefore deny the same.

11. Defendant Gerdau Ameristeel US, Inc. is a Florida corporation that is registered in Wisconsin. The registered agent and office is Corporation Service Company, 8040 Excelsior Drive, Suite 400, Madison, WI 53717. The principal office is located at 4221 West Boy Scout Blvd., Suite 600, Tampa, FL 33607. Gerdau Ameristeel US, Inc. is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$15,495.06, dated July 12, 2012, and docketed July 20, 2012 as Case No. 2012TJ000062. Gerdau Ameristeel US, Inc.'s interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 11 and therefore deny the same.

12. Defendant City of Elkhorn, Wisconsin, in care of Cairie L. Virrueta, City Clerk, 9 South Broad Street, Elkhorn, WI 53121. The City of Elkhorn is a judgment creditor on a judgment against Mortgagor in the originally stated amount of \$54,451.03, dated July 24, 2012, and docketed July 24, 2012 as Case No. 2012CV000734. The City of Elkhorn's interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 12 and therefore deny the same.

13. Defendant Growmark, Inc. is a Delaware corporation that is registered in Wisconsin. The registered agent and office is Corporation Service Company, 8040 Excelsior Drive, Suite 400, Madison, WI 53717. The principal office is located at 1701 Towanda Avenue, P.O. Box 2500, Bloomington, IL 61702-2500. Growmark, Inc. is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$39,499.57, dated July 30, 2012,

and docketed August 15, 2012 as Case No. 2012TJ000070. Growmark, Inc.'s interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 13 and therefore deny the same.

14. Defendant RFH JR, Inc. is a Wisconsin corporation with a principal office and registered agent office located at 4220 N. Newville, Rd., P.O. Box 1427, Janesville, WI 53545. The registered agent is Robert F. Huml, Jr. RFH JR, Inc. is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$108,056.30, dated February 26, 2013, and docketed February 26, 2013 as Case No. 2012CV001412. RFH JR, Inc.'s interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 14 and therefore deny the same.

15. Defendant H. James & Sons, Inc. is a Wisconsin corporation with a principal office and registered agent office located at 4642 Ideal Road, Fennimore, WI 53809. The registered agent is Donna M. James. H. James & Sons is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$13,692.28, dated February 12, 2013, and docketed February 13, 2013 as Case No. 2012CV000440. H. James & Sons, Inc.'s interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 15 and therefore deny the same.

16. Defendant American State Equipment Co., Inc. is a Wisconsin corporation with a principal office and registered agent office located at 2055 S. 108th Street, West Allis, WI 53227. The registered agent is Stephen D. Kraut. American State Equipment Co., Inc. is the judgment

creditor on a judgment against Mortgagor in the originally stated amount of \$79,317.71, dated March 5, 2013, and docketed March 5, 2013 as Case No. 2012CV000356. American State Equipment Co., Inc.'s interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 16 and therefore deny the same.

17. Defendant Wisconsin Department of Workforce Development, 201 E. Washington Avenue, Madison, WI 53703. The Wisconsin Department of Workforce Development filed a Delinquent Worker's Compensation Warrant in the Office of the Clerk of the Circuit Court of Walworth County in the originally stated amount of \$18,215.55 and docketed March 12, 2013 as No. 2013UC000039. The Wisconsin Department of Workforce Development's interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 17 and therefore deny the same.

18. Defendant Frawley Oil Company, Inc. is a Wisconsin corporation with a principal office and registered agent office located at 600 E. Milwaukee Street, P.O. Box. 630, Whitewater, WI 53190. The registered agent is Michael J. Frawley. Frawley Oil Company, Inc. is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$265,653.00, dated April 26, 2013, and docketed April 26, 2013 as Case No. 2012CV000530. Frawley Oil Company, Inc.'s interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 18 and therefore deny the same.

19. Defendant Vulcan Construction Materials, Limited Partnership is a Delaware

limited partnership that is registered in Wisconsin. The registered agent and office is Corporation Service Company, 8040 Excelsior Drive, Suite 400, Madison, WI 53717. The principal office address is 1200 Urban Center Drive, Birmingham, AL 35242. Vulcan Construction Materials, Limited Partnership is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$59,701.32, dated May 16, 2013, and docketed May 16, 2013 as Case No. 2012CV000999. Vulcan Construction Materials, Limited Partnership's interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 19 and therefore deny the same.

20. Defendant BT Equipment, LLC is a Wisconsin limited liability company with a principal office and registered agent office located at N9220 Donald Lane, Watertown, WI 53094. The registered agent is Timothy Otterstatter. BT Equipment, LLC is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$28,853.79, dated May 29, 2013, and docketed May 29, 2013 as Case No. 2012CV001006. BT Equipment, LLC's interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 20 and therefore deny the same.

21. Defendant Zenith Tech, Inc. is a Wisconsin corporation with a principal office and registered agent office located at N6 W23633 Bluemound Road, Waukesha, WI 53188. The registered agent is Mark E. Filmanowicz. Zenith Tech, Inc. is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$31,621.80, dated May 29, 2013, and docketed June 3, 2013 as Case No. 2012TJ000046. Zenith Tech, Inc.'s interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 21 and therefore deny the same.

22. Defendant Wisconsin Bell, Inc. is a Wisconsin corporation with a principal office located at 722 N. Broadway, Milwaukee, WI 53202 and a registered agent office located at 8020 Excelsior Dr., Suite 200, Madison, WI 53717. The registered agent is CT Corporation System. Wisconsin Bell, Inc. is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$1,447.80, dated June 20, 2013, and docketed June 27, 2013 as Case No. 2013SC001020. Wisconsin Bell, Inc.'s interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 22 and therefore deny the same.

23. Defendant Wingra Redi-Mix, Inc. is a Wisconsin corporation with a principal office and registered agent office located at 2975 Kapec Rd., P.O. Box 44284, Madison, WI 53719. The registered agent is Robert M. Shea. Wingra Redi-Mix, Inc. is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$110,330.48, dated August 6, 2013, and docketed August 12, 2013 as Case No. 2012CV000517. Wingra Redi-Mix, Inc.'s interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 23 and therefore deny the same.

24. Defendant Citizens Insurance Company of America, has a principal office located at 645 West Grand River Avenue, Howell, MI 48843, and a registered agent office located at 8020 Excelsior Drive, Suite 200, Madison, WI 53717. The registered agent is CT Corporation Systems. Citizens Insurance Company of America is the judgment creditor on a judgment

against Mortgagor in the originally stated amount of \$162,973.18, dated October 8, 2013, and docketed December 4, 2013 as Case No. 2013FJ000034. Citizens Insurance Company of America's interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 24 and therefore deny the same.

25. Defendant Middlesex Insurance Company, has a principal office located at 1800 North Point Drive, Stevens Point, WI 54481-1253, and a registered agent office located at 8020 Excelsior Drive, Suite 200, Madison, WI 53717. The registered agent is CT Corporation Systems. Middlesex Insurance Company is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$4,279.93, dated January 14, 2014, and docketed February 7, 2014 as Case No. 2014TJ000009. Middlesex Insurance Company's interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 25 and therefore deny the same.

26. Defendant Hudson Insurance Company is a Delaware corporation with a registered agent and office at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801; Dina Daskalakis, 100 William Street, Fifth Floor, New York, NY 10038. Hudson Insurance Company is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$1,228,554.49, dated January 15, 2013, and docketed April 25, 2013 as Case No. 2013TJ000030. Hudson Insurance Company's interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 26 and therefore deny the same.

27. Defendants James T. Callahan, Michael R. Murphy, Terrance E. McGowan, Brian E. Hickey, John Duffy, Robert P. McCormick, Noel C. Borck, Paul O. Gehl, J. Patrick Tielborg, and Paul C. Bensi are Trustees of the Central Pension Fund of the International Union of Operating Engineers. Central Pension Fund of the International Union of Operating Engineers, in care of Michael R. Fanning, 4115 Chesapeake Street, North West, Washington, DC 20016. Central Pension Fund of the International Union of Operating Engineers is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$869,015.17, dated July 31, 2013, and docketed July 25, 2014 as Case No. 2014TJ000058. Central Pension Funds's interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 27 and therefore deny the same.

28. Defendants William Kahl, Barry Scholz, William Buglass, Murray Luedtke, Terrance E. McGowan, Steve Buffalo, Shane Griesbach, and Len Shelton are Trustees of the Joint Labor Management Work Preservation Fund, also known as Business Construction Group. Joint Labor Management Work Preservation Fund, in care of Rita Becker, Fund Administrator, N27W23233 Roundy Drive, Pewaukee WI 53072-0160. Joint Labor Management Work Preservation Fund is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$869,015.17, dated July 31, 2013, and docketed July 25, 2014 as Case No. 2014TJ000058. Joint Labor Management Work Preservation Fund's interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 28 and therefore deny the same.

29. Defendants Steven Buffalo, Len Shelton, Dan Sperberg, Mary Jane DeBattistia,

Tom Wolf, David Bohl, Tim Peterson, John Topp, and Richard Wanta are Trustees of the Operating Engineers Local 139 Health Benefit Fund. Operating Engineers Local 139 Health Benefit Fund, in care of Rita Becker, Fund Administrator, N27W23233 Roundy Drive, Pewaukee WI 53072-0160. Operating Engineers Local 139 Health Benefit Fund is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$869,015.17, dated July 31, 2013, and docketed July 25, 2014 as Case No. 2014TJ000058. Operating Engineers Local 139 Health Benefit Fund's interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 29 and therefore deny the same.

30. Defendant Terrance E. McGowan is the Trustee of the Wisconsin Operating Engineers Skill Improvement and Apprenticeship Fund, in care of Rita Becker, Fund Administrator, N27W23233 Roundy Drive, Pewaukee WI 53072-0160. Wisconsin Operating Engineers Skill Improvement and Apprenticeship Fund is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$869,015.17, dated July 31, 2013, and docketed July 25, 2014 as Case No. 2014TJ000058. Wisconsin Operating Engineers Skill Improvement and Apprenticeship Fund's interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 30 and therefore deny the same.

31. Defendants Patrick B. Nelson, Tim Goetz, Shaun McHugh, and Terrance E. McGowan are Trustees of the International Union of Operating Engineers Local 139. International Union of Operating Engineers Local 139, in care of Rita Becker, Fund

Administrator, N27W23233 Roundy Drive, Pewaukee WI 53072-0160. International Union of Operating Engineers Local 139 is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$869,015.17, dated July 31, 2013, and docketed July 25, 2014 as Case No. 2014TJ000058. International Union of Operating Engineers Local 139's interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 31 and therefore deny the same.

32. Defendants Gary F. Caldwell, Arthur H. Bunte, Jr., Ronald DeStefano, Greg R. May, Charles A. Whobrey, Marvin Kropp, Christopher J. Langan, and William D. Lichtenwald are Trustees of the Central States, Southeast and Southwest Areas Pension Fund, located at, 9377 West Higgins Road, Rosemont, Illinois 60018. Central States, Southeast and Southwest Areas Pension Fund is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$8,307,078.02, dated October 28, 2014, and docketed January 21, 2015 as Case No. 2015 FJ000001. Central States, Southeast and Southwest Areas Pension Fund's interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds admit that the listed individuals are Trustees of the Pension Fund, except for Christopher J. Langan, who is not a Trustee of the Pension Fund. However, the Funds expressly deny that any of their trustees have any liability in relation to this matter, and deny that any of the Trustees personally have any property interests in the Property at issue. Accordingly, the Funds affirmatively state that it was improper to name the trustees as Defendants. The Funds admit that they have a lien on the Property at issue by virtue of a judgment entered in the United States District Court for the Northern District of Illinois (Case No. 14-cv-5977) in October 2014 and registered in the United States District Court for the Eastern District of Wisconsin. An

exemplified copy of the judgment was recorded at the Clerk of Courts for Walworth County, Wisconsin on January 21, 2015. The Funds have insufficient knowledge to either admit or deny the remaining allegations of Paragraph 32, including the allegation that the Funds' interest is junior to Plaintiff's interest, and therefore the Funds deny the same.

33. Defendants Gary F. Caldwell, Arthur H. Bunte, Jr., Greg R. May, Christopher J. Langan, Charles A. Whobrey, George J. Westley, Marvin Kropp, Ronald DeStefano, and William D. Lichtenwald are Trustees of the Central States, Southeast and Southwest Areas Health and Welfare Fund, located at, 9377 West Higgins Road, Rosemont, Illinois 60018. Central States, Southeast and Southwest Areas Health and Welfare Fund is the judgment creditor on a judgment against Mortgagor in the originally stated amount of \$8,307,078.02, dated October 28, 2014, and docketed January 21, 2015 as Case No. 2015FJ000001. Central States, Southeast and Southwest Areas Health and Welfare Fund's interest in the Property at issue in this case is junior to Plaintiff's interest.

ANSWER: The Funds admit that the listed individuals are Trustees of the Health and Welfare Fund, except for Ronald DeStefano, who is not a trustee of the Health and Welfare Fund. However, the Funds expressly deny that any of their trustees have any liability in relation to this matter, and deny that any of the Trustees personally have any property interests in the Property at issue. Accordingly, the Funds affirmatively state that it was improper to name the trustees as Defendants. The Funds admit that they have a lien on the Property at issue by virtue of a judgment entered in the United States District Court for the Northern District of Illinois (Case No. 14-cv-5977) in October 2014 and registered in the United States District Court for the Eastern District of Wisconsin. An exemplified copy of the judgment was recorded at the Clerk of Courts for Walworth County, Wisconsin on January 21, 2015. The Funds have insufficient

knowledge to either admit or deny the remaining allegations of Paragraph 33, including the allegation that the Funds' interest is junior to Plaintiff's interest, and therefore the Funds deny the same.

34. Defendant Walworth County, in care of Kimberly S. Bushey, Clerk of Walworth County, 100 West Walworth Street, Elkhorn, WI 53121. There are delinquent taxes for the years 2012, 2013, and 2014 in an amount of \$8,661.43, plus interest and penalties.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 34 and therefore deny the same.

35. Defendant Mann Complex Condominium Owners Association, Inc. has a principal office located at 1950 N. Wisconsin Street, Suite 8C, Elkhorn, WI 53121.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 35 and therefore deny the same.

36. Defendant The Stone Specialists, LLC, has a principal and registered office address located at W3507 Wildwood Drive, Lake Geneva, WI 53147. Defendant The Stone Specialists, LLC are tenants in the subject property.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 36 and therefore deny the same.

37. Defendant Stone Specialty Company, LLC, is a dissolved Wisconsin limited liability company with a principal office located at 1950 North Wisconsin Street, Elkhorn, WI 53121 and a registered address located at W3507 Wildwood Drive, Lake Geneva, WI 53147. The registered agent is Kathleen M. Hanley.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 37 and therefore deny the same.

38. Defendant Anthony Hanley is an individual with a last known address located at W3507 Wildwood Drive, Lake Geneva, WI 53147. Upon information and belief, Defendant Anthony Hanley was a principal and owner of Defendant Stone Specialty Company, LLC prior to its dissolution.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 38 and therefore deny the same.

39. Defendant Kathleen Hanley is an individual with a last known address located at W3507 Wildwood Drive, Lake Geneva, WI 53147. Upon information and belief, Defendant Kathleen Hanley was a principal and owner of Defendant Stone Specialty Company, LLC prior to its dissolution.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 39 and therefore deny the same.

40. All successors and assigns of the above-named Defendants.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 40 and therefore deny the same.

41. All other persons or parties unknown, claiming any right, title, estate, lien, or interest in the real property described in the Complaint.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 41 and therefore deny the same.

JURISDICTION AND VENUE

42. Walworth County, Wisconsin has appropriate jurisdiction and venue over this action because the property that is the subject of this Action is located in Walworth County.

ANSWER: The Funds have insufficient knowledge to either admit or deny the

allegations in Paragraph 42 and therefore deny the same.

ALLEGATIONS COMMON TO ALL COUNTS

A. The 2007 Land Contract.

43. On or about February 23, 2007, Mann Bros., Inc., as Vendor, entered into a Land Contract to sell to Vendee Stone Specialty Company, LLC ("Stone Specialty") for \$281,000 Unit 6 in the Mann Complex Condominium, which is legally described as:

Unit 6 in Mann Complex Condominium, together with said units undivided percentage interest in the common element, and the exclusive use of the limited common elements appurtenant to said unit all in Mann Complex Condominium, a condominium declared and existing under and by virtue of the Condominium Ownership Act of the State of Wisconsin and recorded by a Declaration as such condominium in the Office of the Register of Deeds for Walworth County, Wisconsin, on August 31, 1994, as Document No. 571245, said condominium being located in the City of Elkhorn, County of Walworth, State of Wisconsin on the real estate described in said Declaration and incorporated herein by this reference thereto ("Property"). A true and correct copy of that Land Contract is attached as Exhibit 1.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 43 and therefore deny the same.

44. The Property is a commercial condominium that has not been abandoned and is not a homestead.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 44 and therefore deny the same.

45. The Land Contract was recorded on March 1, 2007, as Document No. 702286 (Ex. 1).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 45 and therefore deny the same.

46. Under Wisconsin law, Mann Bros. still owned legal title to the Property after entering into the Land Contract, and Stone Specialty acquired equitable title to the Property pursuant to the Land Contract.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 46 and therefore deny the same.

47. Under Wisconsin law, Mann Bros.'s legal title to the Property after entering into the Land Contract is considered personal property and not real property. Under Wisconsin law, Stone Specialty's equitable title to the Property after entering into the Land Contract is considered real property rather than personal property.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 47 and therefore deny the same.

48. Accordingly, pursuant to the 2007 Land Contract, Stone Specialty had an ownership interest in the real property, and Mann Bros. did not.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 48 and therefore deny the same.

B. Mann Bros.'s Assignment of its Vendor Interest in the Land Contract to First Business Bank.

49. On or about March 9, 2007, Mann Bros. assigned its Vendor interest in the Land Contract to First Business Bank. That Assignment of Land Contract was recorded on April 12, 2007, as Document number 705641. (Ex. 2).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 49 and therefore deny the same.

C. The 2008 State of Wisconsin Judgment That Did Not Attach to the Property.

50. On or about November 4, 2008, the State of Wisconsin docketed a judgment against Mann Bros. in the amount of \$75,000, case number 2008CX000002 (Ex. 3) (“2008 Judgment”).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 50 and therefore deny the same.

51. But as of November 4, 2008, Mann Bros. had assigned its Vendor interest in the Land Contract to First Business Bank. Mann Bros. therefore only had a legal, personal property interest, and no longer had an real property interest.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 51 and therefore deny the same.

52. The State of Wisconsin Judgment did not, therefore, attach to any real property interest in the Property that Mann Bros. had at that time.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 52 and therefore deny the same.

53. Moreover, even if Mann Bros. still had some unassigned Vendor interest in the Property pursuant to the Land Contract, the only interest that Mann Bros. had is considered personal property and not real property under Wisconsin law.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 53 and therefore deny the same.

54. The entity that held a real property interest in the Property at the time of the judgment was Stone Specialty, pursuant to its Vendee interest in the Land Contract. But the State of Wisconsin did not have a judgment against Stone Specialty.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 54 and therefore deny the same.

55. Accordingly, the 2008 Judgment did not attach to Property when it was recorded in September, 2008.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 55 and therefore deny the same.

D. First Business Bank's Release of Its Assignment in the Land Contract and Mann Bros.'s November, 2009, Assignment of its Interest in the Land Contract to Community Bank CBD.

56. On September 1, 2009, First Business Bank released the Assignment of the Land Contract by Mann Bros. That Release was recorded on September 4, 2009, as document number 772304 (Ex. 4).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 56 and therefore deny the same.

57. Accordingly, as of September 1, 2009, Mann Bros. reacquired its Vendor interest in the Land Contract. But since the Vendor's interest is personal property and not real property, the 2008 Judgment did not attach to the Property at that point either.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 57 and therefore deny the same.

58. And on November 17, 2009, Mann Bros. again assigned its Vendor interest in the Land Contract, this time to Community Bank CBD. That Assignment was recorded on November 19, 2009, as document number 777500 (Ex. 5).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 58 and therefore deny the same.

59. Section 8 of the Assignment provides that

This Assignment shall constitute a perfected, absolute and present assignment and [Mann Bros.] understands and agrees that it establishes a present and complete transfer of [Mann Bros.'s] interest [to Community Bank CBD].

(Ex. 5, p. 2) (emphasis added).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 59 and therefore deny the same.

E. Stone Specialty's Mistaken 2010 Transfer of Its Vendee Interest in the Land Contract to Mann Bros. Instead of to Community Bank CBD.

60. Sometime between February, 2007, and September, 2010, Stone Specialty breached its payment obligations pursuant to the Land Contract.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 60 and therefore deny the same.

61. On September 7, 2010, Stone Specialty executed a Condominium Deed, pursuant to which it purported to transfer to Mann Bros. its equitable, real property interest in the Property pursuant to the Land Contract. The Condominium Deed was recorded September 16, 2010, as document number 797717 (Ex. 6) ("Condo Deed").

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 61 and therefore deny the same.

62. In the Condo Deed, Stone Specialty made clear that its intent was to transfer its equitable, real property interest it had pursuant to the Land Contract to Mann Bros. "in lieu of foreclosure." The Condo Deed contains the following language:

THIS DEED IS PROVIDED TO GRANTEE IN LIEU OF FORECLOSURE. GRANTOR HEREBY SURRENDERS ANY AND ALL RIGHTS TO THE PROPERTY AND THE LAND CONTRACT EXECUTED BY THE PARTIES HERETO DATED 2/23/07 IN THE AMOUNT OF \$281,000.00 AND

(Ex. 6).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 62 and therefore deny the same.

63. But at the time that the Condo Deed was signed by Stone Specialty, Community Bank CBD held the Vendor interest in the Land Contract pursuant to the November 17, 2009, Assignment of Land Contract from Mann Bros. to Community Bank CBD. (Ex. 5).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 63 and therefore deny the same.

64. At the time that Stone Specialty executed the Condo Deed, Community Bank CBD and not Mann Bros. was the Vendor in the Land Contract and had the right to terminate Stone Specialty's Vendee interest in the Land Contract.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 64 and therefore deny the same.

65. Accordingly, there is a mistake in the Condo Deed. The Grantee of the Condo Deed should have been Community Bank CBD, not Mann Bros.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 65 and therefore deny the same.

66. Because there is a mistake in the Condo Deed and the Grantee of the Condo Deed should have been Community Bank CBD instead of Mann Bros., the Condo Deed should be reformed so that the conveyance is from Stone Specialty to Community Bank CBD.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 66 and therefore deny the same.

67. If the Condo Deed is reformed so that Stone Specialty's conveyance is to Community Bank CBD instead of Mann Bros., then Community Bank CBD and not Mann Bros. acquired the equitable, real property interest in the Property pursuant to the Condo Deed that was recorded September 16, 2010, as document number 797717 (Ex. 6).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 67 and therefore deny the same.

68. In that event, as of September 7, 2010, Community Bank CBD owned all interest in the Property, both the legal, personal property interest pursuant to the Assignment of Land Contract (Ex. 5), and the equitable, real property interest pursuant to the Condo Deed (ex. 6).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 68 and therefore deny the same.

69. In that event, the 2008 Judgment against Mann Bros. did not attach to the Property because Community Bank CBD and not Mann Bros. owned all interest in the Property.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 69 and therefore deny the same.

70. In that event, none of the Defendant judgment creditors that have judgments against Mann Bros. have judgments that attach to the Property because the judgment creditors do not have judgments against the owner of the legal and equitable interest in the Property, Community Bank CBD and its assign, Plaintiff.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 70 and therefore deny the same.

F. Mann Bros. Could Not Accept Stone Specialty's Mistaken 2010 Transfer of Its Vendee Interest in the Land Contract to Mann Bros.

71. Section 7 of the Assignment of Land Contract provides that Mann Bros.

Agrees not to sell, assign, lease, mortgage, convey or otherwise transfer any legal or equitable interest in all or part of the Land Contract or the Property, or permit the same to occur without the prior written consent of [Community Bank CBD].

(Ex. 5, p. 2).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 71 and therefore deny the same.

72. The Condo Deed violated Section 7 of the Assignment of Land Contract because it purported to transfer Stone Specialty's interest in the Land Contract and its equitable interest in the Property to Mann Bros., without Community Bank CBD's "prior written consent."

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 72 and therefore deny the same.

73. Accordingly, if the Condo Deed is not reformed so that the Grantee is Community Bank CBD, then the transfer to Mann Bros. pursuant to the Condo Deed should be determined to be invalid, and Stone Specialty should be determined to still have a Vendee Interest pursuant to the Land Contract.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 73 and therefore deny the same.

G. The Business Notes Between Borrower Mann Ventures, LLC and Lender Community Bank CBD.

74. On January 13, 2006, Community Bank CBD granted a loan to Mann Ventures, LLC for \$534,742.00, a true and correct copy of which is attached as Exhibit 7 ("2006 Note").

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 74 and therefore deny the same.

75. Pursuant to the terms of the 2006 Note, the unpaid principal and all accrued interest remaining was due on July 13, 2010.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 75 and therefore deny the same.

76. On or about August 13, 2010, Mann Ventures, LLC and Community Bank CBD renewed the unpaid balance on the 2006 Note by execution of a renewal note for \$489,672.48, a true and correct copy of which is attached as Exhibit 8 ("2010 Renewal of 2006 Note").

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 76 and therefore deny the same.

77. Pursuant to the terms of the 2010 Renewal of 2006 Note, the unpaid principal and all accrued interest remaining was due on August 13, 2013.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 77 and therefore deny the same.

H. The April, 2012, Mortgage on the Property and Security Agreement with Community Bank CBD that Secured Loans with Four Mann Entities.

78. On or about April 12, 2012, Mann Bros. executed a Mortgage on the Property in favor of Community Bank CBD, a true and correct copy of which is attached as Exhibit 9 ("Mortgage"). The Mortgage was recorded on April 17, 2012, as Document Number 836377.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 78 and therefore deny the same.

79. Defendants Mann Ventures, LLC, D&M Enterprises, LLC, Mann Development, Inc., and R. Mann Investments, LLC (collectively, "Mann Entities") are named as borrowers under the Mortgage.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 79 and therefore deny the same.

80. On information and belief, Mann Bros. granted the Mortgage to Community Bank CBD to pledge the Property as additional collateral for \$162,000.00 of the unpaid balance of the 2010 Renewal of 2006 Note granted by Community Bank CBD (Exs. 7 and 8), and as additional collateral for the subsequent Business Notes with D & M Enterprises, LLC (Ex. 11, described below), and Mann Development Company, Inc. (Ex. 12, described below).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 80 and therefore deny the same.

81. On or about April 12, 2012, Mann Bros., as Maker, executed a Real Estate Security Agreement in favor of Community Bank CBD, as Lender, granting a continuing lien on the Property, a true and correct copy of which is attached as Exhibit 10 ("Security Agreement"). The Security Agreement was recorded on April 17, 2012, as Document Number 836378.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 81 and therefore deny the same.

I. The August and September 2012, Business Notes Between Lender Community Bank CBD and Borrowers Mann Ventures, LLC, D & M Enterprises, LLC. and Mann Development Company, Inc.

82. On or about August 1, 2012, Mann Ventures, LLC and Community Bank CBD renewed the unpaid balance of the 2010 Renewal of 2006 Note ("2012 Renewal of 2006 Note"). See Ex. 11.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 82 and therefore deny the same.

83. On August 1, 2012, D & M Enterprises, LLC, entered into a Business Note with Community Bank CBD, pursuant to which D & M borrowed \$737,037.92. (Ex. 11).

ANSWER: The Funds have insufficient knowledge to either admit or deny the

allegations in Paragraph 83 and therefore deny the same.

84. On September 27, 2012, Mann Development Company, Inc. entered into a Business Note with Community Bank CBD, pursuant to which Mann Development borrowed \$95,000. (Ex. 12).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 84 and therefore deny the same.

J. The 2013 Renewal of the 2012 Renewal of 2006 Note.

85. On or about March 22, 2013, Mann Ventures, LLC and Community Bank CBD renewed the unpaid balance of the 2012 Renewal of 2006 Note by execution of a renewal note for \$482,254.82, a true and correct copy of which is attached as Exhibit 13 (“2013 Renewal of 2006 Note”).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 85 and therefore deny the same.

86. Pursuant to the terms of the 2013 Renewal of 2006 Note, the unpaid principal and all accrued remaining interest was due to be paid on August 1, 2013.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 86 and therefore deny the same.

K. The July, 2013, Assignment of Community Bank CBD’s Interests in the Notes and Property to Plaintiff LSCG Fund 17, LLC.

87. On July 24, 2013, Community Bank CBD assigned its interests in the Business Notes with the Mann Entities and assigned its Mortgages and Security Interests to Plaintiff.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 87 and therefore deny the same.

88. In particular and without limitation, on July 24, 2013, Community Bank CBD

assigned to Plaintiff its interests in:

- a. the August 1, 2012, Business Note with borrower D & M Enterprises, LLC, and Community Bank CBD pursuant to an Allonge (Ex. 14);
- b. the September 27, 2012, Business Note with Mann Development Company, Inc. pursuant to an Allonge (Ex. 15);
- c. the 2013 Renewal of 2006 Note pursuant to an Allonge (Ex. 16);
- d. the April 12, 2012, Mortgage (Ex. 17); and
- e. the April 12, 2012, Security Agreement (Ex. 18).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 88 and therefore deny the same.

L. Community Bank CBD's October, 2014, Assignment of Its Interest in the 2007 Land Contract to Plaintiff LSCG.

89. On October 22, 2014, Community Bank CBD assigned to Plaintiff its Vendor interest in the Land Contract that it obtained from Mann Bros. pursuant to the November, 2009, Assignment of Land Contract (Ex. 19) ("Assignment Agreement").

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 89 and therefore deny the same.

90. That Assignment Agreement was recorded on April 2, 2015, as document number 902100 (Ex. 19).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 90 and therefore deny the same.

M. The Mann Entities' Defaults.

91. D & M Enterprises, LLC breached the August 1, 2012, Business Note with Community Bank CBD (Exs. 11, 14).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 91 and therefore deny the same.

92. Mann Development Company, Inc. breached the September 27, 2012, Business Note with Community Bank CBD (Exs. 12, 15).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 92 and therefore deny the same.

93. Mann Ventures, LLC breached the terms of the 2013 Renewal of 2006 Note with Community Bank CBD (Exs. 13, 16).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 93 and therefore deny the same.

94. Pursuant to the Allonges, Plaintiff is entitled to remedies pursuant to the three Business Notes (Exs. 14-16).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 94 and therefore deny the same.

N. This Action.

95. Plaintiff brings this action seeking a determination and declaration that:

- a. The Condo Deed (Ex. 6) has the incorrect Grantee that was based on a mistake of fact and must therefore be reformed so that the Grantee of the Condo Deed is Community Bank CBD rather than Mann Bros.;
- b. After this reformation, none of the Defendant judgment creditors have judgments that attach to the Property; and
- c. By operation of the Assignment of Land Contract (Ex. 5), the reformed Condo Deed (Ex. 6), and the Assignment Agreement (Ex. 19), Plaintiff owns title to the Property free and clear of any judgment or other liens.

ANSWER: The Funds admit that LSCG is seeking the relief requested in this paragraph. However, the Funds have insufficient knowledge to either admit or deny whether

LSCG is entitled to such relief, and therefore deny that LSCG is entitled to the relief.

96. Alternatively, if the Condo Deed is not reformed to change the Grantee to Community Bank CBD, then Plaintiff seeks a determination and declaration that:

- a. the purported conveyance from Stone Specialty to Mann Bros. is void because it is to the wrong Grantee, and it is not valid because pursuant to Section 7 of the Assignment of Land Contract (Ex. 5), Mann Bros. did not have the authority to accept the conveyance from Stone Specialty pursuant to the Condo Deed;
- b. if the conveyance to Mann Bros. is not valid, then Mann Bros. never acquired Stone Specialty's equitable, real property interest in the Property and none of the Defendant judgment creditors have judgments that attach to the Property;
- c. If the conveyance to Mann Bros. pursuant to the Condo Deed is not valid, then Stone Specialty still has a Vendee interest in the Land Contract (Ex. 1), and Plaintiff holds the Vendor interest (Exs. 5 and 19); and
- d. If the Court makes these determinations and declarations, then as Vendor under the Land Contract, Plaintiff is entitled to foreclose and/or terminate Stone Specialty's Vendee Interest in the Property and acquire fee title to the Property, free and clear of any judgment or other liens.

ANSWER: The Funds admit that LSCG is seeking the relief requested in this paragraph. However, the Funds have insufficient knowledge to either admit or deny whether LSCG is entitled to such relief, and therefore deny that LSCG is entitled to the relief.

97. Alternatively, if Plaintiff is not entitled to acquire the Property free and clear of any liens held by Defendant judgment creditors pursuant to the Land Contract, Plaintiff brings a foreclosure action to foreclose on the Property pursuant to the 2012 Mortgage (Exs. 9 and 17) and 2012 Security Agreement (Exs. 10 and 18), and to extinguish all judgments held by Defendant judgment creditors except the 2008 Judgment.

ANSWER: The Funds admit that LSCG is seeking the relief requested in this

paragraph. However, the Funds have insufficient knowledge to either admit or deny whether LSCG is entitled to such relief, and therefore deny that LSCG is entitled to the relief.

COUNT 1: DECLARATORY JUDGMENT

98. Plaintiff restates and realleges all of the foregoing paragraphs above as though fully stated herein.

ANSWER: The Funds incorporate their answers to the foregoing paragraphs as though fully stated herein.

99. There is a justiciable controversy between the parties regarding the validity of the conveyance pursuant to the Condo Deed (Ex. 6), and whether any of Defendant judgment lien creditors have liens that attach to the Property, including without limitation whether the 2008 Judgment (Ex. 2) attaches to the Property.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 99 and therefore deny the same.

100. Plaintiff is entitled to determination and declaration that:

- a. The Condo Deed (Ex. 6) has the incorrect Grantee that was based on a mistake of fact, and must therefore be reformed pursuant to Counts 2 and/or 3 below so that the Grantee of the Condo Deed is Community Bank CBD rather than Mann Bros.;
- b. After this reformation, Mann Bros. did not have a real property interest in the Property after it entered into the Land Contract in 2007 (Ex. 1), and the 2008 Judgment held by the State of Wisconsin therefore did not attach to the Property;
- c. None of the other Defendant judgment creditors have judgments that attach to the Property; and
- d. By operation of the Land Contract (Ex. 1), the Assignment of Land Contract (Ex. 5), the reformed Condo Deed (Ex. 6), and the Assignment Agreement (Ex. 19), Plaintiff owns title to the Property free and clear of any judgment or other liens.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 100 and therefore deny the same.

101. Alternatively, if the Condo Deed is not reformed to change the Grantee, then Plaintiff is entitled to a determination and declaration that:

- a. the purported conveyance from Stone Specialty to Mann Bros. is void because it is to the wrong Grantee, and it is not valid because pursuant to Section 7 of the Assignment of Land Contract (Ex. 5), Mann Bros. did not have the right or the authority to accept the conveyance from Stone Specialty pursuant to the Condo Deed;
- b. The 2008 Judgment held by the State of Wisconsin did not attach to the Property because Mann Bros. did not acquire Stone Specialty's equitable, real property interest in the Property;
- c. None of the other Defendant judgment creditors have judgments that attach to the Property;
- d. Because the conveyance to Mann Bros. pursuant to the Condo Deed was not valid, Stone Specialty still has a Vendee interest in the Land Contract (Ex. 1), and Plaintiff holds the Vendor interest (Exs. 5 and 19);
- e. Stone Specialty breached the terms of the Land Contract, and has failed to cure those breaches;
- f. As Vendor under the Land Contract, Plaintiff is entitled to foreclose upon and/or terminate Stone Specialty's Vendee Interest in the Property and acquire fee title to the Property;
- g. After Plaintiff forecloses upon the Property pursuant to Land Contract to extinguish Stone Specialty's interest, Plaintiff will own the fee simple interest in the Property free and clear of any judgment or other liens.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 101 and therefore deny the same.

102. Alternatively, if Plaintiff is not entitled to acquire the Property free and clear of any liens held by Defendant judgment creditors pursuant to the Land Contract, Plaintiff is alternatively entitled to a determination and declaration that its security interests in the 2012

Mortgage and 2012 Security Agreement give Plaintiff:

- a. a security interest that is superior to all of the liens held by Defendant judgment creditors except the 2008 Judgment; and
- b. the right to foreclose upon the Property pursuant to the 2012 Mortgage and 2012 Security Agreement, which will extinguish all of the Defendant judgment creditors' liens against the Property except the 2008 Judgment.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 102 and therefore deny the same.

COUNT 2: MUTUAL MISTAKE

103. Plaintiff seeks such other determinations and declarations as the Court deems just and equitable.

ANSWER: The Funds admit that LSCG is seeking the relief requested in this paragraph. However, the Funds have insufficient knowledge to either admit or deny whether LSCG is entitled to such relief, and therefore deny that LSCG is entitled to the relief.

104. Plaintiff restates and realleges all of the foregoing paragraphs above as though fully stated herein.

ANSWER: The Funds incorporate their answers to the foregoing paragraphs as though fully stated herein.

105. Plaintiff is a third-party beneficiary of the Condo Deed.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 105 and therefore deny the same.

106. When the Condo Deed was drafted and executed, it mistakenly listed Mann Bros. as the Grantee, when the Grantee should have been Community Bank CBD.

ANSWER: The Funds have insufficient knowledge to either admit or deny the

allegations in Paragraph 106 and therefore deny the same.

107. Section 7 of the Assignment of Land Contract prohibited Mann Bros. from accepting the purported conveyance from Stone Specialty in the Condo Deed.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 107 and therefore deny the same.

108. Both Stone Specialty and Mann Bros. made the mistake regarding the correct Grantee.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 108 and therefore deny the same.

109. This mutual mistake of fact allows the Court to reform the Condo Deed so that the Grantee is Community Bank CBD.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 109 and therefore deny the same.

110. Plaintiff is entitled to an order reforming the Condo Deed so that the Grantee is Community Bank CBD.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 110 and therefore deny the same.

COUNT 3: UNILATERAL MISTAKE WITH INEQUITABLE CONDUCT

111. Plaintiff restates and realleges all of the foregoing paragraphs above as though fully stated herein.

ANSWER: The Funds incorporate their answers to the foregoing paragraphs as though fully stated herein.

112. Plaintiff is a third-party beneficiary of the Condo Deed.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 112 and therefore deny the same.

113. When the Condo Deed was drafted and executed, it mistakenly listed Mann Bros. as the Grantee, when the Grantee should have been Community Bank CBD.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 113 and therefore deny the same.

114. Section 7 of the Assignment of Land Contract prohibited Mann Bros. from accepting the purported conveyance from Stone Specialty in the Condo Deed.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 114 and therefore deny the same.

115. Stone Specialty made the mistake regarding the correct Grantee.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 115 and therefore deny the same.

116. If Mann Bros. was not also mistaken as to the correct Grantee, then Mann Bros. knew or should have known that the correct Grantee on the Condo Deed was Community Bank CBD, but inequitably failed to inform Stone Specialty of this fact.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 116 and therefore deny the same.

117. This unilateral mistake of fact by Stone Specialty and Mann Bros.'s inequitable conduct allows the Court to reform the Condo Deed so that the Grantee is Community Bank CBD.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 117 and therefore deny the same.

118. Plaintiff is entitled to an order reforming the Condo Deed so that the Grantee is Community Bank CBD.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 118 and therefore deny the same.

COUNT 4: FORECLOSURE PURSUANT TO LAND CONTRACT

119. Plaintiff restates and realleges all of the foregoing paragraphs above as though fully stated herein.

ANSWER: The Funds incorporate their answers to the foregoing paragraphs as though fully stated herein.

120. If the Court does not reform the Condo Deed to correct the Grantee to Community Bank CBD, then, in the alternative, Plaintiff seeks to obtain title to the Property by foreclosing pursuant to the Land Contract.

ANSWER: The Funds admit that LSCG is seeking the relief requested in this paragraph. However, the Funds have insufficient knowledge to either admit or deny whether LSCG is entitled to such relief, and therefore deny that LSCG is entitled to the relief.

121. Plaintiff holds the Vendor interest in the 2007 Land Contract (Ex. 1) by operation of the 2009 Assignment of the Land Contract (Ex. 5) and the 2014 Assignment Agreement (Ex. 19).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 121 and therefore deny the same.

122. Section 7 of the Assignment of Land Contract prohibited Mann Bros. from accepting the transfer from Stone Specialty pursuant to the Condo Deed, and the Condo Deed is void because it is to the wrong Grantee.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 122 and therefore deny the same.

123. Accordingly, if the Condo Deed is not reformed so that the Grantee is Community Bank CBD, then the purported transfer to Mann Bros. pursuant to the Condo Deed should be determined to be invalid, and Stone Specialty should be determined to still have a Vendee Interest pursuant to the Land Contract.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 123 and therefore deny the same.

124. The Land Contract was assigned to Plaintiff as a:

Security interest granted in consideration of sums loaned or to be loaned to Mann Development Company, Inc. and/or D & M Enterprises, LLC.

(Ex. 5, p. 2, Section 17).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 124 and therefore deny the same.

125. Mann Development Company, Inc. and D & M Enterprises, LLC have breached their Notes (Exs. 11-12 and 14-15), entitling Plaintiff to “exercise all rights of [Mann Bros.] under the Land Contract and all of the rights of [Plaintiff] under this Assignment [of Land Contract.” (Ex. 5, p. 2, Section 9(a)).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 125 and therefore deny the same.

126. Plaintiff is therefore entitled to enforce the Vendor’s rights under the Land Contract.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 126 and therefore deny the same.

127. Stone Specialty breached the Land Contract, which entitles Plaintiff to foreclose on the Land Contract and to have all of the Defendant judgment creditors' liens against the Property extinguished.

ANSWER: The Funds affirmatively state that LSCG is not entitled to "extinguish" all other liens on the Property. Instead, in the event judgment of foreclosure and sale are granted as prayed for in Plaintiffs' Complaint, the Court should determine the lien priorities of all the parties and the entitlement to the surplus of monies of the sale (if any) by relying on testimony and upon proper application and proper notice. As for the other allegations in this paragraph, the Funds have insufficient knowledge to either admit or deny them, and therefore deny them.

128. Plaintiff elects to foreclose upon and/or terminate Stone Specialty's Vendee interest in the Land Contract pursuant to Wisconsin Statutes Chapter 846, with said Vendee interest reverting to Plaintiff, resulting in Plaintiff owning the fee simple interest in the Property free and clear of the Defendant judgment creditors' liens.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 128 and therefore deny the same.

129. Plaintiff does not seek to waive any deficiency which may remain due after the sale/termination.

ANSWER: The Funds admit that LSCG is not seeking to waive any deficiency remaining after sale or termination. However, the Funds have insufficient knowledge to either admit or deny whether LSCG is entitled to any of the proceeds from a sale or termination, and therefore deny that LSCG is entitled to any such proceeds. The Funds also affirmatively state that, as plead below, they are respectfully requesting that in the event

judgment of foreclosure and sale are granted as prayed for in Plaintiffs' Complaint, the Court determine the lien priorities of all the parties and the entitlement to the surplus of monies of the sale (if any) by relying on testimony and upon proper application and proper notice.

**COUNT 5: FORECLOSURE PURSUANT TO 2012 MORTGAGE
AND SECURITY AGREEMENT**

130. Plaintiff restates and realleges all of the foregoing paragraphs above as though fully stated herein.

ANSWER: The Funds incorporate their answers to the foregoing paragraphs as though fully stated herein.

131. If Plaintiff is not entitled to acquire the Property free and clear of any liens against the Property held by Defendant judgment creditors pursuant to the Land Contract, Plaintiff alternatively seeks to foreclose on the Property pursuant to the 2012 Mortgage (Exs. 9 and 17) and the 2012 Security Agreement (Exs. 10 and 18), and to extinguish all liens against the Property held by Defendant judgment creditors except the 2008 Judgment.

ANSWER: The Funds admit that LSCG claims to be seeking the relief requested in this paragraph. However, the Funds affirmatively state that LSCG is not entitled to "extinguish" all other liens on the Property. Instead, in the event judgment of foreclosure and sale are granted as prayed for in Plaintiffs' Complaint, the Court should determine the lien priorities of all the parties and the entitlement to the surplus of monies of the sale (if any) by relying on testimony and upon proper application and proper notice. As for the other relief sought in this paragraph, the Funds have insufficient knowledge to either admit or deny whether LSCG is entitled to such relief, and therefore deny that LSCG is entitled to the relief.

132. Defendants D & M Enterprises, LLC, Mann Development Company, Inc., and Mann Ventures, LLC breached the terms of the Business Notes with Community Bank CBD. (Exs. 11-16).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 132 and therefore deny the same.

133. These breaches entitle Plaintiff to foreclose on the Property pursuant to Paragraph 11 of the Mortgage (Exs. 9 and 17) and pursuant to the Security Agreement (Exs. 10 and 18), and to have all of the Defendant judgments creditors' liens against the Property except the 2008 Judgment extinguished.

ANSWER: The Funds affirmatively state that LSCG is not entitled to "extinguish" all other liens on the Property. Instead, in the event judgment of foreclosure and sale are granted as prayed for in Plaintiffs' Complaint, the Court should determine the lien priorities of all the parties and the entitlement to the surplus of monies of the sale (if any) by relying on testimony and upon proper application and proper notice. As for the other allegations in this paragraph, the Funds have insufficient knowledge to either admit or deny them, and therefore deny them.

134. Pursuant to Paragraph 17 of the Mortgage, Plaintiff is entitled to recover from Mann Bros. its attorneys' fees, costs, and expenses, incurred in connection with the protection and enforcement of Plaintiff's rights under the Mortgage.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 134 and therefore deny the same.

135. Plaintiff elects to proceed with a foreclosure pursuant to Wisconsin Statutes Section 846.103(1), with a six-month redemption period, and Plaintiff does not seek to waive

any deficiency which may remain due after the sale.

ANSWER: The Funds admit that LSCG is seeking to proceed with a foreclosure with a six-month redemption period, and that LSCG is not seeking to waive any deficiency remaining after sale or termination. However, the Funds have insufficient knowledge to either admit or deny whether LSCG is entitled to the relief sought in this paragraph, and therefore deny that LSCG is entitled to same. The Funds also affirmatively state that, as plead below, they are respectfully requesting that in the event judgment of foreclosure and sale are granted as prayed for in Plaintiffs' Complaint, the Court determine the lien priorities of all the parties and the entitlement to the surplus of monies of the sale (if any) by relying on testimony and upon proper application and proper notice.

WHEREFORE, Central States, Southeast and Southwest Areas Pension Fund and Central States, Southeast and Southwest Areas Health and Welfare Fund request judgment as follows:

A. That the Court deny the relief requested in Counts I through IV of Plaintiffs' Second Amended Complaint, determine that LSCG does not have a right to the Property at issue free and clear of any other judgments or liens, and find that the Funds have a valid lien on the Property at issue by virtue of a judgment entered in the United States District Court for the Northern District of Illinois (Case No. 14-cv-5977) in October 2014 and registered in the United States District Court for the Eastern District of Wisconsin;

B. In the event judgment of foreclosure and sale are granted as prayed for in Plaintiffs' Complaint, that the Court determine the lien priorities of all the parties and the entitlement to the surplus of monies of the sale (if any) by relying on testimony and upon proper application and proper notice; and

C. For such other or further relief as this Court may deem just and equitable.

Dated: January 26, 2016

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Andrew J. Herink, one of the attorneys for the Central States, Southeast and Southwest Areas Health and Welfare and Pension Funds, hereby certify that on January 26, 2016, I caused to be filed a copy of the foregoing *Defendants' Answer to Second Amended Complaint*. I am serving a copy of the foregoing upon all parties listed in the attached mailing matrix by First Class mail.



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January 26, 2016

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Workforce Development
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2055 South 108th Street
West Allis, WI 53227

H. James & Sons, Inc.,
a Wisconsin corporation
c/o Donna M. James
4624 Ideal Road
Fennimore, WI 53809

RFH Jr, Inc.,
a Wisconsin corporation
c/o Robert F. Huml, Jr.
4220 N. Newville Road
Janesville, WI 53545

Growmark, Inc.,
a Delaware corporation
c/o Corporation Service Company
8040 Excelsior Drive, Suite 400
Madison, WI 53717

City of Elkhorn, Wisconsin
c/o Cairie L. Virrueta
9 South Broad Street
Elkhorn, WI 53121

Gerdau Ameristeel US, Inc.,
a Florida corporation
c/o Corporation Service Company
8040 Excelsior Drive, Suite 400
Madison, WI 53717

Fabco Equipment, Inc.,
a Wisconsin corporation
Kenton B. Oren
11200 W Silver Spring Road
Milwaukee, WI 53225

Bore Master, Inc.,
a Wisconsin corporation,
c/o Daniel Olson
N50W23076 Betker Road
Pewaukee, WI 53072

Dodge Concrete, Inc.,
a Wisconsin corporation
c/o Joseph F. Marx
W6911 Silver Creek Road
Watertown, WI 53098

State of Wisconsin
c/o Brad D. Schimel
2 East Main Street
Madison, WI 53703

R. Mann Investments, LLC,
a Wisconsin corporation
1950 N. Wisconsin Street
Suite 8C
Elkhorn, WI 53121

10
Mann Development Company, Inc.,
a Wisconsin corporation
1950 N. Wisconsin Street
Suite 8C
Elkhorn, WI 53121

D&M Enterprises, LLC,
a Wisconsin limited liability company
1950 N. Wisconsin Street
Elkhorn, WI 53121

Mann Ventures, LLC,
a Wisconsin limited liability company
1950 N. Wisconsin Street
Elkhorn, WI 53121

Mann Bros., Inc.,
a Wisconsin corporation
1950 N. Wisconsin Street
Elkhorn, WI 53121

LSCG Fund 17, LLC,
a Delaware limited liability company
13949 Van Nuys Blvd.
Suite 200
Sherman Oaks, CA 91423

STATE OF WISCONSIN

CIRCUIT COURT

RECEIVED
WALWORTH COUNTY CLERK
WALWORTH COUNTY
2016 FEB -3 PM 4:53

LSCG Fund 17, LLC,
a Delaware limited liability company,
13949 Ventura Blvd.
Suite 300
Sherman Oaks, CA 91423;

Plaintiff,

ANSWER TO STATE OF
WISCONSIN'S CROSS CLAIM

File No.: 15-cv-032513949

FILED

JAN 26 2016

CIRCUIT COURT
WALWORTH COUNTY
BRIDGETTE LEPIANKA

Case Code: 30404; 30405

Case Type: Foreclosure of
Land Contract Mortgage

vs.

Mann Bros., Inc.,
a Wisconsin corporation,
1950 N. Wisconsin Street
Elkhorn, WI 53121;

Mann Ventures, LLC,
a Wisconsin limited liability company,
1950 N. Wisconsin Street
Elkhorn, WI 53121;

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Rosemont, IL 60018;

Walworth County, Wisconsin,
c/o Kimberly S. Bushey
100 West Walworth Street
Elkhorn, WI 5312;

Mann Complex Condominium Owners Association, Inc.,
1950 N. Wisconsin Street
Suite 8C
Elkhorn, WI 53121;

The Stone Specialists, LLC

c/o Kathleen Hanley
W3507 Wildwood Drive
Lake Geneva, WI 53147

Stone Specialty Company, LLC
c/o Kathleen Hanley
W3507 Wildwood Drive
Lake Geneva, WI 53147

Anthony Hanley
W3507 Wildwood Drive
Lake Geneva, WI 53147
Kathleen Hanley
W3507 Wildwood Drive
Lake Geneva, WI 53147

FILED

JAN 26 2016

CIRCUIT COURT
WALWORTH COUNTY
BRIDGETTE LEPIANKA

All successors and assigns of the above-named Defendants; and

All other persons or parties unknown, claiming any right, title, estate, lien or interest in the real property described in the Complaint;

Defendants.

CENTRAL STATES' RESPONSE TO STATE OF WISCONSIN'S CROSS-CLAIM

Defendants, Central States, Southeast and Southwest Areas Pension Fund ("Pension Fund") and Central States, Southeast and Southwest Areas Health and Welfare Fund ("Health and Welfare Fund," and collectively with the Pension Fund, the "Funds") answer the Cross-Claim set forth in Defendant State of Wisconsin's ("State") Answer to Plaintiff's Second Amended Complaint as follows:

136. Incorporates and alleges by reference Plaintiff's allegations set forth above in paragraphs 1 through 45, with exhibit references therein deemed to be references to the exhibits attached to the Amended Complaint herein.

ANSWER: The Funds incorporate their answers to paragraphs 1 through 45 of Plaintiff's Second Amended Complaint (as set forth in their Answer to that Complaint) as though fully stated herein.

137. On November 4, 2008, the State of Wisconsin docketed a judgment against Mann Bros. in the amount of \$75,000, Case No. 2008CX000002 (Ex. 3) (“2008 Judgment”).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 137 and therefore deny the same.

138. Wisconsin’s judgment remains due and unpaid in the amount of \$139,306.85 plus interest at \$0.24657 per day from December 31, 2015.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 138 and therefore deny the same.

139. Wisconsin is the bona fide owner of the judgment, for value.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 139 and therefore deny the same.

140. On September 7, 2010, Stone Specialty executed a Condominium Deed, by which it conveyed to Mann Bros, its vendee’s interest in the Property pursuant to the Land Contract. The Condominium Deed was recorded September 16, 2010, as document number 797717 (Amended Complaint, Ex. 6).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 140 and therefore deny the same.

141. The lien of Wisconsin’s 2008 judgment attached to the Property when Mann Bros. accepted the Stone Specialty conveyance.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 141 and therefore deny the same.

142. The lien of Wisconsin’s judgment attached to the Property when Mann Bros. accepted the Stone Specialty conveyance.

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 142 and therefore deny the same.

143. Wisconsin's judgment is an interest in land within the meaning of Wis. Stat. § 840.01(1).

ANSWER: The Funds have insufficient knowledge to either admit or deny the allegations in Paragraph 143 and therefore deny the same.

Dated: January 26, 2016

Respectfully submitted,



Andrew J. Herink (IL ARDC No. 6303510)
Central States Law Department
9377 W. Higgins Road, 10th Floor
Rosemont, Illinois 60018
Telephone: (847) 939-2458
E-mail: aherink@centralstatesfunds.org
ADMITTED PRO HAC VICE

Frederick Perillo, Bar No. 1002870
The Previant Law Firm, s.c.
1555 North Rivercenter Drive
Suite 202
Milwaukee, WI 53212
Phone: 414-271-4500
Fax: 414-271-6308

CERTIFICATE OF SERVICE

I, Andrew J. Herink, one of the attorneys for the Central States, Southeast and Southwest Areas Health and Welfare and Pension Funds, hereby certify that on January 26, 2016, I caused to be filed a copy of the foregoing *Defendants' Answer to State of Wisconsin's Cross-Claim*. I am serving a copy of the foregoing upon all parties listed in the attached mailing matrix by First Class mail.



Andrew J. Herink
(IL ARDC No. 6303510)
Central States Law Department
9377 W. Higgins Road
Rosemont, Illinois 60018
Telephone: (847) 939-2458
Fax: (847) 518-9797
aherink@centralstatesfunds.org
ADMITTED PRO HAC VICE

January 26, 2016

ATTORNEY FOR CENTRAL STATES

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Lake Geneva, WI 53147

Anthony Hanley
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H. James & Sons, Inc.,
a Wisconsin corporation
c/o Donna M. James
4624 Ideal Road
Fennimore, WI 53809

RFH Jr, Inc.,
a Wisconsin corporation
c/o Robert F. Huml, Jr.
4220 N. Newville Road
Janesville, WI 53545

Growmark, Inc.,
a Delaware corporation
c/o Corporation Service Company
8040 Excelsior Drive, Suite 400
Madison, WI 53717

City of Elkhorn, Wisconsin
c/o Cairie L. Virrueta
9 South Broad Street
Elkhorn, WI 53121

Gerdau Ameristeel US, Inc.,
a Florida corporation
c/o Corporation Service Company
8040 Excelsior Drive, Suite 400
Madison, WI 53717

Fabco Equipment, Inc.,
a Wisconsin corporation
Kenton B. Oren
11200 W Silver Spring Road
Milwaukee, WI 53225

Bore Master, Inc.,
a Wisconsin corporation,
c/o Daniel Olson
N50W23076 Betker Road
Pewaukee, WI 53072

Dodge Concrete, Inc.,
a Wisconsin corporation
c/o Joseph F. Marx
W6911 Silver Creek Road
Watertown, WI 53098

State of Wisconsin
c/o Brad D. Schimel
2 East Main Street
Madison, WI 53703

R. Mann Investments, LLC,
a Wisconsin corporation
1950 N. Wisconsin Street
Suite 8C
Elkhorn, WI 53121

Mann Development Company, Inc.,
a Wisconsin corporation
1950 N. Wisconsin Street
Suite 8C
Elkhorn, WI 53121

D&M Enterprises, LLC,
a Wisconsin limited liability company
1950 N. Wisconsin Street
Elkhorn, WI 53121

Mann Ventures, LLC,
a Wisconsin limited liability company
1950 N. Wisconsin Street
Elkhorn, WI 53121

Mann Bros., Inc.,
a Wisconsin corporation
1950 N. Wisconsin Street
Elkhorn, WI 53121

LSCG Fund 17, LLC,
a Delaware limited liability company
13949 Van Nuys Blvd.
Suite 200
Sherman Oaks, CA 91423

Amendatory Ordinance

No. 2016-03

Amending Bayfield County Ordinance to Create Chapter 6 [Large-Scale Concentrated Animal Feeding Operations Ordinance] of Title 5 [Public Safety] of the Bayfield County Code of Ordinances, Bayfield County, WI

WHEREAS, the special Bayfield County Large-Scale Livestock Study Committee has determined, based on well-documented factual findings, that it is necessary and appropriate for Bayfield County to regulate both the *operations* and *siting* of large-scale Concentrated Animal Feeding Operations ("CAFOs"), in order to adequately protect public health (including human and animal health), safety, and general welfare, prevent public and private nuisances, and preserve the quality of life, environment, and existing livestock and other agricultural operations of Bayfield County; *and*

WHEREAS, on January 27, 2015, the Bayfield County Board of Supervisors enacted Chapter 2 "Livestock Facilities Licensing Ordinance" of Title 5 [Public Safety] of the Code of Ordinances, Bayfield County, Wisconsin (hereinafter "Livestock Facilities Licensing Ordinance"), pursuant to the powers granted under the Wisconsin Constitution and Wisconsin Statutes, including but not limited to Wis. Stat. §93.90 ("Livestock Siting Law"), and Wis. Admin. Code Ch. ATCP 51; *and*

WHEREAS, the Livestock Facilities Licensing Ordinance was enacted pursuant to Wis. Stat. §93.90, and Wis. Admin. Code Ch. ATCP 51, to establish standards and procedures for licensing the *siting* of new and expanded livestock facilities, to protect the public health and safety of the people of Bayfield County; *and*

WHEREAS, on February 18, 2015, the Bayfield County Board of Supervisors enacted Chapter 4 "Moratorium on Livestock Facilities Licensing" under Title 5 "Public Safety" for a duration of twelve (12) months (with a possible extension of up to 6 more months), pursuant to Wis. Stat. §59.03(2), to provide adequate time to determine whether amendments to the Livestock Facilities Licensing Ordinance or creation of another ordinance is necessary to adequately protect public health and safety, and determine whether adequate resources exist to enforce any new or existing livestock facilities ordinances; *and*

WHEREAS, pursuant to Wis. Stat. §59.03(2), the Bayfield County Board of Supervisors "is vested with all powers of a local, legislative and administrative character, including without limitation because of enumeration, the subject matter of water, sewers, streets and highways, fire, police, and health, and to carry out these powers in districts which it may create for different purposes, or throughout the county..." Wis. Stat. §59.03(2); *and*

WHEREAS, pursuant to Wis. Stat. §59.70(1), Bayfield County has authority to "enact building and sanitary codes, make necessary rules and regulations in relation thereto and provide enforcement of the codes, rules and regulations by forfeiture or otherwise"; *and*

WHEREAS, pursuant to Wis. Stat. §92.15, Wis. Admin. Code SATCP 50.60(1), and Wis. Admin. Code SNR 151.096(3), Bayfield County has authority to issue individual permits that require livestock facilities to comply with uncodified conservation or water quality protection standards that may exceed state standards, without prior review and approval

by Wisconsin Department of Agriculture, Trade, and Consumer Protection ("DATCP") or the Wisconsin Department of Natural Resources ("DNR"), provided such permit requirements or standards are not routinely applied as *de facto* regulatory enactments; *and*

WHEREAS, although Wis. Stat. §93.90, and Wis. Admin. Code Ch. ATCP 51, impose limitations on Bayfield County's authority to restrict the *siting* of livestock facilities of over 500 animal units, these laws do not limit or withdraw Bayfield County's authority to regulate the ongoing *operations* of such facilities to prevent pollution, protect public health, safety, and general welfare, and prevent or abate nuisances which may be caused by livestock facilities, and this was expressly recognized in *Adams v. Wis. Livestock Facilities Siting Review Bd.*, 2012 WI 85, ¶ 65 n. 30 & ¶¶ 75, 83-84, 342 Wis. 2d 444, 820 N.W.2d 404; *and*

WHEREAS, in *Adams v. Wis. Livestock Facilities Siting Review Bd.*, a majority of the Wisconsin Supreme Court stated that:

Our decision does not leave political subdivisions without recourse against polluters. Most importantly, political subdivisions retain the authority to bring nuisance abatement actions against polluting farms. See Wis. Stat. § 823.01. More generally, this decision does not speak to political subdivisions' ability to regulate livestock facility operations. It simply says that the legislature has forbidden them from regulating livestock facility siting except as permitted by the Siting Law. Id., 2012 WI 85, ¶ 65 n. 30; and

WHEREAS, pursuant to Wis. Stat. §254.51(5), Bayfield County has authority to enact "ordinances that set forth requirements for animal-borne and vector-borne disease control to assure a safe level of sanitation, human health hazard control or health protection for the community"; *and*

WHEREAS, pursuant to Wis. Stat. §254.59(7), Bayfield County has authority to "enact an ordinance concerning abatement or removal" of human health hazards that is "at least as restrictive as" Wis. Stat. §254.59, which may be enforced in Bayfield County; *and*

WHEREAS, in addition to the Livestock Facilities Licensing Ordinance enacted on January 27, 2015, it is in the best interests of the County of Bayfield to enact a separate ordinance, to more effectively, efficiently, and comprehensively regulate the *operations* of large-scale CAFOs of 1,000 animal units or greater, regardless of where they may be sited, to adequately protect public health (including human and animal health), safety, and general welfare, and to prevent public and private nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of Bayfield County; *and*

WHEREAS, it is deemed to be in the best interest of the County of Bayfield that the Code of Ordinances, Bayfield County, Wisconsin, be further modified and amended in the manner set forth.

NOW, THEREFORE, the Bayfield County Board of Supervisors does hereby ordain as follows:

Section 1. Chapter 6 [Large-Scale Concentrated Animal Feeding Operations Ordinance] of Title 5 [Public Safety] of the Code of Ordinances, Bayfield County, Wisconsin is hereby created to read as follows:

Chapter 6 Large-Scale Concentrated Animal Feeding Operations Ordinance

Sec. 5-6-1 Authority

This ordinance is adopted pursuant to the powers granted under the Wisconsin Constitution and the Wisconsin Statutes, including but not limited to Wis. Stats. §§ 59.03(2), 59.70(1), 254.51(5) & 254.59(7).

Sec. 5-6-2 Title and Purpose

The title of this ordinance is the Large-Scale Concentrated Animal Feeding Operations Ordinance.

The purpose of this ordinance is to effectively, efficiently, and comprehensively regulate the *operations* of Large-Scale Concentrated Animal Feeding Operations of 1,000 animal units or greater ("CAFOs"), without respect to siting, to protect public health (including human and animal health), safety, and general welfare, to prevent pollution and the creation of private nuisances and public nuisances, and to preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of Bayfield County ("the County").

Sec. 5-6-3 Definitions

- (a) All definitions located in Section 5-2-3 of the Bayfield County Code of Ordinances are hereby adopted and incorporated by reference as if set forth herein.
- (b) "Large-Scale Concentrated Animal Feeding Operation" or "CAFO" means a lot or facility, other than a pasture or grazing area, where 1,000 or more animal units have been, are or will be stabled or concentrated, and will be fed or maintained by the same owner(s), manager(s) or operator(s) for a total of 45 days or more in any 12-month period. Two or more smaller lots or facilities under common ownership or common management or operation are a single Large-Scale Concentrated Animal Feeding Operation or CAFO if the total number of animals stabled or concentrated at the lots or facilities equal 1,000 or more animal units and at least one of the following is true: (1) The operations are adjacent; (2) The operations utilize common systems for the land spreading of manure or other wastes; (3) Animals are transferred between the lots or facilities; (4) The lots or facilities share staff, vehicles, or equipment; or (5) Manure, barnyard runoff or other wastes are commingled in a common storage facility at any time.
- (c) "Operations" means a course of procedure or productive activity for purposes of conducting and carrying on the business of a "Large-Scale Concentrated Animal Feeding Operation" or "CAFO," including populating animal housing facilities, storing and managing animal and other waste materials, and conducting any other business activities.
- (d) "Pollution" means degradation that results in any violation of any environmental law as determined by an administrative proceeding, civil action, criminal action or other legal or administrative action, investigation or proceeding, including but not limited to a determination of a violation of a livestock or cropland performance standard under Wis. Admin. Code. §§ NR 151 & 243.23, a determination that any type of unacceptable practice has occurred under Wis. Admin. Code § NR 243.24, a determination that malodorous emissions have been caused or allowed in violation Wis. Admin. Code § NR 429.03. For the purpose of this paragraph, issuance of an order or other communication addressing corrective action or a stipulated agreement, fine, forfeiture or other penalty, is considered a determination of a violation, regardless of whether there is a finding or admission of liability.
- (e) "Private nuisance" means a nontrespassory invasion of another's interest in the private use and enjoyment of land, and the invasion is either: (1) Intentional and unreasonable, or (2) Unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.
- (f) "Public nuisance" means a thing, act, occupation, condition or use of property which shall continue for such length of time as to: (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public; (2) In any way render the public insecure in life, health or in the use of property; or (3) Unreasonably and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage or public use any street, alley, highway, navigable body of water or other public way or the use of public property or other public rights.
- (g) "Siting" means determination of the place where the structures and other physical facilities associated with development of a "Large-Scale Concentrated Animal

Feeding Operation" or "CAFO" may be located, pursuant to Chapter 2 "Livestock Facilities Licensing Ordinance" of Title 5 [Public Safety] of the Code of Ordinances, Bayfield County, Wisconsin, Wis. Stat. §93.90, and Wis. Admin. Code Ch. ATCP 51.

Sec. 5-6-4 Large-Scale Concentrated Animal Feeding Operations or CAFOs

- (a) Regardless of siting, a Large-Scale Concentrated Animal Feeding Operation or CAFO shall be allowed to conduct operations within the County only as provided for under this ordinance.
- (b) The applicant shall apply for a "CAFO Operations Permit" prior to conducting any operations associated with a Large-Scale Concentrated Animal Feeding Operation or CAFO within the County. The application shall be submitted on a form provided to the applicant by the County Clerk, a copy of which is attached hereto as Appendix A.
- (c) The Bayfield County Board of Supervisors ("County Board") shall decide whether or not to approve and issue a CAFO Operations Permit to an applicant that has submitted a complete application and paid the required application fee, after holding a public hearing on the application and considering any evidence concerning the application and the proposed CAFO presented by the applicant and any other interested persons or parties, including members of the public and other governmental agencies or entities, and special legal counsel and expert consultants who may be hired by the County to review the application and advise the County Board.
- (d) The County Board shall approve and issue a CAFO Operations Permit, either with or without conditions, if it determines by a majority vote of all members of the County Board, supported by clear and convincing evidence presented by the applicant, that the operations of the proposed CAFO, with or without conditions, will protect public health (including human and animal health), safety, and general welfare, prevent pollution and the creation of private nuisances and public nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the County, and that the application meets all other requirements of this Ordinance.
- (e) The County Board shall issue a CAFO Operations Permit, with or without conditions, to an applicant that has met all other requirements of this Ordinance provided it determines, based on information provided by the applicant and verified by the County, that a CAFO having substantially similar operational characteristics, housing the same species of animals, and utilizing similar operations, has been continuously operated in the United States for at least ten (10) years without causing pollution of groundwater or surface water, and without causing either a private nuisance or a public nuisance, as determined by an administrative proceeding, civil action, criminal action or other legal or administrative action, investigation or proceeding. However, this requirement may be waived by the County Board at the specific request of the applicant for a CAFO Operations Permit if the County Board determines after a hearing and based on clear and convincing information provided by the applicant and verified by the County, that the proposed CAFO will otherwise meet the requirements set forth in Sec. 5-6-4 (d), above.
- (f) A CAFO Operations Permit approved by the County Board can be voided at any time if the permittee violates any conditions of the permit or any conditions of any other required Federal, State or County permits or licenses, at any time. The County Board shall hold a hearing in advance of the voiding of any permit and provide the permittee an opportunity to prove, by clear and convincing evidence, that there have been no violation of conditions of the permit or condition of any other required Federal, State or County permits or licenses.

Sec. 5-6-5 Procedures

- (a) An applicant for a CAFO Operations Permit shall complete a Bayfield County CAFO Operations Permit Application (Appendix A) and pay the required application fee of one dollar (\$1.00) per proposed animal unit to Bayfield County, at the time the application is submitted to the County Clerk.
- (b) Upon signing and submitting a CAFO Operations Permit Application to the County Clerk, the applicant shall agree to fully compensate the County for all legal services, expert consulting services, and other expenses which may be reasonably incurred by the County in reviewing and considering the application, regardless of whether or not the application for a permit is subsequently approved, with or without conditions, or denied by the County Board. Within thirty (30) days of a request by the County Administrator, the applicant shall provide an administrative fee deposit with the County Clerk in an account such that funds are available to be withdrawn by the County and used to pay for or reimburse the County for the costs and expenses the County incurs in connection with processing the permit application. The County Administrator, in consultation with other County employees, independent consultants and/or legal counsel, shall determine the initial administrative fee deposit based upon the anticipated costs necessary to process the application. After the initial administrative fee deposit, should the County Board at any time determine that additional fees related to the processing of the application will be necessary, the applicant will make an additional fee deposit into the related administrative fee account within fifteen (15) days of receipt of a request for additional funds by the County Board. Any funds remaining in the administrative fee account once the permit application process is complete shall be returned to the applicant. If the administrative fee account is insufficient to cover all remaining costs related to the CAFO Operations Permit Application, the County shall issue a bill for the remaining costs to the applicant, who shall pay said bill within thirty (30) days.
- (c) After receiving the application and the application fee, the County Clerk shall mail a notice that a CAFO Operations Permit Application has been received to all landowners within 3 miles of the proposed CAFO with the date and time of the County Board meeting at which the application will be first considered. The notice shall provide information on how interested persons and parties may inspect and obtain a copy of the application.
- (d) The County Clerk shall then place the application on the agenda for the next regular County Board meeting for which required notice can be provided, at which time the County Board shall conduct an initial review of the application and schedule further proceedings for review and consideration of the application by the County Board. Such proceedings shall include: (a) Considering the need to hire special legal counsel and expert consultants to review the application and advise the County Board; (b) Developing a plan to make a determination of the completeness of the application within a reasonable amount of time; (c) Developing a plan to schedule further proceedings, including scheduling a formal public hearing before the County Board on the application at least sixty (60) days after the application has been determined to be complete by the County Board, and scheduling a subsequent special meeting of the County Board to decide whether or not to grant the requested permit and what, if any, conditions shall be required if the requested permit is granted, within a reasonable amount of time.
- (e) At the formal public hearing held by the County Board on the application at least sixty (60) days after it has been determined to be complete, the County Board shall consider any evidence concerning the application and the proposed CAFO presented by the applicant and any other interested persons or parties, including members of the public and other governmental agencies or entities, and special legal counsel and expert consultants who may be hired by the County to review the application and advise the County Board.

- (f) In its review and consideration of a CAFO Operations Permit Application, the County Board shall act in a quasi-judicial capacity, and its final decision on whether or not to approve and issue a CAFO Operations Permit, either with or without conditions, shall be based on written findings of fact and conclusions of law consistent with the provisions of this ordinance, which shall be filed with the County Clerk and served on the applicant by regular U.S. Mail.
- (g) The County Board shall approve and issue a CAFO Operations Permit, either with or without conditions, if it determines by a majority vote of all members of the County Board, supported by clear and convincing evidence presented by the applicant, that the operations of the proposed CAFO, with or without conditions, will protect public health (including human and animal health), safety, and general welfare, prevent pollution and the creation of private nuisances and public nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the County and that the application meets all other requirements of this Ordinance.
- (h) The County Board shall issue a CAFO Operations Permit, with or without conditions, to an applicant that has met all other requirements of this Ordinance if it determines, based on information provided by the applicant and verified by the County, that a CAFO having substantially similar operational characteristics, housing the same species of animals, and utilizing similar operations, has been continuously operated in the United States for at least ten (10) years without causing pollution of groundwater or surface water, and without causing either a private nuisance or a public nuisance. However, this requirement may be waived by the County Board at the specific request of the applicant for a CAFO Operations Permit if the County Board determines, upon a hearing and based on clear and convincing information provided by the applicant and verified by the County, that the proposed CAFO will otherwise meet the requirements set forth in Secs. 5-6-4 (d) and 5-6-5 (g), above.
- (i) The County Board shall, in granting any CAFO Operations Permit, require the applicant to ensure that sufficient funds will be available for pollution clean-up, nuisance abatement, and proper closure of the CAFO if it is abandoned or otherwise ceases to operate as planned and permitted, based on the following provisions:

1. **Notification.** The County Board shall determine the required financial assurance level of the CAFO and shall notify the applicant. As a condition of a permit, the County Board shall require financial assurance to be filed with the County Board in an amount sufficient to clean-up environmental contamination if the same were to occur, to abate public nuisances caused by CAFO operations, including but not limited to the testing and replacement of any potentially contaminated private and public wells and water supplies within the areas subject to CAFO operations, and to ensure proper closure of the CAFO, should the applicant elect to close or should the closure occur for some other reason. Upon notification of the required financial assurance levels by the County Board, but prior to commencing operations of the CAFO, the applicant shall file with the County Board said financial assurance conditioned on faithful performance of all requirements of this chapter and the permit. Upon notification by the County Board of financial assurance or deposit approval and conformance with permit conditions, the applicant may commence CAFO operations.

2. **Bond Requirements.**

- (a) Bonds shall be issued by a surety company licensed to do business in this state. At the option of the applicant or permit holder a performance bond or a forfeiture bond may be filed. Surety companies may have the opportunity to complete the clean-up of environmental contamination or complete proper closure of the CAFO in lieu of cash payment to the County.

- (b) Each bond shall provide that the bond shall not be canceled by the surety, except after not less than 90 days' notice to the County Board, in writing, by registered or certified mail. Not less than 30 days prior to the expiration of the 90 day notice of cancellation, the applicant or permit holder under this chapter must deliver to the County Board a replacement bond or approved alternate financial assurance in absence of which all CAFO operations shall cease.
- (c) The bond shall be payable to "Bayfield County, Wisconsin."

3. **Alternate Financial Assurance.** An applicant or permit holder may deposit cash, irrevocable letters of credit, irrevocable trusts, established escrow accounts, negotiable certificates of deposit or negotiable government securities with the County in lieu of a bond. Certificates of Deposit shall be automatically renewed or replaced with an alternate security before the maturity date. Any interest earned by the financial assurance will be paid to the applicant at the time such financial assurance is cancelled or withdrawn.

4. **Financial Assurance Reevaluation.**

- (a) The County Board may reevaluate and adjust accordingly the amount of the financial assurance required for the CAFO, including reevaluating said financial assurance when requested to do so by the applicant or permit holder, provided that the applicant or permit holder may only request a reevaluation once per year.
- (b) The applicant or permit holder shall notify the County Board in writing if there is a ten percent (10%) change in the average daily number of animal units housed at the CAFO in any 365 day period. This notification shall be provided at any time such a change occurs, and not just for financial assurance reevaluation.
- (c) The County Board shall notify the applicant in writing within 60 days of a decision to adjust the amount of the financial assurance for the CAFO, whether the adjustment results in a greater or lesser financial assurance requirement.

5. **Financial Assurance on Multiple Projects.** Any applicant or permit holder that receives a permit from the County Board for two or more CAFOs may elect, at the time the second or subsequent CAFO is approved, to post a single financial assurance in lieu of separate financial assurance on each CAFO. Any financial assurance so posted shall be in an amount equal to the estimated cost to the County to clean-up environmental contamination if the same were to occur at all such CAFOs, to abate public nuisances caused by CAFO operations, including but not limited to the testing and replacement of any potentially contaminated private and public wells and water supplies within the areas subject to CAFO operations, and to ensure proper closure of all such CAFOs, should the applicant elect to close or should the closure occur for some other reason. When an applicant elects to post a single financial assurance in lieu of separate financial assurance previously posted on an individual CAFO the separate financial assurance shall not be released until the new financial assurance has been accepted by the County Board.

6. **Financial Assurance Release.** The County Board shall release the applicant's or permit holder's financial assurance after providing notice to all property owners within 3 miles of the CAFO of the intent to release financial insurance and allowing such owners 90 days to object, if it finds, after inspection of the CAFO and documentation provided by the permit holder, that the permit holder has completed or ceased CAFO operations at the permitted location and all associated parcels, and that there is no environmental contamination or public nuisance remaining at any locations used for any part of the CAFO operations, after operations have ceased.

7. **Cancellation.** The financial assurance shall provide that it may not be canceled by the surety or other holder or issuer except after not less than a 90 days' notice to the County Board in writing by registered or certified mail. Not less than 30 days prior to the expiration of the 90 days' notice of cancellation, the applicant or permit holder shall deliver to the County Board a replacement financial assurance. In the absence of this replacement financial assurance, all CAFO operations shall cease until the time the required financial assurance is delivered and in effect.

8. **Changing Methods of Financial Assurance.** The operator of a CAFO may change from one method of financial assurance to another. This may not be done more than once a year unless required by an adjustment imposed pursuant to this chapter. The permit holder shall give the County Board at least 60 days' notice prior to changing methods of financial assurance and may not actually change methods without the written approval of the County Board.

9. **Bankruptcy Notification.** The applicant or permit holder under this chapter shall notify the County Board by certified or registered mail of the commencement of voluntary or involuntary proceedings under the United States Bankruptcy Code, U.S. Code Title 11--Bankruptcy, naming the applicant or permit holder as a debtor, within 10 days of commencement of the bankruptcy proceeding.

(j) The County Board may approve a CAFO Operations Permit and attach conditions to protect public health (including human and animal health), safety, and general welfare, prevent pollution and the creation of private nuisances and public nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the County. To the extent not expressly or otherwise preempted by Wis. Stat. §93.90, and Wis. Admin. Code Ch. ATCP 51 or any other provision of state or federal law, such conditions may include, but are not limited to:

1. Conditions relating to the operational characteristics of the proposed CAFO, to protect public health, prevent point and non-point sources of air and water pollution, and prevent private nuisances and public nuisances;
2. Conditions relating to the management of animal and other waste that may be generated as part of a CAFO's ongoing operations, to protect public health, prevent point and non-point sources of air and water pollution, and prevent private nuisances and public nuisances;
3. Conditions relating to the population and depopulation of individual animal housing facilities, to protect public health and prevent the spread of animal-borne and vector-borne disease, to assure a safe level of sanitation, and to assure human health hazard control or health protection for the community;
4. Conditions relating to biosecurity and the maintenance of animal health and welfare, to prevent the spread of animal-borne and vector-borne disease, to protect public health, and provide for animal safety and welfare;
5. Conditions relating to transportation of animals as part of a CAFO's ongoing operations, to protect public health, prevent pollution, and prevent private nuisances and public nuisances;
6. Conditions relating to protection of private and public drinking and agricultural wells, and other public water supplies, as part of a CAFO's ongoing operations to protect public health, prevent pollution, and prevent private nuisances and public nuisances;
7. Conditions relating to air emissions and dust control as part of a CAFO's ongoing operations, to protect public health, prevent pollution, and prevent private nuisances and public nuisances;
8. Conditions relating to protection of the private and public property rights and property values of affected property owners, as part of a CAFO's ongoing

operations, to protect the general welfare of the County's residents and property owners, and to prevent private nuisances and public nuisances;

9. Conditions relating to permit compliance, enforcement, and monitoring, including establishment of fees that may be assessed against the permittee to cover the costs of hiring, training, and maintaining County personnel, or for contracting with private consultants, to conduct permit compliance, enforcement and monitoring activities for the County;
 10. Any other conditions deemed reasonably necessary or appropriate by the County Board to effectively, efficiently, and comprehensively regulate the *operations* of a CAFO, to protect public health (including human and animal health), safety, and general welfare, prevent pollution and the creation of private nuisances and public nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the County.
- (k) An applicant or any other person or party who is aggrieved by a final decision of the County Board on whether or not to approve and issue a CAFO Operations Permit, either with or without conditions, or a taxpayer, or any officer, department, board or bureau of the County, may, within thirty (30) days after the filing of the decision with the County Clerk, commence an action seeking the remedy available by certiorari in the Bayfield County Circuit Court. The court shall not stay the decision appealed from, but may, with notice to the County Board, grant a restraining order. The County Board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.
- (l) In any certiorari proceeding brought under the preceding paragraph, attorney fees and costs shall not be allowed against the County Board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.
- (m) A final decision of the County Board under this ordinance is not subject to appeal under Wis. Stat. 93.90(5) or the provisions of Chapter 2 "Livestock Facilities Licensing Ordinance" of Title 5 [Public Safety] of the Code of Ordinances, Bayfield County, Wisconsin, Wis. Stat. § 93.90, and Wis. Admin. Code Ch. ATCP 51, which apply only to *siting* decisions.
- (n) The County Board, or its designee, shall work to ensure on an ongoing basis that all requirements and conditions of any permit issued under this ordinance are followed by the permittee. To assist in accomplishing this task, any permit issued pursuant to this ordinance shall be subject to an annual renewal fee in the amount of One Dollar (\$1.00) per animal unit.

Sec. 5-6-6 Permit Term & Extensions

- (a) A permit issued by the County Board under this ordinance shall be for an initial term of five (5) years, so long as the permittee remits the annual renewal fee set forth in Sec. 5-6-5(n), above. Thereafter, if no substantial changes or modifications are proposed to the CAFO operations and there have been no permit violations or compliance problems a permittee may apply for extension of the same permit for additional five (5) year periods. The County Board may request any information it finds reasonably necessary to evaluate whether no substantial changes or modification are proposed or have taken place, and the permittee shall provide such information. If substantial changes or modifications are determined to have taken place, or if there have been violations of the permit conditions or requirements

under this ordinance, or under any state or federal requirements, the permittee shall have to reapply for an Operations Permit and follow all steps required under this ordinance.

Sec. 5-6-7 Penalties

- (a) Any violation of this ordinance shall be punishable by a forfeiture of not less than \$100.00 or more than \$5,000.00 per day for every day of violation of this ordinance, plus the costs of prosecution, including the County's reasonable attorney fees and costs, for each and every violation.
- (b) Each day of violation shall constitute a separate offense. In addition, the County Board may: (1) issue a notice of violation and order that specifies required remedial action, which may include a stop operations and work order; (2) suspend or revoke the permit; or (3) impose any other available enforcement remedy.

Section 2. Except as specifically modified and amended by this ordinance, the Bayfield County Code of Ordinances shall remain in force and effect exactly as originally adopted and previously amended. All ordinances or parts of ordinances inconsistent with or in contravention of the provisions of this ordinance are hereby repealed.

Section 3. **Severability.** If a court of competent jurisdiction adjudges any section, clause, provision, or portion of this ordinance, unconstitutional or invalid, the remainder of this ordinance shall remain in full force and effect and shall not be affected thereby. In addition, if a court of competent jurisdiction adjudges any section, clause, provision, condition, or portion of any CAFO Operations Permit approved and issued by the County Board, pursuant to this ordinance, unconstitutional or invalid, the remainder of the CAFO Operations Permit shall remain in full force and effect and shall not be affected thereby.

Section 4. **Effective Date.** This ordinance shall take effect and be in full force from the date of its passage by the County Board.

APPENDIX "A"

BAYFIELD COUNTY CAFO OPERATIONS PERMIT APPLICATION

Application Filing Fee: \$ _____ (# of Animal Units) \times \$1.00 per AU = \$ _____

Date of Application: _____

Name of Individual or Organization Operating CAFO): _____

Name of Individual Completing Application: _____

Federal Employer ID# _____ State Employer ID# _____

Contact Person: _____

Address: _____

City _____ State _____ Zip _____

Phone: () _____ Fax: () _____ Cell Phone: () _____

Email: _____

Provide the Legal Description and owner name and contact information for each parcel of the land at which the livestock facilities will be located. If any of the land is rented include a copy of the lease agreement or other document demonstrating permission to use the land and/or facilities as proposed. Provide the following information for each parcel.

____ 1/4 of ____ 1/4, Section ____ Township ____ N. Range ____ W. Town of _____

Tax Parcel ID Number: _____ Acreage _____

Name and Address of Land Owner:

Name: _____

Address: _____

City _____ State _____ Zip _____

Provide the Legal Description and owner name and contact information for each parcel of **Owned or Rented** land proposed to be used in conjunction with CAFO Operations (e.g. manure spreading). For each parcel of **Rented** land include a copy of a cropland lease agreement or other document demonstrating permission to use the land as proposed. The term of the lease agreement must be clearly indicated in the lease agreement. Provide the following information for each parcel.

____ 1/4 of ____ 1/4, Section ____ Township ____ N. Range ____ W. Town of _____

Tax Parcel ID Number: _____ Acreage _____

Name and Address of Land Owner:

Name: _____

Address: _____

City _____ State _____ Zip _____

- (1) Describe current land uses within and immediately adjacent to the proposed CAFO site, including aerial photographs. For lands being used for crop production, include a description of crops currently being grown with an estimate of acreage of each crop.
- (2) Permits:
 - a. Does this CAFO have a Bayfield County Siting License? **Yes** **No**

- b. Does this CAFO have a Wisconsin Pollutant Discharge Elimination Systems Permit?
Yes **No**
- c. Does this CAFO have Bayfield County Land Use Permit(s)? **Yes** **No**
 If so, identify the permits held. _____

- d. If this CAFO lacks any of the above permits, please set forth all plans to obtain any of the above permits, including when applications have been or will be filed, and the expected date for approval or denial of the permit.

(3) Location/Crops/Phosphorus:

- a. Identify each structure or facility intended to be used in conjunction with the proposed CAFO, setting forth the location, physical dimensions, and intended use for each structure, as well as how many animal units, if any, will be housed in each structure. At a minimum, include all information and drawings required by Wisconsin Administrative Rules, Chapter NR 243.12(1)(a) 1 through 5.
- b. List each crop that will be grown on land managed by the CAFO. Provide an annual yield estimate for each crop and an explanation of how that estimate was determined.
- c. Provide aerial photos that identify all perennial streams, intermittent streams, navigable waters, and direct conduits to navigable waters on or within 1,000 feet of any parcel of land intended to be used in conjunction with the proposed CAFO.
- d. Provide a soil map using SSURGO data for all parcels of land intended to be used in conjunction with the proposed CAFO. Include a soil map unit description for each predominant and critical soil type shown on the maps and include an estimate of soil depth to bedrock or gravel or sand deposits. Include soil test data for phosphorus with one sample per five acres. The soil test data must have been collected no more than 12 months prior to submission of this application.
- e. Using the P-Trade report in SNAP-PLUS or other viable means, provide an estimate of total annual field edge phosphorus losses for all fields to be used in conjunction with the proposed CAFO for each of the two full calendar years prior to the date submitting this application.
- f. Provide an estimate of total annual phosphorus losses for each of the two full calendar years prior to the date submitting this application for all existing agricultural facilities (buildings, animal lots, animal feeding areas, feed storage etc.) on all lands to be used in conjunction with the CAFO.
- g. Provide an estimate of total annual phosphorus losses for each of the full five calendar years of the proposed operations for all existing agricultural facilities (buildings, animal lots, animal feeding areas, feed storage, etc.) on all lands to be used in conjunction with the CAFO.

(4) CAFO operations:

- a. Describe the method or methods the CAFO will employ to store any and all animal waste products, including describing the exact location where such products will be stored at any time during operation of the CAFO. You may refer to information and drawings submitted in response to paragraph (3) a. above, as appropriate.
- b. Describe the method or methods the CAFO will employ to handle and process any and all animal waste products, including the specific machinery and methods that will be employed, the location where the processing of waste will take place, and any materials or chemicals that will be used. Describe any technology or processes that will be used (such as anaerobic digestion) that will alter pathogen loads, nutrient content, or moisture levels of the manure prior to land-spreading.
- c. Provide a complete nutrient management plan that meets the requirements of Wisconsin Administrative Code NR 243.14. The plan shall be based on the volume

of manure that will be generated by the operation in each of the five calendar years covered by this Permit. Include all lands being used in conjunction with the operations of the CAFO, including but not limited to: spreading manure, growing and harvesting crops, applying commercial fertilizer, shall be included in the nutrient management plan. Provide a copy of a cropland lease agreement or other document for all rented lands included in the nutrient management plan. The lease agreements must clearly allow the land use as proposed in the nutrient management plan.

- d. Provide an estimate of how many livestock mortalities are expected for the operation in a given year and a description of how that estimate was determined. Describe the method or methods the CAFO will use to store dead animals (carcasses), including describing the exact location where such carcasses will be stored and for how long.
- e. Describe the method or methods the CAFO will use to handle, process, and dispose of any and all dead animals, including the specific technology, machinery, and methods that will be employed, the location where the processing/disposal of carcasses will take place, and any materials or chemicals that will be used. If licenses or approvals are necessary from the Wisconsin Department of Natural Resources or other state, town, or federal agency, provide copies of those licenses, permits, and/or approvals. If this CAFO lacks any of the required licenses, permits, and/or approvals, describe all plans and expected dates for receiving them.
- f. Describe the technologies or method(s) the CAFO will employ to reduce, eliminate, or treat methane, nitrous oxide, ammonia, hydrogen sulfide, and particulate emissions from the proposed CAFO, including the specific technology, machinery, and methods that will be employed, and any materials or chemicals that will be used.
- g. Describe how animals will be transported to, from, and within the CAFO, including a description of the type, size and weight (loaded gross vehicle and each axle) of the transportation vehicles, all highways or roads within the County that will be used, the proposed hours of operation for said transportation, and the specific path of travel for all such transportation.
- h. Describe how all animal waste will be transported to, from and within the CAFO, including a description of the type, width, length, and weight (loaded gross vehicle and each axle) of the transportation vehicles, all highways or roads within the County that will be used, the proposed hours of operation for said transportation, and the specific path of travel for all such transportation.
- i. Describe how all other products or materials (apart from animals or manure) will be transported to, from and within the CAFO, including a description of the type, width, length, and weight (loaded gross vehicle and each axle) of the transportation vehicles, all highways or roads within the County that will be used, the proposed hours of operation for said transportation, and the specific path of travel for all such transportation.
- j. Describe the type, width, length, and weight (loaded gross vehicle and each axle) of each implement of husbandry (excluding manure and animal hauling equipment) that will be used on highways or roads within the County. Provide an aerial photos showing the specific path of travel for the implements of husbandry and the estimated hours of operation of the equipment on the highways or roads in Bayfield County.
- k. If manure is transported by pipeline (permanent or temporary) to fields for land-spreading provide a map showing the intended route and the location and photo of every culvert used along the route. Show all perennial streams, intermittent streams, and direct conduits to navigable waters on the map(s). If required, provide a copy of the permit(s) allowing use of the right-of-way or culvert. If crossing driveways or land not under the control of the CAFO, provide a letter from the landowner clearly granting permission to cross the driveway or land with the permanent or temporary pipeline.

- i. Identify all residential and business structures within 500 feet of a gravel road in Bayfield County used at any time of the year by implements of husbandry, agricultural CMVs, tractor-trailers, or semi-trailers. Describe how road dust generated by use of the gravel roads by the CAFO will be controlled.
- m. Identify the source of all water to be used at the proposed CAFO facility and the anticipated quantity of water that will be necessary for all CAFO related operations, and also set forth the location of any private or public well located within 1000 feet of any parcel of real estate to be used in conjunction with the proposed CAFO facility. Provide well-drilling records, if available, for all private or public wells within 1000 feet of any parcel of real estate to be used in conjunction with the proposed CAFO facility.
- n. Identify a CAFO having substantially similar operational characteristics, housing the same species of animals, and utilizing similar operations, that has been continuously operated in the United States for at least ten (10) years without causing pollution of groundwater or surface water, and without causing either a private nuisance or a public nuisance. Set forth in what ways said existing CAFO has similar operational characteristics of the CAFO proposed in this application. In the alternative, state whether the applicant is requesting a waiver of this requirement and, if so, provide information that may be verified by the County, to show that the proposed CAFO will otherwise meet the requirements set forth in Secs. 5-6-4 (d) and 5-6-5 (g), of the Ordinance.

(5) Animal Welfare:

- a. Describe how all animals will be housed in the proposed CAFO, including a description of the size of each pen or stall any animal will be kept in, the number of animals that will be kept within each pen, and the location and type of any outdoor area allotted for animals.
- b. In the event of power outages or equipment failure, describe how the welfare of animals housed by the CAFO will be maintained including, but not limited to: providing water, venting hazardous air emissions, cooling, and feeding.
- c. Describe how all animal units will be fed, including the type of feed, the amount of feed per animal, the method of feeding each animal, etc.
- d. Apart from the feed identified above, identify all products (including chemicals or medicines) that will be injected in, fed to, or otherwise administered to animals in the CAFO on an ongoing basis (i.e. at least once per month):
- e. Identify any and all measures that will be taken to prevent the spread of disease between animals and between animals and humans at the proposed CAFO.
- f. Identify all veterinary care that will be routinely administered to or available to the animals of the proposed CAFO, and identify all medicines or treatments that are anticipated to be administered to animals of the proposed CAFO. Identify steps that will be taken by the CAFO to limit development of resistance to antibiotics.

(6) Employee Welfare:

- a. Identify the number of anticipated employees at the proposed CAFO.
- b. What type of education will employees receive regarding operating safe CAFOs and maintaining safe and healthful conditions for animals and employees at said facility?
- c. What type of healthcare will be made available to employees of the proposed CAFO, or what type of routine medical examinations will be performed?
- d. What are the hours and days of anticipated operation of the proposed CAFO specifically identifying days and times where machinery or other equipment that may make noise detectable to neighboring properties will be in use?

(7) Emergency management:

- a. Set forth in detail an emergency plan of action in the event of soil, water or air contamination emanating from the proposed CAFO, or in the event of a spill of animal waste products, whether on or off the proposed CAFO site, including the name and contact information for emergency management response team members, the equipment and location of equipment available to respond to such an emergency situation, the anticipated timeline for response to an emergency event, and the anticipated testing measures to be used to ensure the emergency response was effective. At a minimum, include all information and drawings required by Wisconsin Administrative Rules, Chapter NR 243.12(13)6.
- b. Set forth in detail an emergency plan of action in the event of a mass animal mortality event (death of more than 5% of the animals within a 72 hour period) caused by natural disaster, disease, equipment failure, or other cause. Include the name and contact information for the emergency management response team members, the equipment and location of equipment available to respond to such an emergency situation, the anticipated timeline for response to an emergency event, and the anticipated testing measures to be used to ensure the emergency response was effective.
- c. Identify all residences and businesses within 1000' of the proposed CAFO site and provide names and contact information for all the owners of those residences and businesses. Indicate how each of those owners will be contacted within 30 minutes of a failure of air filtration or other equipment intended to limit emission of hazardous gasses or particulates.
- d. Set forth in detail all regular testing or monitoring that will take place to ensure that no contamination or environmental degradation is occurring as a result of CAFO related activities. Provide a description of the testing or monitoring protocols and schedule as well as how the data will be communicated to the County.

(8) Environmental impact:

- a. List resources that may be impacted by the proposed CAFO such as timber, agriculture, surface water, ground water, air quality, noise pollution and plant, wildlife or fish habitat. Describe measures that will be taken to mitigate those impacts.
- b. Are there any known endangered species on or near the proposed CAFO site?
Yes / No. If yes – describe the species and whether an environmental impact statement will need to be prepared?
- c. Will groundwater monitoring wells be installed? If not, describe why not. If so, provide information on each monitoring well including anticipated well depth, well location, chemicals and/or substances that will be monitored, and the schedule and protocol for testing the water from each well. How will this information be shared with Bayfield County and the public?
- d. Describe erosion control practices that will be used during the CAFO operations. If no measures will be used, explain why none are needed.
- e. Describe how concentrated flow areas and direct conduits to surface waters will be maintained in perennial vegetation. If concentrated flow areas and/or direct conduits to groundwater are rutted during field operations, describe how the concentrated flow areas and/or direct conduits to surface water will be repaired. Provide an estimate of how often the concentrated flow areas and/or direct conduits to surface water will need to be repaired.

(9) Public and private nuisances:

- a. Describe measures that will be taken to screen the CAFO operation from view of surrounding land uses or explain why such measures are not needed (include photos of the area to show affected areas or why no areas will be affected).
- b. Describe how odor from the livestock facilities and land-spreading activities will be controlled. If no such measures are necessary, explain why. Also explain the

Chequamegon County
Amendatory Ordinance

No. 2016-04
South Fish Creek Watershed
Animal Waste Storage and Management Ordinance

FINDINGS:

The Bayfield County Board of Supervisors makes the following findings:

1. The predominant farmed soils in Bayfield County are clay-looms originating from glacial till. With high bulk density and slow infiltration, runoff during the spring snowmelt and after heavy rains is common.
2. To farm the clay soils of Bayfield County, agricultural producers maintain extensive surface drainage networks to rapidly remove excess water.
3. Drainage practices that increase runoff rates from agricultural lands lead to higher peak flows in streams, resulting in increased streambank erosion and consequent loading of particulate phosphorus and sediment into downstream surface waters.
4. As such, the primary threat from agriculture to surface water in Bayfield County is from surface run-off carrying sediment, nutrients, and manure.
5. Phosphorus loading in surface waters and consequent algal blooms constitute a threat to human health due to toxins produced by the algae.
6. Microbiological pathogens from manure in runoff and surface waters constitute a threat to human health.
7. Most erosion, sedimentation, and nutrient loss from agricultural lands occur during spring snowmelt and during large storm events.
8. Historical precipitation data and future climate modeling indicate the Chequamegon Bay region is and will continue to receive more precipitation in larger storm events.
9. Increasing manure and fertilizer applications within a watershed is likely to increase nutrient loading into surface waters within that watershed.
10. The required manure storage capacity for Concentrated Animal Feeding Operations under NR 243 Wis. Adm. Code, given the climate and soils of Bayfield County, is likely inadequate to ensure no winter manure applications.
11. The short growing season for grain crops such as corn, soybeans, and sunflowers, and the likelihood of saturated or frozen ground conditions after harvest increases the likelihood that manure cannot be applied after harvest, and consequently, livestock operations covered by NR 243 relying on application of manure in the fall after harvest of grain crops are likely to utilize emergency spreading allowances for winter applications of manure.
12. Manitowoc County in Wisconsin, with soils similar to those found in Bayfield County, has implemented additional limits on mechanical application of manure in order to achieve water quality standards in surface waters.
13. The phosphorus levels in South Fish Creek in northeast Bayfield County have exceeded the maximum thresholds permitted under NR 102.06 Wis. Adm. Code in 2014 and 2015. (Lehr, 2015)
14. The phosphorus levels in nearshore areas of Chequamegon Bay have exceeded the maximum thresholds permitted under NR 102.06 Wis. Adm. Code in 2014 and 2015. (Lehr, 2015)

15. The Wisconsin Department of Natural Resources, Bureau of Drinking Water and Groundwater, "Source Water Assessment For Ashland Water Utility, Ashland, Wisconsin, March 27, 2003" has determined:
 - a. The City of Ashland, Wisconsin, located on the south shore of Lake Superior's Chequamegon Bay, relies solely on source water from the bay to provide drinking water to its residents. (p.2)
 - b. The area providing Ashland's source water includes the watersheds of Bono Creek, Boyd Creek, Whittlesey Creek, and the north and south branches of Fish Creek, located in Bayfield County. These streams drain an area of relatively flat, impermeable red clay soils, resulting in heavy sedimentation. (p.5)
 - c. The source area contains a mixture of agricultural activities identified by the Department as having negative impacts on the south branch of Fish Creek (South Fish Creek). (p.6)
 - d. The shallow nature of Chequamegon Bay has multiple negative impacts on source water quality, including warmer summer and autumn temperatures, more easily suspended lake bottom sediments and less dilution of contaminants entering the bay. (p.7)
 - e. The normal counterclockwise circulation pattern in the bay negatively impacts source water by drawing the discharge of the Fish Creek and Bay City Creek east along the shoreline towards the drinking water intake. (p.8)
 - f. Ashland's municipal water supply has one surface water intake located in southeastern Chequamegon Bay. The calculated sensitivity of the intake—defined as the likelihood that source water will be impacted by contaminants due to the intrinsic physical attributes of the source water area—is very high. (p.9)
 - g. Concentrated animal feeding operations (over 1000 animal units) have the potential to contribute pollutants such as inorganic, synthetic organic, microbial contaminants as well as hormones and antibiotics to the source water. (p.10)
 - h. Ashland's source water quality is significantly impacted by local factors and highly susceptible to contamination. (p.14)
 - i. Manure management is a recommended means of dealing with negative impacts on Ashland's source water. (p.15)

Based on the foregoing findings, the Board further finds that the following regulations pertaining to the operations of Concentrated Animal Feeding Operations within the South Fish Creek watershed are necessary to achieve water quality standards under section 281.15 of the Wisconsin Statutes and to protect public health and safety.

NOW, THEREFORE, the Bayfield County Board of Supervisors does hereby ordain as follows:

Chapter 7 of Title 5 [Public Safety] is hereby created to read as follows:

Chapter 7 South Fish Creek Watershed Animal Waste Storage and Management Ordinance

Sec 5-7-1 Authority. This chapter is adopted under authority granted under Section 59.02, 59.03, 59.70, 92.15, and 92.16 of the Wisconsin State Statutes.

Sec. 5-7-2 Applicability. All Concentrated Animal Feeding Operations, as defined in Sec. 5-6-3(b) of the Bayfield County Code of Ordinances, located or utilizing owned or rented land within the South Fish Creek watershed in Bayfield County for the housing of

livestock, production of crops, spreading of manure, or any other agricultural activity shall comply with the regulations in this chapter.

Sec. 5-7-3 Interpretation. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of Bayfield County, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin State Statutes.

Sec. 5-7-4 Severability Clause. If any provision or portion of this chapter is ruled invalid by a court, the remainder of the chapter shall not for that reason be rendered ineffective.

Sec. 5-7-5 Effective Date. This chapter shall become effective upon its adoption and publication by the Bayfield County Board of Supervisors and approval by the Wisconsin Department of Natural Resources under s. 92.15 of the Wisconsin Statutes and NR 151.096 of the Wisconsin Administrative Code.

Sec. 5-7-6 Definitions. Definitions herein are to conform to the provisions set forth in the Wisconsin Administrative Code and Bayfield County Code.

- (a) **Compliance Order.** A document or notification from the Land Conservation Committee, or their designee, outlining the nature of the violation(s) of the provisions of this chapter and corrective measures.
- (b) **Conduit to a navigable water.** A natural or man-made area or structure that discharges to a navigable water via channelized flow. This includes open tile line intake structures, open vent pipes, sinkholes, agricultural well heads, drainage ditches that discharge to navigable waters and grassed waterways that drain directly to a navigable water.
- (c) **Intermittent stream.** A watercourse with a bed and bank where water does not flow continuously and that is identified as an intermittent stream on a United States Geological Survey 1:24,000 quadrangle map.
- (d) **Manure.** Excreta from livestock, poultry, or other animals. Manure includes the following when intermingled with excreta in normal farming operations: debris including bedding, water, soil, hair, and feathers; processing derivatives including separated sand, separated manure solids, precipitated manure sludges, supernatants, digested liquids, composted biosolids, and process water; and runoff collected from barnyards, animal lots, and feed storage areas.
- (e) **Manure storage facility.** An impoundment made by constructing an embankment or excavating a pit or dugout or by fabricating a structure to contain manure and other animal or agricultural wastes that has a volume of 500 cubic feet or more and a depth of 2 feet or more.
- (f) **Nutrient Management Plan.** A plan that outlines the management and crediting of nutrients from all nutrient sources including soil reserves, commercial fertilizer, manure, organic byproducts, legume crops, and crop residues. All nutrient sources shall be accounted for and properly utilized. This plan must meet the current NRCS 590 standard, and NR 243 where applicable, and applies to all fields where plant nutrient sources and soil amendments are applied during the course of a rotation. Management includes the rate, method, and timing of the application of all sources of nutrients to minimize the amount of nutrients entering surface water and groundwater. The plan includes manure nutrient testing and routine soil testing and is developed according to USDA - NRCS Technical Standard 590.
- (g) **Operator.** A person responsible for the oversight or management of equipment, facilities or livestock at a livestock operation, or is responsible for land management in the production of crops.

- (h) Perennial stream. A channel where water flows continuously and that is identified as a perennial stream on a United States Geological Survey 1:24,000 quadrangle map.
- (i) One hundred (100)-year, twenty-four (24)-hour rainfall event. A rainfall event measured in terms of the depth of rainfall occurring within a twenty-four(24)-hour period and having an expected recurrent interval of once in one hundred (100) years.

Sec. 5-7-7 Manure storage capacity. Animal manure storage facilities shall be properly designed to provide a minimum of 540 days of manure storage. In addition, liquid manure storage and containment facilities shall also have markers near the bottom of the facility indicating the levels at which the facility provides 180 and 270 days of storage, respectively. Such capacity shall include storage at all times for direct precipitation and runoff from a 100 yr, 24 hr storm event.

Liquid storage facilities shall be emptied so that the 270-day level indicator is visible on at least one day between July 15 and September 1. In addition, the storage facility shall be emptied so that the 180-level indicator is visible on at least one day between October 15 and November 30. The operator shall record the days on which the 270-day and 180-day level indicators were visible and send a photo of the indicator to the Bayfield County Land Conservation Department. In the event the facility is not emptied to show the 270-day level indicator for any reason AND the facility is not emptied to show the 180-day level indicator by November 30 of the same calendar year for any reason, the operator shall transfer the manure to another manure storage facility or waste treatment plant in such quantity as to empty the facility to show the 180-day level indicator by December 10 of that calendar year.

If the facility was emptied to show the 270-day level indicator in the required time period, but was not emptied to show the 180-day level indicator during the required time period for any reason, the operator shall submit a written plan to the Land Conservation Department for approval by December 5 showing how the storage facility shall be emptied to show the 180-day level indicator by December 15 of that calendar year. Such a plan may include land-spreading the manure subject to any applicable local, state, or federal restrictions and upon approval by the Land Conservation Department. Approval of any proposed land-spreading by the Department shall depend on the ground conditions of the fields proposed for spreading, the method and rate of spreading, the forecasted weather during that time, and the Land Conservation Department's determination of the risk of runoff from such land-spreading. Land-spreading shall not be an option unless the operator can demonstrate that weather conditions or other factors beyond the operator's control prevented the spreading that otherwise would have resulted in emptying the pit to the required level by the required time.

Sec. 5-7-8 Spreading windows. The annually updated nutrient management plan required under NR 243.14 Wis. Adm. Code shall include for each cropping year at least three distinct manure spreading windows in which at least 1/3 of the total manure produced and stored annually by the animal feeding operation is capable of being mechanically applied according to the spreading rates allowed by the nutrient management plan. Spreading windows include, but are not limited to: prior to planting in the spring, after each harvest of hay or perennial forage in the summer and fall, after harvest of small grains in the summer and fall, after harvest of corn or soybeans in the fall, or at any other time when the ground is not frozen or snow-covered and the application is allowable under the NR 243.14 Wis. Adm. Code.

Sec. 5-7-9 Phosphorus. For fields within the South Fish Creek watershed, the operator may not increase soil test phosphorus levels over a 4-year crop rotation unless the operator can demonstrate that deliverability of phosphorus to the impaired waterbody will not increase as a result of increases in soil test phosphorus in the field. The operator may not raise soil test phosphorus levels over a 4-year crop rotation above the optimum level for the highest phosphorus demanding crop in the rotation for a field with soil test

phosphorus levels below optimum levels. In addition, for fields within the South Fish Creek watershed, the Phosphorus Index shall not be higher than 2 for any single cropping year in the rotation. The application of this provision shall be suspended if and when it is satisfactorily demonstrated to the County Board that the phosphorus levels in the South Fish Creek watershed have not exceeded the maximum permitted levels of phosphorus under NR 102.06 for at least two consecutive years immediately preceding such determination, but any such suspension shall terminate upon a subsequent satisfactory demonstration to the County Board that such levels have again been in excess of the maximum permitted levels for at least two consecutive years.

Sec 5-7-10 Further limits on mechanical application of manure. Mechanical application of manure is only permitted to meet crop needs and is subject to the following limitations:

- (a) Manure or process wastewater may not be applied by any means when precipitation capable of producing runoff is forecast by the National Weather Service within 48 hours of the time of planned application. In addition, manure or process wastewater may not be applied by any means on days with a high or medium risk of runoff as indicated in the Runoff Risk Advisory Forecast by the Wisconsin Manure Management Advisory System.
- (b) No manure at any time of the year may be mechanically applied to any channel or concentrated flow area that flows to an intermittent stream, lake, perennial stream, pond, or sinkhole. This includes all conduits to intermittent stream or navigable waters.
- (c) No manure at any time of the year may be mechanically applied to land within 100 feet of an active or inactive well unless that well has been abandoned per USDA-NRCS Technical Standard 351. Manure that is mechanically applied to land that is more than 100, but less than 300 feet, and is upslope of an active or inactive well and that drains to a well must be incorporated into the soil within 48 hours of application.
- (d) No manure at any time of the year may be mechanically applied to land that is within 300 feet of and that drains to a drainage tile surface inlet, intermittent stream, or perennial stream, unless the manure is incorporated into the soil within 48 hours of application.
- (e) No manure at any time of the year may be mechanically applied to land that is within 1,000 feet of a lake or pond and that drains to the lake or pond unless it is incorporated into the soil within 48 hours of application.
- (f) Spreading restrictions listed in this article shall be in addition to any other rules or provisions regulating the mechanical application of animal manure including, but not limited to, WPDES permits issued under NR 243 or Operations Permits issued by Bayfield County. In the case of conflict, the most stringent provisions shall apply.

Sec. 5-7-11 Inspection Authority. Bayfield County, or its designee, is authorized to enter upon any lands affected by this chapter to inspect the land or manure storage facility to determine compliance with this chapter.

Sec. 5-7-12 Penalties and Enforcement.

- (a) Any violation of this chapter shall be punishable by a forfeiture of not less than \$100 or more than \$5000 per day for each violation of this chapter, plus the costs of prosecution, including the County's reasonable attorney fees and costs. Each day of violation shall constitute a separate offense.
- (b) In addition, the County Board, or its designee, may issue a notice of violation and order that specifies required remedial action, which may include a stop



DOOR COUNTY

**RECOMMENDATIONS AS TO LEGISLATION THAT IMPACTS
PLANNING, ZONING, AND LAND USE LAWS**

TO THE DOOR COUNTY BOARD OF SUPERVISORS:

1 **WHEREAS**, Door County requested, by adoption of Resolution 2015-58 on June 23, 2015, that Item
2 #23 of Motion #520, §§ 1922am – 1922L of the biennial budget bill, representing proposed revisions to §
3 59.692, Wis. Stats., Zoning of Shorelands, be removed from the biennial budget bill and addressed in
4 stand-alone legislation. This request, although echoed by dozens of other counties, fell on deaf ears.
5

6 **WHEREAS**, 2015 Wisconsin Act 55 (the biennial budget bill), including the revisions to § 59.692, Wis.
7 Stats., was enacted on July 12, 2015, published July 13, 2015, and in full force and effect from and after
8 July 14, 2015, significantly and immediately changing the state's shoreland zoning policy, purpose, and
9 regulations. These changes were enacted without meaningful notice, public input opportunity, review by
10 and input from local units of government, or analysis by the Wisconsin Department of Natural Resources.
11

12 **WHEREAS**, Predictably, the manner in which this legislation came about has resulted in a general
13 state of confusion as to interpretation and implementation of the 2015 Wisconsin Act 55 shoreland zoning
14 revisions. Opinions and interpretations have been put forth by the Wisconsin Department of Natural
15 Resources (DNR), the Wisconsin Counties Association (WCA), the Wisconsin Legislative Council, and
16 others regarding the meaning and impact of the 2015 Wisconsin Act 55 shoreland zoning revisions. These
17 opinions and interpretations are not entirely consistent regarding the interplay of the 2015 Wisconsin Act
18 55 shoreland zoning revisions with existing law, including Ch. NR 115, Wis. Adm. Code ["NR 115"] and
19 §§ 59.69, 59.692, and 281, Wis. Stats. Consequently, there is a lack of clear guidance regarding what the
20 2015 Wisconsin Act 55 shoreland zoning revisions require and allow, and a resulting uncertainty as to
21 implementation, administration, and enforcement of shoreland zoning at the county level.
22

23 **WHEREAS**, Wisconsin counties have been authorized by state statutes since 1968 to enact and
24 administer general zoning regulations in towns choosing to be subject to those regulations. The
25 enabling legislation is currently codified in § 59.69, Wis. Stats.
26

27 **WHEREAS**, Wisconsin counties have been required by state statutes since 1968 to enact and
28 administer shoreland zoning regulations. The enabling legislation is codified in § 59.692, Wis. Stats., with
29 rules and standards promulgated by the DNR and set forth in NR 115.
30

31 **WHEREAS**, State statutes dictate the process by which counties may revise shoreland or zoning
32 regulations, said process typically involves numerous steps and notifications and opportunities for
33 town board and public input. This process generally takes anywhere from 4-8 weeks to complete.
34

35 **WHEREAS**, Subsequent to enactment of the 2015 Wisconsin Act 55 shoreland zoning revisions, a
36 number of bills were proposed, including AB563, AB582, AB583 and AB600, that impact planning,
37 zoning and land-use at the local level. These bills were introduced one week, and several were sent
38 to public hearing the next, offering little or no opportunity for public input, or analysis by state or local
39 regulators of the meaning of the bills or how the proposed laws would interact with existing laws.
40

41 **WHEREAS**, The development community and property owners typically seek information from
42 county code administrators regarding pertinent zoning regulations months before submitting final
43 applications, relying on the code administrators to provide accurate information as to the zoning
44 regulations surrounding a project. The changes brought about by the 2015 Wisconsin Act 55 shoreland
45 zoning revisions, and the piecemeal bills subsequently introduced and fast-tracked, have created a
46 climate of uncertainty and frustration for the development community, property owners, and county
47 code administrators, all of which contributes to a loss of efficiency and productivity.



RECOMMENDATIONS AS TO LEGISLATION THAT IMPACTS PLANNING, ZONING, AND LAND USE LAWS

DOOR COUNTY

ROLL CALL Board Members Aye Nay Exc. Table with names: AUSTAD, BACON, BRANN, BUR, ENGLEBERT, ENIGL, FISHER, GUNNLAUGSSON, HAINES, HALSTEAD, KOCH, KOHOUT, KOK, LIENAU, MOELLER, NEINAS, SCHULTZ, SITTE, SOHNS, VIRLEE, ZIPPERER.

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NOW, THEREFORE, BE IT RESOLVED, that the Door County Board of Supervisors respectfully requests that the legislature discontinue the practice of putting forth and fast-tracking piecemeal bills regarding planning, zoning, and land use.

BE IT FURTHER RESOLVED, that the Door County Board of Supervisors urges the state legislature to instead adopt a systematic review by a group of primary stakeholders of state laws (existing or proposed) that impact planning, zoning, and land use, with a concurrent process involving notice and public input opportunities. This will result in the thoughtful and deliberate consideration that is certainly due planning, zoning, and land use laws.

BE IT FURTHER RESOLVED, by the Door County Board of Supervisors, that Door County would welcome the opportunity to participate in comprehensive, collaborative discussions, public listening sessions, and hearings regarding state shoreland and comprehensive zoning regulations to discuss manners in which each could be improved.

BE IT FURTHER RESOLVED, that the County Clerk is to forward copies of this resolution to Governor Scott Walker, the Secretary of the DNR of the State of Wisconsin, all members of the Wisconsin Legislature, and each county in the State of Wisconsin.

BOARD ACTION
Vote Required: Majority Vote of a Quorum
Motion to Approve Adopted [X]
1st Fisher Defeated []
2nd Kohout
Yes: No: Exc:

Reviewed by: [Signature], Corp. Counsel
Reviewed by: [Signature], Administrator
FISCAL IMPACT: Adoption of this resolution will not have a fiscal impact. MEJ

Certification:
I, Jill M. Lau, Clerk of Door County, hereby certify that the above is a true and correct copy of a resolution that was adopted on the 28th day of January 2016 by the Door County Board of Supervisors.
Jill M. Lau
County Clerk, Door County

SUBMITTED BY:
RESOURCE PLANNING COMMITTEE

[Signature] Kenneth Fisher, Chair
[Signature] David Lienau
[Signature] Susan Kohout
[Signature] David Enigl
Don Sitte



RECEIVED
WALWORTH COUNTY CLERK

DAVID CRAIG 2016 FEB -1 AM 9:12

STATE REPRESENTATIVE
CHAIRMAN, ASSEMBLY COMMITTEE ON FINANCIAL INSTITUTIONS

January 27, 2016

Walworth County Board
c/o Walworth County Clerk Kimberly S. Bushey
100 W. Walworth
PO Box 1001
Elkhorn, WI 53121

Members of the Board,

Thank you for providing the County Board's resolution opposing Assembly Bill 90 and requesting the inclusion of fourth time OWI offenders in 2009 Act 100 funding. I appreciate hearing from you on this matter.

Please know that I oppose Assembly Bill 90 as it is currently drafted. Among other causes for concern, the bill would rewrite a number of the statutes governing John Doe investigations, effectively overturning legislation passed earlier this session to reform these investigations. Rest assured, I will keep your concerns in mind as the legislative session concludes in the coming months.

Please know that I am a co-sponsor of Assembly Bill 536 which would make a fourth guilty OWI offense a Class H felony and would subject all fourth OWI offenses to the same penalty regardless of how much time has passed since the previous OWI offense. The best way to combat those who continue to break the law by driving under the influence is via deterrence by increasing the penalties these habitual offenders face. Rest assured I will keep your thoughts on 2009 Act 100 in mind as we enter the next budget cycle.

Again, thank you for contacting me regarding this issue. If you should need additional information or assistance with this or any other matter, please feel free to contact me at 888-534-0083 or email me at Rep.Craig@legis.wi.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "David Craig", is written over the printed name.

Representative David Craig
83rd District
Wisconsin State Assembly