

**TOWNSHIP OF PENTWATER  
VILLAGE OF PENTWATER**

**INSTRUCTION TO PERSONS SUBMITTING PROPOSALS**

Sealed proposals will be received at the offices of the Township of Pentwater, located at 500 N. Hancock, Pentwater Township, Michigan 49449. Proposals will continue to be received until the Township and Village accept a proposal and enter into a purchase agreement for the sale of the property.

The Township Board intends to open and read the proposals and then refer the proposals to Township and Village staff for tabulation and analysis. During this period of analysis, the files shall be closed until this action is complete. Copies of the proposal tabulations shall be made available only after this time of analysis and upon request to the Pentwater Township Board, by mail or phone (231) 869-6231.

1. All proposals must be submitted on the attached proposal blank form when provided. The proposal shall be legibly prepared in ink or typewriter. Erasures or alterations must be initialed by the person submitting the proposal.
2. Specifications and plans are encouraged to be included with proposal to the extent possible, so as to further the Owners' evaluations under both the Planning and Zoning section and the Project Plan and Performance Assurance section below.
3. Proposals shall be mailed or delivered. It shall be in a sealed envelope, and the name of the person submitting the proposal and "327 S. Hancock proposal to purchase" shall be included on the outside of the envelope.
4. Proposals will be accepted at the Township offices on behalf of the Village and Township during normal business hours only, said hours being 9:00 am to 4:00 pm, Mondays through Fridays, legal holidays excepted.
5. It is understood that the Village and Township are Governmental units and as such, are exempt from the payment of all State and Federal taxes, except as allowed by the regulatory agencies to be included in the cost of materials and services.
6. The person submitting the proposal, by execution of the proposal, thereby declares that the proposal is made without collusion with any other person, firm, or corporation, and agrees to furnish all proposal items in strict adherence with all State and Federal laws.
7. The Village and Township reserve the right to reject any and all proposals, to waive any irregularities therein, and to accept or negotiate on any proposal which, in the opinion of the Village Council and Township Board, may be most advantageous and to the best interest of the community. The terms of any purchase agreement may similarly be revised if the Village and Township consent.



## **PROPERTY**

The property is roughly 0.19 acres (Tax Parcel No. 64-044-676-001-00) and contains an 8,292 square foot brick building, currently used for governmental offices by the Owners. It contains two stories, each 4,146 square feet, and a 4,146 square foot basement. The property is on the main street of Pentwater, in the center of the Village business district. Visibility and foot traffic are excellent at this location.

## **PLANNING AND ZONING**

Respondent shall submit a preliminary concept plan or narrative, indicating Respondent's plans for use and improvement of the property. Such plans shall comply with the Village Master Plan and the Zoning Plan (or describe necessary amendments which would be required for Respondent's plans). The Future Land Use Map, from the Master Plan, is attached as **Attachment B**. Compliance or compatibility with the Community Vision Team survey is also expected. Respondent shall provide an expected project timeline and shall commit to issuance of a performance bond as specified by the Village Engineer.

## **BUILDING**

A photograph of the building is attached as **Attachment A**. The Township's property card is attached as **Attachment C** and approximate building prints are attached as **Attachment D**. Each attachment is offered for informational purposes only and no representation or warranty as to the accuracy of the information is included.

## **PRICE**

The specific purchase price and associated terms shall be disclosed in the proposal.

## **PURCHASE TERMS AND CONDITIONS**

The Owners intend to sell the Property pursuant to the terms and conditions set forth in the purchase agreement included as **Attachment E** (the "Purchase Agreement"). In addition to submitting the total proposal amount, Respondents must include any proposed modifications, amendments, addendums, or supplements to the Purchase Agreement which it desires be included in its proposal. The Owners reserve the right to further negotiate the terms of the Purchase Agreement following the award.

## **PROJECT PLAN AND PERFORMANCE ASSURANCE**

The Property is a central, important component of the downtown Pentwater business district. The Owners wish to see the Property developed in a reasonably prompt manner, with an end use that will benefit the community.

Respondent is encouraged to submit with its proposal both a plan for use of the Property and a general timeline for the proposed project. Owners may require, as part of the negotiation of the

Purchase Agreement, that Respondent post a performance bond or other assurances that the proposed project and use will proceed. It is contemplated that such bond or other assurances will be specified in the Purchase Agreement and provided to Owners on or before closing, or at such other time as the Owners and Respondent may agree.

## **PROCESS**

Before submitting a sealed proposal, Respondents shall carefully examine the Property by visiting the Property and shall fully inform themselves as to all existing conditions and limitations. Scheduled appointments may be made prior to the proposal submission by contacting Lynne Cavazos, the Township Supervisor, at supervisor@pentwatertwp.org, phone (231) 869-6231 or the Village Manager at CBrown@pentwatervillage.org, phone (231) 869-8301.

## **EVALUATION**

The Owners reserve the right to request additional information it may deem necessary after the submissions are received.

As part of the evaluation process, Respondents may be requested to make an oral presentation, at the Respondent's expense, to an evaluation committee. The presentation may be followed by a question and answer session. Requests to make an oral presentation should be submitted with the applicant's proposal.

## **ACCEPTANCE**

The Owners, in their sole discretion, reserve the right to sell the property to the Respondent whose proposal is deemed most advantageous to the Pentwater community. The Owners, at their sole discretion, expect to select the most responsive and responsible Respondent after evaluation of all responses, based on the requirements and criterion set forth in this solicitation while reserving the right to reject any and all submissions.

A submission shall constitute an irrevocable offer for a period of sixty (60) days from the opening date or until the date of the award, whichever is earlier.

## **FORMAT**

Respondents must use the proposal form supplied and it must be signed by a person authorized to sign on behalf of the Respondent.

**PROPOSAL FORM  
NOTICE OF SALE OF LAND**

**[327 S. HANCOCK, PENTWATER – OFFERED BY THE  
VILLAGE OF PENTWATER AND THE TOWNSHIP OF PENTWATER]**

Total Proposal \_\_\_\_\_

Respondent Name \_\_\_\_\_

Respondent Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

Email Address \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Date \_\_\_\_\_

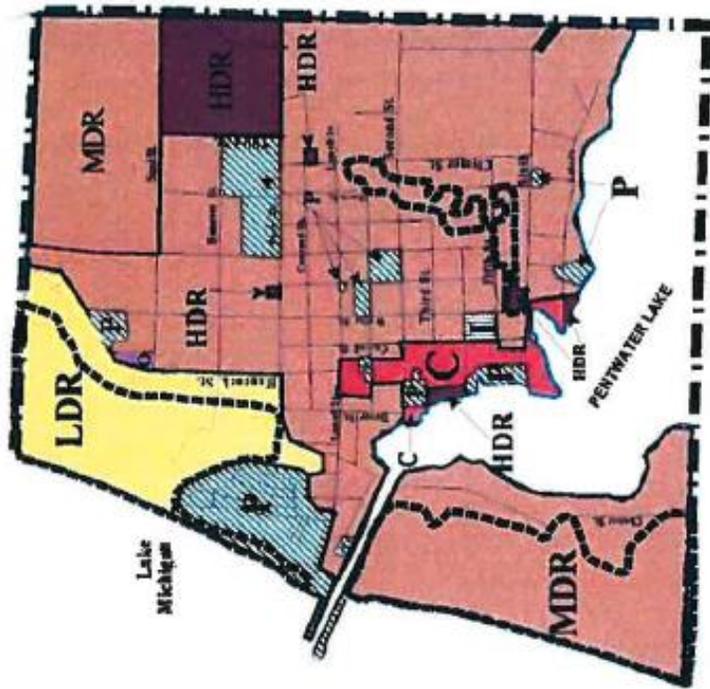
Federal Employer ID or Taxpayer ID \_\_\_\_\_

**Attachment A**  
**Photo of Building**



# Attachment B

## Future Land Use Map



**Future Land Use  
Village of Pentwater**

- Low Density Residential
- Medium Density Residential
- High Density Residential
- Central Business
- Office
- Industrial
- Public/Semi-Public
- Environmentally Sensitive Development Area





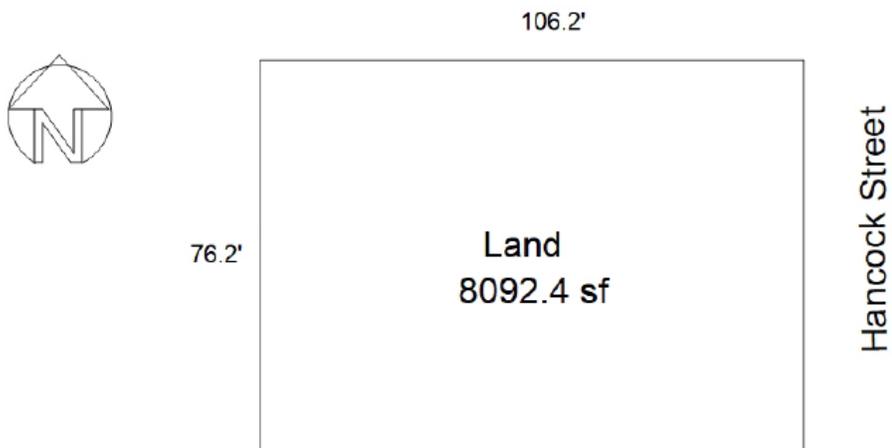
Desc. of Bldg/Section: Calculator Occupancy: Governmental Buildings		Construction Cost High Above Ave. Ave. X Low		<<<<<< Calculator Cost Computations >>>>>>	
Class: C Gross Bldg Area: 8,292 Stories Above Grd: 2 Average Sty Hght: 12 Bsmnt Wall Hght: 8		** ** Calculator Cost Data ** ** Quality: Average Heat#1: Zoned A.C. Warm & Cooled Air 100% Heat#2: Electric, Cable or Baseboard 0% Ave. SqFt/Story: 4146 Has Elevators: *** Basement Info *** Area: 4146 Perimeter: Type: Parking Basement Heat: No Heating or Cooling * Mezzanine Info * Area #1: Type #1: Area #2: Type #2: * Sprinkler Info * Area: Type: Average		<<<<<< Calculator Cost Computations >>>>>> Class: C Quality: Average Stories: 2 Story Height: 12 Perimeter: 0 Base Rate for Upper Floors = 143.45 Parking Basement Basement, Base Rate for Basement = 44.40 (Basement Fireproofing Rate = 0.00) (10) Heating system: Zoned A.C. Warm & Cooled Air Cost/SqFt: 35.07 100% Bsmnt Heating system: No Heating or Cooling Cost/SqFt: 0.00 Adjusted Square Foot Cost for Upper Floors = 178.52 Adjusted Square Foot Cost for Basement = 44.40 Total Floor Area: 8,292 Base Cost New of Upper Floors = 1,480,287 Basement Area: 4,146 Base Cost New of Basement = 184,082 Eff.Age:50 Phy.&Good/Abnr.Phy./Func./Econ./Overall %Good: 40 /100/75 /100/30.0 Reproduction/Replacement Cost = 1,664,369 Total Depreciated Cost = 499,311 ECF (4000 ORIGINAL PLAT VILLAGE/LOVELLS) 0.700 => TCY of Bldg: 1 = 349,517 Replacement Cost/Floor Area= 200.72 Est. TCY/Floor Area= 42.15	
(1) Excavation/Site Prep:		(7) Interior:		(11) Electric and Lighting:	
(2) Foundation: Brick/Stone Block		(8) Plumbing:		Outlets:	
(3) Frame:		Many Above Ave. Average Typical Few None Total Fixtures Urinals 3-Piece Baths Wash Bowls 2-Piece Baths Water Heaters Shower Stalls Wash Fountains Toilets Water Softeners		Few Average Many Unfinished Typical Unfinished Typical	
(4) Floor Structure:		(9) Sprinklers:		Flex Conduit Incandescent Rigid Conduit Fluorescent Armored Cable Mercury Non-Metallic Sodium Vapor Bus Duct Transformer	
(5) Floor Cover:		(10) Heating and Cooling:		(13) Roof Structure: Slope=0 (14) Roof Cover:	
(6) Ceiling:		Gas Coal Hand Fired Oil Stoker Boiler		(40) Exterior Wall: Thickness Bsmnt Insul.	

\*\*\* Information herein deemed reliable but not guaranteed\*\*\*

**Attachment D**  
**Building Prints**



**Third Street**



## Attachment E

### REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (“**Agreement**”) is made and entered into on the Effective Date by and between **Village of Pentwater**, 327 S. Hancock Street, P.O. Box 622, Pentwater, Michigan 49449, and **Pentwater Township**, 500 N. Hancock Street, P.O. Box 512, Pentwater, Michigan 49449, municipal corporations organized and existing under and by virtue of the laws of the State of Michigan (“**Sellers**”), and [Name of Purchaser] (“**Purchaser**”).

#### Recitals

A. Sellers own that certain parcel of land depicted on attached **Exhibit A** (the “**Land**”), on which a building and certain related improvements, fixtures and structures are located (collectively, the “**Improvements**”), located at 327 S. Hancock Street, Pentwater, Michigan 49449, having been assigned tax parcel number 64-044-676-001-00, and legally described as the North 762 feet of the East 106.2 feet of Lots 1 and 2, Block 6 (the Land and Improvements may be referred to collectively in this Agreement as the “**Premises**”, which is further defined below).

B. Sellers desire to sell the Premises to Purchaser and Purchaser desires to purchase the Premises from Sellers, subject to and in accordance with the terms and conditions of this Agreement.

#### Agreement

Now, therefore, in consideration of the mutual undertakings hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

##### 1. Purchase and Sale.

1.1 **Purchase and Sale.** Sellers shall sell to Purchaser, and Purchaser shall purchase from Sellers, the Premises strictly in accordance with and subject to the terms, conditions, and provisions hereinafter set forth.

1.2 **Deposit.** Within five days of the Effective Date, Purchaser shall deposit with [Name of Title Insurance Company] (the “**Title Company**”) the sum of Twenty Thousand Dollars (\$20,000) (the “**Deposit**”). In the event the sale is consummated as contemplated hereunder, the Deposit shall be paid by the Title Company to Sellers at the Closing and credited against the Purchase Price. In the event the sale is not consummated for any reason, disposition of the Deposit shall be governed by the provisions of this Agreement applicable thereto.

1.3 **The Premises.** The Land and the Improvements, together with the items hereinafter set forth in this Section 1.3, are herein referred to collectively as the Premises:

(a) All permits, licenses and rights (whether or not of record), tenements, hereditaments, privileges, and appurtenances in any way belonging or appertaining to

the Land or the Improvements, including, without limitation, any and all development, air, water and riparian rights relating to the Land, all to the extent owned by Sellers and to the extent transferable;

(b) All land, if any, lying in the bed of any street, road, or avenue, open or proposed, at the foot of, adjoining or below the Land to the center line of such street, road or avenue, and in and to any strips and gores adjoining the Land;

(c) All easements and all rights, whether or not of record, appurtenant to the Land and the use of all strips and rights-of-way (including public and private vehicular and pedestrian rights-of-way), if any, abutting, adjacent, contiguous to or adjoining the Land, all to the extent transferable; and

(d) All licenses, permits, certificates of occupancy, and franchises issued by any federal, state, county or municipal authority relating to the use, maintenance or operation of the Premises, all to the extent transferable.

2. **Purchase Price.** The purchase price for the Premises shall be [Insert the Purchase Price (\$ \_\_\_\_\_)] (the “**Purchase Price**”). The Purchase Price, plus or minus prorations and adjustments provided for in this Agreement, shall be paid in full to Sellers at Closing by certified, cashier’s or Title Company check or by wire transfer to an account designated by Sellers.

3. **Title and Deed.** Sellers shall deliver to Purchaser, at the Closing, a covenant deed conveying title to the Premises to Purchaser in fee simple, free and clear of all liens and encumbrances, except (a) the Permitted Exceptions (as hereinafter defined), (b) any real property taxes that are not yet due and payable, and (c) public roads, streets and highways.

4. **Title Insurance and Survey.**

4.1 **Title Commitment.** Within 21 days of the Effective Date, Sellers, at its expense, shall furnish to Purchaser a commitment for an ALTA Owner’s Title Insurance Policy (the “**Commitment**”) issued by the Title Company covering the Premises and showing title in fee simple to be vested in Sellers, together with a true, correct and complete copies of all documents described or referenced as exceptions in Schedule B of the Commitment. The Commitment shall: (a) be in an amount equal to the Purchase Price; (b) name Purchaser as the proposed insured; and (c) include such affirmative endorsements as Purchaser may reasonably request in writing to Sellers within five days of the Effective Date and which are available in Michigan, provided that any additional premium or charge for such endorsement shall be paid by Purchaser. In addition, it shall be Purchaser’s obligation, at Purchaser’s expense, to obtain any survey or other documents (other than the covenant deed and documents required to be provided by Sellers under this Agreement) required by the Title Company for any such requested endorsements.

4.2 **Survey.** Prior to the Contingency Termination Date, Purchaser may, at its expense, obtain a new ALTA/ASCM survey of the Premises (“**Survey**”). The Survey shall be performed by a licensed surveyor and certified to Purchaser, Sellers, and the Title Company, and shall contain the legal description of the Premises.

4.3 **Title Review and Title Policy.** Not later than 45 days from the Effective Date (the “**Contingency Termination Date**”), Purchaser shall notify Sellers (the “**Objection Notice**”) which of the matters described in the Commitment and/or the Survey, if any, that Purchaser finds unacceptable (the “**Unpermitted Matters**”), and Sellers shall then have until the date that is 30 days after Sellers’ receipt of the Objection Notice to elect to remove such Unpermitted Matters or remedy same in a manner satisfactory to Purchaser. The Closing may be delayed upon written agreement of the parties to accommodate the removal of the Unpermitted Matters. All matters disclosed on the Commitment or in the Survey, if any, and not objected to by Purchaser in an Objection Notice shall be deemed “**Permitted Exceptions**”. If Sellers are unable or unwilling to remove any such Unpermitted Matters or remedy same in a manner satisfactory to Purchaser, in Purchaser’s sole and absolute discretion, and within the time period described above, Purchaser shall have the options of (a) proceeding with this Agreement, in which event Purchaser shall accept title subject to such other unremoved Unpermitted Matters without reduction in the Purchase Price, or (b) terminate this Agreement. Purchaser shall exercise one of its options set forth in clause (a) or (b) above by providing written notice thereof to Sellers on or before the Closing Date (as hereinafter defined), and, if Purchaser fails to provide such notice within such time, then Purchaser shall be deemed to have elected to proceed in accordance with clause (a). If Purchaser proceeds under clause (a), all uncured Unpermitted Matters shall become Permitted Exceptions. At the Closing, and as a further condition of Purchaser’s performance of its obligations hereunder, Sellers, at its cost, shall cause the Title Company to deliver to Purchaser an ALTA owner’s title insurance policy (the “**Title Policy**”) issued in accordance with the provisions of the Commitment as specified above (except the Title Policy shall name Purchaser as the owner of the Premises), dated as of the time of recording of the covenant deed to the Premises from Sellers to Purchaser and subject only to the Permitted Exceptions.

## 5. **Purchaser’s Contingencies.**

### 5.1 Due Diligence Investigation.

(a) Commencing on the Effective Date, Purchaser, its agents, engineers, employees, attorneys, accountants, contractors and surveyors shall have the right to conduct all tests, inspections, and other studies and investigations concerning the Premises that Purchaser requires (including, without limitation, environmental tests and assessments, inspection of the physical condition of the Premises, investigation of zoning and other legal requirements) to determine whether the Premises is satisfactory to Purchaser. Purchaser may enter upon the Premises provided (i) Purchaser notifies Sellers in writing of its intent to inspect, test, survey or study a reasonable period of time prior to Purchaser’s entry and (ii) if requested by Sellers, Purchaser is accompanied by a representative of Sellers. Notwithstanding the foregoing, Purchaser will conduct any such physical inspections, tests, examinations, studies and appraisals only on business days and will use commercially reasonable efforts to minimize interference with Sellers’ operations at the Premises and will not perform drilling or sampling on the Premises without the prior written consent of Sellers, which consent shall not be unreasonably withheld or delayed.

(b) If not previously delivered by Sellers to Purchaser, within 21 days after the Effective Date, Sellers shall deliver to Purchaser the following documents, to the extent they exist and are in Sellers’ possession or control:

- (i) Any existing survey of the Premises;
- (ii) All plans and specifications, building permits, certificates of occupancy and other governmental licenses, permits, and approvals relating to the Premises;
- (iii) Copies of all asbestos, radon, mold, soil and other environmental assessments and reports, and all roof, structural and other physical inspection reports, assessments, audits or evaluations of the Premises; and
- (iv) All other written information and documentation reasonably requested by Purchaser concerning the ownership, operation, leasing, use or maintenance of the Premises.

Sellers make no representation or warranty regarding the truth, accuracy or completeness of any information or documents delivered to Purchaser pursuant to this Section 5.1(b).

(c) If Purchaser, in its sole and absolute discretion, is dissatisfied with the Premises based on the tests, inspections, studies, investigations and review of documents described in subsections (a) and (b) above, then Purchaser may terminate this Agreement by giving written notice to Sellers of such termination on or before the Contingency Termination Date and the Deposit shall be returned to Purchaser, so long as Purchaser has fully complied with Section 5.1(d). In the event Purchaser does not terminate this Agreement as provided above on or before the Contingency Termination Date, the Deposit shall become non-refundable to Purchaser, but shall be applicable to the Purchase Price at Closing.

(d) Purchaser shall promptly repair any physical damage to the Premises caused by the testing and inspections conducted by Purchaser pursuant to this Section 5.1 (collectively, the “**Tests**”) and shall promptly remove any mechanics’ liens arising from the work performed to complete the Tests. Purchaser further agrees to keep the results of the Tests confidential, except to the extent that disclosure may be required by law or other governmental requirement or may be reasonably required to be made to Purchaser’s attorneys, lenders, consultants, accountants or other advisors or agents in connection with the purchase, ownership or operation of the Premises by Purchaser. Purchaser shall indemnify, defend and hold Sellers harmless from and against any claim, loss, cost or damage (including reasonable attorneys’ fees, but excluding incidental or consequential damages) resulting from or related to the presence of or entry by Purchaser or its agents, engineers, employees, attorneys, accountants, contractors or surveyors onto the Premises or Purchaser’s failure to comply with its obligations set forth in this subsection (d), which obligations shall survive any termination of this Agreement. If the purchase does not close, Purchaser must promptly provide Sellers, without demand by Sellers, but as a condition precedent to the return of the Deposit (if Purchaser is entitled to have the Deposit returned), legible copies of all due diligence materials generated by or for it, such as surveys, studies, reports, assessments and the like, in respect of the Premises.

(e) Prior to entry upon the Land and at all times thereafter during the term of this Agreement, Purchaser shall cause Purchaser’s agents to name, for the period during which they are conducting an inspection of the Premises, Sellers and its agents as additional insureds to Purchaser’s and/or Purchaser’s agents’ occurrence-based comprehensive general

liability insurance policies, which shall have aggregate coverage limits of not less than Two Million Dollars (\$2,000,000) single-limit coverage with contractual liability endorsement, and which insure Purchaser's obligations under this subparagraph. If any invasive work is conducted by or on behalf of Purchaser with respect to its due diligence, Purchaser shall also cause Purchaser's agents to name, for the period during which they are conducting an inspection of the Land and Improvements, Sellers and its agents as additional insureds to Purchaser's and/or Purchaser's agents' Professional Liability Insurance (including Environmental Impairment Insurance) which shall have aggregate coverage limits of not less than Two Million Dollars (\$2,000,000) single-limit coverage and which insure Purchaser's obligations under this subparagraph. No insurance required by this subparagraph may be cancelled or amended except upon 30 days' prior written notice to Sellers. The minimum levels of insurance coverage to be maintained by Purchaser hereunder shall not limit Purchaser's liability under this subparagraph. All such policies shall be written by underwriters acceptable to Sellers in its reasonable discretion. Purchaser shall promptly provide proof of insurance to Sellers for Sellers' approval. Sellers shall not have any obligation to cure, correct, investigate or remediate any environmental matter(s) identified and/or objected to by Purchaser and Purchaser shall have no obligation to accept, cure, correct, investigate or remediate any such environmental matters unless caused or exacerbated by Purchaser. The provisions of this subparagraph shall survive the Closing or the termination of this Agreement.

5.2 **Additional Conditions.** In addition to the other conditions set forth herein, Purchaser's obligation to acquire the Premises and consummate the other transactions contemplated hereunder shall be conditioned on: (a) all representations and warranties of Sellers being true and correct in all respects as of the Closing; and (b) there being no breach or default by Sellers of any of its other covenants, agreements, duties or obligations hereunder.

5.3 **Project Plan.** As part of the proposalding process, the Purchaser submitted a Project Plan. The following additional conditions and assurances shall be satisfied on or before Closing as part of the Project Plan. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 6. Closing.

6.1 **Closing Date.** Subject to the provisions of Sections 4 and 5 of this Agreement and any other applicable provisions hereof, the sale of the Premises to Purchaser and the other transactions described herein shall be consummated (the "**Closing**") on a date and time mutually agreed upon by the parties following the Contingency Termination Date, but in no event later than 2:00 pm on the last business day that is within 15 day after the Contingency Termination Date (the "**Closing Date**"). The Closing shall take place at the office of the Title Company in \_\_\_\_\_, Michigan.

### 6.2 Closing Documents.

(a) In addition to the Title Policy, Sellers shall deliver to Purchaser, at the Closing, the following:

(i) A covenant deed conveying to Purchaser fee simple title to the Premises subject to the Permitted Exceptions;

(ii) Title affidavits and other documents reasonably required by the Title Company in connection with its issuance of the Title Policy; and

(iii) A FIRPTA Statement from Sellers certifying that Sellers are not a “foreign person,” “foreign estate,” “foreign corporation” or “foreign partnership” or any other foreign entity as such terms are defined in Section 1445 of the Internal Revenue Code and the income tax regulations promulgated thereunder.

(b) Purchaser shall deliver to Sellers at Closing the Purchase Price, together with such documents reasonably required of Purchaser by the Title Company to issue the Title Policy and close the purchase by Purchaser of the Premises.

(c) At the Closing, Sellers and Purchaser shall jointly execute and deliver (i) a closing statement, and (ii) the Lease (as defined below).

**6.3 Closing Costs.** Purchaser shall pay the following expenses incurred in connection with the transactions described herein: (a) one-half of all closing fees charged by the Title Company, (b) the fee for the recording of the covenant deed, (c) all premiums and charges for any endorsements to the Title Policy requested by Purchaser, (d) the cost of the Survey obtained by Purchaser (if any), and (d) Purchaser’s legal fees and expenses. Sellers shall pay the following closing costs and expenses incurred in connection with the transactions described herein: (i) the costs of the Commitment and Title Policy, and the cost of removing all Unpermitted Matters from title which Sellers agreed to remove pursuant to Section 4.3, (ii) one-half of all closing fees charged by the Title Company, and (iii) Sellers’ legal fees and expenses.

**7. Real Property Taxes and Assessments.** Sellers are tax-exempt governmental entities; and therefore, the Premises is not currently subject to real property taxes. Purchaser shall pay any and all real property taxes and assessments that first become due after the Closing Date.

**8. Possession.** At the Closing, Sellers and Purchaser shall enter into a lease agreement for the Premises in the form and containing the terms attached hereto as Exhibit B (the “Lease”) under which Sellers shall retain possession of the Premises until \_\_\_\_\_, 2021. *[This provision may not be necessary.]*

**9. Real Estate Commissions.** Each party represents and warrants to the other that, except no person or entity acting as real estate broker, finder or real estate agent brought about this Agreement. Each party agrees to and does hereby indemnify the other from all loss, damage, cost, or expense (including attorneys’ fees) that the other may suffer as a result of any claim or action brought by any person or entity acting or allegedly acting on behalf of a party in connection with this transaction.

**10. Sellers’ Representations and Warranties.** Sellers represent and warrant to Purchaser that:

10.1 Sellers have full power and authority to enter into this Agreement, bind Sellers and the Premises to the commitments made hereunder, and convey or cause the conveyance of the Premises to Purchaser.

10.2 The execution, delivery and performance by Sellers of this Agreement shall not constitute or cause a default or breach of any agreement or undertaking of Sellers or concerning the Premises.

10.3 Sellers have no knowledge and have received no notice of any claim, demand, damage, action, or cause of action of any person, entity or governmental agency or instrumentality affecting the Premises.

10.4 No person or entity, except Purchaser, has an option, right of first refusal or other purchase rights with respect to the Premises.

**11. Purchaser's Representations and Warranties.** Purchaser represents and warrants to Sellers that:

11.1 Purchaser has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

11.2 The execution of this Agreement by Purchaser is the duly authorized and legally binding action of Purchaser, and upon execution hereof, Purchaser shall be bound by and subject to the terms and provisions of this Agreement.

**12. Survival of Representations and Warranties.** The representations and warranties of the parties contained in this Agreement or in any document executed in connection herewith, including, without limitation, the provisions of Sections 10 and 11 hereof, shall be continuing representations and warranties, shall be deemed to be remade at Closing, shall not merge with or into any deed of conveyance or other document or instrument delivered at or in connection with the Closing and shall survive the Closing for a period of one year after the Closing; provided, however, that such one-year limitation shall not apply to: (a) any fraud; or (b) any claim or cause of action initiated prior to the end of such one-year period but not settled prior to the end of such period. Each party hereby agrees to indemnify, defend and hold harmless the other party and their respective successors and assigns, from and against all claims, liabilities, damages, losses, costs and expenses, including reasonable attorneys' fees and court costs, resulting from or in connection with any misrepresentation or breach of warranty made by the indemnifying party in this Agreement or in any document, certificate or other instrument given or delivered to the other party pursuant to this Agreement. Notwithstanding the foregoing, neither party shall have liability resulting from any misrepresentation or breach of any representation or warranty set forth in this Agreement if the other party had actual knowledge of such misrepresentation or breach of warranty before Closing.

**13. As-Is Condition.** Purchaser agrees, except as otherwise provided in this Agreement, that Purchaser is purchasing the Premises "AS IS", "WHERE IS" and "WITH ALL FAULTS," with no right of set-off or reduction in the Purchase Price, and specifically and expressly without reliance on any warranties, representations or guarantees, whether express, implied or statutory, of any kind, nature, or type whatsoever, including without limitation,

warranties, representations or guarantees with respect to the quality, character, or condition of the Premises, including the presence of any toxic or hazardous materials, substances, or wastes regulated under any applicable law located on, at, under or emanating from or about the Premises, whether latent or patent, merchantability, habitability, utility, tenantability, workmanship, operations, state of maintenance or repair, compliance with statutory or other governmental, regulatory or industry standards or fitness for a particular use, or with respect to the value, profitability or marketability of any part of the Premises, or with respect to any other matter relating to or affecting the Premises. Except as otherwise provided in this Agreement, Sellers disclaim and renounce, and Purchaser acknowledges and agrees that it is not relying on, any such representations or warranties. Purchaser represents to Sellers that, as of the Contingency Termination Date, Purchaser will have had ample opportunity to make a proper inspection, examination and investigation of the Premises to familiarize itself with its condition and that Purchaser will do so to its satisfaction. Upon the Closing, except as otherwise provided in this Agreement, Purchaser shall have no claim in law or in equity and releases and forever discharges Sellers (and its officers, directors, managers, agents, brokers, employees, representatives, successor and assigns) from any claims, actions, liabilities, losses or obligations, based upon the condition of the Premises or the failure of the Premises to meet any standards, including without limitation, the presence of any toxic or hazardous materials, substances or wastes regulated under any applicable law located on, at, under or emanating from or about the Premises or any violation or alleged violation of any applicable law. Further, anything in this Agreement to the contrary notwithstanding, in no event shall Sellers be liable for incidental, special exemplary or consequential damages, including, without limitation, loss of profits or revenue, interference with business operations, loss of tenants, lenders, investors, buyers, diminution in value of the Premises, or inability to use the Premises, due to the condition of the Premises.

**14. Operation of Premises Prior to Closing.** Sellers covenant that, from the Effective Date through the Closing, Sellers shall conduct its business involving the Premises as follows:

14.1 Sellers will refrain from transferring any part of the Premises or creating on the Premises any new easements, liens, encumbrances, or other interests or initiating any change to the zoning classification of the Land;

14.2 Sellers will refrain from entering into or amending any lease, contract, or other agreement regarding the Premises which cannot be terminated as of the Closing Date, without Purchaser's prior written consent in each instance;

14.3 Sellers will promptly furnish Purchaser with copies of all notices received by Sellers of any violation by Sellers or the Premises of federal, state or local laws, ordinances, regulations, or orders having jurisdiction against or affecting the Premises or the use or operation thereof;

14.4 Sellers will continue to operate, maintain and repair the Premises consistent with past practices and in a manner that maintains the Premises in their current condition.

**15. Casualty or Condemnation.**

15.1 In the event, prior to the Closing, of a condemnation or other taking of the Premises, or any part of the Premises, or any rights of access or other rights benefiting the Premises as a result of the exercise of the power of eminent domain, or in the event that any type of proceeding for such a condemnation or taking is commenced prior to the Closing by any governmental body, then Sellers shall immediately notify Purchaser in writing and Purchaser shall have the option to either: (i) terminate this Agreement and neither party shall have any further obligations or liabilities hereunder, except for those obligations hereunder that expressly survive the termination of this Agreement; or (ii) proceed with the Closing, in which event (A) if the taking is consummated prior to the Closing, the Purchase Price shall be reduced by the amount of the award received by Sellers as a result of the taking, or (B) if the taking is not consummated prior to the Closing, Sellers shall assign to Purchaser all right, title and interest in and to the condemnation proceeds and awards, and Purchaser shall have the sole and exclusive right to negotiate, contest and settle all such eminent domain proceedings. Purchaser shall exercise its option under clause (i) or (ii) of this Section 15.1 by providing Sellers with a written notice of its decision within 30 days after Purchaser receives from Sellers written notice of the proposed condemnation or taking, together with such additional information concerning the proposed condemnation or taking as Purchaser may reasonably request.

15.2 In the event of a material damage or casualty to the Premises occurring prior to the Closing, Sellers shall immediately notify Purchaser in writing, and if the cost to repair the damage exceeds \$50,000 (as determined by an independent insurance adjuster selected by Purchaser and approved by Sellers), Purchaser shall have the option to either (i) terminate this Agreement and neither party shall have any further obligations or liabilities hereunder, except for those obligations hereunder that expressly survive the termination of this Agreement; or (ii) proceed with the Closing. This provision does not apply to any condition or attribute of the Premises existing as of the date of this Agreement. If Purchaser is not entitled to terminate or elects not to terminate this Agreement pursuant to clause (i) above, then Sellers shall pay over and assign to Purchaser all insurance proceeds payable as a result of the damage to the Premises.

## 16. **Default/Remedy.**

16.1 **Sellers Default.** In the event of a default by Sellers of which Purchaser is aware prior to Closing in the performance or observance of any of Sellers' duties or obligations herein contained, and upon the failure of Sellers to cure such default within 10 days following written notice thereof from Purchaser, Purchaser, at its option and as its sole remedies, may either: (a) terminate this Agreement in which event the Deposit shall be returned to Purchaser and Sellers shall reimburse Purchaser for all costs and expenses incurred by Purchaser in negotiating and undertaking the transactions contemplated hereby and investigating the Premises, including, without limitation, all costs associated with the investigations and other activities described or contemplated under Section 5.1 above, up to the sum of \$10,000; or (b) specifically enforce this Agreement, by legal action or otherwise. In the event of a default by Sellers of which Purchaser is not aware prior to Closing, including, without limitation, a breach of any representation or warranty not discovered until after Closing, and upon the failure of Sellers to cure such default within 10 days following written notice thereof from Purchaser, Purchaser shall be entitled to exercise any and all rights and remedies at law or in equity.

16.2 **Purchaser Default.** In the event of a default by Purchaser of which Sellers are aware prior to Closing in the performance or observance of any of Purchaser's duties or obligations herein contained, and upon the failure of Purchaser to cure such default within 10 days following written notice thereof from Sellers, Sellers may terminate this Agreement and Purchaser shall pay Sellers the Deposit as liquidated damages and as Sellers' sole and exclusive remedy against Purchaser. In the event of a default of Purchaser of which Sellers are not aware prior to Closing, including, without limitation, a breach of any representation or warranty not discovered until after Closing, and upon the failure of Purchaser to cure such default within 10 days following written notice thereof from Sellers, Sellers shall be entitled to exercise any and all rights and remedies at law or in equity.

16.3 **Costs.** All reasonable attorneys' fees and court costs incurred by a non-defaulting party to enforce this Agreement against a defaulting party shall be paid by the defaulting party.

17. **Miscellaneous.**

17.1 **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given (a) on the same date as the date on which such notice is delivered personally, (b) on the date that is three business days after the date on which such notice is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested or (c) on the date that is one business days after the date on which such notice is sent by overnight courier services (such as Federal Express or any other nationally-recognized courier service), and, in each case, addressed as follows:

If to Sellers: Chris Brown, Manager  
Village of Pentwater  
327 S. Hancock Street  
P.O. Box 622  
Pentwater, Michigan 49449

Lynne Cavazos, Supervisor  
Pentwater Township  
500 N. Hancock Street  
P.O. Box 512  
Pentwater, Michigan 49449

If to Purchaser: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other address as either party may from time to time specify in a written notice to the other in accordance with the terms hereof.

17.2 **Survival.** The provisions of this Agreement shall not be merged into any deed or other document and shall survive Closing.

17.3 **Assignment.** Neither party hereto shall have the right to assign this Agreement or any right or interest hereunder to any person or entity without the other party's prior written consent, except Purchaser may assign this Agreement, in whole or in part, without Sellers' consent, to any Affiliate of Purchaser. For purposes of the prior sentence, the term "**Affiliate**" shall mean and include any person or entity that owns or controls, is owned or controlled by or is under common ownership or control with Purchaser, in whole or in part. Upon such assignment to an Affiliate, the assignor shall not be released or discharged from its duties, obligations and liabilities hereunder.

17.4 **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective grantees, successors and assigns.

17.5 **Amendments.** This Agreement may be amended or modified only by a written instrument duly authorized and executed by the party or parties intended to be bound thereby.

17.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

17.7 **Section Headings.** The section headings inserted in this Agreement are for convenience only and are not intended and shall not be construed to limit, enlarge or otherwise affect the scope or intent of this Agreement or the meaning of any provision hereof.

17.8 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

17.9 **Merger of Prior Agreements.** This Agreement supersedes all prior agreements, understandings, representations and inducements, written and oral, between the parties hereto relating to the subject matter hereof, including, without limitation, any so-called letters of intent executed by one or both of the parties.

17.10 **Time of Essence.** Time is of the essence of this Agreement.

17.11 **Severability.** In the event that any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the other provisions hereof so that this Agreement is valid and enforceable to the fullest extent permitted by law.

17.12 **Independent Counsel; Interpretation.** Purchaser and Sellers each acknowledge that: (a) they have been represented by independent counsel, or have had the opportunity to be represented by independent counsel, in connection with this Agreement; and (b) this Agreement is the result of arms-length negotiations between the parties. Accordingly, notwithstanding any rule of law to the contrary: (i) the fact that this Agreement was prepared by Sellers' counsel as a matter of convenience shall have no import or significance, and any uncertainty or ambiguity in this Agreement shall not be construed against Sellers because Sellers prepared this Agreement; and (ii) no deletions from prior drafts of this Agreement shall be construed to create the opposite intent of the deleted provisions.

17.13 **Tax-Deferred Exchange.** Sellers acknowledge that the Purchaser may be entering into this transaction in connection with a tax-deferred exchange (the “**Exchange**”). If requested by Purchaser, Sellers shall cooperate with the requesting party in effectuating such Exchange, including executing any documents, instruments or agreements reasonably requested by the Purchaser, provided Sellers shall not be obligated to (i) expend any costs in connection with such Exchange (excluding legal fees of Sellers’ counsel in reviewing any such documents, instruments or agreements) or (ii) accept or assume any additional obligations or liabilities.

In Witness Whereof, this Agreement has been executed by the parties and is effective as of the date on which a party last signs below (the “**Effective Date**”).

**Sellers:**

VILLAGE OF PENTWATER

By: \_\_\_\_\_  
Jeff Hodges  
Its: President

By: \_\_\_\_\_  
Rande S. Listerman  
Its: Clerk

Dated: \_\_\_\_\_, 2021

PENTWATER TOWNSHIP

By: \_\_\_\_\_  
Lynne Cavazos  
Its: Supervisor

By: \_\_\_\_\_  
Sue Ann Johnson  
Its: Clerk

Dated: \_\_\_\_\_, 2021

**Purchaser:**

[Name of Purchaser]

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2021

## **EXHIBIT A**

327 S. HANCOCK STREET

The North 76.2 feet of the East 106.2 feet of Lots 1 and 2 of Block 6, Village of Pentwater

Permanent Parcel Number: 64-044-676-001-00

# **EXHIBIT B**

## **The Lease**