

FILED
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Clerk of Court
Shawano Co., WI
2019CV000010

STATE OF WISCONSIN CIRCUIT COURT SHAWANO COUNTY

VILLAGE OF MATTOON and
TOWN OF HUTCHINS
 Plaintiffs,

SHEPHERD’S WATCH COMMUNITY CENTER, Inc.
 Intervenor-Plaintiff

v.

UNIFIED SCHOOL DISTRICT OF ANTIGO,
 Defendant.

Declaratory Judgment
Case Code: 30701
Case No. 19-CV-10

SHEPHERD’S WATCH COMMUNITY CENTER, INC’S COMPLAINT

NOW COMES Shepherd’s Watch Community Center, Inc. (“Shepherd’s Watch”), by its attorneys Wisconsin Institute for Law & Liberty, and alleges to the Court as follows:

1. Shepherd’s Watch brings this declaratory judgment action pursuant to Wis. Stat. § 806.04 to obtain a declaration 1) that plaintiffs Village of Mattoon (“Mattoon”) and Town of Hutchins (“Hutchins” and, together with Mattoon, the “Municipalities”) own the property located at 507 Stone Avenue, Mattoon, Wisconsin 54450 (the “Property”) and possess the legal right to convey the Property to Shepherd’s Watch; and 2) that the Unified School District of Antigo (“Antigo School District”) has no right, title, or interest in the Property. The Municipalities and Shepherd’s Watch have lawfully entered into a contract for the conveyance of the Property by the Municipalities to Shepherd’s Watch for valuable consideration, and by contesting the Municipalities’ ownership of the Property, Antigo School District is harming Shepherd’s Watch by interfering with the lawful performance of that contract by the Municipalities.

PARTIES

2. Shepherd's Watch hereby adopts and incorporates by reference paragraphs 2 through 4 of the Municipalities' Complaint as though fully set forth herein.

3. Shepherd's Watch is a Wisconsin nonstock, not for profit corporation and Christian community center with its principal office located at P.O. Box 80, Mattoon, WI 54450.

JURISDICTION AND VENUE

4. Shepherd's Watch hereby adopts and incorporates by reference paragraphs 6 through 8 of the Municipalities' Complaint as though fully set forth herein.

STATEMENT OF SHEPHERD'S WATCH'S INTEREST

5. This matter pertains to a dispute as to ownership of the former Mattoon Elementary School located at 507 Stone Avenue, Mattoon, Wisconsin 54450 and legally described as follows (the "Property"):

Parcel One:

Lot One (1) in Block Twenty-five (25) of the Plat of Mattoon, being a subdivision of the East Half (E ½) of the Southeast Quarter (SE ¼) of Section Nine (9) and the West Half (W ½) of the Southwest Quarter (SW ¼) of Section (10), Township Twenty-nine (29) North, of Range Twelve (12) East.

(Village of Mattoon, County of Shawano, Wisconsin)

Tax Key 151 70050 0740 (subject premise and other land)

Parcel Two:

Lots Two (2) and Three (3) in Block Twenty-five (25) of the Village of Mattoon

(Village of Mattoon, County of Shawano, Wisconsin)

Tax Key 151 70050 0740 (subject premise and other land)

Parcel Three:

Lots number Four (4) and Five (5) in Block Twenty-five (25) of the Plat of the Village of Mattoon, Shawano County, Wisconsin.

(Village of Mattoon, County of Shawano, Wisconsin)

Tax Key 151 70050 0750 (subject premise and other land)

6. The Property was operated as a school for over 100 years until 2016 when the Antigo School District closed the public school which was then operating on the Property. In early 2018, Shepherd's Watch became interested in purchasing the Property in order to reopen the building on the Property as a community center and ultimately as a private school.

7. Thereafter, Shepherd's Watch began discussing purchasing the Property with the Municipalities.

8. The Antigo School District stated that it would allow the sale of the Property to Mattoon for \$1, but only if Mattoon agreed to a restrictive covenant on the Property that would prohibit any and all subsequent owners, including Shepherd's Watch, from opening or operating a school on the Property. On information and belief, the Antigo School District demanded this restrictive covenant because it does not want any "competition" from a private school.

9. In contrast, the Municipalities support Shepherd's Watch plan for the Property and have told Shepherd's Watch that they think a community center and school at that location would benefit Mattoon and Hutchins.

10. On April 16, 2019, the Municipalities entered into a real property purchase agreement with Shepherd's Watch, pursuant to which the Municipalities will convey the Property to Shepherd's Watch for a price of \$100 (the "Purchase Contract"). A true and correct copy of the Purchase Contract is attached hereto as Exhibit A.

11. Shepherd's Watch's obligations under the Purchase Contract are contingent on the Municipalities' obtaining a final declaration that they own the Property free and clear of any purported interest of the Antigo School District.

12. Shepherd's Watch's interest under the Purchase Contract is sufficient to allow Shepherd's Watch either 1) to intervene as of right pursuant to Wis. Stat. § 803.09(1) or

permissively pursuant to Wis. Stat. § 803.09(2); 2) to be joined as a party pursuant to Wis. Stat. § 803.03(1)(b); or 3) to be made a party pursuant to Wis. Stat. § 806.04(11). *Cf.* Wis. Stat. § 840.03(1) (authorizing “[a]ny person having an interest in real property” to “bring an action relating to that interest” for specified remedies including a declaration of interest); Wis. Stat. § 840.01(1) (defining “interest in real property” to include “present and future rights to, title to, and interests in real property”); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 255-263 (1977) (developer with contract to purchase property contingent on receiving rezoning approval had standing to challenge rezoning denial even though developer did not yet own subject property); *Hoppmann v. Reid*, 86 Wis. 2d 531, 525, 273 N.W.2d.298 (1979) (concluding, under intervention statute, that purchasers of property met test of having “such an interest in the property . . . as requires them to be parties for their own protection” in lawsuit between seller of property and prior tenant claiming right of first refusal).

FACTUAL BACKGROUND

13. On December 5, 1894, the Mattoon Manufacturing Company of Sheboygan deeded Parcel One of the Property to School District No. 6, Town of Hutchins (“Hutchins School District No. 6”).

14. Shortly thereafter, Hutchins School District No. 6 built an elementary school building on Parcel One, with the school being completed prior to 1898.

15. Under Wisconsin law in effect when Parcel One was acquired and the school was built, if Hutchins School District No. 6 was dissolved, the town that initiated the creation of the school district (in this case, Hutchins) would take charge of the property belonging to the school district at the time of its dissolution. Wis. Stat. § 424 (1889).

16. Thus, when Hutchins School District No. 6 acquired Parcel One and built a school building on the parcel, Hutchins and the people of Hutchins all understood that should Hutchins School District No. 6 ever dissolve, the property would revert to Hutchins for disposition as it saw fit.

17. Thus, Hutchins obtained an interest in the real estate when it was acquired by Hutchins School District No. 6.

18. In 1907, the existing elementary school was moved across the street. A larger, two-story high school was built on Parcel One of the Property and was ready to be used by 1909. That year, Joint School District No. 6, Village of Mattoon and Town of Hutchins (“Joint School District No. 6”) was created.

19. On November 17, 1939, Parcel Two of the Property was acquired by Joint School District No. 6, Village of Mattoon, and used as open space by the school.

20. On October 31, 1947, School District No. 1, Town of Hutchins, Hutchins School District No. 6, and Joint School District No. 1, Village of Mattoon and Town of Hutchins were consolidated with and into Joint School District No. 6.

21. In 1951, Joint School District No. 6 paid for and began building a new high school building on the Property, with the first portion of the building completed in 1952.

22. In 1955, Joint School District No. 6 built and paid for an addition to the school building, which doubled the school’s area.

23. On April 17, 1959, Joint School District No. 6 acquired Parcel Three of the Property, which was used as a playground for the school.

24. On June 30, 1962, Joint School District No. 6 dissolved and its territory was assigned to defendant Antigo School District for school purposes.

25. Under Wisconsin law, as part of the dissolution of Joint School District No. 6 and the assignment of territory to the Antigo School District, the Antigo School District acquired possession and control of the Property but not ownership.

26. In June of 2016, the Antigo School District lost its right to possession and control of the elementary school operating on the Property when it closed the school and no longer operated a school at that location for the benefit of the people who lived in the area of the former Joint School District No. 6.

CAUSE OF ACTION FOR DECLARATORY JUDGMENT

27. Shepherd's Watch incorporates by reference the preceding allegations in this Complaint.

28. For over 150 years, the Wisconsin Legislature has recognized the need to provide for the disposition of property held by local school districts upon the dissolution of those districts. And over these many decades, the Legislature has consistently evinced its intent that title to property held by a dissolved local school district revert to the municipality that created that district.

29. In 1863, the Wisconsin Legislature amended the Wisconsin Statutes to provide,

Whenever any district shall become disorganized by the operation of the law in relation to the alteration of districts, the town supervisors shall take charge of the property belonging to the district at the time of its disorganization, dispose of the same by grant or otherwise, and apply the proceeds to the discharge of its debts, paying over the balance, if any, to the treasurers of the districts to which the territory has been attached”

Wis. Gen. Laws, Ch. 62, § 13 (1863); *see also* Wis. Gen. Laws, Ch. 155 § 16 (1863) (substantially similar).

30. Although the relevant provisions were amended over the years, the statutes continued to provide that the local town or towns retained power to dispose of the property held

by dissolving school districts. For example, the statute in effect at the time that title to Parcel One of the Property was acquired by Hutchins School District No. 6 in 1894 stated,

In every case where a district shall become dissolved by reason of the attachment of all its territory to some other district or districts, the town boards of the several towns embracing such district shall take charge of the property belonging to the same at the time of its dissolution, dispose of the same by grant or otherwise and apply the proceeds to the discharge of its debts, paying over the remainder, if any, to the treasurer of the districts to which the territory has been attached

Wis. Stat. § 424 (1889).

31. But in 1921, the Legislature created an ambiguity. A principal revision that occurred during the 1921 session was the consolidation of general municipal law under Chapter 66 of the Wisconsin Statutes. *See* 1921 Wisconsin Statutes, Volume I, and Introduction at 5.

32. One of those changes is pertinent here. Following the enactment of 1921 Wisconsin Act 396, Wis. Stat. § 66.03, into which the relevant statutes had been consolidated, provided that upon dissolution of a school district and assignment of its territory to a different school district, the following would occur:

ADJUSTMENT OF ASSETS AND LIABILITIES ON DIVISION OF TERRITORY. (1) **DEFINITION.** In this section “municipality” includes school district, town, village and city.

(2) **BASIS.** Except as otherwise provided in this section when territory is transferred, in any manner provided by law, from one municipality to another, there shall be assigned to such other municipality such proportion of the assets and liabilities of the first municipality as the assessed valuation of all taxable property in the territory transferred bears to the assessed valuation of all the taxable property of the entire municipality from which said territory is taken according to the last assessment roll of such municipality.

(3) **REAL ESTATE.** The title to real estate shall not be transferred except by agreement, but the value thereof shall be included in determining the assets of the municipality owning the same, and in making the adjustment of assets and liabilities.

Wis. Stat. § 66.03 (1921).

33. These new provisions made clear that when a school district is dissolved, “title to real estate shall not be transferred” to the school district that takes over its territory, “except by agreement.”

34. There was no agreement pursuant to which the Antigo School District took title to the Property.

35. Thus, in 1962, when the Antigo School District took over the territory of Joint School District No. 6, because there was no agreement to transfer title to the Property to the Antigo School District, title did not transfer.

36. Chapter 66 left unstated what happened to Joint School District No. 6’s title to the real estate in such a situation, but made clear that title did not go to the Antigo School District absent an agreement to that effect.

37. This result was clarified even further in 1931, when the Wisconsin Legislature addressed the ambiguity it had created in 1921. At that time, there was a specific proposal to amend Wis. Stat. § 66.03(3) to read “The title to real estate except school buildings and school sites shall not be transferred except by agreement.” 1931 Wisconsin Act 394 Drafting Files.

38. This language, if it had been adopted, would have provided that title to the real property of dissolved school districts which involved school buildings and school sites automatically transferred to the new school district when the territory was assigned to that district. Significantly, however, **that proposed language was stricken and rejected**.

39. Instead, the final version of 1931 Wisconsin Act 394 amended Wis. Stat. § 66.03(3) to read as follows:

(3) REAL ESTATE. (a) The title to real estate shall not be transferred except by agreement, but the value thereof shall be included in determining the assets of the municipality owning the same, and in making the adjustment of assets and liabilities.

(b) The right to possession and control of school buildings and school sites shall pass to the municipality in which the same shall be situated immediately upon the annexation or detachment of any school district territory to another municipality becoming effective. . . .

Wis. Stat. § 66.03(3) (1931).

40. That is, instead of adopting the provision that *title* would pass to the new school district, the Legislature clarified that only “[t]he right to possession and control” of school buildings and sites would transfer to the district along with the assigned territory.

41. The language of Wis. Stat. § 66.03(3) quoted above was the language in place on the date of the dissolution of Joint School District No. 6 in 1962. *See* Wis. Stat. § 66.03(3) (1961-62).

42. What the statutes made explicit is that title to the property of a dissolved school district does *not* pass to the school district to which the dissolved school district’s territory is assigned. The statutes no longer explicitly state where title reverts upon dissolution, but the history of Wisconsin’s laws establishes that title reverts to the town or other municipality that created the school district in the first instance, and the Legislature has not altered that dynamic.

43. Consequently, when Joint School District No. 6 dissolved in 1962, by operation of law, title transferred to Mattoon and Hutchins (whose taxpayers had paid for the real estate and school buildings built on that real estate) with the right to possession and control transferring to the Antigo School District so long as the Antigo School District operated a school at that location for the benefit of the people who lived in the area of the former Joint School District No. 6.

44. For this reason, among others, when the Antigo School District closed the elementary school on the Property in 2016, Mattoon and Hutchins, in their own rights and on behalf of the taxpayers of the former Joint School District No. 6, took ownership of the Property and were within their rights to grant title to the Property to whomever they wanted.

45. As explained above, Mattoon and Hutchins have exercised that right and entered into the Purchase Contract with Shepherd's Watch for the sale of the Property.

46. By contesting the Municipalities' ownership of the Property, the Antigo School District is harming Shepherd's Watch by interfering with the lawful performance of the Purchase Contract by the Municipalities for conveyance to Shepherd's Watch of the Property.

47. Mattoon, Hutchins, and Shepherd's Watch are therefore entitled to a declaration 1) that Mattoon and/or Hutchins own the Property and possess the legal right to convey the Property to Shepherd's Watch and 2) that Antigo School District has no right, title, or interest in the Property.

WHEREFORE, Shepherd's Watch requests the following relief:

1. A declaratory judgment declaring that the Village of Mattoon and/or the Town of Hutchins own the Property and possess the legal right to convey the Property to Shepherd's Watch and that Antigo School District has no right, title, or interest in the Property;
2. Costs as allowed by law; and
3. Such other relief as the Court deems proper.

Dated this 9th day of September, 2019.

Respectfully submitted,
WISCONSIN INSTITUTE FOR LAW & LIBERTY
Attorneys for Plaintiff

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EXHIBIT A TO COMPLAINT

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REAL PROPERTY PURCHASE AGREEMENT

This Real Property Purchase Agreement (the “**Agreement**”) is entered into as of the “**Effective Date**” (as defined in Section 22 below) by and between **Village of Mattoon**, a Wisconsin statutory village, and **Town of Hutchins**, a Wisconsin statutory town (jointly and severally, “**Sellers**,” and each individually a “**Seller**”), and **Shepherd’s Watch Community Center, Inc.**, a Wisconsin nonstock corporation (“**Buyer**”).

WITNESSETH THAT:

WHEREAS, Buyer desires to purchase from Sellers and Sellers desire to sell to Buyer, upon the terms and conditions hereinafter set forth, three contiguous parcels of real property located in the Village of Mattoon, Shawano County, Wisconsin, commonly known as the Mattoon Elementary School property and specially described by the legal descriptions on **Exhibit “A”** attached hereto and made a part hereof, together with all access rights, privileges, easements, and appurtenances pertaining thereto and all improvements, if any, located thereon (collectively, the “**Property**”);

WHEREAS, Buyer has actively engaged in negotiations with Seller, as well as Antigo Unified School District, to acquire the Property since approximately the month of January 2018;

WHEREAS, the ownership of the Property is under investigation and presently disputed (as detailed in the below-defined Lawsuit); however, the real estate records in the Office of the Register of Deeds for Shawano County, Wisconsin, indicate that the title holder of the three parcels comprising the Property are as follows:

- (i) as to Parcel One identified on **Exhibit A**: *School district number six (6) Town of Hutchins, Shawano County Wisconsin*;
- (ii) as to Parcel Two identified on **Exhibit A**: *Jt. School District No. 6 of the Village of Mattoon*; and
- (iii) as to Parcel Three identified on **Exhibit A**: *Joint School District #6 Village of Mattoon, Town of Hutchins, Shawano, County, Wisconsin*.

WHEREAS, the former joint school district of the Village of Mattoon and Town of Hutchins (a.k.a Jt. SD No. 6, Village of Mattoon and Town of Hutchins, Shawano County; the “**Mattoon School District**”) was dissolved on June 30, 1962;

WHEREAS, notwithstanding the dissolution of the Mattoon School District, Sellers maintain they hold title to the Property and are currently plaintiffs to that certain lawsuit known as *Village of Mattoon and Town of Hutchins v. Unified School District of Antigo* filed in the State of Wisconsin Circuit Court for Shawano County (the “**Court**”) as Case No. 2019CV000010 (the “**Lawsuit**”), pursuant to which Sellers have asked the Court to declare Sellers as holding all right, title, and interest in and to the Property; and

WHEREAS, Buyer intends to acquire from Sellers, and Sellers intend to convey to Buyer, all right, title, and interest either or both of Sellers hold in any of the three parcels comprising the Property.

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NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. **Property Acquisition.** Subject to the contingencies set forth in Section 3, below (including Buyer's right to terminate under Section 3(b)), Buyer agrees to purchase from Sellers, and Sellers, jointly and severally, agree to sell and convey to Buyer, all right, title, an interest both Sellers have in any and all portions of the three parcels comprising the Property, on the terms and conditions set forth in this Agreement. By way of illustration:

a. If the Village of Mattoon holds any right, title, or interest in or to any parcel comprising the Property, then the Village of Mattoon shall convey such right, title, and interest to Buyer and Buyer shall acquire all of such right, title, and interest from the Village of Mattoon.

b. If the Town of Hutchins holds any right, title, or interest in or to any parcel comprising the Property, then the Town of Hutchins shall convey such right, title, and interest to Buyer and Buyer shall acquire all of such right, title, and interest from the Town of Hutchins.

c. If the Sellers hold shared right, title, or interest in or to the Property, then the Sellers shall convey all of such right, title, and interests they hold to Buyer and Buyer shall acquire the entirety of such right, title, and interest from Sellers.

When "Property" is used herein to refer to the Property that shall ultimately be conveyed to Buyer hereunder, it shall mean any and all of the Property that either or both of Sellers is ultimately determined to own upon the Lawsuit Resolution (defined below).

2. **Independent Contract Consideration & Purchase Price.**

a. **Independent Contract Consideration.** In connection with the entering into of this Agreement, Buyer shall immediately pay Sellers a nonrefundable fee of Two Dollars (\$2.00), which shall be divided equally between the Sellers.

b. **Purchase Price.** Contingent on satisfaction of the contingencies set forth in Section 3 and closing conditions set forth in Section 7(a), below, Sellers shall sell and transfer the Property to Buyer, and Buyer shall purchase the Property from Seller, for the Purchase Price. The purchase price ("**Purchase Price**") to be paid by Buyer to Sellers for the Property shall be One Hundred Dollars (\$100.00). Buyer shall deliver the Purchase Price to Sellers at the Closing (as hereinafter defined) in the form of cash or other immediately available funds, subject to adjustment for credits and prorations as set forth herein. If both Sellers are owners of all or any of the Property, the Purchase Price shall be divided equally between the Sellers. If only one of the Sellers is an owner of the Property, then the Purchase Price shall be delivered to such Seller.

3. **Contingencies.**

a. **Title Contingency.** Buyer's obligation to purchase the Property hereunder is contingent on Buyer's procurement of an owner's policy of title insurance insuring good and marketable title to any parcel of the Property and showing no recorded building or use restriction, as an exception to title, expressly prohibiting use of the Property as a school,

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community center, recreational center, or for school functions. This contingency shall expire if title is not objected to within thirty (30) days of definitive resolution of the Lawsuit in favor of one or both of Sellers by unappealable court judgment or settlement whereupon one or both of Sellers is deemed the owner of title in any or all of the parcels comprising the Property (hereinafter, "**Lawsuit Resolution**").

b. **Lawsuit Resolution.** Closing and the transaction contemplated herein is contingent upon the definitive resolution of the Lawsuit in favor of one or both of Sellers by unappealable court judgment or settlement whereupon one or both of Sellers is deemed the owner of title in any or all of the parcels comprising the Property. If the Lawsuit is resolved in such a manner that neither Seller holds title to any parcels comprising the Property, this Agreement shall automatically terminate and Sellers shall promptly deliver notice of the same to Buyer. If the Lawsuit is resolved in such a way that either Seller is deemed to own at least one parcel comprising the Property, but not all parcels comprising the Property, Seller or Sellers shall deliver prompt written notice of the same to Buyer and Buyer shall have thirty (30) days thereafter to elect to proceed to Closing on the parcels owned by Sellers, or terminate the Agreement (in which case, if Buyer so terminates this Agreement, it shall pay Sellers' actual attorneys' fees related to this Agreement in an amount not to exceed One Thousand Dollars (\$1,000.00), which payment shall be shared equally between Sellers. If the Lawsuit is resolved as to one Seller whereby such Seller is definitively determined to not own any parcel of the Property, then all rights and obligations of such Seller hereunder shall terminate, while this Agreement shall remain in full force and effect with respect to the other Seller.

c. **Environmental Contingency.** Buyer's obligation to purchase the Property hereunder is contingent upon a qualified independent consultant of Buyer's choice conducting an environmental site assessment of the Property at Buyer's expense, which discloses no defects. A "defect," for purposes of this contingency, means exclusively a material violation of any Environmental Law (defined below), a material contingent liability affecting the Property arising under any Environmental Law, the presence of an underground storage tank(s) not in compliance with applicable law, or material levels of hazardous substances on the Property presenting an immediate and significant risk of contaminating the Property or the health and safety of its occupants. This contingency shall be deemed satisfied unless Buyer, within sixty (60) days of notice from the Seller that the lawsuit referred to herein has been resolved such that one or both of Sellers by unappealable court judgment or settlement is deemed the owner of title in the Property, delivers to Seller a copy of the environmental site assessment/inspection report(s) and a written notice listing the defect(s) identified in the environmental site assessment/inspection report(s) to which Buyer objects. Sellers shall have thirty (30) days after receiving such notice to cure the identified defects; if Sellers cannot so cure such defects with such 30-day cure period, or chose to not so cure such defects, this Agreement shall be considered terminated. Defects do not include conditions the nature and extent of which Buyer had actual knowledge or written notice before signing the Agreement. "**Environmental Laws,**" as used in this Agreement, shall mean the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments, the Comprehensive Environmental Response Compensation and Liability Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Emergency Planning and Community Right-to-Know Act, the Oil Pollution Act of 1990, the Wisconsin Spill Statute and/or all amendments thereto, and regulations, rules, orders, and directives issued thereunder, as well as all other federal, state, local, or foreign

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acts, statutes, laws, orders, directives, or regulations governing or otherwise relating to control or management of hazardous substances or materials and the protection of the public health, safety, and welfare or the environment, or otherwise empowering any act or action by the United States Environmental Protection Agency, the Occupational Safety and Health Administration, the Wisconsin Department of Natural Resources, and/or any other governmental agency. "**Hazardous Materials**," as used in this Agreement, shall mean any substance or material defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or words or terms of similar meaning or import, in addition to petroleum products and fractions thereof and chemical or other substances known or suspected to be toxic or hazardous to health and safety, as such material is prohibited, limited, or regulated under the Environmental Laws.

4. **Access and Cooperation.** Until such time that this Agreement is terminated, Sellers agree to permit Buyer reasonable access to the Property for Buyer's inspection thereof, but only to the extent Sellers have the right and ability to grant Buyer such access. Buyer shall have no right to obtain a Phase II environmental study or perform any ground penetrating radar testing until such time as definitive resolution of the Lawsuit in favor of one or both of Sellers by unappealable court judgment or settlement whereupon one or both of Sellers is deemed the owner of title in all of the parcels comprising the Property. Buyer shall indemnify and hold Sellers harmless from and against any and all cost, expense, liability or damage arising out of: (i) any injury to any person or the Property attributable to Buyer's exercise of any of its rights hereunder; and (ii) any liens filed against the Property or claims or demands made against Sellers or the Property for work performed by or on the behalf of Buyer; and Buyer's indemnification shall survive Closing (as defined below) or any earlier termination of the Agreement. Sellers make no representations or warranties as to the accuracy of any due diligence materials delivered to Buyer. Notwithstanding the foregoing, Buyer shall not be permitted to enter onto the Property without Seller's prior written consent, and shall only enter the Property with the presence of one of Sellers or a representative of Sellers.

5. **AS-IS Sale.**

a. Buyer hereby acknowledges and agrees that its purchase of the Property will be on an "**AS-IS/WHERE-IS**" basis and "**WITH ALL FAULTS**" and with all latent or patent defects. Buyer further acknowledges that neither of Sellers or their respective managers, brokers, lawyers, agents, and affiliates (collectively, "**Sellers Parties**") have made, will make, or are making any warranties, representations, or statements whatsoever, whether express or implied, concerning or relating to the Property. Buyer will be and is relying solely on the independent tests, inspections, investigations, or studies performed by Buyer and/or its agents or contractors (and not upon any warranties, representations, or statements of Sellers or any of the Sellers Parties) for all matters relating to the Property. **IN THE EVENT ANY EXPRESS OR IMPLIED WARRANTIES HAVE BEEN MADE REGARDING THE PROPERTY OR THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT, SELLERS HEREBY DISCLAIM AND DENY SUCH REPRESENTATIONS OR WARRANTIES.**

b. Buyer acknowledges and agrees that the "**AS-IS, WHERE-IS**" provision within this Agreement bars and will bar any and all warranty claims, tort claims, and/or other statutory claims relating to the condition of the Property against the Sellers or any of the Sellers Parties, including, but not limited to, claims for misrepresentation, fraud in the inducement, or under Section 100.18 of the Wisconsin Statutes (as may be amended). All express and implied warranties under the law, including, without limitation, the implied warranties under Wis. Stat. § 706.10 or any warranty that work at

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the Property will be or was done in a good, workmanlike, and satisfactory manner, are hereby expressly disclaimed and excluded.

c. Buyer, and any affiliate of Buyer, in purchasing the Property, agrees and shall be deemed to have agreed to release and forever discharge Sellers and each of the Sellers Parties from any and all actions, causes of action, suits, controversies, claims, damages, settlements, and demands whatsoever, in law or in equity, whether known or unknown, for or on account of or in any way relating to the Property, including, without limitation, any environmental condition on the Property, the presence of any Hazardous Materials on, in, under, or about the Property, the migration or transportation of Hazardous Materials to or from the Property, or for any violation of any of the Environmental Laws related to the Property, except to the extent specifically caused by one or more of the Sellers Parties.

6. **Condemnation.** In the event, at any time between the Effective Date and the Closing Date, all or any portion of the Property is condemned by any legal authority for any public use or purpose, Buyer may elect to terminate this Agreement, in which case neither Buyer nor Sellers shall have any further liabilities, obligations, or rights with regard to this Agreement except for those which by their terms survive any termination of this Agreement.

7. **Closing.** This transaction is to be closed (the "Closing") at the primary office for the Village of Mattoon or such other location as the parties may agree, ninety (90) days following the Lawsuit Resolution ("Closing Date"). For purposes of determining all prorations, the Closing Date shall be inclusive of said date.

a. **Closing Conditions.** Closing is conditioned on (i) Buyer's satisfaction or waiver of Buyer's title contingency described in Section 3(a) above and receipt of the title policy described therein; (ii) Lawsuit Resolution in favor of one or both of Sellers by unappealable court judgment or settlement whereupon one or both of Sellers is deemed the owner of title of any or all of the parcels comprising the Property, which shall be a condition to Closing of all parties hereto; (iii) all conveyance documents and closing deliveries being delivered under Section 7(c) below; (iv) Buyer's waiver of its right to terminate in Section 3(b), to the extent applicable; (v) Buyer's good standing with the Wisconsin Department of Financial Institutions, (vi) there existing no attachments, executions, assignments for the benefit of creditors, receiverships, or voluntary or involuntary proceedings in bankruptcy, or pursuant to any other debtor relief laws, which have been filed by Buyer, threatened against Buyer, or which are currently pending against Buyer in any judicial or administrative proceeding, and (vii) Buyer's ability and commitment to utilize the Property acquired as a school, community center, or center for recreational, educational and/or school related activities.

b. **Prorations.** All real property taxes, if any, shall be prorated (employing a 365-day year) between Buyer and Sellers as of the Closing based upon the net general real estate taxes for the current year, if known, otherwise on the net general taxes for the preceding year. All assessment installments due and payable prior to the Closing Date shall be paid on or prior to the Closing Date. Interest, rents, and water and sewer use charges, if any, shall be prorated as of the Closing Date.

c. **Conveyance Documents and Closing Deliveries.** At Closing,

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i. Seller or Sellers, as the case may be, shall, upon payment of the Purchase Price, convey fee simple title to the parcels of the Property to Buyer that Sellers own as a result of the Lawsuit Resolution by special warranty deed or other conveyance instrument acceptable to the parties and the applicable title company (the "Deed"), free and clear of all liens and encumbrances by, through, or under the applicable grantor(s), except municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, present uses of the Property in violation of the foregoing, and general taxes levied in the year of Closing.

ii. Sellers and Buyer shall execute a statement acknowledging the Lawsuit Resolution and the parcels of Property being conveyed pursuant to this Agreement.

iii. Buyer shall execute a statement waiving its right to terminate under Section 3(b), if applicable.

iv. Full legal and actual possession of such parcels of the Property shall be delivered to Buyer the day of Closing.

v. Sellers and Buyer shall execute all customary documents required by Buyer's title company to issue Buyer's owner's policy of title insurance described in Section 3(a) above, if any.

d. **Closing Costs.** Closing costs shall be paid by the parties as set forth below; however, in the event any charge or fee is not covered herein, the charge or fee shall be paid according to local custom. Buyer shall pay (i) Buyer's attorneys' fees, Sellers' attorneys' fees specific to this Agreement in an amount not to exceed \$1,000, and Closing costs of the transaction contemplated hereby, (ii) recording fees, (iii) transfer tax (if any), (iv) all escrow, closing, and title examination fees, and (v) the premium for the title insurance policy and any endorsements or revisions to the title policy, and the cost of any other due diligence efforts of Buyer. Except as otherwise provided herein, Buyer and Sellers shall each pay their own attorneys' fees in connection with this Agreement.

8. **Default; Damages.**

a. **Seller's Default.** In the event the purchase and sale are not consummated because of Sellers' failure to perform Sellers' obligations under this Agreement, Buyer shall have the following rights and remedies, which shall be Buyer's sole and exclusive remedies: (i) to seek specific performance or (ii) to terminate this Agreement and seek as liquidated and actual damages the sum of One Thousand Dollars (\$1,000.00). Sellers' failure to acquire definitive title to the Property shall not be considered a failure to perform Sellers' obligations under this Agreement.

b. **Buyer's Default.** In the event the purchase and sale are not consummated because of Buyer's failure to perform Buyer's obligations under this Agreement, the Agreement shall terminate and Buyer shall pay to Sellers as liquidated and actual damages the sum of One Thousand Dollars (\$1,000.00), which shall be the Sellers' exclusive remedy. Liquidated damages proceeds to Sellers under this Agreement shall be shared equally

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between Sellers if both Sellers remain Sellers under this Agreement at the time such damages are incurred.

c. The damages limitations in Section 8(a)-(b) are intended solely with respect to Sellers' or Buyer's respective failures to perform their obligations to complete the purchase and sale contemplated hereunder in the event that all contingencies and conditions for closing under the Agreement have been waived and/or satisfied.

9. **Assignment.** This Agreement may be assigned or transferred by Buyer only with Sellers' prior written consent. No such assignment shall release Buyer of its obligations or duties hereunder, and the assignee shall agree to be specifically bound by the terms of this Agreement. One Seller is permitted to assign and/or deed its rights, title, and interest in the Property to the other Seller without consent of or notice to Buyer, and, upon such an occurrence, this Agreement will remain in force and effect with respect to the recipient Seller and Buyer.

10. **Captions, Gender.** The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such section or otherwise affect this Agreement. Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless this Agreement requires otherwise.

11. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of Wisconsin. Each party hereby stipulates and agrees that any action or other legal proceeding arising under or in connection with this Agreement shall be commenced and tried in its entirety in either the United States District Court for the Eastern District of Wisconsin or the Wisconsin Circuit Court for Shawano County, Wisconsin, and each party hereby agrees not to assert in any such action or proceeding that either of such courts lacks personal jurisdiction or is not a convenient forum and hereby waives, to the fullest extent permitted by law, any other right to contest the jurisdiction and/or venue thereof.

12. **Entire Agreement; Integration.** This Agreement contains the sole and entire agreement and understanding between and among the parties relating to the Property and the transactions contemplated hereby and supersedes and replaces all other prior and contemporaneous agreements, understandings, representations, and warranties, oral or written, between and among the parties relating to the Property and the transactions contemplated hereby, with all other prior and contemporaneous agreements, understandings, representations, and warranties having no force or effect.

13. **Time of Essence.** Buyer and Sellers hereby agree that time is of the essence with regard to the terms and conditions of this Agreement.

14. **Binding Effect.** Sellers and Buyer hereby acknowledge and agree that they intend this Agreement to be a binding and enforceable agreement, subject to the terms and conditions set forth herein. All of the terms, covenants, and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

15. **Notices.** Any notice hereunder must be in writing, and shall be effective (i) when deposited in the United States Mail, Certified Return Receipt Requested, (ii) when deposited with a reputable overnight carrier service that provides delivery confirmation, (iii) in the case of facsimile notice (which shall be effective for all purposes hereunder), upon receipt of a facsimile confirmation page by the facsimile sender, or (iv) if by hand delivery, when received by the party to be notified.

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For purposes of notice, the addresses and facsimile numbers of the parties shall be as set forth below or as may be designated from time to time.

If to Sellers:

Village of Mattoon
James Zahn, Village President
PO Box 225
310 Slate Avenue
Mattoon, WI 54450

Fax: _____

Town of Hutchins
Patrick Meverden
N10441 Maple Road
Birnamwood, WI 54414
Fax: 715-489-3293

With a copy to:
Husch Blackwell LLP
Attn: Scott W. Brunner, Esq.
555 E. Wells St., Suite 1900
Milwaukee, WI 53202
Fax: : 414-223-5000

If to Buyer:
Shepherd's Watch Community Center, Inc.

Fax: _____

With a copy to:
Sommer, Olk & Payant, S.C.
Attn: Paul J. Payant
700 Fifth Avenue
Antigo, WI 54409
Fax: 715-623-7660

The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section shall constitute delivery.

16. **No Third Party Beneficiaries.** Sellers and Buyer agree and acknowledge that, except as expressly set forth herein, there are no intended third party beneficiaries of this Agreement nor any of the rights and privileges conferred herein.

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17. **No Strict Construction; Legal Representation.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. Buyer acknowledges that Husch Blackwell LLP is representing only the Sellers with respect to this Agreement and, further, acknowledges that it should have retained independent legal counsel if it desired representation in connection herewith and that it had the opportunity to do so if it so desired or deemed necessary.

18. **Waiver.** The failure of either party to exercise any right given hereunder or to insist upon strict compliance with any term, condition or covenant specified herein, shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with such term, condition, or covenant.

19. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

20. **Amendment.** Neither this Agreement nor any provision hereof may be changed, amended, modified, waived, or discharged either orally or by any course of dealing, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

21. **Counterparts, Separate Signature Pages, Facsimile Signatures.** This Agreement may be executed in several counterparts, by separate signature pages, and/or by facsimile signatures, each of which may be deemed an original, and all such counterparts, separate signature pages, and facsimile signatures together shall constitute one and the same Agreement.

22. **Date of Agreement.** The "Effective Date" of this Agreement shall be the latest date upon which it is executed by both parties as indicated on the signature pages attached hereto.

23. **Business Days.** In the event that any date described in this Agreement for the performance of an action required hereunder by Sellers or Buyer falls on a Saturday, Sunday, or federal legal holiday, such date shall be deemed postponed until the next business day thereafter.

24. **OFAC Compliance.** Neither Buyer nor any of Buyer's respective officers, directors, shareholders, partners, members, managers, affiliates or associates, and no other direct or indirect holder of an equity interest in Buyer, is an entity or person: (i) that is listed in the Annex to, or is otherwise subject to the provisions of United States Presidential Executive Order 13224 issued on September 24, 2001 ("Executive Order"); (ii) whose name appears on the U.S. Department of the Treasury, Office of Foreign Assets Control's ("OFAC") most current list of "Specially Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, www.treas.gov/ofac/; (iii) who commits, threatens to commit or supports "terrorism", as that term is defined in the Executive Order; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses (i) through (iv) above are herein referred to as a "Prohibited Person").

(SEPARATE SIGNATURE PAGE(S) TO FOLLOW)

(Remainder of Page Intentionally Left Blank)

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IN WITNESS WHEREOF, the parties have executed this Real Property Purchase Agreement as of the Effective Date.

BUYER:

SHEPHERD'S WATCH COMMUNITY CENTER, INC.

By: Wade Reimer
Wade Reimer, Authorized Signatory

This Agreement is executed by Buyer this 16 day of April, 2019.

SELLERS:

VILLAGE OF MATTOON

By: James Zahn
Name: James Zahn
Its: Village President

This Agreement is executed by Village of Mattoon this 16 day of April, 2019.

TOWN OF HUTCHINS

By: Patrick M. Meverden
Name: Patrick Meverden
Its: Chairman

This Agreement is executed by Town of Hutchins this 16 day of April, 2019.

(SIGNATURE PAGE TO REAL PROPERTY PURCHASE AGREEMENT)

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EXHIBIT A

The Property**Parcel One:**

Lot One (1) in Block Twenty-five (25) of the Plat of Mattoon, being a subdivision of the East Half (E ½) of the Southeast Quarter (SE ¼) of Section Nine (9) and the West Half (W ½) of the Southwest Quarter (SW ¼) of Section (10), Township Twenty-nine (29) North, of Range Twelve (12) East.

(Village of Mattoon, County of Shawano, Wisconsin)

Tax Key 151 70050 0740 (subject premise and other land)

Parcel Two:

Lots Two (2) and Three (3) in Block Twenty-five (25) of the Village of Mattoon

(Village of Mattoon, County of Shawano, Wisconsin)

Tax Key 151 70050 0740 (subject premise and other land)

Parcel Three:

Lots number Four (4) and Five (5) in Block Twenty-five (25) of the Plat of the Village of Mattoon, Shawano County, Wisconsin.

(Village of Mattoon, County of Shawano, Wisconsin)

Tax Key 151 70050 0750 (subject premise and other land)