

**FIRST AMENDMENT TO AGREEMENT BETWEEN
CITY OF MIDDLETON AND TOWN OF MIDDLETON**

THIS AMENDMENT (this "Amendment"), is made effective as of the ___ day of December, 2001, by and between the City of Middleton, a Wisconsin Municipal Corporation ("City") and the Town of Middleton, a Wisconsin Body Corporate and Politic ("Town").

RECITALS

WHEREAS, the City and the Town have entered into that certain Agreement dated *December 11*, 2001, in which the City and Town agreed to exchange parcels of real estate, among other issues; and

WHEREAS, the City and the Town wish to modify Section 4 of the Agreement as set forth below.

NOW THEREFORE, in consideration of the Agreement, the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by and between the undersigned, each being legally advised in the premises and intending to be legally bound hereby, as follows:

1. Concurrent with the execution of this Amendment, the Town shall execute a deed to the City of approximately 1.6 acres of real estate, more particularly described on the attached Exhibit A and incorporated herein. It is the intent of the parties that the City will convey said real estate to Electronic Theater Controls, Inc. as part of a larger 43 acre conveyance of real estate from the City to Electronic Theater Controls, Inc. The real estate described on the attached Exhibit A shall be considered part of the 20 acres to be conveyed to the City by the Town under Section 4 of the Agreement and not in addition to such real estate conveyance described therein.
2. In the event that the City does not complete the Evergreen Road extension between Airport Road and Evergreen Road by December 31, 2002 as required by Sections 3 and 4 of the Agreement, the City will deed to the Town an additional approximate 1.6 acres of land contiguous to and along the east side of the 20 acres being deeded to the Town by the City under Section 5 of said Agreement.
3. The remaining terms and conditions of the Agreement remain in full force and effect.

AGREEMENT

THIS AGREEMENT, made on December 11, 2001, by and between the City of Middleton, a Wisconsin municipal corporation ("City"), and the Town of Middleton, a Wisconsin body corporate and politic ("Town").

WITNESSETH:

WHEREAS, City and Town both own parcels of land in Section 3, Town 7 North, Range 8 East, in Dane County, Wisconsin; and

WHEREAS, City and Town seek to work together to advance their mutual interests relating to installation of public infrastructure, payment for infrastructure, and promotion of commercial and industrial development in a manner that protects the interests of Town residents and the general public; and

WHEREAS, Town and City are authorized under Wis. Stats. § 66.0301 to enter into agreements for the provision of municipal services and the exercise of governmental functions on a cooperative basis; and

WHEREAS, the Town and City desire to settle the lawsuit now pending in Dane County Circuit Court entitled, Town of Middleton v. City of Middleton, Case No. 01CV1896 ("the suit"); **NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, **THE PARTIES HERETO AGREE** as follows:

1. **Special Assessments or Charges**. The Town shall forgive the existing assessment against the City in the amount of \$59,737.35, plus interest, for improvements to Airport Road. The City shall be responsible for all assessments, plus interest, against property conveyed to the City pursuant to this agreement. Lands conveyed to the Town under this agreement ("Town Lands") shall have no special assessments or charges, now or hereafter, for sanitary sewer, storm sewer, water, utilities, roads or other public improvements or facilities unless and until the Town makes an actual connection to such improvements. There shall be no assessments or special charges levied against Town Lands, now or hereafter, for any roadway or other transportation related improvements except those improvements made in the future to Airport Road which actually front on Town Lands, and such assessments or special charges shall be made on a "front foot" (and not an area) basis, unless the Town consents in writing to an area assessment or charge. There shall be no assessments or special charges levied against Town Lands for any storm water management facilities, now or hereafter, so long as the total impervious area on Town Lands is less than 10% of the total land area of Town Lands (but any such assessment or special charge shall be limited to future improvements). The City agrees to permit a private well and/or septic system on the Town Lands to serve park related facilities, provided that such facilities are located more than 100 feet from a public street. For purposes

hereof, "special charges" shall include, but not be limited to, any charge made under Wis. Stats. sec. 66.0627, or any other provision of law which may be enacted now or at anytime in the future, which provides for the making of charges by municipalities for services provided to property owners, other than utility bills issued by a municipal utility under rates approved by the Public Service Commission and based on actual usage of water or other utility services by the property owner.

2. **Right of Way Dedication**. The Town shall convey to the City for public street purposes, the necessary right of way for a north-south road to be constructed from Evergreen Road to Airport Road ("Evergreen Road extension") concurrently with the execution of this Agreement in accordance with the concept plans previously provided to the Town by the City. If this right of way or any portion thereof is vacated in the future, it shall revert to the Town of Middleton, and such reversionary provision shall be set forth in the Deed. The form of the Deed for such dedication is attached hereto as Exhibit "A." The City shall be responsible for surveying the lands to be conveyed in Exhibit A.
3. **Construction of Evergreen Road Extension**. The City agrees to complete the construction of the Evergreen Road extension as a public street in the year 2002. The cost of road construction and related utilities shall be paid by the City or under the City's auspices. No assessments shall be levied against Town-owned lands, including the Town Lands, for this road and related utility construction. The work shall be completed in accordance with plans and specifications to be prepared by a registered professional engineer retained or employed by the City, consistent with the street standards employed by the City for comparable streets in the City at this time, and such plans shall be provided to the Town for review and comment before final approval thereof by the City. The Town acknowledges that the City may assign a new name to the Evergreen Road extension.
4. **Conveyance of Town Lands to City**. Concurrently with the execution of this Agreement, the Town shall execute a Deed to the City for all of its remaining land (approximately 20 acres) lying south of Airport Road in Section 3, except Lot 2, Certified Survey Map No. 9312 (Town lot west of hockey rink), and the lands conveyed under paragraph 2 hereof. The form of this Deed is attached hereto as Exhibit "B." The City shall be responsible for surveying such lands to be conveyed by the Town, and obtaining and approving a certified survey of such lands if necessary under the City's subdivision ordinance. The Town will hold the executed Deed for this transaction until the Evergreen Road extension identified in paragraph 3 of this Agreement is completed in accordance with the approved plans and open to traffic, at which time the Town shall deliver the executed Deed to the City. If the City fails to complete the construction and opening to traffic of the Evergreen Road extension as a public street in the year 2002, excepting delays caused by acts of God and strikes, the Town will

not be obligated to convey lands described herein to the City and may pursue all legal remedies to cause the completion of Evergreen Road extension by the City, including, but not limited to, specific performance or injunctive relief against the City. The City agrees that the Town will not have any other adequate remedy at law to enforce the provisions hereof with regard to construction of such street absent specific performance or injunctive relief, and the City shall reimburse the Town for any reasonable attorney fees and court costs and disbursements incurred by it in successfully enforcing in court the obligation to construct such street. Within 30 days after the execution of this Agreement, the City agrees to execute and deliver to the Town a conservation easement, in recordable form, which will protect the line of trees on the steep slope which traverses the land to be deeded to the City hereunder, such that no trees may be removed or disturbed in the conservation easement area except as may be necessary for the construction of a trail linking the lands east of the Evergreen Road extension with City parklands lying west of the Evergreen Road extension. The form of the conservation easement and legal description is attached hereto as Exhibit "C", which conservation easement shall be enforceable by the Town and may not be amended or extinguished without the written consent of the Town.

5. **Conveyance of City Lands to Town.** The City shall deed to the Town concurrently with the execution of this Agreement, approximately 20 acres of land now owned by the City and lying north of Airport Road and west of Evergreen Road, which parcel shall be equal in area to the lands to be conveyed and deeded by the Town to the City under paragraphs 2 and 4 above. Said lands shall include a 66 ft. wide driveway access to Airport Road. The City shall be responsible for surveying the lands to be conveyed hereunder, and the City shall have prepared, approved and recorded a certified survey of such parcel prior to conveying the land, in a form approved by the Town. The form of the Deed is attached hereto as Exhibit "D." As of the time of conveyance of such lands to the Town, the City shall have properly zoned the lands deeded to the Town hereunder to permit recreational uses consistent with the uses permitted by this Agreement, and granted a driveway permit for a driveway from such property to Airport Road for recreational use of such lands.

6. **Restrictive Covenant.** The City will execute and record a Restrictive Covenant with the Town concurrently with the execution of this Agreement which restricts the use of all City-owned lands purchased from Dr. Quisling and lying north of Airport Road and west of Evergreen Road to (a) unlighted recreational uses or (b) "inside the fence" airport-related uses only, and which also restricts the land to be deeded by the City to the Town north of Airport Road under paragraph 5 hereof to unlighted recreational use only. The City shall be responsible for preparing the descriptions of the parcels to be restricted under such Restrictive Covenant. For the purposes of this

Agreement, "inside the fence" airport-related uses means (a) those uses which provide for the operation, sales, service, storage, maintenance, and repair of aircraft and aircraft systems, and (b) other airport-related uses requiring direct access to taxiways for aircraft. The form of such Restrictive Covenant is attached hereto as Exhibit E.

7. **Buffer Strip.** The City agrees that the land lying immediately east of Evergreen Road in Section 3, measured from the section line near Evergreen Road and extending from Airport Road south to the existing cemetery lying east of Evergreen Road, shall be a 200 foot wide buffer strip ("buffer strip"), which shall remain undisturbed and contain no improvements except for the construction of earth berms and landscaping as described and required herein. The Town hereby approves an amendment to the Intergovernmental Agreement between the City and Town dated xxxx to permit this buffer strip in lieu of single family residential zoning and deleting any references to single family uses within the buffer strip. At the closing, the City (and any other party owning any property intended to be subject to this restriction), shall execute and record a Restrictive Covenant with the Town containing the requirements hereof, the form of which is attached hereto as Exhibit "F."
8. **Berms.** The City agrees to construct and maintain within the buffer strip, or to require the owner(s) of all lands within the buffer strip, to construct and maintain earth berms along the length of such buffer strip extending from the cemetery north to within 200 feet of the centerline of Airport Road (east-west 1/4 line of Section 3). All of such berms shall be designed and laid out by a landscape architect and shall be ten feet to 15 feet in height and have a slope of no more than 4:1 along the west side adjacent to Evergreen Road. All berms shall be top-soiled to a depth of six inches, fertilized, seeded with turf grasses, mulched, and landscaped as described below. The construction of all of the required berms shall be commenced concurrently with the start of site grading on any of the land adjacent to the buffer strip to the east, and shall be completed prior to any building construction on any of the land adjacent to the buffer strip to the east. The provisions of this paragraph shall be included in the Restrictive Covenant (Exhibit F).
9. **Landscaping.** The west side of the berms described in paragraph 8 hereof, and any unbermed portion of the buffer strip along Evergreen Road shall be landscaped by the City or the owner of the lands within the buffer strip with trees and shrubs using Plant Unit Alternative A or D as depicted in Exhibit G attached hereto, at a density of four plant units per each 200 feet of frontage along Evergreen Road, to be evenly distributed along the area to be landscaped. Existing trees in good condition within the buffer strip having a trunk diameter greater than 4 inches, measured 4 ft. above the ground, may be counted in determining conformance with the required plant units within each 200 foot segment. All required landscaping shall be completed within six (6)

months after substantial completion of the required construction of the berms in the buffer strip, subject to acts of God and strikes. The City agrees to enforce compliance with the landscaping requirements. The provisions of this paragraph shall be included in the Restrictive Covenant (Exhibit F).

10. **Use, Design and Maintenance of Buffer Strip.** Only dead and dying trees may be removed within the buffer strip. No access is permitted through the buffer strip to Evergreen Road. The Town shall be provided with an opportunity to review and comment on the design of the landscaping plan and berms within the buffer strip prior to City approval of the plan and design. The plan shall be a 100 scale, 2 foot contour map showing existing contours, proposed berm contours, all proposed plantings and plant schedule, including the number plants, plant species, and size. The City shall at all times maintain or cause others to maintain the buffer strip, including the berms, trees, shrubs, turf and other landscaping features therein, in a neat and orderly fashion and to control all noxious weeds therein. The provisions of this paragraph shall be included in the Restrictive Covenant (Exhibit F).

11. **Lighting Limitations.** The City agrees to require and enforce strict limitations on all outside lighting on all buildings and parking lots constructed both north and south of Airport Road on all property formerly owned by Dr. Quisling ("Quisling lands"). Such limitations shall conform to the City of Middleton lighting standards attached hereto as part of Exhibit H and shall be incorporated into a Restrictive Covenant, the form of which is attached hereto as Exhibit H, which shall be executed at the closing between the Town and the City (and by any other party who owns any lands intended to be restricted hereby), and recorded by the City. The City shall be responsible for preparing a description of the Quisling lands. No variances may be granted to these lighting standards which will increase the intensity of light spillover or other adverse effects of light on any Town of Middleton residential properties, without the approval of the Town Board of the Town. The City shall require all lighting of outdoor athletic fields which are to be located on the Quisling lands to be designed, orientated and installed to minimize, to the greatest extent possible, the adverse effects of light on all residential properties in the Town. The City agrees to require the use of the most current lighting technology to achieve these standards. The City agrees to provide lighting plans to the Town for lighting of athletic fields for review prior to approval by the City. All provisions hereof shall be reflected in Exhibit H.

12. **Noise Limitations.** The City agrees to require and strictly enforce limitations on noise from land uses on the Quisling lands such that the noise level from heating, ventilating and air conditioning equipment, and other mechanical equipment on the Quisling lands, as measured at any residence in the Town, shall not exceed the noise levels for noise criteria curve No. 25, attached hereto as a part of exhibit I, which shall be incorporated into a Restrictive

Covenant which is attached hereto as Exhibit I, which shall be executed by the City and the Town (and any other party who owns any lands intended to be subject thereto) at the closing and recorded by the City.

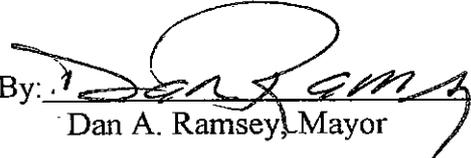
13. **Land Use Planning.** In consideration for the faithful and timely execution of all of the requirements of this agreement, the Town agrees to support the Planned Development District (PDD) zoning designation for all of the Quisling lands to be approved by the Common Council of City. The Town shall be furnished with copies of any and all PDD general implementation plans and specific implementation plans for review and comment prior to the Middleton Plan Commission setting a public hearing on any such general implementation plan or specific implementation plan.
14. **Binding Effect; Miscellaneous.** This Agreement is binding upon the parties hereto, as well as their respective heirs, successors and assigns. This Agreement shall remain binding, regardless of any change in the form of government of either party. This Agreement may not be modified or amended except by a written instrument signed by the parties hereto. The failure of any party hereto to enforce strictly any of the terms hereof shall not constitute a waiver thereof or a waiver of any of the terms or provisions hereof, unless waived in writing by the party granting such waiver. If any provision hereof shall be deemed invalid by any court of competent jurisdiction, such determination shall not invalidate the balance of this Agreement and the balance of this Agreement shall be and remain in full force and effect, and in such event the parties agree to meet and work in good faith to modify this Agreement to the extent possible to secure the benefits of any invalid provision to the parties hereto to the extent permitted by law.
15. **Dismissal of Suit.** At the time of execution and delivery of the deeds referred to in paragraphs 2 and 5 hereof and the covenants referred to in paragraphs 6 through 12 hereof, the parties agree to execute a stipulation dismissing the suit described above between the parties, with prejudice and without costs or attorney fees to any of the parties, and discharging the Lis Pendens recorded with the Dane County Register of Deeds in connection with such suit.
16. **Memorandum of Agreement.** At the closing of the conveyances described in paragraphs 2 and 5 hereof, the parties agree to execute a memorandum of agreement in recordable form applicable to any lands affected by this Agreement as to which there is some action or obligation requiring completion or compliance by one of the parties after such closing which has not been documented in a recorded instrument executed at or prior to such closing.
17. **Real Estate Closing Procedures.** All real estate to be conveyed hereunder shall be conveyed by Warranty Deed, free and clear of all liens and encumbrances, except for public utility easements of record which do not prevent the contemplated use of the property and which are not inconsistent

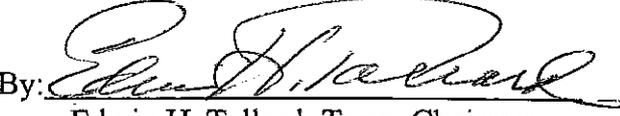
herewith. The party conveying the real estate shall provide to the other party, at the time of execution hereof, a title insurance commitment from a title insurance company licensed to do business in the state of Wisconsin which shall demonstrate that the grantor has merchantable title to the property to be conveyed consistent with the requirements hereof for each Warranty Deed, subject to the exceptions provided herein and standard title insurance exceptions not inconsistent with the terms of this Agreement, but the grantee as to each property conveyed shall be responsible for the cost of the title insurance and shall determine the amount of the coverage required at its expense.

IN WITNESS WHEREOF, the parties hereto have caused the execution of this Agreement by authority of their respective governing bodies effective as of the date when all parties hereto have affixed their respective signatures.

CITY OF MIDDLETON

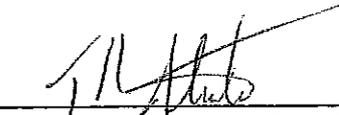
TOWN OF MIDDLETON

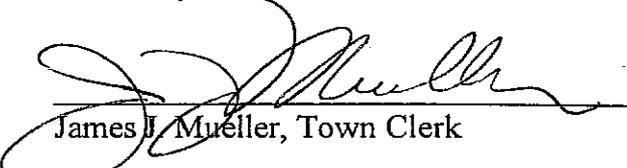
By: 
Dan A. Ramsey, Mayor

By: 
Edwin H. Tallard, Town Chairman

ATTEST:

ATTEST:


Timothy R. Studer, City Clerk


James J. Mueller, Town Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this 27 day of August, 2001, the above-named Dan A. Ramsey and Timothy R. Studer, by and on behalf of the City of Middleton, to me known to be the persons who executed the foregoing and acknowledged the same.

Lance Ambler
Notary Public, State of Wisconsin
My Commission: 4-13-03

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this 11th day of December, 2001, the above-named Edwin H. Tallard and James J. Mueller, by and on behalf of the Town of Middleton, to me known to be the persons who executed the foregoing and acknowledged the same.

Tom Oaty
Notary Public, State of Wisconsin
My Commission: expires 6-5-05

