

8/31/17

Meeting re: off-site ~~W~~ P2 @ 825 W Main St,  
Hortonville for F V Steel + Wine 02-45-560221

Barry + Tracy Jennerjohn - Rep. Jennerjohn LLC  
Michael + ? Gonnering - Rep. Affordable Rental + Storage  
+ son Mark Gonnering  
Atty. Jim Long (rep. Jennerjohns?)  
Jennifer Borski, DNR

Discussion of "Second Extension to Land Contract"  
and proposal for P2 by F V Steel + Wine

State Bar of Wisconsin Form 11-2003  
**LAND CONTRACT**  
(TO BE USED FOR NON-CONSUMER ACT TRANSACTIONS)

Document #: **2005135**  
Date: **12-17-2013** Time: **10:23 AM** Pages: **7**  
Fee: **\$30.00** County: **OUTAGAMIE** State: **WI**  
Transfer Fee: \$558.00

**SARAH R VAN CAMP**  
**REGISTER OF DEEDS**

\*\*\*The above recording information verifies this document has been electronically recorded and returned to the submitter\*\*\*

Document Number

Document Name

**CONTRACT**, by and between Jennerjohn LLC  
\_\_\_\_\_  
("Vendor," whether one or more),  
and Affordable Rental & Storage LLC  
\_\_\_\_\_  
("Purchaser," whether one or more).

Vendor sells and agrees to convey to Purchaser, upon the prompt and full performance of this Contract by Purchaser, the following real estate, together with the rents, profits, fixtures and other appurtenant interests ("Property"), in Outagamie County, State of Wisconsin:

**SEE ATTACHED LEGAL DESCRIPTION**

Additional Land Contract Terms: Seller shall be responsible for capping the three wells located on the property and removing Doc. No. 1459354 dated the 28<sup>th</sup>, 2002, Notice of Contamination; and Doc. No. 1690467, dated the 1<sup>st</sup> of December, 2005, Deed Restriction. Vendor shall indemnify and hold Purchaser harmless from any loss resulting from damages arising from such wells until such time as the Title is clear of above documents.

Purchaser agrees to purchase the Property and to pay to Vendor at PO Box 24, Greenville, WI 54942

the sum of \$ 185,901.02 in the following manner:

- (a) \$ -0- at the execution of this Contract; and
- (b) the balance of \$ 185,901.02, together with interest from the date hereof on the balance outstanding from time to time at the rate of 0.25 % per annum until paid in full as follows:

No payments shall be due until the Maturity Date (see below). Real Estate taxes for 2013 shall be prorated and paid at the time of receipt of the 2013 tax bill. Purchaser shall be responsible for the real estate taxes for 2014 and subsequent years. Vendor shall be entitled to receipt of all insurance proceeds relating to the Property received as a result of claims arising prior to the date hereof. Vendor shall keep current Insurance Policy in effect until all claims arising prior to this date have been paid in full by the Insurance Company.

The entire outstanding balance shall be paid in full on or before the earlier of : (1) the sale of real property owned by PPF Investments LLC located at 728 Schelfhought Ln., Kimberly, WI., or (2) December 1, 2015 ("Maturity Date").

Payments shall be applied first to interest on the unpaid balance at the rate specified and then to principal.

**CHOOSE ONE OF THE FOLLOWING OPTIONS; IF NO OPTION IS CHOSEN, OPTION A SHALL APPLY:**

- A. Any amount may be prepaid without premium or fee upon principal at any time.
- B. Any amount may be prepaid without premium or fee upon principal at any time after \_\_\_\_\_.
- C. There may be no prepayment of principal without written permission of Vendor.

Recording Area

Name and Return Address  
Attorney James R. Long  
5735 W. Spencer Street  
Appleton, WI 54914

24-0-0312-00 & 10-0-0617-00

Parcel Identification Number (PIN)

This is not homestead property.  
(is) (is not)

This is not a purchase money mortgage.  
(is) (is not)

## SECOND EXTENSION TO LAND CONTRACT

Jennerjohn LLC, ("Vendor," whether one or more), and Affordable Rental and Storage LLC, ("Purchaser," whether one or more), entered into two separate Land Contracts on the 7<sup>th</sup> of December, 2013.

Those Land Contracts were Amended on the 30<sup>th</sup> of July, 2015.

In November of 2016, effective the 1<sup>st</sup> of November of 2016, the parties entered into an Extension on one of the Land Contracts.

The Land Contract for \$75,000.00 was Paid in Full, as set forth in the Warranty Deed dated November 18<sup>th</sup>, 2016. That Land Contract has ended.

The second Land Contract now has a balance due as of November 1<sup>st</sup>, 2016, of \$169,137.90. That Land Contract shall draw interest, beginning with the 1<sup>st</sup> of November, 2016, of 4% annually with monthly payments of a minimum of \$2,000.00, with the first payment due on the 1<sup>st</sup> of November, 2016. The \$2,000.00 paid per month shall apply first to Interest and the balance to Principal.

This Land Contract is extended until October 31<sup>st</sup>, 2018, or until 90 days following the date when the State of Wisconsin acting under authority of the document called "Notice Of Contamination To Property" filed in Outagamie County Register of Deeds on the 28<sup>th</sup> of March, 2002, as Document No. 1459354, issues a determination that the restrictions can be extinguished and an Affidavit with the Department's written determination is recorded to give notice that the restriction, or portions of the restriction are no longer binding.

Further, the Deed Restriction recorded on December 1<sup>st</sup>, 2005, as Document No. 1690467, requires a request from the owner of the property to the Wisconsin Department of Natural Resources. If the Department determines that the restrictions can be extinguished, an Affidavit attached to the Department's written determination, may be recorded by the property owner or other interested party to give notice that this Deed Restriction, or portions of the Deed Restriction, are no longer binding.

Until those two documents are filed with the Register of Deeds they remain of record.

If those two documents are recorded and the current owners prove that they have done so, Affordable Rental and Storage LLC understands that they must pay the Land Contract in full 90 days after the DNR gives clear title.

No other changes were made to the Extension of this Land Contract.

**ALL OTHER TERMS OF THE LAND CONTRACTS AS ORIGINALLY STATED REMAIN UNCHANGED.**

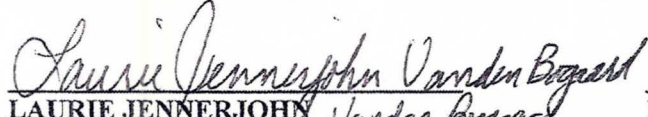
Dated this 23 day of November, 2016.

VENDOR:

PURCHASER:

JENNERJOHN LLC, by:

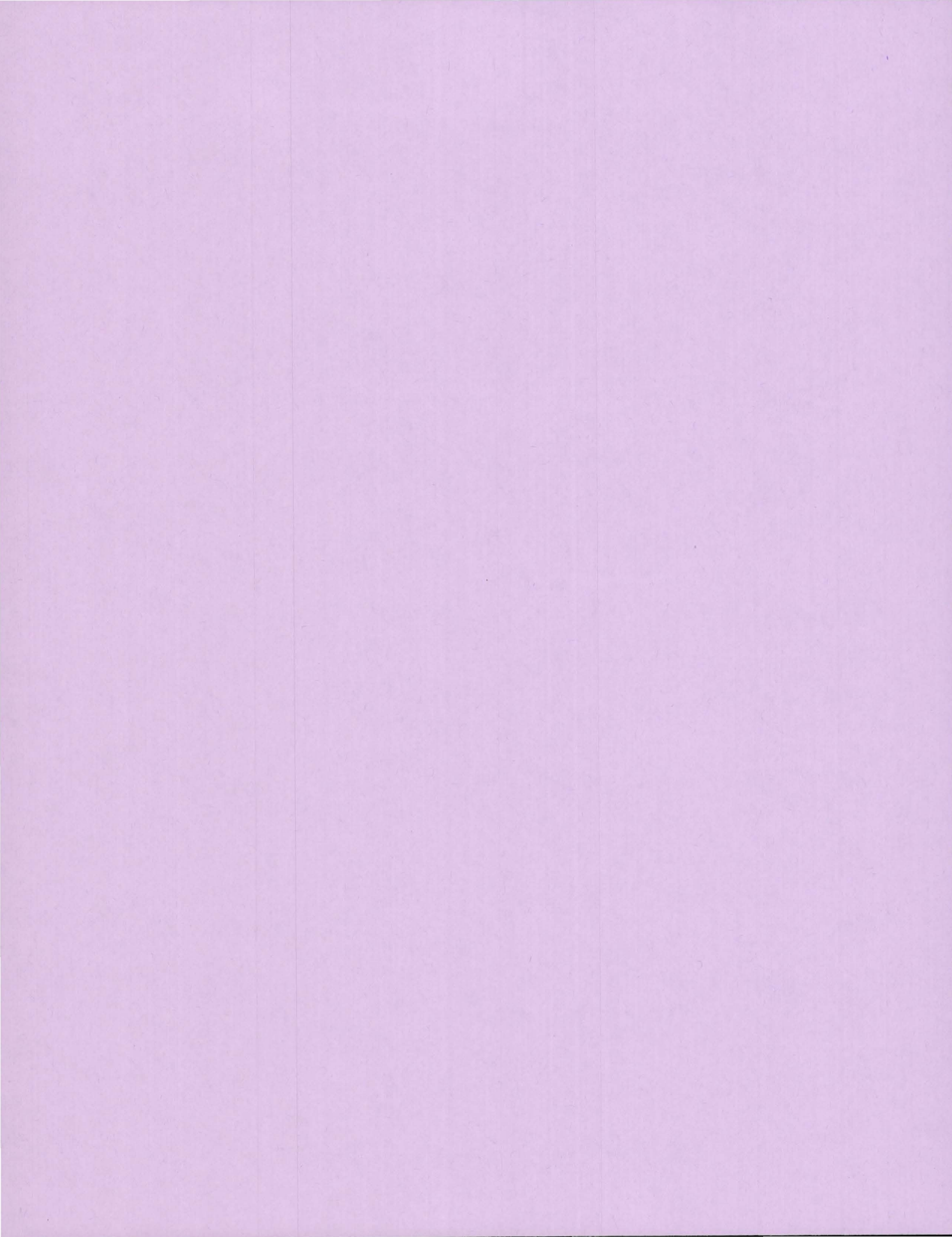
AFFORDABLE RENTAL & STORAGE LLC, LLC, by:

  
LAURIE JENNERJOHN *Vanden Bergard*

  
MICHAEL J. GONNERING

  
MARK JENNERJOHN





## Borski, Jennifer - DNR

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**From:** Beggs, Tauren R - DNR  
**Sent:** Wednesday, August 30, 2017 3:03 PM  
**To:** Borski, Jennifer - DNR  
**Subject:** RE: Info: Filed Deed Notice for 825 W Main St, Hortonville, WI

Hi Jennifer,

Barry is on vacation, but I talked to Michael about this situation and he feels the same as us that the monitoring well that would be installed from the off-site investigation would not affect the title. He would however like to evaluate the property owner's questions in more detail and the land contract documents for the language regarding the clearing of the title. Do you have the land contract document that you could send to Michael? We can have a follow up call with him tomorrow after your face to face conversation with the property owner.

Some thoughts:

- If he is submitting a request for an off-site liability exemption, I would have him include his specific questions below if they cannot be resolved in your meeting with him.
- Would it be beneficial to call a potential lender to find out what documentation they would be looking for to support the financing if this additional well was installed from the FV Steel investigation on this property?
- The off-site exemption is to responsibility of cleanup. The responsibility of the installation of the monitoring wells, groundwater sampling, maintenance of the wells, abandonment of the wells is the FV Steel's responsibility, not theirs.
- If there is a continuing obligation imposed on American Toy and Furniture for residual groundwater, there will be minimal concerns since those properties get their water from a municipal system. If there is a continuing obligation for vapor, such as a vapor mitigation system that would need to be maintained and operated (which is unlikely since it sounds like from our discussion, they are investigating deep groundwater), they could work out a third party agreement for the maintenance of the system. If there is a continuing obligation placed on the American Toy and Furniture property from the off-site case (FV Steel) at the time it would be closed, then that would go on the GIS Registry. I can see how he views it that the property would have contamination on it; however the contamination would be known and defined, so what unknown liability would there be.
- This statement from the land contract *If those two documents are recorded and the current owners prove that they have done so, Affordable Rental and Storage LLC understands that they must pay the Land Contract in full 90 days after the DNR gives clear title.* seems to be specifically referencing the two recorded documents (deed restriction and notice of contamination) and the clearing (rescinding) those from the title, not referring to anything else that came up later. Anything else that comes up later (such as the contamination coming from off-site from FV Steel) can be covered by an off-site liability exemption letter to address these separate concerns.

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Tauren R. Beggs  
Phone: (920) 662-5178  
Tauren.Beggs@wisconsin.gov

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**From:** Borski, Jennifer - DNR  
**Sent:** Wednesday, August 30, 2017 1:53 PM  
**To:** Beggs, Tauren R - DNR  
**Subject:** FW: Info: Filed Deed Notice for 825 W Main St, Hortonville, WI

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Jennifer Borski

Phone: (920) 424-7887

[Jennifer.borski@wisconsin.gov](mailto:Jennifer.borski@wisconsin.gov)

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**From:** Affordable Rental-Storage [<mailto:sales@arshortonville.com>]  
**Sent:** Wednesday, August 23, 2017 4:17 PM  
**To:** Borski, Jennifer - DNR; [ARS\\_LLC@att.net](mailto:ARS_LLC@att.net); 'Barry Jennerjohn'; 'James Long'  
**Cc:** 'Brian Wayner'  
**Subject:** RE: Info: Filed Deed Notice for 825 W Main St, Hortonville, WI

Jennifer,

It is correct that the original land contract which you cited and the Second Extension To Land Contract both make specific reference to the wells which have been closed. But, the Second Extension to Land Contract states:

*If those two documents are recorded and the current owners prove that they have done so, Affordable Rental and Storage LLC understands that they must pay the Land Contract in full 90 days after the DNR gives clear title.*

While the monitoring wells have been closed and the forms are being processed, no reasonable person would say that clear title is actually being received if another well is placed on the property before the last ink is even on the page of the documents clearing the property of environmental concerns. Currently, several lenders are actually competing to finance the remaining balance on the property, but with another well potentially being placed on the property, I will have no choice but to inform potential lenders of that fact. I sincerely hope that I am incorrect, but I anticipate that this information will have a negative effect on the ability to finance the property. If anyone asks a bank that pulls out why, I expect the answer will be obvious that the title is not actually clear from an environmental standpoint, thus negating the final trigger in the Second Extension to Land Contract. Notably, there is a reasonable to strong chance this occurs even if we obtain a liability exemption letter on the property that you suggested in your email.

We respect that if the law provides an exemption from liability, but it is a bit unclear to me how it is an exemption from liability if I am required to maintain the continuing obligations. Is FV Steel required to compensate me for the reasonably expected cost of this maintenance upfront in the access agreement? If so, how does one even begin to ascertain what a reasonable sum is for such maintenance? If a test well shows no contaminants, how long would it need to remain open? These are just a few of the questions rolling around on this end.

It seems relatively clear to me that no reasonable person would suggest that this amounts to a clear title. With that in mind, Jennerjohn still has an interest in the property as a current lienholder and we'll need to discuss this with them.

With all this in mind, I would appreciate it if we could have another meeting as you suggested in your email. I think it would be appropriate for Jennerjohns and the attorney who drafted the land contract, Jim Long, to attend as well. I will try to be as available as possible. Please let me know when would work for you.

In the meantime, we are going to start the application for the exemption letter and get that submitted anyway since that appears to be the best chance to obtain financing. I am curious how long it will take to obtain this once we submit the application.

Mike Gonnering

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**From:** Borski, Jennifer - DNR [<mailto:Jennifer.Borski@wisconsin.gov>]  
**Sent:** Wednesday, August 23, 2017 11:57 AM  
**To:** Affordable Rental-Storage; [ARS\\_LLC@att.net](mailto:ARS_LLC@att.net); 'Barry Jennerjohn'  
**Cc:** 'Brian Wayner'  
**Subject:** RE: Info: Filed Deed Notice for 825 W Main St, Hortonville, WI

Morning Mike,

Thanks for so clearly laying out your concerns. There are a lot of details to sort through on this property and it's all quite complex so I understand that our conversation yesterday may have created more questions for you, even though that was not the intent. I will attempt to clarify all points here in this email. Please let me know if you'd like to have another conversation either on the phone or face-to-face if there are still questions.

- When a release to the environment is reported to DNR, the responsible party has to install monitoring wells and collect soil and groundwater samples. This does not affect the *title* of the property and there is no documentation placed on the title while a case is being investigated. However, open environmental investigations are a concern for prospective purchasers and lenders because of the unknown liability.
- There was a unique situation at 825 W Main St in Hortonville because the property was tax delinquent and there was no viable responsible party. DNR obtained grant funds to begin an investigation and collected soil and groundwater samples, including installing monitoring wells. Outagamie County eventually took title to the property through tax foreclosure and completed the investigations. Mr. Jennerjohn took title to the property and assumed responsibility for the monitoring wells that remained after closure at his request. The purpose was to monitor groundwater until the contamination dropped below standards, even though this was not required by DNR.
- The Department of Commerce (now Department of Safety and Professional Services (DSPS)) filed a "notice of contamination" at the Register of Deeds office in 2002 notifying prospective purchasers of residual soil and groundwater contamination on the property from the underground storage tank when Commerce closed out the environmental case. A case is "closed" when no further investigation or cleanup is being required. However, a "notice of contamination" on the title is a concern for lenders because of *potential future liability*. Commerce had jurisdiction over petroleum-related cases at the time.
- DNR filed a "deed restriction" at the Register of Deeds office in 2005 notifying prospective purchasers of residual soil and groundwater contamination from the chlorinated solvent release and the fact that the building was required to be maintained (i.e. could not be removed) without prior written approval from DNR when DNR closed out that environmental case. Again, the case was "closed" because no further investigation or cleanup was required for that release. A "deed restriction" on the title is more concerning for lenders because of there being a restriction placed on the use of the property and the potential future liability associated with that.
- The land contract between you and Jennerjohn states the following additional terms:

**Additional Land Contract Terms: Seller shall be responsible for capping three wells located on the property and removing Doc. No. 1459354 dated 28<sup>th</sup>, 2002, Notice of Contamination; and Doc. No. 1690467, dated the 1<sup>st</sup> December, 2005, Deed Restriction. Vendor shall indemnify and hold Purchaser harmless from any loss resulting from damages arising from wells until such time as the Title is clear of above documents.**



1. The three wells located on the property (MW-1, MW-5 & TW-3) were "capped" (i.e. abandoned) by OMNNI. OMNNI also abandoned TW-2 on railroad property.
2. The "Notice of Contamination" Doc No. 1459365 dated 2002 cannot be "removed"; however, it can be *rescinded* by filing another affidavit stating that the residual contamination from the petroleum case is no longer present. This was accomplished with the "Deed Notice" just recorded to the title on July 28, 2017.
3. The "Deed Restriction" Doc No. 1690467 dated 2005 cannot be "removed"; however, it can be *rescinded* by filing another affidavit stating that the residual contamination from the chlorinated solvent case is no longer present AND that the restriction to maintain the building no longer applies. This was also accomplished with the "Deed Notice" just recorded to the title on July 28, 2017.

The "Deed Notice" of 2017 essentially clears the title of all notices of contamination and restrictions resulting from previously reported environmental contamination.

- My supervisor is reviewing and will sign two letters titled "Addendum to Case Closure – Removal of Continuing Obligations" that DNR is required to write when environmental work is completed after a case is closed. There is one letter for the closed petroleum case and one for the closed chlorinated solvent case. These letters provide written documentation that there is no longer residual contamination from the previously documented releases and confirms there are no remaining continuing obligations, much of which is also stated in this email.
- Now there is a separate issue that has entered the picture. The property to the north/northeast owned by F V Steel and Wire Company has a release of chlorinated solvents of their own (BRRTS #02-45-560221). They are the responsible party required to investigate that contamination and find the extent of it, even if that means installing wells and collecting soil and groundwater samples on other properties to figure out how far their contamination has migrated. DNR does not install the wells or accept responsibility for these wells. Off-site property owners have no environmental liability for that contamination or the monitoring wells installed by F V Steel and Wire Company as long as you allow reasonable access to allow their consultant to do the investigation.

A link to a fact sheet explaining this is included here: <http://dnr.wi.gov/files/PDF/pubs/rr/RR589.pdf>.

A legal letter can be written to you clarifying your liability for the well proposed by F V Steel and Wire Company but you will need to submit an application and the associated review fee of \$700. The application is available at this link: <http://dnr.wi.gov/files/PDF/forms/4400/4400-201.pdf>.

There is also a fact sheet for lenders regarding investigation of contamination from an off-site property owner available at this link: <http://dnr.wi.gov/files/PDF/pubs/rr/RR927.pdf>.

You and Mr. Jennerjohn should be able to move forward with satisfying the land contract whenever you are ready. Unfortunately, you must also work with F V Steel and Wire Company so that they can perform the actions required of them by State Law. This is a lot to take in. As stated at the beginning of this email, please let me know if you'd like to have another conversation either on the phone or face-to-face if there are still questions.

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Jennifer Borski

Phone: (920) 424-7887

[jennifer.borski@wisconsin.gov](mailto:jennifer.borski@wisconsin.gov)

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**From:** Affordable Rental-Storage [<mailto:sales@arshortonville.com>]

**Sent:** Tuesday, August 22, 2017 6:40 PM

**To:** Borski, Jennifer - DNR; [ARS\\_LLC@att.net](mailto:ARS_LLC@att.net); 'Barry Jennerjohn'

**Cc:** 'Brian Wayner'

**Subject:** RE: Info: Filed Deed Notice for 825 W Main St, Hortonville, WI

Jennifer,

We appreciate that your supervisor is attending to the final close out documents, but after our conversation today, I have legitimate questions here about the actual effect of that paperwork. The land contract for this

property states that the duty to pay the seller of the property arises after the "DNR gives clear title to the property."

While we appreciate the paperwork which is being done on the three wells, if the DNR intends to place a new well on the property, the title is hardly clear even if the DNR is accepting responsibility for the issue. As such, it would be difficult, if not impossible to borrow money against the property and will also preclude the land contract's trigger to pay out the seller.

Please confirm whether the DNR intends to place another monitoring well on the property. If it does, then it is appropriate to notify Jennerjohns, because the DNR is essentially clouding title again (never really actually clearing it), which impedes the duty to pay out the land contract.

This has an incredible effect on the value of the property and on my ability/duty to pay seller out on it. I sincerely hope that is not the case.

I sincerely hope that I somehow misunderstood the phone conversation we had today, but at this point I need to kindly ask that you please confirm whether the DNR actually intends to place another well on the property. If so, that is obviously an impediment on title and leaves questions about what the actual overall effect is of the paperwork which your supervisor is planning to review. I need to know with certainty what the status is on the property so that I do not make any misrepresentations to potential lenders.

Mike Gonnering

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**From:** Borski, Jennifer - DNR [<mailto:Jennifer.Borski@wisconsin.gov>]  
**Sent:** Tuesday, August 22, 2017 4:22 PM  
**To:** 'ARS\_LL@att.net'; Barry Jennerjohn ([jennerjohnsellshomes@gmail.com](mailto:jennerjohnsellshomes@gmail.com))  
**Cc:** Brian Wayner ([Brian.Wayner@omnni.com](mailto:Brian.Wayner@omnni.com))  
**Subject:** Info: Filed Deed Notice for 825 W Main St, Hortonville, WI

Mike & Barry,

The deed notice you both recently signed and recorded at the Register of Deeds office is scanned and attached for your use. I received the recorded version on August 11<sup>th</sup>. Attached is a complete copy of the recorded version.

I drafted the closure addendum letters for each case (BRRTS #02-45-000563 & #03-45-245541) today and forwarded to my supervisor for review and signature. The recorded deed notice is a referenced attachment in each letter and a hard copy will be forwarded to each of you when the closure addendum letters are finalized. I expect it will be at least a week before my supervisor will be able to review and sign.

Let me know if you have any questions in the interim.

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Jennifer Borski

Hydrogeologist – Remediation & Redevelopment Program

Wisconsin Department of Natural Resources

625 E. County Road Y, STE 700, Oshkosh, WI 54901-9731

Phone: (920) 424-7887

Cell Phone: (920) 360-0853

[jennifer.borski@wisconsin.gov](mailto:jennifer.borski@wisconsin.gov)



