



500 Fourth Ave. NE
Austin, MN 55912-3773

www.ci.austin.mn.us

507-437-9940
Fax: 507-434-7197

AGENDA
PORT AUTHORITY
TUESDAY SEPTEMBER 7, 2021
CITY HALL – CONFERENCE ROOM A
4:30 PM

1. Roll Call.
2. Approval of minutes of the June 15, 2021 special meeting.
3. Approve sale of property for PIN 34.460.1040, 34.865.0541, 34.865.0610, and 34.579.0010. (Craig Clark)
4. Creekside Business Park infrastructure grant opportunity – verbal update. (Craig Clark)
5. Review purchase agreement with Patriot Land & Construction Co. LLC for property along 14th Street NE. (Craig Clark)
6. Update on 17th Street NE street project. (Craig Clark)
7. Executive Director Report. (Craig Clark)
8. Any other business.
9. Adjourn.

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement") is entered into this ____ day, of _____, 2021 (the effective date), by and between the Austin Port Authority, a Minnesota public company (hereinafter "Seller"), and Patriot Land & Construction Co, LLC, a Minnesota limited liability limited company (hereinafter "Buyer").

1. Purchase.

1.1. **Subject Property.** Subject to the terms and provisions of this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the subject property described in the attached Exhibit A ("Subject Property"), together with any and all improvements constructed or located on the Subject Property and all easements and rights benefiting or appurtenant to the Subject Property, including any right, title or interest in the bed of any street, road, highway or alley adjoining the Subject Property (hereinafter collectively "Property"), in accordance with the terms and conditions of this Agreement.

1.2 Permits, Warranties and Plans.

2. **Purchase Price.** The total purchase price ("Purchase Price") to be paid by Buyer to Seller for the Property is **Three Hundred Nineteen Thousand Two Hundred and Twenty Dollars (\$319,220.00)**. The Purchase Price shall be payable as follows:

2.1. **Earnest Money.** **Two Thousand Five Hundred Dollars (\$2,500.00)** as earnest money ("Earnest Money") to be paid to Seller. Unless terminated by Buyer pursuant to Sections 5.2, 8.2, 11 or 12 below, if this transaction fails to close for any reason whatsoever (other than Seller's default), the Earnest Money is nonrefundable and will be retained by Seller as consideration for withholding the Property from the market during the pendency of this Agreement.

2.2. **Balance of Purchase Price.** The balance of the Purchase Price, the sum of **Three Hundred Sixteen Thousand Seven Hundred Twenty Dollars (\$316,720.00)**, shall be paid at closing in certified funds or by wire transfer.

2.3. **Contingencies.** The obligation of the Buyer to perform under this Agreement is contingent upon the timely occurrence or satisfaction of each of the following conditions:

proposed use. If Buyer cannot close upon such offer, then it shall waive any further right it may have to that particular parcel of property it may have under this provision.

2.3.7. Buyer shall have ninety (90) days from the effective date of this Agreement to: (i) satisfy and waive a contingency; (ii) give notice to Seller of its inability to waive or satisfy a contingency with an explanation and request for further time to satisfy a contingency, or, (iii) waive such condition/contingency and move to Closing.

3. **Closing.** Unless extended or sooner terminated as provided herein, the closing of the purchase and sale of the Property ("Closing") shall occur on or before _____, 2021 ("Closing Date"). The Closing shall take place at the offices of _____ (TBD) in _____, MN, or at such other place as may be mutually agreed by the parties.

4. **Title.** At the Closing and subject to performance by Buyer, Seller agrees to execute and deliver to Buyer a General Warranty Deed ("Deed") conveying marketable title to the Property, subject only to the following exceptions ("Permitted Exceptions"):

(TO BE LISTED)

5. **Title Examination.**

5.1. **Abstract.** Seller shall deliver to Buyer an Abstract of Title or a Certificate of Title, certified to date, to include paper searches covering bankruptcies and state and federal liens and judgments, property taxes and all special assessments levied or pending against the Property. Buyer shall have twenty business (20) days after receipt of the Abstract for examination of it and the making of any objections thereto, said objections to be made in writing within said time period or deemed to be waived.

5.2. **Title Clearance.** If any objections are so made, Seller shall be allowed thirty (30) days to make title marketable. If Seller's title to the Property is not marketable and is not made so by Seller within thirty (30) days from the date Seller receives Buyer's written objections to the title, and if Buyer has not delivered to Seller a written waiver of uncured title objections within ten (10) business days after expiration of the time period for Seller's correction of title defects, then this Agreement may be terminated at the election of Buyer, and if declared void, this Agreement shall have no further force or effect, and the Earnest Money paid by Buyer shall be returned to Buyer and neither Seller nor Buyer shall have any further rights, liabilities or obligations under this Agreement. If title to the Property is made

7.1. **Inspection.** So long as this Agreement remains in force, Buyer and Buyer's employees, agents and contractors shall have the right to inspect the Property and conduct such soil and geologic tests, environmental assessments, surveys and other tests and inspections as Buyer may reasonably require, all at the sole cost and expense of Buyer.

7.1.1. **Mechanics Liens; Indemnity.** Under no circumstances shall Buyer allow any lien to be filed against the Property for any labor or materials furnished to or for Buyer prior to Closing. Buyer shall repair any damage and return the Property to substantially its condition existing prior to Buyer's entry upon the Property. Buyer shall defend, indemnify and hold Seller harmless from any damages, liens, claims, liability, expenses or costs (including attorneys' fees) as may be incurred by Seller as a result of, or relating to such tests and inspections of the Property. This obligation to defend, indemnify and hold harmless shall survive expiration or termination of this Agreement.

8. **Representations and Warranties by Seller.**

8.1. **Seller's Representations and Warranties.** Seller warrants and represents to Buyer that the following statements are true accurate as of the date of this Agreement and the Closing Date:

8.1.1. **Title.** Seller is the record owner of good and marketable title to the Property. So long as this Agreement remains in force, Seller shall not make or suffer any mortgage, lease, conveyance or other transfer, lien or encumbrance of all or any portion of the Property in a manner which will not be released at or prior to Closing.

8.1.2. **Capacity.** Seller is a Minnesota public corporation duly formed, validly existing and in good standing under the laws of the State of Minnesota. Seller has taken all steps required under its governing laws in order to authorize this Purchase Agreement and the performance and satisfaction of all its terms and conditions.

8.1.3. **Hazardous Substances.** Seller has not used, generated, stored, treated, released, dumped or disposed of any Hazardous Substances (as defined below), toxic substances or waste in or about the Property, or into the sewage or other waste disposal or draining system serving the Property, except for the use and storage in minor quantities of those Hazardous Substances, if any, required for the

(b) **"Hazardous Substance"** means any pollutant, contaminant, hazardous substance or waste, sold waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.

8.1.4. **Violations.** Neither the entering into this Agreement nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon it, or, to Seller's knowledge, will result in a violation of any applicable law, order, rule or regulation of any governmental authority.

8.1.5. **Proceedings.** To Seller's knowledge there is no threatened or pending action, litigation, or proceeding by any organization, person, individual or governmental agency (including governmental actions under condemnation authority or proceedings similar thereto or Environmental Laws) against the Property or against Seller with respect to Seller's interest in the Property.

8.1.6. **Governmental Notices.** To Seller's knowledge the Property and its current use, and the location of the improvements on the Property, and the number of parking spaces available on the Property, are in compliance with all federal, state and municipal laws, ordinances, rules and regulations, including zoning, subdivision, environmental protection, building, fire and health laws, ordinances, rules and regulations; and Seller has received no notices from municipal or regulatory bodies that the Property is in violation of the provisions of any such laws, ordinances, rules or regulations.

8.1.7. **Flood Plain.** To Seller's knowledge, no portion of the Property is in a flood plain.

8.1.8. **Wells; Private Sewage.** The Seller certifies and warrants that to the Seller's knowledge there are no "wells" on the Property within the meaning of Minn. Stat. 103I. This representation is intended to satisfy the requirements of that statute. Seller certifies that (i) sewage which will be generated at the Property does not go to a facility permitted by the Minnesota Pollution Control Agency (for example, a municipal sewer system), and (ii) to Seller's knowledge there are no existing or abandoned individual sewage treatment

9. **Closing Documents.** At the Closing, Seller shall execute and/or deliver the following:

- 9.1. **Deed.** The Deed subject to any Permitted Exceptions;
- 9.2. **Seller's Affidavit.** A standard Seller's Affidavit with respect to judgments, bankruptcies, tax liens, mechanics liens, parties in possession, unrecorded interests, encroachment or boundary line questions, and related matters;
- 9.3. **FIRPTA Affidavit.** An affidavit of Seller stating that Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code;
- 9.4. **Bring Down Certificate.** A certificate certified by an officer of Seller reaffirming, as of the Closing Date, the truth and accuracy of Seller's representations and warranties contained in Section 8;
- 9.5. **Seller's Certificate.** A certificate of the secretary of Seller to which there shall be attached as exhibits true and correct copies of a Certificate of Good Standing, Articles of Organization, and the Operating Agreement of Seller, and any amendments thereto, and records of action authorizing and directing appropriate officers to execute and perform this Purchase Agreement and the transactions contemplated herein;
- 9.6. **Records.** All records regarding the Property that are in possession of the Seller or Seller's owners, employees, agents, officers, directors, or representatives, except those that are proprietary to Seller or which are normally viewed as confidential.
- 9.7. **Road Extension.** Seller will complete the extension of 17th Street NE, along the entire East property line of the Subject Property, at no cost to Buyer as such road is planned and shown on the plat of Nature's Ridge Third Addition, and according to the existing and established schedule for such road extension under the Developer Agreement between Nature Ridge Properties of Austin, Co., the City of Austin, and Austin Utilities.
- 9.8. **Miscellaneous.** Any other affidavits or certificates that may be required under Minn. Stat. § 116.48, subd. 6, or § 115B.16 or other provisions of law and such other instruments and documents as are reasonably required by the Title Insurer.

10. **Closing Costs and Prorations.** Seller and Buyer agree to the following prorations and allocation of costs regarding this Agreement:

12. **Condemnation.** If, prior to the Closing Date, eminent domain proceedings are commenced against all or any part of the Property, Seller shall immediately give notice to Buyer of such fact and at Buyer's option (to be exercised within twenty (20) days after Seller's notice), this Agreement shall terminate, in which event neither party will have further obligations under this Agreement. If Buyer shall elect not to give such notice then there shall be no reduction in the Purchase Price, and Seller shall assign to Buyer at the Closing Date all of Seller's right, title and interest in and to any and all awards made or to be made in the condemnation proceedings, and all payments made in lieu of condemnation proceedings until such time as Buyer has elected not to terminate this Agreement by reason of the pending condemnation.

13. **Assignment; Successors and Assigns.** This Agreement may be assigned by either party and this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

14. **Survival of Covenants.** All of the terms, conditions, covenants, warranties, indemnifications and agreements contained in this Agreement shall survive the Closing.

15. **Default.** If Buyer defaults under this Agreement, Seller shall have the right to terminate this Agreement by giving written notice to Buyer according to Minn. Stat. § 533.11, and upon such termination, Seller may obtain and retain the Earnest Money as liquidated damages. In addition, Buyer shall promptly provide and Seller shall be entitled to receive without demand or notice all "due diligence and deliverables" created during the initial due diligence period, the extended due diligence period, or the period between this agreement and closing. The termination of this Agreement, retention of the Earnest Money, and the provision of the due diligence they created will be the sole remedy available to Seller for such default by Buyer, and Buyer will not be liable for damages for specific performance. If Seller defaults under this Agreement, this provision does not preclude Buyer from seeking and recovering from Seller damages for nonperformance or specific performance of this Agreement. Any action by Buyer for specific performance of this Agreement shall be commenced within one year after such right of action by Buyer arises, time being of the essence.

16. **Notices.** Any notice, payment, demand, or communication required or permitted to be given by any provision of this Agreement will be in writing and will be deemed to have been given when delivered personally, or on the date following the date sent by overnight courier or on the second (2nd) business day after the same is

will not be affected thereby. It is the intention that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible and legal, valid and enforceable.

22. **Time.** Time is of the essence of each and every provision of this Agreement where time is a factor. Except as otherwise expressly provided, references to intervals of time shall mean consecutive calendar days, months or years, as applicable. If the date for giving notice or taking action under this Agreement falls on a weekend or Federal or state holiday, the date for the giving of such notice or taking such action shall be extended to the next business day.
23. **Recording.** Neither this Agreement nor a memorandum of this Agreement shall be recorded. Upon expiration of the Agreement, Buyer shall, upon request, deliver to Seller a recordable quitclaim of Buyer's rights under this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first set forth above.

SELLER:

Austin Port Authority

By:

Name, Title

BUYER:

Patriot Land & Construction Co, LLC

By:

Name, Title

M I N U T E S
PORT AUTHORITY SPECIAL MEETING
TUESDAY, JUNE 15, 2021
4:00 P.M.
MAIN-LEVEL CONFERENCE ROOM B

Members Present: **Commissioners Jerry McCarthy (4:05 pm), Jeff Austin, Michael Bednar, Lee BJORNDAL, and Tim Ruzek.**

Members Absent: **Commissioners Chuck Moline and Jason Baskin**

Staff Present: **Port Authority Attorney Craig Byram, Port Authority Executive Director Craig Clark and Port Authority Secretary Tom Dankert.**

Others Present: **Mayor Steve King; Planning Director Holly Wallace; Tim Penny (SMIF); Curt Johnson, Dean Goette, Don Hagen, and Craig Fink representing Patriot Land and Construction Co. LLC., Nate Stencil (via Zoom).**

Vice-President Austin called the meeting to order at 4:00 p.m.

Item #2. – Approval of minutes of the April 28, 2021 regular meeting: Motion by Commissioner Bednar, seconded by Commissioner Ruzek to approve the minutes of the April 28, 2021 regular meeting. Carried 4-0.

Item #3. – Southern Minnesota Initiative Fund presentation: Tim Penny, Executive Director of the Southern Minnesota Initiative Fund (SMIF) thanked the board for their continued annual support. Mr. Penny discussed some of their annual progress including allocating \$5 million this last year into the region. Support for childcare initiatives including provider training and ECFE grants have been some of initiatives during the last year. Commercial grants, including one to Bella Victoria have also been done. Additionally, SMIF was chosen to help allocate out business development grants as part of the CARES Act funding.

Item #4. – Plat approval – Nature's Ridge Third Addition: Mr. Clark discussed the housing development out near the Nature Center, noting the plat abuts Port Authority property, on what would be an extended 17th Street NE. The Port Authority will also be responsible for \$150,000 of estimated roadway costs for our half.

Motion by Commissioner BJORNDAL, seconded by Commissioner Austin to approve the plat. Carried 5-0.

Item #5. – Extension of Due Diligence Period for property located at 11th Drive and 14th Street NE: Mr. Clark noted the Port Authority originally approved a 90-day exclusive due diligence period for the proposed truck wash, and now the developers would like to extend it another 60 days.

Curt Johnson noted he has looked at the property and have fielded extraordinary interest in the sites. Don Hagen, noted we could have 45-60 trailers a day at this proposed site.

Mr. Johnson noted construction costs are going sideways right now and it is very expensive, but we have a budget of \$9.5 million for a 50,000 square foot facility. The additional 60 days is needed to help with obtaining the needed bank financing. Mr. Johnson noted he understands somebody else is looking at the 13.55 acres that was part of the original due diligence period, but they will let that portion go as far as the extended period request goes.

Commissioner Bjorndal questioned if there would be a buffer strip between this development and the existing bike trail. Mr. Johnson noted there would be, but the plan has not yet been finalized.

Commissioner Ruzek questioned what would happen with the existing G&R Truck Wash site. Mr. Johnson noted they would look at repurposing the existing building.

President McCarthy questioned what the plan was for the waste from this facility. Mr. Hagen noted it would be done differently than is currently being done at the G&R Truck Wash facility, and he has spoken with City Engineer Lang about their proposed project.

Motion by Commissioner Bednar, seconded by Commissioner Austin approving of 60-day extension in the due diligence period, for the 25-acre site only. Carried 5-0.

Item #6. – Proposed development agreement with Stencil Group II, Inc. and #7 Purchase agreement for 704 1st Drive NW: Mr. Clark discussed the proposed market-rate apartment project on the site of the former YMCA. Mr. Clark noted the Council reviewed two proposals, and decided the Stencil project was a better fit for the site. Mr. Clark noted the City agreed to give the Port Authority \$650,000 to cover the cost of the purchase agreement. Mr. Clark noted included in the proposal are contracts for Phase I and Phase II environmental reviews, and a blight test company that is needed for tax increment financing purposes. There is a sales price of \$1, and a claw-back provision that if construction does not commence within 1 year the land goes back to the Port Authority. The project is proposed at 91 units for \$16.5 million.

Commissioner Austin questioned why the City couldn't just do this and keep the Port Authority out of it. Mr. Byram noted the Port Authority has broader powers under state statute, plus the claw-back provision is specifically listed in state statutes. Commissioner Austin stated that the City could just as easily included the same provision in an agreement if they were doing this.

Mayor King noted the vision for downtown and the former YMCA was not known by the City Council and that interest from market rate developers came late to the table. The City benefits 26 years down the road as this market rate property has a tax rate that is 40% higher than affordable rate apartments.

Commissioner Austin stated we need all sorts of housing, both market rate and affordable. After this project is done, we should not need additional market rate apartments for a long time.

Commissioner Ruzek questioned why this doesn't go through the HRA instead. Mr. Byram stated the Port Authority can do almost anything to support economic development.

Developer Nate Stencil noted he opened the Flats on 21 and it is full, and believe a higher amenity apartment is needed in Austin. The existing YMCA will be completely torn down, and this should also help open up single-family home inventory in town.

Motion by Commissioner Bednar, seconded by Commissioner Ruzek to approve the development agreement with Stencil Group II, LLC. Carried 5-0.

Motion by Commissioner Ruzek, seconded by Commissioner Bjorndal to approve the \$650,000 purchase agreement with the YMCA. Carried 5-0.

Item #8. – Executive Director Report: Mr. Clark Stated Commissioner Jerry Mohrfeld has resigned and will be recognized at the June 21, 2021 City Council meeting for his years of service to the Port Authority. Mr. Mohrfeld is the last founding member of the Port Authority and has been on this Board for 34 years.

Additionally, the Nu-Tek ground breaking will be June 22 at 11:00 am.

Mr. Clark noted he has a conflict with the July 28, 2021 regular Port Authority meeting, so we may just cancel that one.

Item #9. – Any other business: None.

Item #10. Adjournment: With no further business, motion by Commissioner Austin, seconded by Commissioner Bjorndal to adjourn the meeting at 5:10 pm. Carried 5-0.

Approved: _____

President: _____

Secretary: _____

City of Austin
Craig Clark,
City Administrator



500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773
Phone: 507-437-9941
craigc@ci.austin.mn.us
www.ci.austin.mn.us

TO: President and Port Members
FROM: Craig D. Clark, Executive Director
RE: Stencil approval of sale and Exhibit D

As you may recall the Port Authority approved a Development Agreement (Exhibit 1) with the Stencil Group II, Inc. on June 15th. Items have progressed and the Port Authority has to satisfy the public notification requirement of any sale of property required by State Statutes as well as waiting the 20-day objection period. This action simply satisfies the public hearing component and is the same development agreement previously approved by the Port Authority.

This also presents a good opportunity to approve the latest building plans which outlines the “project layout, Floor Plans, Interior and Exterior Finishes” which are part of the Development Agreement as Exhibit D (Exhibit 2 in the packet). This along with the requirements of construction costs ensures we get the level of construction we are expecting.

We still await details which are being resolved on the title but are expected to come to a resolution. The Port Authority will own the property to protect our reversionary interests on the project.

Port Authority action is requested to approve the Development Agreement and thereby sale of the property from the Port Authority to Stencil Group II, Inc. as well as the updated Exhibit D of the agreement.

COPY

Exhibit 

CONTRACT

FOR

PRIVATE DEVELOPMENT

By and Between

THE AUSTIN PORT AUTHORITY

And

STENCIL GROUP II, INC.

This document drafted by:

**HOVERSTEN, JOHNSON, BECKMANN,
& HOVEY, LLP
807 West Oakland Avenue
Austin, MN 55912**

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CONTRACT FOR PRIVATE DEVELOPMENT

THIS AGREEMENT, made this ____ day of _____, 2021, by and between The Austin Port Authority, (the "Port"), a public corporation under the laws of the State of Minnesota, having its principal offices at 500 4th Avenue NE, Austin, Minnesota 55912, and NJS Development LLC, a South Dakota Limited Liability Company having its principle office located at 1507 East 69th Street, Sioux Falls, South Dakota 57108 (the "Developer").

WITNESSETH:

WHEREAS, the Port is a municipal corporation organized and existing pursuant to Minnesota Statutes § 469.070; and

WHEREAS, the Port has the duty to promote the general welfare of the Port District and to increase the volume and efficiency of commerce in and through the Port District (Minnesota Statutes § 469.055, Subd. 1); and

WHEREAS, the Port may cooperate with the City of Austin in achieving its industrial development objectives in the Port District (Minnesota Statutes § 469.064); and

WHEREAS, the City of Austin has identified a need for additional market-rate rental units; and

WHEREAS, pursuant to Minnesota Statutes Section 469.058, et seq., the Port is authorized to assist in economic development; and

WHEREAS, the Port has determined that the Development Property is property for which economic development thereupon is in the best interests of the district and its people, and that the transactions described herein further the Port's general plan of port improvement, or industrial development, or both, and as such the Port has approved the Project pursuant to Minnesota Statutes Section 469.058, et seq.; and

WHEREAS, the Port recognizes that the Project will result in redevelopment of the Development Property and that the Development Property is presently occupied by buildings, structures, improvements, and paved surfaces that are structurally substandard to a degree that requires substantial renovation or clearance ("structurally substandard" means containing defects in structural elements or a combination of deficiencies in essential utilities and facilities, light and ventilation, fire protection including adequate egress, layout and condition of interior partitions, or similar factors, which are of sufficient total significance to justify substantial renovation or clearance). See, (Minnesota Statutes Section 469.174, subd. 10); and

WHEREAS, the Port recognizes the Project herein described would not happen through solely private investment in the reasonable foreseeable future and the net increase in market value for the Development Property will be higher with the provision of support by the City of Austin as described herein, including but not limited to the establishment of an Redevelopment Tax Increment Financing District within a Project Area identified in a Tax Increment Financing Plan (Minnesota Statutes Section 469.174) (subject to said District meeting the statutory criteria and being approved by the City of Austin and other required governmental agencies (if any) (See Minnesota Statutes Section 469.175, Subd. 3);

and

WHEREAS, an Redevelopment Tax Increment Financing District may not have a term that exceeds twenty-five years from the date of receipt of the first increment (Minnesota Statutes Section 469.176, Subd. 1b); and

WHEREAS, revenues derived from tax increments from a Redevelopment Tax Increment Financing District must be used to finance eligible costs related to a Development Project under Minnesota Statutes Section 469.048 to 469.068 and 469.174 to 469.1799; and

WHEREAS, the major objectives of the Port in establishing the Project are to provide for economic development, enhanced employment and tax base, and overall improvement in the Port District; and

WHEREAS, the Port believes that the development of the Project pursuant to this Agreement, and fulfillment generally of the terms of this Agreement, are in the vital and best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws under which the development and redevelopment are being undertaken and assisted; and

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I.
Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

“Act” means Minnesota Statutes, Chapter 469.

“Agreement” means this Agreement, as the same may be from time to time modified, amended or supplemented.

“Certificate of Completion” means the certification, in the form of the certificate contained in Exhibit C attached to and made a part of this Agreement, provided to Developers, pursuant to Section 4.5 of this Agreement.

“City” means the City of Austin, Minnesota.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by Developer on the Development Property which shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the building inspector of the City, and such other plans or supplements to the foregoing plans as the Port may reasonably request.

“County” means the County of Mower, Minnesota.

"Developer" means NJS Development LLC, a South Dakota Limited Liability Company with its principle office located at 6245 S. Pinnacle, #203, Sioux Falls, South Dakota 57108.

"Development Property" means the real property described in Exhibit A attached hereto.

"Development Property Deed" means the Quit Claim Deed attached to which is the language described in Exhibit B.

"Event of Default" means the occurrence of any one or more of the events described in Section 7.1 of this Agreement.

"Minimum Improvements" means the construction of a new multi-floor multifamily rental housing facility (hereafter "Structure"). The Structure shall include no less than the following:

- a) A permanent structure with 91 units including studio, one, and two bedroom units, and a total investment by Developer as required under Section 4.4 below;
- b) The site layout for the Structure shall be consistent with the site layout shown in attached Exhibit D;
- c) The exterior elevations of the Structure shall be consistent with the exterior elevations shown in attached Exhibit D;
- d) The Structure shall be constructed consistent with currently applicable building codes and the development standards found in City Code Chapter 11;
- e) All exterior finishes and materials shall be consistent with those shown in the elevations attached hereto as Exhibit D.
- f) All signage will comply with City Code section 4.50.

"Port" means the Austin Port Authority, a public corporation under the laws of the State of Minnesota, having its principal offices at 500 4th Avenue NE, Austin, Minnesota 55912

"Project" shall mean the acquisition of the Development Property and the construction and completion of the Minimum Improvements on the Development Property.

"State" means the State of Minnesota.

"Unavoidable Delays" means delays which are the direct result of strikes, delays which are the direct result of unforeseeable and unavoidable casualties to the Minimum Improvements, the Development Property or the equipment used to construct the Minimum Improvements, delays which are the direct result of governmental action, delays which are the direct result of judicial action commenced by third parties, citizen opposition or action affecting this Agreement or adverse weather conditions or acts of God.

ARTICLE II
Representations and Warranties

Section 2.1. Representations by the Port. The Port makes the following representations as the basis for the undertaking on its part herein contained;

(a) The Port is a public corporation duly organized and existing under the laws of the State. Under the provisions of the Act, the Port has the power to enter into this Agreement and carry out its obligations hereunder.

Section 2.2. Representations and Warranties by Developer. Developer represents and warrants that:

(a) Developer will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Plan, and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations), except for variances necessary to construct the Minimum Improvements contemplated in the Construction Plans and approved by the City.

(b) The Minimum Improvements, as of the date of commencement of construction upon the Development Property, will be an allowed use under the zoning ordinance of the City.

(c) Developer agrees to acquire the Development Property subject to the existence of any pollutants, contaminants or environmental damage upon the Development Property, if any there be, and to indemnify and hold The Port harmless from any such contaminants including performing any mitigation or remediation required by any state or federal agency.

(d) Developer will use its best efforts to obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

(e) Developer is a South Dakota limited liability company, and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions, or provisions of any restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(f) Developer agrees that it will indemnify, defend, and hold harmless the Port, its officers, employees, contractors and agents, from and against any and all claims or causes of action arising or purportedly arising out of the actions of Developer in connection with the construction, installation, ownership or operation of the Minimum Improvements, except for claims or causes of action arising or purportedly arising out of the negligent acts or omissions of the Port's officers, employees, contractors or agents.

(g) Developer agrees that it will reasonably cooperate with the Port with respect to any litigation commenced by third-parties in connection with this Agreement.

(h) Subject to the obligations by the Port to be performed pursuant to the terms of this Agreement, Developer acquires the Development Property in its "as is" condition, without any warranties as to the suitability, use or fitness of the Development Property for any purpose.

(i) Whenever any Event of Default occurs and the Port shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligations or agreement on the part of the Developer under this Agreement, the Developer agrees that it shall, within ten days of written demand by the Port, pay to the Port the reasonable fee of such attorneys and such other expenses incurred by the Port.

ARTICLE III Conveyance of Property

Section 3.1. Port Recognition of Need for Development. The Port recognizes that for the proposed Project on the Development Property to be feasible it is necessary for the Port to furnish the assistance described herein. Further, the Port recognizes that this Project also involves certain grants and assistance from other governmental and private entities all of which rely upon the Port's participation as herein described. Similarly, the Port's participation as described herein is contingent upon the Project receiving such third-party grants and assistance more fully described in Section 3.2 below.

Section 3.2. Transfer of the Development Property. Other than expressly provided herein, all costs of conveyance of the Development Property shall be solely borne by the Developer. However, proceeding with closing the conveyance contemplated herein is expressly conditioned upon the following conditions precedent that are necessary (the Project is not viable without satisfaction of such conditions) for the Project's viability:

- (a) The Port securing funding through a grant from the City in the amount of \$650,000.00 to be used by the Port for acquisition of the Project Property from its current owner.
- (b) The completion of a Phase I, and if recommended a Phase II environmental study of the Project Property, all at Developer's expense, and the Port's ability to negotiate price reductions for its acquisition of the property sufficient to allow an escrow of the costs for mitigating any identified contaminants according to legal requirements. The Port shall escrow an amount equal to the price reductions so negotiated for such purpose and such funds will be payable to Developer for costs directly related to such environmental mitigation as and when such costs are incurred. Decisions about the estimation of costs for mitigation shall be made by Developer and communicated to the Port for use in its negotiations on the purchase price. The ultimate decision to proceed to closing, in light of the environmental concerns, shall be made solely by Developer, shall be final at closing, and following closing Developer shall indemnify and hold the Port harmless from any further costs related to environmental mitigation, whether identified in the environmental studies or discovered during construction. This provision shall survive closing.

- (c) The Port closing on the acquisition of the Project Property from the current owner pursuant to a binding Purchase Agreement with said owner under which the purchase price is \$650,000 (or such reduced price as described in the preceding paragraph), Seller pays taxes through 2021, and Seller provides reasonable assurances and protections from any existing environmental conditions located in or around the Project Property (as required under the preceding paragraph). Said determination of reasonable assurances shall be made cooperatively by Developer and the Port, at Developer's expense and direction. However, once approved, those assurances shall be binding on Developer and shall not be a basis for Developer's refusal to accept the Development Property as otherwise provided herein.
- (d) The City establishing a Tax Increment Financing District and TIF Plan related to this project providing a minimum of \$3,000,000.00 in revenues over its twenty-five year term to be applied to TIF eligible expenses. Any costs related to establishing the Project Property as satisfying the "blight test" (See Minn. Stat. § 469.174, subd. 10, shall be at Developer's sole cost and expense, payable in advance. TIF eligible expenses will include, to the extent such inclusion is lawful, reimbursement of The Port's actual costs in acquiring the Development Property (including amounts escrowed and disbursed for environmental mitigation), and reimbursement of Developer's actual costs of environmental mitigation above such amount as is disbursed from said escrowed funds, clearing the site of all existing structures and improvements, preparing the site for development, and such other construction costs as are allowed under the Statute. Such TIF Plan shall include a minimum assessment agreement.
- (c) The conveyance of the Development Property is subject to all of the conditions, covenants, restrictions and limitations imposed by this Agreement, and shall also be subject to building and zoning laws and ordinances and all other applicable local, state and federal laws and regulations, and subject to the Reversionary Right described in the following paragraph.
- (d) Pursuant to Minn. Stat. § 469.065, subd. 5, the conveyance of the Development Property shall be subject to a Reversionary Interest as hereinafter stated. In the event of a default under this Agreement or the terms of the Development Property Deed before the issuance by the Port of its Certificate of Completion, or upon the occurrence of an Event of Default, and particularly upon the failure of Developer to complete the Minimum Improvements by the date required pursuant to the terms of this Agreement, the Port shall have the right to re-enter and take possession of the Development Property and to terminate the estate conveyed by the Port to Developer, and upon such event, the estate conveyed by the Development Property Deed to Developer shall revert in the Port, its successors, or assigns without claim or interest in Developer. This Reversionary Interest shall terminate if the Minimum Improvements as required by this Agreement are substantially completed by the date required herein.

Section 3.3. Closing. At or before closing on the conveyance of the Development Property to Developer, Developer shall pay the actual cost of closing (transfer of the Development Property to Developer), including but not limited to any recording costs (including the cost of recording this document), closing fees, and any necessary filing fees, deed tax and mortgage registration tax regardless

of whether said charges are customarily attributed to either a "Buyer" or a "Seller" under local custom.

Section 3.4. Price. Other than the obligations and requirements as described herein, the purchase price paid to the Port by Developer in exchange for Development Property Deed shall be \$1.00, due and payable in full at closing.

Section 3.5. Enforcement. In the event the Port is required to enforce the terms and provisions of this Agreement, and the Port prevails, Developer shall pay any legal and administration costs incurred by the Port in the course of such enforcement at the time such costs are incurred.

Section 3.6. Place of Document Execution, Delivery and Recording.

- (a) Unless otherwise mutually agreed by the Port and Developer, the closing conveyance of the Development Property Deed and all documents associated therewith shall be made at City Hall, 500 4th Avenue NE, Austin, Minnesota 55912. The closing date shall be on or reasonably following the date on which the conditions precedent described in Section 3.2 are met, but shall be no later than November 1, 2021, or such other date upon which the parties mutually agree (the "Closing Date").
- (b) This Agreement shall be in recordable form and shall be promptly recorded in the office of the Mower County Recorder, at the expense of Developer.

ARTICLE IV
Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. Developer agrees that, upon receiving title to the Development Parcel, it will promptly construct the Minimum Improvements on the Development Property in accordance with the approved Construction Plans.

Section 4.2. Construction Plans.

- (a) The Port has approved the Construction Plans as submitted by Developer, and the Port must be allowed to review and approve any revisions thereto.
- (b) If Developer desires to make any change in the Construction Plans, Developer shall submit the proposed change to the Port for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Agreement and the Plan, the Port shall approve the proposed change and notify Developer in writing of its approval. Any minor modification of the plans may be approved by the Port's Executive Director. A minor modification is any modification that does not materially alter the size, footprint, gross layout as shown in Exhibit D, or structural components.

Section 4.3. Completion of Construction. Subject to Unavoidable Delays, Developer shall have substantially begun construction of the Minimum Improvements within 30 days of the Date of Closing, and thereafter must maintain reasonable progress in said construction until the Minimum Improvements are complete. Substantial completion of the Minimum Improvements must be met by April 1, 2023. All work with respect to the Minimum Improvements to be constructed or provided by

Developer on the Development Property shall be in conformity with the Construction Plans as submitted by Developer and approved by the Port.

Prior to the Port furnishing Developer with a Certificate of Completion pursuant to Section 4.5., Developer shall make reports, in such detail and at such times as may reasonably be requested by the Port, as to the actual progress of Developer with respect to such construction.

Section 4.4. Certification of Construction Expenditures. Developer shall expend not less than Sixteen Million Dollars and No/100 (\$16,000,000) on the Minimum Improvements on the Development Property. Said minimum investment shall not include equipment, working capital, or other investment made by Approved Lessee in outfitting the Minimum Improvements for its use. Developer shall make such reports and provide such documentation, in such detail and at such times as may be reasonably requested by the Port as to the expenditures made by Developer for said Minimum Improvements.

Section 4.5. Certificate of Completion.

- (a) Promptly after substantial completion of the Minimum Improvements in accordance with those provisions of the Agreement relating solely to the obligations of Developer, the Port will furnish Developer with an appropriate instrument so certifying, which Certificate shall be in the form of Exhibit C attached hereto. Such certification by the Port shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction of the agreements and covenants in this Agreement with respect to the obligations of Developer, and its successors and assigns, to construct the Minimum Improvements by the date for the completion thereof. The issuance of the Certificate of Completion shall constitute a conclusive determination that the Reversionary Interest has terminated. As used here "substantial completion" shall mean completion to the point where Developer is entitled to, and receives, the issuance of a Certificate of Occupancy by the City under the current adopted Minnesota State Building Code.
- (b) If the Port shall refuse or fail to provide any certification in accordance with the provisions of this Agreement, the Port shall, within thirty (30) days after written request by Developer, provide Developer with a written statement, indicating in adequate detail in what respects Developer has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Port, for Developer to take or perform in order to obtain such certification.
- (c) The Certificate of Completion will not be issued by the Port unless Developer has complied with all of the terms and provisions of this Agreement.

ARTICLE V
Prohibitions Against Assignment and Transfer

Section 5.1. Representation as to Development. Developer further recognizes that, in view of the importance of the Project to the general welfare of the community, the qualifications and identity of Developer are of particular concern to the community and the Port. Developer further recognizes that it

is because of such qualifications and identity that the Port is entering into the Agreement with Developer, and in so doing, is further willing to accept and rely on the obligations of Developer for the faithful performance of all undertakings and covenants hereby by it to be performed.

Section 5.2. Prohibition Against Transfer of Property and Assignment of Agreement. For the foregoing reasons, and until the completion of the Minimum Improvements and the issuance of the Certificate of Completion, Developer represents and agrees that:

- (a) Except only by way of security for, and only for, the purpose of obtaining borrowed financing necessary to enable Developer or any successor in interest to the Development Property or Development Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under the Agreement, and any other purpose authorized by the Agreement, Developer (except as so authorized) has not made or created, and will not make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the Development Property, the Development Property, or any part thereof or any interest therein or any contract or agreement to do any of the same, without the prior written approval of the Port, which approval shall not be unreasonably withheld if the Assignee thereof is appropriately licensed and authorized to do business in the State of Minnesota, agrees to perform the obligations of Developer in this Agreement, has engaged in the ownership and operation of other projects similar to those conducted upon the Development Property as of the time of such transfer or assignment, and if neither the Assignee or transferee, nor the owners of a majority of its issued and outstanding common stock if it is a corporation, nor its general partners if it is a partnership, have ever been convicted of a felony or been declared bankrupt or insolvent.
- (b) The Port shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such approval that: (i) Any proposed transferee shall have the qualifications and financial responsibility, as determined by the Port, necessary and adequate to fulfill the obligations undertaken in the Agreement by Developer; (ii) any proposed transferee, by instrument in writing satisfactory to the Port and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the Port, have expressly assumed all of the obligations of Developer under the Agreement and agreed to be subject to all the conditions and restrictions to the extent that they relate to such part unless Developer agrees to continue to fulfill those obligations, in which case the preceding provisions of this Section 6.2.(b)(ii) shall not apply: Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, the Development Property, or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in the Agreement or agreed to in writing by the Port) deprive or limit the Port of or with respect to any rights or remedies or controls with respect to the Development Property or the construction of the Minimum Improvements upon the Development Property; it being the intent of this, together with other provisions of the Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in the Agreement) no transfer of, or change

with respect to, ownership in the Development Property, Development Property, or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the Port or with respect to any rights or remedies or controls provided in or resulting from the Agreement with respect to the Development Property, or the Development Property and the construction of the Minimum Improvements thereon, that the Port would have had, had there been no such transfer or change; (ii) there shall be submitted to the Port for review all instruments and other legal documents involved in effecting transfer; and if approved by the Port, its approval shall be indicated to Developer in writing.

- (c) In the absence of specific written agreement by the Port to the contrary, no such transfer or approval by the Port thereof shall be deemed to relieve Developer, or any other party bound in any way by the Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto or from any of its other obligations under this Agreement.
- (d) The transfer restrictions described in this Article V do not apply to Developer's transfer of the Development Property or the Development Property to a wholly owned subsidiary or an entity of which Developer has a controlling interest so long as Developer maintains such controlling interest throughout the period the transfer restrictions would otherwise apply, and so long as said transfer is reasonably intended to result in continued performance hereunder.

ARTICLE VI

Events of Default

Section 6.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement (unless the context otherwise provides), any one or more of the following events:

- (a) Failure by Developer to commence and substantially complete construction of the Minimum Improvements pursuant to the terms, conditions and limitations of Article IV of this Agreement (including but not limited to the deadlines found therein).
- (b) Failure by Developer to provide any material or substantial statements or information as required to be provided under this Agreement.
- (c) Failure by Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

Section 6.2. Remedies on Default. Whenever any Event of Default referred to in Section 6.1. of this Agreement occurs, the Port may take any one or more of the following actions:

- (a) Suspend its performance under this Agreement until it receives assurances from Developer, deemed adequate by the Port, that Developer will cure its default and continue their performance under the Agreement.

- (b) Terminate this Agreement and its obligations.
- (c) Withhold the Certificate of Completion.
- (d) The Port may re-enter the Development Property pursuant to the Reversionary Interest of the Port.
- (e) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to the Port, including any actions to collect any damages suffered by the Port under this Agreement; or to enforce performance and observance of any obligation, agreement, or covenant of Developer under this Agreement, without regard to whether there is an adequate remedy at law.

Section 6.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Port is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Port or Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article VI.

Section 6.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

ARTICLE VII Additional Provisions

Section 7.1. Port Representatives Not Individually Liable. No member, official, employee, attorney or agent of the Port shall be personally liable to Developers, or any successor in interest, in the event of any default or breach by the Port or from any amount which may become due to Developer or successor or on any obligations under the terms of the Agreement, except in the case of willful misconduct.

Section 7.2. Restrictions on Use. Developer agrees for themselves and their heirs, personal representatives and assigns, and every successor in interest to the Development Property, or any part thereof, that Developer, and such successors and assigns, shall devote the Development Property to, and in accordance with, the uses specified in the Plans and this Agreement or other uses that are in compliance with zoning, building and use ordinances of the City of Austin. Developer shall not discriminate upon the basis of age, race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance, disability, or familial status in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 7.3. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 7.4. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

- (a) In the case of Developer, is addressed to or delivered personally to the mailing or delivery address Developer will, from time to time, furnish to the Port; and
- (b) In the case of the Port, is addressed or delivered personally to the Port at 500 4th Avenue NE, Austin, Minnesota 55912, or at such other address as the Port may, from time to time, designate in writing and forward to Developers.

Section 7.5. Counterparts. This Agreement is executed in any number of counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Port has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed and Developers have caused this Agreement to be duly executed on or as of the date first above written.

THE AUSTIN PORT AUTHORITY

By _____
Jerry McCarthy, Its President

NJS DEVELOPMENT LLC

By _____
Its: President

By _____
Tom Dankert, Its Secretary

By _____
Its: _____

STATE OF MINNESOTA

ss.

COUNTY OF MOWER

The foregoing was acknowledged before me this _____ day of _____, 2021, by Jerry McCarthy and Tom Dankert, the President and Secretary of The Austin Port Authority, a public corporation under the laws of the State of Minnesota, on behalf of The Austin Port Authority.

(SEAL)

Notary Public

STATE OF MINNESOTA

SS.

COUNTY OF MOWER

The foregoing was acknowledged before me this 8 day of June, 2021,
by Nathan Stancil, the President of NJS Development LLC, a limited liability
company under the laws of the State of South Dakota, on behalf of NJS Development LLC.

(SEAL)

Rachel Waits
Notary Public



EXHIBIT A
Description of Development Property

Tax Parcels: 34.579.0010, 34.460.1040, 34.865.1541 and that parcel identified on the Mower County GIS map as "Description Overlap" located between Tax Parcel 34.460.1040 and Tax Parcel 34.460.1041. Formal legal descriptions to be determined as part of the title exam process, but these Tax Parcels and the "Description Overlap" are intended to be included in the "Description of the Development Property."

THE PARTIES AGREE TO SUBSTITUTE A NEW "EXHIBIT A" WITH THE FINAL LEGAL DESCRIPTIONS FOR THIS "EXHIBIT A" AT THE TIME OF RECORDING THIS AGREEMENT.

THE AUSTIN PORT AUTHORITY

NJS DEVELOPMENT LLC

By _____
Jerry McCarthy, Its President

By dk _____
Its: President _____

By _____
Tom Dankert, Its Secretary

By _____
Its: _____

EXHIBIT B
ATTACHMENT TO QUIT CLAIM DEED

*Subject to the requirements, terms and provisions of the Contract for Private Development dated _____, 2021, and recorded as Document No. _____, in the office of the Mower County Recorder (the Contract) by and between the Port of Austin, Minnesota and NJS Development LLC, to which Minimum Improvements as described in the Contract, must be completed by June 1, 2022.

In the event of a default under the Contract or upon the occurrence of an Event of Default pursuant to the terms of the Contract, and particularly upon a failure of the Grantee herein to complete the Minimum Improvements by the date required herein, the Grantor herein shall have the right to re-enter and take possession of the aforesaid premises and to terminate the estate of the Grantee created herein and upon such event, the title to the aforesaid premises shall revest in the Grantor or its assigns, or successors in interest, which right of re-entry, possession and revesting is referred to in the Contract as the "Reversionary Interest". The parties hereby incorporate into this Deed as a covenant running with the land the conditions of Minnesota Statutes, Sections 469.048 to 469.068 relating to the use of the land. Unavoidable Delays as defined in the Contract for Development between the Austin Port Authority, Grantor, and Grantee is good cause by which Grantor will extend the time to comply with any statutory conditions. The filing of a Certificate of Completion issued by the Grantor herein shall be conclusive evidence of the termination of the Reversionary Interest in favor of the Grantor and compliance with all statutory covenants.

This conveyance is made subject to easements and rights-of-way of record.

EXHIBIT C
Certificate of Completion

WHEREAS, The Austin Port Authority, a Minnesota public corporation (the "Port"), and NJS Development LLC, a South Dakota Limited Liability Company (the "Developer") have entered into a Contract for Private Development (the "Contract") dated _____, 2021, and filed in the office of the Mower County Recorder on _____, 2021, recorded as Document No. _____, regarding certain real property located in the City of Austin, (hereinafter referred to in the Contract as the "Development Property"); and

WHEREAS, the Contract contains certain conditions and provisions requiring Developer to construct improvements upon the Development Property (hereinafter referred to and referred to in the Contract as the "Minimum Improvements"); and

WHEREAS, Section 4.5. of the Contract requires the Port to provide an appropriate instrument promptly after the substantial completion (as defined in the Contract) of the Minimum Improvements so certifying said substantial completion;

NOW, THEREFORE, in compliance with said Section 4.5. of the Contract, this is to certify that Developer has substantially completed the Minimum Improvements with regard to the specific real estate herein above described in accordance with the conditions and provisions of the Contract relating solely to the obligations of Developer to construct the Minimum Improvements (including the dates for beginning and completion thereof), and this certification shall be a conclusive determination of satisfaction of the agreements and covenants in the Contract with respect to the obligations of Developer, and its successors and assigns, to construct the Minimum Improvements and the dates for the beginning and completion thereof.

DATED: _____

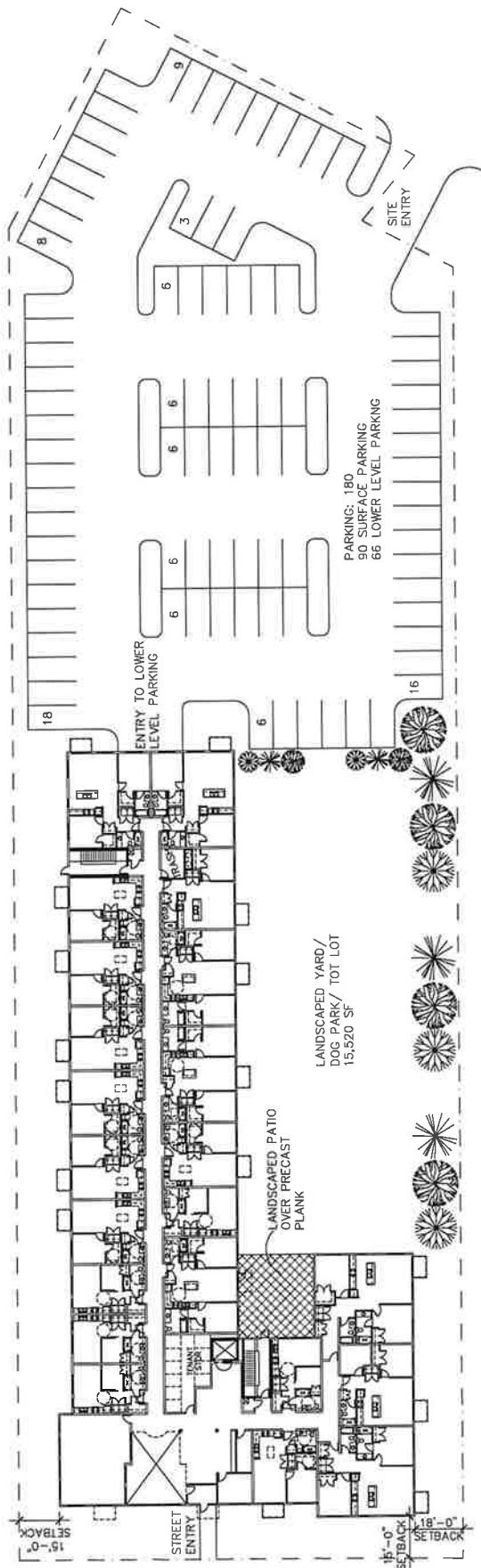
THE AUSTIN PORT AUTHORITY

By _____
Its President

By _____
Its Secretary

EXHIBIT D

Project Layout, Floor Plans, and Interior and Exterior Finishes



PROJECT DATA:

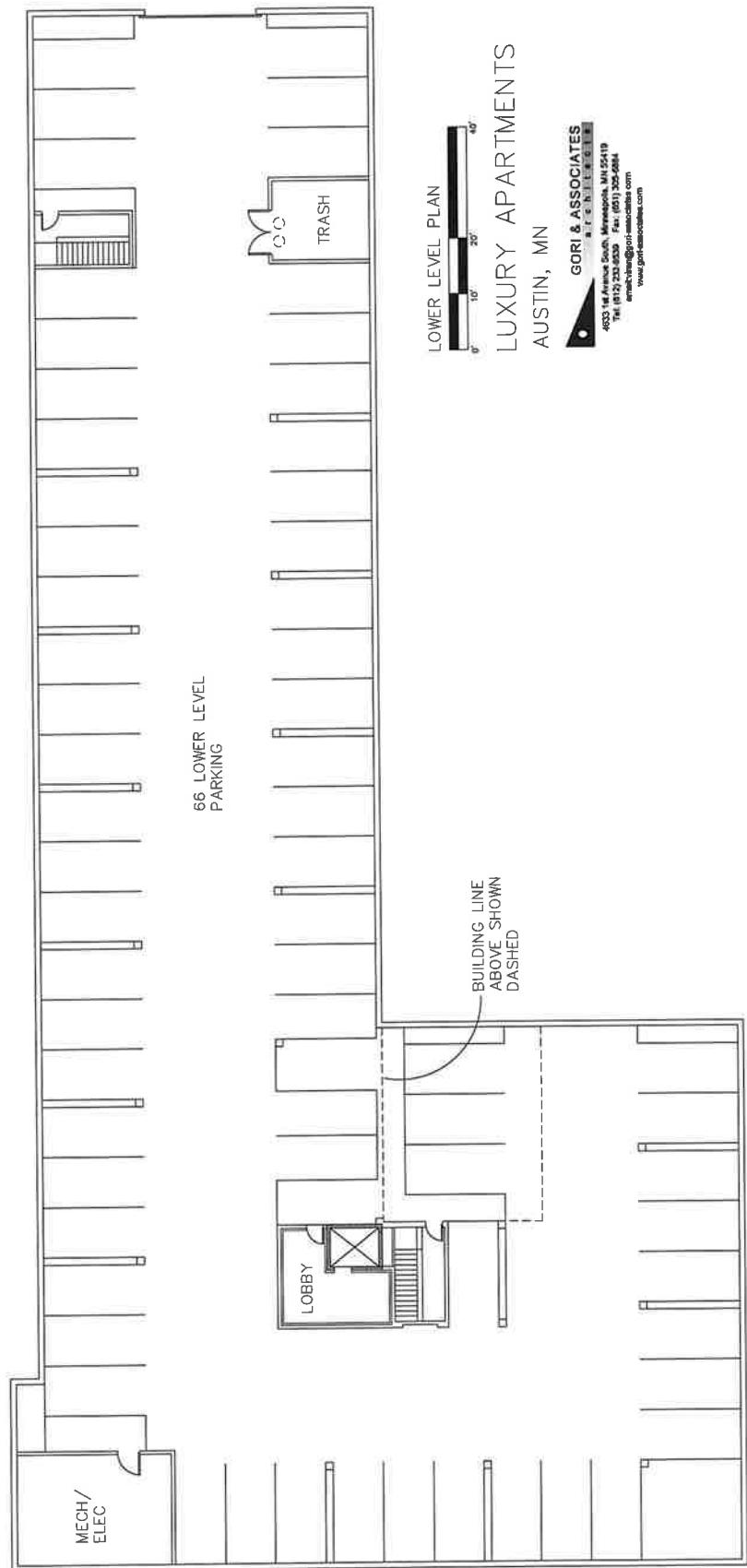
SITE AREA:	88,683 SF (2.03 ACRES)	PROPOSED AREA:	1 FLR = 22,900 SF 2 FLR = 22,366 SF 3 FLR = 22,900 SF 4 FLR = 21,060 SF	UNIT DATA:	STUDIO: 20 1 BEDROOM: 37 2 BEDROOM: 34	QTY	461 SF 501 SF 702 SF 1050 SF	NSF	501 SF	GSF
<hr/>										
LOT COVERAGE:										
BUILDING FOOTPRINT:										
PARKING/DRIVEWAYS/SIDEWALKS/GARAGES:										
TOTAL PROPOSED: 55,400 SF (62% OF LOT AREA)										
LOT COVERAGE: 90 SURFACE STALLS, 66 LOWER LEVEL										
PROPOSED BUILDING HEIGHT: 4 STORIES (50'-0" MAX)										

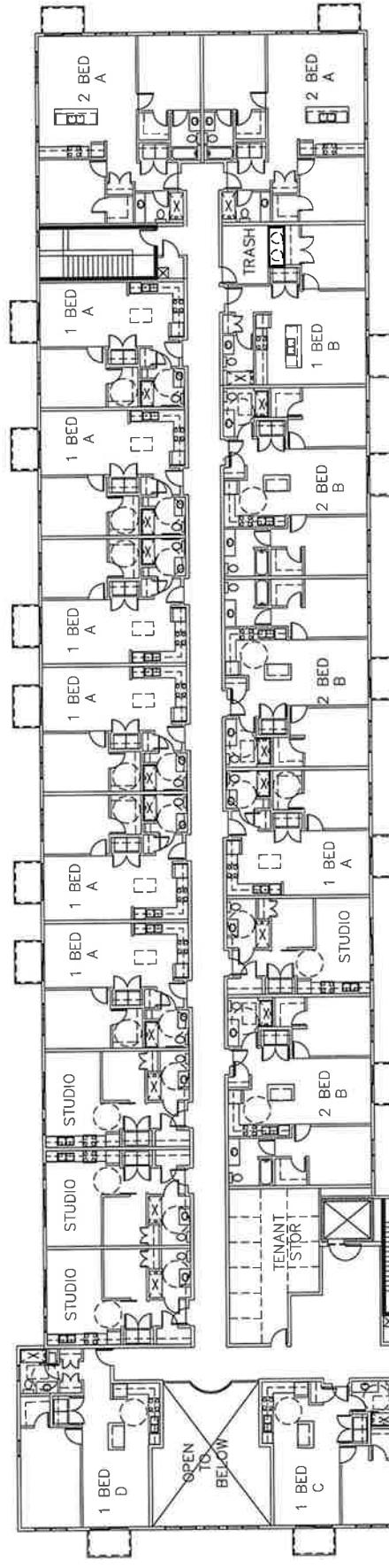
SITE PLAN



LUXURY APARTMENTS
AUSTIN, MN

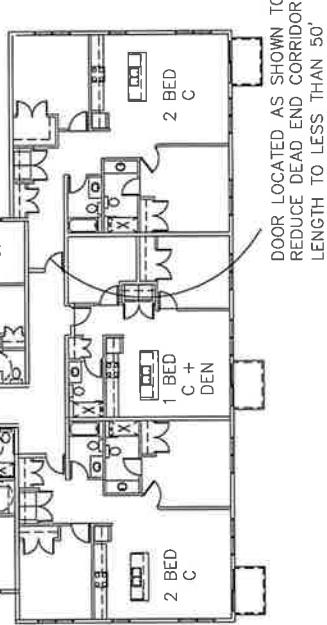
GORI & ASSOCIATES
4631 1/2 Avenue South, Minneapolis, MN 55419
Tel: (612) 223-4353 Fax: (612) 223-0894
email: email@gori-associates.com
www.gori-associates.com

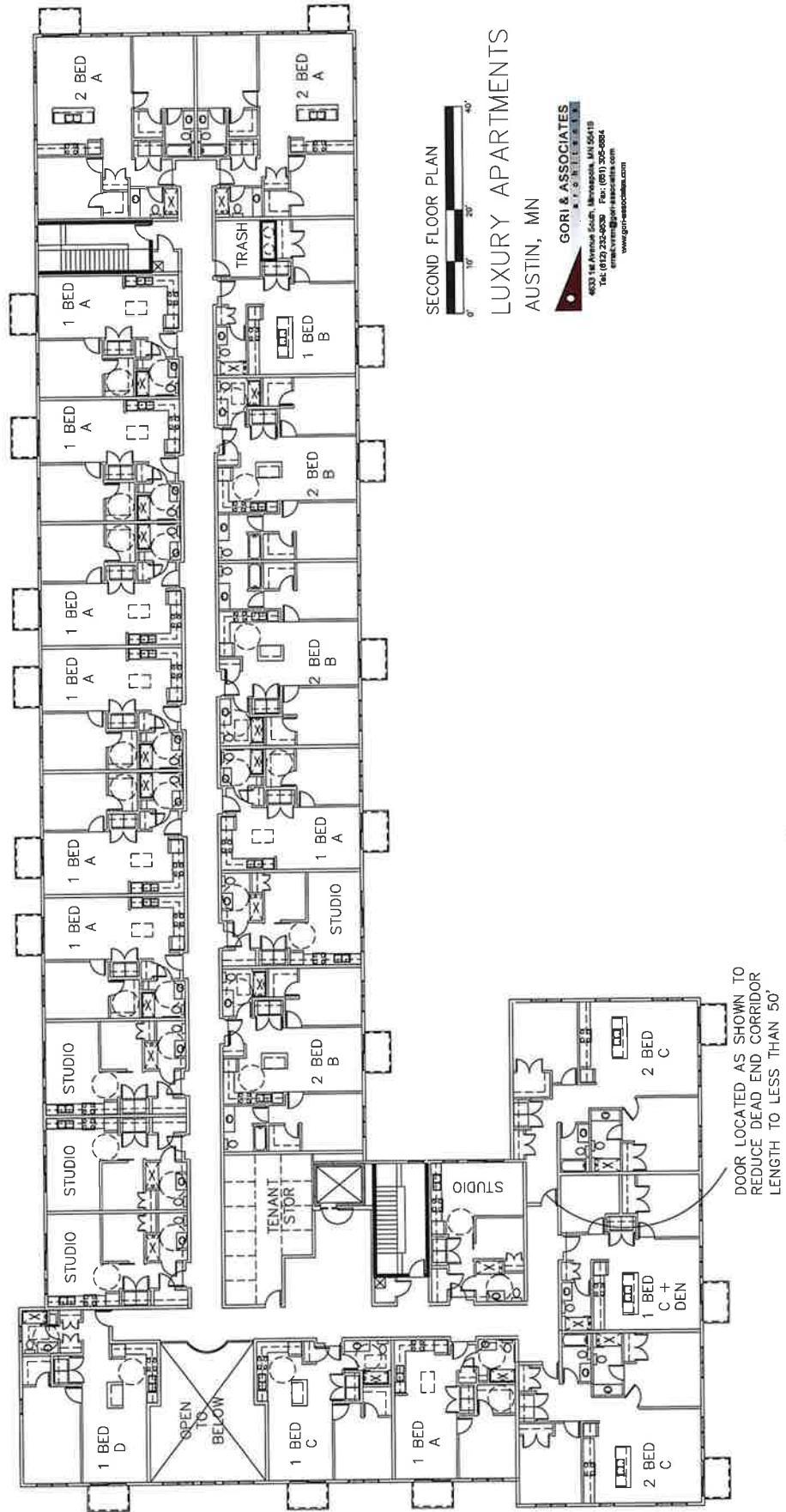


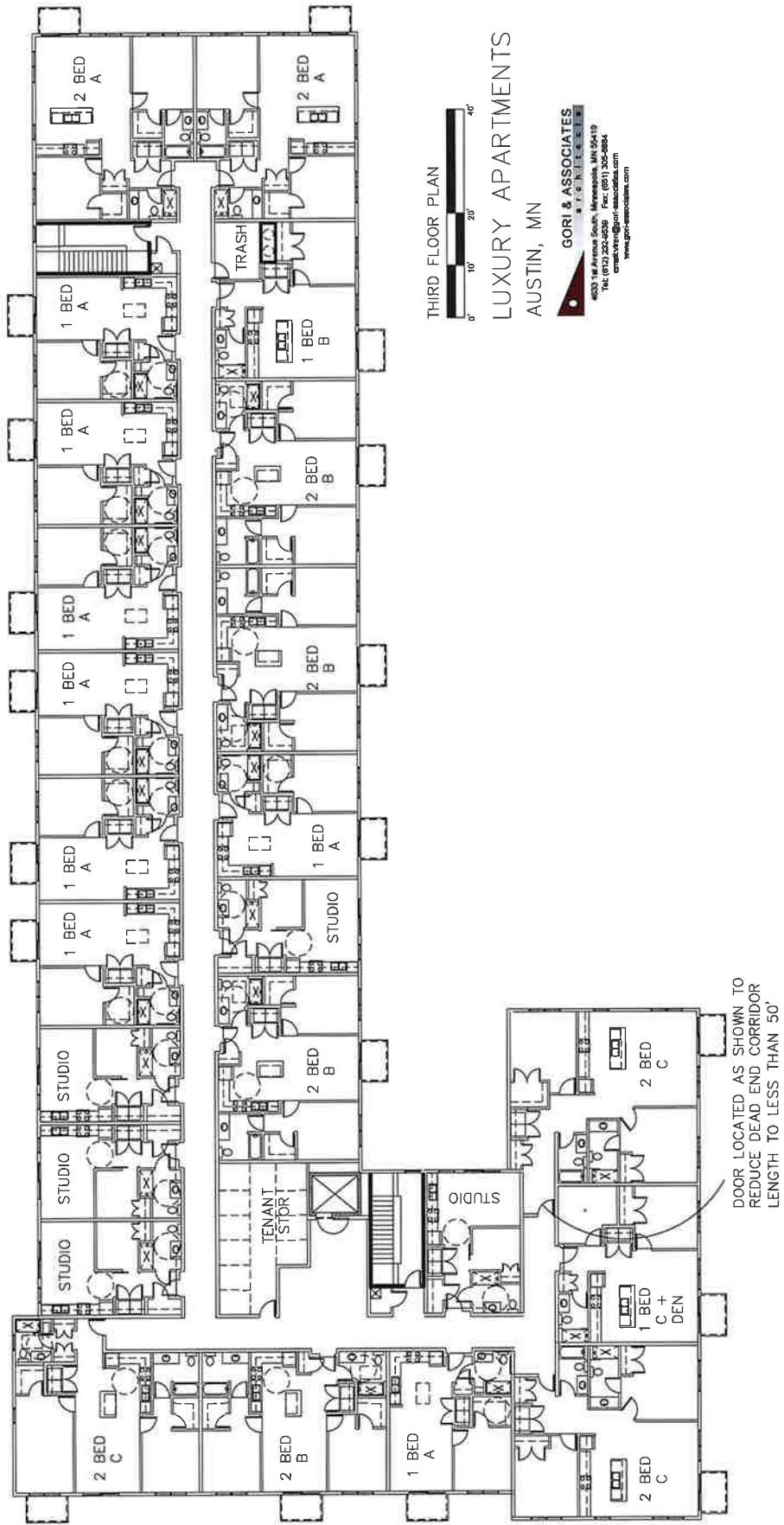


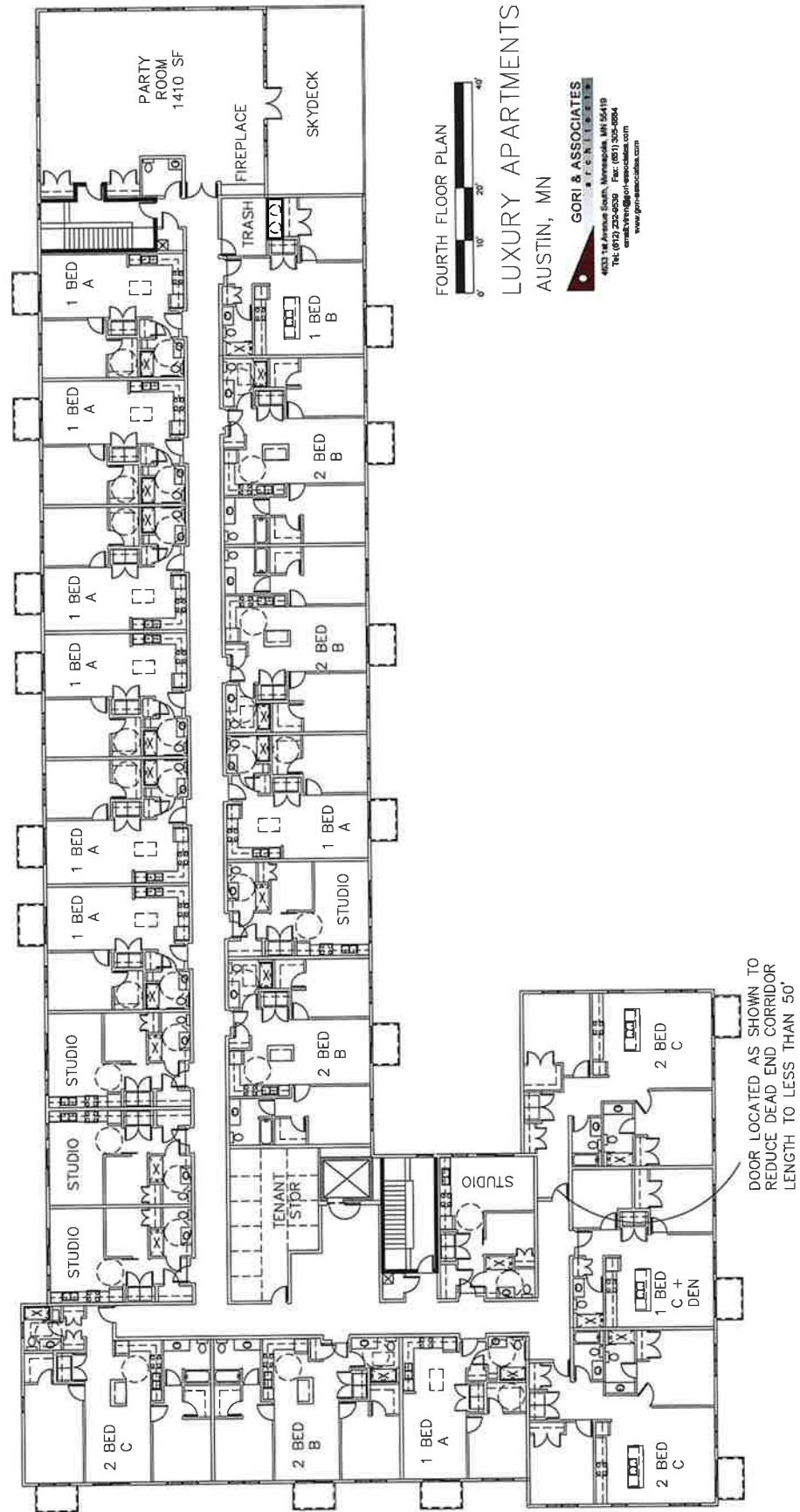
LUXURY APARTMENTS
AUSTIN, MN

GORI & ASSOCIATES
4633 1/2 Avenue South, Minneapolis, MN 55419
Tel: (612) 223-4630 Fax: (601) 320-4634
email: emailmng@gori-associates.com
www.gori-associates.com

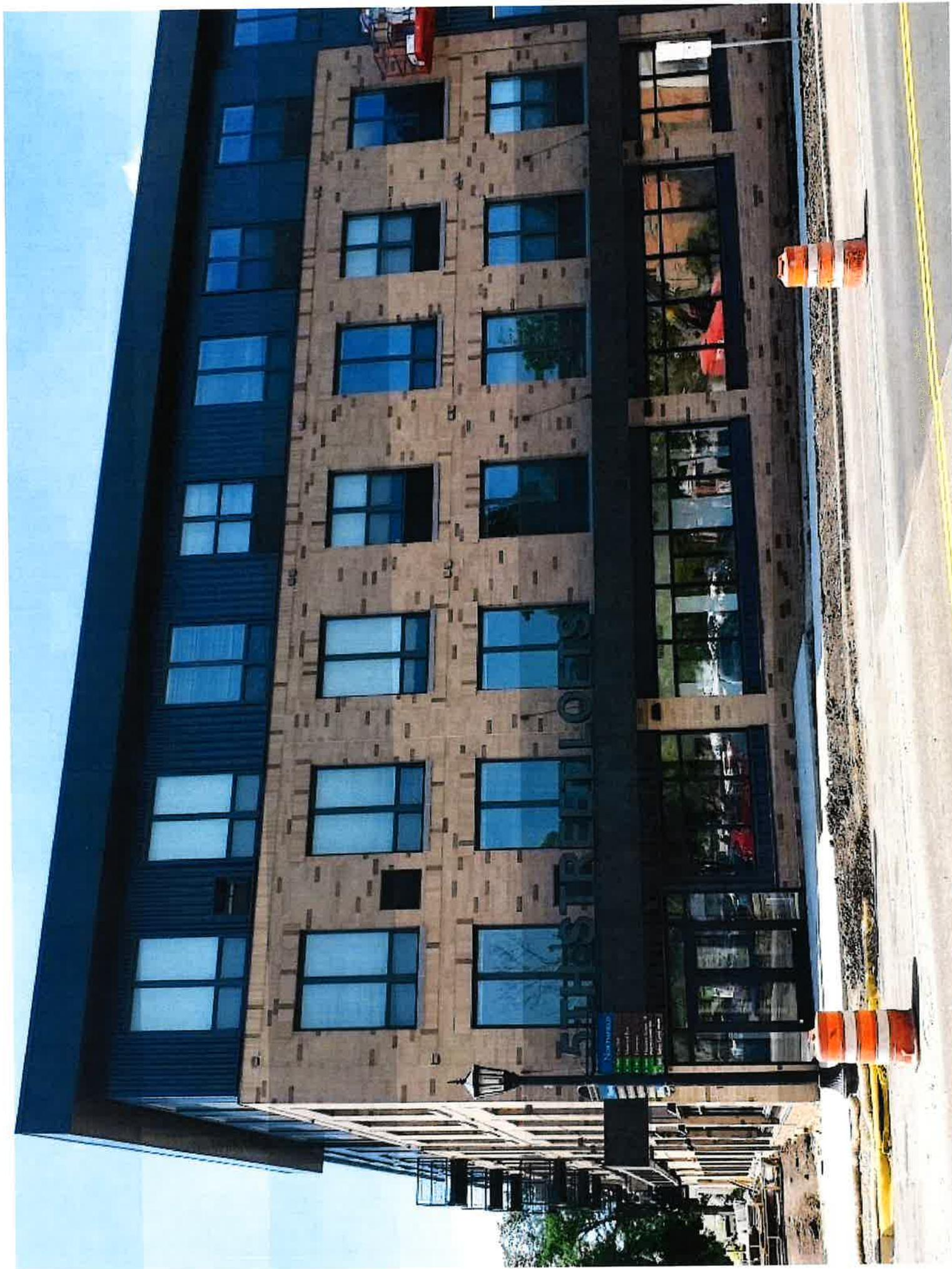








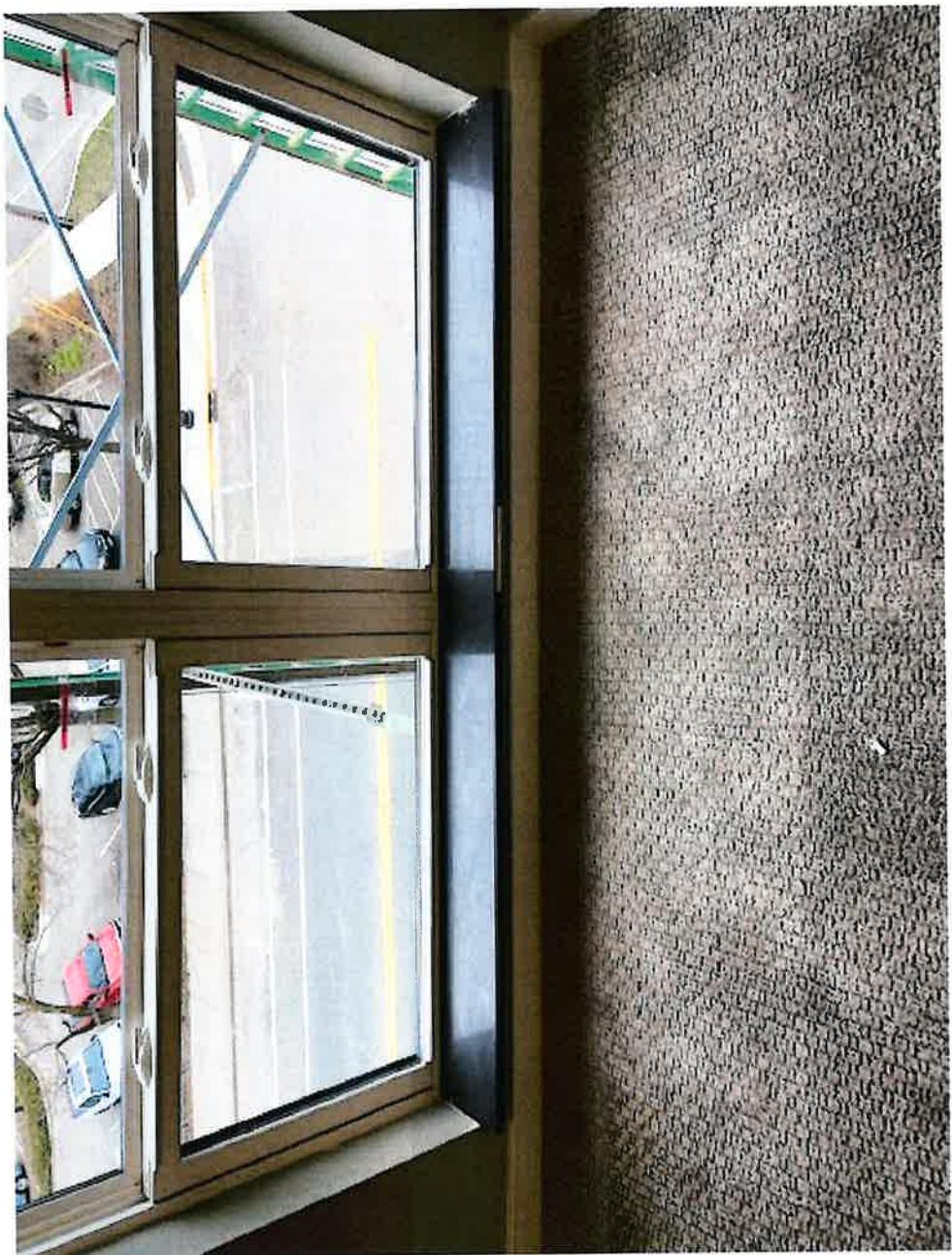






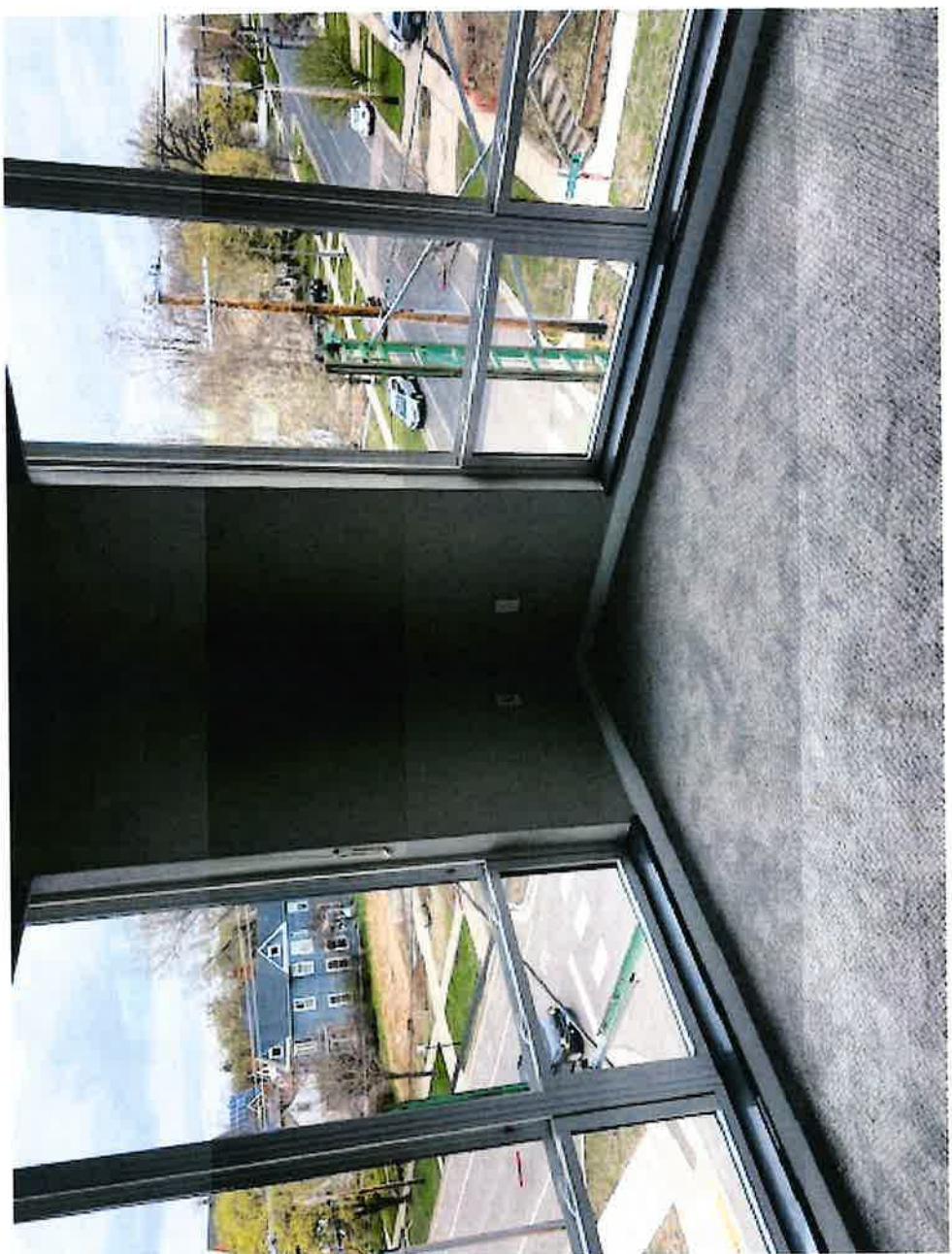


















City of Austin
Craig Clark,
City Administrator



500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773
Phone: 507-437-9941
craigc@ci.austin.mn.us
www.ci.austin.mn.us

TO: Honorable Mayor and City Council Members
FROM: Craig D. Clark, Administrator
RE: Federal Economic Development Administration Grant for Creekside Business Park
Infrastructure

As part of economic development projects costs for infrastructure are always a consideration within an individual commercial development. As a result, John Garry and I have explored opportunities with the Federal EDA and Darrin Fleener, Economic Development Representative covering Minnesota, specifically for possible infrastructure improvements within Creekside to facilitate economic recovery from COVID 19 and otherwise grow or commercial tax base.

The EDA has a Public Works Grant Program (Exhibit 1) that helps expand physical infrastructure while encouraging new business expansion. The fact that NuTek has expanded and other interested companies are considering building in Creekside Business Park helps strengthen our prospective application.

Steven Lang has provided the following costs for City of Austin responsibilities in serval areas within the park (Exhibit 2):

27th Avenue NW – 5th St. to 9th St.

- \$450,000 Street
- \$200,000 Storm/Pond
- **\$650,000 Subtotal**

5th Street NW – Cul de sac

- \$310,000 Street
- \$370,000 Sanitary
- \$ 50,000 Storm (requires storm pond from 27th Ave. estimate listed above)
- **\$730,000 Subtotal**

9th Street & 26th Avenue NW

• \$750,000	Street
• \$170,000	Sanitary
• <u>\$ 50,000</u>	Storm
• \$970,000	Subtotal
• \$2,350,000	Total of \$2,350,000

As you know, Austin Utilities is also an important partner to our development efforts. They have provided the following costs for localized and system improvements in the Creekside area for gas, water and electricity. These costs total \$721,000 for the extensions along the same build out we have proposed as well as \$660,000 for loops systems (Exhibit 3). This would bring a total project cost estimates for AU's portion to \$1,381,000 and a combined total of \$3,731,000.

The Federal grant traditionally provides a 50% matching grant to projects. Due to COVID and American Rescue Plan Act funding has been extended it to an 80/20 Federal/Local match apportionment. It is our understanding that the 80/20 grants will be highly competitive and when exhausted will revert back to the 50/50 match as has been the case.

I would propose we utilize existing fund balance to finance the City and AU's portion of the localized infrastructure. This would help long term with economic recovery by reducing another barrier for development. Should Council wish to recover those fund balance contributions, this could be done at the time of land sale. This would lower the incentive, but remain a significant value to the business- essentially passing along the Federal grant dollars to new businesses and recouping the local contribution. You also recognize this is in partnership with the Austin Port Authority who holds the property in Creekside and is our primary economic development arm for the City. Council could set the expectation as a part of providing these funds to the Port.

This proposal will be sent out to firms requesting their interest and have solicitations back by the next Council meeting. Costs associated with the Federal EDA submission are estimated at \$10,000 and we are in discussions with Austin Utilities for their consideration to pay half of these costs. This quick turnaround is intended to best vie for the possibility of the 80/20 grant funding.

Council direction is requested on approving the RFQ and corresponding resolution.

Federal Economic Development Grant Projects - 2022-2023

For Creekside Business Park area

Creekside Business Park

27 Av NW – 4 St NW to 11 St NW

- \$273,000 Electric

5 St NW – Cul de sac

- \$ 73,000 Electric
- \$ 8,000 Gas
- \$ 53,000 Water
- **\$ 134,000 Subtotal**

9 St NW & 26 Ave NW

- \$ 154,000 Electric
- \$ 17,000 Gas
- \$ 143,000 Water
- **\$ 314,000 Subtotal**
- **\$ 721,000 Total Inside Creekside Business Park**

Creekside Business Park – Ties to Loop to System

Highway 218 – 26 Ave NW to 21 Ave NW

- \$ 330,000 Gas
- \$ 330,000 Water
- **\$ 660,000 Subtotal**
- **\$1,381,000 Total Utilities for Creekside Business Park**

Note: Numbers here are rough estimates only, not to be used for final project application.

The Austin Utilities project areas listed include the area inside Creekside Business Park, similar to the City of Austin projects. It also includes loop feed ties along Hwy 218 south to 21 Av NW. Existing gas and water utility feeds to Creekside are not heavy enough to support significant industrial loads.

Utility Projects

Federal Economic Development Grant

Creekside Business Park

0 150 300 600
SCALE: 1" = 600'

HIGH
U.S.

CHICAGO, MILWAUKEE, ST
PAUL & PACIFIC R.R.

4TH ST NW

236TH

MURPHY
CREEK
161KV
SUBSTATION



11TH ST NW

27TH AV NW

5TH ST NW

4TH ST NW

26TH AV NW

MURPHY

CREEK

JUDICIAL DITCH NO. 26

23RD AV NW

24TH AV NW

25TH AV NW

26TH AV NW

27TH AV NW

28TH AV NW

29TH AV NW

30TH AV NW

31ST AV NW

32ND AV NW

33RD AV NW

34TH AV NW

35TH AV NW

36TH AV NW

37TH AV NW

38TH AV NW

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276TH AV NW

277TH AV NW

278TH AV NW

279TH AV NW

280TH AV NW

281TH AV NW

282TH AV NW

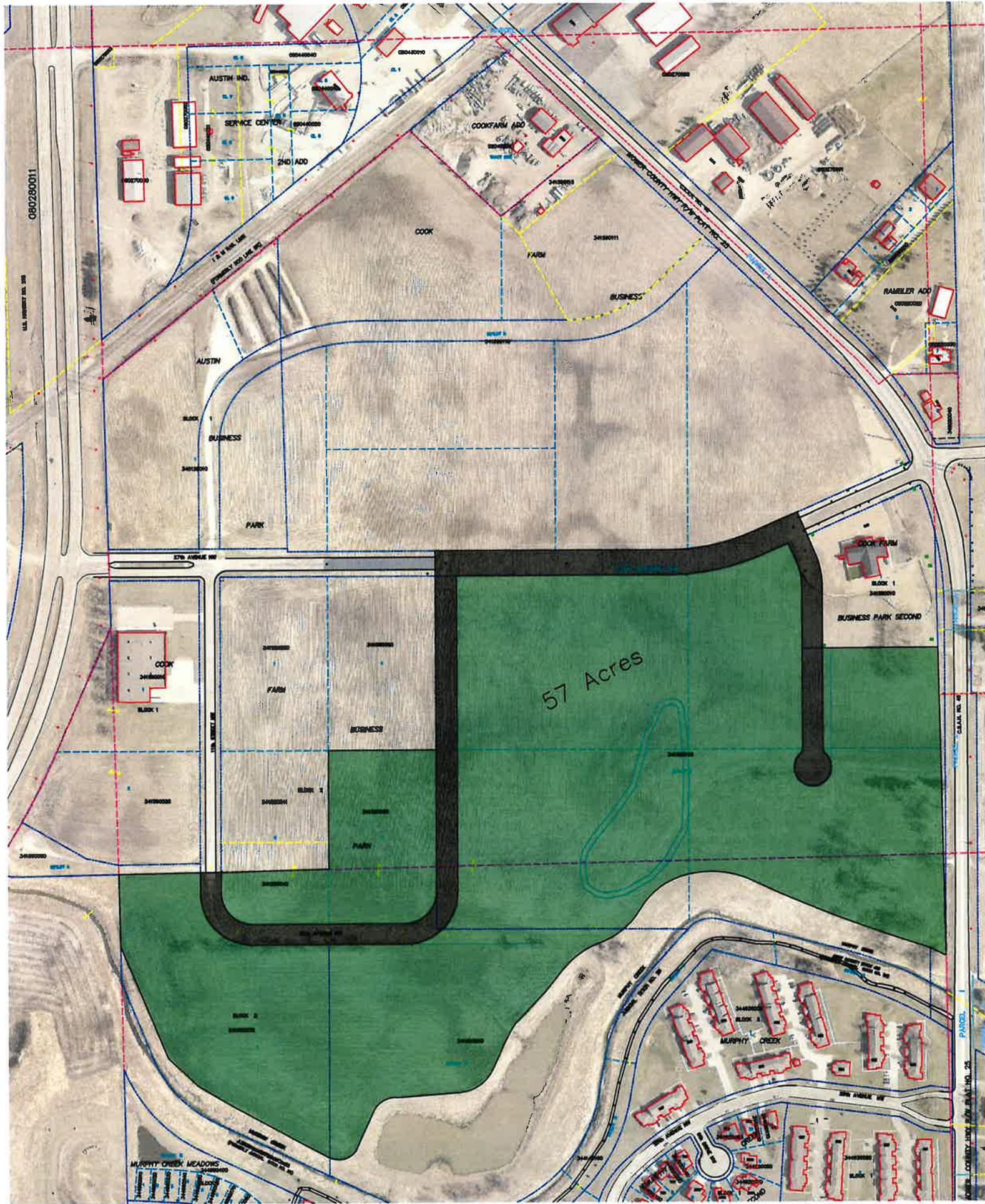
283TH AV NW

284TH AV NW

285TH AV NW

286TH AV NW

287TH



Creekside

**City of Austin
Craig Clark,
City Administrator**



**500 Fourth Avenue N.E.
Austin, Minnesota 55912-3773
Phone: 507-437-9941
craigc@ci.austin.mn.us
www.ci.austin.mn.us**

TO: President and Port Members

FROM: Craig D. Clark, Executive Director

RE: Purchase Agreement for Property along 14th St. NE

Patriot Land and Construction Company, LLC has submitted the following conditional purchase agreement (Exhibit 1). This agreement would provide the Port Authority the following predominate components:

- Purchase price of \$291,500. (The Port Purchased the property in 2018 for \$275,000);
- \$2,500 in earnest money if the project does not move forward;
- Successful completion of an environmental Phase I report and suitable soils;
- Approval of all zoning and environmental permits to operate as well as securing site access for a truck wash;
- Secure financing;
- First right of refusal on outlots outside of the truck was facility within a 60 day notice. We have suggested this be limited and only for a five-year period;
- Satisfaction of the other contingencies within a 90-day period among other items.

I have visited with Mr. Johnson about some changes and intend to have some of our concerns addressed prior to the Port Authority meeting but would not be significant changes. I've made clear the Port would have interest in the outlots and what was going to be developed upon them before we would approve the sale.

Port Authority action is requested to approve the conditional purchase agreement.

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement") is entered into this ____ day, of ____, 2021 (the effective date), by and between the Austin Port Authority, a Minnesota limited liability company (hereinafter "Seller"), and Patriot Land & Construction Co, LLC, a Minnesota limited liability limited company (hereinafter "Buyer").

1. Purchase.

- 1.1. **Subject Property.** Subject to the terms and provisions of this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the subject property described in the attached Exhibit A ("Subject Property"), together with any and all improvements constructed or located on the Subject Property and all easements and rights benefiting or appurtenant to the Subject Property, including any right, title or interest in the bed of any street, road, highway or alley adjoining the Subject Property (hereinafter collectively "Property") in accordance with the terms and conditions of this Agreement.
- 1.2. **Permits, Warranties and Plans.** Seller also agrees to assign, transfer and deliver to Buyer:
 - 1.2.1. **Permits.** All of Seller's interests in any certificates, permits, variances, licenses and/or approvals which benefit or relate to the Property and its current or proposed use;
 - 1.2.2. **Warranties.** All of Seller's interests in all warranties and guaranties, if any, given to or assigned to or benefiting Seller or the Property regarding the acquisition, construction, design, use, operation, management or maintenance of the Property; and
 - 1.2.3. **Surveys.** All surveys, studies, plans and specifications regarding the Property that are in the possession of or readily available to Seller or its agents.

2. **Purchase Price.** The total purchase price ("Purchase Price") to be paid by Buyer to Seller for the Property is **Two Hundred Ninety-One Thousand Five Hundred Dollars (\$291,500.00)** The Purchase Price shall be payable as follows:

- 2.1. **Earnest Money.** **Two Thousand Five Hundred Dollars (\$2,500.00)** as earnest money ("Earnest Money") to be paid to Seller. Unless terminated by Buyer pursuant to Sections 5.2, 8.2, 11 or 12 below, if this transaction fails

to close for any reason whatsoever (other than Seller's default), the Earnest Money is nonrefundable and will be retained by Seller as consideration for withholding the Property from the market during the pendency of this Agreement.

- 2.2. **Balance of Purchase Price.** The balance of the Purchase Price, the sum of **Two Hundred Eighty-Nine Thousand Dollars (\$289,000.00)**, shall be paid at closing in certified funds or by wire transfer.
- 2.3. **Contingencies.** The obligation of the Buyer to perform under this Agreement is contingent upon the timely occurrence or satisfaction of each of the following conditions:
 - 2.3.1. Phase I Environmental Report. Buyer, in its sole discretion, may commission a Phase I Environmental Report that indicates that the Subject Property is not subject to any environmental problems or issues.
 - 2.3.2. Satisfaction that site soil conditions are suitable for construction;
 - 2.3.3. Acquire necessary entitlements, zoning approvals and environmental (Local, MPC & Federal) permits for a Tank/Trailer/Truck Wash;
 - 2.3.4. Site access, General Ingress/Egress and Utility Access/Discharge water services in sufficient capacity to operate a Tank/Trailer/Truck Wash;
 - 2.3.5. Project financing under terms and conditions deemed as reasonable for owner developer, in its sole discretion.
 - 2.3.6. Survey: Seller shall have prepared a certificate of survey that delineates, by Buyer's instructions, the Subject Property to be conveyed to Buyer at Closing. Additionally, Buyer requests a Buyer's Right of First Refusal ("ROFR"); Buyer shall have the right of first refusal on the balance of the property contiguous or within the same plat of property where the Subject Property is situated. Buyer shall have right to match any bona-fide, third party offer, within sixty (60) days' notice from Seller to Buyer of such an offer. If Buyer cannot close upon such offer, then it shall waive any further right it may have to that particular parcel of property it may have under this provision.

2.3.7. Buyer shall have ninety (90) days from the effective date of this Agreement to: (i) satisfy and waive a contingency; (ii) give notice to Seller of its inability to waive or satisfy a contingency with an explanation and request for further time to satisfy a contingency, or, (iii) waive such condition/contingency and move to Closing.

3. **Closing.** Unless extended or sooner terminated as provided herein, the closing of the purchase and sale of the Property ("Closing") shall occur on or before _____ 2021 ("Closing Date"). The Closing shall take place at the offices of _____ (TBD) in _____ MN, or at such other place as may be mutually agreed by the parties.

4. **Title.** At the Closing and subject to performance by Buyer, Seller agrees to execute and deliver to Buyer a General Warranty Deed ("Deed") conveying marketable title to the Property, subject only to the following exceptions ("Permitted Exceptions"):

(TO BE LISTED)

5. **Title Examination.**

5.1. **Abstract.** Seller shall deliver to Buyer an Abstract of Title or a Certificate of Title, certified to date, to include proper searches covering bankruptcies and state and federal liens and judgments, property taxes and all special assessments levied or pending against the Property. Buyer shall have twenty business days after receipt of the Abstract for examination of it and the making of any objections thereto, said objections to be made in writing within said time period, deemed to be waived.

5.2. **Title Clearance.** If any objections are so made, Seller shall be allowed thirty (30) days to make title marketable. If Seller's title to the Property is not marketable and is not made so by Seller within thirty (30) days from the date Seller receives Buyer's written objections to the title, and if Buyer has not delivered to Seller a written waiver of uncured title objections within ten (10) business days after expiration of the time period for Seller's correction of title defects, then this Agreement may be terminated at the election of Buyer, and if declared void, this Agreement shall have no further force or effect, and the Earnest Money paid by Buyer shall be returned to Buyer and neither Seller nor Buyer shall have any further rights, liabilities or obligations under this Agreement. If title to the Property is made marketable within said thirty (30) day period (or if not made marketable, if Buyer elects to waive any uncured title deficiencies), then the parties shall proceed in accordance with the terms and conditions of this Agreement.

The Closing Date shall be extended, if necessary, in order to accommodate the foregoing time periods for cure and/or waiver of title objections.

5.3. **Title Costs.** All costs related to providing the updated abstract and clearance of title shall be paid by the Seller. The premium for any lender's or owner's title insurance policy shall be paid by Buyer. At the time of Closing, Buyer shall retain the abstract(s) of title for the Property.

6. **Taxes and Assessments.** Seller shall pay on the date of Closing any and all deferred real estate taxes (including deferred taxes which become payable because of the loss of so-called "Green Acres" or other reduced or exempt tax classification) attributable to the Property. Seller shall also pay at Closing all special assessments that have been levied or are pending against the Property at the time of Closing. Seller and Buyer shall prorate general real estate taxes attributable to the Property which are due and payable in the year of Closing, except for payment of all deferred taxes which are Seller's responsibility. Real estate taxes for the Property shall be allocated and prorated in the following manner:

6.1. **Unsegregated Taxes.** If the Property is an unsegregated part of a larger tax parcel or parcels, taxes shall be allocated to the Property based upon the same ratio as the acreage of the Property bears to the gross acreage of the entire tax parcel or parcels in which the Property is located.

6.2. **Payment Procedure.** The taxes payable in the year of Closing shall be prorated as of the Closing based on then available information and a 365 day year. At Closing, Buyer shall be charged and Seller credited for that portion of the taxes for the calendar year in which Closing occurs which are attributable to the Property and payable by Buyer in accordance with the foregoing allocation and proration. Subject to such proration, if the Property is an unsegregated part of a larger tax parcel or parcels, Seller shall be responsible for paying prior to the delinquency date all taxes due for the calendar year in which Closing occurs. If prorations are based on estimated tax amounts, then tax prorations shall be adjusted between Buyer and Seller after the Closing based upon the actual tax bills for the prorations period in order to effect a proration based upon actual taxes levied.

7. **Buyer Inspection.**

7.1. **Inspection.** So long as this Agreement remains in force, Buyer and Buyer's employees, agents and contractors shall have the right to inspect the Property and conduct such soil and geologic tests, environmental

assessments, surveys and other tests and inspections as Buyer may reasonably require, all at the sole cost and expense of Buyer.

7.1.1. Mechanics Liens; Indemnity. Under no circumstances shall Buyer allow any lien to be filed against the Property for any labor or materials furnished to or for Buyer prior to Closing. Buyer shall repair any damage and return the Property to substantially its condition existing prior to Buyer's entry upon the Property. Buyer shall defend, indemnify and hold Seller harmless from any damages, liens, claims, liability, injuries or costs (including attorneys' fees) as may be incurred by Seller as a result of or relating to such tests and inspections of the Property. This obligation to defend, indemnify and hold harmless shall survive expiration or termination of this Agreement.

8. Representations and Warranties by Seller

8.1. Seller's Representations and Warranties. Seller warrants and represents to Buyer that the following statements are true accurate as of the date of this Agreement and the Closing Date:

8.1.1. Title. Seller is the record owner of good and marketable title to the Property. So long as this Agreement remains in force, Seller shall not make or suffer any mortgage, lease, conveyance or other transfer, lien or encumbrance of all or any portion of the Property in a manner which will not be released at or prior to Closing.

8.1.2. Capacity. Seller is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Minnesota. Seller has taken all steps required under its Articles of Organization and Operating Agreement in order to authorize this Purchase Agreement and the performance and satisfaction of all its terms and conditions.

8.1.3. Hazardous Substances. Seller has not used, generated, stored, treated, released, dumped or disposed of any Hazardous Substances (as defined below), toxic substances or waste in or about the Property, or into the sewage or other waste disposal or draining system serving the Property, except for the use and storage in minor quantities of those Hazardous Substances, if any, required for the conduct of Seller's business pursuant to handling practices permitted by law. Seller understands and agrees that, as between Seller and

Buyer, Seller is solely responsible for liability under any Environmental Laws, including any requisite clean up of any Hazardous Substance, which arise as a result of use of the Property during the period of Seller's ownership. To Seller's knowledge, Seller has not received any written notice from any governmental authority concerning the presence of any Hazardous Substance located on, in, or under the Property and Seller is not aware of any environmental condition, situation or incident on, in or concerning the Property, that could give rise to an action of liability under any law, rule, ordinance, or common law theory. Seller has disclosed and made available to Purchaser all reports and investigations commissioned by or otherwise readily available to Seller relating to Hazardous Substance and the Property. The Seller certifies and warrants that all permits, licenses, approvals and reports necessary or required for a party to store, use, generate or dispose of any Hazardous Substances within or on the Property have been obtained or made, are being complied with and are in full force and effect. To the best of Seller's knowledge, (i) there are no past or present investigations, administrative proceedings, litigation, regulatory hearings or other actions proposed, threatened or pending, alleging non-compliance with or violation of any federal, state or local laws, ordinance, rule or regulations dealing with environmental, health or safety matters ("Environmental Laws"), or relating to any required environmental permits and (ii) neither Seller nor any third party has violated any Environmental Laws with respect to the Property or improvements.

- (a) **"Environmental Law"** means the Comprehensive Environmental Response, Comparison and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §9601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1201 et seq., the Clean Water Act, 33 U.S.C. §1321 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Toxic Substances Control Act, 33 U.S.C. §1251 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing and hereafter enacted; and
- (b) **"Hazardous Substance"** means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to

cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.

8.1.4. **Violations.** Neither the entering into this Agreement nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon it, or, to Seller's knowledge, will result in a violation of any applicable law, order, rule or regulation of any governmental authority.

8.1.5. **Proceedings.** To Seller's knowledge there is no threatened or pending action, litigation or proceeding by any organization, person, individual or governmental agency (including governmental actions under condemnation authority or proceedings similar thereto or Environmental Laws) against the Property or against Seller with respect to Seller's interest in the Property.

8.1.6. **Governmental Notices.** To Seller's knowledge the Property and its current use, and the location of the improvements on the Property, and the number of parking spaces available on the Property, are in compliance with all federal, state and municipal laws, ordinances, rules and regulations, including zoning, subdivision, environmental protection, building, fire and health laws, ordinances, rules and regulations; and Seller has received no notices from municipal or regulatory bodies that the Property is in violation of the provisions of any such laws, ordinances, rules or regulations.

8.1.7. **Flood Plain.** To Seller's knowledge, no portion of the Property is in a flood plain.

8.1.8. **Wells Private Sewage.** The Seller certifies and warrants that to the Seller's knowledge there are no "wells" on the Property within the meaning of Minn. Stat. 103I. This representation is intended to satisfy the requirements of that statute. Seller certifies that (i) sewage which will be generated at the Property does not go to a facility permitted by the Minnesota Pollution Control Agency (for example, a municipal sewer system), and (ii) to Seller's knowledge there are no existing or abandoned individual sewage treatment systems on the Property except for the sewage treatment system servicing the Property located on a portion of Lot 5, Block 1, Whitefish Crossing Subdivision, Crow Wing County, Minnesota.

8.1.9. **Storage Tanks.** Other than those which have been disclosed by Seller to Buyer, to Seller's knowledge no above ground or underground tanks are located in or about the Property, in use or abandoned, and no such tanks have been removed during Seller's ownership of the Property except in compliance with applicable Federal, state and local statutes, regulations, ordinances, and other regulatory requirements regarding such removal.

8.1.10. **Mechanics Liens.** Seller has paid for, or will pay for on or before Closing, all work, supplies and materials, performed upon and supplied to the Property by or on behalf of Seller.

8.1.11. **Foreign Person.** Seller is not a "foreign person" as contemplated by Section 1445 of the Internal Revenue Code.

8.2. **Breach of Seller Representations or Warranties.** If any representation or warranty of Seller is determined not to be true in any material respect as of the Closing Date, Buyer may, in Buyer's sole discretion, at its option and by notice to Seller either (i) terminate this Agreement, and the Earnest Money shall be promptly refunded to Buyer, or (ii) close on the Property. Buyer's election to close with knowledge of a breach of a Seller representation or warranty will not constitute a waiver or release by Buyer of any claims due to such breach, unless such representation or warranty was true when made but subsequently became untrue due to circumstances beyond Seller's reasonable control (such as the commencement of governmental enforcement proceedings after the date of this Agreement).

8.3. **Survival of Seller's Representations and Warranties.** Each of Seller's representations and warranties herein contained shall survive the Closing and delivery and recordation of the Deed.

8.4. **Seller's Knowledge.** For all purposes of this Agreement, any representation or warranty which is made on the basis of "Seller's knowledge" is limited to the actual knowledge of the Seller's owners, employees, agents, officers, directors, and representatives without conducting any inquiry, analysis, evaluation or other due and diligence investigation.

9. **Closing Documents.** At the Closing, Seller shall execute and/or deliver the following:

9.1. **Deed.** The Deed subject to any Permitted Exceptions;

- 9.2. **Seller's Affidavit.** A standard Seller's Affidavit with respect to judgments, bankruptcies, tax liens, mechanics liens, parties in possession, unrecorded interests, encroachment or boundary line questions, and related matters;
- 9.3. **FIRPTA Affidavit.** An affidavit of Seller stating that Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code;
- 9.4. **Bring Down Certificate.** A certificate carried to by an officer of Seller reaffirming, as of the Closing Date, the truth and accuracy of Seller's representations and warranties contained in Section 8;
- 9.5. **Seller's Certificate.** A certificate of the secretary of Seller to which there shall be attached as exhibits true and correct copies of a Certificate of Good Standing, Articles of Organization and the Operating Agreement of Seller, and any amendments thereto, and records of action authorizing and directing appropriate officers to execute and perform this Purchase Agreement and the transactions contemplated herein;
- 9.6. **Records.** All records regarding the property that are in possession of the Seller, or Seller's owners, employees, agents, officers, directors, or representatives, except those that are proprietary to Seller or which are normally viewed as confidential;
- 9.7. **Easement.** An easement benefiting Property for that portion of the existing parking area which is located upon Lot 3, Block 1, Whitefish Crossing Subdivision, Crow Wing County, Minnesota; and
- 9.8. **Miscellaneous.** Any other affidavits or certificates that may be required under Minn. Stat. § 116.48, subd. 6, or § 115B.16 or other provisions of law and such other instruments and documents as are reasonably required by the Title Insurer.

10. **Closing Costs and Prorations.** Seller and Buyer agree to the following prorations and allocation of costs regarding this Agreement:

- 10.1. **Title Insurance and Closing Fee.** Seller will pay all costs associated with updating the abstract and any title clearance costs. Buyer will pay all premiums required for the issuance of title insurance. Seller and Buyer will each pay one-half of any reasonable and customary closing fee or charge imposed by the Title Company.

- 10.2. **State Deed Tax.** Seller shall pay the state deed tax on the Warranty Deed to be delivered by Seller under this Agreement.
- 10.3. **Sales Tax.** Seller shall pay any sales or excise taxes due as a result of the closing of this transaction.
- 10.4. **Real Estate Taxes and Special Assessments.** All real estate taxes and special assessments shall be paid by the Seller and Buyer as set forth in Section 6.
- 10.5. **Recording Costs.** Buyer will pay the cost of recording the Deed. Seller shall pay the cost of recording any documents necessary to perfect its own title or which release encumbrances other than Permitted Encumbrances.
- 10.6. **Broker's and Finder's Fees.** Seller shall indemnify, defend and hold harmless the Buyer from and against all claims, demands, losses, expenses, and liabilities, including but not limited to reasonable attorneys' fees and expenses, arising in any fashion out of any claims or demand for payment of brokerage commissions, finders fees or similar compensation.
- 10.7. **Other Costs.** All other operating costs of the Property will be allocated between Seller and Buyer as of the Closing Date, so that Seller pays that part of such other operating costs accruing on or before the Closing Date, and Buyer pays that part of such operating costs accruing after the Closing Date.
- 10.8. **Attorneys' fees.** Each of the parties will pay its own attorneys', accountants' and consultants' fees.

11. **Risk of Loss.** The Seller shall keep the Property in its current condition until closing and assume all risk of destruction, loss, or damage to the Property due to fire, storm, or other casualty up to the date of closing. In the event of any adverse change in the condition of the Property, the Buyer, in Buyer's sole discretion, at its option and by notice to Seller, may either (i) terminate this Agreement, and the Earnest Money shall be promptly refunded to Buyer, or (ii) close on the Property, in which case there may be an equitable adjustment of the purchase price based on the change in circumstances.
12. **Condemnation.** If, prior to the Closing Date, eminent domain proceedings are commenced against all or any part of the Property, Seller shall immediately give notice to Buyer of such fact and at Buyer's option (to be exercised within twenty (20) days after Seller's notice), this Agreement shall terminate, in which event

neither party will have further obligations under this Agreement. If Buyer shall elect not to give such notice then there shall be no reduction in the Purchase Price, and Seller shall assign to Buyer at the Closing Date all of Seller's right, title and interest in and to any and all awards made or to be made in the condemnation proceedings, and all payments made in lieu of condemnation proceedings until such time as Buyer has elected not to terminate this Agreement by reason of the pending condemnation.

13. **Assignment; Successors and Assigns.** This Agreement may be assigned by either party and this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

14. **Survival of Covenants.** All of the terms, conditions, covenants, warranties, indemnifications and agreements contained in this Agreement shall survive the Closing.

15. **Default.** If Buyer defaults under this Agreement, Seller shall have the right to terminate this Agreement by giving written notice to Buyer according to Minn. Stat. § 559.21, and upon such termination, Seller may obtain and retain the Earnest Money as liquidated damages. The termination of this Agreement and retention of the Earnest Money will be the sole remedy available to Seller for such default by Buyer, and Buyer will not be liable for damages for specific performance. If Seller defaults under this Agreement, this provision does not preclude Buyer from seeking and recovering from Seller damages for nonperformance or specific performance of this Agreement. Any action by Buyer for specific performance of this Agreement shall be commenced within one year after such right of action by Buyer arises, time being of the essence.

16. **Notices.** Any notice, payment, demand, or communication required or permitted to be given by any provision of this Agreement will be in writing and will be deemed to have been given when delivered personally, or on the date following the date sent by overnight courier or on the second (2nd) business day after the same is sent by certified mail, postage and charges prepaid, directly to the party entitled thereto, in each case addressed as follows (or to such other address as the parties may designate in the manner set forth herein):

To Seller:

To Buyer: Curt Johnson
PO Box 149
Pequot Lakes, MN 56472
218-568-6500

17. **Entire Agreement.** This Agreement embodies the entire agreement between the Seller and the Buyer regarding the transactions contemplated hereby. This Agreement supersedes in all respects all prior written or oral agreements, if any, between the parties relating to the Agreement and the sale of the Property and there are no covenants, agreements, representations, warranties or undertakings of any sort or kind with respect thereto between the Seller and the Buyer other than those specifically set forth in this Agreement. This Agreement may be amended only by a written instrument signed by both the Seller and Buyer.
18. **Interpretation of Agreement.** The parties acknowledge that Agreement was prepared by the Buyer solely as a convenience and that all parties and their counsel, hereto have read and fully negotiated all the language used in this Agreement. The parties acknowledge that because all parties and their counsel, if so desired, participated in negotiating and drafting this Agreement, no rule of construction shall apply to this Agreement which constricts ambiguous or unclear language in favor of or against any party by reason of that party's role in drafting this Agreement.
19. **Governing Law.** The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
20. **Headings.** The headings in the sections of this Agreement are inserted for convenience only and shall not constitute a part hereof.
21. **Severability.** If any clause or provision of this Agreement is illegal, invalid or unenforceable under any present or future law, the remainder of this Agreement will not be affected thereby. It is the intention that if any such provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible and legal, valid and enforceable.
22. **Time.** Time is of the essence of each and every provision of this Agreement where time is a factor. Except as otherwise expressly provided, references to intervals of time shall mean consecutive calendar days, months or years, as applicable. If the date for giving notice or taking action under this Agreement falls on a weekend or Federal or state holiday, the date for the giving of such notice or taking such action shall be extended to the next business day.

23. **Recording.** Neither this Agreement nor a memorandum of this Agreement shall be recorded. Upon expiration of the Agreement, Buyer shall, upon request, deliver to Seller a recordable quitclaim of Buyer's rights under this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first set forth above.

SELLER:

Austin Port Authority

By:

Name, Title

BUYER:

Pennot Land & Construction Co, LLC

By:

Name, Title

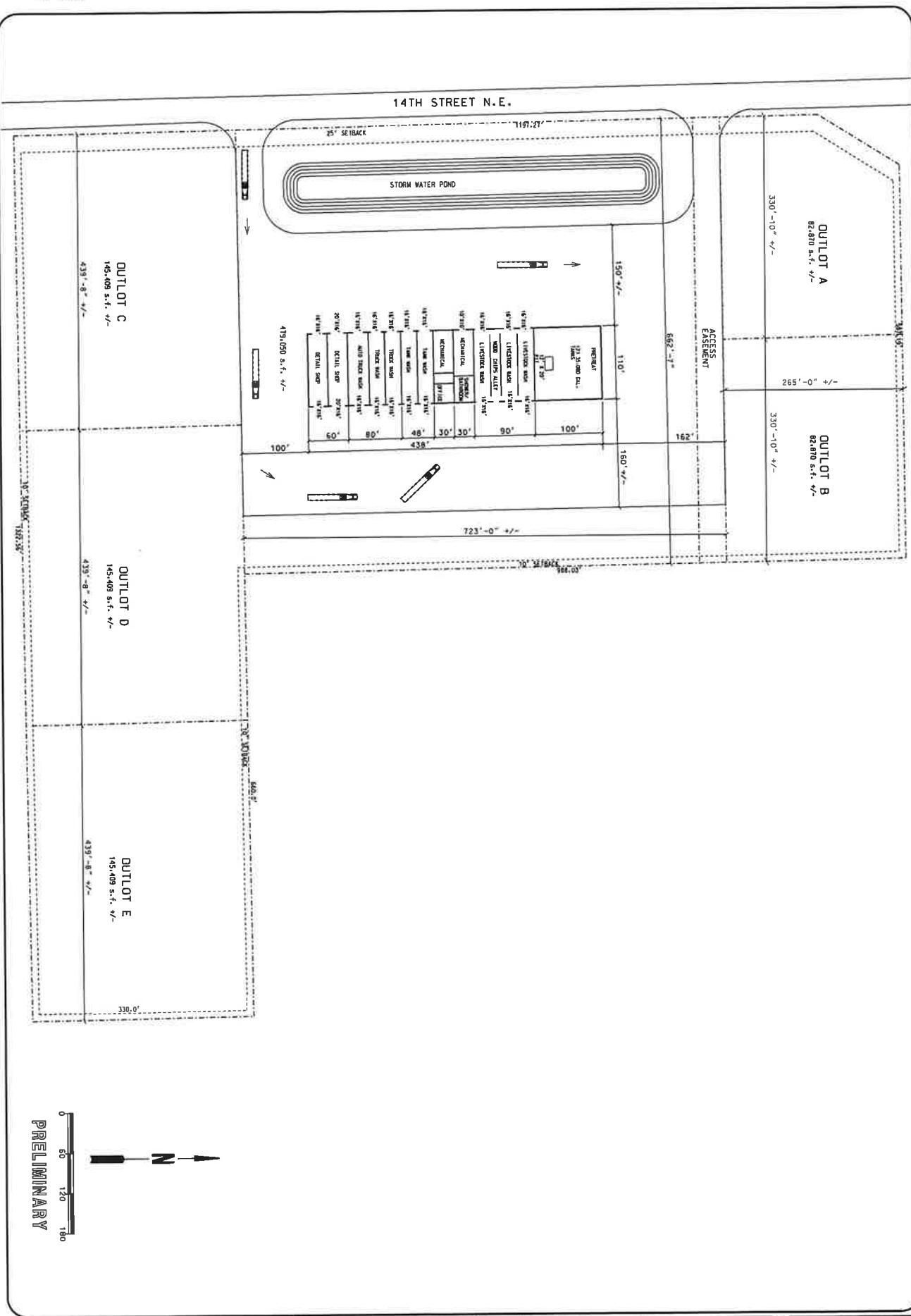
DRAFT

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Approximately 11 Acres, by Survey, from the 25 +/- acres in the NE1/4 of the SE1/4, Section 35-T103-R18W, City of Austin, Mower County, Minnesota.

DRAFT



CERTIFICATE OF SURVEY

IN NE1/4 SE1/4 SECTION 35-T103N-R18W
AUSTIN, MOWER COUNTY, MINNESOTA

SOUTHEASTERLY R/W LINE OF THE
CHICAGO & NORTHWESTERN TRANSPORTATION CO. (ABANDONED)

1986
SOLUTION NO. 4729
3D3N-118W
4 SEI/4
1197.27
EET NORTHEAST

14th ST
S01-0416-E
WEST LINE SECTION 35-1
SECTION 35-1
WEST CORNER SECTION

PREPARED LEGAL DESCRIPTION

[All] that part of the NE1/4 SE1/4 Section 35-T103N-R18W, Mower County, Minnesota; described as follows:

Beginning at the southeast corner of said NE1/4 SE1/4;

thence North 00°55'46" West a distance of 330.00 feet on the east line of the SE1/4 of said Section 35;

thence South 89°1'44" West a distance of 660.00 feet, parallel to the south line of said SE1/4, to the west line of the East 660 feet said NE1/4 SE1/4;

thence North 00°55'46" West a distance of 988.03 feet on the west line of said East 660.00 feet, to the northwest corner of said East 660 feet;

thence South 89°25'33" West a distance of 587.19 feet on the north line of said SE1/4, to the southeasterly right-of-way line of the Chicago & Northwestern Transportation Company, now abandoned;

thence Southwest a distance of 145.30 feet, on the southeasterly right-of-way line of said abandoned Railroad, and on a non tangent curve, concave to the Northwest with a central angle of 01°26'24", a chord length of 577.59 feet, a chord bearing of South 31°41'48" West, a chord length of 145.29 feet, to the west line of said NE1/4 SE1/4;

thence South 01°04'16" East a distance of 1197.27 feet on the line of said NE1/4 SE1/4, to the southwest corner thereof;

thence North 89°1'44" East a distance of 1322.66 feet on the south line of said NE1/4 SE1/4, to the point of beginning;

subject to an easement for public street and utilities over, under and across the East 22.00 feet of the South 47.00 feet of said NE1/4 SE1/4.

FOR: DIANE PERSINGER

under the laws of the State of Minnesota.

ESTIMATE OF COST

2021 17 Street NE Cost Estimate
BASE, BITUMINOUS PAVEMENT
AUSTIN, MINNESOTA

ESTIMATE OF COST
0221 17 Street NE Cost Estimate
RAISE, RUT, MINUS PAVEMENT, CURB & GUTTER, STORM & SANITARY SEWER & APPURTENANT