

City of Ramsey
Agenda
Housing and Redevelopment Authority (HRA)
Regular Session
Tuesday January 8, 2013
Immediately Following City Council
Council Chambers, 7550 Sunwood Drive NW

- 1. Call to Order**
- 2. Citizen Input**
- 3. Approve Agenda**
- 4. Approve Minutes**
- 5. HRA Business**
 1. Elect 2013 HRA Officers
 2. Update on Leasing Activity - The Residence at The COR
 3. Consider Offer to Purchase Property - Lot 3, Block 1, COR TWO (Portions may be closed to the public)
 4. Consider purchase of 14590 Armstrong Blvd. NW Ramsey, Minnesota (Wiser Choice Liquor Store) from M&W Holding Company, LLC. (Portions of this meeting may be closed to the public)
 5. Approve First Amendment to Amended and Restated Parking Use and Maintenance Agreement - Ramp A
 6. Update on Edgewood Project, and Approve Commission Agreement - Premier Commercial Properties
 7. Consider Waiving/Not Waiving Statutory Tort Limits
- 6. Development Team Report**
- 7. Commissioner Input**
- 8. Adjournment**

HRA Regular Session

5. 1.

Meeting Date: 01/08/2013

By: Jo Thieling, Administrative Services

Information

Title:

Elect 2013 HRA Officers

Background:

The by-laws for the Housing and Redevelopment Authority (HRA) require an annual election of officers to include the Chairperson, Vice Chairperson and Secretary-Treasurer. The two sections of the by-laws that address the election of officers are below in italics; the entire by-laws document is attached for HRA reference.

Section 1 - Officers: The officers of the Authority shall be elected from among the Commissioners. The officers shall consist of a Chairperson, Vice Chairperson and a Secretary-Treasurer. A Commissioner may not hold more than one of the aforementioned offices at the same time.

Section 7 - Election/Appointment: The Chairperson, Vice-Chairperson, and Secretary-Treasurer shall be elected annually from among the Commissioners of the Authority. They shall hold office for one year or until their successors are elected and qualified.

Notification:

No notification is required for this action.

Recommendation:

Staff recommends that the HRA elect 2013 officers.

Funding Source:

No funding is required for this action.

Council Action:

HRA action: Elect 2013 HRA officers

Attachments

HRA By Laws

Form Review

Form Started By: Jo Thieling

Started On: 12/20/2012

Final Approval Date: 01/05/2012

Commissioner Ramsey introduced the following resolution and moved for its adoption:

RESOLUTION # HRA-11-05-004

A RESOLUTION AMENDING THE BY-LAWS FOR THE RAMSEY HOUSING AND REDEVELOPMENT AUTHORITY (HRA) UNDER MINNESOTA STATUTES CHAPTER 469.

WHEREAS, on March 9, 2009, the Ramsey City Council adopted Resolution #05-03-072 to establish a Housing and Redevelopment Authority (HRA), in and for the City of Ramsey; and

WHEREAS, pursuant to Minnesota Statutes 469, on March 9, 2009, the HRA for the City of Ramsey adopted Resolution #HRA-09-03-002 to establish by-laws by which it shall be governed; and

WHEREAS, Resolution #HRA-09-03-009 established a seven-commissioner board consisting of the seven City Councilmembers; and

WHEREAS, on May 17, 2011, the HRA for the City of Ramsey reviewed the current by-laws and provided the Executive Director with direction for amendments to the by-laws.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE HOUSING AND REDEVELOPMENT AUTHORITY, IN AND FOR THE CITY OF RAMSEY, ANOKA COUNTY, STATE OF MINNESOTA, that the following by-laws are hereby adopted:

Article 1 - The Authority

- Section 1 - Name: Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota.
- Section 2 - Office, Meeting Place: The office of the Authority shall reside at the Ramsey Municipal Center, or such place as the Authority determines by Resolution. Regular and Special Meetings of the Board of Commissioners shall be open to the public and shall be held at the Ramsey Municipal Center or such other location as the Authority determines by Resolution.
- Section 3 - Powers: The Authority shall have and exercise functions and rights pursuant to the Resolution creating the Authority and those described in Minnesota Statutes 469.001 to 469.047.

Article 2- Commissioners

- Section 1 - Authority: The business of the Authority shall be managed by, or under the authority of, the Board of Commissioners, except as otherwise permitted by statute.
- Section 2 - Number, Qualification, and Term of Office: There shall be seven (7) commissioners, all of whom will be members of the Ramsey City Council. The HRA members will serve a term equal to the Commissioner's City Council term.

- Section 3 - Vacancies: Vacancies of city council member(s) appointed to the Board of Commissioners occurring by reason of death, resignation, removal, or disqualification shall be filled in accordance with Chapters 2 and 4 of the Ramsey City Charter.
- Section 4 – Certificate of Appointment; Filing: Commissioners shall hold office until their successors have been appointed and qualified. A certificate of appointment of each commissioner shall be filed with the city clerk and a certified copy shall be transmitted to the Commissioner of Employment and Economic Development. A certificate shall be conclusive evidence of appointment.

Article 3 - Officers

- Section 1 - Officers: The officers of the Authority shall be elected from among the Commissioners. The officers shall consist of a Chairperson, Vice Chairperson and a Secretary-Treasurer. A Commissioner may not hold more than one of the aforementioned offices at the same time.
- Section 2 - Chairperson: If present, the Chairperson shall preside over all meetings of the Board of Commissioners. The Chairperson shall sign all contracts, deeds and other instruments and documents made by the Authority unless otherwise directed by a majority of the Board.
- Section 3 - Vice-Chairperson: The Vice-Chairperson shall perform the duties of the Chairperson in the absence of the Chairperson and in the case of death or resignation of the Chairperson, the Vice-Chairperson shall perform the duties of the Chairperson until such time as the Board elects a new Chairperson.
- Section 4 - Secretary-Treasurer: The Secretary-Treasurer shall keep the minutes of all meetings, maintain all records of the Authority, and have care and custody of all funds and keep regular books of account of the Authority. The Secretary-Treasurer shall also perform all other duties of the Secretary-Treasurer and shall preside over the Board in the absence of the Chairperson and Vice-Chairperson. The Secretary-Treasurer, upon approval of the majority of the Board by Resolution, may delegate the responsibilities of Treasurer and Secretary to qualified City staff members or consultants.
- Section 5 - Execution of Instruments and Documents: All deeds, contracts, Development Agreements, bonds, and instruments and documents of every kind authorized by the Board shall be signed by the Chairperson and the Executive Director on behalf of, and in the name of, the Authority.
- Section 6 - Additional Duties: The Officers of the Authority shall perform such other duties as may from time to time be required by the Board of the bylaws or rules and regulations of the Authority.
- Section 7 - Election/Appointment: The Chairperson, Vice-Chairperson, and Secretary-Treasurer shall be elected annually from among the Commissioners of the Authority. They shall hold office for one year or until their successors are elected and qualified.
- Section 8 - Vacancies: Should the office of Chairperson, Vice-Chairperson, and/or Secretary-Treasurer become vacant, the Board shall elect a successor from among its members at the next Regular or Special Meeting. Such election shall only be for the unexpired term of the office.

Article 4 – Personnel

- Section 1 – Executive Director: The Ramsey City Administrator shall designate an Executive Director of the Authority with the approval of the Board of Commissioners. The Executive Director shall supervise the administration of the Authority’s business under the direction of the Board of Commissioners. As an assistant to the Secretary/Treasurer, the Executive Director shall insure both proper records and finances of the Authority are maintained. The Executive Director (or designee) shall act as Secretary of the meeting of the Board of Commissioners and shall keep a record of proceedings of the Authority. The Executive Director (or designee) shall be responsible for the maintenance of financial records of the Authority in accordance with applicable laws. The Executive Director shall perform all other duties as required by the position and as assigned by the Board of Commissioners.
- Section 2 – Additional Personnel: The Board of Commissioners may from time to time employ such personnel as it deems necessary to exercise its powers, duties, and functions. The selection and compensation of such personnel shall be determined by the Board of Commissioners, subject to applicable laws. The Board of Commissioners may also use the services of City staff, as needed, to carry out powers, duties, and functions.

Article 5 – Meetings

- Section 1 – Regular Meetings: Meetings shall be held on the second and fourth Tuesdays of the month at the Ramsey Municipal Center, unless the date is a legal holiday, in which case the Board shall have the authority to reschedule by simple motion. In the event that the date/time/meeting place of a particular meeting must be changed, the Executive Director may make the change by notifying all Commissioners in accordance with the procedures for a special meeting.
- Section 2 – Special Meetings: Special meetings may be called by the Chair, four (4) members of the Board of Commissioners, or the Executive Director for the purpose of transacting any business designated in the call. The call for a special meeting must be delivered to all of the Commissioners at least two (2) days prior to the meeting and posted at Ramsey City Hall at least three (3) days prior to the meeting. The call and posting must designate the time/date/meeting place and purpose of the special meeting. At a special meeting, no business may be considered other than as designated in the call, except that if all Commissioners in office are present at a special meeting, then any business may be transacted at such special meeting by a unanimous vote.
- Section 3 – Work Sessions: Work Sessions may be held on an as needed basis.

Article 6 – Quorum

- Section 1 – Quorum: Four Commissioners constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes. When a quorum is in attendance at a regular meeting or properly scheduled special meeting, then action may be taken by the Board of Commissioners upon a vote of a majority of the Commissioners present.

Article 7 – Order of Business

- Section 1 – Order of Business: At the regular meetings of the Board of Commissioners, the following shall be the Order of Business to be conducted:

Call to Order
Approval of Minutes of the Previous Meeting
Open Forum
HRA Business
Executive Director’s Report
Commissioner Comments
Adjournment

All resolutions, motions, and actions shall be in writing and copied into the minutes of the proceedings of the Board of Commissioners.

Article 8 – Manner of Voting

- Section 1 – Manner of Voting: The voting on all questions coming before the Board of Commissioners shall be by the Chairperson calling for yeas and nays on the questions. The decisions shall be entered into the minutes of each meeting. The Chairperson and all members shall be entitled to vote at every meeting of the Board of Commissioners. In the event that any Commissioner shall have a personal interest of any kind in a matter before the Board of Commissioners, as determined by the Ramsey City Attorney, the Commissioner shall be disqualified from voting upon the matter and the Secretary shall record in the Minutes that vote was not cast by said Commissioner.

Article 9 – Amendments

- Section 1 – Amendments: The By-Laws of the Board of Commissioners shall be amended only by resolution at a meeting with all Commissioners in office in attendance and with the approval of at least a majority of the Commissioners.

Article 10 – Fiscal Year

- Section 1 – Fiscal Year: The fiscal year of the Authority shall coincide with the fiscal year of the City of Ramsey, Minnesota.

Article 11 – Effective Date

- Section 1 – Effective Date: These amended by-laws shall become effective and implemented as of May 17, 2011.

The motion for the adoption of the foregoing resolution was duly seconded by Chairperson Jeffrey, upon vote being taken thereon, the following voted in favor thereof:

Chairperson Jeffrey
Commissioner Ramsey
Commissioner Backous
Commissioner Elvig
Commissioner McGlone
Commissioner Tossey
Commissioner Wise

and the following voted against the same:

None

and the following abstained:

None

and the following were absent:

None

whereupon said resolution was declared duly passed and adopted by the Housing and Redevelopment Authority Board of Commissioners this the 17th day of May, 2011.

Chairperson

ATTEST:

HRA Executive Director

HRA Regular Session

5. 2.

Meeting Date: 01/08/2013

Submitted For: Darren Lazan

By: Jo Thieling, Administrative Services

Information

Title:

Update on Leasing Activity - The Residence at The COR

Background:

There have been a number of requests by Council and HRA members for updates on the leasing activities for The Residence at The COR. Flaherty and Collins has requested an opportunity to present their marketing program and progress to date, and to discuss marketing activities over the next four months leading up to the initial opening of units in the project.

Funding Source:

N/A

Council Action:

None. Informational only.

Form Review

Inbox

Kurt Ulrich

Reviewed By

Kurt Ulrich

Date

01/03/2013 03:48 PM

Form Started By: Jo Thieling

Started On: 01/02/2013 03:50 PM

Final Approval Date: 01/03/2013

HRA Regular Session

5. 3.

Meeting Date: 01/08/2013**By:** Darren Lazan, Housing &
Redevelopment Authority

Information**Title:**

Consider Offer to Purchase Property - Lot 3, Block 1, COR TWO (Portions may be closed to the public)

Background:

At several meetings throughout 2012, the HRA and the City Council considered the offer by M&W Holdings to purchase a parcel in the plat of COR TWO. The owner of M&W Holdings, Mr. Jeff Wise, was a sitting council member at the time.

Through this process, an agreement outlining the HRA's purchase of property owned by M&W Holdings on the west side of Armstrong was considered in conjunction with, and conditioned upon the sale of HRA Property in the plat of COR TWO. The terms of the agreement were finalized and the HRA and city council approved those agreements in mid-2012.

After issues related to Mr. Wise's status as a council member were expressed, the HRA chose not to execute the approved deal, and the decision to act on the agreement was postponed until the new year when Mr. Wise's term concluded.

Notification:**Observations:**

The terms of the deal outlined and approved in 2012 were based on the assumption that the project would move forward as a 2012 construction project. Because that did not happen, the economics of the deal have changed for Mr. Wise, and he has modified his offer accordingly.

The revised offer contains two modifications, one affecting the agreement to purchase the existing property west of Armstrong, and one related to the sale of property in COR TWO.

The details of the proposed deal will be sent to HRA Members via separate email.

Recommendation:

The development team recommends the HRA review the revised offer to purchase Lot 3, Block 1, COR TWO, and either provide direction on a response to the offer, or direct the execution of the agreement and proceed to closing.

Funding Source:

N/A

Council Action:

Accept the offer to purchase Lot 3, Block 1, COR TWO, and direct the development team to finalize the purchase agreement and prepare for closing.

Or:

Provide direction on preparing a response to the offer submitted by M&W Holdings, LLC.

Form Review

Inbox

Kurt Ulrich

Form Started By: Darren Lazan

Reviewed By

Kurt Ulrich

Date

01/03/2013 04:08 PM

Started On: 01/03/2013 11:18 AM

Final Approval Date: 01/03/2013

Meeting Date: 01/08/2013**Submitted For:** Kurt Ulrich**By:** Bill Goodrich, Administrative Services

Information**Title:**

Consider purchase of 14590 Armstrong Blvd. NW Ramsey, Minnesota (Wiser Choice Liquor Store) from M&W Holding Company, LLC. (Portions of this meeting may be closed to the public)

Background:

This case has been copied from the 10/9/12 Regular meeting of the HRA for reconsideration.

Board members will recall that the City Council has recently approved the purchase and proposed terms of a purchase agreement for the property at 14590 Armstrong Blvd. NW Ramsey (the "Property") from M&W Holding Company, LLC ("M&W"). However, to date no formal purchase agreement has been executed by the City or M&W. Only negotiations have proceeded. The global transaction also includes the sale by the HRA to M&W of a lot in the proposed plat of COR TWO in order to relocate the existing Liquor Store on the Property. The public purpose for acquisition of the Property is to accommodate the City's need for a small portion of it for the Sunwood Drive Reconstruction project, the need for a part of the parcel for the future Armstrong/Hwy 10 Interchange and area wide redevelopment. Commission members are aware that M&W's principal owner is current Council Member/Commission Member Jeff Wise ("Wise"). Even though throughout the entire negotiation process with the City, Wise has abstained from any City Council votes on the subject, and has not participated in consideration of the subject in any way, including physically leaving the council chambers when the Property purchase has been considered by the City Council, State Law will not permit the City to purchase real property from a current City Council Member.

HRA members will recall that this project was initiated as an HRA project, but changed to the Council under the belief that the Council was the best body to move forward with the public improvement. However, notwithstanding the above purchase prohibition by the City, state law does permit the HRA to purchase from an HRA Commission Member real property upon compliance with certain statutory requirements. It should be noted too that the HRA does have authority to purchase the Property pursuant to the 2007 Redevelopment Plan for the Property and adjacent properties. The objectives of the 2007 Plan include: promote and seek the harmonious development of the Redevelopment Area; to provide logical and organized land use; to promote and provide development of property with minimal adverse impact on the environment; provide adequate utilities and public improvements to enhance new and existing development. These objectives together with others outlined in the 2007 Plan do confirm that the acquisition of the Property is well within the HRA's authority.

The terms of a proposed purchase agreement will be reviewed with the Commission Members by staff at the HRA meeting. Attached to this case is a Deal Recap for purchase of the Property for the Commission's review.

Notification:**Observations:****Recommendation:**

The development team recommends the HRA approve the proposed purchase agreement for the Property.

Funding Source:

N/A

Council Action:

Approve the purchase agreement for the property located at 14590 Armstrong Blvd., Ramsey, Minnesota and legally described as Lot 2, Block 1, Hauser Addition, Anoka County, Minnesota.

Attachments

Deal Recap

Form Review

Inbox
Kurt Ulrich

Reviewed By
Kurt Ulrich
Form Started By: Bill Goodrich

Final Approval Date: 01/03/2013

Date
01/03/2013 04:14 PM
Started On: 01/03/2013

**HRA PURCHASE OF WISER CHOICE LIQUOR STORE
DEAL RECAP**

Project: Hwy 10/Armstrong Interchange and Sunwood Drive Realignment
Seller: M&W Holding Company, LLC
Buyer: Ramsey Housing and Redevelopment Authority
Use: R/W and related Armstrong Interchange and Sunwood Drive Realignment project purposes.

Site Location: Wiser Choice Liquor Store site, 14590 Armstrong Blvd.
Lot 2, Block 1, Hauser Addition

Status: Purchase Agreement

Acres: 1 acre gross
Price: \$940,000.00 (Building, Business and Land)
Total of payments: \$80,160 (Trade Fixtures)
\$90,000.00 (Business Relocation Estimate)
Total: \$1,110,160.00

Earnest Monies: \$5,000.00 non-refundable
Due Diligence: 30 days
Closing Schedule: October 2012
Possession: 18 months from Closing subject to Lease Back

Lease Back: Agreement provides for lease back to Seller for up to 18 months at \$5,000.00/month rent to City, all pending closing and construction of Seller's new Liquor store in the COR

Restrictive Covenant: Seller has requested that the HRA agree to a restrictive covenant that the "...Property may not be used as a liquor store after the Grantor (M&W) vacates the Property."

HRA Regular Session

5. 5.

Meeting Date: 01/08/2013**By:** Darren Lazan, Housing &
Redevelopment Authority

Information**Title:**

Approve First Amendment to Amended and Restated Parking Use and Maintenance Agreement - Ramp A

Background:

In April of 2012, the City, The HRA, and the EDA approved the Amended and Restated Parking Use and Maintenance Agreement (PUMA).

This amended agreement was updated to address, among other things, the concept of the dedication of spaces to The Residence at The COR, and the related signage and use issues surrounding the ongoing operation of the ramp now that it will be completely allocated.

The agreement was recorded in May of 2012, and included a provision for the preparation and execution of an amendment to the agreement to add the legal description for the "Exclusive Easement Area" as outlined conceptually in Exhibit D-2 of the recorded agreement. This was to be prepared following the completion of construction of the ramp and related vestibules.

That survey has been completed and the easement areas identified based on the constructed condition.

Notification:**Observations:**

As-Built Parking Summary:

Ground Floor - 165 stalls + 8 Accessible stalls = 173 Total Stalls

2nd Floor - 216 stalls + 5 Accessible stalls = 221 Stalls

3rd Floor - 214 Stalls + 5 Accessible Stalls = 219 Stalls

4th Floor - 178 Stalls + 2 Accessible Stalls = 180 Stalls

TOTAL STALLS - 793

After a final Assessment of the constructed parking configuration, the following reflects the current parking allocation for Ramp A:

Stalls DEDICATED to Lot 3, Block 1, COR ONE - 275

Stalls ALLOCATED to Lot 3, Block 1, COR ONE - 25

Stalls ALLOCATED to Transit (per funding requirements) - 350

Stalls ALLOCATED to Municipal Center - 75

UNALLOCATED Stalls (future use) - 68

TOTAL STALLS - 793

Notes:

Municipal Center requires 136 stalls by code, but provides 64 on-site stalls, and therefore needs 72 stalls in Ramp A to meet current parking requirements. Previous Allocation to the Municipal Center was 108 stalls. HRA/Council

should consider this reduction as a policy question on how stalls are allocated, or reserved for future uses.

Recommendation:

The development team recommends the HRA approve the First Amendment to the Amended and Restated Parking Use and Maintenance Agreement for Ramp A, subject to final modification and approval by HRA legal counsel, and direct the agreement to be executed and recorded.

Also included in this case is the Work Order for the as-built survey and preparation of the Exclusive Easement documents, in the amount of \$3,400..

Funding Source:

Professional Services Budget

Council Action:

Approve the First Amendment to the Amended and Restated Parking Use and Maintenance Agreement for Ramp A, subject to final modification and approval by HRA legal counsel, and authorize and direct the agreement to be executed by the HRA Chair, HRA Executive Director, and recorded.

Approve the work order for the preparation of the Exclusive Easement document in the amount not to exceed \$3,400

Attachments

Recorded PUMA

First Amendment

Work Order

Easement Sketches

Form Review

Inbox

Kurt Ulrich

Form Started By: Darren Lazan

Reviewed By

Kurt Ulrich

Date

01/03/2013 03:07 PM

Started On: 12/21/2012 04:26 PM

Final Approval Date: 01/03/2013



Record ID 2491126

508341.011

**ABSTRACT/TORRENS
DOCUMENT**

DOCUMENT

ABSTRACT/TORRENS

2031856.006

Record ID 2491124



**AMENDED AND RESTATED PARKING IMPROVEMENT USE AND
MAINTENANCE AGREEMENT FOR PARKING DISTRICT A**

1. **Parties.** The parties to this Amended and Restated Parking Improvement Use and Maintenance Agreement (this "Agreement") are the City of Ramsey, a Minnesota municipal corporation (the "City"), the Economic Development Authority of the City of Ramsey, Minnesota, a body politic and corporate under the laws of the state of Minnesota (the "EDA") and The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota, a body politic and corporate under the laws of the state of Minnesota (the "HRA").

2. **Reference Date and Effective Date.** This Agreement is dated, for reference purposes, as of the 30th day of April, 2012. This Agreement is effective when it is recorded in the office of the Anoka County Recorder and Registrar of Titles.

3. **Recitals.**

(a) **Recital One.** The City owns the real property legally described on **Exhibit A** (the "City Property"), and the HRA owns the real property legally described on **Exhibit B** (the "HRA Property").

(b) **Recital Two.** The City Property and the HRA Property include all of the "Parking District," as defined in that certain Parking Improvement Use and Maintenance Agreement between the City and Ramsey Town Center, LLC (the "Developer") dated as of February 28, 2005 and recorded on March 16, 2005 in the office of the Anoka County Recorder as Document No. 1973660.001 and in the office of the Anoka County Registrar of Titles as Document No. 482124.002 (the "Original PUMA").

(c) **Recital Three.** The City leases the City Property to the EDA pursuant to a Ground Lease Agreement dated as of June 1, 2005 and recorded on December 8, 2005 in the office of the Anoka County Recorder as Document No. 1980341.001 and in the office of the Anoka County Registrar of Titles as Document No. 485607.002 (the "Ground Lease").

(d) **Recital Four.** The EDA subleases the City Property back to the City pursuant to a Lease Agreement dated as of June 1, 2005 and recorded on December 8, 2005 in the office of the Anoka County Recorder as Document No. 1980341.002 and in the office of the Anoka County Registrar of Titles as Document No. 485607.003 (the "Sub-Lease").

(e) Recital Six. The City and the HRA, as the owners of all of the Property subject to the Original PUMA and the EDA and the City, as the tenant and subtenant of the City Property, desire to terminate the Original PUMA, in its entirety and replace it with this Agreement.

(f) Recital Seven. The property that is subject to this Agreement is the real property legally described on **Exhibit C** ("Parking District A").

(g) Recital Eight. Parking District A is zoned "COR District" and is subject to Section 117-118 of the City's zoning ordinance. Section 117-118 of the City's zoning ordinance is referred to herein as the "COR District Ordinance."

(h) Recital Nine. Section 117-118 of the COR District Ordinance requires the HRA to submit a development plan to the City. On September 27, 2011 the HRA submitted and the City Council approved a new development plan for the HRA Property (the "New Development Plan"). Section 117-118(e) of the COR District Ordinance requires the HRA to submit a proposed parking plan to the City for review and approval as a part of the New Development Plan. The New Development Plan includes a parking plan for the HRA Property which includes, as one of its components, a parking plan for Parking District A (the "District A Parking Plan").

(i) Recital Nine. The City owns the approximately 600 stall parking ramp (the "Ramp A"). The Ramp A is located on Lot 2, Block 1, COR ONE, Anoka County, Minnesota (the "District A Parking Parcel"). The City intends to construct an approximately 200 stall addition to Ramp A (the "Ramp A Addition") which will also be located on the District A Parking Ramp Parcel. Ramp A and the Ramp A Addition are referred to herein as the "District A Parking Improvements."

(j) Recital Ten. Section 117-118(e)(6) of the COR District Ordinance contemplates a development agreement that will require the owner of each property in the COR District to assume financial responsibility for the continuing maintenance of public parking facilities. The City anticipates that costs associated with the continuing maintenance of the public parking facilities within the COR District will be allocated among properties the public parking facilities serve based on each property's parking needs. For purposes of this Agreement, the term "Parcel" means each platted lot, platted outlot, registered land survey tract and common interest community unit, located wholly or partially within Parking District A and any portion of any platted lot, platted outlot or registered land survey tract located wholly or partially within Parking District A that has been subdivided using a metes and bounds legal description in accordance with the requirements of the City's subdivision ordinance. The District A Parking Plan allocates the available parking spaces in the District A Parking Improvements among the Parcels in Parking District A. Stalls intended for "park and ride" use are allocated to Lot 1, Block 1, COR ONE, Anoka County, Minnesota, which the City owns and upon which the Ramsey Municipal Center is located. The District A Parking Plan also allocates to each Parcel in Parking District A a fractional share of liability for the costs associated with the continuing maintenance of the District A Parking Improvements. The fractional share of liability assigned to each Parcel is based on the relationship between the number of parking spaces allocated to the Parcel and the total number of parking spaces in the District A Parking Improvements.

(k) Recital Eleven. This Agreement obligates the owner of each Parcel in Parking District A to pay the City for costs the City has or will incur to maintain, repair and replace the District A Parking Improvements based on the fractional share of liability assigned to that Parcel in the District A Parking Plan.

(l) Recital Twelve. This Agreement also grants the owner of each Parcel in Parking District A an appurtenant, non-exclusive easement to use the number of parking spaces in the District A Parking Improvements that the District A Parking Plan allocates to that Parcel except that this Agreement grants the owner of Lot 3, Block 1, COR ONE, Anoka County, Minnesota ("Lot 3") an appurtenant, exclusive easement to use the 275 stalls that are located within the portion of the District A Parking Improvements and the District A Parking Parcel depicted on **Exhibit D-1** (the "Exclusive Easement Area"). After the City completes construction of the Ramp A Addition, the City will survey the Exclusive Easement Area, and the City and the owner of Lot 3 must execute an amendment to this Agreement to add the legal description of the Exclusive Easement Area as **Exhibit D-2**. From and after the recording of that amendment the term Exclusive Easement Area shall mean the area legally described on **Exhibit D-2** and in the event of any conflict between **Exhibit D-1** and **Exhibit D-2**, **Exhibit D-2** shall control.

4. Declaration and Grant of Easements.

(a) Non-Exclusive Easements. The City hereby declares and grants a non-exclusive, appurtenant easement over the portion of District A Parking Parcel and the portion of the District A Parking Improvements that are not located within the boundaries of the Exclusive Easement Area (the "Public Parking Areas") for the benefit of each Parcel to permit the owner of each Parcel, each owners' tenants and each owners' and each owner's tenants' employees, customers, agents, guests and invitees to use, on a first-come, first-served basis and in common with members of the public, the number of parking spaces in the Public Parking Areas that the District A Parking Plan allocates to such owner's Parcel and to use the driveways and pedestrian elevators, stairways, sidewalks and walkways that are a part of the District A Parking Improvements. The easement is to permit the parking of vehicles of a size not to exceed the design parameters of the District A Parking Improvements and for pedestrian access to and from such vehicles. Notwithstanding anything else in this Section 4.1, the non-exclusive easement granted in this Section 4.1 only entitles the owner of Lot 3, such owners' tenants and such owners' and such owners' tenants' employees, customers, agents, guest and invitees to use the number of spaces that is equal to the total number of parking spaces the District A Parking Plan allocates to Lot 3 less the number of "Exclusive Use Stalls," as defined in Section 4.2. The easement set forth in this Section 4.1 does not give the benefitted parties a right to use any specific, designated spaces and does not give the benefitted parties any priority over members of the public or other benefitted parties with respect to the use of available spaces. The number of parking spaces the District A Parking Plan allocates to each Parcel may change as a result of subsequent amendments to the District A Parking Plan, but the City Council may not approve an amendment to the District A Parking Plan that increases or decreases the number of parking stalls allocated to a Parcel without the written consent of the owner of the Parcel.

(b) Exclusive Easement. The City hereby declares and grants an exclusive, appurtenant easement over the Exclusive Easement Area for the benefit of Lot 3. The easement

is to permit the owner of Lot 3 and such owner's tenants and the owner's and owner's tenants' guests and invitees to use the 275 stalls in the Exclusive Easement Area (the "Exclusive Use Stalls") and to exclude all others from the use of such stalls. The owner of Lot 3 shall have exclusive authority to determine how the Exclusive Use Stalls are allocated among and used by such owner's tenants and the owner's and owner's tenants' guests and invitees. The easement is to permit the parking of vehicles of a size not to exceed the design parameters of the District A Parking Improvements. The Exclusive Use Stalls may not be used for any purpose other than the parking of motor vehicles. For example, the Exclusive Use Stalls may not be used for the storage of any personal property other than motor vehicles, and the owner of Lot 3 and such owner's tenants and the owner's and owner's tenants' guests and invitees may not attach or affix anything to the District A Parking Improvements except that the owner of Lot 3 may, upon the receipt of the City's written consent, which consent may not to be unreasonably withheld, affix signs to the District A Parking Improvements to identify the Exclusive Use Stalls, to distinguish the Exclusive Use Stalls from other stalls in the District A Parking Improvements and to distinguish Exclusive Use Stalls from one another. The City Council may not approve an amendment to the District A Parking Plan that impairs the exclusive easement rights granted in this Section 4.2 without the written consent of the owner of Lot 3 and the holder of any mortgage recorded against title to Lot 3.

5. **Operation of the District A Parking Improvements.** The City will operate the Public Parking Areas as public parking facilities. The Public Parking Areas will be available to beneficiaries of the easement described in Section 4.1 and to the public on a first-come, first-served basis subject to the following:

(a) The City will establish handicapped parking stalls within the Public Parking Areas as required by law. The owner of Lot 3 must establish and maintain handicapped parking stalls within the Exclusive Easement Area as required by law.

(b) The City may designate, with appropriate signage, parking stalls within the Public Parking Areas that may only be used for a specified period of time (for example, without limitation, "One Hour Parking," "Overnight Parking," and "No Overnight Parking").

(c) The City may designate parking stalls in the Public Parking Areas as "park and ride" stalls for the exclusive use of public transit patrons during designated days and hours as provided for in the District A Parking Plan. The number of designated "park and ride" stalls may not exceed the number of stalls the Parking Plan allocates for "park and ride" use. The City must utilize signage and other parking control mechanisms in an attempt to limit "park and ride" use to the number of parking stalls designated for "park and ride" use in the District A Parking Plan and must make a good faith effort to enforce restrictions the City adopts to control such use.

(d) The City may elect to charge fees for parking in the Public Parking Areas; provided the costs associated with the operation of the Public Parking Areas on a fee basis will be Parking Maintenance Costs under Section 7 below, and the proceeds received from the operation of the Public Parking Areas on a fee basis will be applied to reduce the budgeted Parking Maintenance Costs allocated among the Parcels pursuant to Section 9 below.

(e) The City may, from time to time, temporarily limit or deny access to parking spaces within the District A Parking Improvements as the City determines to be necessary or desirable in connection with the maintenance, repair or replacement of District A Parking Improvements or the construction of expansions of or additions to the District A Parking Improvements. The City must use all commercially reasonable efforts to minimize any interference with the use of the parking stalls in the Exclusive Use Area.

6. **Maintenance, Repair and Replacement of the District A Parking Improvements.** The City will maintain, repair and replace the District A Parking Improvements in a manner consistent with other public parking facilities in the greater Minneapolis-St. Paul, Minnesota metropolitan area.

7. **Parking Maintenance Costs.** For purposes of this Agreement, the term “Parking Maintenance Costs” means all costs and expenses that the City incurs to operate, maintain, repair and replace District A Parking Improvements, including, but not limited to, costs associated with snow removal, insurance, security, elevator maintenance and repair, lighting, landscaping, signage, parking control facilities, staff and contributions to a reserve fund for future maintenance, repair and replacement costs. Parking Maintenance Costs include both amounts the City pays to third parties to operate, maintain, repair and replace District A Parking Improvements and administer this Agreement and the fair market value of any services provided by City employees in connection with the operation, maintenance, repair or replacement of District A Parking Improvements or the administration of this Agreement. Parking Maintenance Costs may also include periodic contributions to a reserve fund the City establishes to provide a source of funds for major repairs, renovations and replacement.

8. **Budget of Parking Maintenance Costs.** The City may, from time to time, establish a fiscal year for the purposes of budgeting for Parking Maintenance Costs. If the City does not establish a fiscal year, the fiscal year for budgeting Parking Maintenance Costs is the fiscal year. On or before the date thirty (30) days prior to the beginning of the first full or partial fiscal year and thirty (30) days prior to the beginning of each full fiscal year thereafter, the City’s staff must prepare and the City Council must approve a proposed budget of anticipated Parking Maintenance Costs for the next fiscal year.

9. **Charges for Parking Maintenance Costs.** On or before the date thirty (30) days prior to the beginning of the first full or partial fiscal year and thirty (30) days prior to each full fiscal year thereafter, the City Council must adopt a resolution allocating the budgeted Parking Maintenance Costs for that fiscal year among the Parcels. The allocations will be based on the budgets described in Section 8 above. The share of the anticipated annual Parking Maintenance Costs the City allocates to each Parcel for a given fiscal year will be determined by multiplying the Parcel’s “Allocated Share,” as determined pursuant to Section 10 below, by the budgeted Parking Maintenance Costs for that fiscal year.

10. **Determination of Each Parcel’s Allocated Share.** The District A Parking Plan assigns each Parcel an “Allocated Share” which is a fraction, the numerator of which is the number of parking spaces assigned to that Parcel in the District A Parking Plan and the denominator of which is the total number of parking spaces in the District A Parking Improvements. If and each time the District A Parking Plan is amended in a manner that

modifies the Allocated Share assigned to any Parcel, the amendment must describe when such modification is effective for purposes of the calculation and payment of Parking Maintenance Costs for the fiscal year in which amendment is effective.

11. **Annual Notice.** On or before date fifteen (15) days prior to the commencement of the first full or partial fiscal year and fifteen (15) days prior to each full fiscal year thereafter, the City will mail to the owner of each Parcel, at the address the Anoka County Assessor's office maintains for the distribution of real estate tax statements for the Parcel, a notice setting forth the Parking Maintenance Costs set forth in the City Council's approved budget of Parking Maintenance Costs for the upcoming fiscal year, the Allocated Share attributable to the owner's Parcel for the upcoming year, the amount of the Parking Maintenance Costs for the upcoming fiscal year that the City Council has allocated to the Parcel for that fiscal year pursuant to the resolution described in Section 9 and the amount of the monthly installment of the allocated amount. The notice will not include a copy of the approved budget, but a Parcel owner may obtain a copy of an approved budget from the City upon request.

12. **Payment of Allocated Parking Maintenance Costs.** The owner(s) of each Parcel must pay to the City the amount of the Parking Maintenance Costs that the City Council has allocated to the Parcel for that fiscal year pursuant to the resolution described in Section 9 and such amount is due and payable to the City in a single installment or in multiple installments on the date or dates set forth in said resolution. Each Parcel owner is personally liable for the payment of the share of Parking Maintenance Costs the City allocates to the owner's Parcel and any additional amounts due pursuant to Section 14. The City may commence an action in Anoka County District Court against any owner that does not pay such amounts to the City when and as they are due. If a Parcel has more than one owner, all owners are jointly and severally liable to the City for the full amount of the Parking Maintenance Costs the City allocates to the owners' Parcel and any additional amounts due pursuant to Section 14. An owner may not withhold payment of amounts due under this Agreement as a set-off against claims which the owner asserts against the City under this Agreement or otherwise. If an owner fails to pay an installment of Parking Maintenance Costs on or before the date due, the unpaid installment accrues interest from the date due until the installment is paid in full at a rate of interest equal to the lesser of 12% per annum or the highest rate allowed by law. If the City uses all commercially reasonable efforts to collect delinquent payments, but as a result of an owner's bankruptcy or otherwise the City is unable to recover the delinquent payments from the responsible owner, the amount of the unrecoverable, delinquent payments shall be a Parking Maintenance Cost. If a Parcel owner fails to pay the annual installment of Parking Maintenance Costs when due and the City engages legal counsel to assist the City in collecting the delinquent payments, the City may also recover its reasonable attorneys' fees and costs associated with the collection of the delinquent payments from the Parcel owner. To the extent the City is unable to recover its reasonable attorneys' fees from the delinquent owners, such fees shall be a Parking Maintenance Cost.

13. **Failure to Approve a Budget or to Adopt a Resolution Allocating Costs.** The City Council's failure to approve a budget or to adopt a resolution allocating Park Maintenance Costs among the Parcels pursuant to Sections 8 and 9 above or the City's failure to send the notice described in Section 11 above does not constitute the City's waiver or release of a Parcel owner's obligation to pay its Allocated Share of Parking Maintenance Costs, and in the absence

of an approved budget, a resolution allocating Park Maintenance Costs among the Parcels or an annual notice, for a given fiscal year, each Parcel owner must pay, on or before the first day of each fiscal year, an amount equal to the amount of the prior fiscal year's allocation of Parking Maintenance Costs until the City Council approves a budget and adopts a resolution allocating Parking Maintenance Costs for that fiscal year and the City provides mailed notice of the information described in Section 11.

14. **Deficits, Surpluses, Annual Audit and Audit Rights.** On or before the 60th day of each fiscal year the City will determine if the actual Parking Maintenance Costs for the prior fiscal year were more than or less than the amount set forth in the City Council's approved budget for that prior fiscal year and will mail to the owner of each Parcel, at the address the Anoka County Assessor's office maintains for the distribution of real estate tax statements for the Parcel, a notice stating the amount of the deficit or surplus or a statement that there is no deficit or surplus. If there is a deficit, each owner is obligated to pay to the City, within 30 days after the owner's receipt of the notice described in this Section 14, an amount determined by multiplying the amount of the deficit by the Allocated Share assigned to the owner's parcel during the prior fiscal year. If there is a surplus, the City must credit against the amounts due from each Parcel owner in the following fiscal year an amount determined by multiplying the amount of the surplus by the Allocated Share assigned to the owner's Parcel during the prior fiscal year. The notice described in this Section 14 must, in addition to stating the amount of the surplus or deficit, state the Allocated Share assigned to each Parcel in the prior fiscal year and, in the case of a deficit, the additional amount each Parcel owner is obligated to pay pursuant to this Section 14 or, in the case of a surplus, the amount of the credit each owner will receive. The City must maintain a separate fund which isolates the financial activities relating to the operation, maintenance, repair and replacement of the District A Parking Improvements. The City will have this fund included in the City's annual audit. Any additional auditing cost the City incurs to include this separate fund in the City's annual audit is a Parking Maintenance Cost for the year in which the audit is conducted. The City must make the City's books and records relating to the Parking Maintenance Costs the City incurs and the City's allocation of the Parking Maintenance costs among and collection of Parking Maintenance Costs from the Parcel owners available for to Parcel owners for inspection, examination and copying during the City's regular business hours. The City may require a Parcel owner that desires to inspect, examine or copy the City's books and records to provide the City with reasonable advance notice to allow the City to assemble the books and records and may charge the Parcel owner the City's actual cost for i) any staff time devoted to assembling the books and records and monitoring the Parcel owner or its representative during his or her inspection and examination and ii) any copies the Parcel owner requests. At the request of a Parcel owner, the City will submit the City's books and records to an independent certified accountant selected by the Parcel owner for review and audit. If the review and audit discloses an error in the City's calculation or allocation of Parking Maintenance Costs, the City will determine the amount of the deficit or surplus resulting from such error and refund such surplus or collect such deficit from the Parcel owners in the manner described in this Section; provided, however, the City will only address errors occurring during the fiscal year in which the audit is conducted and the preceding two fiscal years. The Parcel owner or owners who commissioned the review and audit are solely responsible for its cost.

15. **The City's Lien for Unpaid Parking Maintenance Cost.** The City has a lien on each Parcel for the amount of the Parking Maintenance Costs the City Council allocates to the

Parcel pursuant to Section 9 and for any additional amounts due with respect to the Parcel under Section 14. To provide record notice of its lien, the City must record a notice of lien in the Anoka County land records. A notice of lien must include the legal description of the Parcel subject to the City's lien and the amounts due with respect to the Parcel as of the date of the notice of lien. The City's lien has priority over all liens, encumbrances and other interests that are first recorded in the Anoka County land records after the City's recording of its notice of lien. The City may only foreclose its lien by judicial action. Foreclosure by advertisement is not permitted. The period of redemption for Parcel owners is six months from the date of the foreclosure sale. If the City brings an action to recover a judgment for unpaid Parking Maintenance Costs (whether or not the City elects to also foreclose its lien), the City may also recover interest, as described above, and all costs of collection, including reasonable attorneys' fees and costs. The City may, in the future, seek to amend its Charter to permit the City to specially assess amounts due under this Agreement against a Parcel if such amounts are not paid when and as they are due under the terms of this Agreement.

16. **Damage or Destruction, Insurance and Waivers of Claims.** If the District A Parking Improvements are damaged or destroyed, the City will repair such damage or destruction or, if the City determines that it is in the City's best interest to replace the damaged District A Parking Improvements, the City will replace the damaged or destroyed District A Parking Improvements. The City must commence such repair or replacement within 6 months of the date of the damage or destruction and must complete such repair or replacement within 12 months of the date of such damage or destruction. The cost of such repair or replacement will be a Parking Maintenance Cost, but the City must use insurance proceeds and reserve funds, to the extent available, to finance such repair or replacement. If insurance proceeds and reserve funds are insufficient to finance the cost of repair or replacement, the City may finance the repair or replacement from other sources and reimburse itself or repay third parties from future collections of Parking Maintenance Costs. The City must obtain and maintain casualty insurance insuring the District A Parking Improvements. The City must obtain the casualty insurance through the League of Minnesota Cities or from an insurance company that is licensed in the State of Minnesota and that has a B general policyholder's rating or a financial performance index of 6 or better in the Best's Insurance Reports. The City must maintain insurance for the full replacement cost of any insurable improvements that constitute a part of the District A Parking Improvements, subject to a deductible in an amount the City Council determines; provided the amount of the deductible may not exceed one-half of one percent of the replacement cost of the District A Parking Improvements as reasonably estimated by the City Council from time-to-time. The cost of the casualty insurance and the amount of any deductible, in the event of an insured loss, are Parking Maintenance Costs. The City hereby releases the Parcel owners, the Parcel owners' tenants, and the Parcel owners' and Parcel owners' tenants, employees, customers, guests and invitees from claims for damage to or destruction of the District A Parking Improvements to the extent, and only to the extent, that damage to the District A Parking Improvements are covered by the insurance the City maintains pursuant to this Section 16 and the City is actually able to recover the cost of repairing the damage under its insurance policy.

17. **Amendments.** This Agreement may be amended, at any time, with the written consent of the fee owner of each Parcel in Parking District A. To be effective the amendment must be executed and acknowledged by each such Parcel owner and the amendment must be

recorded in the appropriate County land records. In addition, the City may amend this Agreement pursuant to Section 18 and 19 below.

18. **Changes to Parking District A.** At any time and from time to time and without the consent of the Parcel owners, except as provided in Section 18.1 below, the City may (A) amend this Agreement to redefine Parking District A to include additional portions of the HRA Property; to subject the included portions of the HRA Property to covenants and restrictions set forth in this Agreement and to extend the easements granted in Section 4.1 to the included portions of the HRA Property; or (B) amend this Agreement to remove all or portions of the HRA Property or all or portions of the City Property from Parking District A; release the removed property from the covenants and restrictions set forth in this Agreement and terminate the easements this Agreement grants to those Parcels; provided that:

(a) The owner of any Parcel removed from Parking District A consents to the amendment removing the owner's Parcel from Parking District A, and the owner of any property added to Parking District A consents in writing to the amendment adding the owners property to Parking District A; and

(b) The City also amends the District A Parking Plan to reflect the removal of Parcels and/or the addition of property. In the amended District A Parking Plan, the number of parking spaces in the District A Parking Improvements that are allocated to the property being added to Parking District A must equal the number of Parking Spaces allocated to the Parcel(s) being removed from Parking District A unless the City is also amending the District A Parking Plan as described in Section 4 above to increase or decrease the number of Parking Spaces allocated to Parcels that are not being added to or removed from Parking District A. In any event, an amendment to the District A Parking Plan that the City adopts in connection with an amendment to this Agreement cannot increase a Parcel owner's Allocated Share without the consent of that Parcel owner.

19. **Additional Parking Improvements.** At any time and from time to time and without the consent of the Parcel owners, except as provided in Section 19.2 below, the City may amend this Agreement to include expansions of the District A Parking Improvements, additional parking ramps in Parking District A or surface parking lots in Parking District A (collectively, "**Future Parking Improvements**") in the definition of the District A Parking Improvements and may adopt a corresponding amendment to the District A Parking Plan provided that:

(a) The City also amends the District A Parking Plan to allocate the parking spaces in the Future Parking Improvements among Parcels in Parking District A, as the same may be redefined pursuant to Section 18 above, and to amend the Allocated Share of each Parcel to reflect the number of Parking Spaces allocated to that Parcel by the amendment and to reflect the increase in the total number of parking spaces in the District A Parking Improvements; and

(b) The owner of each Parcel to which the amended District A Parking Plan allocates additional parking spaces consents in writing to the amendment.

20. **Transfers.** Whenever a transfer occurs in the ownership of a Parcel, the transferor has no liability for defaults under this Agreement occurring after the date the

instrument of transfer is recorded in the Anoka County land records, but the transferee is liable for defaults occurring prior to the date of the transfer except to the extent the City is barred from asserting a claim against the transferee as a result of an estoppel certificate the City has provided pursuant to Section 21 below.

21. **Estoppel Certificates.** Upon the written request of a Parcel owner, the City will provide the Parcel owner and any prospective purchaser from or lender to the Parcel owner with an estoppel certificate stating, to the best of the City's actual knowledge, that this Agreement is in full force and effect, that this Agreement has not been modified or amended except as described in the estoppel certificate and that the Parcel owner requesting the certificate is not in default in the payment of any amounts due under this Agreement or if such a default exists, the amount in default.

22. **Easements and Covenants to Run With Title.** The benefits and the burdens of the easements and the covenants in this Agreement run with title to each Parcel in Parking District A and inure to the benefit of and are binding on the Parcel owners and their respective heirs, personal representatives, and successors in title.

23. **Termination of the Original PUMA.** Upon the recording of this Agreement in the Anoka County Land Records, the Original PUMA is terminated and is of no further force or effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

(Signatures appear on following pages)

EXHIBIT A

LEGAL DESCRIPTION OF THE CITY PROPERTY

Lots 1, 1A, and 2, Block 1 COR ONE, Anoka County, Minnesota, according to the recorded plat thereof.

EXHIBIT B

LEGAL DESCRIPTION OF THE HRA PROPERTY

Lot 3, Block 1 and Outlots A and B, COR ONE, Anoka County, Minnesota, according to the recorded plat thereof.

EXHIBIT C

LEGAL DESCRIPTION OF PARKING DISTRICT A

Lots 1, 1A, 2 and 3, Block 1, COR ONE, Anoka County, Minnesota, according to the recorded plat thereof.

EXHIBIT D-1

DEPICTION OF THE EXCLUSIVE EASEMENT AREA

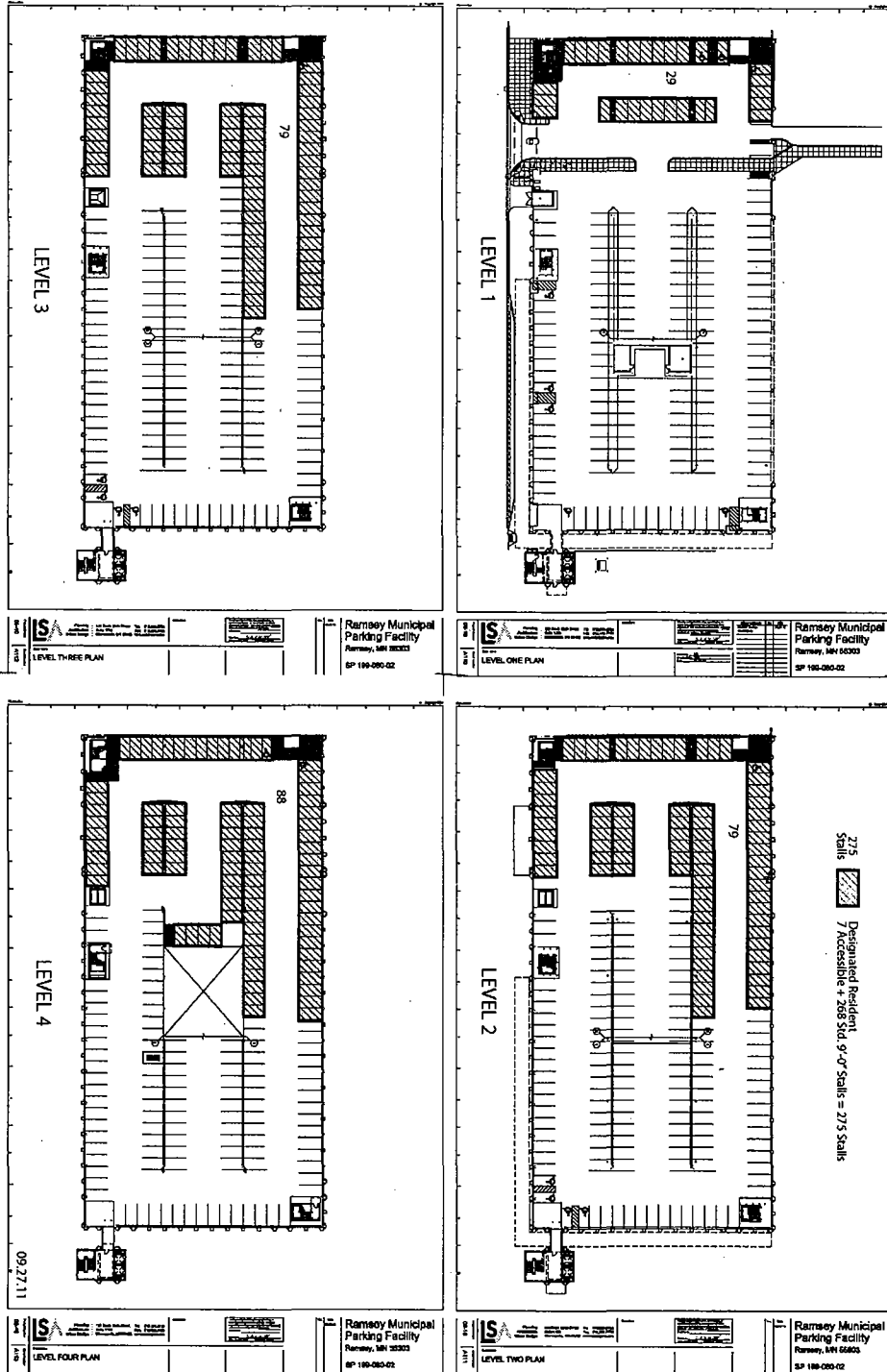


EXHIBIT D-2

LEGAL DESCRIPTION OF THE EXCLUSIVE EASEMENT AREA

[To be completed after recording, by subsequent amendment, pursuant to Section 3(l)]

ANOKA COUNTY MINNESOTA

Document No.: 508341.011 TORRENS

I hereby certify that the within instrument was filed in this office for record on: 05/03/2012 3:14:00 PM

Fees/Taxes In the Amount of: \$66.00

LARRY W. DALIEN

Anoka County Property Tax

Administrator/Recorder/Registrar of Titles

CGT, Deputy *LRK*

Record ID: 2491126

ANOKA COUNTY MINNESOTA

Document No.: 2031856.006 ABSTRACT

I hereby certify that the within instrument was filed in this office for record on: 05/03/2012 3:14:00 PM

Fees/Taxes In the Amount of: \$46.00

LARRY W. DALIEN

Anoka County Property Tax

Administrator/Recorder/Registrar of Titles

CGT, Deputy

Record ID: 2491124

Commercial Partners Title, LLC
200 South Sixth Street
Suite 1300
Minneapolis, MN 55402

**FIRST AMENDMENT TO
AMENDED AND RESTATED PARKING IMPROVEMENT USE AND MAINTENANCE
AGREEMENT FOR PARKING DISTRICT A**

1. **Recitals.**

1.1 **Recital One.** On or about April 27, 2012 the City of Ramsey, a Minnesota municipal corporation (the "City"), the Economic Development Authority of the City of Ramsey, a Minnesota body politic and corporate under the laws of the state of Minnesota (the "EDA") and the Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota, a body politic and corporate under the laws of the state of Minnesota (the "HRA") executed an Amended and Restated Parking Improvement Use and Maintenance Agreement for Parking District A (the "Agreement"), which is dated, for reference purposes, as of April 30, 2012, and which was recorded in the office of the Anoka County Recorder and in the office of the Anoka County Registrar of Titles on May 3, 2012, as Document No. 2031856.006 (Abstract) and 508341.011 (Torrens).

1.2 **Recital Two.** Among other things, the Agreement grants the owner of Lot 3, Block 1, COR ONE, Anoka County, Minnesota an exclusive easement to use 275 parking stalls located on the property depicted on Exhibit D-1 of the Agreement (the "Exclusive Easement Area").

1.3 **Recital Three.** Exhibit D-1 to the Agreement is a depiction of the Exclusive Easement Area. Section 3(l) of the Agreement obligates the City to survey the Exclusive Easement Area after the construction of the Ramp A Addition is completed and obligates the City and the owner of Lot 3 to execute an amendment to the Agreement to add the legal description of the Exclusive Easement Area to the Agreement as Exhibit D-2.

1.4 **Recital Four.** The City has completed construction of the Ramp A Addition.

1.5 **Recital Five.** Prior to adding a new Exhibit D-2 to the Agreement to set forth the legal description of the Exclusive Easement Area, the City and F&C Ramsey Apartments, LLC, an Indiana limited liability company ("F&C"), the current owner of Lot 3, Block, COR ONE, Anoka County, Minnesota ("Lot 3"), desire to amend the Agreement to: (a) change the location of a portion of the Exclusive Easement Area; and (b) grant F&C an exclusive easement over certain vestibules that have been constructed as a Part of the Ramp A Addition at the access points between the Ramp A Addition and the improvements F&C is constructing on Lot 3.

1.6 **Recital Six.** The City and F&C are entering into this Agreement in consideration of the mutual benefits each will receive by relocating the Exclusive Easement Area and as required by Section 3(l) of the Agreement.

1.7 **Recital Seven.** The EDA is not a party to this Agreement because the "Ground Lease" and the "Sub-Lease," as defined in the Agreement, have been terminated, and the EDA no longer has any right, title or interest in or two the property

defined in the Agreement as “Parking District A.” The HRA is not a party to this Agreement because it has conveyed its interest in the Lot 3 to F&C, and the HRA no longer has any right, title or interest in or two the property defined in the Agreement as “Parking District A.”

2. **Amendment to Section 4(a).** The first sentence of Section 4(a) of the Agreement is deleted in its entirety and replaced with the following:

The City hereby declares and grants a non-exclusive, appurtenant easement over the portion of District A Parking Parcel and the portion of the District A Parking Improvements that are not located within the boundaries of the Exclusive Easement Area or the Vestibule Easement Area (the “Public Parking Areas”) for the benefit of each Parcel to permit the owner of each Parcel, each owners’ tenants and each owners’ and each owner’s tenants’ employees, customers, agents, guests and invitees to use, on a first-come, first-served basis and in common with members of the public, the number of parking spaces in the Public Parking Areas that the District A Parking Plan allocates to such owner’s Parcel and to use the driveways and pedestrian elevators, stairways, sidewalks and walkways that are a part of the District A Parking Improvements.

3. **New Section 4(c).** The City hereby declares and grants an exclusive, appurtenant easement over the vestibule areas depicted on the attached **Exhibit E** (the “Exclusive Vestibule Areas”) for the benefit of Lot 3. The easement is to permit the owner of Lot 3 and such owner’s tenants and the owner’s and owner’s tenants’ guests and invitees to use the Exclusive Vestibule Areas as an entry way between the improvements F&C is constructing on Lot 3 and the Ramp A Addition and to exclude all others from the use of the Exclusive Vestibule Areas. The City shall construct the demising walls of each vestibule and shall install a door between the Exclusive Parking Area or Public Parking Area, as the case may be, and the interior of each vestibule. F&C, as the owner of Lot 3, must, at its sole cost and expense, maintain, repair and, as necessary, replace the interiors of the vestibules and interior finishes, if any, to the walls, floors and ceilings of the vestibules; any doors between the vestibules and the improvements constructed on Lot 3; any doors constructed between the vestibules and the Exclusive Parking Area or Public Parking Area, as the case may be; and any access control or other security equipment F&C may elect to install on the vestibule doors. F&C must at all times maintain the vestibules and the doors between the interior of each vestibule and the Exclusive Parking Area, the Public Parking Area and the improvements constructed on Lot 3, as the case may be, in compliance with all applicable fire codes and any other applicable federal, state, county or municipal statute, law, ordinance, rule or regulation. The Exclusive Vestibule Areas may not be used for any purpose other than as an entry way between the improvements F&C is constructing on Lot 3 and the Ramp A Addition. For example, the Exclusive Vestibule Areas may not be used for the storage of any personal property.

4. **Amendment to Section 6.** Section 6 is deleted in its entirety and replaced with the following:

The City will maintain, repair and replace the District A Parking Improvements, exclusive of the Exclusive Vestibule Areas, in a manner consistent with other public parking facilities in the greater Minneapolis-St. Paul, Minnesota metropolitan area. The

owner of Lot 3, must, at its sole cost and expense, maintain, repair and, as necessary, replace the vestibules, the interior finishes, if any, to the walls, floors and ceilings of the vestibules; the doors between the vestibules and the Exclusive Parking Area, the Public Parking Area and the improvements constructed on Lot 3; and any access control or other security equipment such owner may elect to install on the vestibule doors.

5. **Exhibit D-1.** **Exhibit D-1** attached to the Agreement is hereby deleted in its entirety and replaced with the **Exhibit D-1** attached hereto.

6. **Exhibit D-2.** **Exhibit D-2** to the Agreement is hereby deleted in its entirety and replaced with **Exhibit D-2** attached hereto.

7. **Defined Terms.** Capitalized terms used in this First Amendment and not otherwise defined herein have the meaning set forth for such terms in the Agreement.

8. **No Further Changes.** Except as expressly modified in this First Amendment, the Agreement remains unmodified and in full force and effect.

[Remainder of Page Intentionally Left Blank – Signature Pages Follow]

EXHIBIT D-1

Depiction of the Exclusive Easement Areas

EXHIBIT D-2

Legal Description of the Exclusive Easement Areas

Due to variations in elevations across the floors and ceilings of the various levels of the District A Parking Improvements the descriptions below may inadvertently include structural portions of the District A Parking Improvements. It is the intent of the parties that any structural portions of the District A Parking Improvements encompassed within the descriptions set forth on this Exhibit D-2 be excluded from the Exclusive Easement Area and that, on each level of the District A Parking Improvements, the Exclusive Easement Area only include those areas of the District A Parking Improvements which lie above the interior, unfinished surfaces of the floor and below the interior, unfinished surfaces of the ceiling.

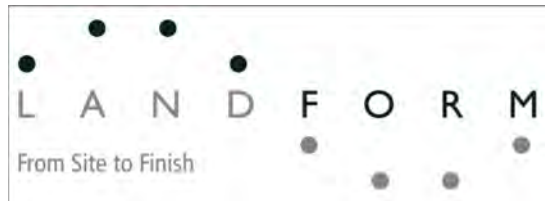
EXHIBIT E-1

Depiction of the Exclusive Vestibule Areas

EXHIBIT D-2

Legal Description of the Exclusive Vestibule Areas

Due to variations in elevations across the floors and ceilings of the various levels of the District A Parking Improvements the descriptions below may inadvertently include structural portions of the District A Parking Improvements. It is the intent of the parties that any structural portions of the District A Parking Improvements encompassed within the descriptions set forth on this Exhibit D-2 be excluded from the Exclusive Vestibule Area and that, on each level of the District A Parking Improvements, the Exclusive Vestibule Area only include those areas of the District A Parking Improvements which lie above the interior, unfinished surfaces of the floor, below the interior, unfinished surfaces of the ceiling and within the interior, unfinished surfaces of the vestibules constructed with the Exclusive Vestibule Areas.



105 South Fifth Avenue Suite 513
 Minneapolis, MN 55401
 Tel: 612-252-9070
 Fax: 612-252-9077
 www.landform.net

WORK ORDER

DATE	December 5, 2012	CONTRACT NO.	RAM12033
<u>CLIENT INFORMATION</u>		<u>BILLING INFORMATION</u> (IF DIFFERENT FROM CLIENT)	
COMPANY NAME	City of Ramsey HRA	COMPANY NAME	
CLIENT CONTACT	Kurt Ulrich	CONTACT	
ADDRESS	7550 Sunwood Drive	ADDRESS	
CITY, STATE, ZIP	Ramsey, MN 55303	CITY, STATE, ZIP	
PHONE/FAX	763-433-9817	PHONE/FAX	

PROJECT INFORMATION

PROJECT NAME	Ramsey PUMA Easement Exhibits	PRINCIPAL	Darren Lazan
PROJECT DESCRIPTION	Parking Structure & Easement Exhibits	STUDIO/DEPT	Survey
PROPERTY LOCATION	The COR	EST. START DATE	Upon Approval
CITY, STATE, ZIP	Ramsey, MN 55303	EST. COMPLETE DATE	To be Determined
PIN:	Multiple	PROJECT MANAGER	S. Trosen
		PHASE MANAGER	S. Trosen

SCOPE OF SERVICES LANDFORM AGREES TO PERFORM PROFESSIONAL SERVICES FOR THE CLIENT AS FOLLOWS:

PHASE	DESCRIPTION	TASK	BILLING MESSAGE
RAM12033	PUMA ESMT	Perform as-built survey of parking structure and complete final easement documents as required by puma and current real estate agreements.	Hourly to a Maximum of \$3,400

Reimbursable Expenses, including but not limited to Mileage, Plotting, Printing, Scanning, and Subconsultants are not included in the fees below and will be billed as a reimbursable expense at 1.15 times cost.

FEES (RATE SCHEDULE IS AVAILABLE UPON REQUEST FOR HOURLY CONTRACTS)

<input type="checkbox"/>	FIXED FEE	FIXED FEE AMOUNT:	Plus Typical Reimbursables
<input type="checkbox"/>	HOURLY WITH AN ESTIMATE	ESTIMATE FEE:	RATES
<input checked="" type="checkbox"/>	HOURLY TO A MAXIMUM	MAXIMUM FEE: \$3,400.00	RATES per contract

IN WITNESS WHEREOF, the parties have accepted, made and executed this agreement upon the terms, conditions and provisions stated above and on the attached General Conditions including, but not limited to, provisions relating to limitations on liability of Consultant.

Accepted By:
Landform

City of Ramsey

Darren Lazan
 President

Date:

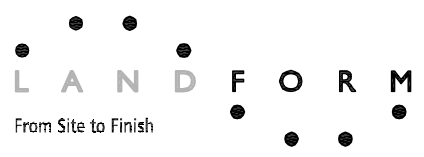
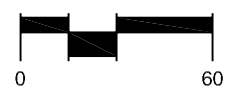
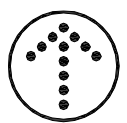
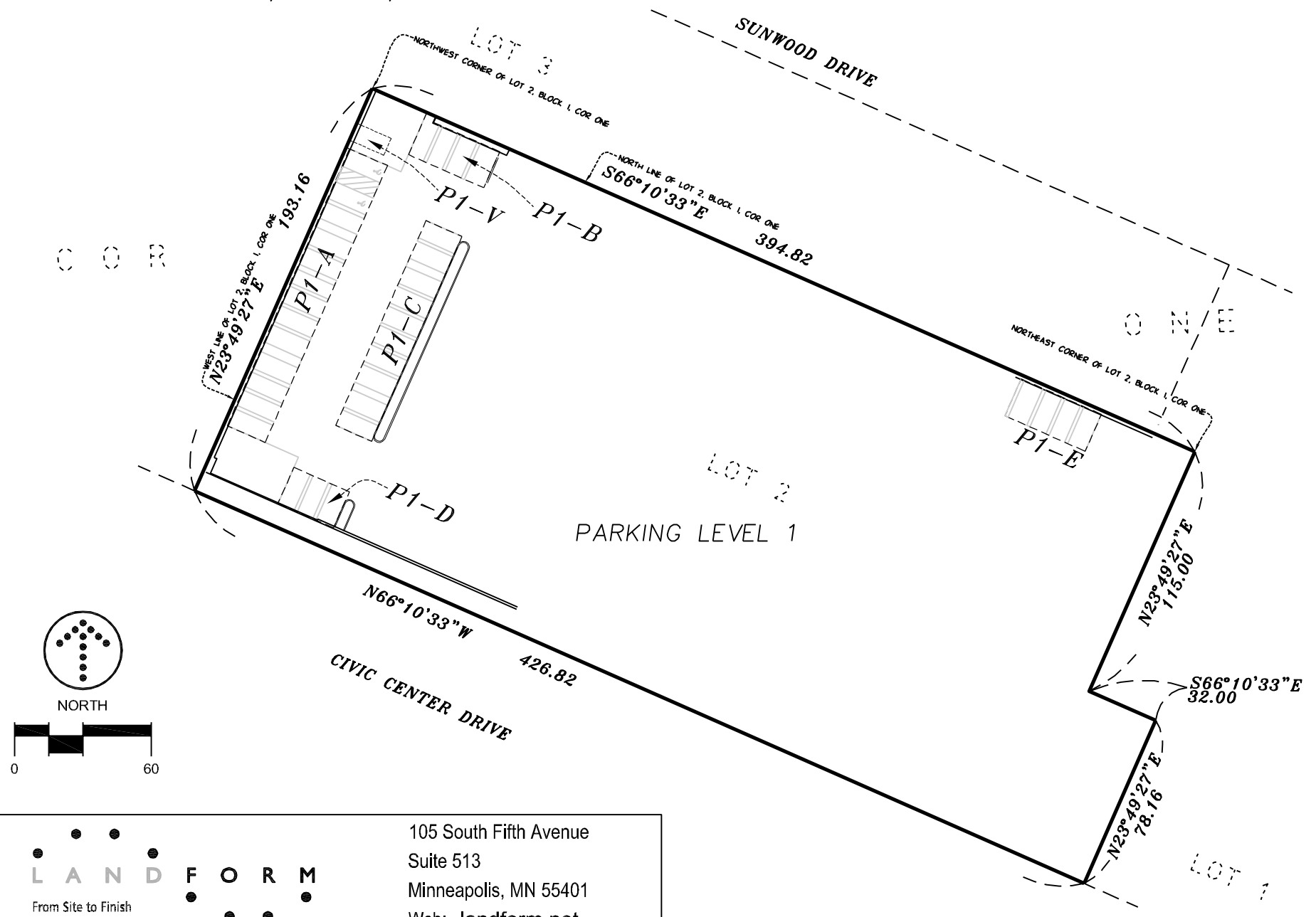
Date: December 5, 2012
 Landform Federal Tax ID: 27-1199905

General Conditions

1. All required services outside SCOPE OF WORK outline will be provided upon the CLIENT'S request and will be billed at the rates quoted on the CURRENT FEE SCHEDULE. A copy of the CURRENT FEE SCHEDULE has been made available to CLIENT or is attached hereto. Rates and multiples for Additional Services and other services as set forth in the fee schedule shall be adjusted annually in accordance with normal salary review practices of Consultant.
2. Fees outlined in this contract will be adhered to subject to site conditions and criteria set forth by the CLIENT and requirements of all applicable governmental agencies, utility companies, etc., in effect on the date of the CONSULTANT'S signing of this contract. No work by the CONSULTANT will commence until fully dimensioned and client-approved plans have been received from CLIENT. Subsequent changes to the plans, which require additional work by the CONSULTANT, will result in extra charges at the rates quoted on the CURRENT FEE SCHEDULE.
3. Field staking will be performed one time only for the fees quoted. Any restaking due to the loss of stakes beyond the CONSULTANT'S control will be billed at the rate on the CURRENT FEE SCHEDULE. In addition, fees outlined for field survey and construction staking are subject to the CONSULTANT being able to perform each item without delays beyond its control. The CLIENT shall request construction-staking items a minimum of two (2) working days in advance of when desired.
4. In the event that a question or claim may arise as to an error or omission in the CONSULTANT'S work or plans, the CONSULTANT will assume no liability for errors or omissions unless notified within 48 hours of the client's discovery of such. If notified within 48 hours, the CONSULTANT will have the right to remedy any such errors or omissions within a reasonable and agreed upon time thereafter, at no additional cost to the CLIENT. The CONSULTANT will assume no liability for construction staking unless all stakes are maintained intact and verified as to their origin.
5. The CLIENT shall give separate authorization to the CONSULTANT to commence each item of work as outlined in the SCOPE OF WORK.
6. CLIENT will be billed monthly, based upon percentage of work completed and/or hourly charges and reimbursable costs. Invoices are due and payable upon presentation. Objections to invoices not made in writing within thirty (30) days of the billing date are waived. A FINANCE CHARGE of one and one half percent (1.5) per month (18% ANNUAL PERCENTAGE RATE) will be added to portions of accounts over 30 days past due. FINANCE CHARGES may be compounded. CLIENT'S failure to make timely payments is justification for suspension of all services and withholding of all deliverables until payment is received or other written agreements made. CONSULTANT shall be entitled to recover all costs, expenses and fees incurred by CONSULTANT (including litigation and arbitration fees and costs, reasonable attorneys' fees, and CONSULTANT'S internal labor at the rates quoted on the CURRENT FEE SCHEDULE) due to CLIENT'S failure to make timely payments.
7. This Agreement may be terminated by either party upon seven (7) days' written notice. In the event of any termination, the CONSULTANT will be paid for all services rendered to the date of termination plus unpaid reimbursable expenses. Such termination shall not affect the parties' accrued rights and liabilities as of the date of termination. Without limiting the generality of the foregoing, paragraphs 4, 6, 9, 10, 11, 12, 14, 15, and 16 of these General Conditions shall survive any cancellation, expiration, or termination of this Agreement.
8. The CONSULTANT will not be responsible for the cost of permits, title company charges, governmental review fees, soil reports, printing, photographic charges, etc. as applicable, except those printing charges necessary for the CONSULTANT to do it's work. The CONSULTANT will be reimbursed for such charges paid by it for the CLIENT at the rates quoted on the CURRENT FEE SCHEDULE.
9. The CONSULTANT will not be responsible or liable for the following: (a) Any use of plans, surveys, specifications, etc. not signed and sealed by the CONSULTANT and approved by the appropriate governmental agencies; (b) Inaccuracy of data, plans, legal descriptions or any other information supplied by the CLIENT or others; (c) Site soil, hydrologic, or geologic conditions; (d) Changes to the plans and specifications made by the CLIENT or others; (e) Job site conditions; or (f) The performance of work on this project by any construction contractor or third party.
10. All original work will be property of the CONSULTANT. The CLIENT at its request will be furnished with reproducible copies as a reimbursable expense. All documents furnished by the CONSULTANT are instruments of its service. They are not suitable for reuse or extensions of this project or any other project. CONSULTANT is the author of these documents and retains all common law, statutory and/or reserved rights, including copyright. Any reuse without specific written approval by the CONSULTANT in each case will be at the sole risk of the user and without liability or legal exposure to the CONSULTANT.
11. Neither the CLIENT nor the CONSULTANT shall assign, sublet or transfer any rights under or interest in the contract without the written consent of the other. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the CLIENT or CONSULTANT.
12. The CONSULTANT makes no representation concerning any cost estimate figures made in connection with maps, plans, specifications or drawings other than that all cost figures are estimates only and the CONSULTANT shall not be responsible for fluctuations in costs or quality figures.
13. The CLIENT agrees to cooperate in every way requested by the CONSULTANT to expedite the completion of the work set forth in the contract. The CLIENT agrees to provide the CONSULTANT access to the property involved and to make available any records, documents, deeds, legal descriptions or other items requested by the CONSULTANT for the reasonable pursuit of the completion of the work.
14. The CONSULTANT makes no warranty, either expressed or implied, as to its services. Services will be performed in accordance with generally accepted engineering and/or surveying practices.
15. Any claim, dispute or other matter in question arising out of or relating to this Agreement or breach thereof ("Claim") in which the aggregate amount in controversy exclusive of interest, attorneys' fees and costs, is less than or equal to \$100,000 shall be decided by binding arbitration in Minneapolis in accordance with the Construction Industry Rules of the American Arbitration Association. Judgment on any award by the arbitrator(s) shall be enforceable in any court having jurisdiction. Any Claim in which the aggregate amount in controversy, exclusive of interest, attorneys' fees and costs, is greater than \$100,000 shall be resolved by litigation in the State or Federal Court located within Hennepin County, Minnesota. Consultant and Client expressly consent to the exclusive personal jurisdiction and venue of the Minnesota courts for all purposes relating to this Proposal. The parties waive trial by jury. This Agreement shall be governed by Minnesota law, without regard to conflicts of law principles.
16. CONSULTANT'S TOTAL LIABILITY TO CLIENT FOR ANY LOSS, CLAIM OR DAMAGE ARISING OUT OF THE NEGLIGENCE OR OTHER LEGAL FAULT OF CONSULTANT IN PERFORMING ITS SERVICES SHALL BE LIMITED TO THE GREATER OF (I) THE AMOUNT STATED IN THIS PROPOSAL AS COMPENSATION FOR CONSULTANT'S BASIC SERVICES, OR (II) THE LIMITS OF ANY INSURANCE ACTUALLY AVAILABLE TO THE CONSULTANT. AT ANY TIME PRIOR TO COMMENCEMENT OF SERVICES. CLIENT MAY, BY PAYING A 20% PREMIUM IN ADDITION TO CONSULTANT'S FEE, ELIMINATE THIS LIMITATION ON LIABILITY. In no event shall CONSULTANT be liable for loss of profits, loss of use, loss of revenue, or any or special, indirect or consequential damages of any kind.
17. **NOTICE OF LIEN RIGHTS (MINNESOTA): (a) Any person or company supplying labor or materials for this improvement to your property may file a lien against your property if that person or company is not paid for the contributions. (B) UNDER MINNESOTA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR CONTRACT PRICE, OR WITHHOLD THE AMOUNTS DUE THEM FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT UNLESS WE GIVE YOU A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.**
18. There are no understandings or agreements except as herein expressly stated.

DESCRIPTION SKETCH

FOR: PART OF LOT 2, BLOCK 1, COR ONE



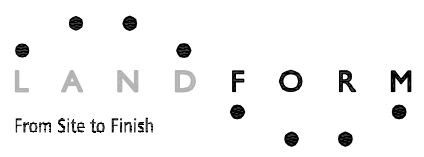
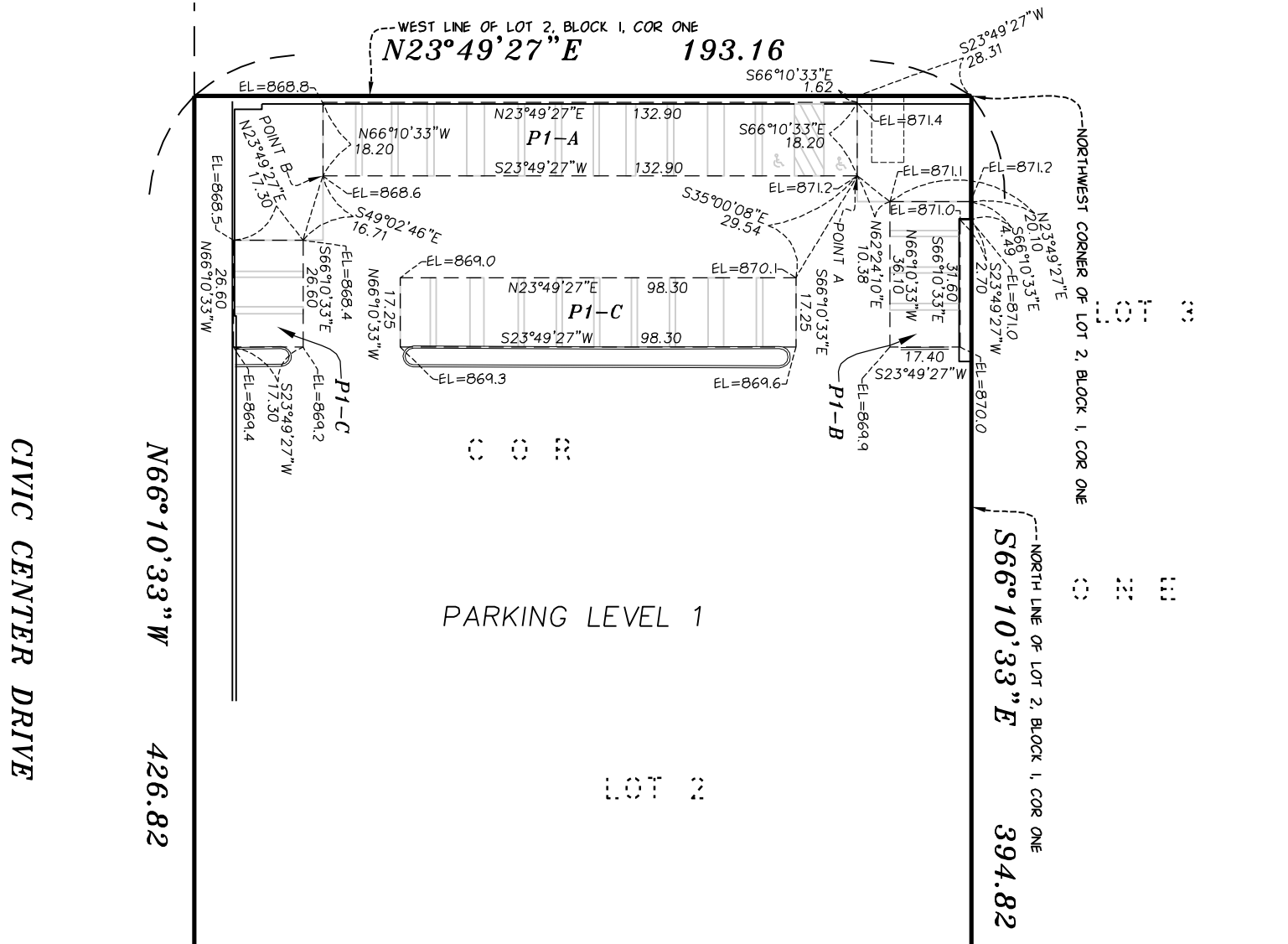
From Site to Finish

105 South Fifth Avenue
 Suite 513
 Minneapolis, MN 55401
 Web: landform.net

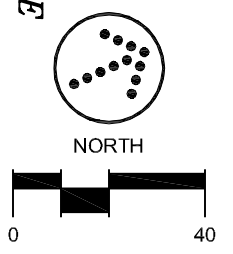
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DESCRIPTION SKETCH

FOR: PART OF LOT 2, BLOCK 1, COR ONE



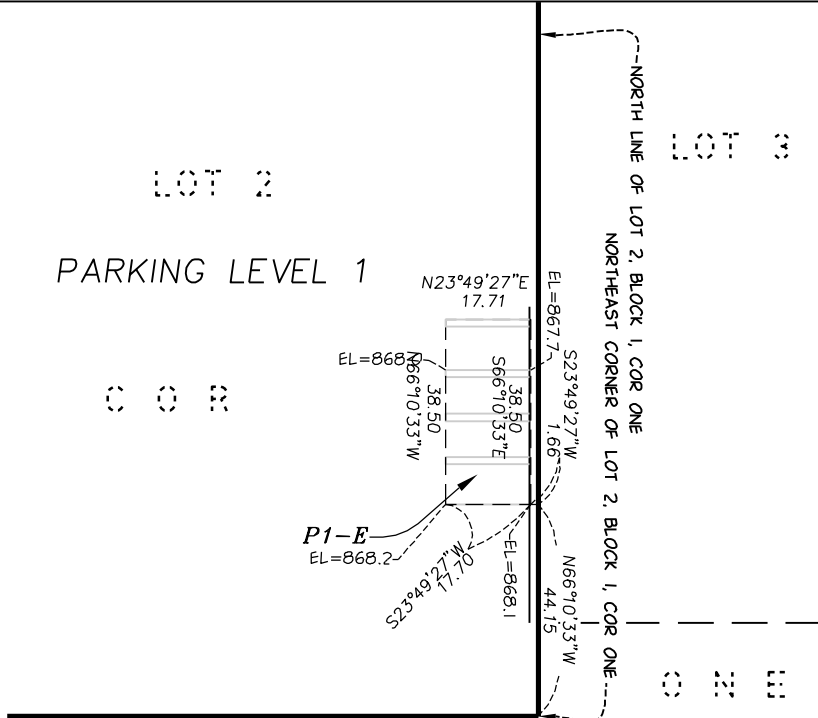
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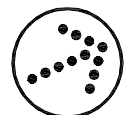
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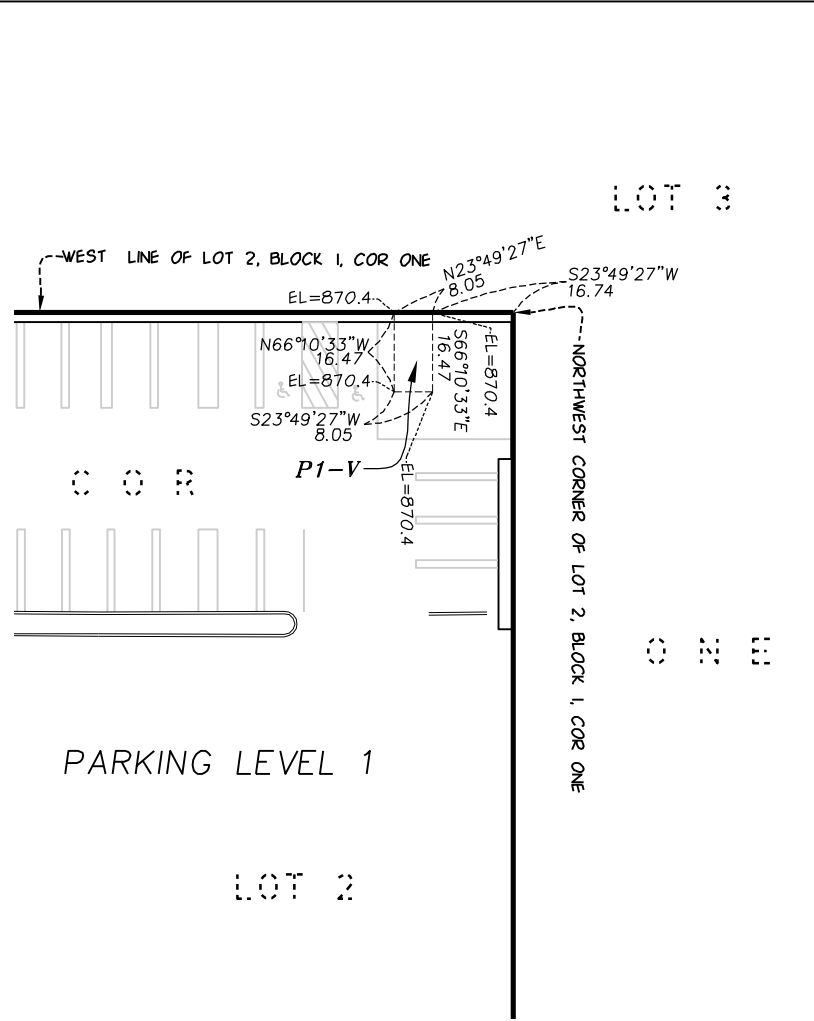
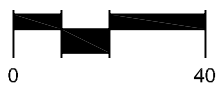
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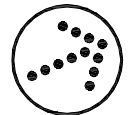
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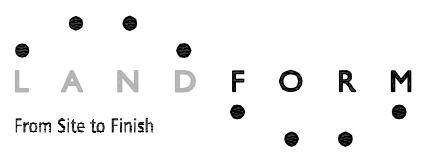
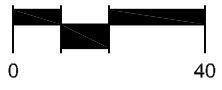
NORTH



LOT 2



NORTH



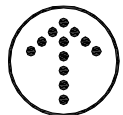
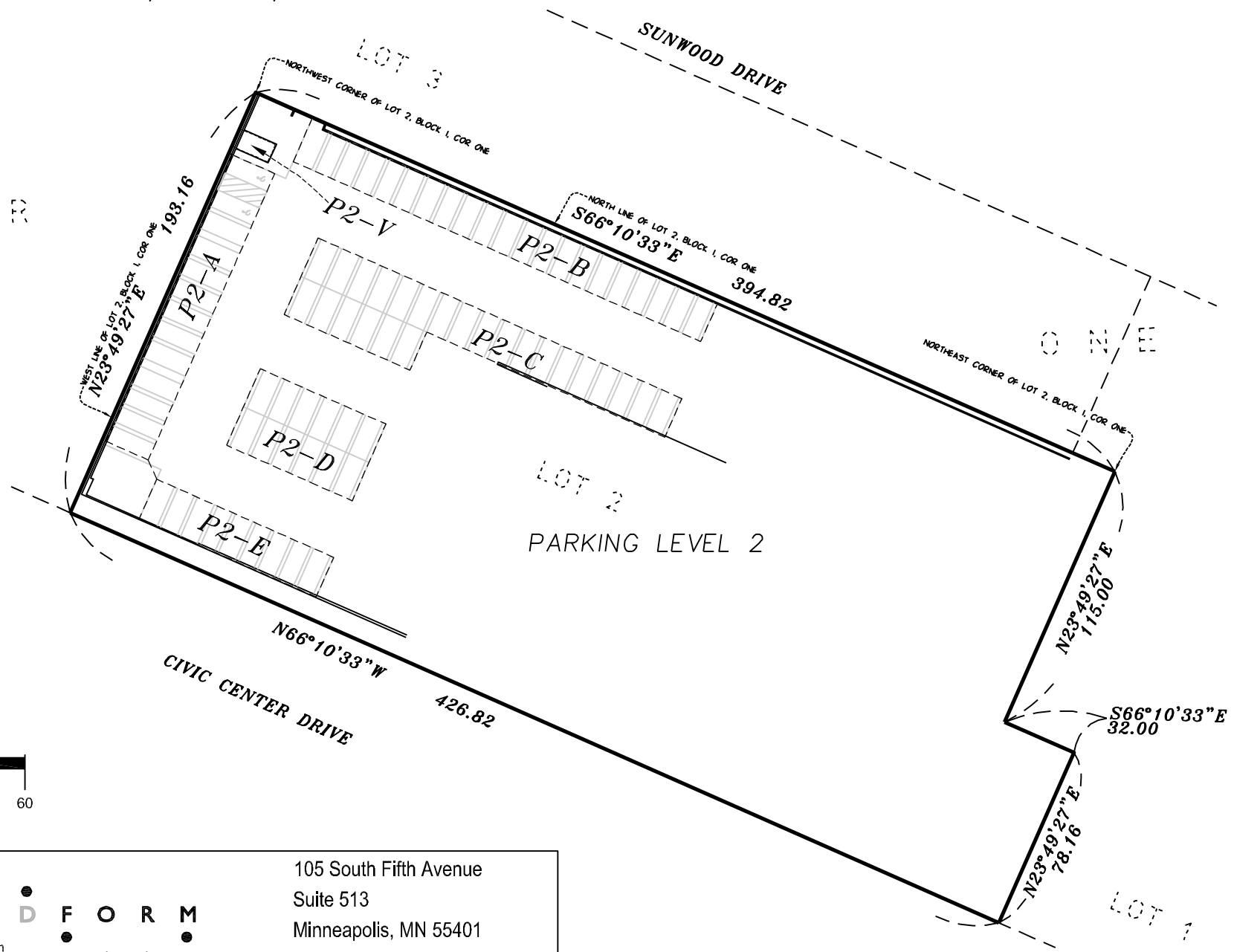
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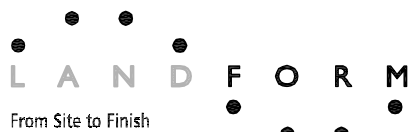
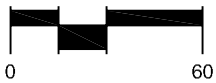
FOR: PART OF LOT 2, BLOCK 1, COR ONE

C O R

O N E



NORTH



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Job No. RAM001 Drawing: PUMA EASE By: SCT

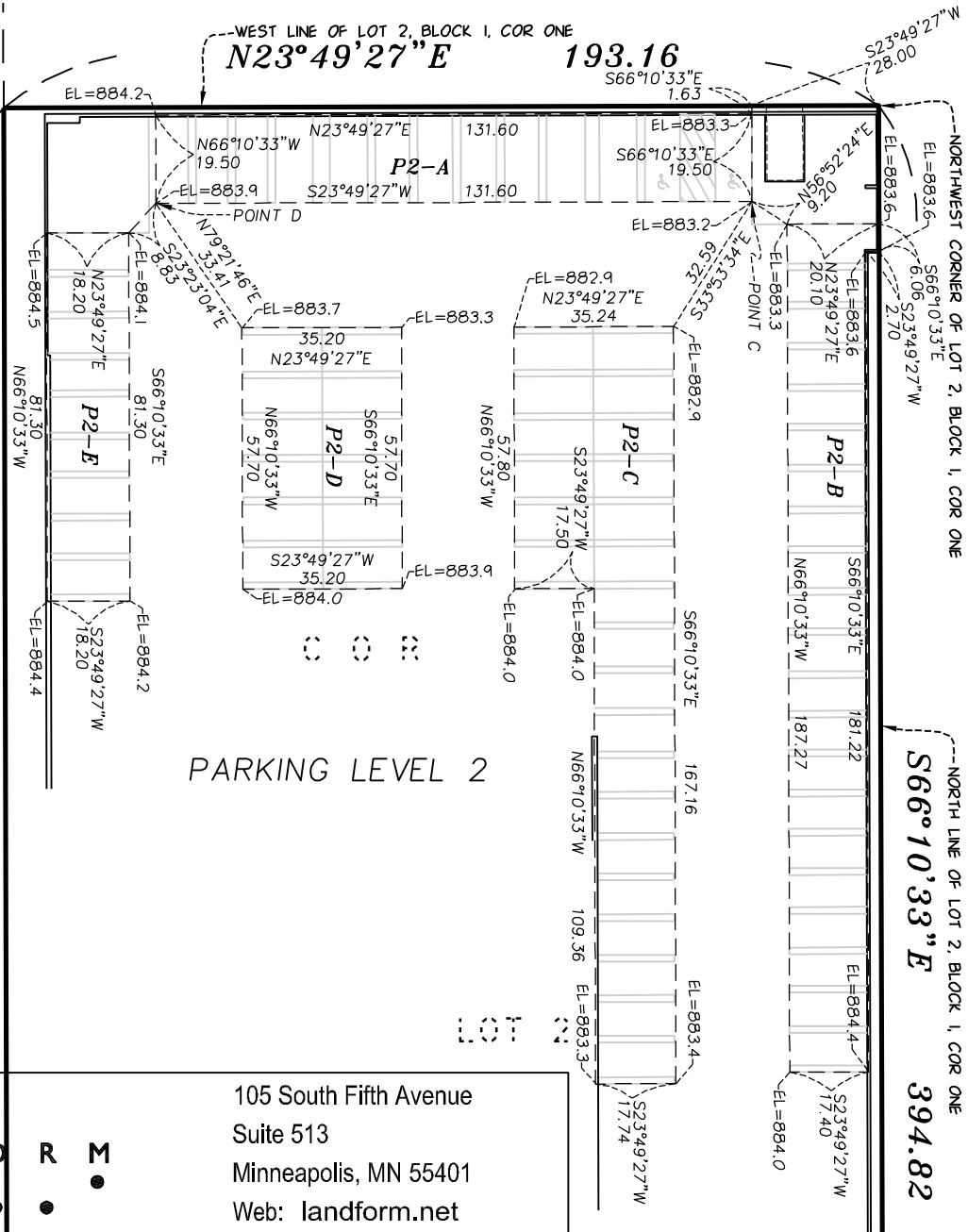
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FOR: PART OF LOT 2, BLOCK 1, COR ONE

CIVIC CENTER DRIVE

N66°10'33"W 426.82

WEST LINE OF LOT 2, BLOCK 1, COR ONE
N23°49'27"E 193.16



PARKING LEVEL 2

LOT 2

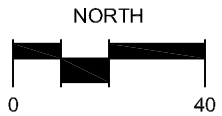
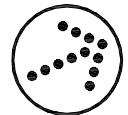
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 From Site to Finish

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 Suite 513
 Minneapolis, MN 55401
 Web: landform.net

Job No. RAM001 Drawing: PUMA EASE By: SCT

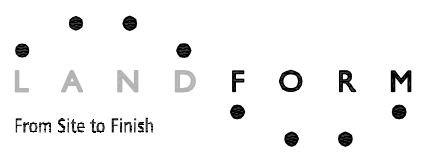
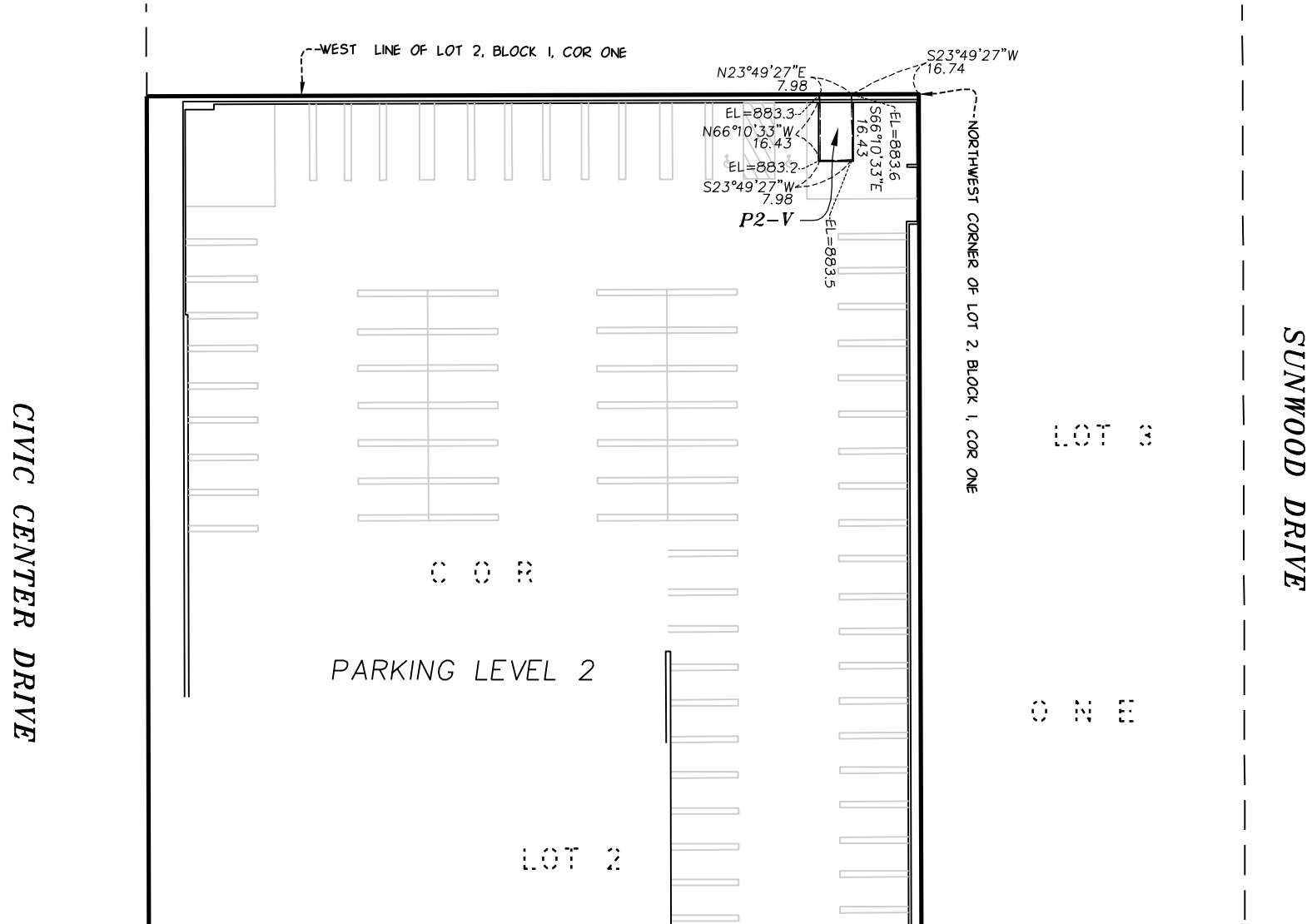
SUNWOOD DRIVE

NORTH LINE OF LOT 2, BLOCK 1, COR ONE
S66°10'33"E 394.82

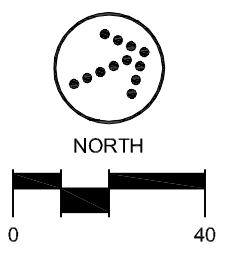


DESCRIPTION SKETCH

FOR: PART OF LOT 2, BLOCK 1, COR ONE



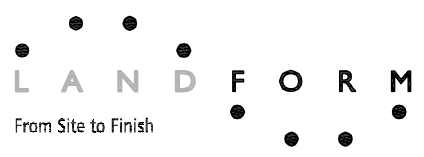
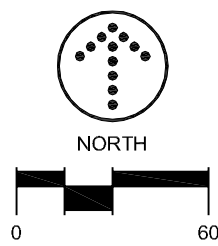
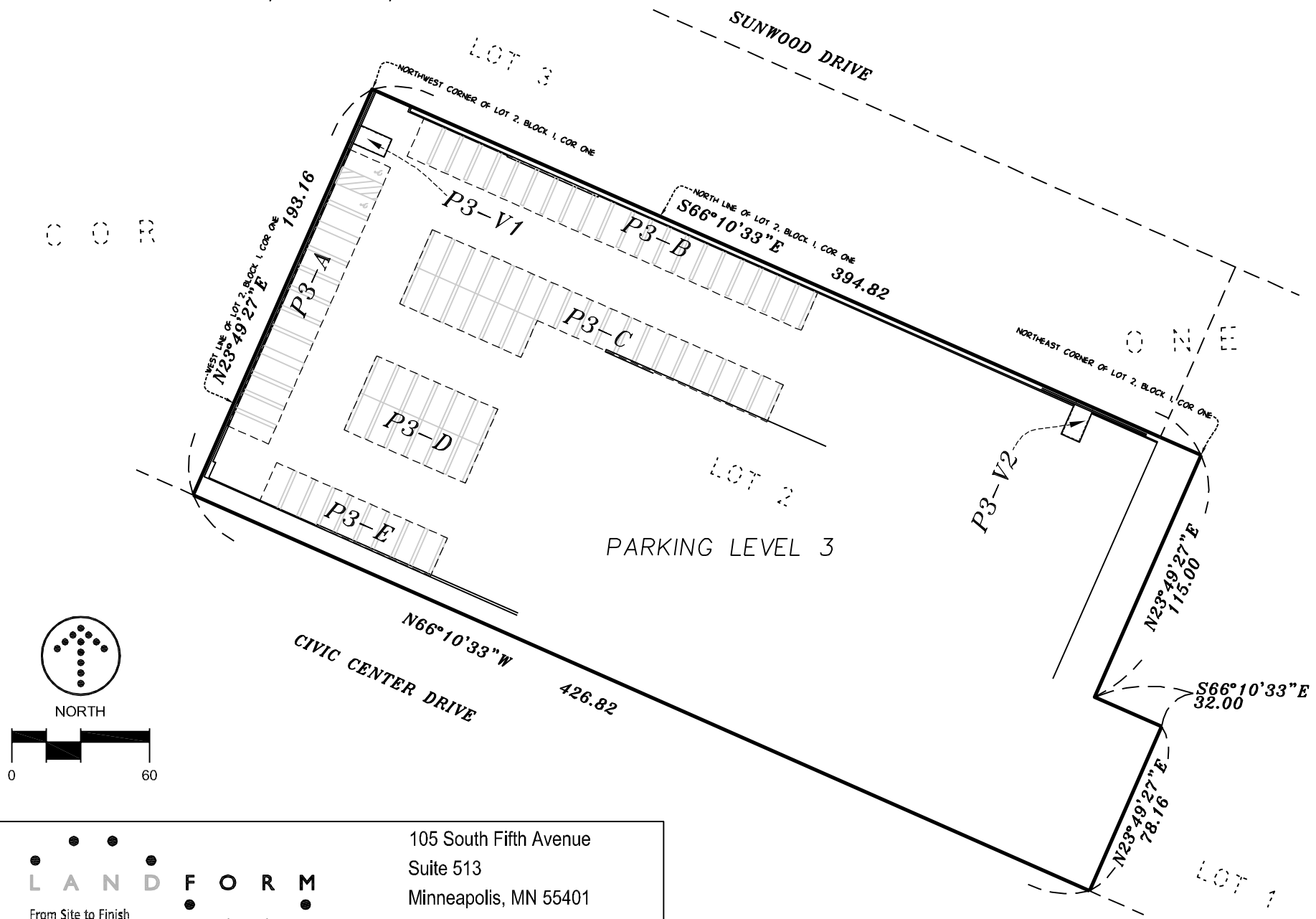
105 South Fifth Avenue
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Job No. RAM001 Drawing: PUMA EASE By: SCT

DESCRIPTION SKETCH

FOR: PART OF LOT 2, BLOCK 1, COR ONE



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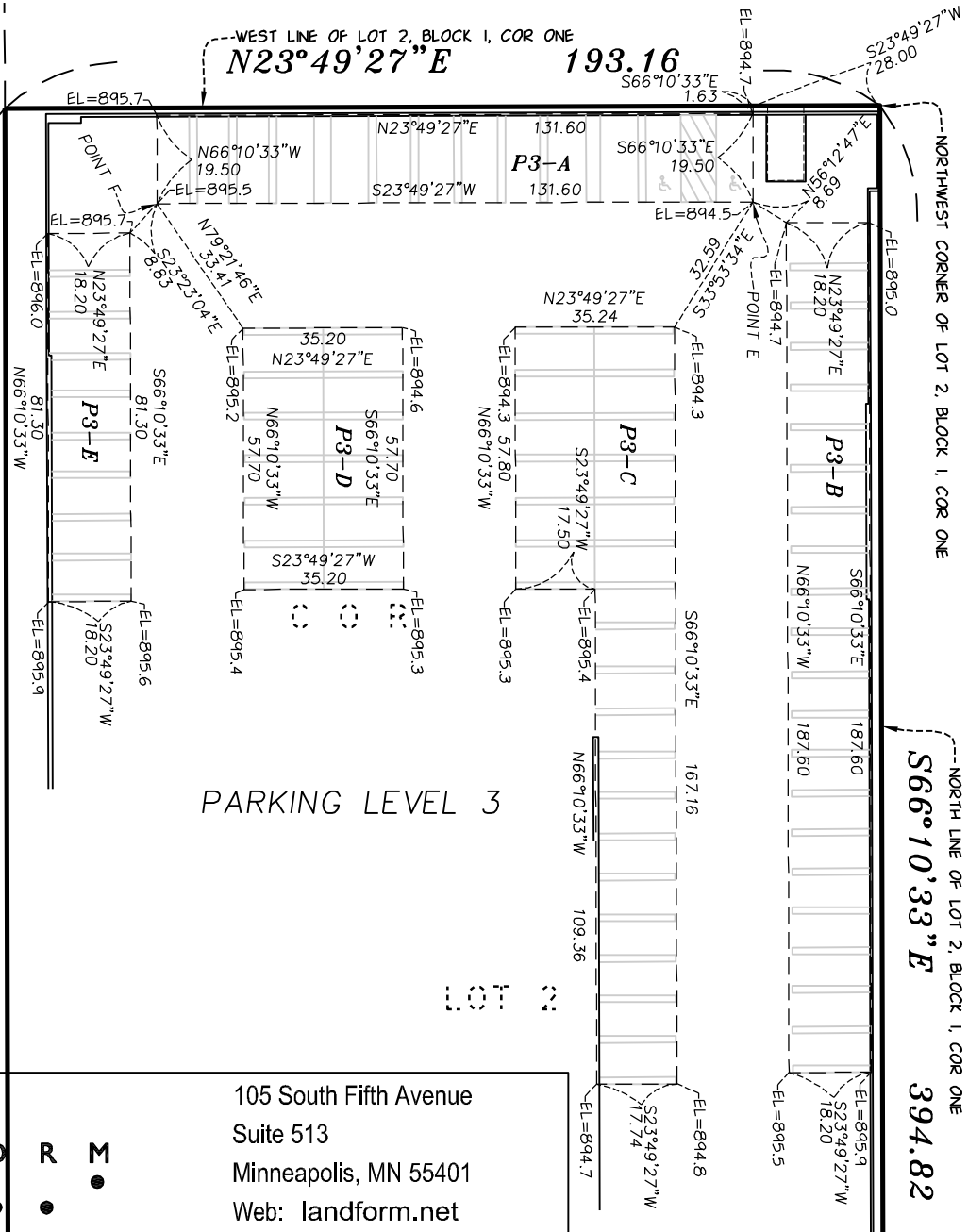
DESCRIPTION SKETCH

FOR: PART OF LOT 2, BLOCK 1, COR ONE

CIVIC CENTER DRIVE

N66°10'33"W 426.82

WEST LINE OF LOT 2, BLOCK 1, COR ONE
N23°49'27"E 193.16



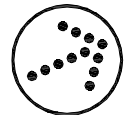
PARKING LEVEL 3

LOT 2

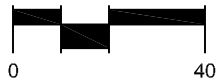
FOR

SUNWOOD DRIVE

NORTH LINE OF LOT 2, BLOCK 1, COR ONE
S66°10'33"E 394.82



NORTH

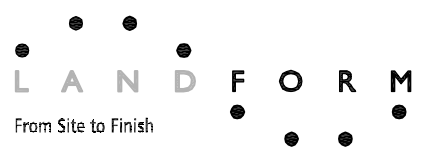
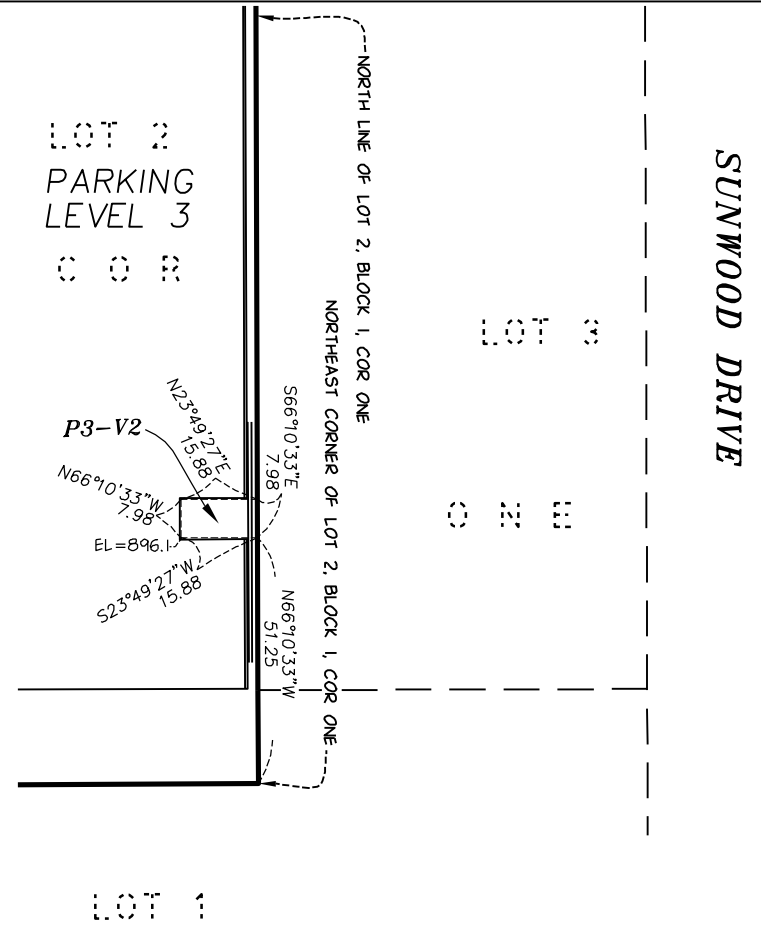
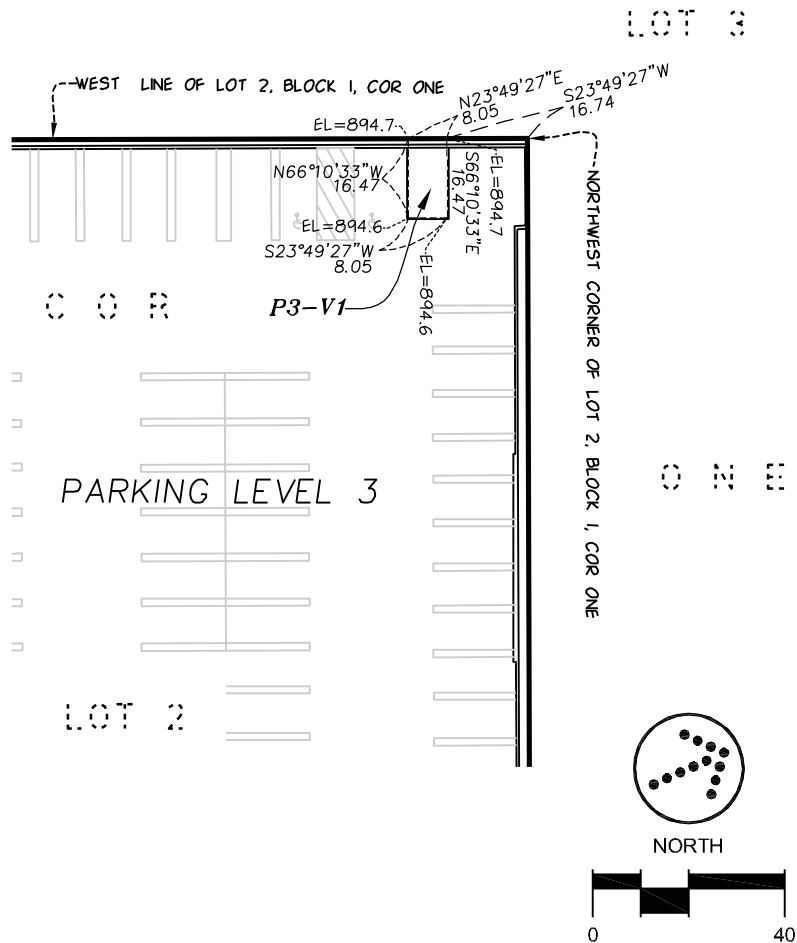


LANDFORM
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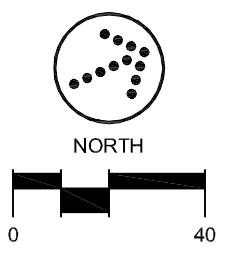
DESCRIPTION SKETCH

FOR: PART OF LOT 2, BLOCK 1, COR ONE



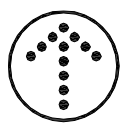
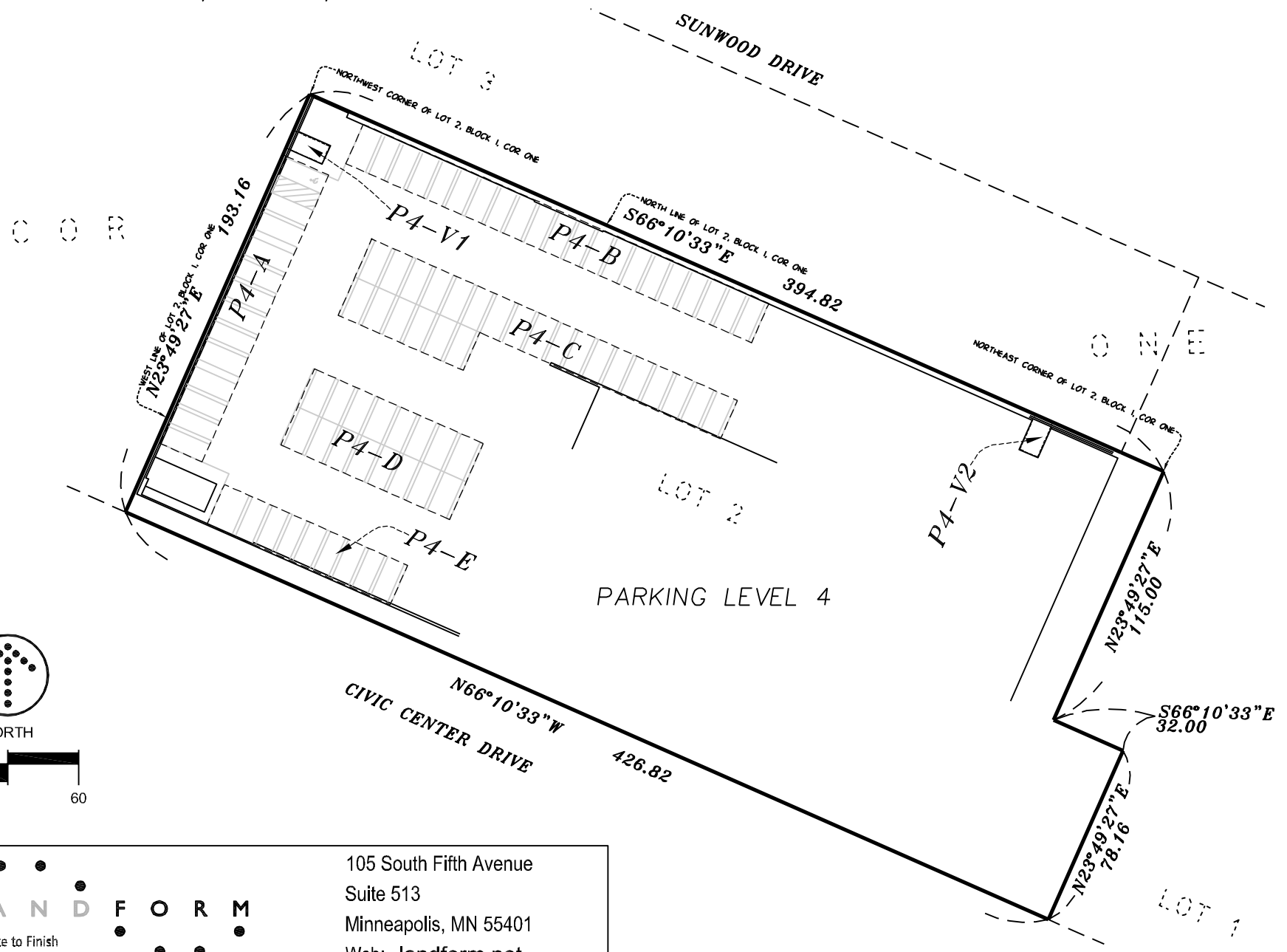
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Job No. RAM001 Drawing: PUMA EASE By: SCT

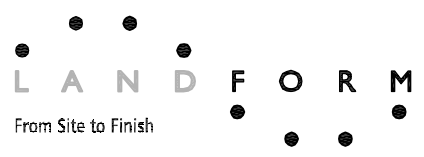
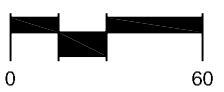


DESCRIPTION SKETCH

FOR: PART OF LOT 2, BLOCK 1, COR ONE



NORTH

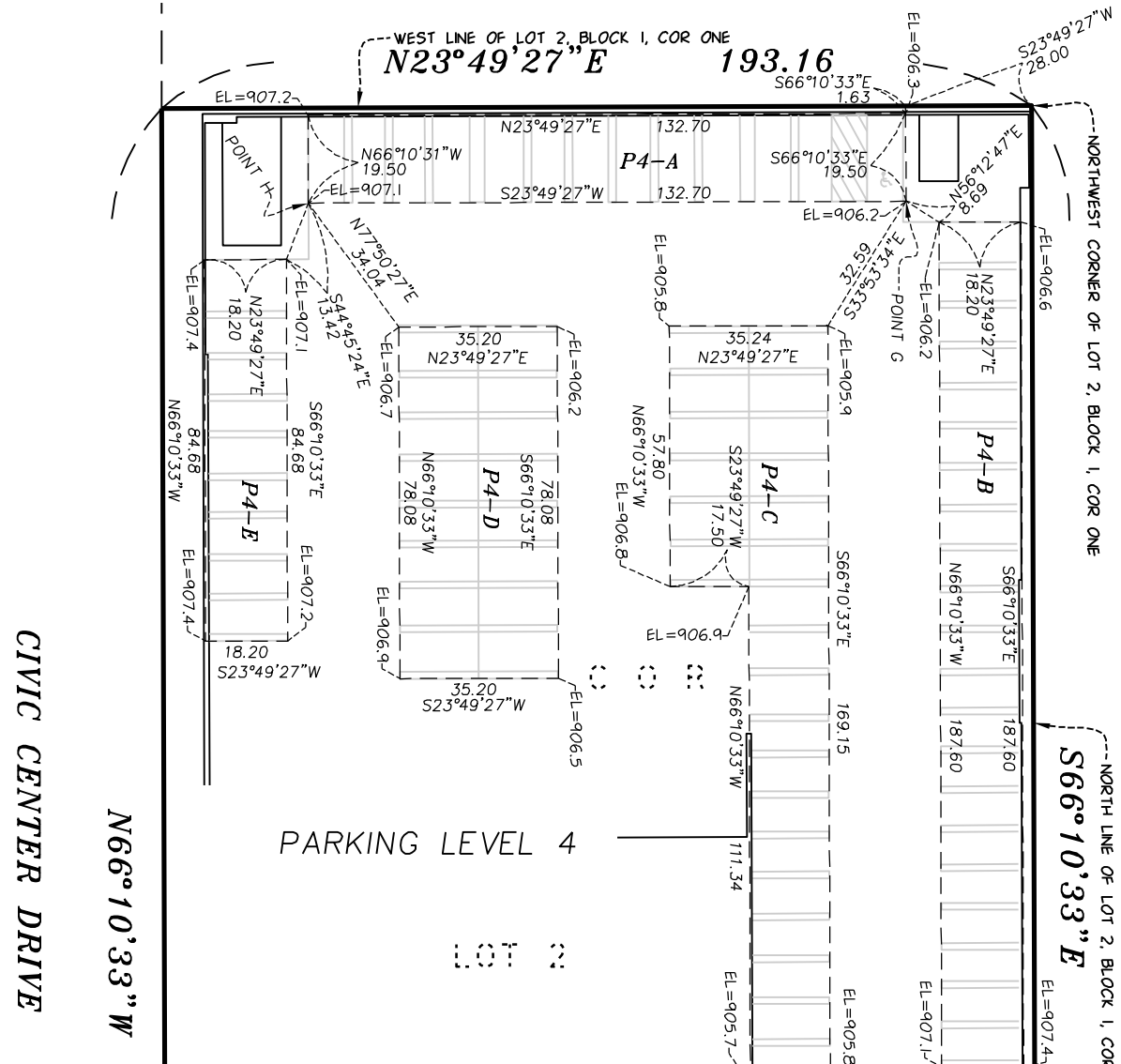


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Job No. RAM001 Drawing: PUMA EASE By: SCT

DESCRIPTION SKETCH

FOR: PART OF LOT 2, BLOCK 1, COR ONE



CIVIC CENTER DRIVE

N66°10'33\"W

PARKING LEVEL 4

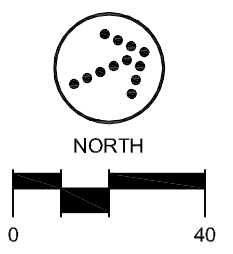
LOT 2

NORTH LINE OF LOT 2, BLOCK 1, COR ONE
S66°10'33\"E
394.82

SUNWOOD DRIVE

LANDFORM
From Site to Finish

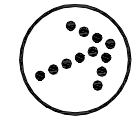
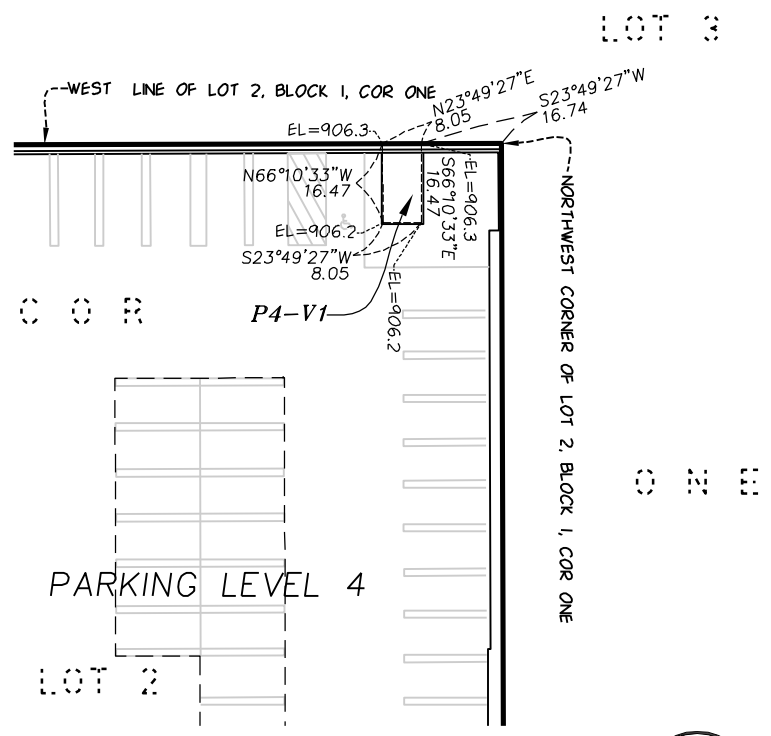
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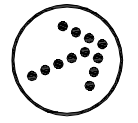
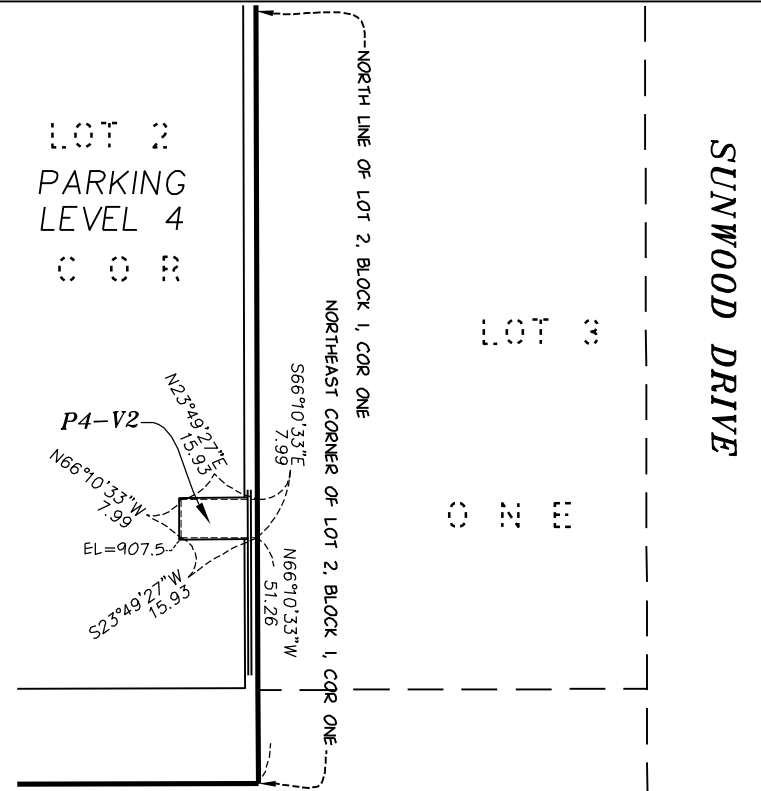
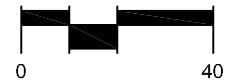
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DESCRIPTION SKETCH

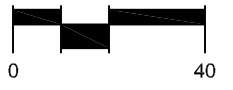
FOR: PART OF LOT 2, BLOCK 1, COR ONE



NORTH



NORTH



LANDFORM

From Site to Finish

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Job No. RAM001 Drawing: PUMA EASE By: SCT

HRA Regular Session

5. 6.

Meeting Date: 01/08/2013

By: Darren Lazan, Housing &
Redevelopment Authority

Information

Title:

Update on Edgewood Project, and Approve Commission Agreement - Premier Commercial Properties

Background:

In October of 2012, the HRA approved an Option Agreement with Edgewood Property Management for the purchase of one of two sites within The COR. Over the last 60 days, Edgewood has conducted market studies and evaluated the two sites presented by the development team, and chosen Site A, the 3 acre parcel located at the northeast quadrant of Center Street and Ramsey Parkway as depicted in the current development plan.

On December 15th, pursuant to the agreement, Edgewood exercised this option, and final Purchase Agreements have been forwarded for their execution. The required earnest monies have been deposited in trust with their agent, and will be transferred to the title company with the executed agreements.

As outlined in the Purchase Agreement, the buyer (Edgewood) is represented by Premier Commercial Properties, and is entitled to a commission paid by the seller. The attached agreement should be approved and executed by the HRA when escrow is opened.

Notification:

Observations:

Seller traditionally pays brokerage fees in commercially standard transactions. This was documented in the Option/Purchase Agreement approved by the HRA, and Premier has certainly earned their commission on this project as they assisted the buyer in his evaluation of the site, and assisted in the document structure and execution.

Recommendation:

The development team recommends approval of the attached commission agreement in the amount of four percent (4%) of the purchase price or approximately \$37,374.48 based on current parcel configuration. This will be adjusted as necessary with the final plat.

Funding Source:

Land Sale Proceeds at closing

Council Action:

Approve the attached commission agreement with Premier Commercial Properties in the amount of four percent (4%) of the purchase price or approximately \$37,374.48 based on current parcel configuration, due at closing.

Attachments

Commission Agreement

Purchase Agreement

Parcel Map

Form Review

Inbox
Kurt Ulrich

Reviewed By
Kurt Ulrich

Form Started By: Darren Lazan

Date

01/03/2013 02:57 PM

Started On: 12/21/2012 03:37 PM

Final Approval Date: 01/03/2013



A Real Estate Services Company
6897 139th Lane NW
Ramsey, MN 55303
763. 862. 2005 Office
763. 862. 1925 Fax

Commission Agreement

Reference:

The Purchase Agreement dated _____ between The Housing and Redevelopment Authority in and for the City of Ramsey (Seller) and Edgewood Management Group, LLC and / or it's assigns (Buyer).

Property located at "Proposed Lot 2, Block 1, COR 5 Ramsey, Minnesota 55303

Buyer's Broker: Premier Commercial Properties, Inc.

Seller, hereby agrees to pay to Buyers Broker a Real Estate Commission in the amount of four (4) percent of the sales price shown in the Purchase Agreement for the property listed herein due upon Closing.

It's _____

Dated _____

Marty Fisher
It's: **Broker /Owner** _____

Dated _____

PURCHASE AGREEMENT

RELATING TO

OUTLOT A, RAMSEY TOWN CENTER 7TH ADDITION

1. **Parties.** The parties to this Purchase Agreement (the "Agreement") are:
 - a. The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota, a public body politic and corporate under the laws of the state of Minnesota ("Seller"). Seller's address is Ramsey Municipal Center, 7550 Sunwood Drive, Ramsey, Minnesota 55303, Attn: Executive Director; and
 - b. Edgewood Management Group, LLC, a North Dakota limited liability company ("Buyer"). Buyer's address is _____. **[Insert address and name of contact person.]** Buyer hereby designates _____ as Buyer's agent for service of process in Minnesota, agrees that Buyer may not revoke such designation during the term of this Agreement and agrees that Seller may serve process on Buyer by leaving the process with a person of suitable age and discretion at _____. **[Insert address for service of process.]**

This Agreement sometimes refers to Seller and Buyer individually as a "Party" and collectively as the "Parties". Seller and Buyer are entering into this Agreement pursuant to Buyer's exercise of an option. Seller granted to Buyer in an Option Agreement between Seller and Buyer dated as of October 15, 2012 (the "Option Agreement"). Except for the provisions of Section 8 of the Option Agreement, which, by their terms, survive the Parties' execution of this Agreement, and the provisions of Section 11 of the Option Agreement, to the extent necessary to enforce Seller's rights under Section 8 of the Option Agreement, the terms of the Option Agreement are merged into and extinguished by the Parties' execution of this Agreement.

2. **Effective Date and Original Purchase Agreement.** This Agreement is dated, for reference purposes, and is effective as of December 15, 2012 (the "Effective Date").

3. **Property.** The property that is the subject of this Agreement is Outlot A, RAMSEY TOWN CENTER 7TH ADDITION, Anoka County, Minnesota, according to the recorded plat thereof (the "Land"). As used in this Agreement the term "Property" means the Land and all hereditaments and appurtenances to the Land. There are currently no improvements located on the Land. The Parties do not contemplate the conveyance of any personal property pursuant to this Agreement. Seller and Buyer acknowledge and agree that as Buyer proceeds through its site evaluation and planning process, either Seller or Buyer may desire to modify the boundaries of the Land to better accommodate Buyer's development, but any modification to the boundaries to the Land shall require an amendment to this Agreement executed by both Seller and Buyer.

4. **Purchase and Sale.** Seller agrees to sell the Property to Buyer pursuant to the terms of this Agreement, and Buyer agrees to purchase the Property from Seller pursuant to the terms of this Agreement.

5. **Platting.** On or before the date thirty (30) days after the Effective Date, Seller shall apply to the City of Ramsey (the “City”) for approval of a plat that depicts the Land as a separate lot. The plat may also include other property Seller owns. Seller must use commercially reasonable efforts to cause the City Council of the City to grant preliminary and final approvals for the plat on or before the date seventy five (75) days after the Effective Date. The plat, as finally approved by the City Council of the City, is referred to herein as the “Final Plat”.

6. **Purchase Price.** The purchase price of the Property is Six Dollars and Fifty Cents (\$6.50) per square foot (the “Purchase Price”). Seller and Buyer estimate, but neither Seller nor Buyer represents or warrants, that the area of the Land is 142,789 square feet. Based on this area estimate, the estimated purchase price of the Property is Nine Hundred Twenty Eight Thousand One Hundred Twenty Eight and 50/100 Dollars (\$928,128.50). The Parties will determine the actual square footage of the Land based on the boundaries of the Land as set forth on the Final Plat. If the area is not a whole number, any fractional square footage shall be included in the calculation of the Purchase Price.

7. **Earnest Money.** As a condition of Buyer’s exercise of the option granted to Buyer in the Option Agreement, Buyer has deposited the sum of Ten Thousand Dollars (\$10,000.00) (the “Earnest Money”) with Commercial Partners Title, LLC (“Title”). Title shall hold and disburse the Earnest Money pursuant to the terms of an Escrow Agreement in the form attached as Exhibit A which Seller and Buyer have executed contemporaneous with this Agreement (the “Escrow Agreement”). The Escrow Agreement directs Title to hold the Earnest Money in a non-interest bearing account. Buyer may, prior to Buyer’s exercise of the Option, unilaterally modify the Escrow Agreement to direct Title to hold the earnest money in an interest bearing account, but if Buyer modifies the Escrow Agreement to direct Title to hold the Earnest Money in an interest bearing account, Buyer must pay all fees and costs imposed by Title for Title’s services as Escrow Agent. If Title holds the Earnest Money in a non-interest bearing account, Seller and Buyer must each pay one-half of Title's fee, if any, for acting as the Escrow Agent. Any interest which the Earnest Money earns will inure to the Party that is entitled to the Earnest Money under the terms of this Agreement.

8. **Closing.** Seller and Buyer must meet at Ramsey Municipal Center, 7550 Sunwood Drive, Ramsey, Minnesota or at another location initially agreed by Seller and Buyer at 9:30 a.m. on or before the date ninety (90) days after the Effective Date (the “Date of Closing”) at which time the Parties will perform the obligations set forth in this Section 8 (the “Closing”). In the alternative, the Parties may, by mutual agreement, elect to close in escrow by delivering all necessary documents and funds to Title on or before the Date of Closing. Notwithstanding the provisions of the preceding sentences, if the date ninety (90) days after the Effective Date is a Saturday, Sunday or a legal holiday upon which the offices of the City of Ramsey are closed, the Date of Closing shall be the first business day following the date ninety (90) days after the Effective Date. At Closing:

a. Seller must:

i Deliver a recorded copy or a recordable original of the Final Plat to Title. If Seller provides Title with a recordable original of the

Final Plat Seller must also provide Title with sufficient funds to pay the amounts which Title must pay to Anoka County (including but not limited to real estate taxes and recording fees) to record the Final Plat.

- ii Tender to Title, for payment to the City, an amount equal to the sum of the fees and charges which, under the City's Ordinances, are due and payable to the City at the time the Final Plat is recorded with respect to the Property within the Final Plat, if any, other than the Land. Fees and charges due and payable to the City may include, but are not limited to park dedication fees, trail fees, utility connection fees, and storm water fees.
- iii Deliver to Buyer a certified copy of a Resolution of Seller's board of commissioners authorizing the execution of the Option Agreement and the performance of Seller's obligations under the Option Agreement and this Agreement;
- iv Deliver to Buyer a duly executed and acknowledged Limited Warranty Deed conveying title to the Land from Seller to Buyer, subject to the following "Permitted Encumbrances:"
 - (A) Building, zoning and subdivision statutes, laws, ordinances and regulations and, if applicable, any special service district ordinance adopted by the City pursuant to Minn. Stat. Section 428A;
 - (B) Reservations of minerals or of mineral rights in favor of the State of Minnesota, if any;
 - (C) The reservation of a right of reverter in favor of Seller. The right of reverter shall provide that if: (1) Buyer does not commence construction of the "Minimum Improvements," as defined below, on or before the date twelve (12) months after the Effective Date; (2) Buyer does not substantially complete the construction of the "Minimum Improvements" on or before the date thirty-six (36) months after the Effective Date; or (3) if the holder of a Mortgage on the Property commences proceedings to foreclose its Mortgage prior to Buyer's substantial completion of the "Minimum Improvements," Seller may commence an action in Anoka County District Court seeking an order re-vesting title to the Property in Seller and granting Seller immediate possession of the Property. Buyer is deemed to have commenced construction when Buyer has: (a) obtained all building permits from the City necessary for the construction of the "Minimum Improvements" on the

Property; and (b) Buyer has commenced the construction of the footings and foundations for the "Minimum Improvements." For purposes of this Agreement the term "Minimum Improvements" means not less than 75 units of assisted living and memory care apartments meeting the design framework outlined for the zoning district in which the Property is located. Seller agrees that Seller will, at Buyer's request, subject Seller's future interest in the Property pursuant to the right of reverter to the lien of mortgage granted by Buyer to secure the repayment of a loan, the proceeds of which Buyer is obligated to use to acquire or construct improvements on the Property provided the holder of the mortgage acknowledges, in writing both for itself and any successor's in title to the mortgage, that if Seller enforces the right of reverter and obtains a District Court Order re-vesting title to the Property in Seller prior a foreclosure of the mortgage and the expiration of the applicable redemption period provided for in Minnesota Statutes Sections 580 and 581, as applicable, Seller is entitled to redeem the Property from foreclosure, as an owner. The Right of Reverter will provide that if Buyer's commencement or completion of the "Minimum Improvements" is delayed as a direct result of an act of God, other than weather related conditions or events that are reasonably foreseeable both in terms of the likelihood of their occurrence and their severity; war; riots; or civil disorder; labor strikes or labor shortages; shortages of necessary materials; or litigation commenced by third parties that, either by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays and if Buyer notifies Seller of the condition within fourteen (14) days of its onset, the commencement date and completion date set forth in the Right of Reverter shall be extended for a number of days equal to the delay directly caused by such condition.

- (D) Any defects in the marketability of Seller's title to the Property that are identified as exceptions in the commitment for title insurance that Seller, in its capacity as "Optionor" delivered to Buyer, in its capacity as Optionee, pursuant to the terms of the Option Agreement unless, prior to Buyer's exercise of the Option set forth in the Option Agreement, Seller and Buyer amend the Option Agreement to obligate Seller to eliminate one or more of those exceptions prior to Closing, in which case any exception which Seller is obligated to eliminate shall not be deemed a Permitted Encumbrance.

- v Execute and deliver to Buyer and Title a Minnesota Uniform Conveyancing Blank Affidavit Regarding Business Entity evidencing the absence of bankruptcies, judgments, tax liens or corporate dissolution proceedings involving parties with the same or similar names as the Seller; and evidencing the absence of mechanic's liens arising out of work performed or materials provided by or at the request of Seller and the absence of known unrecorded interests, encroachments or boundary line questions affecting the Land;
 - vi Execute and deliver to Buyer a non-foreign affidavit in recordable form containing such information as is required under IRS Section 1445(b)(2) and any regulations relating thereto; and
 - vii Pay or provide evidence of payment of the following: the State Deed Tax due upon the execution of the Limited Warranty Deed; the cost of the title commitments Seller provides to Buyer pursuant to the terms of the Option Agreement; pay Buyer up to \$3000 to reimburse amounts Buyer pays to an unaffiliated third party for a survey of the Land; real estate taxes and levied special assessments, if any, pursuant to the provisions of Section 9 below; and one-half of any reasonable and customary closing fees Title charges to conduct closing of this transaction.
- b. Buyer shall:
- i Direct Title to disburse the Earnest Money to Seller;
 - ii Tender the balance of the Purchase Price to Seller in wire transferred funds;
 - iii Tender to Title, for payment to the City, an amount equal to the sum of the fees and charges which, under the City's Ordinances, are due and payable to the City at the time the Final Plat is recorded with respect to the Land. Fees and charges due and payable to the City may include, but are not limited to park dedication fees, trail fees, utility connection fees, and storm water fees.
 - iv Pay or provide evidence of payment of the following: real estate taxes, if any, pursuant to the provisions of Section 9; the recording fees and conservation fee, if any, payable to record the Limited Warranty Deed from Seller to Buyer; all premiums and other charges for any title insurance policies Buyer purchases for itself and its lender; all costs associated with Buyer's financing; and one-half of any reasonable and customary closing fees Title charges to conduct the closing of this transaction.

9. **Real Estate Taxes, Special Assessments and Owners Association Assessments.**

a. **Real Estate Taxes.** On or before the Date of Closing, Seller must pay the real estate taxes, if any, due and payable with respect to the Property in years prior to the year of Closing. Seller and Buyer must prorate the real estate taxes, if any, due and payable with respect to the Property in the year of Closing on a per diem basis as of the Date of Closing. In connection with recording the Final Plat, the Seller must pay all real estate taxes due and payable with respect to the Property in the year the Plat is recorded. If Closing occurs on a date prior to the date that all real estate taxes due and payable with respect to the Property in the year of Closing are due, Seller and Buyer each agree to pay their pro rata share of the real estate taxes due and payable in the year in which Closing occurs at Closing, so Title can use those funds to pay the real estate taxes when the Final Plat is submitted for recording.

b. **Special Assessments.** On or before the Date of Closing, Seller must pay all special assessments that are levied against the Property as of the Date of Closing including any installments of special assessments certified for payment with the real estate loans due and payable in the year of Closing.

10. **Possession.** Seller will deliver possession of the Property to Buyer as of the actual date of Closing.

11. **Representations, Statutory Disclosures and Covenants of Seller and the City.**

a. **Representations of Seller.** Seller represents to Buyer that, as of the Effective Date of the Option Agreement:

- i Seller has the legal authority to enter into this Agreement and sell the Land.
- ii There are no actions, suits, proceedings or investigations pending or, to the best of Seller's actual knowledge, threatened against the Land, including, without limitation, (A) condemnation or eminent domain claims, actions or proceedings, or (B) actions to seize any portion of the Land under any civil or criminal law authorizing seizure or forfeiture as a penalty for violation.
- iii To the best of Seller's actual knowledge, there are no tenants or other third parties in possession of any portion of the Land.
- iv To the best of Seller's actual knowledge, Seller's title to the Land is not subject to any unrecorded: purchase agreements (other than this Agreement) options, covenants, conditions, restrictions, easements or liens.
- v To the best of Seller's actual knowledge: there are no Hazardous Substances located on the Land, except as may be disclosed in the

Phase I Environmental Site Assessment for Ramsey Town Center, Highway 10 and Ramsey Boulevard, NW, Ramsey, Minnesota dated April 27, 2007 (Delta Project No. 5A0703-198), prepared by Delta Environmental Consultants, Inc. for Minnwest Bank Central, a copy of which Seller has provided to Buyer (the "Environmental Report"); the Land is not subject to any liens or claims by government or regulatory agencies or third parties arising from the release or threatened release of Hazardous Substances in, on or about Land; and, except as may be disclosed in the Environmental Report, the Land has not been used in connection with the generation, disposal, storage, treatment or transportation of Hazardous Substance. For purposes of this Agreement, the term "Hazardous Substance" includes but is not limited to substances defined as "hazardous substances," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response Compensation Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., and substances defined as "hazardous wastes," "hazardous substances," "pollutants, or contaminants" as defined in the Minnesota Environmental Response and Liability Act, Minnesota Statutes, §115B.02. The term "hazardous substance" also includes asbestos, polychlorinated biphenyls, petroleum, including crude oil or any fraction thereof, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and synthetic gas).

b. Statutory Disclosures. As required by statute, Seller hereby represents to Buyer that, to the best of Seller's actual knowledge:

- i There are no wells located on the Land.
- ii There are no underground or above ground storage tanks of any size or type located on the Land.
- iii Sewage is not currently generated at the Land, and there are no abandoned individual sewage treatment systems located on the Land.
- iv The Land has not been used for Methamphetamine production.

c. Covenants of Seller.

- i From and after the Effective Date, Seller will not perform any grading or excavation on the Land, will not construct, remove or modify any improvements or landscaping on the Land, without Buyer's consent which consent Buyer may not unreasonable withhold, condition or delay.

- ii On or before the Date of Closing Seller will pay, in full, any persons who provide lien labor or materials towards the improvement of the Land at the request of Seller.
- iii From and after the Effective Date, until this Purchase Agreement is terminated Seller will not voluntarily subject the Land to any covenants, conditions, restrictions, easements, or liens without the written consent of Buyer; provided, however, Seller may petition the City of Ramsey for the adoption of an ordinance subjecting the Land to a Special Service District as described in Section 12(b)(ii).
- iv Seller will pay any commission or fee due to any agent Seller has engaged or subsequently engages in connection with the transactions described in this Agreement. Seller will pay Buyer's real estate broker, Premier Commercial Properties, a commission equal to 4% of the Purchase Price upon the actual closing of the transaction contemplated by this Agreement and Buyer's payment of the Purchase Price to Seller.

For purposes of Sections 11(a) and 11(b), the phrase "Seller's actual knowledge" means the actual knowledge of Mr. Kurt Ulrich, Seller's executive director. If, at any time prior to Closing, Seller acquires actual knowledge that a representations set forth in Section 11(a) or 11(b) is no longer accurate in some material respect, Seller will promptly notify Buyer. The representations and covenants set forth above will survive the Closing of this transaction and Seller's delivery of the Limited Warranty Deed to Buyer, but any action by Buyer alleging that (i) one or more of the representations set forth in Section 11(a) or 11(b) was inaccurate, when made; (ii) Seller failed to promptly notify Buyer after Seller acquired actual knowledge that a representation set forth in Sections 11(a) or 11(b) was no longer accurate in some material respect; or (iii) Seller breached one or more of the covenants set forth in Section 11(c), must be commenced within six (6) months after the Date of Closing by filing an action in Anoka County District Court or Buyer will be deemed to have waived any such claims.

12. **Representations and Covenants of Buyer.**

a. **Representations of Buyer.** Buyer represents to Seller that, as of the Effective Date:

- i Buyer is a limited liability company, duly organized pursuant to and in good standing under the laws of the State of North Dakota; and
- ii The individual signing this Agreement on behalf of Buyer is fully authorized and empowered to sign this Agreement on Buyer's behalf.

If, at any time prior to Closing, Buyer acquires actual knowledge that a representations set forth in Section 12(a) is no longer accurate in some material respect, Buyer will promptly notify Seller. The representations set forth above will survive the Closing of

this transaction and Seller's delivery of the Limited Warranty Deed to Buyer, but any action by Seller alleging (i) that one or more of the representations set forth in Section 12(a) was inaccurate, when made; or (ii) that Buyer failed to promptly notify Seller after Buyer acquired actual knowledge that a representation set forth in Section 12(a) was no longer accurate in some material respect; must be commenced within six (6) months after the Date of Closing by filing an action in Anoka County District Court or Seller will be deemed to have waived any such claims.

b. Covenants of Buyer.

- i Seller has advised Buyer that Seller has been working with the City and intends to continue to work with the City after Closing on the City's adoption of an Ordinance establishing a Special Service District pursuant to Minnesota Statutes Sections 428A.01 through 428A.101, as the same may be amended, or, in the alternative, the establishment of a similar service district pursuant to future special legislation (either a "Service District"). The Service District, if established, will include all or some portion of the property described on Exhibit B but will not include other property without Buyer's consent. Buyer agrees that, at the request of Seller, Buyer will cooperate with and assist Seller and the City in the establishment of a Service District. Buyer's obligation to cooperate and assist includes, but is not limited to, an obligation to join in a petition requesting a public hearing on the creation of a Service District pursuant to Minnesota Statutes Section 428A.08, if Buyer is eligible to join in such a petition. Buyer further agrees that Buyer will not file or join in the filing of an objection pursuant to Minnesota Statutes Section 428A.02, Sub. 4 or Section 428A.09 and will not appeal to the District Court pursuant to Minnesota Statutes Section 428A.02, Subd. 5. Buyer's obligations under this Section 12(b)(i) survive the closing of the transaction contemplated by this Agreement and are binding on any person or entity obtaining any right, title or interest in the Property subject to the Agreement by or through Buyer. Seller may transfer its rights under this Section 12(b)(i) to the City.
- ii Buyer agrees to indemnify and defend Seller from and hold harmless against any and all claims, causes of action or expenses, including reasonable attorney's fees, relating to or arising from Buyer's or Buyer's employees, agents or contractors presence on the Land prior to the actual date of Closing. Buyer agrees that if Buyer does not acquire title to the Land from Seller pursuant to the terms of this Agreement, Buyer must repair any damage to the Land caused by Buyer or Buyer's employees, agents or contractors and to return the Land to substantially the same condition that existed prior to Buyer's or Buyer's employees, agents or contractors entrance onto the Land.

- iii Buyer will, as soon as reasonably possible after the Closing Date, apply to the City of Ramsey any other governmental agencies for all “Permits” as defined in Section 14(b) necessary for Buyer’s intended development of the Land, and Buyer will diligently pursue the acquisition of all such Permits. Buyer will pursue the acquisition of such Permits at Buyer’s sole cost and expense. Seller agrees to cooperate with Buyer in the acquisition of such Permits, but Seller’s obligation to cooperate does not obligate Seller to incur any cost or potential liability.

13. **Inspections.** At all times prior to the Date of Closing, Buyer and its employees, agents and contractors have the right, upon reasonable notice to Seller, to go upon the Land to inspect the Land and to determine the condition of the Land and the improvements located thereon, including specifically the presence or absence of hazardous substances, petroleum products and asbestos in, on or about the Land. Buyer acknowledges that Buyer is purchasing the Land in reliance on Buyer's inspection of the Land pursuant to this Section 13 and on Buyer's judgment regarding the sufficiency of such inspections. Buyer is not relying on any written or oral representations, warranties or statements that Seller or Seller's Agents have made other than the representations of Seller set forth in Section 11.

14. **Buyer's Contingencies.** Buyer’s obligations under this Agreement are contingent on satisfaction of the contingency described in subsection (a) on or before the date sixty (60) days after the Effective Date and the satisfaction of the contingencies described in subsection (b), (c), (d) and (e) on or before the actual date of Closing. If the contingency described in subsection (a) is not satisfied on or before the date sixty (60) days after the Effective Date or if one or more of the contingencies described in subsections (b) (c), (d) and (e) are not satisfied on or before the actual date of closing, Buyer may terminate this Agreement pursuant to the provisions of Section 18. The contingency described in subsection (a) expires at the end of the 60th day following the Effective Date. If Buyer does not terminate this Agreement in accordance with Section 18 prior to the expiration of the contingency described in subsection (a) that contingency terminates and Buyer may no longer terminate this Agreement because of the failure of that contingency. Buyer’s obligations under this Agreement are contingent on:

a. Buyer’s determination, in Buyer’s reasonable discretion, based on Buyer’s inspection of the Property and any other relevant information available to Buyer, that the physical condition of the Property, including but not limited to the Property’s environmental condition and the soil conditions on the Property are acceptable to Buyer.

b. Buyer’s execution of the Development Agreement with the City of Ramsey pursuant to which the City of Ramsey agrees to provide Buyer with tax increment financing in an amount and on terms and conditions acceptable to Buyer in Buyer’s sole and absolute discretion.

c. Seller’s title to the Land on the actual date of Closing not being subject to any covenants, conditions, restrictions, easements, liens or defects in marketability, other than Permitted Encumbrances.

d. The City Council of the City granting final approval of the Final Plat.

e. Buyer's acquisition of or determination that Buyer will be able to acquire all rezoning, subdivision, site plan approvals, variances, conditional use permits, building permits, or other municipal approvals necessary for Buyer's intended development of the Property as assisted living and memory care apartments..

15. **Seller's Contingencies.** Buyer's obligations under this Agreement are contingent on The City Council of the City granting final approval of the Final Plat. If the City Council of the City does not grant final approval of the Final Plat on or before the actual date of closing, Seller may terminate this Agreement pursuant to the provisions of Section 18.

16. **Condemnation.** If a public or private entity with the power of eminent domain commences condemnation proceedings against all of any part of the Property, Seller must immediately notify Buyer, and either Seller or Buyer may, at Buyer's sole option, terminate this Agreement pursuant to Section 1 below. The Parties will have twenty (20) days from the effective date of Seller's notice to Buyer to exercise their termination right. If neither Party terminates this Agreement within said twenty (20) day period, the Parties must fully perform their obligations under this Agreement, with no reduction in the Purchase Price, and Seller must assign to Buyer, on the Date of Closing, all of Seller's right, title and interest in any award made or to be made in the condemnation proceedings. Seller may not designate counsel, appear or otherwise act with respect to any such condemnation proceedings without Buyer's prior written consent unless Buyer fails to respond within seven (7) days to a request for such written consent.

17. **Default.** If Seller, the City or Buyer default in the performance of any of the Party's obligations under this Agreement, the non-defaulting Party may, after written notice to the defaulting Party, suspend performance of its obligations under this Agreement, and the rights of the non-defaulting Party are as follows:

a. **Buyer's Default.** If Buyer defaults in the performance of any of Buyer's obligations under this Agreement or if one or more of the representations of Buyer in Section 12(a) is inaccurate as of the Effective Date, Seller has the right to:

- i Terminate this Agreement pursuant to Minnesota Statutes, Section 559.21 and retain the Earnest Money; or
- ii If Buyer defaults in the performance of one or more of Buyer's obligations under Section 12(b)(i) or 12(b)(ii), Seller may commence an action in Anoka County, District Court to recover damages and, at Seller's option, to obtain an order compelling Buyer's specific performance of Buyer's obligations under Section 12(b)(i) or Section 12(b)(ii), as applicable. In any such action, Seller may also recover Seller's reasonable attorney's fees and costs.

The remedies set forth in this Section 17(a) are Seller's sole and exclusive remedies in the event of Buyer's default or a misrepresentation by Buyer.

b. Seller's or City's Default. If Seller defaults in the performance of any of Seller's or the City's obligations under this Agreement, Buyer may:

- i terminate this Agreement pursuant to Section 18, below; or
- ii initiate a civil action to compel Seller's and the City's specific performance of Seller's obligations under this Agreement provided that Buyer commences such action within three (3) months of the date of the default. In any such action for specific performance, Buyer may also recover Buyer's attorneys fees and costs.

The remedies set forth in this Section 17(b) are Buyer's sole and exclusive remedies in the event of Seller's.

18. **Termination of this Agreement.** Sections 14, 16 and 17(b) allow Buyer to terminate this Agreement under certain conditions. Sections 15 and 16 allow Seller to terminate this Agreement under certain conditions. The following procedures govern the Parties' exercise of their termination rights (except that Seller's termination of this Agreement pursuant to Section 17(a) is governed by Minnesota Statutes Section 559.21 and not by this Section 18):

a. A Party intending to terminate this Agreement pursuant to one of the above-referenced Sections (the "Terminating Party") must notify the non-terminating Party (the "Non-Terminating Party"), in writing and in accordance with Section 21, of the Terminating Party's intent to terminate this Agreement.

b. The Terminating Party's notice must recite the Section of this Agreement that authorizes the Terminating Party's termination of this Agreement and must describe the facts and circumstances which the Terminating Party asserts justify termination under the referenced Section.

c. The Terminating Party's notice of termination will be effective as of the date the Terminating Party deposits the notice of termination with the United States Postal Service, with all necessary postage paid, for delivery to the Non-Terminating Party via certified mail, return receipt requested at the address set forth in Section 21. If the Terminating Party delivers a notice of termination in a different manner than described in the preceding sentence, the notice of termination will be effective as of the date the Non-Terminating Party actually receives the notice of termination. The Terminating Party must also mail a copy of the notice of termination to the Parties respective attorneys as provided for in Section 21 below.

d. If the Non-Terminating Party disputes the Terminating Party's right to terminate this Agreement, the Non-Terminating Party must so notify the Terminating Party, in writing, within five (5) business days of the Non-Terminating Party's receipt of the Terminating Party's notice of termination.

e. If the Non-Terminating Party does not dispute the Terminating Party's right to terminate the Agreement, Buyer must execute and delivery to Seller a recordable termination of this Agreement or quit claim deed conveying the Property to Seller, and

upon Buyer's delivery of the recordable termination or quit claim deed to Seller, Seller must direct Title to disburse the Earnest Money to Buyer.

f. If the Parties dispute the validity of an attempted termination of this Agreement, either Party may initiate a civil action in a court of competent jurisdiction to determine the status of this Agreement, and the Party that prevails in any such action is entitled to recover the costs and reasonable attorneys' fees which such Party incurs in the action from the non-prevailing Party.

19. **Survival.** The representations, warranties, covenants, agreements and indemnities set forth in this Agreement all remain operative and will survive Closing and the execution and delivery of the deed and will not be merged therein.

20. **Assignment.** The terms and conditions of this Agreement are binding on the successors and assigns of both parties hereto. Buyer may not assign Buyer's rights or obligations under this Agreement without Seller's consent which consent Seller may grant or withhold in Seller's sole and absolute discretion. Notwithstanding the foregoing, Buyer may, upon notice to, but without the consent of, Seller, assign Buyer's rights under this Agreement to an entity owned by or under common ownership with Buyer, but such an assignment shall not relieve Buyer from liability for the performance of Buyer's obligations under this Agreement.

21. **Notice.** All notices provided for in this Agreement must be in writing, except that Buyer may deliver a notice contemplated by Section 13 to Seller via e-mail. If a notice is sent by mail, it is not effective until the date two days after the Party sending the notice deposits the notice with the United States Postal Service with all necessary postage paid, for delivery to the other Party via certified mail, return receipt requested, at the address set forth in Section 1 above. If a Party delivers a notice provided for in this Agreement in a different manner than described in the preceding sentence, notice will be effective as of the date the other party actually receives the notice. A Party sending a notice must also deliver a copy of the notice to the Parties' respective attorneys via first class United States mail or via e-mail at the addresses set forth below:

Seller's Attorney: Thomas L. Bray
Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2157
Telephone: (612) 977-8650
Fax: (612) 977-8288
E-Mail: tbray@briggs.com

Buyer's Attorney: _____

22. **Miscellaneous.**

a. Entire Agreement. This Agreement and the Option Agreement embody the entire agreement between the Parties and cannot be varied, except by the written agreement of the parties. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties other than the provisions of Section 8 of the Option Agreement and the provisions of Section 11 of the Option Agreement, to the extent necessary to enforce Section 8 of the Option Agreement.

b. Attorneys' Fees; Costs; Venue. If any legal action is commenced by any party to enforce any provision of this Agreement, the losing party will pay to the prevailing party all actual expenses, including reasonable costs and attorney's fees, incurred by the prevailing party. The prevailing party is the party who receives substantially the relief sought, whether by judgment, summary judgment, dismissal, settlement or otherwise.

c. Counterparts. This Agreement may be executed in several original counterparts, each of which and all together will constitute this Agreement in its entirety. A counterpart of this Agreement or any amendment thereto executed by a party and delivered to the other party via telecopier will be construed as a legally binding signature. Without delay, the sending party should deliver an original, signed counterpart to the other party.

d. Headings. The headings contained in this Agreement are for reference purposes only and do not in any way affect the meaning or interpretation hereof.

e. Exhibits. The Exhibits attached to this Agreement are incorporated into and are a part of this Agreement.

f. Dates. Time is of the essence with respect to this Agreement. If the final day of a period or date of performance under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of performance will be deemed to fall on the next day that is not a Saturday, Sunday or legal holiday.

g. Enforceability. If any provision of this Agreement is adjudged to be invalid or unenforceable by a court of competent jurisdiction, this Agreement should be construed as if such invalid or unenforceable provision had not been inserted herein and should not affect the validity or enforceability of the remainder of this Agreement.

h. No Third Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective permitted successors and assigns. Furthermore, nothing in this Agreement is intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over or against any party to this Agreement.

i. No Partnership. Nothing contained herein and no act by Buyer or Seller in the performances of, or in any way related to, this Agreement should be construed to create or evidence in any manner any employment, partnership, agency or joint venture

relationship between the parties hereto. Buyer and Seller represent and acknowledge that it is their mutual intention that the sole relationship created between them by this Agreement is that of vendor and purchaser.

j. Construction. All of the parties to this Agreement have participated freely in the negotiations and preparation hereof. Accordingly, this Agreement should not be construed more strictly against any one of the parties.

k. Waiver. Failure of either Buyer or Seller to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, will not constitute a waiver of Buyer's or Seller's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

l. Choice of Law. This Agreement is governed by and construed in accordance with the laws of the State of Minnesota.

[The remainder of this page is intentionally left blank.]

SELLER:

**THE HOUSING AND REDEVELOPMENT
AUTHORITY IN AND FOR THE CITY OF
RAMSEY, MINNESOTA, A PUBLIC BODY
POLITIC AND CORPORATE UNDER THE
LAWS OF THE STATE OF MINNESOTA**

By: _____
Its: Chair

By: _____
Its: Executive Director

Signature Date: _____

(Separate Signature Page to Purchase Agreement)

BUYER:

EDGEWOOD MANAGEMENT GROUP, LLC

By: _____

Its: Chief Manager

Signature Date: _____

(Separate Signature Page to Purchase Agreement)

EXHIBIT A

FILE NO. _____

ESCROW AGREEMENT

The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota, a public body politic and corporate under the laws of the State of Minnesota ("Seller"), Edgewood Management Group, a North Dakota limited liability company ("Buyer") are parties to the purchase and sale of the real estate described in the attached Purchase Agreement, dated _____, 2012 ("Purchase Agreement"). As provided in Section 7 of the Purchase Agreement, Buyer hereby deposits the sum of \$10,000.00 (the "Earnest Money") with Commercial Partners Title, LLC (the "Earnest Money Agent"). The Earnest Money Agent will hold the Earnest Money in an account insured by a governmental agency or instrumentality.

Upon notification by both parties in writing that the transaction has closed, the Earnest Money Agent will pay the Earnest Money to Seller. If either party notifies the Earnest Money Agent that the transaction has not closed, the Earnest Money Agent will pay the Earnest Money as follows:

1. Upon receipt of instruments regarding the release of the Earnest Money executed by both parties the Earnest Money Agent will deliver the Earnest Money pursuant to such instructions;
2. If Seller delivers a Notice of Cancellation of Purchase Agreement that complies with Minn. Stat. § 559.21 describing the Purchase Agreement and the Property, as defined therein, together with an Affidavit of Service evidencing service of the Notice of Cancellation on Buyer and an Affidavit of Failure to Comply with Notice completed, executed and acknowledged to the Earnest Money Agent on or before the date one hundred twenty (120) days after the Date of Closing as defined in the Purchase Agreement, the Earnest Money Agent will deliver the Earnest Money to Seller, unless Buyer has commenced an action in Anoka County District Court challenging Seller's cancellation of the Purchase Agreement, in which case Earnest Money Agent shall either continue to hold the Earnest Money or shall pay the Earnest Money into court.
3. If no disposition of the Earnest Money has been made by the date one hundred twenty (120) days from the Date of Closing, as defined in the Purchase Agreement, the Earnest Money Agent will return the Earnest Money to Buyer, unless Seller or Buyer has commenced an action in Anoka County District Court holding a right to the Earnest Money or otherwise seeking to enjoin Earnest Money Agent's disbursement of the Earnest Money to Buyer, in which case, Earnest Money Agent will either continue to hold the Earnest Money or shall pay the Earnest Money into court.

The Earnest Money Agent will have no responsibility for any decision concerning performance or effectiveness of the Purchase Agreement, and will only be responsible to act

pursuant to the procedures set forth above. Buyer and Seller hereby agree to hold the Earnest Money Agent harmless from any claims or defenses arising out of this Escrow Agreement and indemnify the Earnest Money Agent for all costs and expenses in connection with this escrow, including court costs, attorneys' fees, except for claims arising out of the Earnest Money Agent's failure to account for the funds held and costs and expenses incurred by the parties in connection with such a claim.

To the extent that the provisions of this Escrow Agreement are inconsistent with the provisions of the Purchase Agreement, the provisions of this Escrow Agreement will control.

The Earnest Money Agent will not charge a fee for acting as an escrow agent.

SELLER:

BUYER:

By: _____
Its: Chair

By: _____
Its: Chief Manager

By: _____
Its: Executive Director

By: _____

Address:

Address:

Ramsey Municipal Center
7550 Sunwood Drive
Ramsey, Minnesota 55303
Attn: Executive Director

Taxpayer Identification Number
or Social Security Number:

Taxpayer Identification Number
or Social Security Number:

The Earnest Money Agent hereby acknowledges receipt of this Agreement and the Earnest Money, to hold the Earnest Money as above specified.

Dated this ____ day of _____, 20____.

Commercial Partners Title, LLC

By: _____

Its: _____

EXHIBIT B

[Legal Description of Property to be included in a potential special service district]

Meeting Date: 01/08/2013

By: Diana Lund, Finance

Information

Title:

Consider Waiving/Not Waiving Statutory Tort Limits

Background:

The City of Ramsey annually renews its property, casualty and liability insurance coverage with the League of Minnesota Cities. As part of this renewal process, the HRA is required to pass a resolution waiving or not waiving the statutory tort limits for its liability coverage. A form is required to be filed for the City and HRA.

Attached is the Liability Coverage Waiver Form that is required to be signed after HRA approval of a resolution indicating whether the City chooses to waive or not waive the statutory tort limits. If the HRA were to waive the statutory limits, additional insurance would need to be purchased by the City to cover the increased liability. This increased liability has not currently been budgeted for, nor has the City waived the tort limits in the past.

If the HRA was to consider waiving the tort limits and purchasing additional insurance coverage, staff would request rates for the increased coverage for 2013 and bring them back for consideration at a future regularly scheduled meet of the HRA along with budget considerations.

Recommendation:

Staff recommends that the HRA adopt the resolution not waiving the Statutory Tort Limits for Liability Coverage.

MN state liability limits are \$500,000/\$1,500,000.

Funding Source:

Liability Coverage for Not-Waiving Statutory Tort Limits was included in the 2013 HRA Budget.

Council Action:

Adopt Resolution #HRA-13-01-XXX Not Waiving the Statutory Tort Limits for League of Minnesota Cities Insurance Trust Liability Coverage for the City of Ramsey.

Attachments

Resolution Not Waiving Statutory Tort Limits

Non-Waiver Form

Form Review

Inbox

Kurt Ulrich

Reviewed By

Kurt Ulrich

Date

01/03/2013 12:11 PM

Form Started By: Diana Lund

Started On: 12/26/2012 11:06 AM

Final Approval Date: 01/03/2013

introduced the following resolution and moved for its adoption:

RESOLUTION #13-01-XXX

RESOLUTION NOT TO WAIVE STATUTORY TORT LIMITS FOR LMCIT LIABILITY COVERAGE

WHEREAS, city staff has reviewed the impacts of waiving and not-waiving statutory tort limits for liability insurance with the League of Minnesota Cities Insurance Trust; and

WHEREAS, City Council has determined it is in the best interest of the City to not waive the statutory tort limits for liability insurance with LMCIT.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RAMSEY, ANOKA COUNTY, STATE OF MINNESOTA:

- 1) That the City Council of the City of Ramsey does not waive the statutory tort limits for LMCIT liability coverage.

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

and the following abstained:

and the following were absent:

Whereupon said resolution was declared duly passed and adopted by the Ramsey City Council this the 8th day of January, 2013.

Mayor

ATTEST:

City Clerk

SECTION I: LIABILITY COVERAGE WAIVER FORM

Cities obtaining liability coverage from the League of Minnesota Cities Insurance Trust must decide whether or not to waive the statutory tort liability limits to the extent of the coverage purchased. The decision to waive or not to waive the statutory limits has the following effects:

- *If the city does not waive the statutory tort limits*, an individual claimant would be able to recover no more than \$500,000. on any claim to which the statutory tort limits apply. The total which all claimants would be able to recover for a single occurrence to which the statutory tort limits apply would be limited to \$1,500,000. These statutory tort limits would apply regardless of whether or not the city purchases the optional excess liability coverage.
- *If the city waives the statutory tort limits and does not purchase excess liability coverage*, a single claimant could potentially recover up to \$1,500,000. on a single occurrence. The total which all claimants would be able to recover for a single occurrence to which the statutory tort limits apply would also be limited to \$1,500,000., regardless of the number of claimants.
- *If the city waives the statutory tort limits and purchases excess liability coverage*, a single claimant could potentially recover an amount up to the limit of the coverage purchased. The total which all claimants would be able to recover for a single occurrence to which the statutory tort limits apply would also be limited to the amount of coverage purchased, regardless of the number of claimants.

Claims to which the statutory municipal tort limits do not apply are not affected by this decision.

This decision must be made by the city council. **Cities purchasing coverage must complete and return this form to LMCIT before the effective date of the coverage.** For further information, contact LMCIT. You may also wish to discuss these issues with your city attorney.

_____ accepts liability coverage limits of \$ _____ from the League of Minnesota Cities Insurance Trust (LMCIT).

Check one:

- The city **DOES NOT WAIVE** the monetary limits on municipal tort liability established by Minnesota Statutes 466.04.
- The city **WAIVES** the monetary limits on tort liability established by Minnesota Statutes 466.04, to the extent of the limits of the liability coverage obtained from LMCIT.

Date of city council meeting _____

Signature _____ Position _____

Return this completed form to LMCIT, 145 University Ave. W., St. Paul, MN. 55103-2044