



Monday, September 23, 2019
Immediately following 7:00 p.m. Council Meeting

City Hall – Council Chambers
5200 - 85th Ave North

**THE BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF BROOKLYN PARK
SPECIAL MEETING – AGENDA #12**

**President Jeffrey Lunde, Vice President Lisa Jacobson & Treasurer Wynfred Russell
Commissioners Mark Mata, Terry Parks, Susan Pha & Tonja West-Hafner, Executive Director Kim
Berggren, Assistant Executive Director Jay Stroebel & Secretary Theresa Freund**

If due to a disability, you need auxiliary aids or services during an EDA Meeting, please provide the City with 72-hour notice by calling 763-493-8012 or FAX 763-493-8391.

Our Mission: Brooklyn Park, a thriving community inspiring pride where opportunities exist for all.

Our Goals:

*Strong Neighborhoods • Adapting to Changing Demographics • Public Safety
Financial Sustainability • Community Image • Focused Redevelopment and Development*

I. ORGANIZATIONAL BUSINESS

1. CALL TO ORDER/ROLL CALL

2. PUBLIC COMMENT AND RESPONSE

This provides an opportunity for the public to address the EDA on items, which are not on the agenda. Open Forum will be limited to 15 minutes (if no one is in attendance for the Open Forum, the Regular Meeting may begin) and it may not be used to make personal attacks, to air personality grievances, to make political endorsements or for political campaign purposes. Commissioners will not enter into a dialogue with citizens. Questions from the EDA will be for clarification only. Open Forum will not be used as a time for problem solving or reacting to the comments made but, rather, for hearing the citizen for informational purposes only.

2A. RESPONSE TO PRIOR PUBLIC COMMENT

2B. PUBLIC COMMENT

3. APPROVAL OF AGENDA

II. STATUTORY BUSINESS AND/OR POLICY IMPLEMENTATION

4. CONSENT

4.1 None.

The following items relate to the EDA's long-range policy-making responsibilities and are handled individually for appropriate debate and deliberation. (Those persons wishing to speak to any of the items listed in this section should fill out a speaker's form and give it to the Secretary. Staff will present each item, following in which audience input is invited. Discussion will then be closed to the public and directed to the EDA table for action.)

5. Public Hearings

5.1 None.

6. General Action Items

6.1 Consider Authorizing an Amendment to the EDA General Fund Budget in the Amount of \$1,247,000 to Transfer Funds to the City for Acquisition of Parcel 5 – 8832 101st Avenue North for the 101st Avenue and Highway 169 Interchange Project, CIP 4042-19.

6.1A Resolution

6.1B Location Map

6.1C Parcel Map

6.1D General Parcel Layout Map

6.1E Purchase Agreement

III. DISCUSSION - These items will be discussion items but the EDA may act upon them during the course of the meeting.

7. Discussion Items

7.1 None.

IV. WORK SESSION - This portion of the meeting will not be televised nor videotaped and will be held in the Council Chambers.

8. Work Session

8.1 None.

V. ADJOURNMENT

Since we do not have time to discuss every point presented, it may seem that decisions are preconceived. However, background information is provided for the EDA on each agenda item in advance from City staff; and decisions are based on this information and past experiences. If you are aware of information that has not been discussed, please raise your hand to be recognized. Please speak from the podium. Comments that are pertinent are appreciated. Items requiring excessive time may be continued to another meeting.

City of Brooklyn Park Request for EDA Action

Agenda Item:	6.1	Meeting Date:	September 23, 2019
Agenda Section:	General Action	Prepared By:	Jeff Holstein, Transportation Engineer Jennifer Jordan, Senior Project Manager
Resolution:	X	Presented By:	Jennifer Jordan, Senior Project Manager
Attachments:	5		
Item:	Consider Authorizing an Amendment to the EDA General Fund Budget in the Amount of \$1,247,000 to Transfer Funds to the City for Acquisition of Parcel 5 – 8832 101 st Avenue North for the 101 st Avenue and Highway 169 Interchange Project, CIP 4042-19		

Executive Director's Proposed Action:

MOTION _____, SECOND _____, TO WAIVE THE READING AND ADOPT RESOLUTION #2019-_____ AUTHORIZING AMENDMENT TO THE EDA GENERAL FUND BUDGET IN THE AMOUNT OF \$1,247,000 TO TRANSFER FUNDS TO THE CITY FOR ACQUISITION OF PARCEL 5 – 8832 101st AVENUE NORTH FOR THE 101st AVENUE AND HIGHWAY 169 INTERCHANGE PROJECT, CIP 4042-19.

Overview:

The City Council took several actions over the past five years confirming Brooklyn Park's participation in the design, construction and right of way (ROW) acquisition for an interchange on Trunk Highway 169 at 101st Avenue North. On April 2019, the City Council authorized approval of appraised values, offers for compensation, and acquisition by eminent domain for the interchange project.

The City received the final appraisals for the required right of way needs of the project in May/June and initial offers were made to the affected properties. The offers were based on independent appraisals for the fair market value of the property including severance damages (where required). The initial offers were followed by one month of negotiations, as required by the state, prior to filing for eminent domain on July 15, 2019. The city should obtain title and possession by the condemnation action via "quick-take" process of the required properties by October 14, 2019.

Staff is continuing to work with our land acquisition consultant (WSB Associates) and the City Attorney to reach negotiated settlements with all property owners. The April 2019 Council action allowed staff and consultants to negotiate reasonable settlements with the property owners with subsequent Council approval. The City Attorney and WSB indicates it is reasonable for the City's last written offer prior to filing for eminent domain to be higher than the City's appraised values. The goal of this higher offer is to minimize "risk" by avoiding condemnation, additional City Attorneys' fees, and paying the court cost and attorneys' fees of the landowner.

Parcel 5 is a 271,658 square foot parcel that includes a single-family home and is addressed as 8832 101st Avenue North. Only 32,316 square feet of the parcel is needed for the project. This portion includes the house. The City's appraiser determined value of the acquisition, including the house, at \$236,700. In compliance with State law, the City increased this value by \$13,300 to \$249,998 to account for additional cost for the landowner to purchase a comparable home in the community. Under the Uniform Relocation Act, the City must also make a replacement housing payment when the amount paid for a residential property is less than what a comparable property costs on the market at the date of displacement. WSB calculated this payment is \$75,002. As a result, the total minimum costs of acquiring the portion of Parcel 5 needed for the project was \$325,000 (exclusive of other relocation costs).

In the After Condition, access to and from the remainder of Parcel 5 would be possible, but potentially difficult. Two adjacent Parcels (6 & 8) that are also partial acquisitions will have no access in the After Condition. Potential severance damages on these parcels is a concern. On February 18, 2019 at the EDA Work Session, staff discussed the potential purchase of these three residual parcels. The possibility exists to purchase these residual parcels and combine into a developable parcel. The future Land Use Plan for this area shows Business Park. Multi-family housing would also likely be a viable use for this land.

The City needs to test each of the five parcels located in the northwest corner of the project for contamination in order to convey the project portions of these parcels to MNDOT and have MNDOT assume ownership and maintenance responsibilities for the interchange in the After Condition. The City also wanted to test the residual portions of Parcels 5, 6, and 8 for contamination to make an informed decision regarding the potential purchase and reasonable purchase price of these residual properties. The City Council approved retaining the SRF Consulting Group, Inc. and their soils and contamination sub-consultant (Braun Intertec Corp.) at the April 22, 2019 meeting to provide these services. The results of the Braun investigation indicated very minimal contamination issues on Parcel 5, with estimated remediation costing \$10,000 to \$20,000. This level of contamination should not impact the negotiations and/or purchase price for all of Parcel 5.

The City's appraiser estimated the total Parcel 5 value at \$1,073,000. This was then increased by the same amount stated above (\$13,300) to account for the Minimum Compensation Study. The total Parcel value was then estimated at \$1,086,300. This value was the original purchase offer for the property contingent upon no contamination issues and EDA and Council approval. Based on discussions with the city attorney and WSB, it was deemed reasonable to increase the city's offer for the entire parcel to \$1,620,000 to avoid risk of an even higher award and eliminate litigation costs associated with the condemnation process.

Prior experience litigating over redevelopment land values in this area suggested that there was significant potential for a dispute that would expose the City to a much higher award than its appraisal value of \$1,073,000. Further, although the City made a previous offer of settlement for the purpose of reducing the risk of an award that would require the court to award the owner his litigation costs (attorney, appraiser and potential other expert fees), some risk that the City would have to pay those costs remained. Regardless of the final award amount, the City would necessarily incur its owner litigation costs if it chose to present its case to the commissioner panel. This settlement eliminates all risk of paying the owners litigation costs and the City's litigation costs.

The landowner accepted the City's offered purchase price and the City Attorney prepared a purchase agreement to convey ownership from the landowner to the city. A copy of this document is attached. In this agreement, the owner is waiving his statutory right of first refusal. As a result, the City will not have to offer any surplus property to him before selling it to a third party.

Staff and WSB have reviewed this document and recommend that the City Council approve the purchase agreement for acquisition of all of 8832 101st Avenue North for the TH 169 / 101st Avenue Interchange Project. The City Council will need to take formal action to transfer the residual portion of the parcel to the EDA at a later date.

Primary Issues/Alternatives to Consider:

The EDA action will allow for transfer of EDA general funds to the City for acquisition of Parcel 5 in 2019. Acquisition by negotiation for all of Parcel 5 will allow the City the opportunity to provide access to the residual portions of Parcels 6 and 8 which should mitigate the potential for large severance damages for those two parcels.

Budgetary/Fiscal Issues:

The Interchange Project (No. 4042-19) is included in the City's 2019-2023 Capital Improvement Plan. Funding is planned to come from the City's EDA, special assessments and grants. The \$1,620,000 would include approximately \$373,000 for the project portion and \$1,247,000 for the remaining portion, which would be expected to be paid for with EDA funds.

Attachments:

- 6.1A RESOLUTION
- 6.1B LOCATION MAP
- 6.1C PARCEL MAP
- 6.1D GENERAL PARCEL LAYOUT MAP
- 6.1E PURCHASE AGREEMENT

THE BROOKLYN PARK ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF BROOKLYN PARK

RESOLUTION #2019-

AUTHORIZING AN AMENDMENT TO THE EDA GENERAL FUND BUDGET IN THE AMOUNT OF \$1,247,000 TO TRANSFER FUNDS TO THE CITY FOR ACQUISITION OF PARCEL 5 – 8832 101st AVENUE NORTH FOR THE 101st AVENUE AND HIGHWAY 169 INTERCHANGE PROJECT, CIP 4042-19

WHEREAS, the Brooklyn Park Economic Development Authority (the “EDA”) and the City of Brooklyn Park (the “City”) are undertaking a highway interchange project located at Highway 169 and 101st Avenue in the City (the “Project”), which is expected to cost approximately \$28.2 million;

WHEREAS, the EDA and the City have determined the Project is needed because it contributes to the economic development potential of the community by allowing nearby business parks and mixed-use neighborhoods to expand;

WHEREAS, EDA desires to transfer \$1,247,000 from its general fund budget to the City for the acquisition of Parcel 5 – 8832 101st Avenue North, a portion of which will be used for the Project and a portion of which will be held for future redevelopment; and

WHEREAS, the EDA has determined that it is necessary to amend its general fund budget to provide for the transfer of money to the City in order for the City to acquire such property.

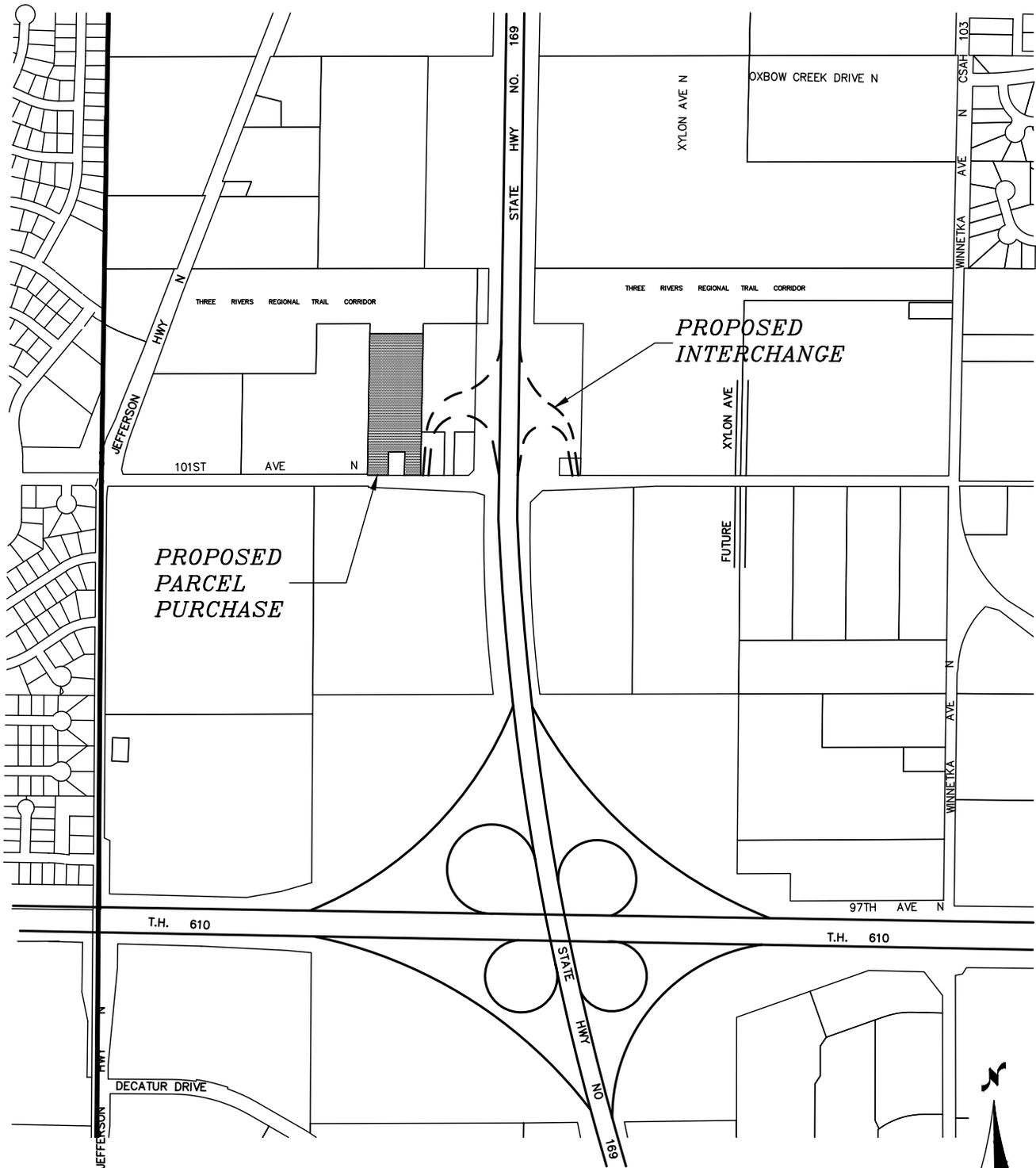
NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Brooklyn Park Economic Development Authority (the “Board”) as follows:

1. The EDA finds (a) that its objectives in encouraging development, redevelopment and expansion of commercial properties within the City would be advanced by the Project and (b) that the expenditure of EDA funds for the acquisition of Parcel 5 – 8832 101st Avenue North for the Project and for redevelopment purposes is necessary in order to fully develop that area of the City.

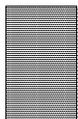
2. The EDA hereby appropriates and commits to transfer to the City up to \$1,247,000 to pay costs of the acquisition of Parcel 5 – 8832 101st Avenue North and authorizes the expenditure of available EDA general fund dollars for such purpose in the amount of up to \$1,247,000 or such amount as determined necessary for such purpose by the Executive Director of the EDA in consultation with City Engineer.

3. The EDA hereby authorizes an amendment to its budget consistent with the transfer authorized above for the acquisition of Parcel 5 – 8832 101st Avenue North.

LOCATION MAP



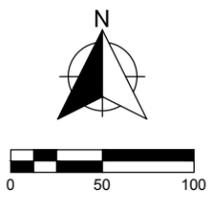
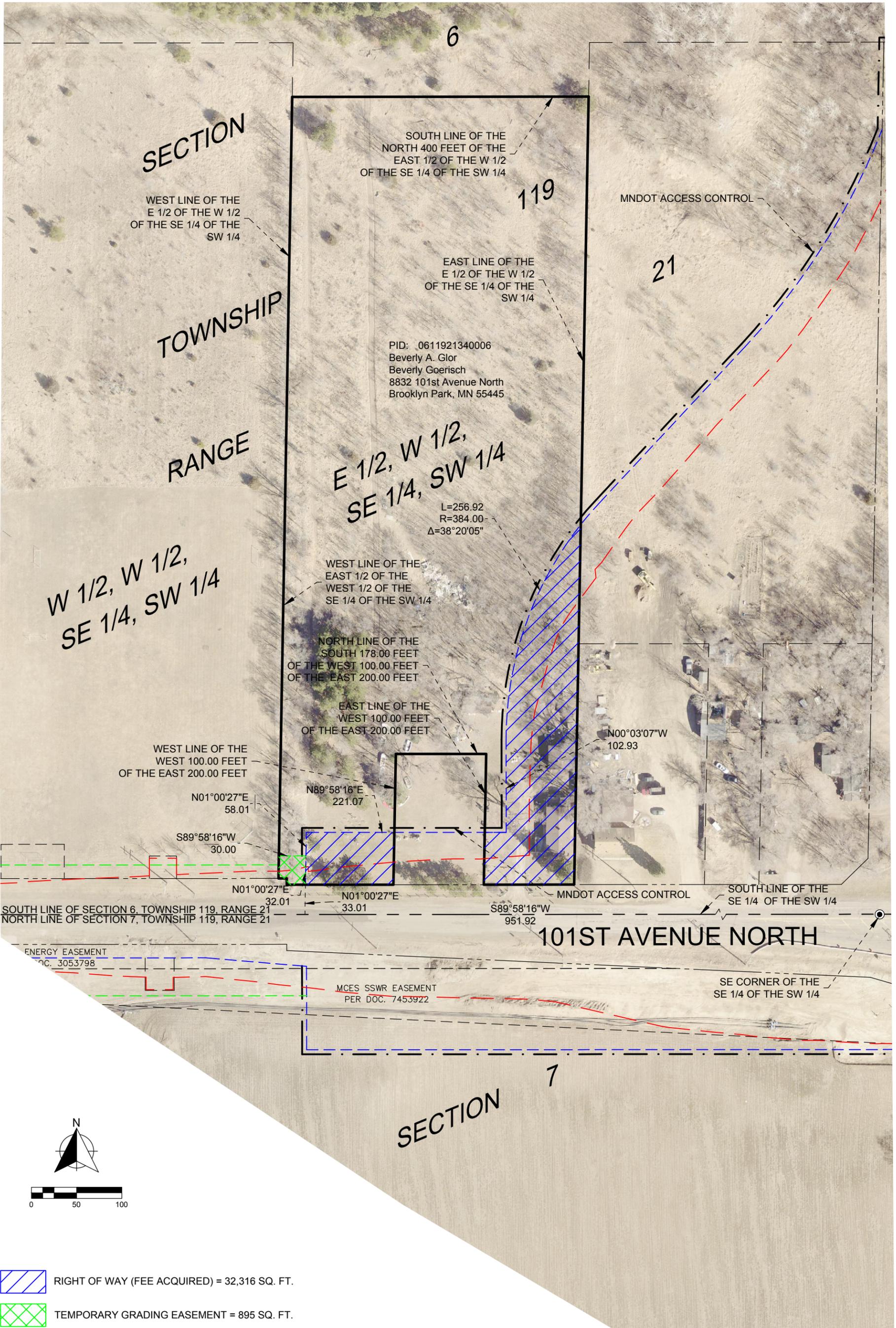
LEGEND



8832 101ST AVE N.



NO SCALE



- RIGHT OF WAY (FEE ACQUIRED) = 32,316 SQ. FT.
- TEMPORARY GRADING EASEMENT = 895 SQ. FT.
- CONSTRUCTION LIMITS

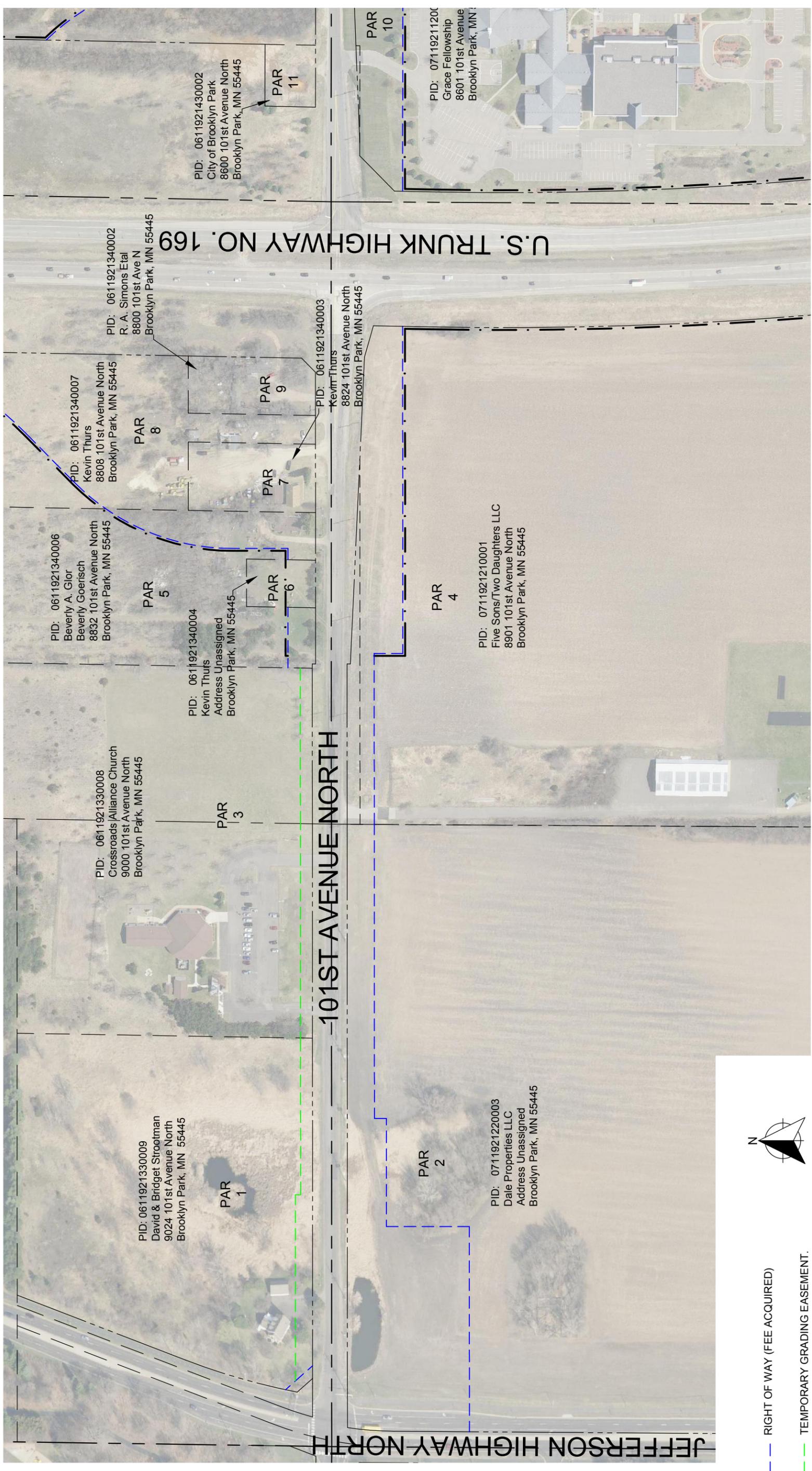
Prepared by:



TH 169 / 101st Avenue Interchange
Easement Exhibit
Parcel 5
8832 101st Avenue North
Brooklyn Park, Minnesota

WSB Project No. 012336-000 Date: 3/1/19





--- RIGHT OF WAY (FEE ACQUIRED)
--- TEMPORARY GRADING EASEMENT.



Prepared by:



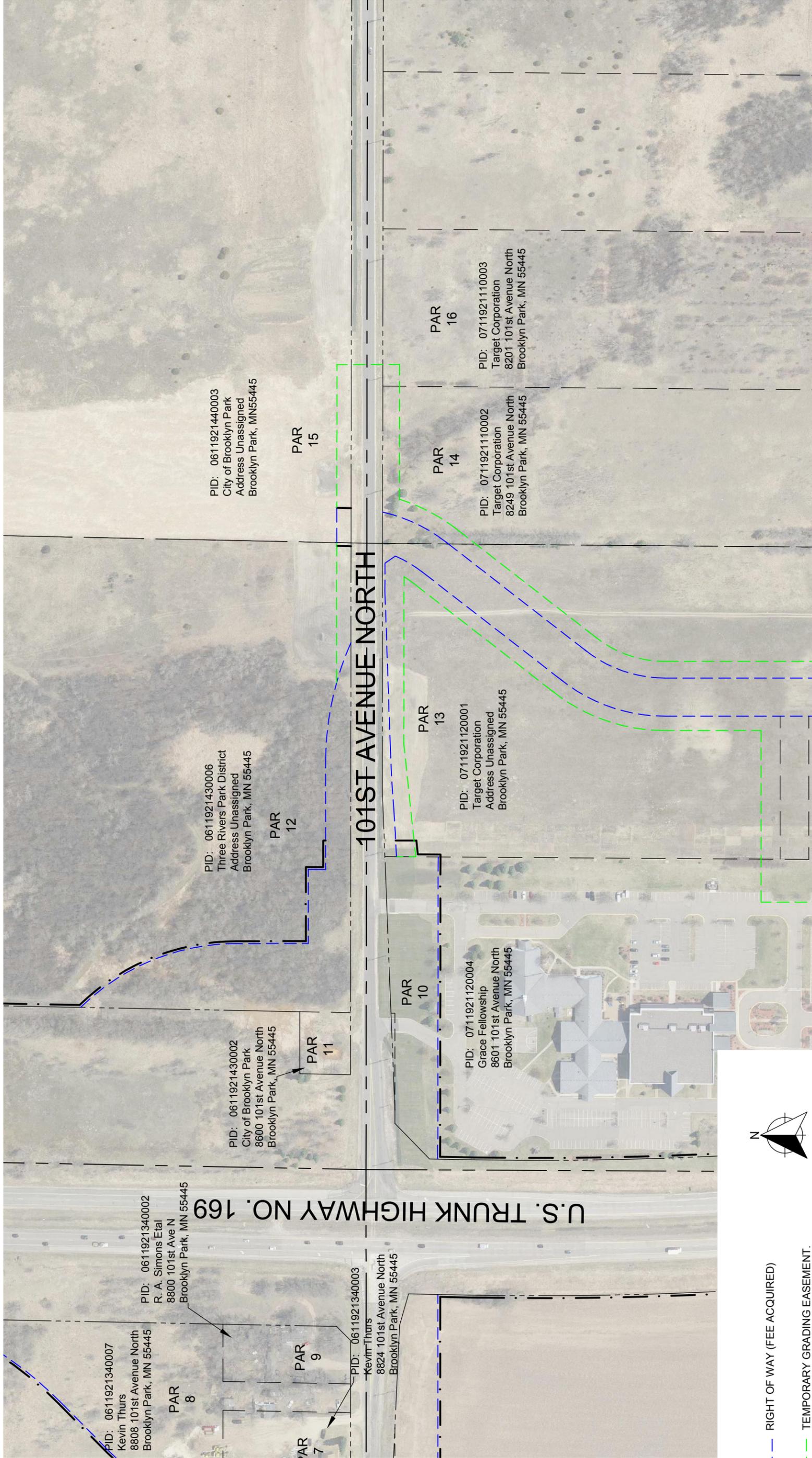
TH 169 / 101st Avenue Interchange
Parcel Layout Exhibit
 Brooklyn Park, Minnesota

WSB Project No. 0123336-000

Date: 12/10/18



SHEET 1 / 2



PID: 0611921340007
Kevin Thurs
8808 101st Avenue North
Brooklyn Park, MN 55445

PID: 0611921340002
R. A. Simons Etal
8800 101st Ave N
Brooklyn Park, MN 55445

U.S. TRUNK HIGHWAY NO. 169

PID: 0611921430002
City of Brooklyn Park
8600 101st Avenue North
Brooklyn Park, MN 55445

PID: 0611921430006
Three Rivers Park District
Address Unassigned
Brooklyn Park, MN 55445

PID: 0611921440003
City of Brooklyn Park
Address Unassigned
Brooklyn Park, MN 55445

PID: 0611921340003
Kevin Thurs
8824 101st Avenue North
Brooklyn Park, MN 55445

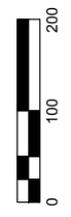
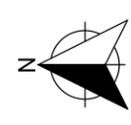
PID: 0611921430002
City of Brooklyn Park
8600 101st Avenue North
Brooklyn Park, MN 55445

PID: 0711921120004
Grace Fellowship
8601 101st Avenue North
Brooklyn Park, MN 55445

PID: 0711921120001
Target Corporation
Address Unassigned
Brooklyn Park, MN 55445

PID: 071192110002
Target Corporation
8249 101st Avenue North
Brooklyn Park, MN 55445

PID: 071192110003
Target Corporation
8201 101st Avenue North
Brooklyn Park, MN 55445



- RIGHT OF WAY (FEE ACQUIRED)
- TEMPORARY GRADING EASEMENT.

Prepared by:



TH 169 / 101st Avenue Interchange
Parcel Layout Exhibit
Brooklyn Park, Minnesota

WSB Project No. 0123336-000

Date: 12/10/18



SHEET 2 / 2

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement") is made as of _____, 2019, by and between Beverly A. Goerisch and Donald G. Goerisch, wife and husband ("Sellers"), and the City of Brooklyn Park, a municipal corporation under Minnesota law ("Purchaser").

RECITALS:

A. Sellers are the owners of real property legally described on Exhibit A attached hereto and incorporated herein (the "Property").

B. Sellers have agreed to convey the Property to Purchaser and Purchaser desires to purchase the same, pursuant to, and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter expressed, and other good and valuable consideration, the receipt, sufficiency and mutuality of which are hereby acknowledged, Purchaser and Sellers agree as follows:

1.0 Property To Be Purchased.

- (a) Sellers agree to sell to Purchaser and Purchaser agrees to purchase from Sellers the real property which is commonly known as 8832-101st Avenue North, Brooklyn Park, MN 55445, which is legally described on Exhibit A attached hereto, and which is identified by Hennepin County as tax identification parcel number 06-119-21-34-0006 ("Property"), on terms satisfactory to the Purchaser, and subject to the parties' compliance with the terms and conditions of this Purchase Agreement.
- (b) Pursuant to this Agreement and in return for the payment of the purchase price herein, Seller is also selling to Purchaser and Purchaser is also purchasing from Seller all improvements located on the Property.
- © Purchaser has filed eminent domain proceedings in Hennepin County District Court File No. 27-CV-19-1198 to acquire the necessary portion of the Property which is legally described in Exhibit C attached hereto ("Necessary Property").
- (d) Sellers waive any objections to the public purpose and necessity of Purchaser's taking of the necessary portion of the Property in the eminent domain proceeding and all objections which they could otherwise assert to the procedures followed by Purchaser in authorizing or prosecuting said eminent domain proceeding.

2.0 Purchase Price and Earnest Money. The purchase price to be paid by Purchaser for the Property is One Million Six Hundred Twenty Thousand and no/100ths Dollars (\$1,620,000.00) ("Purchase Price"). Within five days after execution of this Agreement by Sellers and Purchaser, Purchaser shall deposit the amount of \$5,000.00 with First American Title Insurance Company, 701 Xenia Avenue South, Ste. 450, Golden Valley, MN 55416 ("Title Company") as earnest money to be held in accordance with an escrow agreement in the form attached hereto

as Exhibit B and incorporated herein, which earnest money and accrued interest shall be applied in part payment of the Purchase Price at closing. The balance of the Purchase Price, plus or minus pro-rations and adjustments as set forth herein, will be paid to Sellers at closing.

- 3.0 Closing Date. The closing of the purchase and sale contemplated by this Agreement shall occur within 20 days after the last of the following to occur ("Effective Date"): (a) execution of this Agreement by the Sellers; (b) execution of this Agreement on behalf of the Purchaser; and (c) waiver by Purchaser or expiration of the Due Diligence Period. Purchaser may extend the closing date and the due diligence period by an additional 30 days by giving written notice of its intention to do so. The closing shall take place at the office of Title Company or at such other place as the parties shall mutually agree. Sellers agree to deliver possession of the Property to Purchaser on the closing date, except that they may continue to occupy the dwelling on the Property until 60 days following the closing date. Sellers shall be responsible for the payment of all utilities used on the Property until Sellers' vacation of the Property, and will maintain insurance insuring the Property until Sellers' vacation of the Property.
- 4.0 Evidence of Title. As soon as practicable but no later than 10 days after the Effective Date of this Agreement, Purchaser shall order and provide to Sellers, at Purchaser's sole cost and expense, a preliminary commitment for an ALTA Owner's Policy of Title Insurance, issued by Title Company, in the amount of the Purchase Price, to insure Purchaser's title to the Property, including copies of documents referenced in Schedule B thereof (collectively, the "Title Commitment"). The Title Company shall provide an electronic version of the commitment and all documents described in the commitment. The Title Commitment shall have an effective date of no earlier than the Effective Date of this Agreement. The Title Commitment shall include affirmative coverages for appurtenant easements, if any, and zoning, access, contiguity, tax parcel and comprehensive endorsements. The Title Commitment shall obligate Title Company to delete standard exceptions from the Title Commitment and the policy upon Title Company's receipt of a seller's affidavit from Sellers.
- 5.0 Purchaser's Conditions to Closing. The closing of the transaction contemplated by this Agreement and the obligations of the Purchaser to purchase the Property shall be subject to the following conditions:
- (a) Documents. Within five days of the Effective Date, Sellers shall deliver to Purchaser those documents listed herein which are in Sellers' reasonable control or possession.
 - (b) City Council Approval. Promptly following signing of this Agreement by Sellers, Purchaser shall submit this agreement to the City Council of Purchaser for approval and shall undertake to obtain City Council approval of this Agreement within 30 days following execution of this Agreement by Sellers.

- (c) Inspection and Structural. After execution of this Agreement on behalf of Purchaser, Purchaser, and its agents, employees, contractors and invitees, may, following reasonable notice to and cooperation with Sellers, enter upon the Property in order to perform such engineering, environmental inspections and testing, other testing and other inspections as Purchaser may deem necessary, provided that neither Purchaser nor its agents shall engage in any intrusive testing without the prior written consent of Sellers, which consent shall not be unreasonably withheld, conditioned or delayed. Purchaser hereby agrees to indemnify, defend and hold Sellers harmless from and against any and all losses, claims, causes of action, liabilities and costs of defense (including reasonable attorney's fees) incurred by Sellers arising out of the actions of Purchaser, its agents, employees, contractors or invitees in the course of any such entry upon the Property. In the performance of any inspection to or upon the Property and during any access to the Property, Purchaser and his agents shall comply with all applicable laws and regulations with respect to the inspection and access and shall refrain from interfering with Sellers' use of the Property. Purchaser shall assume all liability for any damages to Property or injury to persons resulting from, arising out of or incurred in connection with any inspection or access to the Property by Purchaser or its agents. Sellers will also provide access to the Purchaser of all reports and records, correspondence and other documentation in the possession of Sellers relevant to the Property,
- (d) Environmental. Within 5 days after execution of this Agreement on behalf of Purchaser, Seller shall provide Purchaser with copies of all environmental studies and reports relating to the Property which are in Sellers' possession (collectively, the "Reports"), including, but not limited to, Phase One and Phase Two environmental assessments, wetland studies, or any other pertinent studies or reports. Purchaser shall have the right to perform such testing on the Property as it may elect at its sole cost and expense in accordance with Section 5.0 (c) above. If, prior to Closing, Purchaser, in its sole discretion, objects to the environmental conditions present on the Property, because Purchaser or its consultants find "hazardous substances" or "pollutants", as those terms are defined under state or federal law, to be present on the Property in concentrations which exceed those permitted under regulations of the Minnesota Pollution Control Agency or United States Environmental Protection Agency, Purchaser may rescind this Purchase Agreement, and instead proceed to acquire title and possession of only the Necessary Property in the eminent domain proceeding, by deposit with the district court administrator or payment to the Sellers and any lienholders on the Property of the City's approved appraisal amount for the Necessary Property. Notwithstanding Purchaser's rescission of this Agreement, subparagraphs © and (d) of Section 1 of this Agreement shall survive rescission of this Agreement.
- (e) Representations and Warranties. The representations and warranties in this Purchase Agreement shall be true at the time of closing as though such representations and warranties were made at such time.

- (f) Marketability. Marketability of title to said Real Property shall have been established or waived pursuant to the provisions of this Purchase Agreement.

6.0 Representations and Warranties.

A. Sellers make the following representations and warranties to Purchaser:

- (i) Sellers have the full and complete authority to sell the Property.
- (ii) Sellers are not foreign persons, or a foreign partnership, foreign trust or foreign estate as those terms are defined in Section 1445 of the Internal Revenue Code.
- (iii) There are no unsatisfied judgments or state or federal tax liens of record against Sellers, and there have been no labor or materials furnished to the Property for which payment has not been paid. If there are unsatisfied liens or judgments against a person with a name similar to Sellers, they are not against Sellers, and Sellers will provide evidence satisfactory to Title Company, prior to Closing, that such liens or judgments are not against Sellers. Sellers have previously had indebtedness against them discharged in bankruptcy. At or before Closing, Sellers will provide Purchaser such recordable documents as Title Company may require in order to deliver marketable title of the Property to Purchaser at Closing, notwithstanding such previous bankruptcy.
- (iv) To Sellers' knowledge, there are no unrecorded mortgages, contracts, purchase agreements, options, leases, easements or other agreements or interest relating to the Property.
- (v) Sellers have not received notice of any new public improvement project(s), the cost of which a governmental entity may assess against the Property.
- (vi) To Sellers' knowledge, the Property is not in violation of any statute, law, ordinance or regulation, and there is no action, litigation, governmental investigation, condemnation or administrative proceeding of any kind pending or, to Sellers' best knowledge, threatened, against or involving any portion of the Property, except Purchaser's eminent domain proceeding to acquire a portion of the Property in District Court File No. 27-CV-19-11928, which is now pending.
- (vii) To Sellers' knowledge, Sellers are not in default in the performance of any of their obligations under any easement agreement, covenant, condition, restriction, or other instrument or agreement relating to the Property.

- (viii) There are not now, nor to Sellers' actual knowledge have there ever been, underground or above ground storage tanks of any size or type located on the Property nor any Hazardous Substances (defined below) located on the Property in violation of applicable governmental requirements, and the Property has not been used in connection with the generation, disposal, storage, treatment or transportation of Hazardous Substances in violation of applicable governmental requirements. To Sellers' actual knowledge, no activity has been undertaken on the Property that would cause or contribute to the discharge of Hazardous Substances or of fluids into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions that would require a permit under any federal or state law or local ordinance. For purposes of this Agreement, the term "Hazardous Substances" includes but is not limited to substances defined as "hazardous substances," "toxic substances," "hazardous wastes" "pollutants" or contaminants" under federal or Minnesota law. The term "hazardous substance" shall also include 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).
- (ix) For the purposes of satisfying any applicable requirements of Minn. Stat. §152.0275, Sellers disclose and certify that, to the best of their knowledge, methamphetamine production has not occurred on the Property.
- (x) That prior to closing, Sellers will have terminated any and all existing leases, rental agreements or license agreements with any tenants of the Property.
- (xi) At closing, Sellers will execute a waiver of right of first refusal form pursuant to Minn. Stat., Section 117.226 in the form which is attached hereto as Exhibit C.

The foregoing representations and warranties shall be accurate on the date hereof and on the date of closing. If, at any time prior to the closing, Sellers acquire actual knowledge of events or circumstances which render the representations and warranties set forth in this section inaccurate in any respect, Sellers shall immediately notify Purchaser in writing and Purchaser shall have the right to terminate this Agreement. At closing Sellers shall execute and deliver to Purchaser a certificate of Sellers certifying that the representations contained in this section are true as of the closing or, if such representations are no longer true, describing, in detail, the reasons why the representations are no longer true (the "Bring Down Certificate"). Sellers will indemnify Purchaser, its successors and assigns, against and will hold Purchaser, its successors and assigns harmless from, any loss, liability, costs, expenses or damages, including reasonable attorney's fees, that Purchaser incurs because of the Sellers' breach of any of the above representations and warranties, the inaccuracy of any of the above representations when made or remade, or Sellers' failure to notify Purchaser, before the Closing, if the representations set forth above become inaccurate and Sellers actually know of such inaccuracy. The representations, warranties and indemnification set forth above shall survive the closing of this transaction and

Sellers' delivery of the Deed for a period of 12 months.

B. Purchaser makes the following representations and warranties to Sellers:

- (i) The individuals executing this Agreement on behalf of Purchaser have the requisite authority to execute this Agreement and such other documents as are contemplated or to be delivered by Purchaser herein, and to bind Purchaser thereto; and Purchaser has the full and complete authority to purchase the Property.
- (ii) Purchaser shall promptly pay, when due, any and all charges for engineering, surveying or other studies, reports, assessments or investigations which are commissioned or requested by Purchaser and not the responsibility of Sellers under this Agreement.
- (iii) Purchaser shall not change the zoning, subdivide the Property, or complete any other administrative or physical change to the Property prior to closing.

The representations and warranties contained in this section shall be true and correct on the Effective Date and closing date.

7.0 Real Estate Taxes and Special Assessments. The Parties shall pay the real estate taxes and special assessments as follows:

- (a) At or before the closing, Sellers shall pay all real estate taxes, and special assessments payable therewith and any penalties and interest thereon due and payable with respect to the Property in all years prior to the year of closing, including all deferred taxes attributable to years prior to the year of closing.
- (b) Purchaser and Sellers shall prorate the real estate taxes due and payable in the year of closing, on a per diem basis using a calendar year, to the date of the closing. Sellers shall pay the balance of all special assessments levied, pending, certified or deferred as of the Effective Date, except in no event shall Sellers be required to pay special assessments imposed or to be imposed against the Property by Purchaser in connection with Purchaser's proposed 101st Avenue and Highway 169 Interchange Project.
- (c) Purchaser shall pay all real estate taxes due and payable in the years following the year of closing.

8.0 Closing Documents. At or prior to closing, the parties shall execute and deliver the following:

- (a) Warranty Deed conveying title to Purchaser;
- (b) Assignment of all Licenses and Permits needed to operate the Property, if any;

- (c) Assignment of all Contracts, Warranties and Guarantees, if any;
- (d) Any documents reasonably required by the title company;
- (e) Affidavit Regarding Seller (MN Uniform Conveyancing Blanks Forms);
- (f) FIRPTA Affidavit. A non-foreign affidavit, properly executed, containing such information as is required by Internal Revenue Code Section 1445 (b)(2) and its regulations;
- (g) IRS Form. A designation agreement designating the "reporting person" for the purposes of completing Internal Revenue Form 1099 and, if applicable, Internal Revenue Form 8594;
- (h) Well Certificate. A certificate (or statutory statement on the Deed) signed by Sellers warranting that there are no wells on the Property within the meaning of Minn. Stat. Section 1031, or if there are wells, a Well Certificate in the form required by law;
- (i) Storage Tanks. If the Property contains or contained a storage tank, an affidavit with respect thereto, as required by Minn. Stat. Sec. 116.48;
- (j) Bring Down Certificate from Seller;
- (k) A Release and Termination of Right of First Refusal in the form attached hereto as Exhibit D; and
- (k) All other documents required hereunder to effectuate the provisions of this Purchase Agreement.

9.0 Closing Costs. The following costs and expenses shall be paid in connection with the closing:

- (a) Sellers shall pay the cost of:
 - (i) All expenses to correct any title objections that Sellers elect to undertake pursuant to section 4.0 above;
 - (ii) Proration as of the closing date of all utilities and operating expenses and rents;
 - (iii) Proration as of the closing date of real property taxes and installments of special assessments, as specified in section 7.0 above; and
 - (iv) All attorneys' fees and expenses incurred by Seller (but, in no event, shall Sellers be required to pay attorney's fees and expenses incurred by Purchaser in the purchase of the Property or negotiation of this Agreement).

- (v) All real estate commissions, if any.
- (b) Purchaser shall pay the cost of:
- (i) UCC searches;
- I.
- (ii) Additional soil reports or inspection reports required by Purchaser;
 - (iii) Any recording fees for recording the Deed;
 - (iv) The Title Company's closing fee;
 - (v) Proration as of the closing date of real property taxes and installments of special assessments as provided in section 7.0 above;
 - (vi) Proration as of the closing date of all utilities and operating expenses and rents as provided herein;
 - (vii) All attorneys' fees and expenses incurred by Purchaser;
 - (viii) All of the fees associated with the Title Policy and half of the escrow and closing fees;
 - (ix) All other closing fees customarily paid for by Purchaser in a transaction of this type;
 - (x) Application fees for city approvals and all costs of generating necessary city submittals with the exception of the proposed preliminary and final plat approvals;
 - (xi) All grading, drainage, compaction, and other related site work necessary for the construction of the Project.
 - (xii) All fees associated with the issuance of the Owner's Title Insurance Commitment, including State and Federal Tax Liens, Judgment and Bankruptcy Searches;
 - (xiii) All State Deed Taxes and/or transfer taxes on deeds; and
 - (xiv) Recording fees on all releases and satisfactions of existing mortgages;

10.0 Title To Be Delivered. Sellers agrees to convey marketable fee simple title in the Property to Purchaser at closing subject only to:

- (a) Covenants, conditions, restrictions, declarations and easements of record, if any, without effective forfeiture provisions and which do not interfere with present Improvements;

- (b) Utility and drainage easements which do not interfere with present Improvements;
- (c) Reservations of minerals or mineral rights by the State of Minnesota, if any;
- (d) Building, zoning and subdivision laws, ordinances and State and Federal regulations which do not interfere with present Improvements.

11.0 Operation Prior to Closing. During the Executory Period, Sellers shall operate and maintain the Property in the same manner as it is being operated on the date hereof and in accordance with prudent and reasonable standards. Sellers shall execute no contracts, leases, or other agreements regarding the Property during the Executory Period which extend beyond the closing date without the prior written consent of Purchaser, which consent may be withheld by Purchaser at its sole discretion. Sellers shall not pledge or transfer any interest in or encumber or permit the encumbrance of the Property with any lien, easement, interest or agreement from and after the Effective Date without the prior written consent of Purchaser, which may be withheld in Purchaser's sole and absolute discretion.

12.0 Default.

- (a) If Purchaser defaults in the performance of Purchaser's obligations under this Agreement due to no fault of Sellers, then Sellers may either: (i) terminate this Agreement in accordance with Minnesota Statutes, Section 559.21; or (ii) seek specific performance of this Agreement.
- (b) If Sellers default in the performance of Sellers' obligations under this Agreement due to no fault of Purchaser, then Purchaser may either (i) terminate this Agreement in accordance with Minnesota Statutes, Section 559.21; or (ii) seek specific performance of this Agreement.
- (c) Notwithstanding anything in this Agreement to the contrary, any action by Sellers for specific performance must be commenced no later than 90 days after the date of the occurrence of Purchaser's default. The limitation set forth in the preceding sentence shall not apply to claims for indemnification or contribution specifically provided for in this agreement, if any
- (d) Sellers waive any objection they may have to the public purpose and necessity of the condemnation by Purchaser of the Necessary Property for road reconstruction and related purposes which is now pending in Court File No.27-CV-19-11928, and waive any objection to the filing by the district court of an order approving the Purchaser's taking and use of quick take to acquire title and possession of said portion of the Property, as provided in Purchaser's petition for condemnation in said action.

13.0 Assignment. Prior to the closing, Purchaser shall be entitled to assign the Agreement to another legal entity. Such entity will assume all of the rights, duties and obligations of the Purchaser under the Agreement and Purchaser under the Agreement shall be released

this Agreement in writing prior to the expiration of the 30 day period. Unless extended by Purchaser pursuant to Section 3, should the 30 days expire without any such notice, it will be deemed that the Purchaser has waived the right to terminate this Agreement due to the physical condition of the Property.

(e) Amendment. This Purchase Agreement shall be amended only by a written instrument signed by Seller and Purchaser.

(f) Successors and Assigns. This Purchase Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.

(g) Headings. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as defining or as limiting in any way the scope or intent of the provisions hereof.

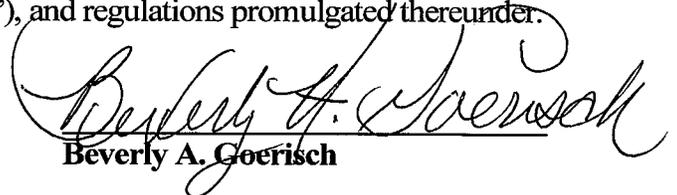
(h) Invalidity. If for any reason any portion or paragraph of this Agreement shall be declared void or unenforceable by any court of law at equity it shall only affect such particular portion or paragraph of this Agreement and the balance of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

(i) Assignability. This Purchase Agreement and the rights hereunder may not be assigned by either party, except that Purchaser may assign its rights to an entity to be formed at or prior to Closing and Sellers may assign their rights for purposes of effecting a tax free exchange.

(j) Counterparts. This Purchase Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same Purchase Agreement.

(k) Relocation Benefits. Nothing in this agreement prohibits Sellers from pursuing all relocation benefits for which they are eligible under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 ("URA"), and regulations promulgated thereunder.

SELLERS


Beverly A. Goerisch


Donald G. Goerisch

PURCHASER

City of Brooklyn Park

By _____
Jeffrey Lunde, Mayor

Attest: _____
Jay Stroebel, City Manager

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The East Half of the West Half of the Southeast Quarter of the Southwest Quarter, except the South 178 feet of the West 100 feet of the East 200 feet thereof, and except the North 400 feet thereof, Section 6, Township 119, Range 21, Hennepin County, Minnesota.

Property Identification No.- Property I.D. 06-119-21-34-0006, Torrens, Certificate No. 770376
Property Address: 8832 – 101st Av N, Brooklyn Park, MN 55445

**EXHIBIT B
ESCROW AGREEMENT**

Beverly A. Goerisch and Donald G. Goerisch ("Sellers"), and City of Brooklyn Park ("Purchaser") are parties to the purchase and sale of the real estate described in the attached Real Estate Purchase Agreement, dated 9-9-19, 2019 ("Purchase Agreement"). As provided in section 2.0 of the Purchase Agreement, Purchaser hereby deposits the sum of Five Thousand Dollars (\$5,000.00) (the "Earnest Money") with the First American Title Insurance Company (the "Escrow Agent").

Escrow Agent agrees to disburse the Earnest Money in accordance with the terms of the Purchase Agreement and disburse the same strictly in accordance with such terms. The Escrow Agent will hold the Earnest Money in an interest-bearing account, if such account is reasonably available, with an institution whose accounts are insured by a governmental agency or instrumentality. If interest accrues on the Earnest Money it will accrue to Purchaser unless Purchaser defaults under the terms of the Purchase Agreement and Seller elects to retain the Earnest Money as liquidated damages in which case Seller will be entitled to such interest, if any.

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

The Escrow Agent's fee for acting as an escrow agent is \$ _____ and the Purchaser agrees to pay for this cost.

SELLERS:


Beverly A. Goerisch


Donald G. Goerisch

PURCHASER:

CITY OF BROOKLYN PARK

Jeffrey Lunde, Mayor

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

Dated this ____ day of _____, 2019.

By: _____

Its: _____

EXHIBIT C

Legal Description of the Necessary Portion of the Subject Property (“Necessary Property”)

All that part of the Subject Property (described above), lying easterly, southerly, and southeasterly of the following described line:

Commencing at the southeast corner of Southeast Quarter of the Southwest Quarter; thence South 89 degrees 58 minutes 16 seconds West, assumed bearing, along the south line of said Southeast Quarter of the Southwest Quarter, 951.92 feet; thence North 01 degrees 00 minutes 27 seconds East, 33.01 feet to the northerly right of way line of 101st Avenue North and the beginning of the line to be described; thence North 01 degrees 00 minutes 27 seconds East, 58.01 feet; thence North 89 degrees 58 minutes 16 seconds East, 221.07 feet; thence North 00 degrees 03 minutes 07 seconds West, 102.93 feet; thence northerly, 256.92 feet along a tangential curve concave to the east, having a radius of 384.00 feet and a central angle of 38 degrees 20 minutes 05 seconds to the east line of the said East Half of the West Half of the Southeast Quarter of the Southwest Quarter and there terminating.

Description of access to be taken

All right of access, being the right of ingress to and egress from the hereinbefore described property to be taken in fee.

Exhibit D

RELEASE AND TERMINATION OF RIGHT OF FIRST REFUSAL

Beverly A. Goerisch and Donald G. Goerisch (“Owners”), to evidence the release and termination of a right of first refusal under Minnesota Statutes, Section 117.226, state as follows:

1. Owners were the prior owners of a property located at 8832- 101st Avenue North, Brooklyn Park, Minnesota, and legally described in the attached Exhibit A (the “Property”);
2. On the ____ day of _____, 2019, Owners executed a purchase agreement with the City of Brooklyn Park in which Owners agreed to sell the Property to the City of Brooklyn Park a political subdivision of the State of Minnesota (the “City”);
3. In the Purchase Agreement, in consideration for the City’s agreement to acquire the entire Property, Owners agreed to release their right of first refusal under Minnesota Statutes, Section 117.226;
4. Owners conditioned such release upon the City’s recording of a deed-in-lieu of condemnation from the Owners conveying to the City title to the entire Property.
5. As such, I hereby attest that the condition to Owners’ release has been fulfilled and their right-of-first-refusal under Minnesota Statutes, Section 117.226 is hereby terminated.

[remainder of page intentionally blank]

Dated _____, 2019

Beverly A. Goerisch

EXHIBIT A TO RELEASE OF FIRST REFUSAL

LEGAL DESCRIPTION OF PROPERTY

The East Half of the West Half of the Southeast Quarter of the Southwest Quarter, except the South 178 feet of the West 100 feet of the East 200 feet thereof, and except the North 400 feet thereof, Section 6, Township 119, Range 21, Hennepin County, Minnesota.

Property Identification No.- Property I.D. 06-119-21-34-0006, Torrens, Certificate No. 770376
Property Address: 8832 – 101st Av N, Brooklyn Park, MN 55445