



207 Lafayette Street
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Mile 725 Upper Mississippi

AGENDA

DATE: September 10, 2020
TIME: 4:00 P.M.
PLACE: Via Zoom (See Attached Notes)

1. **CALL TO ORDER - APPROVAL OF MINUTES**
Approval of the minutes from the August 12, 2020 Meeting
2. **REMARKS BY PRESIDENT**
3. **PUBLIC HEARINGS**
 - A. **Public Hearing Sale of Land in J T Schain Industrial Park**
Commissioners will hold a public hearing and consider a resolution to sell a 2.7 acre parcel in J T Schain Industrial Park to Hiatt Industries, LLC.
4. **NEW BUSINESS**
 - A. **Black Squirrel Properties – Proposed Amendments to JT Schain Restrictive Covenants**
Michael Onstad, owner of Black Squirrel Properties has proposed amendments to the covenants at the J T Schain Industrial Park. Since the proposed amendments must be either approved or denied by J T Schain property owners, staff would like direction on how Commissioners would like staff to vote for or against the proposed changes.
 - B. **Support of Business Assistance/Subsidy to BCS Automotive Enterprises, LLC**
As part of the financing package for the BCS expansion at 5752 Industrial Park Road, the City Council is required to hold a public hearing and vote to consider approving the proposed Business Subsidy.

If Commissioners concur a motion to support the proposed Business Subsidy Agreement would be appropriate.
 - C. **Review and Approval of Port/BCS Automotive Loan Documents**
In May of this year the Port Authority approved a Port loan to BCS for their expansion. At that time, we did not have the final loan documents drafted.

If Commissioners concur, a motion to approve the attached resolution approving the loan to BCS and superseding Resolution 761 that was passed in May, would be appropriate.

D. Sand Requests – Technology Park

Staff will provide an update on commitments for sand from Technology Park and two current requests. In addition, Commissioners may consider charging for future requests at a nominal fee of \$1 per yard.

5. FINANCIAL REPORTS

6. ADJOURNMENT

Zoom Procedures for Port Authority Meeting
Thursday, September 10, 2020 at 4:00 pm
Council Chambers, Winona City Hall

All interested parties are invited to participate via electronic means. This meeting is open to the public via web or phone. This meeting begins at 4:00 pm; please log in prior to the start of the meeting. You may exit the meeting at any time.

Port Authority Commissioners and Staff:

- To join the Zoom Meeting via web, go to: <https://zoom.us/j/252527617> and enter Meeting ID: 252 527 617
- To join via phone, dial phone number:

+1 312 626 6799 US (Chicago)

When prompted, enter the following Meeting ID: 252 527 617
Then enter your participant ID if you have one; if not, enter #

For participants:

- Only use one audio source; audio from computer is preferred if available.
- Be aware of background noise from your location.
- If using phone, do not use the speaker function.
- If using a web cam, be aware of what is in your background.
- If you have headphones, please use them as that will limit background noise
- Please mute your audio until you wish to speak. Then unmute your audio, and ask the Chairman for permission to talk.
- If using web access, note the options for you to view the meeting (gallery shows all participants same size)

Other notes:

- Staff will "host" the meeting on a city computer and will manage when participants' audio is muted / unmuted.
- The public hearing notices included the Zoom meeting information, and also indicated that written comments could be submitted to staff by a set date prior to the Port Authority meeting. These written comments will be provided to the Commissioners either in advance or at the public hearing.

PORT AUTHORITY AGENDA ITEM

AGENDA ITEM: 1. Approval of Minutes

DATE: September 10, 2020

Following are the minutes from the August 12, 2020 meetings for Commission's review and approval.

PORT AUTHORITY OF WINONA MINUTES

DATE: August 12, 2020

PRESENT: President Cichanowski, Commissioners: Johnson, Thurley, Borzyskowski, Gorman, Lucas and Executive Secretary Sarvi

ABSENT: Commissioner Hansen

STAFF PRESENT: Director of Community Development Lucy McMartin, Finance Director Jessica Wojahn, & Development Coordinator Myron White

1. CALL TO ORDER – APPROVAL OF MINUTES

The meeting was called to order at 4:00 PM by President Cichanowski.

A motion was made by Commissioner Lucas and seconded by Commissioner Borzyskowski to approve the July 9, 2020 minutes. The motion carried with all Commissioners present voting aye.

2. REMARKS BY PRESIDENT

President Cichanowski had no remarks.

3. NEW BUSINESS

A. *Recommended 2021 Port Authority Budget*

Director of Community Development McMartin referenced the proposed budget documents and proposed levy that were included in the Port Authority packet. She indicated, if the Port Authority agrees with the proposed budget, staff requests that the Port Authority forward the following recommendations to City Council:

- Approval of the recommended tax levy for Fund 936
- Approval of the recommended tax levy for Fund 911
- Approve the 2021 Port Authority Budget as proposed

Director of Community Development McMartin provided an overview of each of the Port Authority's funds. Ms. McMartin highlighted the following:

- Commercial Harbor Fund 945 included match funding along with anticipated grant funding from the MN Department of Transportation Port Development Assistance Fund for a steel sheet pile wall at 998 Riverview Drive.
- The proposed tax levy for Fund 936 included funds for Airport Improvement Bonds.

- The recommended tax levy for Fund 911 is for the Port's General Fund.

After fielding questions from Port Authority Commissioners, Commissioner Lucas made a motion to approve the following items along with a recommendation to Winona City Council to approve the proposed Port Authority Budget:

- Approval of the recommended tax levy for Fund 936
- Approval of the recommended tax levy for Fund 911
- Approve the 2021 Port Authority Budget as proposed

The motion was seconded by Commissioner Borzyskowski with all members present voting aye.

4. FINANCIAL REPORTS

Finance Director Wojahn indicated that the Port Authority Financials were in order with no extraordinary revenues or expenditures.

5. ADJOURNMENT

The meeting was adjourned at 4:30 pm.

Myron White
Development Coordinator

Mike Cichanowski
President

PORT AUTHORITY AGENDA ITEM

AGENDA ITEM: 3. A. Public Hearing – Sale of Land in J T Schain Industrial Park

DATE: September 10, 2020

**ATTACHMENTS: 1) Map of J.T. Schain Industrial Park
2) Hiatt Industries, LLC Project Proposal
3) Resolution**

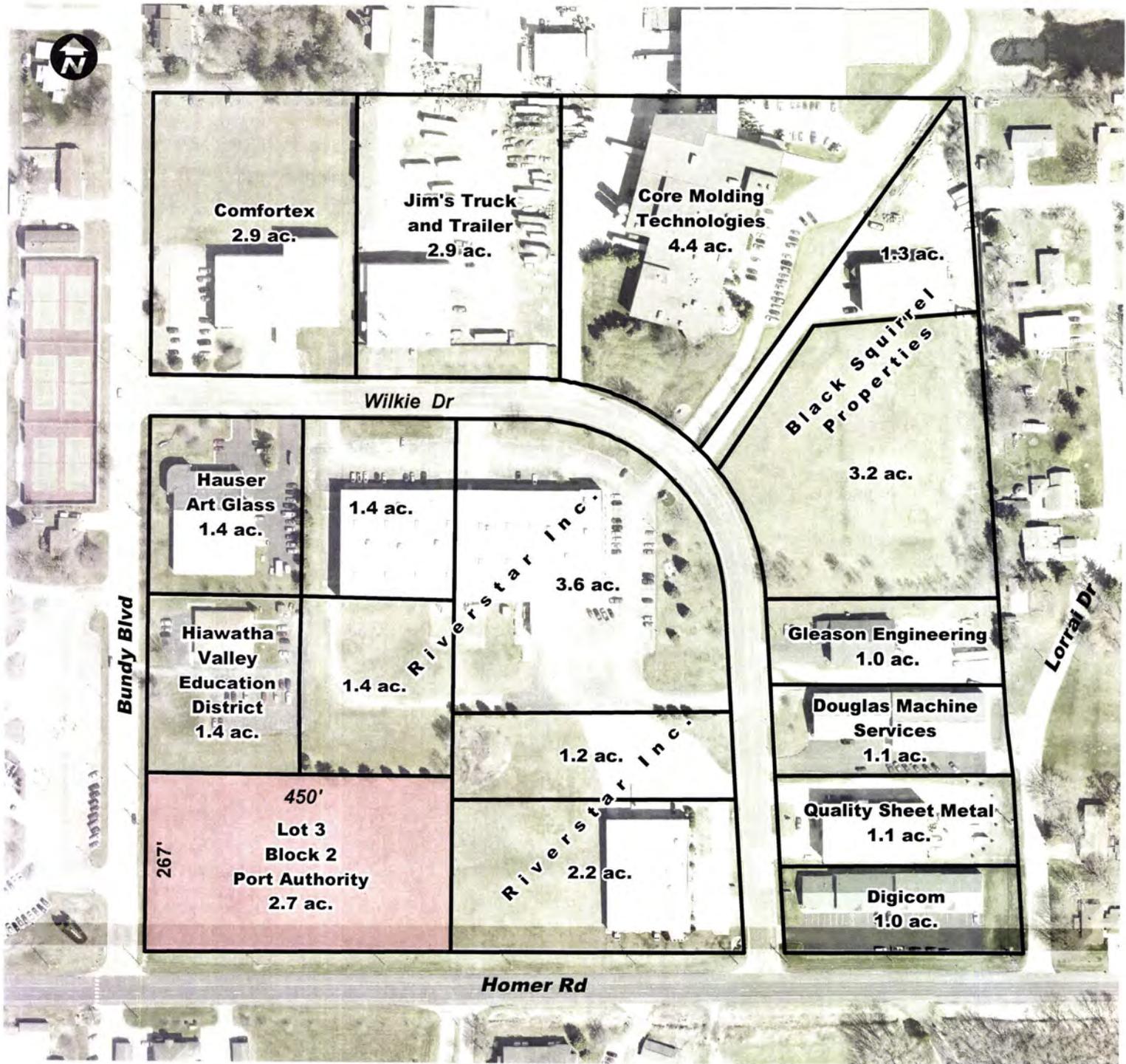
Port Authority staff has been meeting with Hiatt Industries, LLC over the past two years about accommodating their business expansion in Winona. Hiatt Metal Forming, LLC was founded in 1985 by Steven and Debra Hiatt and they began the business in their home which lead into building a facility in 1990. The facility in Goodview is leased to RTP Company and they are occupying much of the space for their business.

Hiatt Metal Forming, LLC is ready to move to a new building as they continue to grow and expand the wire-forming business. The real estate entity for the purchase is Hiatt Industries, LLC. The new facility will be used for light manufacturing of wire forms, sheet metal stamping and small component fabrication for various American industries including agriculture, commercial food products, fitness equipment, casting and foundries, automotive, consumer goods and more. They have eight employees and plan to add two within the next year and ten over the next five years.

Pursuant to a notice published on August 27, 2020, the Port Authority will hold a public hearing on the proposed sale of property, which is located in J T Schain Industrial Park. The 2.7-acre parcel is the last vacant lot owned by the Port Authority in the park. Plans include building a light manufacturing facility and equipment purchases with an anticipated investment of \$2 million. They are evaluating the need for additional assistance using local or state tools such as loans. Port staff will continue to work with the Hiatt's as they explore tools to finance their project. Hiatt's would like to close by the end of the year and start site work in the spring, pending approval of necessary financing mechanisms.

Following the public hearing, the Port Authority Commissioners may consider the resolution authorizing the sale of land and approve the purchase agreement.

JT Schain Industrial Park



January 2019

This map was compiled from a variety of sources. This information is provided with the understanding that conclusions drawn from such information are solely the responsibility of the user. The GIS data is not a legal representation of any of the features depicted, and any assumptions of the legal status of this map is hereby disclaimed.

M-1 Zoning District
* SUBJECT TO COVENANTS

Building Setbacks:
* 30' Front
50' Sideyard Total, neither less than 10'
40' Rear (1 Story)
50' Rear (2 Story)
60' Rear (3 Story)

* Parking Subject to Covenants

* Building cannot cover over 50% of lot



HIATT INDUSTRIES, LLC PROJECT PROPOSAL

New Facility Building Project
Proposal to Winona Port Authority for land purchase to
be used for construction of new manufacturing facility

Presented by
Hiatt Industries, LLC

HIATT INDUSTRIES, LLC

Land Purchase and Building Proposal

Hiatt Industries is proposing to purchase Lot 3, Block 2 in the J.T. Shain Industrial Park for the new permanent location for long-standing Winona business, Hiatt Metal Forming, LLC.

Hiatt Metal Forming, LLC was founded in 1985 by Steven and Debra Hiatt. Their dream of owning their own business began in their home basement, quickly growing to a garage addition which lead to building their current location in 1990. For over thirty-five years the business has expanded and grown its manufacturing and distribution services in the larger Winona area. Today the day to day operations are run by the 2nd generation, Crystal Hiatt and supported by our dedicated team. We continue to focus on supporting our customer partnerships and looking ahead to future growth opportunities.

Hiatt Metal Forming, LLC is ready to move to a new home and wishes to build new roots in the heart of the Winona community as we continue to grow and expand our wire-forming business.

Overview

We are interested in purchasing Lot 3, Block 2 of the J.T. Shain Industrial Park to build a new manufacturing and warehouse facility for our long-established business.

Purpose of the Building

This new facility will be used for light manufacturing of wire forms, sheet metal stamping and small component fabrication for various American industries.

- Our processes include CNC Forming, Bending, Swaging, Welding and Stamping
- Tool & Die making, Machine & Tool design,
- Plant Maintenance, Warehousing, Shipping and Receiving

Project Timeline and Construction

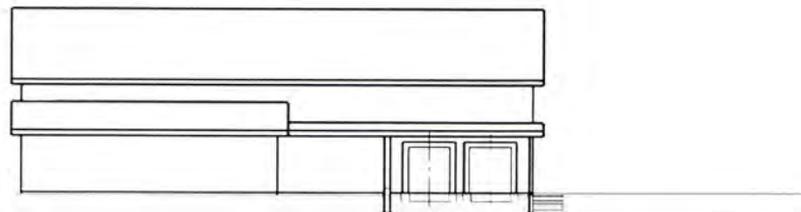
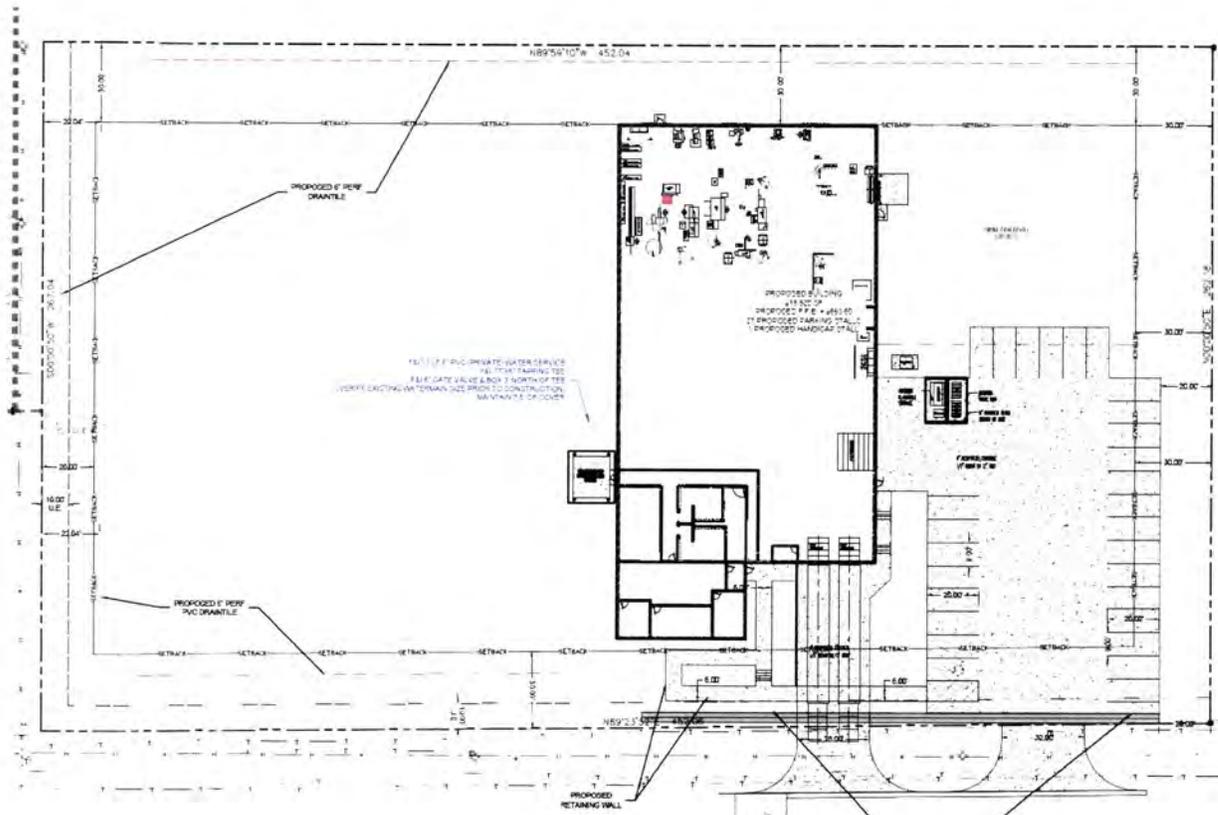
Our project timeline is 2021 thru 2022 for construction and planned completion in Spring 2022

- Steel Structure with corrugated steel siding and a standing seam steel roof
- Front of building to be faced with pre-stressed concrete with a standing seam steel roof
- Extended roof area to protect entrances, outside dock doors, and overhead doors from weather

Building Features

- Office and Manufacturing areas will be heated and cooled throughout by outside units in the rear of the building; ceiling fans will provide air circulation as required
- Electrical service of 480 Volt, 3 Phase, 1600 Amp Service Main
- Fire protection including a pressurized sprinkler system including alarm connected to fire department

- Includes 2 sealed cushioned loading docks with floating dock levelers
- Includes 4 insulated Roll-up overhead doors
- Paved parking lot includes 28 parking locations
- Surveillance cameras inside and out
- Fully landscaped around building with automatic lawn irrigation
- Backlit sign mounted to front of building with name and logo



Purchase Requests

Hiatt Metal Forming requests the following to complete the purchase of this lot

- Accept purchase price offer of \$160,000.00
- Complete Phase I Environmental Study on lot prior to closing
- Bury utilities in Boulevard to provide a modern and safe industrial park
 - Per 2018 communications, telephone lines are property of Charter/Spectrum – to modernize the area, would request they finish what appears to be a once started project of burying these lines to avoid having lines hanging from above
 - Power lines are property of Xcel Energy – request for city to begin working with them to replace the poles to the new higher/taller spec in order to allow for construction equipment and general business traffic to travel safely and securely under the lines. Request for this to begin before close of sale to avoid any delays due to weather for new construction to begin. Xcel stated in 2018 they would do this at their own cost. Is needed as property will be raised to bring building well above flood plane and to also ensure street-level loading docks
- Request unlimited access to Port Authority Sand Fill at no cost for the purpose of adjusting the building structure floor height to suit proper loading dock heights and normal back grading around facility. Hiatt will provide the hauling.

Building Pad for Manufacturing Plant	4	120	160	76,800	Cub. Ft.
Building Pad for Warehouse	4	120	160	76,800	Cub. Ft.
			Total:	153,600	Cub. Ft.
			Total Cubic Yards of Fill:	5,689	Cub. Yard
			Total 12 Yard Truckloads:	474	Loads

Why the Port Authority Should Support the Project

- Port supporting new growth for the Winona Community
- Our project brings new and long-term tax revenue to the City
- Partnering together on this project completes the long-time development of the J.T. Shain Industrial Park
- Supporting this project supports Hiatt's long-established business as we move into Winona to continue to grow and expand our manufacturing business and bring new opportunities to our community

Estimated Project Timeline

Date	Description
9/10/2020	Meeting with Port Authority (Zoom mtg)
10/10/2020	Public Meeting with Port Authority (Zoom mtg)
11/10/2020	Receive purchase agreement
11/20/2020	Estimated Closing Date

12/1/2020	Building permits can be applied for
5/1/2021	Construction to begin
11/1/2021	Building completion
12/1/2021	HMF moved in and fully operational
9/30/2022	Finish landscaping and parking lot

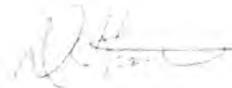
In Closing

We look forward to working with and partnering with the Port of Authority and City of Winona to complete this new project. We are excited for this opportunity to be in Winona and to continue to support our larger Winona community. Hiatt has enjoyed a long history in our area. We have built a fantastic team of dedicated employees, long-standing customer relationships with local manufacturers, and focus on supporting local for many of our service needs.

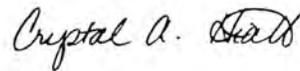
We thank you for your time and support.



Steve Hiatt
Owner, President



Debra Hiatt
Owner, VP & Treasurer



Crystal Hiatt
Owner, VP Sales & Operation

**PORT AUTHORITY OF WINONA
RESOLUTION 2020-_____**

**A RESOLUTION BY THE PORT AUTHORITY OF WINONA APPROVING THE SALE
OF REAL PROPERTY IN WINONA, MINNESOTA, AND DISPENSING WITH REVIEW
OF THE SALE BY THE WINONA PLANNING COMMISSION**

WHEREAS, the Port Authority of Winona (the "Port"), pursuant to Minnesota State Statutes, Section 469.065, did place a notice, a copy of which with proof of publication is on file in the office of the Port Authority of Winona, of a public hearing of the proposed sale of property owned by the Port in a legal newspaper, said hearing to be held to determine whether it is in the best interest of the Port district and the people thereof, and in furtherance of the general plan of the Port and economic development in the Port district to sell the land described in Exhibit A, which is attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Property described in Exhibit A is owned by the Port; and

WHEREAS, Hiatt Industries, LLC (the "Buyer") has submitted a proposal to purchase the Property described in Exhibit A for use as part of an industrial development project (the "Project"); and

WHEREAS, pursuant to Minnesota Statutes, Section 469.065, subd. 7, a conveyance of the Property must not be made until the Buyer gives the Port plans and specifications for the Project to develop the Property sold by the Port to the Buyer, and the Port must approve the plans and specifications in writing; and

WHEREAS, the Port has investigated the facts of the proposed sale of said Property, the terms and conditions of said sale, received and reviewed the preliminary Project plans and specifications (attached hereto as Exhibit B), the proposed use of said Property, and the relation of the Project use to the improvement of business in the City of Winona and the Port district in general; and

WHEREAS, the Buyer is willing to purchase the Property from the Port for the purchase price of One Hundred Sixty Thousand and No/100ths Dollars (\$160,000.00); and

WHEREAS, a draft Purchase Agreement and Quit Claim Deed for conveyance of the Property to the Buyer for the Project has been prepared and is attached hereto as Exhibit C; and

WHEREAS, in accordance with the attached draft Purchase Agreement, the Port and Buyer expressly understand and agree that the sale of the Property is contingent upon approval by the Board of Commissioners of the Port; and

WHEREAS, if any transaction approval as provided in the Purchase Agreement is not obtained by the closing date stated in the Purchase Agreement, the Purchase Agreement shall then be null and void, without further obligation by either party; and

WHEREAS, Minnesota Statutes, Section 462.356, subdivision 2, provides that no publicly owned interest in real property within a municipality shall be acquired or disposed of until after the planning commission has reviewed the proposed acquisition or disposition and reported in writing to the governing body of the Port its findings as to compliance of the proposed acquisition or disposition with the comprehensive plan; and

WHEREAS, the same statute further states, however, that the governing body may, by resolution adopted by two-thirds vote, dispense with the requirements of this subdivision when in its judgment it finds that the acquisition or disposal of real property has no relationship to the comprehensive plan; and

WHEREAS, the proposed conveyance of the Property, presented by the Buyer, meets the terms and conditions set forth by the Port as its guide in determining if such proposals are in the best interest of the Port district and the public.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Port Authority of Winona that:

1. The Board of Commissioners hereby finds, determines, and declares that it is in the best interest of the Port district and the people thereof and in furtherance of the general Port plan to sell the Property to the Buyer for the Project pursuant to the plans and specification for the Project on the Property.

2. The Board of Commissioners hereby approves the Project plans and specifications for the Project as submitted by the Buyer attached hereto as Exhibit B and finds, determines and declares that the same are in the best interest of the Port district and the people thereof and in furtherance of the general Port plan.

3. The Board of Commissioners hereby finds that the proposed sale of the Property for the Project has no relationship to the Winona Comprehensive Plan, and therefore review of the proposed sale by the Winona Planning Commission is not required under Minnesota Statutes, Section 462.356, Subd. 2, and is hereby dispensed with as allowed by that statute.

4. The actions of the Executive Secretary of the Port Authority of Winona in causing public notice of the proposed sale and in describing the terms and conditions of such sale and Project, which have been available for inspection by the public at the office of the Port Authority from and after the publication of the hearing, are in all respects ratified and confirmed.

5. The Property is being sold for \$160,000.00 in accordance with the terms and conditions contained in the Purchase Agreement and Quit Claim Deed attached hereto as Exhibit C.

6. The Board of Commissioners hereby approves the attached Purchase Agreement and exhibits thereto in order to accomplish the sale of that certain Property described therein, and authorizes and directs the President and Executive Secretary to execute the Purchase Agreement substantially in the form hereby approved, allowing for minor or technical changes as determined by the City Attorney, and such other documents, including but not limited to the approved Quit Claim Deed, as are necessary to accomplish the conveyance and close on the sale of the Property by the Port to the Buyer. The Buyer shall record the requisite instruments of sale, as applicable, in the Office of the Winona County Recorder.

PASSED by the Board of Commissioners of the Port Authority of Winona, Minnesota, on this ____ day of _____, 2020.

President

Attest:

Executive Secretary

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lot Three (3), Block Two (2), J T Schain Industrial Park, according to the recorded plat thereof, Winona County, Minnesota, subject to easements, restrictions, and reservations of record.

EXHIBIT B

PLANS AND SPECIFICATIONS FOR THE PROJECT



HIATT INDUSTRIES, LLC PROJECT PROPOSAL

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Proposal to Winona Port Authority for land purchase to
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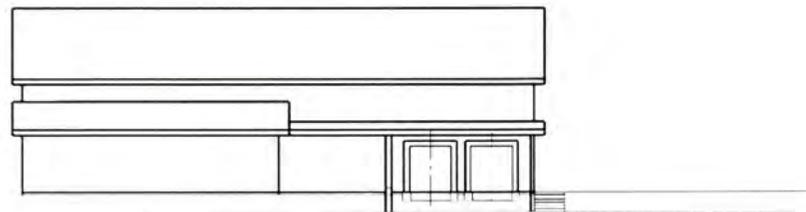
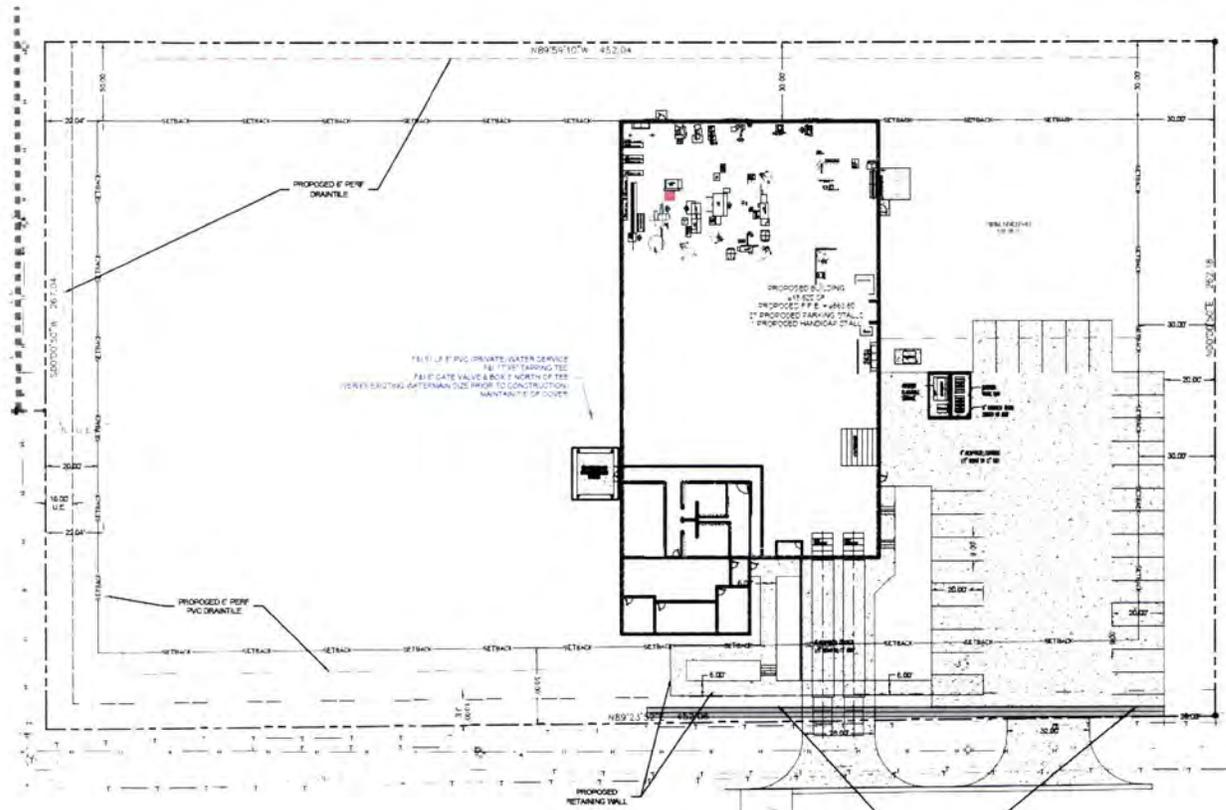
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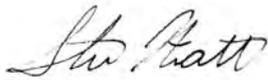
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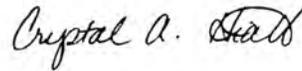
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Steve Hiatt
Owner, President



Debra Hiatt
Owner, VP & Treasurer



Crystal Hiatt
Owner, VP Sales & Operation

EXHIBIT C

PURCHASE AGREEMENT

VACANT LAND PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement") is made as of _____, 2020, between the Port Authority of Winona, a body politic and corporate under the laws of the State of Minnesota ("Seller"), and Hiatt Industries, LLC, a limited liability company under the laws of the State of Minnesota ("Buyer"); (collectively the "Parties").

In consideration of the covenants and agreements of the Parties hereto, Seller and Buyer agree as follows:

1. **Sale of Property.** Upon and subject to the terms and conditions of this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the following:
 - a. **Real Property.** The real property legally described in Exhibit A, which is attached hereto and incorporated herein by reference, together with and subject to all easements of record and rights benefiting or appurtenant to the land and improvements including any right, title or interest in the bed of any street, road, highway or alley adjoining the land (collectively the "Real Property"); and
 - b. **Personal Property:** There is no personal property included in this sale/purchase.
2. **Purchase Price and Manner of Payment.** The total purchase price ("Purchase Price") to be paid by Buyer to Seller for the Real Property is One Hundred Sixty Thousand and No/100ths Dollars (\$160,000.00), which amount shall be paid as follows:
 - a. \$1,000.00 as earnest money; receipt of which is hereby acknowledged by Seller; and
 - b. \$159,000.00 cash, on the Closing date, in immediately payable current U.S. funds.
3. **Closing and Possession.** The closing of the purchase and sale contemplated by this Agreement shall occur on a date mutually acceptable to Seller and Buyer, but no later than December 1, 2020 (the "Closing Date"). The Seller agrees to deliver possession not later than the Closing Date provided that all the contingencies and other terms and conditions contained in this Agreement have been complied with and satisfied. Closing shall take place at Winona City Hall or at such other location as agreed to mutually by the Parties.
 - a. **Seller's Closing Documents.** On the Closing Date, Seller shall execute and/or deliver to Buyer the following (collectively, "Seller's Closing Documents"):
 - i. **Quit Claim Deed.** Attached hereto and made a part hereof as Exhibit B is the required Quit Claim Deed containing the terms, covenants, and conditions upon which the sale of the Real Property is based. The Quit Claim Deed shall contain the following restrictions, covenants, and

conditions:

1. The Real Property herein conveyed shall be devoted to the following use: industrial use.
2. The Real Property shall be devoted to such intended use in accordance with the provisions of the Deed.
3. The Buyer shall (a) commence work on the improvements on or before June 1, 2021, (b) shall devote the Real Property to its intended use, and (c) shall devote the Real Property to its intended use by June 1, 2022. If the Buyer fails to commence work on time or fails to devote the Real Property to its intended use, or fails to devote the real property to its intended use on time, title to the real property shall revert to Seller, at Seller's election, and, in that event, Buyer shall promptly offer a deed to the Real Property to Seller, who will then refund to Buyer the amount of the Purchase Price paid by Buyer to Seller, without interest, less any taxes and other encumbrances affecting marketability of title. Notwithstanding the foregoing, Seller may, at its option, consider an extension of time for good cause shown by Buyer. In the event an extension is granted, such extension (a) shall be to a date certain, (b) may be conditioned by Seller to protect the public interest, and (c) during the period Buyer shall not transfer title to the Real Property without the express written consent of Seller.

After the Buyer has devoted the Real Property to its intended use in accordance with approved plans and specifications for the development of the Real Property, submitted to the Seller, the Seller shall provide to Buyer a certificate of compliance / completion in recordable form within 30 days from the determination thereof by Seller.

4. Incorporated herein by reference are all of the conditions of Minnesota Statutes, Sections 469.048 to 469.068, and all of said conditions and the conditions stated herein relative to the use of the Real Property are covenants running with the land.
5. The Buyer shall not transfer title to the Real Property within five (5) years after the date of this Deed without the express written consent of the Seller.
6. Any transfer of title to the Real Property made pursuant to the provisions of paragraphs 3 and 5 hereof shall be made only to a person or entity who demonstrates to the satisfaction of Seller that such person or entity has the ability to perform in place of Buyer.

- ii. Well Certificate. If there are wells on the Real Property, a Well Certificate in the form required by Minn. Stat. § 1031.235.
 - iii. Other Affidavits. Any other affidavits or certificates that may be required under Minn. Stat. § 116.48, Subd. 6, or Sect. 115B.16 or other provisions of law.
 - iv. Other. Such other documents as may reasonably be required to transfer fee title to the Property to Buyer.
- b. **Buyer's Closing Documents**. On the Closing Date, Buyer will execute and/or deliver to Seller the following (collectively, "Buyer's Closing Documents):
- i. Purchase Price. The Purchase Price, minus the earnest money, by check or wire transfer.
4. **Conditions Precedent**. The obligations of the Parties to perform under this Purchase Agreement are contingent upon the timely occurrence or satisfaction of each of the following conditions prior to or on the Closing Date:
- a. **Public Hearing**. Sale of the Real Property is contingent upon a determination by the Port Authority of Winona of the advisability of making the sale after a public hearing required by Minnesota Statutes, Section 469.065. The Parties understand and agree that the sale/purchase of the Real Property is contingent upon approval by the Board of Commissioners of the Port Authority of Winona. The required public hearing was held on September 10, 2020.
 - b. **Preliminary Plans**. Prior to the public hearing, the Buyer shall submit to the Seller preliminary plans and specifications for the development of the Real Property. The Real Property shall be devoted to its intended use based upon the finally approved plans and specifications for the development project. The required preliminary plans for the development of the Real Property were submitted by the Buyer to the Seller on February 26, 2020.
 - c. **Final Plans**. The Buyer shall submit to the Seller final plans and specifications for the development of the Real Property prior to commencement of work. The final plans must be approved in writing by the Seller. The detail of the plans and specifications shall be such as will enable the Seller to determine with reasonable certainty that the project on the Real Property is or will be in compliance with the law and will, if carried out, provide for the intended use.

The conditions precedent and contingencies in this section are solely for the benefit of, and may at any time be waived by, the Party so benefitted. If any approval as provided herein, except clause (c), is not obtained, or any condition precedent not satisfied, by the Closing Date, this Agreement shall be null and void.

5. **Purchase, As-Is.** The Real Property described in this Purchase Agreement is being sold in an "as is" and with "all faults" condition, Buyer hereby acknowledges that Buyer has had an opportunity to inspect the Real Property prior to the execution of this Agreement. Buyer's acceptance of title to the Real Property shall represent Buyer's acknowledgment and agreement that, except as expressly set forth in this Agreement: (i) Seller has not made any written or oral representation or warranty of any kind with respect to the Real Property (including without limitation express or implied warranties of title, merchantability, or fitness for a particular purpose or use), (ii) Buyer has not relied on any written or oral representation or warranty made by Seller, its agents or employees with respect to the condition or value of the Real Property, (iii) Buyer has had an adequate opportunity to inspect the condition of the Real Property, including without limitation, any environmental testing, and to inspect documents applicable thereto, and Buyer is relying solely on such inspection and testing, and (iv) the condition of the Real Property is fit for Buyer's intended use. Buyer agrees to accept all risk of Claims (including without limitation all Claims under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) whether past, present or future, existing or contingent, known or unknown, arising out of, resulting from or relating to the condition of the property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation, the presence of any Hazardous Substance on the Real Property, whether such Hazardous Substance is located on or under the Real Property, or has migrated or will migrate from or to the Real Property.

a. For purposes of this Section, the following terms have the following meanings:

- i. "Environmental Law" means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §9601 et seq. the Federal Water Pollution Control Act, 33 U.S.C. §1201 et seq., the Clean Water Act, 33 U.S.C. §1321 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Toxic Substances Control Act, 33 U.S.C. §1251 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing and hereafter enacted; and
- ii. "Hazardous Substance" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.
- iii. "Claim" or "Claims" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgment, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any

attorney's fees, consultant's fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims).

6. **Wells and Individual Sewage Treatment Systems.** The Seller certifies that the Seller does not know of any wells or individual sewage treatment systems on or serving the Real Property described herein.
7. **Prorations.** Seller and Buyer agree to the following prorations and allocation of costs regarding the Real Property and this Agreement.
 - a. **Deed Tax.** Buyer shall pay all state deed tax regarding the deed to be delivered by Seller under this Agreement.
 - b. **Real Estate Taxes and Special Assessments.** Real estate taxes and any special assessments payable in the year 2020 shall be prorated between Seller and Buyer to the Closing Date. The Buyer shall pay real estate taxes and any special assessments payable therewith in 2021 and thereafter.
 - c. **Recording Costs.** Buyer will pay the cost of recording the Deed. Seller shall pay the cost of recording any documents necessary to perfect its own title.
 - d. **Other Costs.** All other operating costs of the Real Property will be allocated between Seller and Buyer as of the Closing Date, so that Seller pays that part of such other operating costs accruing on or before the Closing Date, and Buyer pays that part of such operating costs accruing after the Closing Date.
 - e. **Attorneys' Fees.** Each of the parties will pay its own attorneys', accountants', and consultants' fees.
8. **Title Examination.**
 - a. **The Delivery of the Title Commitment.** Buyer may obtain, at its option and expense, a commitment for an owner's policy of title insurance. Buyer shall pay all costs associated with obtaining title insurance including, but not limited to, updating of the abstract or obtaining a new abstract of title for the Real Property, title insurance premiums and title examination fees (hereinafter the "Title Commitment"), issued by a Title Insurance Company authorized to do business in the State of Minnesota and approved by Buyer (hereinafter the "Title Company"). The Title Commitment shall be based upon the description of the Real Property provided herein and shall show fee title in the Seller, subject only to the permitted encumbrances waived in writing by Buyer, and shall provide for extended coverage risks and include special endorsements for zoning, contiguity and such other matters as Buyer may request.
 - b. **The Making and Curing of Title Objections.** Buyer shall be allowed fifteen (15) days after receipt of the Title Commitment in which to make objections to

the content of the commitment, said objections to be made in writing. If there are any objections to the title which are not remedied by the Closing Date, the Seller shall have sixty (60) days from the date of receipt of said written objections in which to remedy said objections.

c. **The Consequences of Failing to Cure Title Objections.** If said objections are not remedied within sixty (60) days from the date of Seller's receipt of said objections, then Buyer shall have the following two alternatives:

- i. Buyer may accept title to said Real Property subject to said objections; or
- ii. Buyer may declare this entire transaction to be null and void, in which case, the earnest money shall immediately be returned to Buyer.

9. **Entire Agreement; Modification.** This written Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in writing executed by the parties.
10. **Binding Effect.** This Agreement binds and benefits the parties and their successors and assigns.
11. **Controlling Law.** The Parties acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel, and/or has the requisite experience and sophistication to understand, interpret, and agree to the particular language of this Agreement. The Parties have equal bargaining power, and intend the plain meaning of the provisions of this Agreement. In the event of an ambiguity in or dispute regarding the interpretation of this Agreement, the ambiguity or dispute shall not be resolved by application of any rule that provides for interpretation against the drafter of the Agreement. This Agreement has been made under the laws of the State of Minnesota, and such laws will control its interpretation.
12. **Dates and Time Periods.** Should the date for the giving of any notice, the performance of any act, or the beginning or end of any period provided for herein fall on a Saturday, Sunday or legal holiday, such date shall be extended to the next succeeding business day which is not a Saturday, Sunday or legal holiday.
13. **Notices.** Any notice required or permitted to be given by any party upon the other is given in accordance with this Agreement if it is directed to Seller by delivering it personally to an officer of Seller; or if it is directed to Buyer, by delivering to a partner of Buyer; or if mailed by United States registered or certified mail; return receipt requested, postage prepaid; or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed as follows:

If to Buyer: Steven Hiatt, _____

Hiatt Industries, LLC
2551 Garvin Heights Road
Winona, MN 55987

If to Seller: Steven T. Sarvi, Executive Secretary
Port Authority of Winona
P.O. Box 378
Winona, MN 55987-0378
507-457-8234

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit as aforesaid; provided, however, that if notice is given by deposit, that the time for response to any notice by the other party shall commence to run two (2) business days after any such deposit. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

14. **Remedies.** If Buyer defaults under this Agreement, Seller shall have the right to terminate this Agreement by giving written notice to Buyer. If Buyer fails to cure such default within thirty (30) days after receipt of such written notice, this Agreement will terminate, and upon such termination Seller will retain the Earnest Money as liquidated damages, time being of the essence of this Agreement. The termination of this Agreement and retention of the Earnest Money will be the sole remedy available to Seller for such default by Buyer, and Buyer will not be liable for damages. If Seller defaults under this Agreement, Buyer may terminate the Agreement upon thirty (30) days' written notice to Seller (Seller having cure rights during the 30-day period), and upon such termination, the Earnest Money shall be refunded to Buyer and thereafter, neither party shall have any further rights or obligations hereunder.

15. **Miscellaneous Provisions.**

- a. **Voluntary and Knowing Action.** The Parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- b. **Authorized Signatories.** The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- c. **Data Practices.** The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.

- d. **Assignment.** This Agreement may not be assigned by either party without the written consent of the other party.
 - e. **Headings and Captions.** Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.
 - f. **Survival.** The respective covenants, agreements, indemnifications, warranties, and other terms of this Agreement will survive and be in full force and effect after the Closing, and shall not be deemed to have merged into any of the Closing Documents.
 - g. **Other Documents.** Each party to this Agreement agrees, both at the Closing and after the Closing, to execute such other documents as may be reasonably requested by the other party in order to complete the transactions contemplated by this Agreement.
 - h. **Recitals.** The recitals hereto are made a part hereof.
 - i. **Counterparts.** This Purchase Agreement may be executed in counterparts, each of which shall be deemed an original, and which together shall constitute a single, integrated contract.
16. **Seller's Transaction Approval.** Seller's obligation to perform hereunder is contingent upon Seller obtaining, before the Closing Date, approval of the transaction contemplated by this Agreement by the Winona Port Authority, Minnesota. Notwithstanding anything in this Agreement to the contrary, if such approval has not been obtained by the Closing Date, this Agreement shall be null and void. Execution of this Agreement by any person on behalf of the Seller prior to obtaining the necessary approvals provided herein shall not confer any personal authority nor create any personal liability on the signer for the obligations of Seller under this Agreement.

Remainder of this page intentionally left blank.

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed effective as of the day and year first set forth above.

SELLER:
PORT AUTHORITY OF WINONA

By: _____
Michael Cichanowski
Its: President

By: _____
Stephen T. Sarvi
Its: Executive Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF WINONA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Michael Cichanowski, as President, and Stephen T. Sarvi, as Executive Secretary, for the Port Authority of Winona, a body politic and corporate under the laws of the state of Minnesota, Seller.

Notary Public

EXHIBIT A
TO PURCHASE AGREEMENT

LEGAL DESCRIPTION OF REAL PROPERTY

Lot Three (3), Block Two (2), J T Schain Industrial Park, according to the recorded plat thereof, Winona County, Minnesota, subject to easements, restrictions, and reservations of record.

EXHIBIT B
TO PURCHASE AGREEMENT

(Top 3 inches reserved for recording data)

QUIT CLAIM DEED

eCRV number: _____

DEED TAX DUE: \$ _____

DATE: _____, 2020

FOR VALUABLE CONSIDERATION, the Port Authority of Winona, a body politic and corporate under the laws of the State of Minnesota ("**Grantor**"), hereby conveys and quitclaims to Hiatt Industries, LLC, a limited liability company under the laws of the State of Minnesota ("**Grantee**"), real property in Winona County, Minnesota, legally described as:

The real property described in Exhibit A which is attached hereto and incorporated herein by reference.

Check here if all or part of the described real property is Registered (Torrens)

Subject to the following restrictions, covenants, and conditions:

1. The real property herein conveyed shall be devoted to the following use: industrial.
2. The real property shall be devoted to such intended use by the Grantee in accordance with the provisions of this Deed.
3. The Grantee shall (a) commence work on the improvements on or before June 1, 2021, (b) shall devote the real property to its intended use, and (c) shall devote the real property to its intended use by June 1, 2022. If the Grantee fails to commence work on time or fails to devote the real property to its intended use on time, title to the real property shall revert to Grantor, at Grantor's election, and, in that event, Grantee shall promptly offer a deed to the real property to Grantor, who will then refund to Grantee the amount of the Purchase Price paid by Grantee to Grantor, without interest, less any taxes and other encumbrances affecting marketability of title. Notwithstanding the foregoing, Grantor may, at its option, consider an extension of time for good cause shown by Grantee. In the event an extension is granted, such extension (a) shall be to a date certain, (b) may be conditioned by Grantor

to protect the public interest, and (c) during the period Grantee shall not transfer title to the real property without the express written consent of Grantor.

After the Grantee has devoted the real property to its intended use in accordance with the approved plans and specifications for the development of the real property submitted to the Grantor and the Development Agreement, the Grantor shall provide to Grantee a certificate of compliance/completion in recordable form within 30 days from the determination thereof by Grantor.

4. Incorporated herein by reference are all of the conditions of Minnesota Statutes, Sections 469.048 to 469.068, and all of said conditions and the conditions stated herein relative to the use of the real property are covenants running with the land.
5. The Grantee shall not transfer title to the real property within five (5) years after the date of this Deed without the express written consent of the Grantor.
6. Any transfer of title to the real property made pursuant to the provisions of paragraphs 3 and 5 hereof shall be made only to a party who demonstrates to the satisfaction of Grantor that such party has the ability to perform in place of Grantee.

The Grantor certifies that the Grantor does not know of any wells on the described real property.

Grantor

Port Authority of Winona

By: _____
Its: President

By: _____
Its: Executive Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF WINONA)

This instrument was acknowledged before me on _____, 2020, by Michael Cichanowski, the President, and by Stephen T. Sarvi, the Executive Secretary of the Port Authority of Winona, a body politic and corporate under the laws of the State of Minnesota, Grantor.

(Notary Seal)

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

FLAHERTY & HOOD, P.A.
525 Park Street, Suite 470
St. Paul, MN 55103
(651) 225-8840

TAX STATEMENTS FOR THE REAL
PROPERTY DESCRIBED IN THIS
INSTRUMENT SHOULD BE SENT TO:

Hiatt Industries, LLC
Attn: Steven Hiatt
2551 Garvin Heights Road
Winona, MN 55987

EXHIBIT A
TO QUIT CLAIM DEED

Lot Three (3), Block Two (2), J T Schain Industrial Park, according to the recorded plat thereof, Winona County, Minnesota, subject to easements, restrictions, and reservations of record.

PORT AUTHORITY AGENDA ITEM

AGENDA ITEM: 4. A. Black Squirrel Properties – Proposed Amendment to Restrictive Covenants

DATE: September 10, 2020

**ATTACHMENTS: Map of J T Schain Industrial Park
J T Schain Covenants
Port Letter to JT Schain Property Owners**

Earlier this year, the Port Authority was contacted by Michael Onstad, owner of Black Squirrel Properties, LLC. Mr. Onstad/Black Squirrel owns two properties in the J T Schain Industrial Park (see attached map). The Industrial Park has in place Protective Covenants that were put in place when the Park was established in June of 1988. Mr. Onstad has requested two amendments to the covenants. If approved, these amendments would be in effect for all properties within the JT Schain Industrial Park.

- 1) Article 2: 6(C) States: All off-street parking areas shall be surfaced with concrete or bituminous material.

It is our understanding Mr. Onstad has requested an allowance for gravel surface parking.

- 2) Article 5: 3(C) Restricts: Any use that offers goods or services for sale to the general public.

It is our understanding Mr. Onstad would like the flexibility to lease or sell land to businesses that indeed do offer goods and services for sale to the general public.

As outlined in the covenants, Mr. Onstad was directed to contact each property owner in the J T Schain Park and present them with a recordable document to execute if the property owner agreed with the amendments as proposed. If property owners owning 65% of the land in the park agreed and executed the document, the covenants would be amended. After getting little response from property owners, the covenants offer an alternative which requires calling a meeting of property owners. At the meeting, if a majority of property owners agree to the proposed changes, the covenants will be amended.

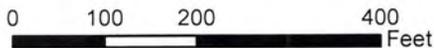
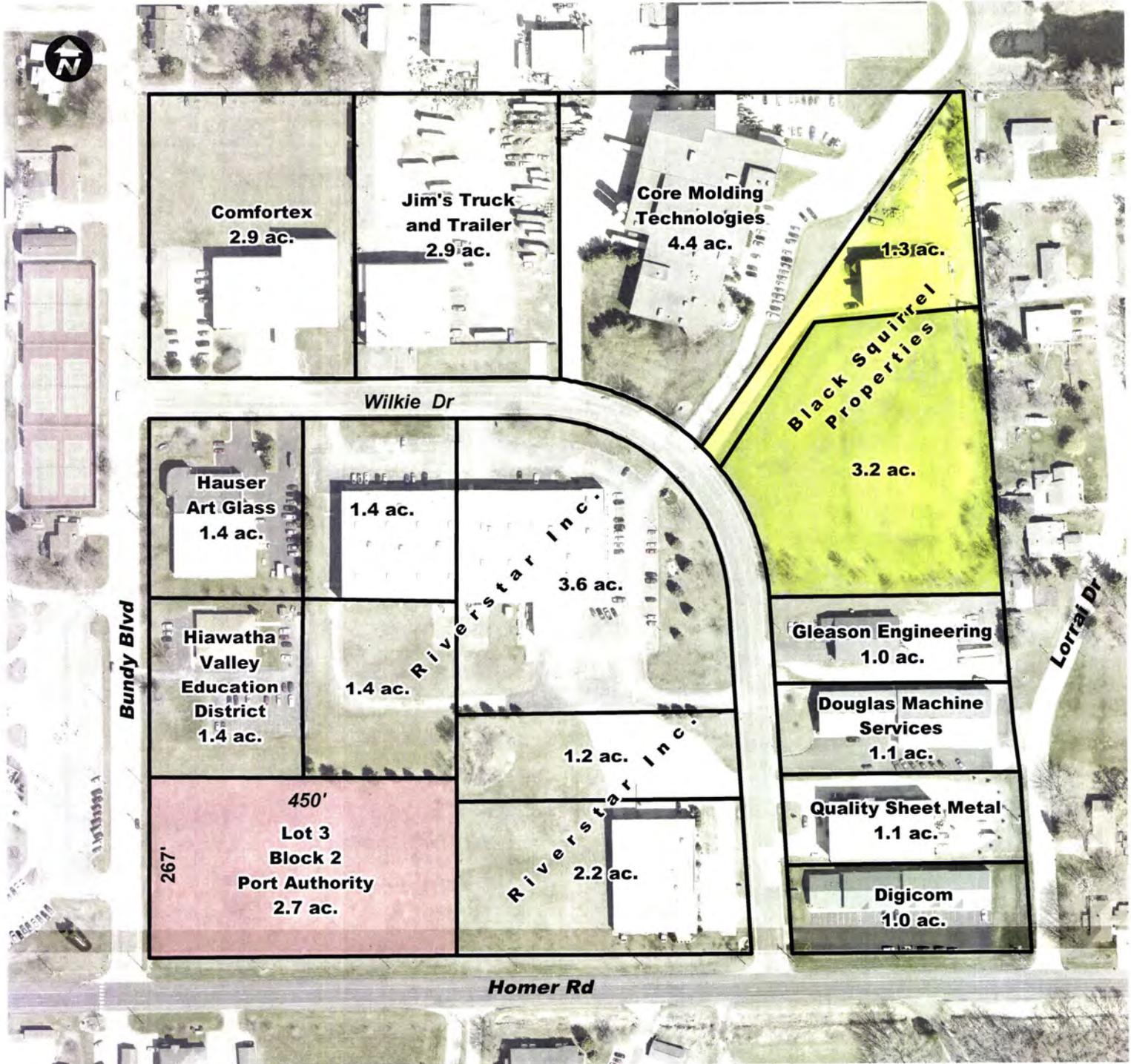
On September 15th, Mr. Onstad will hold a meeting. The Port, being owner of a 2.7 acre parcel in the park has been invited and asked to provide vote on the proposed amendments.

4. A. BLACK SQUIRREL PROPERTIES – PROPOSED AMENDMENT TO RESTRICTIVE
COVENANTS
SEPTEMBER 10, 2020
PAGE 2

Considering the proposal to purchase the land has been received from Hiatt Metal Forms, Port Authority staff sought out the proposed new owner's view on the Amendments. They oppose the amendments, and feel they are in place to meet the appropriate needs and desires for an attractive and usable industrial park and to maintain the curb appeal of the businesses in the park.

Requested Action: Port Authority staff would like direction from the Port Authority Commissioners on whether they are in favor or not in favor of the proposed Amendments so a representative may vote at the meeting on September 15, 2020.

JT Schain Industrial Park



January 2019

This map was compiled from a variety of sources. This information is provided with the understanding that conclusions drawn from such information are solely the responsibility of the user. The GIS data is not a legal representation of any of the features depicted, and any assumptions of the legal status of this map is hereby disclaimed.

M-1 Zoning District
* SUBJECT TO COVENANTS

Building Setbacks:
 * 30' Front
 50' Sideyard Total, neither less than 10'
 40' Rear (1 Story)
 50' Rear (2 Story)
 60' Rear (3 Story)

* Parking Subject to Covenants

* Building cannot cover over 50% of lot

PROTECTIVE COVENANTS AND
RESTRICTIONS FOR
J. T. SCHAIN INDUSTRIAL PARK

The Port Authority of Winona, a body politic and corporate under the laws of the State of Minnesota, hereinafter called "declarant", and Lillian Dascher, a single person, F.L.J. Realty, a limited partnership, and JCT Partnership, a Minnesota general partnership being the legal owner in fee simple of all real property platted as J. T. Schain Industrial Park located in the City of Winona, County of Winona, State of Minnesota, and desiring to insure the use of the property for industrial development purposes only, to prevent nuisance, to provide for an orderly and attractive appearance, and to insure development consistent with sound environmental practices, all with no greater restriction upon the free and undisturbed use of one site than is necessary to insure the same advantages to other sites, proposed modifications to the "A" district will create a new district incorporating suggested changes; the new district will be identified as "A-1".

Do hereby declare all of the land or lots or sites, now owned by the parties named herein, to hereafter be held, transferred, sold, leased, conveyed, and occupied subject to the following:

ARTICLE I
DEFINITIONS

1. "A" district. A district specifically designed to be occupied by industries often characterized as "light", together with wholesale and warehouse activities.
2. Site. "Site" shall mean all contiguous land under one ownership or one lease.
3. Improvements. "Improvements" shall mean and include buildings, out-buildings, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, signs, and any structures of any type or kind.
4. Declarant. "Declarant" shall mean The Port Authority of Winona, its successors and assigns.
5. "A-1" district. A district similar in nature to the "A" district designed to be occupied exclusively by "light", high-

technology industries that pose few impacts on adjacent land uses. All restrictions applicable in the "A" district shall apply to the "A-1" district, unless more restrictive provisions are provided.

ARTICLE II REGULATION OF IMPROVEMENTS

1. Minimum Setback Lines.

A. General. No structure of any kind, and no part thereof, shall be placed on any site closer to the property line than herein provided. The following structures and improvements are specifically excluded from these setback provisions.

1) Roof overhang subject to specific approval of the declarant, in writing.

2) Steps and walks.

3) Paving and associated curbing, except that vehicle parking or loading areas shall not be permitted within forty (40) feet of the street property lines.

4) Fences, except that no fence shall be placed within street setback areas unless specific approval is given by the declarant in writing.

5) Landscaping.

6) Planters, not to exceed three (3) feet in height.

7) Displays identifying the owner, lessee, or occupant, subject to the specific approval of the declarant in writing.

B. Setback from side property lines. In an "A" district, fifty (50) feet or more total for both yards with neither less than ten (10) feet.

C. Setback from street property lines. In an "A" district, thirty (30) feet or more.

D. Setback from adjacent residential zoning. In an "A-1" district, fifty (50) feet or more with an approved earth berm and landscaping.

2. Completion of Construction. After commencement of construction of any structure, the work thereon shall be diligently prosecuted, to the end that the structure shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof.

3. Excavation. No excavation shall be made except in connection with construction of an improvement, and upon completion thereof, exposed openings shall be backfilled and disturbed ground shall be graded and levelled.

4. Landscaping

A. Every site on which a building shall have been placed and the unpaved areas between property lines and setback lines shall be landscaped according to plans approved as

specified herein and maintained thereafter in a sightly and well-kept condition. The first thirty (30) feet of the setback from street property lines shall be used exclusively for landscaping except for walks and driveways bisecting the required landscape area.

B. Hose bibs and maintenance facilities in the vicinity of the landscaped areas shall be provided for.

C. Landscaping as approved by declarant shall be installed within ninety (90) days of occupancy or completion of the building, whichever occurs first, unless an extension shall be granted by the declarant.

D. No more than fifty (50) percent of the site shall be covered by buildings.

5. Signs.

A. No billboard or advertising sign shall be permitted, other than the following:

1) One only identifying the name, business, and products of the person or firm occupying the premises; and

2) One (or more) required for control of vehicles or persons; and

3) Those offering the premises for sale or lease when specifically approved by the declarant in writing.

B. Permitted signs shall not be of a flashing or travelling type.

C. Permitted signs shall not extend above the height of the highest ceiling of the principal structure on the site.

D. Except as specifically established herein, signs and identifications on buildings or building sites shall be of such size, design, and color as is specifically approved by declarant in writing.

6. Parking Areas.

A. Adequate off-street parking shall be provided to accommodate all parking needs of employees, visitors, and company vehicles on the site. The intent of this provision is to eliminate the need for any on-street parking. If parking requirements increase as a result of a change in use or number of employees, additional off-street parking shall be provided to satisfy the intent of this section.

B. Off-street parking spaces shall be provided to the greater amount provided by application of the following formula: One parking space for each one and one-half (1 1/2) employees, plus one space for each person in management, plus one visitor space for each five (5) persons in management, but with not less than two (2) visitor spaces; or, one space for each one thousand (1,000) square feet gross floor area used for warehousing and distribution, plus one space for each five hundred (500) square feet of gross floor area used for manufacturing, plus one space for each four hundred (400) square feet of gross office floor area.

C. All off-street parking areas shall be surfaced

with concrete or bituminous material.

D. Off-street parking areas shall not be located in street setback areas.

E. No parking will be permitted in the required front yard in an "A-1" district. Any parking beyond the required front yard area shall be properly screened from the fronting road. Screening shall be approved by the declarant.

7. Storage and Loading Areas.

A. No materials, supplies, or equipment, including company-owned or operated trucks, shall be stored in any area on a site except inside a closed building, or behind a visual barrier screening such areas from the view of adjoining properties and/or a public street.

B. Loading areas shall not encroach into street setback areas unless specifically approved by declarant in writing.

C. Loading docks shall be set back and screened from the street. Docks shall not be closer than seventy (70) feet to the street property line, unless specifically permitted by declarant in writing.

8. Building regulations. Any building erected on a site shall conform to the following construction practices:

A. Exterior walls of sheet or corrugated iron, steel, aluminum, or asbestos will be permitted only upon specific approval in writing by declarant.

B. Exterior walls not fronting on public streets shall be painted or suitably treated in a manner acceptable to declarant.

C. Exterior walls fronting on public streets shall be treated in face brick or equivalent in a manner acceptable to declarant.

9. Utilities. All utility lines, etc., shall be underground.

ARTICLE III
APPROVAL OF PLANS

1. No improvement, as that term is hereinabove defined, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to these restrictions until plans and specifications showing plot layout and all exterior elevations, with materials and colors therefor and structural design, signs, and landscaping, shall have been submitted to and approved in writing by declarant. Such plans and specifications shall be submitted in writing over the signature of a person deemed to be responsible by the declarant.

2. Approval shall be based, among other things, on adequacy of structural design, conformity and harmony of external

design with neighboring sites, operations, and uses and relation of topography, grade, and finished ground elevation of the site being improved to that of neighboring sites and proper facing of main elevation with respect to nearby streets and conformity of the plans and specifications to the purpose and the general plan and intent of these restrictions. Declarant shall not arbitrarily or unreasonably withhold its approval of such plans and specifications.

3. If declarant fails either to approve or to disapprove such plans and specifications within thirty (30) days after the same have been submitted to it, it shall be conclusively presumed that declarant has disapproved said plans and specifications, unless declarant has taken action to continue consideration of the matter to a date certain.

4. Neither declarant nor its successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any owner or lessee or person, firm, or corporation affected by this declaration, by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person, firm, or corporation who submits plans to declarant for approval agrees, by submission of such plans, and every owner, lessee, person, firm, or corporation interested in any of said property agrees, by acquiring title hereto or interest therein, that he or it will not bring any action or suit against declarant to recover any such damages.

5. Notwithstanding anything to the contrary herein contained, after the expiration of one year from the date of issuance of a building permit by the City of Winona, Minnesota, for an improvement, said improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all provisions of this Article unless actual notice of such noncompliance or non-completion, executed by declarant, shall appear of record in the office of the Register of Deeds of Winona County, Minnesota, or unless legal proceedings shall have been instituted to enforce compliance or completion.

ARTICLE IV ENFORCEMENT

1. Abatement and suit. Violation of any restriction herein contained shall give to declarant and every owner of property subject to these restrictions the right to enter upon the property upon or as to which said violation or breach exists and to summarily abate and remove, at the expense of the owner, lessee, or occupant thereof, any structure, thing, or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding at law or

in equity against the person or persons who have violated are attempting to violate any of these restrictions to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover damages for said violation.

2. Deemed to Constitute a Nuisance. The result of every action or omission whereby any restrictions herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an owner, lessee, or occupant, either private or public, shall be applicable against every such result and may be exercised by declarant or by any owner of property subject to these restrictions.

3. Attorneys' Fees and Costs and Disbursements. In any legal or equitable proceeding for the enforcement or to restrain the violation of this declaration, or any provision hereof, the losing party or parties shall pay the attorney's fees, costs, and disbursements of the prevailing party or parties, in such amount as may be fixed by the Court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

4. Inspection. Declarant may from time to time at any reasonable hour or hours, enter and inspect any property subject to these restrictions to ascertain compliance therewith.

5. Failure to Enforce Not a Waiver of Rights. With the exception of the time limit for action by declarant contained in paragraph five of Article III hereof, the failure of declarant or any property owner to enforce any restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction.

ARTICLE V REGULATION OF OPERATIONS AND USES

1. Permitted Operations and Uses. Unless otherwise specifically prohibited herein, any industrial operation and use will be permitted if it is performed or carried out entirely within a building.

2. Specific District Prohibitions.

A. In an "A" district, the following are prohibited: any noise, other than vehicular, discernable outside the enclosed confines of a structure and/or the emission of any smoke, dust, or other particles, odor, noxious gas, fumes, radioactivity, matter of radioactivity, ground vibrations, and heat or glare discernable outside the enclosed confines of a structure.

3. Prohibited Operations and Uses. The following operations and uses shall not be permitted on any property in an "A" district:

- A. Commercial excavation of building or construction materials.
- B. Dumping, disposal, incineration, or reduction of garbage, offal, dead animals, or refuse.
- C. Any use that offers goods or services for sale to the general public.
- D. Residential
- E. Trailer Courts
- F. - Junk Yards
- G. Labor Camps.
- H. Distillation of bones.
- I. Fat rendering.
- J. Stockyard or slaughter of animals.

4. Approval of Operations and Uses.

A. Operational plans and specifications for any site improvement shall be submitted to the declarant prior to construction thereof over the signature of a person deemed to be responsible by the declarant, together with certification from a design architect or engineer that said operational plans and specifications comply with paragraphs two and three of this Article. If declarant fails either to approve or to disapprove such operational plans or specifications within sixty (60) days after the same have been submitted to it, it shall be conclusively presumed that declarant has disapproved said plans and specifications unless declarant has taken action to continue consideration of the matter to date certain. The declarant, from time to time, reserves the right to order recertification of such compliance by a qualified professional at the total expense of the property owner, lessee, or occupant.

B. Neither declarant, nor its successors or assigns, shall be liable in damages to anyone submitting operational plans and specifications to them for approval, or to any owner, lessee, person, firm, or corporation affected by this declaration, by reason of mistake in judgment, negligence, or non-feasance arising out of or in connection with the approval or disapproval or failure to approve any such operational plans and specifications to declarant for approval agrees, by submission of such plans and specifications, and every owner, lessee, person, firm, or corporation interested in any of said property agrees, by acquiring title thereto or interest therein, that he will not bring any action or suit against declarant to recover any such damages.

5. Prohibited Operations and Uses in an "A-1" District. The following operations and uses shall not be permitted on any property in an "A-1" district:

- A. Commercial excavation of building or construction materials.
- B. Dumping, disposal, incineration, or reduction of garbage, offal, dead animals, or refuse.

C. Any use that offers goods or services for sale to the general public.

- D. Residential
- E. Trailer Courts.
- F. Junk Yards.
- G. Labor Camps.
- H. Distillation of bones.
- I. Fat rendering.
- J. Stockyard or slaughter of animals.
- K. Auto sales and service.
- L. Truck and implement sales.
- M. Service, repair, and other commercial uses not incidental to or supportive of the primary use.

ARTICLE VI
TERM, TERMINATION, MODIFICATION, AND
ASSIGNMENTS OF DECLARANT'S RIGHTS
AND DUTIES

1. Term. This declaration, every provision hereof, and every covenant, condition, and restriction contained herein shall continue in full force and effect for a period of fifty (50) years from the date hereof.

2. Termination and Modification. This declaration, or any provision hereof, or any covenant, condition, or restriction contained herein, may be terminated, extended, modified, or amended, as to the whole of said property or any portion thereof with the written consent of the fee owners and lessees of sixty-five percent (65%) of the property subject to these restrictions, based on the number of square feet owned or leased as compared to the total number of square feet subject to these restrictions. The written consent required shall be in the form of a proper instrument executed and acknowledged for recording in the office of the Register of Deeds of Winona County, Minnesota; notwithstanding the foregoing, in the event the written consent and aforesaid cannot be obtained by solicitation within a reasonable time, an owner or lessee may call a meeting of the owners and lessees by a writing directed to each owner and lessee, which writing shall set a date (not less than thirty (30) days hence), time and place for the meeting, and shall briefly describe the purpose of the meeting and the efforts made to secure a written consent by solicitation; such writing shall be mailed by certified mail to each owner or lessee and addressed to the local address of the owner or lessee; at the meeting, the written consent aforesaid may be given by a simple majority of the owners and lessees represented at the meeting.

3. Assignments of Declarant's Rights and Duties. Any and all of the rights, powers, and reservations of declarant herein contained may be assigned to any person, firm or corporation which will assume the duties of declarant pertaining to the

particular rights, powers, and reservations assigned, and upon any such person, corporation, or association's evidencing its consent in writing to accept such assignment and assume such duties. He or it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by declarant herein. The term "declarant" as used herein includes all such assignees and their heirs, successors, and assigns. If at any time declarant ceases to exist and has not made such assignment, a successor, may be appointed in the same manner as these restrictions may be terminated, modified, or amended under paragraph two of this Article.

ARTICLE VII MISCELLANEOUS PROVISIONS

1. Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title, interest in or to any portion of said property, including a lessee, is and shall be conclusively deemed to have consented and agreed to every covenant, condition, and restriction contained herein, whether or not any reference to this declaration is contained in the instrument by which such person acquired an interest in said property.

2. Rights of Mortgages. All restrictions and other provisions herein contained shall be deemed subject and subordinate to all mortgages and deeds of trust now or hereafter executed upon land subject to these restrictions; provided; however, that if any portion of said property is sold under a foreclosure of any mortgage or under the provisions of any deed of trust, any purchaser at such sale, and his successors and assigns, shall hold any and all property so purchased subject to all of the restrictions and other provisions of this declaration.

3. Mutuality, Reciprocity; Runs with Land. All restrictions, conditions, covenants, and agreements contained herein are made for the direct, mutual, and reciprocal benefit of each and every part and parcel of said land; shall create mutual, equitable servitudes upon each parcel in favor of every other parcel; shall create reciprocal rights and obligations between the respective owners of all parcels and shall create privity of contract and estate between all grantees of said parcels, their heirs, successors, and assigns, operate as covenants running with the land, for the benefit of all other parcels.

4. Paragraph Headings. Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this declaration or in any way to define, limit, or describe the scope and intent of the particular paragraphs to which they refer.

5. Effect of Invalidation. If any provision of this declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

6. Addition of Territory. Declarant may at any time or from time to time during the pendency of these restrictions add all or a portion of the land described in Exhibit A, which is attached hereto and by reference made a part hereof, to the property which is covered by this declaration, and upon the recording of a notice of addition to territory containing the provisions set forth in paragraph seven of this Article, the covenants contained in this declaration shall apply to the added land in the same manner as if it were originally covered by this declaration; and thereafter, the rights, powers, and responsibilities of the parties to this declaration with respect to the added land shall be the same as with respect to the original land, and the rights, privileges, duties, and liabilities of the owners, lessees, and occupants of parcels within the added land shall be the same as in the case of the original land.

7. Notice Provisions. The notice of addition to territory referred to in paragraph six of this Article shall contain the following provisions:

A. A reference to this declaration, which reference shall state the date of recording hereof and the book or books of the records of Winona County, Minnesota, and page numbers, where this declaration is recorded.

B. A statement that the provisions of this declaration shall apply to the added territory in the manner set forth in paragraph six of this Article, and

C. An exact description of the added territory.

8. District Map. A map showing districts is attached hereto and made a part hereof as fully as if contained herein.

IN WITNESS WHEREOF the parties hereto have set their hands this 13th day of June, 1988.

PORT AUTHORITY OF WINONA

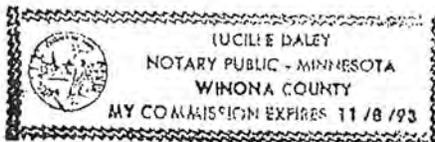
By: Loanne Miller

Its: President

By: Eric B. Jensen

Its: Executive Secretary

STATE OF MINNESOTA)
) SS.
COUNTY OF WINONA)

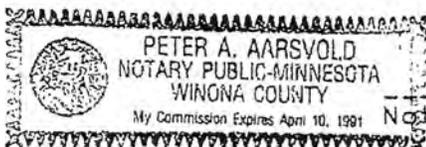


On this 13th day of June, 1988, before me, a Notary Public within and for said County, personally appeared Lillian Dascher and I. Jean Carter, to me personally known, who being by me duly sworn did say that they are all of the general partners of F.L.J. Realty Company, a limited partnership named in the foregoing instrument, and that said instrument was signed on behalf of said partnership, and the said Lillian Dascher and I. Jean Carter acknowledged said instrument to be the free act and deed of said partnership.

Lucille Daley
Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF WINONA)

On this 16th day of June, 1988, before me, a Notary public within and for said County, personally appeared Thomas A. Grupa and Charles A. Grupa, who being by me duly sworn did say that they are partners of JCT Partnership, a Minnesota general partnership named in the foregoing instrument, and that said instrument was signed on behalf of said partnership, and said Thomas A. Grupa and Charles A. Grupa acknowledged said instrument to be the free act and deed of said partnership.



Peter A. Aarsvold
Notary Public



207 Lafayette Street
P.O. Box 378
Winona, MN 55987-0378
507-457-8250
www.portofwinona.com

Mile 725 Upper Mississippi

August 25, 2020

WINONA, MN 55987

RE: Request to Amend JT Schain Covenants by Property Owner

Dear Sir or Madam:

The Port Authority previously mailed you a letter explaining that the Port Authority of Winona had been approached by Mike Onstad, owner of Black Squirrel Properties and a property owner in the JT Schain Industrial Park (please see attached map). Mr. Onstad has asked to amend two of the covenants currently in effect for the Park.

Proposed amendments: (please know these changes would be in effect for all parcels in the JT Schain Industrial Park, not just those owned by Mr. Onstad):

Article 2: 6(C): This article states: All off-street parking areas shall be surfaced with concrete or bituminous material.

It is our understanding Mr. Onstad would like to provide a gravel surface for parking.

Article 5: 3(C): This article restricts: Any use that offers goods or services for sale to the general public.

It is our understanding Mr. Onstad would like the flexibility to lease or sell land to businesses that offer goods and services for sale to the general public.

In the spring of this year, Mr. Onstad communicated with property owners asking for written consent to the proposed changes. Hearing little response, **Mr. Onstad directed his attorney, Rick Dold, to send a certified letter to all JT Schain Industrial Park property owners calling for a meeting at 10:00 AM on September 15th at 330 West Second Street in Winona.** According to the covenants, a majority of property owners in attendance on September 15th will determine if the covenants are to be changed or if they are to remain as drafted. If you support or oppose the proposed changes, it would be important for you to have a representative at the meeting.

Port Authority staff cited that there is very little land available for light industrial development in Winona and allowing more commercial uses should be one of the issues considered by owners of land in the park. Please feel free to contact me if you should have any questions.

Request to Amend JT Schain Covenants by Property Owner
August 25, 2020
Page 2

The Port Authority owns only one 2.7 acre parcel of property in the park. Our influence to either approve or reject the proposed covenants is exactly the same as every other property owner in the park. Port staff will be at the September 15th meeting and will represent any directives issued by the Port Authority of Winona. The meeting is designed to determine the wishes of the majority of the property owners in attendance.

Sincerely,

Lucy McMartin

Lucy McMartin
Director of Community Development
lmcmartin@ci.winona.mn.us
507.457.8250

Myron White

Myron White
Development Coordinator
mwhite@ci.winona.mn.us
507.457.8250

Attachments: Map of JT Schain Industrial Park (Owner's property highlighted)
Copy of JT Schain Covenants
Permitted uses in I-1 Zoning District

- e) Prohibited – a blank cell in the use table indicates that the land use is prohibited in that base zoning district.
- 2) The Accessory Use Table, Table 43-2, lists accessory uses and indicates whether they are permitted or permitted with standards. The table also includes references to whether additional use specific standards are applicable to that use. The following definitions shall be referenced when using Table 43-2:
 - a) Permitted uses – a “P” in a cell of the use table indicates that the accessory land use is allowed by right in the base zoning district.
 - b) Permitted with standards use – a “PS” in a cell of the use table indicates that the accessory land use is allowed when standards identified in **Chapter 43 Article 03 Division 7** are met. Uses permitted with standards are also subject to all other applicable requirements of the UDC.
 - c) Prohibited – a blank cell in the use table indicates that the accessory land use is prohibited in that base zoning district.
- 3) Unlisted uses. When a proposed land use is not explicitly listed in the use table, the Community Development Department shall determine whether or not it is included in the definition or a listed use or is so consistent with the size, scale, operating characteristics, and external impacts of a listed use that it should be treated as the same use. Any such interpretation shall be made available to the public through mailed notice to property owners with 150 feet and shall be serve as a finding for future decisions of the city until the Community Development Department makes a different interpretation.
- 4) Overlay Districts Prohibited. When a property is located within the boundaries of one or more overlay districts, the most restrictive use provision among the overlay and base zoning districts shall apply.

B) Principal Uses Table

Table 43-1: Principal Uses Table

Use Type	RESIDENTIAL						MIXED USE			BUSINESS			INDUSTRIAL		AGRICULTURAL	USE SPECIFIC STANDARDS
	R-R	R-S	R-1	R-1.5	R-2	R-3	MU-DC	MU-DF	MU-N	B-1	B-2	B-3	I-1	I-2	AG/NR	
Residential																
Household Living																
Dwelling, single-family	P	P	P	P	P	P			P	P					P	
Dwelling, two- to four-family			PS	P	P	P			P	P						Yes
Dwelling, conversion to two-, three-, and four-family			C	PS	PS	PS			PS	PS						Yes
Dwelling, attached townhouse or rowhouse (5 or more units)			C	PS	PS	PS		PS	PS	PS	PS	PS				Yes
Dwelling, apartment (5 or more units)						P		P	P	PS	PS	PS				Yes
Dwelling, apartment mixed use (1 or more units)							PS	PS	PS	P	P	P				Yes

Table 43-1: Principal Uses Table

Use Type	RESIDENTIAL						MIXED USE			BUSINESS			INDUSTRIAL		AGRICULTURAL	USE SPECIFIC STANDARDS
	R-R	R-S	R-1	R-1.5	R-2	R-3	MU-DC	MU-DF	MU-N	B-1	B-2	B-3	I-1	I-2	AG/NR	
Manufactured home park			C	C	C	C	C	C	C	C	C	C				Yes
Group Living																
Assisted living facility					C	P	C	C		P	P	P				
Emergency Shelter							C	C	C	C	C	C				Yes
Fraternity or sorority					C	C		C	C							Yes
Long-term or transitional care facility					C	P	C	C		P	P	P				
Overnight Shelter							C	C	C	C	C	C				Yes
Residential care, licensed in-home (6 or fewer persons)	P	P	P	P	P	P	P	P	P	P	P	P			P	
Residential care, licensed in-home (7 or more persons)				P	P	P	P	P	P	P	P	P				
Roominghouse (3 or greater units)							C	C		C	C	C				
Lodging																
Bed and breakfast (B&B), owner-occupied tourist home, 2 rooms maximum	I	I	I	I	I	I	PS	PS	I	I	PS	PS			I	Yes
B&B, owner-occupied tourist home, 3 rooms maximum			I	I	I	I	PS	PS	I	I	PS	PS				Yes
B&B, owner-occupied tourist home, 5 rooms maximum					I	I	PS	PS	I	I	PS	PS				Yes
B&B, owner-occupied tourist home, any number of rooms						I	PS	PS	I	I	PS	PS				Yes
Hotel							P	P			P	P				
Motel or motor hotel								PS			PS	PS				Yes
Residential retreat center, non-owner occupied tourist home	I	I	I	I	I	I	PS	PS	I	I	PS	PS			I	Yes
Public & Institutional																
Cemetery	P	P													P	
Club or lodge					C	C	C	C	C	C	C	C				
Emergency service facility	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS			PS	Yes
Hospital						C				C	C	C				Yes
Municipal, county, state, or federal administrative building	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	Yes

Table 43-1: Principal Uses Table

Use Type	RESIDENTIAL						MIXED USE			BUSINESS			INDUSTRIAL		AGRICULTURAL	USE SPECIFIC STANDARDS
	R-R	R-S	R-1	R-1.5	R-2	R-3	MU-DC	MU-DF	MU-N	B-1	B-2	B-3	I-1	I-2	AG/NR	
Religious facility	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	Yes
School, college or university	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS			PS	Yes
School, elementary or secondary	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS			PS	Yes
School, nursery or preschool	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS			PS	Yes
School, trade or business	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS			PS	Yes
Commercial																
Food, Beverage, & Indoor Entertainment																
Adult use establishment												PS	PS	PS		Yes
Bar, cocktail lounge, and night club							P	P	C	C	P	P	P	P		Yes
Brewpub							P	P	C	C	P	P	P	P		Yes
Commercial recreation or entertainment facility, indoor							PS	PS			PS	PS	PS			Yes
Conference or convention center							C	C			C	C	C	C		Yes
Public recreation facility, indoor					PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		Yes
Restaurant							P	P	P	P	P	P	P	P		Yes
Restaurant, drive-through or drive-in								PS		C	PS	PS	PS	PS		Yes
Theater							PS	PS	C	C	PS	PS	PS	PS		Yes
Retail Sales																
Gas station								C	C	PS	PS	PS	PS	PS		Yes
Automotive sales and leasing								C			PS	PS	PS	PS		Yes
Billboard or outdoor advertising, off-premise sign							C	C		PS	PS	PS	PS	PS		Yes
Grocery, food, or beverage store							P	P	P	P	P	P	P	P		Yes
Heavy consumer goods store							C	P		C	P	P	P	P		Yes
Pharmacy or convenience store							P	P	P	P	P	P	P	P		Yes
Retail store, not listed							P	P	P	P	P	P	P	P		Yes
Retail store with drive-through							C	PS	C		PS	P	PS	PS		
Personal Services																
Animal hospital or veterinary clinic							C	C		PS	PS	PS	PS	PS		Yes
Animal kennel															PS	Yes
Automotive repair, minor							C	PS	C	PS	PS	PS	PS	PS		Yes

Table 43-1: Principal Uses Table

Use Type	RESIDENTIAL			MIXED USE			BUSINESS			INDUSTRIAL		AGRICULTURAL	USE SPECIFIC STANDARDS			
	R-R	R-S	R-1	R-1.5	R-2	R-3	MU-DC	MU-DF	MU-N	B-1	B-2	B-3	I-1	I-2	AG/NR	
Automotive repair, major								PS				PS	PS	PS		Yes
Clinic						P	P	P	P	P	P	P	P	P		Yes
Day care facility							P	P	P	P	P	P	P	P		Yes
Funeral home or mortuary						C		C	C	C	C	P	P	P		Yes
Personal service and repair business							P	P	P	P	P	P	P	P		Yes
Personal service with drive-through							C	PS	C		PS	P	P	P		Yes
Storage facility										P	P	P	P	P		Yes
Business & Technical Services																
Office, business, professional, or administrative						C	P	P	P	P	P	P	P	P		Yes
Publishing							P	P		P	P	P	P	P		Yes
Research or scientific laboratory							C	C		P	P	P	P	P		Yes
Studio, gallery or work space, commercial art/performance						C	C	C	C	C	P	P	P	P		Yes
Studio, visual or sound production							C	C		C	P	P	P	P		Yes
Industrial																
Brewery, large														PS		Yes
Brewery, small							C	C				PS	PS	PS		Yes
Construction contractor yard								C				PS	PS	PS		Yes
Crematory														PS		Yes
Farm winery															C	
Makerspace							C	C	C	C	P	P	P	P		
Manufacturing, Light							C	C				PS	PS	PS		Yes
Manufacturing, Heavy														C		Yes
Meat packing, stockyard or slaughterhouse														C		
Microdistillery							C	C				PS	PS	PS	C	Yes
Printing							C	C			PS	PS	PS	PS		Yes
Scrap, salvage or storage yard														PS		Yes
Silica sand processing facility														C		Yes
Storage of Grain, Flour Fertilizer, Livestock Feed or Fuel													PS	PS		Yes
Warehouse or wholesale trade								C				P	P	P		
Recreation & Open Space																

Table 43-1: Principal Uses Table

Use Type	RESIDENTIAL						MIXED USE			BUSINESS			INDUSTRIAL		AGRICULTURAL	USE SPECIFIC STANDARDS
	R-R	R-S	R-1	R-1.5	R-2	R-3	MU-DC	MU-DF	MU-N	B-1	B-2	B-3	I-1	I-2	AG/NR	
Active park or playground	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Campground															PS	Yes
Golf course	C	C	C	C	C	C									C	
Marina													P	P		
Passive park, open space, natural area, or trail	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Nature or wildlife preserve, sanctuary, management area, or historic area															P	
Commercial recreation, outdoor							C	C		PS	PS	PS	PS	PS		Yes
Public recreation, outdoor					PS	PS	C	C	PS	PS	PS	PS	PS	PS		Yes
Natural Resources & Agriculture																
Agriculture - raising of crops	P														P	
Agriculture - raising of livestock	PS														PS	Yes
Animal stable															PS	Yes
Commercial greenhouse, nursery, tree farm, or orchard	PS										C	C	PS	PS	PS	Yes
Community garden	P	P	P	P	P	P	P	P	P						P	
Extraction pit															C	Yes
Land alteration when not incidental to construction of a permitted use	C	C	C		C	C				C					C	Yes
Timber harvesting															P	
Utilities & Transportation																
Airport															C	C
Electric or heat generation plant															C	
Essential services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Motor Freight Station													PS	PS		Yes
Parking, standalone structural							C	C	C	PS	PS	PS	PS	PS		Yes
Parking, standalone non-structural							PS	PS	PS	PS	PS	PS	PS	PS		Yes
Public/utility maintenance facility					P	P				P	P	P	P	P		

Table 43-2: Accessory Uses Table
P = Permitted

PS = Permitted with Standards

Use Type	RESIDENTIAL						MIXED USE			BUSINESS			INDUSTRIAL		AGRICULTURAL	USE SPECIFIC STANDARDS
	R-R	R-S	R-1	R-1.5	R-2	R-3	MU-DC	MU-DF	MU-N	B-1	B-2	B-3	I-1	I-2	AG/NR	
Essential services not including power lines over 35 KV relay and commercial broadcast towers	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Home occupation	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		Yes
In-home family or group daycare	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Land alteration when incidental to construction of a permitted use	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Noncommercial garden and household pets not including fowl or farm animals	P	P	P	P	P	P	P	P	P	P	P	P	P	P		
Noncommercial radio and television antenna	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Overnight Shelter							C	C	C	C	C	C				Yes
Outdoor dining area							P	P	P	P	P	P	P	P		
Outdoor sales/display							P	P	P	P	P	P	P	P		
Parking, structural or nonstructural facilities exclusively for the use of the permitted use	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	Yes
Parking, recreational vehicle	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	Yes
Rooming unit, the keeping of not more than 2 roomers or boarders by a resident family	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Sign	P	P	P	P	P	P	P	P	P	P	P	P	P	P		
Small-scale wind energy turbine	PS	PS	PS	PS	PS	PS		PS	PS	PS	PS	PS	PS	PS		Yes
Solar panel	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		Yes
Swimming pool, private	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	Yes
Vending machine	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	Yes
Wireless antenna attached to existing structure	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	

PORT AUTHORITY AGENDA ITEM

**AGENDA ITEM: 4. B. Support of Business Assistance/Subsidy to BCS
Automotive Enterprises, LLC**

DATE: September 10, 2020

ATTACHMENT: Business Assistance/Subsidy Language

One component of the financing package for BCS Automotive includes a State of Minnesota Department of Employment and Economic Development Minnesota Investment Fund (MIF) grant/loan. MIF dollars are typically granted to the City with the understanding that grant proceeds be provided to the business for their proposed expansion. In this instance, the grant is in the amount of \$600,000 with \$500,000 of that amount forgiven provided BCS, within two years, retains 90 jobs and creates 117 new jobs with cash wages between \$13.99 and \$17.00. BCS's expected equity injection into the project is expected to be \$2,287,000. You may also recall in May of this year the Port Authority approved a \$100,000 loan to BCS with \$50,000 forgivable providing they provide the above-mentioned jobs and wages.

Under MN Statutes it is required that the City and BCS enter into a Business Assistance/Subsidy Agreement (see attached). On Monday, September 21st the City Council will hold a public hearing to hear testimony regarding the proposed assistance. After the public hearing, the City Council will be asked to enter into the agreement with BCS Automotive Enterprises, LLC.

If Commissioners concur, a motion encouraging City Council to support the proposed Business Assistance/Subsidy Agreement would be appropriate.

- (a) January 15, 2021 for the period ending December 31, 2020
- (b) January 15, 2022 for the period ending December 31, 2021
- (c) January 15, 2023 for the period ending December 31, 2022;
- (d) Fifteen days after the Compliance Date.

Section 7.2 Documentation to be provided to the Lender:

(a) Project status and the status of payments.

(b) Additional Leverage. The Borrower must provide to the Lender invoices, sworn construction statements, and or any other information, with each progress report, to document Other Project Funds in addition to the originally included project costs.

(c) Job Creation Documentation. The Borrower shall provide to the Lender information on the hiring of each New Job on forms provided by the Lender. This information must include:

- (1) Permanent jobs created;
- (2) Job title of each New Job;
- (3) Date of hire of each new employee;
- (4) Hourly base wage paid;
- (5) List of Benefits provided; and
- (6) Hourly value of Benefits paid.

(d) Payroll Report. A formal payroll report verifying job information will be due as of the Compliance Date.

ARTICLE 8

Business Subsidy Agreement and Reporting

Section 8.1. Business Subsidy Agreement. The provisions of this Section constitute the "Business Subsidy Agreement" for purposes of the Minnesota Business Subsidy Act (Minn. Stat. § 116J.993 — § 116J.995 and its successor statute.)

(a) The Borrower acknowledges and agrees that the provisions of Minnesota's Business Subsidy Act apply to this Loan Agreement, as Borrower is receiving government assistance under the terms of this Loan Agreement.

- (1) The subsidy provided to the Borrower includes the \$600,000 loan made hereunder which will be used for Building renovation.

- (2) The public purposes and goals of the subsidy are to increase Borrower's net jobs in the City and encourage economic development.
 - (3) The goals for the subsidy are to create jobs that pay a livable wage, per Section 8.1(b) of this Loan Agreement.
 - (4) If the goals are not satisfied, the Borrower shall make payment to the Lender as required in Section 8.2 of this Loan Agreement.
 - (5) The subsidy is needed because the Project cost is economically infeasible without the Loan.
 - (6) The Borrower must continue operations in the Jurisdiction for at least five years following the Benefit Date.
 - (7) The Borrower does not have a parent corporation.
-
- (8) In addition to the assistance provided under this Loan Agreement, the Borrower has received or expects to receive as part of this Project, the following financial assistance from other "grantors" as defined in the Business Subsidy Act: \$600,000 from the city of Winona, Minnesota.
- (b) On the Compliance Date, the Borrower shall have:
- (1) Maintained Ninety (90) permanent, non-contract, non-seasonal FTE jobs;
 - (2) Created at least One Hundred Seventeen (117) New Jobs at the Development Property with each job noted once within "wage brackets" as stated below:
 - (a) Eighty Two (82) paying at least \$13.99 per hour in cash wages, exclusive of Benefits. The Borrower is entitled to forgivable loan proceeds in the amount of \$4,926 for each job created in this wage bracket,
 - (b) Fifteen (15) paying at least \$16.99 per hour in cash wages, exclusive of Benefits. The Borrower is entitled to forgivable loan proceeds in the amount of \$6,404 for each job created in this wage bracket,
 - (c) Twenty (20) paying at least \$17 per hour in cash wages, exclusive of Benefits. The Borrower is entitled to repayable loan proceeds in the amount of \$5,000 for each job created in this wage bracket
 - (d) Any job created between the Effective Date and the Compliance Date shall pay at least \$13.86 per hour, including Benefits.
 - (e) New Jobs created on or after the Effective Date that meet the criteria outlined in 8.1(b)(2) will count toward the Borrower's job creation goal.

Section 8.2. Default on Business Subsidy Act Requirements.

(a) If the Borrower fails to meet the job creation goal and wage level commitment set forth in Section 8.1(b) above on the Compliance Date, the Lender may, after holding a public hearing, extend the Compliance Date for one year, after approval from the State. If no extension occurs, or if after the extension, the Borrower fails to meet the job creation goal and wage commitment, the Borrower will be required to repay to the Lender a pro rata share of the Loan principal plus interest as calculated in Section 8.2 (b) at an accelerated rate, based upon the difference between the wage bracket values defined in Section 8.1(b)(2) above and the wage bracket value of actual jobs created. Forgivable loan proceeds will be subject to collection first; once the forgivable funds are exhausted, repayable loan proceeds will be subject to accelerated repayment.

(b) In an Event of Default occurring as a result of a breach by the Borrower of any provision of Section 8.1 of this Loan Agreement, the Borrower agrees to repay the principal amount as calculated in Section 8.2(a) hereof plus interest set at the greater of five percent (5%) or the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysis of the United States Department of Commerce for the 12-month period ending March 31st of the previous year

(c) Interest required in Section 8.2 (b) shall commence to accrue as of the Initial Disbursement Date;

(d) Nothing in this Section 8.2 shall be construed to limit the Lender's rights or remedies under any other provision of this Loan Agreement, and the provisions of Section 8.2 are in addition to any other such right or remedy the Lender may have available.

(e) The Borrower shall provide to the Lender information regarding job and wage goals and results for two years after the Benefit Date or until the goals are met, whichever is later. This reporting requirement will expire if the goals are met on the Compliance Date. If the goals are not met, the Borrower must continue to provide information on the Loan until the Loan is repaid. The information must be filed on the Non-JOBZ Minnesota Business Assistance form as found on the MN Department of Employment and Economic Development website and shall include the following:

- (1) the type, public purpose, and amount of subsidies and type of district, if the subsidy is tax increment financing;
- (2) the hourly wage of each job created with separate bands of wages;
- (3) the sum of the hourly wages and cost of health insurance provided by the employer with separate bands of wages;
- (4) the date the job and wage goals will be reached;
- (5) a statement of goals identified in the subsidy agreement and an update on achievement of those goals;

- (6) the location of the recipient prior to receiving the business subsidy; (7) the number of employees who ceased to be employed by the recipient when the recipient relocated to become eligible for the business subsidy;
- (8) why the recipient did not complete the project outlined in the subsidy agreement at their previous location, if the recipient was previously located at another site in Minnesota;
- (9) the name and address of the parent corporation of the recipient, if any;
- (10) a list of all financial assistance by all grantors for the project; and
- (11) other information the Commissioner of the MN Dept. of Employment and Economic Development may request.

(f) This information must be provided to the Lender no later than March 1 of each year for the previous year. If the Borrower does not submit the report, the Lender shall mail the Borrower a warning within one week of the required filing date. If, after 14 days of the postmarked date of the warning, the Borrower fails to provide a report, the Borrower must pay to the Lender a penalty of \$100 for each subsequent day until the report is filed. The maximum penalty shall not exceed \$1,000.

ARTICLE 9 Other Conditions

Section 9.1. Project Time Frame. The time frame outlined in the Grant Application and Grant Contract pertaining to the Project shall be met by the Borrower.

Section 9.2. Promissory Note. The Borrower shall execute a Promissory Note in substantially the form set forth by the State.

Section 9.3. Collateral. The Borrower shall furnish the Lender description of collateral,

Section 9.4. Annual Financial Statements. For the term of the Loan, upon request of the Lender, the Borrower shall submit the most recent annual financial statement prepared in accordance with generally accepted accounting principles. The annual financial statements shall include a profit and loss statement, balance sheet, and statement of cash flow, notes and an opinion from the accountants of such statements acceptable to the Lender.

Section 9.5. Discrimination on Account of Race, Creed, or Color. The provisions of Minn. Stat. § 181.59 and any successor statutes, which relate to civil rights and discrimination, shall be considered a part of this Loan Agreement as though wholly set forth herein and the Borrower shall comply with each such provision throughout the term of this Loan Agreement.

Section 9.6 Affirmative Action. The Borrower is encouraged to prepare and implement an affirmative action plan for the employment of minority persons, women, and the qualified disabled.

Section 9.7. Job Listing Agreement. (Minn. Stat. § Section 116L.66 and any successor statutes). When the Loan is for \$200,000 or more, the Borrower shall enter into a Job Listing Agreement

PORT AUTHORITY AGENDA ITEM

AGENDA ITEM: 4. C. Review and Approval of Port/BCS Automotive Loan and Loan Documents

DATE: September 10, 2020

ATTACHMENTS: Resolution
BCS Loan Documents

In May of this year, the Port Authority reviewed and approved a Port Authority Loan to BCS Automotive for their Winona expansion project. At that time, we did not have the final loan documents prepared for review. Attached you will find the loan documents and a proposed resolution that supersedes Resolution 761 passed in May.

The loan is much like the loans we have done for other local expansions. The loan is proposed to be in the amount of \$100,000 with \$50,000 forgivable if BCS meets wage and job goals. Those goals include the retention of 90 jobs currently in Winona and the creation of 117 new jobs with wages ranging from \$13.99 per hour to over \$17.00 per hour. Those new jobs would be created within 2 years.

Exhibits A and B to the resolution will be completed as the documents are prepared.

If Commissioners concur, a motion to approve the attached resolution superseding Resolution 761 and authorizing the President and Executive Secretary to execute loan documents, would be appropriate.

RESOLUTION # _____
SUPERCEDING RESOLUTION #761
Approving BCS Automotive Loan and Authorizing the President and
Executive Secretary to Execute Loan Documents

WHEREAS, the Authority administers a Revolving Loan Fund (the "Loan Program") for the purpose of encouraging business growth and/or expansion projects for local companies; and

WHEREAS, Recipient operates BCS Automotive Interface Solutions US, LLC, a tier one supplier to the automotive industry, and has applied to the Authority for a Revolving Loan in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the "Loan") to assist with an expansion program into new market sectors (the "Project"); and

WHEREAS, Recipient is the owner of the subject property upon which the Project will occur located at 5752 Industrial Park Road, Winona, MN 55987, PID No. 32.320.0360, (the "Property"); and

WHEREAS, the Port Authority has determined that the Recipient's loan application is consistent with the intent of its Loan Program in that their expansion will retain 90 quality manufacturing jobs in Winona and create an additional 117 quality manufacturing jobs within the next two years. The Port has agreed to make a loan in the principal amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00); and

WHEREAS, a portion of the above-mentioned loan amount, Fifty Thousand and 00/100 Dollars (\$50,000.00), may be forgivable if certain job and wage goals are met.

NOW, THEREFORE, BE IT RESOLVED by the Port Authority of Winona, Minnesota:

1. The Port Authority of Winona approves a Port Revolving Loan as outlined above to BCS Automotive Interface Solutions US, LLC.
2. The Port Authorizes President Mike Cichanowski and Executive Secretary Stephen T. Sarvi to execute of the Loan Documents.

Passed and adopted by the Port Authority of Winona at a meeting thereof held this 10th day of September, 2020.

Mike Cichanowski
President

Attest:

Stephen T. Sarvi
Executive Secretary

**PORT AUTHORITY OF WINONA
REVOLVING LOAN FUND LOAN AGREEMENT**

THIS LOAN AGREEMENT (this "Agreement") is made and entered into as of this _____ day of _____, 2020 (the "Effective Date"), by and between BCS Automotive Interface Solutions US, LLC, a limited liability company under the laws of the State of Delaware, 5752 Industrial Park Road, Winona, MN 55987 (the "Recipient"), and the Port Authority of Winona, a body politic and corporate under the laws of the State of Minnesota, 207 Lafayette Street, Winona, MN 55987 (the "Authority"); (collectively the "parties").

WHEREAS, the Authority administers a Revolving Loan Fund (the "Loan Program") for the purpose of encouraging business growth and/or expansion projects for local companies; and

WHEREAS, Recipient operates BCS Automotive Interface Solutions US, LLC, a tier one supplier to the automotive industry, and has applied to the Authority for a Revolving Loan in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) (the "Loan") to assist with an expansion program into new market sectors. This expansion is expected to retain 90 quality manufacturing jobs in Winona and create an additional 117 new jobs within 2 years (the "Project"); and

WHEREAS, Recipient is the owner of the subject property upon which the Project will occur located at 5752 Industrial Park Road, Winona, MN 55987, PID No. 32.32.0360, (the "Property"); and

WHEREAS, the Authority has determined that the Recipient's loan application is consistent with the intent of its Loan Program and has agreed to make a loan in the principal amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00); and

WHEREAS, a portion of the above-mentioned Loan amount, Fifty Thousand and 00/100 Dollars (\$50,000.00), may be forgivable if certain job and wage goals are met as provided herein; and

WHEREAS, pursuant to Resolution # _____, dated _____, 2020, the Authority has approved this Loan for the Project.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. AMOUNT AND TERMS OF THE LOAN.

- a. Loan. Subject to, and upon the terms and conditions herein set forth, the Authority agrees to make the Loan to Recipient in the principal amount of One Hundred Thousand and No/100ths Dollars (\$100,000.00).
- b. Term. The Loan shall be amortized over a Seven (7) year period with the first payment due January 1, 2021, and the final payment due on or before December 31, 2027 with repayment thereof as provided herein below.

- c. Interest. Interest shall accrue on the Payable Loan Amount at the annual rate of 3.00 percent (the "Loan Rate"). The Loan Rate shall be adjusted every year to the greater of one point below the Minnesota prime rate or 3.00 percent. The interest adjustment shall be determined on January 2nd of each year and shall be applied to the unpaid principal amount as of February 1st of each year.
 - d. Promissory Note. Recipient shall execute a Promissory Note in the amount of One Hundred Thousand and No/100ths Dollars (\$100,000.00) (the "Note").
 - e. Loan Repayments.
 - i. Partial Repayment of Loan. Recipient shall make monthly payments of principal and interest on the Note on a portion of the Loan until the principal amount of Fifty Thousand and No/100ths Dollars (\$50,000.00) plus all interest due thereon (the "Payable Loan Amount") is paid in full.
 - ii. Partial Forgiveness of Loan. Fifty Thousand and No/100ths Dollars (\$50,000.00) (the "Forgivable Loan Amount") of the Loan is forgivable, provided the Recipient retains 90 current jobs in the City of Winona and creates a minimum of 117 full time equivalent jobs at a wage rate not less than \$13.86 per hour (not inclusive of benefits) within two years of substantial completion of improvements slated to begin the third quarter of 2020 and to conclude not later than July 31, 2021 as more particularly provided herein below. Interest at the Loan Rate shall also accrue on the Forgivable Loan Amount under the same schedule as the Payable Loan Amount, but shall be deferred and forgiven provided the Recipient timely meets the terms and conditions of forgiveness set forth herein below.
 - f. Disbursements. The Loan shall be disbursed to Recipient in one lump sum as provided herein below.
2. DISTRIBUTION OF LOAN FUNDS. The Authority will pay the sum of One Hundred Thousand and No/100ths Dollars (\$100,000.00) (the "Loan Funds") to the Recipient in a lump sum upon:
- a. Execution of this Agreement;
 - b. Execution of a Borrower's Affidavit;
 - c. Execution and filing of a UCC1 for the Collateral in favor of the Authority; and
 - d. Execution of a Promissory Note.
3. REPRESENTATIONS OF RECIPIENT. Recipient warrants that the following statements are true:
- a. The statements and representations made in Recipient's request/application for the Loan were at the time of the request and as of the date hereof true and correct.
 - b. Recipient is in good standing with all public entities having any authority or jurisdiction over Recipient.
 - c. Recipient is currently in compliance with and shall at all times remain in compliance with all federal, state and local laws, rules and regulations, which apply to Recipient.

- d. Recipient is current on local property tax and special assessment payments owing on Recipient's Property, which is the subject of this Agreement.
 - e. Recipient shall use the Loan Funds for, and only for, the Project on the Property and purposes stated in Recipient's request or as otherwise approved by the Authority in the award of the Loan, specifically to assist with an expansion program into new market sectors.
 - f. Recipient shall continue to operate its business within the City of Winona, Minnesota (the "City") at all times during the term of this Agreement.
4. DISCLOSURE BY RECIPIENT. Recipient shall provide to the Authority, upon request, any and all business and financial records as may be necessary to confirm to the Authority that Recipient continues to be in good standing and operating successfully at its location on the Property in the City and that the Loan Funds have been used and/or continue to be used in compliance with the approved purposes of the Loan. Recipient shall also provide to the Authority a year-end report annually for a period of seven calendar years following the Effective Date of this Agreement. "Year-end" shall be defined as December 31, with the year-end report being due by the following January 31. The year-end reports shall demonstrate to the Authority the status or completion of the purposes for which the Loan was given to Recipient and shall document the continuing existence of the business on the Property in the City and whether the business has created or retained the jobs and met the other terms and conditions of this Agreement.
5. REPAYMENT OF PAYABLE LOAN AMOUNT.
- a. Recipient shall repay the Payable Loan Amount portion of the Note in monthly installments of Six Hundred Sixty and 67/100ths Dollars (\$660.67) commencing on January 1, 2021, and continuing every month thereafter until December 1, 2027, at which time the entire principal balance and all accrued interest on the Payable Loan Amount shall be due and payable in full. An amortization schedule for the Payable Loan Amount portion of the Note is attached hereto as Exhibit A.
 - b. Any amount of principal and accrued interest, which is not paid when due, shall bear interest from the date on which such amount is due and payable until such amount is paid in full, payable on demand, at the Loan Rate or the maximum rate allowable by law.
 - c. Interest shall be computed daily on the Loan Funds at the Loan Rate on the basis of actual number of days in which all or any portion of the principal amount of the Loan hereof is outstanding computed on the basis of a 365 day year.
 - d. Recipient may prepay the Loan at any time without penalty.
 - e. Principal and interest on the Loan shall be payable in lawful money of the United States at the Authority's office located at 207 Lafayette Street, Winona, Minnesota, 55987.
 - f. If Recipient defaults on any material provision of this Agreement, then Recipient shall immediately repay the entire Loan Amount to the Authority. In addition, Recipient shall also pay any costs of collection, including but not limited to reasonable attorneys' fees and expenses, incurred by the Authority in enforcing this obligation.

6. FORGIVENESS/REPAYMENT OF FORGIVABLE LOAN AMOUNT.

- a. Job and Wage Goals. The Forgivable Loan Amount portion of the Loan shall be forgiven, without interest, provided: (i) the Recipient has retained 90 current full time jobs and created a minimum of 117 full-time equivalent jobs at an average wage rate not less than \$13.86 per hour (not inclusive of benefits) within two years of substantial completion of the Project (scheduled to commence the third quarter of 2020 and be completed not later than July 31, 2021), but not later than March 31, 2023; and (ii) the Recipient has continuously operated its business within the City for the term of this Agreement.
- b. If Recipient's Project does not timely meet the agreed upon job and wage goals as provided in this Agreement, the Recipient shall, in addition to repaying the Payable Loan Amount, repay the entire Forgivable Loan Amount portion of the Loan plus accrued interest at the Loan Rate, which amount shall be due and payable not later than December 1, 2027. Interest shall be computed daily on the Loan Funds at the Loan Rate on the basis of actual number of days in which all or any portion of the principal amount of the Loan hereof is outstanding computed on the basis of a 365 day year. Recipient may prepay the Loan at any time without penalty. Principal and interest on the Loan shall be payable in lawful money of the United States at the Authority's office located at 207 Lafayette Street, Winona, Minnesota, 55987.
- c. If Recipient defaults on any material provision of this Agreement or fails to satisfy any one or more of the two conditions for forgiveness of the Loan set forth in this Paragraph, then Recipient shall repay the Forgivable Loan Amount to the Authority. In addition, Recipient shall also pay any costs of collection, including but not limited to reasonable attorneys' fees and expenses, incurred by the Authority in enforcing this obligation.

7. SECURITY. As security for the payment of principal and accrued interest under this Agreement, Recipient hereby grants the following to the Authority:

- a. Collateral. A security interest in a specific piece of the Recipient's equipment listed on Exhibit B attached hereto (the "Collateral"). Recipient shall not and nothing in this Section shall constitute or be deemed to constitute, a grant of authority to Recipient to, sell, lease, or otherwise dispose or encumber the Collateral, or any part of the Collateral, without prior written consent of the Authority, except in the ordinary course of business or as otherwise provided herein. The security interest hereby created shall attach immediately upon execution of this Agreement and concurrently therewith, Recipient shall execute a UCC Financing Statement (Form UCC1) against the asset(s) listed on Exhibit B, attached hereto. The form UCC1 shall be promptly filed by Recipient with the Minnesota Secretary of State's Office at Recipient's sole cost and expense.
- b. Insurance. The Recipient shall maintain, at Recipient's cost and expense, commercial general liability and other policies of insurance for liability, wind, fire and other casualty purposes on the Property and equipment identified in this Agreement.

8. EVENTS OF DEFAULT OF RECIPIENT. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

- a. Recipient shall fail to pay when due (whether by acceleration or otherwise) principal or interest under this Agreement, and any such default continues for a period of thirty calendar days after Recipient receives notice thereof from the Authority;
- b. Recipient shall close, sell or relocate its business outside the City of Winona, Minnesota, or otherwise fail to operate its business within the City of Winona, Minnesota, at any time during the term of this Agreement;
- c. Any representation or warranty made by or on behalf of Recipient in this Agreement, in any other Loan Document, including but not limited to this Agreement, or in any statement or certificate given in writing pursuant thereto or in connection therewith is false, misleading or incomplete in any material respect when made (or deemed to have been made);
- d. Recipient fails or neglects to perform, keep or observe any covenant set forth in this Agreement and the same has not been cured within thirty calendar days after Recipient receives notice thereof from the Authority;
- e. Recipient shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail to generally pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;
- f. An involuntary case or other proceeding shall be commenced against Recipient seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days; or an order for relief shall be entered against Recipient under the federal bankruptcy laws as now or hereafter in effect; or
- g. This Agreement for any reason (other than the satisfaction in full of all amounts owing in connection with the Loan) ceases to be, or is asserted by Recipient not to be, a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms, and such occurrence has not been cured to the Authority's satisfaction within five (5) calendar days after Recipient receives notice thereof from the Authority.

9. AUTHORITY REMEDIES IN EVENT OF DEFAULT. If an Event of Default shall occur and be continuing, the outstanding principal amount of the Loan and interest accrued thereon shall be immediately due and payable without presentment demand,

protest or further notice of any kind, all of which are hereby expressly waived, except as provided in this paragraph, interest thereon shall accrue on the total amount of the Loan (principal and interest) outstanding from and after the date of default, and an action therefore shall immediately accrue. In the Event of Default, the Authority shall give written notice thereof to the Recipient at 5752 Industrial Park Road, Winona, MN 55987, or to such other address as the Recipient may inform the Authority in writing. In the event that any such default is not cured within Ten (10) days of the receipt of such notice, the Authority may, at its option, declare the entire balance due hereunder immediately due and payable without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise this option at a later date. After the date of default, payment by Recipient shall be applied first to interest and then to principal. If payments are in default more than 60 days, interest on the unpaid principal balance shall accrue at Ten percent (10%) per annum. Said increased interest shall be as and for liquidated damages to LENDER and shall not be considered a penalty. Recipient shall also pay any costs of collection, including but not limited to reasonable attorneys' fees and expenses, incurred by the Authority in enforcing this obligation.

10. GENERAL TERMS.

- a. Voluntary and Knowing Action. The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
- b. Authorized Signatories. The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- c. Recitals. The recitals to this Agreement are made a part hereof and incorporated herein by reference.
- d. Assignment. This Agreement may not be assigned by either party without the written consent of the other party.
- e. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall be only valid when they have been reduced to writing, and signed by an authorized representative of the Authority and Recipient.
- f. Records-Availability and Retention. Pursuant to Minn. Stat. 16C.05, subd. 5, Recipient agrees that the Authority or the City of Winona, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any book, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of Recipient and involve transactions relating to this Agreement.

Recipient agrees to maintain these records for a period of six years from the date of termination of this Agreement.

- g. Compliance with Laws. Recipient shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, programs and staff for which Recipient is responsible.
- h. Interest by Authority or City Officials. No elected official, officer, or employee of the Authority or the City shall, during his or her tenure of employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- i. Cumulative Rights. Except as otherwise expressly stated herein, no right or remedy herein conferred on or reserved to the Authority is intended to be exclusive of any other right or remedy hereby provided by law, but each shall be cumulative in, and in addition to, every other right or remedy given herein or hereafter existing at law, in equity, or by statute.
- j. Indemnification. The Recipient expressly releases from and covenants and agrees to indemnify and hold the Authority and the City and its officers, agents, servants, employees harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of this Agreement or the Project and further releases such officers, employees, agents and members from any personal liability in connection with handling funds pursuant to the terms of this Agreement. The indemnification provided hereunder shall not apply to intentional acts or the negligence of the individual or entity so indemnified. Recipient further agrees to pay, indemnify and hold the Authority and the City harmless from any and all costs, expenses and fees, including reasonable attorney's fees that may be incurred by the Authority or the City in enforcing this Agreement.
- k. Governing Law. This Agreement shall be deemed to have been made and accepted in Winona County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.
- l. Data Practices. The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes Section 13.01 *et seq.*
- m. No Waiver. Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.
- n. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement

shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.

- o. Entire Agreement. These terms and conditions constitute the entire Agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.
- p. Headings and Captions. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.
- q. Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any party, and any discharged obligations of the Authority and Recipient arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.
- r. Execution. This Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any party to the counterpart shall be deemed a signature to the Agreement, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing party.

[Remainder of page left intentionally blank.]

PORT AUTHORITY OF WINONA

Date: _____

By: _____

Michael Cichanowski
Its: President

Date: _____

By: _____

Stephen T. Sarvi
Its: Executive Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF WINONA)

This instrument was acknowledged before me on _____, 2020, by Michael Cichanowski, the President, and by Stephen T. Sarvi, the Executive Secretary of the Port Authority of Winona, a body politic and corporate under the laws of the State of Minnesota.

(Notary Seal)

Notary Public

EXHIBIT A
AMORTIZATION SCHEDULE

EXHIBIT B
COLLATERAL

PORT AUTHORITY AGENDA ITEM

AGENDA ITEM: 4. D. Requests for Sand

DATE: September 10, 2020

Port Authority staff will provide an update on the requests for use of sand in Technology Park.

In 2018, the Port Authority approved uses for the sand for the following projects and there was no charge for the sand:

- The YMCA development
- Winona County- Road sand in partnership with the City of Winona
- Bluffview Estates and Fairfield (small quantity)
- Main Square Development

Since that time, the Port has had requests for projects and have approved them at no charge for the following uses:

Winona Nursery - sand to level and fill the area sold to them this year (small amount).

Heartland Excavating - sand fill following demolition of the former Winona County Office Building.

Mathiowetz Construction County Road Construction - Nodine 2,000-5,000 yards.

Fitzgerald Excavating - Winona County Road project in Ridgeway- confirm quantity

O' Laughlin - a few small Winona projects

Scherbring - 100 truck loads.

Bay State Milling Warehouse - Bennet and Sons

Fastenal Building (9,000-10,000)

We have received additional requests outlined below.

Hiatt Manufacturing approximately 5,000 yards as part of their site preparation

RTP Company 35,000 yards for a new warehouse

4. D. REQUESTS FOR SAND
SEPTEMBER 10, 2020
PAGE 2

Since demand has grown, staff recommends a fee be charged for future requests (other than those noted here) for \$1 per yard

Because there may not be sufficient sand available for all of the projects staff recommends:

- Fastenal: Encourage Fastenal to utilize sand that has been deposited adjacent to Dick's Marine
- Hiatt: Reserve 5,000 yards of sand located in Technology Park for Hiatt's project in JT Schain
- RTP: Free to use what remains of the sand in the Technology Park (likely something less than the 35,000 yards requested)

If Commissioners concur, it would be appropriate to make a motion to direct staff to:

- 1) Charge \$1 per yard for future projects (not listed above)
- 2) Distribute remaining sand as recommended.