

## REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (Agreement) is made on May 24, 2012 (Effective Date), by and between the County of Otsego (Seller), whose address is 225 W. Main Street, Gaylord, Michigan 49735, and Development Group of Gaylord, LLC (Purchaser), whose address is 124 Allegan Street, Suite 2100, Lansing, Michigan 48933.

1. **Background.** Seller is the owner of a parcel of real property located in the City of Gaylord, County of Otsego, Michigan, as shown on Exhibit A and described in Exhibit B, consisting of approximately 9.55 acres, as well as the real property depicted in Exhibit C (collectively, the "Property"), which Purchaser wishes to purchase. Seller will provide Purchaser with the legal description of the parcel depicted in Exhibit C. This Agreement sets forth the terms and conditions on which Purchaser agrees to purchase the Property from Seller.

2. **Purchase and sale.** Seller agrees to sell the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller, together with all easements, rights, hereditaments, and appurtenances, on the terms and conditions set forth below.

3. **Purchase price.** The purchase price for the Property (Purchase Price) shall be One Dollar (\$1.00), payable in cash at the Closing (defined in Paragraph 11).

4. **Condition of Property.**

(a) Purchaser acknowledges that, except as otherwise set forth in this Agreement or in any of the Closing documents, Seller has not made, does not make, and specifically negates and disclaims any and all representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning, or with respect to (I) the value, nature, quality, or condition of the Property, including, without limitation, the water, soil, and geology or structural elements, or foundations; (ii) the suitability of the Property for any or all of Purchaser's activities and uses; (iii) the compliance of or by the Property with any laws, codes, rules, ordinances, regulations, orders, decrees, or other requirement of any applicable governmental authority or body (collectively, the "Laws"), including, without limitation, compliance with any applicable zoning ordinance; (iv) the habitability, marketability, profitability, or fitness for a particular purpose of the Property; (v) existence in, on, under, or over the Property of any Hazardous Materials (defined below); or (vi) any other matter with respect to the Property. Additionally, no person acting on behalf of Seller is authorized to make, and by execution of this Agreement Purchaser acknowledges that no person had made, any representation, agreement, statement, warranty, guaranty, or promise regarding the Property, and no representation, warranty, agreement, guaranty, statement, or promise, if any, made by any person acting on behalf of Seller shall be valid or binding on Seller unless expressly set forth in this Agreement or

in any of the Closing documents. "Hazardous Materials" means any substance that is or contains (A) any "hazardous substance" as now or hereafter defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (42 USC 9601 *et seq.*), or any regulations promulgated under CERCLA; (B) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act (RCRA) (42 USC 6901 *et seq.*), or regulations promulgated under RCRA; (C) any substance regulated by the Toxic Substances Control Act (TSCA) (15 USC 2601 *et seq.*); (D) gasoline, diesel fuel, or other petroleum hydrocarbons; (E) asbestos and asbestos-containing materials in any form, whether friable or nonfriable; (F) polychlorinated biphenyls; (G) radon gas; and (H) any additional substances or materials that are now or hereafter classified or considered to be hazardous or toxic under any Laws.

(b) Purchaser further acknowledges that having been given the opportunity to inspect the Property, Purchaser is relying solely on its own investigation of the Property and not on any information provided or to be provided by Seller and agrees to accept the Property and waive all objections or claims against Seller arising from or related to the Property or to any Hazardous Materials on the Property except for a breach of any representations or warranties set forth in this Agreement or any of the Closing documents. Purchaser further acknowledges that any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller had not made any independent investigation or verification of the information and makes no representations as to the accuracy, truthfulness, or completeness of the information.

(c) Purchaser further acknowledges that the Seller has represented and disclosed to Purchaser that the Property is subject to a deed restriction as set forth in Liber 1067, Page 899, recorded in the Otsego County Register of Deeds, which requires that the Property shall be used exclusively for a public purpose open to the general public.

(d) This Paragraph 4 shall survive the Closing for a period of 30 years.

**5. Due Diligence Period.** Purchaser has the right to conduct a due diligence review of the Property as follows: The term Due Diligence Period means the 180-day period beginning with the Effective Date of this Agreement. If, on or before the expiration of the Due Diligence Period, Purchaser elects to terminate this Agreement, for any reason as determined in its sole discretion, Purchaser shall deliver a notice of its election to terminate to Seller, and this Agreement shall automatically terminate, and neither Seller nor Purchaser shall have any further rights or obligations under this Agreement. If Purchaser fails to deliver a notice of termination of this Agreement during the Due Diligence Period, Purchaser shall close on the terms stated in this Agreement without further extensions. Seller may grant to Purchaser an additional 90 day extension of the due diligence period if requested by the Purchaser in writing prior to the expiration of the due diligence period.

**6. Purchaser's access to the Property.** During the Due Diligence Period, Purchaser and its employees, agents, contractors, and invitees will have reasonable access to the Property for the purpose of inspecting and evaluating the Property, including the taking of soil borings. While Purchaser and its employees, agents, contractors, or invitees are on the Property, (a) they shall not unreasonably interfere with any use of the Property by Seller; (b) Seller shall not be liable for any damage, loss, or injury caused by them, and (c) Purchaser shall indemnify and hold Seller harmless from any damage, loss, or injury, including, without limitation, costs and expenses of investigating, defending, and settling or litigating any claim, including reasonable attorney fees, arising out of their presence on the Property before the date of Closing. On completion of all such inspections and evaluations, Purchaser shall return the Property substantially to its prior condition at Purchaser's expense.

**7. Delivery of documents.** Promptly following the signing of this Agreement:

(a) Seller shall deliver to Purchaser a copy of any environmental site assessment, review, or evaluation prepared for the Property in Seller's possession or control;

(b) Purchaser shall obtain, at Purchaser's expense, a title insurance commitment for an owner's policy of title insurance for the Property, without standard exceptions, in the amount of the Purchase Price, issued by a title insurance company of its choosing, and deliver a copy of the commitment to Seller and the surveyor of the Property on receipt of the commitment;

(c) Purchaser may order, at Purchaser's expense, an ALTA/ACSM survey of the Property from a registered surveyor of its choosing for delivery to Seller, Purchaser, and the title insurance company that will establish the acreage computation contemplated by this Agreement.

**8. Taxes and assessments.** Any taxes and assessments that are a lien on the Property, or that otherwise relate to the Property and are due and payable as of Closing (other than the lien of general real estate taxes that are not due and payable as of Closing) shall be paid by Seller on or before Closing. Real estate taxes for the year in which the Closing occurs shall be prorated and adjusted between Seller and Purchaser as of Closing on a calendar-year basis. If the real estate taxes for the year cannot be determined as of Closing, the taxes shall be prorated as of Closing based on the real estate taxes payable with respect to the Property for the immediately preceding calendar year. Once the actual real estate taxes for the year in which the Closing occurs have been determined, the proration of the taxes shall be recalculated based on the actual taxes for the year, and the party owing the other an amount based on recalculation shall promptly pay the same to the other party.

**9. Contingency.** The obligation of the parties to close the transactions contemplated by this Agreement shall be contingent on: (A) acceptance of the bid submitted by Purchaser

by the State of Michigan to construct a 22,000 square foot facility on the Property as described in Paragraph 24; (B) approval of financing through the Michigan Finance Authority to construct a 22,000 square foot facility on the Property as described in Paragraph 24; and (C) entry of an agreement between the Seller and Purchaser addressing the issue of Otsego County Sheriff's Department storage facility, and parking for the Otsego County Library, upon the Property. If this contingency is not satisfied at or before Closing, this Agreement shall terminate and neither party shall have any further liabilities or obligations under this Agreement.

**10. Closing date and possession.** Purchaser and Seller shall complete the sale and transfer possession of the Property from Seller to Buyer (the Closing) at a closing to be held within thirty (30) days after the end of the Due Diligence Period. The Closing shall take place at the office of the title insurance company involved in the transaction or at another location agreeable to Seller and Purchaser.

**11. Form of Conveyance.** At the Closing, Seller shall grant and convey legal title to the Property to Purchaser pursuant to a Quit-Claim Deed, subject only to (a) the lien of taxes on the Property not yet due and payable, and (b) the easements, covenants, conditions, and restrictions of record as shown on the title commitment referenced above, and not objected to by Purchaser during the Due Diligence Period. The deed shall state the consideration as "for good and valuable consideration," and Seller shall sign and file a transfer valuation affidavit to evidence the Purchase Price.

**12. Closing.** Purchaser shall prepare the closing documents and deliver them to Seller for review and approval at least 10 days before the Closing. At or before the Closing, Purchaser shall be responsible for the payment of the state and county transfer taxes, the title insurance premium to issue a policy pursuant to the title commitment referenced above, the fees necessary to record the deed and any other documents to transfer title, the cost of the survey referenced above, the cost of any inspections it obtained on the Property, and any closing costs charged by any closing agent. At or before closing, Seller shall be responsible for the costs of any recording fees to record any documents to clear title. Purchaser and Seller shall each pay their own attorney and other professional fees.

**13. Default and Remedies.** If Seller fails to perform in accordance with this Agreement or if any representation or warranty of Seller in this Agreement is untrue when made or at Closing, Seller shall be in default. In the event of a default by Seller, Purchaser may, as its sole and exclusive remedy, elect to terminate this Agreement. In the event of a default under this Agreement by Purchaser, Seller may, as its sole and exclusive remedy, elect to terminate this Agreement.

**14. Representations and warranties.**

(a) Seller warrants and represents to Purchaser that as of the date of this Agreement and at

Closing:

- (i) Seller owns good and marketable fee simple title to the Real Property;
- (ii) this Agreement constitutes a legal, valid, and binding agreement of Seller;
- (iii) to Seller's actual knowledge, (A) there is no pending or threatened litigation or proceeding relating to the Property or the operation or use of it, and (B) there is no pending or threatened bankruptcy proceeding involving Seller;
- (iv) to Seller's actual knowledge, the Property is not, and Seller has not received any notice that the Property is, in violation of any federal, state, local, or other governmental zoning, health, environmental, safety, platting, subdivision, or other law, ordinance, or regulation, or any applicable private restriction relating to the Property or the operation or use of it;
- (v) Seller will use its best efforts to remove the deed restriction as described above in Paragraph 5(c) which provides that the Property shall be used exclusively for a public purposes open to the general public;
- (vi) there are no leases or contracts relating to the Property or the operation or use of it that will be binding on Purchaser or the Property subsequent to Closing;
- (vii) Seller has delivered to Purchaser all Plans, Warranties, and other documents, instruments, records, studies, agreements, permits, reports, surveys, environmental studies, and any and all other reports and similar or related information in Seller's or its agent's actual possession that pertain to the Property or the operation and use of it;
- (viii) (A) Seller is a Michigan Municipal Corporation authorized and existing under the laws of the State of Michigan; (B) neither the execution of this Agreement nor the performance of Seller's obligations under this Agreement will constitute a default under its organization documents or any contract or agreement by which Seller is bound; and (C) the execution and delivery of this Agreement by Seller and the consummation of the transactions contemplated by this Agreement by Seller will not violate any order, writ, injunction, or decree of any court in any litigation to which Seller is a party or bound or violate any law.

(b) Purchaser represents and warrants to Seller that as of the date of this Agreement and at Closing:

- (i) Purchaser is a limited liability company authorized and existing under the laws of the State of Michigan;

(ii) neither the execution of this Agreement by Purchaser nor the performance of Purchaser's obligations under this Agreement will constitute a default under its organizational documents or any contract or agreement by which Purchaser is bound; and

(iii) the execution and delivery of this Agreement by Purchaser and the consummation of the transactions contemplated by this Agreement by Purchaser will not violate any order, writ, injunction, or decree of any court and any litigation to which Purchaser is a party or bound or violate any law.

**15. Disclaimer by Seller.** Purchaser acknowledges and agrees that Seller has not made, does not make, and expressly disclaims any warranties, representations, covenants, or guarantees, either express or implied, whether arising by operation of law or otherwise, as to the merchantability, quantity, quality, environmental condition, or physical condition of the Property or its suitability or fitness for any particular purpose or use. Purchaser affirms that it:

a. has investigated and inspected the Property and is familiar and satisfied with its environmental condition and physical condition; and

b. has made its own determination as to the

(i) merchantability, quantity, quality, environmental condition and physical condition of the Property, including the possible presence on, at, under or emanating from the Property of hazardous materials or other environmental contamination; and

(ii) the Property's suitability or fitness for any particular purpose or use.

The closing of the transaction contemplated by this Agreement shall constitute Purchaser's acceptance of the Property in its present environmental condition and physical condition on an "as is," "where is," and "with all faults and defects," basis regardless of how such faults and defects were caused or created (by the negligence, actions, omissions or fault of the Seller or otherwise), and acknowledges that without this acceptance, this sale by Seller would not be made, and the Seller shall not be under any obligation whatsoever to undertake any improvement, repair, modification, alteration, remediation, or other work of any kind with respect to any of the Property except as required by state or federal authorities pursuant to state and federal statutes and regulations respectively.

The Seller is hereby expressly released by Purchaser and its successors and assigns from any and all responsibilities, liabilities, obligations, and claims of Purchaser known and unknown, whether based upon negligence, strict liability or otherwise, arising under environmental protection laws, common law, or any other legal requirement, including

any obligations to take the Property back or reduce the purchase price and any actions for contribution, indemnity, or to improve, repair, or otherwise modify the physical condition of the Property, that Purchaser or its successors or assigns may have against Seller, based in whole or in part, upon the presence of hazardous materials or other environmental contamination on, at, under, or emanating from the Property or arising from the environmental condition or physical condition of the Property, regardless of how caused or created (by the negligence, actions, omissions or fault of Seller, pursuant to any statutory scheme of strict liability, or otherwise). Purchaser further acknowledges that the provisions of this Disclaimer have been fully explained to Purchaser and that it fully understands and accepts the same as a condition to proceeding with this transaction. Purchaser acknowledges that Seller's employees, agents, or representatives have not made any statements or representations contrary to the provisions of this Paragraph. In entering into and performing this Agreement, Purchaser has relied, and will rely, solely upon its independent investigation of, and judgment with respect to, the Property and its value.

**16. Indemnification of Seller by Purchaser.**

(a) From and after Closing, to the fullest extent permitted by law, Purchaser agrees to indemnify, defend and hold harmless Seller and its affiliated and related entities, and their officers, directors, and employees from and against any and all losses, liabilities, claims, strict liability claims, lawsuits, fines, penalties, judgments, expenses (including, but not limited to, reasonable attorneys' fees), environmental abatement, investigation, remediation and cleanup costs, and damages in connection with personal injuries, death, or damage to Property or the environment arising after the date of closing from Purchaser's use of the Property relating to:

(i) any possession, use or operation of the Property, regardless of whether such injuries/death/damage are caused by or arise from Seller's or third parties' pre-Closing or post-closing negligence, actions or omissions relating to the operation, physical condition or maintenance status of the Property; and/or

(ii) any Environmental Condition or Environmental Claims pertaining to the Property.

(b) In this Agreement the following terms shall be defined as follows:

(i) "Environmental Condition" means any condition or conditions affecting or relating to the air, soil, groundwater or surface water at or about the Property and any failure to comply with governmental requirements, including environmental protection laws, relating to such

condition or conditions, which could or does require remediation, including abatement, investigation, containment or removal and/or which could result in Environmental Claim(s).

(ii) “Environmental Claim(s)” means all claims, causes of action, liabilities, damages, losses, costs or expenses (including reasonable attorney and environmental consultant fees) relating to the prevention, abatement, investigation, remediation, release or elimination of pollution or contamination, the violation of Environmental Protection Laws, or the application of Environmental Protection Laws pertaining to the condition of the Property and the migration of existing pollution onto or under other property. Environmental Claim(s) includes claims arising from application of Environmental Protection Laws to the condition of the Property, as well as any and all claims by third parties and by governmental or quasi-governmental entities no matter how such claims arise.

(iii) “Environmental Protection Laws” mean any and all current or future laws, statutes, rules, regulations, and judicial interpretations thereof of the United States, of any state or local government, or of any other governmental or quasi-governmental authority having jurisdiction that relate to the prevention, abatement, investigation, remediation or elimination of pollution and/or protection of the environment, including but not limited to those federal statutes commonly known as the Solid Waste Disposal Act of 1970, as amended; the Resource Conservation and Recovery Act of 1976, as amended; the Clean Water Act, as amended; the Clean Air Act, as amended; the Safe Drinking Water Act, as amended; the Migratory Bird Treaty Act, as amended; the Toxic Substances Control Act, as amended; and the Hazardous Materials Transportation Act, as amended; together with any and all other applicable federal, state, and local statutes, laws, rules and regulations serving any similar or related purpose.

17. **Notice.** Any notice required or permitted to be given under this Agreement by one party to the other shall be in writing and the same shall be given and deemed to have been served and given when (a) delivered in person to the party to whom the notice is given, (b) placed in the U.S. mail, postage prepaid, by registered or certified mail, return receipt requested, or (c) deposited with a nationally recognized overnight courier service. The address of the parties for the purposes of this Agreement and for all notices under this Agreement shall be the address indicated in the introductory paragraph of this Agreement.

18. **Entire Agreement.** This Agreement embodies the entire agreement of the parties and supersedes any prior or contemporaneous understandings or written or oral agreements between them concerning the Property. No variation, modification, or

alteration of these terms shall be binding on either party unless set forth in an express and formal written amendment executed by all parties to this Agreement.

19. **Governing law.** This Agreement shall be governed by and construed under and in accordance with the laws of the State of Michigan.

20. **Binding effect.** All of the terms and provisions in this Agreement shall bind and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns. Neither party shall assign or otherwise transfer its interest under this Agreement to any other third party without the prior approval of the other party to this Agreement, which shall not be unreasonably withheld.

21. **Construction.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being acknowledged and agreed that this Agreement shall be interpreted in light of the probable intent of the parties.

22. **Severability.** If any term, covenant, or condition of this Agreement or its application is, to any extent, held to be invalid or unenforceable, the remainder of this Agreement or the application of the term, covenant, or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall remain effective; and each term, covenant, or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

23. **Development of Property.** The Purchaser is submitting a bid pursuant an RFP from the State of Michigan to construct a new 22,000 square foot facility on the Property. The Seller authorizes the Purchaser to submit the bid in the Seller's name as the owner. If the bid is accepted by the State of Michigan then the Seller will work with the Purchaser to obtain financing through the Michigan Finance Authority. Such financing will not carry the *full* faith and credit of the County. The Purchaser will act as Turnkey Developer for the Project upon terms and conditions to be agreed upon between the Seller and Purchaser.

24. **Counterparts.** This Agreement may be executed in one or two counterparts, each of which will be an original, and all of which together shall constitute one and the same document. Facsimile signatures shall be effective as originals.

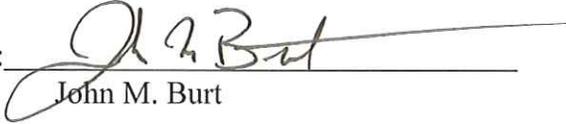
25. **Exhibits.** The following exhibits are attached to and a part of this Agreement:

- Exhibit A - Certificate of Survey of the Property
- Exhibit B - Legal description of the Property

Exhibit C - Aerial map of a portion of the Property

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date above written.

COUNTY OF OTSEGO

By:   
John M. Burt

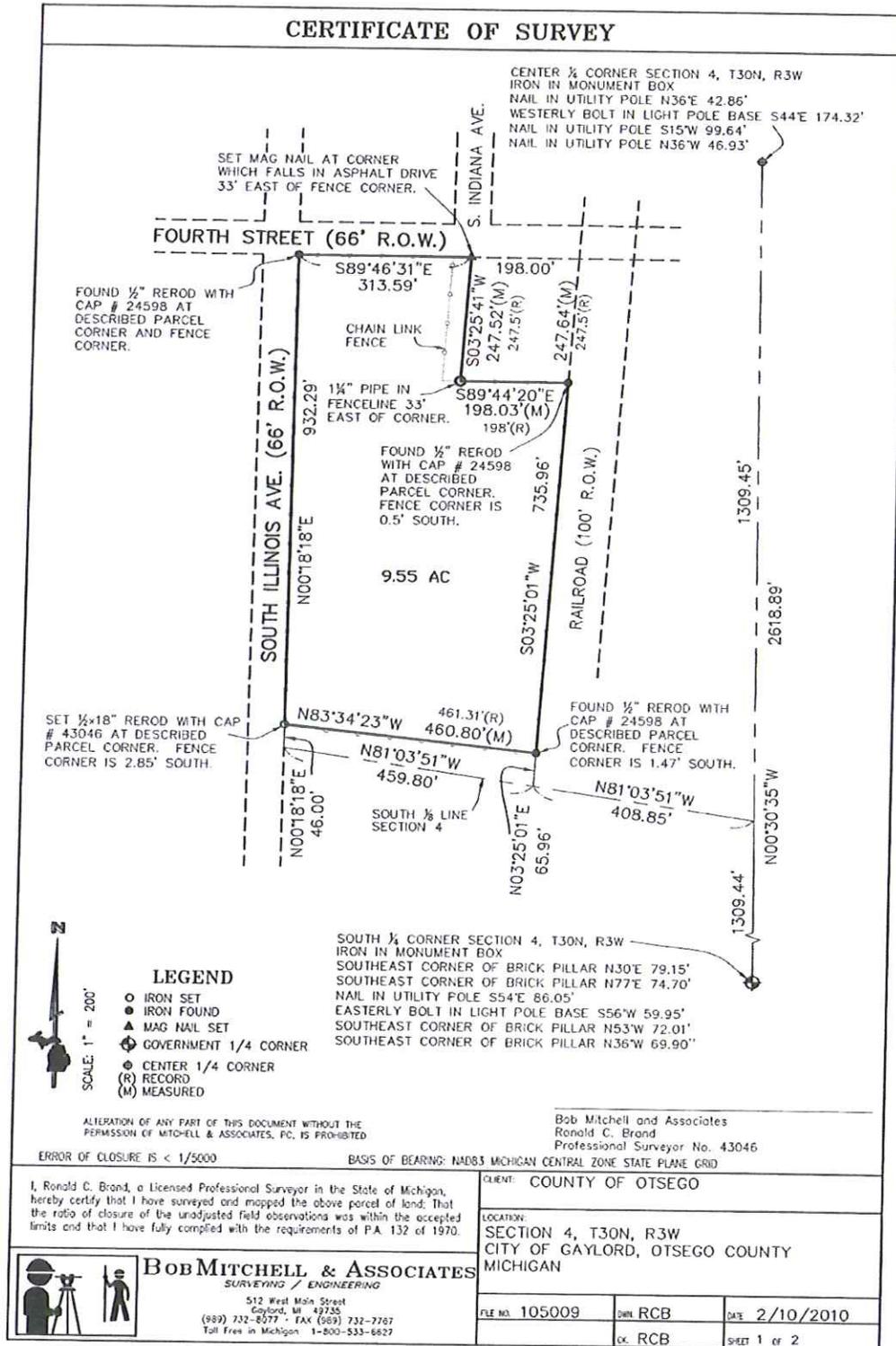
Its: County Administrator

DEVELOPMENT GROUP OF GAYLORD, LLC

By: \_\_\_\_\_

Its: Member

# Exhibit A



# Exhibit B

## Legal

DESCRIPTION: A parcel of land situated in the City of Gaylord, County of Otsego, State of Michigan, and described as follows, to wit:

Part of Section 4, Town 30 North, Range 3 West described as Beginning 12 rods West of the intersection of the South line of Fourth Street and the West line of MCRR; thence West 18.17 rods; thence South to a point 46 feet North of one-eighth line; thence South 83°East 461.31 feet; thence North to a point 15 rods South of South line of Fourth Street; thence West 12 rods; thence North to Point of Beginning.

SUBJECT TO All agreements, covenants, easements and restrictions of record, if any.

AS FOUND IN THIS SURVEY THE ABOVE PARCEL MAY BE MORE PARTICULARLY DESCRIBED AS:

A parcel of land situated in the City of Gaylord, County of Otsego, State of Michigan, being part of Section 4, Town 30 North, Range 3 West described as Commencing at the South one-quarter corner of said Section 4; thence North 0°30'35" West, along the North-South one-quarter line of said section, 1309.44 feet to the South one-eighth line of said section; thence North 81°03'51" West, along said South one-eighth line, 868.65 feet to the East right of way of South Illinois Avenue; thence North 0°18'18" East, along said East right of way line, 46.00 feet to the Point of Beginning; thence continuing North 0°18'18" East, along said East right of way line, 932.29 feet to the South right of way line of Fourth Street; thence South 89°46'31" East, along said South right of way line, 313.59 feet to a point 198.00 feet West of the intersection of South line of Fourth Street and the West line of the Railroad; thence South 3°25'41" West 247.52 feet (recorded as 247.5'); thence South 89°44'20" East 198.03 feet (recorded as 198') to the West line of the Railroad; thence South 3°25'01" West, along the West line of the Railroad, 735.96 feet; thence North 83°34'23" West 460.80 feet (recorded as 461.31') to the Point of Beginning. Said parcel contains 9.55 acres of land more or less.

SUBJECT TO All agreements, covenants, easements and restrictions of record, if any.

## Exhibit C

