



FREEPORT EDA BOARD AGENDA  
REGULAR MEETING  
Tuesday, February 19, 2013  
12:00 P.M.  
CITY HALL

I. CALL TO ORDER

- A. Roll Call

II. APPROVAL OF THE AGENDA

III. APPROVAL OF THE MINUTES

- A. November 26, 2012 Special Meeting Minutes

IV. NEW BUSINESS

- A. Resolution 2013-001: Farm Lease, Neil Middendorf
- B. Other

V. OLD BUSINESS

- A. Redevelopment of the old creamery site
  - 1. Redevelopment Grant Application Heidi Peper
- B. Backwater Boats
- C. Other

VI. ADJOURN

Next meeting: Monday, March 18, 2013 at 12:00 P.M. in City Hall



FREEPORT EDA BOARD MINUTES  
SPECIAL MEETING  
November 26, 2012

The special meeting of the Freeport EDA Board was called to order by President Matt Worms at 12:02 P.M. with members Vicki Holthaus, Jim Hemker, Rodney Atkinson, Andy Welle and Carrie Goebel present. Member John Thelen was absent.

APPROVAL OF THE AGENDA

Goebel moved and Hemker seconded a motion to approve the agenda. Motion carried 6-0.

APPROVAL OF THE MINUTES

Hemker moved and Worms seconded a motion to approve the October 15, 2012 minutes. Motion carried 6-0.

NEW BUSINESS

Backwater Inc.

Worms informed EDA members that the owner of Backwater Inc. had expressed interest in a couple of commercial sites in Freeport, including the city's maintenance building. Worms said city officials would continue to work with the owner to pursue moving his business into the city.

Resolution 2012-03: Professional Services Agreement with SEH

Hemker moved and Atkinson seconded a motion on Resolution 2012-03: Professional Services Agreement with SEH, adding that a request for interest from developers be solicited in the Beacon for two weeks after the City's SCDP pre-application is scored. Motion carried 5-0.

OLD BUSINESS

Redevelopment of the old creamery site

Holthaus explained that the federal prevailing wage requirement of the Small Cities program made the program less desirable as a funding source for the project. In addition, Holthaus explained that the project would be more likely to attract a developer and redevelop as intended, if the construction phase did not require prevailing wage to be paid. Holthaus said Heidi Peper with SEH, Inc. recommended the City apply to the Redevelopment Grant Program for acquisition and demolition funding, as opposed to the Small Cities Program. The Redevelopment Grant program would require state prevailing wage rates versus federal. Holthaus explained that once the site was prepared, the property could be sold to the developer for construction. Holthaus explained that an Option Agreement would secure the price and rights to purchase the land during the grant application phase, but would not require the EDA to purchase if funding was not awarded.

Hemker moved and Welle seconded a motion to authorize moving forward with amending the Agreement with SEH, Inc. for grant writing services to include a Redevelopment Grant Pre-application and hire Rinke Noonan to draft an Option Agreement. Motion carried 6-0.

New board member updates

Holthaus shared that Thelen had tendered his resignation from the board. Holthaus explained that three positions would need to be filled in January if the EDA was interested in replacing Holthaus' position as a voting member.

ADJOURN

Worms moved and Goebel seconded a motion to adjourn the meeting at 1:02 P.M. Motion carried 6-0.

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Matthew Worms, President

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Victoria M. Holthaus, Secretary

## FARM LEASE

The Economic Development Authority in and for the City of Freeport, Minnesota, whose address is 125 Main Street, P.O. Box 301, Freeport, Minnesota 56331 ("Landlord"), and Neil Middendorf, whose address is 216 Seventh Street SW, Freeport, MN 56331 ("Tenant") make this Farm Lease (this "Lease") effective as of January 1, 2013 (the "Effective Date").

### RECITALS

- A. Landlord owns real property located in Stearns County, Minnesota, described as Parcel ID Nos. 54.32129.0069, 54.32129.0071, 54.32129.0072, 54.32129.0074, 54.32129.0086, 54.32129.0082, 54.32129.0085, 54.32129.0067, 54.32129.0068, 54.32129.0073, and 54.32129.0081 described and depicted on the attached **Exhibit A** and **Exhibit B** (collectively, the "Property").
- B. Tenant desires to lease the Property for crop farming purposes and Landlord is willing to lease the Property to Tenant pursuant to the terms and conditions of this Lease.

Now therefore, in consideration of the parties' mutual covenants and agreements in this Lease and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Lease of Property.** Landlord leases the Property to Tenant beginning on the Effective Date and ending on December 31, 2013 (the "Initial Term").
2. **Lease Renewal and Rent for Initial Term and Renewal Terms.** Subject to this Lease's terms and conditions and provided Tenant is not then in default, upon expiration of the Initial Term, Tenant shall have the right to renew this Lease for additional periods of one (1) year each (each a "Renewal Term") beginning on January 1, 2014, on the same terms and conditions. The rent to be paid by Tenant during the Initial Term and each Renewal Term shall be equal to the amount of all annual real estate taxes levied, assessed or owing on the Property (the "Rent"), which amount Tenant shall immediately pay in full before delinquency. Tenant may exercise its renewal options by providing Landlord with written notice of renewal on or before September 1<sup>st</sup> prior to the expiration of the then current term of this Lease. This right of renewal may be exercised by Tenant only in the event all Rent has been fully paid to the date of the exercise of the renewal and all provisions of this Lease have been fully and faithfully observed by Tenant. The Initial Term and each Renewal Term may be referred to herein as the "Term."
3. **Security.** To secure Tenant's payment of the Rent and performance and fulfillment of this Lease's terms and conditions, Tenant grants to Landlord a security interest in all crops growing or grown on the Property during this Lease's term and in all products and contract rights with respect to them and all proceeds of each. In addition to the rights and remedies available under this Lease and otherwise available at law, Landlord shall have all rights and remedies of a secured party under the Uniform Commercial Code or other applicable law, and may require Tenant to assemble property and make it available to Landlord at a place to be designated by Landlord that is reasonably convenient to both parties. Tenant shall reimburse Landlord for all expenses of retaking, holding, preparing for sale, selling and the like, which shall include Landlord's reasonable attorneys' fees and other expenses.
4. **Property's Use.** Tenant shall use the Property only for crop farming and for no other purposes without Landlord's prior, written consent. Tenant shall not use the Property, or permit others to use the Property, for any unlawful business or purpose. Tenant's use of the Property shall comply with all applicable laws, regulations and ordinances and is further subject to existing usage and matters of record. Tenant shall not cut any trees or brush or permit the erection of any structures, signs or improvements without first obtaining Landlord's prior written consent.

5. **Condition of Property.** Landlord has not made any representations or warranties regarding the Property. Tenant has examined the Property, acknowledges that the Property is in a good and useable condition and lease and utilizes the Property "as is", "where is" and "with all faults" based solely on Tenant's own judgment. Landlord makes no express or implied warranty with respect to the Property. Tenant acknowledges and agrees that Landlord has no responsibility regarding the planting or harvesting of crops on the Property. Unless arranged by separate written agreement, Tenant agrees not to prepare the land for planting any crop, or plant any crop which would not mature until after this Lease's expiration.

6. **Assignment.** Tenant shall not assign this Lease, sublet or license the Property, or any portion of it, without first obtaining Landlord's prior, written consent. Any consent under this Lease will not be deemed to be a consent to any subsequent assignment or sublet agreement. Tenant's failure to comply with this section will constitute a material breach of this Lease, resulting in the Lease's immediate forfeiture and termination.

7. **Maintenance and Cultivation of Property.** Tenant shall, throughout the entire Lease Term, maintain the Property in good order, condition and repair at its own cost and expense. Tenant shall cultivate the Property in a careful, diligent, thorough and husband-like manner. Tenant shall be solely responsible for providing all machinery, equipment, labor, fuel, fertilizer, seed and power necessary to plant, maintain and harvest the crops on the Property. Tenant further agrees, as necessary, to prevent noxious weeds from going to seed on the Property, including cutting or spraying with herbicide for weeds at Tenant's expense; to spread such fertilizer and manure as is necessary and appropriate; to keep open ditches, tile drains, tile outlets, tile inlets, grass waterways, and terraces (including, but not limited to repair of any damage to tile, tile intakes or ditches annually), and to keep the same in good repair; to preserve established watercourses or ditches, and to refrain from any operation that will injure the Property or adjacent properties; to prevent all unnecessary waste, or loss, or damage to the Property; to comply with rules and regulations relating to applicable pollution statutes, ordinances, and rules, including, but not limited to mowing and controlling all weeds and brush, including adjoining fence lines, and mowing all road ditches to the satisfaction of the Landlord; to keep all roads free from growing weeds; to back-plow those portions of the Property as reasonably determined by the Landlord to be necessary upon the expiration of the Lease to Landlord's satisfaction; and to remove rocks from the Property in accordance with customary agricultural practices. Tenant shall not remove any crop residue from the Property without Landlord's prior written consent. Tenant shall keep the Property reasonably clean and free from rubbish and Tenant shall not commit or permit any waste on the Property. Tenant shall refrain from using carry-over chemicals during the last crop year which will affect any crops to be grown in the following years. Unless arranged by separate written agreement, Tenant agrees not to plow any land or otherwise prepare the land for planting any crop, or plant any crop which would not mature until after this Lease's expiration.

8. **Improvements.** Except for plowing and other normal and customary crop farming techniques, Tenant will not make any alterations or improvements to the Property including without limitation any tiling, drainage, structures, irrigation systems, landscaping, landfill, structures, fences and other improvements to the grade of land, without Landlord's prior written consent. Tenant shall be solely responsible for the cost of any permitted improvements constructed on the Property during this Lease's Term. Any approved Tenant improvements will be made in a good and workman like manner and in compliance with all laws, regulations and ordinances of any governmental agency having jurisdiction over the Property. Tenant agrees that any buildings, fences, and improvements of any kind and nature that may be erected or affixed under or upon the Property during this Lease's Term will become part and parcel of the Property without payment therefor, and will become Landlord's property, unless Tenant first obtains Landlord's written consent to erect and remove the same. Tenant may not incur any expense for, or on account of, Landlord with regard to this Lease or the Property without first obtaining Landlord's written consent.

9. **Consequential Damages.** Landlord shall not be responsible for any loss or damage to Tenant that may result from any destruction or defective condition of the Property. Tenant will return possession of the Property to Landlord at this Lease's expiration in as good condition as at the Lease's

commencement. In addition to the foregoing, Landlord, its agents, employees, beneficiaries, and assigns, shall not be liable for, and Tenant waives, all claims and damages, including, but not limited to, consequential, incidental and punitive damages, to person, property or otherwise, sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Property. Tenant shall keep Tenant's property on the Property at Tenant's own risk and Tenant shall defend, indemnify and hold Landlord harmless from and against any and all suits and claims arising out of or related to damage to such property kept on the Property or injuries on the Property, including subrogation claims by Tenant's insurance carrier.

10. **Tenant's Insurance.** Tenant shall at all times during the Lease Term, and at Tenant's sole cost and expense, procure and maintain general public liability, fire and casualty insurance, and personal injury insurance. The policy limits shall be not less than \$1,000,000.00 per person and \$1,000,000.00 per occurrence. Tenant shall have Landlord named as an additional insured on all such policies and shall provide evidence of such coverage to Landlord on an annual basis or at any other time when so requested by Landlord. The insurance policy required of Tenant under this Section shall cover claims for personal injuries, wrongful death, occurring in, on, or resulting from the Property. Tenant shall be solely responsible for maintaining insurance protected against loss to Tenant's personal property, crops, improvements, trade fixtures, personal property, and equipment located on or used on the Property. All such insurance shall be reasonably acceptable to Landlord. All of said insurance shall provide that it will not be subject to cancellation, termination or change except after at least thirty (30) days prior written notice to Landlord. Tenant shall provide to Landlord prior to commencement of the Lease Term, policies or duly executed certificates evidencing such insurance and the insurer's waiver of subrogation together with satisfactory evidence of payment of the premium for such insurance, and renewals of such policies, not less than thirty (30) days prior to the expiration of the term of such coverage. If Tenant fails to comply with such insurance requirements, Landlord may obtain such insurance and keep the same in effect, and Tenant shall immediately pay Landlord's cost to obtain such insurance as additional rent.

11. **Indemnification.** Tenant indemnifies, defends, and holds Landlord harmless from and against any and all liability, liens, claims, demands, expenses, fees (including reasonable attorneys' fees), costs, fines, penalties, suits, proceedings, actions and causes of action of any kind and every kind and nature arising or growing out of or in any way connected with Tenant's use, occupancy, management or control of the Property or Tenant's operations, conduct or activities on the Property.

12. **Real Estate Taxes, Assessments, and Utilities.** During the Initial Term and each Renewal Term thereafter, Tenant shall pay directly all real estate taxes upon the Property before the same shall become delinquent, and shall provide proof of payment to the Landlord. Tenant shall also pay any utility costs including, but not limited to, costs and expenses for electricity, gas, fuel, water or sewer Tenant uses in connection with the Property.

13. **Landlord's Access.** Landlord and Landlord's agents will have complete access to the Property at all times to inspect the Property, to make necessary repairs, alterations, or improvements, to exhibit the Property to prospective or actual purchasers, tenants, workmen, or contractors, for survey, platting and other work, or for any other purpose whatsoever.

14. **Condemnation.** If the whole or any part of the Property is taken under the power of the eminent domain or is sold to any entity having the power of eminent domain under threat of condemnation, this Lease shall, at the Landlord's sole option, terminate on the date on which the condemnor or buyer takes possession thereof. In the event of such taking, the award shall be made without prejudice to the rights of either the Landlord or Tenant by the condemning authority for any loss or damage caused by such condemnation. Neither the Landlord nor the Tenant shall have any right to any award made to the other by any condemning authority.

15. **Sale of Property.** Notwithstanding anything apparently to the contrary in this Lease, if Landlord sells the Property, or any part of it, during this Lease's Term, Tenant shall upon notice from Landlord vacate and deliver possession of the Property, or such portion of it, to the purchaser upon

closing of the sale or as otherwise specified in Landlord's notice. Landlord and the purchaser shall not be responsible or liable for any costs or expenses for Tenant's crop loss on the Property due to the sale. If Landlord sells the Property during this Lease's Term before Tenant plants any crops on the Property and Landlord desires to immediately deliver possession of the Property to the purchaser, Tenant will surrender possession of the Property to the purchaser immediately.

16. **Default and Remedies.** Tenant's failure to comply with any of this Lease's covenants or conditions will be a default of the Lease whereupon Landlord may, in addition to any other legal or equitable remedies, immediately terminate this Lease and take immediate possession of the Property and Tenant will vacate the Property immediately. Landlord's reentry on the Property due to Tenant's default under this Lease shall not constitute a forfeiture of the Rent to be paid by Tenant for this Lease's Term. Tenant agrees to pay, or to reimburse Landlord for, all attorneys' fees and costs resulting from Tenant's breach of this Lease, in addition to all other expenses associated with Landlord obtaining possession of and removing Tenant from the Property after a termination of this Lease.

17. **Holdover.** If Tenant shall remain in possession of the Property after expiration of this Lease's term, such possession shall not be construed to be a renewal of this Lease, but shall be a tenancy at the will of Landlord, which may be terminated upon written notice delivered to Tenant or sent to Tenant at the address provided for above.

18. **Surrender of Property.** Upon this Lease's expiration or earlier termination, Tenant shall, at its sole cost and expense: (i) remove Tenant's personal property and equipment; and (ii) surrender and deliver up the Property to Landlord, peaceably and quietly, in as good order and condition as they were in on the date the Lease commenced. Any personal property or crops left on the Property at this Lease's termination or expiration shall be deemed abandoned and the property of Landlord, to be disposed of at Landlord's discretion and Tenant's cost. If Tenant fails to surrender possession of the Property as required in this Lease, Tenant shall pay to Landlord a penalty of \$100.00 per day for each day Tenant remains in possession thereafter, in addition to any actual damages caused by the Tenant to the Landlord's Property or improvements, and said payments shall not entitle Tenant to any interest of any kind or character in or on the Property.

19. **Remedies Cumulative.** The remedies provided under this Lease are not intended to limit or qualify such other remedies as the Landlord may have at large or in equity. All remedies shall be cumulative; use of any one remedy by Landlord shall not preclude or waive the right to use of any or all others.

20. **Entire Agreement.** This Lease contains the parties' entire agreement in regards to its subject matter and supersedes in all respects any and all prior oral or written agreements or understandings. No promises or other terms shall be implied in this Lease.

21. **Amendments.** No amendment of this Lease shall be binding unless it is in writing and signed by the party against whom enforcement is sought.

22. **Severability.** The invalidity or unenforceability of one provision of this Lease will not affect the validity or enforceability of the other provisions.

23. **Binding Effect.** This Lease shall both bind and benefit the parties to this Lease and their respective heirs, personal representatives, successors, and permitted assigns.

24. **Governing Law.** This Lease shall be construed and the rights and obligations arising hereunder shall be determined in accordance with the laws of the State of Minnesota.

25. **Representation.** Rinke Noonan represents only the Landlord and no other party. Tenant acknowledges that he has reviewed this Lease and consulted with his own attorney concerning this Lease; that he has negotiated any and all provisions of this Lease which he has deemed necessary;



that he is not relying on any representations, warranties or statements of any kind whatsoever made by Landlord or any other person or entity in connection with this Lease other than are expressly set forth herein, and that the general rule of construction that a document will be construed against its draftsman shall not apply with respect to this Lease.

26. **Counterparts.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and emailed PDF signatures shall be sufficient for all purposes.

27. **Time is of the Essence.** This is of the essence with respect to this Lease's terms and conditions.

LANDLORD:

TENANT:

The Economic Development Authority in and for  
the City of Freeport, Minnesota

By \_\_\_\_\_  
Its President

\_\_\_\_\_  
Neil Middendorf

By \_\_\_\_\_  
Its Treasurer

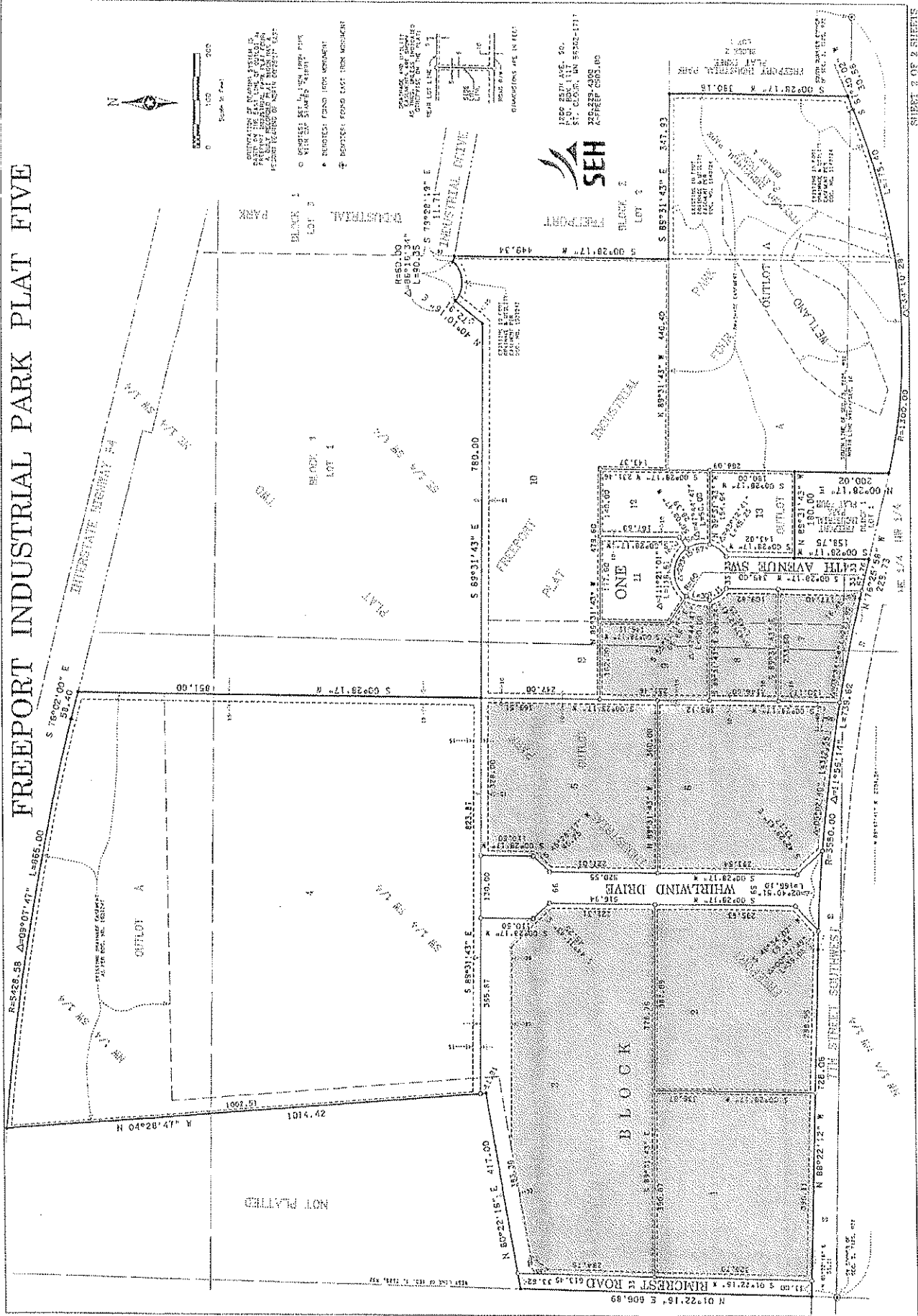
THIS INSTRUMENT DRAFTED BY:  
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St. Cloud, MN 56302  
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17909.010



OFFICIAL PLAT

Plat Cabinet 3-11

# FREERPORT INDUSTRIAL PARK PLAT FIVE



# EXHIBIT B

