



CPED STAFF REPORT

Prepared for the City Planning Commission

CPC Agenda Item #2
 December 1, 2014
 PL-286

LAND USE APPLICATION SUMMARY

Property Location: 3140 Chowen Avenue South
Project Name: Bigos-Calhoun Greenway Subdivision
Prepared By: [Becca Farrar-Hughes](#), Senior City Planner, (612) 673-3594
Applicant: Bigos-Calhoun Greenway, LLC, (763)367-7400
Project Contact: Ravich Meyer, Attn: Alex Selke, (612)317-4757
Request: To subdivide the existing lot into two lots.
Required Applications:

Preliminary and Final Plat	To subdivide the existing lot into two lots.
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SITE DATA

Existing Zoning	R6 District
Lot Area	197,950 square feet / 4.54 acres
Ward(s)	13
Neighborhood(s)	West Calhoun Neighborhood Council
Designated Future Land Use	Urban Neighborhood
Land Use Features	The property is located in close proximity to the designated major retail center at Calhoun and Excelsior. The site is also located between West Lake Street and Excelsior Boulevard; both are designated Commercial Corridors. West Lake Street transitions to a Community Corridor at Abbott Avenue South heading west to the city boundary.
Small Area Plan(s)	Midtown Greenway Land Use and Development Plan

BACKGROUND

SITE DESCRIPTION AND PRESENT USE. The site consists of two existing residential buildings and a large surface parking lot. The site was originally occupied by the 4-story, 42-foot tall, 151-unit building located directly adjacent to Chowen Avenue South. The applicant received approval as part of a PUD in 2012 (BZZ-5578), to construct another residential building on the premises; a new 6-story, 72-foot tall, 185-unit residential development. Both buildings currently exist on the premises along with a large surface parking lot.

SURROUNDING PROPERTIES AND NEIGHBORHOOD. The majority of the developed properties surrounding the site accommodate multi-family developments. The Midtown Greenway is located to the north and the Minikahda Club to the south across West 32nd Street. The property is located in close proximity to the designated major retail center at Calhoun and Excelsior. The zoning

Date Application Deemed Complete	October 15, 2014	Date Extension Letter Sent	N/A
End of 60-Day Decision Period	N/A	End of 120-Day Decision Period	February 12, 2015

designations surrounding and including the site are predominantly R6. The Midtown Greenway is zoned R1A, the Minikahda Club is zoned R1, and the major retail center is zoned C3S.

PROJECT DESCRIPTION. The applicant proposes to subdivide the existing 197,950 square foot 4.54 acre single lot into two lots. Lot 1 is proposed at 118,906 square feet or approximately 2.7 acres and Lot 2 is proposed at 80,388 square feet or approximately 1.8 acres. There are two multi-family residential buildings that are situated on the existing lot. The subdivision would divide the existing lot so that each apartment building located on the property would be on a separate lot. No physical changes or improvements are proposed to the site.

In 2012, the applicant received Planning Commission approval for a new 6-story, 72-foot tall, 185-unit residential development on the properties located at 3140 Chowen Avenue South and 3129 Ewing Avenue South. The development was made possible due to the acquisition of the parcel located on Ewing Avenue South via the City of Minneapolis (that acquired the tax-forfeited property from Hennepin County) and then combining it with the parcel located on Chowen Avenue South. The development became a unified development with the existing Calhoun Greenway development, an existing 4-story, 42-foot tall, 151-unit residential development located on the site. A conditional use permit for a Planned Unit Development (PUD) was required in order to develop the site as proposed and an alternative was also necessary in order to allow more than one principal residential structure on a zoning lot. Site plan was also required for the development. As part of the PUD, there were several underlying lots that were combined into one lot through a preliminary and final plat (PL-265) as required by Section 527.60 of the Zoning Code.

Overall, there are a total of 336 dwelling units and 412 off-street parking spaces between the two apartment buildings. Lot 1, as proposed would consist of 80,388 square feet and the newer 6-story, 72-foot tall, 185-unit apartment building that was approved in 2012. A total of 255 off-street parking spaces would be allocated to Lot 1 to serve that building. A draft reciprocal access easement would be recorded to ensure that the parcel has guaranteed access to Chowen Avenue South. Lot 2, as proposed would consist of 118,906 square feet and the original 4-story, 42-foot tall, 151-unit apartment building located on the property. A total of 157 off-street parking spaces would be allocated to Lot 2 to serve that building.

The City Attorney's office has indicated that it appears that the required monuments have been placed and that the required affirmations are stated on the face of the plat. It is the opinion of the City Attorney's Office that the plat is satisfactory and meets statutory requirements. The Public Works Department has also reviewed the plat and has deemed that it is also satisfactory.

RELATED APPROVALS. See background section above for a written description.

Planning Case #	Application	Description	Action
BZZ-5578 and PL-265	Conditional Use Permit, Site Plan Review & Preliminary and Final Plat	Construction of a new 6-story, 72-foot tall, 185-unit apartment building.	Approved in 2012.

PUBLIC COMMENTS. Staff has not received official correspondence from the West Calhoun Neighborhood Council or any neighborhood letters on this specific proposal prior to the printing of this report. Any correspondence received prior to the public meeting will be forwarded on to the Planning Commission for consideration and included as part of the public record.

ANALYSIS

PRELIMINARY/FINAL PLAT – PL-286

The Department of Community Planning and Economic Development has analyzed the application for a Preliminary and Final Plat based on the following findings:

- I. *The subdivision is in conformance with these land subdivision regulations, the applicable regulations of the zoning ordinance and policies of the comprehensive plan.*

Subdivision Regulations:

The applicant is proposing to subdivide an existing lot into two lots (Lot 1: 80,388 square feet and Lot 2: 118,906 square feet) so that each apartment building on the property would be located on a separate lot.

As outlined in Section 598.260 of the Zoning Code, individual lots within planned unit developments are exempt from the public street frontage requirement of Section 598.230 and the design requirements of sections 598.240 and 598.250 provided the design of the subdivision includes a deed restriction designating the following:

- (1) The relationship between all common spaces and each individual lot (rights in the common spaces and proportionate ownership accruing to the individual lot).
- (2) Provision for access to each lot that does not have frontage on a public street.
- (3) A requirement that an owners' association be created. The duties and responsibilities of the owners' association shall include maintaining the elements of the planned unit development or cluster development as authorized under the zoning ordinance or other applicable regulations.
- (4) A provision that the taxes, special assessments, and other charges and fees that would normally be levied against the common spaces shall be levied against the individual lot occupied or to be occupied by buildings in direct proportion to the interest that is stated in the deed restriction and shall provide that such levies shall be a lien against the individual lots.
- (5) A requirement that any disposition of any of the common property situated within the planned unit development or cluster development shall not be made without the prior approval of the planning commission.

Typically, Lot 1 would not have been compliant with the design standards regarding number of sides and public street frontage as indicated on the preliminary and final plat,; however, as noted above both lots are part of a larger PUD and are therefore exempt from these provisions.

Zoning Ordinance:

The existing use of the site was approved through the amendment to the conditional use permit for a Planned Unit Development. No physical changes or improvements are proposed to the site.

Comprehensive Plan:

According to *The Minneapolis Plan for Sustainable Growth*, the subject parcel is located within an area designated as urban neighborhood. Urban neighborhoods are a “predominantly residential area with a range of densities, with highest densities generally to be concentrated around identified nodes and corridors. May include undesignated nodes and some other small-scale uses, including neighborhood-serving commercial and institutional and semi-public uses (for example, schools, community centers, religious institutions, public safety facilities, etc.) scattered throughout. More intensive non-residential uses may be located in neighborhoods closer to Downtown and around Growth Centers. Not generally intended to accommodate significant new growth, other than replacement of existing buildings with those of similar density.” The property is located in close proximity to the designated major retail center at Calhoun and Excelsior. Further, the site is located between West Lake Street and Excelsior Boulevard which are both designated Commercial Corridors. West Lake Street transitions to a Community Corridor at Abbott Avenue South heading west to the city boundary. The proposal to subdivide the existing lot from one to two lots, and the existing uses to remain on site is consistent with the relevant provisions of *The Minneapolis Plan for Sustainable Growth*, as follows:

Land Use Policy 1.1: “Establish land use regulations to achieve the highest possible development standards, enhance the environment, protect public health, support a vital mix of land uses, and promote flexible approaches to carry out the comprehensive plan.”

(1.1.5) “Ensure that land use regulations continue to promote development that is compatible with nearby properties, neighborhood character, and natural features; minimizes pedestrian and vehicular conflict; promotes street life and activity; reinforces public spaces; and visually enhances development.”

Land Use Policy 1.3: “Ensure that development plans incorporate appropriate transportation access and facilities, particularly for bicycle, pedestrian, and transit.”

(1.3.1) “Require safe, convenient, and direct pedestrian connections between principal building entrances and the public right-of-way in all new development and, where practical, in conjunction with renovation and expansion of existing buildings.”

(1.3.2) “Ensure the provision of high quality transit, bicycle, and pedestrian access to and within designated land use features.”

Land Use Policy 1.8: “Preserve the stability and diversity of the city's neighborhoods while allowing for increased density in order to attract and retain long-term residents and businesses.”

(1.8.1) “Promote a range of housing types and residential densities, with highest density development concentrated in and along appropriate land use features.”

Housing Policy 3.1: “Grow by increasing the supply of housing.”

(3.1.1) “Support the development of new medium- and high-density housing in appropriate locations throughout the city.”

Housing Policy 3.2: “Support housing density in locations that are well connected by transit, and are close to commercial, cultural and natural amenities.”

(3.2.1) “Encourage and support housing development along commercial and community corridors, and in and near growth centers, activity centers, retail centers, transit station areas, and neighborhood commercial nodes.

Urban Design Policy 10.4: “Support the development of residential dwellings that are of high quality design and compatible with surrounding development.”

(10.4.2) “Promote the development of new housing that is compatible with existing development in the area and the best of the city’s existing housing stock.”

Urban Design Policy 10.8: “Strengthen the character and desirability of the city’s urban neighborhood residential areas while accommodating reinvestment through infill development.

The proposal to subdivide the property from one lot to two lots is in conformance with the above noted policies and implementation steps of the Comprehensive Plan.

There is an additional plan that must be considered when evaluating the proposal, the *Midtown Greenway Land Use & Development Plan*, which was adopted by the City Council on February 23, 2007. The *Midtown Greenway Land Use & Development Plan*, includes parcels on each side of the Midtown Greenway from the western boundary of the City to Hiawatha Avenue and designates the subject site as a high-density housing site (40-120 dwelling units per acre) on the future land use plan and also calls for a “Transit-Oriented” development intensity, with larger scale buildings that may exceed five stories. The existing use of the site is consistent with the adopted *Midtown Greenway Land Use & Development Plan*.

2. *The subdivision will not be injurious to the use and enjoyment of other property in the immediate vicinity, nor be detrimental to present and potential surrounding land uses, nor add substantially to congestion in the public streets.*

The applicant is proposing to subdivide an existing lot into two lots. The proposed plat would not be injurious to the use and enjoyment of surrounding property, nor would it be detrimental to present and potential surrounding land uses, nor add substantially to congestion in the public streets. The site is fully developed.

3. *All land intended for building sites can be used safely without endangering the residents or users of the subdivision or the surrounding area because of flooding, erosion, high water table, soil conditions, improper drainage, steep slopes, rock formations, utility easements or other hazard.*

The site is developed and does not present the above hazards.

4. *The lot arrangement is such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in securing building permits and in providing driveway access to buildings on such lots from an approved street. Each lot created through subdivision is suitable in its natural state for the proposed use with minimal alteration.*

The parcels created by this application present no foreseeable difficulties for this development as the site is fully developed. Further, the reciprocal easement agreement shall be recorded to ensure perpetual access from Lot I to Chowen Avenue South.

5. *The subdivision makes adequate provision for stormwater runoff, and temporary and permanent erosion control in accordance with the rules, regulations and standards of the city engineer and the requirements of these land subdivision regulations. To the extent practicable, the amount of stormwater runoff from the site after development will not exceed the amount occurring prior to development.*

A Stormwater Management Plan has previously been approved by Public Works. All necessary drainage and sanitary system plans were reviewed and approved previously prior to building permit issuance. The site is fully developed.

RECOMMENDATIONS

Recommendation of the Department of Community Planning and Economic Development for the Preliminary and Final Plat:

The Department of Community Planning and Economic Development recommends that the City Planning Commission adopt the above findings and **approve** the Preliminary and Final Plat application for the property located at 3140 Chowen Avenue South subject to the following conditions:

1. A deed restriction shall be recorded that meets the requirements outlined in Section 598.260 of the Zoning Code.
2. The reciprocal access easement shall be recorded to ensure perpetual access from Lot 1 to Chowen Avenue South.
3. A total of 255 off-street parking spaces would be allocated to Lot 1. A total of 157 off-street parking spaces would be allocated to Lot 2.

ATTACHMENTS

1. Project description
2. Correspondence – City Attorney, PW, CM Palmisano, West Calhoun
3. Zoning Map
4. Plans – Preliminary and Final Plat
5. Draft Reciprocal Easement Agreement

**Ravich Meyer
Kirkman McGrath
Nauman & Tansey,
P.A.**

Memo

To: Becca Farrar-Hughes, City of Minneapolis

From: Alex C. Sellke

Date: November 19, 2014

Re: Calhoun Greenway 2nd Addition
Subdivision Application
Project Description

This Subdivision Application (the "Application") is submitted by Bigos-Calhoun Greenway, LLC (the "Applicant") for the property located at 3140 Chowen Avenue South, legally described as Lot 1, Block 1, Calhoun Greenway Addition (the "Property"). The Property currently consists of (i) a 6-story, 72 foot tall, 185-unit residential building (the "New Building") and (ii) a 4-story, 42-foot tall, 151-unit residential building (the "Old Building"). The Property was re-platted by the Applicant in 2013 in connection with a Conditional Use Permit for a Planned Unit Development to allow the development of the New Building and to combine the New Building and the Old Building into a unified development (See Minneapolis PED File No. PL-265).

In 2014, the Applicant determined that the New Building and the Old Building should be situated on individual platted lots in order to facilitate the separate sale or mortgaging of each building, which may occur at some point in the future. The project contemplated by the Application (the "Subdivision") accomplishes this objective by subdividing the Property into two new lots. The New Building and the Old Building will be situated, respectively, on Lot 1 and Lot 2, Calhoun Greenway 2nd Addition (the "New Lots"). This Subdivision does not involve any physical changes or improvements to the Property, and no land use applications are necessary.

The Reciprocal Easement Agreement (the "Easement") submitted with the Application is for the purpose of ensuring the New Lots have legal access to and from the public rights-of-way of Chowen Avenue South and West 32nd Street. In addition, the Easement grants Lot 2 (the Old Building) an easement for surface parking on Lot 1 (the New Building) to provide Lot 2 with sufficient off-street parking to meet the minimum requirements of the Minneapolis zoning code.

**Department of Public Works
Engineering Design Division/Right-of-Way Section
309 2nd Avenue South, Room 200
673-2428**

Date: November 17, 2014

To: Becca Farrar – CPED Planning
Erik Nilsson – City Attorney

From: Robert Boblett, Right of Way

Subject: Calhoun Greenway 2nd Addition – Preliminary and Final

We have reviewed the Preliminary and Final plats of the Calhoun Greenway 2nd Addition, and we have no right of way issues.

It does seem, however, that the underlying plat shown should be the Calhoun Greenway Addition from 2013, and not the Calhoun Boulevard Addition from 1885.

Alex C. Sellke

From: Alex C. Sellke
Sent: Tuesday, October 14, 2014 1:47 PM
To: 'emily.ziring@minneapolismn.gov'
Subject: Notice of Subdivision Application

Ms. Ziring,

As required by the Minneapolis Department of Community Planning & Economic Development, I am writing to inform you that a Subdivision Application will be submitted for the property located at 3140 Chowen Avenue South (the "Property"). The proposed project does not involve any physical changes or improvements to the Property. The project is a minor subdivision that will divide one (1) existing lot into two (2) new lots. Currently the two apartment buildings located on the Property—"The Calhoun Greenway" and "Be @ The Calhoun Greenway" are situated on one lot. The subdivision will divide the existing lot so each apartment building sits on a separate lot. No land use applications are needed for the project.

The applicant is:

Bigos-Calhoun Greenway, LLC
8325 Wayzata Blvd, #200
Golden Valley MN 55426
(763) 367-7400

Please inform Ms. Palmisano of this project and don't hesitate to contact me with any questions.

Sincerely,

Alex C. Sellke
Applicant's Representative

ALEXcSELLKE 612.317.4757 ASELLKE@RAVICHMEYER.COM



RAVICHMEYERKIRKMANMCGRATHNAUMAN&TANSEY PA
80 S. 8TH ST, STE 4545, MINNEAPOLIS, MINNESOTA 55402 WWW.RAVICHMEYER.COM

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Alex C. Sellke

From: Alex C. Sellke
Sent: Tuesday, October 14, 2014 1:42 PM
To: 'info@westcalhoun.org'
Subject: Notice of Subdivision Application

Ms. Sullivan and Mr. Kees,

As required by the Minneapolis Department of Community Planning & Economic Development, I am writing to inform you that a Subdivision Application will be submitted for the property located at 3140 Chowen Avenue South (the "Property"). The proposed project does not involve any physical changes or improvements to the Property. The project is a minor subdivision that will divide one (1) existing lot into two (2) new lots. Currently the two apartment buildings located on the Property—"The Calhoun Greenway" and "Be @ The Calhoun Greenway" are situated on one lot. The subdivision will divide the existing lot so each apartment building sits on a separate lot. No land use applications are needed for the project.

The applicant is:

Bigos-Calhoun Greenway, LLC
8325 Wayzata Blvd, #200,
Golden Valley MN 55426
(763) 367-7400

Please contact me with any questions.

Sincerely,

Alex C. Sellke
Applicant's Representative

ALEXCSELLKE 612.317.4757 ASELLKE@RAVICHMEYER.COM



RAVICHMEYER KIRKMAN MCGRATH NAUMAN & TANSEY PA
80 S. 8TH ST. STE 4545, MINNEAPOLIS, MINNESOTA 55402 WWW.RAVICHMEYER.COM

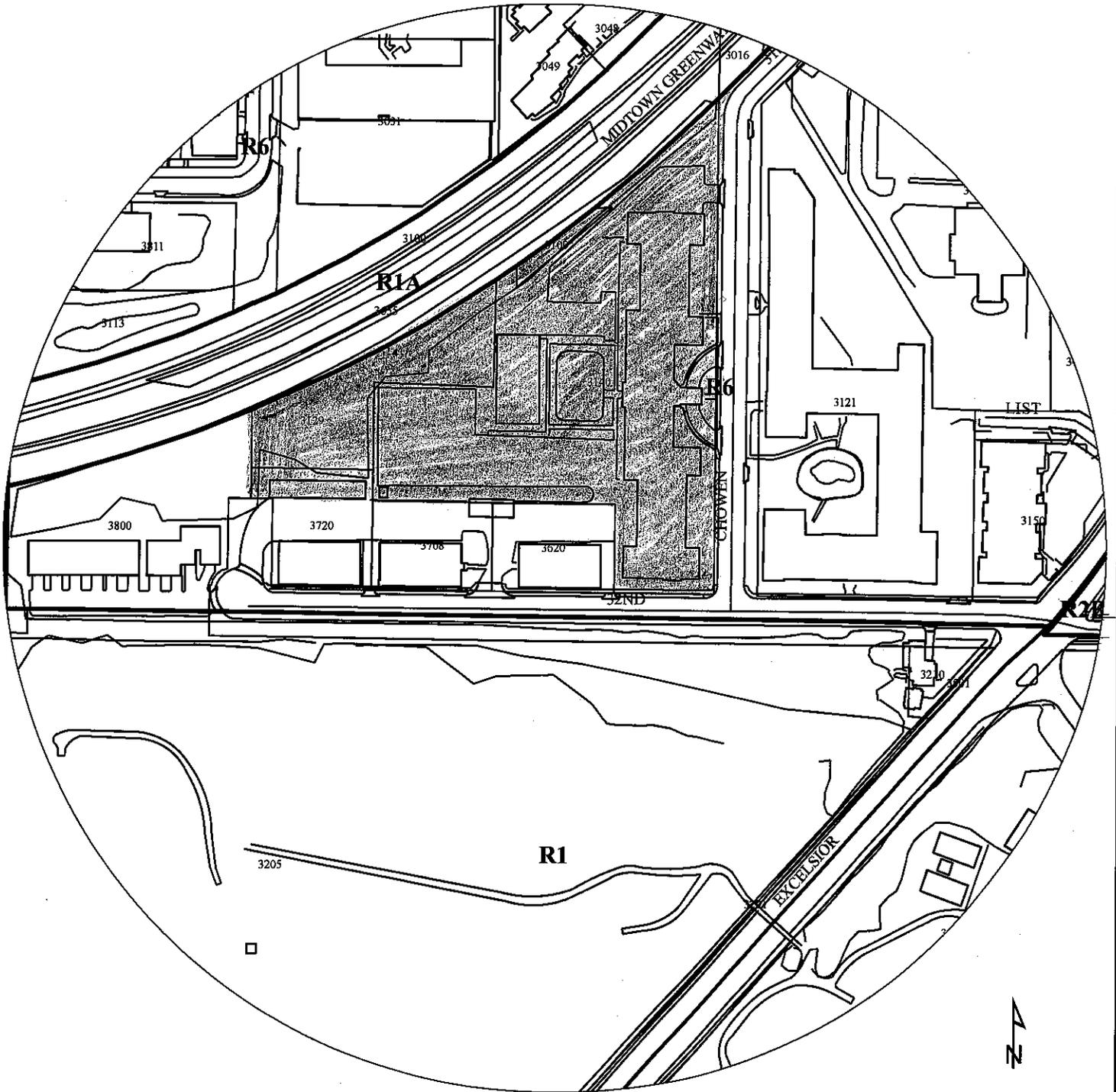
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Bigos-Calhoun Greenway, LLC

13th

NAME OF APPLICANT

WARD



PROPERTY ADDRESS

3140 Chowen Avenue South

FILE NUMBER

PL-286

PRELIMINARY PLAT OF: CALHOUN GREENWAY 2ND ADDITION

Lot 1, Block 1, Calhoun Greenway Addition, Hennepin County, Minnesota.

LEGAL DESCRIPTION:
Lot 1, Block 1, Calhoun Greenway Addition, Hennepin County, Minnesota.

NOTES:
1. The location of the building system is based on the Hennepin County coordinate grid (NAD 83-88 Adj.).
2. The total area of the property described herein is 193,894 square feet or 4.4729 acres.
3. The legal description and easement information used in the preparation of this survey were obtained from the Hennepin County Assessor's Office, Hennepin County, Minnesota, for the Survey of the County Company, Commitment No. 28017, having a commitment date of August 11, 2011, at 09:00 AM.
4. The survey was conducted on the ground and the location of the proposed utility facilities was determined by a combination of ground and aerial photography. The location of the proposed utility facilities was determined by a combination of ground and aerial photography. The location of the proposed utility facilities was determined by a combination of ground and aerial photography.
5. According to the City of Minneapolis the property described herein lies within Flood Zone 1, Flood Insurance Rate Map Community Flood No. 24222-025-1, dated September 2, 2004.
6. According to the City of Minneapolis the property is zoned R6 (Multiple-Family District) High Density.

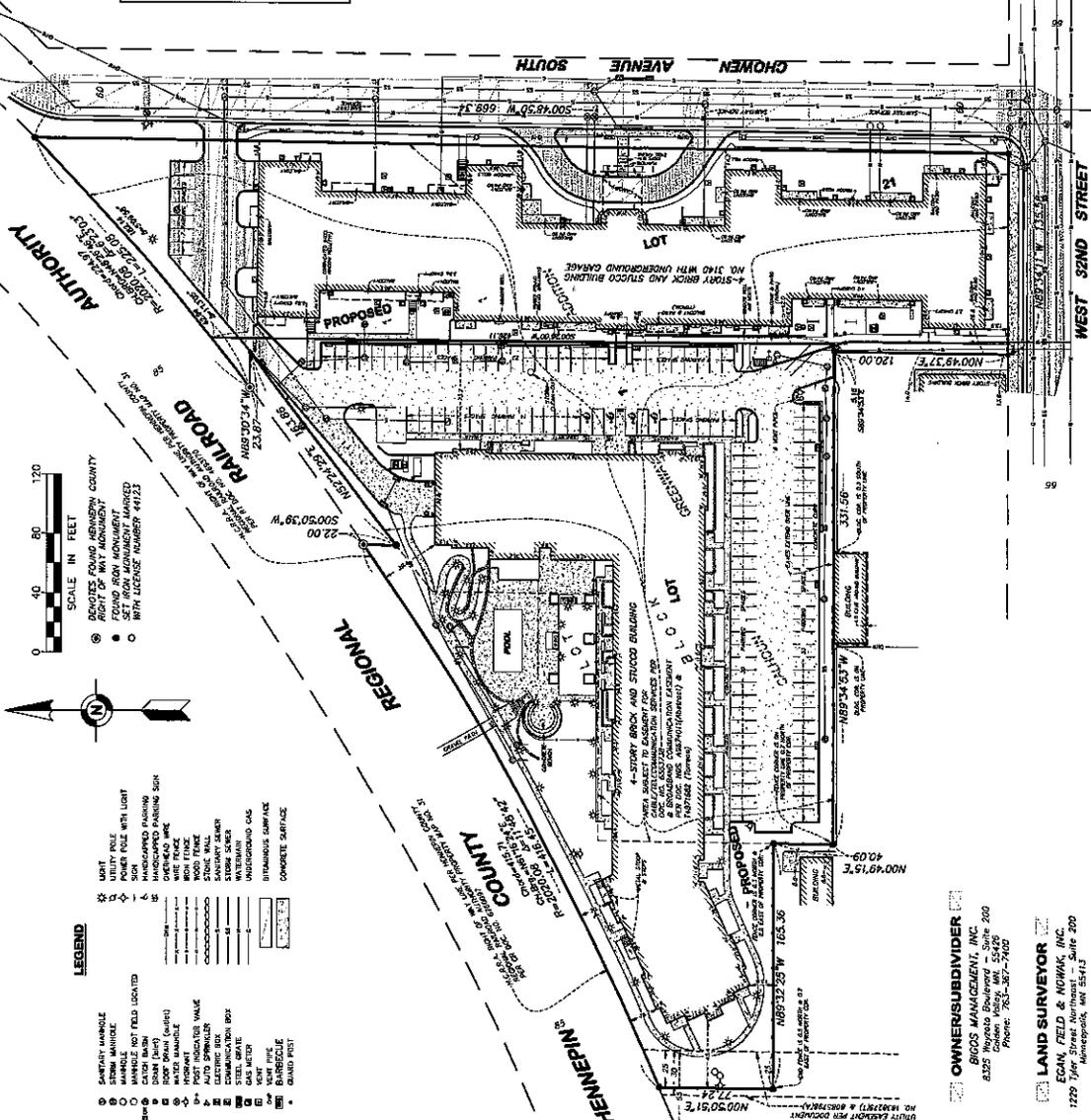
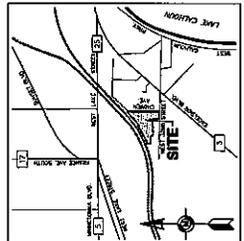
PROPOSED LEGAL DESCRIPTIONS:
Lot 1, Block 1, CALHOUN GREENWAY 2ND ADDITION, Hennepin County, Minnesota.
and
Lot 2, Block 1, CALHOUN GREENWAY 2ND ADDITION, Hennepin County, Minnesota.

PROPOSED LOT AREAS:
PROPOSED LOT 1, BLOCK 1, CALHOUN GREENWAY 2ND ADDITION = 116,950 sq. ft. or 2.7297 acres.
PROPOSED LOT 2, BLOCK 1, CALHOUN GREENWAY 2ND ADDITION = 62,388 sq. ft. or 1.4265 acres.

SURVEY ITEMS PER SCHEDULE B:
ITEM 10. Easements and mineral rights reserved by the State of Minnesota as shown by record on the Certificate of Title.
ITEM 11. Easements and mineral rights reserved by the State of Minnesota as shown by record on the Certificate of Title.
ITEM 12. Special Street Dedication and improvement, No. 2619 confirmed by the City Council of the City of Minneapolis on September 12, 1959, filed August 27, 1970, as Document No. 974688.
NOTE: This document does not affect the lot but remains as a memorial on the Certificate of Title.
ITEM 13. Easements and mineral rights reserved by the State of Minnesota, dated September 25, 1984, filed January 29, 1985, as Document No. 493232 (Abstract), filed April 25, 2003, as Document No. 493232 (Abstract) and filed April 11, 1985, as Document No. 1932976 (Survey).
ITEM 14. Easement for utility purposes reserved by CFC Road Estate Corporation, a Wisconsin corporation, dated August 1, 1982, as Document No. 1520776.
ITEM 15. Easement for CFC Road Estate Corporation, dated January 24, 1994, filed March 26, 1994, as Document No. 6257328.
ITEM 16. Hennepin County Regional Railroad Authority Property Map No. 31 filed October 8, 2009, as Document No. 483370.
NOTE: This document does not affect the lot but remains as a memorial on the Certificate of Title.
ITEM 17. Easements for railroad purposes reserved by the State of Minnesota, as shown by record on the Certificate of Title, dated February 2, 2011, filed July 18, 2011, as Document No. 4877401 (Abstract) and Document No. 1491524 (Survey).
ITEM 18. Easements and mineral rights reserved by the State of Minnesota, dated September 12, 2012, filed September 12, 2012, as Document No. 4894953.

CERTIFICATION:
I hereby certify that the survey was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.
Date of survey, September 2, 2011.
Date of signature, September 24, 2014.

Erwin R. Peters
Minnesota License No. 44123



OWNERSUBDIVIDER
BIGOS MANAGEMENT, INC.
8129 Regatta Boulevard, Suite 200
Minneapolis, MN 55414
Phone: 763-387-7400

LAND SURVEYOR
EGAN, FIELD & NOWAK, INC.
1229 University Avenue, Suite 470
Minneapolis, MN 55414

PROPERTY ADDRESS:
3140 CHOWEN AVENUE SOUTH
MINNEAPOLIS, MN 55416

SURVEY FOR:
BIGOS MANAGEMENT

PRELIMINARY PLAT OF:
CALHOUN GREENWAY
2ND ADDITION

FIELD BOOK	PAGE	NO. OF RECORD	DATE	DESCRIPTION
2149	1	1		

DATE	BY	DESCRIPTION

DRAWING NAME	DRAWN BY	CHECKED	DATE
FILE NO. 3501			

RECIPROCAL EASEMENT AGREEMENT

This Reciprocal Easement Agreement is made and entered into effective as of _____, 2014, by and between **BIGOS-CALHOUN GREENWAY, LLC**, a Delaware limited liability company (the "East Parcel Owner"), and **BIGOS-BE @ CALHOUN, LLC**, a Minnesota limited liability company (the "West Parcel Owner").

BACKGROUND

East Owner is the owner of that certain parcel of real estate legally described on **Exhibit A** attached hereto and incorporated herein by this reference (the "East Parcel").

West Owner is the owner of that certain parcel of real estate adjacent to, contiguous with, and located to the West of the East Parcel as legally described on **Exhibit B** attached hereto and incorporated herein by this reference (the "West Parcel"). The West Parcel and East Parcel are sometimes referred to herein as the "Parcels" or a "Parcel".

The West boundary of the East Parcel is contiguous with the East boundary of the West Parcel.

A driveway affording both the East Parcel and the West Parcel access to and from publicly dedicated right of ways crosses the boundary between the Parcels, and parking on the West Parcel has been recently constructed. The Parcels may share certain utilities and certain improvements may encroach from one Parcel onto the other. The portions of the West Parcel and the East Parcel which are encumbered by this instrument are shown on the drawing attached as **Exhibit C** (the "Easement Area").

The parties wish to create and impose certain easements and covenants on the portions of the parcels as appurtenant benefits and burdens for the respective parcels, and the parties have entered into this Agreement for such purposes.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. **Submission of the Parcels to this Agreement.** The East Parcel and the West Parcel are hereby both subjected to the provisions of this instrument, and such parcels shall hereafter be owned, occupied, leased, sold, mortgaged or otherwise transferred subject to and together with the covenants, easements and restrictions of this instrument. The provisions hereof shall run with and bind the land.

2. **Driveway and Access Easement.** The parties hereby grant, create, reserve, and impose an appurtenant, permanent, reciprocal, non-exclusive driveway and access easement for, ingress and egress, vehicular and pedestrian, to and from Chowen Avenue South to the east, from W.

32nd Street to the south, and over, across, and upon the driveway located within the surface parking area on the West Parcel, all shown on Exhibit C (the "Access Easement Area") for the mutual benefit of the East Parcel and West Parcel and future owners of the East Parcel and the West Parcel, and their respective tenants, residents, employees, agents, guests, lenders, invitees, and their respective successors and assigns.

3. **Parking Easement.** The West Owner hereby grants a permanent appurtenant and exclusive easement for parking as shown on Exhibit C (the "Parking Easement Area") for the sole benefit of the East Parcel, future owners of the East Parcel, and their respective tenants, residents, employees, agents, guests, lenders, invitees, and their respective successors and assigns.

4. **Utility Easement.** The parties hereby grant, create, reserve and impose a non-exclusive, perpetual easement (the "Utility Easement") in, to, over, under and across the Parcels for the purpose of continued location, operation, maintenance, repair, replacement, removal, and relocation of underground storm sewer lines, drains, sanitary sewer pipes, surface drainage and catch basin purposes, water and gas lines, electric power lines, telephone and communication lines, irrigation lines, and other underground utility lines which are located in the as of the date hereof ("Utility Lines") to serve the Parcels. The Owner of any portion of the Parcels under or upon which a Utility Line is located may, at such Owner's sole cost and expense, relocate, reroute or otherwise modify the location or depth of such Utility Lines, provided that such action will not in any manner interrupt the continued utility service to the Parcels served by such Utility Line. In addition, the relocation of any Utility Lines and installation of any new Utility Lines will be subject to the approval of the Owner upon whose Parcel the Utility Line will be located, which approval will not be unreasonably withheld or delayed if: (i) said Utility Line does not run through or under any building on the Parcel; (ii) the Owner installing the new or relocated Utility Line fully restores, repaves, replants and re-landscapes any disturbance on the surface; and (iii) the Owner installing the new or relocated Utility Line agrees to indemnify all other Owners from any and all liability, claims, damages, losses, costs or expenses, including any mechanic's liens or attorneys' fees suffered or incurred by reason of such work.

5. **Easement for Encroachments.** Each Owner, with respect to its Parcel, hereby grants to the other Owners a non-exclusive easement to, over, under and across such Owner's respective Parcel for purposes of maintaining the footings, foundations, supports, fences, steps, sidewalks and equipment (including the HVAC equipment), if any, encroaching onto such Owner's Parcel. The foregoing easement will lapse and expire upon the removal or destruction of the encroachment. The foregoing will not be construed to grant permission to any Owner to construct any new encroachments or to expand any existing encroachments after the date hereof.

6. **Maintenance and Repairs.** The driveway, roads, curb cuts, pavement, including parking areas and other improvements (the "Improvements") located in the Easement Area will at all times be maintained in a good and serviceable condition, and in compliance with all ordinances, laws, rules, and regulations. The West Owner will be responsible, in the first instance, to maintain, repair, and replace, the Improvements, which shall include, but shall not be limited to, patching, sweeping, resurfacing, repairing, snow and ice removal, sanding, salting, and all other maintenance

and repairs of thereof (collectively "Maintenance"). The costs incurred in connection with Maintenance of the Improvements are referred to herein collectively as the "Maintenance Costs." Each Owner will be responsible to pay fifty percent (50%) of the Maintenance Costs.

At least thirty (30) days prior to the beginning of each calendar year, the West Parcel Owner will present the East Parcel Owner a budget estimating the cost of the expected Maintenance Costs for the next calendar year. Periodically, and not less frequently than once each year, the West Owner will provide a detailed breakdown of all Maintenance Costs to the East Owner, accompanied by an invoice to the East Owner requesting payment of the East Owner's share of the Maintenance Costs. Such amounts will be due and payable from the East Owner to the West Owner within thirty (30) days after receipt of such invoice. The West Owner agrees to provide the East Owner with any documentation or other information reasonably requested by the East Owner with respect to the Maintenance Costs.

If the West Owner fails to adequately maintain and repair the Improvements, and such failure continues for a period of thirty (30) days after written notice from the East Owner to the West Owner (except in an emergency situation where only notice reasonable under the circumstances must be provided), then the East Owner may, but is not obligated to, itself perform such necessary Maintenance of the Improvements. The West Owner's share of the costs incurred by the East Owner, plus ten percent (10%) of such amount of an administrative fee, plus all attorneys' fees incurred, will be due and payable from the West Owner to the East Owner within thirty (30) days after written request. If not paid with thirty (30) days, such amounts will accrue interest at the rate provided herein.

Notwithstanding the foregoing, if any damage or destruction should occur to any of the Improvements by reason of any negligent action of the East Owner or its contractors, employees, tenants, residents, managers or invitees, then the East Owner will be solely responsible to pay the cost of the repairs required thereby. Similarly, if any damage or destruction should occur to any of the Improvements by reason of any negligent action of the West Owner or its contractors, employees, tenants, residents, managers or invitees, then the West Owner will be solely responsible to pay the cost of the repairs required thereby.

7. **Utility Line Maintenance and Repair.** Except as otherwise provided in this Agreement, each Owner, at its sole cost, will be obligated to maintain, repair and (as required) replace any utility line serving only the Parcel owned by such Owner. Each Owner will be responsible for fifty percent (50%) of such maintenance and repair costs related to Utility Lines.

8. **Insurance.** The East Owner and the West Owner will each obtain and maintain, at their separate costs, public liability insurance over the entire Easement Area in amounts to be mutually agreed upon by the East Owner and the West Owner, but which will not be less than the amounts required by any lender providing mortgage financing on the East Parcel or the West Parcel. The East Owner will cause its insurance company to add the West Owner and its lender(s) as additional insureds on such policy; and the West Owner will cause its insurance company to add the East Owner and its lender(s) as additional insureds on such policy.

9. **Mutual Indemnity and Waiver of Subrogation.** Except as excluded below, the East Owner agrees to indemnify, defend and hold harmless the West Owner, and its members, governors, tenants, residents, managers, employees, agents, guests and lenders, from and against any costs, expenses, damages, liabilities, claims, causes of action, litigation, liens and all attorneys' fees suffered or incurred by reason of the East Owner's negligence with respect to the Easement Area.

Except as excluded below, the West Owner agrees to indemnify, defend and hold harmless the East Owner, and its members, governors, tenants, residents, managers, employees, agents, guests and lenders, from and against any costs, expenses, damages, liabilities, claims, causes of action, litigation, liens and all attorneys' fees suffered or incurred by reason of the West Owner's negligence with respect to the Easement Area.

Notwithstanding the foregoing, to the fullest extent they may do so under the law, each of the East Owner and the West Owner waives and releases any and all claims against the other party (and against their members, governors, tenants, residents, contractors, employees, managers, lenders, agents, guests and invitees, and their successors and assigns) which might be pursued by either of their insurance carriers by means of subrogation, assignment or otherwise.

10. **Real Estate Taxes.** The East Owner will remain obligated to pay all of the real estate taxes and special assessments due and payable with respect to the entire East Parcel; and, the West Owner will remain obligated to pay all of the real estate taxes and special assessments due and payable with respect to the entire West Parcel.

11. **Notices.** Any notice or election herein required or permitted to be given or serviced by any party hereto upon the other will be in writing and delivered either in person, by email, by facsimile, recognized overnight delivery service (i.e., Federal Express, UPS, etc.), or sent by United States certified or registered mail, postage prepaid, addressed as follows:

If to East Owner: BIGOS-CALHOUN GREENWAY, LLC
c/o Bigos Management, Inc.
8325 Wayzata Boulevard
Suite 200
Golden Valley, Minnesota 55426

If to West Owner: BIGOS-BE@CALHOUN, LLC
c/o Bigos Management, Inc.
8325 Wayzata Boulevard
Suite 200
Golden Valley, Minnesota 55426

Any such communication, if mailed as provided herein, will be deemed to have been received on the expiration of four (4) business days after mailing. Any such communication, if sent by recognized

overnight delivery service (i.e., Federal Express, UPS, etc.) will be deemed to have been received on the first business day after the communication is sent by such means. Any communication personally delivered or sent by email or facsimile will be deemed to have been given upon delivery thereof in the manner above provided on the date delivered. If the last day of a period within which either party is required or allowed to provide a notice, demand, offer, election, acceptance or other communication hereunder should fall upon a Saturday, Sunday or legal holiday then, the next full business day will be included in such period and such notice, offer, demand, request or communication may be made and given on such next full business day.

12. **Estoppel Certificate.** Upon written request from time to time from the other Owner, each Owner will issue to a prospective mortgagee of such other Owner or to a prospective successor Owner to such other Owner an estoppels certificate stating:

(a) Whether the Owner to whom the request has been directed knows of any default by the requesting Owner under this Agreement, and if there are known defaults, specifying the nature thereof;

(b) Whether to its knowledge this Agreement has been assigned, modified or amended in any way (or if it has, then stating the nature thereof); and

(c) That to the Owner's knowledge this Agreement as of that date is in full force and effect.

Such statement will act as a waiver of any claim by the Owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. However, such statement will in no event subject the Owner furnishing it to any liability whatsoever, notwithstanding the negligence or otherwise inadvertent failure of such Owner to disclose correct and/or relevant information.

13. **Modification of Access.** An Owner may not make any modifications or alterations of the Access Easement Area or the Parking Area Easement located on the Parcel owned by such Owner which would materially adversely affect, or materially impede the access or parking afforded thereby, without in each instance obtaining the prior written consent of all Owners.

14. **Condemnation.** In the event of a condemnation of part of the Parcels, the parties agree that any award or payment for such condemnation, or for a sale or transfer under threat thereof, will belong to and be the sole and absolute property of the Owner of the fee title of the Parcel subject to such taking or transfer under threat thereof, and all other Owners will be deemed conclusively to have waived and released any and all rights therein or thereto; except pursuant to a separate claim against the condemning authority for any separate damages or losses suffered by reason of such condemnation. Upon the completion of such taking or transfer under threat thereof, the portion of the property so transferred will be deemed to have been released from this instrument. If such a

condemnation, taking, sale or transfer under threat thereof reduces the number of parking spaces located below the require minimum, then the Owner whose Parcel is so affected will use commercially reasonable efforts (including using proceeds from the condemnation award or settlement) to restore or substitute an equal number of other parking spaces on its remaining Parcel to the extent feasible, provided, however, that "commercially reasonable efforts" will not be construed to require such Owner to construct a parking ramp or to spend funds in excess of its condemnation award or settlement to acquire land for replacement or substitute parking.

15. **Hazardous Materials.** Each Owner will be solely responsible for all claims, liabilities, costs and expenses arising from or in any manner related to the presence, location, storage, release, dumping, spill or other placement of hazardous materials in, on or under any portion of the Parcel owned in fee by such Owner. Hazardous materials means toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, and any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601-9657, as amended).

16. **Mechanic's Liens.** Upon written demand by any Owner, each Owner will remove, or cause the removal of, any mechanic's liens caused by the Owner receiving the written demand within sixty (60) days after such written request which are filed against any portion of the demanding Owner's Parcel. Such removal may be accomplished by the responsible Owner by depositing the appropriate amounts pursuant to Minnesota Statutes section 514.10 within such sixty (60) day period.

17. **Enforcement; Lien Rights.** If any Owner (a "Defaulting Owner") fails, upon demand, to pay any sum of money payable pursuant to the provisions of this Agreement, then, in addition to any right any other Owner (a "Creditor Owner") may have to bring an action against the Defaulting Owner and any rights of subrogation the Creditor Owner may have by operation of law, the Creditor Owner may, at the option of the Creditor Owner, pay the amount required to be paid on behalf of the Defaulting Owner. The amount so paid by the Creditor Owner on behalf of the Defaulting Owner will be a debt owed by the Defaulting Owner to the Creditor Owner, payable on demand, and accruing interest from the date of such payment until the date paid at the rate specified herein. The amount of such debt, plus interest accrued thereon, plus all costs, expenses and attorneys' fees incurred in connection therewith by the Creditor Owner will be secured by a lien against the Parcel(s) owned by the Defaulting Owner. Such lien will date from the date of payment by the Creditor Owner on behalf of the Defaulting Owner, and may be perfected by filing a notice of such lien against the Parcel(s) owned by the Defaulting Owner in the appropriate office of the Hennepin County Registrar of Titles or County Recorder, as appropriate. Provided, however, that such lien will be subordinate to any mortgage, or any lien provided for therein, now or hereafter placed upon any Parcel. Such lien will continue in full force and effect from the date of filing a notice of such lien hereunder, until such sum of money and interest as provided herein, is paid in full.

If the Defaulting Owner fails, upon demand, to pay any Creditor Owner any sum of money

payable to the Creditor Owner pursuant to the provisions of this Agreement, the Creditor Owner may bring an action against the Defaulting Owner or foreclose the lien provided for in the first paragraph of this Section in the same manner as provided for in Chapter 514 of the Minnesota Statutes, as now enacted or hereafter amended, and costs of such action or foreclosure and reasonable attorneys' fees will be added to the amount due the Creditor Owner by the Defaulting Owner. The priority of such liens will be determined in the chronological order in which a lien statement has been recorded in the Office of the County Recorder or the Registrar of Titles, as the case may be.

In view of the purposes of this Agreement, the parties acknowledge that money damages in the event of a default in the performance of any provisions hereof may be inadequate, and accordingly either party shall have the right, in addition to any other remedies available, to apply for and receive from any court of competent jurisdiction, equitable relief by way of (i) restraining order, injunction or otherwise, prohibitory or mandatory, to prevent a breach of the terms hereof; (ii) specific performance to enforce performance of the terms hereof; or, (iii) reimbursement for costs incurred in securing any such relief, including reasonable attorneys' fees. However, such right of equitable relief and remedies provided above shall not be construed to be in lieu of the right to seek any other available remedy at law, or to seek money damages for a breach hereof.

18. Interest. In each instance, when any Owner is obligated to pay any sum of money to another Owner pursuant to the provisions of this Agreement, interest will accrue thereon and be payable hereunder at the rate of ten percent (10%) per annum, accruing from the date such obligation becomes due until paid.

19. Maintenance of Buildings. Each Owner, at its sole cost and expense will keep and maintain the building(s) located on its Parcel(s) in good condition and state of repair, and in compliance with all laws, rules and regulations, orders and ordinances of the governmental agencies exercising jurisdiction thereover and the provisions of this Agreement. Each Owner further agrees to cause its tenants to store all trash and garbage in adequate containers maintained in a neat and clean condition and each Owner will arrange for regular removal of such trash and garbage at its sole cost and expense.

20. Successors and Assigns. This Agreement will be binding upon and/or inure to the benefit of the heirs, administrators, representatives, executors, successors and assigns and will inure to the benefit of both parties and their successors and assigns.

21. Attorneys' Fees. If any action, lawsuit, arbitration or other proceeding is initiated under this Agreement by reason of any parties breach of this Agreement or failure to perform as provided hereunder, then, the prevailing party in such action, lawsuit or proceeding shall be entitled to recover, and the non-prevailing party agrees to pay all attorneys' fees, court costs, filing fees, deposition costs and similar expenses incurred by the prevailing party. Such recovery of fees and costs shall be in addition to any and all other remedies available hereunder, at law or in equity.

22. **Not a Public Dedication.** The Easement Area will at all times remain in private ownership. This Agreement shall not be deemed a gift or dedication to the City of Minneapolis, to any public body, or to the general public or for any public purpose.

23. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

[SEPARATE SIGNATURE PAGE ATTACHED]

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

BIGOS-BE @ CALHOUN, LLC

By: _____

Theodore J. Bigos

Its: Chief Manager

BIGOS-CALHOUN GREENWAY, LLC,

By: _____

Theodore J. Bigos

Its: Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Theodore J. Bigos, the Chief Manager of Bigos-Be @ Calhoun, LLC, on behalf of the limited liability company.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Theodore J. Bigos, the Chief Manager of Bigos-Calhoun Greenway, LLC, on behalf of said company.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
Ravich Meyer Kirkman McGrath Nauman & Tansey
A Professional Association
4545 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2225

**EXHIBIT A
TO
RECIPROCAL EASEMENT AGREEMENT**

LEGAL DESCRIPTION OF EAST PARCEL

Real property situated in the County of Hennepin, State of Minnesota legally described as follows:

Lot 2, Block 1, Calhoun Greenway 2nd Addition, Hennepin County, Minnesota

**EXHIBIT B
TO
RECIPROCAL EASEMENT AGREEMENT**

LEGAL DESCRIPTION OF WEST PARCEL

Real property situated in the State of Minnesota, County of Hennepin legally described as follows:

Lot 1, Block 1, Calhoun Greenway 2nd Addition, Hennepin County, Minnesota

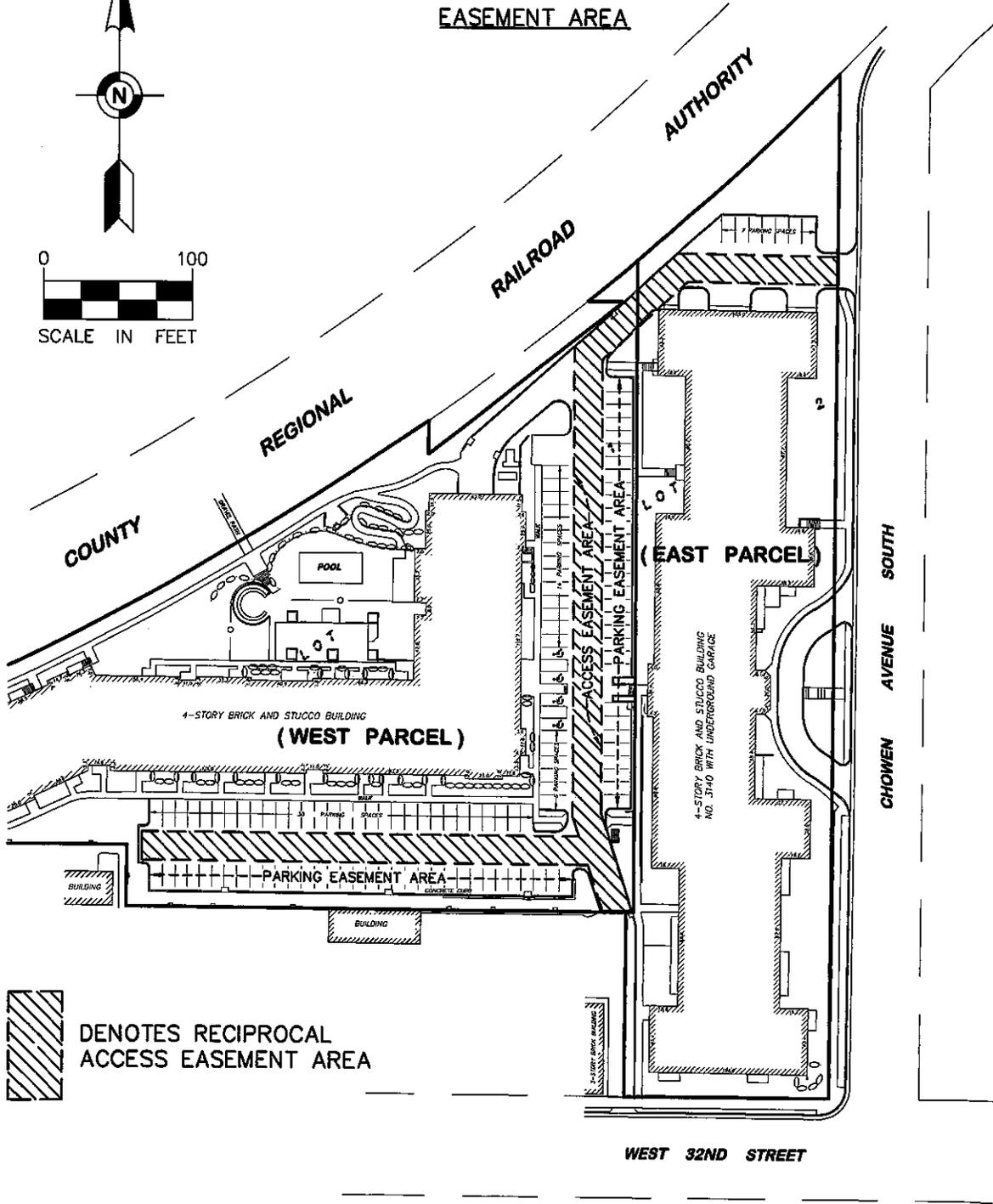
**EXHIBIT C
TO
RECIPROCAL EASEMENT AGREEMENT**

EASEMENT AREA

**EXHIBIT C
TO
RECIPROCAL EASEMENT AGREEMENT
EASEMENT AREA**



0 100
SCALE IN FEET



DENOTES RECIPROCAL
ACCESS EASEMENT AREA

WEST 32ND STREET

CHOWEN AVENUE SOUTH

1229 Tyler Street NE, Suite 100
Minneapolis, Minnesota 55413
PHONE: (612) 466-3300
FAX: (612) 466-3383
WWW.EFSURVEY.COM

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