CITY OF STOUGHTON
FINANCE DEPARTMENT
207 S Forrest, Stoughton, WI 53589

(608) 873-6677 www.ci.stoughton.wi.us

Date: June 17, 2021

To: Finance Committee

From: Jamin Friedl

Subject: GIP-Glacier Moraine LLC Letter of Credit

On February 2, 2020 the City entered into an agreement with GIP-Glacier Moraine LLC for the sale of property located within the City's TIF District No. 6. That agreement guaranteed the City a minimum of $550,000 in projected tax increment over the remaining life of the TIF. If by December 15, 2024, the combined actual tax increment plus projected tax increments is less than $550,000, the City is entitled to draw on the letter of credit provided as part of this agreement.

The City agreed to reduce the letter of credit beginning on December 15, 2021, and annually thereafter until December 15, 2024. Representatives from GIP-Glacier Moraine LLC have reached out to ask if the City will consider reducing the letter of credit earlier than December 15, 2021.

As can be seen by the attached excerpt from the 2021 Real Estate Assessment Tax Roll, the incremental value added as of January 1, 2021 from this development is $355,500. We know the City will be obligated to reduce the letter of credit on December 15, 2021, but the challenge with doing this prematurely is that we do not know what the final mil rate will be at this point in time. The City's mil rate has been reducing by an average of 1.7% annually over the last four years. Assuming a decrease in the 2021 mil rate of 1.5% (for example purposes only), the City would be required to reduce the letter of credit by $104,839 on December 15, 2021.

If the City wishes to pursue reducing the letter credit prior to the final mil rate being determined, the Finance Committee recommends building in a contingency amount to ensure the interim is less than the final reduction that will be calculated in December. Following the final calculation in December, the City will then approve an additional reduction in the letter of credit.

Respectfully,

Jamin Friedl

Global Valuation System

Real Estate Assessment Roll

NAME AND ADDRESS	DESCRIPTION OF PROPERTY	SCHOOL DISTRICT	CLS	ACRES	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	WOODLAND VALUE
061132498902 GIP-CLACIER MORAINE, LLC F[redacted]	441 GLACIER MORAINE DR LOT 3 CSM 15363 CS110/62&63-2/28/2020 F/K/A LOT 2 CSM 14436 CS99/112&113-2/7/2017 DESCR AS SEC 32-6-11 PRT SE1/4SE1/4 & PRT SW1/4SE1/4 (4.43 ACRES)	06	B	4.43	159,500	196,000	355,500	

PURCHASE AND SALE AGREEMENT
(City of Stoughton – GIP-Glacier Moraine LLC)

THIS PURCHASE AND SALE AGREEMENT (the "Agreement"), is entered into as of the _____ day of _____, 2020 (the "Effective Date"), by and between the City of Stoughton, a Wisconsin municipal corporation (the "City"), and GIP-Glacier Moraine LLC ("Buyer").

RECITALS

1. Buyer proposes to purchase approximately 4.43 acres of land from the City and to construct eight commercial buildings.

2. The City finds that the development of the Property and the fulfillment of the terms and conditions of this Agreement are in the best interests of the City and its residents, by expanding the tax base and creating employment and commercial opportunities, thereby serving public purposes in accordance with state and local law.

3. The City Council on January 28, 2020 adopted Resolution No. R-22-2020, approving this Agreement and authorizing the City, through its duly authorized officials and agents, to execute and implement this Agreement.

AGREEMENT

In consideration of the Recitals, and the mutual promises, obligations and benefits provided hereunder, the receipt and adequacy of which are hereby acknowledged, Buyer and the City agree as follows:

A. DEFINITIONS.

As used in this Agreement, the following terms, when having an initial capital letter, shall have the following meanings:

1. Actual Tax Increment. The tax increment actually received by the City from taxes levied on the Property in a given year, as reasonably calculated by the City, pursuant to Wis. Stat. § 66.1105.

2. Projected Actual Tax Increment. The tax increment the City is projected to receive from taxes levied on the Property in future years, as reasonably calculated by the City. In calculating Projected Actual Tax Increment, the City shall use the full Assessed Value of the Property at the time of calculation, and shall use the mil rate effective at that time for the first projected Revenue Year, with the mil rate decreasing at a rate of 1.5 percent each year for subsequent Revenue Years. Buyer and the City agree that Projected Actual Tax Increment will be the full Assessed Value, multiplied by the applicable mil rate at which taxable property in the City is taxed to levy taxes for all taxing jurisdictions in which the Property is located, multiplied

by the number of years that Actual Tax Increment may lawfully be allocated to the City pursuant to Wis. Stat. § 66.1105.

3. Revenue Year. Revenue Year means the year in which the City actually receives taxes levied on Property. For example, taxes levied in 2020 are received by the City in 2021.

4. District. City of Stoughton Tax Increment District No. 6.

5. City Improvements. The following public improvements to be designed and constructed by the City for the benefit of the Property, and which shall not be specially assessed against the Property:

(a) The extension of Glacier Moraine Drive between Williams Drive and Progress Lane.

(b) Sanitary sewer and water mains in Glacier Moraine Drive and lateral stubs to serve the Property from Glacier Moraine Drive.

6. Property. The approximately 4.43 acre parcel described as Lot 2 on Exhibit A attached hereto, together with all other rights and interests appurtenant thereto, and to be more particularly described in a certified survey map to be prepared by the City.

7. Project. Construction of eight commercial units in accordance with site and architectural plans to be approved by the City of Stoughton Plan Commission and a Conditional Use Permit to be approved by the City of Stoughton Common Council.

B. AGREEMENT TO PURCHASE.

Subject to the terms and conditions of this Agreement, the City shall sell to Buyer, and Buyer shall purchase from the City, the Property located in the City of Stoughton, Dane County, Wisconsin.

C. PURCHASE PRICE.

1. Purchase Price. The Purchase Price for the Property shall be One Hundred Eighty Thousand and no/100 Dollars ($180,000.00). The Purchase Price shall be payable as follows:

(a) Earnest Money Deposit. Within three (5) business days of the Effective Date, Buyer shall deposit the sum of Three Thousand and no/100 Dollars ($3,000.00) ("Deposit") with the Madison, Wisconsin office of First American Title Insurance Company (the "Title Company"). The Deposit shall be held in an interest bearing escrow account. The Deposit shall be credited to the Purchase Price and released to the City at Closing.

(b) Balance. Buyer shall pay the balance of the Purchase Price, subject to the adjustments and prorations set forth in this Agreement, at Closing.

D. TITLE EVIDENCE.

1. The City, at the City's expense, shall promptly following the recording of the CSM described in Section E.3, deliver to Buyer a commitment ("Commitment") prepared by the Title Company to issue a standard form ALTA owners' policy of title insurance, including gap coverage, for the Property in the amount of the Purchase Price naming Buyer as the insured, showing all liens, encumbrances and other matters of record. Within fifteen (15) days of Buyer's receipt of the Commitment, Buyer shall notify the City, in writing ("Buyer's Title Notice"), of any objections to the Title Commitment. The City shall use diligent good faith efforts to remove any objections Buyer has with respect to the Title Commitment. If one or more of such objections cannot be removed, the City shall notify Buyer in writing ("City's Notice"), within fifteen (15) days after the City's receipt of Buyer's Title Notice, of which objections cannot be removed. Buyer shall elect, in writing within ten (10) days thereafter, either to: (i) terminate and cancel the Agreement, in which case the Deposit shall be returned to Buyer and, except as set forth in this Agreement, neither party shall have further obligations hereunder; or (ii) waive the title objections and proceed to Closing. If Buyer does not timely give notice to terminate this Agreement, then the uncured defects shall become Permitted Exceptions and Buyer shall be deemed to have waived its right to terminate this Agreement under this Section.

E. CONTINGENCIES AND CONTINGENCY DEADLINE.

All of the contingencies in this Agreement shall be removed on or before ninety (90) days after the Effective Date (the "Contingency Deadline"), or this Agreement shall, at the Buyer's option, be null and void and the Deposit shall be returned to Buyer. Buyer reserves the right to waive any of Buyer's contingencies by delivering a signed notice of waiver to the City.

Buyer and the City hereby acknowledge that the contingencies set forth in this Agreement are significant and material terms and conditions of this Agreement and that the Buyer and the City will incur costs and obligations with reference to performing, or having performed, inspections and investigations of the Property to satisfy these contingencies. The Buyer and the City hereby each waive any and all rights to challenge the enforceability of the Agreement on the basis that any of the conditions and contingencies set forth herein is illusory.

In the event that Buyer has failed to provide the City with written objection to the contingencies in this Agreement by the Contingency Deadline, then each such contingency shall be deemed satisfied and waived by Buyer.

Buyer's obligation to close on the purchase of the Property described by this Agreement is contingent upon:

1. Physical Inspections Contingency. Buyer or its designated architect, engineer, inspector or other representative, at Buyer's sole cost and expense, being granted access to the Property for a physical inspection of the Property and approval by the Buyer of the physical condition of the Property exercised in the use of the Buyer's reasonable opinion and discretion.

This contingency does not include testing, defined as the taking of materials such as soils, water, air, or other materials from the Property and the laboratory or other analysis of those materials.

2. Phase I Environmental Audit. Buyer obtaining, at Buyer's sole cost and expense, a written Phase I Environmental Audit Report, other environmental reports or investigations of the Property from qualified independent consultants selected by Buyer, which reports are satisfactory to the Buyer, in the use of the Buyer's reasonable opinion and discretion.

3. CSM Contingency. The City obtaining, at its expense, a certified survey map ("CSM") showing the division of the Property and showing no encroachments or other matters that could, in Buyer's reasonable discretion, subject Buyer to liability or expense. The City shall provide a copy of the CSM to Buyer at least fifteen (15) days prior to the end of the Contingency Deadline and Buyer shall have until the end of the Inspection Period to review the CSM. The City shall thereafter record the CSM in the Dane County Register of Deeds Office.

4. Zoning Contingency. Buyer obtaining, at Buyer's sole cost and expense, approval of a Conditional Use Permit authorizing multiple principal structures on the Property and Site Plan authorized construction of the Project.

5. Utilities. Buyer determining that the Property is or can be, at Buyer's expense, reasonably served by utilities such as electricity, gas, cable, and telephone at a cost that is satisfactory to Buyer in its sole discretion. This paragraph in no way obligates the City to provide such utilities to the Property and Buyer acknowledges the City has no obligation to construct utilities other than the City Improvements.

6. Subsoils. Buyer obtaining, at Buyer's expense, written evidence from a qualified soils expert that the Property is free from any subsoil condition that would make the proposed use as a commercial warehouse and office building impossible or significantly increase the costs of development.

F. AS-IS SALE.

Buyer acknowledges that Buyer will have full and adequate right and opportunity to inspect and review the Property prior to the Contingency Deadline. The waiver of Buyer's right to terminate the Agreement prior to the Contingency Deadline, and Buyer's completion of the Closing, shall each constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Property. In closing and completing this transaction, Buyer will have relied exclusively on its own inspections and reviews, and not on any representation or warranty of the City, or its agents or employees. Buyer understands and agrees (i) that the City has made no representation, warranty or guaranty, express or implied, oral or written, regarding the condition of the Property; and (ii) if Buyer satisfies or waives the contingencies contained in this Agreement, to accept the Property in its "AS-IS/WHERE-IS" condition, with all present and future faults or defects, and without any representation or warranty of the City, except for the warranty of title set forth in the Agreement.

G. CLOSING.

1. Closing Date. Except as otherwise set forth herein, the Closing shall occur at the offices of the Title Company on March 31, 2020, or at such other place or time as the parties may agree in writing.

2. Closing Documents. At the Closing, the parties shall deliver following documents:

(a) The City will execute and deliver to Buyer a general warranty deed (the "Deed") conveying the Property to Buyer subject only to municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, general taxes levied in the year of closing and the Permitted Exceptions;

(b) Both parties will complete a Wisconsin Real Estate Transfer Return in the form that is required by state statute in order to record the Deed;

(c) Both parties will execute and deliver a closing statement setting forth the Purchase Price and any adjustments thereto as provided for in this Agreement;

(d) Both parties will execute and deliver any other documents that are necessary to consummate the transaction contemplated by this Agreement, including such documents as are necessary to cause title to be conveyed to Buyer in the form approved by Buyer pursuant to the terms of this Agreement.

3. Costs and Expenses. The City shall be responsible for paying the Wisconsin real estate transfer fee, if any, the cost of providing title insurance to Buyer, and any recording fees related to satisfying any existing mortgages against the Property. Buyer will pay any recording fees related to recording the Deed and any mortgages it grants on the Property. The parties shall evenly share any cost of the Title Company to act as the closing agent and escrow agent. Each party will be solely responsible for paying its respective attorney's fees.

4. Prorations and Adjustments. The following items shall be prorated and adjusted between Buyer and the City as of 12:01 a.m. on the date of Closing as follows:

(a) General real estate taxes levied against the Property. The proration shall be based on the net general real estate taxes for the year of Closing, if known, otherwise on the net general real estate taxes for the year prior to Closing.

(b) Assessments, either general or special, for improvements completed prior to Closing, whether matured or unmatured, shall be paid in full by the City (including all principal and interest). Buyer shall pay all other assessments.

(c) Such other items as are required to be prorated pursuant to the terms hereof, or as are customarily prorated upon the transfer of ownership and possession of real estate in Dane County.

H. CITY OBLIGATIONS.

1. City Improvements. The City shall complete the City Improvements on or before July 31, 2020. The City's failure to complete the City Improvements by July 31, 2020 shall, at Buyer's option, obligate the City to repurchase the Property from the Buyer at a price of One Hundred Eighty Thousand and no/100 Dollars ($180,000.00) plus Buyer's closing costs (not including any bank or legal fees) as shown on the settlement statement prepared by the Title Company for Closing.

2. Cooperation. Upon the execution of this Agreement by both parties, Buyer may commence any proceedings that are necessary to obtain any government approvals necessary for Buyer to develop the Property for Buyer's Intended Use. The City agrees that it will, in its capacity as the current owner of the Property, cooperate with Buyer to the extent necessary for Buyer to apply for governmental permits or approvals. However, nothing in this Agreement is intended to relieve, nor shall it be construed as relieving, or in any way satisfying other obligations, procedures or requirements pertaining to the future zoning, division or development of the Property. This Agreement does not bind the City to approve any land division, zoning or other application or development activity for the Property. Buyer agrees to comply with all applicable City of Stoughton plans, policies and ordinances relating to applications for zoning, land division, development or other approvals.

3. Casualty. The City assumes all risks and liability for damage to or injury occurring to the Property by fire, storm, accident, or any other casualty or cause until the Closing has been consummated. If, prior to Closing, the Property suffers any damage from fire or other casualty equal to or in excess of Twenty-Five Thousand and no/100 Dollars ($25,000.00), Buyer may either at or prior to Closing (a) terminate this Agreement, in which event the Deposit shall be refunded to Buyer, and neither party shall have any further right or obligation hereunder, or (b) consummate the Closing. If the Property suffers any damage less Twenty-Five Thousand and no/100 Dollars ($25,000.00) prior to the Closing, Buyer agrees that it will consummate the Closing and accept the assignment of the proceeds of any insurance covering such damage and there shall be no other reduction in the Purchase Price.

I. BUYER'S OBLIGATIONS.

1. Buyer Guarantee to City. Buyer guarantees that, by not later than December 15, 2024, the combination of Actual Tax Increment and Projected Actual Tax Increment (together the "Combined Actual Tax Increment") will be not less than $550,000. If, by December 15, 2024, the Combined Actual Tax Increment is less than $550,000, then the City shall be entitled to draw on the Letter of Credit the difference between $550,000 and the Combined Actual Tax Increment.

2. Letter of Credit.

(a) Buyer shall provide an irrevocable letter of credit issued pursuant to Chapter 405 of the Wisconsin Statutes to the City prior to the closing date to secure Buyer's tax increment guarantee obligation under Section I.1 of this Agreement. The letter of credit shall be

in a form acceptable to the City, and shall be issued by an entity that is acceptable to the City, or that has a rating of its long-term unsecured debt not lower than A1 by Moody's Investors Service or A+ by Standard and Poor's. It shall be payable at sight to the City, and shall bear an expiration date not earlier than December 31, 2024. The letter of credit shall be payable to the City at any time upon presentation of the following: (1) a sight draft drawn on the issuing bank in an amount to which the City is entitled under this Agreement; (2) an affidavit executed by a person authorized by the City stating that monies are due from Buyer pursuant to the guarantee obligation in Section I. 1.of this Agreement; and (3) the letter of credit.

(b) Beginning on December 15, 2021, and annually thereafter until December 15, 2024, the amount of the required letter of credit may be reduced by the Combined Actual Tax Increment as of that date.

J. NOTICES.

All notices or directions desired or required to be given under this Agreement shall be in writing and personally delivered, sent by commercial overnight courier, email or confirmed facsimile transmission and directed as follows:

If to Buyer: GIP-Glacier Moraine LLC
PO Box 159
Cottage Grove, WI 53527
Telephone: 608.577.0779
Email: grossoproperties@gmail.com

If to the City: City of Stoughton
207 S. Forrest Street
Stoughton, WI 53589
Attn: Tim Swadley
Telephone: 608.873.6677
Email: tswadley@ci.stoughton.wi.us

With a copy to: Stafford Rosenbaum, LLP
222 West Washington Avenue, Suite 900
Madison, Wisconsin 53701-1784
Attention: Matthew Dregne
Telephone: 608.259.2618
Email: mdregne@staffordlaw.com

Notices personally delivered shall be deemed received when given. Notices sent by email or confirmed facsimile transmission shall be deemed received when given, if prior to 5 PM, recipient's local time, on a business day, otherwise on the next occurring business day. Notices or demands sent by commercial overnight courier shall be deemed received on the next business day following deposit.

K. DEFAULT AND REMEDIES.

1. In the event the Closing is not consummated due to default by the City, the Deposit and interest shall be returned to Buyer, and Buyer may pursue any remedy available to Buyer at law or in equity, including an action for specific performance of this Agreement. In the event the transaction contemplated herein is not consummated due to default by Buyer hereunder, then the Deposit shall be delivered to the City, and the City may (i) sue for specific performance; or (ii) terminate the Agreement and sue for actual damages.

2. With respect to defaults other than the failure to consummate Closing, a default is defined herein as a party's breach of, or failure to comply with, the terms of this Agreement and the failure to cure such breach within thirty (30) days after the date of written notice from the non-defaulting party. The parties reserve all remedies at law or in equity necessary to cure any default or remedy any damages or losses under this Agreement. Rights and remedies are cumulative, and the exercise of one or more rights or remedies shall not preclude the exercise of other rights or remedies.

L. BROKERS.

Buyer and the City represent and warrant that neither Buyer nor the City have retained the services of any real estate broker or agent, with the exception of Blake George, Lee and Associates. The City agrees to pay Lee and Associates six percent (6%) of the Purchase Price at closing. The Parties agree to indemnify and hold the other harmless from and against any and all liability or damages, including costs and attorney's fees, resulting from any claim brought by any other real estate broker or agent for any real estate commission or finder's fee due, or alleged to be due, as the result of the actions of such person.

M. GENERAL CONDITIONS.

1. No Vested Rights Granted. Except as provided by law, or as expressly provided in this Agreement, no vested rights to develop the Property or the Project shall inure to Buyer by virtue of this Agreement. Nor does the City warrant that Buyer is entitled to any City approvals required for development of the Property or construction of the Project as a result of this Agreement.

2. Immunity. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable law.

3. Dates and Deadlines. Unless otherwise specifically provided herein, in the computation of any period of time which shall be required or permitted hereunder or under any law for any notice or other communication or for the performance of any term, condition, covenant or obligation, the day from which such period runs shall be excluded and the last day of such period shall be included unless it is a Saturday, Sunday or legal holiday, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday or legal holiday. Time is of the Essence as to all dates and deadlines in this Agreement.

4. Assignment. Buyer may assign its rights and obligation under this Agreement at any time to an entity that is related to, and/or controlled by, Buyer. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns.

5. No Waiver. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and Buyer, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults. Either party's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the other party hereto.

6. Force Majeure. Neither party shall be responsible for any loss or delay caused by any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing by the Party claiming Force Majeure

7. Modifications. This Agreement may only be modified in writing signed by both the City and Buyer.

8. Further Assurances. The parties each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action before or after the Closing as shall be necessary or desirable to fully carry out the terms of this Agreement and to fully consummate the transaction contemplated hereby. This Agreement does not bind the City to approve any land division, zoning or other application or development activity for the Property.

9. Construction of Agreement. Each party participated fully in the drafting of every part of this Agreement. This Agreement shall not be construed strictly in favor of or against either party. It shall be construed simply and fairly to each party.

10. Captions. The captions at the beginning of the several paragraphs and subparagraphs, respectively, are for convenience in locating the context only, and are not part of the text.

11. Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of Wisconsin without giving effect to principles of conflicts of law thereof.

12. Severability. In the event any term or provision of this Agreement shall be held illegal, invalid or unenforceable, or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby but each such term and provision shall be valid and shall remain in full force and effect.

13. Attorney's Fees. If either party commences an action to enforce the terms of, or to resolve a dispute concerning, this Agreement, the substantially prevailing party in any such action shall be entitled to recover from the substantially non-prevailing party all costs and

expenses incurred in connection with such action, including, but not limited to, reasonable attorney's fees and court costs.

14. Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all such counterparts together shall constitute one original instrument. Signatures transmitted by facsimile or PDF by email shall be deemed to be original signatures for all purposes.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date first set forth above, and by so signing this Agreement, certify that they have been duly authorized by their respective entities to execute this Agreement on their behalf.

CITY:

CITY OF STOUGHTON
Dane County, Wisconsin

By_____
Tim Swadley, Mayor

ATTEST:

_____
Holly Licht, City Clerk

Provision has been made to pay the liability that will accrue under this Agreement:

Countersigned:

_____ _____
Jamin T. Friedl, Finance Director Date

Approved as to Form:

Stafford Rosenbaum LLP

By: _____
Matthew P. Dregne
City Attorney

BUYER:

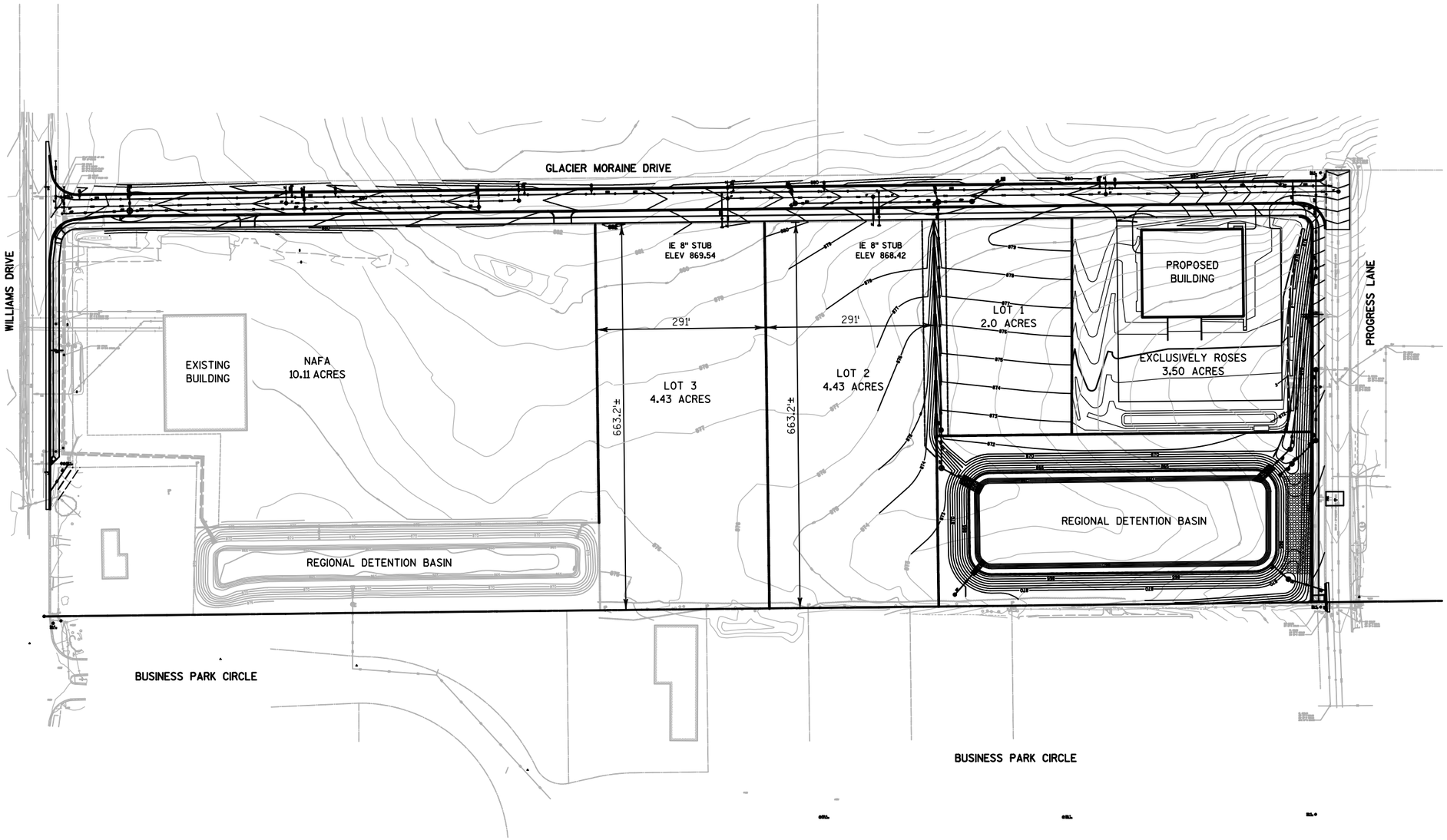
GIP-GLACIER MORAINE LLC

_____

Ronald J. Grosso

Exhibits:

Exhibit A – Description of the Property



NO.	REVISIONS	DATE:

BUSINESS PARK
PRELIMINARY LOT LAYOUT AND PLANNING
2019 BUSINESS PARK EXPANSION

CITY OF STOUGHTON
DANE COUNTY, WISCONSIN

JOB NO.
1040.097

PROJECT MGR.
MAF

STRAND ASSOCIATES®

SHEET