



**BISMARCK CITY COMMISSION  
PUBLIC MEETING NOTICE**

**TO:** Board of City Commissioners  
Media

**FROM:** Keith Hunke, City Administrator

**DATE:** July 8, 2021

**SUBJECT:** Special Meeting Notice

Board of City Commissioners  
Friday, July 9, 2021  
2:00 p.m.  
City/County Building  
221 N. 5th Street, Mayor's Conference Room  
Bismarck, ND 58503

**AGENDA**

Consider review and approval to enter into purchase agreement with RDC National, Inc. for 21.61 acres of Northern Plains Commerce Centre land under the terms as requested by the City Attorney.

**ADJOURN**



## City Attorney

**DATE:** July 8, 2021  
**FROM:** Janelle Combs, City Attorney  
**ITEM:** Approval of Purchase Agreement at NPCC

**REQUEST:**

Consider review and approval of purchase agreement.

Please place this item on the July 8, 2021 Special City Commission meeting agenda.

**BACKGROUND INFORMATION:**

Previously the Commission had directed negotiating authority regarding the purchase of approximately 21.61 acres of land which are Lots 3 and 4 of Block 1, Northern Plains Commerce Center. The changes to the request were accepted by the potential Buyer. Attached is a purchase agreement reflecting that agreement; however, there are several legal terms that I have requested changes from the Buyer.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve entering into purchase agreement with RDC National, Inc. for 21.61 acres of NPCC land under the terms as requested by the City Attorney.

**STAFF CONTACT INFORMATION:**

Janelle Combs | City Attorney, 355-1340 or [jcombs@bismarcknd.gov](mailto:jcombs@bismarcknd.gov)

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement") is entered into as of the later of the dates on which the parties hereto did sign this Agreement, and is entered into by and between **RDC National, Inc.**, a Wisconsin corporation ("Buyer") and the **City of Bismarck, North Dakota** ("Seller"). Seller agrees to sell and Buyer agrees to purchase, upon the terms and conditions and subject to the contingencies hereinafter set forth, the real property together with all appurtenances and rights thereunto belonging, and consisting of approximately twenty-one and sixty-one hundredths (21.61) acres of vacant land and being Lots 3 and 4, Block 1 as approximately depicted on Exhibit A attached hereto, and being part of Lot 1, Block 1 of the Northern Plains Commerce Centre Addition, in the City of Bismarck, County of Burleigh, State of North Dakota, and as approximately depicted on Exhibit A attached hereto (the "Property"). The terms and conditions of such sale and purchase are as follows:

### 1. PURCHASE PRICE; EARNEST MONEY:

(a) Purchase Price. The purchase price for the Property will be the sum of One Hundred Eight Thousand Nine Hundred and 00/100 Dollars (\$108,900.00) for each usable acre of land purchased by Buyer (with any partial acres prorated accordingly on a one-hundredth of an acre basis); provided, however, that no purchase price shall due (or paid) for lands that are unusable by Buyer, including, without limitation, and any lands encumbered by easements which in any way limit reasonable development of such lands. It is anticipated that the Property will contain approximately twenty-one and sixty-one hundredths (21.61) acres of usable land, and assuming that acreage of usable land is confirmed then the total purchase price for the Property would be Two Million Three Hundred Fifty-Three Thousand Three Hundred Twenty-Nine and 00/100 Dollars (\$2,353,329.00).

(b) Earnest Money. Earnest money shall be deposited by Buyer in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) toward the purchase of the Property. The earnest money shall be held in escrow during the pendency of the transaction contemplated by this Agreement by First American Title Insurance Company - National Commercial Services Division with its office located at 25 W. Main St., Suite 400, Madison, Wisconsin 53703 (the "Title Company") and the earnest money may only be disbursed pursuant to the terms of this Agreement.

2. CREATION OF LEGAL PARCEL; STORM WATER EASEMENT RIGHTS: Seller covenants and agrees to obtain, at Seller's cost, on or before the date for closing, a plat/subdivision of the lots and/or such other documentation as may be required, which shall be recorded prior to closing, in order to create the parcel/lot comprising the Property (in the size, location and layout determined as contemplated herein) so the same may be legally conveyed to Buyer at closing, which plat/subdivision shall also include Seller dedicating all of streets/right-of-ways surrounding the Property and which may be required by any governmental authority generally as part of such subdivision and/or required for the Intended Use. It is further agreed that any new/proposed easements affecting the Property must be approved in writing by Buyer, and that any existing easements crossing the portions of the Property to be developed as shown on Exhibit B attached hereto shall be released from the Property (and not affect the Property at closing), including without limitation (and if presently in place on the Property), a release of (i) the 20' wide Stormwater, Drainage & Access Easement & Utility Easement shown between Lot 3, Block 1 and Lot 4, Block 1 on Exhibit A attached hereto, (ii) the 50' wide Utility Easement on the north side of Lot 3, Block 1 on Exhibit A attached hereto, and (iii) the 25' Cap. Elec. Coop Easement near the north side of Lot 3, Block 1 on Exhibit A attached hereto. Additionally, Seller shall also grant to Buyer at closing, and using a document approved by Buyer, the right and easement for Buyer to discharge the storm water generated from the developed Property (and from the developed Adjacent Property as described in Section 5(f) herein) onto property shown as Lot 5, Block 1 on Exhibit A attached hereto.

3. **CONVEYANCE OF MARKETABLE TITLE; POSSESSION:** Seller shall convey the Property to Buyer or its assigns at closing by Warranty Deed, using a form approved by Buyer, and the Property may only be subject to Permitted Encumbrances (as defined in Section 5(c) below). Notwithstanding the foregoing, any and all liens or encumbrances, such as mortgages, construction liens and special assessments must be satisfied by Seller prior to or at closing, and marketable title shall be conveyed to Buyer at closing. Possession of the Property shall be delivered to Buyer immediately after the closing.

4. **DELIVERY OF PROPERTY DOCUMENTATION:** Seller agrees to deliver to Buyer, within ten (10) days of the date that this Agreement is fully signed by both Buyer and Seller (which date is hereinafter referred to as the “date of acceptance”), copies of any surveys, any title reports and policies as well as copies of any title documents referenced therein and any correspondence relating thereto, any soil reports or studies, any environmental reports, any correspondence with governmental authorities, and any other reports, summaries or other information of any kind or nature relating to the Property that Seller has in its possession or control.

5. **CONTINGENCIES:** The obligation of Buyer to conclude the transaction for the purchase of the Property as contemplated by this Agreement is expressly made contingent upon the following provisions. In order for Buyer to exercise Buyer’s right to terminate this Agreement pursuant to any of the contingencies in this Agreement, Buyer must provide Seller with written notification of Buyer’s termination of this Agreement during the period commencing on the date of acceptance and ending on the one hundred eightieth (180th) day after the date of acceptance (the “Due Diligence Period”). However, Buyer shall have the right to extend the Due Diligence Period for up to two (2) additional periods of thirty (30) days each (with each extension commencing on the first day after the end of the Due Diligence Period previously in effect) provided that for each extension (i) Buyer provides written notice to Seller of such extension at least five (5) days prior to the last day of the Due Diligence Period previously in effect, and (ii) Buyer deposits an additional Five Thousand and 00/100 Dollars (\$5,000.00) as additional earnest money with the Title Company. If Buyer delivers a timely written notice to Seller of Buyer's termination of this Agreement pursuant to any of the contingencies outlined in this Agreement, then Buyer’s obligation to purchase the Property shall be terminated (and this Agreement shall be null and void) and Buyer’s earnest money deposited with the Title Company shall be returned to Buyer.

(a) **Environmental Report.** This Agreement is contingent upon Buyer obtaining, at Buyer’s cost, a written report from an environmental consultant of Buyer’s choosing comprised of a Phase I environmental site assessment performed according to and stating the opinions as provided in the Standard Practice for Environmental Site Assessments and such further analyses, assessments and reports as required by Buyer in order to confirm that there are no recognized environmental conditions affecting the Property, and that the soils, groundwater and surface waters on, in, or under the Property do not contain any hazardous substances. Seller agrees to provided to Buyer, within ten (10) days after any request, with a Seller completed and signed environmental questionnaire using any form for the same as provided by Buyer (and being a form provided by Buyer's proposed tenant and/or by an environmental consultant). Buyer may (but is not obligated to) conduct Phase II investigations if necessary as a result of matters disclosed in the Phase I environmental site assessment, including but not limited to, the right to perform soil borings and testing on the Property. Buyer agrees to restore, or have its contractors and other agents restore, any land affected by any borings on the Property and after Buyer’s investigation of the Property is complete. Buyer and Seller agree that Buyer’s obligation to restore the Property shall be limited to returning the land affected to the grade existing before the investigations and borings were conducted. If the Phase I environmental assessment report or any subsequent investigations and/or reports discloses (i) any actual or potential recognized environmental condition which Buyer is unwilling to accept and/or (ii) that there are or may be any hazardous substances located on, in, or under the Property which Buyer is unwilling to accept, then in either event Buyer may provide Seller with written notification of its objection to the environmental condition of the Property. In the event that Buyer notifies Seller of an objection to the environmental condition of the Property, Seller shall be granted a reasonable period, not exceeding fifteen (15) days, in

which to remove Buyer's objections and, subject to the other limitations and contingencies set forth in this Agreement, the closing date shall be extended as necessary for this purpose. If Seller is unable, after using reasonable diligence, to remove Buyer's objections within such fifteen (15) day period, then Buyer may provide Seller with written notification of Buyer's termination of this Agreement within fifteen (15) days thereafter or this contingency shall be deemed waived. The time for closing shall be extended accordingly.

(b) Survey. This Agreement is contingent upon Buyer obtaining, at Buyer's cost, a survey (the "Survey") setting forth and confirming the following for Buyer: (i) the legal description of the Property, which shall be the same legal description as set forth in the Title Commitment issued by the Title Company; (ii) that the Property contains substantially the same usable acreage described in this Agreement and is sufficient in size and configuration for Buyer's Intended Use as described herein; (iii) the location of all easements (whether recorded, unrecorded or apparent), governmentally imposed right-of-ways and set-backs, and confirming that no easements, right-of-way and set-backs impact Buyer's Intended Use as described herein, as determined by Buyer; (iv) the location of all public and private utilities and services, and confirming that connections to such services are (or will be after Seller's Work) available at the lot lines or within the Property, as well as the location of all water courses, drains, sewers and roads crossing the Property; (v) the location of any flood plain, floodway, wetland and/or special flood hazard areas within the Property, including any applicable set-backs from such areas, and that such areas and any applicable set-backs do not impact Buyer's Intended Use as described herein, as determined by Buyer; (vi) the location of and that vehicular access is available to the Property; (vii) that the Adjacent Property (as described in Section 5(f) herein) is contiguous with the Property; and (viii) such other similar information as is necessary to show the Property to be free from encroachments and other questions of survey and otherwise to be in such form as is acceptable to Buyer, in its sole discretion, and as may be required to induce the Title Company to eliminate all survey exceptions from its Title Commitment and the final owners policy. If the Survey reveals exceptions or conditions which render the Property unmarketable, or which Buyer determines, in its sole discretion, will have an adverse impact on the Property or Buyer's Intended Use, then Buyer may provide Seller with written notice of such objections. If Buyer does not notify Seller of its objection to any item disclosed in the Survey within the Due Diligence Period then this contingency shall be deemed waived. In the event that Buyer notifies Seller of an objection to the Survey, Seller shall be granted a reasonable period, not exceeding fifteen (15) days, in which to remove Buyer's objections and, subject to the other limitations and contingencies set forth in this Agreement, the closing date shall be extended as necessary for this purpose. If Seller is unable, after using reasonable diligence, to remove Buyer's objections within such fifteen (15) day period, then Buyer may provide Seller with written notification of Buyer's termination of this Agreement within fifteen (15) days thereafter or this contingency shall be deemed waived. The time for closing shall be extended accordingly.

(c) Title Commitment. Buyer shall order, at Buyer's cost, a commitment for title insurance with a coverage amount no less than the Purchase Price (the "Title Commitment") from the Title Company. This Agreement is contingent upon the foregoing Title Commitment and the final owners policy of title insurance showing title to the Property to be free and clear of all encumbrances excepting only Permitted Encumbrances (defined below) and any liens of record which shall be paid by Seller at closing, and shall affirmatively insure at the time of closing that the Property described in the Title Commitment is the same as depicted in the Survey, and that the Adjacent Property (as described in Section 5(f) herein) is contiguous with the Property. At closing, Seller agrees to provide the Title Company with all documentation necessary to delete and remove all standard title exceptions from the owner's policy of title insurance. "Permitted Encumbrances" as used herein shall be defined as municipal and zoning ordinances, recorded easements for public utilities serving the Property, and such other non-standard title exceptions not objected to by Buyer. If the Title Commitment reveals exceptions or conditions which render the Property unmarketable, or which Buyer determines, in its sole discretion, will have an adverse impact on the Property or Buyer's Intended Use, then Buyer may provide Seller with written notice of such objections. If Buyer does not notify Seller of its objection to any item disclosed in the Title Commitment within the Due Diligence Period then this contingency shall be deemed waived. In the event that Buyer notifies Seller of an

objection to the status of title to the Property as disclosed by the foregoing Title Commitment, Seller shall be granted a reasonable period, not exceeding fifteen (15) days, in which to remove Buyer's objections and, subject to the other limitations and contingencies set forth in this Agreement, the closing date shall be extended as necessary for this purpose. If Seller is unable, after using reasonable diligence, to remove Buyer's objections within such fifteen (15) day period, Buyer may provide Seller with written notification of Buyer's termination of this Agreement within fifteen (15) days or this contingency shall be deemed waived. No further or additional exceptions to the Title Commitment or to the final title policy may be added after the passage of the contingency provided for in this Section 5(c) unless Buyer agrees in writing.

(d) Intended Use. This Agreement is contingent upon Buyer: (i) obtaining zoning and building approvals and/or any other documentation sufficient, to Buyer's reasonable satisfaction, from all governmental organizations having jurisdiction, and approvals from any subdivision association, architectural review board or other similar organization having authority over the development and use of the Property, such that the Property (together with the Adjacent Property to the south as described in Section 5(f) below) may be developed with and used as a package and cargo distribution and warehouse facility, together with associated uses, including, but not limited to, office, retail counter/customer operations, loading and unloading, outside parking, washing, and storage of tractors, trailers, trucks, automobiles, and other vehicles (operated 24 hours a day, 7 days a week) within a building containing approximately 217,323 square feet, using metal on the exterior surface of the building, with asphalt drives and parking areas covering the portions of the Property, and with a security fence surrounding the perimeter of the Property, with such improvements as approximately depicted in the Site Plan attached hereto as Exhibit B and in the elevation drawings attached hereto as Exhibit C (the "Intended Use") and (ii) obtaining location and site plan approval, and an executed lease, from Buyer's proposed tenant for the developed Property on terms which are acceptable to Buyer. If Buyer is unable to obtain such zoning and building approvals and/or sufficient documentation as described above, or if Buyer is unable to obtain location and site plan approval and an executed lease from Buyer's proposed tenant on terms acceptable to Buyer, then in either such event Buyer may provide Seller with written notification of Buyer's termination of this Agreement within the Due Diligence Period or this contingency shall be deemed waived.

Seller agrees to assist Buyer in Buyer obtaining all zoning and building approvals for Buyer's Intended Use from all governmental organization having jurisdiction over the use and development of the Property, including Seller providing its support for the Intended Use as described above, and joining in, signing and/or filing any applications therefor. Additionally, to the extent applicable to the Property, Seller hereby represents and warrants to Buyer that Seller exclusively controls any subdivision association, architectural review board or other similar private organization having authority over the development and use of the Property (collectively, the "Approving Organizations"), and Seller hereby provides Seller's approval and the approval of the Approving Organizations for the Intended Use as described above (with approval provided for both the use of the Property and the development of the Property as described and depicted herein). Seller shall provide Buyer with a separate written approval from the Approving Organizations (on the Approving Organizations' letterhead) within thirty (30) days after the date of acceptance. Seller shall also provide, within thirty (30) days after the date of acceptance, a zoning letter on City of Bismarck letterhead confirming that the above stated Intended Use is a permitted use within the City of Bismarck zoning ordinances.

(e) Inspections and Other Investigations for Construction. This Agreement is contingent upon Buyer or Buyer's contractor (or any other construction professional(s) of Buyer's choosing) conducting an inspection or inspections of the Property to determine the feasibility and cost of construction for the Intended Use. Buyer shall have the right (but not the obligation) to perform physical site inspections and investigations, including the right to enter the Property for purposes of performing such inspections and investigations and to perform soil borings, which inspections and investigations may include, but are not limited to, geotechnical inspections, hydrological inspections, and inspections and investigations of any protected or endangered species or habitat located on the Property. Buyer agrees to restore, or have its

contractors and other agents restore, any land affected by any borings on the Property and after Buyer's inspection and investigation of the Property is complete. Buyer and Seller agree that Buyer's obligation to restore the Property shall be limited to returning the land affected to the grade existing before the investigations and borings were conducted. If Buyer's inspection discloses matters which prevent or are likely to increase the cost of construction for the Intended Use, then Buyer may provide Seller with written notification of Buyer's termination of this Agreement within the Due Diligence Period or this contingency shall be deemed waived.

(f) Acquisition of Adjacent Property. This Agreement is contingent upon Buyer acquiring the approximately 4.81 acre parcel to the south of the Property (the "Adjacent Property") and currently owned by White Tip Real Estate, LLC (which is shown on the Site Plan attached hereto as Exhibit B), so the same may be combined with the Property for Buyer's Intended Use. If Buyer is unable or unwilling, in Buyer's sole discretion, to purchase and acquire the Adjacent Property, then Buyer may provide Seller written notification of Buyer's termination of this Agreement at any time prior to closing.

6. UTILITIES. Seller represents and warrants to Buyer that water, sewer, gas, electrical and telecommunications lines and services are available to the Property and are sufficient for Buyer's Intended Use, and that connections to such utility lines and services are available for Buyer's use within the Property, at the lot lines to the Property or are available within the public right-of-way immediately adjacent to the Property. In the event that any such utility lines and service are not available for connection within the Property, at the lot lines to the Property or within the public right-of-way immediately adjacent to the Property, then Seller shall be responsible for the cost of extending such utility lines and service to the Property as contemplated herein, which extensions shall be completed no later than the closing date.

7. TAXES AND SPECIAL ASSESSMENTS: Seller represents and warrants that the Property is and will be exempt from general real estate taxes for the year of closing, and so there will not be a proration of the general real estate taxes at closing. Taxes and special assessments for all years prior to the year of closing, regardless of when payable, as well as the entire remaining (outstanding) balance of all special assessments affecting the Property (including those which are proposed, preliminary, pending, levied and/or assessed on or before the date of closing), shall be paid in full by Seller on or before closing. In addition to the foregoing, Buyer shall not be responsible for, and Seller agrees to hold harmless and indemnify Buyer and its tenants and successors and assigns from and against, (i) any costs, fees, special assessments or other charges that may be incurred, levied and/or assessed against the Property before or after the closing and relating to, or incurred in connection with, the approvals for and/or the construction of any roads or streets and utility infrastructure, for any impact fees, assessments and/or charges imposed by any governmental body and relating to the Property and/or relating to the development of the Northern Plains Commerce Centre (all Additions) and any other surrounding property(ies) currently owned by Seller, and (ii) any agricultural use-value conversion charges, roll back taxes or similar taxes or charges relating to the change in the use of the Property to a non-agricultural use, including those assessed or assessable after the closing. The provisions contained in this Section 7 shall survive the closing.

8. REPRESENTATION AND WARRANTIES: As a material inducement to cause Buyer to enter into this Agreement, Seller warrants and represents to Buyer, with respect to the Property as follows (Seller's warranties and representations are true and correct in all material respects on the date of the Agreement and shall be true and correct in all material respects on the closing date and shall survive the closing of the transaction contemplated herein):

(a) There are no actions, lawsuits, judgments, liens, suits, claims, investigations or other proceedings pending or threatened against Seller or the Property which relates to Seller or the ownership, maintenance, or operation of the Property or might in any way affect the Property or this transaction.

(b) There is no environmental condition, situation or incident on, under or otherwise affecting the Property that could in any manner give rise to any action or liability under any environmental law, and Seller is not subject to and is not currently operating under any compliance or consent order, schedule, decree or agreement issued or entered into under any environmental law. The Property has never been used as a landfill or as a garbage dump. No portion of the Property is located within a wetland.

(c) No building or other improvement encroaches on the Property, nor does any improvement which is part of the Property encroach on lands of others or on any public or private road or right of way.

(d) Seller is not a foreign person within the meaning of § 1445 of the Internal Revenue Code of 1986, as amended. Seller shall complete an appropriate Certificate of Non-Foreign Status at closing confirming the accuracy of this representation.

(e) Seller has good and marketable title to the Property. Seller has the full right, power and authority to sell, convey and transfer the Property herein and to execute, deliver and carry out the provisions of this Agreement. No other person, firm, corporation or other entity has any right or option to acquire the Property or any portion thereof or any interest therein.

(f) No leases, licenses or other rights of possession affect the Property (and Seller shall not enter into any new leases, licenses or other rights of possession affecting the Property during the pendency of the transaction contemplated by this Agreement without Buyer's prior written consent).

(g) Each individual executing this Agreement on behalf of Seller is duly authorized to execute and deliver the same on behalf of Seller.

**9. INDEMNITY:** Seller agrees to indemnify Buyer and Buyer's successors and assigns against, and shall hold Buyer and Buyer's successors and assigns harmless from, any and all losses, liabilities, claims, fines, penalties, forfeitures, damages, administrative orders, consent agreements and orders, and the costs and expenses thereto (including without limitation, reasonable attorney's fees), which may, at any time, be imposed upon, incurred by, or awarded against Buyer as a result of or in connection with the breach by Seller of any representations, warranties, agreements and/or covenants contained in this Agreement, whether such breaches are discovered before or after closing. The provisions contained in this Section 9 shall survive the closing.

**10. DEFAULT:** Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and conditions of this Agreement. If Buyer defaults in the performance of any obligations under this Agreement, Seller may request the earnest money as liquidated damages, as Seller's sole remedy. If Seller defaults, Buyer may: (i) sue for specific performance; or (ii) terminate this Agreement and request the return of the earnest money. The foregoing is not intended to limit either party's indemnification obligations which survive termination.

**11. CONDEMNATION:** If, prior to Closing, all or any material part of the Property is taken by eminent domain proceedings or a notice of any eminent domain proceeding with respect to the Property or any part thereof is received by Seller, Seller shall immediately give notice thereof to Buyer and Buyer shall have the right, exercisable in writing within thirty (30) days of receipt of such notice, to either: (i) complete the consummation of the transaction described hereunder in accordance with this Agreement; or (ii) terminate this Agreement in which event the earnest money shall be refunded to Buyer and this Agreement shall be null and void and both Seller and Buyer shall be released from any and all further obligation and liability hereunder. Failure to deliver such written notice shall be deemed an election by Buyer to complete the closing, subject to the other terms, conditions and contingencies set forth in this Agreement. If Buyer elects (or is deemed to have elected) to complete closing, the closing shall be completed in accordance with

this Agreement, except that at closing Seller shall assign, transfer, and pay to Buyer all rights that Seller has to any of the proceeds of any eminent domain proceedings and all proceeds from any such proceedings theretofore or thereafter received by Seller.

**12. CLOSING DATE; CLOSING COSTS:** The closing on the transaction contemplated by this Agreement shall occur within thirty (30) days after the date that the Due Diligence Period (as described in Section 5 herein) lapses or is earlier waived in writing by Buyer, or on such other date and at a reasonable time as may be agreed to by both Buyer and Seller (the "closing date" or "Closing Date"). The location of the closing shall be at the Title Company (through an escrow type closing), unless the parties mutually agree to another location. Seller shall be responsible for the payment of the following closing costs: (i) preparation of the Warranty Deed; (ii) preparation of and recording expense of all releases, satisfactions and corrective documents, (iii) any transfer fees and/or transfer taxes assessed or to be assessed in connection with the transfer or conveyance of the Property and/or the recording of the deed, (iv) one-half (1/2) of the closing fees to the Title Company, and (v) Seller's attorney fees. Buyer shall be responsible for the payment of the following closing costs: (i) per page charge for recording the Warranty Deed, (ii) the title insurance premium to the Title Company for the owner's policy of title insurance, (iii) one-half (1/2) of the closing fees to the Title Company, and (iv) Buyer's attorney fees.

**13. ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement by and between the parties and any other prior representations or agreements are deemed merged herein and those not specified herein do not represent any agreements or promises or covenants or representations on the part of either party hereto.

**14. AMENDMENTS, MODIFICATIONS OR WAIVERS:** No amendment, modification or waiver of any condition, provision or term shall be valid or of any effect unless made in writing signed by the party or parties to be bound or a duly authorized representative and specifying with particularity the extent and nature of such amendment, modification or waiver. Any waiver by any party of any default of another party shall not effect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein shall limit the remedies and rights of the parties thereto under and pursuant to this Agreement.

**15. TIME IS OF THE ESSENCE:** Time is of the essence of each provision of this Agreement and of all the conditions thereof.

**16. CONSTRUCTION OF AGREEMENT:** Whenever the singular number is used herein, the same shall include the plural where appropriate, and the words of any gender shall include any other genders where appropriate. Captions contained herein are inserted only for the purpose of convenient reference, and in no way define, limit or describe the scope of this Agreement or any part thereof.

**17. BINDING EFFECT:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.

**18. COUNTERPARTS; FACSIMILE AND E-MAILED SIGNATURES:** This Agreement may be executed in two (2) or more counterparts each of which, upon execution and delivery as prescribed, shall be deemed to be an original for all purposes. In proving this Agreement, it shall be necessary to account for only one such counterpart. Buyer and Seller agree that facsimile and e-mailed (.pdf) signatures will be binding on the parties.

**19. ASSIGNMENT:** Buyer may assign Buyer's rights and obligations under the Agreement. Upon written notice to Seller of such assignment, the Buyer named in the Agreement shall thereafter be released from all liability arising from the Agreement.

**20. NOTICES:** All notices, demands and communications provided for herein or made hereunder shall be deemed effective upon receipt by the other party, either by facsimile, electronic mail, personal delivery or upon receipt if mailed first class with postage prepaid, addressed in each case as follows, until some other addresses shall have been designated in a written notice given in a like manner, and shall be deemed to have been given or made when so received at the following addresses:

Buyer: RDC National, Inc.  
c/o Carl Ruedebusch, President/CEO  
4605 Dovetail Drive  
Madison, WI 53704  
Email: [carl@ruedebusch.com](mailto:carl@ruedebusch.com)

Seller: Attn: Keith Hunke, City Administrator  
City of Bismarck, North Dakota  
221 N. Fifth Street  
Fourth Floor  
Bismarck, ND 58506  
E-mail: [khunke@bismarcknd.gov](mailto:khunke@bismarcknd.gov)

**21. COMMISSION TO SELLER'S BROKER:** Seller has retained Kyle Holwagner and CRA Group ("Broker") in connection with this transaction and Seller agrees to pay Broker a commission at the closing of the transaction contemplated by this Agreement per the terms of a separate agreement. Further, Seller agrees to pay and to hold Buyer harmless for the payment of any other commissions payable to any real estate brokers and/or agents hired by Seller as a result of the transaction contemplated by this Agreement or otherwise. The provisions contained in this Section 21 shall survive the closing.

**22. TIME FRAME FOR ACCEPTANCE OF AGREEMENT BY SELLER:** This Agreement shall only be binding upon Buyer and Seller if a copy of the accepted Agreement is signed by Seller and delivered to Buyer on or before **5:00 p.m., July \_\_\_\_ 8, 2021** (time is of the essence). Buyer may withdraw this Agreement prior to Seller's delivery of the Agreement as provided herein.

*Signatures appear on the following page(s).*

IN TESTIMONY WHEREOF, Seller and Buyer have hereunto set their hands the day and year first above written.

**BUYER:**

RDC NATIONAL, INC.

By: \_\_\_\_\_  
Carl Ruedebusch, President

Date: \_\_\_\_\_, 2021

**SELLER:**

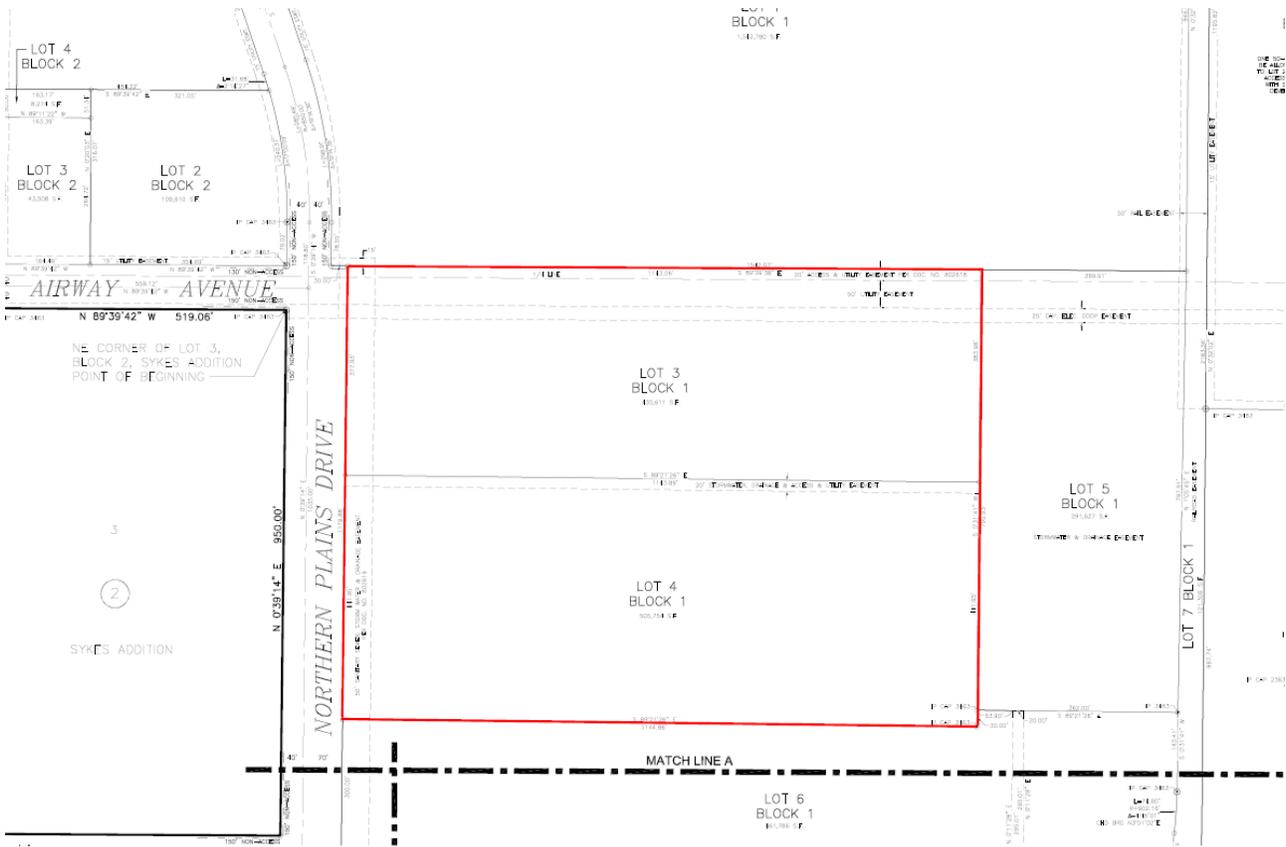
CITY OF BISMARCK, NORTH DAKOTA

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

Date: \_\_\_\_\_, 2021

EXHIBIT A TO PURCHASE AGREEMENT

PROPERTY



**EXHIBIT B TO PURCHASE AGREEMENT**

**SITE PLAN**

