

ECONOMIC DEVELOPMENT AGREEMENT

BY AND AMONG

EAST KENOSHA DEVELOPMENT, LLC

and

THE CITY OF BROKEN ARROW

Dated as of May 5, 2020

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is dated as of the 5th day of May, 2020, by and among EAST KENOSHA DEVELOPMENT, LLC, an Oklahoma Limited Liability Company (the "Company") and the City of Broken Arrow, a municipal corporation (the "City").

WITNESSETH:

WHEREAS, the Company is a limited liability company organized under the laws of the State of Oklahoma and headquartered in Tulsa, OK, specializing in the development of commercial realty; and

WHEREAS, the Company is interested in developing land for construction of an AutoZone Auto Parts store to be constructed on 1.38 acres of land generally located at 20th Street and Kenosha (hereinafter "Project"). The legal description of the Site is shown on *Exhibit A*; and

WHEREAS, this expansion will include development located on approximately 1.38 acres of land generally located at 20th Street and Kenosha, within the City as shown via plat and accompanying documents on *Exhibit B*, which is attached hereto and made a part hereof; and

WHEREAS, the Project will include about 7,362 square feet of commercial retail space for an AutoZone Auto Parts store; and

WHEREAS, it is estimated that, upon completion, AutoZone will hire a total of approximately 10-12 full time employees; and

WHEREAS, the average AutoZone store produces in excess of \$1,800,000.00 in annual sales; and

WHEREAS, the City reasonably expects that the establishment of the Project in the City will increase overall sales tax and property tax revenues of the City; and

WHEREAS, a declared goal of the City is to encourage and facilitate economic development within and near the City by attracting and expanding new industry and commercial businesses to the Broken Arrow area, and to promote the economic health and expansion of existing industry and commercial businesses within the City; and

WHEREAS, the City seeks to promote development in this area in order to retain and expand employment, enhance the tax base, stimulate economic growth, improve the quality of life in the City, and strengthen the community; and

WHEREAS, the City also recognizes that the Project and its operations will have additional direct and indirect economic benefits within and near the City, in Tulsa County and in the State of Oklahoma through, including without limitation, diversifying the local economy, providing economic stimulus for additional employment and other development, and predicated and/or

providing training and employment opportunities in manufacturing, sales and management skills; and

WHEREAS, the City also recognizes it would be beneficial to the public and would help facilitate the construction of additional facilities and addition of full time employees at the Site if the City were to construct a traffic signal upgrade to the Site in the approximate area identified on *Exhibit B* attached hereto; and

WHEREAS, the City has appropriated and is prepared to encumber the sum not to exceed \$67,133.40 for reimbursement to the Company for construction of infrastructure relating to a pavement extension on North 20th Street and construction of a storm sewer; and

WHEREAS, implementation of this Agreement, which is reasonably expected to facilitate the realization of the aforesaid economic benefits to the City and general area, would otherwise be difficult or impractical without certain development incentives, and apportionments and appropriations for such purposes of certain City sales tax revenues, other forms of public assistance and the involvement the City; and

WHEREAS, the City deems it appropriate to approve the execution and delivery of this Agreement in the interest of providing for the implementation of the Project and have determined such actions are in the best interests of the City and the health, safety, and welfare of the City and residents within and near the City;

NOW, THEREFORE, in consideration of the covenants and mutual obligations herein set forth and other consideration, the sufficiency of which the parties hereby acknowledge, the parties hereto hereby covenant and agree as follows:

ARTICLE I DEFINITIONS

"Agreement" and such terms as "herein," "hereof," "hereto," "hereby," "hereunder," and the like shall mean and refer to this Agreement, and any and all permitted supplements, modifications and/or amendments hereto.

"AutoZone" shall mean AutoZone Development LLC, a Nevada limited liability company, and its affiliates, the Company's tenant with respect to the Project.

"Company" shall mean East Kenosha Development, LLC, an Oklahoma Limited Liability Company.

"City" shall mean the City of Broken Arrow, Oklahoma, an Oklahoma municipal corporation, and, as the case may be, shall mean and refer to such agency, department or instrumentality of the City as may have, or shall have been charged with, primary responsibility for any given Agreement-subject activity.

"Construction Plans" shall mean such architectural and engineering drawings, plans, specifications, and other documentation as may be reasonably necessary to describe the nature, scope, materials, quality, quantity, and other information requisite for the construction and fitting of improvements and/or structures included, or to be included, within the Project, which shall be subject to the City's normal and customary review and approval as part of the City's permitting process.

"Completion Date" shall mean from the beginning date of the construction extending out ninety calendar days.

"Project" shall mean development of the Site and the construction of an AutoZone Autoparts Retail Store on said Site, consisting of a building area of at least 7,362 square feet.

"Project Site" shall mean an approximate 1.38 acre tract of land generally located at 20th Street and East Kenosha, within the City as shown on *Exhibit A*, which is attached hereto and incorporated by reference.

"State Competitive Contracting Requirements" shall mean the Public Competitive Bidding Act, Title 61, O.S.A., sections 101, *et seq.*, together with all other applicable statutory requirements pertaining to the advertising, selection and award of contracts pursuant thereto and including all contractual, bonding and insurance requirements pertaining to such contracts.

"Traffic Control Improvements" shall mean, traffic control improvements along the North side of Kenosha and 20th Street to accommodate the projected traffic to the Site. The traffic control improvements shall consist of installation of traffic signals and traffic control modifications designed, constructed and installed at the sole discretion of the City.

ARTICLE II NATURE OF THIS AGREEMENT

2.1 Scope of the Project. The project constructed at and on the Site shall be developed, constructed and landscaped in conformity with the City's Zoning Ordinances and Building and Land Subdivision Codes, and the Engineering Design Criteria Manual.

The parties understand, acknowledge and agree that the Company shall be solely responsible for constructing and completing or causing the construction or completion of any and all improvements to the Project Site, except as specifically provided herein.

2.2 Relationship of the Parties. The undertakings of the parties under this Agreement require the mutual cooperation of the parties and their timely actions on matters appropriate and/or necessary to fully implement the provisions hereof. The parties agree to exercise diligent, best and good faith efforts in performing and assisting one another, and requisite third parties, in performing their respective obligations under and/or relating to this Agreement, specifically including, without limitation, the performance obligations hereinafter set forth in **Articles III and IV** hereof.

**ARTICLE III
OBLIGATIONS OF THE CITY**

3.1 Infrastructure Improvements. At its sole cost, except as otherwise provided herein, the City shall install traffic signal and traffic control modifications on North Kenosha and 20th Street. The design, construction and installation of the traffic signal and control modifications will be at the sole discretion of the City. The parties agree that the time allotted for the construction of the traffic signal shall be twenty-six (26) weeks from the date of this Agreement. The date of completion for the traffic signal shall be November 3, 2020. The City, at its sole discretion, may extend the date of completion of the traffic signal and control modifications for an additional eight (8) weeks.

To the extent that any Infrastructure Improvements are made on or in public rights of way or any other lands owned by the City, title to the same, upon the completion thereof, shall vest in the City, and The Company shall furnish to the City all requested instruments of release or conveyance necessary to perfect the City's title thereto, provided such instruments are in a form reasonably acceptable to The Company.

**ARTICLE IV
OBLIGATIONS OF EAST KENOSHA DEVELOPMENT, LLC**

4.1 Development of Project. The Company agrees to construct and equip or cause to be constructed and equipped by AutoZone, the Project in accordance with the Construction Plans, as follows:

- (a) At the sole cost of Company or AutoZone, as applicable, develop, construct or cause to be constructed, and facilitate the operation of an Autozone Autoparts Store, consisting of approximately 7,362 square feet of building area in accordance with the following schedule:
 - a. construction start date: May 2020
 - b. completion date: July 15, 2020
- (b) Construct and dedicate to the City a pavement extension on North 20th Street within the time allotted under paragraph (a) above and as is shown in *Exhibit C*;
- (c) Construct and dedicate to the City a storm sewer on the Site within the time allotted under paragraph (a) above and as is shown in *Exhibit C*;
- (d) The Company shall comply with Oklahoma Competitive Bidding Act, 61 O.S. § 101 *et seq* for the bidding of the construction of the pavement extension and the storm sewer as listed in paragraph 4.1 (b) and (c) above.

- (e) AutoZone shall continuously employ 10-12 employees at the Autozone Autoparts Retail Store for a minimum of three years starting from the completion date of the Project.

4.2 Right-of-way and Easements. At its sole cost, The Company shall dedicate right-of-way, utility easements and other necessary easements within the Site shown on and in accordance with the Master Site Plan and the City's Zoning, Building, Land Subdivision Code and Engineering Design Criteria Manual. These dedications shall be accomplished by deeds drafted by the City Engineer for the pertinent rights of way, easements or other necessary conveyances. All other dedications may be accomplished through the platting process.

4.3 Performance. In the event the Company fails to meet the Company's obligations outlined in paragraph 4.1, the City may terminate this Agreement and all of the terms and conditions hereof upon written notice to the Company, and, in such case, this Agreement would no longer be of any force and effect as between the parties. Furthermore, the Company shall repay to the City any and all costs incurred by the City for infrastructure improvements on Company property and any amounts reimbursed to the Company by the City pursuant to paragraph 4.5 below. The parties acknowledge that time is of the essence for purposes of this agreement.

4.4 Site Acquisition. The Company has acquired or will acquire fee simple title to the Site.

4.5 Contingent Payment Obligations of The City. The Company shall pay the upfront cost of construction to build the pavement extension and the storm sewer as listed in paragraph 4.1 above. Upon timely completion of the construction for each improvement, the Company shall submit invoices to the Director of Community Development for reimbursement. Upon approval by the City, the Company shall be reimbursed no more than the line item amount of the cost estimates for the constructed improvement, as reflected in "*Exhibit D*" attached hereto and specifically incorporated by reference. Furthermore, the City shall in no event pay in excess of \$67,133.40 to Company for reimbursement of the construction as listed in paragraph 4.1 and *Exhibit D* herein.

ARTICLE V CONSTRUCTION AND INDEMNIFICATION PROVISIONS

5.1 Construction Plans and Contracts. Prior to commencement of any construction on the Site, the Company or AutoZone (or other party undertaking construction of building improvements) shall furnish the Construction Plans to the City, for the City's normal and customary review and approval as part of the City's permitting process. The parties agree to cooperate and to use their respective best efforts to secure whatever assistance and approvals may be required from third parties in order to facilitate the preparation for and the course of such construction.

5.2 Indemnification. It is understood and agreed between the parties that the Company is performing its obligations hereunder independently, and the City assumes no responsibility or liability in connection therewith to third parties, and the Company agrees to indemnify and hold harmless the City, and its respective officers, agents and employees, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage, or other harm for which recovery of damages is sought, suffered by any person or persons that may arise out of or be occasioned by any of the terms or provisions of this Agreement, or by any negligent act or omissions of the Company or its officers, agents, associates, employees, or contractors, in the performance of the Company's obligations under this Agreement. The provisions of this Section 5.2 are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE VI GENERAL PROVISIONS

6.1 Nondiscrimination. The Company agrees not to discriminate on the basis of race, color, religion, gender, or national origin in the sale, lease, or rental or in the use or occupancy of the Site, the Project or any related facilities in violation of applicable law or regulation.

6.2 Conflict of Interest; Representatives not individually Liable. No official or employee of the City shall have any personal interest in or under this Agreement, nor shall any person voluntarily acquire any ownership interest, direct or indirect, in any legal entity which is a party to this Agreement. No official or employee of the City shall be personally liable to The Company in the event of any default or breach by or the City.

6.3 Applicable Law, Severability and Entire Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma governing agreements made and fully performed in Oklahoma. If any provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or surviving portion(s) of such provision, and each other provision of this Agreement, shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the City and the Company with respect to the subject matters of this Agreement, there being no terms, conditions, warranties or representations with respect to the subject matter other than as contained herein.

6.4 Third Parties. Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any other persons, as third-party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights express or implied, upon any other person.

6.5 No Partnership Created. This Agreement specifically does not create any partnership or joint venture between the parties hereto, or render any party liable for any of the debts or obligations of any other party.

6.6 Formalities and Authority. The parties hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

6.7 Notices and Demands. Any notice, demand, or other communication under this Agreement shall be sufficiently given or delivered when it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or delivered personally, as follows:

To the Company:

East Kenosha Development, LLC
Joe Adwon, Managing Member
PO Box 701116
Tulsa, OK 74170-1116

To the City:

City Manager
The City of Broken Arrow
P. O. Box 610
220 South First
Broken Arrow, Oklahoma 74012

With copies to:

City Attorney
City of Broken Arrow, Oklahoma
P. O. Box 610
Broken Arrow, Oklahoma 74012

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the others as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

6.8 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

6.9 Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

6.10 Unavoidable Delays. The time for performance of any term, covenant, condition, or provision of this Agreement shall be extended by any period of unavoidable delays. In this Agreement, "unavoidable delays" shall mean any delay beyond the reasonable direct or indirect control of the party obligated to perform the applicable term, covenant, condition, or provision under this Agreement and shall include, without limiting the generality of the foregoing, delays attributable to acts of God, strikes, labor disputes, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy, public health pandemics, and casualty, and shall not include any delays attributable to financial difficulties; *provided*, the assertion of any unavoidable delay shall be subject to the asserting party first giving written notice to the other parties of its claim thereof and thereupon and forthwith diligently and in good faith undertaking all reasonable efforts to overcome the conditions leading to or causing such delay.

6.11 Further Assurances. Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to the consummation of the matters or completion of the undertakings set forth herein, as may be reasonably requested by any other party to consummate more effectively the purposes or subject matter of this Agreement.

6.12 Attorneys' Fees. In the event of any controversy, claim or dispute between the parties affecting or relating to the subject matter or performance of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its reasonable expenses, including reasonable attorneys' fees as determined by Oklahoma law.

6.13 Counterparts. This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

6.14 City's Limited Liability. The obligations of the City arising under or by virtue of this Agreement shall be limited to \$67,133.40 plus the cost of the design, construction and installation of infrastructure improvements identified in paragraph 3.1.

6.15 Construction of this Agreement. Each party hereby acknowledges that it and its legal counsel have reviewed and, as the case may be, revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

STATE OF _____)
)
COUNTY OF _____)

ss:

Before me, the undersigned, a Notary Public in and for said County and State on the 28th day of April, 2020, personally appeared Joe Adwon, member manager of East Kenosha Development, LLC, a Oklahoma Company, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.



Notary Public

My commission expires: 9-8-2022

My number is: 14008057

(S E A L)



EXHIBIT A

A TRACT OF LAND THAT IS PART OF THE NORTHEAST QUARTER (NE/4) OF SECTION TWELVE (12), TOWNSHIP EIGHTEEN (18) NORTH, RANGE FOURTEEN (14) EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, SAID TRACT OF LAND BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION TWELVE (12); THENCE SOUTH 88°44'15" WEST ALONG THE NORTHERLY LINE OF SAID SECTION 12 FOR 1015.33 FEET; THENCE SOUTH 01°15'45" EAST FOR 65.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST 71ST STREET SOUTH (EAST KENOSHA STREET) AND THE POINT OF BEGINNING OF SAID TRACT OF LAND; THENCE SOUTH 43°29'34" WEST FOR 35.21 FEET; THENCE SOUTH 01°30'25" EAST FOR 100.00 FEET; THENCE SOUTH 07°31'22" WEST FOR 60.71 FEET; THENCE SOUTH 01°08'51" EAST FOR 45.74 FEET; THENCE SOUTH 88°16'06" WEST FOR 80.01 FEET; THENCE NORTH 01°08'51" WEST FOR 21.40 FEET; THENCE SOUTH 88°44'15" WEST FOR 191.66 FEET TO A POINT ON THE EASTERLY LINE OF LOT ONE (1), BLOCK THREE (3), OF BLOCKS 1, 2 AND 3, ARROW VILLAGE ADDITION, AN ADDITION TO THE CITY OF BROKEN ARROW, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF; THENCE NORTH 01°16'21" WEST ALONG SAID EASTERLY LINE FOR 200.00 FEET TO A POINT ON SAID SOUTHERLY RIGHT-OF-WAY LINE OF EAST 71ST STREET SOUTH (EAST KENOSHA STREET); THENCE NORTH 88°44'15" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 35.97 FEET; THENCE NORTH 01°01'57" WEST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 10.00 FEET; THENCE NORTH 88°44'15" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 269.37 FEET TO THE POINT OF BEGINNING OF SAID TRACT OF LAND.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINING 60,105 SQUARE FEET OR 1.38 ACRES, MORE OR LESS

Exhibit B

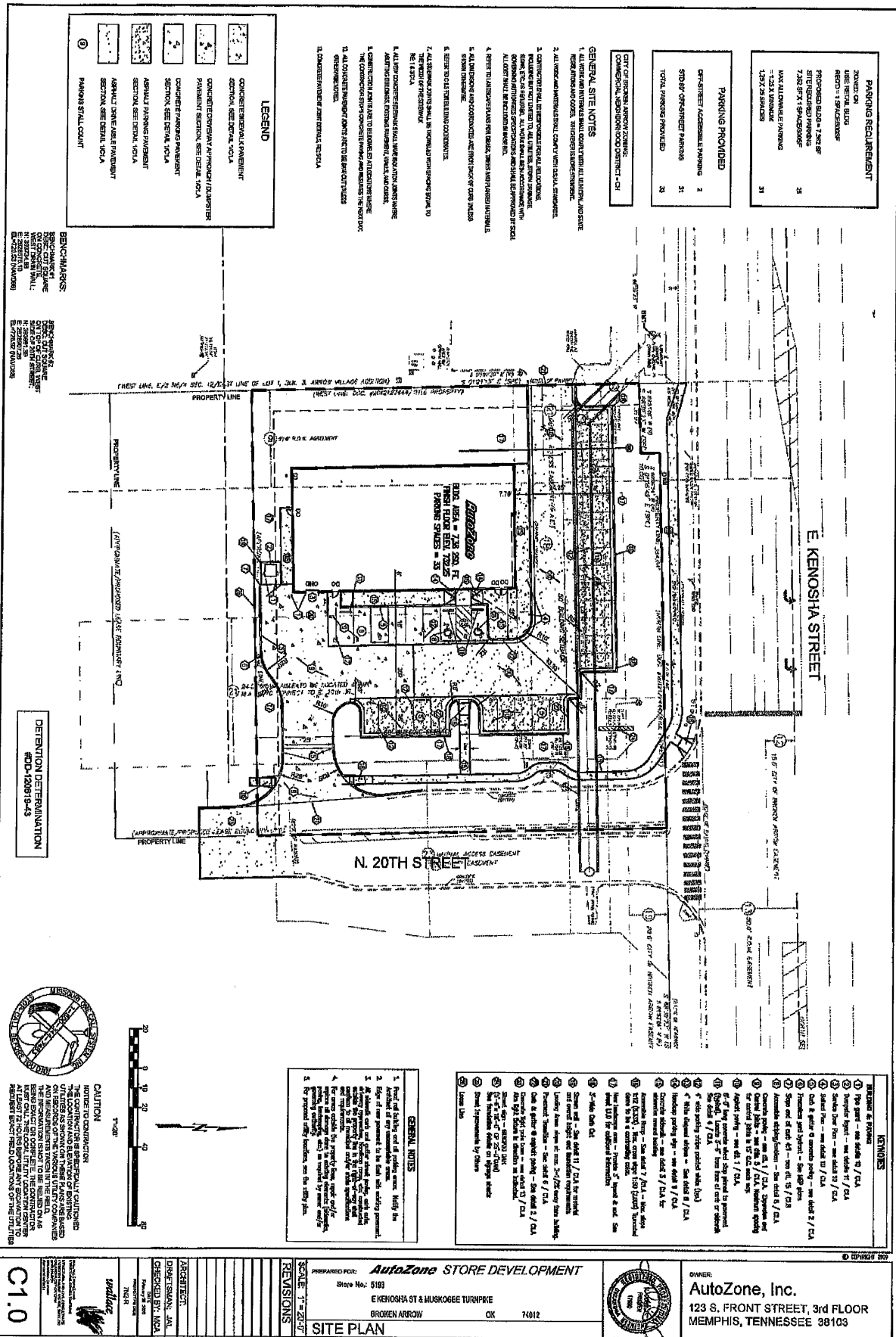


EXHIBIT B

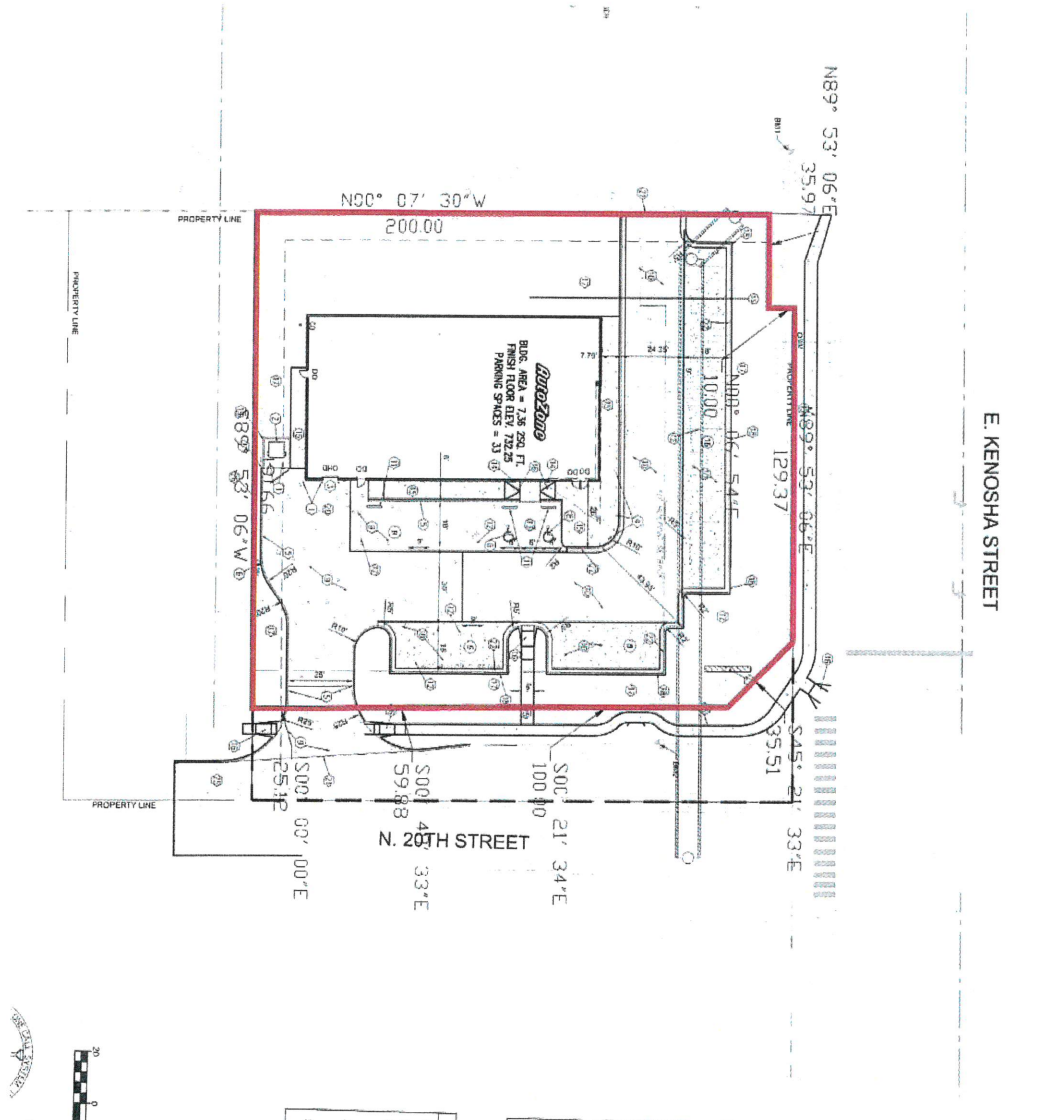


EXHIBIT C

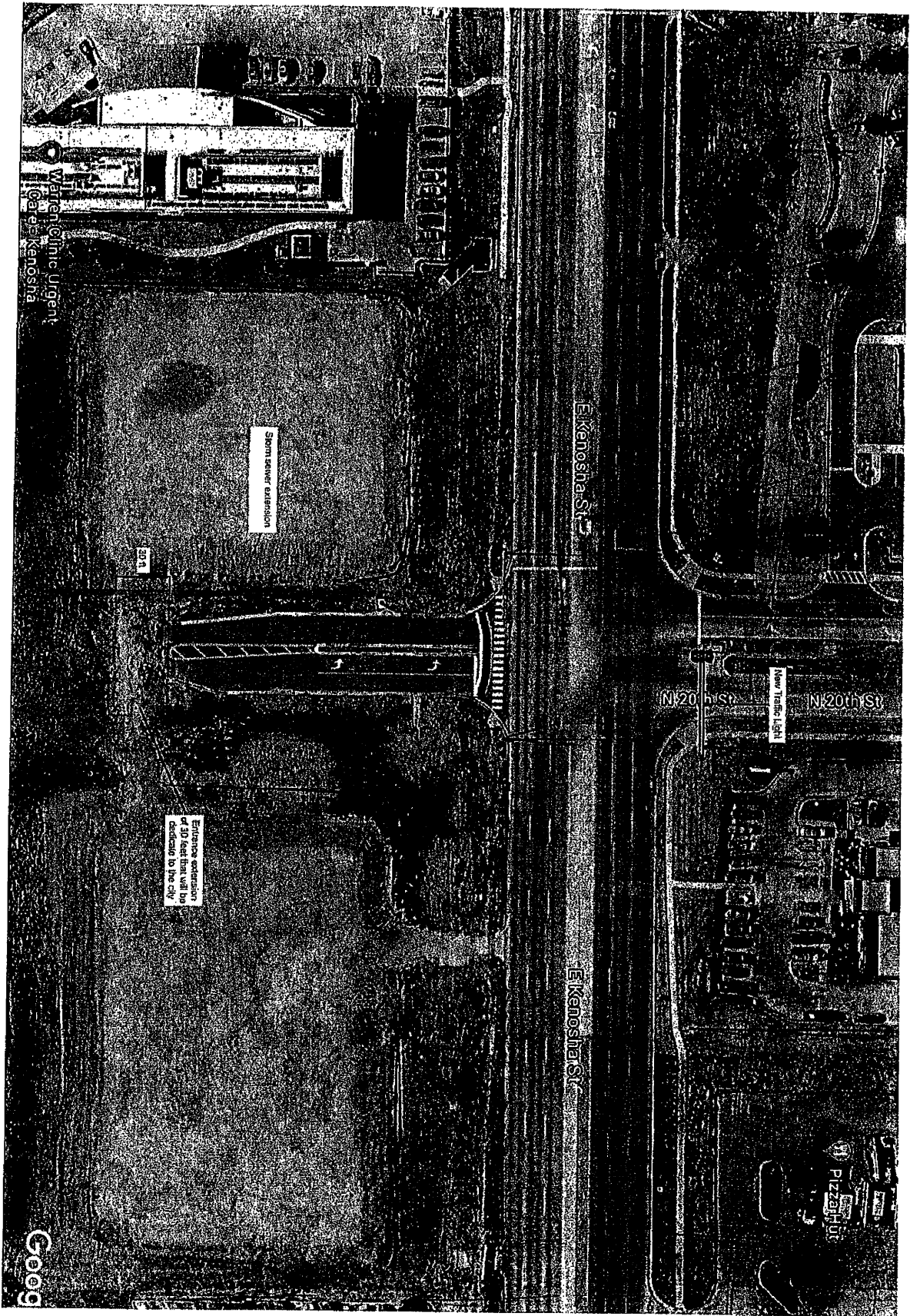



Exhibit D

 INFRASTRUCTURE SOLUTIONS GROUP, LLC Consulting Engineers			Project Budget EKD, LLC March 25, 2020	
3840 S. 103rd E. Ave. Suite 227 Tulsa, OK. 74146 918-664-5500				
Infrastructure cost for Lot A Development				
Bid Item	Unit Quantity	Units	Unit Price	Extension
20th St. Pavement Extension:				
AC Pvmnt, S-4 PG64-28 OK, in place	140	sy	\$58.00	\$ 8,120.00
6" Barrier Conc. C&G, In place	70	lf	\$30.00	\$ 2,100.00
6" Class A Aggregated Base, in place	150	sy	\$25.00	\$ 3,750.00
Storm Sewer				
5' X 3' RCB Storm Sewer, in place	153	LF	\$108.00	\$ 16,524.00
24 inch RCP , Class 3, in place	5	LF	\$80.00	\$ 400.00
Area Inlet on 4' X4' base, in place	1	EA	\$1,500.00	\$ 1,500.00
Conc. End Wall for RCB, in place	1	LS	\$1,500.00	\$ 1,500.00
Traffic Signals (20th & Kenosha)				
Traffic Signals (20th & Kenosha)	1	EA	\$60,000.00	\$ 60,000.00
Traffic Controller Modifications	1	EA	\$5,000.00	\$ 5,000.00
Engineering for Signals Only	1		\$10,000.00	\$ 10,000.00
SUB-TOTAL CONSTRUCTION COST (No Engineering)				\$ 108,894.00
Mobilization (as 1 project)	1	EA	\$2,700.00	\$ 2,700.00
Construction Staking (as 1 project)	1	EA	\$2,200.00	\$ 2,200.00
Contingency (as 1 project)	1	LS	\$11,379.40	\$ 11,379.40
Construction Amount:				\$ 125,173.40
Engineering (Storm Sewer Design, Pavement Ext. and Bidding)				\$ 12,960.00
Legal / Surveyor Review of MOU, U/E, other				\$ 4,000.00
Total Project Costs				\$ 142,133.40