

# ORIGINAL

## REAL ESTATE PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of March 3, 2017, (hereinafter the "Effective Date") between the City of Tacoma, a first class municipal corporation ("Seller") and DCT Blair Logistics Center LLC, a Delaware limited liability company ("Buyer").

### RECITALS

WHEREAS, Seller is the owner of certain real property more particularly described in Section 1, below.

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer the real property on the terms and conditions set forth herein; and

WHEREAS, the real property described in Section 1 below, is being sold by Seller in response to a request from the Buyer to acquire the real property; and

WHEREAS Seller is conveying the real property as a negotiated disposition pursuant to the authority provided in Tacoma Municipal Code Section 1.06.280; and

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

### AGREEMENT

1. **Real Property.** Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, all of Seller's interest in the real property located in the City of Tacoma, County of Pierce and State of Washington, legally described in Exhibit "A" and generally depicted in Exhibit "B", (herein, the "Property").

2. **Purchase Price.** The total purchase price for the Property (the "Purchase Price") will be Eighty-one Thousand and 00/100 dollars (\$81,000.00). Within five (5) business days after the Effective Date, Buyer shall deposit Fifteen Thousand Dollars (\$15,000) (such amount and any other deposits of earnest money made pursuant to the terms of this Agreement, if any, including any interest earned thereon, the "Earnest Money") with Escrow Agent, to be held by the Escrow Agent in accordance with its standard joint order escrow instructions. The Earnest Money shall be promptly returned to Buyer upon any termination of this Agreement other than by reason of Buyer's default. Provided that all conditions precedent to Buyer's obligations to close as set forth in this Agreement have been satisfied and fulfilled, or waived in writing by Buyer, the Purchase Price shall be paid to Seller at Closing, plus or minus prorations and other adjustments hereunder, including all Earnest Money credited against the Purchase Price by federal wire transfer of immediately available funds.

3. **Title to Property.**

3.1 **Conveyance.** The Seller shall convey to Buyer, all of Seller's right, title and interest in the Property, by duly executed and acknowledged Quit Claim Deed (the "Deed"). The Seller shall convey title to Buyer by executing and delivering the Deed to Buyer at Closing.

3.2 **Commitment.** Upon execution of this Agreement, Seller authorizes Buyer to order a commitment (the "Commitment") for an owner's standard coverage policy of title

insurance (or, at Buyer's election, an owner's extended coverage policy of title insurance) in the amount of the Purchase Price to be issued by a Title Company of Buyer's choosing (the "Title Company" as further set forth in 3.3 below).

3.3 Title Insurance. As a condition to Closing, Title Company shall be irrevocably committed to issue to Buyer an ALTA Owner's Policy of title insurance, with extended coverage (i.e., with ALTA General Exceptions 1 through 5 deleted). The Title Company for this transaction shall be: Land Services USA, Inc., as agent for First American Title Insurance Company, Attention: Eileen Christian, 10 North Church Street, Suite 307, West Chester, PA 19380, Tel: 610-429-3145 Ext. 2899 (the "Title Company"), and the Escrow Agent for this transaction shall be: Land Services USA, Inc. as agent for First American Title Insurance Company, Attention: Eileen Christian, 10 North Church Street, Suite 307, West Chester, PA 19380, Tel: 610-429-3145 Ext. 2899 (the "Escrow Agent").

3.4 Condition of Title. Buyer shall advise Seller by written notice what encumbrances to title, if any, are disapproved by Buyer ("Disapproved Encumbrances") within 10 (ten) business days of receipt of the Commitment. All monetary encumbrances other than non-delinquent ad valorem property taxes will be deemed to be disapproved. Seller will have ten (10) business days after receipt of Buyer's notice to give Buyer notice that (i) Seller will remove Disapproved Encumbrances, or (ii) Seller elects not to remove Disapproved Encumbrances. If Seller fails to give Buyer notice before the expiration of the ten (10) day period, Seller will be deemed to have elected not to remove Disapproved Encumbrances. Notwithstanding anything to the contrary in this Agreement, Seller shall remove from title on or before the Closing Date all monetary encumbrances other than those approved by Buyer. If Seller elects not to remove any Disapproved Encumbrances, Buyer will have fifteen (15) business days to notify Seller of Buyer's election either to proceed with the purchase and take the Property subject to those encumbrances, or to terminate this Agreement. If Buyer elects to terminate this Agreement pursuant to this section, the escrow will be terminated, the Earnest Money will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement. If this Agreement is terminated through no fault of Seller, then Seller and Buyer shall share equally any costs of terminating the escrow and any cancellation fee for the Commitment.

Seller hereby agrees from and after the Effective Date, until the Closing or the termination of this Agreement, that it (a) will take no action that will adversely affect title to the Property; (b) will not lease, rent, mortgage, encumber, or permit the encumbrance of all or any portion of the Property without Buyer's prior written consent; and (c) will not enter into any written or oral contracts or agreements with respect to the Property.

3.5 Title Policy. Seller shall cause the Title Company to issue to Buyer at closing a standard coverage owner's policy of title insurance insuring Buyer's title to the Property in the full amount of the Purchase Price subject only to the Permitted Encumbrances (the "Title Policy"). The Title Policy must be dated as of the Closing Date. The term "Permitted Encumbrances" means those specific exceptions in the Title Commitment as of the end of the end of the Feasibility Study Period other than those that Seller is required or has agreed to remove and any real estate taxes not yet due and payable.

#### 4. Conditions to Closing.

4.1 City Council Approval. This Agreement, and the transaction contemplated hereby, must be duly approved by the Tacoma City Council prior to closing. If Tacoma City Council approval is not obtained, this Agreement will terminate, and the Earnest Money, less any costs advanced or committed for Buyer, will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them,

and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement. Nothing in this Paragraph 4.1 will obligate the Buyer to obtain City Council approval beyond the ordinary course of City procedure.

**4.2 Feasibility Study.** Buyer will have ninety days from the execution of this Agreement (the "Feasibility Study Period") to conduct a review of the Property and satisfy itself with respect to the condition of and other matters related to the Property and its suitability for Buyer's intended use (the "Feasibility Study"). The Feasibility Study may include all inspections and studies Buyer deems reasonably necessary or desirable. Buyer and Buyer's agents, representatives, consultants, architects and engineers will have the right, from time to time, from and after the date of this Agreement to enter onto the Property and make borings, drive test piles and conduct any other reasonable tests and studies that may be necessary or desirable to ascertain the condition and suitability of the Property for Buyer's intended use. Such tests and inspections are to be performed in a manner not disruptive to the operation of the Property. Buyer shall protect, defend and indemnify Seller from and against any construction or other liens or encumbrances arising out of or in connection with its exercise of this right of entry and shall cause any such liens or encumbrances to be promptly released.

**4.3 Feasibility Study Period Extension.** Buyer shall have three (3) separate options (each an "Extension Option") to extend the Feasibility Study Period for thirty (30) days each upon written notice of the same to Seller prior to the end of the Feasibility Study Period. Contemporaneously with each Extension Option Buyer shall make an additional earnest money deposit in the amount of Five Thousand Dollars (\$5,000) (each an "Extension Deposit") paid by electronic wire to the escrow account with the Escrow Agent. Each Extension Deposit shall be added to, and deemed part of, the Earnest Money for all purposes under this Agreement, provided however that if Buyer delivers an Inspection Termination Notice (as defined below) the Extension Deposit(s) shall be nonrefundable to Buyer. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement for any reason or no reason by giving written notice of termination to Seller on or before the expiration of the Feasibility Study Period (as extended) (the "Inspection Termination Notice"). If Buyer does not give an Inspection Termination Notice, this Agreement shall continue in full force and effect, and Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 4.3. If Buyer terminates this Agreement pursuant to this Section 4.3, Buyer shall receive an immediate return of the Earnest Money, and any Extension Deposits shall be retained by Seller, and all rights and obligations of the parties under this Agreement shall terminate, except for those which expressly survive termination.

**4.4 Buyer's Indemnification.** Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expense (including reasonable costs and attorneys' fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or employees by any person or entity as a result of or on account of injuries or damages to persons, entities and/or property received or sustained, arising out of, in connection with or as a result of the acts or omissions of Buyer, or its agents or employees in exercising its rights under this Agreement and the right of entry granted in connection with its Feasibility Study. Such indemnification shall not extend to claims or liabilities arising out of the discovery of any condition existing at the Property prior to Buyer's inspection or any claims resulting from or caused by Seller's acts or omissions.

## **5 Condition of the Property.**

**5.1 "As Is" "Where Is"** Buyer acknowledges that the Property will be purchased under this Agreement in an "as is" "where is" condition. Except for the statements made at Sections 26 and 28 below, no warranties are given or implied in this conveyance.

5.2 Inspections. Buyer agrees that it will rely on its own inspections and evaluations of the Property, with the exception of written documentation, including, but not limited to any disclosures required by law, provided to it by Seller, to determine the suitability of the Property for Buyer's Intended use.

6. Closing. The consummation of the transaction contemplated herein shall occur on the Closing Date (as defined below) through conveyance of the Deed and Purchase Price through escrow, which the parties shall establish with Escrow Agent. Counsel for the respective parties may execute the escrow instructions, as well as any amendments thereto. In the event of any conflict between the escrow instructions and the provisions of this Agreement, as between the parties, the provisions of this Agreement shall control. The Closing will be on or before that date which is Ten (10) days after the expiration of the Feasibility Study Period (as extended) or Buyer's earlier waiver thereof, but in no event later than May 30, 2017 (the "Closing Date"), unless the parties mutually agree to another date. On the Closing Date, the parties will prepare and be ready to deliver all instruments and funds required to complete the transaction in accordance with this Agreement. "Closing", for the purpose of this Agreement, is defined as the date that all documents are executed and delivered to parties, and the sale proceeds are available for disbursement to the seller, and legal title passes to the Buyer.

7. Closing Costs and Proration. Seller shall pay the premium for a standard coverage owner's policy of title insurance in the full amount of the Purchase Price, state of Washington real estate excise taxes applicable to the sale, and one-half of the Escrow Agent's escrow fee. Buyer shall pay the additional premium, if any, attributable to an extended coverage owner's policy of title insurance (if elected by Buyer) and any endorsements required by Buyer, any financing costs, the cost of recording the deed and any financing documentation, and one-half of the Escrow Agent's escrow fee. Property taxes and assessments for the current year, water and other utility charges, if any, shall be prorated as of the Closing Date unless otherwise agreed. Seller is a property tax exempt organization pursuant to R.C.W. 84.36.010, and therefore property taxes will only be due from Buyer for its ownership from and after the Closing Date.

8. Casualty Loss. Seller shall promptly notify Buyer of any event prior to the Closing Date which causes damage to or destruction of any portion of the Property (not including any, at present, unauthorized improvements Buyer has made to the Property). If Buyer and Seller cannot come to an agreement regarding any such damage to or destruction of the Property, including the settlement of any insurance claims, then Buyer and Seller will each have the right to terminate this Agreement by giving written notice of termination to the other party within twenty (20) days after receipt of actual notice of such casualty loss. Upon exercise of such termination election by either party, this Agreement will terminate, and the Earnest Money will be returned to Buyer.

9. Events of Default. In the event Buyer fails, without legal excuse, to perform any of the covenants or obligations set forth in this Agreement, then that portion of the Earnest Money which does not exceed five percent (5%) of the Purchase Price shall be forfeited to Seller as the sole and exclusive remedy available to Seller for such failure. In the event Seller fails, without legal excuse, to perform any of the covenants or obligations set forth in this Agreement, Buyer shall be entitled to immediate return of the Earnest Money and the Extension Deposit(s) (if made), and may pursue any remedies available to it in law or equity, including specific performance.

10. Possession. Seller shall deliver possession of the Property to Buyer on the Closing Date. Seller shall remove any and all personal property from the Property on or before the Closing Date, unless specifically authorized otherwise in writing by Buyer.

11. Notices. Any notice under this Agreement must be in writing and be personally delivered, or delivered by recognized overnight courier service. Facsimile and e-mail transmission of notice shall not be effective.] All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Seller: City of Tacoma, Public Works Department  
Real Property Services  
747 Market Street, Rm. 737  
Tacoma, WA 98402  
Facsimile No. 253-594-7941

With a copy to: City of Tacoma, Legal Department  
Attn: Jeff H. Capell, Deputy City Attorney  
747 Market Street, Rm 1120  
Tacoma, WA 98402  
Facsimile No. 253-591-5755

Buyer:  
DCT Blair Logistics Center LLC  
c/o DCT Industrial  
555 17<sup>th</sup> Street, Suite 3700  
Denver, CO 80202  
Attn: John Spiegleman  
Email: jspiegleman@dctindustrial.com

With a copy to: Greenberg Traurig LLP  
77 West Wacker Drive, Suite 3100  
Chicago, IL 60601  
Attn: Milos Markovic  
Email: markovicm@gtlaw.com

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail.

12. Buyer's Indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expense (including reasonable costs and attorneys' fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or employees by any person or entity as a result of or on account of injuries or damages to persons, entities and/or property received or sustained, arising out of, in connection with or as a result of Buyer, or its agents or employees entering onto the Property, except for claims caused by Seller, its agents or employees. Prior to any obligation to indemnify hereunder, Seller agrees to provide written notice to Buyer of at least thirty (30) days (except in the case of emergency) and an opportunity to cure the liability and defend with counsel of Buyer's choosing.
13. Environmental Liability Waiver. Buyer, intending to bind its successors and assigns, hereby forever waives, releases, discharges Seller from any and all claims, demands, causes of action, damages, liabilities, losses, expenses, and all costs and fees for legal actions related thereto caused by or resulting from Hazardous Substances existing on, at, or under the Property on the date the Buyer acquires legal title to the Property. Buyer hereby indemnifies Seller from any and all claims, demands, causes of action, damages, liabilities, losses, expenses, and all costs and fees for legal actions caused by or resulting from Hazardous Substances which have been generated or stored on the Property,

and/or disposed of on or off the Property subsequent to the Closing. This Agreement to indemnify and hold harmless is to apply to claims brought by any party based upon any state or federal statutory or common law, including, but not limited to, any claims brought under applicable state laws described below, and shall include, but not be limited to, claims for investigation, litigation, administration, oversight, remedial action costs, response costs, and personnel costs, all costs arising out of or related to the clean-up, storage, treatment, handling, disposal, transportation, presence of, or threatened release or discharge of any contaminants at, to, from, beneath, or near the Property, and any property damage or damages for personal injury related thereto.

For purposes of this Agreement, "Hazardous Substances" shall include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," "pollutants," "contaminants," or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, 15 U.S.C. § 2601, et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 1601, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq.; the Washington State Environmental Policy Act, RCW 90.48.010, et seq.; the Water Pollution Control Act, RCW 90.48.010, et seq.; the Hazardous Waste Management Statute, RCW 90.105, et seq.; the Toxic Substance Control Act, RCW 70.105C, et seq.; and the Model Toxics Control Act, RCW 70.105C, et seq.; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws and shall also include petroleum, oil, and petroleum by-products.


14. Counterparts; Faxed Signatures. This Agreement may be executed in any number of counterparts by the parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. Signatures transmitted by facsimile or email shall be fully binding and effective for all purposes.
15. Brokers and Finders. In the event any broker or other person makes a claim for a commission or finder's fee based upon the transaction contemplated by this Agreement, the party through whom said broker or other person makes its claim shall indemnify and hold harmless the other party from said claim and all liabilities, costs and expenses related thereto, including reasonable attorneys' fees, which may be incurred by such other party in connection with such claim. This indemnity shall survive the closing of this transaction. Any and all claims, if any, for commission arising out of this transaction shall be borne solely by the Buyer or its assigns.
16. Amendments. This Agreement may be amended or modified only by a written instrument executed by both Seller and Buyer.
17. Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Washington without recourse to any principles of Conflicts of Laws.
18. Attorney Fees. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy proceeding.

19. Time of the Essence. Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.
20. Waiver. Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.
21. Non-merger. The terms and provisions of this Agreement, including without limitation, all indemnification obligations, will not merge in, but will survive, the closing of the transaction contemplated under the Agreement.
22. Assignment. Buyer shall not assign this Agreement without Seller's prior written consent, which consent may not be unreasonably withheld or delayed. The foregoing notwithstanding, Buyer may freely assign this Agreement and all its rights and obligations to its corporate affiliates without Seller approval, but shall provide Seller with timely written notification of any such assignment.
23. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.
24. Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to effect the Agreement contemplated herein.
25. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Property, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.
26. Authority. Seller has the full right and authority and has (or will prior to Closing, if City Council approval is granted) obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Seller, enforceable in accordance with their terms. To Seller's knowledge, there is no action or proceeding pending or, to Seller's knowledge, threatened against Seller or relating to the Property, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement.
27. Legal Compliance. To Seller's knowledge, neither the Property nor its use violates any governmental law or regulation or any covenants or restrictions encumbering the Property.
28. Contracts. There are no agreements relating to the Property to which Seller or its agents is a party and which would be binding on Buyer after the Closing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**SELLER:**

**CITY OF TACOMA**, a first class Municipal Corporation



Elizabeth A. Pauli  
Interim City Manager



Kurtis D. Kingsolver, P.E.  
P.W. Director/City Engineer



Andrew Cherullo  
Finance Director

Attest:



Doris Sorum  
City Clerk

Approved as to form:

  
Deputy City Attorney

**BUYERS:**

**DCT Blair Logistics Center LLC**,  
a Delaware limited liability company

By: DCT Industrial Operating Partnership  
LP,  
a Delaware limited partnership,  
its Sole Member

By: DCT Industrial Trust Inc.,  
a Maryland corporation,  
its General Partner



By: \_\_\_\_\_  
Name: John G. Spiegleman  
Title: Executive Vice President



**Exhibit "A"**

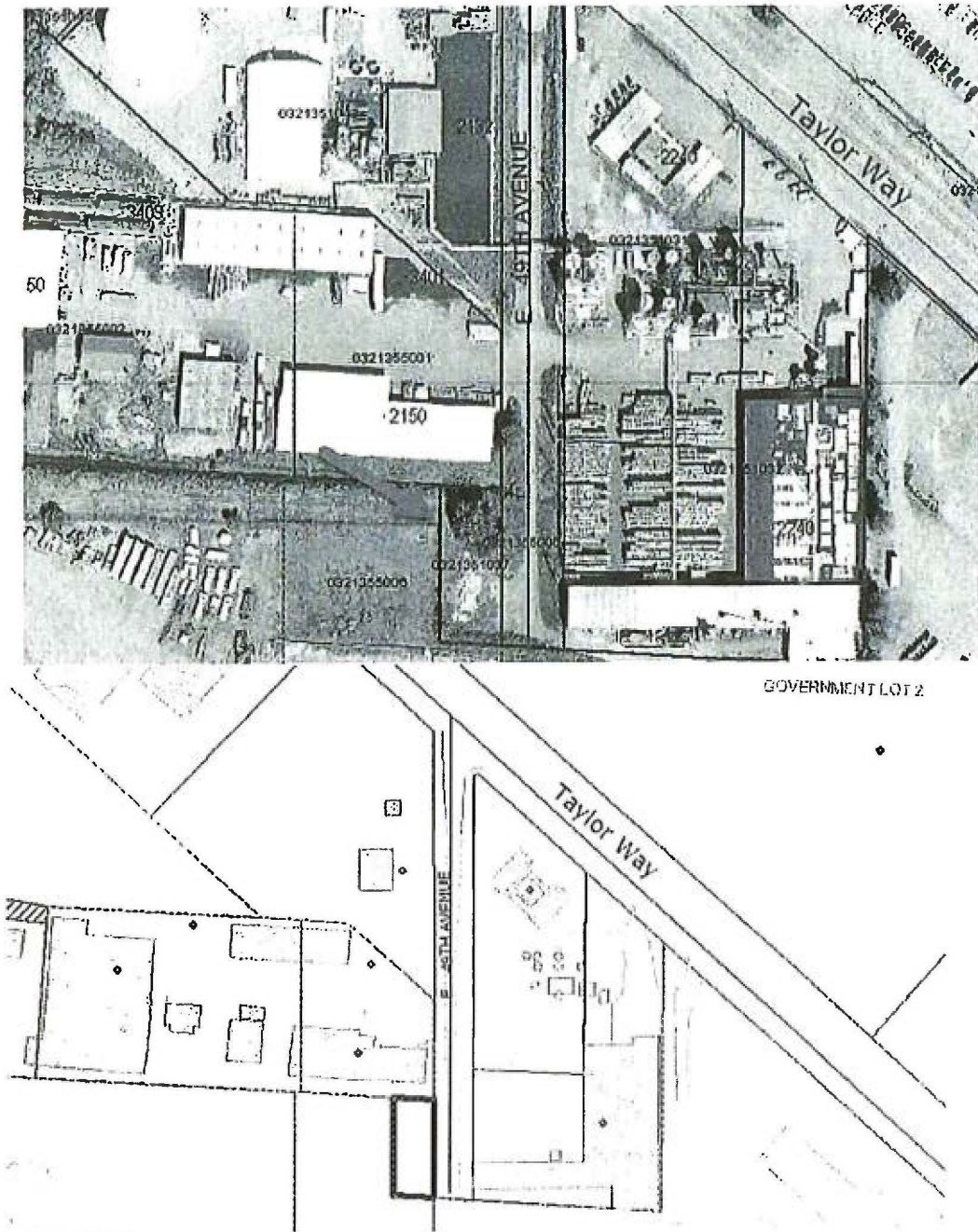
Legal Description

The south 150 feet of the north 200 feet of the east 90 feet of the Southwest quarter of the Northeast quarter of Section 35, Township 21 North, Range 3 East, W.M.;

Except the east 30 feet for 49<sup>th</sup> Avenue N.E.

**Exhibit "B"**

**General Map Depiction**



CHI 67602839v4

CHI 67602839v7

CHI 67602839v8