

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is dated for identification purposes as of _____, 2019 ("Date of Agreement"), by and between the CITY OF NORTH LITTLE ROCK, an Arkansas municipal corporation (the "City") and POWER & ICE, LLC, an Arkansas limited liability company (the "Developer") (the City and the Developer collectively referred to herein as the "Parties").

RECITALS

WHEREAS, the City and J. Chandler and Company, Inc., an Arkansas corporation ("Chandler") executed that certain Real Estate Development and Option to Purchase Agreement on or about August 28, 2018 (the "Option") whereby the City granted Chandler and option to purchase certain property in its downtown corridor suitable for development for uses that attract visitors and employment opportunities more particularly described on EXHIBIT A which is attached hereto and incorporated herein (the "Property");

WHEREAS, Chandler has exercised its right to purchase the Property pursuant to the Option;

WHEREAS, pursuant to Section 13 of the Option, Chandler has assigned its right to purchase the Property to the Developer;

WHEREAS, pursuant to Section 11(a)(ii) of the Option, at Closing, the Developer and the City are to execute a Development Agreement which is to be negotiated by the Mayor and Developer, and approved by the City Council;

WHEREAS, this Agreement is the result of such negotiations and has been approved by the City Council for execution by the Mayor on behalf of the City;

WHEREAS, the Developer has informed the City of its desire to construct improvements on the Property as more particularly described in the "Plans" attached hereto as EXHIBIT B and incorporated herein (the "Developer Improvements");

WHEREAS, the City and Developer desire by this Agreement to provide for, among other things, the conveyance of the Property as provided under the Option and for Developer to construct, operate and maintain the Developer Improvements in accordance with all covenants, conditions and restrictions set forth herein; and

WHEREAS, this Agreement is in the best interest of the City and the welfare of its residents, and in accord with the goals, objectives and public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, in consideration of conveyance of the Property from the City to the Developer, the mutual covenants, conditions and obligations pursuant to the Option, and the

mutual covenants, conditions and obligations contained herein, the sufficiency of which is hereby acknowledged, the City and the Developer hereby agree as follows:

Section 1. Incorporation of Recitals and Construction.

1.1 ***Incorporation of Recitals.*** The statements set forth above are true and correct constituting an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the Parties.

1.2 ***Rules of Construction.*** The rules of construction set forth in this Section 1.2 shall apply to this Agreement.

a. All Section, Subsection, and Exhibit references used in this Agreement are to the Sections, Subsections and Exhibits to this Agreement unless otherwise specified. The Exhibits attached to this Agreement constitute a part of this Agreement and are incorporated herein for all purposes. The Section and Subsection headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof.

b. If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb). Unless the context requires otherwise, all words used in this Agreement in the singular number shall extend to and include the plural, and all words used in the plural number shall extend to and include the singular. Unless the context of this Agreement clearly requires otherwise, words importing the masculine gender shall include the feminine and neutral genders and vice versa. The words “includes” or “including” mean “including without limitation,” “shall” and “will” have equal force and effect, the words “hereof,” “hereby,” “herein,” “hereunder” and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular Section or Subsection in which such words appear and any reference to a law shall include any amendment thereof or any successor thereto and any rules and regulations promulgated thereunder. Currency amounts referenced in this Agreement are in U.S. Dollars.

c. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day.

d. Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party or any similar rule operating against the draft of an agreement shall not be applicable to the construction or interpretation of this Agreement.

Section 2. Development of the Property.

2.1 ***Design and Plan Approval.*** The City shall have developmental control of the Property for a period of the three (3) years following the Date of Agreement (the “Developmental

Control Term”) which shall include control over the architectural appearance, size, proposed use, exterior improvements and the like. Developer shall not construct, or allow to be constructed, any structure, building or other improvement during the Developmental Control Term, without the express approval of the City, which shall not be unreasonably withheld. Concurrently with the approval and execution of this Agreement, the City has approved the Plans which includes the City’s approval of the architectural appearance, size, proposed use, and exterior improvements to be constructed on the Property. In the event the Developer Improvements require material deviations from the Plans attached hereto, the City shall, under this Agreement and in addition to those police powers held by the City, have the right to review and approve such material changes to the Plans. The Developer acknowledges and agrees that the City is entitled to approve or disapprove such material changes to the Plans in order to promote a high level of design which will impact the development of property surrounding the Property, and to provide an environment for the social, economic and psychological growth and well-being of the citizens of the City. However, the City agrees that the approval of such deviations from the Plans shall not be unreasonably withheld, delayed or conditioned. If the City disapproves of the material deviations from the Plans so submitted to the City for approval, the City shall state in writing the reasons for disapproval within fifteen (15) days of such disapproval, and the Developer, upon receipt of the disapproval based upon the powers of the City reserved herein, may revise such portions of the Plans and resubmit to the City. After the expiration of the Developmental Control Term, the City shall have no rights to approve or disapprove of Developer’s use or construction of improvements on the Property other than those pursuant to city ordinances or codes adopted pursuant to the police powers held by the City.

2.2 *Developer’s Commencement of Construction.* In the event Developer does not commence construction of the Developer Improvements on the Property within one (1) year following the Date of Agreement, the City shall have the right to compel the reconveyance of the Property to the City by providing written notice (the “Reconveyance Notice”) to the Developer within ten (10) days of the first (1st) anniversary of the Date of Agreement (the “Notice Period”). If the City does not provide such Reconveyance Notice to the City within the Notice Period, the right of the City to compel such reconveyance of the Property shall terminate and be of no further effect. If the City does provide such Reconveyance Notice to Developer within the Notice Period, and construction did not commence within the one (1) year period following the Date of Agreement, then the Developer shall convey the Property to the City in exchange for payment to the Developer of the purchase price paid by the Developer to the City for the Property less five percent (5%). Commencement of construction shall mean the actual commencement of physical construction operations on the Property. Notwithstanding the foregoing, the City shall have no right to compel reconveyance of the Property if Developer’s failure to commence construction of the Developer Improvements was the result of any delay of any approval pursuant to this Agreement or any approval required by ordinance or code on behalf of the City.

Section 3. **General Provisions.**

3.1 *Notices, Demands and Communications Between the Parties.* Any approval, disapproval, demand, document or other notice (“Notice”) which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth

below, or at any other address as that party may later designate by Notice. All notices or other communications required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be considered as properly given if delivered personally or sent by first class U.S. mail, postage prepaid, except that notice of a Default may be sent by certified mail, postage prepaid, return receipt requested, or by overnight express mail or by commercial courier service, charges prepaid. In addition, notices may be provided to a party by fax or electronic mail to any party who so states in a writing to the other party, including the e-mail address and fax number to be used. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the addresses set forth below. For purposes of notice, the addresses of the parties shall be:

To the City: City of North Little Rock, AR
 Attn: Mayor Joe A. Smith
 300 Main Street
 North Little Rock, AR 72114
 Fax: _____
 E-mail: _____

With a Copy to: City of North Little Rock, AR
 Attn: Amy Fields

 Fax: _____
 E-mail: _____

To Developer: Power & Ice, LLC
 Attn: John Chandler
 400 Shall Street
 Little Rock, Arkansas 72202
 Fax: _____
 E-mail: johnpartners@gmail.com

With a Copy to: Quattlebaum, Grooms & Tull PLLC
 Attn: Grant M. Cox
 111 Center Street, Suite 1900
 Little Rock, Arkansas 72201
 Fax: (501) 379-3856
 E-mail: gcox@qgtlaw.com

Any party may change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove. The Developer shall forward to the City, without delay, any notices, letters or other communications delivered to the property or to the Developer which could reasonably affect the ability of the Developer to perform its obligations to the City under this Agreement.

3.2 ***Enforced Delay; Extension of Times of Performance.*** In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war, insurrection, acts of terrorism, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, adverse weather conditions, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, acts or omissions of the other party, or acts or failures to act of the City or any other public or governmental agency or entity (except that the acts or failures to act or delay of the City shall not excuse performance by the City). Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the Developer and the Mayor.

3.3 ***Successors and Assigns.*** All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Developer and its successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other successors or assigns. The Developer shall be liable for the performance of its covenants, obligations, and undertakings herein set forth which accrue during the period of its ownership of the Property.

3.4 ***Relationship Between City and Developer.*** It is hereby acknowledged that the relationship between the City and Developer is not that of a partnership or joint venture and that the City and the Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein, the City shall have no rights, powers, duties, or obligations with respect to the development, operations, maintenance or management of the Developer Improvements.

3.5 ***Counterparts.*** This Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement.

3.6 ***Integration.*** This Agreement along with the Option contains the entire understanding between the Parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, other than the Option, are merged in this Agreement and shall be of no further force or effect.

3.7 ***Real Estate Brokerage Commission.*** The City and the Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with the Developer's acquisition of the Property from the City. The parties agree to defend and hold harmless the other party from any claim to any such commission or fee from any broker, agent or finder with respect to this Agreement which is payable by such party.

3.8 **Attorneys' Fees.** In any action between the Parties to interpret, enforce, reform, modify, or rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party shall pay the other party's costs and expenses, including, without limitation, litigation costs, expert witness fees, attorneys' fees, and court costs.

3.9 **No Waiver.** A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

3.10 **Modifications.** Any alteration, change, or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

3.11 **Severability.** If any term, provision, condition, or covenant of this Agreement or its applicable to any party or circumstances shall be held, to any extent, invalid, or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

3.12 **Time of Essence.** Time is expressly made of the essence with respect to the performance by the City and the Developer of each and every obligation and condition of this Agreement.

3.13 **Cooperation.** Each party agrees to cooperate with the other with regards to this transaction and, in that regard, to sign any and all documents which maybe reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements; provided, that this Section shall not apply to the City acting under its police power unless such police power is being utilized to unreasonably delay the commencement of construction so as to cause a default under this Agreement.

3.14 **Memorandum.** If the City desires to record a Memorandum of this Agreement setting forth the Developmental Control Term and the right to compel reconveyance of the Property as set forth in Sections 2.1 and 2.2, respectively, the City and Developer shall execute, acknowledge, deliver and record such Memorandum, but such Memorandum shall not include the Plans.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Date of Agreement first above written.

CITY:

CITY OF NORTH LITTLE ROCK, ARKANSAS

By: _____
Joe A. Smith, Mayor

Attest: _____
Diane Whitbey, City Clerk

[SEAL]

ACKNOWLEDGMENT

State of _____ §
County of _____ §

On this _____ day of _____, 2019, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within name Joe A. Smith and Diane Whitbey, Mayor and City Clerk, respectively, for THE CITY OF NORTH LITTLE ROCK, ARKANSAS, satisfactorily proven to be such persons, who stated that they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name of the City, and further stated and acknowledged that they had signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the date first above written.

Notary Public

My Commission Expires:

[SEAL]

DEVELOPER:

POWER & ICE, LLC, an Arkansas limited liability company

By: _____
John Chandler, Manager

ACKNOWLEDGMENT

State of _____ §

§

County of _____ §

§

On this ____ day of _____, 2019, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within name John Chandler, satisfactorily proven to me to be such person, who stated that he as the Manager of POWER & ICE, LLC, an Arkansas limited liability company, was duly authorized in his respective capacity to execute the foregoing instrument for and in the name and behalf of said limited liability company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ____ day of _____, 2019.

Notary Public

My Commission Expires:

[SEAL]

EXHIBIT A

THE PROPERTY

LEGAL DESCRIPTION
TRACT B - CHANDLER

PART OF LOT C1 AND LOT B, P & R PROPERTIES ADDITION IN THE CITY OF NORTH LITTLE ROCK, PULASKI COUNTY, ARKANSAS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT C1;
THENCE S 02° 25' 31" W ALONG THE EASTERLY RIGHT-OF-WAY LINE OF MAIN STREET (70' ROW) FOR 1.00 FEET;
THENCE S 88° 44' 39" E ALONG THE SOUTHERLY LINE OF A 61 FOOT UTILITY AND ACCESS EASEMENT FOR 6.00 FEET TO THE POINT OF BEGINNING;
THENCE S 88° 44' 39" E ALONG SAID EASEMENT FOR 138.03 FEET TO THE WESTERLY LINE OF A 25 FOOT ACCESS EASEMENT;
THENCE S 02° 25' 31" W ALONG SAID WESTERLY LINE FOR 50.00 FEET;
THENCE N 88° 44' 39" W FOR 144.03 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF MAIN STREET;
THENCE N 02° 25' 31" E ALONG SAID RIGHT-OF-WAY LINE FOR 44.00 FEET;
THENCE S 88° 44' 39" E FOR 6.00 FEET;
THENCE N 02° 25' 31" E FOR 6.00 FEET TO THE POINT OF BEGINNING, CONTAINING 7,164 SQUARE FEET OR 0.164 ACRES, MORE OR LESS.

EXHIBIT B

THE PLANS

[See Attached]

POWER & ICE BUILDING



09/06/2019

TAGGART ARCHITECTS, INC.

4500 Burrow Drive North Little Rock, AR 72116

501-758-7443

501-753-7309 Fax

INDEX OF DRAWINGS

INDEX OF DRAWINGS - ARCHITECTURAL

A101 FLOOR PLANS
A201 ELEVATIONS

TAGGART
ARCHITECTS

THIS DRAWING IS THE PROPERTY OF TAGGART ARCHITECTS, INC. AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF TAGGART ARCHITECTS, INC.

SEAL

COVER SHEET

SHEET NAME

DATE

PROJECT NUMBER

09/06/2019

130617

SHEET NUMBER

T1

POWER & ICE BUILDING

PROJECT NAME _____

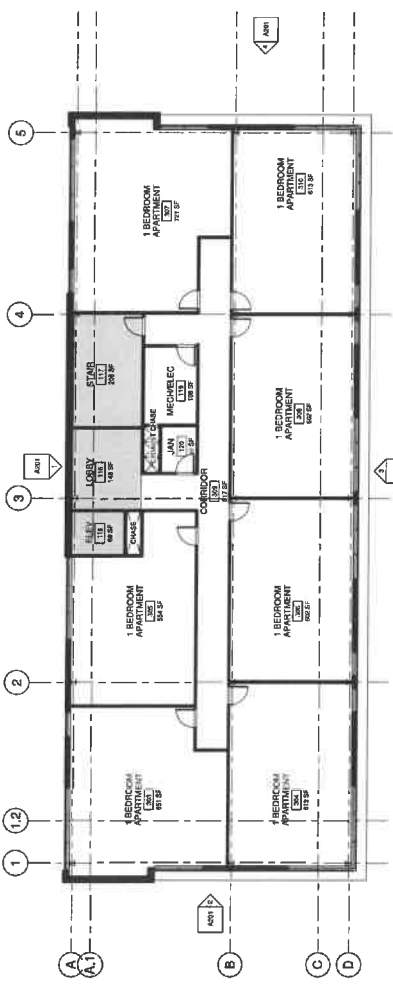
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FLOOR PLANS

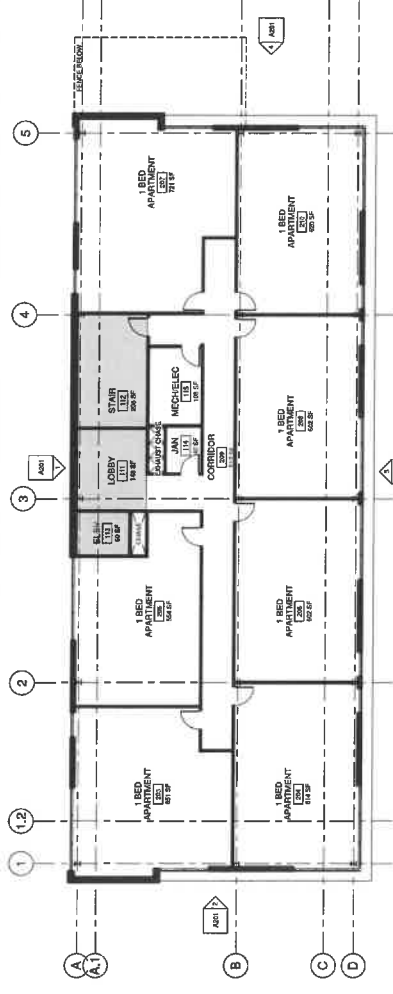
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A101

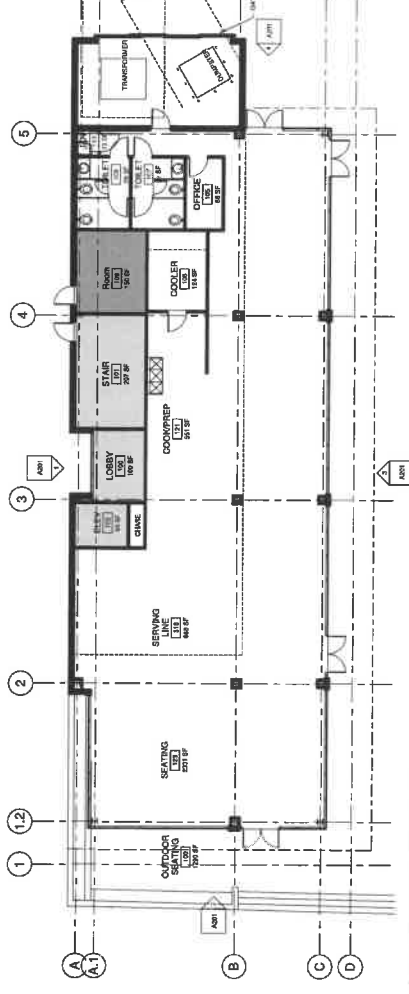
SHEET NUMBER _____



③ 3RD FLOOR
1000 - 1'x2'



⑤ 5TH FLOOR
1000 - 1'x2'



① 1ST FLOOR
1000 - 1'x2'

**POWER & ICE
BUILDING**

PROJECT NAME _____

SEAL _____

REVISIONS _____

| NO. | DESCRIPTION | DATE |
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ELEVATIONS

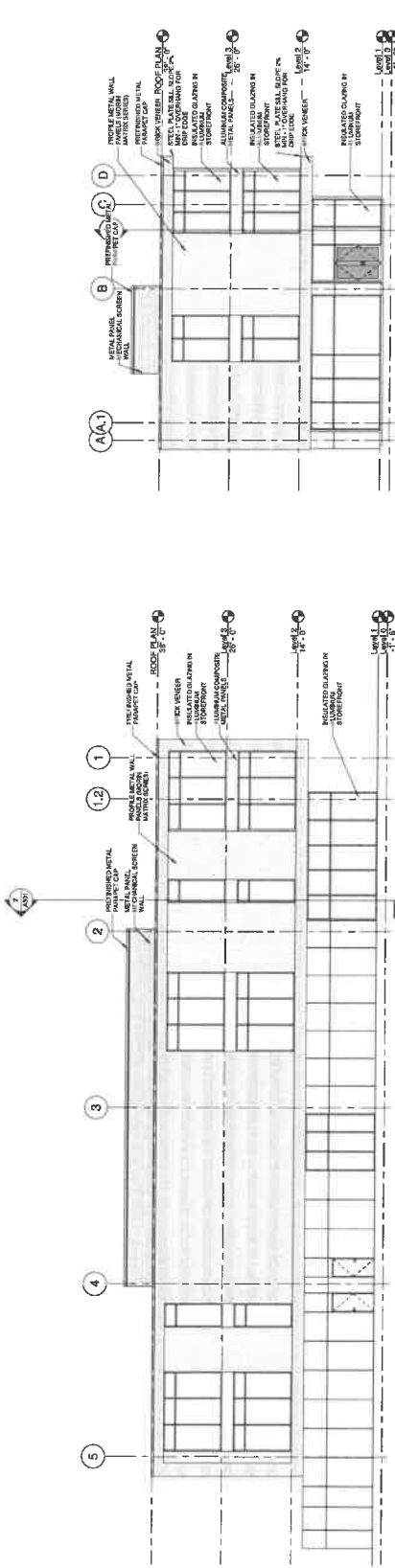
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DATE _____

PROJECT NUMBER _____

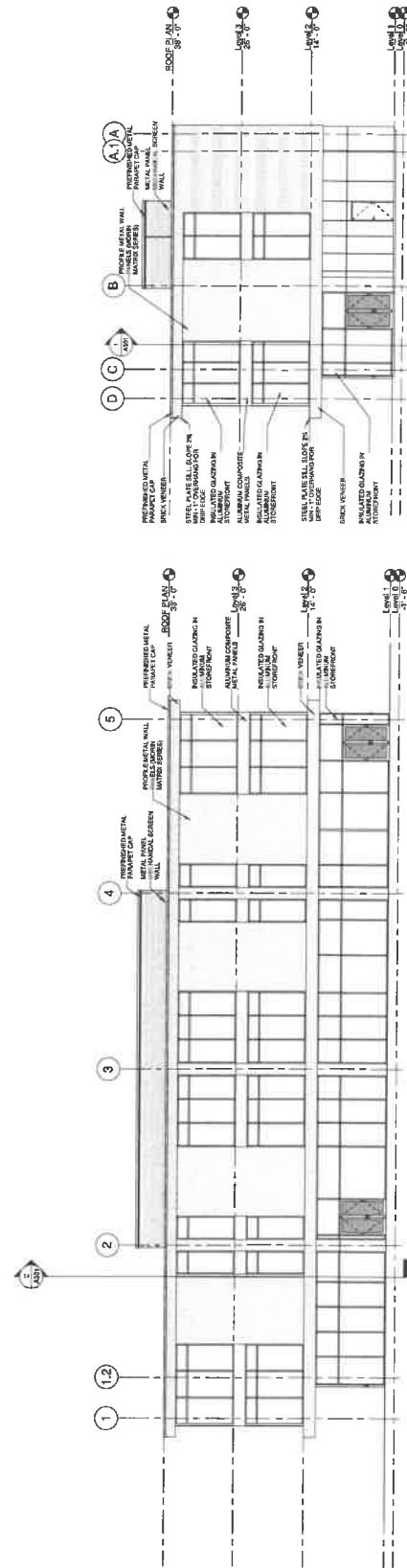
A201

SHEET NUMBER _____



1 NORTH ELEVATION
1/8" = 1'-0"

2 WEST ELEVATION
1/8" = 1'-0"



3 SOUTH ELEVATION
1/8" = 1'-0"

4 EAST ELEVATION
1/8" = 1'-0"