



## ***SPECIAL MEETING***

### **CITY OF HESSTON AGENDA**

Tuesday, September 29, 2020

Council Chamber/Municipal Court Building  
110 E. Smith Street

Join Zoom Meeting:

<https://us02web.zoom.us/j/87616165505>

#### **Present**

David Kauffman, Mayor \_\_\_\_\_  
Brad Unruh, City Council \_\_\_\_\_  
Jason Jones, City Council \_\_\_\_\_  
Larry Fuqua, City Council \_\_\_\_\_  
Clare Moore, City Council \_\_\_\_\_  
Susan Swartzendruber, City Council \_\_\_\_\_

#### **Others Present**

1. \_\_\_\_\_  
2. \_\_\_\_\_  
3. \_\_\_\_\_  
4. \_\_\_\_\_  
5. \_\_\_\_\_

Gary Emry, City Administrator \_\_\_\_\_  
Jason Thrasher, City Clerk \_\_\_\_\_

1. Call to Order - 6:00pm
2. Proposal Interview: Rupe Helmer Group –Dollar General
3. Adjourn Meeting

[Form Remaining Parcel]

## **REAL ESTATE PURCHASE AND SALE AGREEMENT**

**THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement")** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 (the "**Effective Date**"), by and between The City of Hesston, with an address of 115 East Smith, Hesston, KS 67062 ("**Seller**") and Rupe Helmer Group, LLC, or assigns, an Oklahoma limited liability company ("**Buyer**") with a business address of 6846 South Canton Ave., Suite 250, Tulsa, Oklahoma 74136.

### **RECITALS:**

A. Seller is the sole owner of that certain real estate, together with improvements thereon, located in Harvey County, legally described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Property**"). All mineral rights shall be excepted from this purchase.

B. Seller desires to sell to Buyer and Buyer desires to purchase from Seller all of Seller's rights, title and interest in and to the Property, upon the terms and conditions hereinafter set forth, including but not limited to the restrictions contained within **Exhibit "B"** upon the remainder parcel retained by Seller (the "**Remaining Parcel**").

**NOW, THEREFORE**, in consideration of the agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

### **ARTICLE I** **PURCHASE AND SALE OF PROPERTY**

1.1 **Agreement to Sell.** Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase and acquire from Seller, on the date of closing as herein provided (the "**Closing Date**" or "**Closing**"), all of Seller's rights, title and interest in and to the Property (excluding mineral rights), together with all and singular the tenements, hereditaments and appurtenances in connection with the Property; subject, however, to the Permitted Exceptions (hereinafter defined).

1.2. **Purchase Price and Payment.** Buyer agrees to pay to Seller the sum of Seventy Five Thousand and 00/100 Dollars (\$75,000.00) (the "**Purchase Price**") for the Property (subject to any adjustments provided for in this Agreement), as follows:

(a) Upon execution of this Agreement by Buyer, Buyer shall deliver to Seller this Agreement, together with a cashier's check or certified check in the amount of Five Thousand and 00/100 Dollars (\$5,000.00) (the "**Earnest Money**"), payable to Commercial Title & Escrow Services, Inc. (the "**Title Company**"), whose

address is 4739 E. 91<sup>st</sup> St., Suite 200, Tulsa, Oklahoma 74137, Attention: Pam Bewley. Seller shall deliver the Earnest Money, together with a copy of this Agreement, fully executed by Seller and Buyer, to the Title Company. The Title Company shall hold the Earnest Money in an interest-bearing account, and interest shall be credited as provided herein.

(b) On or before the Closing Date, Buyer shall deliver the remainder of the Purchase Price, in the amount of **Seventy Thousand and 00/100 Dollars (\$70,000.00)** (subject to any adjustments provided for in this Agreement), to the Title Company in immediately available guaranteed funds.

## **ARTICLE II**

### **BUYER'S DUE DILIGENCE**

2.1 **Title Commitment.** Within fifteen (15) days after the Effective Date, Seller shall, at Seller's sole cost and expense, provide Buyer a current ALTA commitment for an Owner's Policy of Title Insurance (the "**Commitment**") issued through the Title Company, together with copies of all documents identified in the Commitment as Schedule B exceptions. At Closing, Seller shall pay all costs associated with obtaining an Owner's Title Insurance Commitment. Buyer shall pay all premium costs for the Owner's Title Insurance Policy.

2.2 **Survey.** At any time during the Review Period (as defined in Section 3.1), Buyer may order, at Buyer's sole cost and expense, a current ALTA/ACSM survey (the "**Survey**") of the Property. Seller, if in possession of a survey, shall provide to Buyer at no cost within fifteen (15) days of the execution of this Agreement.

2.3 **Environmental Audit.** At any time during the Review Period, Buyer may, at Buyer's sole cost and expense, order an environmental audit and/or assessment of the Property (the "**Environmental Audit**") by an independent environmental consultant chosen by Buyer.

2.4 **Site Inspection.** Seller and Buyer agree that Buyer may enter upon the Property at any time after the execution of this Agreement and prior to the expiration of the Review Period, at Buyer's sole risk and expense, to perform such architectural, engineering, structural, soil, feasibility, market analysis, cost analysis and other related studies, audits and investigations as it deems appropriate to determine whether there exists a material adverse condition which, in the reasonable judgment of Buyer, renders the proposed purchase, operation and further development of the Property infeasible for Buyer's intended use (the "**Site Inspection**"). Seller shall cooperate with Buyer to accommodate such inspections and studies during regular business hours and upon reasonable advance notice by Buyer of the need to access the Property and any improvements thereon for such purposes.

**ARTICLE III**  
**REVIEW PERIOD; OBJECTIONS; CURE PERIOD; ZONING**

3.1 **Review Period.** Buyer shall have a period of **one hundred twenty (120)** days from the Effective Date (the "**Review Period**") to review the Commitment and related Schedule B exception documents, the Survey, the Environmental Audit, and to perform its Site Inspection and any other due diligence Buyer deems necessary. Buyer shall repair any damage to the Property caused by the activities of Buyer or any third party acting on Buyer's behalf in connection with the Commitment, the Survey, the Environmental Audit, the Site Inspection or otherwise, and shall hold harmless and indemnify Seller from any liability arising out of or in connection with any activities, undertakings, studies, reports or investigations performed by or on behalf of Buyer. Buyer shall have the right to extend the Review Period a maximum of **two (2) times** by **thirty (30)** days each by (i) providing Seller with written notice no later than the expiration of the then current Review Period of Buyer's desire to extend the Review Period by thirty (30) days and (ii) depositing **Five Thousand Five Thousand and 00/100 Dollars (\$5,000.00)** with the Title Company as additional Earnest Money.

3.2 **Review Items; Review Item Issues.** Within ten (10) days of Buyer's receipt or prior to the expiration of the Review Period, whichever is earlier, Buyer shall deliver complete and accurate copies of the Commitment (together with copies of all exception documents listed therein), the Survey, the Environmental Audit, and any studies, analyses, audits or investigations obtained by Buyer during its Site Inspection (collectively, the "**Review Items**") to Seller. Prior to the expiration of the Review Period, Buyer shall notify Seller in writing of any objections Buyer has to any easements, restrictions, reservations, encumbrances, exceptions, adverse environmental conditions or other matters or Property conditions shown or referred to in any of the Review Items (the "**Review Item Issues**").

3.3 **Objections; Cure Period; Notice Period.** With regard to Review Item Issues identified in or in connection with any of the Review Items obtained by Buyer and to which Buyer objects in writing to Seller prior to the expiration of the Review Period, Seller shall have a period of thirty (30) days following expiration of the Review Period (the "**Cure Period**") in which to either cure such objections to Buyer's satisfaction or notify Buyer in writing that Seller is unable or unwilling to cure all of Buyer's objections. In the event Seller is unable or unwilling to cure all of Buyer's objections, Buyer may either (i) waive any uncured objection and proceed in accordance with the terms and conditions herein, or (ii) terminate this Agreement by providing Seller with written notice thereof within five (5) days following expiration of the Cure Period (the "**Notice Period**"). Any uncured objection which has been waived by Buyer shall be deemed to be a Permitted Exception. Further, in the event Buyer has not terminated this Agreement by written notice to Seller prior to the expiration of the Notice Period as provided in this Section 3.3, then any uncured objection which has not been specifically waived by Buyer shall be deemed to have been waived and to be a Permitted Exception.

3.4 **Permitted Exceptions.** For purposes of this Agreement, the term "**Permitted Exceptions**" shall be deemed to include (i) any easements, restrictions, reservations, encumbrances, exceptions or other Review Item Issues to which Buyer does not object within the Review Period, (ii) if Buyer has not elected to terminate this Agreement

due to Seller's failure or inability to cure any Buyer objections, any easements, restrictions, reservations, encumbrances, exceptions of record or other Review Item Issues existing at the time of Closing; (iii) that portion of the Property, if any, in streets, roads and highways; (iv) overlaps, encroachments and boundary line disputes which would be revealed by an accurate survey of the Property; and (v) general and special real estate taxes and assessments for the current and subsequent years.

3.5 **"As Is, Where Is"**. Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood that, pursuant to this Article III, Buyer is being provided a period of one hundred eighty (180) days (and options for two (2) thirty day extensions) to obtain and review such Review Items pertaining to the Property as Buyer deems necessary and prudent and to make a full and complete physical inspection of the Property. The parties expressly agree that Seller shall have no obligation to cure any objections Buyer may have to any Review Item Issues identified in or in connection with any of the Review Items or to correct or repair any title, survey, environmental, structural or other defect or anomaly which Buyer may discover or determine exists during the Review Period, subject to Buyer's right to terminate this Agreement pursuant to Section 3.3.

3.6 **Restrictions**. Seller agrees that the Remaining Parcel retained and owned by Seller, after the Property is sold to Buyer, shall be restricted as described in Exhibit "B" attached hereto. It is contemplated that such restrictions shall be filed of record and run with the land.

3.7 **Zoning Contingency**. In addition to any other conditions to Buyer's obligations to Close, the obligation to Close this purchase expressly contingent upon Buyer obtaining the appropriate zoning change from the proper zoning authority. In the event that the zoning change is not approved, this Agreement is voidable at the discretion of Buyer.

#### **ARTICLE IV**

#### **SELLER'S REPRESENTATIONS AND WARRANTIES**

Seller hereby makes the following representations and warranties to and for the benefit of Buyer, its successors and assigns:

4.1 Seller has good, insurable fee simple title to the Property, subject to (i) all easements, restrictions, reservations, mortgages, deeds of trust, liens, encumbrances and other agreements and matters of record; (ii) taxes and assessments, general and special, not now due and payable; (iii) rights of the public in and to the parts thereof in streets, roads or alleys; and, specifically, subject to (iv) the Permitted Exceptions.

4.2 To Seller's knowledge, there are no violations of any laws, ordinances or governmental authorities by Seller with respect to the Property.

4.3 Seller is a **municipality** who is vested with full right, title, authority and capacity to execute and perform this Agreement and to consummate all of the transactions contemplated herein. No other party has any legal or equitable right to the title or proceeds of this sale.

4.4 Seller is not a foreign person selling property as described in the Foreign Investment in Real Property Tax Act and agrees to deliver an affidavit at Closing reflecting that Seller is not such a foreign person and to provide Seller's tax identification number.

4.5 To Seller's knowledge, Seller is not prohibited from consummating the transactions contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order or judgment.

## **ARTICLE V**

### **BUYER'S REPRESENTATIONS AND WARRANTIES**

Buyer hereby makes the following representations and warranties to and for the benefit of Seller, its successors and assigns:

5.1 Buyer is duly organized, validly existing and in good standing under the laws of the State of Oklahoma. Buyer has full right, title, authority and capacity to execute and perform this Agreement and to consummate all of the transactions contemplated herein. The individuals of Buyer who execute and deliver this Agreement and all documents to be delivered hereunder are and shall be duly authorized to do so.

5.2 To Buyer's knowledge, Buyer is not prohibited from consummating the transactions contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order or judgment.

## **ARTICLE VI**

### **EXPENSES AND PRORATIONS**

Seller shall pay in full all real and personal property ad valorem taxes and assessments and all installments of current year special assessments payable on or before the Closing Date, and Buyer shall pay all such taxes and assessments that cannot be paid until after the Closing Date; provided, however, that taxes and assessments for the tax period in which Closing occurs shall be prorated based on the last preceding tax period for which the assessments are known. Seller shall pay the cost of any fees or payments incurred if there is a prepayment of any mortgage or encumbrance on the Property, the cost of abstracting, the cost of preparing and recording the Warranty Deed, documentary stamps, the cost of any curative action on the Review Item Issues undertaken by Seller and recording fees associated therewith, any brokerage commission payable by Seller pursuant to Section 9.4(a) and its own attorney's fees, if any. Buyer shall pay the cost of any owner's policy of title insurance and endorsements to be issued to Buyer, the Survey, the Environmental Audit, all costs related to Buyer's Site Inspection, any brokerage commission payable by Buyer pursuant to Section 9.4(b), any mortgage registration taxes and its own attorneys fees, if any. Buyer and Seller shall split the closing costs to be paid to the Title Company equally, including but not limited to any escrow fee. All other items, including but not limited to utilities, customarily subject to proration shall be prorated as of the Closing Date.

## **ARTICLE VII**

### **CLOSING**

7.1 **Closing Date.** Closing shall occur at the offices of the Title Company on or before a date which is Sixty (60) days after the date Buyer notifies Seller that Buyer is satisfied with its review of the Property, or on such other date as may hereafter be mutually agreed upon by the parties hereto. Or, in the instance that THE PROPOSED Zoning change is still pending, Closing shall be pushed to the latter of the Closing date as calculated above or Sixty (60) days after the Zoning is approved.

7.2 **Seller's Deliverables at Closing.** At the Closing Seller shall duly execute, acknowledge and/or deliver:

- (a) A Warranty Deed conveying to Buyer indefeasible fee simple title to the Property free and clear of any lien, encumbrance or exception other than the Permitted Exceptions;
- (b) If required by the Title Company, a Certified Copy of Resolution from Seller, authorizing the sale of the Property to Buyer, and/or a Certificate of Good Standing;
- (c) Intentionally Deleted;
- (d) A Non-Foreign Tax Certification (FIRPTA Affidavit);
- (e) An Affidavit as to Liens and Encumbrances (Owner's Affidavit);
- (f) Seller's Settlement Statement; and
- (g) Any other documents or instruments required to be executed pursuant to the provisions of this Agreement or otherwise reasonably necessary to be executed or delivered for consummation of the transactions contemplated hereby.

7.3 **Buyer's Deliverables at Closing.** Buyer shall deliver or cause to be delivered to the Title Company, for disbursement to Seller:

- (a) Wire transferred or other immediately available certified funds in an amount sufficient to pay the balance of the Purchase Price (after deduction of the Earnest Money paid hereunder and after any applicable credits are taken into account);
- (b) If required by the Title Company, a Certified Copy of Resolution from Buyer, authorizing the acquisition of the Property from Seller, and/or a Certificate of Good Standing;
- (c) Buyer's Settlement Statement; and

(d) Any other documents or instruments required to be executed pursuant to the provisions of this Agreement or otherwise reasonably necessary to be executed or delivered for consummation of the transactions contemplated hereby.

7.4 **Title Company.** The Title Company shall, upon delivery of all of the aforementioned documents and funds, and subject to such further instructions as may be given it by either Seller or Buyer, (i) cause Seller's Warranty Deed to be recorded together with any other instruments of conveyance which have been executed by Seller and have been requested by Buyer to be recorded; (ii) deliver the Purchase Price to Seller; and, if requested by Buyer (iii) issue its Owner's Policy of Title Insurance to Buyer.

## **ARTICLE VIII**

### **TERMINATION AND DEFAULT**

#### **8.1 Permitted Termination.**

(a) **By Buyer.** Buyer may terminate this Agreement: (i) by giving Seller written notice thereof prior to the expiration of the Review Period, if Buyer determines, in its reasonable judgment based on its review of the Review Items, that the purchase of the Property is not feasible for Buyer's intended use; or (ii) by giving Seller written notice thereof prior to the expiration of the Notice Period as provided in Section 3.3 above, if Buyer has properly notified Seller of Buyer's objections to any Review Item Issues prior to the expiration of the Review Period and Seller has failed to cure or elected not to cure all of such objections prior to the expiration of the Cure Period, (iii) in the event of an uncured Seller default, as provided in Section 8.3 below, or (iv) under Section 3.7 above.

(b) **By Seller.** Seller may terminate this Agreement in the event of an uncured Buyer default, as provided in Section 8.2 below.

(c) **Disbursement of Earnest Money upon Permitted Termination.** Except as otherwise provided herein (including, but not limited to, the provisions of Section 3.1), if this Agreement is terminated by either party pursuant to an express right to terminate given hereunder (a "**Permitted Termination**") the Earnest Money deposit, together with all accrued interest, shall immediately be returned to Buyer, and this Agreement shall be null and void and neither party shall thereafter have any further rights or obligations hereunder.

8.2 **Buyer's Default/Seller's Remedies.** Buyer shall be in default hereunder upon the occurrence of any one or more of the following events: (i) any of Buyer's warranties or representations set forth herein are untrue or inaccurate in any material respect, or (ii) Buyer shall fail to meet, comply with or perform any material covenant, agreement or obligation of Buyer hereunder within the time limits and in the manner set forth herein, for any reason other than an uncured default by Seller hereunder or a Permitted Termination by Buyer. In the event Seller fulfills all of its material obligations hereunder and meets all conditions precedent and concurrent to Closing for which it is responsible (or which have not been waived or deemed to have been waived by Buyer as

provided herein) and Buyer is unable, fails or refuses to meet its obligations hereunder and continues to fail and refuse to honor its obligations hereunder for more than ten (10) days after receipt of a written notice from Seller of such default, Seller may terminate this Agreement, in which event it shall receive the Earnest Money deposit and any accrued interest thereon as liquidated damages hereunder, it being agreed between Buyer and Seller that such sum shall be liquidated damages for a default of Buyer hereunder because of the difficulty, inconvenience and uncertainty of ascertaining actual damages for such default or Seller may pursue any and all other remedies at law.

8.3 **Seller's Default/Buyer's Remedies.** Seller shall be in default hereunder upon the occurrence of any one or more of the following events: (i) any of Seller's warranties or representations set forth herein are untrue or inaccurate in any material respect, or (ii) Seller shall fail to meet, comply with or perform any material covenant, agreement or obligation of Seller hereunder within the time limits and in the manner set forth herein, for any reason other than an uncured default by Buyer hereunder or a Permitted Termination by Seller. In the event Buyer fulfills all of its obligations hereunder and meets all conditions precedent and concurrent to Closing for which it is responsible and Seller is unable, fails or refuses to meet its obligations hereunder (except as permitted with respect to Seller's inability or unwillingness to cure any or all of Buyer's objections to Review Item Issues) and continues to fail and refuse to honor its obligations hereunder for more than ten (10) days after its receipt of a written notice from Buyer of such default, Buyer may terminate this Agreement and, in such event, it shall receive a full refund of the Earnest Money deposit(s) and any accrued interest thereon, or pursue any other other available legal or equitable remedy, including but not limited to seeking specific performance, for breach of this Agreement by Seller.

## **ARTICLE IX ADDITIONAL PROVISIONS**

9.1 **Interim Responsibilities of Seller.** Seller agrees that, from and after the date hereof, Seller will not sell or otherwise dispose of all or any portion of the Property or encumber the Property in any material manner without the prior written consent of Buyer.

9.2 **Validity of Agreement.** Each party hereto hereby warrants, represents and agrees that the execution of this Agreement, and any other documents executed and delivered pursuant to the provisions hereof, have been duly authorized by it, that this Agreement is duly executed by it and the obligations herein set forth are its valid and binding obligations enforceable in accordance with their terms. This Agreement shall be construed in accordance with the laws of the State of Oklahoma. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision of this Agreement, or any document executed and delivered pursuant hereto, shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any document executed and delivered pursuant hereto.

9.3 **Amendments.** This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and no representations, inducements,

promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect unless contained in a written amendment. Any amendment to this Agreement shall not be binding upon either of the parties hereto unless such amendment is in writing and executed by the authorized representatives of the parties hereto and made a part hereof.

#### 9.4 **Brokerage Commission.**

(a) Except for a commission to be paid to \_\_\_\_\_ in the amount of **Six percent (6.0%)** of the Purchase Price, which will be paid by Seller on the Closing Date if the purchase and sale contemplated hereunder is closed, Seller represents and warrants that it has not contracted, negotiated or worked with any real estate broker or other person with respect to this transaction and that no real estate broker or other person is entitled to any commission or fee with respect to the sale of the Property or in the negotiation or execution of this Agreement. Seller agrees to indemnify and hold harmless Buyer from any and all claims for payment from any brokerage commission, fee or other payment of money pertaining to the sale of the Property which may be claimed against either Seller or Buyer, or both, arising out of contacts with Seller in connection with this transaction.

(b) Buyer represents and warrants that it has not contracted, negotiated or worked with any other real estate broker or other person with respect to this transaction and that no real estate broker or other person is entitled to any commission or fee with respect to the sale of the Property or in the negotiation or execution of this Agreement. Buyer agrees to indemnify and hold harmless Seller from any and all claims for payment from any brokerage commission, fee or other payment of money pertaining to the sale of the Property which may be claimed against either Seller or Buyer, or both, arising out of contacts with Buyer in connection with this transaction.

9.5 **Notices.** Any notice, demand or other document which either party is required or may desire to give or deliver to, or make upon, the other party shall be in writing, and may be personally delivered, sent by an overnight delivery service (such as Federal Express), sent by facsimile (followed by overnight delivery) or given by registered or certified mail, return receipt requested, postage prepaid, addressed to the parties at their respective addresses set forth below, with copies to be sent to any additional person whose name and address has been supplied by one party to the other. Either party hereto may designate a different address for itself by notice similarly given.

If to Seller:      **City of Hesston**  
                             **115 East Smith**  
                             **Hesston, KS 67062**

If to Buyer: Rupe Helmer Group, LLC  
6846 S. Canton Ave., Suite 250  
Tulsa, Oklahoma 74136  
Attention: Mike Mantle  
Facsimile: (918) 749-5312

Notice shall be deemed served and received two (2) days from the date of mailing (in the case of notices mailed by registered or certified mail) or upon delivery (in the case of notices sent by hand delivery or overnight delivery), or upon delivery with confirmation of receipt (in the case of notices sent by facsimile). A party's failure or refusal to accept service of a notice shall constitute delivery of the notice.

9.6 **Benefits.** This Agreement shall be binding upon and inure to the benefit of the respective parties hereto and their respective successors, transferees and permitted assigns.

9.7 **Effect of Waiver.** In the event any obligation contained in this Agreement should be breached by either party and such breach is thereafter waived by the other party, it is specifically understood and agreed that any such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

9.8 **Assignment.** This Agreement may not be assigned without the prior consent of the other party; provided, however, Buyer may assign its interest hereunder to any other party whomsoever that is an affiliate of Buyer without the prior written consent of Seller.

9.9 **No Joint Venture.** Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture between Seller and Buyer.

9.10 **Counterparts.** This Agreement may be executed in two or more counterparts, that when compiled together shall be deemed as one agreement and shall be effective as an Original regardless of whether such counterpart signature is original, digital, facsimile or a copy.

9.11 **Anti-Terrorism Representation and Warranty.** Seller and Buyer each represent and warranty that neither they nor the officers and directors controlling Seller and Buyer, respectively, are acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity, or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and that they are not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation. Each party agrees to defend, indemnify, and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing representation and warranty.

9.12 **Headings.** Paragraph numbers and headings herein contained are inserted for convenience only and are in no way to be construed as part of this Agreement or as a limitation in the scope of the particular portions of this Agreement to which they refer.

9.13 **Time of the Essence.** **TIME IS OF THE ESSENCE OF THIS AGREEMENT.**

**[ SIGNATURE PAGE TO FOLLOW ]**

**IN WITNESS WHEREOF**, the parties hereof have executed this Agreement as of the day and year first above written.

**SELLER:**

\_\_\_\_\_, **an** \_\_\_\_\_

By: \_\_\_\_\_  
City of Hesston

**BUYER:**

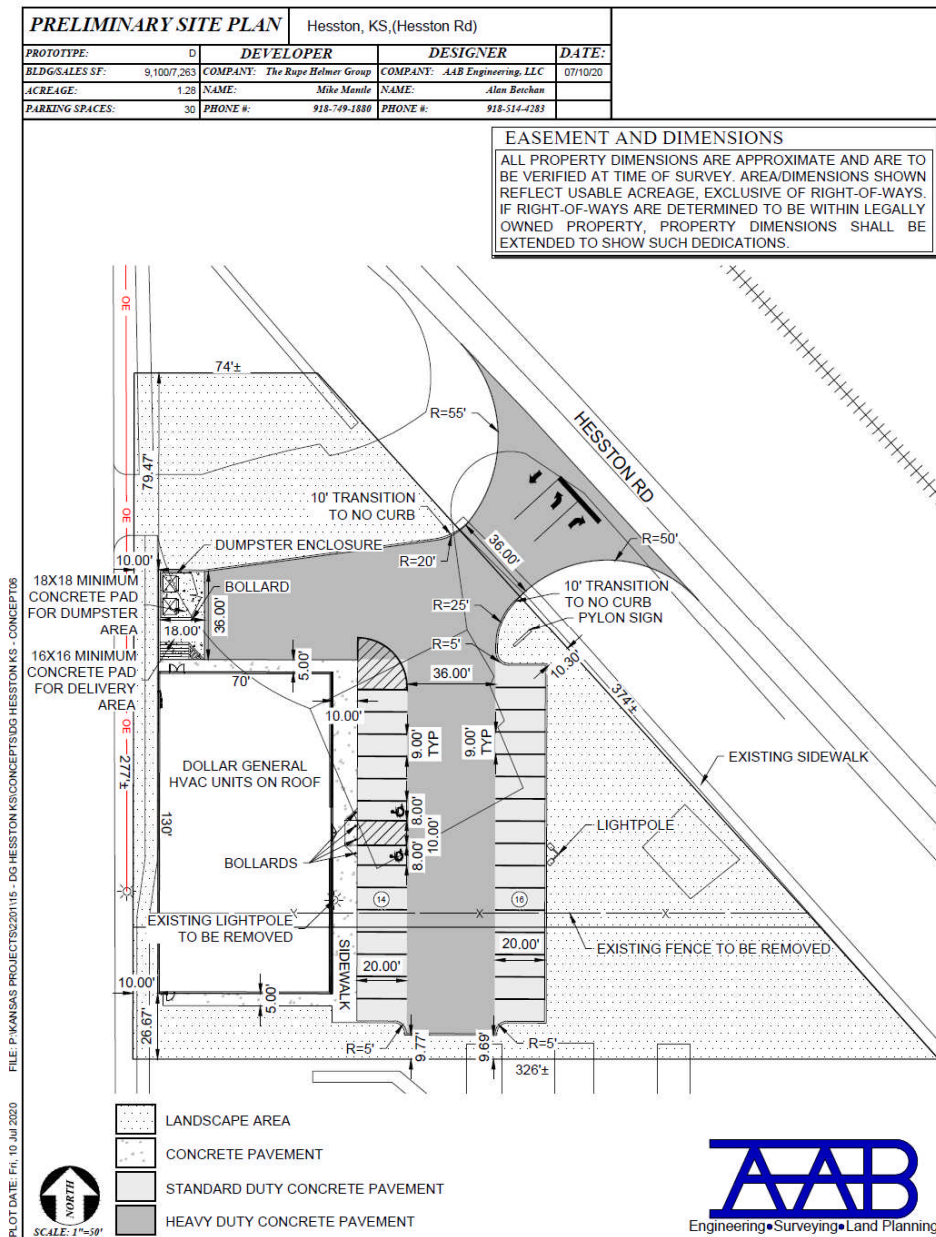
**RUPE HELMER GROUP, LLC,**  
an Oklahoma limited liability company

By: \_\_\_\_\_  
Mike Mantle, Vice President

## EXHIBIT "A"

County Assessor Legal Description for the land located in Hesston, KS . Exact Legal Description to be determined by ALTA Survey.

**LEGAL: RAZOOK ADD #1 TO HESSTON, S15, T22, R01W, BLOCK 1, Lot 1, ACRES 1**



## **EXHIBIT "B"**

### **RESTRICTIONS**

**Restrictions on the remainder of land owned by Seller.** Seller covenants and agrees not to lease, rent, occupied, or allow to the lease, rented or occupied, any part of the remainder of Sellers land located within 1,000 feet of the real property shown on Exhibit "A" for the purpose of conducting business as for use of a Family Dollar Store, Bill's Dollar Store, Fred's, Dollar Tree, Ninety-Nine Cents Only, Deals, Big Lots, Walgreens, CVS, Rite Aid, and any Wal-Mart concept.

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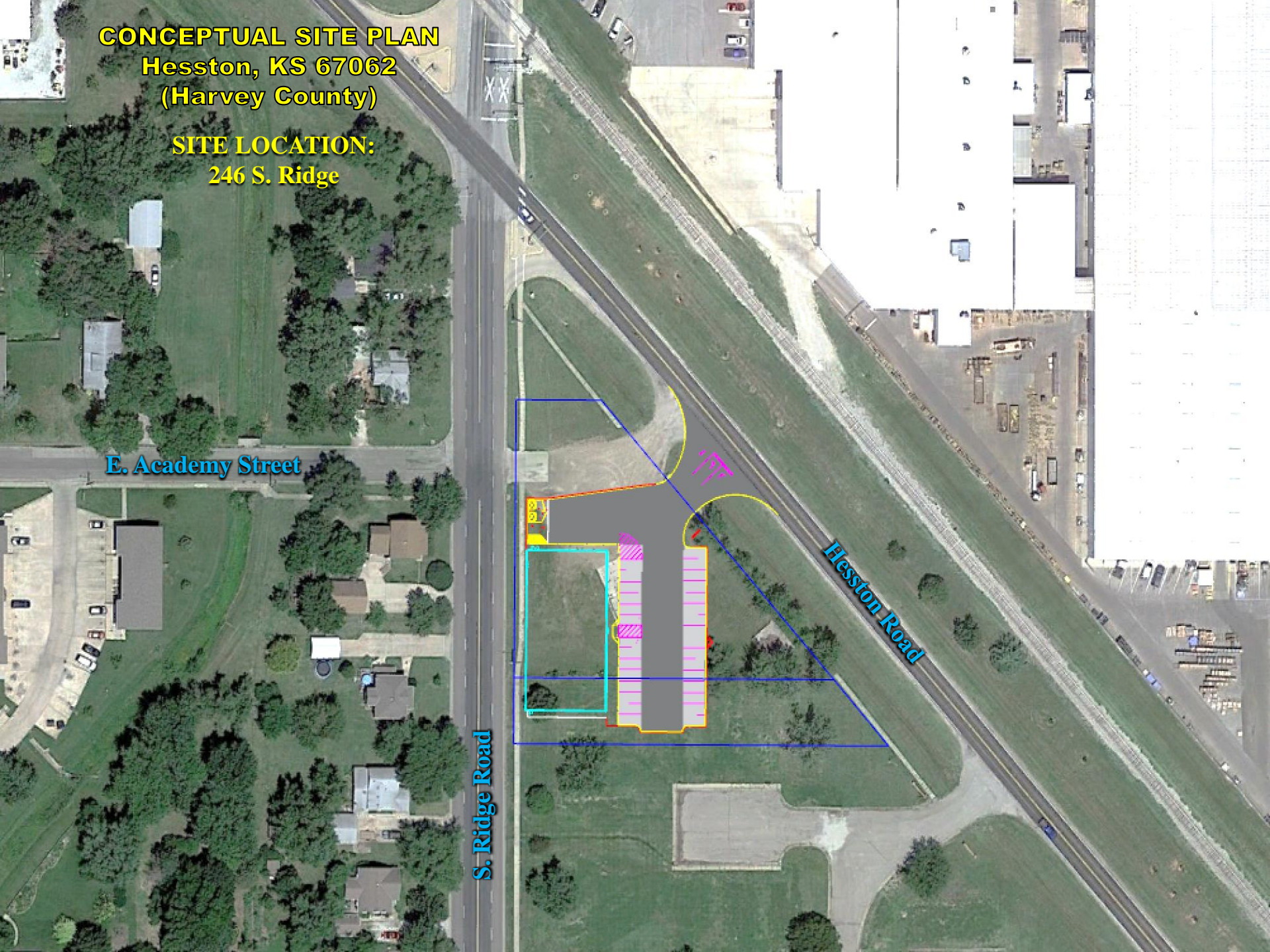
**CONCEPTUAL SITE PLAN**  
**Hesston, KS 67062**  
**(Harvey County)**

**SITE LOCATION:**  
**246 S. Ridge**

**E. Academy Street**

**S. Ridge Road**

**Hesston Road**





**Prototype Building Elevation**

# PRELIMINARY SITE PLAN

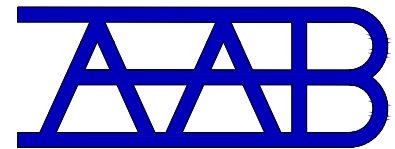
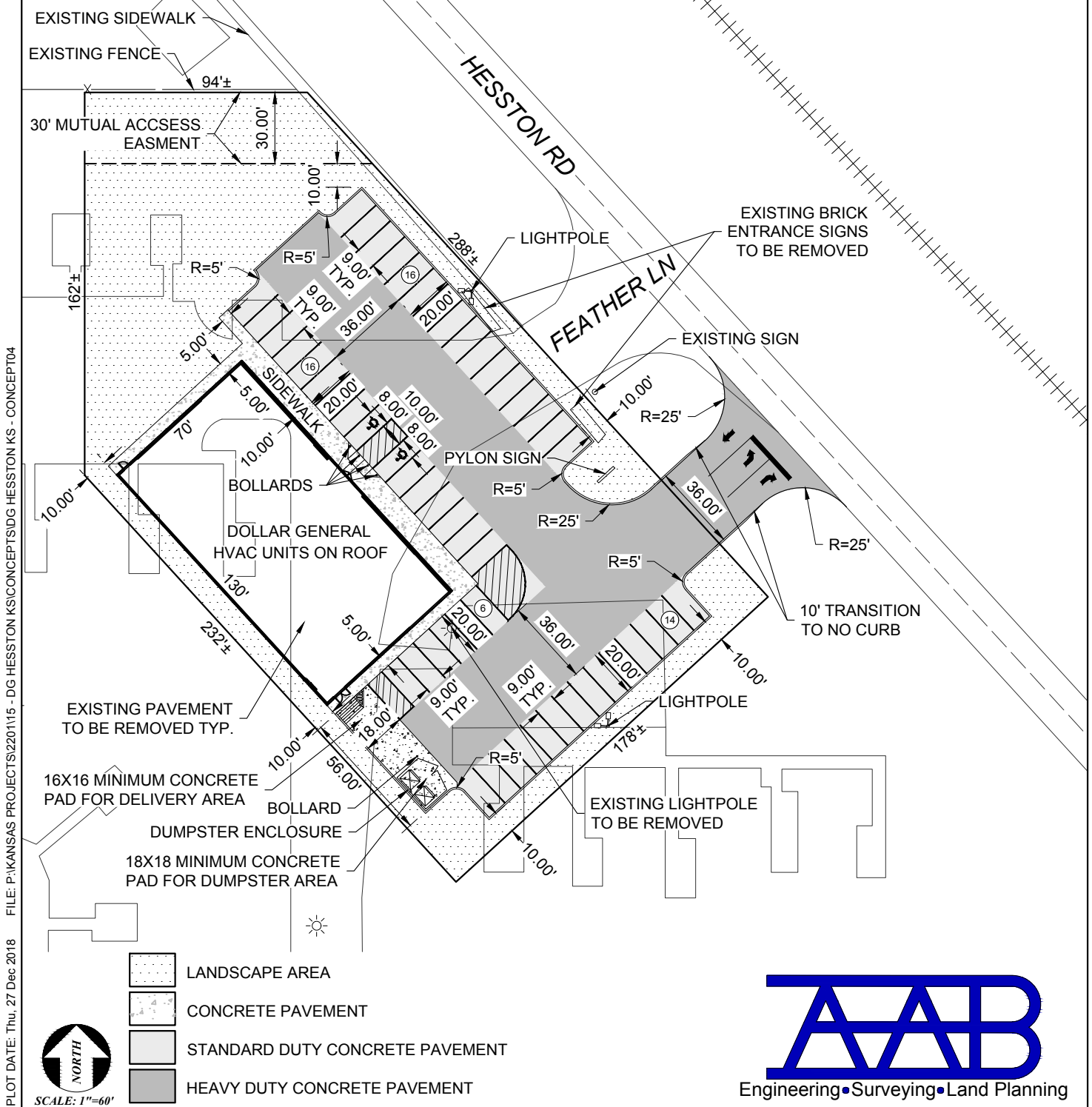
Hesston, KS, (Hesston Rd)

PROTOTYPE:	C	DEVELOPER	DESIGNER	DATE:
BLDG/SALES SF:	9,100 / 7,343	COMPANY: The Rupe Helmer Group	COMPANY: AAB Engineering, LLC	12/27/18
ACREAGE:	1.24	NAME: Mark Helmer	NAME: Alan Betchan	
PARKING SPACES:	52*	PHONE #: 918-749-1880	PHONE #: 918-514-4283	

\* Parking spaces required by Zoning Code.

## EASEMENTS AND DIMENSIONS

ALL PROPERTY DIMENSIONS ARE APPROXIMATE AND ARE TO BE VERIFIED AT TIME OF SURVEY. AREA/DIMENSIONS SHOWN REFLECT USABLE ACREAGE, EXCLUSIVE OF RIGHT-OF-WAYS. IF RIGHT-OF-WAYS ARE DETERMINED TO BE WITHIN LEGALLY OWNED PROPERTY, PROPERTY DIMENSIONS SHALL BE EXTENDED TO SHOW SUCH DEDICATIONS.



Engineering • Surveying • Land Planning



# PRELIMINARY SITE PLAN

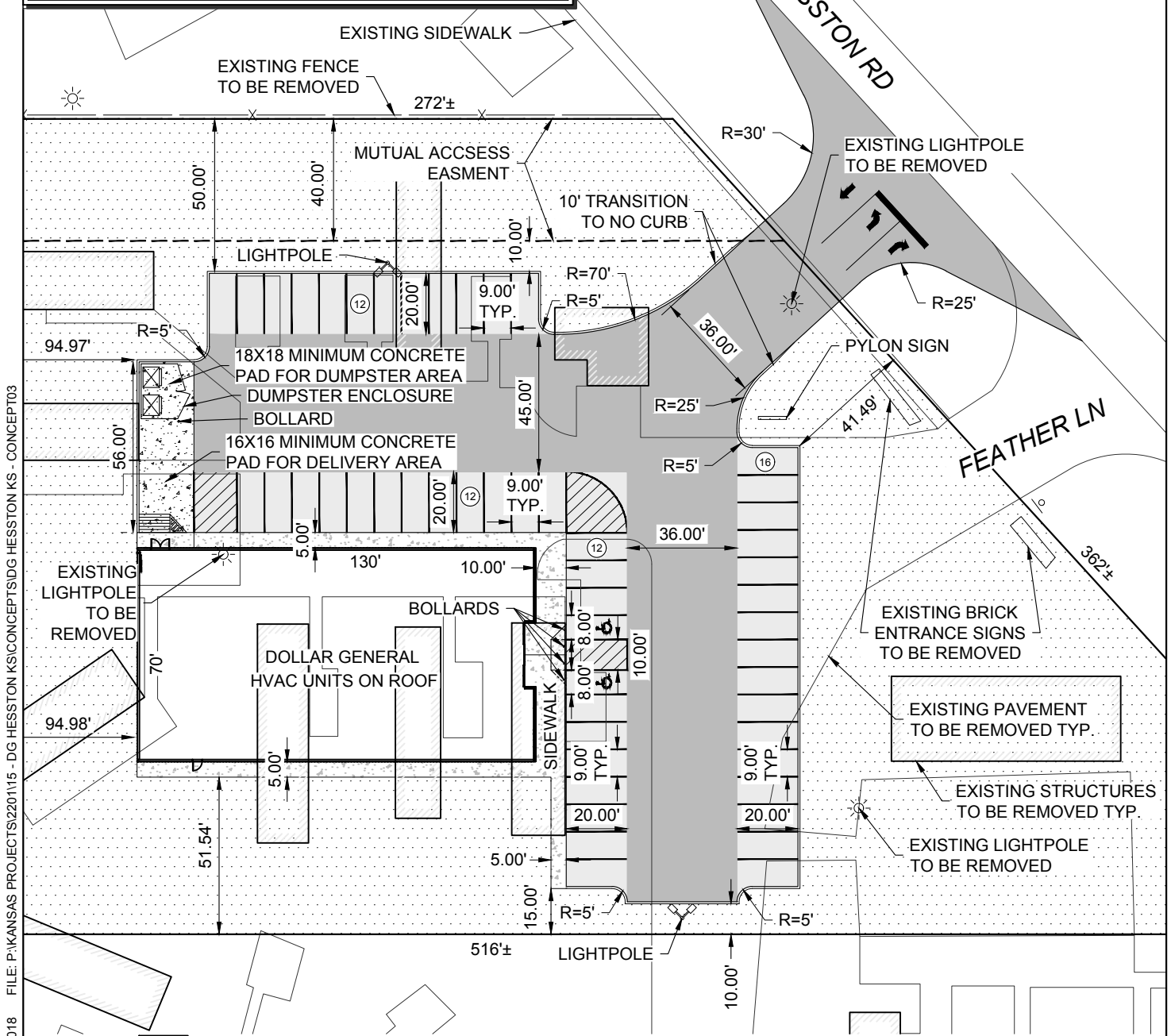
Hesston, KS, (Hesston Rd)

PROTOTYPE:	B	DEVELOPER	DESIGNER	DATE:
BLDG/SALES SF:	9,100 / 7,343	COMPANY: The Rupe Helmer Group	COMPANY: AAB Engineering, LLC	12/19/18
ACREAGE:	2.42	NAME: Mark Helmer	NAME: Alan Betchan	
PARKING SPACES:	52*	PHONE #: 918-749-1880	PHONE #: 918-514-4283	

\* Parking spaces required by Zoning Code.

## EASEMENTS AND DIMENSIONS

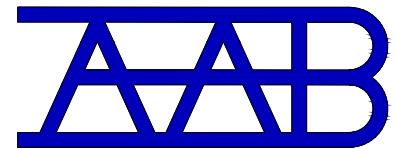
ALL PROPERTY DIMENSIONS ARE APPROXIMATE AND ARE TO BE VERIFIED AT TIME OF SURVEY. AREA/DIMENSIONS SHOWN REFLECT USABLE ACREAGE, EXCLUSIVE OF RIGHT-OF-WAYS. IF RIGHT-OF-WAYS ARE DETERMINED TO BE WITHIN LEGALLY OWNED PROPERTY, PROPERTY DIMENSIONS SHALL BE EXTENDED TO SHOW SUCH DEDICATIONS.



- LANDSCAPE AREA
- CONCRETE PAVEMENT
- STANDARD DUTY CONCRETE PAVEMENT
- HEAVY DUTY CONCRETE PAVEMENT



SHEET 1 OF 2



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**PRELIMINARY SITE PLAN**

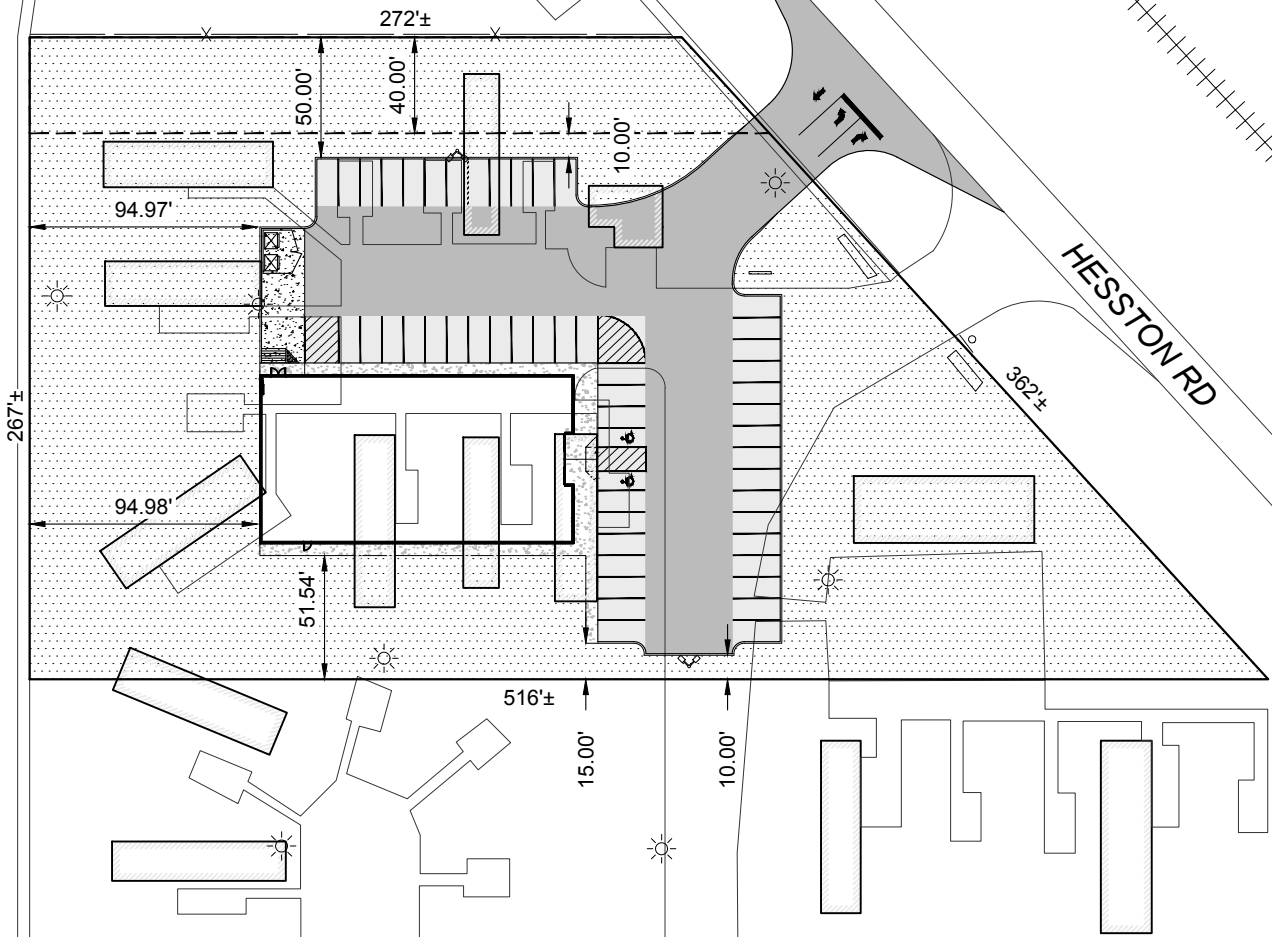
Hesston, KS (Hesston Rd)

PROTOTYPE:	B	DEVELOPER	DESIGNER	DATE:
BLDG/SALES SF:	9,100 / 7,343	COMPANY: The Rupe Helmer Group	COMPANY: AAB Engineering, LLC	12/19/18
ACREAGE:	2.42	NAME: Mark Helmer	NAME: Alan Betchan	
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**S. RIDGE RD****HESSTON RD**

LANDSCAPE AREA



CONCRETE PAVEMENT



STANDARD DUTY CONCRETE PAVEMENT

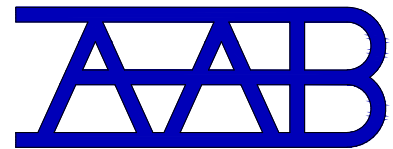


HEAVY DUTY CONCRETE PAVEMENT



SCALE: 1"=80'

SHEET 2 OF 2



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# PRELIMINARY SITE PLAN

Hesston, KS, (Hesston Rd)

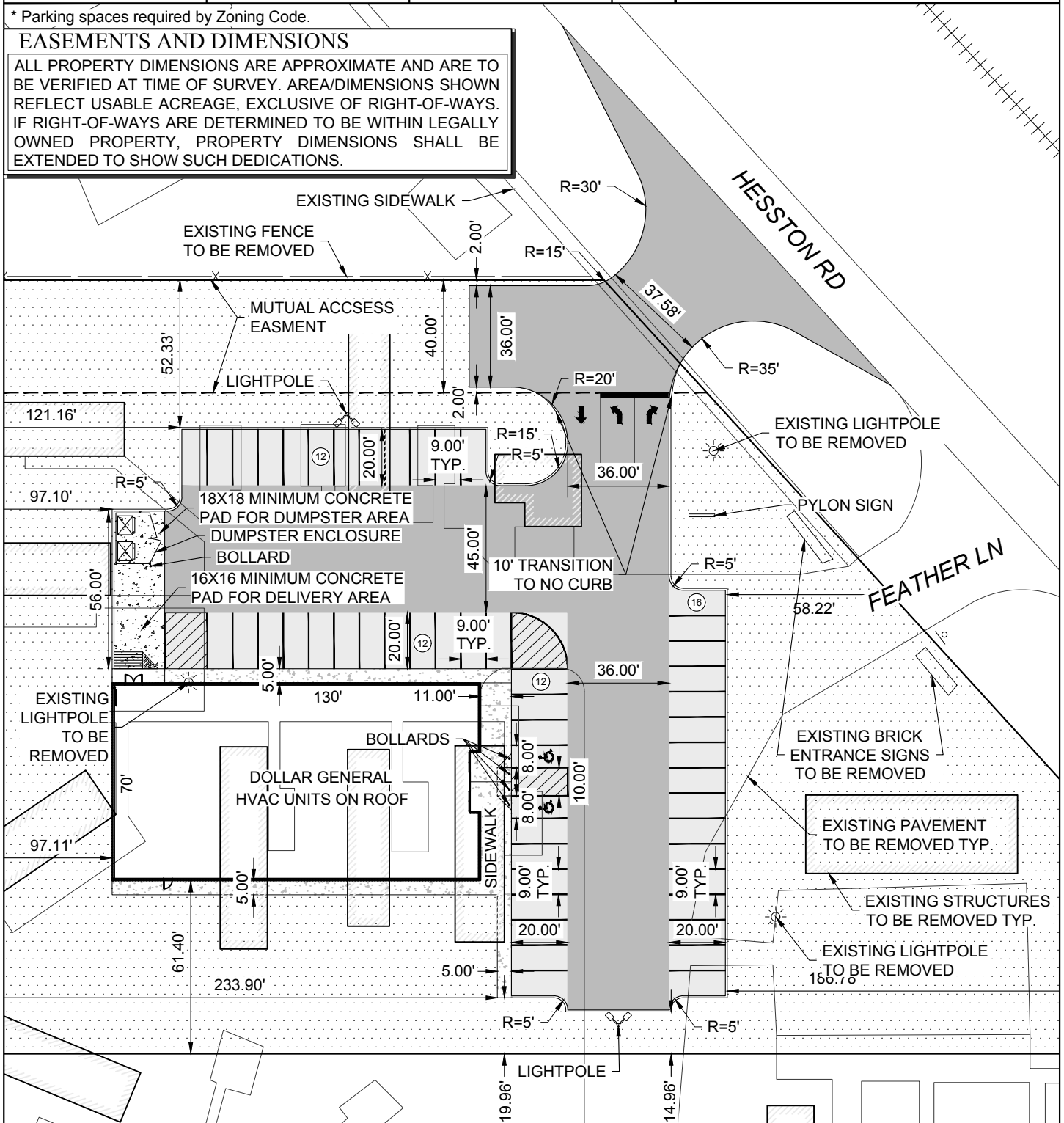
PROTOTYPE:	B	DEVELOPER	DESIGNER	DATE:
BLDG/SALES SF:	9,100 / 7,343	COMPANY: The Rupe Helmer Group	COMPANY: AAB Engineering, LLC	12/12/18
ACREAGE:	2.50	NAME: Mark Helmer	NAME: Alan Betchan	
PARKING SPACES:	52*	PHONE #: 918-749-1880	PHONE #: 918-514-4283	

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## EASEMENTS AND DIMENSIONS

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PLOT DATE: Wed, 12 Dec 2018 FILE: P:\KANSAS PROJECTS\220115 - DG HESSTON KS\CONCEPTS\IDG HESSTON KS - CONCEPT01



- LANDSCAPE AREA
- CONCRETE PAVEMENT
- STANDARD DUTY CONCRETE PAVEMENT
- HEAVY DUTY CONCRETE PAVEMENT



SHEET 1 OF 2

**AAB**  
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**PRELIMINARY SITE PLAN**

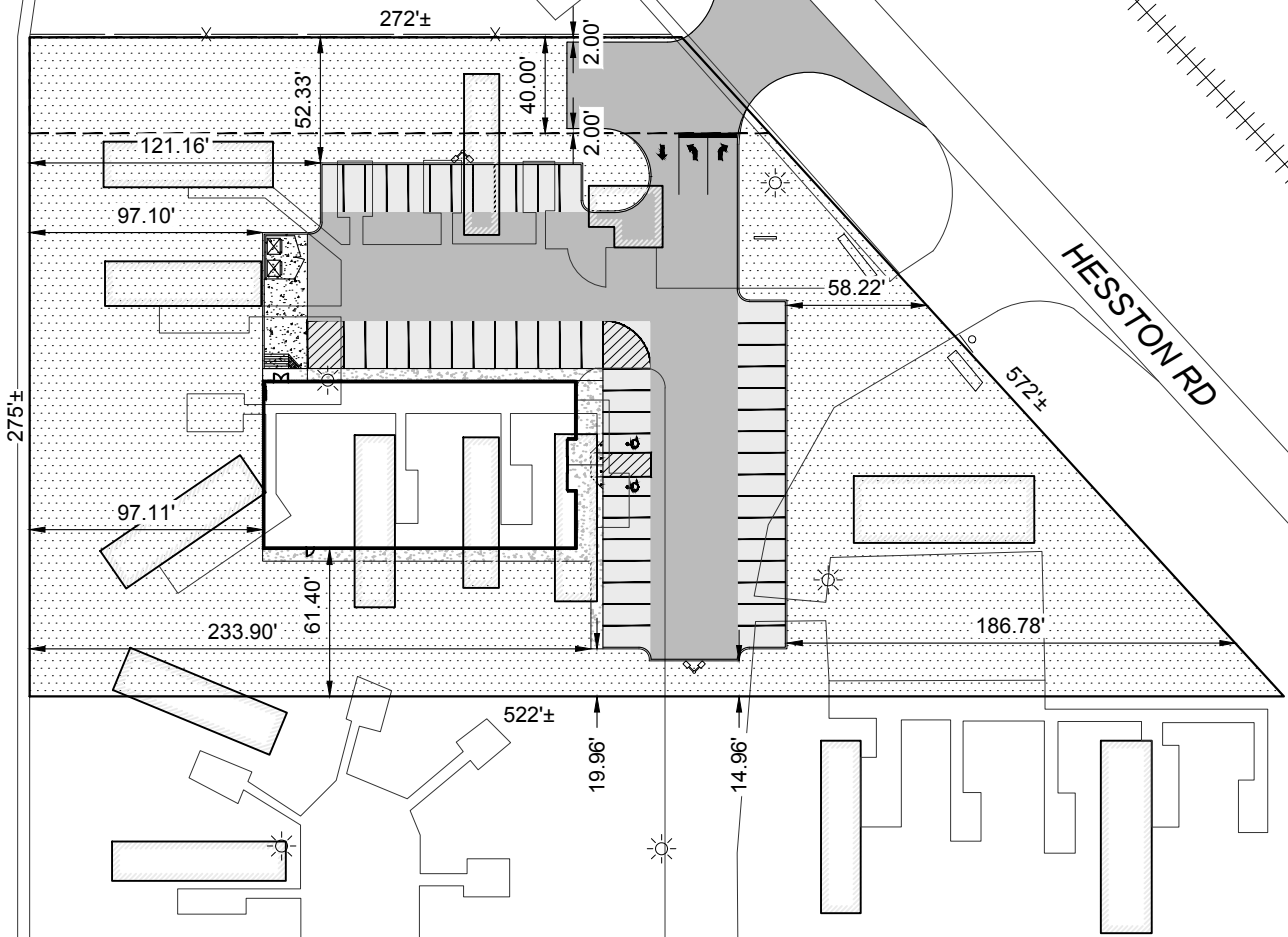
Hesston, KS (Hesston Rd)

PROTOTYPE:	B	DEVELOPER	DESIGNER	DATE:
BLDG/SALES SF:	9,100 / 7,343	COMPANY: The Rupe Helmer Group	COMPANY: AAB Engineering, LLC	12/12/18
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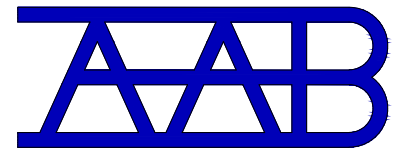
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SHEET 2 OF 2