

Memorandum



Date: December 4, 2025
To: Buchanan City Commission
From: Tony McGhee
Subject: Lease and Potential Sale of North South Area of

Background and Purpose

The portion of the Dewey Street right of way proposed for lease serves primarily as an access drive to Building 324. While it is part of the public right of way, its day-to-day function is more consistent with a private access drive than a public street segment that provides broad public benefit. Leasing the area now, and moving toward a future sale, better aligns ownership and responsibility with how the property is actually used. It also allows Building 324 to advance planned improvements at the site, including additional parking and improved traffic movement, as part of the development of a new event space for the community.

Public Benefit and Rationale

Staff views the lease and eventual sale as a practical and beneficial step for the City for several reasons.

First, it allows the public to remove itself from capital and maintenance costs associated with an area that primarily provides a private benefit. This includes ongoing upkeep and any long term replacement responsibilities that typically come with maintaining a right of way.



Second, it supports private investment that will improve circulation and parking at the property, and supports the planned event space improvements. These improvements will

add activity and bring additional visitors into the downtown area while improving site function and safety.

Third, it is the City's intent to lease the area at no taxable value given its current function as an access drive. That said, this would change if revenue generating investments are made on the subject property, such as leasable building space or other income producing improvements. In that situation, the taxable status and valuation would be evaluated consistent with applicable assessing practices.

In short, this is a win-win situation where the City reduces long term obligations in an area that is not providing meaningful public right of way value, while supporting a project that provides community benefit through reinvestment and improved use of the property.

Lease Terms

Key terms of the proposed lease include the following:

- Term: Three years
- Annual Lease Rate: \$1
- Purpose: Interim step toward eventual sale of the leased right of way area to Building 324
- Easement Requirement: The lease and eventual sale will include granting the City a 10 foot easement for the operation and maintenance of the portion of the McCoys Creek Trail that runs through this area. The easement is intended to be along the westerly side of the existing right of way.
- Taxable Value Intent: The intent is to lease the area at no taxable value given its current use as an access drive. This may change if revenue generating improvements are constructed, such as leasable building space.

Trail Easement Location

The draft lease includes a proposed easement location as a placeholder. The final 10 foot easement location will be negotiated by the City Manager as part of lease execution.

It is important to note that the easement will not follow the exact western edge of the right of way as shown in the placeholder exhibit, since a portion of that area is within the creek itself. The intent is to secure a workable, maintainable trail corridor for the City that supports continued public access and allows the City to operate and maintain the trail segment.

Recommendation

Staff recommends the City Commission approve the proposed three year lease of the identified portion of the Dewey Street public right of way to Building 324 at an annual lease rate of \$1, and authorize the City Manager to sign and execute the lease on behalf of the City, including authority to negotiate the final location of the 10 foot McCoys Creek Trail easement during lease execution.

Attachment A: Proposed Draft Lease

Attachment A



DRAFT

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (“Lease”) is entered into and effective November __, 2025 (“Commencement Date”), by and between the City of Buchanan, a Michigan municipal corporation (“Lessor”), and Building 324, LLC, a Michigan limited liability company (“Lessee”).

1. Leased Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor under the terms and conditions set forth in this Lease that area of land described as the “Proposed Lease Area” located the City of Buchanan as more particularly described in Exhibit A attached to this Lease and made a part hereof (“Leased Premises”), except that portion of land running along the southwesterly boundary of the Leased Premises as more particularly described as the “Non-Motorized Path Easement” (“Path”) in Exhibit A attached to this Lease and made a part hereof. Lessee’s Use, as defined in this Lease, shall at no time in any manner block, occupy, use, intrude upon, encroach upon or obstruct the Path.

Lessee’s occupancy and use of the Leased Premises shall at all times be subject to such ingress, egress, underground utilities, and any other purposes for which there are easements of record or as required by City Ordinances.

2. Survey and City Easement. The City shall incur all survey costs and fees necessary for entering into and recording this Lease.

3. Cooperation. Lessor agrees to cooperate with Lessee in obtaining, at Lessee’s expense, all licenses and permits required for Lessee’s use of the Leased Premises (“Governmental Approval(s)”).

4. Use. The Leased Premises may be used by Lessee for the non-permanent construction, use, and operation of an access drive, motor vehicle parking area, and outdoor space (“Use”) that comply with all City of Buchanan general and zoning ordinances and approval requirements and conditions. Notwithstanding anything contained herein, Lessor does not waive any City of Buchanan zoning or other ordinance approvals required for the Use and this Lease shall not be construed as representing any determination on Lessee’s entitlement to such approvals.

5. Initial Term. The initial term of this Lease shall be three (3) years commencing on the Commencement Date and terminating the day before the third (3rd) anniversary of the Commencement Date (“Initial Term”). The parties agree that the City may at any time at its discretion and expense record this Lease with the Register of Deeds.

6. Renewal Terms/Option to Purchase. Provided it is not in default of any provision of this Lease, Lessee may seek an extension of the Initial Term of this Lease for one (1) additional three (3) year term (“Renewal Term”), subject to the City’s sole discretion and only as permitted by the City Charter and Ordinances. The Renewal Term shall be on the same terms and conditions as set forth in this Lease. The Initial Term and

DRAFT

Renewal Term shall collectively be referred to herein as the “Term.” In the alternative, at the end of the Term, Lessee may opt to offer to purchase the Leased Premises at fair market value, which offer shall be subject to all procedures for the proposed sale of City real property under the City Charter, City Ordinance and state law.

7. Rent. Beginning on the Commencement Date, during the Initial Term of this Lease, Lessee shall pay to Lessor an annual rental amount of One and 00/100 Dollars (\$1.00) (“Rent”). Rent shall be payable in advance, with subsequent payments to be made on or before each anniversary of the Commencement Date thereafter. Payments shall be remitted to the address shown for Lessor in this Lease, or such other address as Lessor may direct by written notice to Lessee. A payment of Rent received by Lessor more than fifteen (15) days after it is due shall include an administrative late charge equal to five (5%) of the required payment.

8. Conditions Subsequent. In the event that Lessee’s Use of the Leased Premises is legally prohibited through no fault of Lessee, then upon the expiration of sixty (60) days from Lessee’s written notice to Lessor of that prohibition and documentation of same, this Lease shall terminate and be of no further force or effect.

9. Improvements; Utilities, Access and Other Easements.

(a) Lessee shall have the right at Lessee’s sole cost and expense, to erect and maintain on the Leased Premises non-permanent improvements, personal property and facilities consistent with the Use allowed by Paragraph 4 and the any site plan approved under the City of Buchanan Zoning Ordinance and regulatory approval process. Lessee shall, upon expiration of the Term, or within ninety (90) calendar days after any earlier termination of the Lease remove all footings, structures, equipment, conduits, fixtures, improvements and all personal property placed in or on the Leased Premises and restore the Leased Premises to the original, pre-Rent Commencement Date condition. Lessor may waive the removal requirement for one or more installations or parts thereof by written notice to Lessee. At Lessor’s option, any property of the Lessee that remains on the Leased Premises after ninety (90) days following the expiration or earlier termination of this Lease, may be deemed abandoned by the Lessee and shall thereafter be owned by the Lessor without further consent of the Lessee and without any reimbursement of payment to Lessee.

(b) Lessee shall have the right to install utilities, at Lessee’s expense, and to improve present utilities on the Leased Premises. Lessee shall have the right to place utilities on (or to bring utilities across or under) any easement, without disturbing any existing easement uses, to service the Leased Premises. Lessee shall have access to the Leased Premises twenty-four (24) hours per day, seven (7) days per week.

10. Termination. Except as otherwise provided herein, this Lease may be terminated upon written notice as follows:

(a) By either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) calendar days of receipt of written notice of default (without however, limiting any other rights available to the parties pursuant to any other provisions of this Lease); provided, that if the defaulting party commences efforts to cure the default within such period and diligently pursues curing of the default to completion within a reasonable time period agreed to by the non-defaulting party, the nondefaulting party shall no longer be entitled to terminate this Lease based on that default. No written notice of default shall be required and no right to cure shall apply to Lessee’s duties or obligations under Paragraphs 1, 4 and/or 13 of this Lease;

DRAFT

(b) Upon sixty (60) calendar days written notice by Lessee to Lessor, if Lessee is unable to obtain or maintain through no fault of Lessee, any license, permit or other Governmental Approval necessary for the Use; or

(c) By Lessee for any reason upon one (1) year's advance written notice from Lessee to Lessor and payment of liquidated damages by Lessee to Lessor in the amount of the next annual Rent payment.

11. Taxes. Lessee shall pay any personal property taxes assessed on, or any portion of such taxes attributable to the Leased Premises and Use. Lessee shall also be responsible for paying its portion of all real estate taxes, special assessments, or similar taxes attributable to the Leased Premises. Nothing in this Section shall be construed as limiting Lessee's right to contest, appeal or challenge such taxes or assessments.

12. Condemnation. If a condemning authority takes all of the Leased Premises, or a portion sufficient to prevent the Use, this Lease shall terminate as of the date the title vests in the condemning authority. Lessee shall be entitled to file its own claims against the condemning authority for the value of its moving expenses, prepaid rent and business dislocation expenses. A sale of all or part of the Leased Premises to a purchaser with the power of eminent domain, in the face of the exercise of eminent domain power, shall be treated as taking by condemnation for the purpose of this paragraph.

13. Insurance. Lessee shall purchase and maintain in full force and effect throughout the Term, commercial general liability insurance with limits of liability of at least Two Million Dollars (\$2,000,000.00) in respect of bodily injury, including death, arising from any one occurrence and Two Million Dollars (\$2,000,000.00) in respect to damage to property arising from any one occurrence. Lessee shall provide a blanket additional insured endorsements to Lessor. Lessor, including its elected and appointed officers, employees and agents, shall be covered and listed additional named insureds by means of insurance policy endorsements or certificates on all of Lessee's liability insurance policies, including all liquor liability policies. If Lessee fails to provide written notice to Lessor of any cancellation of insurance coverage at least thirty (30) calendar days of the effective date of cancellation Lessor may in its sole discretion immediately terminate this Lease without prior notice or opportunity to cure and Lessee shall immediately discontinue the Use. Lessee shall furnish to Lessor certificates of insurance and or endorsements confirming the insurance coverages required throughout the term of this Lease identifying Lessor, including its elected and appointed officers, employees and agents, as additional insured. Lessee's failure, refusal, or inability to maintain the insurance coverages required under this Lease or provide the required endorsements or certificates of insurance coverage shall constitute a material breach of this Lease and the City may at its sole discretion terminate this Lease immediately without prior notice or opportunity to cure and Lessee shall immediately discontinue the Use. At Lessor's sole option, should Lessee fail to maintain all required insurance on the premises, Lessee is authorized to either pay the premium on Lessor's policies, or obtain any required policy. Lessee shall then reimburse Lessor all premiums actually paid by Lessor for the required insurance coverages, which Lessee shall pay as additional rent which is due and owing within thirty (30) days of written notice of Lessor's payment of the same with a copy of the paid invoice. Should Lessee fail or refuse to maintain the insurance coverages required under this Paragraph 13 or fail or refuse to make payment to Lessor within thirty (30) days of the written notice, Lessor may issue a 7-day demand for possession for nonpayment of rent and seek an eviction thereafter if not paid. At Lessor's sole discretion, regardless of Lessor's decision to obtain or pay for insurance following Lessee's failure to maintain the same, such shall be considered a material breach of the Lease that will permit Lessor, at Lessor's sole option to alternatively issue a 30-day notice to quit and to thereafter seek termination of the tenancy.

DRAFT

14. Lessee's Environmental Covenants and Indemnity. As used in this Lease, the term "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste which is, or becomes designated as such in the future or is regulated by any agency of the United States Government or by any local governmental authority having jurisdiction, including, without limitation, any substance, material or waste that is defined or designated as a hazardous substance pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act or the Clean Water Act. During the Term of this Lease, Lessee shall cause the presence, use, storage and/or disposal of any Hazardous Material, on or under the Leased Premises by Lessee, its agents, employees, business invitees, contractors or sublessees to be in compliance with all applicable laws, rules, regulations and orders. Lessee shall not install or permit the installation of any underground storage tanks on the Leased Premises. Lessee shall defend, indemnify, protect and hold Lessor harmless from and against all claims, costs, fines, judgments and liabilities, including, without limitation, reasonable attorney's fees and costs, arising out of or in connection with the presence, storage, use or disposal of Hazardous Materials on or under the Leased Premises to the extent caused by the acts, omissions or negligence of Lessee, its employees, business invitees, contractors or sublessees. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

15. Notices. All notices required or permitted under this Lease shall be in writing and shall be deemed received or effective upon personal delivery, or three (3) business days after being deposited in the U.S. Mail, registered or certified, and postage prepaid, or one (1) business day after being deposited with a recognized overnight delivery service. Such notices shall be addressed to the applicable party at its address shown below, or at such other address or addresses as either party shall designate to the other in writing in accordance with this paragraph:

As to Lessor: City of Buchanan
Attn: City Manager
302 N. Red Bud Trail,
Buchanan, Michigan 49107

With a copy to: City of Buchanan
Attn: City Clerk
302 N. Red Bud Trail,
Buchanan, Michigan 49107

As to Lessee: Building 324, LLC
325 E. Front Street, Suite 118,
Buchanan, Michigan 49107
Attention: _____

16. Title. Lessor warrants and represents that: (i) it has the full right, power, and authority to execute this Lease; and (ii) it has good and marketable title to the Leased Premises subject to all easement(s) of record.

17. Assignment, Sublease, Insolvency. Lessee shall not, without the prior written consent of Lessor, lease or sublease, mortgage or grant a security interest in the Leased Premises or make a conditional assignment of this Lease to any such mortgagees or holders of security interests, including their successors and assigns (hereinafter, collectively referred to as "Secured Parties"). It shall be a default by Lessee under this Lease entitling Lessor to immediately terminate this Lease if Lessee makes an assignment for the benefit of creditors, or files a voluntary petition under any state or federal bankruptcy or insolvency law, or an involuntary petition alleging an act of bankruptcy or insolvency is filed against Lessee under any state or federal bankruptcy or insolvency law that is not dismissed within 90 days, or whenever a petition is filed by or against (to the extent not dismissed within 90 days) Lessee under the reorganization provisions of the

DRAFT

United States Bankruptcy Code or under the provisions of any state or federal law of like import, or whenever a petition shall be filed by Lessee under any provisions of the United States Bankruptcy Code or similar state or federal law, or whenever a receiver of Lessee, or of, or for, the property of Lessee shall be appointed, or Lessee admits it is insolvent or is not able to pay its debts as they mature.

18. Successors and Assigns. Subject to Paragraph 17, this Lease shall run with the Leased Premises described on Exhibit "A-1" and shall be binding upon and inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns.

19. Waiver of Incidental and Consequential Damages. Neither party will assert any claim whatsoever against the other party for loss of anticipatory profits or any other indirect, special, incidental or consequential damages incurred as a result of the construction, maintenance, operation or use of the Leased Premises Lessee or otherwise arising from or relating to any provisions of or breach this Lease.

20. Self Help. Except as otherwise stated in this Lease and without limiting any rights to terminate this Lease, in case of a breach of any covenant or term hereof by either party, the other party may, in its sole discretion, elect to remedy the breach, which remedy shall not operate or be construed as a waiver of the rights herein to recover the cost of such remedy from the defaulting party by setoff or otherwise, and the defaulting party shall be responsible for any and all costs, expenses, reasonable attorney fees and litigation expenses as may be incurred by the non-defaulting party in performing the defaulting party's obligations hereunder.

21. Miscellaneous.

(a) Each party agrees to furnish to the other, within thirty (30) days after request, such truthful estoppel information as the other may reasonably request.

(b) This Lease constitutes the entire agreement and understanding of Lessor and Lessee with respect to the subject matter of this Lease, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be dated, in writing, and executed by Lessor and Lessee.

(c) If either Lessor or Lessee is represented by a broker in this transaction, that party shall be fully responsible for any fees due such broker and shall hold the other party harmless from any claims for commission by such broker.

(d) This Lease shall be construed in accordance with the laws of the State of Michigan.

(e) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

(f) Lessor shall cooperate with Lessee in executing any documents necessary to protect Lessee's rights under this Lease or Lessee's use of the Leased Premises and in taking such action as Lessee may reasonably require to effect the terms and conditions of this Lease.

(g) This Lease may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties, it being understood that all parties need not sign the same counterpart. The parties agree that a scanned or electronically reproduced copy or image of this Lease shall be deemed an original.

DRAFT

(h) The provisions of this Lease that by their nature are intended to survive its expiration or termination, including but not limited to Paragraphs 1, 9, 11, 14, 17, 20 and 21 will survive the expiration or termination of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first written above.

WITNESS:

Print Name

LESSOR, CITY OF BUCHANAN:

By: _____

Print Name

Title: _____

WITNESS:

Print Name

LESSEE, BUILDING 324, LLC

By: _____

Print Name

Title: _____

EXHIBIT "A"

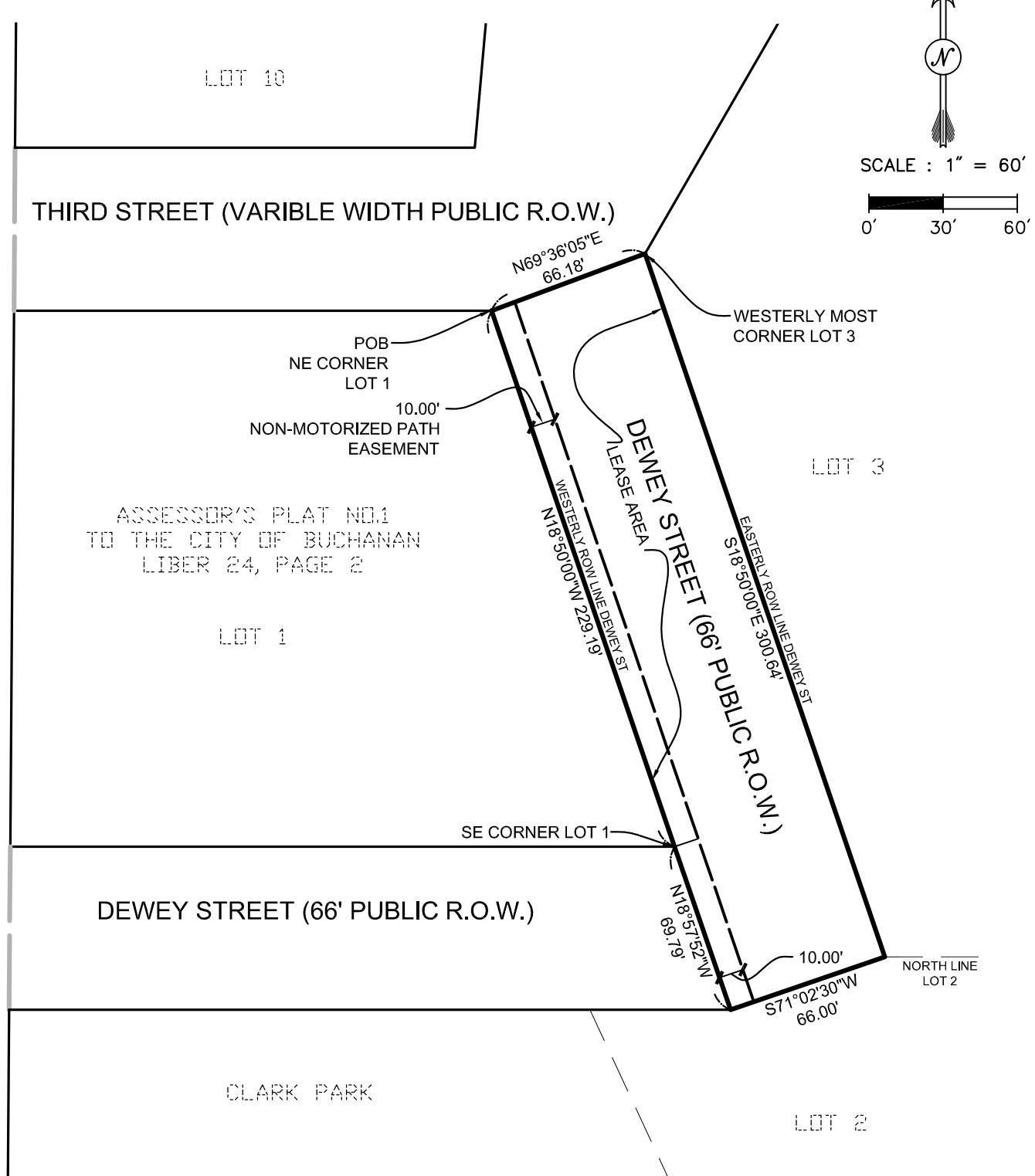


EXHIBIT "A"

Proposed Lease Area:

An area of Land Located in Section 25, T. 7 S., R. 18 W., City of Buchanan, Berrien County, Michigan, being more particularly described as:

Beginning at the Northeast corner of Lot 1, Assessor's Plat No. 1 To The City of Buchanan, as Recorded in Liber 24 of Plats on Page 2, Berrien County Records; thence North 69°-36'-05" East, 66.18 feet to the Westerly most corner of Lot 3 of said Plat and the Easterly right-of-way line of Dewey St.; thence South 18°-50'-00" East thereon, 300.64 feet to the Northerly line of Lot 2 of said Plat and the Southerly right-of-way line of Dewey St.; thence South 71°-02'-30" West thereon, 66.00 feet; thence North 18°-57'-52" West, 69.79 feet to the Southeast corner of Lot 1 of said Plat and the Westerly right-of-way line of Dewey St.; thence North 18°-50'-00" West thereon, 229.19 feet to the Northeast corner of Lot 1 of said Plat and the place of beginning. Containing 19,829 sq. ft., more or less

10.00 foot Non-Motorized Path Easement:

The Westerly 10.00 feet of the following described parcel: Beginning at the Northeast corner of Lot 1, Assessor's Plat No. 1 To The City of Buchanan, as Recorded in Liber 24 of Plats on Page 2, Berrien County Records; thence North 69°-36'-05" East, 66.18 feet to the Westerly most corner of Lot 3 of said Plat and the Easterly right-of-way line of Dewey St.; thence South 18°-50'-00" East thereon, 300.64 feet to the Northerly line of Lot 2 of said Plat and the Southerly right-of-way line of Dewey St.; thence South 71°-02'-30" West, 66.00 feet; thence North 18°-57'-52" West, 69.79 feet to the Southeast corner of Lot 1 of said Plat and the Westerly right-of-way line of Dewey St.; thence North 18°-50'-00" West thereon, 229.19 feet to the Northeast corner of Lot 1 of said Plat and the place of beginning. Containing 2991 sq. ft., more or less

Prein&Newhof
Engineers • Surveyors • Environmental • Laboratory

1707 South Park St. Suite 200 t. (269) 372-1158
Kalamazoo, MI 49001 f. (616) 364-6955
www.preinnewhof.com info@preinnewhof.com

LOCATED IN : SECTION 25
TOWN 7 SOUTH, RANGE 18 WEST
CITY OF BUCHANAN,
BERRIEN COUNTY, MICHIGAN

Date : 9/25/2025 PAGE
Project No. 2190800 2 OF 2