



IN CITY COUNCIL

Marlborough, Mass., DECEMBER 20, 2021

ORDERED:

That the Application for Special Permit from J & D Landscape Contractors, to construct and operate both a contractor's yard and landscape contractor's yard at the Airport Industrial Park, 101 Airport Boulevard, Unit 12, is carried over to the 2022/2023 Legislative Session, be and is herewith **APPROVED**.

(IN URBAN AFFAIRS COMMITTEE)

ADOPTED

ORDER NO. 21-1008441C

MIRICK O'CONNELL

A T T O R N E Y S A T L A W

Brian R. Falk
Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477
bfalk@mirickoconnell.com
t 508.929.1678
f 508.983.6256

December 15, 2021

VIA EMAIL

Councilor Michael Ossing, President
Marlborough City Council
City Hall
Marlborough, MA 01752

Re: J&D Landscape Contractors; 101 Airport Boulevard;
Special Permit Application for a Contractor's Yard

Dear Councilor Ossing:

On behalf of J&D Landscape Contractors, I respectfully request that the City Council take action to carry over to the Council's 2022 – 2023 session its consideration of J&D Landscape's special permit application for 101 Airport Boulevard (Order No. #21-1008441).

Following a public hearing before the Council on December 6, 2021, we filed a draft decision and await comments from the Site Plan Review Committee. We expect to appear before the Council's Urban Affairs Committee in early 2022 seeking a recommendation to the full Council.

Thank you for your time and attention to this matter. Best wishes this holiday season and Happy New Year.

Sincerely,



Brian R. Falk

BRF/

cc: Client



IN CITY COUNCIL

Marlborough, Mass., NOVEMBER 8, 2021

ORDERED:

That there being no objection thereto set **MONDAY, DECEMBER 6, 2021** as **DATE FOR PUBLIC HEARING**, on the Application for Special Permit from Attorney Brian Falk, on behalf of J & D Landscape Contractors, to construct and operate both a contractor's yard and landscape contractor's yard at the Airport Industrial Park, 101 Airport Boulevard, Unit 12, be and is herewith referred to **URBAN AFFAIRS COMMITTEE & ADVERTISE**.

Ninety days after public hearing is 03/06/22 which falls on a Sunday, therefore 03/07/22 would be considered the 90th day.

ADOPTED

ORDER NO. 21-1008441

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2021 NOV -4 A 9:34

Brian R. Falk
Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477
bfalk@mirickoconnell.com
t 508.929.1678
f 508.983.6256

November 3, 2021

VIA HAND DELIVERY

Councilor Michael Ossing, President
Marlborough City Council
City Hall
Marlborough, MA 01752

Re: J&D Landscape Contractors; 101 Airport Boulevard;
Special Permit Application for a Contractor's Yard

Dear Councilor Ossing:

On behalf of J&D Landscape Contractors, I respectfully submit the enclosed application for a special permit to construct and operate a contractor's yard / landscape contractor's yard at the Airport Industrial Park, 101 Airport Boulevard (Unit 12).

In addition to a special permit, the project will require an amendment to the Airport Industrial Park's Site Plan Approval from the Site Plan Committee.

Thank you for your time and attention to this matter.

Very truly yours,



Brian R. Falk

BRF/

Encl.

cc: Client


CITY OF MARLBOROUGH
OFFICE OF THE CITY CLERK

APPLICATION TO CITY COUNCIL FOR ISSUANCE OF SPECIAL PERMIT

1. Name and address of Petitioner or Applicant:
J&D Land Holdings LLC (J&D Landscape Contractors) 804 Boston Post Road, Sudbury, MA 01776
2. Specific Location of property including Assessor's Plate and Parcel Number.
101 Airport Boulevard (Unit 12); Map 73, Parcel 52
3. Name and address of owner of land if other than Petitioner or Applicant:
Marlborough Industrial LLC 259 Turnpike Road, Suite 100, Southborough, MA 01772
4. Legal interest of Petitioner or Applicant (owner, lessee, prospective owner, etc.)
5. Specific Zoning Ordinance under which the Special Permit is sought:
Article 650-17, 650-18(48) Section _____ Paragraph _____ Sub-paragraph _____
6. Zoning District in which property in question is located:
Limited Industrial
7. Specific reason(s) for seeking Special Permit
The Applicant seeks to operate a contractor's yard / landscape contractor's yard at 101 Airport Boulevard.

8. List of names and addresses of abutter. SEPARATE SHEET ATTACHED

PETITION IS HEREBY MADE FOR THE ISSUANCE OF A SPECIAL PERMIT BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH AND IS BASED ON THE WITHIN PETITION OR APPLICATION AS FILED HEREWITH AND MADE PART OF SAID PETITION.



Signature of Petitioner or Applicant
Brian Falk, Attorney for the Applicant
Address: Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477
Telephone No. 508.929.1678

Date: 11/1/2021

LIST OF NAMES AND ADDRESS OF ABUTTERS
AS REQUESTED ON THE APPLICATION FOR SPECIAL PERMIT OF:

J&D Landscape Contractors

(Name of Petitioner)

FOR THE ISSUANCE OF SPECIAL PERMIT BY THE CITY COUNCIL OF THE CITY OF
MARLBOROUGH UNDER CHAPTER 650, ZONING, OF THE CODE OF THE CITY OF
MARLBOROUGH.

(Abutters as defined in §650-59, Section 4H, Powers and Procedure of Special-Permit Granting
Authorities

SPECIAL PERMIT-SUMMARY IMPACT STATEMENT

Applicant's Name: J&D Land Holdings LLC Address: 804 Boston Post Road, Sudbury, MA

Project Name: J&D Landscape Contractors Address: 101 Airport Boulevard

1. PROPOSED USE: (describe) Contractor's Yard / Landscape Contractor's Yard

2. EXPANSION OR NEW: New

3. SIZE: floor area sq. ft. 6,000 s.f. 1st floor 6,000 s.f. all floors 6,000 s.f.
buildings 1 # stories 1 lot area (s.f.) 818,282 sq. ft. (entire site)

4. LOT COVERAGE: 58.5 %Landscaped area: 41.5 %

5. POPULATION ON SITE: Number of people expected on site at anytime:
Normal: 12 Peak period: 15

6. TRAFFIC:

(A) Number of vehicles parked on site:

During regular hours: 12 Peak period: 12

(B) How many service vehicles will service the development and on what schedule?

Deliveries of materials as needed.

7. LIGHT: How will the development be lit at the exterior? How much light will leave the property and enter the abutting property? Downward facing lighting.

8. NOISE:

(A) Compare the noise levels of the proposed development to those that exist in the area now.

Same.

(B) Describe any major sources of noise generation in the proposed development and include their usual times of operation. Loading and unloading of vehicles.

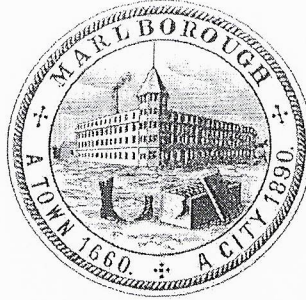
9. AIR: What sources of potential air pollution will exist at the development? _____

Vehicle exhaust.

10. WATER AND SEWER: Describe any unusual generation of waste. None.

11. HAZARDOUS MATERIAL: List any types of Hazardous Waste that will be on-site. How will this waste be stored? Where? How much will be in storage on a daily basis? How will it be disposed? None.

***Attach additional sheets if necessary**



CITY OF MARLBOROUGH
MARLBOROUGH, MASSACHUSETTS 01752

City Hall
140 Main St.

Marlborough, Massachusetts 01752

Voice (508) 460-3775 Facsimile (508) 460-3723 TTD (508) 460-3610

President and Members City Council

Date: 11-2-2021

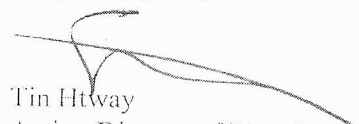
SPECIAL PERMIT APPLICATION
CERTIFICATION BY PLANNING DEPARTMENT

Project Name: J&D Landscape Contractors
Project Use Summary: Contractor's Yard / Landscape Contractor's Yard
Project Street Address: 101 Airport Boulevard (Unit 12)
Plate: _____ Parcel: 73-52
Applicant/Developer Name: J&D Land Holdings LLC
Plan Date: 1-31-2020 Revision Date: 10-12-2021

Dear President and Members:

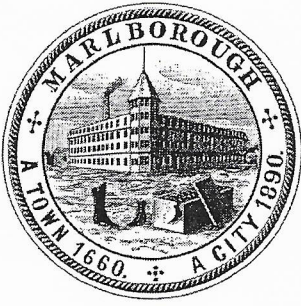
In accordance with the City Council's Rules for Special Permit Applications, I hereby certify that the Site Plan filed with the City Clerk has been reviewed by the Building Department within the limits of work shown on the plan, and that said plan meets all prior referenced informational requirements of Section 7; that the plan conforms in all aspects to City Code and to these Rules and Regulations, and that any necessary zoning variances have been already granted by the Marlborough Zoning Board of Appeals, and any applicable appeal period concerning said variances have run.

Very truly yours,


Tin Htway
Acting Director of Planning

Application Fee to submit to
City Clerk's office

\$500



**City of Marlborough, Massachusetts
CITY CLERK DEPARTMENT**

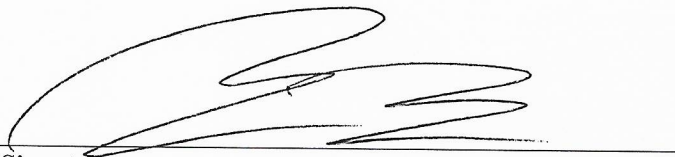
**Steven W. Kerrigan
City Clerk**

Dear Applicant,

To ensure that each department listed below receives a copy of your completed Special Permit application, please hand-deliver to each department as instructions indicate below.

PLACE A CHECK-MARK AFTER HAND-DELIVERING THE APPLICATION TO THE FOLLOWING DEPARTMENTS AND SIGN YOUR NAME & DATE IT ACCORDINGLY. MAKE SURE THIS PAGE IS SIGNED AND RETURNED TO THE CITY CLERK'S OFFICE WITH THE COMPLETED APPLICATION. THE CITY CLERK'S OFFICE WILL NOT ACCEPT THE APPLICATION WITHOUT THE SIGNATURE OF THE APPLICANT OR PETITIONER AS INDICATED BELOW.

| | |
|---------|---|
| 1 SET | POLICE CHIEF <input checked="" type="checkbox"/> |
| 1 SET | FIRE CHIEF <input checked="" type="checkbox"/> |
| 1 SET | CITY ENGINEER <input checked="" type="checkbox"/> |
| 1 SET | DIRECTOR OF PLANNING <input checked="" type="checkbox"/> |
| 1 SET | CONSERVATION OFFICER (IF WETLANDS AFFECTED) _____ |
| 1 SET | BUILDING COMMISSIONER <input checked="" type="checkbox"/> |
| 12 SETS | OFFICE OF THE CITY COUNCIL <input checked="" type="checkbox"/> |
| 3 SETS | OFFICE OF THE CITY CLERK _____ (MUST be Original & 2 Complete Sets) |


Signature

11/4/2021
Date

Thank you for your cooperation in this matter.

Sincerely,

*Steven W. Kerrigan
City Clerk*



**City of Marlborough, Massachusetts
CITY CLERK DEPARTMENT**

**Steven W. Kerrigan
City Clerk**

I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all Municipal tax returns and paid all Municipal taxes required under law.

Company Name

J&D Land Holdings LLC

Owner Name/Officer Name of LLC or Corporation

Daniel J. Pellegrino

Owner/Officer Complete Address and Telephone Number

804 Boston Post Road

Sudbury, MA 01776

Signature of Applicant

Attorney on behalf of Applicant, if applicable

Attorney Brian Falk

The Special Permit Package will not be accepted unless this certification clause is signed by the applicant and the Tax Collector.

Tax Collector

**FIRST DRAFT
DECISION**

FROM ATTY. FALK

DECEMBER 8, 2021

City Council

From: City Council
Sent: Wednesday, December 8, 2021 5:00 PM
To: Mike Ossing; Samantha Perlman; Mark Oram; Kathleen Robey; Karen Boule; John Irish; Sean Navin; Laura Wagner; David Doucette; Christian Dumais; Robert Tunnera; Don Landers
Cc: Steven Kerrigan; Wilson Chu; Jason Grossfield
Subject: From Atty Falk: J&D Landscape Contractors - Draft Special Permit Decision
Attachments: Draft Special Permit, J&D Landscape, 101 Airport Blvd (A7506234x7A575).DOCX; ATT00001.htm

From: "Falk, Brian R." <bfalk@MirickOConnell.com>
Date: December 8, 2021 at 3:59:42 PM EST
To: City Council <citycouncil@marlborough-ma.gov>, 'Kathleen Robey' <atlarge_4@marlborough-ma.gov>
Cc: "kboule@marlborough-ma.gov" <kboule@marlborough-ma.gov>, 'Steven Kerrigan' <skerrigan@marlborough-ma.gov>
Subject: J&D Landscape Contractors - Draft Special Permit Decision

Greetings,

Attached is a draft decision for the J&D Landscape Contractors' special permit decision. The proposed conditions are nearly identical to those used for the Dasilva and Lourival decisions earlier this year.

Please note that proposed Condition #2 includes language to allow for the phasing of site improvements. Since this site is already built, but for a few items such as screening, there may be a situation where J&D is ready for occupancy but cannot yet comply with certain conditions due to winter weather conditions. This language would allow for the issuance of a temporary certificate of occupancy, with a final certificate of occupancy to be issued only after all conditions have been met.

Also, proposed Finding #13 provides suggested language that would allow Councilor-Elect Brown to complete a certification and vote on the matter after she is sworn in.

We look forward to receiving comments from the Site Plan Committee and meeting with the Urban Affairs Committee.

Thanks,
Brian

MIRICK O'CONNELL
ATTORNEYS AT LAW

BRIAN R. FALK
Partner
Mirick, O'Connell, DeMallie & Lougee, LLP
100 Front Street | Worcester | MA | 01608-1477

_____, 2022

**NOTICE OF DECISION
GRANT OF SPECIAL PERMIT**

In City Council
Order No. #21-1008441

Application of:
J&D Land Holdings LLC

Locus:
101 Airport Boulevard, Marlborough, MA
Parcel 52-1-12 on Assessors Map 73

DECISION

The City Council of the City of Marlborough hereby **GRANTS** the Application of J&D Land Holdings LLC, with a mailing address of 804 Boston Post Road, Sudbury, MA, as provided in the DECISION and subject to the Findings of Fact and Conditions contained therein.

Decision date: _____, 2022

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the [] day of [], 2022.

APPEALS

Appeals, if any shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and shall be filed within twenty (20) days after the date of the filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, MA.

A TRUE COPY
ATTEST:

City Clerk

ORDERED:

IN CITY COUNCIL

DECISION ON A SPECIAL PERMIT

Application of:
J&D Land Holdings LLC

Locus:
101 Airport Boulevard, Marlborough, MA
Parcel 52-1-12 on Assessors Map 73

**DECISION ON A SPECIAL PERMIT
ORDER NO. 21-1008441**

The City Council of the City of Marlborough hereby GRANTS the Application for a Special Permit to J&D Land Holdings LLC (the “Applicant”) for contractor’s yard and a landscape contractor’s yard at 101 Airport Boulevard, in the Limited Industrial Zoning District, as provided in this Decision and subject to the following Findings of Fact and Conditions.

FINDINGS OF FACT

1. The Applicant, J&D Land Holdings LLC, is a Massachusetts limited liability company with an address of 804 Boston Post Road, Sudbury, MA 01776.
2. The Applicant is the owner of the property located at 101 Airport Boulevard, Marlborough, MA, being shown as Parcel 52-1-12 on Assessors Map 73 (the “Site”).
3. In accordance with Article V, Section 650-17 and Section 650-18(A)(48), of the Zoning Ordinance of the City of Marlborough (the “Zoning Ordinance”), the Applicant proposes a contractor’s yard and a landscape contractor’s yard at the Site (the “Use”). As shown on the Plans referenced in paragraph 5 below, the Use consists of a building, accessory parking, outdoor storage areas, and landscaped areas.
4. The Applicant, by and through its counsel, filed with City Clerk of the City of Marlborough an Application for a Special Permit (“Application”) for the Use.
5. In connection with the Application, the Applicant submitted a certified list of abutters, filing fees, a site plan entitled “Proposed Site Plan of Use Area #12 101 Airport Boulevard” by Connorstone Engineering, with the last revision date of October 12, 2021, and a landscaping plan entitled “Proposed Landscape Plan of Use Area #12 in Marlborough, MA” by

Connorstone Engineering, with the last revision date of October 12, 2021 (collectively the "Plans") attached hereto as **"Attachment A."**

6. The Application was certified as complete by the Building Commissioner of the City of Marlborough, acting on behalf of the City Planner for the City of Marlborough, in accordance with the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.

7. The Site is located in the Limited Industrial Zoning District.

8. The Site has an area of 46,543 square feet +/- as shown on the Plans.

9. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing on the Application and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.

10. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, opened a public hearing on the Application on Monday, December 6, 2021. The public hearing was held at the Marlborough City Hall, 140 Main Street. The hearing was closed on December 6, 2021.

11. The Applicant, through its representatives, presented testimony at the public hearing detailing the Use, describing its impact upon municipal services, the neighborhood, and traffic.

12. At the public hearing, no members of the public spoke in opposition to the Use.

13. Councilor Teona Brown was absent from the single session of the public hearing on the Application. Prior to the vote on this decision, Councilor Brown filed a written certification as to examination of all the evidence and testimony received at the hearing session as set forth in **"Attachment B"** hereto, made as part of the record of the hearing, in accordance with Massachusetts General Laws Chapter 39, Section 23D.

**BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING
FINDINGS AND TAKES THE FOLLOWING ACTIONS**

A. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.

B. The City Council finds that the proposed Use of the Site is an appropriate use and in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions as provided herein. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth herein.

C. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby GRANTS the Applicant a Special Permit for a contractor's yard and a landscape contractor's yard at 101 Airport Boulevard as shown on the Plans filed, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding on the Applicant, its successors and/or assigns:

1. Construction in Accordance with Applicable Laws. Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts, and shall be built according to the Plans as may be amended during Site Plan Review.

2. Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review by the Site Plan Review Committee, in accordance with the City of Marlborough Site Plan Review Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit, and a final occupancy permit shall not be issued until the Applicant has complied with all conditions, provided that the Site Plan Committee may authorize the phasing of site work depending upon weather conditions and other factors. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plans submitted, reviewed and approved by the City Council as the Special Permit Granting Authority.

3. Modification of Plans. Notwithstanding conditions #1 and #2 above, the City Council or the Site Plan Review Committee may approve engineering changes to the Plans, so long as said changes do not change the Use as approved herein, or materially increase the impervious area of the Use, reduce the green area, alter traffic flow, or increase the size of the building, all as shown on the Plans.

4. Incorporation of Submissions. All plans, photo renderings, site evaluations, briefs and other documentation provided by the Applicant as part of the Application, and as amended or revised during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.

5. Storm Water and Erosion Control Management. The Applicant, its successors and/or assigns, shall ensure that its site superintendent during construction of the project is competent in stormwater and erosion control management. This individual(s)' credentials shall be acceptable to the Engineering Division of the City's Department of Public Works and the City's Conservation Commission. This individual(s) shall be responsible for checking the Site before, during, and after storm events including weekends and evenings when storms are predicted. This individual(s) shall ensure that no untreated stormwater leaves the Site consistent with the State's and the City's stormwater regulations. This individual(s) shall ensure compliance with the approved sequence of construction plan and the approved erosion control

plan. The Applicant, its successors and/or assigns, shall grant this individual(s) complete authority of the Site as it relates to stormwater and erosion controls.

6. Screening. In accordance with Section 650-18(A)(48) of the Zoning Ordinance, the Applicant shall install fencing, vegetated screening, or a combination of screening types, to screen areas of the Site used for the storage of vehicles, equipment, and materials from the street and adjacent properties, and shall maintain the fencing and plantings in good repair. Said screening shall comply with the requirements of all applicable City Ordinances.

7. Outdoor Storage Areas. In accordance with Section 650-18(A)(48) of the Zoning Ordinance, the outdoor storage of vehicles, equipment, and materials shall be located on impervious and otherwise dust-free surfaces. Materials shall be stored with sufficient protections to avoid damage to landscaped areas and to avoid interference with the proper functioning of stormwater infrastructure. Lawn areas shall be separated from adjacent parking/storage areas with curbing. Any storage of bark mulch at the Site shall be subject to fire safety conditions approved through the Site Plan Review process. The Site shall not be used to store grass clippings or similar landscaping debris that may generate odors.

8. Indoor Storage Areas. Building areas used to store vehicles, equipment, and materials indoors shall be equipped with floor drainage systems designed to prevent fuel, oil, and other hazardous materials from entering the stormwater or sewer systems, approved through the Site Plan Review process.

9. Vehicle Repairs and Maintenance. The Site may not be used for major repairs of vehicles and equipment, but minor maintenance of vehicles and equipment which are exclusively operated as part of the Use may be performed indoors only, subject to Condition 10.

10. Noise and Air Quality. The Applicant, its successors and/or assigns, shall comply with the City's Noise Ordinance and shall comply with all state and federal requirements governing air quality and emissions.

11. Lighting. Exterior lighting at the Site shall be downward facing and shielded to minimize impacts on neighboring properties, with a lighting plan for the Site to be reviewed and further conditioned during the Site Plan Review process. Exterior lighting at the Site shall be shut off outside of operating hours, except for lighting necessary for security and emergency access.

12. Compliance with Applicable Laws. The Applicant, its successors and/or assigns agrees to comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of the Use.

13. Recording of Decision. In accordance with the provisions of Massachusetts General Laws, Chapter 40A, Section 11, the Applicant, its successors and/or assigns, at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and before the Applicant has applied to the Building Commissioner

for a building permit. Upon recording, the Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office, the Building Department, and the City Solicitor's office.

Yea: ___ - **Nay:** ___ - **Absent -** ___
Yea: _____, _____, _____, _____, _____, _____, _____, _____,
Nay: _____, _____,
Absent: _____, _____,

Signed by City Council President
Michael H. Ossing

ADOPTED
In City Council
Order No. 21-1008441

Attachment A

Attachment B