



**COMMITTEE OF THE WHOLE MEETING  
MONDAY, MARCH 6, 2017  
NORTH AURORA VILLAGE HALL - 25 E. STATE ST.  
(Immediately following the Village Board Meeting)**

**AGENDA**

**CALL TO ORDER**

**ROLL CALL**

**AUDIENCE COMMENTS**

**TRUSTEE COMMENTS**

**DISCUSSION**

1. Franchise Agreement – Comcast
2. 102 S. Lincolnway Special Use
3. North Aurora Smiles Site Plan
4. Riverfront Jeep Site Plan

**EXECUTIVE SESSION**

**ADJOURN**

Initials

SP

# Memorandum



**To:** Steve Bosco, Village Administrator  
**From:** David Hansen, Administrative Intern  
**Date:** 3-2-2017  
**Re:** Comcast Cable Franchise Renewal

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The Village's original 12-year non-exclusive local franchise agreement with Comcast to provide cable television in the community was due to expire on August 26, 2014. It was extended by the Village Board twice. The second extension expired on February 26, 2016.

The purpose of the extensions was to give the Village Board the opportunity to further explore the level of Public, Educational and Governmental (PEG) television access desired for the community as well as whether to negotiate a new franchise agreement in partnership with the Southwest Fox Valley Cable Consortium. Since the expiration of the extension, the Southwest Fox Valley Cable Consortium has been working in partnership with the Village to negotiate a new franchise agreement with Comcast on behalf of their four member communities (North Aurora, Plano, Sandwich and Yorkville).

Staff is proposing to renew the non-exclusive local franchise agreement with Comcast for ten (10) years. Per the renewal, the majority of the provisions in the franchise agreement will stay the same. The only major change is regarding the PEG access section and its HD component.

\*Attached is the draft ordinance renewing the Village's current cable franchise agreement with Comcast for ten (10) years.

\*\*Also attached is the Comcast Cable Franchise Agreement.

VILLAGE OF NORTH AURORA



VILLAGE OF NORTH AURORA  
KANE COUNTY, ILLINOIS

Ordinance No. \_\_\_\_\_

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**ORDINANCE APPROVING A CABLE FRANCHISE RENEWAL AGREEMENT  
WITH COMCAST OF ILLINOIS XIII, L.P.**

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Adopted by the  
Board of Trustees and President  
of the Village of North Aurora  
this \_\_\_\_ day of \_\_\_\_\_, 2017

Published in Pamphlet Form  
by authority of the Board of Trustees of the  
Village of North Aurora, Kane County, Illinois,  
this \_\_\_\_ day of \_\_\_\_\_, 2017  
by \_\_\_\_\_.

Signed \_\_\_\_\_

**VILLAGE OF NORTH AURORA**

**ORDINANCE NO. \_\_\_\_\_**

**ORDINANCE APPROVING A CABLE FRANCHISE RENEWAL AGREEMENT  
WITH COMCAST OF ILLINOIS XIII, L.P.**

**WHEREAS**, Comcast of Illinois XIII, L.P. ("Comcast") is the duly authorized holder of a franchise as the successor in interest to that Franchise Agreement between TCI Illinois Holdings, L.P. A/K/A AT&T Broadband and the Village of North Aurora, Illinois, ("Franchise Agreement") authorizing Comcast to serve the Village and to operate and maintain a cable television system; and

**WHEREAS**, the existing Franchise Agreement has reached the end of its term and has been extended pending the negotiation and approval of an agreement renewing the franchise; and

**WHEREAS**, the terms for renewal of the franchise with Comcast have been informally negotiated in keeping with Section 626(h) of Title VI of the Communications Act of 1934, as amended, and agreement on terms for renewal of the franchise with Comcast has been reached and reduced to writing; and

**WHEREAS**, it is in the public interest to extend and renew the current Franchise on the terms and conditions that have been negotiated.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of North Aurora, Kane County, Illinois, as follows:

1. The recitals set forth above are adopted and incorporated herein as the material and significant findings of the President and the Board of Trustees as if fully stated herein.
2. The Cable Television Franchise Agreement By and Between the Village of North Aurora and Comcast of Illinois XIII, L.P. in the form attached hereto and incorporated herein by reference as Exhibit "A" is hereby approved, and the Village President or his designee is hereby authorized and directed to execute it on behalf of the Village of North and Village staff are hereby authorized and directed to take all necessary and appropriate actions to implement the agreement as written and approved.
3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance, or any part thereof. The Village Board of Trustees hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that anyone or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.
4. This Ordinance shall take immediate full force and effect from and after its passage, approval, publication and such other acts as required by law.

**VILLAGE OF NORTH AURORA**

Presented to the Board of Trustees of the Village of North Aurora, Kane County, Illinois this \_\_\_\_\_ day of \_\_\_\_\_, 2017, A.D.

Passed by the Board of Trustees of the Village of North Aurora, Kane County, Illinois this \_\_\_\_\_ day of \_\_\_\_\_, 2017, A.D.

Mark Carroll \_\_\_\_\_

Laura Curtis \_\_\_\_\_

Chris Faber \_\_\_\_\_

Mark Gaffino \_\_\_\_\_

Mark Guethle \_\_\_\_\_

Michael Lowery \_\_\_\_\_

Approved and signed by me as President of the Board of Trustees of the Village of North Aurora, Kane County, Illinois this \_\_\_\_\_ day of \_\_\_\_\_, 2017, A.D.

\_\_\_\_\_  
Dale Berman, Village President

ATTEST:

\_\_\_\_\_  
Lori Murray, Village Clerk

R:\Secretary\Clients - Municipal\Village of North Aurora\Cable & Video Programming\Cable Franchise\Comcast Cable Franchise Renewal\Ord. Approving Cable Franchise Renewal Agreement with Comcast.docx

**CABLE TELEVISION FRANCHISE AGREEMENT**  
**BY AND BETWEEN**  
**The**  
**VILLAGE OF NORTH AURORA**  
**And**  
**COMCAST OF ILLINOIS XIII, L.P.**

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the Village of North Aurora, Illinois (hereinafter, the "Village") and Comcast of Illinois XIII, L.P. (hereinafter, "Grantee") this day \_\_\_\_\_ of \_\_\_\_\_, 2017 (the "Effective Date").

The Village, having determined that the financial, legal, and technical abilities of the Grantee are reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

This Agreement is entered into by and between the parties under the authority of the Cable Act, and the Illinois Municipal Code, as amended from time to time; provided that any provisions of the Illinois Municipal Code that are inconsistent with the Cable Act shall be deemed to be preempted and superseded.

**SECTION 1: Definition of Terms**

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

"Cable Act" or "Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, 47 U.S.C. §§ 521 et seq., as the same may be amended from time to time.

"Cable Operator" has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means any Person or group of Persons who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System; or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

"Cable Service" or "Service" has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means the one-way transmission to Subscribers of Video Programming or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service.

"Cable System" or "System," has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means Grantee's facilities, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves only to retransmit the

television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public right-of-way, (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

"Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by the Federal Communications Commission by regulation.

"Code" means the Village of North Aurora Municipal Code.

"Customer" or "Subscriber" means a Person who lawfully receives and pays for Cable Service with the Grantee's express permission.

"FCC" means the Federal Communications Commission or successor governmental entity thereto.

"Franchise" means the initial authorization, or renewal thereof, issued by the Village, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Cable System.

"Franchise Agreement" or "Agreement" shall mean this Agreement and any amendments or modifications hereto.

"Franchise Area" means the present legal boundaries of the Village as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means as provided in this Agreement, and exclude any areas disconnected therefrom.

"Grantee" shall mean Comcast of Illinois XIII, L.P.

"Gross Revenue" means the Cable Service revenue received by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly Basic Cable Service, cable programming service regardless of Service Tier, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources from Cable Service delivered over the Cable System as may now exist or hereafter develop, provided that such revenues, fees, receipts, or charges may be lawfully included in the gross revenue base for purposes of computing the Village's permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, third party advertising sales commissions and agency fees, nor any taxes, fees or assessments imposed or assessed by any governmental

authority. In the event there is or becomes a conflict between the lists herein described and then applicable generally accepted accounting principles, the latter shall prevail. Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to *City of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5<sup>th</sup> Cir. 1997), and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the "Pasadena Decision," *City of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues*, CSR 5282-R, *Memorandum Opinion and Order*, 16 FCC Rcd. 18192 (2001), and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F.3d 802 (5th Cir. 2003).

"Initial Franchise Service Area" means that portion of the Franchise Area served by the Grantee's Cable System as of the Effective Date of this Franchise Agreement.

"Other Programming Service" means information that a Cable Operator makes available to all Subscribers generally.

"Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Village.

"Public, Educational and Governmental (PEG) Access Channel" shall mean a video Channel designated for non-commercial use by the Village or its designee, the public, and educational institutions.

"Public, Educational and Government (PEG) Access Programming" shall mean non-commercial programming produced by, for, or made available to any Village residents or organizations, schools and government entities and the use of designated facilities, equipment and/or Channels of the Cable System in accordance with 47 U.S.C. §531 and this Agreement. PEG channels shall be used only for non-commercial purposes. Acknowledgement of underwriters and sponsors for the purpose of funding public, educational, and government access related activities is allowed.

"Public Way" shall mean the surface of, and the space above and below, any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the Village in the Franchise Area, to the extent that the Village has the right and authority to authorize, regulate, or permit the location of facilities other than those of the Village. Public Way shall not include any real or personal Village property that is not specifically described in this definition and shall not include Village buildings, fixtures, and other structures and improvements, regardless of whether they are situated in the Public Way.

"Right of Way Ordinance" shall mean Title 12 Chapter 20, of the Code, as amended from time to time.

"Standard Installation" means those installations to Subscribers that are located up to one hundred twenty-five (125) feet from the existing distribution system (Cable System).

“Southwest Fox Valley Cable and Telecommunications Consortium” or “Consortium” is the designee of the Village with respect to the operation of Public, Educational and Government Access Programming and related activities and the performance of duties described in that certain Intergovernmental Agreement by and between the members of said Consortium, as amended from time to time.

"Village" means the Village of North Aurora, Illinois or the lawful successor, transferee, designee, or assignee thereof.

"Video Programming" or "Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## **SECTION 2: Grant of Authority**

2.1. Pursuant to Section 621(a) of the Cable Act, 47 U.S.C. § 541 (a), 65 ILCS 5/11-42-11(a) of the Illinois Municipal Code, and Ordinance/Resolution No. \_\_\_\_\_ approving and authorizing the execution of this Agreement, the Village hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years from the Effective Date, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law. From and after the Effective Date of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement is intended to be the sole and exclusive Franchise Agreement between the Parties pertaining to the Grantee's Franchise for the provision of Cable Service. In the event this Franchise expires without being renewed or terminated, the terms and conditions described herein shall continue to apply on a month-to-month basis, as long as negotiations continue in good faith and until such time when the franchise is renewed.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, and any applicable State law which may exist at the time of renewal and which is not superseded by the Cable Act.

2.4. Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the Village of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the Village pursuant to such police power.

2.5. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the Village to perform any public works or public improvements of any description, (B) be

construed as a waiver of any codes or ordinances of general applicability promulgated by the Village, or (C) be construed as a waiver or release of the rights of the Village in and to the Public Ways.

## 2.6.Competitive Equity.

2.6.1. In the event the Village grants an additional Franchise to use and occupy any Public Way for the purposes of operating a Cable System, the additional Franchise shall only be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11.

2.6.2. In the event an application for a new cable television franchise or other similar authorization is filed with the Village proposing to serve the Franchise Area, in whole or in part, the Village shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application.

2.6.3. Only to the extent the City generally grants an exemption to other similarly situated utilities, and provided that appropriate vehicle safety markings have been deployed, Grantee's vehicles shall be exempt from parking restrictions of the Village only while used in the course of installation, repair and maintenance work on the Cable System. This exemption does not apply to fire lanes or designated handicapped spaces.

## **SECTION 3: Construction and Maintenance of the Cable System**

3.1. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all generally applicable provisions of Title 12 Chapter 20 of the Code, as may be amended from time to time.

3.2. Aerial and Underground Construction. At the time of Cable System construction, the Grantee may petition the Village for a variance from the strict application of the Right of Way Ordinance in the manner described therein. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

### 3.3. Undergrounding and Beautification Projects.

3.3.1. In the event the Village requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for the project to the same extent as such funds are made available to other users of the Public Way, if any, provided that any utility's exercise of authority granted under its tariff to charge consumers for the said utility's cost of the project that are not reimbursed by the Village shall not be considered to be public or private funds.

3.3.2. The Grantee shall not be required to relocate its facilities unless it has been afforded at least sixty (60) days notice of the necessity to relocate its facilities. Within forty-five (45) days of receiving notice from the Village, the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. In instances where a third party is seeking the

relocation of the Grantee's facilities or where the Grantee is entitled to reimbursement pursuant to the preceding Section, the Grantee shall not be required to perform the relocation work until it has received payment for the relocation work, or in the case of Village requests there is money obligated for such purpose.

3.4 Restoration of Private Property. The Grantee shall remove all excess material and restore all turf and terrain and other property within ten (10) business days after any parcel of private property adjacent to the Public Way is disturbed, damaged or destroyed due to construction or maintenance by the Grantee, all to the satisfaction of the Village engineer. Such cleanup and repair may be required to consist of backfilling, regrading, reseeding, resodding, or any other requirement to restore the private property to a condition substantially equivalent to that which existed prior to the commencement of the project. The time period provided in this section shall be extended a reasonable term by the Village engineer for good cause, as determined in his/her reasonable discretion.

#### **SECTION 4: Service Obligations**

4.1. Initial Service Obligations. As of the Effective Date of this Agreement, Grantee's Cable System has been designed to provide, and is capable of providing, Cable Service to residential Customers throughout the Initial Franchise Service Area. The Grantee shall continue to make Cable Service available in the Initial Service Area throughout the term of this Agreement and Grantee shall extend its Cable System and provide service consistent with the provisions of this Franchise Agreement.

4.2. General Service Obligation. The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per linear Cable System network mile as measured from the existing Cable System's technically feasible connection point. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the Grantee's distribution cable (e.g., a Standard Installation).

4.2.1. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of installation that exceeds a Standard Installation, plus a reasonable rate of return.

4.3. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K, as amended from time to time. The Grantee shall cooperate with the Village, and its designee, in conducting inspections related to these standards upon reasonable prior written request from the Village based on an indicative number of Subscriber complaints.

4.4. Annexations and New/Planned Developments. In cases of annexation the Village shall provide the Grantee written notice of such annexation. In cases of new construction, planned

developments or property development where undergrounding or extension of the Cable System is required, the Village shall provide or cause the developer or property owner to provide notice of the same. Such notices shall be provided at the time of notice to all utilities or other like occupants of the Village's Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise Agreement.

4.5. Service to School Buildings and Governmental Facilities.

4.5.1. The Village and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary Basic Cable Service and a free Standard Installation at one outlet to all eligible buildings as defined in said state statute. Eligible buildings shall not include buildings leased to non-governmental third parties or buildings such as storage facilities at which government employees are not regularly stationed.

4.5.2. Long Drops. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds a Standard Installation.

4.6. Emergency Alerts. At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an "Emergency Alert System" ("EAS") consistent with applicable Federal law and regulation — including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" — as may be amended from time to time. Should the Village become qualified and authorized to activate the EAS, the Grantee shall provide instructions on the access and use of the EAS by the Village to the Village on an annual basis. The Village agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the Village, its employees or agents in using such system.

4.7. Customer Service Obligations. The Village and Grantee acknowledge that the customer service standards and customer privacy protections are set forth in the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.*, and enforcement provisions are included in Title 5, Chapter 51, of the Code. Enforcement of such requirements and standards and the penalties for non-compliance with such standards shall be consistent with the Cable and Video Customer Protection Law, 220 ILCS 5/22-501 *et seq.*, and Title 5, Chapter 51, of the Code.

**SECTION 5: Oversight and Regulation by Village**

5.1. Franchise Fees. The Grantee shall pay to the Village a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state

authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest at the prime lending rate as quoted by JP Morgan Chase & Company or its successor, computed from time due until paid. Any undisputed overpayments made by the Grantee to the Village shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the Franchise Fee liability otherwise accruing under this Section.

5.1.1. The Parties acknowledge that, at present, the Cable Act limits the Village to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that a change in the Cable Act would allow the Village to increase the Franchise Fee above five percent (5%), the Village shall hold a public hearing and determine if the Village should collect the additional amount. Following the determination, the Village shall notify the Grantee of its intent to collect the increased Franchise Fee and Grantee shall have a reasonable time (not to be less than ninety (90) days from receipt of notice from the Village) to effectuate any changes necessary to begin the collection of such increased Franchise Fee or notify the Grantee of its intent to not collect the increased fee. In the event that the Village increases said Franchise Fee, the Grantee shall notify its Subscribers of the Village's decision to increase said fee prior to the implementation of the collection of said fee from Subscribers as required by law.

5.1.2. In the event a change in state or federal law requires the Village to reduce the franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the lower of: i) the maximum permissible franchise fee percentage; or ii) the lowest franchise fee percentage paid by any other Cable Operator granted a Cable Franchise by the Village pursuant to the Cable Act, and Section 11-42-11 of the Illinois Municipal Code; provided that: (a) such amendment is in compliance with the change in state or federal law; (b) the Village approves the amendment by ordinance; and (c) the Village notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

5.1.3. Taxes Not Included. The Grantee acknowledges and agrees that the term "Franchise Fee" does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators on their services but not including a tax, fee, or assessment which is unduly discriminatory against Cable Operators or Cable Subscribers).

5.2. Franchise Fees Subject to Audit. The Village and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05 (Municipal Franchise Fee Review; Requests For Information). Any audit shall be conducted in accordance with generally applicable auditing standards. The Village and Grantee agree that the audit procedures set forth in the Local Government Taxpayer's Bill of Rights Act shall be applicable to any audit of PEG Capital payments as provided for in Section 8.7.7 of this Franchise Agreement.

5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, with the exception of the information directly related to an audit of Franchise Fees or PEG Capital Fees as set forth in Section 5.2. The Village agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Village that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. Grantee shall cooperate in responding to any request made upon the Village under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*, to the extent a request includes public records in the custody or control of Grantee and are not considered proprietary or confidential in nature. In the event that the Village has in its possession and receives a request under the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Village shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the Village from and against any claims arising from the Village's opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the Village with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*, or with a decision or order of a court with jurisdiction over the Village, shall not be a violation of this Section.

## **SECTION 6: Transfer of Cable System or Franchise or Control of Grantee**

6.1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Village as provided for in Section 617 of the Cable Act, 47 U.S.C. §537, and 47 C.F.R. §76.502, or their respective successor in state or Federal law. A transfer of control of the Grantee is defined as an acquisition of fifty-one percent (51%) or greater ownership interest in Grantee

6.2. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation.

6.3. The Grantee, and any proposed transferee under this Section 6, shall submit a written application to the Village containing or accompanied by such information as is required in accordance with applicable law and FCC regulations, specifically including a completed Form 394 or its successor, and in compliance with the processes established for transfers under FCC rules and regulations, including Section 617 of the Cable Act, 47 U.S.C. §537 and 47 C.F.R. §76.502. As a condition to granting of any consent, the Village may require the transferee to agree in writing to assume the obligations of the Grantee under this Franchise Agreement.

6.4. Any transfer of control resulting from or after the appointment of a receiver or receivers or trustee or trustees, however denominated, designated to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of a one hundred twenty (120) day period, shall be treated as a transfer of control pursuant to 47 U.S.C. §537 and require the Village's consent thereto in the manner described in Section 6 above.

## **SECTION 7: Insurance and Indemnity**

7.1. Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain such insurance and provide the Village certificates of insurance in accordance with Title 12 Chapter 20.080 of the Municipal Code. The Grantee shall indemnify and hold harmless the Village from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.

7.2. Indemnification. The Grantee shall indemnify, defend and hold harmless the Village, its officers, employees, and agents (the "Indemnitees") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "Indemnification Events"), arising in the course of the Grantee constructing and operating its Cable System within the Village. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events which may occur during the term of this Agreement notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The Village shall give the Grantee timely written notice of its obligation to indemnify and defend the Village after the Village's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the Village. If the Village elects in its own discretion to employ additional counsel, the costs for such additional counsel for the Village shall be the responsibility of the Village.

7.2.1. The Grantee shall not indemnify the Village for any liabilities, damages, costs or expense resulting from any conduct for which the Village, its officers, employees and agents may be liable under the laws of the State of Illinois.

7.2.2. Nothing herein shall be construed to limit the Grantee's duty to indemnify the Village by reference to the limits of insurance coverage described in this Agreement.

## **SECTION 8: Public, Educational and Governmental (PEG) Access**

8.1. PEG Capacity. The Grantee shall provide capacity for the City's noncommercial Public, Educational and Governmental ("PEG") Access Programming through Grantee's Cable System consistent with the requirements set forth herein. The Village's PEG Access Programming shall be provided consistent with Section 611 of the Cable Act, 47 U.S.C. §531, as amended from time to time.

8.1.1 As of the Effective Date of this Agreement, the Village utilizes three (3) PEG Channels, which for purposes of reference only are utilized, respectively, for (1) Government Access, (2) Public Access, and (3) Educational Access, including programming produced by and/or for Waubensee Community College. The Grantee shall provide the Village's entire PEG Access programming on the Grantee's Basic Service Tier.

## 8.2. PEG HD Programming

8.2.1 Annual Meeting to Discuss PEG High-Definition Programming. In recognition of the Village's interest in the future distribution of the PEG Channels in high-definition (HD), Grantee will meet with the Village and/ or its PEG programming designee on an annual basis to discuss:

(i.) The status of each party's respective preparedness to produce and cablecast the PEG Access Programming in HD, taking into consideration the amount of PEG programming being produced in HD versus standard definition (SD).

(ii.) The proportion of channels cablecast in SD versus HD.

(iii.) The percentage of HD subscription penetration across Grantee's subscriber base in the member communities of the Consortium.

8.2.2 PEG Channel Migration from SD to HD. On or after the fifth anniversary date of this Agreement, the parties shall migrate PEG Access Programming from SD to HD, but only if all of the following conditions have been met and notice has been given in writing:

(i.) The Consortium is capable of producing and transmitting PEG programming in HD. For purposes of this Agreement, an HD signal refers to a television signal delivering picture resolution of 720p or 1080i. For the first PEG Channel transitioned to HD, the Channel must include a minimum of five (5) hours per day, seven (7) days per-week of HD PEG programming. Prior to the transition of each additional PEG Channel, the Consortium must accumulate a library containing a minimum of one hundred (100) hours of locally produced, original HD content, per channel.

(ii.) Forty-Two percent (42%) of channels comprising the Basic Service Tier are cablecast in HD. For the purpose of calculating this condition, any networks which are simulcast in HD and SD shall be counted as only one channel.

(iii.) The percentage of HD subscription penetration across the Grantee's subscriber base in the Consortium's member communities is equivalent to eighty percent (80%).

8.2.3. If all of the conditions above have been met, Grantee will be provided up to six (6) months to transition the PEG programming on the eligible PEG Channel to HD.

8.2.4. In no instance, shall the PEG Channels be cablecast in both SD and HD.

8.2.5 In the event the metrics haven't been met by the fifth anniversary of this agreement and upon request, the party which has control over the metric measured by the foregoing conditions shall give the other party notice within thirty (30) days as to whether it has reached attainment or completion of such condition. For example, the Consortium shall give notice to the Grantee for criteria (i) and the Grantee shall give notice to the Village/ City and the Consortium for criteria (ii) and (iii) upon request.

8.3 Village Operation and Control of PEG Channels. The Grantee does not relinquish its ownership of a Channel by designating it for PEG use. However, the PEG Channels are, and shall be, operated by the Village or its designee, and the Village, or its designee, may at any time allocate or reallocate the usage of the PEG Channels among and between different non-commercial uses. The Village or its designee, shall be responsible for establishing, and thereafter enforcing, rules for the noncommercial use of the PEG Access Channels.

8.4 Editorial Control. The Village, or its designee, shall be responsible for the editorial control of the Video Programming on the PEG Channels and the Grantee shall not exercise any editorial control over any use of the PEG Access Channels except to the extent permitted in 47 U.S.C. §531(e). Grantee acknowledges that the Village cooperates with the Southwest Fox Valley Cable and Telecommunications Consortium for the production and programming of the PEG Channel, and agrees to hold each member of the Consortium separately responsible for the editorial content of the programs produced by or for each member. If it is unclear or if an individual member of the Consortium does not take responsibility for particular content the Consortium as a whole will be held responsible.

8.5 Origination Point. At such time that the Village determines that it wants to establish capacity to allow its residents who subscribe to Grantee's Cable Service to receive PEG Access Programming originated from new facilities (other than those having a signal point of origination at the time of the execution of this Agreement); or at such time that the Village, or the Consortium, determines that it wants to change or upgrade a location from which PEG Access Programming is currently originated; the Village, or the Consortium in the case of a change or upgrade, will give the Grantee written notice detailing the point of origination and the capability sought. The Grantee agrees to submit a cost estimate to implement the plan within a reasonable period of time, but not longer than sixty (60) days. After an agreement to reimburse the Grantee for its expenditure, including but not limited to the application of PEG Capital Fees, the Grantee will implement any necessary system changes within a reasonable period of time, but not longer than one hundred twenty days (120). For the purpose of this section, the term "originated," shall mean the programming was electronically submitted to Grantee's Cable System from such location.

As of the effective date of this agreement, the origination point for the Southwest Fox Valley Cable and Telecommunications Consortium is located on the campus of Waubensee Community College, State Rt. 47, Sugar Grove. Grantee's duty to operate and maintain the return line shall apply from the output of the transport device located on the premises to the head end.

8.6 PEG Signal Quality. Provided PEG signal feeds are delivered by the Village, or its designee, to the designated signal input point without material degradation, the PEG Channel delivery system from the designated signal input point shall meet the same FCC technical standards as the remainder of the Cable System set forth in Section 4.3 of this Agreement.

8.7 Grantee Use of Unused Time. Because the Village and Grantee agree that a blank or underutilized PEG Channel is not in the public interest, in the event the Village, or its designee, does not completely program a Channel, Grantee may utilize the Channel for its own purposes subject to the terms and conditions described in this section. Grantee shall give the Village, and its designee, notice that any PEG Channel contains unused time, as defined below. If within sixty (60) days of receiving such notice from Grantee the Village, or its designee, neither (i) objects to Grantee's finding in writing, or (ii) causes or permits the elimination of the unused time, Grantee may program unused time on the PEG Channel subject to reclamation from the Village upon no less than sixty (60) days and no more than ninety (90) days notice. Except as otherwise provided herein, the programming of the PEG Channel with text messaging or playback of previously aired programming shall not constitute unused time. A programming schedule that has not been updated for a period of ninety (90) days shall be considered unused time. Unused time shall be considered to be a period of time, in excess of six (6) consecutive hours, where no PEG programming of any kind can be viewed on a PEG Channel. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

8.8. PEG Access Capital.

8.8.1. At its sole discretion and as provided for herein, the Village, may designate PEG access capital projects to be funded by an external charge (the "PEG Capital Fee") to be passed on to each Subscriber pursuant to Section 622(c) of the Cable Act (47 U.S.C. §542(g)(2)(c)). The PEG Capital Fee shall be collected and paid only for capital costs that are considered lawful under the Cable Act, as amended and as implemented by the Federal Communications Commission.

8.8.2. The Village shall impose any PEG Capital Fee by an ordinance. The PEG Capital Fee shall be specified in the ordinance in the form of a per customer per month charge of up to but not more than fifty-three cents (\$0.53) to be passed on to each Basic Service Subscriber pursuant to Section 622(c) of the Cable Act (47 U.S.C. §542(c)). The ordinance shall also specify the total amount of the PEG Capital Fee to be collected; include a detailed and itemized description of the intended utilization of the PEG Capital Fee for PEG Access Channel facilities and/or equipment (a "PEG Capital Plan"); and acknowledge a commitment to the provision of sufficient budgetary funding and resources to support PEG Access Programming operations and effective utilization of the PEG Access Channel facilities and equipment set forth in the PEG Capital Plan. The Village, or its designee, may spend the PEG Capital Fee on items not identified in the PEG Capital Plan so long as such expenses are: (i) only capital costs that are considered lawful under the Cable Act, as amended, and as implemented by the Federal Communications Commission; and (ii) identified in the reporting requirements detailed under Section 8.8.6.

8.8.3. Consistent with paragraph 8.8.2 of this Section, the Village or designee may on an annual basis, amend the monthly amount of the PEG Capital Fee to be collected, subject to the maximum rate described in the Ordinance. The Grantee shall implement any amendment to the monthly amount of the PEG Capital Fee within ninety (90) days from receipt of written notice from the Village or its designee.

8.8.4. The Grantee shall collect the PEG Capital Fee and shall make the PEG Capital payments from such sums collected at the same time and in the same manner as Franchise Fee payments, provided the Village may assign the right to receive the PEG Capital Fee payments to its designee. Said PEG Capital Fee shall be imposed within one hundred twenty days (120) of the Village's, written notification to the Grantee of its having adopted the ordinance (or amendment thereto) described in this section. In the event the Village or its designee desires to terminate the collection of the PEG Capital Fee, the Grantee shall remove the PEG Capital Fee from its Subscribers' monthly billing statements within ninety (90) days of the receipt of a written request from the Village or its designee; provided that all PEG Capital Fees that have been collected by the Grantee shall be remitted to the Village, or its designee, as provided for herein. Once terminated, collection of a PEG Capital Fee shall only be reinstated in accordance with the procedures detailed in Section 8.8.2 of this Franchise Agreement.

8.8.5. Consistent with the PEG Capital Plan description of the intended utilization of the PEG Capital Fee, the Village, or its designee, shall be permitted to hold all or a portion of the PEG Capital Fee from year to year as a designated fund to permit the Village, or its designee, to make capital expenditures. If the Village, or its designee, chooses to borrow from itself or a financial institution, revenue for large PEG capital purchases or capital expenditures, the Village, or its designee, shall be permitted to make periodic repayments using the PEG Capital Fee.

8.8.6. No more frequently than on an annual basis, commencing with the implementation of the PEG Capital Fee, the Village, or its designee, will provide the Grantee a listing of the items purchased and expenditures made from the proceeds of the PEG Capital Fee during the previous 12 month period, solely for the purpose of ensuring the PEG Capital Fee is used for capital costs that are considered lawful under the Cable Act, as amended and as implemented by the Federal Communications Commission. The first such listing shall be provided to the Grantee within thirty (30) days following the first anniversary of the implementation of the PEG Capital Fee, and subsequent listing shall be provided annually thereafter. The Village and Grantee agree and acknowledge that the Village may commingle its PEG Capital Fees with the fees received by other communities which are members of the SFVCTC, or its successor, and the listing of items purchased and expenditures made may be aggregated and is not required to be broken down by the Village from which the revenue is received. The Grantee's sole remedy for the Village's failure to deliver the list shall be to obtain specific performance.

8.8.7. The Village and Grantee acknowledge that the utilization of the PEG Capital Fee shall be subject to audit by the Grantee using procedures consistent with the audit standards set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05 (Municipal Franchise Fee Review; Requests For Information), provided the rights and responsibilities of the parties shall be reversed from that described in that statute. Any audit shall be conducted in accordance with generally applicable auditing standards. Any undisputed expenditures made by the Village for purposes other than PEG Capital shall be credited upon discovery of such overpayment until such time when the full value of such expenditures (including time value pursuant to Section 622(b) of the Cable Act [47 U.S.C. Section 542(b)]) has been applied to the PEG Capital Fee liability. The Village and Grantee agree and acknowledge that the Village may commingle its PEG Capital Fees with the fees received by other communities which are members of the

SFVCTC, or its successor, and the Village may assign its responsibility to respond to an audit to the Agency, or its successor.

8.8.8. Unless otherwise agreed to by the Grantee, any PEG Capital Fees remaining at the end of the agreement in the possession of the Village and/or its designee that have not been expended for PEG Capital, shall be credited against PEG Capital Fees required in the subsequent franchise agreement, provided in the event there are no PEG Capital Fees required under the subsequent franchise agreement, such monies shall continue to be obligated only for PEG Capital expenditures.

8.8.9. For any payments owed by Grantee in accordance with this Section which are not made on or before the due dates, Grantee shall make such payments including interest at an annual rate of the prime lending rate as quoted by JP Morgan Chase & Company or its successor, computed from time due until paid. Any undisputed overpayments made by the Grantee to the Village shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the PEG Capital Fee liability otherwise accruing under this section.

8.9.10. The Grantee and Village agree that, except as provided in Paragraphs 8.8.7 of this Section, the capital obligations set forth in this Section are not “Franchise Fees” within the meaning of 47 U.S.C. § 542.

## **SECTION 9: Enforcement of Franchise**

9.1. Notice of Violation or Default. In the event the Village believes that the Grantee has not complied with a material term of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

9.2. Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from the receipt of the Village's written notice: (A) to respond to the Village, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Village of the steps being taken and the projected date that the cure will be completed.

9.3. Enforcement. Subject to applicable federal and state law, and following notice and an opportunity to cure and respond pursuant to the provisions of Section 9.2 above, in the event the Village determines that the Grantee is in default of any material provision of the Franchise, the Village may:

9.3.1. seek specific performance of any provision that reasonably lends itself to such remedy or seek other relief available at law, including declaratory or injunctive relief; or

9.3.2. in the case of a substantial or frequent default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

(i) The Village shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee. The notice shall set forth with

specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Village has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy or in the event that the Grantee has not taken action to cure the default, it may then seek termination of the Franchise at a public hearing. The Village shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

(ii) At the designated hearing, the Village shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which the Village shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Grantee at its sole expense. The decision of the Village shall be in writing and shall be delivered to the Grantee in a manner authorized by Section 10.2. The Grantee may appeal such determination to any court with jurisdiction within thirty (30) days after receipt of the Village's decision.

9.4. Remedies Not Exclusive. In addition to the remedies set forth in this Section 9, the Grantee acknowledges the Village/ City's ability pursuant to Section 4.7 of this Franchise Agreement to enforce the requirements and standards, and the penalties for non-compliance with such standards, consistent with the Illinois Cable and Video Customer Protection Law enacted by the Village as Title 5 Chapter 51 of the Code; and, pursuant to Sections 3.1 and 7.1 of this Franchise Agreement and Title 12 Chapter 20 of the Code, to enforce the Grantee's compliance with the Village's Right-of-Way Ordinance. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to permit the Village to exercise such rights and remedies in a manner that permits duplicative recovery from, or payments by, the Grantee. Such remedies may be exercised from time to time and as often and in such order as may be deemed expedient by the Village.

## **SECTION 10: Miscellaneous Provisions**

10.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Non-compliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

10.2. Notice. Any notification that requires a response or action from a party to this franchise within a specific time-frame, or that would trigger a timeline that would affect one or both parties' rights under this franchise, shall be in writing and shall be sufficiently given and served upon the other party by

hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Village:

Village of North Aurora  
25 E. State St.  
North Aurora, Illinois 60542  
ATTN: Village President

To the Grantee:

Comcast  
1500 McConnor Pkwy  
Schaumburg, Illinois 60173  
ATTN: Director of Government Affairs

and

Comcast  
1701 JFK Blvd.  
Philadelphia, PA 19103  
ATTN: Government Affairs

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the person of record as specified above. Either party may change its address and addressee for notice by notice to the other party under this Section.

10.3. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the Village and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral. Except for ordinances adopted pursuant to Sections 2.4 and 2.5 of this Agreement, all ordinances or parts of ordinances related to the provision of Cable Service that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

10.3.1. The Village may adopt a cable television/video service provider regulatory ordinance that complies with applicable law, provided the provisions of any such ordinance adopted subsequent to the Effective Date of this Franchise Agreement shall not apply to the Grantee during the term of this Franchise Agreement.

10.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either party may notify the other in writing that the Franchise has been materially altered by the change and of the election to begin negotiations to amend the Franchise in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be

competitively neutral, and the parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

10.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

10.6. Venue. Except as to any matter within the jurisdiction of the federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, Kane County, Illinois. Any matter brought pursuant to the jurisdiction of the federal court shall be brought in the United States District Court of the Northern District of Illinois.

10.7. Modification. Except as provided in Sections 5.1.1 and 5.1.2, no provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Village and the Grantee, which amendment shall be authorized on behalf of the Village through the adoption of an appropriate ordinance or resolution by the Village, as required by applicable law.

10.8. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.

10.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein.

10.10. Validity of Franchise Agreement. The parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Franchise Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement. In the event any provision hereof is nonetheless found by a final, non-appealable judicial order to be invalid or unenforceable in the manner in which it is applied or implemented by the parties hereto, the parties agree that the change in interpretation and performance of this Agreement shall be solely prospective from the effective date of the order and shall not give rise to any retroactive claims for a party's actions in reliance on this Agreement preceding the date of such order unless such order clearly addresses the retroactive and prospective application of such order.

10.11. Authority to Sign Agreement. Grantee warrants to the Village that it is authorized to execute, deliver and perform this Franchise Agreement. The individual signing this Franchise Agreement on behalf of the Grantee warrants to the Village that s/he is authorized to execute this Franchise Agreement in the name of the Grantee.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

**For the Village of North Aurora:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date:\_\_\_\_\_

**For Comcast of Illinois XIII, L.P.**

By:\_\_\_\_\_

Name: \_\_John Crowley\_\_\_\_\_

Title: \_\_Regional Senior Vice-President\_\_\_\_\_

Date:\_\_\_\_\_

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## VILLAGE OF NORTH AURORA BOARD REPORT

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
CC: STEVE BOSCO, VILLAGE ADMINISTRATOR  
**FROM:** MIKE TOTH, COMMUNITY & ECONOMIC DEVELOPMENT DIRECTOR  
**SUBJECT:** PETITION 17-02: 102 S. LINCOLNWAY SPECIAL USE  
**AGENDA:** 3/6/2017 COMMITTEE OF THE WHOLE MEETING

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### DISCUSSION

The petitioner is requesting a special use to allow Motor Vehicle Repair and/or Service on the subject property. The subject property is located in the B-3 Central Business District. Motor vehicle service and repair is classified as a special use in the B-3 Central Business District. According to the Zoning Ordinance, if any nonconforming use is discontinued, or becomes vacant, and remains discontinued or unoccupied for a continuous period of 180 days such use shall be deemed to be abandoned. As the previous use has been abandoned for more than 180 days, a special use to allow motor vehicle service and repair on the subject property is needed.

A public hearing was held before the Plan Commission at their February 7, 2017 meeting. The Plan Commission discussed several items pertaining to the proposed special use -- items involving the current state of the property and proposed business operations. The Plan Commission discussed the condition of the sidewalk and signage. With regard to the business operation, The Plan Commission stated that they do not want cars being stored outside of the building. They also wanted to make sure there was adequate space for dumpster pick up and that cars were not being test driven on John Street. The petitioner confirmed adequate space for dumpster pick up and stated that the building has four (4) bays, which would allow plenty of space for the indoor storage of motor vehicles. Staff notes that a Condition #1 of the staff report states that *outdoor storage of inoperable vehicles shall be prohibited*. Lastly, staff stated that the traffic code would apply to any test driving incidents on John Street. The Plan Commission unanimously recommended approval of the proposed special use, subject to the six conditions listed in the staff report.

#### Attachments:

1. Staff report to the Plan Commission.

## **Staff Report to the Village of North Aurora Plan Commission**

**FROM: Mike Toth, Community and Economic Development Director**

### **GENERAL INFORMATION**

**Meeting Date:** February 7, 2017

**Petition Number:** #17-02

**Petitioner:** John White

**Request(s):** Special use to allow Motor Vehicle Repair and/or Service

**Location:** 102 S. Lincolnway

**Parcel Number(s):** 15-04-256-007

**Size:** Approximately 14,810 sq. ft.

**Current Zoning:** B-3 – Central Business District

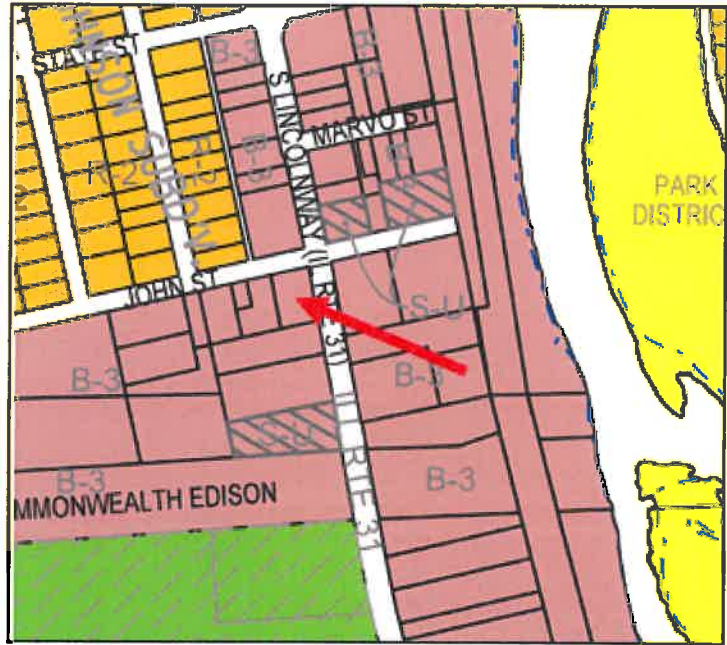
**Contiguous Zoning:** B-3 – Central Business District (north, south, east and west)

**Comprehensive Plan Designation:** Village Center/Mixed Use

### **PROPOSAL**

The 5,326 square foot building located on the subject property has historically been used for motor vehicle service. The submitted plans include updates to the site and building for motor vehicle service and repair use.

The subject property is located in the B-3 Central Business District. Motor vehicle service and repair is classified as a special use in the B-3 Central Business District. According to the Zoning Ordinance, if any nonconforming use is discontinued, or becomes vacant, and remains discontinued or unoccupied for a continuous period of 180 days such use shall be deemed to be abandoned. As the previous use has been abandoned for more than 180 days, a special use to allow motor vehicle service and repair on the subject property is needed.



Staff finds that the proposed special use meets the Standards for Specials Uses, as submitted by the petitioner, and as set forth in the Zoning Ordinance. Should the Plan Commission elect to approve the special use, staff recommends that the Plan Commission make a motion to include the following conditions:

1. Outdoor storage of inoperable motor vehicles shall be prohibited.
2. The storage rack adjacent to the northeast corner of the existing building exterior shall be removed from the subject property.
3. Any existing debris shall be removed from the subject property and the site shall be maintained in an orderly fashion.
4. All dumpsters located on the subject property shall be enclosed per Section 14.11.A of the Zoning Ordinance.
5. The Petitioner/Owner shall grant to the Village, at no cost to the Village, a twenty-five (25) foot easement public utility easement for storm sewer purposes spanning the entirety of the eastern boundary of the subject property. The Village shall fully complete all necessary restoration work done as part of the storm sewer installation.
6. Any modification or intensification that alters the essential character or operation of the use in a way not approved at the time the special use was granted shall require new special use approval.



VILLAGE OF  
**NORTH  
AURORA**  
Crossroads on the Fox

25 East State Street, North Aurora, IL 60542  
P: 630.897.1457 F: 630.897.0269  
www.northaurora.org

## APPLICATION FOR SPECIAL USE

VILLAGE OF NORTH AURORA  
Board of Trustees  
25 East State Street  
North Aurora, IL 60542

PETITION NO. 17-02

FILE NAME Special Use Motor Vehicle Repair

DATE STAMP

**RECEIVED**

**JAN 30 2017**

### I. APPLICANT AND OWNER DATA

Name of Applicant\* John White

**VILLAGE OF  
NORTH AURORA**

Address of Applicant 8100 Van Emmon Rd

Telephone Numbers 630-800-0606

Email Address jwhi567@aol.com

Name of Owner(s)\* Kathy Moecher

Telephone Numbers 5859431544

If Applicant is other than owner, attach letter of authorization from Owner.

Title of Record to the real estate was acquired by Owner on 1/4/17

### II. ADDRESS, USE AND ZONING OF PROPERTY

Address of Property 102 S Lincolnway Rte 31 North Aurora  
(indicate location if no common address)

Legal Description: Included on Survey

Parcel Size 14,810 SF

Present Use Automotive Shop (vacated)  
(business, manufacturing, residential, etc.)

Present Zoning District B3- Central Business district  
(Zoning Ordinance Classification)



25 East State Street, North Aurora, IL 60542  
P: 630.897.1457 F: 630.897.0269  
[www.northaurora.org](http://www.northaurora.org)

4. A written certified list containing the names of registered owners, their mailing addresses and tax parcel numbers, of all properties within 250 feet of the property for which the special use is requested.
5. Statement and supporting data regarding Standards for Special Uses (above).
6. A copy of owner's title insurance policy or the deed for the subject property.
7. Filing fee in the amount of \$4,300.00, if paid by check make payable to the Village of North Aurora.
8. Letter of authorization letter from owner, if applicable.
9. Disclosure of beneficiaries of land trust, if applicable.

Completed forms for the following must accompany application

10. Visit the Illinois Department of Natural Resources' website [www.dnr.state.il.us](http://www.dnr.state.il.us) and initiate a consultation using DNR's EcoCat online application
11. Visit the Kane DuPage Soil and Water Conservation District's website [www.kanedupageswcd.org](http://www.kanedupageswcd.org) for a Land Use Opinion Application


The Applicant authorizes the Village of North Aurora representatives to enter on to the property to make inspection during the hearing process.

The Applicant is responsible for publishing a legal notice in the newspaper, sending certified mail notices to properties within 250 feet, and posting a sign on the property advertising the public hearing. These shall be in accordance with village Ordinances at the times decided by the Village of North Aurora.


The undersigned hereby agrees to reimburse the Village for all costs of court reporter fees for attendance at and transcript of hearing(s) and other professional service fees for services rendered in connection with this application as defined in Appendix B of the North Aurora Zoning Ordinance. Such reimbursement shall be made promptly upon receipt of invoices from the Village, whether or not this application for special use is approved.

I (we) certify that all of the above statements and the statements contained in any documents submitted herewith are true to the best of my (our) knowledge and belief.

  
Applicant or Authorized Agent

  
Date

  
Owner \*

  
Date



Page 2 of 6

**Attach hereto a statement with supporting data that the proposed special use will conform to the following standards:**

*1. The proposed special use is, in fact, a special use authorized in the zoning district in which the property is located.*

Yes this special use is allowed in the zoning district.

*2. The proposed special use is deemed necessary for the public convenience at that location.*

Yes this is a service use for the public convenience providing quality car repair services at a clean and convenient location.

*3. The proposed special use does not create excessive additional impacts at public expense for public facilities and services, and will be beneficial to the economic welfare of the community.*

This use will not create an excessive additional impact at public facilities and services and will be beneficial to the economic welfare of the community by providing reasonable priced full service car repairs to the community and it may create jobs.

*4. The proposed use is in conformance with the goals and policies of the Comprehensive Plan, and all Village codes and regulations.*

Yes, since the proposed use is the properties highest and best use given the existing building, limited parking and small lot size.

*5. The proposed special use will be designed, located, operated, and maintained so as to be harmonious and compatible in use and appearance with the existing or intended character of the general vicinity.*

Yes this service will be harmonious and compatible in use and appearance to the general facility and will not have late night hours and all repairs will be completed inside the facility.

*6. The proposed special use will not significantly diminish the safety, use, enjoyment, and value of other property in the neighborhood in which it is located.*

No, it will not significantly diminish the safety, use, enjoyment, and value of other property in the neighborhood.

*7. The proposed special use is compatible with development on adjacent or neighboring property.*

Yes, there are a number of other service uses in the area.

*8. The proposed special use minimizes potentially dangerous traffic movements, and provides adequate and safe access to the site.*

This is an existing site and there have not been any past issues.

*9. The proposed special use provides the required number of parking spaces and maintains parking areas, in accordance with the requirements of this Ordinance.*

Yes the plan meets the required parking spaces.

*10. The proposed special use is served by adequate utilities, drainage, road access, public safety, and other necessary facilities.*

Yes this is an existing site and all utilities are already provided.

*11. The proposed special use conforms with the requirements of this Ordinance and other applicable regulations.*

Yes this is an existing building with existing improvements on it.



VILLAGE OF  
**NORTH  
AURORA**  
Crossroads on the Fox

25 East State Street, North Aurora, IL 60542  
P: 630.897.1457 F: 630.897.0269  
www.northaurora.org

Following are the names and addresses of all properties within 250 feet of the property in questions for which the special use being is being requested.

TAX PARCEL NO.	NAME	MAILING ADDRESS
<u>1504256007</u>	<u>Paul E &amp; Kathy Moecher</u>	<u>37W461 Heritage Dr, Batavia IL</u>
<u>1504253017</u>	<u>Queens Oak Holding Trust</u>	<u>5032 Parkway Plaza Blvd Charlotte NC</u>
<u>1504254008</u>	<u>Nicklaus &amp; Sarah Unold</u>	<u>17 S Adams St North Aurora IL</u>
<u>1504254009</u>	<u>Ernest L Latham</u>	<u>21 S Adams St, North Aurora IL</u>
<u>1504254010</u>	<u>Phillip A Woods</u>	<u>111 John St North Aurora IL</u>
<u>1504254017</u>	<u>Kevin Staton</u>	<u>97 E RicKard Dr Oswego IL</u>
<u>1504254018 &amp; 154256003</u>	<u>North Aurora Village</u>	<u>25 E state St North Aurora IL</u>
<u>1504255012</u>	<u>Rose Wendel Trustee</u>	<u>2380 Ridge Rd Highland Park IL</u>
<u>1504255013 &amp; 1504255030</u>	<u>Michael Neil</u>	<u>19 S Lincolnway, North Aurora IL</u>
<u>1504255039</u>	<u>Timothy &amp; Cherie Miller</u>	<u>11 John St North Aurora IL</u>
<u>1504255041</u>	<u>KulKorp LLP, Karen Kulcycki</u>	<u>1750 W Ogden Ave Unit 4855 Naperville IL</u>
<u>1504256004</u>	<u>Tuu Duc Le &amp; Xuan Thi Luu</u>	<u>1050 Cochran St Aurora IL</u>
<u>1504256005</u>	<u>Aurora Dentrax PC</u>	<u>2124 Ogden Ave Ste 303 Aurora IL</u>
<u>1504256006</u>	<u>Thomas J &amp; Maarylin A Leuer</u>	<u>434 S EdgeLawn Dr Aurora, IL</u>

also sent to 1504256008, 1504256014, 1504256018, 1540276001, 154276002, 154276012, 154276014, 1504401002

I, John White, being first duly sworn on oath certifies that all fo the above statements and the statements contained in any papers or plans submitted herewith are true and correct.

[Signature]  
Applicant Signature

1/20/17  
Date

SUBSCRIBED AND SWORN TO  
Before me this 20th day of Jan, 2017.

[Signature]  
Notary Public

OFFICIAL SEAL  
L. BELL

NOTARY PUBLIC, STATE OF ILLINOIS  
My Commission Expires 11-26-2017

Tax Parcel	Tax Name	Address
1504256008	Verna L Ohler	2017 Larchwood Dr North Aurora IL
1504256014	Laurie, Joseph & Rosemary Laurie	3677 Canton Cir Mundelein IL
1504256018	James Eccher, Bob Tirona	37 S River St Aurora, IL
1504276001	Laurie, Joseph & Rosemary Laurie	101 S Lincolnway North Aurora
1504276002	12 John St LLC	12 John St North Aurora IL
1504276012	Trust 8002367289 Aurora 111	505 N Lake Shore Dr Apt 3707 Chicago
1504276014	Michael Covelli Jr	821 N Deerpath Rd North Aurora IL
1504401002	4 V Investments LLC	2000 W Main St St Charles IL

I, John White, being first duly sworn on oath certifies that all fo the above statements and the statements contained in any papers or plans submitted herewith are true and correct.

Applicant Signature Date

SUBSCRIBED AND SWORN TO

Before me this 12 day of January, 2017

Notary Public 1504256007 Paul E & Kathy Moecher 37W 461 Heritage Dr, Batavia IL

1504253017 Queens Oak Holding Trust 5032 Parkway Plaza Blvd Charlotte NC

1504254008 Nicklaus & Sarah Unold 17 S Adams St North Aurora IL

1504254009 Ernest L Latham 21 S Adams St, North Aurora IL

1504254010 Phillip A Woods 111 John St North Aurora IL

1504254017 Kevin Staton 97 E Rickard Dr Oswego IL

1504254018 & 154256003 North Aurora Village 25 E state St North Aurora IL

1504255012 Rose Wendel Trustee 2380 Ridge Rd Highland Park IL

1504255013 & 1504255030 Michael Neil 19 S Lincolnway, North Aurora IL

1504255039 Timothy & Cherie Miller 11 John St North Aurora IL

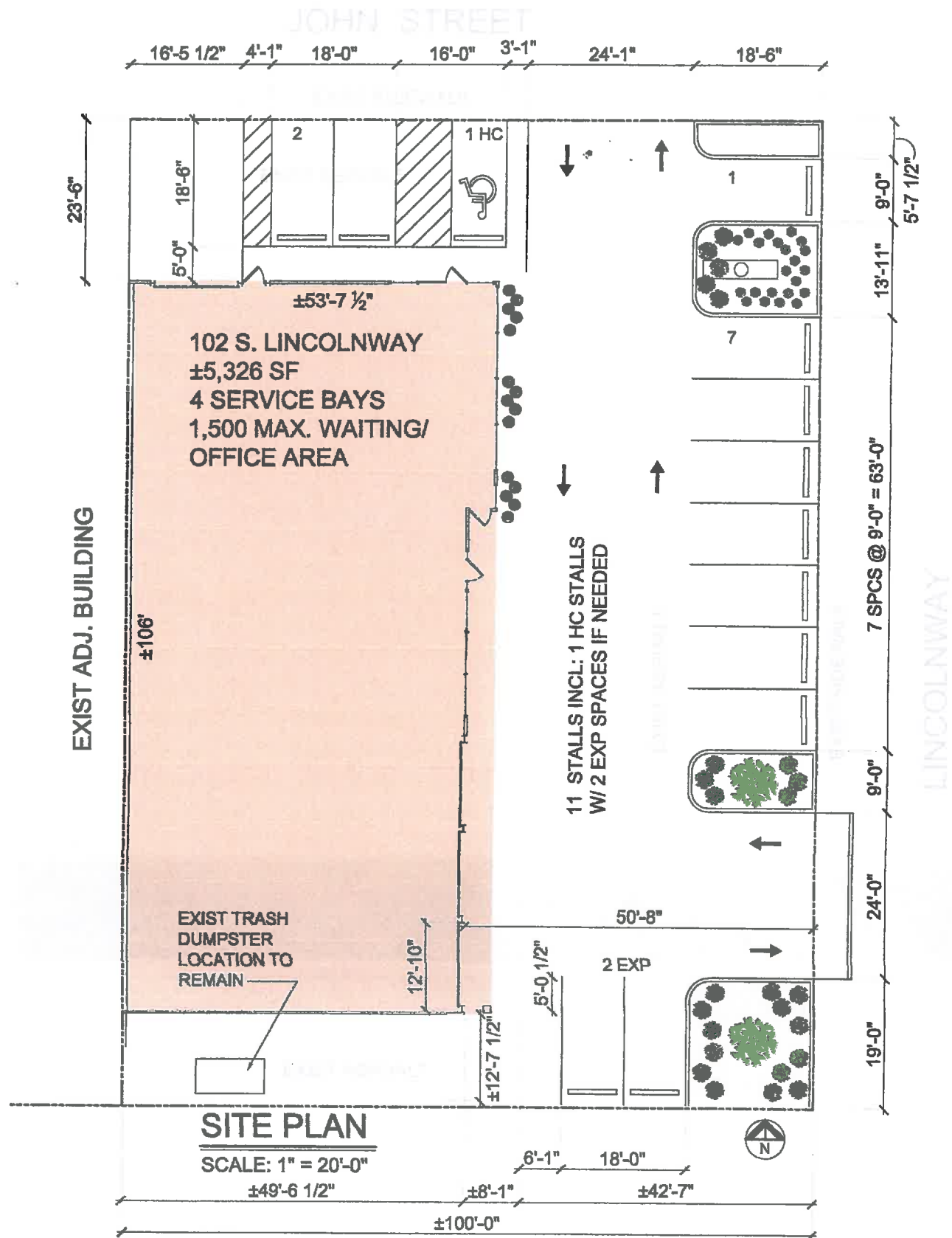
1504255041 KulKorp LLP, Karen Kulcycki 1750 W Ogden Ave Unit 4855 Naperville IL

1504256004 Tuu Duc Le & Xuan Thi Luu 1050 Cochran St Aurora IL

1504256005 Aurora Dentrux PC 2124 Ogden Ave Ste 303 Aurora IL

1504256006 Thomas J & Maarylin A Leuer 434 S EdgeLawn Dr Aurora, IL

OFFICIAL SEAL  
L. BELL  
NOTARY PUBLIC, STATE OF ILLINOIS  
My Commission Expires 11-26-2017

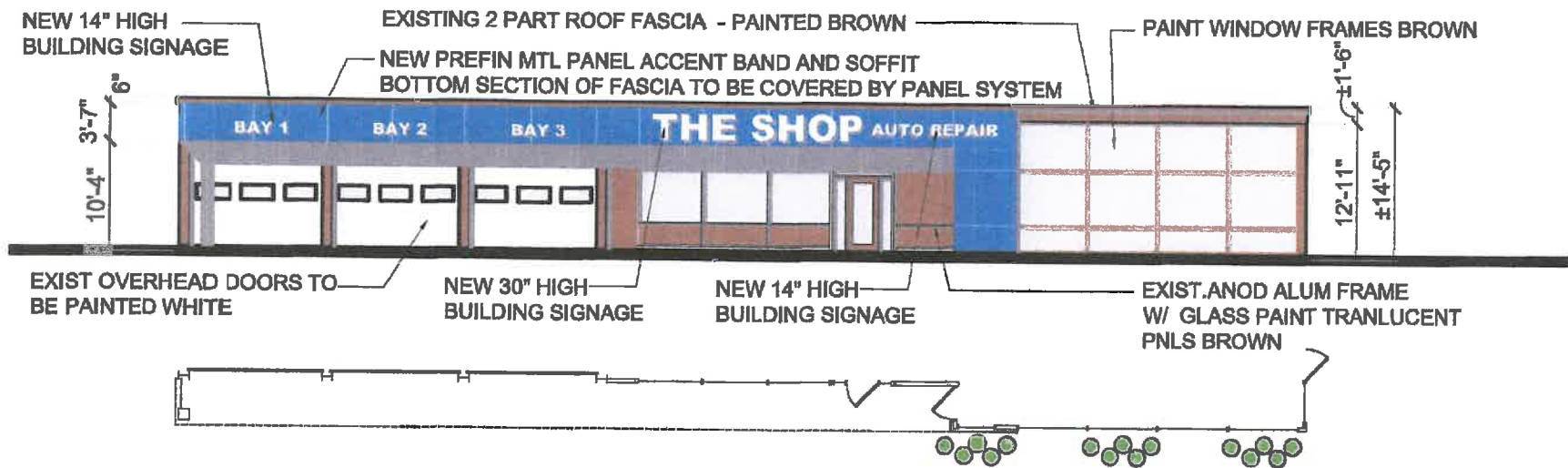


**A+M ARCHITECTS, L.L.C.**  
40 Landover Parkway Suite 3  
Hawthorn Woods, Illinois 60047  
TEL: 847.726.9517  
FAX: 847.726.9516

New Retrofit for :  
**CAR UTOPIA**  
102 S. LINCOLNWAY - NORTH AURORA, IL

Date: 12/08/16  
Dwg: 16-102  
Drawn by: AA  
© 2016 A+M Architects, LLC

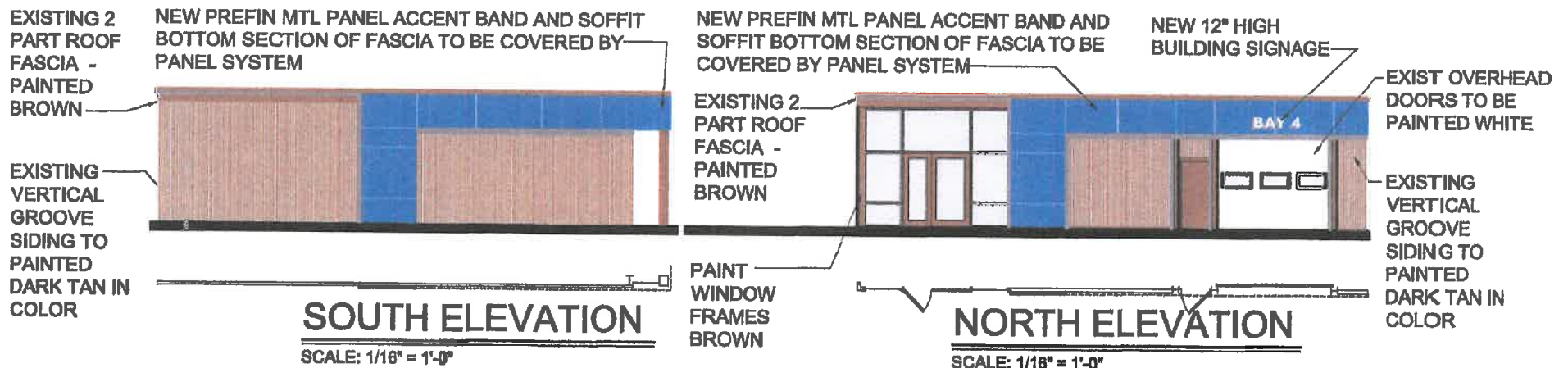
A



## EAST ELEVATION

SCALE: 1/16" = 1'-0"

COLORS TO BE SELECTED BY OWNER



**A+M ARCHITECTS, LLC**

40 Landover Parkway Suite 3  
Hawthorn Woods, Illinois 60047  
TEL: 847.726.9517  
FAX: 847.726.9516

New Retrofit for :  
**THE SHOP AUTO REPAIR CENTER**  
102 S. LINCOLNWAY NORTH AURORA, IL

Date: 01/03/17

Dwg: 16-102

Drawn by: AA

© 2017 A+M Architects, LLC

EL

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**VILLAGE OF NORTH AURORA  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
CC: STEVE BOSCO, VILLAGE ADMINISTRATOR  
**FROM:** MIKE TOTH, COMMUNITY & ECONOMIC DEVELOPMENT DIRECTOR  
**SUBJECT:** SITE PLAN REVIEW – NORTH AURORA SMILES  
**AGENDA:** 3/6/2017 COMMITTEE OF THE WHOLE MEETING

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**DISCUSSION**

As illustrated by the submitted plans, the intent of this request is to accommodate the development of a 5,338 square foot single-story dental office facility. Dental Offices are classified as a permitted use in the B-2 General Business District.

Per Section 4.4 of the Zoning Ordinance, site plan review is required for each building permit application for multi-family, townhouse, commercial, and industrial development for which a site plan has not already been approved.

The Plan Commission discussed this item at their February 7, 2017 meeting. The Plan Commission did not have any additional comments or suggestions of the proposed dental office and recommended approval of the site plan, subject to the one condition listed in the staff report.

**Attachments:**

1. Staff report to the Plan Commission.

**STAFF REPORT TO THE VILLAGE OF NORTH AURORA PLANNING COMMISSION  
FROM: MIKE TOTH, COMMUNITY DEVELOPMENT DIRECTOR**

**GENERAL INFORMATION**

**Meeting Date:** February 7, 2017

**Petition Number:** SPA #17-02

**Petitioner:** Jacob & Hefner Associates, Inc.

**Request:** Site Plan Approval

**Location:** Lot 107 of Randall Crossing

**Parcel Number(s):** 12-32-403-005

**Size:** 2.06 acres

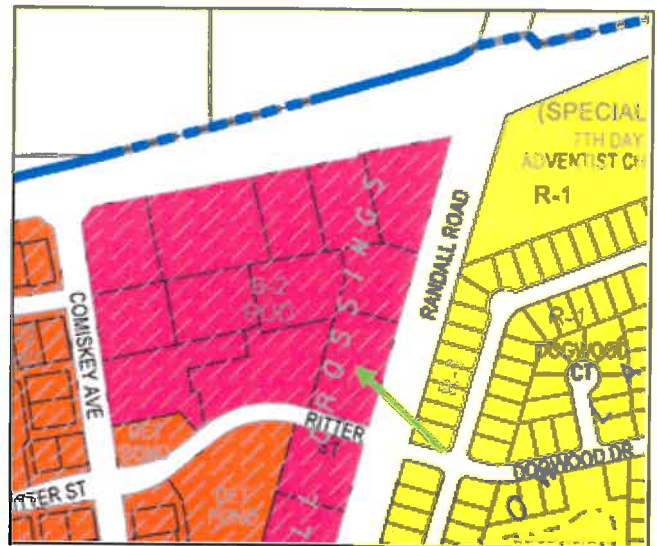
**Current Zoning:** B-2 General Business District  
Planned Unit Development (Randall Highlands PUD)

**Contiguous Zoning:** North, South and West: B-2  
General Business District Planned Unit  
Development East: R-1 Single Family Residence  
District

**Comprehensive Plan Designation:**  
'Regional Commercial'

**Attachments:**

1. Site plan, prepared by Jacob & Hefner Associates, Inc., dated January 31, 2017.
2. Landscape plan, prepared by McCallum Associates, dated February 1, 2017.
3. Exterior conceptual design plans, prepared by HTJ Architects LLC.



**PROPOSAL**

The subject property is located in the B-2 General Business District and has already been granted a special use for a general commercial planned unit development, known as the Randall Highlands. As illustrated by the submitted plans, the intent of this request is to accommodate the development of a

5,338 square foot single-story dental office facility. Dental Offices are classified as a permitted use in the B-2 General Business District.

Per Section 4.4 of the Zoning Ordinance, site plan review is required for each building permit application for multi-family, townhouse, commercial, and industrial development for which a site plan has not already been approved.

Staff has reviewed the submitted plans and confirms compliance with the Zoning Ordinance and Randall Highlands Planned Unit Development.

### **SITE PLAN APPROVAL**

Standards for Site Plan Review. The scope of site plan review includes the location of principal and accessory structures, infrastructure, open space, landscaping, topography, grading plan, building elevations, exterior lighting, traffic movement and flow, number of parking spaces, design of parking lots, and location of landscaping and screening. In reviewing site plans, the relationship of the site plan to adopted land use policies, and the goals and objectives of the Comprehensive Plan shall be evaluated. In addition, the following characteristics shall also be considered:

1. The arrangement of the structures and buildings on the site to:
  - a. Allow for the effective use of the proposed development.
  - b. Allow for the efficient use of the land.
  - c. Ensure compatibility with development on adjacent property.
  - d. Respond to off-site utility and service conditions, and minimize potential impacts on existing or planned municipal services, utilities, and infrastructure.
  - e. Protect the public health, safety, convenience, comfort, and general welfare.
  - f. Conform to the requirements of this Ordinance and other applicable regulations.
2. The arrangement of open space or natural features on the site to:
  - a. Create a desirable and functional environment for patrons, pedestrians, and occupants.
  - b. Preserve unique natural resources where possible, such as, but not limited to forested areas and, hydrological features.
  - c. Provide adequate measures to preserve existing healthy, mature trees wherever practically feasible.
  - d. Provide adequate measures to preserve identified natural resources on adjacent sites.
  - e. Design drainage facilities to promote the use and preservation of natural watercourses, patterns of drainage and compliance with existing stormwater control and erosion protection facilities or requirements.
  - f. Avoid unnecessary or unreasonable alterations to existing topography.
3. The organization of circulation systems to:
  - a. Provide adequate and safe access to the site.

- b. Minimize potentially dangerous traffic movements.
  - c. Separate pedestrian and auto circulation and provide for bicycle parking or storage insofar as practical.
  - d. Minimize curb cuts.
4. The design of off-street parking lots or garages to:
- a. Minimize adverse impacts on adjacent properties.
  - b. Promote logical and safe parking and internal circulation.
5. In accordance with Section 14.2 (Landscape Plan) the design of landscape improvements and related features to:
- a. Create a logical transition to adjoining lots and developments.
  - b. Screen incompatible, negative, or unsightly uses.
  - c. Minimize the visual impact of the development on adjacent sites and roadways.
  - d. Utilize plant materials suitable to withstand the climatic conditions of the Village and microclimate of the site.
  - e. Promote and enhance the appearance and image of the Village.
6. Site illumination that is designed, located, and installed in a manner that will minimize adverse impacts on adjacent properties.
7. Conformance of the proposed development with the goals and policies of the Comprehensive Plan and all Village codes and regulations.

### **FINDINGS**

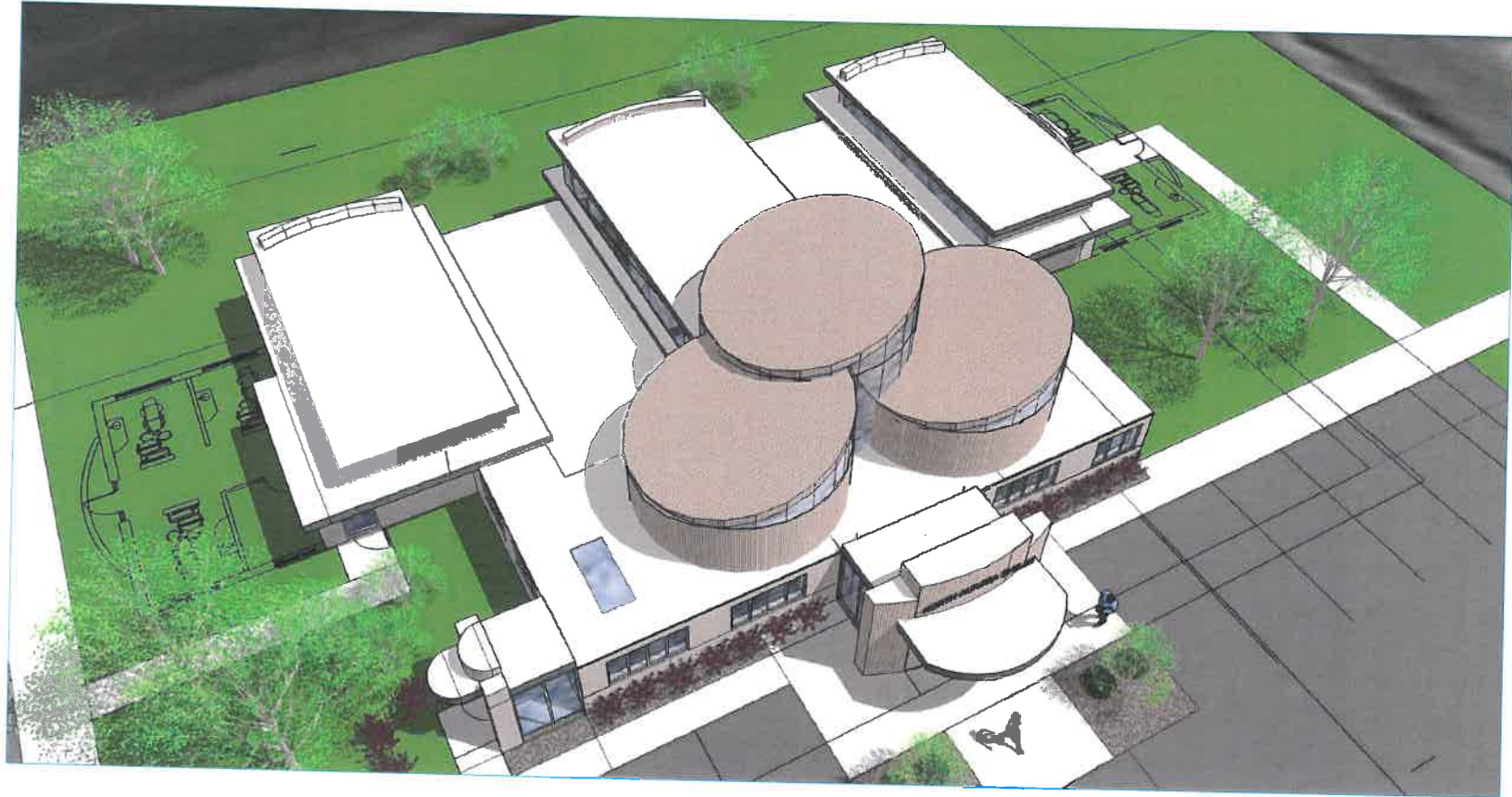
The Department of Community Development finds that the proposed site plan for Lot 107 of Randall Crossing meets the Site Plan Approval Standards and general zoning provisions set forth in the Zoning Ordinance. Staff recommends that the following conditions:

- 1. All dumpsters located on the subject property shall be enclosed per Section 14.11.A of the Zoning Ordinance.










DESIGNED BY	DATE
DRAWN BY	DATE
CHECK / APPROVED BY	DATE

A PROPOSED NEW OFFICE FOR:  
**NORTH AURORA SMILES**  
 NWC Randall Road and Ripper Street  
 North Aurora, Illinois

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EXTERIOR CONCEPTUAL  
 DESIGN IMAGE

PROJECT NUMBER  
**AZ001**  
**A1**



EXTERIOR CONCEPTUAL  
DESIGN IMAGE

PROJECT NUMBER  
**AZ001**  
**A2**

**hjt**

**Architects LLC**  
a Division of HJT Design Group

A PROPOSED NEW OFFICE FOR:  
**NORTH AURORA SMILES**  
**MWC Randall Road and Ribler Street**  
**North Aurora, Illinois**

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DESIGNED BY \_\_\_\_\_ DATE \_\_\_\_\_  
DRAWN BY \_\_\_\_\_ DATE \_\_\_\_\_  
CHECK / APPROVED BY \_\_\_\_\_ DATE \_\_\_\_\_

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ISSUED	DATE
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DRAWN BY	DATE
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A PROPOSED NEW OFFICE FOR:  
**NORTH AURORA SMILES**  
 NWC Randall Road and Ritter Street  
 North Aurora, Illinois

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**hjt**  
**Architects LLC**  
 300 West 1st Street, Suite 200  
 North Aurora, IL 60151  
 Tel: 815.341.1111  
 Fax: 815.341.1112  
 www.hjtarchitects.com

**hjt**

EXTERIOR CONCEPTUAL  
 DESIGN IMAGE

PROJECT NUMBER  
**AZ001**  
**A4**



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ISSUED	DATE
DESIGNED BY	DATE
CHECKED / APPROVED BY	DATE

A PROPOSED NEW OFFICE FOR:  
**NORTH AURORA SMILES**  
 NWC Randall Road and River Street  
 North Aurora, Illinois

Architect's Office: 1111 North Aurora Street, Suite 100, North Aurora, IL 60155  
 Phone: (815) 895-1111  
 Fax: (815) 895-1112  
 Email: info@hjtarchitects.com  
 Website: www.hjtarchitects.com

**hjt** Architects LLC  
 A Division of HJT Construction Group, Inc.

EXTERIOR CONCEPTUAL  
 DESIGN IMAGE

PROJECT NUMBER  
**AZ001**  
**A5**





REVIEW	DATE
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DRAWN BY	DATE
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CHECK / APPROVED BY	DATE
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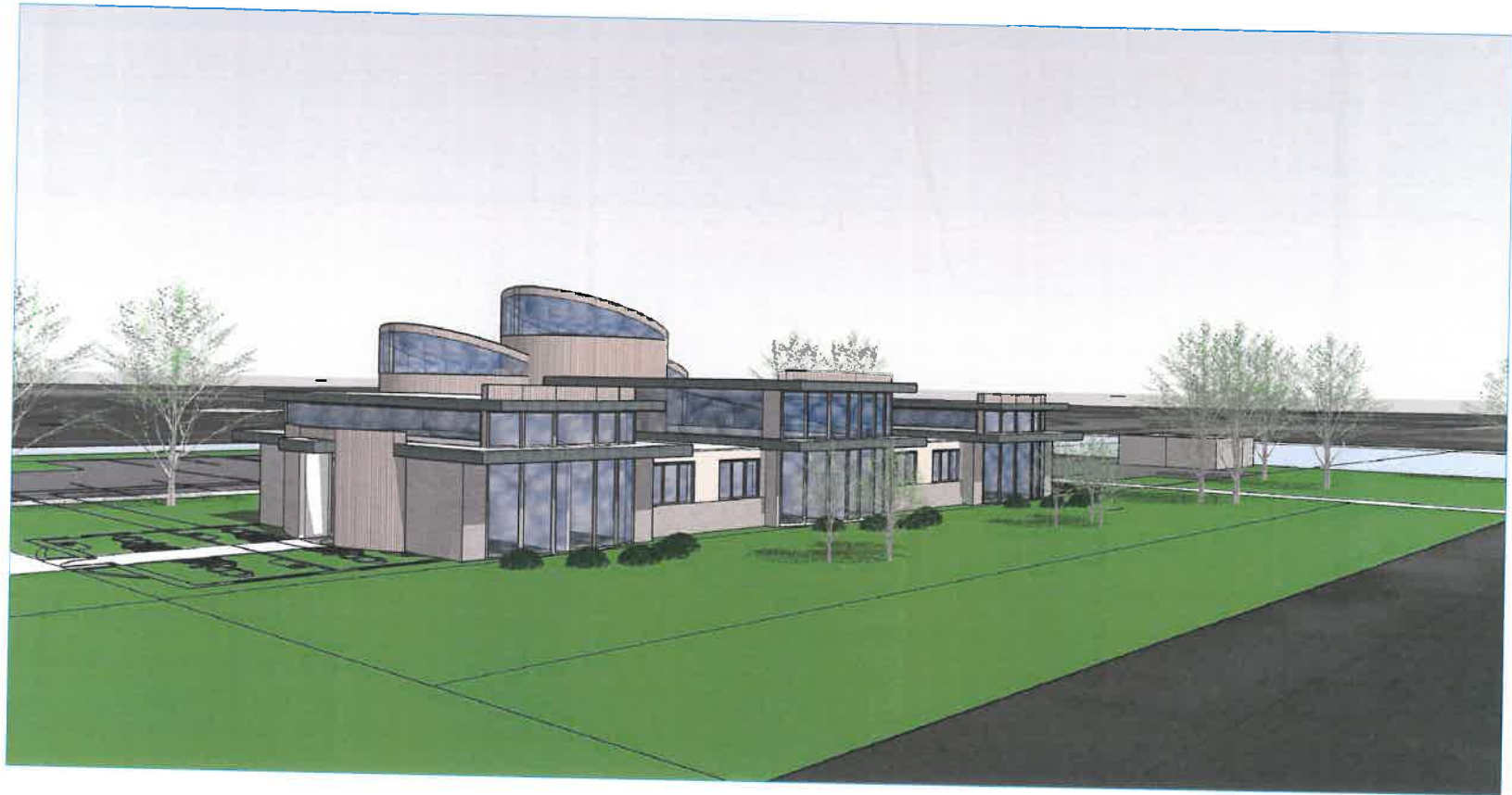
**A PROPOSE NEW OFFICE FOR:  
NORTH AURORA SMILES  
NWC Randall Road and Ritter Street  
North Aurora, Illinois**

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**EXTERIOR CONCEPTUAL  
DESIGN IMAGE**

**PRODUCT NUMBER  
AZ001  
A6**




REVIEWED	DATE
DRAWN BY	DATE
CHECK / APPROVED BY	DATE

A PROPOSED NEW OFFICE FOR  
**NORTH AURORA SMILES**  
 NWC Randall Road and Ritter Street  
 North Aurora, Illinois

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EXTERIOR CONCEPTUAL  
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PROJECT NUMBER  
**AZ001**  
**A7**








ISSUED	DATE
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CHECK / APPROVED BY	DATE

A PROPOSED NEW OFFICE FOR:  
**NORTH AURORA 3MILES**  
 NWC Randall Road and Ritter Street  
 North Aurora, Illinois

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EXTERIOR CONCEPTUAL  
 DESIGN IMAGE

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PROJECT NUMBER  
**AZ001**  
**A10**

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**VILLAGE OF NORTH AURORA  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
CC: STEVE BOSCO, VILLAGE ADMINISTRATOR  
**FROM:** MIKE TOTH, COMMUNITY & ECONOMIC DEVELOPMENT DIRECTOR  
**SUBJECT:** SITE PLAN REVIEW – RIVERFRONT JEEP  
**AGENDA:** 3/6/2017 COMMITTEE OF THE WHOLE MEETING

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**DISCUSSION**

As illustrated by the submitted plans, the intent of this request is to accommodate the development of a 30,993 square foot auto dealership on seven acres of vacant land located within North Aurora Towne Centre. Motor Vehicle Sales and/or Service is classified as a special use in the B-2 General Business District; however, the Towne Centre PUD allows 'Automobile sales and service, including oil change facilities and automobile auto repair' as a permitted use.

Per Section 4.4 of the Zoning Ordinance, site plan review is required for each building permit application for multi-family, townhouse, commercial, and industrial development for which a site plan has not already been approved.

The Plan Commission discussed this item at their February 7, 2017 meeting. The Plan Commission did not have any additional comments or suggestions of the proposed dealership and recommended approval of the site plan, subject to the one condition listed in the staff report.

**Attachments:**

1. Staff report to the Plan Commission.

**STAFF REPORT TO THE VILLAGE OF NORTH AURORA PLANNING COMMISSION  
FROM: MIKE TOTH, COMMUNITY DEVELOPMENT DIRECTOR**

**GENERAL INFORMATION**

**Meeting Date:** February 7, 2017

**Petition Number:** SPA #17-03

**Petitioner:** River Front Dodge Chrysler  
Jeep

**Request:** Site Plan Approval

**Location:** Lot 1 North Aurora Towne  
Centre

**Parcel Number(s):** 15-06-451-012

**Size:** 7.46 acres

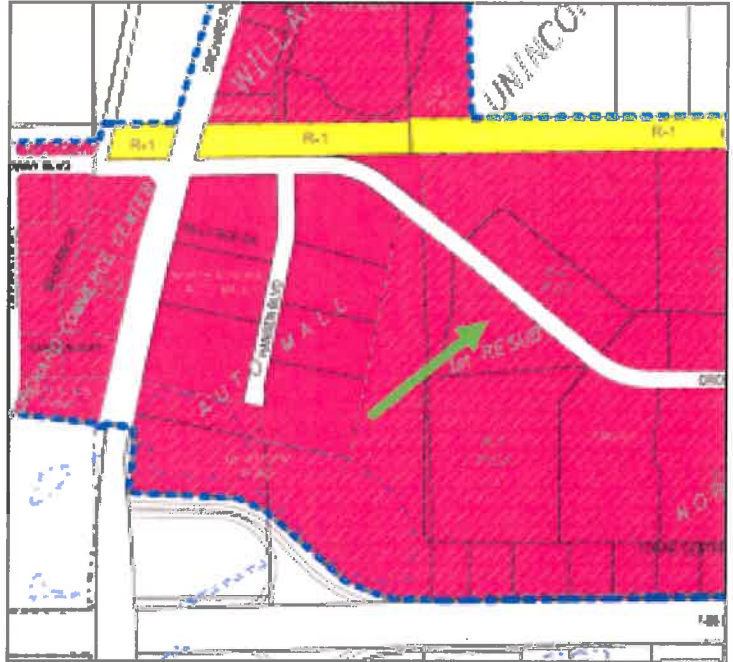
**Current Zoning:** B-2 General Business  
District Planned Unit Development  
(Towne Centre PUD)

**Contiguous Zoning:** B-2 General Business  
District Planned Unit Development (Towne  
Centre PUD)

**Comprehensive Plan Designation:**  
'Regional Commercial'

**Attachments:**

1. Site plan, prepared by Watermark Engineering Resources, Inc., dated January 27, 2017.
2. Landscape plans, prepared by Watermark Engineering Resources, Inc., dated January 27, 2017.
3. Exterior building elevation plans, prepared by KRM Architecture, January 16, 2016



## **PROPOSAL**

The subject property is located in the B-2 General Business District and has already been granted a special use for a general commercial planned unit development, known as the Towne Centre. As illustrated by the submitted plans, the intent of this request is to accommodate the development of a 30,993 square foot auto dealership. Motor Vehicle Sales and/or Service is classified as a special use in the B-2 General Business District; however, the Towne Centre PUD allows 'Automobile sales and service, including oil change facilities and automobile auto repair' as a permitted use. The southern portion of the property will be reserved for the storage of automobile inventory, not customer parking. Further, the storage area will not abut a street; therefore, the perimeter parking lot landscaping provisions do not apply. Staff notes that the amount of product inventory required by the different auto manufacturers varies and the manufacturers set the required amount of inventory.

Per Section 4.4 of the Zoning Ordinance, site plan review is required for each building permit application for multi-family, townhouse, commercial, and industrial development for which a site plan has not already been approved.

Staff has reviewed the submitted plans and confirms compliance with the Zoning Ordinance and Towne Centre Planned Unit Development.

## **SITE PLAN APPROVAL**

Standards for Site Plan Review. The scope of site plan review includes the location of principal and accessory structures, infrastructure, open space, landscaping, topography, grading plan, building elevations, exterior lighting, traffic movement and flow, number of parking spaces, design of parking lots, and location of landscaping and screening. In reviewing site plans, the relationship of the site plan to adopted land use policies, and the goals and objectives of the Comprehensive Plan shall be evaluated. In addition, the following characteristics shall also be considered:

1. The arrangement of the structures and buildings on the site to:
  - a. Allow for the effective use of the proposed development.
  - b. Allow for the efficient use of the land.
  - c. Ensure compatibility with development on adjacent property.
  - d. Respond to off-site utility and service conditions, and minimize potential impacts on existing or planned municipal services, utilities, and infrastructure.
  - e. Protect the public health, safety, convenience, comfort, and general welfare.
  - f. Conform to the requirements of this Ordinance and other applicable regulations.
2. The arrangement of open space or natural features on the site to:
  - a. Create a desirable and functional environment for patrons, pedestrians, and occupants.
  - b. Preserve unique natural resources where possible, such as, but not limited to forested areas and, hydrological features.
  - c. Provide adequate measures to preserve existing healthy, mature trees wherever practically feasible.

- d. Provide adequate measures to preserve identified natural resources on adjacent sites.
  - e. Design drainage facilities to promote the use and preservation of natural watercourses, patterns of drainage and compliance with existing stormwater control and erosion protection facilities or requirements.
  - f. Avoid unnecessary or unreasonable alterations to existing topography.
3. The organization of circulation systems to:
  - a. Provide adequate and safe access to the site.
  - b. Minimize potentially dangerous traffic movements.
  - c. Separate pedestrian and auto circulation and provide for bicycle parking or storage insofar as practical.
  - d. Minimize curb cuts.
4. The design of off-street parking lots or garages to:
  - a. Minimize adverse impacts on adjacent properties.
  - b. Promote logical and safe parking and internal circulation.
5. In accordance with Section 14.2 (Landscape Plan) the design of landscape improvements and related features to:
  - a. Create a logical transition to adjoining lots and developments.
  - b. Screen incompatible, negative, or unsightly uses.
  - c. Minimize the visual impact of the development on adjacent sites and roadways.
  - d. Utilize plant materials suitable to withstand the climatic conditions of the Village and microclimate of the site.
  - e. Promote and enhance the appearance and image of the Village.
6. Site illumination that is designed, located, and installed in a manner that will minimize adverse impacts on adjacent properties.
7. Conformance of the proposed development with the goals and policies of the Comprehensive Plan and all Village codes and regulations.

## **FINDINGS**

The Department of Community Development finds that the proposed site plan for Lot 1 North Aurora Towne Centre meets the Site Plan Approval Standards and general zoning provisions set forth in the Zoning Ordinance. Staff recommends that the following conditions:

1. All dumpsters located on the subject property shall be enclosed per Section 14.11.A of the Zoning Ordinance.

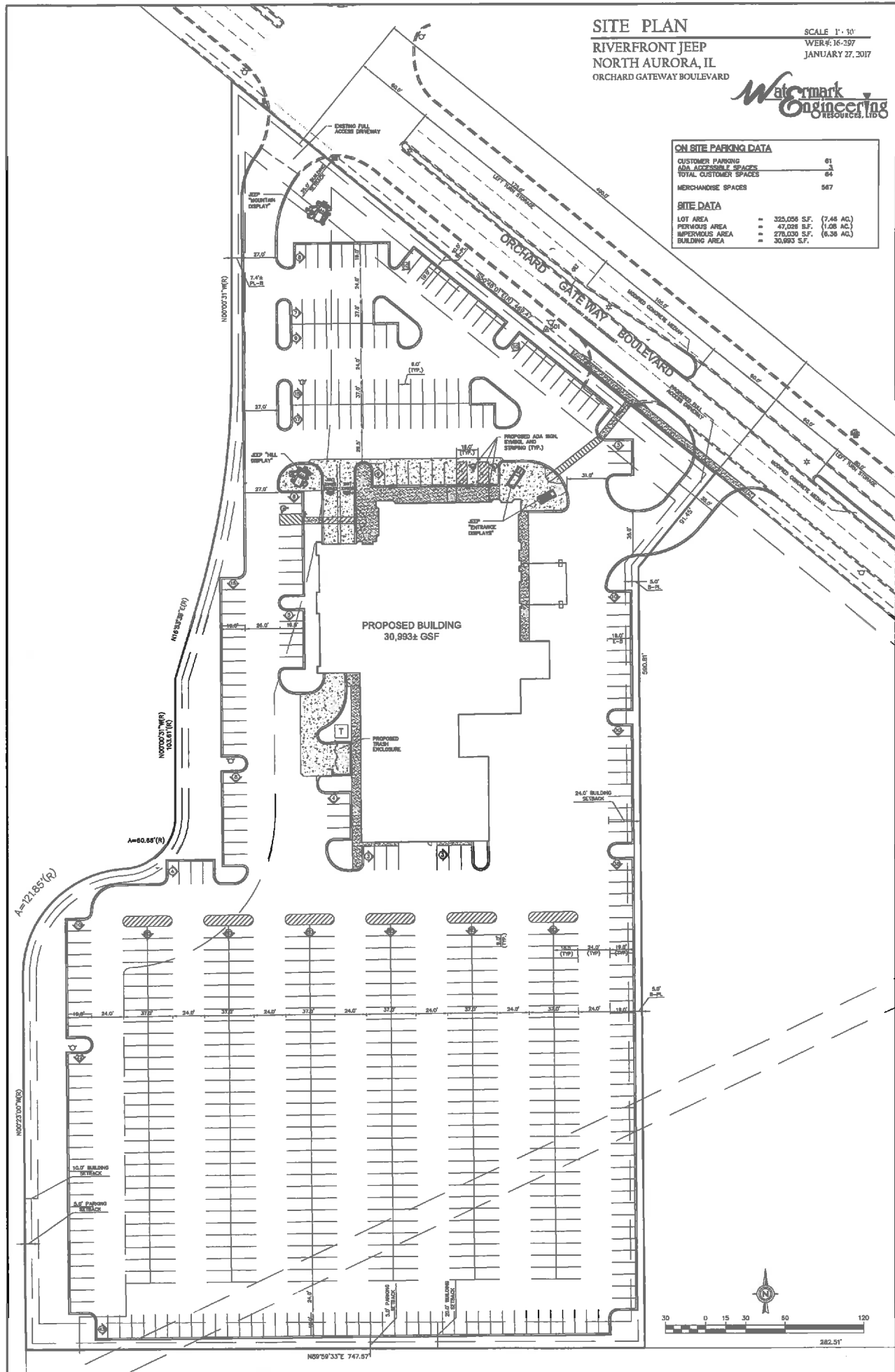
SCALE 1" = 30'  
WER# 16-297  
JANUARY 27, 2017

**Watermark Engineering**  
RESOURCES, LTD.

<u>ON SITE PARKING DATA</u>		
CUSTOMER PARKING		61
ADA ACCESSIBLE SPACES		3
TOTAL CUSTOMER SPACES		64
MERCHANDISE SPACES		567

<u>SITE DATA</u>		
LOT AREA	=	325,056 S.F. (7.48 AC.)
PERVIOUS AREA	=	47,026 S.F. (1.08 AC.)
IMPERVIOUS AREA	=	278,030 S.F. (6.38 AC.)
BUILDING AREA	=	30,693 S.F.



LANDSCAPE RENDERING

RIVERFRONT JEEP  
NORTH AURORA, IL  
ORCHARD GATEWAY BOULEVARD

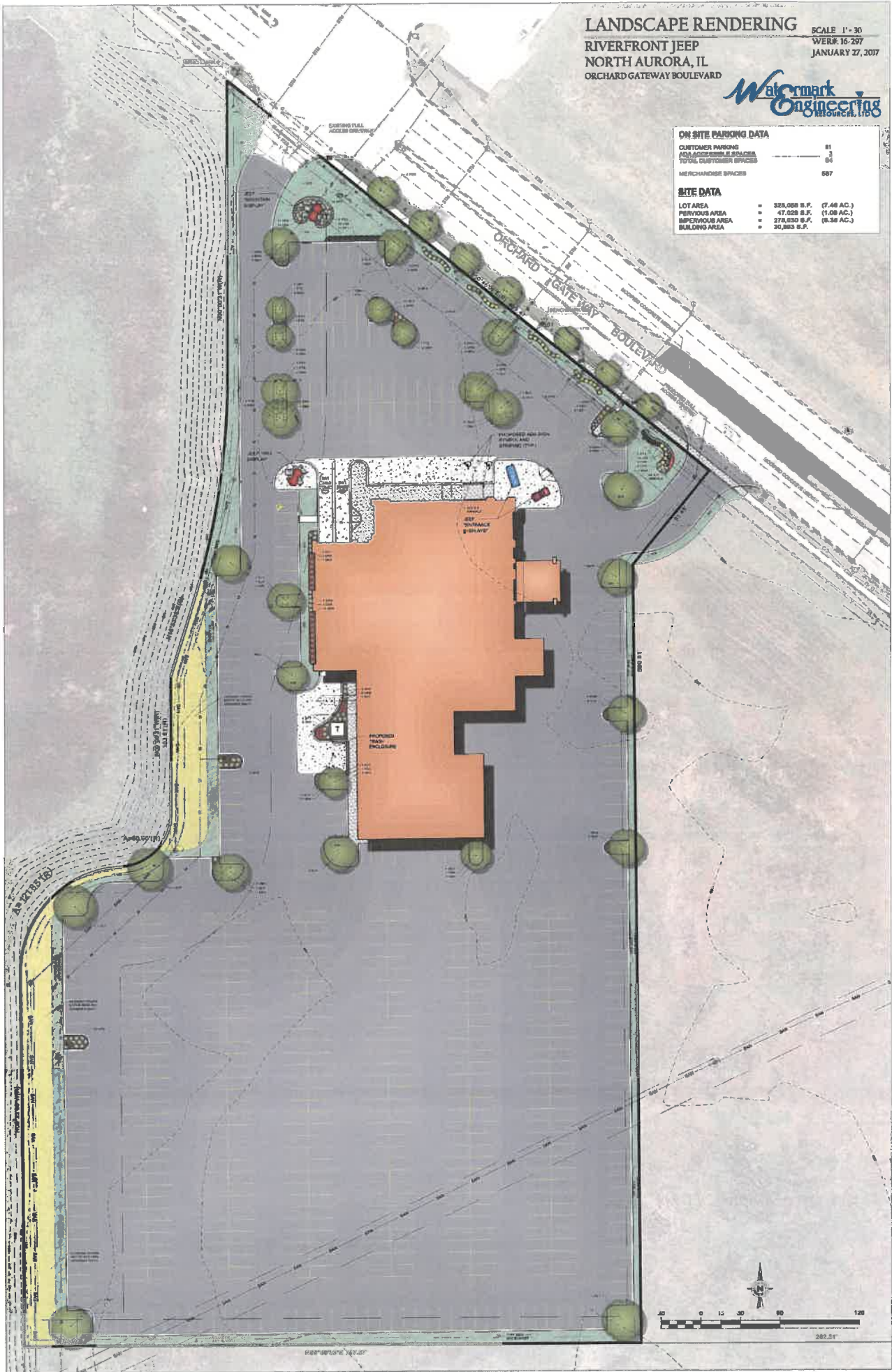
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WER# 16-297  
JANUARY 27, 2017

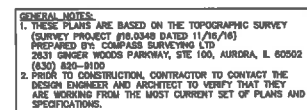


ON SITE PARKING DATA	
CUSTOMER PARKING	81
ADA ACCESSIBLE SPACES	3
TOTAL CUSTOMER SPACES	84
MERCHANDISE SPACES	657

SITE DATA	
LOT AREA	= 325,000 S.F. (7.48 AC.)
PERVIOUS AREA	= 47,028 S.F. (1.08 AC.)
IMPERVIOUS AREA	= 277,972 S.F. (6.39 AC.)
BUILDING AREA	= 20,000 S.F.





ON SITE PARKING DATA	
CUSTOMER PARKING	81
ADA ACCESSIBLE SPACES	3
TOTAL CUSTOMER SPACES	84
MERCHANDISE SPACES	567

SITE DATA	
LOT AREA	= 328,056 S.F. (7.46 AC.)
PERVIOUS AREA	= 47,088 S.F. (1.08 AC.)
IMPERVIOUS AREA	= 276,030 S.F. (6.38 AC.)
BUILDING AREA	= 30,993 S.F.

## PLANT LIST

**SHADE, ORNAMENTAL AND CONIFEROUS TREES**

<u>QTY.</u>	<u>ABRV.</u>	<u>BOTANICAL NAME</u>	<u>COMMON NAME</u>	<u>SECT.</u>
4	MM	<i>Acer x freemanii 'Jeffersred'</i>	Autumn Blaze Maple	2 1/2" Cal.
4	ABM	<i>Acer x freemanii 'Marmo'</i>	Marmo Maple	2 1/2" Cal.
7	PSG	<i>Ginkgo biloba 'Princeton Sentry'</i>	Princeton Sentry Ginkgo	2 1/2" Cal.
8	SLH	<i>Gleditsia triflorata var. inermis 'Skyline'</i>	Skyline Honeylocust	2 1/2" Cal.
4	KCT	<i>Gymnocladus dioica (Male Only)</i>	Kentucky Coffee Tree	2 1/2" Cal.
7	FTE	<i>Ulmus x frederici</i>	Frontier Elm	2 1/2" Cal.

### FLOWERING AND EVERGREEN SHRUBS

QTY.	ABRV.	BOTANICAL NAME	COMMON NAME	SIZE
46	GLS	<i>Rhus aromatica</i> "Grove-Low"	Grove-Low Sumac	5 Gal.
42	DKR	<i>Rosa</i> "Radtke"	Double Knock Out Rose	3 Gal.
17	PDZ	<i>Rosa</i> "Radtkepink"	Pink Double Knock Out Rose	3 Gal.
109	DPZ	<i>Spiraea japonica</i> "Tracy"	Double Play Big Bang Spirea	3 Gal.
2	BPL	<i>Syringa pinnatifida</i> "Panda"	Boomerang Purple Linc	5 Gal.
4	DFJ	<i>Salix purpurea</i> "Dutch's Emerald"	Dutch's Emerald Juniper	5 Gal.

**PERENNIALS, ORNAMENTAL GRASS AND GROUNDCOVERS**

<b>QTY.</b>	<b>GRV.</b>	<b>BOTANICAL NAME</b>	<b>COMMON NAME</b>	<b>SIZE</b>
104	GBH	Hemerocallis "Dancing Bananas"	Go!ng Bananas Daylily	1 Gal.
8	HRB	Penstemon digitalis "Husker Red"	Husker Red Beardstitch	1 Gal.
50	LBS	Rubusodae fulgens "Victor's Little Suzan"	Little Suzy Black Eyed Susan	1 Gal.
8	DBE	Rubusodae iacintina "Doublebelle"	Double Black Eyed Susan	1 Gal.
24	RYS	Salvia nemorosa "Rosamund"	Rose Wyo Salvia	1 Gal.
23	AFS	Scutellaria bicolor "Autumn Fire"	Autumn Fire Scudm	1 Gal.
18	KFF	Salicapsis spicata x scutellaria "Karl Forster"	Karl Forster Feather Reed	1 Gal.
116	DPD	Sporocleia heterophylla "Tara"	Drawn Prairie Dropseed	1 Gal.

 PERENNIAL PLANTING DETAIL  
NOT TO SCALE. USE ONLY ZONE HARDY PLANT MATERIAL.

Diagram illustrating the correct planting depth for a tree in a pot. The tree is shown in a pot, with labels indicating the following instructions:

- PLACE GRASS SO THAT THE TOP OF THE ROOT BALL IS 1-2" ABOVE THE FINISHED GRADE.
- 5" SHROUDED HARDWOOD MULCH.
- PROVIDE INITIAL WATERING TO SATURATE ROOT BALL AND SETLE REMAINING AIR POCKETS.
- UNDISTURBED SUBGRADE.
- DIG HOLE A MINIMUM OF 3 INCHES DEEPER THAN THE ROOT BALL DIAMETER.

**SHRUB PLANTING DETAIL**  
NOT TO SCALE. USE ONLY ZONE HARDY PLANT MATERIAL.



Call Before You Dig  
**KULIE**  
Simply Call 811



LANDSCAPE PLAN  
DESIGNED BY  
KENNETH M. PRICE, RM



30 0 15 30 60 120

LANDSCAPE PLAN

Prepared For:

**Custom Facilities**  
6298 Rucker Rd. Suite C  
Indianapolis, IN 46220

**RIVER FRONT JEEP**  
East of Orchard Road, South of Orchard  
North Aurora, Illinois

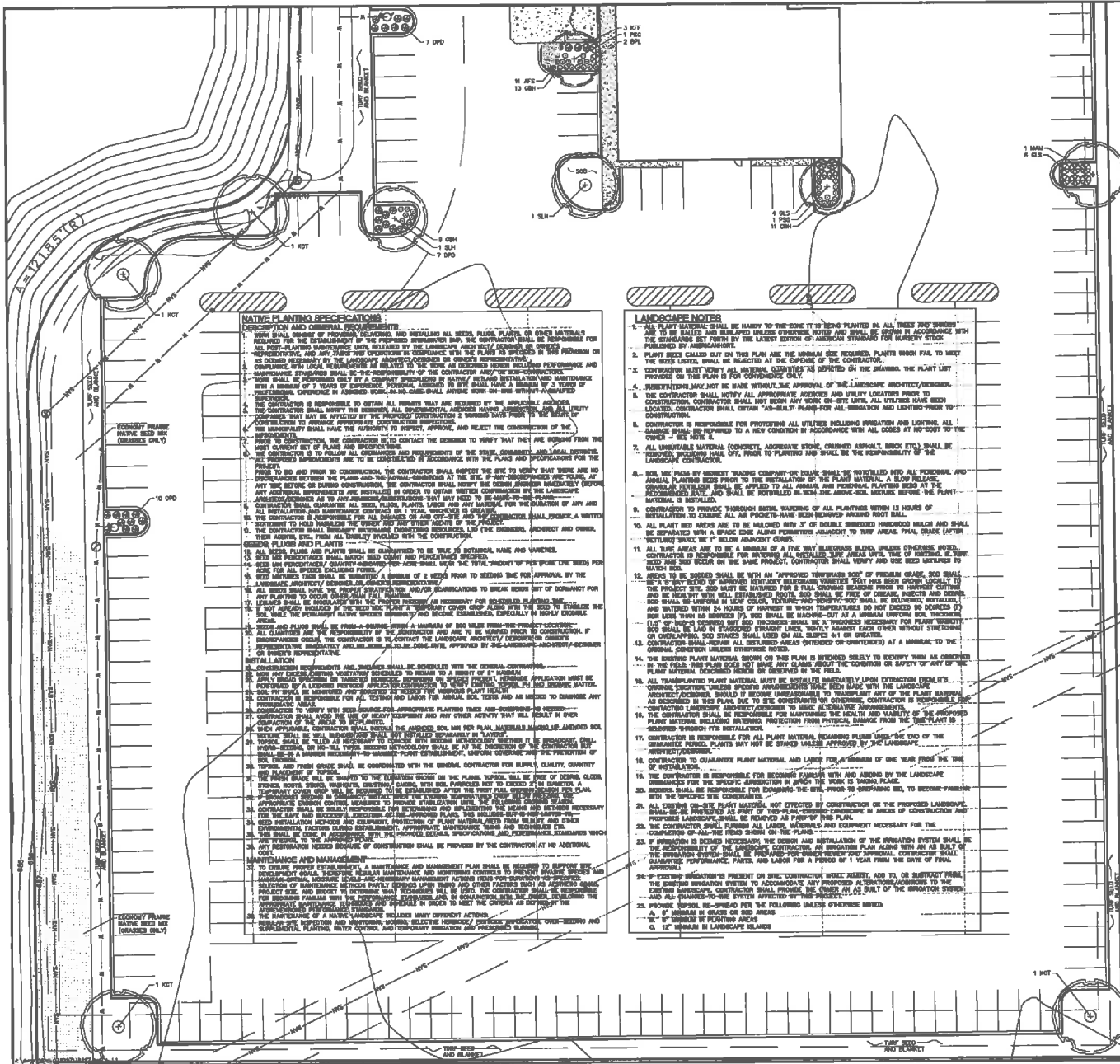
Prepared By:	
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**Watermark Engineering Resources, Ltd.**  
2031 Clagor Woods Parkway, Suite 100, Aurora, IL 60002

CHECKED BY: B. PERRY  
DESIGN BY: B. PERRY  
DRAWN BY: A. HUEBNER  
DATE: JANUARY 27, 2017  
SCALE: 1" = 30'

L-1.0

PROJECT NO.: 16-2-  
ANDSCABE PM AN



**GENERAL NOTES:**  
 1. THESE PLANS ARE BASED ON THE TOPOGRAPHIC SURVEY (SURVEY PROJECT #16.0348 DATED 11/18/16) PREPARED BY: COMPASS SURVEYING LTD. 2631 CHICAGO WOODS PARKWAY, SUITE 100, AURORA, IL 60502 (630) 820-9500  
 2. PRIOR TO CONSTRUCTION, CONTRACTOR TO CONTACT THE DESIGN ENGINEER AND ARCHITECT TO VERIFY THAT THEY ARE WORKING FROM THE MOST CURRENT SET OF PLANS AND SPECIFICATIONS.

#### ON SITE PARKING DATA

CUSTOMER PARKING	61
ADA ACCESSIBLE SPACES	8
TOTAL CUSTOMER SPACES	69
MERCHANDISE SPACES	567

#### SITE DATA

LOT AREA	= 328,096 S.F. (7.48 AC.)
PERVIOUS AREA	= 47,028 S.F. (1.08 AC.)
SUPERVISED AREA	= 278,030 S.F. (6.38 AC.)
BUILDING AREA	= 30,993 S.F.

#### Economy Prairie Seed Mix (Dry - Mesic Soils)

AGREEMENT	SCIENTIFIC NAME	COMMON NAME	SEED/LB	CEASE	LAUNCH
AGREEMENT	Scirpus americanus	WET FLAT GRASS	5.000	10.000	7.000
AGREEMENT	Eleocharis acicularis	SPRINKLER GRASS	5.000	10.000	7.000
AGREEMENT	Scirpus americanus	WET FLAT GRASS	5.000	10.000	7.000
AGREEMENT	Scirpus americanus	WET FLAT GRASS	5.000	10.000	7.000

CONTRACTOR TO DOUBLE THE APPLICATION RATE PROPORTIONALLY FOR EACH GRASS SPECIES. PRAIRIE AREA APPROXIMATELY 0.32 ACRES. CONTRACTOR TO USE A MINIMUM OF 10.0 LBS. OF SEED MIX.

#### NATIVE PLANTING PERFORMANCE STANDARDS

PERFORMANCE AND SURVIVAL STANDARDS	PERCENT COVER OF PLANTING	PERCENT COVER OF PLANTING	PERCENT COVER OF PLANTING	PERCENT COVER OF PLANTING	PERCENT COVER OF PLANTING
YEAR 1	100%	100%	100%	100%	100%
YEAR 2	100%	100%	100%	100%	100%
YEAR 3	100%	100%	100%	100%	100%

#### NATIVE SEED MIX SOURCE INFORMATION

ECOLOGY + VISION, LLC  
 815-581-5003  
 P.O. BOX 501  
 LELAND, IL 60531

CONTRACTOR TO INSTALL NATIVE SEED MIXES AND BLANKET PER SUPPLIERS SPECIFICATIONS, INSTRUCTIONS AND RECOMMENDATIONS INCLUDING SEED BED PREPARATION, SOIL AMENDMENTS, AND PH LEVELS. ALL BLANKETS SHALL BE STAKED AS NECESSARY TO PROPERLY ANCHOR BLANKETS IN PLACE.

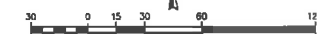
SEPARATE BID ITEM  
 CONTRACTOR TO PROVIDE A SEPARATE BID FOR A MAINTENANCE CONTRACT FOR THE NATIVE AREAS ON-SITE.



Simply Call 811



LANDSCAPE PLAN  
 DESIGNED BY  
 KENNETH M. PRICE, RLA



#### LANDSCAPE PLAN

DATE	
REVISION	
NO.	
DESCRIPTION	

Prepared For:

Custom Facilities  
 6296 Rucker Rd. Suite C  
 Indianapolis, IN 46220  
 RIVER FRONT JEEP  
 East of Orchard Road, South of Orchard Gateway Blvd.  
 North Aurora, Illinois

Prepared By:

Worm Engineering, Inc.  
 201 Chicago Woods Parkway, Suite 100, Aurora, IL 60502  
 Phone: (630) 820-9500, Fax: (630) 820-9501, Email: info@wormeng.com

DESIGN BY: E. PORTY	PROJECT NO. 16-297
DESIGN DATE: 7/17/2017	
SCALE: 1" = 30'	

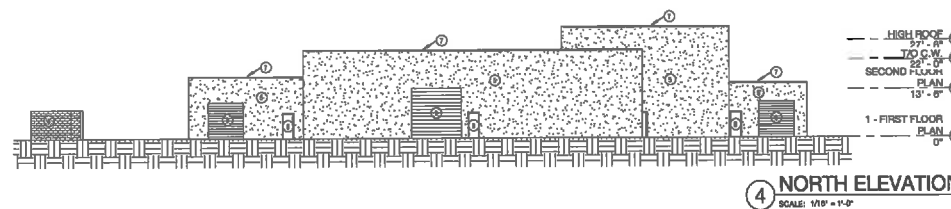
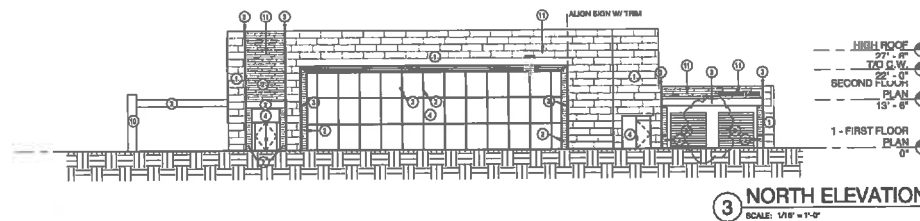
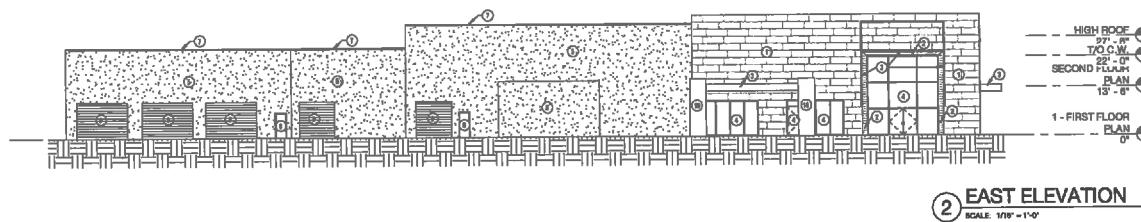
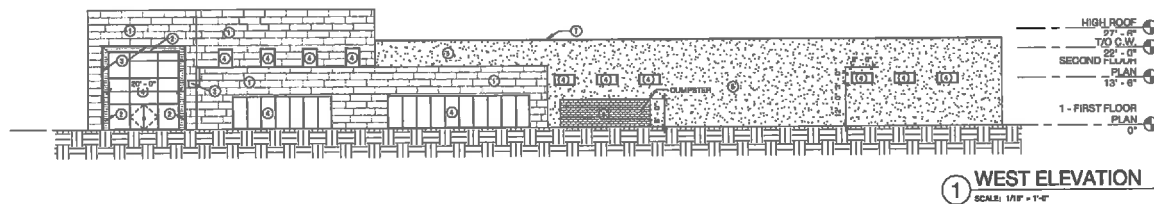
L-1.1

LANDSCAPE PLAN



RIVERFRONT  
**Jeep**





# ELEVATION NOTES

1. AC41 - APPLICABLE INTERIORS ONLY USE AC41 INTERIORS
2. AC42 - APPLICABLE INTERIORS ONLY USE AC42 INTERIORS
3. AC43 - APPLICABLE INTERIORS ONLY USE AC43 INTERIORS
4. AC44 - APPLICABLE INTERIORS ONLY USE AC44 INTERIORS
5. AC45 - APPLICABLE INTERIORS ONLY USE AC45 INTERIORS
6. AC46 - APPLICABLE INTERIORS ONLY USE AC46 INTERIORS
7. AC47 - APPLICABLE INTERIORS ONLY USE AC47 INTERIORS
8. AC48 - APPLICABLE INTERIORS ONLY USE AC48 INTERIORS
9. AC49 - APPLICABLE INTERIORS ONLY USE AC49 INTERIORS
10. AC50 - APPLICABLE INTERIORS ONLY USE AC50 INTERIORS



Custom Facilities  
6296 Rucker Rd, Suite C  
Indianapolis, IN 46220  
www.customfacilities.com  
tel: (317) 269-0000  
fax: (317) 269-4785



212 W. 10th St., A-300  
Indianapolis, Indiana  
tel: 765.649.5477  
www.krMarchitecture.com

REVISIONS

RIVERFRONT JEEP DEALERSHIP  
CUSTOM FACILITIES  
1840 Orchard Gateway Blvd  
Indianapolis, Indiana 46220

EXTERIOR ELEVATIONS

PROFORM DRAWINGS  
01.18.16

VERSION 2458	DESIGN PROPOSED
DRAWN BY Author	CHECKED BY Designer
SHEET NO.	

A4-1