

**Meeting Held Electronically**



**COMMITTEE OF THE WHOLE MEETING**  
**MONDAY, JUNE 21, 2021**  
(Immediately following the Village Board Meeting)

**AGENDA**

**CALL TO ORDER**

**ROLL CALL**

**AUDIENCE COMMENTS**

**TRUSTEE COMMENTS**

**DISCUSSION**

- Fairview Development/Traffic Plan
- OPUS Draft TIF Incentive

**EXECUTIVE SESSION**

**ADJOURN**

Initials: SB

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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 AND ECONOMIC DEVELOPMENT DIRECTOR  
**SUBJECT:** FAIRVIEW DRIVE INDUSTRIAL DEVELOPMENT TRAFFIC PLAN  
**AGENDA:** JUNE 21, 2021 COMMITTEE OF THE WHOLE MEETING

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### DISCUSSION

At the March 15, 2021 Committee of the Whole meeting, the Village Board discussed conceptual development plans for two speculative industrial warehouse buildings on 26.5 acres of vacant land located directly to the west of the Tinseltown theatre property. According to the conceptual site plan, the site would have access to the north utilizing Smoketree Plaza and to the south utilizing Fairview Drive via Sullivan Road. Fairview Drive is currently obsolete Village right-of-way. Access to Smoketree would be achieved through the acquisition of a vacant 3.94 acre parcel of land currently owned by the owners of the Comfort Inn and Suites.

While the Village Board was generally supportive of the concept development plans, they did mention concerns regarding the potential traffic impact. Certain Trustees expressed concern specifically over the truck traffic entering and exiting the property utilizing Smoketree Plaza from Rte. 31 at Lovedale Lane. The Trustees also inquired about the estimated daily truck traffic expected to be generated by the development.

In order to provide the Village Board with specific information relative to their traffic concerns, the developer consulted with KLOA, Inc. to perform a Preliminary Traffic Review. As the attached memorandum states, the intent of their submittal is to provide information on the estimated traffic to be generated by the development, a review of the proposed access and circulation system and a review the truck routes to and from the development.

According to the Truck Route Exhibit, inbound truck traffic would enter the site from the south onto Fairview Drive via Sullivan Road and exit to the north onto Smoketree Plaza. Passenger vehicles could take access from either entrance to the site. Assuming the Village does not wish to maintain the Fairview Drive right-of-way for the benefit of one development, Fairview Drive would need to be vacated. The details of the vacation process and ownership transfer could be addressed at a later date. Staff notes the City of Aurora would also need to be consulted to determine if any jurisdictional rights to Sullivan Road would be impacted.

### CONSIDERATION

Staff would like to take this opportunity to solicit feedback from the Village Board on the Preliminary Traffic Review and any details included therein. If the Board is comfortable with the information included in the Preliminary Traffic Review, a more in-depth analysis of the Fairview Drive/Sullivan Road access should be conducted to investigate the turn geometrics required of inbound trucks, the ability for the access drive to accommodate two-way traffic and to consider any jurisdictional obligations with the City of Aurora.

MEMORANDUM TO: Ben Harris  
Ridgeline Property Group

FROM: Michael A. Werthmann, PE, PTOE  
Principal

DATE: June 11, 2021

SUBJECT: Preliminary Traffic Review  
Proposed Warehouse/Distribution Development  
North Aurora, Illinois

This memorandum summarizes the results of a preliminary traffic review performed by Kenig, Lindgren, O'Hara, Aboona, Inc. (KLOA, Inc.) for a warehouse/distribution development to be located in North Aurora. The vacant site is located just south of Smoketree Plaza and generally bounded by the BNSF railroad tracks on the west and Tinseltown movie theater on the east. As proposed, the warehouse/distribution development is to contain approximately 375,800 square feet of space with access provided via Sullivan Road and Smoketree Plaza. A copy of the proposed site plan is included in the Appendix.

The purpose of this memorandum is to (1) estimate the traffic to be generated by the development, (2) review the proposed access and circulation system including the improvements to Fairview Drive, and (3) review the truck routes to and from the development.

## Development-Generated Traffic Volumes

The estimates of traffic to be generated by the development are based upon the proposed land use type and size using data published in the Institute of Transportation Engineers' (ITE) *Trip Generation Manual*, 10<sup>th</sup> Edition. Further, based on ITE surveys, it is estimated that approximately 20 percent of the traffic approaching and departing the development during the peak hours will be trucks with the remaining 80 percent consisting of passenger vehicles. **Table 1** shows the passenger vehicle and truck trips estimated to be generated by the proposed development during the weekday morning and weekday evening peak hours as well as the two-way weekday daily traffic volumes.

Table 1  
PROJECTED SITE-GENERATED TRAFFIC VOLUMES

ITE Land Use Code	Type	Weekday Morning Peak Hour			Weekday Evening Peak Hour			Weekday Two-way Daily
		In	Out	Total	In	Out	Total	
<b>150</b>	<b>Warehouse</b>	<b>54</b>	<b>16</b>	<b>70</b>	<b>20</b>	<b>53</b>	<b>73</b>	<b>640</b>
	Passenger Vehicles	43	13	56	16	43	59	512
	Trucks	11	3	14	4	10	14	128

## Proposed Access and Circulation

Access to the development will be provided via Sullivan Road and Smoketree Plaza via the extension of Fairview Drive through the development. Fairview Drive currently extends from Sullivan Road to the south boundary of the site. The Fairview Drive extension is proposed to intersect Smoketree Plaza aligned opposite the Roadway Inn access drive. Fairview Drive currently intersects Sullivan Road approximately 300 feet east of Highland Avenue.

The existing Fairview Drive and the extension through the development will be widened and/or constructed with a 36-foot cross section with one lane in each direction. At its intersections with Sullivan Road and Smoketree Plaza, Fairview Drive and the extension are proposed to provide one inbound lane and one outbound lane with the outbound lanes under stop sign control. In addition, both intersections will be improved and/or constructed to provide sufficient radii to accommodate turning truck traffic. Exhibits prepared by Pinnacle Engineering Group showing the truck maneuvers at the Fairview Drive/Sullivan Road and Fairview Drive extended/Smoketree Plaza intersections are included in the Appendix.

Finally, all truck traffic will be required to exit the development via the Fairview Drive extension and its intersection with Smoketree Plaza. Truck traffic will be restricted from traveling southbound on Fairview Drive south of the development. The following signage should be provided along the development's internal circulation system clearly indicating the truck restrictions:

- “Truck Do Not Enter” signs should be located facing north at the southern internal four-legged intersection.
- Signs indicating trucks are prohibited from traveling south on Fairview Drive should be located at each of the internal drives at their intersections with Fairview Drive extended.

## Truck Routes To and From the Development

Given the internal truck restrictions and the limitations for truck maneuvers along the existing roadway system, Exhibit A illustrates and the following summarizes the proposed truck routes to and from the development:

- All trucks are proposed to primarily travel to and from the development via IL 31, with semi-trailers primarily traveling to and from the north on IL 31 to access the I-88 interchange.
- Inbound trucks are proposed to traverse IL 31 to eastbound Sullivan Road to northbound Fairview Drive to the development.
- Outbound trucks are proposed to exit the development via the Fairview Drive extension intersection with Smoketree Plaza and then travel eastbound and southbound along Smoketree Plaza to IL 31.

To direct truck traffic to enter the development via Sullivan Road to Fairview Drive as opposed to Smoketree Plaza, consideration should be given to implementing the following measures:

- The developer and the individual companies leasing space in the development should clearly indicate to the truck drivers, via education/marketing materials, the truck routes to and from the development.
- The developer and/or the Village should work with the mapping/navigating companies to direct all traffic entering the development to use Sullivan Road to Fairview Drive.
- Restricting truck traffic from entering the development via Smoketree Plaza via “Truck Do Not Enter” signs.

Finally, to ensure all truck traffic enters the development via Sullivan Road, one alternative to consider is to convert Fairview Drive and the extension through the development to a one-way northbound traffic flow.

## IL 31 and Smoketree Plaza Intersection

It is important to note that Smoketree Plaza and its intersection with IL 31 currently carries truck traffic due to the industrial and warehouse/distribution uses located along Smoketree Plaza, particularly the Dart Container Company. Exhibits prepared by Pinnacle Engineering Group showing the truck maneuvers from Smoketree Plaza to IL 31 are included in the Appendix. As the Pinnacle Engineering Group truck maneuver exhibits demonstrate, trucks can complete the maneuvers from Smoketree Plaza to northbound IL 31 and southbound IL 31. However, please note the following regarding the truck maneuvers:

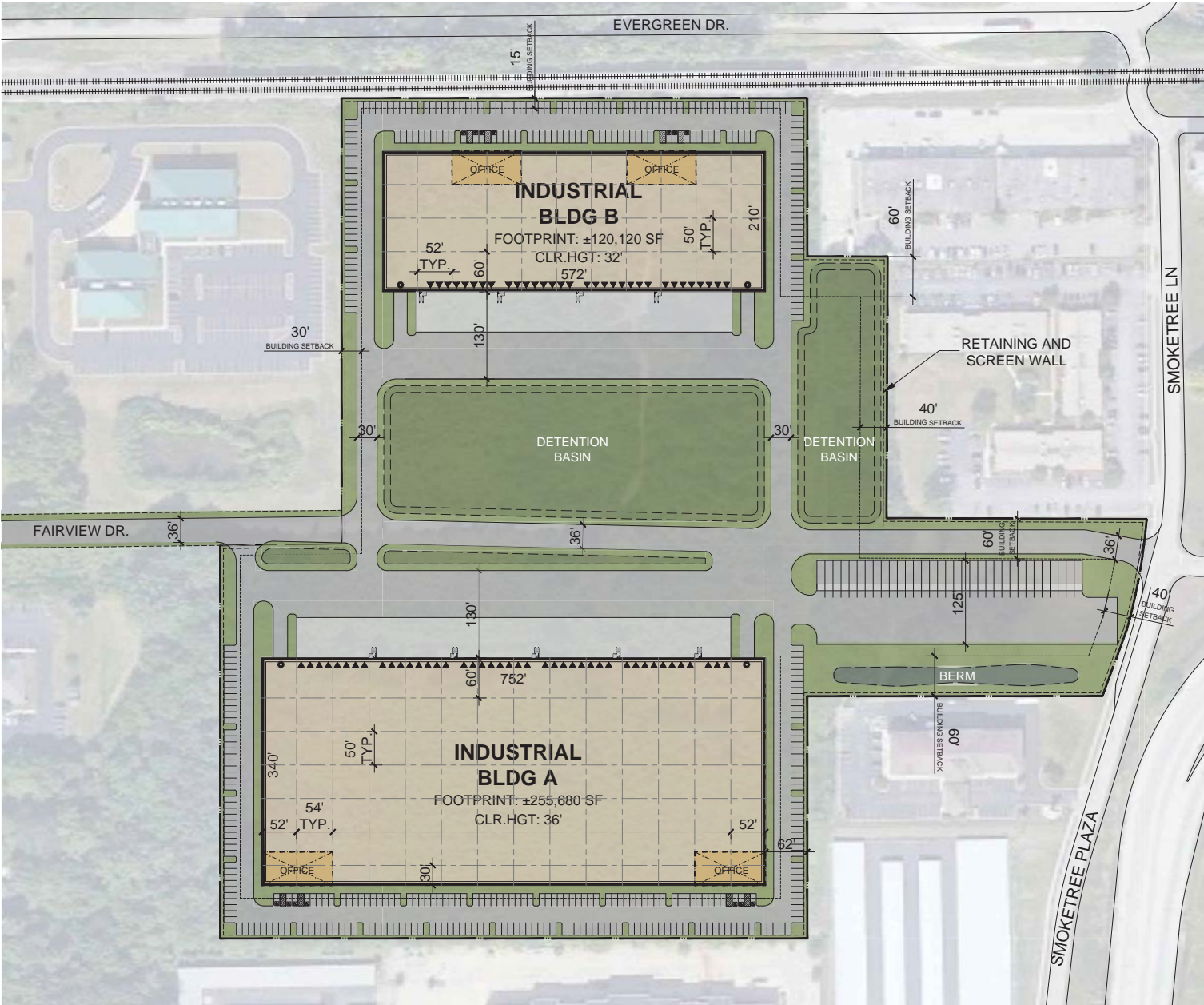
- The maneuvers for semi-trailers are tight and require them to be completed at lower speeds with wider turns than typical and the use of both eastbound lanes along the Smoketree Plaza approach at IL 31.
- Field investigations and aerial photos have shown that longer semi-trailers have clipped (traveled over) the mountable portion/median nose ramp of the IL 31 medians and the southwest corner of the intersection to complete the turns from Smoketree Plaza to IL 31.
- While the trailers of semi-trailers extend into the inbound lane to the movie theater when semi-trailers are stopped at the IL 31 stop bar, the inbound lane is wide enough for movie theater traffic to typically travel around the trailers when entering the movie theater. However, the trailers will block the inbound lane if the semi-trailer is behind one or more vehicles stopped at the IL 31 intersection. As such, consideration should be given to installing a “Do Not Block Intersection” sign on southbound Smoketree Plaza at its intersection with the inbound lane to the movie theater.

# Appendix

Site Plan  
Truck Maneuvering Exhibits  
Truck Route Exhibit

## Site Plan





PROJECT DATA:		
SITE AREA:		
GROSS:	26.45 AC	1,152,289 SF
DETENTION:	@ 15%	167,111 SF
NET:		22.62 AC
		985,178 SF
BUILDING AREA:		
BUILDING B		120,120 SF
BUILDING A		255,680 SF
TOTAL:		375,800 SF
PARKING REQUIREMENTS:		
WAREHOUSE		1/5000 SF
OFFICE		1/500 SF
FAR:		
GROSS:		0.33
NET:		0.38
COVERAGE:		
GROSS:		33%
NET:		38%
BUILDING B		
DOCK-HIGH DOORS		32
GRADE-LEVEL DOORS		2
PARKING REQUIRED:		
WAREHOUSE	120,120 SF	24 STALLS
OFFICE @ 5%	6,006 SF	12 STALLS
TOTAL		36 STALLS
PARKING PROVIDED:		181 STALLS
		@ 1.51/1000 SF
		6 STALLS
REQ. ACCESSIBLE		
BUILDING A		
DOCK-HIGH DOORS		43
GRADE-LEVEL DOORS		2
PARKING REQUIRED:		
WAREHOUSE	255,680 SF	51 STALLS
OFFICE @ 5%	12,784 SF	26 STALLS
TOTAL		77 STALLS
PARKING PROVIDED:		240 STALLS
		@ 0.94/1000 SF
		7 STALLS
REQ. ACCESSIBLE		

DEVELOPMENT STANDARDS:	
ZONING:	ORI
MAX. COVERAGE:	60%
MAX. HEIGHT:	50 FT
BUILDING SETBACKS:	
FRONT:	30 FT
SIDE:	15 FT
REAR:	20 FT
LANDSCAPE SETBACKS:	
FRONT:	5 FT
SIDE:	5 FT
REAR:	5 FT
OFF-STREET PARKING:	
STANDARD:	9X18.5
DRIVE AISLE:	24 FT
TREE WELL:	5 FT
REQ. PARKING RATIO BY USE:	
WAREHOUSE:	1/5000 SF
MANUF	1/500 SF
OFFICE:	1/500 SF
NOTES:	
	1 100 feet abutting residential.
	2 50 feet abutting residential.
	3 50 feet abutting residential.

This conceptual design is based upon a preliminary review of entitlement requirements and on unverified and possibly incomplete site and/or building information, and is intended merely to assist in exploring how the project might be developed.

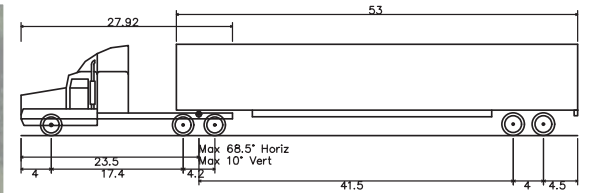
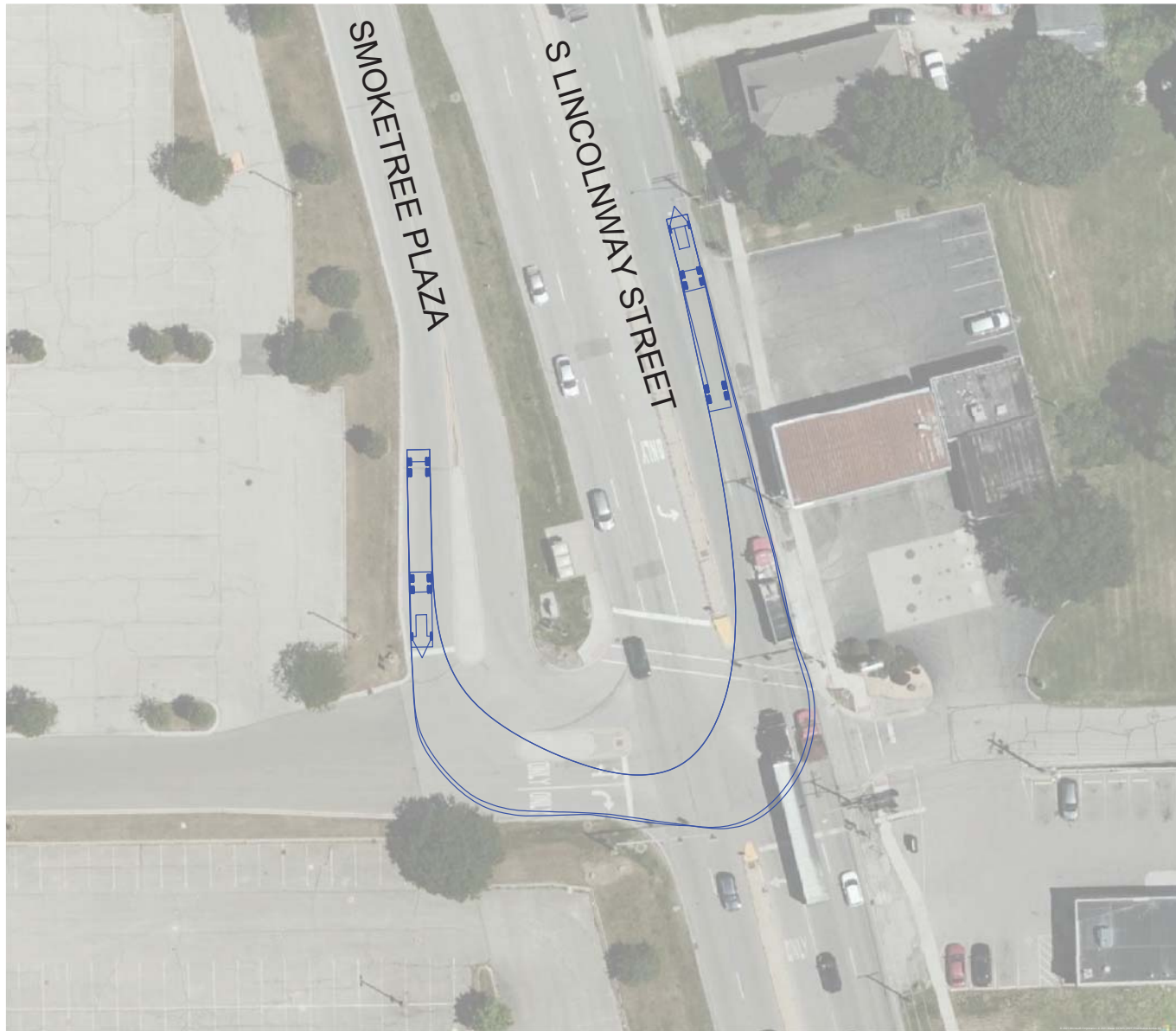
Stormwater Management Design:  
SURFACE DETENTION

Boundary Source:  
CIVIL CAD FILE



## Truck Maneuvering Exhibits

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WB-65 - Interstate Semi-Trailer  
Overall Length 73.500ft  
Overall Width 8.500ft  
Overall Body Height 12.052ft  
Min Body Ground Clearance 1.334ft  
Max Track Width 8.500ft  
Lock-to-lock time 6.00s  
Curb to Curb Turning Radius 45.000ft



SCALE: 1"=40'



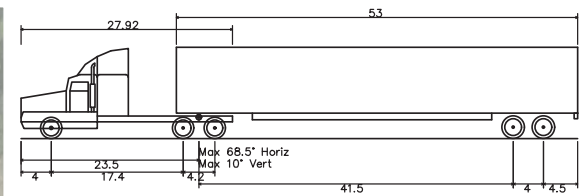
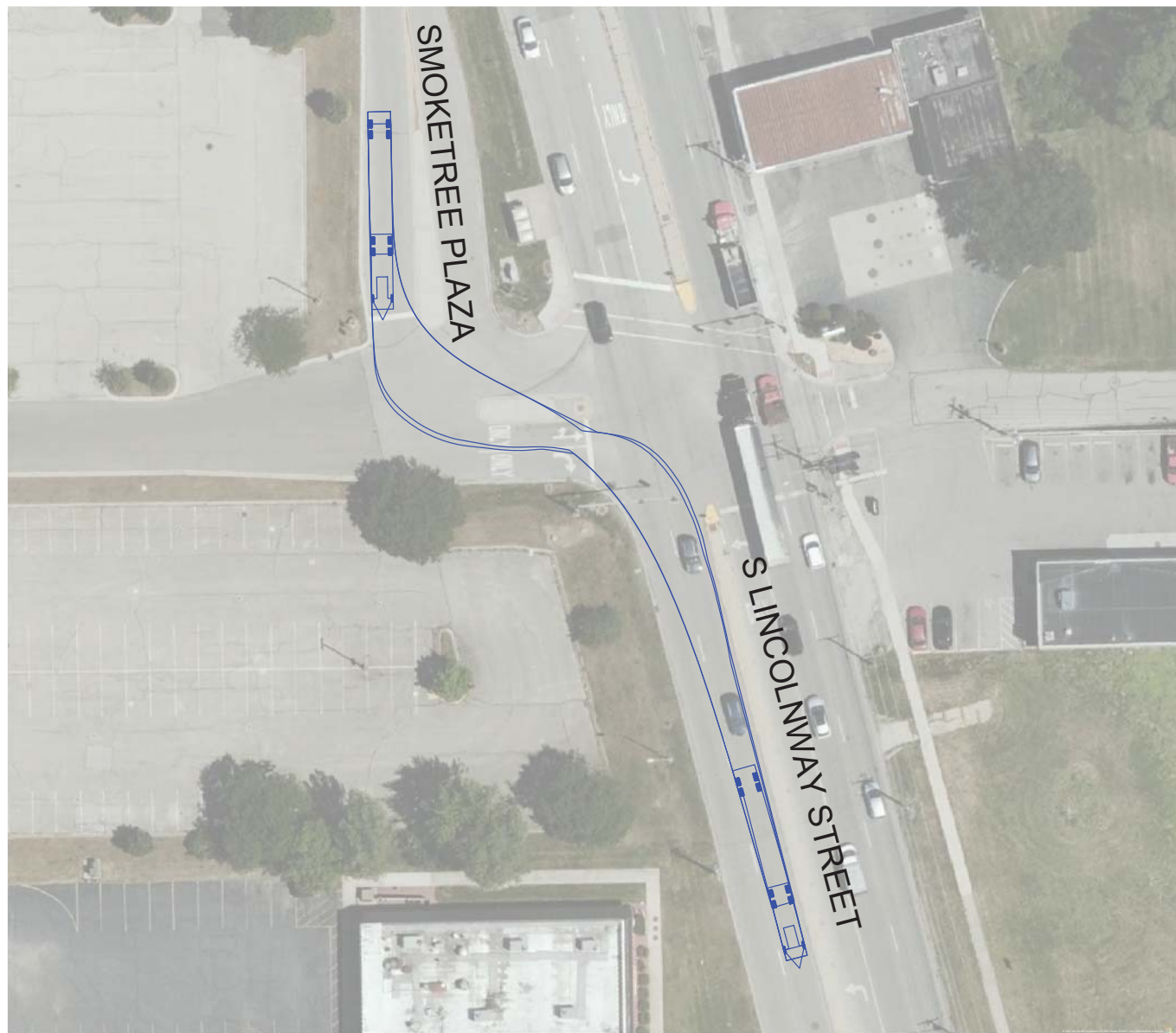
## WB-65 TURNING EXHIBIT - 1 OF 4 - EXITING SMOKETREE PLAZA

PINNACLE ENGINEERING GROUP

1051 E. MAIN STREET | SUITE 217 | EAST DUNDEE, IL 60118 | WWW.PINNACLE-ENGR.COM | CHICAGO@PINNACLE-ENGR.COM

JOB NO. 2335.00-IL 6/7/21

PLAN | DESIGN | DELIVER



WB-65 - Interstate Semi-Trailer  
 Overall Length 73.500ft  
 Overall Width 8.500ft  
 Overall Body Height 12.052ft  
 Min Body Ground Clearance 1.334ft  
 Max Track Width 8.500ft  
 Lock-to-lock time 6.00s  
 Curb to Curb Turning Radius 45.000ft



SCALE: 1"=40'



## WB-65 TURNING EXHIBIT - 2 OF 4 - EXITING SMOKETREE PLAZA

PINNACLE ENGINEERING GROUP

1051 E. MAIN STREET | SUITE 217 | EAST DUNDEE, IL 60118 | WWW.PINNACLE-ENGR.COM | CHICAGO@PINNACLE-ENGR.COM

JOB NO. 2335.00-IL 6/11/21

PLAN | DESIGN | DELIVER





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# W-65 TURNING EXHIBIT - 3 OF 4 - ENTERING SMOKETREE SITE

PINNACLE ENGINEERING GROUP

1051 EAST MAIN STREET | SUITE 217 | EAST DUNDEE, IL 60118 | WWW.PINNACLE-ENGR.COM |

PLAN | DESIGN | DELIVER

PEGJOB# 2335.00-IL

06/11/2021





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# W-65 TURNING EXHIBIT - 4 OF 4 - EXITING SMOKETREE SITE

PINNACLE ENGINEERING GROUP

1051 EAST MAIN STREET | SUITE 217 | EAST DUNDEE, IL 60118 | WWW.PINNACLE-ENGR.COM |

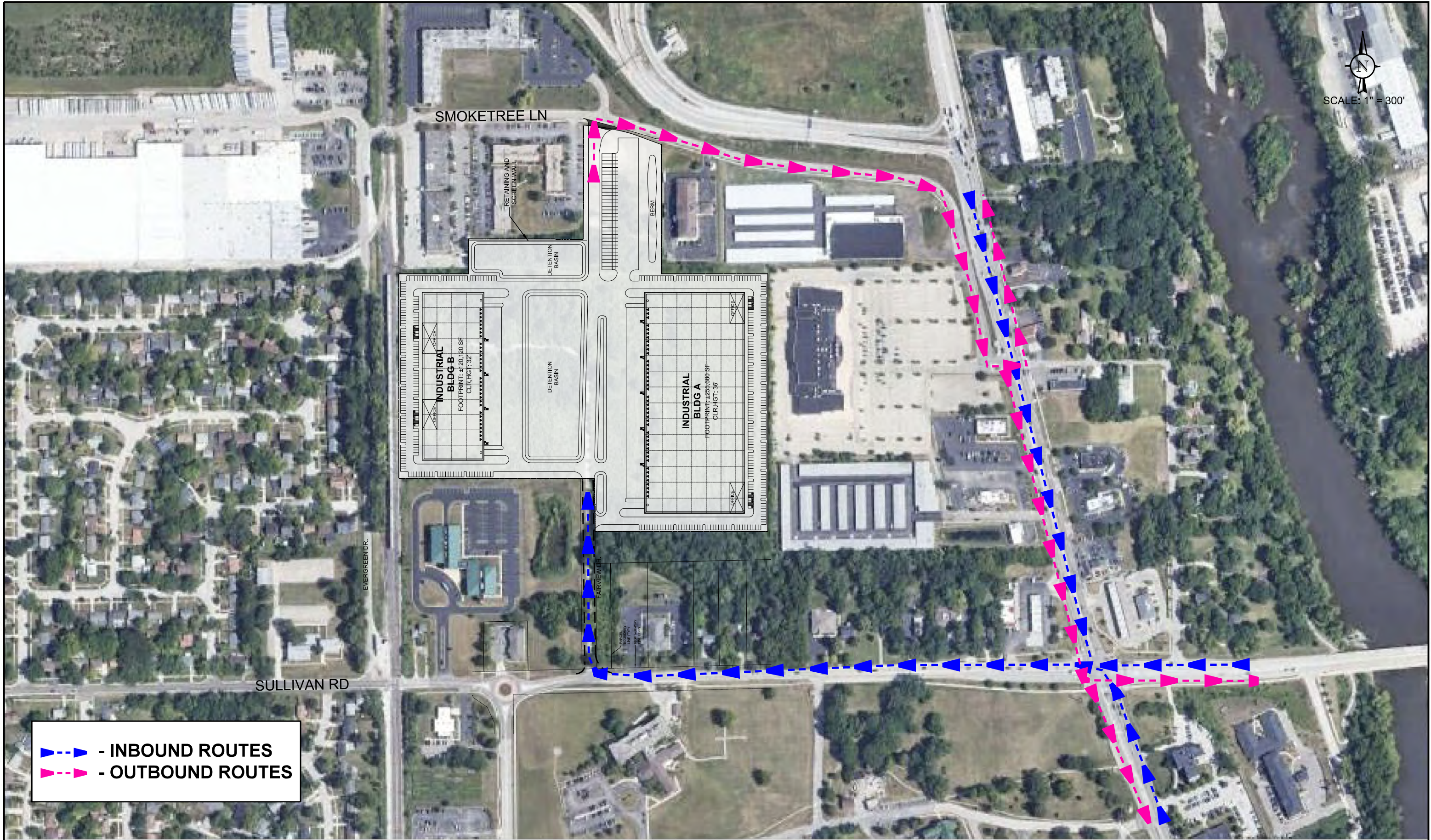
PLAN | DESIGN | DELIVER

PEGJOB# 2335.00-IL

06/07/2021

## Truck Route Exhibit





▲---▲ - INBOUND ROUTES  
▲---▲ - OUTBOUND ROUTES

FAIRVIEW DRIVE  
WAREHOUSE/DISTRIBUTION  
DEVELOPMENT  
NORTH AURORA, ILLINOIS

TRUCK ROUTES TO/FROM THE DEVELOPMENT

DRAWN: MD      CHECKED: MW  
DATE: 06-09-21      REV:  
PROJECT # 21-North Aurora  
EXHIBIT: A





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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 AND ECONOMIC DEVELOPMENT DIRECTOR  
**SUBJECT:** OPUS TAX INCREMENT FINANCING INCENTIVE REQUEST  
**AGENDA:** JUNE 21, 2021 COMMITTEE OF THE WHOLE MEETING

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**DISCUSSION**

At the May 17, 2021 Committee of the Whole meeting, Opus presented information pertaining to an incentive request involving tax increment financing funds for the OPUS I-88 Corporate Park. Their request was the result of several weeks of discussion with Village staff. As you already know, staff is in the process of fulfilling the statutory requirements for the creation of the North Aurora United Tax Increment Financing District. Given the diminishing lifespan of the Route 31 TIF District, Opus' TIF incentive request would require adoption of the United TIF District with a new 23-year lifespan.

According to Opus' submittal, the project would require a total TIF reimbursement amount of \$3,931,420 in order to make the project financially sustainable. Per the incentive request, the project would be front-funded by the developer and the reimbursement amount would be paid back on an annual basis using only TIF funds generated from the project, not to exceed the aforementioned amount. While the Opus I-88 Corporate Park is a two-phased, three-building development, Opus' TIF incentive request is only tied to the completion of Building B, which is the 543,638 square foot building located on the eastern portion of the Valley Green Golf Course.

At the May 17, 2021 COW meeting, Opus provided two different reimbursement scenarios: 90% (9-year anticipated payback) of and 75% (10-year anticipated payback) of the increment generated from the Building B property. After several rounds of questioning, the Village Board concluded with support for the request and asked that the repayment schedule coincide with the 75% annual TIF increment reimbursement schedule.

Staff has since been working with Opus on the draft Village of North Aurora Tax Increment Financing Redevelopment Agreement for the I-88 Corporate Park Project ("Agreement") in order to specify the broad terms discussed with the Village Board and also the legal provisions involved.

**CONSIDERATION**

Staff would like to take this opportunity to solicit feedback from the Village Board on the draft Agreement and any details included therein. Staff notes the Agreement is a working document; therefore, subject to further change. A final Agreement would be presented to the Village Board on July 19, 2021 for Board consideration.

**VILLAGE OF NORTH AURORA  
TAX INCREMENT FINANCING  
REDEVELOPMENT AGREEMENT  
(I-88 CORPORATE PARK PROJECT)**

THIS REDEVELOPMENT AGREEMENT (the “**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 (the “**Effective Date**”), by and between the VILLAGE OF NORTH AURORA, an Illinois municipal corporation (the “**Village**”) and NORTH AURORA INDUSTRIAL VENTURE, LLC, a Delaware limited liability company (the “**Developer**”), (the Village and Developer are hereinafter sometimes collectively referred to as the “**Parties**,” and individually as a “**Party**”).

**W I T N E S S E T H:**

WHEREAS, pursuant to the Tax Increment Allocation Redevelopment Act, as amended (65 ILCS 5/11-74.4-1 et seq. (the “**Act**”)), the Village has undertaken a program to redevelop certain property within the Village and generally located \_\_\_\_\_ (the “**Redevelopment Project Area**”). The Redevelopment Project Area is legally described in Exhibit A and depicted in Exhibit A-1 attached hereto and made apart hereof; and

WHEREAS, on \_\_\_\_\_, 20\_\_\_\_, the President and Board of Trustees (the “**Corporate Authorities**”) of the Village, after giving all necessary notices and conducting all necessary meetings and public hearings required by the Act, adopted Ordinance No. \_\_\_\_\_: An Ordinance of the Village of North Aurora, Kane County, Illinois Approving a Tax Increment Redevelopment Plan and Redevelopment Project for the \_\_\_\_\_ Project Area; Ordinance No. \_\_\_\_\_: An Ordinance of the Village of North Aurora, Kane County, Illinois, Designating the \_\_\_\_\_ Redevelopment Project Area of Said Village a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act; and Ordinance No. \_\_\_\_\_: An Ordinance of the Village of North Aurora, Kane County, Illinois, Adopting Tax Increment Allocation Financing for the \_\_\_\_\_ Redevelopment Project Area (collectively, the “**TIF Ordinances**”); and

WHEREAS, Developer is the owner or is under contract to purchase the property legally described in Exhibit B attached hereto and made a part hereof (the “**Property**”); and

WHEREAS, the Property is within the Redevelopment Project Area; and

WHEREAS, Developer intends to develop the Property with an approximately 543,638 square foot industrial building with off-street parking, loading, landscaping, and related improvements (the “**Project**”); and

WHEREAS, the Village has approved a preliminary site, engineering and landscape plans, a preliminary/final plat of subdivision and building elevations (as amended from time to time, the “**Project Plans**”) for the Project, which preliminary site, engineering and landscape plans, preliminary/final plat of subdivision and building elevations are attached hereto as Exhibit C; and

WHEREAS, the total costs of land acquisition, development and construction for the Project shall be not less than \_\_\_\_\_ and no/100 Dollars (\$\_\_\_\_\_) (the “**Project Budget**”) as set forth on Exhibit D attached hereto; and

WHEREAS, to facilitate the development and construction of the Project and subject to and in accordance with the terms of this Agreement, the Village has agreed to reimburse Developer for certain Redevelopment Project Costs (as defined below) that Developer incurs, or has incurred, in connection with the Project; and

WHEREAS, Developer has agreed to develop and construct the Project in accordance with this Agreement, all Village codes, ordinances and regulations (except to the extent the Village has granted relief therefrom), as applicable to the Project Plans, and all other governmental authorities having jurisdiction over the Property and the Project; and

WHEREAS, Developer represents and warrants to the Village, and the Village finds that, but for the assistance to be provided by the Village to Developer pursuant to the Act and this Agreement, the Project would not be economically viable and, concomitantly, Developer would not develop and construct the Project; and

WHEREAS, this Agreement has been submitted to the Corporate Authorities of the Village for consideration and review, and the Corporate Authorities and Developer have taken all actions required to be taken prior to approval and execution of this Agreement in order to make the same binding upon the Village and Developer according to the terms hereof; and

WHEREAS, the Corporate Authorities of the Village, after due and careful consideration, have concluded that the development and construction of the Project as provided herein will further the growth of the Village, facilitate the redevelopment of a portion of the Redevelopment Project Area, improve the environment of the Village, increase the assessed valuation of the real estate situated within the Village, foster increased economic activity within the Village, increase employment opportunities within the Village, improve the industrial base of the Village, and is otherwise in the best interests of the Village by furthering the health, safety, morals and welfare of its residents and taxpayers.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Village and Developer do hereby agree as follows:

## **ARTICLE I**

### **RECITALS PART OF THE AGREEMENT**

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article I.

## **ARTICLE II FINDINGS**

The Corporate Authorities of the Village hereby make the following findings regarding the Project:

- A. That the Project will be constructed on parcels of land that are blighted and greatly underutilized and will enhance the Village's tax base in accordance with the Village's comprehensive plan.
- B. That based on representations and documentation submitted by Developer, without this Agreement and the economic incentives contained herein, the Project would not be economically viable and would not be constructed.
- C. That the Developer is acquiring the Property and has obtained zoning approvals from the Village conditioned on the need for reimbursement of eligible redevelopment costs to be negotiated with the Village, and the Village acknowledged that condition in Ordinance No. 21-04-05-01 rezoning the Property and approving a special use for planned unit development.
- D. That Developer meets high standards of creditworthiness and financial strength.
- E. That the Project will enhance the tax base of the Village by substantially increasing the equalized assessed value of the Property.
- F. That the Project will provide benefits to the Village in the way of developing otherwise underutilized parcels of property, creating jobs within the Village and enhancing the overall tax base and as such it is in the best interests of the Village to enter into this Agreement.

## **ARTICLE III OBLIGATION OF THE PARTIES**

3.1 **Developer Obligations and Agreements.** In consideration of the substantial commitment of the Village to the redevelopment of the Redevelopment Project Area pursuant to the TIF Ordinances and its commitments contained in this Agreement, Developer shall fulfill, or has fulfilled, the following obligations:

- A. Developer has acquired or shall acquire good and merchantable title to the Property on or before December 31, 2021, subject to Force Majeure Delays (as defined below).
- B. Developer shall construct the Project substantially in accordance with the Project Plans attached hereto as Exhibit C as amended by final plans approved by the Village in connection with the issuance of permits, subject to changes approved by the Village, in a good and workmanlike manner and in accordance with all applicable federal, state, and local laws, ordinances, and regulations. Developer shall exercise reasonable efforts to substantially complete the Project on or before June 1, 2023, subject to any Force Majeure

Delays. For purposes of this Agreement, “substantial completion” and words of similar import will mean the issuance of a temporary or final certificate of occupancy for the Project (which may be a temporary or final certificate of occupancy for the shell and core of a building if a permit has not been issued for tenant improvement work at that time.

- C. Developer has advanced, shall hereafter advance, or shall cause other parties to advance the funds necessary to construct and complete the Project.
- D. Developer has secured, or shall hereafter secure or cause to be secured, all required permits, entitlements, authorizations and approvals necessary or required to construct and complete the Project.
- E. In the event a claim is made against the Village, its officers, officials, agents and employees or any of them, or if the Village, its officers, officials, agents and employees or any of them (the “**Indemnified Party**” or “**Indemnified Parties**”), is made a party-defendant in any proceeding arising out of or in connection with Developer’s construction and/or operation of the Project or Developer’s duties, obligations and responsibilities under the terms of this Agreement including, but not limited to, any claim or cause of action concerning construction of the Project, the assignment and/or pledge of the Developer Note (as defined below), matters pertaining to hazardous materials and other environmental matters in existence at the Property as of the date of this Agreement or as a consequence of non-compliance with the Prevailing Wage Act or which may in any way result therefrom, to the extent permitted by law, Developer shall indemnify, defend and hold harmless the Indemnified Parties, or any Indemnified Party, from all claims, liabilities, losses, taxes, judgments, costs, fines, fees, including expenses and reasonable attorneys’ fees, in connection therewith (collectively, “**Losses**”); provided, however, that to the extent that any Losses are caused by the negligence, fraud or willful misconduct of one or more Indemnified Parties, Developer shall have no obligation to indemnify such Indemnified Parties for any such Losses. Any such Indemnified Party may obtain separate counsel to participate in the defense thereof at his or her own expense. The Indemnified Parties shall cooperate in the defense of such proceedings and be available for any litigation related appearances which may be required. Further, Developer shall be entitled to settle any and all claims for money, in such amounts and upon such terms as to payment as it may deem appropriate, without the prior approval or consent of the Indemnified Parties, or any of them, as the case may be, provided that neither the Village nor any of the other Indemnified Parties shall be required to contribute to such settlement except to the extent that Losses that are the subject of the settlement are caused by the negligence, fraud or willful misconduct of an Indemnified Party, and further provided the Special Tax Allocation Fund (as defined herein) shall not be used in connection with any such settlement without the consent of the Village and Developer.
- F. Developer agrees to acquire and pay for each building permit, occupancy permit, utility connection permit or other Village required permit which is required for all improvements to be constructed in connection with the Project. Said permits shall be acquired in accordance with the terms of the Village Municipal Code, as amended from time to time.

- G. Developer shall not cause or permit any mechanic's liens or other lien claims (other than a lender to which this Agreement has been collaterally assigned) to remain against the Special Tax Allocation Fund, as defined in Section 4.1, for labor or materials furnished in connection with demolition, site preparation, development, construction, additions, modifications or improvements regarding the Project or any other matter regarding the Project which might give rise to lien rights against the Special Tax Allocation Fund. Notwithstanding the foregoing, Developer shall be entitled to defend, prosecute or settle, as the case may be in a timely and commercially reasonable manner, any such claims for mechanic's liens, other liens, claims or causes of action, provided that the Village shall not be required to contribute to such settlement.
- H. Upon reasonable notice, the Village Administrator, or his or her designee, shall have access to all portions of the Project during the Construction Period during normal business hours for the purpose of determining compliance with this Agreement, applicable laws and applicable regulations; provided, however, that any such person(s) shall comply with all construction site rules and regulations while such person(s) is on or near the Property. Additionally, Developer shall keep and maintain detailed accountings of expenditures demonstrating the total actual costs of Developer's Redevelopment Project Costs. All such books, records and other documents, including but not limited to the General Contractors' and contractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, and documentation evidencing that Developer has incurred and paid any expense for which reimbursement as Developer's Redevelopment Project Costs is sought by Developer hereunder shall be available at Developer's offices for inspection, copying, audit and examination by an authorized representative of the Village for a period of two (2) years after issuance of the Certificate of Completion (defined below). The Village shall treat all such information as confidential business materials, the disclosure of which would cause Developer competitive harm. As such, the Village shall not disclose any such information pursuant to a Freedom of Information Act request unless compelled to by the Attorney General or a court of competent jurisdiction.
- I. To the extent required by law, Developer agrees to pay, and to contractually obligate and cause any and all general contractors and subcontractors to pay, the prevailing rate of wages as established pursuant to the Illinois Prevailing Wage Act [820 ILCS 130/0.01 *et seq.* (Illinois State Bar Ed. 2016)] when constructing the Project.
- J. Developer shall cooperate with the Village and provide the Village with the information in Developer's possession or control required and necessary under the Act to enable the Village to comply with the Act and its obligations under this Agreement.
- K. Developer agrees to comply with the fair employment/affirmative action principles contemplated by the Act and the TIF Ordinances, and with all applicable federal, state and municipal regulations in connection with the construction of the Project.
- L. Developer represents and warrants to the Village that no member, official, officer, employee of the Village, or any commission or committee exercising authority over the

Project or the Property, or any consultant hired by the Village or Developer with respect thereto, owns or controls or has owned or controlled any interest, direct or indirect, in Developer or, to the knowledge of Developer, owns or controls or has owned or controlled any interest, direct or indirect any portion of the Property, or will own or control any interest in the Project, and that this Agreement will not violate Section 5/11-74.4-4(n) of the Act.

- M. Developer has furnished to the Village a Project Budget showing total costs for the Project in an amount not less than \_\_\_\_\_ Million \_\_\_\_\_ Hundred \_\_\_\_\_ Thousand and no/100 Dollars (\$\_\_\_\_\_) as set forth in Exhibit D. Developer hereby certifies to the Village that, as of the date of this Agreement, the Project Budget is a true, correct and complete estimate of Project costs, to the best of Developer's knowledge, in all material respects.
- N. The Developer agrees that to the extent it is obligated to pay any portion of the real estate tax bills for the Property, it shall pay or cause to be paid such taxes promptly on or before such payment is subject to a penalty for delinquency.
- O. Developer and its successors or assigns, agrees that it shall not protest or appeal the equalized assessed valuation of the Project and/or the Property during the term of this Agreement unless Developer has reasonably demonstrated that the equalized assessed valuation of the Project and/or the Property exceeds that of similarly situated properties then under assessment in Kane County, Illinois by more than ten percent (10%). Additionally, Developer shall not seek a real estate tax refund for any tax year during which the Redevelopment Project Area is in existence other than in connection with an error in the calculation or billing of such tax, an overpayment of tax or in connection with a successful contest of the assessed value of the Property or the Project permitted by this paragraph.
- P. From and after the date of issuance of permits for excavation or grading work for the Project until a temporary or final certificate of occupancy has been issued for the Project (the "**Construction Period**"), Developer shall require its general contractor, or if there is none, then at its own expense, to obtain and maintain comprehensive general liability, workers' compensation and automobile/vehicle liability insurance for the Project, and shall cause the Village to be named as an additional insured, with all the rights of a primary insured, on such policies, except that on the worker's compensation insurance. Said insurance policies, which may be comprised of primary, excess and umbrella policies, shall be issued in an amount not less than Five Million Dollars (\$3,000,000.00) combined single limit for bodily injury, personal injury or death and property damage with respect to any single occurrence, or in the case of worker's compensation insurance, as required by statute. Developer shall provide at least ten (10) business days prior written notice to the Village before such policies are materially changed, modified or cancelled. Prior to the commencement of any work on the Project, Developer shall provide the Village with appropriate certificates of insurance. During the Construction Period, Developer shall keep in force (or shall cause to be kept in force) at all times, builder's risk insurance, against the risk of physical loss, including collapse, covering the total value of the building(s) and



contents including the work performed and equipment, supplies and materials furnished for the Project. Should the Village receive notice that premiums needed to maintain in force any of the required insurance policies have not been paid, the Village shall notify Developer of the receipt of said notice. Failure of Developer to pay any premiums on any required insurance policy that is not cured within thirty (30) days after written notice from the Village shall constitute an event of default under this Agreement.

### 3.2 Village Obligations and Agreements.

A. In consideration of the substantial commitment of Developer to the development and construction of the Project, the Village shall reimburse annually Developer from seventy-five percent (75%) of Available Incremental Taxes (as defined below) for all Redevelopment Project Costs up to the Maximum Reimbursement Amount (as defined below), all in accordance with the terms of the Developer Note (as defined below) and this Agreement. The term “**Available Incremental Taxes**” shall mean all ad valorem real property taxes received by the Village, if any, arising from the levies upon the Property attributable to the then current equalized assessed valuation of the Property over and above the initial equalized assessed value of the Property, all as determined pursuant to Section 5/11-74.4-8 of the Act and the TIF Ordinances. For purposes of this Section, a “partial real estate tax year” shall mean a real estate tax year that includes the extension of *ad valorem* real estate property tax levy over the reassessed Project and the Property by Kane County and for which the Village will receive incremental *ad valorem* real property taxes attributable to the increased equalized assessed valuation of the Project and the Property. The term “**Redevelopment Project Costs**” shall mean and include all costs defined as “redevelopment project costs” in Section 5/11-74.4-3(q) of the Act (as amended from time to time) which are eligible for reimbursement under the Act and which have been approved in the TIF Ordinances. The term “**Maximum Reimbursement Amount**” shall mean Three Million Seven Hundred Ninety-Eight Thousand Four Hundred Seventy-Three and no/100 Dollars (\$3,798,473) which is the maximum amount of economic incentives that Developer may receive pursuant to this Agreement. The Maximum Reimbursement Amount shall exclude any interest paid on the Developer Note.

The Parties acknowledge and agree that in no event shall the amount of reimbursement exceed the Maximum Reimbursement Amount as defined in this Section 3.2. Such reimbursement shall, however, be paid only from funds paid into the Special Tax Allocation Fund pursuant to the Act and from no other source. THE VILLAGE SHALL NOT BE OBLIGATED TO MAKE ANY PAYMENTS OTHER THAN FROM THE FUND, AND THE REIMBURSEMENT SHALL NOT BE DEEMED A GENERAL OBLIGATION OF THE MUNICIPALITY. THE VILLAGE DOES NOT GUARANTY THAT THE FULL MAXIMUM REIMBURSEMENT AMOUNT WILL BE ACHIEVED AND REIMBURSED TO DEVELOPER.

B. Upon substantial completion of the Project, and upon Developer’s written request, the Village shall issue to Developer a certificate in recordable form certifying that Developer has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement (the “**Certificate of Completion**”). The Village shall respond to Developer’s written request for a Certificate of Completion within thirty (30) days by issuing either a Certificate of Completion or a written statement detailing the ways in which the Project does not conform to this Agreement or



has not been satisfactorily completed, and the measures which must be taken by Developer in order to obtain the Certificate of Completion. Developer may resubmit a written request for a certificate upon completion of such measures. Absent fraud, the Certificate of Completion shall be conclusive evidence of the satisfaction of Developer's duties and obligations under this Agreement regarding the construction of the Project.

C. Developer shall deliver a Certificate of Expenditure in the form attached hereto as Exhibit F, together with closing statements, contractor statements and lien waivers covering the eligible costs for which reimbursement is being sought under this agreement and such other documentation as reasonably required by the Village to evidence that Developer has incurred and paid such costs. The Village shall either accept or reject, with comments, the Certificate of Expenditure within thirty (30) days after the submission thereof. If the Village reasonably determines that any cost identified therein is not a Redevelopment Project Cost, Developer shall have the right to identify and substitute other costs incurred and paid by Developer in connection with the Project as Redevelopment Project Costs with a supplemental application for payment. Absent delays by Developer in responding to requests by the Village for additional information reasonably required by the Village to evidence that Developer has incurred and paid the costs for which reimbursement is requested or to respond to the Village's rejection of certain costs for which Developer had sought reimbursement as Redevelopment Project Costs, the Village shall issue its determination on the Certificate of Expenditure within the thirty (30) day period described above.

D. In consideration of Developer's undertakings, upon substantial completion and approval by the Village of a Certificate of Expenditure provided by Developer, the Village shall issue a note (the "**Developer Note**"), substantially in the form attached hereto as Exhibit E, to Developer in an aggregate initial principal amount equal to the amount of the Redevelopment Project Costs incurred and paid by Developer, up to the Maximum Principal Amount. Interest on the Developer Note will accrue upon issuance at a per annum rate equal to three and one-half percent (3.5%) for one year after the date of issuance thereof. Interest shall be calculated on a simple interest basis and shall be based on a 360 day year. The Developer Note shall be issued on a taxable basis.

The Developer Note may be freely assigned or pledged (including, without limitation, as collateral to any lender providing project financing) in compliance with applicable laws, provided, however, the Village makes no representation or warranty regarding the legality or validity of any such assignment or pledge of the Developer Note.

E. In the event a claim is made against Developer, its directors, partners, affiliates, shareholders, officers, officials, agents and employees or any of them, or if Developer, its directors, partners, affiliates, shareholders, officers, officials, agents and employees or any of them (the "**Developer Indemnified Party**" or "**Developer Indemnified Parties**"), is made a party-defendant in any proceeding arising out of or in connection with the Village's duties, obligations and responsibilities under the terms of this Agreement to the extent permitted by law, the Village shall indemnify, defend and hold harmless Developer Indemnified Parties, or any Developer Indemnified Party, from all claims, liabilities, losses, taxes, judgments, costs, fines, fees, including expenses and reasonable attorney's fees, in connection therewith. Any such Developer Indemnified Party may obtain separate counsel to participate in the defense thereof at

his or her own expense. Developer Indemnified Parties shall cooperate in the defense of such proceedings and be available for any litigation related appearances which may be required. Further, the Village shall be entitled to settle any and all claims for money, in such amounts and upon such terms as to payment as it may deem appropriate, without the prior approval or consent of Developer Indemnified Parties, or any of them, as the case may be, provided that neither Developer nor any of the other Developer Indemnified Parties shall be required to contribute to such settlement.

#### **ARTICLE IV**

### **REIMBURSEMENT OF REDEVELOPMENT PROJECT COSTS; LIMITATION ON AMOUNTS AVAILABLE FOR REIMBURSEMENT**

4.1 **Establishment of Sub-Account; Use of Tax Increment.** In connection with its establishment and ongoing administration of the Redevelopment Project Area, the Village has established a special tax allocation fund pursuant to the requirements of the Act (the “**Special Tax Allocation Fund**”). None of the monies contained in the Special Tax Allocation Fund or the Project Account (as defined below) shall, at any time, be commingled with any other funds of the Village, pledged, encumbered or allocated for any other purpose other than performance of the Village’s obligations pursuant to the Agreement without Developer’s consent. Such prohibition shall continue until such time as the Developer Note has been fully repaid or this Agreement has been terminated in accordance with the terms hereof. The Village shall create a sub-account within the Special Tax Allocation Fund (“**Project Account**”) and all Available Incremental Taxes received by the Village shall be deposited in Project Account of the Special Tax Allocation Fund upon receipt from Kane County. The Village shall use the Available Incremental Taxes deposited in the Project Account of Special Tax Allocation Fund to pay Developer pursuant to Section 3.2 of this Agreement.

#### **ARTICLE V**

### **AUTHORITY**

#### **5.1 Powers.**

A. The Village hereby represents and warrants to Developer that the Village has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and the foregoing has been, or will be, duly and validly authorized and approved by all necessary Village proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Village, and is enforceable in accordance with its terms and provisions and the execution of this Agreement does not require the consent of any other governmental authority.

B. Developer hereby represents and warrants to the Village that Developer has full lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and the foregoing has been or will be duly and validly authorized and approved by all necessary Developer actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of Developer, is enforceable in accordance with its terms and provisions and does not require the consent of any other party.

5.2 **Authorized Parties.** Except in cases where the approval or authorization of the Village's Corporate Authorities is required by law, whenever, under the provisions of this Agreement, or other related documents and instruments or any duly authorized supplemental agreements, any request, demand, approval, notice or consent of the Village or Developer is required, or the Village or Developer is required to agree to, or to take some action at, the request of the other, such request, demand, approval, notice or consent, or agreement shall be given for the Village, unless otherwise provided herein, by the Village Administrator or her designee and for Developer by any officer of Developer so authorized (and, in any event, the officers executing this Agreement are so authorized). Any Party shall be authorized to act on any such request, demand, approval, notice or consent, or agreement or other action and neither Party hereto shall have any complaint against the other as a result of any such action taken.

## **ARTICLE VI DEFAULTS AND REMEDIES**

6.1 **Breach.** A Party shall be deemed to be in breach this Agreement if it fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement after the expiration of any cure period applicable thereto.

6.2 **Cure of Breach.** Except as otherwise provided herein, prior to the time that a failure of any Party to this Agreement to perform its obligations hereunder or the failure to perform any other action or omission to perform any such obligation or action described in Section 7.1 shall be deemed to be a breach hereof, the Party claiming such failure shall provide written notification to the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within sixty (60) days of the receipt of such notice; provided, however, to the extent a failure to perform hereunder cannot reasonably be cured within that sixty (60) days period, then that sixty (60) day period will be extended for such additional period as may be reasonably necessary under the circumstances to complete the cure of that failure as long as the failing Party commenced the cure within that sixty (60) day period and diligently prosecutes that cure to completion. The obligation to cure defaults, as herein required, shall be tolled during any applicable time period during which a delay in performance is permitted as an event of Force Majeure Delay under the provisions of Section 7.3 hereof but the tolling of the performance of any obligation shall be limited to the obligation or action as to which the Force Majeure Delay provisions apply.

In the event that either Party shall breach any provision of this Agreement and fail to cure said breach as provided in the preceding paragraph or as elsewhere provided in this Agreement, the non-defaulting Party may enforce the terms hereof by filing any action or proceeding available at law or in equity, in any court of competent jurisdiction, including an action for specific performance of the covenants and agreements herein contained. Notwithstanding the foregoing, each Party's remedy for monetary damages shall be limited to its actual (but not consequential) damages in an amount not to exceed its out-of-pocket expenses incurred in connection with this Agreement, including attorneys' fees. Except as otherwise set forth herein, no action taken by a

Party pursuant to the provisions of this Section 6.2 or pursuant to the provisions of any other section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and nonexclusive of any other remedy either set forth herein or available to any Party at law or in equity. Notwithstanding any Developer default, in no event shall the Village suspend, limit, delay any payments on the Developer Note or seek any remedy which may have the effect of any of the foregoing.

**6.3 Default Shall Not Permit Termination of Agreement.** No default under this Agreement shall entitle any Party to terminate, cancel or otherwise rescind this Agreement; provided, however, this limitation shall not affect any other rights or remedies the Parties may have by reason of any default under this Agreement.

**6.4 Right to Enjoin.** In the event of any violation or threatened violation of any of the provisions of this Agreement by a Party, any other Party shall have the right to apply to a court of competent jurisdiction for an injunction against such violation or threatened violation, and/or for a decree of specific performance.

**6.5 Village Termination Right.** Notwithstanding anything in this Agreement to the contrary, if either (A) Developer fails to substantially complete the Project within three (3) years after obtaining a permit for vertical construction for the Project (subject to Force Majeure Delays), or (B) Developer fails to begin grading of the Property pursuant to a permit issued by the Village in connection with the Project within one (1) year of acquiring fee title to the Property (subject to Force Majeure Delays), then the Village may terminate this Agreement by written notice to Developer delivered within sixty (60) days after the applicable failure described in clause (A) or (B) above but in any event before Developer has either achieved substantial completion of the Project or begun grading of the Property in connection with the Project, as applicable.

## **ARTICLE VII GENERAL PROVISIONS**

**7.1 Time of Essence.** Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

**7.2 Mutual Assistance.** The Parties agree to take such actions, including the execution and delivery of such documents, instruments and certifications (and, in the case of the Village, the adoption of such ordinances and resolutions), as may be necessary or appropriate from time to time to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out such terms, provisions and intent. The Village agrees that it shall not revoke or amend one or more of the TIF Ordinances if such revocation or amendment would prevent or impair the development of the Project in accordance with this Agreement or the Village's performance of its obligations hereunder. The Parties shall cooperate fully with each other in securing from any and all appropriate governmental authorities (whether federal, state, county or local) any and all necessary or required permits, entitlements, authorizations and approvals to develop and construct the Project.

7.3 **Force Majeure.** For the purposes of this Agreement, neither Developer nor the Village shall be considered to be in breach of any of its obligations hereunder if said Party is unable to acquire any property which, by the terms of this Agreement, said Party was required to acquire. “**Force Majeure Delays**” means delays in a Parties’ performance hereunder (including, without limitation, development or construction of the Project) caused by any one or combination of the following, which are beyond the reasonable control of the Party relying thereon, including, without limitation, destruction by fire or other casualty, strike or other labor troubles, governmental restrictions, takings, and limitations arising subsequent to the date hereof, war or other national emergency; fire, flood or other casualties, shortage of material, adverse weather conditions, such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, tornadoes or cyclones, any delay in the performance by Developer resulting from the non-performance of the Village’s responsibilities, plague, epidemics, or quarantine (including matters related to COVID-19) and other similar or dissimilar causes beyond the reasonable control of Developer or the Village which, in fact, interferes with the ability of Developer or the Village to discharge its respective obligations hereunder. Notwithstanding that (a) as of the date of this Agreement, a national pandemic, quarantine and other conditions exist that are related to COVID-19, and (b) the impact of such pandemic, quarantine and other conditions on the fulfillment of any obligations of either Developer or the Village under this Agreement are not yet fully known, the execution and delivery of this Agreement with the knowledge of such ongoing pandemic, quarantine and other conditions will in no way whatsoever preclude, impair or other adversely affect the relief to which a Party is entitled under this Agreement as a result of the same being Force Majeure Delay (*i.e.*, just as though the pandemic had not existed as of the date of this Agreement). Force Majeure Delay shall not include economic hardship.

7.4 **Amendment.** This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the Parties evidenced by a written amendment, by the adoption of an ordinance or resolution of the Village approving said written amendment, as provided by law, and by the execution of said written amendment by the Parties or their successors in interest. Notwithstanding the foregoing, an amendment to the Project Plans shall not require an amendment to this Agreement.

7.5 **Entire Agreement.** This Agreement sets forth all agreements, understandings and covenants between and among the Parties relative to the matters herein contained. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and shall be deemed a full integration of the entire agreement of the Parties.

7.6 **Severability.** If any provisions, covenants, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable. Notwithstanding the foregoing, if any portion of this Agreement relating to the Village’s obligation to make payment under the Developer Note is held to be invalid, then Developer shall have to right to terminate this Agreement upon written notice to the Village.

7.7 **Consent or Approval.** Except as otherwise specifically provided in this Agreement, whenever consent or approval written or otherwise of any Party to this Agreement is required, such consent or approval shall not be unreasonably withheld, delayed or conditioned.

7.8 **Illinois Law.** This Agreement shall be construed in accordance with the laws of the State of Illinois.

7.9 **Notice.** Any notice, request, consent, approval or demand (collectively, a “Notice”) given or made under this Agreement shall be in writing and shall be given in the following manner: (A) by personal delivery of such Notice; or (B) by mailing of such Notice by certified mail, return receipt requested; (C) by nationally recognized commercial overnight delivery of such Notice for next business day delivery. All Notices shall be delivered to the addresses set forth in this Section 7.9. Notice served by certified mail shall be effective on the fifth Business Day (as defined below) after the date of mailing. Notice served by commercial overnight delivery for next business day delivery shall be effective on the next Business Day following deposit with the overnight delivery company. For purposes hereof, a “Business Day” shall be Monday through Friday excluding federal and State of Illinois holidays.

If to the Village:

The Village of North Aurora  
25 East State Street  
North Aurora, IL 60542  
Attn: Village Administrator

with a copy to:

Drendel & Jansons Law Group  
111 Flinn Street  
Batavia, IL 60510  
Attn: Kevin G. Drendel

If to Developer:

North Aurora Industrial Venture, LLC  
c/o Principal Real Estate Investors, LLC  
711 High Street  
Des Moines, Iowa 50392-1370  
Attn: David Straka

with a copy to:

Principal Real Estate Investors, LLC  
711 High Street  
Des Moines, Iowa 50392-0301  
Attn: Alan Kress, Counsel



and a copies to:

Opus Development Company, L.L.C.  
9700 Higgins Road, Suite 900  
Rosemont, Illinois 60018  
Attn: Michael P. Yungerman

Opus Holding, L.L.C.  
10350 Bren Road West  
Minnetonka, Minnesota 55343  
Attn: Legal Department

and to:

O'Rourke, Hogan, Fowler & Dwyer, LLC  
10 South LaSalle Street, Suite 3700  
Chicago, Illinois 60606  
Attn: Howard I. Goldblatt

7.10 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

7.11 **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and continue until the earlier of: (A) Developer's receipt of the Maximum Reimbursement Amount or (B) \_\_\_\_\_, 2044.

7.12 **Good Faith and Fair Dealing.** Village and Developer acknowledge their duty to exercise their rights and remedies hereunder and to perform their covenants, agreements and obligations hereunder, reasonably and in good faith.

7.13 **Drafting.** Each Party and its counsel have participated in the drafting of this Agreement therefore none of the language contained in this Agreement shall be presumptively construed in favor of or against either Party.

7.14 **Recording.** The Parties agree to record a memorandum of this Agreement with the Kane County Recorder of Deeds.

7.15 **Covenants Run with the Land/Successors and Assigns.** It is intended that the covenants, conditions, agreements, promises, obligations and duties of each Party as set forth in this Agreement shall be construed as covenants and that, to the fullest extent legally possible, all such covenants shall run with and be enforceable against both the covenanted and the Project. Such covenants shall terminate upon termination or expiration of this Agreement. On or before the last date of payment of Available Incremental Taxes, the Village shall provide a release to confirm termination of this Agreement which Developer may, at its sole cost and expense, record against the Property. This Agreement shall inure to the benefit of, and shall be binding upon each

Developer and each Developer's respective successors, grantees and assigns, and upon successor corporate authorities of the Village and successor municipalities.

Notwithstanding anything in this Agreement to the contrary, any person or entity now or hereafter owning legal title to all or any portion of the Property, including Developer, shall be bound to this Agreement only during the period such person or entity is the legal titleholder of the Property or a portion thereof, however, that all such legal title holders shall remain liable after their ownership interest in the Property ceases as to those liabilities and obligations which accrued during their period of ownership but remain unsatisfied or unperformed. As used in this Agreement, the term "Developer" will mean the owner of fee simple title to the Property from time to time during the term of this Agreement.

**7.16 Partial Funding.** Except as otherwise set for in this Agreement, Developer acknowledges and agrees that the economic assistance to be received by Developer as set forth in this Agreement is intended to be and shall be a source of partial funding for the Project and agrees that any additional funding above and beyond said economic assistance shall be solely the responsibility of Developer. Developer acknowledges and agrees that the amount of economic assistance set forth in this Agreement represents the maximum amount of economic assistance to be received by Developer, provided Developer complies with the terms and provisions set forth in this Agreement. Developer further acknowledges and agrees that the Village is not a joint developer or joint venturer with Developer and the Village is in no way responsible for completion of any portion of the Project.

**7.17 Attorney Fees.** Should it become necessary to bring legal action or proceedings to enforce this Agreement, or any portion thereof, or to declare the effect of the provisions of this Agreement, the prevailing party shall be entitled to recover or offset against sums due, its costs, including reasonable attorneys' and consultant fees, in addition to whatever other relief the prevailing party may be entitled.

**7.18 No Special Damages.** Neither the Village nor Developer will be liable under this Agreement for consequential, indirect, special or punitive damages.

**7.19 Estoppel Certificates.** Each of the Parties hereto agrees to provide the other upon not less than ten (10) business days prior request, a certificate certifying that this Agreement is in full force and effect (unless such is not the case, in which such Party shall specify the basis for such claim), that the requesting Party is not in default of any term, provision or condition of this Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting Party. If either Party fails to comply with this provision within the time limit specified, it shall be deemed to have appointed the other as its attorney-in-fact for execution of same on its behalf as to the specific request only.

[SIGNATURE PAGES FOLLOW]



**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

**NORTH AURORA,**  
an Illinois Municipal Corporation

By: \_\_\_\_\_  
Village President

ATTEST:

\_\_\_\_\_  
Village Clerk

**NORTH AURORA INDUSTRIAL VENTURE, LLC,**  
a Delaware limited liability company

By: Opus Development Company, L.L.C., a Delaware  
limited liability company, its Development Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named \_\_\_\_\_ is personally known to me to be the \_\_\_\_\_ of Opus Development Company, L.L.C., a Delaware limited liability company, as the development manager of North Aurora Industrial Venture, LLC, a Delaware limited liability company and also personally known to me to be the same person whose name is subscribed to the foregoing instrument and that he/she appeared before me this day in person and severally acknowledged that he/she signed and delivered the said instrument, pursuant to authority given by the limited liability company as his/her free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
Commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS        )  
                                      ) SS  
COUNTY OF KANE         )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named \_\_\_\_\_ and \_\_\_\_\_ are personally known to me to be the Village President and Village Clerk, respectively, of the Village of North Aurora and also personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Village President and Village Clerk, and that they appeared before me this day in person and severally acknowledged that, as such Village President and Village Clerk, they signed and delivered the said instrument, pursuant to authority given by the Village of North Aurora as their free and voluntary act, and as the free and voluntary act and deed of the Village of North Aurora, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
Commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**Legal Description of Redevelopment Project Area**

**EXHIBIT A-1**

**Map of Redevelopment Project Area**  
[Attached]

**EXHIBIT B**

**Legal Description of the Property**

**EXHIBIT C**  
**Project Plans**  
[Attached]

**EXHIBIT D**  
**Project Budget**



**EXHIBIT E**

FORM DEVELOPER NOTE

REGISTERED                      AMOUNT  
NO. R-1                      \$\_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF ILLINOIS  
COUNTY OF KANE  
VILLAGE OF NORTH AURORA-  
DEVELOPER TAX INCREMENT ALLOCATION REVENUE NOTE  
(\_\_\_\_\_REDEVELOPMENT PROJECT AREA),  
DEVELOPER NOTE SERIES, 20\_\_\_\_\_

Registered Owner: \_\_\_\_\_

Interest Rate: THREE AND ONE-HALF PERCENT (3.5%)

Issuance Date: \_\_\_\_\_, 20\_\_\_\_\_

Maturity Date: \_\_\_\_\_, 20\_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that the Village of North Aurora, Kane County, Illinois (the “**Village**”), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns as hereinafter provided, on or before the Maturity Date identified above, but solely from the sources hereinafter identified, the principal amount of this Developer Note, and interest accrued thereon, from time to time advanced by the Registered Owner to pay Redevelopment Project Costs of the Project (as defined in the Redevelopment Agreement, defined below) in accordance with that certain Ordinance adopted by the Corporate Authorities of the Village on \_\_\_\_\_ (the “**Ordinance**”) and that certain Redevelopment Agreement dated as of \_\_\_\_\_, 2021 (the “**Redevelopment Agreement**”) between the Village and North Aurora Industrial Venture, LLC up to the principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Principal and interest payments on this Developer Note are payable annually on November 15 of each year commencing on November 15, 20\_\_ to and including the Maturity Date from Available Incremental Taxes on deposit in the Project Account of the Special Tax Allocation Fund (as such terms are defined in the Redevelopment Agreement), only to the extent such monies are available. The Registered Owner shall be entitled to receive all monies deposited in the Project Account on or prior to the Maturity Date. Notwithstanding anything to the contrary contained herein, this Developer Note shall automatically be cancelled and be deemed paid-in-full on the Maturity Date, even if the sum of all payments made on this Developer Note do not satisfy in full the principal balance of this Note and any interest accrued thereon, subject to the availability unpaid funds in the Project Account.

The principal and interest payments on this Developer Note shall be payable in lawful money of the United States of America, and shall be made to the Registered Owner hereof as shown on the registration books of the Village maintained by the Chief Financial Officer of the Village, as registrar and paying agent (the “**Registrar**”), at the close of business on the fifteenth day of the month immediately prior to the applicable payment, maturity or redemption date, and shall be paid by wire transfer, check or draft of the Registrar, payable in lawful money of the United States of America, wired in accordance with the wire instructions provided by the Registered Owner or mailed to the address of such Registered Owner as it appears on such registration books or at such other address furnished in writing by such Registered Owner to the Registrar; provided, that the final installment of principal and accrued and unpaid interest will be payable solely upon presentation of this Developer Note at the principal office of the Registrar in North Aurora, Illinois or as otherwise directed by the Village.

Notwithstanding anything in this Developer Note to the contrary, interest will only be payable on the outstanding principal amount hereof for one year beginning on the date of this Developer Note.

This Developer Note is issued by the Village in fully registered form in the aggregate principal amount of advances previously made from time to time by Developer up to Three Million Seven Hundred Ninety-Eight Four Hundred Seventy-Three and No/100 Dollars (\$3,798,473.00) for the purpose of paying or reimbursing Developer for certain Redevelopment Project Costs (as defined in the Redevelopment Agreement) incurred by Developer in connection with the redevelopment of the Project (as defined in the Redevelopment Agreement), on the Property (as defined in the Redevelopment Agreement) in the Village, all in accordance with the Constitution and the laws of the State of Illinois, and particularly the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.) (the “**TIF Act**”), and the Ordinance, in all respects as by law required. IN NO EVENT SHALL THE TOTAL PRINCIPAL AND INTEREST PAYMENTS ON THIS DEVELOPER NOTE EXCEED THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FOUR HUNDRED TWENTY AND NO/100 DOLLARS (\$3,931,420.00).

The Village has assigned and pledged certain rights, title and interest of the Village in and to the seventy-five percent (75%) of the Available Incremental Taxes from the Property which the Village is entitled to receive pursuant to the TIF Act, the Redevelopment Agreement and the Ordinance, and received by the Village in order to pay the principal and interest of this Developer Note. Reference is hereby made to the aforesaid Ordinance and Redevelopment Agreement for a description, among others, with respect to the determination, custody and application of said revenues, the nature and extent of such security with respect to this Developer Note and the terms and conditions under which this Developer Note is issued and secured. THIS DEVELOPER NOTE IS NOT A GENERAL OR MORAL OBLIGATION OF THE VILLAGE BUT IS A SPECIAL LIMITED OBLIGATION OF THE VILLAGE, AND IS PAYABLE SOLELY FROM AVAILABLE INCREMENTAL TAXES RECEIVED BY THE VILLAGE, AND SHALL BE A VALID CLAIM OF THE REGISTERED OWNER HEREOF ONLY AGAINST SAID SOURCE. THIS DEVELOPER NOTE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE VILLAGE, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE REGISTERED OWNER OF THIS DEVELOPER NOTE SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER

OF THE VILLAGE, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF OR INTEREST ON THIS DEVELOPER NOTE.

The Village may prepay this Note at any time.

This Developer Note is transferable by the Registered Owner hereof in person or by its attorney duly authorized in writing at the principal office of the Registrar in North Aurora, Illinois, but only upon surrender and cancellation of this Developer Note. Upon such transfer, a new Developer Note of authorized denomination of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor. Such transfer shall be in accordance with the form at the end of this Developer Note.

This Developer Note hereby authorized shall be executed and delivered as provided for in the Redevelopment Agreement.

Pursuant to the Redevelopment Agreement, Developer has agreed to construct the Project on the Subject Property and to advance funds for eligible Redevelopment Project Costs related to the Project. Such costs up to the amount of Three Million Seven Hundred Ninety-Eight Four Hundred Seventy-Three and No/100 Dollars (\$3,798,473.00) as determined and adjusted pursuant to the Redevelopment Agreement shall be deemed to be a disbursement of the proceeds of this Developer Note. The outstanding principal amount of this Developer Note shall be determined in accordance with the terms of the Redevelopment Agreement. Upon payment in full, the Maturity Date of this Developer Note or expiration of the Redevelopment Project Area, whichever occurs first, this Developer Note shall be deemed "Paid In Full" and shall be surrendered to the Village and cancelled, subject to payment to Registered Owner of any Available Incremental Taxes paid to the Village and then owed to Registered Owner under Developer Note.

The Village and the Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and for all other purposes and neither the Village nor the Registrar shall be affected by any notice to the contrary, unless transferred in accordance with the provisions hereof of the Redevelopment Agreement.

It is hereby certified and recited that all conditions, acts and things required by law to exist, to happen, or to be done or performed precedent to and in the issuance of this Developer Note did exist, have happened, have been done and have been performed in regular and due form and time as required by law; that the issuance of this Developer Note, together with all other obligations of the Village, does not exceed or violate any constitutional or statutory limitation applicable to the Village.

This Developer Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Registrar.

IN WITNESS WHEREOF, the Village of North Aurora, Kane County, Illinois, by its Corporate Authorities, has caused its official seal to be imprinted by facsimile hereon or hereunto affixed, and has caused this Developer Note to be signed by the duly authorized manual or facsimile signature of the Village President and Village Clerk as of the issuance Date set forth above.

\_\_\_\_\_  
Village President

(SEAL)  
Attest:

\_\_\_\_\_  
Village Clerk

CERTIFICATE  
OF  
AUTHENTICATION

Registrar and Paying Agent:  
Chief Financial Officer of the  
Village of North Aurora, Kane  
County, Illinois

This Note is described in the  
within mentioned Ordinance and  
is the \$\_\_\_\_\_ Developer Tax Increment  
Allocation Revenue Note  
(\_\_\_\_\_Redevelopment Project Area),  
Developer Note Series 20\_\_\_ of the Village of North Aurora,  
Kane County, Illinois.

\_\_\_\_\_  
Chief Financial Officer

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

(ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto the within Note and does hereby irrevocably constitute and appoint attorney to transfer the said Note on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_  
Registered Owner

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the Note in every particular, without alteration or enlargement or any change whatever.

Consented to as of: \_\_\_\_\_

Village of North Aurora, Kane County, Illinois

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

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

## **EXHIBIT F**

### **Form of Certificate of Expenditure** *Certificate of Expenditure*

Village of North Aurora  
\_\_\_\_\_  
\_\_\_\_\_

**Re: Development Agreement, dated \_\_\_\_\_, 20\_\_, (the “Redevelopment Agreement”) by and between the Village of North Aurora, Illinois (“Village”) and North Aurora Industrial Venture, LLC, a Delaware limited liability company (the “Developer”)**

Dear Village Administrator:

Pursuant to the Redevelopment Agreement, you are hereby requested to issue or increase the amount of Developer Note for the dollar amount set forth in this Certificate of Expenditure. The terms used in this Request for Reimbursement shall have the meanings given to those terms in the Redevelopment Agreement.

1. Certificate of Expenditure No.: \_\_\_\_\_
2. Amount expended by Developer: \$ \_\_\_\_\_
3. The amount set forth in this Certificate of Expenditure is for those Redevelopment Project Costs permitted under the Redevelopment Agreement.
4. The undersigned certifies that:

(i) the amounts included in Paragraph 2 above were paid or incurred and financed in accordance with approved plans, permits and specifications of the Project as defined in the Redevelopment Agreement;

(ii) the amounts included in Paragraph 2 above, represent a part or all of the reimbursement due and payable as Redevelopment Project Costs under the Redevelopment Agreement and Certificate of Expenditure the amounts have not been included in any previous Certificate of Expenditure, with paid invoices and/or other documents attached as evidence of such expenditures;

(iii) Developer is not in default under the Redevelopment Agreement and nothing has occurred to the knowledge of Developer that would prevent the performance of the obligations of Developer under the Redevelopment Agreement.

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

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

\_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED:

**VILLAGE OF NORTH AURORA, an  
Illinois municipal corporation**

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

\_\_\_\_\_  
Village Administrator

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