No. _____

IN THE SUPREME COURT OF ILLINOIS

HABDAB, LLC, an Illinois limited liability company, Plaintiff-Petitioner, v. COUNTY OF LAKE, *et al* Defendant-Respondent.	Petition for Leave to Appeal from the Appellate Court of Illinois, Second District No. 2-23-0006 There Heard on Appeal from the Circuit Court of the Nineteenth Judicial Circuit, Lake County Hon. Jacquelyn D. Melius, Judge Presiding

PETITION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

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I. PRAYER FOR LEAVE TO APPEAL

Petitioner, Habdab LLC, by its attorneys, O'Donnell Callaghan LLC, petitions this Supreme Court of Illinois for leave to appeal the November 21, 2023 decision of the Illinois Appellate Court, Second District, denying petitioner's appeal and affirming the judgment of the circuit court of Lake County.

II. STATEMENT OF THE DATE.

The Second District entered its judgment on petitioner's appeal on November 21, 2023. No petition for rehearing has been filed.

III. STATEMENT OF THE POINTS RELIED UPON FOR REVERSAL.

A. The Second District Misinterpreted the Statutory Definition of "Road Improvement Impact Fees" to Limit the Application of the Impact Fee Law.

The Second District erred in concluding the definition of "road improvement impact fees" in the definitions section of the Road Improvement Impact Fee Law, 605 ILCS 5/5-901, *et seq.*, was intended to limit the application of the statute to apply to only road improvement impact fees that are collected at certain, specified points in the development process, *i.e.*, at the time of issuance of a building permit or a certificate of occupancy. According to the Second District, if a unit of local government seeks to impose impact fees for highway improvements on a developer, and requires the developer to pay those fees at any point in the development process other than the time of issuance of a building permit or a certificate of occupancy, the government does not have to comply with the Impact Fee Law. This is an unduly narrow and erroneous interpretation of the statute.

B. The Second District's Interpretation Invites Local Governments to Avoid Compliance with the Law by Requiring a Road Improvement Impact Fee to Be Paid at Any Time Other Than Issuance of a Building Permit or Certificate of Occupancy.

The Second District's focus on a specific definition in the statute, limiting the applicability of the law to the timing of collecting road improvement impact fees, is inconsistent with the comprehensive framework intended by the legislature. The Second District's decision creates an arbitrary loophole for local governments to avoid complying with the statute's requirements by collecting impact fees at any point other than the issuance of a building permit or certificate of occupancy. This is contrary to the fundamental purpose of the Impact Fee Law, which is to ensure that new developments contribute only their fair share of the cost of road improvements. Contrary to the Second District's opinion, a court's interpretation of whether a local government is in compliance with the Impact Fee Law should pay more attention to the protection of constitutional rights rather than a rigid focus on the timing of assessment.

C. The Second District's Decision Ignores and Conflicts with This Court's Ruling in *N. Illinois Home Builders Association, Inc. v. County of Du Page.*

The Second District's interpretation of the Impact Fee Law contradicts the precedent set by this Court in *N. Illinois Home Builders Ass'n, Inc. v. Cnty. of Du Page*, 165 Ill. 2d 25, 38 (1995). The Second District failed to adequately analyze the leading case in this State addressing road improvement impact fees, which emphasized the constitutional considerations regarding the essential nexus between imposed exactions and a legitimate state interest. By placing arbitrary emphasis on when the impact fee is collected, the Second District avoids this constitutional analysis and allows local governmental bodies to do likewise, depriving developers and landowners of their constitutional protections.

D. There Is No Essential Nexus Between the County's Determination of the Fees in 2009 and Plaintiff's Use of the Property in 2018-2023.

Finally, the Second District erred when it attempted to retroactively create an essential nexus between the road improvement impact fees the County established on a per-acre basis for plaintiff's property in 2009 and plaintiff's actual use of the property over nine years later. This after-the-fact attempt to satisfy the unconstitutional conditions doctrine does not justify the County's attempt to evade the very statute that was enacted to serve the purpose of the doctrine for road improvement impact fees.

IV. STATEMENT OF FACTS

The Central Lake County Area Transportation Improvement Intergovernmental Agreement

On December 1, 2009, the County of Lake (the "County") and the Village of Mundelein (the "Village"), along with two other County villages, entered into an intergovernmental agreement entitled Central Lake County Area Transportation Improvement Intergovernmental Agreement (the "IGA"). C 1271. The purpose of the IGA was to establish construction funding for future County highway improvements in the "Central Lake County Area." C 1271-72; C 1567, p. 9:5-24. The road improvements were intended both to accommodate increased traffic generated from future development in the Central Lake County Area and to address existing traffic demands. C 1271-72.

The County agreed to design and construct the road improvements. C 1277. The County would be reimbursed a portion of the road improvement construction costs by impact fees collected from future developments within the Central Lake County Area. C 1276. The County and the villages agreed developers[1] of such future developments would be

[1] Throughout this petition, Petitioner refers to owners and/or developers of land within the Central Lake County Area who may be subject to the IGA Fees as "developers," using the term defined in the IGA as "The owner of a Development, as well as an assignee, contract

collectively assessed 50% of the construction costs of the road improvements as their "allocable share" thereof. C 1276-78. The remaining 50% of the construction costs would be borne by the County as a "public benefit." C 1587, p. 90:17-91:11; C 1277.

Those road improvement costs assessed as impact fees (the "Fees") to future developments within the Central Lake County Area, would be collected as and when such development occurred. C 1277. The IGA identified six "sub-areas" of undeveloped land from which the Fees would be collected and assigned a separate per-acre impact fee to each sub-area. C 1275-77. The cost per acre established in 2009 for those properties in the sub-area designated as "Highway Corridor 5" was $8,120 per acre. C 1292.

The County and the villages agreed to collect the Fees from new developments within the sub-areas. C 1278. For any development located within an unincorporated portion of the Central Lake County Area that sought annexation to a village, that village would "require" the developer to enter into an annexation agreement that provided for the developer's payment of the County's Fees. *Id.* For properties already within one of the villages, the villages agreed not to grant any zoning relief for new developments "except upon the condition that the Developer agrees to pay the FEES in accordance with this Agreement." *Id.* For any development within the County's jurisdiction, the County would require the developer to "agree" to pay the Fees as a condition of providing any access or zoning relief to the developer. *Id.*

The Fees were to be collected from the developer before the responsible government authority granted "Final Development Approval," which term was defined in the IGA as "the latter of the grant of Zoning Relief, annexation approval, or final plat approval." C 1279, C 1275. However, for any property within a sub-area to which none of

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purchaser, agent, or other person having control over a Development and responsibility for the Development." *See*, C 1274.

those conditions applied, the Fees would be extracted upon "the issuance of the earlier of a grading permit, a site development permit, a building permit, or a certificate of occupancy." C 1275.

No portion of the Fees was to be retained by any of the Villages; the Villages agreed to collect the Fees from developers and transfer the entire Fees to the County as reimbursement for the portion of the road improvement costs allocated to such developer's property. C 1279.

Plaintiff's Property Within the Central Lake County Area

Plaintiff, Habdab, LLC, owns three parcels of real estate (collectively, the "subject property") within Highway Improvement Area 5 of the Central Lake County Area. C 2090 V2, ¶ 1; C 1309-10, ¶ 26; C 1269. Parcel 1 of the subject property was annexed into the Village pursuant to an Annexation and Development Agreement dated September 11, 2018 between plaintiff and the Village (the "Annexation Agreement"). C 1310, ¶ 27. Parcel 2 of the subject property was annexed into the Village pursuant to an amendment to the Annexation and Development Agreement dated July 22, 2019 (the "First Amendment"). *Id.*, ¶ 28. Neither the Annexation Agreement nor the First Amendment includes any provision in which plaintiff agreed to pay the County's IGA Fees. C 1310-11, ¶ 30.

On September 19, 2019, Betsy Duckert of the Lake County Division of Transportation sent a letter to John Lobaito, then Village Administrator of the Village of Mundelein. C 1269. In the letter, the County asserted plaintiff owed $191,581.90 as Fees pursuant to the IGA for Parcels 1 and 2, which Fees were to have been collected by the Village and transferred to the County. *Id.* The County stated the Fees must be paid before the County would issue a construction access permit for the subject property. *Id.*

On August 25, 2020, plaintiff filed its complaint against the County and Village seeking a declaratory judgment that plaintiff is not obligated to pay the County's Fees pursuant to the IGA because the County has not complied with the Illinois Road Improvement Impact Fee Law in assessing the Fees against the subject property. C 1178, C 1183-84. At the time plaintiff filed the complaint, plaintiff was seeking annexation of its third parcel, Parcel 3, into the Village. C 1306-07; C 1182, ¶ 33.

On October 5, 2020, the Village filed a cross-complaint against the County, seeking a declaratory judgment that the Fees the County was seeking to collect from plaintiff's property pursuant to the IGA were not yet due, as the Village had not yet granted "Final Development Approval" for Parcels 1 or 2. C 1307. The same day, the Village also filed a counterclaim against plaintiff, seeking a declaratory judgment that any Fees due under the IGA relative to plaintiff's Parcels 1, 2 or 3 "are the responsibility of [plaintiff] to pay Lake County." C 129, 138-40.

On May 24, 2021, the County filed a cross-complaint against the Village, asserting the Village breached the IGA by not including a provision in the Village's Annexation Agreement or First Amendment requiring plaintiff to pay the IGA Fees. C 1336. The County took the position that if the Village did not collect the Fees from plaintiff, the Village was responsible to pay the Fees directly to the County pursuant to the IGA. *Id.*

On or about April 26, 2021, plaintiff and the Village entered into a Second Amendment to the Annexation Agreement. C 1408-1429. The Second Amendment provided for the annexation of Parcel 3 into the Village, referenced therein as the "35 Acre Parcel," subject to the terms and conditions of the Annexation Agreement, as amended therein. C 1408-09. Given the pendency of the lawsuit, the Second Amendment addressed the payment of the Fees the County was seeking to assess against plaintiff's property

pursuant to the IGA. C 1419-20. The Second Amendment contained a provision that plaintiff would be responsible to pay any Fees relative to the subject property arising from the IGA as a result of any "Final Development Approval" of the subject property. C 1419. However, the Village and plaintiff agreed plaintiff would not be required to pay any IGA Fees while this lawsuit challenging the County's ability to collect the Fees remains pending. C 1419. In other words, plaintiff has not agreed to pay the Fees unless and until a court orders it to do so. *Id.*

The Village of Mundelein Admits the Purpose of the IGA Is to Avoid the Impact Fee Law

The Illinois Road Improvement Impact Fee Law (the "Impact Fee Law") has been established since 1989. 605 ILCS 5/5-901. The Impact Fee Law authorizes units of local government to adopt and implement road improvement impact fee ordinances and resolutions. 605 ILCS 5/5-902. The Impact Fee Law prohibits units of local government from imposing road improvement impact fees on property owners by any other method other than pursuant to the statute. 605 ILCS 5/5-904. One of the stated purposes of the Impact Fee Law is to promote orderly growth by ensuring that a "new development bears its fair share of the cost of meeting the demand for road improvements through the imposition of road improvement impact fees." 605 ILCS 5/5-902.

Former Village of Mundelein Village Administrator John Lobaito testified the Fees collected from the County and Village pursuant to the IGA are road improvement impact fees. C 1658, p. 120:5-10. There is no correlation between the Fees assessed by the County pursuant to the IGA, which are assessed on a per-acre basis, and the actual use of any development against which they are assessed. *Id.*, pp. 120:18-121:13. Mr. Lobaito testified that the County's attempt to assess a road improvement impact fee that is identical, on a per-acre basis, for both plaintiff's property and for the Saia LTL Freight truck terminal adjacent

to plaintiff's property, is unfair and "just doesn't make sense." C 1659, pp. 123:18-125:8. Mr. Lobaito testified that the purpose for which the County was seeking to collect road improvement impact fees via annexation agreements under the IGA was in an attempt to avoid the requirements of the Impact Fee Law. C 1660, p. 126:24-127:6; *see also*, A 631-32.

V. ARGUMENT

This is a case involving Lake County's attempt to impose impact fees on plaintiff for the payment of road improvements in a manner other than that prescribed by the Illinois legislature in the Impact Fee Law. 605 ILCS 5/5-901 Instead of complying with the procedure for assessing impact fees for highway improvements in the fair and equitable manner detailed in the Impact Fee Law, the County and three municipalities entered into an Intergovernmental Agreement specifically contemplated and designed to avoid such procedures. The County asserted it was successful in avoiding the requirements of the Impact Fee Law because the statute only applies to road improvement impact fees that are imposed as a condition to the issuance of a building permit or a certificate of occupancy. The Second District agreed with the County's argument, and affirmed the trial court, concluding the Impact Fee Law has "no relevance" to the impact fees assessed by the County. *Habdab, LLC v. The County of Lake*, 2023 IL App (2d) 23000, ¶ 44.

If the Second District's published decision is allowed to stand, all a governmental entity has to do in order to avoid the requirements of the Impact Fee Law is to assess its highway improvement impact fees at any point in time in the development process other than the issuance of a building permit or a certificate of occupancy. On the contrary, if a municipality wishes to subject itself to the many, detailed, procedures established in the statute for protecting landowners from arbitrary exactions, then it must remember to make its impact fees collectible at the time a building permit or certificate of occupancy is issued.

A highway improvement impact fee collected at any other time makes the statute utterly irrelevant, according to the Second District.

Not only does the Second District's analysis completely gut the purpose and effect of the Impact Fee Law, it also ignores this Court's decision in *Northern Illinois Home Builders Ass'n, Inc. v. County of DuPage*, 165 Ill. 2d 25 (1995). For the reasons explained herein, petitioner asks this Court to review and overturn the Second District's erroneous decision.

A. The Second District Erred in Limiting the Application of the Impact Fee Law to Only Impact Fees Collected at Specific Points in the Development Process.

The Second District's primary and grave error lies in interpreting the definition of "road improvement impact fee" in the Impact Fee Law to limit the application of the statute. Section 5-903 of the Impact Fee Law contains a series of definitions for terms used within the statute. 605 ILCS 5/5-903. One of the definitions contained therein is the term "Road improvement impact fee," which

> means any charge or fee levied or imposed by a unit of local government as a condition to the issuance of a building permit or a certificate of occupancy in connection with a new development, when any portion of the revenues collected is intended to be used to fund any portion of the costs of road improvements

605 ILCS 5/5-903.

The Second District held that this definition limits the application of the statute to ***only*** impact fees that are issued at the exact times indicated in this definition, that is, when a building permit or certificate of occupancy is issued. *Habdab, LLC*, 2023 IL App (2d) 230006 at ¶¶ 39-41. Therefore, the Second District held, any impact fee assessed by a governmental entity on a landowner to pay for the construction, alteration, or repair of roadways, which is collected or assessed at any other time in the development process is simply not a "road improvement impact fee" subject to the statute. *Id.* In fact, the Second District held that the

Impact Fee Law has "no relevance" to impact fees imposed by governmental authorities on landowners for the construction of roadway improvements if those impact fees are not collected when a building permit or certificate of occupancy is issued. *Id.* at ¶ 44. In a word, the Second District's conclusion is absurd.

B. The Impact Fee Law Does Not Support the Second District's Conclusion.

The primary, fundamental canon of statutory interpretation is to determine and give effect to the intention of the legislature in creating the statute. *Nottage v. Jeka*, 172 Ill. 2d 386, 392 (1996). Here, the Impact Fee Law was created "to promote orderly economic growth throughout the State by assuring that new development bears its fair share of the cost of meeting the demand for road improvements through the imposition of road improvement impact fees." 605 ILCS 5/5-902. By creating the Impact Fee Law, the Illinois legislature intended local government officials to conform its local laws and ordinances providing for the collection of road improvement impact fees that adhere to the minimum standards and procedures set forth in the statute. *Id.* While courts are often called on to interpret the nuances of statutory construction, in doing so they "should not, under the guise of statutory construction, add requirements or impose limitations that are inconsistent with the plain meaning of the enactment." *Nottage*, 172 Ill. 2d at 392. Contrary to this fundamental canon, this is exactly what the Second District did here.

In determining the Impact Fee Law has "no relevance" to an impact fee assessed by a governmental body on a landowner for the construction of roadway improvements, so long as the assessment is done at any point in time other than issuance of a building permit or certificate of occupancy, the Second District has effectively destroyed the purpose of the statute. No longer does the statute serve to protect landowners and ensure they bear their fair share of roadway improvement costs. No longer are local municipalities required to

conform their local roadway improvement impact fee ordinances to the minimum standards and procedures set forth in the statute. Instead, all they have to do is collect the impact fees at any time in the development process other than the issuance of a building permit or a certificate of occupancy, and the protections in the Impact Fee Law do not apply.

Here, the County and the villages did so by imposing the Fees at the point a property owner annexes its property into one of the villages. Because no building permit or certificate of occupancy is issued at that time, there was no need for the County or municipalities to comply with the Impact Fee Law. There was no need for the government to adopt a comprehensive road improvement plan to define the roadway improvements for which such payment would be collected, establish an advisory committee, hold a public notice and hearing. 605 ILCS 5/5-905. There was no need to provide the landowner assessed with Fees the right to appeal the road improvement plan and fees assessed pursuant thereto. 605 ILCS 5/5-917. And there was no need to require the Fees imposed on the developer be specifically and uniquely attributable to the traffic demands generated by that particular development. 605 ILCS 5/5-904. None of these statutory protections apply or even have any relevance to such impact fees, according to the Second District.

The Second District found this case involved a question of statutory interpretation, but the only section of the statute it focused its interpretation on was the definitions section. The court gave nominal consideration to other sections of the statute referenced by petitioner in its argument, but avoided addressing those substantive arguments by reiterating its position that "[t]here is no ambiguity in the statutory definition." *Habdab* at ¶ 41. A statutory definition is not meant to provide all context for and limitation of the application of the statute, to the exclusion of all the other provisions therein, regardless of how "unambiguous" that definition may be. A statute must be read and interpreted in its entirety,

not arbitrarily limited because of a single term in one definition. *See*, *Mercado v. S & C Electric Co.*, 2023 IL App (1st) 220020, ¶ 20 ("Statutory terms are not to be interpreted in a vacuum; rather, they must be viewed as a whole with the rest of the statute's provisions").

The Second District's decision to limit the applicability of the entire statute to only road improvement impact fees collected at a *certain*, *specific* period in time and thus find the statute has "no relevance" to road improvement impact fees collected at *any other period in time*, simply because the definition happens to mention the point in time at which the statute *prescribes* the impact fees be collected, is absurd.

Moreover, this myopic focus on one "definition" in Section 903 of the statute, to the exclusion of others, supports a finding that the Second District's hyperfixation on the timing of collection of fees is illogical. For example, there are additional defined terms in this section, such as "Specifically and uniquely attributable," which

> means that a new development creates the need, or an identifiable portion of the need, for additional capacity to be provided by a road improvement. Each new development paying impact fees used to fund a road improvement must receive a direct and material benefit from the road improvement constructed with the impact fees paid. The need for road improvements funded by impact fees shall be based upon generally accepted traffic engineering practices as assignable to the new development paying the fees.

605 ILCS 5/5-903.

In this definition, the term "road improvement impact fees," which the Second District elevates to such importance that it limits the application of the rest of the statute, is never used. This definition refers to "impact fees," but not the Second District's specifically defined term, "road improvement impact fees." According to the Second District, that must mean that the term "road improvement impact fees" has "no relevance" to the term "specifically and uniquely attributable." This seems unlikely, given they are both defined terms in the same definition section of the statute.

Instead, by focusing narrowly on the definitions provision, the Second District convinced itself that the legislature "selected a point in time" at which road improvement impact fees *must* be assessed on developers in order for the statute to have any relevance to those impact fees. *Habdab* at ¶ 41. However, the Second District pointed to no indication in either the definitions section or anywhere else in the statute that led to a conclusion that the legislature found the *timing* of the impact fee payment so important as to elevate it to creating a bar for applicability of the statute.

By making this erroneous decision, the Second District has outlined a path for any unit of local government that wishes to avoid compliance with the statute. If a governmental entity such as the County or any municipality seeks to collect impact fees for the payment of highway improvements, and wishes to avoid the requirements of the statute, all it needs to do is assess its roadway improvement impact fees at any point in time other than the issuance of a building permit or certificate of occupancy. If, for example, the fee is collected when the developer submits its application for a building permit, then it is not a road improvement impact fee, and is not required to comply with statute. If the impact fee is to be paid at the time a final inspection is scheduled, then it is not a road improvement impact fee, and is not required to comply with the statute.

There are any number of points in time in the development process when a municipality can require a developer to pay impact fees, in order to avoid the mandates of the statute. In fact, as a result of the Second District's decision, a municipality would have to *specifically* decide that it wants its road improvement impact fees to be subject to the statute, and *then* if it chooses to do so, it can set forth a procedure for collecting those fees at the time a building permit or certificate of occupancy is issued. Otherwise, if it decided *not* to collect its roadway improvement fees at that point in time, the strictures of the statute have

"no relevance" to the type, quantity, determination, and amount of impact fees the municipality may charge its developers for the construction of roadway improvements in its jurisdiction.

The Second District must be overturned because the legislative intent was to establish a comprehensive framework for impact fees, not to provide municipalities with an easy means of circumventing its requirements. The Second District's painfully simplistic analysis enables any municipality seeking to avoid the statute an arbitrary and completely effective loophole for doing so. It abandoned any analysis of the intent of the Illinois legislature in creating the statute, which is to safeguard developers, ensuring that fees are reasonable, proportionate, and directly related to the impact of new developments on public infrastructure. The flawed interpretation by the appellate court undermines this crucial objective by permitting municipalities to evade necessary protections based on mere timing considerations. Compliance with the Impact Fee Law should be determined by the substance of the fees imposed, their relation to the development's impact, and the protection of constitutional rights, rather than a rigid focus on the moment of assessment.

C. The Second District's Limitation of the Application of the Impact Fee Law Conflicts with This Court's Decision in *N. Illinois Home Builders Ass'n, Inc.*

In forming its decision restricting the application of the Impact Fee Law to only those road improvement impact fees which a municipality may elect to subject to the requirements of the law based on the timing of assessments, the Second District ignored the leading Illinois decision regarding the Impact Fee Law, *N. Illinois Home Builders Ass'n, Inc. v. Cnty. of Du Page*, 165 Ill. 2d 25, 29 (1995). While the Second District briefly mentioned this Court's decision, it made no analysis of the decision and its applicability to the circumstances here.

In *N. Illinois Home Builders Ass'n, Inc.*, the plaintiffs, like plaintiff here, sought to challenge a local government's collection of impact fees for the construction of highway improvements. *Id.* at 31. The plaintiffs in that case also challenged the Impact Fee Law itself, as violative of the takings clauses of the Illinois and United States Constitutions. *Id.* at 29. In addressing the plaintiffs' constitutional claims, this Court examined the Impact Fee law and its purpose, in light of the constitutional purpose of protecting landowners from exactions unconnected to a legitimate state interest. *Id.* at 32. This Court addressed the United States Supreme Court cases of *Dolan v. City of Tigard*, 512 U.S. 374, 386 (1994) and *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 825 (1987), which directly speak to this issue. This Court noted an analysis of the constitutionality of the Impact Fee Law and the DuPage County roadway improvement impact fee ordinance enacted pursuant thereto would hinge upon whether such ordinances, using the standards set forth in *Nollan* and *Dolan*, establish an essential nexus between the exactions sought to be imposed and the furtherance of a legitimate state interest. *N. Illinois Home Builders Ass'n, Inc.*, 165 Ill. 2d at 32. This Court noted that the state has a legitimate interest in minimizing traffic congestion, promoting traffic safety, and providing for road improvements to address those interests. *Id.* The Court then looked at the specific provisions of the Impact Fee Law to determine whether the procedures in the statute satisfied the essential nexus test required by the United States Supreme Court and this Court, using the test set forth in *Pioneer Tr. & Sav. Bank v. Vill. of Mount Prospect*, 22 Ill. 2d 375, 380 (1961). *Id.* at 33.

This Court found the Illinois legislature's first attempt at creating a road improvement impact fee law failed the essential nexus test, or the test in *Pioneer Tr. & Sav. Bank* that the exactions be "specifically and uniquely attributable" to the developer's activity. *N. Illinois Home Builders Ass'n, Inc.*, 165 Ill. 2d at 35. "There is nothing in the first enabling act,

or the ordinances based upon it, which restricts the expenditure of funds collected thereunder to deficiencies created by the new development providing those funds." Because the first enabling act did not provide enough protections requiring impact fees assessed on developers for the construction of road improvements be specifically and uniquely attributable to the actual impact of the development on the need for those road improvements, the lack of such an essential nexus between the developer's activity and the fees imposed on the developer were unconstitutional. *Id.*

On the other hand, the legislature's second attempt at implementing a roadway improvement impact fee ordinance, which is the version of the statute that exists today, did satisfy the proportionality test. *Id.* at 36. This Court noted that the Impact Fee Law explicitly requires that road improvement impact fees assessed on developers be "specifically and uniquely attributable" to the need for additional capacity to be provided by a road improvement that is actually generated by such development. *Id.* at 33-34; 605 ILCS 5/5-903. This Court noted that protection in the statute satisfied the *Pioneer Trust* test, as well as the *Nollan* and *Dolan* Supreme Court mandates that governmental exactions contain an "essential nexus" to a legitimate government purpose. *Id.*

This Court then analyzed the specific Du Page County road improvement impact fee ordinance, which divided the county into 11 districts, and contained a formula for the calculation of fees to be paid for each development, containing fee tables for each type of land use in each district. *Id.* at 30-31, 37. The Court found the Du Page County ordinance complied with the requirements of the Impact Fee Law to collect only fees specifically and uniquely attributable to the development's impact on the roadways. *Id.* at 37.

Notably, nowhere in *N. Illinois Home Builders Ass'n, Inc.* did this Court address the timing of the impact fee payment to determine whether the statute satisfied these

constitutional protections. More importantly to the Second District's flawed analysis here, this Court did not find that by merely conditioning the payment of the impact fees at a certain stage in the development process, the Illinois legislature or Du Page County could avoid the constitutional tests of requiring governmental exactions to have an essential nexus to the specific activity on which the exaction is purportedly conditioned.

Therein lies the fundamental and egregious flaw in the Second District's reasoning. The Illinois legislature went to the effort of drafting a statute that complies with the prevailing United States Supreme Court and Illinois Supreme Court case law regarding governmental exactions, even using the exact language, *i.e.*, "specifically and uniquely attributable," used by this Court in *Pioneer Trust. Id.* at 33-34, *quoting* 605 ILCS 5/5-9806(a)(1). This Court thoroughly analyzed the effort that resulted in the Impact Fee Law in *N. Illinois Home Builders* and found it satisfied each of those tests. 165 Ill. 2d at 31-38. Now, the Second District has declared that a unit of local government can charge road improvement impact fees that do not comply with *Nollan*, *Dolan*, *Pioneer Trust*, or *N. Illinois Home Builders Ass'n, Inc.*, so long as it takes care not to use the specifically defined term of "road improvement impact fees" that is used in the Impact Fee Law, and to pick a different period of time to require payment of those fees other than that specifically provided in the statute.

D. No Essential Nexus Between Determination of the Fee and Use of the Property.

The Second District's error in concluding the Impact Fee Law does not apply to the road improvement impact fees imposed by the County on plaintiff is further highlighted in the section of its opinion analyzing plaintiff's argument regarding the doctrine of unconstitutional conditions. The Second District found the IGA to be a legitimate end run around the Impact Fee Law because there is a "rough proportionality" between the $8,120 per acre road improvement impact Fees imposed on plaintiff and plaintiff's actual use of the

property as a clean fill operation. C 1292; *Habdab, LLC*, 2023 IL App (2d) 230006 at ¶ 56. The Second District misses the point.

In 2009, when the County entered into the IGA, it established the Fees for plaintiff's property would be $8,120 per acre, *regardless* of plaintiff's actual use of the property in the future. C 1292. Plaintiff annexed the first parcel of the subject property into the Village nine years later, in 2018. C 1310, ¶ 27. Plaintiff did not begin using the property for a clean fill operation until after the annexation. The County's attempt to point to the use of the property ten years after the Fees were established does not establish the required "essential nexus" and "rough proportionality" between plaintiff's use of the property and the burdens imposed on plaintiff under the IGA. *See, McElwain v. The Office of the Illinois Secretary of State*, 2015 IL 117170, ¶ 29. There was no "essential nexus" in 2009 between plaintiff's non-use of the property and the $8,120 per acre fee established at that time. Moreover, the retroactive attempt to identify in 2023 a "rough proportionality" between how plaintiff is now using the property and the fee apparently fortuitously established 14 years ago does not justify the end run around the Impact Fee Law. Establishing a fee in one decade and hoping the landowner's use of the property one or more decades later justifies the fee is not allocating the burden of paying for public road improvements in a fair and equitable manner. 605 ILCS 5/5-902.

CONCLUSION

The Second District's analysis does not just sanction a local governmental unit's ability to create an end run around the statutory requirements, it *invites* it. This is an important question not only because of the path it will pave for local governments to avoid the Impact Fee Law, but could also set a precedent for avoiding other constitutional and statutory obligations as well. Moreover, the Second District's conclusion that the Impact Fee

Law is "not relevant" to a road improvement impact fee assessed by a unit of local government simply because that fee is not imposed as a condition to the issuance of a building or certificate of occupancy ignores this Court's constitutional analysis of the Impact Fee Law in *N. Illinois Home Builders Ass'n, Inc. v. Cnty. of Du Page*, 165 Ill. 2d 25 (1995). The Second District's decision is clearly erroneous, and cannot be left to stand. For these reasons, petitioner asks that this Court grant this petition for leave to appeal and reverse the erroneous decision of the Second District.

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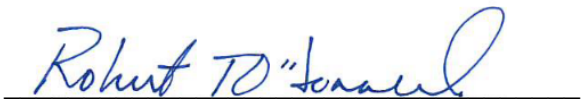
RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 20 pages.



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2023 IL App (2d) 230006
No. 2-23-0006
Opinion filed November 21, 2023

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

HABDAB, LLC, Plaintiff-Appellant, v. THE COUNTY OF LAKE and THE VILLAGE OF MUNDELEIN, Defendants-Appellees.	)	Appeal from the Circuit Court of Lake County. No. 20-MR-514 Honorable Jacquelyn D. Melius, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court, with opinion.
Justices Birkett and Mullen concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, Habdab, LLC, filed a two-count declaratory judgment action against defendants, the County of Lake (county) and the Village of Mundelein (village). In count I, directed against the county and the only count at issue in this appeal, plaintiff sought to invalidate an intergovernmental agreement between the county, the village, and several other municipalities. The agreement established construction funding for future highway improvements in the county's central area and provided that a portion of the construction costs would be reimbursed to the county from impact fees collected from developers, including plaintiff, in the central area. Plaintiff alleged that the agreement violated the Road Improvement Impact Fee Law (Impact Fee Law) (605 ILCS 5/5-901 *et seq.* (West 2022)) and that it had an interest in avoiding payment of unconstitutional

fees. The county and plaintiff filed cross-motions for summary judgment, and the trial court granted the county's motion, denied plaintiff's motion, and entered judgment in the county's favor and against plaintiff on count I. The court subsequently made findings pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016). Plaintiff appeals, arguing that (1) the Impact Fee Law applies to the agreement's fees because they meet the statutory definition of impact fees, (2) the agreement's fees do not comply with the Impact Fee Law because they are assessed on a per-acre basis and, thus, are not specifically and uniquely attributable to the developed property's actual impact on the roadway system, (3) the doctrine of unconstitutional conditions bars the fees because they constitute an unconstitutional taking, and (4) plaintiff never agreed to pay the unconstitutional impact fees. We affirm.

¶ 2 I. BACKGROUND

¶ 3 A. Central Lake County Area Transportation Improvement Intergovernmental Agreement

¶ 4 In 2009, the county and three municipalities (the villages of Mundelein, Grayslake, and Libertyville) entered into an intergovernmental agreement, the Central Lake County Area Transportation Improvement Intergovernmental Agreement (IGA). Its purpose was to establish construction funding for future highway improvements in the central Lake County area. The improvements were intended to address existing and future traffic demands. Under the IGA, the county agreed to design and construct road improvements in exchange for a portion of the construction costs being reimbursed from fees collected from developers within the area, upon the occurrence of certain triggers. The parties to the IGA agreed that developers of future developments would be collectively assessed 50% of the construction costs of the road improvements and the remaining 50% of the costs would be borne by the county as a "public benefit."

¶ 5 Specifically, as relevant here, the IGA provides that the villages, "as a condition of annexation of any unincorporated territory located within the Central Lake County Area and within a Highway Improvement Area," would "require the execution of an annexation agreement, which annexation agreement shall include among its terms the payment of FEES in accordance with this Agreement." The IGA establishes six "Highway Improvement Areas" within the central Lake County area, and the parties (to the IGA) created a schedule of fees for each subarea. The fees for each subarea would be divided by the number of developable areas within each subarea and assessed against future developments, based on the number of acres contained within each development.

¶ 6 The fees would be collected "prior to granting Final Development Approval." The term "Final Development Approval" was defined as "the latter of the grant of Zoning Relief, annexation approval, or final plat approval." If none of these conditions apply, the fees are collected upon "the issuance of the earlier of a grading permit, a site development permit, a building permit, or a certificate of occupancy."

¶ 7 B. Annexation Agreements Between Plaintiff and the Village

¶ 8 Plaintiff and the village, a home rule municipality, entered into three successive annexation agreements. Parcel 1, consisting of 6.6 acres, was annexed via an annexation agreement, dated September 11, 2018, for a "clean fill" commercial development project.[1] Parcel 2, consisting of 10.03 acres, was annexed via an amendment to the annexation agreement, dated July 22, 2019. Parcel 3 was annexed through a second amendment, dated April 26, 2021, about eight months after the complaint was filed in this case. Neither the annexation agreement nor the first amendment included any provision in which plaintiff agreed to pay the IGA fees.

[1]Third parties pay a fee to plaintiff to truck in fill to be deposited on the parcels.

¶ 9 The second amendment provided for the annexation of parcel 3, consisting of 35 acres, into the village. It addressed the payment of fees arising from the IGA as a result of any "Final Development Approval." The amendment stated that the parties agreed that any fees, as defined in the IGA and as a result of any final development "or otherwise, relative to any or all of the Combined Parcel," were the owner's responsibility to pay to the county. However, the village and plaintiff agreed that plaintiff would not be required to pay any fees while the lawsuit challenging the county's ability to charge and collect the fees remained pending. The second amendment also provided that plaintiff agreed to indemnify and hold harmless the village from 50% of attorney fees and costs, up to $50,000, the village incurred in connection with the litigation; this included such amounts associated with any claims made by any IGA party, any settlement, any claim, and any judgment against the village by the county, plaintiff, or any other IGA party, relating to the IGA and/or the annexation agreements/amendments and the village's actions or omissions. It also stated that the expected completion date of plaintiff's improvements on the three parcels was December 31, 2035.

¶ 10 The three parcels were zoned agricultural prior to annexation; afterward, they were reclassified into the R-1 "Single Family Residential Zoning District." Plaintiff submitted to the village various plans and plats of annexation.[2]

¶ 11 On September 19, 2019, the county informed the village that plaintiff owed $191,581.90 in fees for parcels 1 and 2 pursuant to the IGA. It asserted that the fees must be paid before the county would issue a construction access permit for the properties.

¶ 12 C. Plaintiff's Complaint and Other Filings

[2]The parcels are located south of Petersen Road, north on Winchester Road, and east of Illinois Route 83.

¶ 13 On August 25, 2020, plaintiff filed a declaratory judgment complaint against the county (count I) and the village (count II), seeking a declaration that it was not obligated to pay the fees under the IGA on the basis that the county had not complied with the Impact Fee Law. Also at this time, plaintiff was seeking to annex parcel 3 into the village. Specifically, as to count I, which is at issue in this appeal, plaintiff asserted that the IGA fees did not meet the requirements of the Impact Fee Law and, thus, the county lacked the authority to impose them and could not condition the issuance of a permit or other discretionary benefit upon plaintiff's agreement to pay the fees. It also alleged that it had a tangible interest in avoiding the payment of unconstitutional "road improvement impact fees." 605 ILCS 5/5-903 (West 2022).

¶ 14 On October 5, 2022, the village filed an answer, affirmative defenses, and a counterclaim against plaintiff, seeking a declaration that plaintiff must pay any IGA fees related to all three parcels. It also filed on that date a third-party complaint against the county, seeking a declaration that the IGA fees were not yet due because final development approval had not been granted by the village for parcels 1 or 2. On July 6, 2021, the village voluntarily dismissed its counterclaim against plaintiff, based on the agreement contained in the second amendment to the annexation agreement, which provided that the village shall voluntarily dismiss its counterclaim within 10 days of the parties' execution of the second amendment.

¶ 15 On May 24, 2021, the county filed a third-party counterclaim against the village, asserting breach of contract and unjust enrichment and seeking recovery of unpaid IGA fees. It asserted that the village breached the IGA by not including a provision in the annexation agreement or the first amendment that required plaintiff to pay the IGA fees. It sought $191,581.90 in unpaid fees.

¶ 16 D. Summary Judgment Motions

¶ 17 On June 29, 2022, the county moved for summary judgment as to count I of plaintiff's declaratory judgment complaint. It argued that the IGA fees, as they related to plaintiff and its three parcels, were not subject to the Impact Fee Law because they "flow" from an annexation agreement entered between the village and plaintiff and are, therefore, enforceable.[3] The county also asserted that the fees under the IGA are not "road improvement impact fees" under the Impact Fee Law because they are not conditioned on the issuance of a building permit or a certificate of occupancy. *Id.*

¶ 18 Plaintiff, on August 23, 2022, filed a cross-motion for summary judgment on count I of its complaint, arguing that the IGA fees are unenforceable against it because they are unconstitutional and violate the Impact Fee Law. Specifically, plaintiff asserted that the county had violated the federal and Illinois constitutions and that the IGA fees are "road improvement impact fees." The IGA parties coerced landowners, it alleged, to "agree" to pay the fees, as a condition of receiving any of several forms of land use relief from the applicable government unit. In this way, the county presumed to escape the Impact Fee Law because parties may agree to contract away their constitutional rights. Plaintiff also asserted that the fees constituted "road improvement impact fees" and that the IGA is an illegal attempt to avoid the Impact Fee Law's requirements, because the roadway improvement impact fees assessed would not be specifically and uniquely attributable to the traffic demands generated by a particular development but, instead, would be assessed on a per-acre basis.

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[3]The county asserted that the clean fill operation was proceeding on all three parcels, with an average of 100 truckloads of fill being brought to them daily. No village approvals remained pending.

¶ 19 On November 1, 2022, the trial court granted the county's summary judgment motion and denied plaintiff's summary judgment motion. It found that the IGA fees were not subject to the Impact Fee Law and could be collected via an annexation agreement. Plaintiff appeals.

¶ 20 II. ANALYSIS

¶ 21 Plaintiff argues that the trial court erred in denying its summary judgment motion and granting the county's motion. It contends that the Impact Fee Law applies to this case because the fees the county seeks to assess on developers to compensate for impacts of their developments on the public roadway system are unquestionably "road improvement impact fees" under the statute. Plaintiff further argues that, because the IGA fees are assessed on a per-acre basis and are not specifically and uniquely attributable to its property's actual impact on the roadway system, the fees do not comply with the Impact Fee Law and, therefore, violate its constitutional rights under the takings clauses of the fifth amendment to the United States Constitution and section 2 of article 1 of the Illinois Constitution. U.S. Const., amend. V; Ill. Const. 1970, art. I, § 2. It further contends that neither the county nor the village may condition plaintiff's receipt of a discretionary benefit, such as annexation or the issuance of an access permit, on plaintiff's agreement to give up its constitutional rights. Finally, plaintiff argues that it never agreed to pay the unconstitutional impact fees. For the following reasons, we affirm the trial court's ruling.

¶ 22 Summary judgment is appropriate where the pleadings, depositions, admissions, and affidavits on file, viewed in the light most favorable to the nonmoving party, reveal that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2022); *First of America Bank v. Netsch*, 166 Ill. 2d 165, 176 (1995). When parties file cross-motions for summary judgment, "they agree that only a question of law is involved and invite the court to decide the issues based on the record." *Pielet v. Pielet*,

2012 IL 112064, ¶ 28. "However, the mere filing of cross-motions for summary judgment does not establish that there is no issue of material fact, nor does it obligate a court to render summary judgment." *Id.* We review *de novo* a trial court's ruling on a motion for summary judgment. *Standard Mutual Insurance Co. v. Lay*, 2013 IL 114617, ¶ 15.

¶ 23 This case involves a question of statutory interpretation. The fundamental rule of statutory interpretation is to ascertain and give effect to the intent of the legislature. *Benzakry v. Patel*, 2017 IL App (3d) 160162, ¶ 74. The most reliable indicator of that intent is the language of the statute itself. *Id.* In determining the plain meaning of statutory language, a court will consider the statute in its entirety, the subject the statute addresses, and the apparent intent of the legislature in enacting the statute. *Id.* If the statutory language is clear and unambiguous, it must be applied as written, without resorting to further aids of statutory interpretation. *Id.* We review *de novo* issues of statutory interpretation. *Id.* ¶ 73.

¶ 24 A. Relevant Statutes

¶ 25 We begin with the relevant statutes. The Illinois Municipal Code allows municipalities to enter into annexation agreements with owners of land in unincorporated territories. 65 ILCS 5/11-15.1-1 (West 2022). Furthermore, such agreements may provide for contributions of either land or monies or both to any municipality or other units of local government. *Id.* § 11-15.1-2(d).

¶ 26 The Impact Fee Law authorizes certain units of local government[4] to implement "road improvement fee" ordinances and resolutions to supplement other funding sources so that the burden of paying for such improvements is allocated fairly and equitably. 605 ILCS 5/5-902 (West

[4]"Units of local government" means "counties with a population over 400,000 and all home rule municipalities." 605 ILCS 5/5-903 (West 2022).

2022). In so doing, the statute promotes economic growth and preserves local elected officials' adoption of ordinances and resolutions that adhere to minimum standards and procedures. *Id.*

¶ 27 Section 5-904 of the Impact Fee Law provides, in relevant part:

> "No impact fee shall be imposed by a unit of local government within a service area or areas upon a developer for the purposes of improving, expanding, enlarging or constructing roads, streets or highways directly affected by the traffic demands generated from the new development unless imposed pursuant to the provisions of this Division. *An impact fee payable by a developer shall not exceed a proportionate share of costs incurred by a unit of local government which are specifically and uniquely attributable to the new development paying the fee in providing road improvements*, but may be used to cover costs associated with the surveying of the service area, with the acquisition of land and rights-of-way, with engineering and planning costs, and with all other costs which are directly related to the improvement, expansion, enlargement or construction of roads, streets or highways within the service area or areas as designated in the comprehensive road improvement plan." (Emphasis added.) *Id.* § 5-904.

¶ 28 Section 5-911 addresses the timing of the assessment of impact fees and provides:

> "Impact fees shall be assessed by units of local government *at the time of final plat approval or when the building permit is issued when no plat approval is necessary*. No impact fee shall be assessed by a unit of local government for roads, streets or highways within the service area or areas of the unit of local government if and to the extent that another unit of local government has imposed an impact fee for the same roads, streets or highways." (Emphasis added.) *Id.* § 5-911.

¶ 29 The statute prescribes the timing of the payment of impact fees. Impact fees imposed on a residential development, consisting of one single-family residence, are "payable as a condition to the issuance of the building permit." *Id.* § 5-912. As to all other types of new development, the fees are "payable as a condition to the issuance of the certificate of occupancy, provided that the developer and the unit of local government enter into an agreement designating that the developer notify the unit of local government that the building permit or the certificate of occupancy has been issued." *Id.* If agreed to by the unit of local government and the person paying the fees, they may be paid at the time the building permit is issued or at an earlier stage of the development. *Id.*

¶ 30 The statute defines a "road improvement impact fee" as

> "any charge or fee levied or imposed by a unit of local government as a condition to the issuance of a *building permit or a certificate of occupancy* in connection with a new development, when any portion of the revenues collected is intended to be used to fund any portion of the costs of road improvements." (Emphasis added.) *Id.* § 5-903.

¶ 31 The Impact Fee Law preempts home rule powers and functions. *Id.* § 5-919.

¶ 32 B. Application of Impact Fee Law to IGA Fees

¶ 33 Plaintiff argues first that the IGA fees are "road improvement impact fees" under the Impact Fee Law. It disputes the county's assertion, based on the definition of that term included in the statute's definition section, that the Impact Fee Law applies only to "road improvement impact fees" that are collected at the time a "building permit or certificate of occupancy" is issued. *Id.* § 5-903. It contends that the county's assertion is based on an arbitrary distinction between a "road improvement impact fee" as defined in the Impact Fee Law and the fees the county seeks to collect under the IGA. Plaintiff argues that the definition must be read more broadly and in conjunction with the phrase, "in connection with a new development." *Id.* Plaintiff also asserts that

the county's interpretation leads to an absurd result, in that a municipality could avoid the statute by making fees payable upon an event other than the issuance of a building permit or a certificate of occupancy. It posits that there would be no need to adopt a comprehensive road plan, for example, under this scenario. Instead, a municipality could merely require a developer to pay impact fees at the time it submits its *application* for a building permit rather than when the permit is *issued*.

¶ 34 Plaintiff also contends that the remainder of the statute guides the definition it proposes. Plaintiff points to the statutory provision addressing the timing of the assessment of impact fees, which requires that they be assessed at the time of final plat approval or, if no approval is necessary, when a building permit is issued. *Id.* § 5-911. Plaintiff argues that this provision ensures that the fees are assessed when the development is far enough along that the plan is final or building permits are issued, thus assuring that the fees will be related to the actual development. Conversely, here, it contends, the fees the county attempts to impose on plaintiff's property were assessed in 2009, long before plaintiff sought to annex its property into the village, let alone develop its property.

¶ 35 Further, plaintiff asserts that the statutory provision addressing the payment of impact fees, which requires that the fees shall be payable as a condition to the issuance of a building permit or a certificate of occupancy, shows that the language in the definitions section of the Impact Fee Law was not intended to be limiting. *Id.* § 5-912. In plaintiff's view, the legislature did not intend the statute to apply only to "road improvement impact fees" that a unit of local government has independently decided to impose on its developers at the stage of development when the issuance of a building permit or a certificate of occupancy is imminent, as opposed to any other stage. Rather, plaintiff contends, that language is in the definitions section because that stage is when

units of government are required to *collect* "road improvement impact fees." Plaintiff also points to language in the same provision that allows parties to agree to payment of impact fees before the building permit is issued. *Id.* Thus, it reasons, the Impact Fee Law clearly applies to "road improvement impact fees" that are imposed pursuant to an agreement, including an annexation agreement. Plaintiff argues that the IGA fees are not removed from the statute's purview just because the county imposes the fees when a property is annexed through a voluntary annexation agreement instead of when a building permit or a certificate of occupancy is issued.

¶ 36 Plaintiff points to section 5-904, which addresses the purpose of the statutory fees. It contends that the IGA fees' purpose is the same as that of "road improvement impact fees" under the Impact Fee Law. The purpose of IGA fees is to fund roadway improvement projects that will be required so county highways can meet the demands of increased traffic generated from future development. The purpose of "road improvement impact fees" is to improve, expand, enlarge, or construct roads, streets, or highways directly affected by the traffic demands generated from the new development. *Id.* § 5-904.

¶ 37 The county responds that the term "road improvement impact fee" in the statute means the fee imposed as a condition to the issuance of a building permit or a certificate of occupancy. Here, however, the fees that the village would be required to collect from plaintiff under the IGA do not involve the exchange of a fee for the issuance of a building permit or a certificate of occupancy. Rather, the county contends, the fees involve the voluntary annexation of the plaintiff's properties into the village as authorized by the Illinois Municipal Code. Thus, it reasons, the IGA fees, as they relate to plaintiff's properties, are not "road improvement impact fees" and do not fall within the purview of the Impact Fee Law.

¶ 38 The trial court found persuasive *Shore Development Co. v. City of Joliet*, 2011 IL App (3d) 100911-U, an unpublished order upon which the county had relied.[5] The trial court determined, as had the court in *Shore*, that the Impact Fee Law did not apply, because the fees at issue did not constitute "road improvement impact fees" under the Impact Fee Law since they were not levied upon the issuance of a building permit or certificate of occupancy. See *id.* ¶ 29 (noting that the case before it did not involve the charge of a fee in exchange for the issuance of a building permit or a certificate of occupancy but, rather, the initial annexation of the subject property and the approval of a final plat). The trial court here further found that the annexation agreement or the IGA controlled for determining fees.

¶ 39 We likewise agree that the IGA fees do not constitute "road improvement impact fees" under the Impact Fee Law. The IGA provides that payment of the highway improvement fees thereunder is a condition of annexation into one of the villages. It also provides that the party having jurisdiction over a development is responsible for collecting the fees before granting "Final Development Approval" (defined as the latter of the grant of zoning relief, annexation approval, or final plat approval; if none of the foregoing apply, then the issuance of the earlier of a grading permit, a site development permit, a building permit, or a certificate of occupancy).

¶ 40 The Impact Fee Law, again, defines "road improvement impact fees" as

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[5]Illinois Supreme Court Rule 23(e) (eff. Feb. 1, 2023) prohibits parties from citing as persuasive authority nonprecedential orders entered before January 1, 2021. Thus, the county should not have cited *Shore*, which was filed in 2011, for any purpose. See *Katz v. Hartz*, 2021 IL App (1st) 200331, ¶ 41. Regardless, courts may adopt the reasoning of unpublished orders. See *Byrne v. Hayes Beer Distributing Co.*, 2018 IL App (1st) 172612, ¶ 22. Our analysis, thus, is unaffected by the county's reliance on *Shore*.

> "any charge or fee levied or imposed by a unit of local government as a condition to the issuance of a *building permit or a certificate of occupancy* in connection with a new development, when any portion of the revenues collected is intended to be used to fund any portion of the costs of road improvements." (Emphasis added.) 605 ILCS 5/5-903 (West 2022).

¶ 41 There is no ambiguity in the statutory definition. The phrase "in connection with a new development" does not broaden the definition, as plaintiff suggests. We also find unavailing plaintiff's assertion that the county's position is based on an arbitrary distinction between a "road improvement impact fee," as defined in the Impact Fee Law, and the fees the county seeks to collect under the IGA. We believe that, if the legislature intended to encompass into the Impact Fee Law every conceivable exaction for highway improvements, it would not have limited the definition of "road improvement impact fees." That the statute encompasses only fees levied as conditions to the issuance of either a building permit or a certificate of occupancy reflects that the legislature selected a point in time distinct from and later than, as relevant here, annexation.

¶ 42 Nor can we conclude that the remainder of the statute contains language supporting plaintiff's position. Section 5-911, which addresses the timing of the fee assessment and provides that "road improvement impact fees" shall be assessed "at the time of final plat approval or when the building permit is issued when no plat approval is necessary" (*id.* § 5-911), does not act to broaden the definition of "road improvement impact fees," which, again, are limited to fees "levied or imposed *** as a condition to the issuance of a building permit or a certificate of occupancy in connection with a new development." *Id.* § 5-903. The two conditions in the definition must still be met.

¶ 43 Section 5-912 also does not impact the definition of "road improvement impact fees." That section addresses the timing of payment of "road improvement impact fees" and sets forth methods of payment that are intended to minimize the effect of impact fees on the persons making the payments. *Id.* § 5-912. For residential developments, it provides that fees "shall be payable as a condition to the issuance of the building permit." *Id.* For all other types of developments, fees "shall be payable as a condition to the issuance of the certificate of occupancy." *Id.* Finally, the section provides that the parties may agree to the payment of the fees "at the time when the building permit is issued *or at an earlier stage of development*." (Emphasis added.) *Id.* We believe that this language does not reflect that the legislature intended to broaden the definition of "road improvement impact fees." The fact that parties may agree that the statutory fees may be *paid* earlier than the default times under the provision does not in any way show that the *definition* includes fees other than those that are "levied or imposed *** as a condition to the issuance of a building permit or a certificate of occupancy in connection with a new development." *Id.* § 5-903.

¶ 44 Even if, as plaintiff asserts, the county and the villages entered into the IGA to avoid the Impact Fee Law's requirements, we cannot ignore a statutory definition with very specific language. Because we conclude that the IGA fees do not constitute "road improvement impact fees," the Impact Fee Law has no relevance to our decision. Accordingly, we need not address plaintiff's arguments concerning compliance with that statute.

¶ 45 C. Doctrine of Unconstitutional Conditions

¶ 46 Next, plaintiff argues that the doctrine of unconstitutional conditions bars the county's attempt to circumvent the Impact Fee Law by agreeing that the village will require plaintiff to "agree" to pay the IGA fees. Specifically, plaintiff contends that, despite the IGA, the county and the village cannot agree between themselves to do away with plaintiff's constitutional right (*i.e.*,

to be required to pay only impact fees that are specifically and uniquely attributable to its development, pursuant to the takings clauses of the federal and Illinois Constitutions) in exchange for a discretionary governmental benefit (*i.e.*, annexation). Further, plaintiff contends that, if the fees are not specifically and uniquely attributable to the development activity, it amounts to confiscation of private property, rather than reasonable regulation under the police power. Plaintiff maintains that, here, it was faced with a Hobson's choice (*i.e.*, an apparent free choice when there is no real alternative) of either (1) accepting the IGA's per-acre fee without any input on its behalf nor any consideration as to what its actual use of the property will be or (2) foregoing the discretionary benefit of annexing its property into the village. For the following reasons, we find plaintiff's argument unavailing.

¶ 47 Preliminarily, we note that plaintiff agreed at oral argument that municipal/county enactments are presumptively constitutional. See, *e.g.*, *Jackson v. City of Chicago*, 2012 IL App (1st) 111044, ¶ 20 (further noting the challenging party has the burden to establish a constitutional violation). Also, courts construe enactments to uphold their validity and constitutionality, where that can reasonably be done. See, *e.g.*, *In re Commitment of Walker*, 2014 IL App (2d) 130372, ¶ 20.

¶ 48 " '[T]he unconstitutional conditions doctrine *** vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up.' " *Willie Pearl Burrell Trust v. City of Kankakee*, 2016 IL App (3d) 150655, ¶ 36 (quoting *Koontz v. St. Johns River Water Management District*, 570 U.S. 595, 604 (2013)).

> "Under the doctrine of 'unconstitutional conditions,' the 'government may not require a person to give up a constitutional right *** in exchange for a discretionary benefit conferred by the government where the benefit sought has little or no relationship' to the

right. *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994). The Seventh Circuit has explained that the meaning of the doctrine is simply that 'conditions can lawfully be imposed on the receipt of a benefit—conditions that may include the surrender of a constitutional right, such as the right to be free from unreasonable searches and seizures—provided the conditions are reasonable.' *Burgess v. Lowery*, 201 F.3d 942, 947 (7th Cir. 2000). The Supreme Court has adopted a two-part test for evaluating unconstitutional conditions questions: first, is there an essential nexus between the condition burdening rights and a legitimate state interest and second, is there a 'rough proportionality' between the burden on the individual and the harm the government seeks to remedy through the condition. *Dolan*, 512 U.S. at 386-91." *McElwain v. Office of the Illinois Secretary of State*, 2015 IL 117170, ¶ 29.

¶ 49 Here, plaintiff notes that no developer was a party to the IGA and that the IGA establishes fees and leaves no opportunity for a developer to change the amount of such fees. Thus, it maintains, the fees are not the result of any bargain between the developer and the municipality into which it seeks to annex. Instead, they are, according to plaintiff, a condition imposed on the developer by the municipality, on behalf of the county, and the developer has no ability to negotiate the fees. Accordingly, the practice, it asserts, is unconstitutional.

¶ 50 Plaintiff further asserts that, in essence, the county is attempting to use the IGA to circumvent the Impact Fee Law by using the village as the enforcer of the county's unconstitutional impact fees. The IGA, it notes, provides that, if plaintiff seeks to obtain a discretionary benefit from the village, the village must "require" plaintiff to "agree" to pay the county's unconstitutional impact fees. However, it asserts, the unconstitutional conditions doctrine prohibits the village from requiring plaintiff to give up its right to be free from unconstitutional takings in exchange for a

discretionary benefit. Plaintiff maintains that it has no obligation to pay the county any "road improvement impact fees" other than those the county may assess in compliance with the Impact Fee Law, *i.e.*, "road improvement impact fees" with an actual nexus to the impact on public roadways attributable to plaintiff's development. 605 ILCS 5/5-904 (West 2022). Thus, it reasons, the county's argument that the IGA does not have to honor plaintiff's constitutional rights because parties may agree to contract away their constitutional rights does not weigh in favor of the IGA's validity.

¶ 51 Plaintiff further asserts that it has a right to be required to pay only those impact fees that are specifically and uniquely attributable to its development, pursuant to the takings clauses of the federal and Illinois constitutions. This is the constitutional right, it contends, the IGA is designed to force landowners to "agree" to contract away. Plaintiff also again raises the Impact Fee Law, arguing that it provides the procedure for satisfying the "rough proportionality" requirement. Its purpose, plaintiff contends, is to provide a procedure for ensuring that roadway improvement impact fees are specifically and uniquely attributable to the development, which *is* the "rough proportionality" required in Illinois. The county, plaintiff argues, does not get to ignore the Impact Fee Law and deem that its own procedure is enough of a "rough proportionality," such that the statute does not need to be followed.

¶ 52 The county responds that plaintiff does not have a right to annex property into a municipality, which involves a voluntary, arm's length bargained-for contractual arrangement between a municipality and a property owner. Plaintiff, it contends, was not required to annex into the village, and the village was not obligated to enter into an annexation agreement with plaintiff. In choosing to annex the three parcels into the village to conduct its commercial clean fill development, the county asserts, plaintiff freely agreed in the second amendment to pay the IGA

fees for the parcels upon termination of the litigation in favor of the county. The county argues that, because this matter involves fees provided pursuant to a voluntary annexation agreement, as authorized by section 11-15.1-2(d) of the Illinois Municipal Code, the doctrine of unconstitutional conditions has no application.

¶ 53 We agree with plaintiff that it has referenced a constitutional right, specifically, "the right to receive just compensation when property is taken for a public use." *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994). However, we disagree with plaintiff that the unconstitutional conditions doctrine applies.

¶ 54 Turning to the first requirement under the doctrine, we conclude that there is an essential nexus between the condition burdening rights and a legitimate state interest. As to the latter, "the need to minimize or reduce traffic congestion is a legitimate State interest." *Northern Illinois Home Builders Ass'n, Inc. v. County of Du Page*, 165 Ill. 2d 25, 32 (1995). Further, "a nexus exists between preventing further traffic congestion and providing for road improvements to ease that congestion." *Id.* The IGA provides that, as property develops in the central Lake County area, residents will benefit from highway improvements that ensure traffic is efficiently transported through the area, and it provides for construction funding for such improvements.

¶ 55 Second, we conclude that there is a rough proportionality between the burden on plaintiff and the harm the county (via the village) seeks to remedy through the condition. Plaintiff misstates the proper standard, asserting that the IGA fees must be specifically and uniquely attributable to its development. Our supreme court has noted that rough proportionality is the proper standard under the unconstitutional conditions doctrine (which is a federal doctrine). *McElwain*, 2015 IL 117170, ¶ 29 (citing *Dolan*, 512 U.S. at 386-91). This standard requires a lesser degree of connection between the exaction and the projected impact of the new development than the

specifically-and-uniquely-attributable standard, which applies in takings challenges under the Illinois Constitution. *Northern Illinois Home Builders Ass'n*, 165 Ill. 2d at 33. No precise mathematical calculation is required, but the municipality must make some sort of individualized determination that the required dedication is related in both nature and extent to the impact of the proposed development. *Dolan*, 512 U.S. at 391.

¶ 56 We believe that there is a rough proportionality between the IGA fees assessed against plaintiff's parcels and the road improvements. The IGA's purpose is to establish construction funding for future highway improvements in the central Lake County area. The improvements are intended to address existing and future traffic demands. Under the IGA, the county agreed to design and construct road improvements in exchange for a portion of the construction costs being reimbursed from fees collected from developers within the area, upon the occurrence of certain triggers. It established six "Highway Improvement Areas" within the central Lake County area, and the parties created a schedule of fees for each subarea. The fees for each subarea are divided by the number of developable areas within each subarea and are assessed against future developments, based on the number of acres contained within each development. The three parcels were zoned agricultural prior to annexation; afterward, they were reclassified into the R-1 "Single Family Residential Zoning District." Plaintiff's clean fill operation, which operates on all three parcels, involves about 100 truckloads of fill per day (as of March 2022) being transported to the parcels.

¶ 57 In summary, because both of its requirements are met, the unconstitutional conditions doctrine does not apply here to render the fees a taking without just compensation.

¶ 58 D. Annexation Agreement

¶ 59 Finally, plaintiff argues that it has *not* agreed, via the annexation agreements, to give up its constitutional right to pay only impact fees genuinely attributable to the impact its property has on the roadways. It notes that the first annexation agreement between it and the village does not mention the county's impact fees and contains no promise by plaintiff to pay them. Similarly, it notes, the first amendment to the annexation agreement does not mention the IGA fees and contains no promise by plaintiff to pay them. The second amendment to the annexation agreement contains references to the IGA fees, plaintiff notes, but it also has language providing that, *if its challenge to the fees fails, it agrees to pay the fees to the village*.[6] Plaintiff argues that the foregoing is not a knowing and voluntary agreement to waive a constitutional right. Rather, it is an express preservation of a judicial challenge seeking to enforce that right. It also contends that the trial court's judgment in the county's favor cannot stand, if the judgment turned on the court's finding that plaintiff "agreed" to pay the fees in the annexation agreement, where, in plaintiff's view, such a finding is erroneous.

¶ 60 In this appeal, plaintiff challenges the trial court's summary judgment rulings by raising arguments based on the Impact Fee Law and the unconstitutional conditions doctrine. We have rejected those arguments. (Neither our discussion of the Impact Fee Law nor the unconstitutional conditions doctrine rely on any "agreement" to pay the IGA fees.) As plaintiff acknowledges, if its challenge to the county's impact fees fails and the fees are upheld, as has occurred here, then

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[6]Similarly, in its reply brief, plaintiff argues that the second amendment cannot be read to reflect its agreement to the fees but is, rather, an acknowledgement "that, if plaintiff loses this lawsuit, and the County's fees are deemed constitutional, then the fees would have to be paid, and plaintiff would have to pay them."

plaintiff must pay the fees to the village. Thus, we reject plaintiff's argument that it never agreed to pay the IGA fees.

¶ 61 III. CONCLUSION

¶ 62 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 63 Affirmed.

Habdab, LLC v. County of Lake, 2023 IL App (2d) 230006

Decision Under Review:	Appeal from the Circuit Court of Lake County, No. 20-MR-514; the Hon. Jacquelyn D. Melius, Judge, presiding.
Attorneys for Appellant:	Robert T. O'Donnell and Hayleigh K. Herchenbach, of O'Donnell Callaghan LLC, of Libertyville, for appellant.
Attorneys for Appellee:	Eric F. Rinehart, State's Attorney, of Waukegan (John P. Christensen and Gunnar B. Gunnarsson, Assistant State's Attorneys, of counsel), for the People. No brief filed for other appellee.

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

HABDAB, LLC, an Illinois limited liability company, Plaintiff, v. COUNTY OF LAKE, an Illinois body politic and corporation, and VILLAGE OF MUNDELEIN, an Illinois municipal corporation, Defendants.	Case No.: 20MR00000514

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Habdab, LLC, by and through its attorneys, O'Donnell Callaghan LLC, for its complaint for declaratory judgment, states as follows:

1. Plaintiff, Habdab, LLC, is an Illinois limited liability company with its principal place of business in Mundelein, Lake County, Illinois.

2. Defendant, the Village of Mundelein (the "Village"), is a home rule municipal corporation located in Lake County, Illinois.

3. Defendant, the County of Lake (the "County"), is an Illinois body politic and corporation, located in Lake County, Illinois.

4. Venue is appropriate in Lake County because both defendants and the property at issue are located in Lake County, and because the incidents complained of occurred in Lake County, Illinois.

Road Improvement Impact Fees in Illinois

5. In 1986, Illinois passed the Road Improvement Impact Fee Law (the "IFL"), which provides that "No impact fee shall be imposed ... unless imposed pursuant to the provisions of this Division." 605 ILCS 5/5-904.

6. The IFL establishes a specific procedure for the imposition of road improvement impact fees on owners and developers of property within Illinois. *See* 605 ILCS 5/5-901, *et seq.*

7. The IFL requires that road improvement impact fees be approved by ordinance or resolution only after detailed and compulsory procedures. The required procedures include adoption of a comprehensive road improvement plan, preparation of land use assumptions, establishment of an advisory committee, as well as public notice and hearing. 605 ILCS 5/5-905.

8. The statute provides a fee payer the right to appeal the land use assumptions and the road improvement plan. 605 ILCS 5/5-917. In fact, under the IFL, all matters relating to road improvement impact fees are appealable. *Id.*

9. The IFL requires that any road improvement impact fee imposed on a development must be specifically and uniquely attributable to the traffic demands generated by that particular development. 605 ILCS 5/5-904.

10. Further, all road improvement impact fees must not exceed a proportionate share of the costs that will be incurred by the unit of government in providing road improvements to serve the new development. 605 ILCS 5/5-904.

11. Under the IFL, road improvement impact fees must be assessed at the time of final plat approval or when the building permit is issued. 605 ILCS 5/5-911.

12. Governmental units may enter into agreements for the cooperative collection of road improvement impact fees. 605 ILCS 5/5-912.

13. Further, any road improvement impact fees assessed against a property owner must be returned to the property owner (with interest) unless the governmental unit enters into a contract to use those fees for road improvements within five years. 605 ILCS 5/5-916.

The County's Road Improvement Impact Fees

14. In 2009, the County entered into an agreement with the Village and two additional municipalities – Grayslake and Libertyville – for the collection of road improvement impact fees on new developments within the so-called Central Lake County Area. A copy of the Central Lake County Area Transportation Improvement Intergovernmental Agreement (the "IGA") is attached as Exhibit 1.

15. Under the IGA, the County may decide to construct certain road improvements identified in its Year 2020 Transportation Priority Plan, or "certain projects not yet listed in any of the County's published planning documents." Exhibit 1, p. 2 (see definition of "Improvements" and "Fees"); *see also* Ex. 1 at §IV(2). On information and belief, the Year 2020 Transportation Priority Plan was approved in March of 2001.

16. Under the IGA, any developer of a new development is required to pay road improvement impact fees which, in the aggregate, are anticipated to cover 50% of the costs of the County's potential improvements. Ex. 1 at §IV(3). Payment of the fees is a condition of granting any final development approval. Ex. 1 at §V(2).

17. In order to collect the County's road improvement impact fees, a municipality will require a developer seeking to annex an unincorporated territory into that municipality to execute an annexation agreement which includes payment of the County's road improvement impact fees as a condition of annexation. Ex. 1 at §V(1).

18. For any unincorporated property, the County will impose the same road improvement impact fees as a condition of any application to the County for zoning relief. If a property does not require zoning relief, the County will refuse to grant any variance under the County's highway access ordinance unless the landowner agrees to pay road improvement impact fees as set forth in the IGA. Ex. 1 at §V(1).

19. If the County's road improvement impact fees are collected by a municipality, that municipality shall transfer the fees directly to the County; any fees collected by the County are retained by the County. Ex. 1 at §V(2).

20. If road improvement impact fees paid to the County pursuant to the IGA are not spent on road improvements for new developments, the County is permitted to use such funds for long-term capital replacement costs and major maintenance activities. Ex. 1 at §V(7).

21. As set forth in the IGA, the County's road improvement impact fees fail to satisfy the requirements of the Road Improvement Impact Fee Law.

22. The road improvement impact fees imposed by the IGA are not established by a comprehensive road improvement plan based on detailed land use assumptions. They are not approved by a resolution or an ordinance after a notice and hearing with the oversight and review of a qualified advisory committee. *See*, 605 ILCS 5/5-905.

23. There is no advisory committee, and there is no public notice and hearing before road improvement impact fees are imposed. The County's road improvement impact fees are not subject to appeal and there is no requirement that the County return unused fees. *See*, 605 ILCS 5/5-917; 605 ILCS 5/5-916.

24. The County's road improvement impact fees are not specifically and uniquely attributable to traffic demands generated by any new development, or related in any way to the proportionate share of costs that may be incurred for road improvements that will serve the new development.

25. Instead, owners and developers of property within the Central Lake County Area are assessed road improvement impact fees based solely on the total acreage of their property.

Road Improvement Impact Fees Imposed on Plaintiff

26. Plaintiff is the owner of three parcels of real estate in Lake County, which parcels are located south of Petersen Road, north of Winchester Road, and east of Illinois Route 83. Attached as Exhibit 2 is an plat of annexation on which plaintiffs' parcels are labeled "Parcel 1," Parcel 2," and "Parcel 3."

27. Parcel 1 is approximately 6.6 acres. It was annexed into the Village pursuant to an Annexation and Development Agreement dated September 11, 2018 (the "Annexation Agreement"). A copy of the Annexation Agreement is attached as Exhibit 3.

28. Parcel 2 is approximately 10 acres. It was annexed into the Village pursuant to an Amendment to Annexation and Development Agreement dated July 22, 2019 (the "Amended Annexation Agreement"). A copy of the Amended Annexation Agreement is attached as Exhibit 4.

29. Plaintiff currently operates a commercial clean fill operation on Parcel 1 and Parcel 2.

30. The Annexation Agreement and the Amended Annexation Agreement do not include any contractual provision that requires plaintiff to pay the County's road improvement impact fees. *See generally*; Exhibit 3 and Exhibit 4.

31. Nevertheless, the County has demanded plaintiff pay $191,581.90 as a result of its annexation of Parcel 1 and Parcel 2 to the Village and use of Parcel 1 and Parcel 2 as a commercial clean fill operation. *See*, Letter from Lake County State's Attorney to John Lobaito dated February 4, 2020, attached as Exhibit 5.

32. The County has refused to grant plaintiff an access permit to Winchester Road solely because the County's road improvement impact fees have not been paid in full. *Id.*

33. Further, plaintiff is presently seeking annexation of Parcel 3 to the Village pursuant to a second amendment to the Annexation and Development Agreement. Upon annexation, Parcel 3 will be incorporated into plaintiff's commercial clean fill operation.

34. The Village has advised plaintiff that Parcel 3 is also located in Area 5, and that annexation of Parcel 3 will also require payment of road improvement impact fees for each of its approximately 35 acres. The road improvement impact fees attributable to Parcel 3 have not been finally calculated, but are estimated at approximately $400,000.00.

COUNT I – DECLARATORY JUDGMENT AGAINST THE COUNTY

35. Plaintiff restates and re-alleges Paragraphs 1-34 as paragraph 35 of this Count I.

36. The County lacks the authority to impose any road improvement impact fees except as set forth in the Road Improvement Impact Fee Law.

37. The County's road improvement impact fees do not meet the requirements set forth in the Road Improvement Impact Fee Law.

38. Because the County lacks authority to impose its road improvement impact fees, the County may not condition the issuance of an access permit, or any other discretionary benefit, on plaintiff's agreement to pay the County's road improvement impact fees.

39. Plaintiff has a tangible legal interest in avoiding the payment of unconstitutional road improvement impact fees to the County.

40. The County has an adverse interest in seeking to obtain payment of the road improvement impact fees from plaintiff.

41. There is an actual controversy between the parties as to whether plaintiff is required to pay the road improvement impact fees to the County.

WHEREFORE, plaintiff, Habdab, LLC, requests that this Court find, declare and enter judgment in favor of plaintiff and against the County of Lake, and in so doing order as follows:

a) the County of Lake's road improvement impact fees, as set forth in the Central Lake County Area Transportation Improvement Intergovernmental Agreement, do not comply with the Road Improvement Impact Fee Law;

b) the County of Lake does not have the authority to impose or collect from Habdab, LLC any road improvement impact fees set forth in the Central Lake County Area Transportation Improvement Intergovernmental Agreement;

c) the County of Lake does not have the authority to condition the issuance of an access permit, or any other discretionary benefit, upon Habdab, LLC's agreement to pay road improvement impact fees set forth in the Central Lake County Area Transportation Improvement Intergovernmental Agreement;

d) Habdab, LLC does not have any obligation or duty to pay to the County of Lake any road improvement impact fees set forth in the Central Lake County Area Transportation Improvement Intergovernmental Agreement; and

e) for whatever additional and further relief is necessary to ensure complete relief is accorded to plaintiff.

COUNT II – DECLARATORY JUDGMENT AGAINST THE VILLAGE

42. Plaintiff restates and re-alleges Paragraphs 35-38 as paragraph 42 of this Count II.

43. Because the County lacks authority to impose its road improvement impact fees, the Village does not have the authority to collect the County's road improvement impact fees as set forth in the IGA.

44. Because the County lacks authority to impose its road improvement impact fees, the Village does not have the authority to condition the annexation of Parcel 3, or any other discretionary benefit, upon plaintiff's agreement to pay the County's road improvement impact fees as set forth in the IGA.

45. Plaintiff has a tangible legal interest in avoiding the payment of unconstitutional road improvement impact fees to the County.

46. The Village has an adverse interest in seeking to condition plaintiff's annexation of its property upon plaintiff's payment of the road improvement impact fees to the County.

47. There is an actual controversy between the parties as to whether plaintiff is required to pay the road improvement impact fees to the County in order to annex Parcel 3 into the Village.

WHEREFORE, plaintiff, Habdab, LLC, requests that this Court find, declare and enter judgment in favor of plaintiff and against the Village of Mundelein, and in so doing order as follows:

a) the County of Lake's road improvement impact fees, as set forth in the Central Lake County Area Transportation Improvement Intergovernmental Agreement, do not comply with the Road Improvement Impact Fee Law;

b) the Village of Mundelein does not have the authority to impose or collect from Habdab, LLC any road improvement impact fees set forth in the Central Lake County Area Transportation Improvement Intergovernmental Agreement;

c) the Village of Mundelein does not have the authority to condition the annexation of Parcel 3, or any other discretionary benefit, upon Habdab, LLC's agreement to pay road improvement impact fees set forth in the Central Lake County Area Transportation Improvement Intergovernmental Agreement;

d) Habdab, LLC does not have any obligation or duty to pay to the Village of Mundelein any road improvement impact fees set forth in the Central Lake County Area Transportation Improvement Intergovernmental Agreement; and

e) for whatever additional and further relief is necessary to ensure complete relief is accorded to plaintiff.

HABDAB, LLC

By: Robert T. O'Donnell
One of its attorneys

Robert T. O'Donnell (ARDC# 3124931)
Hayleigh K. Herchenbach (ARDC# 6327026)
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Mary Ellen Vanderventer
Lake County Recorder Of Deeds

Imaged 0455817300029 Type: AGR
Recorded: 12/05/2000 at 08:52:58 AM
Receipt#: 2000-00056748
Total Amt: 80.00 Page 1 of 29
Lake County IL Recorder
Mary Ellen Vanderventer Recorder
File 6547544

RECORDING

COVERSHEET

☒ NON-STANDARD DOCUMENT

☐ RE-RECORDED DOCUMENT - previously recorded as document number

[ ] (Lake County numbers consist of 7 Digits)

PLEASE ALSO STATE THE REASON FOR RE-RECORDING IN THE BOX BELOW

Agreement

Submitted by & Return To: Paula Trigg
Lake County DOT
600 W. Winchester
Libertyville, IL 60048

EXHIBIT
1

(29)

Doc Number: 6547544 Page 1 of 29

A 32

C 1186

Execution Version

CENTRAL LAKE COUNTY AREA
TRANSPORTATION IMPROVEMENT
INTERGOVERNMENTAL AGREEMENT

This **CENTRAL LAKE COUNTY TRANSPORTATION IMPROVEMENT INTERGOVERNMENTAL AGREEMENT** (the "Agreement") is entered into this day of December 1, A.D. 2023 by and among the COUNTY OF LAKE, Illinois, an Illinois body politic and corporate, acting by and through its Chair and County Board (hereinafter referred to as the "COUNTY"), the VILLAGE OF GRAYSLAKE, an Illinois municipal corporation, acting by and through its Mayor and Village Board (hereinafter referred to as "GRAYSLAKE"), the VILLAGE OF LIBERTYVILLE, an Illinois municipal corporation, acting by and through its Mayor and Village Board (hereinafter referred to as "LIBERTYVILLE"), the VILLAGE OF MUNDELEIN, an Illinois home rule municipal corporation, acting by and through its Mayor and Village Board (hereinafter referred to as "MUNDELEIN"), and such other municipalities as may subscribe hereto pursuant to the terms of this Agreement. The COUNTY, GRAYSLAKE, LIBERTYVILLE, MUNDELEIN, and any other municipalities that subscribe to this Agreement are hereinafter referred to collectively as "Parties" to this Agreement, and any one is referred to individually as a "Party" to this Agreement.

WITNESSETH

WHEREAS, the Parties all have jurisdictional responsibility over portions of the territory generally described as the Central Lake County Area; and

WHEREAS, the Parties recognize that the quality of life and the public health, safety, and welfare of the Central Lake County Area are dependent on ensuring that public facilities and particularly roadways are designed and developed in a manner that can convey the anticipated vehicular traffic in the area; and

WHEREAS, as additional property in the Central Lake County Area develops, the Parties acknowledge and agree that they and their residents will all benefit by ensuring that adequate rights-of-way and various roadway improvements are provided so that traffic in the Central Lake County Area can be safely and efficiently transported upon and through area roadways; and

WHEREAS, in collaboration with GRAYSLAKE, LIBERTYVILLE, MUNDELEIN, and the Villages of Hainesville, Round Lake Park, and Round Lake (hereinafter collectively referred to as the "VILLAGES"), the COUNTY has evaluated the traffic demands that anticipated future

development will have upon Peterson Road and those existing or planned roadways within the Central Lake County Area that are tributary to or otherwise contribute substantially to vehicular traffic upon Peterson Road or within the Central Lake County Area; and

WHEREAS, in response to such anticipated future development, the COUNTY has identified roadway improvement projects (hereinafter the "IMPROVEMENTS") that will be required so that County Highways can meet the demands of increased traffic generated from said future development, including right-of-way acquisitions necessary to construct the IMPROVEMENTS. Among said IMPROVEMENTS are certain projects listed in the COUNTY's YEAR 2020 TRANSPORTATION PRIORITY PLAN, as well as certain projects not yet listed in any of the COUNTY's published planning documents. The YEAR 2020 TRANSPORTATION PRIORITY PLAN, by this reference is hereby made a part of this Agreement; and

WHEREAS, the COUNTY has also developed cost estimates relating to the IMPROVEMENTS (including the cost of right-of-way acquisitions); and

WHEREAS, in order to provide for the collection of payments to cover the estimated costs of IMPROVEMENTS, the Parties desire to establish a schedule of highway improvement fees (hereinafter "FEES") to equitably assign costs for the IMPROVEMENTS to individual development parcels within the Central Lake County Area, which FEES will be matched by COUNTY funds to cover the full cost of the IMPROVEMENTS; and

WHEREAS, the Parties have determined that the COUNTY's 50% contribution to the cost of the IMPROVEMENTS is reflective of the existing traffic demands for the IMPROVEMENTS as well as traffic to be generated from sources outside the Central Lake County Area, but the FEES to be paid are reflective of the anticipated traffic demands for the IMPROVEMENTS from future development within the Central Lake County Area; and

WHEREAS, the Parties desire to establish a means by which new Developments within the Central Lake County Area will pay appropriate FEES to ensure that necessary IMPROVEMENTS can be funded to protect and preserve the public health, safety, welfare, and convenience, especially while traveling in the Central Lake County Area; and

WHEREAS, the COUNTY has authority to require a permit as a pre-condition to a property accessing upon County Highways, and to that end the COUNTY has enacted its "Highway Access Regulation Ordinance" (the "ACCESS ORDINANCE"); and

WHEREAS, the VILLAGES have authority under 65 ILCS 5/11-15.1-1 *et seq.*, to enter into annexation agreements in connection with the annexation of territory and, pursuant to such annexation agreements require matters not otherwise forbidden by law; and

WHEREAS, the VILLAGES also have authority to enter into agreements regarding the exercise of jurisdiction within their 1.5-mile planning areas pursuant to (but not limited to) Division 11-12 of the Illinois Municipal Code, 65 ILCS 5/11-12-4 *et seq.*; and

WHEREAS, the entire Central Lake County Area lies within the 1.5-mile planning jurisdiction of at least one of the VILLAGES; and

WHEREAS, pursuant to Section 10 of Article VII of the Illinois Constitution of 1970 and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.* ("Cooperation Act"), the COUNTY and any of the VILLAGES may contract or otherwise associate among themselves, or transfer any power or function, in any manner not prohibited by law or ordinance; and

WHEREAS, in addition, the COUNTY and GRAYSLAKE have previously entered into that certain "Agreement for Transportation Improvements" dated April 5, 2005 (the "Central Range Transportation Agreement") affecting certain developments with GRAYSLAKE that are located in the Central Lake County Area; and

WHEREAS, consistent with the objectives of this Agreement, the COUNTY and GRAYSLAKE desire to amend the Central Range Transportation Agreement; and

WHEREAS, the Parties desire to extend participation in this Agreement to all of the VILLAGES, and to that end the COUNTY will be authorized to enter into codicils to this Agreement for purposes of adding Parties to this Agreement; and

WHEREAS, at least 30 days (and not more than 120 days) prior to the approval of this Agreement, GRAYSLAKE, LIBERTYVILLE, MUNDELEIN, and any other municipalities that may subscribe to this Agreement have posted public notice of this Agreement for at least 15 consecutive days and they have caused notice of this Agreement to be published at least once in a paper of general circulation within the Central Lake County Area in accordance with 65 ILCS 5/11-12-9;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, made pursuant to all applicable statutes, local ordinances and authority, the Parties do hereby enter into the following Agreement:

SECTION I
Recitals/Headings

1. It is mutually agreed by and among the Parties that the foregoing preambles are hereby incorporated into and made a part of this Agreement as though fully set forth.

2. It is mutually agreed by and among the Parties that the "headings" as contained in this Agreement are for reference only and the actual written provisions, paragraphs, and words of this Agreement shall control.

SECTION II
Definitions

In addition to terms defined elsewhere in this Agreement, the following terms, whenever used in this Agreement, shall have the following meanings unless a different meaning is required by the context:

1. "Central Lake County Area": That portion of Lake County, Illinois generally depicted in Exhibit A attached to and made a part of this Agreement.

2. "County Engineer": That person designated by the COUNTY as the County Engineer, or any designee acting at the direction of and on behalf of such designated County Engineer.

3. "Developer": The owner of a Development, as well an assignee, contract purchaser, agent, or other person having control over a Development and responsibility for the Development.

4. "Development": Any residential, commercial, industrial, or other project which is being newly constructed, reconstructed, redeveloped, structurally altered, relocated, or enlarged on any lot, parcel, or tract in the Central Lake County Area in connection with receiving Final Development Approval from the COUNTY or one of the VILLAGES, and which generates additional traffic within the Central Lake County Area. The Parties acknowledge and agree that the reconstruction, structural alteration, relocation, or

enlargement of a detached single-family residence within the Central Lake County Area is not a Development for purposes of this Agreement. In addition, with respect to any property involving Development in multiple phases or plats, each such phase or final plat shall be deemed a separate Development.

5. "Final Development Approval": For any Development, the latter of the grant of Zoning Relief, annexation approval, or final plat approval. If none of the foregoing apply, the issuance of the earlier of a grading permit, a site development permit, a building permit, or a certificate of occupancy.

6. "Fund": The account to be established and maintained by the COUNTY into which any FEES paid pursuant to this Agreement are to be deposited and from which the cost of IMPROVEMENTS may be paid or reimbursed. The Fund shall include six Area Sub-Accounts (as hereinafter defined).

7. "Highway Corridor": Peterson Road and those existing or planned roadways within the Central Lake County Area that are tributary to or otherwise contribute substantially to vehicular traffic upon Peterson Road or within the Central Lake County Area as depicted on Exhibit A.

8. "Highway Improvement Areas": One of six subareas of the Central Lake County Area as depicted on Exhibit A that are used for purposes of this Agreement to allocate the cost of IMPROVEMENTS and to establish the FEES set forth in this Agreement.

9. "Zoning Relief": Any form of discretionary approval authorized under a Party's zoning regulations, including without limitation rezonings, specifically requested zoning text amendments, variations, conditional or special use permits, or final planned unit development approvals, or any final subdivision plat for which any variances are required.

SECTION III
Highway Improvement Areas and Associated FEES

1. It is mutually agreed by and among the Parties hereto that the COUNTY, with the collaboration of the VILLAGES, has evaluated the traffic and transportation effects of future Developments along and upon the Highway Corridor for purposes of identifying IMPROVEMENTS that will be required to serve the additional traffic resulting from such Developments. The COUNTY has also prepared a schedule of FEES to be assessed upon Developments located within any of the six (6) Highway Improvement Areas within the Central Lake County Area as depicted on Exhibit A.

2. The Parties acknowledge and agree that each of the six (6) Highway Improvement Areas have associated FEES, expressed on a per-acre basis, that are intended to offset the cost of IMPROVEMENTS necessitated by the additional traffic to be generated as a result of Developments in the particular Highway Improvement Area. The methodology for the calculation of FEES is described under Section IV of this Agreement; the schedule of FEES is attached hereto as Exhibit B and by this reference made a part of this Agreement.

SECTION IV
Cost of IMPROVEMENTS; Calculation of FEES; Responsibility for IMPROVEMENTS

1. (a) In the course of identifying the IMPROVEMENTS, the COUNTY has developed estimated costs relating to such IMPROVEMENTS. Based on those cost estimates, the COUNTY has allocated those costs to the various Highway Improvement Areas, and then ascertained a per-acre FEE that will generate sufficient revenues to pay 50% of the costs of the IMPROVEMENTS. It is mutually agreed by and among the Parties hereto that a Development in any Highway Improvement Area will create new demands for IMPROVEMENTS, the cost of which will be, in part, offset by the payment of the FEES. The FEES for a particular Development shall be calculated by multiplying the appropriate per acre FEE, as specified in Exhibit B, by the total acres of the Development located within a particular Highway Improvement Area. It is mutually agreed by and among the Parties that the FEES have been computed on a June 2007-dollars basis and shall be adjusted annually to reflect projected increases in both material costs and labor costs. The adjustment shall be calculated using the Construction Cost Index (Source: ENR Construction Cost Index). The COUNTY may from time-to-time present the Parties with an updated Exhibit B to reflect such annual cost adjustments, but such cost adjustments shall apply irrespective of any updated Exhibit B.

(b) The COUNTY'S identification of, and estimated costs for, the IMPROVEMENTS are set forth in Exhibit B-1, which is attached to and made a part of this Agreement (the "Estimated Improvement Costs"). It is mutually agreed by and among the Parties that the Estimated Improvement Costs have been computed on a June 2007-dollars basis and shall be adjusted annually to reflect projected increases in both material costs and labor costs, which annual adjustment shall be calculated using the Construction Cost Index (Source: ENR Construction Cost Index). The COUNTY may from time-to-time present the Parties with an updated Exhibit B-1 to reflect such cost adjustments, but such cost adjustments shall apply irrespective of any updated Exhibit B-1.

(c) In addition to the annual adjustment in the Estimated Improvement Costs as set forth in Section IV.1(b), the COUNTY may, from time-to-time, review the scope and Estimated Improvement Costs set forth in Exhibit B-1. In the event that the COUNTY determines that the scope of the IMPROVEMENTS or the Estimated Improvement Costs require a material re-adjustment, the COUNTY may submit a revised Exhibit B-1. If at least 60% of the Parties approve the revised Exhibit B-1 in writing, then the revised Exhibit B-1 will supersede the then-applicable Estimated Improvement Costs as provided in Section IV.1(b) of this Agreement. Whenever this Agreement references Estimated Improvement Costs as set forth in Exhibit B-1, such reference includes adjustments to those estimates as provided in this paragraph (c).

2. It is mutually agreed by and among the Parties that, except as provided in Section V.4 of this Agreement, the COUNTY is responsible for the design and construction of the IMPROVEMENTS. The scheduling of both the design engineering and roadway construction for the IMPROVEMENTS shall be as determined in the sole judgment of the COUNTY ENGINEER, except that the COUNTY is required to initiate the design of the IMPROVEMENTS within six months after the occurrence of any "trigger event" as set forth in Exhibit B-1, and thereafter commence construction of such IMPROVEMENTS as soon as possible (but in no event later than 24 months) after completion of design engineering and right-of-way acquisition. In addition, except as provided in Section V.4, the COUNTY shall prepare all necessary surveys, design plans and specifications, receive bids, award construction contracts, furnish engineering inspection during construction, and cause the IMPROVEMENTS to be built, in accordance with the approved plans, specifications, and construction contracts. Said plans, specifications, and construction contracts as approved from time-to-time by the COUNTY ENGINEER shall by this reference become a part of this Agreement as if fully set forth.

3. It is anticipated that FEES from Developments within a Highway Improvement Area will be sufficient to pay for 50% of the allocable share of the cost of IMPROVEMENTS for such Highway Improvement Area, and that the COUNTY will finance the remaining 50% of the costs of the IMPROVEMENTS solely from its available transportation funds. In the event that the COUNTY determines that construction of all or a portion of the IMPROVEMENTS associated with a particular Highway Improvement Area is warranted prior to the commencement of all of the contemplated Development within such Highway Improvement Area and the payment of all the FEES as provided for in this Agreement, such prior construction of the IMPROVEMENTS shall not affect the obligations of the

Parties under this Agreement to collect (or to cause to be collected) FEES from a Development in accordance with the provisions of this Agreement.

SECTION V

Imposition and Collection of FEES; Credits; Disbursements

1. The Parties acknowledge and agree that any new Development within the Central Lake County Area will generate traffic within the Highway Corridor that, without the offsetting effect of the IMPROVEMENTS, (i) will have adverse impacts on the surrounding properties and the facilities available to serve properties within the Central Lake County Area, (ii) will diminish the value of surrounding properties, and (iii) will threaten the public health, safety, and welfare. To finance such offsetting IMPROVEMENTS, it is necessary to collect the FEES contemplated by this Agreement. Consistent with the foregoing, the Parties agree as follows:

   a) The VILLAGES that are Parties to this Agreement, and each of them, agree that, as a condition of annexation of any unincorporated territory located within the Central Lake County Area and within a Highway Improvement Area, such VILLAGE shall require the execution of an annexation agreement, which annexation agreement shall include among its terms the payment of FEES in accordance with this Agreement.

   b) The COUNTY agrees that, as a condition of any Zoning Relief for a Development involving any unincorporated territory located within the Central Lake County Area and within a Highway Improvement Area, the COUNTY will require the owner of such territory to agree to pay the FEES in accordance with this Agreement.

   c) For any Development of unincorporated territory of Lake County that does not require Zoning Relief, the COUNTY agrees that it will not grant any variances under the ACCESS ORDINANCE except upon the condition that the Developer agrees to pay the FEES in accordance with this Agreement.

   d) For any Development of property that is located in any of the VILLAGES as of the date of this Agreement (or as of the date that the VILLAGE in question becomes a party to this Agreement) and that is not subject to an annexation or other agreement conforming to the provisions of Section V.1.a or Section VI of this Agreement, the VILLAGE having jurisdiction agrees that it will not grant any Zoning Relief for such Development except upon the condition that the Developer agrees to pay the FEES in accordance with this Agreement.

e) In the event that Development of a property can occur without Zoning Relief or occurs within a VILLAGE that is not a Party, the Parties agree that no variances under the ACCESS ORDINANCE will be granted except upon the condition that the Developer agrees to pay the FEES in accordance with this Agreement.

2. The Party having jurisdiction over a Development shall be responsible for collecting the FEES relating to a Development prior to granting Final Development Approval. Upon the collection of any FEES, a Party shall transfer the FEES to the COUNTY for deposit into the Fund. Alternatively, any Party having jurisdiction over a Development may cause FEES to be paid and collected by requiring that no Development shall receive Final Development Approval unless the FEES have been paid to the COUNTY and a receipt of such payment from the COUNTY is delivered to the Party having jurisdiction. Any FEES collected directly by the COUNTY pursuant to the preceding sentence shall be deposited into the Fund as hereinafter provided.

3. The COUNTY shall establish the Fund at a local bank or trust. The Fund shall have separate interest-bearing sub-accounts for each of the Highway Improvement Areas (the "Area Sub-Accounts"). Upon receipt of any FEES, the COUNTY shall deposit such FEES into the Area Sub-Account relating to the Highway Improvement Area from which the FEES were collected. Interest earned on moneys within any Area Sub-Account of the Fund shall be held in, and shall become part of, such Area Sub-Account. Neither the FEES nor any interest earned thereon within any Area Sub-Account shall be used either (a) for any purpose other than to defray the costs of IMPROVEMENTS for the Highway Improvement Area associated with such Area Sub-Account, or (b) to pay the COUNTY's 50% share of any IMPROVEMENTS.

4. The Parties acknowledge and agree that, as part of a Development, certain of the IMPROVEMENTS (including the provision of right-of-way relating to an IMPROVEMENT) may be provided by the Developer. In such cases, credits against the FEES otherwise due may be granted in accordance with this Section.

a) In lieu of paying FEES or in consideration of a reduction in the FEES, a Developer may, as determined by the County Engineer, either: (1) construct all or a portion of the IMPROVEMENTS ("CONSTRUCTION CREDITS"); (2) dedicate right-of-way necessary for the construction of the IMPROVEMENTS ("RIGHT-OF-WAY CREDITS"); or (3) both construct all or a portion of the IMPROVEMENTS and dedicate right-of-way necessary for the construction of the IMPROVEMENTS.

b) The dollar value of both CONSTRUCTION CREDITS and RIGHT-OF WAY CREDITS shall be based upon the Estimated Improvement Costs, which credits will be intended to reflect the cost savings by the COUNTY by virtue of such costs being absorbed as part of the Development.

c) To the extent all or a portion of an IMPROVEMENT is to be constructed as part of a Development in exchange for CONSTRUCTION CREDITS, said IMPROVEMENT shall be constructed in accordance with the established roadway design policies of the Lake County Division of Transportation.

d) To the extent that right-of-way for the construction of all or a portion of the IMPROVEMENTS is dedicated as part of a Development, the Developer will be required to (i) present to the COUNTY good and transferable title to said right-of-way, (ii) ensure that said right-of-way shall be free and clear of any encumbrances that would preclude use of the right-of-way for IMPROVEMENTS, (iii) provide a Plat of Dedication to the COUNTY that can be used to transfer title to the COUNTY and be in a format acceptable to the County Engineer and the County Recorder's Office, and (iv) execute and deliver such other documents as may reasonably be required to effect the purposes of this paragraph. Such transfer of right-of-way must be completed before any RIGHT-OF-WAY CREDITS shall be credited towards a Development.

e) To the extent that a Developer installs IMPROVEMENTS or dedicates rights-of-way so that the value of any CONSTRUCTION CREDITS and any RIGHT-OF-WAY CREDITS is greater than the FEES due from the Development, then the Developer shall be entitled to reimbursement only from the associated Area Sub-Account of the Fund (and not from any other COUNTY or VILLAGE funds), and only to the extent that the value of the CONSTRUCTION CREDITS and RIGHT-OF-WAY CREDITS exceed the amount of the FEES otherwise due from the Development (the "EXCESS CREDITS"). To the extent that such Area Sub-Account lacks sufficient moneys to reimburse the value of the EXCESS CREDITS at the time of completion of the IMPROVEMENTS or dedication of the right-of-way, the COUNTY will pay solely from the applicable Area Sub-Account such EXCESS CREDITS, or portion thereof, to the Developer within 30 days after such moneys become available from the applicable Area Sub-Account. The priority for reimbursing EXCESS CREDITS to Developers from funds available (or that may become available) in the applicable Area Sub-Account shall be based on the first-in-time of the completion of IMPROVEMENTS or the dedication of rights-of-way giving rise to the EXCESS CREDIT.

5. It is mutually agreed by and among the Parties hereto that the computation of FEES does not include the costs of any roadway improvements specifically relating to the access for a Development [i.e., the addition of turning lanes, the addition of through-travel lanes, the installation of traffic signals, etc., (hereinafter "Development Access Improvements")] to or from any highway as required by the ACCESS ORDINANCE. The Developer shall be wholly responsible for all costs relating to any such Development Access Improvements (the " Development Access Costs"). No CONSTRUCTION FEE CREDITS or RIGHT-OF-WAY CREDITS shall be awarded for, nor shall any amounts from the Fund be used to pay, such Development Access Costs.

6. Whenever the COUNTY undertakes the design and construction of IMPROVEMENTS, the COUNTY shall be authorized to draw moneys from the appropriate Area Sub-Account of the Fund to pay for 50% of the lesser of the actual cost of the IMPROVEMENT or the Estimated Improvement Costs as set forth in Exhibit B-1. The Parties recognize that, in light of the provisions of this Section V.6, the COUNTY may pay more than 50% of the actual cost of the IMPROVEMENTS, in the event the actual cost of the IMPROVEMENT exceeds the estimated Improvement Costs.

7. In the event that moneys remain in any Area Sub-Account of the Fund after the IMPROVEMENTS for the relevant Highway Improvement Area have been completed and all EXCESS CREDITS have been paid, such moneys shall be used first to reimburse the COUNTY for such amounts it contributed in excess of 50% of the cost of the IMPROVEMENTS associated with such Highway Improvement Area. Any moneys remaining in an Area Sub-Account after the COUNTY is so reimbursed shall be used for the long-term capital replacement costs and major maintenance activities relating to the IMPROVEMENTS in the appropriate Highway Improvement Area.

SECTION VI.

Amendment to the Central Range Transportation Agreement

1. The Parties acknowledge and agree that the terms and provisions of this Section have no applicability to any of the Parties except the COUNTY and GRAYSLAKE.

2. The COUNTY and GRAYSLAKE agree that the terms of this Agreement are hereby incorporated into and made a part of that certain "Agreement For Transportation Improvements Between the Village of Grayslake and the County of Lake," dated April 5, 2005 (the "Central Range Transportation Agreement").

3. The COUNTY and GRAYSLAKE agree to amend Sections 2.A through 2.C of the Central

Range Transportation Agreement, so that said Sections 2.A through 2.C of the Central Range Transportation Agreement shall hereafter be and read as follows:

Section 2. County Roadway Improvements

A. Village Obligations. The Village agrees to assume full financial responsibility (except as provided in Subsection 2.B and 2.C of this Agreement), and without reimbursement from the County for any associated costs, for the design and construction (including the acquisition, without cost to the County, of any required rights-of-way or easements by negotiation or eminent domain, in the name of either the County for the County highways, the State of Illinois for State roadways, and the Village for Village streets) of the following improvements to County and State roadways:

1. Improvements to the Alleghany Road/Illinois Route 120 Intersection, as generally depicted on the Intersection Plan, and as more specifically depicted on Exhibit B attached to this Agreement (the "Alleghany/Rt. 120 Improvement");

2. Improvements to the Peterson Road/Alleghany Road Intersection, as generally depicted on the Intersection Plan, and as more specifically depicted on Exhibit C attached to this Agreement (the "Peterson/Alleghany Improvement"); and

3. Improvements to the Peterson Road/Illinois Route 83 Intersection as generally depicted on the Intersection Plan, and as more specifically depicted on Exhibit C-1 attached to this Agreement (the "Peterson/Rt. 83 Improvement"), which improvements shall be designed and constructed after such time as at least two movements at the intersection are operating below a level of service "D" pursuant to the standards of the Illinois Department of Transportation ("IDOT").

B. Design and Construction Obligations. Unless otherwise mutually agreed by the parties, the Village shall: (i) undertake and complete the design, construction, and installation of the Alleghany/Rt. 120 Improvement not later than 31 December 2007; ~~(ii) the Peterson/Alleghany Improvement not later than 31 December 2008; and (iii) the Peterson/Rt. 83 Improvement within 24 months after the parties mutually agree that the Peterson/Rt. 83 Improvements are required based upon the standards set forth in Section 2.A.3 of this Agreement or 31 December 2009, whichever is later. All such deadlines shall be subject to any force majeure events. The parties agree that, in the event of delays arising from the acquisition of rights-of-way or other necessary property interests, the securing of required permits from other governmental agencies, or other matters not within the Village's reasonable control, the foregoing completion dates shall be subject to adjustments, but only as mutually agreed by the parties based on their good faith review of the circumstances surrounding such delays. In connection with the design, construction, and installation of the Alleghany/Rt. 120 Improvements, the Peterson/Alleghany Improvements, and the Peterson/Rt. 83 Improvements (collectively, the "Intersection Improvements") in accordance with all requirements of law and sound engineering practices, the County shall~~

reasonably cooperate with the Village and shall not unreasonably withhold, delay, or condition any comment, information, approval, or other authorization needed or useful to the Village in order to allow the Village to:

1. Obtain all easements, rights of way, licenses, and other property rights (free of encumbrances or other restrictions) that are necessary or convenient to construct, install, operate, and maintain the Intersection Improvements, including the preparation of appropriate surveys, agreements, and other relevant documents. Such property rights shall include those rights necessary to establish and maintain any required storm water management facilities consistent with the ultimate improvement contemplated for any affected County highway; provided, however, that such rights shall be secured in connection with the Village's approval of developments adjacent to such affected County highways; provided further that, for any portion of the Intersection Improvements undertaken, the Village shall be required to obtain the rights of way, easements, or other property interests as may be necessary for such portion of the Intersection Improvement so undertaken and irrespective of the status of development approvals for the properties adjacent to such Intersection Improvements.

2. Secure all permits, approvals, and authorizations that may be necessary or appropriate to construct, install, and operate the Intersection Improvements. In furtherance of this subsection, the Village shall prepare studies and plans as may be required to secure such permits, approvals, or authorizations; and

3. Perform such other activities as the parties may agree upon that are necessary or convenient in connection with the design, construction, installation, and placing into service of the Intersection Improvements, including associated administrative activities.

Each element of the Intersection Improvements shall be designed and constructed in accordance with the applicable standards, specifications, and plans of the highway authority having jurisdiction over the roadway to be improved. To the extent that federal funding is obtained in connection with any element of the Intersection Improvements, all applicable federal, state, and county standards shall be satisfied in accordance with the terms of such funding. The parties acknowledge and agree that, consistent with the foregoing, the County Engineer shall review and approve all designs, plans, surveys, land conveyance documents, and other pertinent data relating to Intersection Improvements on County highways in accordance with generally applicable County standards and policies.

(ii) provide payment of $2,000,000 to the County not later than 1 November 2009 for the cost of design and construction of the Peterson/Allegheny Improvement; and (iii) provide payment of $2,000,000 to the County not

later than 30 June 2010 for the cost of design and construction of the Peterson/Rt. 83 improvement (the Alleghany/Rt. 120 improvements, the Peterson/Alleghany improvements, and the Peterson/Rt. 83 improvements are hereinafter collectively referred to as the "*Intersection Improvements*").

In addition the parties agree that up to a total of one acre of additional right-of-way (ROW), located outside of the Central Range Area Boundary, as depicted in EXHIBIT A of this Agreement, would be needed for the north, south and east approaches to complete the improvement at Peterson/Rt. 83. The Village shall pay to the County, within thirty (30) days of the receipt of an invoice from the County, in a lump sum, one hundred percent (100%) of the actual cost to acquire up to a total of one additional acre of ROW needed for the improvement to the intersection.

Further, the Village agrees to obtain all easements, rights-of-way, licenses, and other property rights (free of encumbrances or other restrictions) that are necessary or convenient to construct, install, operate, and maintain the Intersection Improvements, including the preparation of appropriate surveys, agreements, and other relevant documents. Such property rights shall include those rights necessary to establish and maintain any required storm water management facilities consistent with the ultimate improvement contemplated for any affected County highway; provided, however, that such rights shall be secured in connection with the Village's approval of developments adjacent to such affected County highways; provided further that, for any portion of the Intersection Improvements undertaken, the Village shall be required to obtain the rights-of-way, easements, or other property interests as may be necessary for such portion of the Intersection Improvement so undertaken and irrespective of the status of development approvals for the properties adjacent to such Intersection Improvements.

In connection with any acquisition of ROW under this Section 2.B, the Village and the County agree that the parties shall make best efforts to minimize the acquisition costs for any such ROW. The parties further agree that, if the ROW costs exceed more than 120% of the estimated ROW cost as set forth in Exhibit B-1 of that certain "Central Lake County Area Transportation Improvement Intergovernmental Agreement" (the "CLC Transportation IGA"), as adjusted pursuant to the terms of the CLC Transportation IGA, the parties shall confer to assess appropriate reductions in the total ROW to be obtained, sharing of costs for such ROW, or such other approaches that are mutually acceptable to contain the overall ROW cost.

C. Alternative Funding Sources. The Village reserves the right to seek funds from parties other than the County to pay for the construction and installation of the Intersection Improvements. To the extent that the County is awarded any grants from any source (other than the County or a County-related funding source) for the express purpose of undertaking any of the Intersection Improvements, or portions thereof, such grants shall be applied to satisfying the

Village's obligation to finance the construction and installation of the Intersection Improvements. In the event that a grant is awarded to the County for any portion of the Intersection Improvements, the Village shall nevertheless: (1) ~~remain responsible for the design, engineering, and construction of such Intersection improvements; (2)~~ be financially responsible for any local "matching" funds for such grant; and (3~~2~~) approve and execute any agreement or other documentation that may be necessary in connection with securing or administering such grant. To the extent that the County notifies the Village of its intent to pursue a grant for any portion of the Intersection Improvements and the Village concurs with such effort in writing, the Village shall cooperate with and assist the County in securing such grant, which cooperation shall include the payment or reimbursement of reasonable expenses that the County incurs in preparing any grant application.

4. Except as expressly provided in this Section, the COUNTY and GRAYSLAKE acknowledge and agree that the terms of the Central Range Transportation Agreement as originally approved remain in full force and effect.

SECTION VII.
Additional Parties

The Parties agree that it is desirable to have the Villages of Hainesville, Round Lake Park, and Round Lake, or any of the foregoing, included as Parties to this Agreement. To that end, GRAYSLAKE, LIBERTYVILLE, and MUNDELEIN agree that, in the event that the COUNTY obtains the approval of any of the Villages of Hainesville, Round Lake Park, or Round Lake to the terms of this Agreement and secures such Village's signature to the Codicil attached hereto as Exhibit C and by this reference made a part of this Agreement, then upon such execution of the Codicil, that Village will be deemed a Party to this Agreement as if it were a Party from the outset, and no further approvals from the other Parties shall be required.

SECTION VIII.
General Provisions

1. Payments due to the COUNTY by any of the Parties hereto, in accordance with the provisions of this Agreement shall be made in a lump sum for the full amount due prior to issuance of any access permit under the ACCESS ORDINANCE or within thirty (30) days after any Final Development Approval (in the event that the proposed Development does not require access to a County Highway).

2. This Agreement shall not be construed, in any manner or form, to limit the power or authority of the COUNTY or the COUNTY ENGINEER to maintain, operate, improve,

manage, construct, reconstruct, repair, widen or expand COUNTY Highways as best determined, as provided by law.

3. Nothing contained in this Agreement is intended or shall be construed as in any manner or form creating or establishing a relationship of co-partners amongst any of the Parties hereto, or as appointing any of the Parties as an agent of the COUNTY or any other Party. The Parties and each of them is and shall remain independent of the COUNTY and each other with respect to all services performed under this Agreement.

4. Each party warrants and represents to the other parties and agrees that (1) this Agreement (or the Codicil, as the case may be) has been executed by duly authorized agents or officers of such Party and that all such agents and officers have executed the same in accordance with the lawful authority vested in them, pursuant to all applicable and substantive requirements; (2) this Agreement is binding and valid and will be specifically enforceable against each of the Parties to the extent permitted by law; and (3) this Agreement does not violate any presently existing applicable order, writ, injunction, or decree of any court or government department, commission, board, bureau, agency, or instrumentality applicable to any of the Parties.

5. It is mutually agreed by and among the Parties hereto that this Agreement shall be deemed to take effect on October 15, 2009, provided the duly authorized agents of the Parties hereto duly execute this Agreement by affixing their signatures prior to October 15, 2009. In the event the date that the last authorized agents of the Parties hereto affix their signatures to this Agreement is subsequent to October 15, 2009, the effective date of this Agreement shall then be the first day of the month which follows the date that the last authorized agent of the Parties hereto affixes their signature. For any of the VILLAGES that becomes a Party as a result of the execution of a Codicil pursuant to Section VII, this Agreement will be effective with respect to that VILLAGE as of the execution date of such Codicil.

6. It is mutually agreed by and between the Parties hereto that all notices, requests, and other communications made under this Agreement shall be made in writing and shall be sent by way of standard U.S. Postal Service mail delivery as follows:

If to the COUNTY:

County Engineer
Lake County Division of Transportation

600 W. Winchester Rd.
Libertyville, IL 60048
(or most current address)

If to the VILLAGE OF GRAYSLAKE:
Mayor
Village of Grayslake
10 S. Seymour Ave.
Grayslake, IL 60030
(or most current address)

If to the VILLAGE OF LIBERTYVILLE:
Mayor
Village of Libertyville
118 W. Cook St.
Libertyville, IL 60048
(or most current address)

If to the VILLAGE OF MUNDELEIN:
Mayor
Village of Mundelein
440 E. Hawley St.
Mundelein, IL 60060
(or most current address)

7. This Agreement shall be enforceable in any court of competent jurisdiction by any of the Parties hereto by any appropriate action at law or in equity, including any action to secure the performance of the representations, promises, covenants, agreements and obligations contained herein.

8. The Parties agree that:
   a. if suit is brought with respect to the Development of land that is incorporated as of the effective date of this Agreement, then the COUNTY and the VILLAGE within whose boundaries the Development is to occur shall mutually participate in the defense of any such action and equally share the costs of defense of any such action;

c. if suit is brought with respect to the Development of land that is unincorporated as of the date that the alleged cause of action arises, then the COUNTY shall be responsible for the defense of any such action, including all costs of defense of any such action.

To the extent that a suit is brought seeking to recover moneys paid to the Fund, to the extent permitted by law any judgment requiring repayment of such moneys shall be paid from the Area Sub-Account that had originally received the moneys in question. To the extent that an action involves multiple counts, such mutual defense will extend only to those counts directly challenging this Agreement.

9. The provisions of this Agreement are severable. If any provision, paragraph, section, subdivision, clause, phrase, or word of this Agreement is for any reason held to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such decision shall not affect the remaining portions of this Agreement.

10. This Agreement supersedes all oral agreements and negotiations amongst the Parties hereto relating to the subject matter hereof. Any prior formal agreements amongst or between any of the Parties hereto shall remain in full force and effect except as modified by this Agreement.

11. Any alterations, amendments, deletions, or waivers of any provision of this Agreement shall be valid only when expressed in writing and duly executed by all of the Parties hereto.

12. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors, and assigns.

13. This Agreement may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute this Agreement.

14. The Parties shall establish and maintain at all times during the term of this Agreement permanent books and records relating to the matters set forth in this Agreement. Each Party shall have the right to inspect and copy such records of the other during normal business hours, and the Parties hereby waive all copying and related costs. In addition, the COUNTY agrees that, as part of its ordinary and customary annual audit process, separate schedules for each Area Sub-Account setting forth revenues received and expenditures made shall be included.

15. This Agreement, and any Codicils to this Agreement, shall be certified by the Clerk of each of the Parties and recorded in the Office of the Lake County Recorder. Every recordation of a Codicil shall be deemed a re-affirmation and re-approval of this Agreement. This Agreement shall remain in full force and effect for a twenty (20) year period, and thereafter shall be automatically renewed for subsequent twenty (20) year periods, until all FEES are collected and all IMPROVEMENTS are completed as contemplated in this Agreement. If any provision of this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such easements, rights, restrictions, agreements, or covenants shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of any now living current or former President of the United States, or the duration of such statutory limitation (but only to the extent such statutory limitation is the only basis on which such provision is authorized).

[Signature page to follow.]

ATTEST:

Village Clerk

VILLAGE OF GRAYSLAKE

By: _____
Mayor

Date: Oct 8, 2009

ATTEST:

Village Clerk

VILLAGE OF LIBERTYVILLE

By: _____
Mayor

Date: 10.16.09

ATTEST:

Village Clerk

VILLAGE OF MUNDELEIN

By: _____
Mayor

Date: 11/09/2009

RECOMMENDED FOR EXECUTION

Martin G. Buehler, P.E.
Director of Transportation/ County Engineer
Lake County

ATTEST:

County Clerk
Lake County

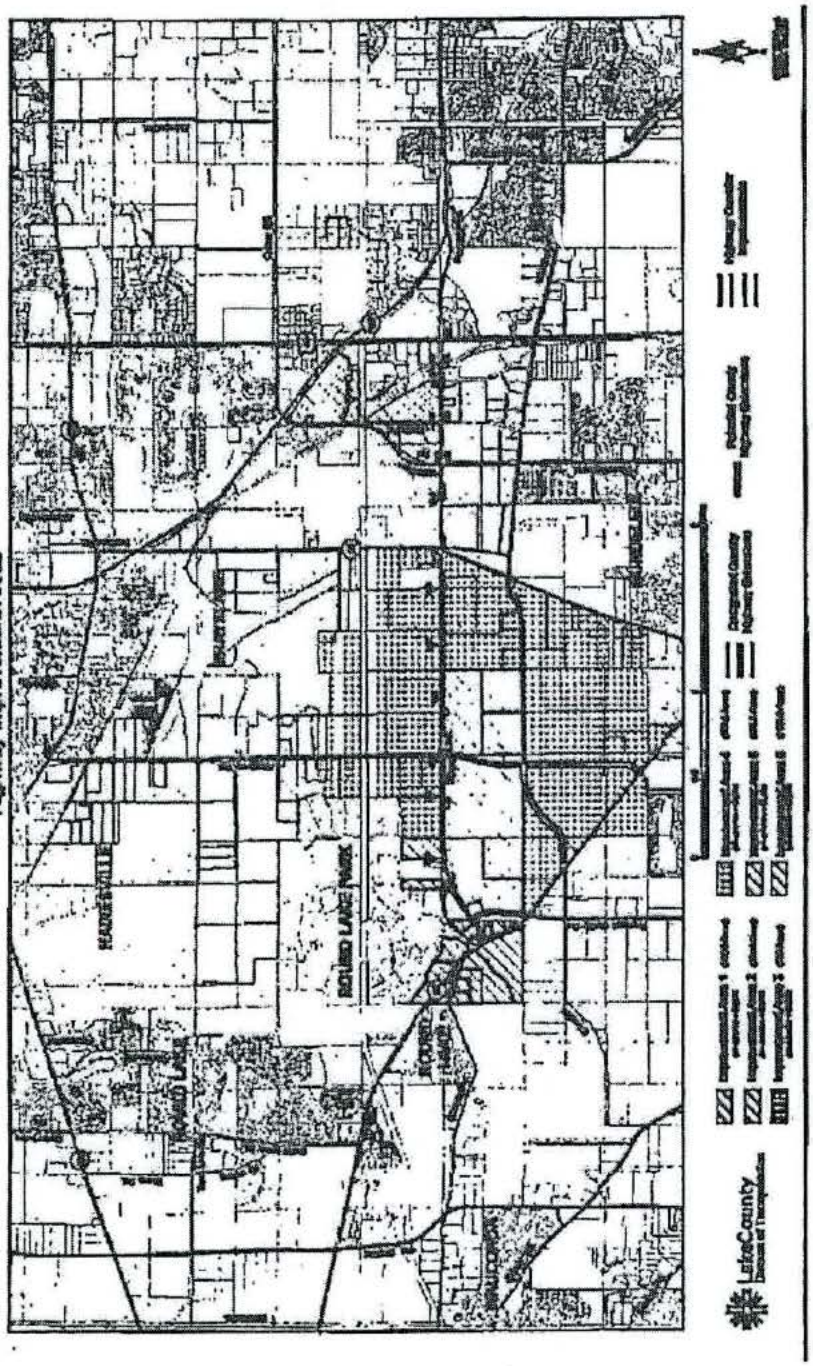
COUNTY OF LAKE

By: _____
Chair
Lake County Board

Date: 11/16/09

Recording Version

EXHIBIT A
Central Lake County Areawide Highway Improvements
Highway Improvement Areas



Execution Version

EXHIBIT B

Schedule of FEES

Highway Corridor	Cost per Acre*
1	$3600
2	$2190
3	$6920
4	$7500
5	$8120
6	$3630

* Costs per acre have been calculated using June 2007 estimated construction dollars.

Exhibit B-1

Schedule of IMPROVEMENTS, Estimated Costs, and Trigger Events

IMPROVEMENT by Area and Highway Corridor or Highway Extension	Estimated Design & Construction Cost per mile[1]	ROW Estimated Costs per mile[1]	Total IMPROVEMENT Cost[1]	Trigger Event for Design of IMPROVEMENT[2]
Area 1 Peterson east of IL 60	$2,612,500	n/a	$1,385,417	Average Daily Traffic exceeds 16,000 vehicles[3]
Area 2 Fremont Center	$2,612,500	n/a	$1,097,250	FEES and CREDITS paid/attributed to the Fund in the amount of 50% of the Total Estimated Improvement Costs
Area 2 Alleghany south of Peterson	$2,612,500	n/a	$1,332,275	FEES and CREDITS paid/attributed to the Fund in the amount of 50% of the Total Estimated Improvement Costs
Area 3 Peterson east of IL 60 to IL 83	$5,225,000	$827,200	$7,444,206	Average Daily Traffic exceeds 16,000 vehicles[3]
Area 3 Alleghany north of Peterson	$5,225,000	$827,200	$3,570,798	Average Daily Traffic exceeds 16,000 vehicles[3]
Area 4 Winchester east of Alleghany	$2,612,500	$3,106,400	$6,509,454	FEES and CREDITS paid/attributed to the Fund in the amount of 50% of the Total Estimated Improvement Costs
Area 4 Winchester west of Alleghany	$2,612,500	$3,106,400	$4,122,654	FEES and CREDITS paid/attributed to the Fund in the amount of 50% of the Total Estimated Improvement Costs

Area 4 Alleghany south of Winchester	$2,612,500	$3,106,400	$4,122,654	FEES and CREDITS paid/attributed to the Fund in the amount of 50% of the Total Estimated Improvement Costs
Area 5 Midlothian north of Peterson	$2,612,500	n/a	$940,500	FEES and CREDITS paid/attributed to the Fund in the amount of 50% of the Total Estimated Improvement Costs
Area 5 Peterson IL 83 to IL 45	$5,225,000	$827,200	$6,778,464	Design currently in progress
Area 6 Alleghany south of Rt 120	$5,225,000	$827,200	$8,715,168	Average Daily Traffic exceeds 16,000 vehicles[3]

[1] Roadway Improvements Costs have been calculated using the June 2007 Estimated Unit Costs and Standards from the published Lake County Division of Transportation2007-2012 Proposed Highway Improvement Program, Section 7, UNIT COSTS – Roadways.

[2] The triggers for design of the Improvements that are based on collection of FEES (as opposed to traffic counts) shall be met when there are sufficient moneys on hand in the appropriate Area Sub-Account to fund 50% of a particular IMPROVEMENT to be paid from such Area Sub-Account. The COUNTY reserves the right to determine the order that IMPROVEMENTS within a Highway Improvement Area shall be undertaken. For purposes of calculating the moneys available in an Area Sub-Account for an IMPROVEMENT, both the amount of FEES paid into such Area Sub-Account of the Fund and the value of CONSTRUCTION CREDITS and RIGHT-OF-WAY CREDITS relating to the IMPROVEMENT in question shall be considered.

[3] In the event that an Area Sub-Account has sufficient funds available (as calculated in accordance with Note 2 above) to undertake the construction of an IMPROVEMENT whose trigger is based on a traffic count that has not yet been achieved, the COUNTY shall commence design of such IMPROVEMENT notwithstanding the fact that the traffic-count trigger has not been met. Construction, however, shall not be required to commence until the later of (I) satisfaction of the traffic count trigger as determined by the County Engineer, or (II) 24 months following completion of design engineering and right-of-way acquisition.

EXHIBIT C

Additional Parties Codicil

THIS INSTRUMENT IS A CODICIL to that certain "Central Lake County Area Transportation Improvement Intergovernmental Agreement" (the "IGA") and is entered into by and between _____ (the "Village") and the COUNTY OF LAKE (the "County") pursuant to Section VII of the IGA.

The Village hereby acknowledges and agrees that it has: (a) taken all of the procedural steps described in the IGA required before considering the approval of the IGA; (b) approved this Codicil by the duly authorized action of its corporate authorities; (c) pursuant to such approval elected to accept all of the terms and conditions of the IGA and to be bound thereby; and (d) authorized its President and Clerk to execute this Codicil on behalf of the Village.

The County, pursuant to its authority under Section VII of the IGA, hereby accepts the Village's approval of the Codicil by causing the Codicil to be executed by the County Board Chairman and County Clerk.

The County and the Village agree to cause their respective clerks to certify a true and correct copy of this Codicil and thereafter record it in the office of the Lake County Recorder.

IN WITNESS WHEREOF, the duly authorized persons on behalf of the Village and the County have signed this Codicil as follows:

ATTEST:

_____
Village Clerk

VILLAGE OF _____

By: _____
President

Date: _____

ATTEST:

_____
County Clerk
Lake County

COUNTY OF LAKE

By: _____
Chair
Lake County Board

Date: _____

5990155_v7

Lake County Illinois

Certified Copy

resolution: 09-2114

File Number: 09-2114

Joint resolution authorizing the execution of the Central Lake County Area Transportation Improvement Intergovernmental Agreement among the Villages of Grayslake, Libertyville and Mundelein, and Lake County, which addresses the developer portion of funding of various county long-term highway improvements in six sub-areas. This resolution also amends the existing County/Grayslake Central Range Transportation Agreement to make the County the lead agency with $4 million in funding from the Village for the intersection improvements at Peterson Road/Allegheny Road and Peterson Road/IL Rte 83.

RESOLUTION

WHEREAS, the Villages of Grayslake, Libertyville, and Mundelein and Lake County (the "*Governmental Units*") have jurisdictional responsibility over portions of the territory generally described as the Central Lake County Area; and

WHEREAS, the Governmental Units recognize that the quality of life and the public health, safety, and welfare of the Central Lake County Area are dependent upon ensuring that public facilities and particularly roadways are designed and developed in a manner that can efficiently convey the anticipated vehicular traffic in the area; and

WHEREAS, as additional property in the Central Lake County Area develops, the Governmental Units acknowledge and agree that they and their residents will all benefit by ensuring that adequate rights-of-way and various roadway improvements are provided so that traffic in the Central Lake County Area can be safely and efficiently transported upon and through area roadways; and

WHEREAS, the Governmental Units have evaluated the traffic demands that anticipated future development will have upon Peterson Road *(County Highway 20)* and those existing or planned roadways within the Central Lake County Area that are tributary to or otherwise contribute substantially to vehicular traffic upon Peterson Road or within the Central Lake County Area; and

WHEREAS, in response to such anticipated future development, the Governmental Units have identified roadway improvement projects (hereinafter the "*Improvements*") that will be required upon County Highways to meet the demands of increased traffic generated from said anticipated future development, including right-of-way acquisitions necessary to

construct the Improvements; and

WHEREAS, cost estimates have also been developed relating to the Improvements *(including the cost of right-of-way acquisitions)*; and

WHEREAS, in order to provide a means for collecting payments to cover the estimated costs of the Improvements, the Governmental Units have developed a "*Central Lake County Area Transportation Improvement Intergovernmental Agreement*" (the "*Agreement*"); and

WHEREAS, pursuant to Section 10 of Article VII of the Illinois Constitution of 1970 and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.* (the "*Cooperation Act*"), the Governmental Units may contract or otherwise associate among themselves, or transfer any power or function, in any manner not prohibited by law or ordinance; and

WHEREAS, pursuant to the Cooperation Act and 605 ILCS 5/5-101 *et seq.*, 65 ILCS 5/11-15.1-1 *et seq.*, and 65 ILCS 5/11-12-4 *et seq.*, the Governmental Units have authority to enter into the Agreement and to enforce the terms thereof; and

WHEREAS, at least 30 days (and not more than 120 days) prior to the approval of this Agreement, the Villages of Grayslake, Libertyville, and Mundelein have posted public notice of this Agreement for at least 15 consecutive days and they have caused notice of this Agreement to be published at least once in a paper of general circulation within the Central Lake County Area in accordance with 65 ILCS 5/11-12-8; and

WHEREAS, Lake County and the Village of Grayslake have previously entered into that certain "Agreement for Transportation Improvements" dated April 5, 2005 *(the "Grayslake Central Range Transportation Agreement")* affecting certain developments with Grayslake that are located in the Central Lake County Area; and

WHEREAS, consistent with the objectives of the said Grayslake Central Range Transportation Agreement, Lake County and Grayslake desire to amend the said Grayslake Central Range Transportation Agreement, by inclusion of the said amendments in the Central Lake County Area Transportation Improvement Intergovernmental Agreement *(i.e. the Agreement)*; and,

WHEREAS, the Governmental Units desire to provide for the participation in the Agreement to three other villages in the Central Lake County Area *(Round Lake, Round Lake Park and Hainesville)* and to that end, Lake County will be authorized to enter into codicils to the Agreement for purposes of adding any of said parties to the Agreement; and

WHEREAS, the Agreement sets forth the rights, responsibilities and obligations of the Governmental Units; and

WHEREAS, execution of the Agreement must be authorized by Resolution of the County Board.

NOW, THEREFORE, BE IT RESOLVED, by this County Board of Lake County, Illinois, that the Chair of the County Board and the Clerk of said County be and they are hereby authorized and directed to execute the attached Agreement, in the form substantially contained herein.

BE IT FURTHER RESOLVED, that the County Engineer shall transmit, in writing, the final Agreement to be executed by the Chair of the County Board and the County Clerk.

DATED at Waukegan, Lake County, Illinois, on this 10th day of November, A.D., 2009

I, Willard R. Helander, certify that this is a true copy of resolution No. 09-2114, passed by the Lake County Board on 11/10/09.

Attest: Willard R. Helander

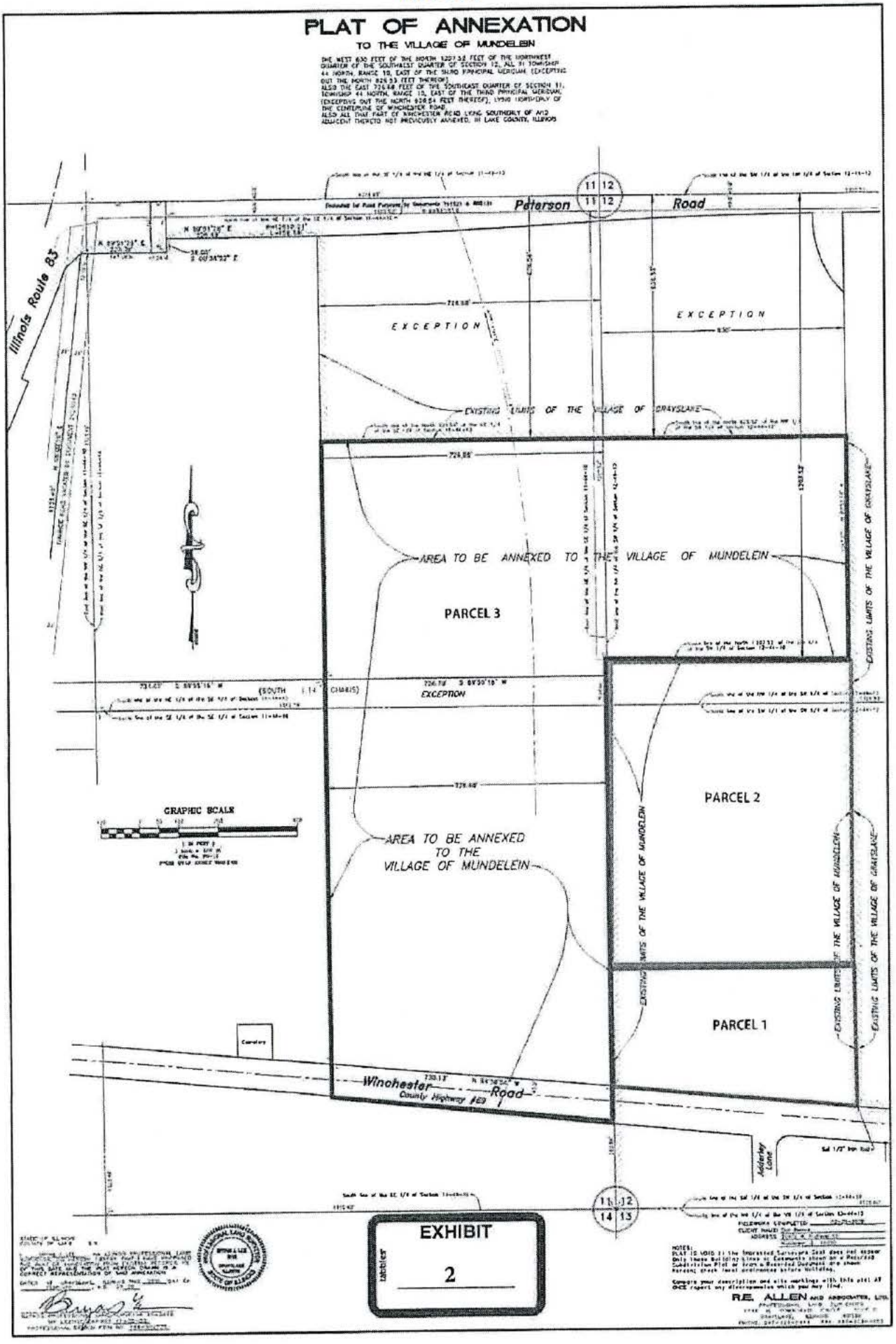
Willard R. Helander

November 19, 2009
Date Certified

PLAT OF ANNEXATION

TO THE VILLAGE OF MUNDELEIN

THE WEST 630 FEET OF THE NORTH 1227.52 FEET OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 12, ALL IN TOWNSHIP 44 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPTING OUT THE NORTH 826.53 FEET THEREOF).
ALSO THE EAST 726.68 FEET OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 44 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPTING OUT THE NORTH 826.54 FEET THEREOF), LYING NORTHERLY OF THE CENTERLINE OF WINCHESTER ROAD.
ALSO ALL THAT PART OF WINCHESTER ROAD LYING SOUTHERLY OF AND ADJACENT THERETO NOT PREVIOUSLY ANNEXED, IN LAKE COUNTY, ILLINOIS



AFTER RECORDING RETURN TO:

Community Development
Village of Mundelein
300 Plaza Circle
Mundelein, Illinois 60060

Image# 057695870024 Type: ANX
Recorded: 10/02/2018 at 12:54:31 PM
Receipt#: 2018-00052267
Page 1 of 24
Fees: $60.00
Lake County IL Recorder
Mary Ellen Vanderventer Recorder
File 7516722

THIS SPACE RESERVED FOR RECORDER'S USE ONLY

ANNEXATION AND DEVELOPMENT AGREEMENT
HABDAB, LLC

BETWEEN

VILLAGE OF MUNDELEIN
AN ILLINOIS MUNICIPAL CORPORATION

AND

HABDAB, LLC
(19908 West Winchester Road, Mundelein, IL
PIN No. 10-12-300-038)

DATED AS OF September 11, 2018

EXHIBIT
3

ANNEXATION AND DEVELOPMENT AGREEMENT

I. INTRODUCTION

This Annexation and Development Agreement ("Agreement") is made as of the 11th day of SEPTEMBER, 2018, by and between among the Village of Mundelein ("Village"), and HABDAB, LLC ("Owner"). The Village and the Owner are collectively referred to herein as the "Parties."

II. RECITALS

WITNESSETH:

WHEREAS, the Owner holds fee simple title to certain property that Owner wishes to develop within the Village that property consisting of 6.6 acres, commonly known as 19908 West Winchester Road, assigned PIN 10-12-300-038 which is legally described in **Exhibit A** attached hereto and made a part hereof ("Subject Property").

WHEREAS, it is the desire of the Parties to annex the Subject Property to the Village and zone and develop the Subject Property in accordance with the terms of this Agreement and in accordance with the ordinances of the Village; and

WHEREAS, Village and Owner have or will perform and execute all acts required by law to effectuate such annexation and zoning and development of the Subject Property; and

WHEREAS, the Subject Property is situated in the unincorporated area of Lake County and is contiguous to the incorporated territory of the Village; and

WHEREAS, the corporate authorities of the Village have duly fixed the time for a public hearing on this Agreement and pursuant to legal notice have held such hearings thereon all as required by the provisions of the Illinois Statutes including Division 13 of the Illinois Municipal Code (65 ILCS 5/11-13-1, et seq.) and the Village authority as a home rule unit of local government; and

WHEREAS, in reliance upon the current development of the Subject Property, Owner and the Village have executed all petitions and other documents and timely served all notices that are necessary to accomplish the annexation of the Subject Property to the Village; and

WHEREAS, in accordance with the powers granted to the Village by the provisions of the Illinois Compiled Statutes, 65 ILCS 5/11-15.1-1 through 5/11-15.1-5, inclusive relating to annexation agreements, the Parties hereto wish to enter into a binding agreement with respect to the annexation of the Subject Property to the Village and to provide for various other matters related directly or indirectly to the annexation of the Subject Property as authorized by the provisions of said statutes; and

WHEREAS, pursuant to due notice and publication in the manner provided by law, the appropriate zoning authorities of the Village have held such public hearing and have taken all further action required by the provision of Illinois Compiled Statutes, 65 ILCS 5/11-15.1-3 and the ordinances of the Village relating to the procedure for the authorization, approval and execution of this Agreement by the Village.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions herein contained, and by authority of and in accordance with the aforesaid statutes of the State of Illinois, the Parties hereto agree as follows:

III. ANNEXATION

A. Owner has filed with the Clerk of the Village a duly executed petition pursuant to and in accordance with the provisions of 65 ILCS 5/7-1-8 of the Illinois Compiled Statutes, to annex the Subject Property to the Village subject to the approval of this Agreement. It is expressly understood that this Agreement, in its entirety, together with the aforesaid Petition for Annexation, shall be null, void and of no force and effect unless the Subject Property is zoned and classified as provided herein.

B. The Owner has filed with the Village Clerk a Plat of Annexation which contains an accurate map of the Subject Property.

IV. ZONING AND PLATTING

A. Pursuant to Section 20.24.240 of the Village's Zoning Ordinance, contemporaneously with annexation, the Subject Property will automatically be classified in the R-1 Single Family Residential Zoning District.

B. Further, the Village agrees that the Subject Property shall be developed in substantial compliance with the plans and documents submitted to the Village by Owner and listed as follows:

1. Engineering documents from Eriksson Engineering Associates, Ltd., consisting of sheet C000 (Title Sheet dated 06/11/2018 with a latest revision date of 8/10/2018); C001 (General Notes dated 6/11/2018); C100 (Site Utility Plan dated 6/11/2018); C200 (Grading and Paving Plan dated 6/11/2018); C300 (Soil Erosion and Sediment Control Plan dated 6/11/2018); and C400 (Site Work Details dated 6/11/2018) (collectively, the "Engineering Plans"); and

2. Landscape plan prepared by Eriksson Engineering Associates, Ltd., dated 06/11/2018; consisting of 1 page.

C. The parties agree that:

1. The Owner may cause to be constructed a berm in accordance with the Engineering Plans subject to the construction of such berm only occurring on weekdays from 7:00 a.m. to 7:00 p.m. Upon request by the Owner, in the sole discretion of the Village, the Village may allow, in writing from the Building Director, the hours of such construction to be extended a maximum of 2 hours and for a specified period of time. If such berm is undertaken, it shall be completed no later than September 1, 2019. Time is of the essence.

2. The Owner shall a) sweep Winchester Road from time to time as well as those times reasonably requested by the Village to eliminate dirt and/or debris tracked onto Winchester Road from the Subject Property and b) set aside a specific area on the Subject Property for the removal of mud from trucks exiting the Subject Property prior to their proceeding onto public right of way.

3. The Owner shall utilize an inspection and ticketing system as part of the acceptance of soils on the Subject Property.

4. The Owner shall cause the soil fill area on the Subject Property, as shown on the Engineering Plans, to result in a soil bearing capacity of 3,000 psf. The berm on the Subject Property, shall be compacted by the Owner to 85% proctor density no later than September 1, 2019. The parties agree that a typical cross section of the completed fill on the Subject Property shall conform to page C-400 in the Engineering Plans. The Owner has obtained a General National Pollutant Discharge Elimination System (NPDES) Permit for the proposed activities on the Subject Property. The approved soil erosion and sediment control plan created pursuant to the requirements of the WDO must fulfill the plan requirements in the NPDES permit.

5. In addition, each operation of any truck bringing soil to the Subject Property shall legibly execute a clean fill agreement in the form attached hereto as **Exhibit B** and the Owner shall cause each truck to be tested by a petroleum sniffer to check soil loads for petroleum contamination. The Owner shall provide all such records to the Village upon the Village's request.

6. All vehicles entering and exiting the Subject Property must do so to and from the west on Winchester Road in accordance with the driving route set forth in Engineering Plans. The Owner shall cause a sign, to be approved by the Village, to be installed on the Subject Property providing that vehicles may only enter and depart from the Subject Property to and from the west.

7. The only construction that may occur on the Subject Property shall be in accordance with the Engineering Plans and only after approval by the Village with the exception of modifications to the house which may be done in accordance with the rules and regulations of the Village.

8. The Village agrees that the house on the Subject Property is a permitted structure and the use of the house as a single-family dwelling unit is a permitted use within the R-1 Zoning District in which the Subject Property is classified. The Village further agrees that the barns on the Subject Property are legal nonconforming structures and the use of the barns for storage is a legal nonconforming use under the Village's Zoning Ordinance and that barns may continue to be utilized for storage. The Village agrees that the Owner may make routine repairs and maintenance of the barns, without expanding same, subject to compliance with generally applicable Village ordinance. The Village also agrees that the installation of the berm on the Subject Property in accordance with the Engineering Plans is permitted within the R-1 Zoning District.

9. The Owner shall comply with the design plan for grading set forth in Engineering Plans to eliminate the tracking of soil or other debris onto public rights of way.

10. The Owner shall obtain from the Lake County Division of Transportation such approval of access unto Winchester Road if such approval is required under the applicable Lake County ordinance.

11. All improvements set forth in the Engineering Plans shall be completed no later than September 1, 2019. Time is of the essence.

12. All landscaping set forth in the Landscaping Plan shall be completed no later than September 1, 2019. Time is of the essence.

13. The Owner shall remove mud from trucks before they exit the Subject Property to mitigate the tracking of mud onto public roads. The Owner shall cause all operation on the Subject Property to conform and adhere to the dust control measures.

V. INITIAL CONSTRUCTION

A. Upon payment of the fees listed in subparagraphs C of Section VI. and issuance of a Village of Mundelein Building Permit, mass grading, excavation, storm water retention and detention related to the construction of improvements may proceed at Owner's sole risk in accordance with subparagraph 8 of paragraph C of Section IV, ZONING AND PLATTING, and paragraph B of Section XIII, INSURANCE, provided that the final erosion control plan has been approved by the Village Engineer, the detailed improvement plans and specifications have been submitted to the Village Engineer and the Village Engineer has given approval to the portion of the plans relating to grading and all erosion and siltation control measures shown on the plans or required by the Village Engineer are in place.

8. Construction may proceed upon payment of all fees outlined in subparagraphs C in Section VI, after all local, state and federal permits have been issued and after the Village approval of all the final plan submittals and the fulfillment of all other requirements set forth in this Agreement.

C. To the extent streams, floodplain or wetlands exist on the site, no grading shall be undertaken until the required local, state and federal permits, if needed, have been filed and approved with the Village Engineer and approved by all appropriate agencies and all wetland mitigation fees have been paid.

VI. IMPACT FEES, DONATIONS AND OTHER FEES

A. Village Impact Fees: The Owner shall pay all of the following impact fees (the "Impact Fees") upon the earliest of any of the following "redevelopment events" occurring:

1. All or a portion of the Subject Property is rezoned by the Village from the R-1 Zoning District to another zoning district within the Village; or

2. A special use permit or a final planned unit development is approved for all or any portion of the Subject Property; or

3. All or any portion of the Subject Property is the subject of a final plat of subdivision approved by the Village; or

4. All or any portion of the Subject Property is utilized in a materially different manner than the Subject Property is being used as approved in this Agreement.

The Impact Fees for the Subject Property as of the date of this Agreement are as follows and are based on the existing uses of the Subject Property; however, upon any "redevelopment event" as defined in subparagraph A of Article VI, IMPACT FEES, DONATIONS AND OTHER FEES, Owner shall pay all impact fees in accordance with the rates and fees established by Village ordinance at the time of said "redevelopment event" and shall be based upon the proposed use of the Subject Property:

Fee	Per Acre (6.6)	Amount
Annexation	$4,110	$20,550
Capital Development	$2,835	$14,175
Sewer Add & Exp	$4,500 ¾" meter	$4,500
Water Add & Exp	$500 ¾" meter	$500
Transportation	$4,385	$21,925
Stormwater	$2,525	$12,625
Tree Replacement	TBD	TBD
Downtown Fee	$1,000	$5,000
TOTAL		**$79,275**

The Impact Fees shall be paid in addition to all other fees payable hereunder and all other fees which are customarily and generally applicable throughout the Village (including, but not limited to, building permit fees, occupancy permit fees, sewer and water connection fees, building plan review and inspection fees, engineering plan review and inspection fees, and other consultant's fees) as established from time to time by the Village.

B. In addition, the Owner agrees to use its best efforts to enter into a mutually acceptable annexation agreement with the Village within 12 months after the date of this Agreement for the annexation of the "Twenty-Acre Properties" (Twenty-Acre Properties), which parcels currently bear the property index numbers of 10-15-401-007 and 10-15-401-008 and are depicted in **Exhibit C** hereto. In the event that such annexation agreement is not entered into within such twelve month period by and between the Owner (or the owner of record of the Twenty-Acre Properties) and the Village, the Owner shall pay the Village its consultant fees incurred relative to the annexation of the Subject Property to the Village. In no event shall said fees exceed an amount of $10,000.

C. Fire Protection Fee: Owner shall reimburse the Village in the amount of $2,327.99 which represents the amount due from the Village to the Grayslake Fire Protection District for the fire protection property taxes on the Subject Property as provided in Public Act 91-0307. Said amount represents the five years of taxes as anticipated under said Act and shall be paid by the Owner within 30 days of the effective date of this Agreement.

D. School, Park and Library Donations: No school, park or library donations shall be required to be paid by the Owner unless the Subject Property is re-zoned for some form of residential use, at which time school, park and library impact fees may be required pursuant to Village ordinances.

E. Engineering and Other Consultants' Fees/Litigation Expense: Subject to subparagraph B of this Section VI, Owner agrees to reimburse the Village for all engineering, legal and other consultant fees in accordance with the provisions of Village Ordinance No. 06-07-63.

F. The Owner and its successors and assigns shall be obligated to pay all water and sanitary sewer system connection fees in accordance with the Village ordinances in effect at the time they connect to the Village's water and sanitary sewer system pursuant to Section VII. of this Agreement. Upon payment of same by the Owner or its successors or assigns, physical connections shall be allowed.

G. No Other Fees or Donations: Except as otherwise provided herein, Owner shall not be required by the Village to pay any fees or to donate any land or money or make any other contributions to the Village or any other governmental agency.

VII. SITE IMPROVEMENTS

A. Should the Subject Property undergo a "redevelopment event" as defined in subparagraph A of Article VI, IMPACT FEES, DONATIONS AND OTHER FEES, the following site improvement requirements, in accordance with Title 19 SUBDIVISIONS of the Mundelein, Illinois Municipal Code, shall apply.

1. On-Site Public Improvements: Owner shall be responsible for the construction and installation of those public improvements and utilities consisting of storm sewers, sanitary sewers, water mains, streets and appurtenant structures as are needed to adequately service the Subject Property and to have facilities available for the use of adjacent properties in accordance with applicable Village ordinances and requirements.

2. Roadways, Right-of-Way and Pavement Width: Owner shall construct all streets and other public improvements in accordance with applicable Village ordinances and the Engineering Plans.

3. Subsurface Utilities: All new utilities to be installed in conjunction with development of the Subject Property, both offsite and onsite, to include storm sewers, water mains, electric, gas, telephone, and cable television shall be installed underground.

4. Off-Site Public Improvements: Owner shall be responsible for the construction and installation of those public improvements and utilities consisting of storm sewers, water mains, wastewater sewers, streets and appurtenant structures described on the plans, approved by the Village, to adequately service the Subject Property.

B. Water and Sewer Connections: Village agrees to defer the requirement that the Subject Property be connected to the Village's water and sewer system until the earliest of the following events to occur: a) at the time the Subject Property undergoes a "redevelopment event" as defined in subparagraph A of Article VI, IMPACT FEES, DONATIONS AND OTHER FEES or b) a change in the use of the Subject Property, provided that the installation of the berm on the Subject Property shall not be considered a change of use.

1. Wastewater Treatment: In accordance with Title 19 SUBDIVISIONS of the Mundelein, Illinois Municipal Code and subparagraph B of Article VII, SITE IMPROVEMENTS, upon completion of the site facilities as contemplated under the terms of this Agreement and after payment of all necessary tap on fees and subject to restrictions that may apply generally to all developers within the Village on a "first come, first served basis" with all other property within the Village or hereafter annexed to the Village and subject to Illinois Environmental Protection Agency permits, the Village will allow the Owner to apply for sanitary sewer permits to serve the proposed development on the Subject Property.

2. Water Supply: In accordance with Title 19 SUBDIVISIONS of the Mundelein, Illinois Municipal Code and subparagraph B of Article VII, SITE IMPROVEMENTS, the Village has a fully functional potable water supply system to serve the proposed development of the Subject Property, subject to restrictions that may apply generally to all developers within the Village, on a "first come, first served basis" with all other property within the Village or hereafter annexed to the Village.

C. Easements and Access: The Village shall, upon the request of Owner, grant to utility companies providing utilities to any portion of the Subject Property, such construction easements and utility easements over, under, across or through property owned or controlled by the Village as are necessary or appropriate for the development of the Subject Property in accordance with the provisions of this Agreement, the development plan or any approved plans. The Village reserves the right to review and approve the type and other possible options relating to above grade utility equipment for maintenance and aesthetic purposes. Owner agrees to cooperate with the Village to reasonably see that the most aesthetic equipment offered by the utility companies is used. Owner agrees to grant to the Village easements on the Subject Property required from time to time for utility purposes, including access and maintenance thereof, at locations mutually satisfactory to the Village and Owner.

D. Off Site Streets and Construction Traffic: Owner shall be responsible for the repair of any damage to any Village street or road resulting from Owner's development and construction activities on, the Subject Property.

VIII. BUILDING AND OCCUPANCY PERMITS

A. Building Permits: The Village shall issue building permits for which Owner, tenant of the building, or any other party who has the right to apply for building permits ("Building Permit Applicant") applies within a reasonable time after all final plans, including final engineering, are approved, signed and recorded. If an application is disapproved, the Village shall provide Building Permit Applicant with a statement in writing specifying the reasons for denial of the application, including a specification of the requirements of law which the application and supporting documents fail to meet. Such statement may consist in whole or in part of legible and understandable notations on building plans. The Village shall thereafter issue such building permits upon Building Permit Applicant's compliance with those requirements of law specified by the Village so long as the application and supporting documents comply with all other requirements of the Village.

B. Occupancy Permits: The Village shall issue certificates of occupancy for any building constructed on the Subject Property within a reasonable time following its receipt of the last of the documents or information required to support such application. If an application is disapproved, the Village shall provide Owner, tenant of the building or any other party who has the right to apply for certificate of occupancy ("Certificate Applicant") with a statement in writing specifying the reasons for denial of applications, including specification of the requirements of law which the application and supporting

documents fail to meet. The Village shall issue such certificates of occupancy upon Certificate Applicant's compliance with those requirements of law specified by the Village. The Village agrees that certificates of occupancy are not required for the buildings that currently are located on the Subject Property.

C. Rental Registration: In accordance with Chapter 16.44 of the Mundelein, Illinois Municipal Code, rental registration is required for all rental housing units on the Subject Property. The Owner agrees that a certificate of registration is required for the rental housing unit that currently is located on the Subject Property and shall comply with those requirements of law specified by the Village.

IX. VILLAGE ORDINANCES

Compliance: Except as otherwise provided herein, Owner shall be subject to and comply with all of the provisions of the Village's Zoning Ordinance, the Stormwater Control Ordinance, the 2015 International Building Code, as amended by the Village, the 2014 National Electric Code, as amended by the Village, the 2014 State of Illinois Plumbing Code, as amended by the Village, the 2015 International Fire Prevention Code, as amended by the Village, the Stormwater Control Ordinance and all other applicable ordinances, codes, rules and regulations in effect from time to time, including, without limitation the payment of all fees, charges, expenses, and costs provided for therein. Also, to the extent applicable, Owner shall comply with the requirements of all other governmental agencies.

X. STORMWATER MANAGEMENT

Owner shall provide stormwater detention/retention for the development of the Subject Property in compliance with: (i) the Lake County Stormwater Management Commission criteria and Village Ordinance No. 94-8-35 (Stormwater Watershed Development Ordinance), as amended; and (ii) any applicable requirements of the U.S. Army Corps of Engineers and the Illinois Department of Water Resources. In conjunction with its submission to the Village of final engineering plans, Owner shall submit to the Village Engineer an analysis of the Development's impact on stormwater drainage on downstream properties. Also, to the extent applicable, Owner shall comply with the requirements of all other governmental agencies.

XI. GENERAL PROVISIONS

A. Time of Essence/Cooperation of Parties: Time is of the essence of this Agreement and of each and every provision hereof. The Parties shall cooperate with one another on an ongoing basis and make every reasonable effort (including, with respect to the Village, the calling of special meetings, the holding of additional public hearings and the adoption of ordinances) to further the implementation of the provisions of this Agreement and the intentions of the Parties as reflected by the provisions of this Agreement. Specifically, but without limitation, in connection with Owner's performance of its obligations under this Agreement, the Village agrees to execute such applications and documents as may be necessary to obtain approvals and authorizations from other governmental or

administrative agencies and to cooperate otherwise to the extent necessary to assure Owner's performance of those obligations.

B. Conflict with Ordinances: If any pertinent existing resolutions or ordinances, or interpretations thereof, of the Village are inconsistent or in conflict with any provision hereof, then the provisions of this Agreement and the ordinances passed pursuant hereto shall constitute lawful and binding amendments to, and shall supersede the terms of said inconsistent ordinances or resolutions, or interpretations thereof, as they may relate to the Subject Property.

C. Term: This Agreement shall be binding upon and inure to the benefit of the Parties, the successors to the Owner, and any successor municipal authorities of the Village and successor municipalities, for a period of twenty (20) years commencing with the Effective Date of this Agreement and for whatever additional period of time agreed to by the Parties in writing. In the event the zoning of the Subject Property or the execution and delivery of this Agreement is challenged either directly or indirectly in any court proceeding which shall delay construction on the Subject Property, the period of time during which such litigation is pending, to the extent permitted by law, shall not be included in calculating such twenty (20) year term.

D. Assignability: This Agreement shall run with the land and, as such, shall be binding upon subsequent owners of the Subject Property, or any portion thereof; provided, however, that Owner shall not assign its rights or delegate its duties hereunder and such rights shall not inure to subsequent owners of the Subject Property, unless the Village provides its prior written express consent of the proposed assignee of such rights which consent shall not be unreasonably withheld. If the Owner desires the Village approve an assignment it shall make such request to the Village in writing, which request shall identify the proposed assignee, and the Owner shall provide the Village with all information reasonably requested by the Village with respect to the proposed assignee's qualifications.

E. Notices: All notices or other writings which any party is required to, or may wish to, serve upon any other party in connection with this Agreement shall be in writing and shall be delivered personally or sent by certified or registered mail, return receipt requested, postage prepaid, to the following addresses or faxes to the Parties at the following facsimile numbers:

If to VILLAGE: Village Administrator
Village of Mundelein
300 Plaza Circle
Mundelein, Illinois 60060
FAX: (847) 949-0143

With a copy to:	Charles Marino, Esq. 100 E. Monroe Street Suite 902 Chicago, Illinois 60603 FAX: (312) 236-1065
If to OWNER:	HABDAB, LLC 21402 W. Route 60 Mundelein, IL 60060 FAX: _____
With a copy to:	Gerald P. Callaghan 28045 N. Ashley Circle, Suite 101 Libertyville, IL 60048 FAX: 847-367-2758

Any party may change its address or facsimile for the service of notice by giving written notice of such change to the other party, in the manner specified below. All notices shall be deemed effective as of the date of receipt, in the case of personal delivery; two days after deposit in the U.S. mail, in the case of notice set by certified or registered mail; and as of the date of transmission, if delivered by fax (provided the transmitting machine provides a record confirmation of the day and time of transmission).

F. Severability: If any provision of this Agreement is held invalid, such provision shall be deemed to be removed therefrom and the invalidity thereof shall not affect any of the other provisions contained herein.

G. Remedies: Any party to this Agreement may, either in law or equity, by suit, action, mandamus, or other proceedings, enforce or compel performance of this Agreement. No action taken by any party hereto pursuant to the provisions of this Section 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 non-exclusive or otherwise available to any party at law or in equity.

H. Breach of Agreement: In the event of a material breach of this Agreement, the Parties agree that the party alleged to be in breach shall have thirty (30) days' notice of said breach to correct the same prior to the non-breaching party's seeking any remedy provided for herein (provided, however, that said thirty (30) day period shall be extended if the defaulting party has initiated the cure of said default and is diligently proceeding to cure the same).

I. Attorney's Fees: In the event that either party brings or defends against litigation relating to the interpretation or enforcement of this Agreement and prevails, the prevailing party shall be reimbursed by the losing party its attorney's fees and costs incurred in connection with such litigation as well as its attorney's fees and costs associated with any appeal.

If the Village prevails in an action to collect money due under the terms of this Agreement, the Village shall be reimbursed for the costs of collecting the amount awarded, including any attorney's fees.

J. No Punitive Damages: Notwithstanding the foregoing, under no circumstances shall any of the Parties be liable to the other Parties for any consequential or punitive damages as a result of a default by any party under this Agreement.

K. No Waiver: The failure of any of the Parties to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, imposed upon any other party, shall not be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

L. Captions: Throughout this Agreement, the singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. Section numbers and caption headings are purely descriptive and shall be disregarded in construing this Agreement.

M. Integration/Exhibits: This Agreement constitutes the entire agreement and understanding of the Parties relative to the subject matter hereof superseding all prior agreements, understandings and negotiations (all of which are expressly merged herein). All exhibits to this Agreement are incorporated herein by this reference thereto.

N. Effective Date. The "Effective Date" of this Agreement shall be the date of its execution by the Village.

O. Amendments: The Village and Owner, and its successors-in-interest may, by mutual consent, change, amplify or otherwise agree to terms and conditions other than those set forth in this Agreement by the adoption of an ordinance by the Village amending the terms of this Agreement and the acceptance of same by Owner, or its successors-in interest, subject to the provisions of the Illinois Compiled Statutes, 65 ILCS 5/11-15.1-1. Any modification to the zoning or development of the Subject Property which may be hereinafter sought by the Owner, it successors and assigns, shall not be considered an amendment to this original Annexation Agreement or any amendment thereto.

XII. INDEMNIFICATION AND ASSUMPTION OF ALL RISKS BY OWNER

A. The Village shall not at any time be liable for injury or property damage occurring to any person or property from any cause whatsoever arising out of the construction, activities or any other use of any portion of the Subject Property by the Owner, its affiliates, employees, agents, contractors, tenants or invitees.

B. The Owner hereby agrees to indemnify and hold harmless the Village from and against any claim asserted or liability imposed upon the Village for bodily injury or property

damage to any person or property arising out of the operation or use of the Subject Property by the Owner, its affiliates, employees, invitees, tenants or contractors.

XIII. INSURANCE

A. The Owner shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Owner's, its affiliates', agents', employees', invitees', tenants' or contractors' operation and/or use of the Subject Property. The cost of such insurance shall be borne by the Owner. Coverage shall include, but shall not be limited to the following:

1. Commercial General Liability Coverage;

2. Workers' Compensation Insurance as required by state statute and Employers Liability Insurance;

3. Owner shall maintain limits of:

a) Commercial General Liability: $3,000,000.00 per occurrence for bodily injury (including death) and property damage and $3,000,000 general aggregate including personal and advertising injury.

b) Workers' Compensation and Employers Liability: Workers Compensation limits as required by state statute and Employers Liability limits of $1,000,000.00 each accident and $1,000,000.00 disease each employee, $1,000,000 disease-policy limit.

c) Commercial Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Owner on or about the Subject Property with limits of One Million Dollars ($1,000,000.00) combined single limit for each accident for bodily injury and property damage.

d) All policies other than those for Worker's Compensation and Employer's Liability shall be written on an occurrence and not on a claims-made basis.

e) The coverage amounts set forth above may be met by blanket policies so long as in combination the limits equal those stated.

f) All coverage required by this section shall be primary coverage exclusive of any insurance that the Owner might have or carry from time to time as relates to Owner's operations.

B. Prior to the Owner commencing construction of the berm or any other improvement on the Subject Property, the Owner shall file with the Village the required original certificates of insurance naming the Village as the additional insured endorsements which shall clearly state all of the following:

1. The policy number, name of the insurance company, name and address of the agent or authorized representative, name and address of the insured, project name and address, policy expiration date, and specific coverage amounts; and

2. That the Owner's insurance is primary as respects any other valid or collectable insurance that the Village may possess, including any self-assured retention that the Village may have; and

3. Any insurance that the Village possesses shall be considered excess only and shall not be required to contribute with the Owner's insurance as relates to the Owner's operations. Any certificates of insurance required by this Agreement shall be filed and maintained with the Village annually during the term of the Agreement. The Owner shall promptly advise the Village of any claims or litigation that may result in the liability to the Village.

4. The Owner's insurance coverage shall be primary with respect to the Village for claims caused by the Owner's negligence. In such instances, any insurance or self-insurance maintained by the Village shall be in addition to the Owner.

5. The Owner shall agree to waive all rights of subrogation against the Village from work performed by the Village, its contractors, agents or affiliates. Each insurance policy required by this clause shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been received by the Village.

6. Insurance is to be placed with insurers with a Best's rating of no less than A-, VII and licensed, authorized or permitted to do business in the State of Illinois.

7. On an annual basis, the Owner shall furnish the Village with certificates of insurance including additional insured endorsements evidencing coverage required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

8. The Owner, for so long as the Owner owns the Subject Property, shall maintain insurance and submit a certificate of insurance to the Village on the anniversary date and each anniversary thereafter of this Agreement.

C. The Owner agrees to indemnify and save harmless the Village from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by the Owner under the terms of this Agreement.

D. The Owner shall require that each and every one of its contractors and their subcontractors and invitees who perform work on the Subject Property carry, in full force and effect, substantially the same coverage as required of the Owner. During the construction of improvements on the Subject Property, the Owner shall require all of its contractors (if any) to include the Village as an additional insured. Proof that the general contractor has included the Village as an additional insured shall be submitted in conformance with the requirements of this section of this Agreement.

E. The Village is to be included as an additional insured as its interest may appear under this Agreement with respect to liability arising out of activities performed by the Owner, its employees, agents, contractors, invitees, tenants and affiliates.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement this 11th day of September, 2018.

VILLAGE OF MUNDELEIN,
an Illinois municipal corporation

By: _____
Mayor Steve Lentz

Attest: _____
Village Clerk Sol C. Cabachuela

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

The foregoing instrument was acknowledged before me on September 11, 2018, by Steve Lenz, Mayor of the **VILLAGE OF MUNDELEIN**, an Illinois home rule municipal corporation, and by Sol C. Cabachuela, the Village Clerk of said municipal corporation. Given under my hand and official seal this 11th day of September 2018.

_____
Signature of Notary

SEAL

OFFICIAL SEAL
Wendy L. Whitaker
Notary Public, State of Illinois
My Commission
Expires 10/27/20

My Commission expires: 10/27/20

OWNER:

HABDAB, LLC,
an Illinois limited liability company

By: Daniel Beelow
Daniel Beelow, its authorized agent and Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

The foregoing instrument was acknowledged before me on SEPTEMBER 11, 2018, by DANIEL BEELOW of HABDAB, LLC, which Individual is known to me to be the identical person who signed the foregoing instrument as such representative of HABDAB, LLC for and on behalf of HABDAB, LLC, and that they executed the same as their free and voluntary act and deed, and as the free and voluntary act and deed of HABDAB, LLC, for the uses and purposes therein mentioned. Given under my hand and official seal this 11th day of SEPTEMBER 2018.

Ann M. Watson
Signature of Notary

SEAL

OFFICIAL SEAL
ANN M. WATSON
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires 4-24-22

My Commission expires: 4/24/22

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

THE WEST 630 FEET OF THAT PART OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 44 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF SAID SOUTHWEST QUARTER OF SECTION 12 AND THE NORTH LINE OF THE 40 FOOT RIGHT OF WAY OF WINCHESTER ROAD AS DESCRIBED IN DOCUMENT 1389464; THENCE NORTH 00 DEGREES 58 MINUTES 48 SECONDS WEST ALONG SAID WEST LINE, 425.62 FEET; THENCE NORTH 89 DEGREES 37 MINUTES 35 SECONDS EAST, 1255.30 FEET TO THE WEST 40 FOOT RIGHT OF WAY LINE OF MIDLOTHIAN ROAD; THENCE SOUTH 01 DEGREE 02 MINUTES 02 SECONDS EAST ALONG SAID WEST RIGHT OF WAY LINE, 518.35 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 25 FEET, 41.95 FEET ARC MEASURE TO A POINT TANGENT TO THE NORTHERLY RIGHT OF WAY LINE OF WINCHESTER ROAD; THENCE NORTH 84 DEGREES 53 MINUTES 46 SECONDS WEST, 1,235.03 FEET ALONG THE NORTHERLY RIGHT OF WAY TO THE POINT OF BEGINNING (EXCEPTING THEREFROM THAT PART OF THE LAND TAKEN FOR ROAD/HIGHWAY PURPOSES), ALL IN LAKE COUNTY, ILLINOIS; PIN 10-12-300-038.

EXHIBIT B

CLEAN FILL AGREEMENT

CLEAN FILL AGREEMENT

Fax No: 847-566-5825

Customer Name: _____ Delivery Date: _____

Contact Name & Number: _____

Trucking Company (Transporter): _____

How many trucks will be dumping? _____ Approximate Number of Loads: _____

Truck Numbers Dumping for this job (if known): _____

Owner's Name, Address or Lot # and Subdivision _____

_____

Site and Previous Land Use _____
(Residential, Commercial, Industrial)

Environmental Assessment/ Analytical Yes _____ No _____

This agreement, made on _____, 20___, by and between the above-referenced Customer and B&B Project Management, Inc. ("B&BPMI") governs the conduct of the parties in connection with the deposit of Clean Fill Material by Customer at B&BPMI properties. In consideration of the performance by Customer hereunder, and other valuable consideration, B&BPMI agrees to permit Customer to deposit the above Clean Fill Material, strictly conforming to this contract, on its property.

Customer expressly warrants, represents and guarantees that the Clean Fill Material consists solely of uncontaminated soil generated during construction, remodeling, repair and demolition of utilities, structures and roads and is not commingled with any clean construction or demolition debris. Clean Fill Material does not consist of clean construction or demolition debris as that term is defined in the Illinois Environmental Protection Act. Customer understands that loads containing clean construction or demolition debris will be rejected by the Yard.

The warranties, representations and guarantees set forth herein shall survive and continue in full force and effect so long as said Clean Fill Material is present at the Yard.

Customer shall protect, hold harmless, defend and indemnify B&BPMI from all claims, penalties, fines, assessments, liabilities and expenses, including, but not limited to, reasonable attorney's fees and litigation expenses, monitoring, containment, restoration, removal, clean-up or other remedial costs, consultant fees and investigation fees which arise out of, are incidental to or connected with one or more of the following:

(a) any claim of contamination, death, injury or damage to persons or property or claim of breach of any requirement imposed by any state, federal or local governmental authority, whether judicial, administrative or legislative, arising out of, incidental to, or connected with Customer's acts, omissions or deposits of the material subject to this Clean Fill Agreement;
(b) any claim of a breach of any representation, warranty or certification made by Customer to B&BPMI;
(c) Customer's negligent or intentional acts, omissions and breaches of duty.

_____ CUSTOMER'S AUTHORIZED REPRESENTATIVE

_____ B&B PROJECT MANAGEMENT, INC
Daniel A. Beelow, President

EXHIBIT C

TWENTY ACRE PROPERTIES

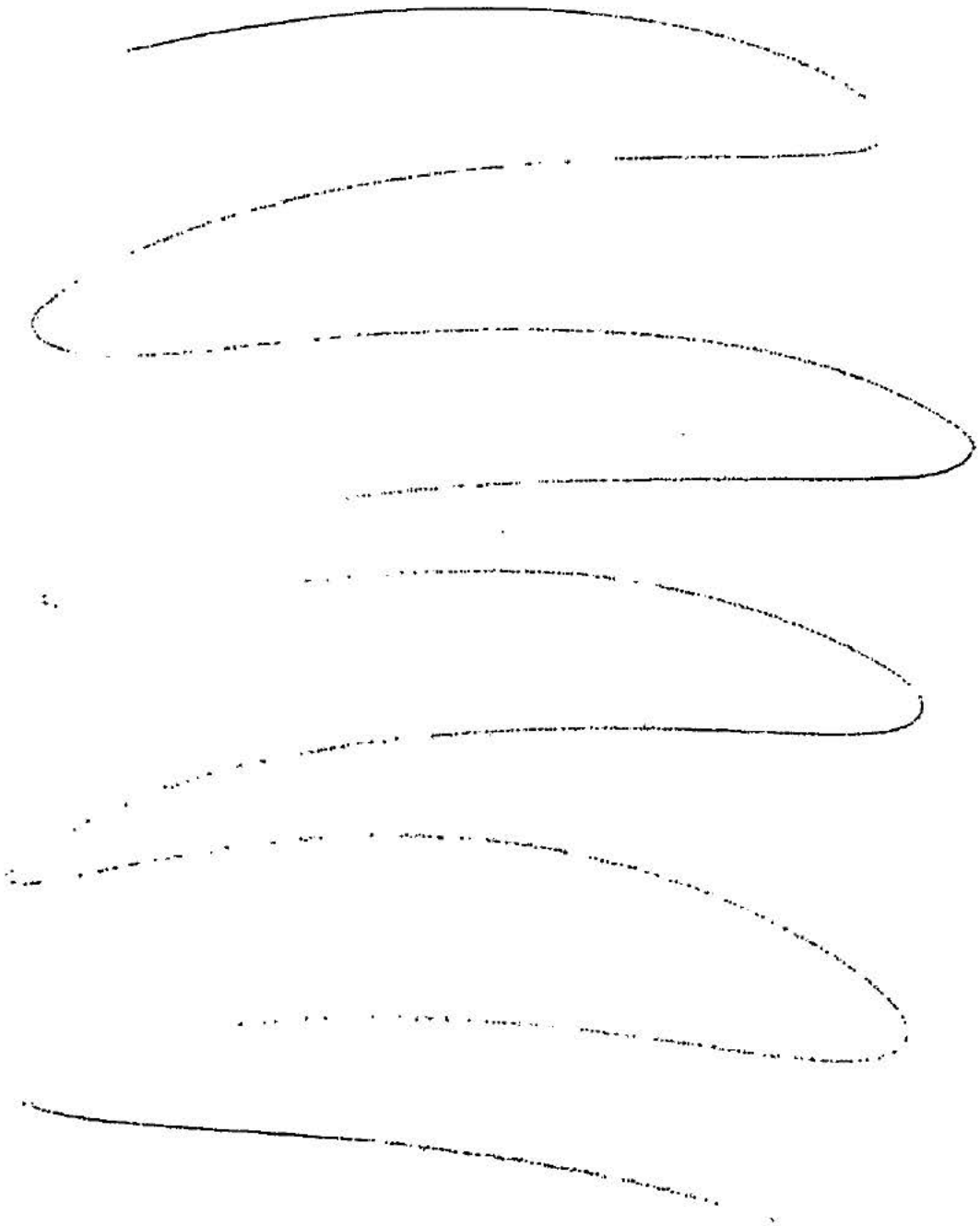
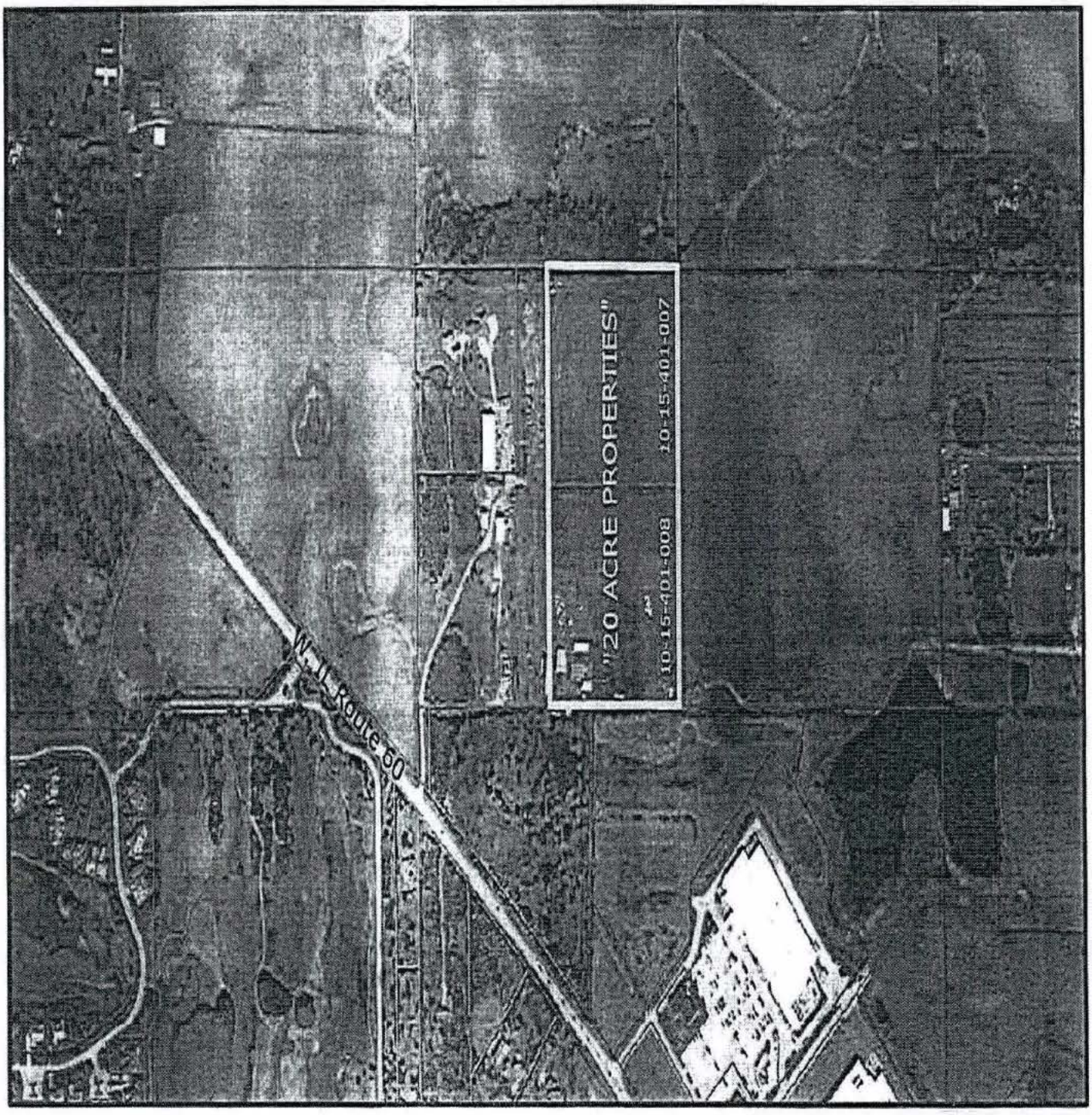


EXHIBIT C



Legend

"20 ACRE PROPERTIES" — PARCEL LINES

PINS

10-15-401-007

10-15-401-008

AFTER RECORDING RETURN TO:

Community Development
Village of Mundelein
300 Plaza Circle
Mundelein, Illinois 60060

Image# 058520450029 Type: AMD
Recorded: 08/21/2019 at 04:24:29 PM
Receipt#: 2019-00042695
Page 1 of 29
Fees: $50.00
IL Rental Housing Fund: $0.00
Lake County IL Recorder
Mary Ellen Vanderventer Recorder
File 7586286

THIS SPACE RESERVED FOR RECORDER'S USE ONLY

AMENDMENT TO ANNEXATION AND DEVELOPMENT AGREEMENT HABDAB, LLC

BETWEEN

VILLAGE OF MUNDELEIN AN ILLINOIS MUNICIPAL CORPORATION

AND

HABDAB, LLC (30200 North Midlothian Road, Mundelein, IL PIN No. 10-12-300-036)

DATED AS OF July 22, 2019

EXHIBIT 4

29

AMENDMENT TO
ANNEXATION and DEVELOPMENT AGREEMENT
by and between
THE VILLAGE OF MUNDELEIN
and
HABDAB, LLC

I. INTRODUCTION

This Amendment ("Amendment") to that Annexation and Development Agreement by and between the Village of Mundelein ("Village") and HABDAB, LLC ("Owner") (the "Agreement") dated September 10, 2018 is made and entered into this 22nd day of July, 2019. The Village and the Owner are together referred to herein as the "Parties."

II. RECITALS

WITNESSETH:

WHEREAS, pursuant to the Agreement, the Village annexed a 6.6 acre parcel defined as the "Subject Property", as legally described and depicted in **Exhibit A**, and provided for various matters in connection with the Subject Property; and

WHEREAS, the Owner also holds fee simple title to certain property that Owner wishes to develop within the Village, such property consisting of 10.03 acres, commonly known as 30200 North Midlothian Road, assigned PIN 10-12-300-036 and which is legally described and depicted in **Exhibit B** attached hereto and made a part hereof (the "Ten Acre Parcel"); and

WHEREAS, the Subject Property and the Ten Acre Parcel are together referred to as the "Combined Parcels;" and

WHEREAS, it is the desire of the Parties to amend the Agreement to provide for the annexation, zoning and development of the Ten Acre Parcel in accordance with the terms of this Amendment and in accordance with the ordinances of the Village; and

WHEREAS, Village and Owner have or will perform and execute all acts required by law to effectuate such annexation and zoning and development of the Ten Acre Parcel; and

WHEREAS, the Ten Acre Parcel is situated in the unincorporated area of Lake County and is contiguous to the incorporated territory of the Village; and

WHEREAS, Owner and the Village have executed all petitions and other documents and timely served all notices that are necessary to accomplish the annexation of the Ten Acre Parcel to the Village; and

WHEREAS, In accordance with the powers granted to the Village by the provisions of the Illinois

Compiled Statutes, 65 ILCS 5/11-15.1-1 through 5/11-15.1-5, inclusive relating to amendments of annexation agreements, the Parties hereto wish to enter into a binding agreement with respect to the annexation of the Ten Acre Parcel to the Village and to provide for various other matters related thereto; and

NOW, THEREFORE, In consideration of the mutual covenants, agreements and conditions herein contained, and by authority of and in accordance with the aforesaid statutes of the State of Illinois, the Parties hereto agree as follows:

III. ANNEXATION

A. Owner has filed with the Clerk of the Village a duly executed petition pursuant to and in accordance with the provisions of 65 ILCS 5/7-1-8 of the Illinois Compiled Statutes, to annex the Ten Acre Parcel to the Village subject to the approval of this Amendment. It is expressly understood that this Amendment, in its entirety, together with the aforesaid Petition for Annexation, shall be null, void and of no force and effect unless the Ten Acre Parcel is zoned and classified as provided herein.

B. The Owner has filed with the Village Clerk a Plat of Annexation which contains an accurate map of the Ten Acre Parcel.

IV. ZONING AND PLATTING

A. Pursuant to Section 20.24.240 of the Village's Zoning Ordinance, contemporaneously with annexation, the Ten Acre Parcel will automatically be classified in the R-1 Single Family Residential Zoning District.

B. Further, the Village agrees that the Ten Acre Parcel shall be developed in substantial compliance with the plans and documents submitted to the Village by Owner and listed as follows:

1. Engineering documents from Eriksson Engineering Associates, Ltd., consisting of sheet C000 (Title Sheet dated April 24, 2019 with a latest revision date of June 5, 2019); C001 (General Notes dated April 24, 2019 with a latest revision date of June 5, 2019); C100 (Site Utility Plan dated April 24, 2019, with a latest revision date of May 6, 2019); C200 (Grading and Paving Plan dated April 24, 2019 with a latest revision date of June 5, 2019); C300 (Soil Erosion and Sediment Control Plan dated April 24, 2019 with a latest revision date of June 5, 2019); and C400 (Site Work Details dated April 24, 2019 with a latest revision date of June 5, 2019) (collectively, the "Engineering Plans for the Ten Acre Parcel"); and

2. Landscape plan prepared by Eriksson Engineering Associates, Ltd., dated June 11, 2018, with a latest revision date of September 4, 2018, subject to review and approval by the Village; (the "Landscape Plan for the Ten Acre Parcel").
The Parties agree that the Engineering Plans for the Ten Acre Parcel shall incorporate the Village's reasonably requested final engineering comments to same.

The "Engineering Plans", as defined in the Agreement, as well as the "Landscape plan" referenced in paragraph IV(B) of the Agreement, along with the "Engineering Plans for the Ten Acre Parcel" and the "Landscape Plan for the Ten Acre Parcel" are collectively referred to herein as the "Plans for the Combined Parcels." The soil placed on the Combined Parcels are referred to herein as the "Improvements," while landscaping provided for in the Plans for the Combined Parcels is referred to herein as the "Landscaping".

V. PERFORMANCE AND COMPLETION

A. The Owner agrees to obtain a bond in favor of the Village and deliver said performance bond prior to the issuance of any permits relating to the Improvements for the Combined Parcels to ensure the following being completed no later than December 31, 2025:

1. The Improvements deposited on the Combined Parcels are completed in accordance with this Amendment and the Agreement, including but not limited to grading in accordance with the Plans for the Combined Parcels and having a soil bearing capacity and meeting the compaction requirements as set forth in subparagraph V(C)(4), herein, and

2. The Combined Parcels have been stabilized, including the completion of Landscaping, hydroseeding and installation of stormwater facilities in accordance with the Plans for the Combined parcels ("Stabilization").

The bond must be substantially in the form attached hereto as **Exhibit C**. The Owner must cause the Improvements on the Combined Parcels to be completed no later than December 31, 2025.

B. The conformity of the Improvements and the Stabilization of the Combined Parcels to the Plans for the Combined Parcels will be deemed to have occurred by passage of a final inspection and approval of the Combined Parcels by the Village, which may be initiated by (i) written notice from Owner to the Village requesting an inspection of the Improvements; or (ii) written notice from the Village to the Owner at least twenty-four (24) hours in advance that an inspection will take place of the Combined Parcels to verify the conformity of the Improvements to the Plans for the Combined Parcels and completion of the Stabilization ("Completion"). If the Improvements do not conform to the Plans for the Combined Parcels by December 31, 2025, the Village shall have the right, in its sole discretion, and without the obligation, to make one or more claims upon such

bond, and the proceeds from the bond received by the Village shall be utilized for conforming the Improvements to the Plans for the Combined Parcels, the Agreement and this Amendment, and completion of the Stabilization.
Every six months, while soil is being deposited on the Combined Parcels, the Owner shall provide certified documentation, signed and notarized by an authorized agent of the Owner, based on his or her personal knowledge, to the Village, which shall contain a representation that they are complete and accurate, setting forth the approximate amount of clean soil placed on the Combined Parcels for the previous six-month period, that the operator of each vehicle depositing soil on the Combined Parcels has entered into a clean fill agreement, the approximate location of same on a map of the Combined Parcels, and a representation to the Village that such additional soil has been graded in accordance with the Plans for the Combined Parcels.

C. The Parties agree that:

1. The Owner may also cause to be constructed a berm on the Combined Parcels in accordance with the Plans for the Combined Parcels subject to the construction of such berm only occurring on weekdays from 7:00 a.m. to 6:00 p.m. Upon request by the Owner, in the sole discretion of the Village, the Village may allow, in writing from the Building Director, the hours of such construction to be extended a maximum of 2 hours and for a specified period of time. In addition, the Owner may perform construction activities on no more than twenty-five (25) Saturdays during each calendar year between the hours of 8:00 a.m. and 1:00 p.m.

2. The Owner shall a) sweep Winchester Road from time to time as well as those times reasonably requested by the Village to eliminate dirt and/or debris tracked onto Winchester Road from the Combined Parcels and b) set aside a specific area on the Subject Property for the removal of mud from trucks exiting the Subject Property prior to their proceeding onto public right of way.

3. The Owner shall utilize an inspection and ticketing system as part of the acceptance of soils on the Combined Parcels.

4. The Owner shall cause the soil fill area on the Combined Parcels, as shown on the Plans for the Combined Parcels, to result in a soil bearing capacity of 3,000 psf. This shall be accomplished on an ongoing basis for each portion of the Combined Parcels, on a phase by phase basis, as soil is brought onto the Combined Parcels. The Owner shall deposit soils on the Combined Parcels in a reasonably compact, contiguous area, on a phase by phase basis, in accordance with the criteria set forth in the Plans for the Combined Parcels, the Agreement and this Amendment. The berm on the Combined Parcels shall be compacted by the Owner to 85% proctor density no later than December 31, 2025 notwithstanding any other provision herein. The parties agree that a typical cross section of the completed fill on the Combined Parcels shall conform to page C400 in the Engineering Plans (for the Subject Property) and page C500 of the Engineering Plans

for the Ten Acre Parcel. The Owner has obtained a General National Pollutant Discharge Elimination System (NPDES) Permit for the proposed activities on the Combined Parcels. The approved soil erosion and sediment control plan created pursuant to the requirements of the WDO must fulfill the plan requirements in the NPDES permit.

5. In addition, each operator of any truck bringing soil to the Combined Parcels shall legibly execute a clean fill agreement in the form attached hereto as **Exhibit D** and the Owner shall cause each truck to be tested by a petroleum sniffer to check soil loads for petroleum contamination. During each 18-month interval while soil is being placed on any portion of the Combined Parcels, the Owner shall propose to the Village proposed locations of three soil borings on the Combined Parcels in the location where soil has been most recently deposited. The Village may accept such proposed location or in its sole discretion elect to have the Owner complete three soil borings elsewhere on the Combined Parcels. The Owner shall cause completion of such soil borings tests at a location determined by the Village at the Owner's cost and which shall promptly be provided to the Village. Such borings must reflect that the soil compaction meets 80% of the soil bearing capacity at the time of such soil boring as required in subparagraph V(C)(4), and must meet the soil bearing capacity in full, in accordance with subparagraph V(C)(4), no later than December 31, 2025.

6. Unless otherwise approved by the Village, all vehicles entering and exiting the Ten Acre Parcel must do so to and from the Subject Property and from the west on Winchester Road in accordance with the driving route set forth in Engineering Plans. The Owner shall cause a sign, to be approved by the Village, to be installed on the Subject Property providing that vehicles may only enter and depart from the Subject Property to and from the west.

7. The only construction that may occur on the Ten Acre Parcel must be in accordance with the Engineering Plans and only after approval by the Village.

8. The Village agrees that the installation of the berm on the Ten Acre Parcel in accordance with the Engineering Plans is permitted within the R-1 Zoning District.

9. The Owner will comply with the design plan for grading set forth in Engineering Plans to eliminate the tracking of soil or other debris onto public rights of way.

10. The Owner will obtain from the Lake County Division of Transportation such approval of access unto Winchester Road if such approval is required under the applicable Lake County ordinance.

11. The Improvements, once commenced, in accordance with the Plans for the Combined Parcels must be completed by the Owner no later than December 31, 2025. Time is of the essence.

12. . The Owner shall remove mud from trucks before they exit the Combined Parcels to mitigate the tracking of mud onto public roads. The Owner shall cause all operation on the Ten Acre Parcel to conform and adhere to the dust control measures.

VI. INITIAL CONSTRUCTION

A. Upon payment of the fees listed in subparagraphs C of Section VII. and issuance of a Village of Mundelein Building Permit, mass grading, excavation, storm water retention and detention related to the construction of improvements on the Ten Acre Parcel may proceed at Owner's sole risk in accordance with Section IV, ZONING AND PLATTING; SECTION V, PERFORMANCE AND COMPLETION; and paragraph B of Section XIV, INSURANCE, provided that the final erosion control plan has been approved by the Village Engineer, the detailed improvement plans and specifications have been submitted to the Village Engineer and the Village Engineer has given approval to the portion of the plans relating to grading and all erosion and siltation control measures shown on the plans or required by the Village Engineer are in place.

B. Construction may proceed on the Ten Acre Parcel upon

1. Payment of all fees outlined in subparagraphs C in Section VII;

2. After all local, state and federal permits have been issued;

3. After receipt by the Village the performance bond described in Paragraph V, and

4. After the Village approval of all the final plan submittals and the fulfillment of all other requirements set forth in this Agreement.

C. To the extent streams, floodplain or wetlands exist on the Ten Acre Parcel, no grading shall be undertaken until the required local, state and federal permits, if needed, have been filed and approved with the Village Engineer and approved by all appropriate agencies and all wetland mitigation fees have been paid.

VII. IMPACT FEES, DONATIONS AND OTHER FEES

A. Village Impact Fees: The Owner must pay all of the following impact fees (the "Impact Fees") upon the earliest of any of the following "redevelopment events" with respect to the Ten Acre Parcel occurring:

1. All or a portion of the Ten Acre Parcel is rezoned by the Village from the R-1 Zoning District to another zoning district within the Village; or

2. A special use permit or a final planned unit development is approved for all or any portion of the Ten Acre Parcel; or

3. All or any portion of the Ten Acre Parcel is the subject of a final plat of subdivision approved by the Village; or

4. All or any portion of the Ten Acre Parcel is utilized in a materially different manner than the Subject Property is being used as approved in this Agreement.

The Impact Fees for the Ten Acre Parcel as of the date of this Agreement are as follows and are based on the existing uses of the Ten Acre Parcel; however, upon any "redevelopment event" as defined in subparagraph A of Article VI, IMPACT FEES, DONATIONS AND OTHER FEES of the Agreement, Owner shall pay all impact fees in accordance with the rates and fees established by Village ordinance at the time of said "redevelopment event" and shall be based upon the proposed use of the Ten Acre Parcel:

Fee	Per Acre (10.03)	Amount
Annexation	$4,110	$41,100
Capital Development	$2,835	$28,350
Sewer Add & Exp	$4,500 ¾" meter	$4,500
Water Add & Exp	$500 ¾" meter	$500
Transportation	$4,385	$43,850
Stormwater	$2,525	$25,250
Tree Replacement	$0	$0
Downtown Fee	$1,000	$10,000
TOTAL	**$19,855**	**$153,550**

The Impact Fees shall be paid in addition to all other fees payable hereunder and all other fees which are customarily and generally applicable throughout the Village (including, but not limited to, building permit fees, occupancy permit fees, sewer and water connection fees, building plan review and inspection fees, engineering plan review and inspection fees, and other consultant's fees) as established from time to time by the Village.

8. In addition, the Owner shall present to the Village, no later than October 30, 2020, a proposed term sheet for the annexation of the "Roppelt/Schaul Properties" and the "Forty-Acre Beelow Properties" which parcels are currently assigned property index numbers of 10-15-401-007, 10-15-401-008, 10-15-401-001 and 10-15-401-055 and are depicted in **Exhibit E**. Thereafter, the Owner agrees to use its best efforts to enter into mutually acceptable annexation agreements with the Village no later than December 31, 2021 for the annexation of the "Roppelt/Schaul Properties" and the "Forty-Acre Beelow Properties", as defined above. In the event that each such annexation agreement for each of the "Roppelt/Schaul Properties and the "Forty-Acre Beelow Properties" as defined above is not entered into by December 31, 2021 by and between the Owner (or the owner of record of the Roppelt/Schaul Properties and the Forty-Acre Beelow

Properties) and the Village, the Owner shall pay the Village its consultant fees incurred relative to the annexation of the Subject Property to the Village and the Agreement but not to exceed $10,000 as well as the consultant and attorney fees incurred by the Village in connection with the annexation of the Ten Acre Parcel and this Amendment but not to exceed $10,000. The Village may extend the date for the Village and the Owner to enter into such annexation agreements for the "Roppelt/Schaul Properties and/or the "Forty-Acre Beelow Properties" in its sole discretion without conducting a public hearing to amend the Agreement and Amendment.

C. Fire Protection Fee: Owner shall reimburse the Village in the amount of $67.40 which represents the amount due from the Village to the Grayslake Fire Protection District for the fire protection property taxes on the Ten Acre Parcel as provided in Public Act 91-0307. Said amount represents the five years of taxes as anticipated under said Act and shall be paid by the Owner within 30 days of the effective date of this Agreement.

D. School, Park and Library Donations: No school, park or library donations shall be required to be paid by the Owner unless the Ten Acre Parcel is re-zoned or utilized for some form of residential use, at which time school, park and library impact fees may be required pursuant to Village ordinances.

E. Engineering and Other Consultants' Fees/Litigation Expense: Subject to subparagraph B of this Section VII, Owner agrees to reimburse the Village for all engineering, legal and other consultant fees in accordance with the provisions of Village Ordinance No. 06-07-63.

F. The Owner and its successors and assigns shall be obligated to pay all water and sanitary sewer system connection fees in accordance with the Village ordinances in effect at the time they connect to the Village's water and sanitary sewer system pursuant to Section VII. of this Amendment. Upon payment of same by the Owner or its successors or assigns, physical connections shall be allowed.

G. Option to Acquire the Combined Parcels. The Village is hereby granted the option, for no additional consideration besides entering into this Amendment, to acquire fee simple title to all or any portion of the Combined Parcels, and may be at the Owner's option at the time of Village Acquisition exclusive of the three acre portion of the Combined Parcels surrounding the barn thereon as depicted in **Exhibit F** hereto, 180 days after i) receipt of notice by the Village by Federal Express or other overnight service sent by the Owner, directed to the attention of the Administrator of the Village, notwithstanding any other provision which is inconsistent or contrary, that the Improvements and Stabilization have been completed in accordance with the Plans for the Combined Parcels or ii) December 31, 2025 – whichever is earlier. At the time that the Owner sends such notice, or December 31, 2025, whichever occurs first, the Owner shall pay the Village $45,000. The Village shall use the $45,000 for investigation and testing of the Combined Parcels. To the extent that funds remain after such testing and investigation by the Village is

completed, the remaining funds shall be returned to the Owner. The Village, its contractors and consultants, or the entity to whom it may assign this option, along with its contractors and consultants, shall have the right, without the obligation, upon reasonable notice to Owner, to access and inspect the Combined Parcels and to conduct any testing of any portion of the Combined Parcels in order to determine the environmental condition of the Combined Parcels or for any other investigative purposes. The Owner agrees to cooperate in connection with such investigation and provide any and all documentation it may have associated with the Combined Parcels in order for the Village or the entity that it may assign this option, its consultants or contractors, to ascertain the environmental or other condition of the Combined Parcels. If the Village exercises such option, within 30 days of written notification by the Village to the Owner of its choosing to exercise such option, the Owner shall convey fee simple title to said Combined Parcels to the Village through a warranty deed not subject to any conditions or restrictions of record except real estate taxes due and payable arising after the date of transfer and such other exceptions that are acceptable to the Village, in its sole discretion. The Owner shall execute such additional documentation reasonably requested by the Village to accomplish such transfer and to obtain a title insurance policy free and clear of all exceptions except real estate taxes due and owing after the date of transfer and such other exceptions that are acceptable to the Village as determined by the Village, in its sole discretion. The Owner shall be responsible for payment for all property taxes arising for the time prior to the transfer of title of the Combined Parcels. Such option shall be at no cost for the Village (besides the consideration of entering into the Agreement and the Amendment, which the Parties agree is sufficient.

The Parties agree that the Village may assign the option described above.

H. No Other Fees or Donations: Except as otherwise provided herein, Owner shall not be required by the Village to pay any other fees or to donate any land or money or make any other contributions to the Village or any other governmental agency.

VIII. SITE IMPROVEMENTS

A. Should the Ten Acre Parcel undergo a "redevelopment event" as defined in subparagraph A of Article VII, IMPACT FEES, DONATIONS AND OTHER FEES of the Agreement, the following site improvement requirements, in accordance with Title 19 SUBDIVISIONS of the Mundelein, Illinois Municipal Code, shall apply.

1. On-Site Public Improvements: Owner shall be responsible for the construction and installation of those public improvements and utilities consisting of storm sewers, sanitary sewers, water mains, streets and appurtenant structures as are needed to adequately service the Ten Acre Parcel and to have facilities available for the use of adjacent properties in accordance with applicable Village ordinances and requirements.

2. Roadways, Right-of-Way and Pavement Width: Owner shall construct all streets and other public improvements in accordance with applicable Village ordinances and the Engineering Plans.

3. Subsurface Utilities: All new utilities to be installed in conjunction with development of the Ten Acre Parcel, both offsite and onsite, to include storm sewers, water mains, electric, gas, telephone, and cable television shall be installed underground.

4. Off-Site Public Improvements: Owner shall be responsible for the construction and installation of those public improvements and utilities consisting of storm sewers, water mains, wastewater sewers, streets and appurtenant structures described on the plans, approved by the Village, to adequately service the Ten Acre Parcel.

B. Water and Sewer Connections: Village agrees to defer the requirement that the Ten Acre Parcel be connected to the Village's water and sewer system until the earliest of the following events to occur: a) at the time the Ten Acre Parcel undergoes a "redevelopment event" as defined in subparagraph A of Article VII, IMPACT FEES, DONATIONS AND OTHER FEES of the Agreement or b) a change in the use of the Ten Acre Parcel, provided that the installation of the berm on the Ten Acre Parcel shall not be considered a change of use.

1. Wastewater Treatment: In accordance with Title 19 SUBDIVISIONS of the Mundelein, Illinois Municipal Code and subparagraph B of Article VII, SITE IMPROVEMENTS, upon completion of the site facilities as contemplated under the terms of this Agreement and after payment of all necessary tap on fees and subject to restrictions that may apply generally to all developers within the Village on a "first come, first served basis" with all other property within the Village or hereafter annexed to the Village and subject to Illinois Environmental Protection Agency permits, the Village will allow the Owner to apply for sanitary sewer permits to serve the proposed development on the Ten Acre Parcel.

2. Water Supply: In accordance with Title 19 SUBDIVISIONS of the Mundelein, Illinois Municipal Code and subparagraph B of Article VIII, SITE IMPROVEMENTS, the Village has a fully functional potable water supply system to serve the proposed development of the Ten Acre Parcel, subject to restrictions that may apply generally to all developers within the Village, on a "first come, first served basis" with all other property within the Village or hereafter annexed to the Village.

C. Easements and Access: The Village shall, upon the request of Owner, grant to utility companies providing utilities to any portion of the Ten Acre Parcel (as well as the Subject Property), such construction easements and utility easements over, under, across or through property owned or controlled by the Village as are necessary or appropriate for the development of the Ten Acre Parcel (as well as the Subject Property) in accordance with the provisions of the Agreement, the development plan or any approved plans. The Village reserves the right to review and approve the type and other possible options

relating to above grade utility equipment for maintenance and aesthetic, unobtrusive purposes. Owner agrees to cooperate with the Village to reasonably see that the most aesthetic equipment offered by the utility companies is used. Owner agrees to grant to the Village easements on the Ten Acre Parcel required from time to time for utility purposes, including access and maintenance thereof, at locations mutually satisfactory to the Village and Owner.

D. Off Site Streets and Construction Traffic: Owner shall be responsible for the repair of any damage to any Village street or road resulting from Owner's development and construction activities on, the Ten Acre Parcel.

IX. BUILDING AND OCCUPANCY PERMITS

A. Building Permits: The Village shall issue building permits for which Owner or any other party who has the right to apply for building permits ("Building Permit Applicant") applies within a reasonable time after all final plans, including final engineering, are approved, signed and recorded. If an application is disapproved, the Village shall provide Building Permit Applicant with a statement in writing specifying the reasons for denial of the application, including a specification of the requirements of law which the application and supporting documents fail to meet. Such statement may consist in whole or in part of legible and understandable notations on building plans. The Village shall thereafter issue such building permits upon Building Permit Applicant's compliance with those requirements of law specified by the Village so long as the application and supporting documents comply with all other requirements of the Village.

B. Occupancy Permits: The Village shall issue certificates of occupancy for any building constructed on the Ten Acre Parcel within a reasonable time following its receipt of the last of the documents or information required to support such application. If an application is disapproved, the Village shall provide Owner, tenant of the building or any other party who has the right to apply for certificate of occupancy ("Certificate Applicant") with a statement in writing specifying the reasons for denial of applications, including specification of the requirements of law which the application and supporting documents fail to meet. The Village shall issue such certificates of occupancy upon Certificate Applicant's compliance with those requirements of law specified by the Village.

C. Rental Registration: In accordance with Chapter 16.44 of the Mundelein, Illinois Municipal Code, rental registration is required for all rental housing units on the Ten Acre Parcel.

X. VILLAGE ORDINANCES

Compliance: Except as otherwise provided herein, Owner shall be subject to and comply with all of the provisions of the Village's Zoning Ordinance, the Stormwater Control Ordinance, the 2015 International Building Code, as amended by the Village, the 2014 National Electric Code, as amended by the Village, the 2014 State of Illinois Plumbing Code, as amended by the Village, the

2015 International Fire Prevention Code, as amended by the Village, the Stormwater Control Ordinance and all other applicable ordinances, codes, rules and regulations in effect from time to time, including, without limitation the payment of all fees, charges, expenses, and costs provided for therein. Also, to the extent applicable, Owner shall comply with the requirements of all other governmental agencies.

XI. STORMWATER MANAGEMENT

Owner shall provide stormwater detention/retention for the development of the Ten Acre Parcel in compliance with: (i) the Lake County Stormwater Management Commission criteria and Village Ordinance No. 94-8-35 (Stormwater Watershed Development Ordinance), as amended; and (ii) any applicable requirements of the U.S. Army Corps of Engineers and the Illinois Department of Water Resources. In conjunction with its submission to the Village of final engineering plans, Owner shall submit to the Village Engineer an analysis of the development's impact on stormwater drainage on downstream properties. Also, to the extent applicable, Owner shall comply with the requirements of all other governmental agencies.

XII. GENERAL PROVISIONS

A. Time of Essence/Cooperation of Parties: Time is of the essence of this Amendment and of each and every provision hereof. The Parties shall cooperate with one another on an ongoing basis and make every reasonable effort (including, with respect to the Village, the calling of special meetings, the holding of additional public hearings and the adoption of ordinances) to further the implementation of the provisions of this Amendment and the intentions of the Parties as reflected by the provisions of this Amendment. Specifically, but without limitation, in connection with Owner's performance of its obligations under this Amendment, the Village agrees to execute such applications and documents as may be necessary to obtain approvals and authorizations from other governmental or administrative agencies and to cooperate otherwise to the extent necessary to assure Owner's performance of those obligations.

B. Use of Capitalized Terms: Any capitalized terms utilized in this Amendment shall have the same meaning as those capitalized terms set forth in the Agreement.

C. Conflict with Ordinances: If any pertinent existing resolutions or ordinances, or interpretations thereof, of the Village are inconsistent or in conflict with any provision hereof, then the provisions of this Amendment and the ordinances passed pursuant hereto shall constitute lawful and binding amendments to, and shall supersede the terms of said inconsistent ordinances or resolutions, or interpretations thereof, as they may relate to the Ten Acre Parcel.

D. Term: This Agreement shall be binding upon and inure to the benefit of the Parties, the successors to the Owner, and any successor municipal authorities of the Village and successor municipalities, for a period of twenty (20) years commencing with the Effective

Date of this Amendment to Agreement and for whatever additional period of time agreed to by the Parties in writing. In the event the zoning of the Subject Property or the execution and delivery of this Amendment to Agreement is challenged either directly or indirectly in any court proceeding which shall delay construction on the Subject Property, the period of time during which such litigation is pending, to the extent permitted by law, shall not be included in calculating such twenty (20) year term.

E. Assignability: This Amendment shall run with the land and, as such, shall be binding upon subsequent owners of the Ten Acre Parcel, or any portion thereof; provided, however, that Owner shall not assign its rights or delegate its duties hereunder and such rights shall not inure to subsequent owners of the Ten Acre Parcel, unless the Village provides its prior written express consent of the proposed assignee of such rights which consent shall not be unreasonably withheld. If the Owner desires the Village approve an assignment it shall make such request to the Village in writing, which request shall identify the proposed assignee, and the Owner shall provide the Village with all information reasonably requested by the Village with respect to the proposed assignee's qualifications.

F. Severability: If any provision of this Amendment is held invalid, such provision shall be deemed to be removed therefrom and the invalidity thereof shall not affect any of the other provisions contained herein.

G. Effect of Amendment: Each of the Owner and the Village understand, acknowledge and agree that i) this Amendment supersedes and modifies the Agreement only as to the specific provisions and text set forth herein and ii) the Agreement shall continue to be in full force and effect to the extent not expressly superseded hereby.

H. Controlling Document. In the event that there is any inconsistency or ambiguity regarding any provision in the Agreement or this Amendment, the provision in this Amendment shall control, govern and prevail.

XIII. INDEMNIFICATION AND ASSUMPTION OF ALL RISKS BY OWNER

A. The Village shall not at any time be liable for injury or property damage occurring to any person or property from any cause whatsoever arising out of the construction, activities or any other use of any portion of the Ten Acre Parcel by the Owner, its affiliates, employees, agents, contractors, tenants or invitees.

B. The Owner hereby agrees to indemnify and hold harmless the Village from and against any claim asserted or liability imposed upon the Village for bodily injury or property damage to any person or property arising out of the operation or use of the Ten Acre Parcel by the Owner, its affiliates, employees, invitees, tenants or contractors.

XIV. INSURANCE

A. The Owner shall procure and maintain for the duration of this Amendment insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Owner's, its affiliates', agents', employees', invitees', tenants' or contractors' operation and/or use of the Ten Acre Parcel. The cost of such insurance shall be borne by the Owner. Coverage shall include, but shall not be limited to the following:

1. Commercial General Liability Coverage;

2. Workers' Compensation Insurance as required by state statute and Employers Liability Insurance;

3. Owner shall maintain limits of:

a) Commercial General Liability: $3,000,000.00 per occurrence for bodily injury (including death) and property damage and $3,000,000 general aggregate including personal and advertising injury;

b) Workers' Compensation and Employers Liability: Workers Compensation limits as required by state statute and Employers Liability limits of $1,000,000.00 each accident and $1,000,000.00 disease each employee, $1,000,000 disease-policy limit;

c) Commercial Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Owner on or about the Subject Property with limits of One Million Dollars ($1,000,000.00) combined single limit for each accident for bodily injury and property damage.

d) All policies other than those for Worker's Compensation and Employer's Liability shall be written on an occurrence and not on a claims-made basis.

e) The coverage amounts set forth above may be met by blanket policies so long as in combination the limits equal those stated.

f) All coverage required by this section shall be primary coverage exclusive of any insurance that the Owner might have or carry from time to time as relates to Owner's operations.

B. Prior to the Owner commencing construction of the berm or any other improvement on the Ten Acre Parcel, the Owner shall file with the Village the required original certificates of insurance naming the Village as the additional insured endorsements which shall clearly state all of the following:

1. The policy number, name of the insurance company, name and address of the agent or authorized representative, name and address of the insured, project name and address, policy expiration date, and specific coverage amounts; and

2. That the Owner's insurance is primary as respects any other valid or collectable insurance that the Village may possess, including any self-assured retention that the Village may have; and

3. Any insurance that the Village possesses shall be considered excess only and shall not be required to contribute with the Owner's insurance as relates to the Owner's operations. Any certificates of insurance required by this Agreement shall be filed and maintained with the Village annually during the term of the Agreement. The Owner shall promptly advise the Village of any claims or litigation that may result in the liability to the Village.

4. The Owner's insurance coverage shall be primary with respect to the Village for claims caused by the Owner's negligence. In such instances, any insurance or self-insurance maintained by the Village shall be in addition to the Owner.

5. The Owner shall agree to waive all rights of subrogation against the Village from work performed by the Village, its contractors, agents or affiliates. Each insurance policy required by this clause shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been received by the Village.

6. Insurance is to be placed with insurers with a Best's rating of no less than A-, VII and licensed, authorized or permitted to do business in the State of Illinois.

7. On an annual basis, the Owner shall furnish the Village with certificates of insurance including additional insured endorsements evidencing coverage required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

8. The Owner, for so long as the Owner owns the Ten Acre Parcel, shall maintain insurance and submit a certificate of insurance to the Village on the anniversary date and each anniversary thereafter of this Agreement.

C. The Owner agrees to indemnify and save harmless the Village from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by the Owner under the terms of this Agreement.

D. The Owner shall require that each and every one of its contractors and their subcontractors and invitees who perform work on the Ten Acre Parcel carry, in full force and effect, substantially the same coverage as required of the Owner. During the

construction of improvements on the Ten Acre Parcel, the Owner shall require all of its contractors (if any) to include the Village as an additional insured. Proof that the general contractor has included the Village as an additional insured shall be submitted in conformance with the requirements of this section of this Agreement.

E. The Village is to be included as an additional insured as its interest may appear under this Agreement with respect to liability arising out of activities performed by the Owner, its employees, agents, contractors, invitees, tenants and affiliates.

XV. STOP WORK ORDER ON COMBINED PARCELS

In addition to any and all other rights of the Village, in the event that the Village sends notice to the Owner of a material breach of the Agreement or this Amendment by the Owner, and if such breach is not cured by the Owner within 20 days of the date that such notice is submitted by the Village to the Owner, the Village and Owner agree that the Village may issue a stop work order relating to the Combined Parcels and that, at the expiration of such 20-day interval, no additional soil may be brought in or placed on all or any portion of the Combined Parcels and that all operations of the Owner (exclusive of any obligation owed to the Village required to be performed by the Owner that can be accomplished with the soils previously placed on the Combined Parcels) shall cease and terminate until such breach by the Owner is cured.

[SIGNATURE PAGES FOLLOW]

Exhibits:

Exhibit A – Legal Description and Depiction of the Subject Property
Exhibit B – Legal Description and Depiction of Ten Acre Parcel
Exhibit C – Form of Bond
Exhibit D – Clean Fill Agreement
Exhibit E – Depiction of Roppelt/Schaul Properties and Forty Acre Beelow Properties
Exhibit F – Depiction of Three Acre Portion of Combined Parcels

IN WITNESS WHEREOF, the PARTIES hereto have executed this Amendment this 30TH day of JULY, 2019.

VILLAGE OF MUNDELEIN,
an Illinois municipal corporation

By: _____
Mayor Steve Lentz

Attest: _____
Village Clerk Sol C. Cabachuela

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

The foregoing instrument was acknowledged before me on JULY 30, 2019, by Steve Lentz, Mayor of the VILLAGE OF MUNDELEIN, an Illinois home rule municipal corporation, and by Sol C. Cabachuela, the Village Clerk of said municipal corporation. Given under my hand and official seal this 30TH day of JULY, 2019.

Ann M. Watson
Signature of Notary

SEAL

OFFICIAL SEAL
ANN M. WATSON
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires 4-24-22

My Commission expires: 4/24/22

OWNER:

HABDAB, LLC,
an Illinois limited liability company

By: _____
Daniel Beelow, its authorized agent and Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF Lake)

The foregoing instrument was acknowledged before me on July 29, 2019, by Daniel Beelow, Manager of HABDAB, LLC, which individual is known to me to be the identical person who signed the foregoing instrument as such representative of HABDAB, LLC for and on behalf of HABDAB, LLC, and that they executed the same as their free and voluntary act and deed, and as the free and voluntary act and deed of HABDAB, LLC, for the uses and purposes therein mentioned. Given under my hand and official seal this 29 day of July, 2019.

_____
Signature of Notary

SEAL

My Commission expires: 05/08/2020

OFFICIAL SEAL
CARRIE A COSTA
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:05/08/20

EXHIBIT A

LEGAL DESCRIPTION AND DEPICTION OF THE SUBJECT PROPERTY

THE WEST 630 FEET OF THAT PART OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 44 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF SAID SOUTHWEST QUARTER OF SECTION 12 AND THE NORTH LINE OF THE 40 FOOT RIGHT OF WAY OF WINCHESTER ROAD AS DESCRIBED IN DOCUMENT 1389464; THENCE NORTH 00 DEGREES 58 MINUTES 48 SECONDS WEST ALONG SAID WEST LINE, 425.62 FEET; THENCE NORTH 89 DEGREES 37 MINUTES 35 SECONDS EAST, 1255.30 FEET TO THE WEST 40 FOOT RIGHT OF WAY LINE OF MIDLOTHIAN ROAD; THENCE SOUTH 01 DEGREE 02 MINUTES 02 SECONDS EAST ALONG SAID WEST RIGHT OF WAY LINE, 518.35 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY ALONG A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 25 FEET, 41.95 ARC MEASURE TO A POINT TANGENT TO THE NORTHERLY RIGHT OF WAY LINE OF WINCHESTER ROAD; THENCE NORTH 84 DEGREES 53 MINUTES 46 SECONDS WEST, 1,235.03 FEET ALONG THE NORTHERLY RIGHT OF WAY TO THE POINT OF BEGINNING (EXCEPTING THEREFROM THAT PART OF THE LAND TAKEN FOR ROAD/HIGHWAY PURPOSES), ALL IN LAKE COUNTY, ILLINOIS; PIN 10-12-300-038.

EXHIBIT B

LEGAL DESCRIPTION AND DEPICTION OF THE TEN ACRE PARCEL

THAT PART OF THE WEST 630 FEET OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 44 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF A LINE DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE WEST LINE OF SAID SOUTHWEST QUARTER, 425.62 FEET NORTH OF THE NORTH RIGHT OF WAY LINE OF WINCHESTER ROAD; THENCE NORTH 89 DEGREES 37 MINUTES 35 SECONDS EAST, A DISTANCE OF 1255.30 FEET TO THE TERMINUS OF SAID LINE (EXCEPT THE NORTH 1207.52 FEET THEREOF), IN LAKE COUNTY, ILLINOIS. PIN 10-12-300-036

EXHIBIT C

FORM OF BOND

EXHIBIT D

CLEAN FILL AGREEMENT

CLEAN FILL AGREEMENT

Fax No: 847-566-5825

Customer Name: _____ Delivery Date: _____

Contact Name & Number: _____

Trucking Company (Transporter): _____

How many trucks will be dumping? _____ Approximate Number of Loads: _____

Truck Numbers Dumping for this job (if known): _____

Owner's Name, Address or Lot # and Subdivision _____

_____

Site and Previous Land Use _____
(Residential, Commercial, Industrial)

Environmental Assessment/ Analytical Yes _____ No _____

This agreement, made on _____, 20___, by and between the above-referenced Customer and B&B Project Management, Inc. ("B&BPMI") governs the conduct of the parties in connection with the deposit of Clean Fill Material by Customer at B&BPMI properties. In consideration of the performance by Customer hereunder, and other valuable consideration, B&BPMI agrees to permit Customer to deposit the above Clean Fill Material, strictly conforming to this contract, on its property.

Customer expressly warrants, represents and guarantees that the Clean Fill Material consists solely of uncontaminated soil generated during construction, remodeling, repair and demolition of utilities, structures and roads and is not commingled with any clean construction or demolition debris. Clean Fill Material does not consist of clean construction or demolition debris as that term is defined in the Illinois Environmental Protection Act. Customer understands that loads containing clean construction or demolition debris will be rejected by the Yard.

The warranties, representations and guarantees set forth herein shall survive and continue in full force and effect so long as said Clean Fill Material is present at the Yard.

Customer shall protect, hold harmless, defend and indemnify B&BPMI from all claims, penalties, fines, assessments, liabilities and expenses, including, but not limited to, reasonable attorney's fees and litigation expenses, monitoring, containment, restoration, removal, clean-up or other remedial costs, consultant fees and investigation fees which arise out of, are incidental to or connected with one or more of the following:

(a) any claim of contamination, death, injury or damage to persons or property or claim of breach of any requirement imposed by any state, federal or local governmental authority, whether judicial, administrative or legislative, arising out of, incidental to, or connected with Customer's acts, omissions or deposits of the material subject to this Clean Fill Agreement;
(b) any claim of a breach of any representation, warranty or certification made by Customer to B&BPMI;
(c) Customer's negligent or intentional acts, omissions and breaches of duty.

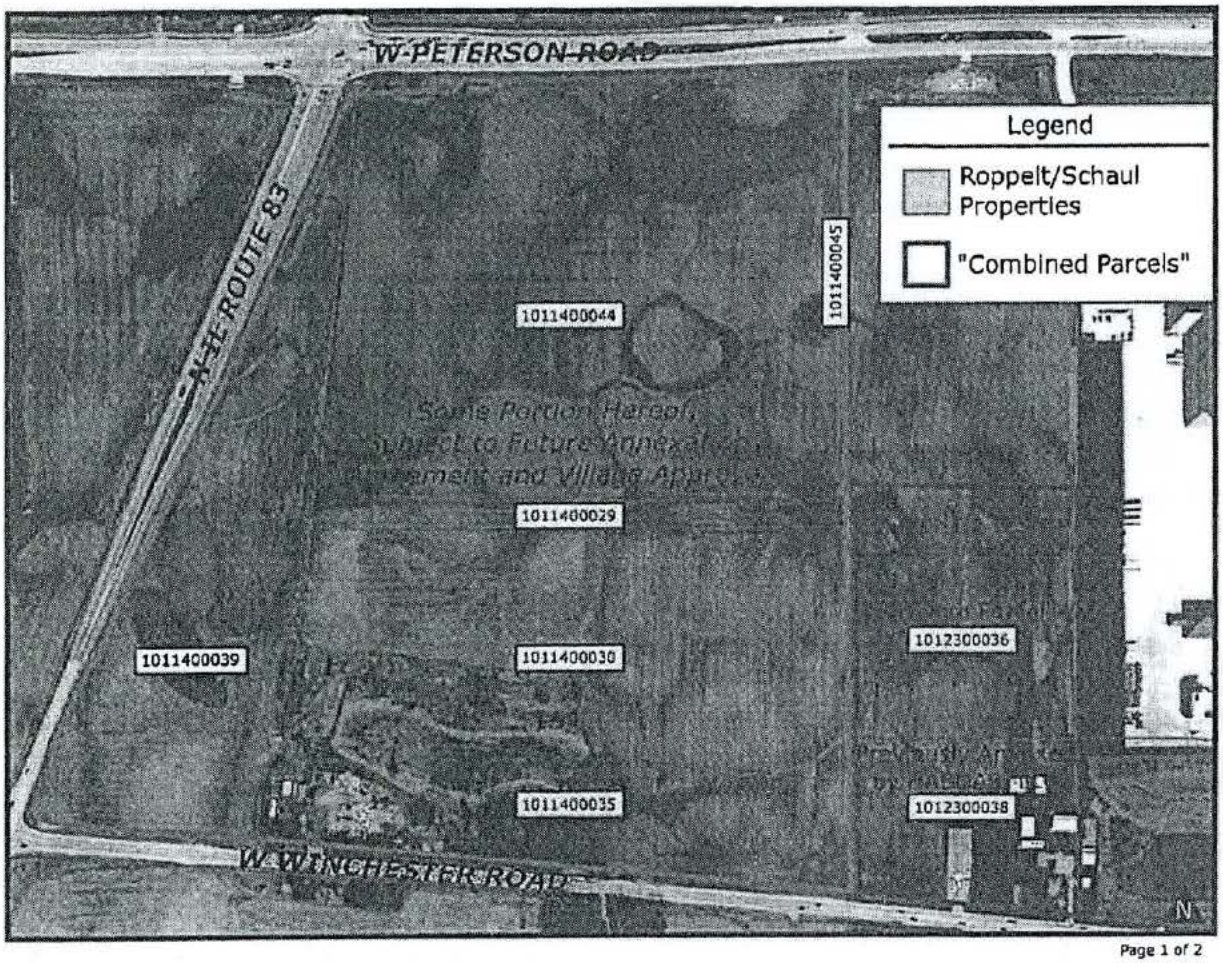
_____
CUSTOMER'S AUTHORIZED REPRESENTATIVE

_____
B&B PROJECT MANAGEMENT, INC
Daniel A. Beelow, President

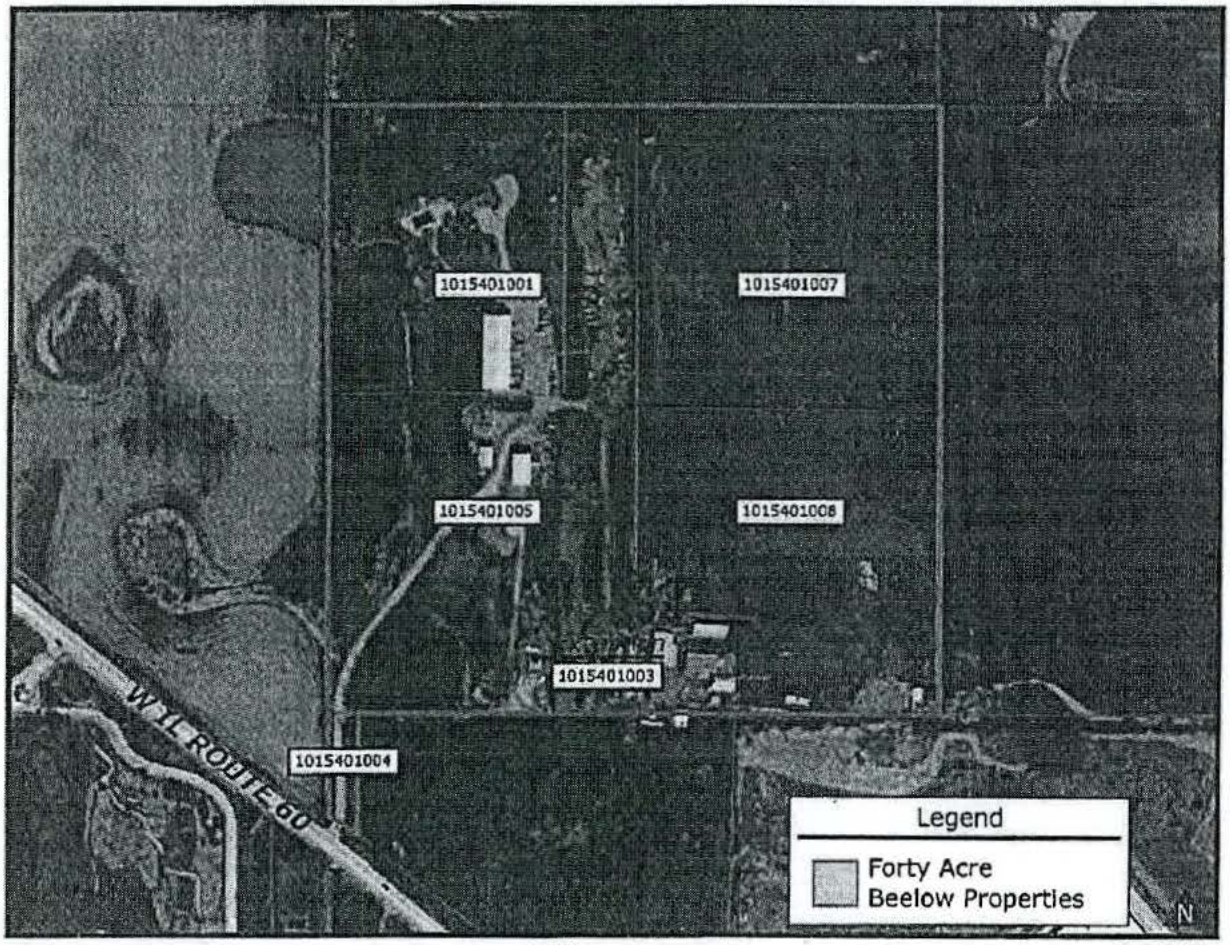
EXHIBIT E

DEPICTION OF ROPPELT/SCHAUL PROPERTIES AND FORTY ACRE BEELOW PROPERTIES

DEPICTION OF ROPPELT/SCHAUL PROPERTIES



DEPICTION OF FORTY ACRE BEELOW PROPERTIES

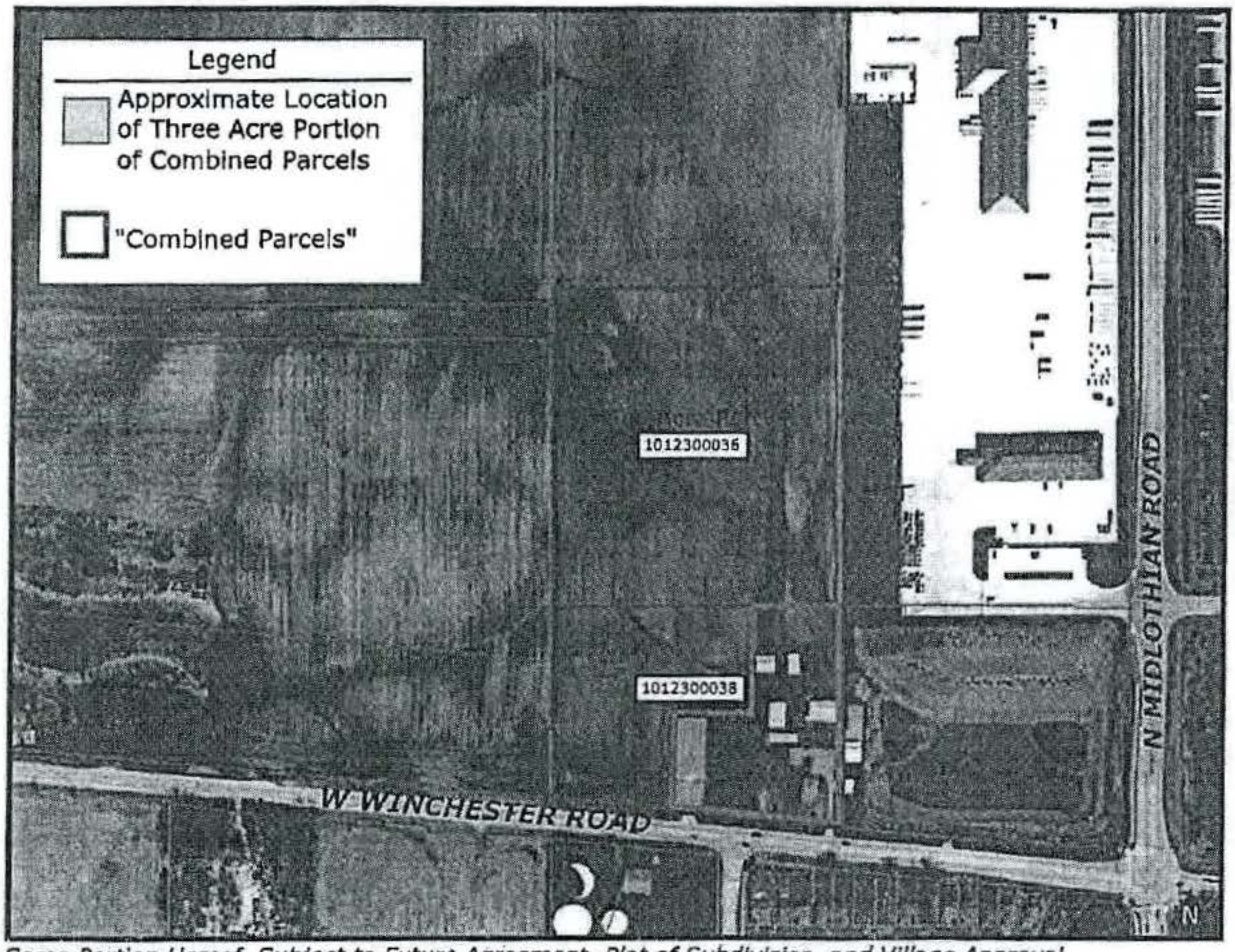


Subject to Future Annexation Agreement and Village Approval

EXHIBIT F

DEPICTION OF THREE ACRE PORTION OF COMBINED PARCELS

DEPICTION OF THREE ACRE PORTION OF COMBINED PARCELS



Some Portion Hereof, Subject to Future Agreement, Plat of Subdivision, and Village Approval

Division of Transportation

Shane E. Schneider, PE
Director of Transportation/County Engineer

600 West Winchester Road
Libertyville, Illinois 60048-1381
Phone 847 377 7400
Fax 847 984 5888

LakeCounty

Temporary Access Request
Beelow parcels
Winchester Road

September 19, 2019

Mr. John A. Lobaito
Village Administrator
Village of Mundelein
300 Plaza Circle
Mundelein, IL 60060

Dear Mr. Lobaito:

As you are aware, the Village is party to the Central Lake County Area Transportation Improvement Intergovernmental Agreement which states that payment is due to the County when an approval is given for development within the areas outlined by this agreement. Review has been made of the engineering plans supplied to us by Dan Beelow for his grading project on Winchester Road. Per the agreement, any fees due to the County are due at the time of development approval of a site and prior to the issuance of any access permit to the County highway. We have not yet received the fee for these parcels from the Village.

As Dan Beelow has submitted the Village approved plans with his application for a renewal of the access permit to Winchester Road, these fees would now be due to paid to the County prior to the County issuing another construction access to this parcel. The current construction access permit for this site has expired.

The acreage as shown in the annexation agreement for PIN numbers 1012300038 and 1012300036 is 16.58 acres in Improvement Area 5 of Exhibit A of the Agreement. The 2019 value per acre for area 5 is $11,555.00 which totals **$191,581.90**.

Should you have any questions do not hesitate to contact me at (847) 377-7450.

Sincerely,

Betsy A. Duckert

Betsy A. Duckert, P.E.
Manager of Permitting

Cc: Adam Boeche, Village of Mundelein
Dan Beelow
Shane Schneider, LCDOT

EXHIBIT
5

No. _____

IN THE SUPREME COURT OF ILLINOIS

HABDAB, LLC, an Illinois limited liability company, Plaintiff-Petitioner, v. COUNTY OF LAKE, *et al.*, Defendant-Respondent.	On Petition for Leave to Appeal from the Appellate Court of Illinois, Second District, No. 2-23-0006 There Heard on Appeal from the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois No. 20 MR 514 Hon. Jacquelyn D. Melius, Judge Presiding

NOTICE OF FILING

TO:

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PLEASE TAKE NOTICE that on December 26, 2023, the undersigned attorney caused to be electronically filed with the Supreme Court of Illinois, 200 E. Capitol Ave, Springfield, Illinois, this notice along with a **Petition for Leave to Appeal**, a true and correct copy of which is attached hereto and hereby served upon you.

HABDAB, LLC

By: _____
One of its attorneys

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CERTIFICATE OF SERVICE

A copy of the foregoing notice and any attached document(s) were served upon the addressee(s) set forth hereinabove via email transmission on December 26, 2023. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct.

Signature: