

PUBLIC NOTICE

IN ACCORDANCE WITH THE APPLICABLE STATUTES OF THE STATE OF ILLINOIS AND ORDINANCES OF THE VILLAGE OF WHEELING, NOTICE IS HEREBY GIVEN THAT

**THE SPECIAL MEETING OF THE LIQUOR CONTROL COMMISSION
WILL BE HELD ON MONDAY, MARCH 7, 2016 AT 6:30 P.M.
IN THE BOARD ROOM, WHEELING VILLAGE HALL,
2 COMMUNITY BOULEVARD, WHEELING ILLINOIS
CHAIRPERSON DEAN S. ARGIRIS PRESIDING**

**DURING WHICH MEETING IT IS ANTICIPATED THERE WILL BE DISCUSSION AND
CONSIDERATION OF AND, IF SO DETERMINED, ACTION UPON
THE MATTERS CONTAINED IN THE FOLLOWING:**

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL FOR ATTENDANCE**
- 4. APPROVAL OF MINUTES** Special Meeting of January 4, 2016
- 5. HEARING IN THE MATTER OF:**

Central Florida Restaurants, Inc.
DBA TGI Fridays
1500 Lake Cook Road
- 6. ADJOURNMENT**

THIS MEETING WILL BE TELEVISED ON WHEELING CABLE CHANNELS 17 & 99.

***IF YOU WOULD LIKE TO ATTEND A VILLAGE MEETING BUT REQUIRE AN AUXILIARY AID,
SUCH AS A SIGN LANGUAGE INTERPRETER, PLEASE CALL 847-499-9085 AT LEAST
72 HOURS PRIOR TO THE MEETING.***

PUBLIC NOTICE

IN ACCORDANCE WITH THE APPLICABLE STATUTES OF THE STATE OF ILLINOIS AND ORDINANCES OF THE VILLAGE OF WHEELING, NOTICE IS HEREBY GIVEN THAT

THE REGULAR MEETING

**OF THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING
WILL BE HELD ON MONDAY, MARCH 7, 2016**

**IMMEDIATELY FOLLOWING THE SPECIAL HEARING OF THE LIQUOR CONTROL COMMISSION
IN THE BOARD ROOM, WHEELING VILLAGE HALL,
2 COMMUNITY BOULEVARD, WHEELING, ILLINOIS
VILLAGE PRESIDENT DEAN S. ARGIRIS PRESIDING**

**DURING WHICH MEETING IT IS ANTICIPATED THERE WILL BE DISCUSSION AND
CONSIDERATION OF AND, IF SO DETERMINED, ACTION UPON
THE MATTERS CONTAINED IN THE FOLLOWING:**

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL FOR ATTENDANCE**
4. **APPROVAL OF MINUTES:** Regular Meeting of February 1, 2016
5. **CHANGES TO THE AGENDA**
6. **PROCLAMATIONS, CONGRATULATORY RESOLUTIONS AND AWARDS**
7. **APPOINTMENTS AND CONFIRMATIONS**
8. **ADMINISTRATION OF OATHS**
9. **CITIZEN CONCERNS AND COMMENTS**
10. **STAFF REPORTS**
11. **CONSENT AGENDA** - All items listed on the Consent Agenda are considered to be routine by the Village Board and will be enacted by one motion. There will be no separate discussion of these items unless a Board member or citizen so requests, in which event the item will be removed from the general order of business and considered after all other Agenda items.
 - A. [Resolution Granting a Tag Day Permit to Misericordia Heart of Mercy for the Dates of April 29 and 30, 2016](#)
 - B. [Resolution Approving a Contract with Milieu Design for Flower Installation, Landscape/Horticulture Maintenance and Roadway Weed Control for FY 2016](#)
 - C. [Resolution Authorizing the Village President and Village Clerk to Execute a Lease Allowing the Wheeling Park District to Locate Three Antennas on the Village Water Tower at 630 Northgate Parkway](#)
12. **OLD BUSINESS** NONE

13. NEW BUSINESS All listed items for discussion and possible action

A. Two (2) Resolutions Establishing and Granting the George Hieber Citizenship Award

1. [Resolution](#) Establishing the George Hieber Citizenship Award

2. **Resolution** Granting the Inaugural George Hieber Citizenship Award to George Hieber

B. [Ordinance](#) Authorizing the Execution of a Restated Redevelopment Agreement between the Village of Wheeling and WTC, LLC for the Development of Land at 351 W. Dundee Road, Wheeling, IL Comprising a Part of the Town Center-II TIF District of the Village of Wheeling, Cook and Lake Counties, Illinois

C. [Four \(4\) Ordinances](#) Regarding a Self-Storage Facility at 2730 Jackson Drive

1. **Ordinance** Granting a Text Amendment to Title 19, Zoning, of the Wheeling Municipal Code to Add 'Self-Storage Facility' as a Special Use in the B-2 Neighborhood Commercial District [Docket No. 2016-3A]

2. **Ordinance** Granting a Rezoning from R-1 Single-Family District to B-2 Neighborhood Commercial District for 2500 E. Hintz Road [Docket No. 2016-3B(1)]

3. **Ordinance** Granting a Rezoning from R-1 Single-Family District to B-2 Neighborhood Commercial District for 2730 Jackson Drive [Docket No. 2016-3B(2)]

4. **Ordinance** Granting Special Use-Site Plan Approval for a Self-Storage Facility, 2500 E. Hintz Road [Docket No. 2016-3C]

D. [Ordinance](#) Amending Title 19, Zoning, of the Wheeling Municipal Code, Relative to Small Cell Antennas [Docket No. 2016-4]

E. [Ordinance](#) Amending the Village of Wheeling Annual Budget for the Fiscal Year Beginning January 1, 2015 and Ending December 31, 2015

F. [DISCUSSION RE: Concept Review of Proposed Orange Crush Asphalt Plant Relocation to 571 S. Wheeling Road](#)

14. OFFICIAL COMMUNICATIONS

15. APPROVAL OF BILLS February 11–March 2, 2016

16. EXECUTIVE SESSION

17. ACTION ON EXECUTIVE SESSION ITEMS, IF REQUIRED

18. ADJOURNMENT

THIS MEETING WILL BE TELEVISED ON WHEELING CABLE CHANNELS 17 & 99

***IF YOU WOULD LIKE TO ATTEND A VILLAGE MEETING BUT REQUIRE AN AUXILIARY AID,
SUCH AS A SIGN LANGUAGE INTERPRETER,
PLEASE CALL 847-499-9085 AT LEAST 72 HOURS PRIOR TO THE MEETING.***

**VILLAGE OF WHEELING
LEGISLATIVE COVER MEMORANDUM**

AGENDA ITEM NO (S): #11.A
(To be inserted by Deputy Clerk)

DATE OF BOARD MEETING: March 7, 2016

TITLE OF ITEM SUBMITTED: Resolution Granting a Tag Day Permit to Misericordia Heart of Mercy for the dates of April 29 and 30, 2016

SUBMITTED BY: Andrew Jennings, Director of Community Development

BASIC DESCRIPTION OF ITEM: Request to conduct a Tag Day Event by Misericordia Heart of Mercy for the dates of April 29 and April 30, 2016.

BUDGET¹: N/A

BIDDING²: N/A

EXHIBIT(S) ATTACHED: Memo, Resolution, Application for Tag Day Event.

RECOMMENDATION: Approval

¹ If applicable, provide all budgetary considerations as follows: is the item covered in the current budget; fund(s) the item is to be charged to; expenses per fund(s) and total cost; and necessary transfer(s) or supplemental appropriation(s).

² If applicable, describe the bidding process and results for purchases and contracts. If applicable, state whether or not any particular city, state or federal program was considered



MEMORANDUM

TO: Jon A. Sfondilis, Village Manager
FROM: Andrew Jennings, Director of Community Development
DATE: March 3, 2016
SUBJECT: Approval of Tag Days for Misericordia Heart of Mercy

EXECUTIVE SUMMARY

Staff recommends approval of the attached tag day application from Misericordia Heart of Mercy for their annual Candy Day event.

Misericordia Heart of Mercy has submitted their application to conduct a tag day in Wheeling pursuant to Chapter 4.64 of the Wheeling Municipal Code, which allows an organization to conduct a tag day for no more than two days within Wheeling.

The above not-for-profit organization has been in existence for 86 years and has participated in a tag day event for over 11 years within our community. The Village last approved their tag day event on April 6, 2015.

If you should have any further questions or concerns, please let me know.

RESOLUTION NO. 16 - _____

RESOLUTION GRANTING A TAG DAY PERMIT TO MISERICORDIA HEART OF MERCY FOR THE DATES OF APRIL 29 AND 30, 2016

WHEREAS, the Wheeling Municipal Code, Chapter 4.64, "Tag Day" requires that organizations secure a permit to conduct such Tag for no more than two days within one calendar year within the Village of Wheeling; and

WHEREAS, Misericordia Heart of Mercy, a not-for-profit organization, has made proper application for a permit to conduct a Tag Day Event on April 29 and 30, 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COUNTIES OF COOK AND LAKE, STATE OF ILLINOIS, that Misericordia Heart of Mercy be granted a permit to Tag in the Village of Wheeling on April 29 and 30, 2016 contingent upon receipt of permission from the property owners to solicit on private property.

Trustee _____ moved, seconded by Trustee _____, that

Resolution No. 16 - _____ be adopted.

President Argiris _____

Trustee Vito _____

Trustee Krueger _____

Trustee Papantos _____

Trustee Brady _____

Trustee Lang _____

Trustee Vogel _____

APPROVED this _____ day of _____, 2016 by the President and Board of Trustees of the Village of Wheeling, Illinois.

ATTEST

Dean S. Argiris, Village President

Elaine E. Simpson, Village Clerk



COMMUNITY DEVELOPMENT
(847) 459-2620 (fax) 847-459-2656

TAG DAY APPLICATION

DATE: 11-15-15

1) Name of Organization MISERICORDIA
2) Address 6300 N. RIDGE CHICAGO
IL 60660 773-973-6300
State Zip Code Phone Number

3) Mailing Address (if different) N/A
Street
City State Zip Code

4) The purpose for which the organization is legally established HOME FOR 600+ CHILDREN + ADULTS WITH SPECIAL NEEDS.

5) How long has organization been in existence? 94 YEARS

6) Number of members 600-PLUS RESIDENTS

7) Names, address & drivers license numbers of solicitors (use back of sheet) TO BE PROVIDED BY ALAN SHERMAN, COORDINATOR.

8) List of organization's officers (attach list) OK

9) Tag Day Manager: ALAN SHERMAN
Name Address

WHEELING IL 60090
City State Zip Code Phone Number

10) Proposed date of Tag Day APRIL 29 + 30, 2016

11) Location of Taggers including intersections
SEE ATTACHED SHEET

PLEASE NOTE:

All organizations are to comply with Chapter 4.64 of the Wheeling Municipal Code regarding solicitation on public highways.

Solicitors on public highways shall wear reflective type vest during such time that solicitation occurs on or near a public highway.

Permission must be obtained from property owner to tag on private property, i.e. parking lots, shopping centers, etc.

- 12) A. Attach copy of registration statement filed with the States Attorney General pursuant to 225 ILCS 460/2 of the Illinois Revised Statutes, if required .
- B. If exempt, state exemption section
- 13) State Board, Group, or Individual having final discretion as to the distribution of the contributions received (Attached documentation)
- 14) Attach Copy of Not-for-Profit Certification
- 15) Attach copy of permission from property owner to tag on private property

ATTESTATION

The undersigned attest that the above named organization is organized not-for-profit under the law of the State of Illinois and has been continuously in existence for at least 5 years preceding date of this application, and that during this entire 5 year period preceding date of an application it has maintained a bona fide membership actively engaged in carrying out its objectives. The undersigned do hereby state under penalties of perjury that all statements in the foregoing application are true and correct; that the officers, and operators of the Tag Day are bona fide members of the sponsoring organization and are all good moral character and have not been convicted of a felony; that if a permit is granted hereunder, the undersigned will be responsible for the conduct of the Tag Day in accordance with the provisions of the laws of the State of Illinois and this jurisdiction governing the conduct of such Tag Days."

MISERICORDIA

Name of Organization

St. Rosemary Connelly, ASM, Executive Director

President/Chairperson

Signature

Village Manager

Signature

Wheeling Locations

PACATWGS

Wheeling and Plainfield Roads



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/9/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, Inc. Two Pierce Place, 22nd Floor Itasca IL 60143	CONTACT NAME: PHONE (A/C, No, Ext): 866-829-8486 FAX (A/C, No): 855-858-0904 E-MAIL ADDRESS: cbccerts@gbtpa.com	
	INSURER(S) AFFORDING COVERAGE INSURER A : Underwriters at Lloyd's London INSURER B : American Alternative Insurance Corp INSURER C : State National Insurance Company, I INSURER D : INSURER E : INSURER F :	NAIC # 15792 19720 12831
INSURED Catholic Bishop of Chicago A Corporation Sole 835 N. Rush St. Chicago IL 60611	CATHBIS-01	

COVERAGES **CERTIFICATE NUMBER: 649385088** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

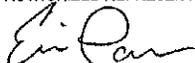
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		N	BP1000915	7/1/2015	7/1/2016	EACH OCCURRENCE \$\$\$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$included MED EXP (Any one person) \$included PERSONAL & ADV INJURY \$included GENERAL AGGREGATE \$N/A PRODUCTS - COMP/OP AGG \$included \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		N	BP1000915	7/1/2015	7/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$\$\$1,000,000		N	R2A2FF000000900	7/1/2015	7/1/2016	EACH OCCURRENCE \$\$\$9,000,000 AGGREGATE \$\$\$9,000,000 \$
C A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N	NDE-0858984-15 BP1000915	7/1/2015 7/1/2015	7/1/2016 7/1/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$\$\$5,000,000 E.L. DISEASE - EA EMPLOYEE \$\$\$5,000,000 E.L. DISEASE - POLICY LIMIT \$\$\$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

If additional Insured status granted herein, coverage afforded by Endorsement 1 issued by Company A above.
MISERICORDIA HOME, 6300 NORTH RIDGE, CHICAGO, IL 60660
"CANDY DAYS" FRIDAY, APRIL 29, 2016 AND SATURDAY, APRIL 30, 2016

ADDITIONAL INSURED: VILLAGE OF WHEELING

CERTIFICATE HOLDER **CANCELLATION**

VILLAGE OF WHEELING 2 COMMUNITY BOULEVARD WHEELING IL 60090	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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MISERICORDIA

Heart of Mercy
Center

6300 North Ridge • Chicago, IL 60660-1017 • 773-973-6300 • fax 773-973-5214

www.misericordia.org

INDEMNIFICATION AND HOLD-HARMLESS AGREEMENT

Village of Wheeling

VILLAGE/CITY

Two Community Blvd 60090

ADDRESS

THE APPLICANT (MISERICORDIA HEART OF MERCY CENTER) AGREES TO INDEMNIFY, DEFEND AND HOLD THE ABOVE NAMED VILLAGE/CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS FOR DAMAGES, FEES OR COSTS TO PERSONS OR PROPERTY ARISING FROM SOLICITATION ACTIVITIES OF THE APPLICANT WITHIN THE ABOVE NAMED VILLAGE/CITY ON APRIL 29 AND APRIL 30, 2016.

AUTHORIZED AGENT:

Signature: *Nancy Turry*

Nancy Turry
Manager, Public Relations
Misericordia Heart of Mercy Village
6300 North Ridge Boulevard
Chicago, IL 60660

Date: *11-15-15*



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

July 22, 2014

MISERICORDIA HOME
6300 N. RIDGE ROAD
CHICAGO, IL 60660

Lisa Madigan
ATTORNEY GENERAL

RE: RE: Status of MISERICORDIA HOME under the Illinois Charitable Laws CO# 01040984

Dear Registrant:

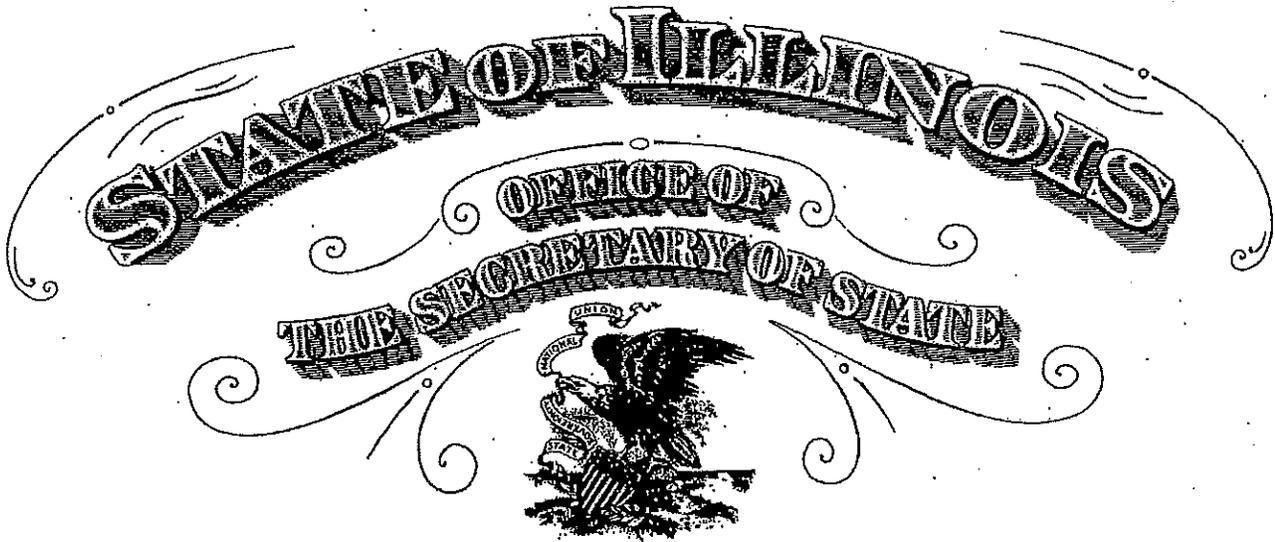
This letter is pursuant to your request that the Attorney General confirm the status of MISERICORDIA HOME under the Charitable Organization Laws.

This organization is currently registered with the Attorney General's Charitable Trust and Solicitations Bureau as CO# 01040984, and has been granted religious exemption from filing annual financial reports with our office. Please let us know if you require further information.

Sincerely,

A handwritten signature in black ink that reads "Takiyah Martin Barnes". The signature is written in a cursive style.

Takiyah Martin Barnes, Compliance Officer
Charitable Trusts Bureau
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601
Telephone: (312) 814-2595



To all to whom these Presents Shall Come, Greeting:

I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that I am the keeper of the records of the Department of Business Services. I certify that

MISERICORDIA HOME, A DOMESTIC CORPORATION, INCORPORATED UNDER THE LAWS OF THIS STATE ON FEBRUARY 04, 1921, APPEARS TO HAVE COMPLIED WITH ALL THE PROVISIONS OF THE GENERAL NOT FOR PROFIT CORPORATION ACT OF THIS STATE, AND AS OF THIS DATE, IS IN GOOD STANDING AS A DOMESTIC CORPORATION IN THE STATE OF ILLINOIS.



In Testimony Whereof, I hereto set
my hand and cause to be affixed the Great Seal of
the State of Illinois, this 17TH
day of FEBRUARY A.D. 2012

Jesse White

**Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201**

Department of the Treasury

Date: June 4, 2014

Person to Contact:

Roger Meyer ID# 0110429

Toll Free Telephone Number:

877-829-5500

Employer Identification Number:

53-0196617

Group Exemption Number:

0928

United States Conference of Catholic
Bishops
3211 4th Street, NE
Washington, DC 20017-1194

Dear Sir/Madam:

This responds to your May 19, 2014, request for information regarding the status of your group tax exemption.

Our records indicate that you were issued a determination letter in March 1946, that you are currently exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and are not a private foundation within the meaning of section 509(a) of the Code because you are described in sections 509(a)(1) and 170(b)(1)(A)(i).

With your request, you provided a copy of the *Official Catholic Directory for 2014*, which includes the names and addresses of the agencies and instrumentalities and the educational, charitable, and religious institutions operated by the Roman Catholic Church in the United States, its territories, and possessions that are subordinate organizations under your group tax exemption. Your request indicated that each subordinate organization is a non-profit organization, that no part of the net earnings thereof inures to the benefit of any individual, and that no substantial part of their activities is for promotion of legislation. You have further represented that none of your subordinate organizations is a private foundation under section 509(a), although all subordinates do not all share the same sub-classification under section 509(a). Based on your representations, the subordinate organizations in the *Official Catholic Directory for 2014* are recognized as exempt under section 501(c)(3) of the Code under GEN 0928.

Donors may deduct contributions to you and your subordinate organizations as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to them or for their use are deductible for federal estate and gifts tax purposes if they meet the applicable provisions of section 2055, 2106, and 2522 of the Code.

Subordinate organizations under a group exemption do not receive individual exemption letters. Most subordinate organizations are not separately listed in Publication 78 or the EO Business Master File. Donors may verify that a subordinate organization is included



November 15, 2015

Elaine Simpson, Village Clerk
Village of Wheeling
Two Community Boulevard
Wheeling, IL 60090

Dear Friend of Misericordia:

Misericordia is already planning for our Annual Misericordia/Jelly Belly Candy Days tag day fundraising event for next year. **The dates for 2016 are Friday and Saturday, April 29 and 30.** As you know, each year our volunteers collect in street intersections and in front of heavy pedestrian walkways or stores and businesses, distributing tags and packets of Jelly Belly Candy while collecting donations.

We assure you that this tag day fundraiser makes a difference in the lives of the 600 children and adults who call Misericordia "Home", as the funds we receive from the State cover only a portion of our program costs. This year we must raise \$15 million to cover the cost of programs that are not reimbursed.

For some areas, this letter is for information only because we have already received permission or they do not grant permission for streets or intersections. All other areas will find the information they require attached to this letter.

We believe that our residents can achieve, and we believe in the compassionate and generous people who share our mission. For many, a first visit to Misericordia is an eye-opening experience – from programs that provide independent living and work opportunities for our residents to round-the-clock care at the Mother McAuley Skilled Nursing Residence. We provide a full continuum of care and quality programs to meet the individual needs of all those who call Misericordia home.

If you need more information or have any questions, please contact Misericordia at 773-273-4189 or email mam1955@att.net or nancy.turry@misericordia.com.

For your belief in Misericordia, for your past assistance, and your consideration of this request, we are most grateful. God's blessings on you and yours.

Sincerely,

Sister Rosemary Connelly, R.S.M.
Executive Director

**VILLAGE OF WHEELING
LEGISLATIVE COVER MEMORANDUM**

AGENDA ITEM NO(S): #11.B
(To be inserted by Deputy Clerk)

DATE OF BOARD MEETING: March 7, 2016

TITLE OF ITEM SUBMITTED: Resolution Approving a Contract with Milieu Design for Flower Installation, Landscape/Horticulture Maintenance and Roadway Weed Control for FY 2016

SUBMITTED BY: Mark Janeck, Director of Public Works

BASIC DESCRIPTION OF ITEM¹: A resolution seeking approval of a not-to-exceed \$126,163.82 contract with Milieu Design, Wheeling, IL to perform landscaping services at municipal properties that include installing flowers, landscape maintenance (mulching, weeding, trimming) and roadway weed control.

BUDGET²: Included in the 2016 budget

BIDDING³: Bids were advertised on February 2, 2016. Three (3) bids were received and opened on February 12, 2016.

EXHIBIT(S) ATTACHED: Memo, Resolution, Bid Proposal, Contract

RECOMMENDATION: Approval

SUBMITTED FOR BOARD CONSIDERATION: Village Manager

¹ *The purpose of the proposed item and a description of same. If the issue is site specific, such as an annexation or road improvement, a map must be attached to the memorandum.*

² *If applicable, provide all budgetary considerations as follows: is the item covered in the current budget; fund(s) the item is to be charged to; expenses per fund(s) and total cost; and necessary transfer(s) or supplemental appropriation(s).*

³ *If applicable, describe the bidding process and results for purchases and contracts. If applicable, state whether or not any particular city, state or federal program was considered*



MEMORANDUM

TO: Jon A. Sfondilis, Village Manager
FROM: Mark Janeck, Director of Public Works
DATE: February 29, 2016
SUBJECT: Landscaping Contract

EXECUTIVE SUMMARY

Staff recommends entering into a not-to-exceed contract with Milieu Design (Milieu) in the amount of \$126,163.82 that includes annual, monthly and weekly landscaping services at municipal properties.

The Department of Public Works is currently responsible for grounds maintenance at all Village properties, including pocket parks. As Village properties have grown in number and size, the responsibilities of Public Works personnel have increased to the extent that some readjustment to how services are provided, in this case specific to exterior landscaping, is necessary in order to continue the expected high level of maintenance. To achieve this objective financially, Public Works is recommending that in addition to contracting with Milieu to complete lawn mowing services, numerous other landscaping duties including weeding, mulching, trimming, annual flower planting, and vegetative control along some specific roadways, would also become the responsibility of Milieu.

A public bid was advertised on February 2, 2016 for Flower Installation, Landscape/Horticulture Maintenance and Roadway Weed Control. Bids were opened on February 12, 2016 from three (3) qualified contractors. Due to the complicated nature of the required work, the public bid allowed contractors to submit cost proposals on some or all of the specified tasks. Milieu was the only contractor that provided cost proposals for all of the tasks outlined, and was the low bid on all tasks except for the provision of mulching. Including mulch services, the proposed Milieu landscaping contract (separate from lawn maintenance) is \$126,163.82.

The philosophy behind contracting out the bulk of all municipal landscape responsibilities is to enable Public Works personnel to accomplish other more pertinent core service tasks that are currently contracted out or work that is not completed due to other duties such as landscaping. Analyses of current Public Works expenditures on those landscaping tasks proposed to be accomplished by Milieu, total approximately \$215,000, excluding equipment costs. Additionally, many of the tasks included within the proposed contract have not been historically provided by the Village. The combination of increasing landscape services and employing a professional maintenance company, should theoretically improve plant quality and overall site

appearance while lowering costs. The differential between the Village and contractor cost is explained through an allowance by the Illinois Department of Labor (IDOL), permitting municipalities to contract with non-prevailing wage workers to complete the subject work. While the Village's seasonal workers account for approximately 40% of landscaping work hours in any given year, the remaining 60% is performed by full time employees. The ability for the Village to contract with a non-prevailing wage company drastically reduces the personnel costs for such services and also reduces liability.

Public Works is recommending the acceptance of the attached not-to-exceed \$126,163.82 landscaping contract with Milieu. Staff believes that approval of the contract is in the best interest of the Village and will avoid the complication of having multiple contractors on Village properties at the same time. Milieu is a local company and has specialized in landscape services since 1987. They have performed lawn mowing services for the Village since 2013. Recently, on February 1, 2016, the Board approved Resolution 16-13 which awarded a renewal contract for lawn mowing to Milieu.

Funding for landscaping services will be derived from various accounts within the approved FY 2016 Public Works budget. Among the most affected will be the seasonal employee account. The main reason for seasonal employees is to maintain landscape areas throughout the Village. For the past 2-3 years, the number and quality of applicants for these positions has decreased and has seriously affected the department's ability to keep up with our substantial landscaping responsibilities. In FY 2016, \$144,500.00 is budgeted for seasonal employees; Public Works will be reallocating approximately \$93,000.00 of those funds to help pay for the proposed contract. Seasonal employees will continue to be employed by three of the four Public Works divisions, but at a lessor, more manageable level. Other affected accounts, also by way of reduction, will be tree trimming (\$15,000.00), EAB tree replacement (\$37,450.00), and concrete curb restoration (\$15,000.00).

The landscaping contract with Milieu Design is necessary to meet responsibilities that Public Works is currently performing with limited staff at a higher internal cost. Staff is confident in Milieu's ability to adequately perform all the duties in the contract. With your concurrence, please include this item on the March 7, 2016 Board meeting agenda.

RESOLUTION NO. 16 - _____

RESOLUTION APPROVING A CONTRACT WITH MILIEU DESIGN FOR FLOWER INSTALLATION, LANDSCAPE/HORTICULTURE MAINTENANCE AND ROADWAY WEED CONTROL FOR FY 2016

WHEREAS, Public Works currently is responsible for grounds maintenance, including all landscaping at Village properties, many road right of ways, and pocket parks; and

WHEREAS, Village properties have grown in number and size and staff responsibilities have increased over the years; and

WHEREAS, contracting out landscaping services such as flower installation, landscape/horticulture maintenance and roadway weed control allows Public Works staff to accomplish other more pertinent core service work or tasks not completed due to other responsibilities; and

WHEREAS, staff advertised for bids and three (3) sealed bids from landscape contractors were received and opened on February 12, 2016; and

WHEREAS, Milieu Design, of Wheeling, IL was the lowest qualified bidder in all specified tasks except mulching; and,

WHEREAS, with the additional cost of mulching, Milieu Design's contract is \$126,163.82, work that will provide an increase in landscape maintenance services than the Village has previously provided, and work that will result in a cost savings to the Village; and,

WHEREAS, Milieu Design currently performs lawn mowing services for the Village and has performed said services efficiently and well since 2013; and

WHEREAS, it is in the best interest of the Village to approve this contract with Milieu Design, which includes mulching, to avoid complications with multiple contractors operating on Village properties.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COUNTIES OF COOK AND LAKE, STATE OF ILLINOIS, that the Village President is authorized to execute a contract with Milieu Design, from Wheeling, IL, for a Flower Installation, Landscape/Horticulture Maintenance and Roadway Weed Control contract in a total amount not-to-exceed \$126,163.82.

Trustee _____ moved, seconded by Trustee _____
that Resolution No. 16 - _____ be adopted.

President Argiris _____

Trustee Brady _____

Trustee Papantos _____

Trustee Krueger _____

Trustee Vito _____

Trustee Lang _____

Trustee Vogel _____

ADOPTED this _____ day of _____, 2016, by the
President and Board of Trustees of the Village of Wheeling, Illinois.

Dean S. Argiris
Village President

ATTEST:

Elaine E. Simpson
Village Clerk

**VILLAGE OF WHEELING
 BID PROPOSAL**

CONTRACTOR INFORMATION	
Company Name:	<i>Milieu Design LLC</i>
Address:	<i>48 E. Hintz Rd., Wheeling, IL</i>

Proposal for Contract Document. We hereby agree to furnish to the Village of Wheeling Bid Proposals in accordance with provisions, instructions, and specifications of the Village of Wheeling for the prices as follows:

Option A - Flower Installation and Mulching

A.1: Flower Installation

Area	Item	Location	Total Price Per Item (for 2016)
		<i>Village Facilities</i>	
1	Flower Installation	Village Hall	\$3540.80
2	Flower Installation	Police Department/ Fire Station 42	\$2608.72
3	Flower Installation	Public Works	\$ 672
4	Flower Installation	Fire Station 24	\$ 672
5	Flower Installation	Fire Station 23	N/A
6	Flower Installation	Senior Center Pavilion	\$723.60
7	Flower Installation	Metra Commuter Station	N/A
		<i>Parks</i>	
8	Flower Installation	Friendship Park	\$10,362.72
9	Flower Installation	Clock Tower	\$456.80
10	Flower Installation	Lehmann Fountain	\$829.60
11	Flower Installation	Veterans Memorial Park	\$1647.20
12	Flower Installation	Northgate/Dundee Pocket	\$1431.60
13	Flower Installation	Lark Park	\$2443.20
		<i>Medians</i>	
14	Flower Installation	Milwaukee Ave.	\$3,398.40
15	Flower Installation	Northgate/Lake Cook Road	N/A
		<i>Miscellaneous</i>	
16	Flower Installation	Elevated Tank 1	\$1983.68
17	Flower Installation	South Station	N/A
		SUBTOTAL FLOWER INSTALLATION	\$30,770.32

A.2: Mulching

Estimated Amount (cubic yards)	Type of Mulch	Unit Price (per cubic yard)	Total Price (for 2016)
609	Triple Ground	\$60	\$36,540.00
609	Dyed Brown	\$55	\$33,495.00
108	Dyed Red	\$70	\$7,560.00

Locations for Mulching

Area	Mulch Installation	
1	Village Hall	Triple Ground or Dyed Brown
2	Police Department/Fire Station #42	Triple Ground or Dyed Brown
3	Public Works	Triple Ground or Dyed Brown
4	Fire Station 24	Triple Ground or Dyed Brown
5	Fire Station 23	Triple Ground or Dyed Brown
6	Senior Center Pavilion	Triple Ground or Dyed Brown
7	Metra Commuter Station	Triple Ground or Dyed Brown
8	Friendship Park	Dyed Red
9	Clock Tower	Triple Ground or Dyed Brown
10	Lehmann Fountain	Dyed Red
11	Veterans Memorial Park	Dyed Red
12	Northgate/Dundee Pocket	Dyed Red
13	Lark Park	Dyed Red
14	Milwaukee Ave.	Triple Ground or Dyed Brown
15	Northgate/Lake Cook Road	Triple Ground or Dyed Brown
16	Elevated Tank 1	Triple Ground or Dyed Brown
17	South Station	Triple Ground or Dyed Brown

Milieu
BF
2/9/2016

Option B – Landscape/Horticulture Maintenance
 ("Weekly" & "As Needed" Maintenance Services)

	Item	Quantity	Unit Price	Total Per Item (for 2016)
1	Spring Clean-Up	1	\$3,415.50	\$ 3,415.50
2	Fall Clean-Up	1	\$3,102.00	\$ 3,102.00
3	Soil/Mulch Cultivation	1	\$2,475.00	\$ 2,475.00
4	Soil Fertilization	4	\$638	\$2,552.00
5	Pre-Emergent Weed Control (Spring & Fall)	2	\$783	\$1,566.00
6	Post-Emergent Weed Control	Weekly	\$270.67	\$8,120.00
7	Deadhead Annuals & Perennials	Weekly	\$217.80	\$6,534.00
8	Inspection/Trimming Shrubs/Ornamentals & Ground Cover	As Needed	\$1,617.00	\$6,468.00
9	Weeding	Weekly	\$540.10	\$16,203.00

2/9/16
 Milieu
 BF

Option C – Roadway Weed Control
(2x/Year Weed Control Services)

	Location	Price Per Item (for 2016)
1	Milwaukee Avenue	\$ 3960
2	Dundee Road	\$ 3960
	TOTAL Roadway Weed Control	\$7920

01/11/12
00:44:44 01/09/12

Milcom
BY
2/9/2016



Landscape Architecture,
Construction, Maintenance &
Snow Removal

48 E. Hintz Road
Wheeling, Illinois 60090
phone: 847-465-1160
fax: 847-465-1159
email: info@milieu-design.com
website: www.milieudesignllc.com

Mr. Mark Janeck
Director of Public Works
Village of Wheeling
77 W. Hintz Rd.
Wheeling, IL 60090

Subject: Village of Wheeling – Mulch Installation

February 23, 2016

Dear Mark,

Milieu Design is pleased to present a revised proposal for mulch installation for the Village of Wheeling.

Milieu's updated proposal follows:

- 609 yards of Triple Ground Mulch @ \$50/yard installed = \$30,450
- 108 yards of Dyed Red Mulch @ \$61/yard installed = \$6,588
- Total Proposed = \$37,038

Milieu is prepared to perform these services with a high standard of quality and to the specifications of the Village of Wheeling.

Best regards,

Brian Frank
General Manager
847-366-5069 cell phone
bfrank@milieu-design.com

VILLAGE OF WHEELING
*FLOWER INSTALLATION, LANDSCAPE/HORTICULTURE MAINTENANCE
AND ROADWAY WEED CONTROL*

CONTRACT DOCUMENT

This agreement is made this 7th day of March, 2016 between and shall be binding upon the Village of Wheeling, an Illinois municipal Corporation hereinafter referred to as (the "Village") and Milieu Design hereinafter to as (the "Contractor") and its successors.

Witnessed, that in consideration of the mutual promises of the parties delineated in the contract documents, the Contractor agrees to perform the services and the Village agrees to pay for the following services as set forth in the contract documents:

Flower installation, landscape/horticulture maintenance and roadway weed control.

1. This contract shall embrace and include all of the applicable contract documents listed below as if attached hereto or repeated herein:
 - a. Specification and Contract Document for FLOWER INSTALLATION, LANDSCAPE/HORTICULTURE MAINTENANCE AND ROADWAY WEED CONTROL consisting of the following:
 - i. Cover Sheet
 - ii. Table of Contents
 - iii. Invitation to Bid on Contract Document Legal Notice: February 2, 2016
 - iv. Standard General Conditions of the Construction Contract, EJCDC C-700 2007 Edition (as modified)
 - v. Specific Terms, Conditions and Instructions and Blue Prints
 - vi. Bid Proposal Form
 - vii. Plans and Specifications
 - viii. All issued Addenda
 - ix. Certificate of Eligibility to Enter into Public Contracts
 - x. Required Performance and Payment Bonds
 - xi. Required Insurance Certificates
 - xii. All other Modifications issued after the execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the work issued by the Engineer.
 - b. The Contractor's Bid Proposal Dated 2/9/2016
 - c. Required Performance and Payment Bonds and Certificate of Insurance
2. The Village agrees to pay, and the Contractor agrees to accept as full payment for the items, and installation of the same, which are the subject matter of this contract the total sum of \$ based on

pricing per services as paid in accordance with the provisions of the Local Government Prompt Payment Act.

3. The Contractor represents and warrants that it will comply will all applicable Federal, State and local laws concerning prevailing wage rates and all Federal, State and local laws concerning equal employment opportunities.
4. The Contractor shall commence work under this Contract upon written Notice to Proceed from the Village and shall complete work on this project by December 31, 2016 from the date of the Notice to Proceed. Time is of the essence of this Contract and Contractor agrees to achieve completion within the contract time by all proper and appropriate means including working overtime without additional compensation.
5. Bonds required to guarantee performance and payment for labor and material for this work shall be in a form acceptable to the Village and shall provide that they shall not terminate on completion of the work, but shall be reduced to ten percent (10%) of the contract sum upon the date of final payment by the Village for a period of one (1) year to cover a warranty and maintenance period which Contractor agrees shall apply to all material and workmanship for one (1) year from the date of issuance of the final payment by the Village.
6. Pursuant to the provisions of Section 5 of the Mechanics' Lien Act of Illinois, prior to making any payment on this contract the Village demands that the Contractor furnish a written statement of the names of all parties furnishing labor and/or materials under this Contract and the amounts due or to become due on each. This statement must be made under oath or be verified by affidavit. Final payment shall not be issued by the Village nor shall any retained percentage become due until releases and waivers of lien have been supplied as the Village designates.
7. In executing this Contract, Contractor agrees that it has examined the site of the work and the conditions existing therein, has examined the Contract Documents and taken and compared field measurements and conditions with those Documents.
8. This Contract represents the entire Agreement between the parties and may not be modified without the written approval of both parties.
9. Where the terms of this Contract conflict with the provisions of the Contract Documents, the Contract Documents shall be binding.

IN WITNESS WHEREOF, the Village of Wheeling, Illinois by, Village President, and the Contractor have hereunto set their hands this _____ day of _____, 20____.

If an individual or partnership, all individual names of each partner shall be signed or if a corporation, an officer duly authorized shall sign here:

Accepted this ___ day of _____, 20__.

Individual or Partnership _____ Corporation _____

By Position/Title

By Position/Title

Print Company Name

THE VILLAGE OF WHEELING, ILLINOIS

Accepted this ___ day of _____, 20_.

Dean S. Argiris
Village President

Attest:

Elaine Simpson
Village Clerk

**VILLAGE OF WHEELING
LEGISLATIVE COVER MEMORANDUM**

AGENDA ITEM NO(S): #11.C
(To be inserted by Deputy Clerk)

DATE OF BOARD MEETING: March 7, 2016

TITLE OF ITEM SUBMITTED: A Resolution Authorizing the Village President and Village Clerk to Execute a Lease to Locate Three Antennas on the Village Water Tower at 630 Northgate Parkway.

SUBMITTED BY: James V. Ferolo, Klein, Thorpe & Jenkins, Ltd.

BASIC DESCRIPTION OF ITEM: The attached Resolution authorizes the execution of a lease between the Village and Wheeling Park District that allows the Park District to install three antennas, approximately one foot in diameter each, on the Village water tower at 630 Northgate Parkway for the transmission of radio communications signals.

EXHIBIT(S) ATTACHED: Resolution, Lease, Memorandum

RECOMMENDATION: Approval

SUBMITTED FOR BOARD APPROVAL: Village Manager



MEMORANDUM

TO: Village President, Clerk and Board of Trustees
FROM: Jon A. Sfondilis, Village Manager
DATE: March 03, 2016
SUBJECT: Park District Cell Tower Request

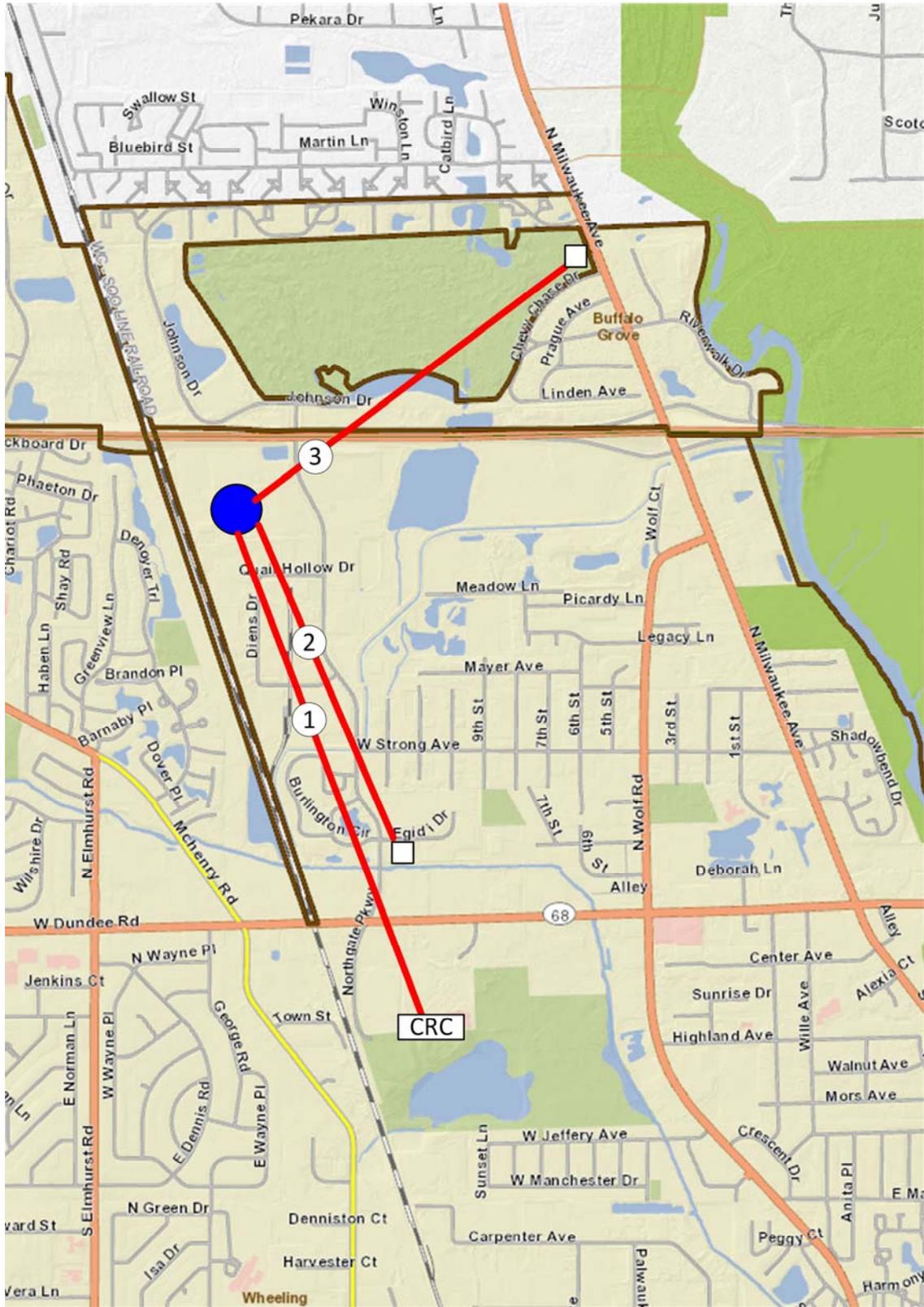
EXECUTIVE SUMMARY

The Wheeling Park District has a need to increase the facility-to-facility communication of their information system. An opportunity for intergovernmental cooperation exists in allowing certain Park District equipment to be installed at a single Village-owned location.

The Wheeling Park District approached the Village of Wheeling with a request to install wireless data antennas at the Northgate/Lake Cook water tower site. Similar to the network connectivity challenges that the Village IT department faces for interconnecting all of its municipal facilities, the Park District has been challenged with establishing a robust and reliable connection between the Community Recreation Center and their Chevy Chase Country Club location.

In brief, a total of three small antennas (slightly larger than an iPad) will be installed on the handrails of the water tower. These devices will act as point-to-point communicators for the Park District system.

Approval of this request creates no negative impact to the Village's operations or infrastructure. Effectively, the District's equipment will piggyback on existing gear already in place. This agreement provides for any incurred expenses (i.e., electricity) to be paid by the District.



RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE VILLAGE PRESIDENT AND VILLAGE CLERK TO EXECUTE A LEASE ALLOWING THE WHEELING PARK DISTRICT TO LOCATE THREE ANTENNAS ON THE VILLAGE WATER TOWER AT 630 NORTHGATE PARKWAY

WHEREAS, the Village of Wheeling (the "Village") is a home rule unit of government; and

WHEREAS, the Wheeling Park District has expressed an interest in leasing space on the Village water tower located at 630 Northgate Parkway for purposes of locating three small antennas and related equipment for the purpose of transmitting radio communications signals; and

WHEREAS, the Village of Wheeling has the home rule authority to sell or lease its property.

NOW, THEREFORE, be it resolved by the President and Board of Trustees of the Village of Wheeling, Counties of Cook and Lake, State of Illinois, as follows:

SECTION 1: That the President and the Board of Trustees hereby approve and direct the execution by the Village President of a Lease in substantial conformity with the Lease attached hereto as EXHIBIT A and made a part hereof.

Trustee _____ moved, seconded by Trustee

_____, that Resolution No. _____ be passed.

PASSED this _____ day of _____, 2016.

Trustee Argiris _____ Trustee Papantos _____

Trustee Brady _____ Trustee Vito _____

Trustee Krueger _____ Trustee Vogel _____

Trustee Lang _____

APPROVED this _____ day of _____ 2016.

Dean S. Argiris
Village President

ATTEST:

Elaine E. Simpson
Village Clerk

LEASE

THIS LEASE WITH OPTION (this "Lease") is by and between VILLAGE OF WHEELING, an Illinois municipal corporation, ("Landlord") and WHEELING PARK DISTRICT, an Illinois municipal corporation ("Tenant") and is made this _____ day of _____, 2016.

1. Lease. Landlord hereby leases to Tenant that portion of the Village of Wheeling North Station Water Tower located at 630 Northgate Parkway, Wheeling, IL 60090 sufficient for placement of the Antennas (as defined below), together with all necessary space for access and utilities, as generally described and depicted in the attached Exhibit A (collectively referred to hereinafter as the "Premises"). Tenant's Antennas shall be located on top of the Tower approximately 120 feet above ground level and shall appear as shown in **Exhibit A**, attached hereto and incorporated herein.

2. Term.

(a) The initial term of this Lease shall be three (3) years commencing on _____, 2016 (the "Commencement Date"), and terminating at midnight on the last day of the initial term (the "Initial Term").

(b) Option to Renew. The term of this lease shall automatically extend for up to two (2) additional terms of three (3) years each, upon a continuation of all the same provisions hereof, unless Tenant gives City written notice of Tenant's intention to terminate the lease at least sixty (60) days before the expiration of the term then present at the time of such notice. If Tenant shall remain in possession of the Leasehold Parcel at the expiration of this Lease or any Renewal term without a written agreement, such tenancy shall be deemed a month to month tenancy under the same terms and conditions of this Lease, except that the Rent amount due shall be equal to 200% of the then current Rent amount.

3. Rent.

(a) From and after the Commencement Date, Tenant shall pay Landlord or designee, as rent, Two Hundred Fifty and 00/100 Dollars (\$250.00) per month ("Rent"). The first payment of Rent shall be due within twenty (20) days following the Commencement Date and shall be prorated based on the days remaining in the month following the Commencement Date, and thereafter Rent will be payable monthly in advance by the fifth day of each month to Landlord at the address specified in Section 18 below. If this Lease is terminated for any reason (other than a default by Tenant) at a time other than on the last day of a month, Rent shall be prorated as of the date of termination and all prepaid Rent shall be immediately refunded to Tenant. Landlord, its

successors, assigns and/or designee, if any, will submit to Tenant any documents required by Tenant in connection with the payment of Rent, including, without limitation, an IRS Form W-9.

(b) During the Initial Term and the Renewal Term, monthly Rent shall be adjusted, effective on the first day of each year of the Initial or Renewal Term, and on each such subsequent anniversary thereof, to an amount equal to three percent (3%) of the monthly Rent in effect immediately prior to the adjustment date.

4. Permitted Use. The Premises may be used by Tenant for the installation of Antennas for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities, including, without limitation, antennas, equipment shelters and/or cabinets and related activities. The Antennas shall consist of three (3) antennas as previously indicated by Tenant to be approximately one (1) foot in diameter, consisting of hardware of the following types: (1) a NEC NLite E or a (2) ExtendAir® All-Outdoor Licensed FCC 11–23 GHz, or any other previously approved and FCC licensed antenna meeting the general standards of the Landlord of one (1) foot in diameter (hereinafter collectively referred to as “Antennas”.) as shown in **Exhibit B** attached hereto and made a part hereof.

5. Interference. Tenant shall not use the Premises in any way which interferes with the use of the Premises by Landlord or lessees or licensees of Landlord with rights in the Premises prior in time to Tenant’s (subject to Tenant’s rights under this Lease, including, without limitation, non-interference). Similarly, Landlord shall not use, nor shall Landlord permit its lessees, licensees, employees, invitees or agents to use, any portion of the Premises in any way which interferes with the operations of Tenant. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

6. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, equipment shelters and/or cabinets and related cables and utility lines and a location based system, as such location based system may be required by any county, state or federal agency/department, including, without limitation, coaxial cable, base units and other associated equipment (collectively, the “Antennas”). Tenant shall have the right to alter, replace, expand, enhance and upgrade the Antennas at any time during the term of this Lease provided written approval is received from the Landlord prior to any such improvement. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. Landlord acknowledges that it shall neither interfere with any aspects of construction nor attempt to direct construction personnel as to the location of or method of installation of the Antennas. The Antennas shall

remain the exclusive property of Tenant and shall not be considered fixtures. Tenant shall have the right to remove the Antennas at any time during and upon the expiration or termination of this Lease provided written approval is received from the Landlord prior to any such work.

(c) Tenant shall, at Tenant's expense, keep and maintain the Antennas now or hereafter located on the Premises in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and casualty excepted. Upon termination or expiration of this Lease, the Premises shall be returned to Landlord in good, usable condition, normal wear and tear and casualty excepted and all Antennas and associated hardware shall be removed.

(d) Landlord shall be responsible for providing utilities to the Antennas. Tenant further expressly acknowledges that the Landlord does not guarantee uninterrupted electrical service, and the Landlord shall not be responsible for electrical outages or interruptions in electrical service used by Tenant, unless solely caused by the intentional acts of Landlord or its agents or employees.

(e) As partial consideration for Rent paid under this Lease, Landlord hereby grants Tenant easements on, under and across the Premises for ingress, egress, utilities and access (including access for the purposes described in Section 1) to the Premises adequate to install and maintain utilities, including, but not limited to, the installation of power and telephone service cable, and to service the Premises and the Antennas at all times during the Initial Term of this Lease and any Renewal Term (collectively, the "Easements"). The Easements provided hereunder shall have the same term as this Lease.

(f) Tenant shall have reasonable access to the Premises during the Initial Term of this Lease for the construction and testing of the Antennas, at no charge to Tenant. However, after Tenant completes installation of the Antennas, access by Tenant to the Premises shall only be allowed upon 48 hours' notice and consent by the Landlord.

(h) Tenant undertakes full and complete responsibility at all times hereafter for the expenses of, and quality of, construction and compliance with all applicable Federal, State, and local laws, regulations and codes, code requirements and regulations of governmental authorities having jurisdiction over the construction, including but not limited to compliance with acts affecting construction of public buildings and service areas used by public employees, and Tenant agrees to remedy or correct any deficiencies with such compliance. The construction shall be performed pursuant to the building permit and conducted by authorized and licensed personnel and shall be performed in compliance with local and State requirements for construction activities upon public property. Tenant agrees that all installations and constructions described in this Agreement shall be completed promptly in a neat, workmanlike manner, consistent with good engineering practices and in compliance with all applicable codes and regulations and without the attachment of any construction liens. All costs associated with the installation of the Antennas upon the Premises, including permit costs and the cost of extending electrical service to Tenant's equipment, shall be paid by Tenant. Prior to the issuance of permits, Tenant's contractor shall maintain and provide Landlord with evidence of each of the insurance coverage specified in Section 10 of this Agreement, in

the amounts so specified. Tenant shall provide Landlord with as-installed drawings of the Premises, with Antennas installed, which show the actual location of all equipment and Antennas and Tenant shall also provide to Landlord certification by an engineer licensed in the State of Illinois and approved by the Village that the facilities have been completed in accordance with the approved installation plans, within thirty (30) days after the completion of installation. Said drawings shall be accompanied by a complete and detailed inventory of the Antennas, coax and other materials used on the Premises.

7. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

(a) upon thirty (30) days' written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Lease within such thirty (30) day period;

(b) immediately upon written notice by Tenant if Tenant notifies Landlord of any unacceptable results of any Tests prior to Tenant's installation of the Antennas on the Premises, or if Tenant does not obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary to the installation and/or operation of the Antennas or Tenant's business;

(c) upon ninety (90) days' written notice by Tenant if Tenant determines that the Premises or the Antennas are inappropriate or unnecessary for Tenant's operations for economic or technological reasons;

(d) immediately upon written notice by Tenant if the Premises or the Antennas are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antennas. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Premises and/or the Antennas are restored to the condition existing immediately prior to such damage or destruction; or

(e) at the time title to the Premises transfers to a condemning authority pursuant to a taking of all or a portion of the Premises sufficient in Tenant's determination to render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

If the Lease is terminated, Tenant shall be responsible for removing the Antennas and restoring the Tower to the state in which it existed prior to the commencement of the Lease.

8. Default and Right to Cure. Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each party shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to Section 18 hereof, to take effect immediately, if the other party fails to perform any covenant or commits a

material breach of this Lease and fails to diligently pursue a cure thereof to its completion after thirty (30) days' written notice specifying such failure of performance or default.

9. Repairs/Maintenance. Tenant shall be responsible for all repairs of the Antennas, and may at its own expense alter or modify the Antennas to suit its needs consistent with the intended use of the Antennas so long as Tenant does not alter the appearance of the Tower, such alteration does not increase the overall height of the Tower and/or Antennas, and such alteration and modification are in accordance with the Wheeling Municipal Code. Tenant shall, at its own expense, maintain the Antennas in a safe and sightly condition, and in good repair. Tenant shall have sole responsibility for the costs and expenses related to the maintenance, repair, and security of its personal property including all Antennas and shall keep the same in good repair and condition during the Lease term and all renewal terms. Tenant shall keep the Premises, Tower and Antennas free of debris and anything of a dangerous, noxious or offensive nature of which would create a hazard or undue vibration, heat, noise or interference.

Landlord shall notify Tenant at least thirty (30) days in advance of the date when any painting or other maintenance may take place at the site. Landlord shall take all reasonable actions in order to minimize any disturbance to Tenant's operations during any such painting or other maintenance. Should the painting or other maintenance interfere with the Tenant's operations, Landlord shall allow Tenant to install temporary facilities, at its Tenant's sole cost, on another location on Landlord's property until such painting or other maintenance is completed. Additional cost to Landlord for painting services due to the Tenant's operations and location of the Antennas shall be the sole responsibility of the Tenant. All Antennas and related conduit must be painted the same color as the water tower as to blend into the color scheme of the tower. Upon initial installation or any subsequent modifications to the water tower by Tenant, Tenant shall pay for a third party inspection by a licensed engineering firm experienced in elevated tank work and approved by the Landlord. The Inspector shall serve as the Landlord's representative to check welds, coatings and structural integrity of the tank. Landlord shall select the firm and Tenant shall be responsible for payment of reasonable services.

10. Insurance and Indemnification.

(a) Disclaimer of Liability. Landlord shall not at any time be liable for injury or damage occurring to any person or property arising out of Tenant's construction, maintenance, repair, use, operation, condition or dismantling of the Antennas, unless only to the extent caused by the negligent or intentional acts or omissions of Landlord or its agents or employees.

(b) Tenant's Indemnification. Unless and only to the extent caused by the negligent or intentional acts or omissions of Landlord or its agents or employees, Tenant shall, at its sole cost and expense, indemnify and hold harmless Landlord and all associated, affiliated, allied and subsidiary entities of Landlord, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys and contractors (hereinafter referred to as "Indemnitees"), from and against:

(i) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Tenant, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy which may arise out of or is caused by the construction, installation, operation, maintenance, use or condition of the Premises, Tower and/or Antennas or the Tenant's failure to comply with any Federal, State or local statute, ordinance or regulation; and

(ii) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Tenant, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Premises, Tower and/or Antennas, and, upon the written request of Landlord, Tenant shall cause such claim or lien covering Landlord's property to be discharged or bonded within thirty (30) days following such request.

(c) Landlord's Indemnification. The Landlord shall indemnify and hold Tenant, its officials, officers, agents and employees harmless from any and all liability resulting from personal injury or property damage arising out of the Landlord's or its agents or employees negligent or willful and wanton acts or omissions at the premises to the extent Landlord can be held liable for any such acts or omissions under State Law, including but not limited to the Illinois Tort Immunity Act.

(d) Assumption of Risk. Tenant undertakes and assumes for its officers, agents, affiliates, contractors and subcontractors and employees (collectively Tenant for the purpose of this section), all risk of inherent dangerous conditions, if any, on or about the Premises and Tower, and unless caused by the negligent and intentional acts or omissions of Landlord or its employees or agents, Tenant hereby agrees to indemnify and hold harmless the Landlord against and from any claim asserted or liability imposed upon the Landlord for personal injury or property damage to any person (other than from Indemnitee's negligence or willful misconduct) arising out of the Tenant's installation, operation, maintenance, condition or use of the Premises, Tower and/or Antennas or Tenant's failure to comply with any Federal, State or local statute, ordinance or regulation.

(e) Insurance: During the term of the lease, Tenant shall (unless optional as set forth below) maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

(i). Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with a minimum of one million dollars for each accident;

(ii). Comprehensive commercial general liability insurance with minimum limits of two million dollars (\$2,000,000.00) with a five million dollar (\$5,000,000.00) minimum umbrella as the combined single limit for each occurrence of bodily injury, personal injury and property damage;

(iii). Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Tenant, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of State law and minimum limits of one million dollars (\$1,000,000.00) as the combined single limit occurrence for bodily injury and property damage;

(iv). At the start of and during the period of any construction, builders all risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation of the Antenna Facilities. Upon completion of the installation of the Antennas, Tenant shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Leasehold Parcel. The amount of insurance at all times shall be representative of the insurable values installed or constructed;

(v). All policies, other than those for Worker's Compensation, shall be written on an occurrence and not on a claims made basis;

(vi). The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as, in combination, the limits equal or exceed those stated.

(f) Named Insured and Additional Insureds: All policies, except for business interruption and Worker's Compensation policies, shall specifically name the Village of Wheeling, including generally all associated, affiliated, allied and subsidiary entities of Landlord, now existing or hereafter created, and their respective officers, boards, commissions, employees, and agents, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds"). The general liability insurance policy shall contain separation of insureds wording, as follows:

"SEPARATION OF INSUREDS

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- (a) As if each Named Insured were the only Named Insured; and
- (b) Separately to each insured against whom claim is made or "suit" is brought."

(g) Evidence of Insurance: Certificates of insurance for each insurance policy required to be obtained by Tenant in compliance with this paragraph shall be filed and maintained with Landlord annually during the term of the Agreement. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord.

(h) Cancellation of Policies of Insurance: At least thirty (30) days prior written notice shall be given to Landlord by the insurer or its authorized agent of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties in this paragraph of the Agreement.

(i) Deductibles: Tenant agrees to indemnify and save harmless Landlord, the Indemnitees and Additional Insureds from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Agreement.

(j) Insurance Companies: All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Illinois or surplus line carriers on the State of Illinois Insurance Commissioner's approved list of companies qualified to do business in the State of Illinois. All insurance carriers and surplus line carriers shall be rated "A-" or better by A.M. Best Company, or the highest available rating. The foregoing notwithstanding, Landlord agrees that if Tenant maintains a self-insurance program through the Park District Risk Management Agency (PDRMA) covering Tenant's insurance obligations under this Lease, Landlord agrees to accept, in lieu of any certificate of insurance, a letter of self-insurance issued by Tenant, in full compliance with Tenant's insurance and insurance certificate obligations hereunder.

(k) Contractors: Tenant shall require that each and every one of its contractors and their subcontractors who perform work on the Leasehold Parcel and/or Tenant Facilities to carry, in full force and effect, "Worker's Compensation, comprehensive public liability and automobile liability insurance coverages of the type and with the same limits of insurance which Tenant is required to obtain under the terms of this Agreement.

(l) Review of Limits: At Landlord's option, no more than twice during each term of this Agreement, the parties shall mutually, and in good faith, review the insurance coverages to be carried by Tenant. In the event Landlord determines that any factors or occurrences including substantial increases in the level of jury verdicts or judgments or the passage of state or federal or other governmental regulations which would materially increase Landlord's exposure to risk have occurred, Tenant shall be so

notified, and the parties shall mutually agree upon the additional limits of insurance to be provided at the Tenant's sole cost and expense. If the parties are unable to reach an agreement on the modification of the limits of the insurance, the parties shall mutually agree upon a person in the insurance industry within thirty (30) days from the written request of either party to determine what are the standard limits for insurance of the type specified in substantially similar circumstances.

11. Quiet Enjoyment, Title and Authority. As of the Effective Date and at all times during the Initial Term and any Renewal Terms of this Lease, Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute and perform this Lease; (ii) Landlord has good and unencumbered fee title to the Premises and Tower, free and clear of any liens or mortgages, except those heretofore disclosed in writing to Tenant and which will not interfere with Tenant's rights to or use of the Premises; (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord; and (iv) Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

12. Environmental Laws. Landlord represents that it has no knowledge of any substance, chemical or waste (collectively, "Hazardous Substance") on the Premises that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord and Tenant shall not introduce or use any Hazardous Substance on the Premises in violation of any applicable law. Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance not caused by Tenant, that have occurred or which may occur on the Premises. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence of any Hazardous Substances on the Premises or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, "Actions"), that relate to or arise from the indemnitor's activities on the Premises. This Section 14 shall survive the termination or expiration of this Lease.

13. Assignment and Subleasing. Landlord shall have the right to assign or otherwise transfer this Lease and the Easements granted herein, upon written notice to Tenant except for the following; any assignment or transfer of this Lease which is separate and distinct from a transfer of Landlord's entire right, title and interest in the Premises, shall require the prior written consent of Tenant which may be withheld in Tenant's sole discretion. Upon Tenant's receipt of (i) an executed deed or assignment and (ii) an IRS Form W-9 from assignee, and subject to Tenant's consent, if required, Landlord shall be relieved of all liabilities and obligations hereunder and Tenant shall look solely to the assignee for performance under this Lease and all obligations hereunder. Landlord shall have the right to sublet tower space upon the Tower to

other tenants and receive all rent derived therefrom, providing that the Sublease does not interfere with the rights of the Tenant hereunder.

14. Successors and Assigns. This Lease and the Easements granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

15. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antennas or any portion thereof, which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Secured Parties the right to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Tenant's and/or Secured Party's sole discretion and without Landlord's consent.

16. Miscellaneous.

(a) The prevailing party in any litigation arising hereunder shall be entitled to reimbursement from the other party of its reasonable attorneys' fees and court costs, including appeals, if any.

(b) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements with respect to the subject matter and property covered by this Lease. Any amendments to this Lease must be in writing and executed by both parties.

(c) Landlord agrees to cooperate with Tenant in executing any documents reasonably necessary to protect Tenant's rights in or use of the Premises.

(d) In the event the Premises is encumbered by a mortgage or deed of trust, Landlord agrees, upon request of Tenant, to obtain and furnish to Tenant a non-disturbance and attornment agreement for each such mortgage or deed of trust, in a form reasonably acceptable to Tenant.

(e) Tenant may obtain title insurance on its interest in the Premises. Landlord agrees to execute such documents as the title company may require in connection therewith.

(f) This Lease shall be construed in accordance with the laws of the State of Illinois.

(g) If any term of this Lease is found to be void or invalid, the remaining terms of this Lease shall continue in full force and effect. Any questions of particular interpretation shall not be interpreted against the drafter, but rather in accordance with the fair meaning thereof. No provision of this Lease will be deemed waived by either party unless expressly waived in writing by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

(h) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacities as indicated.

(i) This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(j) All Exhibits referred to herein and any Addenda are incorporated herein for all purposes. The parties understand and acknowledge that Exhibits A and B may be attached to this Lease and the Memorandum of Lease, in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A and/or B, as the case may be, may be replaced by Tenant with such final, more complete exhibit(s) provided that the Landlord has provided consent to the final exhibits in writing.

17. Tower Marking and Lighting Requirements. Landlord acknowledges that it, and not Tenant, shall be responsible for compliance with all Tower marking and lighting requirements of the Federal Aviation Administration (“FAA”) and the FCC except for those marking and lighting requirements necessitated as a result of the installation of the Antennas which shall be the responsibility of the Tenant. Landlord and/or Tenant shall indemnify and hold the other party harmless from any fines or other liabilities caused by either the Landlord’s or Tenant’s failure to comply with such requirements. Should either party be cited by either the FCC or FAA because the Tower is not in compliance and, should the responsible party fail to cure the conditions of noncompliance within the time frame allowed by the citing agency, the non-defaulting party may either terminate this Lease immediately on notice to the defaulting party or proceed to cure the conditions of noncompliance at the defaulting party’s expense, which amounts may be deducted or added to Rent, as applicable, otherwise payable under this Lease.

18. Notices. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the addresses of the respective parties set forth below:

Landlord: Village of Wheeling	Tenant: Wheeling Park District
2 Community Boulevard	_____
Wheeling, IL 60090	_____
Attn: Village Manager	Attn: _____

With copy to:	James V. Ferolo	_____
	Klein, Thorpe and Jenkins, Ltd.	_____
	20 N. Wacker Drive - #1660	_____
	Chicago, IL 60606	_____

19. Effective Date. The effective date of this Lease is the date of execution by the last party to sign (the “Effective Date”).

IN WITNESS WHEREOF, the parties hereto bind themselves to this Lease as of the day and year first above written.

LANDLORD:

TENANT:

Village of Wheeling

Wheeling Park District

By: _____

By: _____

Print Name: Dean S. Argiris

Print Name: _____

Title: Village President

Title: _____

Date: _____

Date: _____

Attest

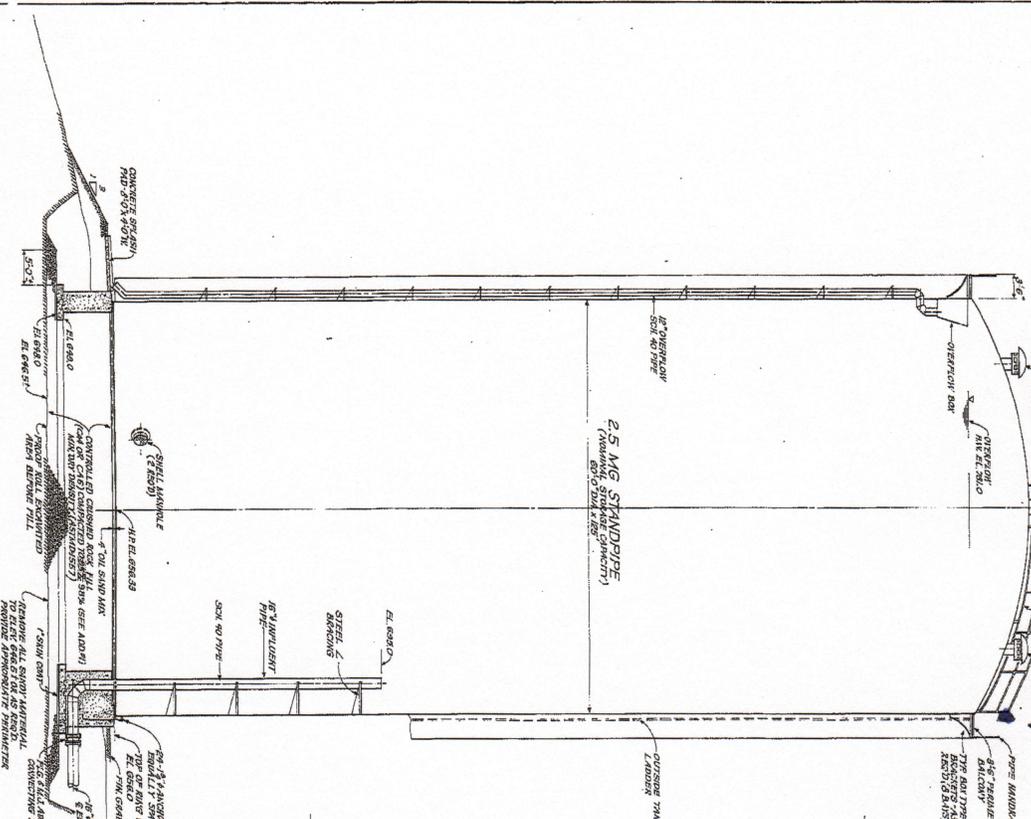
Elaine E. Simpson
Village Clerk

EXHIBIT A

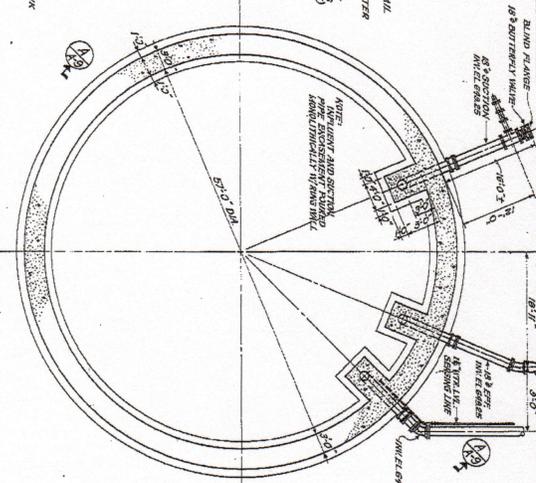
Depiction of Tower with Antennas

GENERAL NOTE:
THE TANK SECTIONS ARE AN ILLUSTRATIVE
CONCEPT. DESIGN REQUIREMENTS AND
MATERIAL ACCESSORIES REQUIRED.

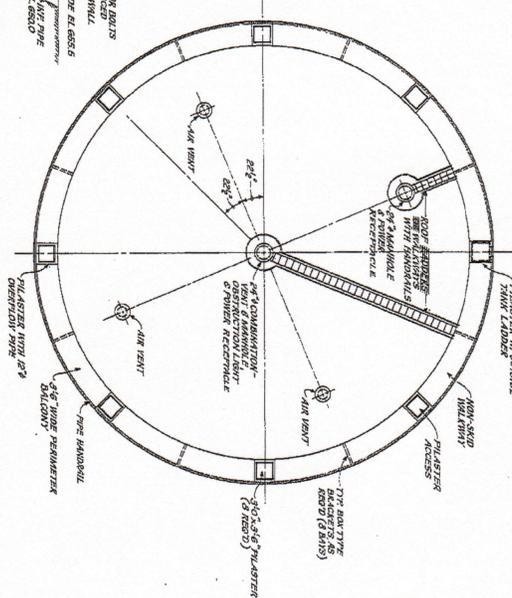
ELEVATION
SCALE: 3/8" = 1'-0"



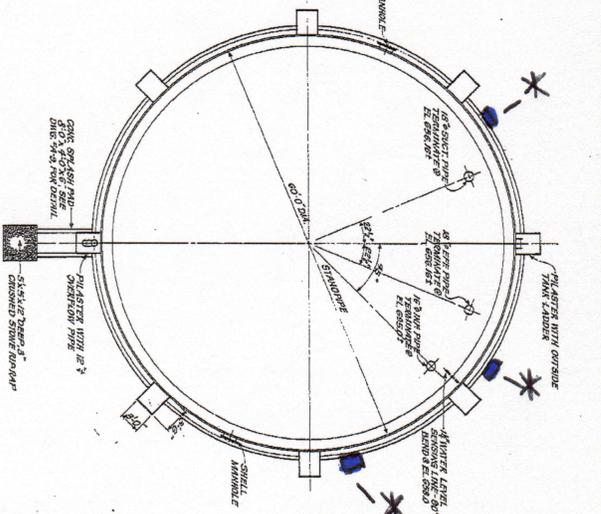
FOOTING PLAN
SCALE: 3/8" = 1'-0"



ROOF PLAN
SCALE: 3/8" = 1'-0"



SECTIONAL PLAN
SCALE: 3/8" = 1'-0"



* INDICATE APPROXIMATE LOCATION ON TOWER

DRAWING OF RECORD
REV. 4 BR
DATE: _____

WATER SYSTEM IMPROVEMENTS
2.5 MG STANDPIPE NO. 1
PLANS AND SECTION
WHEELING, ILLINOIS
ALTON, BURRO & HOWSON
ENGINEERS - 1951

EXHIBIT B

Specifications of Antennas

HPCPE-18

0.3 m | 1 ft High Performance Parabolic Reflector Antenna, Single-polarized, 17.7-19.7GHz



General Specifications

Antenna Type	High Performance Parabolic Reflector Antenna
Size, nominal	1 ft 0.3 m
Polarization	Single

Electrical Specifications

Operating Frequency Band	17.7 - 19.7 GHz
Half Power Beamwidth, Horizontal	3.2 degrees
Half Power Beamwidth, Vertical	3.2 degrees
Cross-Polarization Discrimination	30 dB
Front to Back Ratio (F/B)	57 dB
Gain, Low Frequency	33 dBi
Gain, Mid Frequency	33.5 dBi
Gain, High Frequency	33.9 dBi
VSWR	1.5:1
Return Loss	-14 dB

Mechanical Specifications

Eye Azimuth Adjustment	± 10 degrees
------------------------	--------------

Mounting Pipe Diameter, Min	2 inch 5.08 cm
Mounting Pipe Diameter, Max	4.5 inch 11.4 cm
Net Weight	15 lbs 6.8 kg
Wind Velocity Operational	90 mph 145 km/h
Wind Velocity Survival Rating	125 mph 201 km/h
Mechanical Configuration	HPCPE
Axial Force (FA)	46 lbs 204 N
Side Force (FS)	13 lbs 58 N
Twisting Moment (MT)	27 ft-lbs 36 Nm
Operating temperature range	-40 to +60 C
Max pressure, psig, (if waveguide interface)	consult factory

Regulatory Compliance

FCC	undeclared
ETSI	302217 R2 C2
RoHS-complaint	Yes

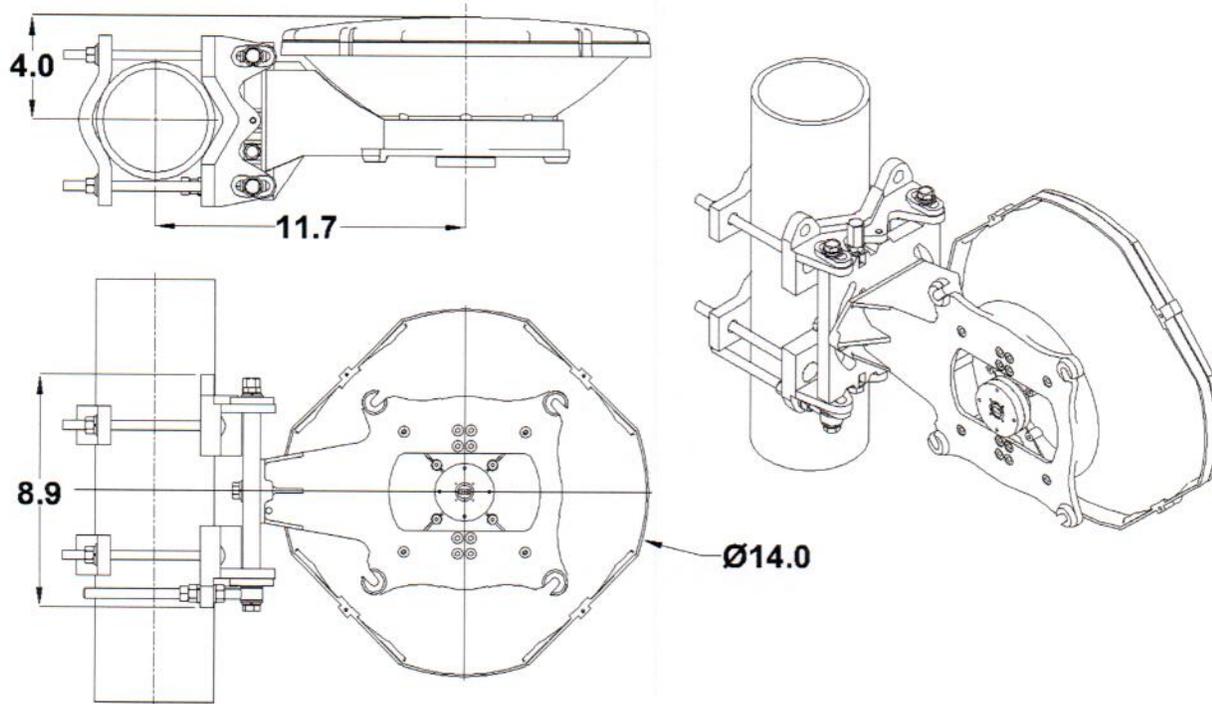
Shipping Information

Package Type	Cardboard
Gross Weight	23 lbs 10.4 kg
Dimensions, L x W x H	25 x 16 x 13 in 64 x 41 x 33 cm
Shipping Volume	3.01 cu ft 0.09 cu m

Additional Comments

Choose Radiowaves products for best performance and reliability

Technical Drawings



HPCPE

Radiowaves Glossary

Axial Force:	Force applied to the face of the antenna due to wind at specified wind speed
Beamwidth	The total width of the main beam measured in degrees between the 3-dB (half-power) points on either side of the peak of the main beam
Cross Polarization Discrimination (XPD)	The dB difference between maximum received co-polarized signal at electrical boresight and maximum received cross-polarized signal
Front to Back Ratio (F/B)	The dB difference between maximum received signal at electrical boresight to maximum received signal behind the antenna (180 +/- 40 degrees)
Gain	A measure of how well the antenna focuses available energy into a single beam. Larger antennas typically have higher gains and smaller beamwidths.
Gross Weight	Shipping weight, includes weight of antenna plus packaging materials
Net Weight	Weight of antenna only as mounted on tower.
Operating Frequency Band	The frequency limits between which the antenna meets declared specifications. Antennas may operate outside the frequency band with mild performance degradation.
Return Loss	A measure of how much rf energy incident upon the antenna is reflected back from whence it came, expressed as a negative dB value.
Side Force (FS)	Force applied to the side of the antenna due to wind at specified wind speed

VSWR

A measure of how much rf energy incident upon the antenna is reflected back from whence it came, expressed as a ratio

Wind Velocity Operational

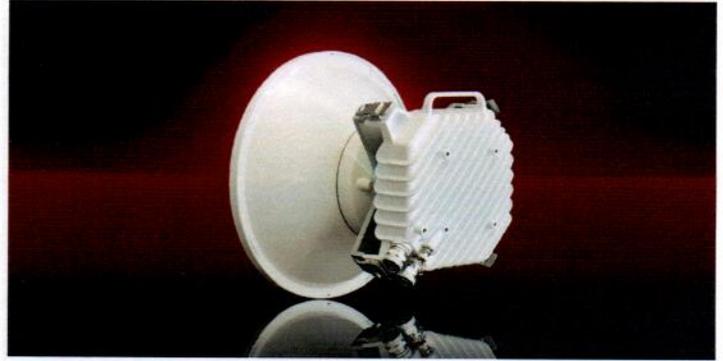
Wind speed where the antenna deflection is less than or equal to 0.1 degrees

Wind Velocity Survival Rating

Wind speed where the antenna will not suffer permanent damage, but may require re-pointing.



ExtendAir G2™ All-Outdoor FCC



Gigabit Ethernet Microwave Systems for High Capacity Backhaul

All-outdoor ExtendAir G2™ systems are high performance, point-to-point Gigabit Ethernet radios built for use in bands from 6 to 43 GHz. Designed to deliver guaranteed full-duplex Ethernet throughput up to 370 Mbps for short-haul and medium-range applications, the ExtendAir G2 all-outdoor radios are rugged, zero footprint systems requiring no cabinet space. Exalt's ExtendAir G2 yields a cost-effective, yet feature rich radio solution for service provider and enterprise applications where high reliability transmission is critical.

At a Glance

- High Performance
- Lowest Cost per Bit
- Data Rates up to 370 Mbps
- QPSK–256QAM with Adaptive Modulation
- Power-over-Ethernet
- 128/256-bit AES Encryption
- Zero Footprint
- Easy Sparring with Field Replaceable Diplexers
- Extended Temperature Range

Applications

- Mobile Networks
- Small Cell Backhaul
- WISP/Service Providers
- Government (Public Safety)
- Enterprise (Oil/Gas, Energy, Utilities, Transportation)
- Campus (Education, Healthcare, B2B)

ExtendAir G2 features and benefits include:

Single-unit sparing. A single ExtendAir G2 radio can be used to spare an entire 6, 11, 15, 18, 23 or 38 GHz frequency band, thanks to the industry's first field-replaceable diplexer in an all-outdoor radio. Compared to traditional approaches, the use of ExtendAir G2 drops the cost of spares by up to 90%.

Errorless adaptive modulation. With a rate adaptation range of 256QAM to QPSK, ExtendAir G2 can be used to deliver even higher ranges and data rates at high availability levels, then temporarily reduce throughput in the event of a fade while still ensuring the delivery of high priority traffic.

Data networking. ExtendAir G2 systems support jumbo frames and incorporate full Layer 2 switching along two GbE ports in combination with critical features such as 802.1Q (VLAN tagging), 802.1p (QoS) and Ethernet rate limiting.

Remote management. ExtendAir G2 systems include a full set of remote management tools such as Telnet/Command Line Interface (CLI), RS232, HTTP, HTTPS and SNMPv1, v2c and v3.

High security. ExtendAir G2 systems allow network managers to support the most stringent security requirements with hardware-based FIPS 197-compliant AES 128-bit and 256-bit encryption for data traffic protection and support for both encrypted SNMP v3 and SSL/SSH to ensure management security.



Primary Specifications

Maximum Capacity Ethernet (Full Duplex)

Frequency (GHz)

ExtendAir G2

rc06020, rc11020, rc15020
rc18020, rc23020, rc38020

370 Mbps

6 GHz (5.925–6.875 GHz), 11 GHz (10.700–11.700 GHz), 15 GHz (14.500–15.350 GHz)
18 GHz (17.700–19.700 GHz), 23 GHz (21.200–23.600 GHz), 38 GHz (38.600–40.000 GHz)

Specifications ExtendAir G2 Licensed FCC Series

RF Duplexers⁶

TR 252.06 MHz Lo/Hi	TR 160 MHz Lo/Hi	TR 490/500/530 MHz Lo/Hi	TR 475 MHz Lo/Hi	TR 1560 MHz Lo/Hi	TR 1200 MHz Lo/Hi	TR 700 MHz Lo/Hi
Band 1: 5.915–5.990 GHz/ 6.167–6.242 GHz	Band 1: 6.540–6.600 GHz/ 6.700–6.670 GHz	Band 1: 10.695–10.895 GHz/ 11.195–11.400 GHz	Band 1: 14.500–14.668 GHz/ 14.975–15.143 GHz	Band 1: 17.700–18.000 GHz/ 19.260–19.560 GHz	Band 1: 21.200–21.600 GHz/ 22.400–22.800 GHz	Band 1: 38.595–38.805 GHz/ 39.295–39.505 GHz
Band 2: 5.974–6.049 GHz/ 6.226–6.301 GHz	Band 2: 6.580–6.640 GHz/ 6.740–6.800 GHz	Band 2: 10.850–11.050 GHz/ 11.350–11.555 GHz	Band 2: 14.660–14.828 GHz/ 15.135–15.303 GHz	Band 2: 17.840–18.140 GHz/ 19.400–19.700 GHz	Band 2: 21.600–22.000 GHz/ 22.800–23.200 GHz	Band 2: 38.795–39.005 GHz/ 39.495–39.705 GHz
Band 3: 6.034–6.108 GHz/ 6.286–6.360 GHz	Band 3: 6.620–6.680 GHz/ 6.780–6.840 GHz	Band 3: 11.000–11.200 GHz/ 11.500–11.705 GHz	Band 3: 14.175–14.883 GHz/ 15.190–15.358 GHz		Band 3: 22.000–22.400 GHz/ 23.200–23.600 GHz	Band 3: 38.995–39.205 GHz/ 39.695–39.905 GHz
Band 4: 6.093–6.168 GHz/ 6.345–6.420 GHz	Band 4: 6.660–6.710 GHz/ 6.820–6.870 GHz					Band 4: 39.195–39.405 GHz/ 39.895–40.105 GHz

Maximum RSL	0 dBm no damage
QPSK	-20 dBm error-free
16QAM-256QAM	-25 dBm error-free
Output Power (min power)	0 to +3dBm depending on frequency band
Power Control Step Size	0.5 dB
ATPC⁴	Yes
Error Floor	10 ⁻¹²
FEC	Reed Solomon T=8
Ethernet Latency	40-170µs (<115µs typical) at full throughput (GigE) with AES encryption enabled
Data Security	NIST FIPS 197-compliant 128-bit AES and 256-bit AES ⁵ or 96-bit proprietary encryption
Adaptive Modulation	QPSK-256QAM fully configurable; errorless
Management	In-band management, Out-of-band management
Security	SSL/SSH and secure, encrypted SNMPv3
HTTP	Embedded web server GUI (Internet Explorer, Firefox, Safari, Chrome)
CLI/Telnet	via 10/100/1000BaseT
SNMP	v1, v2c, and secure v3
MIB support	MIB I, MIB II, Exalt MIB
Installation and Management Manual	Embedded in radio, accessible via HTTP GUI
Compliance	SNMP v1, v2c, v3
RF	FCC Part 101, IC SRSP 314.5; 317.8; 321.8
EMI	EN 301 498-1, -4
Safety	EN 60950-1, IEC 60950-1
Physical	
Dimensions (H x W x D)	9.4" x 9.4" x 4.5" 23.9 cm x 23.9 cm x 11.4 cm
Operating Temperature	-40 to +65 °C; -40 to +149 °F
Full Spec Temperature	-40 to +60 °C; -40 to +140 °F
Weight	9.5 lbs / 4.3 kg
Environmental	NEMA 4 / IP67
Altitude	4600m / 15,000 ft.
Humidity	100% condensing
Interfaces	PoE + 10/100/1000BaseT 10/100/1000BaseT RSL

Ethernet	RJ48C/RJ45 Female (x2)
Interface Speed	10/100/1000BaseT (ETH1/PoE + ETH2)
Duplex	Half, Full, Auto
Compliance	802.3 with MDIX
VLAN	802.1q, transparent, trunk, and management only
QoS⁴	8 priority levels, 8 queues; 802.1p, 802.1q (VLAN ID), source MAC address, destination MAC address
Ethernet Rate Limiting	Configurable per port via software
Maximum Packet Size	9720 bytes
DC Power	<40 W 48 VDC, 0.8 A
AC Power Adapter	
Input	100–240 VAC 2.3 A
Output	72 W, 48 VDC
Warranty	Two years ⁷

1. Consult with your Exalt sales representative for availability.
2. Not all channel bandwidths are available for every channel plan. Consult your Exalt sales representative for availability.
3. Maximum layer 1 throughput as measured with 64-byte packets and maximum layer 2 Ethernet throughput as measured with 1522 byte packets. In both cases, throughput includes source address, destination address and CRC overhead. Base configurations start at 25 Mbps full-duplex with 50, 100, 200, 300, and 370 Mbps upgrades.
4. Software upgrade required.
5. Software license key option.
6. Field replaceable. Refer to warranty terms and conditions.
7. Terms and conditions apply. Consult your Exalt sales representative for details.



VILLAGE OF WHEELING LEGISLATIVE COVER MEMORANDUM

AGENDA ITEM NO(S): #13.A

(To be inserted by Deputy Clerk)

DATE OF BOARD MEETING: March 7, 2016

TITLE OF ITEM SUBMITTED: Two (2) Resolutions Establishing and Granting the George Hieber Citizenship Award

1. Resolution Establishing the George Hieber Citizenship Award
2. Granting the Inaugural George Hieber Citizenship Award to George Hieber

BASIC DESCRIPTION OF ITEM¹: Establishes an annual George Hieber Citizenship award to recognize individuals or groups that make noteworthy contributions to the Wheeling community, as well as a policy and procedures for granting the award; grants the inaugural award to George Hieber.

BUDGET²: N/A

BIDDING³: N/A

EXHIBIT(S) ATTACHED: Memo, Resolutions

SUBMITTED FOR BOARD CONSIDERATION: VILLAGE MANAGER

¹ *The purpose of the proposed item and a description of same. If the issue is site specific, such as an annexation or road improvement, a map must be attached to the memorandum.*

² *If applicable, provide all budgetary considerations as follows: is the item covered in the current budget; fund(s) the item is to be charged to; expenses per fund(s) and total cost; and necessary transfer(s) or supplemental appropriation(s).*

³ *If applicable, describe the bidding process and results for purchases and contracts. If applicable, state whether or not any particular city, state or federal program was considered*



MEMORANDUM

TO: Village President, Clerk, and Board of Trustees
FROM: Jon A. Sfondilis, Village Manager
DATE: March 3, 2016
SUBJECT: George Hieber Citizenship Award

EXECUTIVE SUMMARY

Per the request of the Board of Trustees, staff has drafted a resolution establishing an annual Citizenship Award in honor of George Hieber and creating a protocol for granting the award in the future, as well as a second resolution naming him as the first recipient of the award,

The first attached resolution creates a Citizenship Award in honor of George Hieber and his many contributions to civic life in Wheeling over many years in a number of capacities. In keeping with the Board's direction, this resolution sets forth a policy by which future George Hieber Citizenship Awards will be granted. The policy is written broadly to enable the Village to bestow the award on any individual or group that makes significant contributions to the Wheeling community. Each year the Village will solicit written nominations for the award, and the Village President will consult with the Board of Trustees to select a recipient. The Board will then grant the award through a resolution approved at a public meeting.

In keeping with that process, the second resolution names Mr. Hieber as the inaugural recipient of the award that bears his name.

Staff has commissioned a large commemorative plaque that will hang in the Village Hall and record the names of the recipients of the award. The plaque uses a base of white marble sourced through Wheeling-based Terrazzo & Marble Supply Companies, and is being designed and fabricated by Wheeling-based Marblecast Products, Inc.

If you have questions or concerns about the George Hieber Citizenship Award, don't hesitate to contact me.

RESOLUTION NO. 16 - _____

RESOLUTION ESTABLISHING THE GEORGE HIEBER CITIZENSHIP AWARD

WHEREAS, George Hieber has for many years distinguished himself as an exemplary Wheeling citizen, both through his formal service as a Village commissioner and through his everyday engagement in civic life; and

WHEREAS, one of the many qualities that distinguishes Wheeling as a world-class community and makes it an exceptional place to live and to work is the good citizenship demonstrated by its residents, business leaders, and other community stakeholders; and

WHEREAS, good citizenship can be manifested in a number of ways, including but not limited to public service, volunteerism, leadership, philanthropy, professional excellence, neighborliness, and other actions taken by individuals or groups that rise above narrow self-interest to help make Wheeling great; and

WHEREAS, the Board of Trustees of the Village of Wheeling seeks to encourage good citizenship by recognizing outstanding contributions to Wheeling, and establishing a formal mechanism for granting such recognition through an annual award; and

WHEREAS, the Board of Trustees further regards it as fitting and proper that this award be named in honor of George Hieber to commemorate his longstanding service and many distinguished contributions to the Wheeling community;

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COUNTIES OF COOK AND LAKE, STATE OF ILLINOIS, as follows:

1. That the George Hieber Citizenship Award is hereby established;
2. That said Award shall be granted to any individual or group deemed by the Board of Trustees to merit recognition for specific or continuing noteworthy contributions to the Wheeling community;
3. That with the advice and consent of the Board of Trustees, the Village President shall annually designate a recipient of the Award based on nominations submitted in writing by Village elected and appointed officials, by members of the Village staff through the Village Manager, by local institutions, organizations, and associations, and by the public at large, with such nominations stating the nominee's qualifying contributions to the Wheeling community;
4. That the Village shall solicit such nominations for said Award through the regular means at its disposal for soliciting public input; and
5. That said Award shall be granted once per calendar year by a resolution of the Board of Trustees.
6. That this resolution shall be in full force and effect from and after its passage and approval as provided by law.

Trustee _____ moved, seconded by Trustee _____
that Resolution No. **16** - _____ be adopted.

President Argiris	_____	Trustee Lang	_____
Trustee Brady	_____	Trustee Papantos	_____
Trustee Krueger	_____	Trustee Vito	_____
		Trustee Vogel	_____

Adopted this _____ day of _____, 2016 by the President and Board of Trustees of the Village of Wheeling, Illinois.

Dean S. Argiris
Village President

ATTEST:

Elaine E. Simpson
Village Clerk

**VILLAGE OF WHEELING
LEGISLATIVE COVER MEMORANDUM**

AGENDA ITEM NO(S) #13.B
(To be inserted by Deputy Clerk)

DATE OF BOARD MEETING: March 7, 2016

TITLE OF ITEM SUBMITTED: An Ordinance Authorizing the execution of a Restated Redevelopment Agreement between the Village of Wheeling and WTC, LLC for the Development of Land at 351 W. Dundee Road, Wheeling, IL Comprising a Part of the Town Center-II TIF District of the Village of Wheeling, Cook and Lake Counties, Illinois

SUBMITTED BY: James V. Ferolo-Klein Thorpe and Jenkins

BASIC DESCRIPTION OF ITEM: The Ordinance authorizes the President to execute a Restated Redevelopment Agreement. The Restated Agreement extends the time for Final PUD Approval from February 28, 2016 to August 31, 2016. The overall schedule for completion of the Project is amended as well. Completion of the residential building has been pushed back to January 31, 2019. Completion of the theater is pushed back to August 31, 2018. Other components of the development are undergoing similar schedule changes. Further changes are described in the Board Memorandum.

EXHIBIT(S) ATTACHED: Ordinance, Restated Redevelopment Agreement and Board Memorandum

RECOMMENDATION: Approval

SUBMITTED FOR BOARD APPROVAL: Village Manager

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE EXECUTION OF A RESTATED REDEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF WHEELING AND WTC, LLC FOR THE DEVELOPMENT OF LAND AT 351 W. DUNDEE ROAD, WHEELING, IL COMPRISING A PART OF THE TOWN CENTER-II TIF DISTRICT OF THE VILLAGE OF WHEELING, COOK AND LAKE COUNTIES, ILLINOIS

BE IT ORDAINED, by the President and Board of Trustees of the Village of Wheeling Cook and Lake Counties, Illinois, as follows:

SECTION 1: The President and Board of Trustees of the Village find as follows:

- A. The Village of Wheeling (hereinafter referred to as the "VILLAGE") is a home rule municipality pursuant to Section 6(a) of Article VII of the Constitution of the State of Illinois and is authorized to exercise and perform any function pertaining to its government and affairs.
- B. The State of Illinois has adopted tax increment financing pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as from time to time amended (hereinafter referred to as the "TIF ACT").
- C. Pursuant to its home rule powers and in accordance with the TIF ACT, on July 7, 2014, 2014 the corporate authorities of the VILLAGE adopted Ordinance Numbers 4866, 4867, and 4868 in accordance with the TIF ACT and its home rule powers, approving a tax increment redevelopment plan and project, designating a tax increment redevelopment project area and adopting tax increment financing relative to the VILLAGE'S TOWN CENTER-II TIF DISTRICT (hereinafter referred to as the "TOWN CENTER-II TIF DISTRICT") for redevelopment and revitalization of a portion of the corporate limits of the VILLAGE, (hereinafter referred to as the "REDEVELOPMENT PROJECT AREA").
- D. WTC, LLC (hereinafter referred to as the "DEVELOPER") desires to redevelop a portion of the REDEVELOPMENT PROJECT AREA, (hereinafter referred to as the "SUBJECT PROPERTY") on which the DEVELOPER intends to construct a mixed use project including a 300 unit luxury apartment building, movie theater, restaurants and retail establishments (hereinafter referred to as the "DEVELOPMENT").

- E. On August 4, 2014, the VILLAGE approved a Redevelopment Agreement, between the DEVELOPER and the VILLAGE, which sets forth the terms and conditions pursuant to which the DEVELOPER will proceed with the DEVELOPMENT (hereinafter referred to as the “REDEVELOPMENT AGREEMENT”).
- F. On February 2, 2015 the Village Board approved a First Amendment to the Redevelopment Agreement.
- G. On July 6, 2015 the Village Board approved a Second Amendment to the Redevelopment Agreement
- H. Due to further unforeseen issues that will cause delays in zoning approval and completion of the DEVELOPMENT, it is necessary to amend certain sections of the REDEVELOPMENT AGREEMENT to incorporate an amended schedule as well as to address other necessary changes to the REDEVELOPMENT AGREEMENT.
- I. In accordance with the TIF ACT and the VILLAGE’S home rule powers it is in the best interest of the VILLAGE to approve a RESTATED REDEVELOPMENT AGREEMENT, pursuant to the TIF ACT.

SECTION 2: Based upon the foregoing, and pursuant to the TIF ACT and the VILLAGE’S home rule powers, a REDEVELOPMENT AGREEMENT that is in substantial conformity with the RESTATED REDEVELOPMENT AGREEMENT attached hereto as EXHIBIT A is hereby approved, with all final changes subject to the approval of the Village Manager. The President and Clerk of the VILLAGE are authorized and directed to execute and deliver such other instruments, once finalized, including the RESTATED REDEVELOPMENT AGREEMENT attached hereto as EXHIBIT A.

SECTION 3: That this Ordinance shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

ADOPTED this ____ day of _____, 2016, pursuant to a roll call vote as follows:

President Argiris	_____	Trustee Papantos	_____
Trustee Brady	_____	Trustee Vito	_____
Trustee Krueger	_____	Trustee Vogel	_____
Trustee Lang	_____		

APPROVED this _____ day of _____, 2016

Dean Argiris, Village President

ATTEST:

Elaine Simpson, Village Clerk

Approved as to form only:

Village Attorney

Published by me in pamphlet form this _____ day of _____, 2016.

Village Clerk

EXHIBIT A

RESTATED REDEVELOPMENT AGREEMENT

RESTATED REDEVELOPMENT AGREEMENT – WHEELING TOWN CENTER

This Redevelopment Agreement (the "Agreement") is made and entered into as of the ____ day of _____, 2016 (the "Effective Date") by and between the Village of Wheeling Illinois, an Illinois home rule municipal corporation (the "Village"), and WTC LLC, a Delaware limited liability company, licensed to do business in Illinois (hereinafter collectively, the "Developer"). (The Village and the Developer are sometimes referred to individually as a "Party" and collectively as the "Parties.")

RECITALS

The following Recitals are incorporated herein and made a part hereof.

A. The Village has the authority, pursuant to the laws of the State of Illinois, to promote the health, safety and welfare of the Village and its inhabitants, to prevent the presence of blight, to encourage private development in order to enhance the local tax base and increase additional tax revenues realized by the Village, to foster increased economic activity within the Village, to increase employment opportunities within the Village, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes, and otherwise take action in the best interests of the Village.

B. The Village is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended (the "Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the Act.

C. Pursuant to the Act and Village Ordinance Numbers 4866, 4867, and 4868, adopted July 7, 2014, the Village approved a tax increment redevelopment plan and project, designated the tax increment redevelopment project area, and adopted tax increment financing relative to the Village's Town Center (Dundee Road) Tax Increment Financing District (the "Town Center II TIF District").

D. The Developer desires to redevelop all of the Property by the Apartment Project (as defined below), the Retail Projects and the related infrastructure and amenities, all as to be set forth in the Final Plans (the "Project"). The Apartment building shall consist of at least 275 Class "A" residential rental units with high end finishes and a quality amenity package.

E. It is necessary for the development and completion of the Project that the Village enter into this Agreement with Developer to provide for the redevelopment of the Property, thereby implementing the TIF Plan.

F. Developer has been and continues to be unable and unwilling to undertake the redevelopment of the Property with the Project but for certain tax increment financing ("TIF") incentives to be provided by the Village in accordance with the Act (as defined below) and the home rule powers of the Village, which the Village is willing to provide under the terms and conditions contained herein. The Parties acknowledge and agree that but for the TIF incentives, to be provided by the Village, Developer cannot successfully and economically develop the Property with the Project in a manner satisfactory to the Village. The Village has determined that it is desirable and in the Village's best interests to assist Developer in the manner set forth herein and as this Agreement may be supplemented and amended from time to time.

G. The Village, in order to stimulate and induce development of the Property with the Project, has agreed to finance certain Eligible Redevelopment Costs (as defined in Article Two below) through Net Incremental Property Taxes (as defined below), all in accordance with the terms and provisions of the Act and this Agreement.

H. This Agreement has been submitted to the Corporate Authorities of the Village for consideration and review, the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Village according to the terms hereof, and any and all actions of the Corporate Authorities of the Village precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

I. This Agreement has been submitted to the Members of the Developer for consideration and review, the Members have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Developer according to the terms hereof, and any and all action of the Developer's Members precedent to the execution of this Agreement have been undertaken and performed in the manner required by law.

J. The Village hereby designates Developer as the exclusive developer for the Project on the Property, subject to the terms of this Agreement and only so long as Developer is not in default in relation to this Agreement after the expiration or any notice, cure or grace period.

K. On August 4, 2014, the Village approved a Redevelopment Agreement ("Original Redevelopment Agreement") outlining the development of the Property at 351 W. Dundee Road with a high end by the Apartment complex and Retail Center known as the Wheeling Town Center.

L. On February 2, 2015 the Village approved a First Amendment to the Original Redevelopment Agreement.

M. On July 6, 2015 the Village approved a Second Amendment to the original Redevelopment Agreement.

N. It is necessary to further amend the Original Redevelopment Agreement to incorporate revised schedule for zoning approval and construction of the project along with additional changes that are all stated in a Restated Redevelopment Agreement. .

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

ARTICLE ONE **INCORPORATION OF RECITALS**

The findings, representations and agreements set forth in the above Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set out in this Article One, and constitute findings, representations and agreements of the Village and of the Developer according to the tenor and import of the statements in such Recitals.

ARTICLE TWO **DEFINITIONS**

For the purposes of this Agreement, unless the context clearly requires otherwise, words and terms used in this Agreement shall have the meanings provided from place to place herein, including above in the Recitals hereto, and as follows:

"Act" means the Tax Increment Allocation Redevelopment Act found at 65 ILCS 5-11-74.4-1, *et seq.*, as amended.

"Agreement" means this Redevelopment Agreement.

"Apartment Project" shall mean an apartment building consisting of at least 275 class "A" luxurious residential rental units with high end finishes, together with common areas, pool and a fitness center serving the residential units contemplated to be constructed on Parcels 1.1, as identified on **Exhibit 5**, attached hereto and made a part hereof, subject to establishment by the Final Plans. The Apartment Project shall be marketed as a luxury rental development.

"Change in Law" means the occurrence, after the Effective Date, of a Change in Law Event, provided such Change in Law Event materially impairs the ability of the Party to perform its obligations under this Agreement and such event is not caused by the Party relying thereon:

"Change in Law Event" means any of the following: (i) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or

regulation (other than by the Village, but including Violative Village Actions); (ii) the order or judgment of any federal or state court, administrative agency or other governmental body (other than the Village, but including Violative Village Actions); (iii) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the Village, but including Violative Village Actions) and (iv) the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the actions to be performed under this Agreement (except any imposition of any conditions on, or delays in, any such issuance or renewal by the Village, provided such impositions and delays by the Village do not violate this Agreement).

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Collector" means the officer or officers of the County of Cook, Illinois, who is or are at the time obligated under applicable law to collect and pay over to the Village the Incremental Property Taxes pursuant to and in accordance with the Act.

"Corporate Authorities" means the President and Board of Trustees of the Village of Wheeling, Illinois.

"Dedicated Improvements" means all rights-of-way and easements on the Property along with the public improvements located therein or thereon which will, upon completion, be conveyed to and or come under the jurisdiction of the Village or a utility company, each as shown in the approved Final PUD.

The Dedicated Improvements, subject to Metra's conclusion relative to the ultimate ownership of the East Commuter Lot ("East Lot") shall only include, the watermain, excluding the service connections, and the large diameter elliptical pipe that will traverse the east border of the Property connecting Lake Heritage and the future development on Dundee Road.

With the prior consent of Metra, the East Lot shown on the Map attached hereto as Exhibit 9 currently owned by the Village and reserved for Metra commuter parking shall be transferred to the Developer in fee simple and 150 regular spaces, 9 kiss and ride spaces and 6 ADA spaces will be maintained by the Developer as commuter parking for as long as a commuter train station exists in Wheeling in accordance with an agreement to be entered between the Village and Developer. Should Metra consent to the transfer of property, the Village shall enter into a cost sharing agreement with the Developer to allocate to the Developer a portion of the funds collected for commuter parking fees to the maintenance and repair of the commuter parking area within the Development, with the remainder of the funds to be retained by the Village for the purpose of maintaining the train station and associated facilities outside of the Development.

Should Metra require municipal ownership of a portion of the parking lots and/or roadways within the Development, the Developer, as a condition of closing of the Initial Land Conveyance defined in 6.1(A) below, shall enter into a cost sharing agreement with the Village that allocates the cost of maintenance and repair of any Village owned surfaces within the Development. Such cost sharing agreement will provide that the Developer will maintain the east Metra parking lot in accordance with the terms of the extended Commuter Station Development Agreement approved by Resolution 96-35, as amended. The preliminary and final plats of subdivision shall reflect Metra's determination as to the ultimate ownership of a portion of the parking lots and/or a portion of the roadways within the Project.

All other improvements, will be owned and maintained by the Developer, including but not limited to, all other paved areas on the Property, street lights, water service connections, sidewalks, ADA crossings, signage, sanitary sewer system (main and connections), storm sewer system and other facilities within, on or under the Property owned by the Developer.

"Developer" means WTC LLC, a Delaware limited liability company, licensed to do business in the State of Illinois, or any successor or assignees in interest.

"Effective Date" means the date on which this Agreement is fully executed by both Parties, with said date being inserted in the opening paragraph of this Agreement.

"Eligible Redevelopment Costs" means costs of the Project to be paid or reimbursed by the Village as provided in this Agreement and as identified in Section 7.2 below.

"Final Plans" mean the Village approved site plan and engineering plans for the Project as approved by the Final PUD Approval referenced in Section 5.1 below, Developer shall have obtained Final PUD approval within one hundred-eighty (180) days of the date of this Agreement.

"Incremental Property Taxes" means that portion of the *ad valorem* real estate taxes, if any, arising from the taxes levied upon the Property, which taxes are actually collected and which are attributable to the increase in the equalized assessed valuation ("EAV") of the Property over and above the EAV of the Property at the time of the formation of the Town Center II TIF District, all as determined by the County Clerk of the County of Cook, Illinois, pursuant to and in accordance with the Act, the TIF Ordinances and this Agreement, and which are received by the Village after the Effective Date of this Agreement.

"Members" means, collectively, those individuals or entities which are the members of the Developer.

"Net Incremental Property Taxes" means fifty eight percent (58%) of the Incremental Property Taxes deposited in the Town Center-II TIF Fund attributable to the taxes levied on the Property after the deduction of administrative expenses of the Village which said expenses shall not exceed Twenty Thousand and 00/100 Dollars (\$20,000) annually; provided however that (1) if the Library District is unable to support its claim for reimbursement as required by 65 ILCS 5/11.74.4-3(q)(7.7), such percentage shall be increased to sixty percent (60%); and (2) to the extent the School District's increased costs attributable to the Project are less than forty percent (40%) of Incremental Property Taxes, then the remaining portion of such set aside shall be included in the definition of Net Incremental Property Taxes as used herein

"Party" means the Village and/or Developer and their respective successors and/or assigns as permitted herein, as the context requires.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, trust, or government or any agency or political subdivision thereof, or any agency or entity created or existing under the compact clause of the United States Constitution.

" Project" shall have the meaning as set forth in Recital E above.

"Property" means those parcel(s) legally described and depicted on **Exhibit 1**.

"Retail Projects" shall mean those buildings to be constructed and intended primarily for retail use consisting of approximately ninety-five thousand (95,000) square feet of ground floor retail space and up to 30,000 square feet of second floor non-retail space contemplated to be constructed on Retail Pads A through J, as identified on **Exhibit 5**, subject to establishment by the Final Plans.

"TIF Ordinances" means those Ordinances referenced in Recital D above.

"Title Company" means Chicago Title Insurance Company.

"Uncontrollable Circumstance" means any event which:

- A. is beyond the reasonable control of and without the fault of the Party relying thereon; and
- B. is one or more of the following events:
 - (i) a Change in Law;
 - (ii) insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, fire, nuclear incident, war or naval blockade;
 - (iii) epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, other extraordinary or ordinary weather conditions or other similar act of God;
 - (iv) governmental condemnation or taking other than by the Village;

- (v) strikes or labor disputes, or work stoppages not initiated by the Developer;
- (vi) unreasonable delay in the issuance of building or other permits or approvals by the Village or other governmental authorities having jurisdiction other than the Village;
- (vii) shortage or unavailability of essential materials, which materially change the ability of the Party relying thereon to carry out its obligations under this Agreement;
- (viii) unknown or unforeseeable geo-technical or environmental conditions, including stormwater management issues as reasonably agreed upon by the Parties;
- (ix) major environmental disturbances;
- (x) vandalism;
- (xi) terrorist acts; or
- (xii) litigation brought by or against third parties including but not limited to actions pertaining to evictions.

Uncontrollable Circumstance shall not include: (1) economic hardship (except to the extent caused as a direct result of one or more of the Uncontrollable Circumstances described above); (2) unavailability of materials (except as described in Subsection (b)(vii) above); or (3) a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

“Qualified Investor” means any bank, financial institution, entity with assets exceeding five million and no/100 dollars (\$5,000,000.00), registered investment company or other person or entity defined as an “accredited investor” under the U.S. Securities Act of 1933 and its regulations.

“Village” means the Village of Wheeling, Illinois, an Illinois home rule municipal corporation.

“Violative Village Actions” means any law, ordinance, code, rule or regulation which is enacted, adopted, promulgated or modified by the Village which: (i) violates the terms of this Agreement; (ii) voids or materially modifies the terms of this Agreement; (iii) withdraws, terminates or voids the Final Plans (without Developers written consent); or (iv) renders performance by the Village hereunder illegal or impossible.

ARTICLE THREE **CONSTRUCTION**

This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- A. Definitions include both singular and plural.
- B. Pronouns include both singular and plural and cover all genders.

- C. The word "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".
- D. Headings of Articles and Sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.
- E. All exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement. In the event of a conflict between any exhibit and the terms of this Agreement, the Agreement shall control.
- F. Any certificate, letter or opinion required to be given pursuant to this Agreement means a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth. Reference herein to supplemental agreements, certificates, demands, requests, approvals, consents, notices and the like means that such shall be in writing whether or not a writing is specifically mentioned in the context of use.
- G. The Village Manager, unless applicable law requires action by the Corporate Authorities (which determination shall be made by the Village Manager and not the Developer), shall have the power and authority to make, grant or do those things, certificates, requests, demands, notices and other actions required that are ministerial in nature or described in this Agreement (collectively, the "Village Actions") for and on behalf of the Village and with the effect of binding the Village as limited by and provided for in this Agreement. Developer is entitled to rely on the full power and authority of: (i) the Persons executing this Agreement on behalf of the Village as having been properly and legally given authority to do so by the Village; and (ii) the Village Manager as to any Village Actions; in each case without any duty to inquire or verify whether such has been approved (or requires the approval of) any Corporate Authorities.
- H. In connection with the foregoing and other actions to be taken under this Agreement, and unless applicable documents require action by Developer in a different manner, Developer hereby designates Brad Friedman and Josh Goldstein as its authorized representatives who shall individually have the power and authority to make, grant or do all things, supplemental agreements, certificates, requests, demands, approvals, consents, notices and other actions required or described in this Agreement for and on behalf of Developer and with the effect of binding Developer in that connection (each such individual being an "Authorized Developer Representative"). Developer shall have the right to change its Authorized

Developer Representative by providing the Village with written notice of such change which notice shall be sent in accordance with Section 17.3 of this Agreement.

ARTICLE FOUR **REDEVELOPMENT PLAN**

The Village and the Developer agree to cooperate in implementing the Project in accordance with the Parties' respective obligations, as set forth in this Agreement, and the specific approvals by the Village, in the future, of the zoning, planned unit development and Final Plans for the Property and Project.

ARTICLE FIVE **DEVELOPMENT OF THE PROPERTY**

5.1 Zoning. Subject to Uncontrollable Circumstances, no later than August 31, 2016, the Developer shall have obtained from the Village final approval of a planned unit development, ("Final PUD Approval") for the development of the Property with the Project, with said final planned unit development to be in substantial conformity with **Group Exhibit 2 attached hereto and made a part hereof** identified in Section 5.3 below (the "Concept Plans"), subject to mutually agreed upon changes by the Developer and Village. The Village represents that the Property is currently within the MXT Transit Oriented Zoning District and that the permitted uses in the MXT Transit Oriented zoning district shall be permitted as a matter of right within the Property subject to the provisions of Section 5.4 below. The Developer shall obtain approval of Final Plans for the Project in accordance with the rules, regulations and ordinances of the Village including, but not limited to, the zoning review process, and the approval of all applicable ordinances required relative to the approval of the Final Plans for the Project, and in accordance with this Section, it being understood that the Village, in its capacity as a municipal corporation has sole discretion to approve all plans for development within the Village, and the Village shall not be deemed to have caused a default hereunder or hold any liability for its failure to approve any Final Plans for the Project or provide the Final PUD Approval. Notwithstanding the foregoing, the Village agrees that the Concept Plans attached hereto as **Group Exhibit 2** illustrate and represent the general layout and use for the Property. The Village further agrees that it will not unreasonably withhold its approval of the planned unit development plans provided said planned unit development plans are substantially in compliance with **Group Exhibit 2** identified in Section 5.3 below, subject to revision pursuant to the Village's zoning review process and design review process, and are otherwise in compliance with all applicable Village codes, ordinances and regulations unless said regulations are modified by departures granted as part of the preliminary planned unit development approval process.

5.2 Development. Subject to Uncontrollable Circumstances, within three (3) months after Final PUD Approval, (as defined above), Developer shall apply for all necessary permits from all governmental agencies having jurisdiction over the Project as may be required to commence construction of Phase I (Phase I of the Project is defined below in Section 6.1 A) of the Project.

5.3 Preliminary and Final Plans. The Property shall be developed by Developer in substantial conformity with the Preliminary PUD Ordinance and Plans and Exhibits attached thereto attached hereto and made a part hereof as **Group Exhibit 2.2016** All parking required for the Project shall be provided by the Developer on the Property in conformance with the Final Plans. It is understood that the Project must be constructed in conformity with all current applicable codes, ordinances and regulations of the Village as may be modified by this Agreement and the Final Plans. After Final PUD Approval, the Developer may request and obtain certain modifications to this Agreement or the Final Plans without a public hearing, except as required by State law, but only with the Corporate Authorities' approval, and which modifications shall be deemed minor modifications. These said minor modifications include: (a) variations to bulk use requirements not exceeding twenty (20%) percent; (b) variations as to the total square footage for each type of use which shall not differ by more than ten (10%) percent; and (c) a change by no more than twenty percent (20%) of the total retail square footage of the Project. Notwithstanding the above, all modifications, not otherwise defined in this Section as minor, and all special use requests, shall require a public hearing in accordance with the Wheeling Village Code.

5.4 Flood Control Facility ("Facility"). The Developer shall design and construct an elliptical storm sewer pipe on the Property in substantial conformance with the improvements as described in the report entitled "Heritage Park Flood Control Facility Storm Sewer Improvements for Future Developments-Drainage Exhibits and Calculations" dated July 20, 2011, as prepared by Haegar Engineering, LLC. Wheeling Storage Facility shall be constructed by the Village at its expense. The Village shall reimburse the Developer its costs for producing plans and specifications for this Facility and for constructing this Facility within thirty (30) days of receipt of an invoice, lien waivers and all other documents evidencing completion in accordance with the contract and as reasonably requested by the Village. Reimbursement shall include a Developer Fee no greater than 5% of the total cost of construction of the Facility. Prior to the commencement of design or construction the Developer shall provide the Village a contract for said design and construction for the Village's consideration and approval. The work shall be done at Prevailing Wage Rates. If the Village does not approve of the cost for the design and construction, the Village has the option of entering into its own contract to design and construct the Facility in which case the Developer is obligated to work cooperatively with the Village's chosen contractor in coordinating the construction of the Facility along with other underground utility work.

5.5 Prohibited Uses. The uses identified in **Exhibit 3** attached hereto and made a part hereof are referred to herein, individually and collectively, as the "Prohibited Uses". Even though the Prohibited Uses may otherwise be permitted in the MXT Transit Oriented Zoning District under the Village's Zoning Ordinance, the Developer agrees to not lease to, sell or allow any such Prohibited Uses to operate on the Property. Said prohibition of said Prohibited Uses shall be a covenant running with the land and binding on all future owners, tenants and assignees of any kind during the term of this Agreement. However, if any use listed on **Exhibit 3** is not a prohibited use in the MXT Transit Oriented Zoning District under the Wheeling Zoning Ordinance, as amended from time to time, the Village may, in its sole and exclusive discretion, upon request by Developer, allow any Prohibited Use without any further public hearings. Any such decision to allow a Prohibited Use may be made by the Village Board. The approval of a particular use which constitutes one of the Prohibited Uses shall not, however, waive in any way the provisions of this Section 5.4 restricting any other Prohibited Uses in regard to the Project and the Property. No occupancy permit and/or business license shall be issued by the Village relative to any business/use listed on **Exhibit 3** unless the Village has agreed to allow the particular Prohibited Use. If the Developer leases to, sells or allows a Prohibited Use on the Property, the Village, at its option, may seek a refund or suspend a portion of the TIF Reimbursement, as defined below, due the Developer under this Agreement, based upon the following formula:

$$\frac{\text{Square footage of that portion of the Project occupied by the prohibited use}}{\text{Square footage of the Project}} \times \text{Funding due to the Developer under Section 7.2} = \text{Reduction in TIF Reimbursement or Refund of TIF Reimbursement}$$

Prior to reducing the amount of the TIF Reimbursement due to Developer pursuant hereto, if the Prohibited Use is being engaged in by either: (x) a tenant of the Property and such was not permitted by the terms of such Tenant's lease; or (y) a purchaser of such portion of the Property, then the Developer shall have a period of one hundred eighty 180 days from the date of Notice from Village to enforce the terms of its lease or this Agreement in order to cause such tenant/purchaser to cease the Prohibited Use. In the event the Developer is unsuccessful in causing such tenant/purchaser to cease the Prohibited Use, the Village may thereafter exercise its right to withhold payment of the TIF Reimbursement based on the above formula.. Any such refund due the Village shall be paid within thirty (30) days of demand by the Village and shall constitute an obligation due and owing to the Village by the Developer and a lien against the Property until paid. Interest shall be assessed against all said amounts due an owing at a rate of five percent (5%) per annum.

ARTICLE SIX
CONVEYANCE OF PROPERTY

6.1 Conveyance of Property

A. The Village will convey clear and marketable title to the Property in a phased approach to the Developer substantially in accordance with the provisions of the Purchase Agreement in form attached as **Exhibit 4** ("Purchase Agreement"). The initial land conveyance consisting of parcels 1.1 and 1.2 ("Initial Land Conveyance") on Exhibit 5 will be purchased by the Developer upon satisfaction of the "Phase 1 Conditions" hereinafter defined. The Village and Developer agree that the price for each conveyance of a portion of the Property other than the portion of the Property for the Apartment Project ("Apartment Parcel") shall be for the amount of One Dollar (\$1.00) in accordance with the terms of the Purchase Agreement. The purchase price for the Apartment Parcel shall be reduced by the amount equal to 50% of the relocation cost of the West Shore Pipe Line ("West Shore") underground oil pipeline (the "Pipeline") pursuant to a three party reimbursement agreement to be entered into between the Village, Developer and the West Shore Pipeline Company ("Reimbursement Agreement") pursuant to paragraph 6.1(D) below. The Reimbursement Agreement shall provide that the total cost of relocation will be split equally between the Village and Developer who shall be severally liable for their proportionate share. The estimated cost to relocate the Pipeline is approximately One Million Four Hundred Eighty Seven Thousand Dollars (\$1,487,000.00); however the Developer agrees that the purchase price of the Apartment Parcel initially established at Seven Hundred Fifty Thousand Dollars (\$750,000.00) shall be increased by an amount by which 50% of the actual cost to relocate the Pipeline exceeds the amount paid by Developer for the Apartment Parcel at the closing thereof. The Developer shall deposit with the Village by wire transfer the amount of Fifty Thousand and 00/100 Dollars (\$50,000) upon execution of the Pipeline Relocation Reimbursement Agreement. The Developer shall further deposit with the Village by wire transfer the amount of Seven Hundred Thousand Dollars (\$ 700,000.00) (the "Deposit") at the same time as the Village is required to make payment for construction costs to West Shore prior to physical construction of the Pipeline under the Reimbursement Agreement. This shall take place no later than Final PUD Approval. No construction related to the relocation of the Pipeline shall begin prior to both the Village and Developer having deposited a total of Seven Hundred Fifty Thousand Dollars (\$750,000.00) into a segregated account to be held by the Village as provided in the Reimbursement Agreement. The Deposit will be credited against the purchase price for the Apartment Parcel at the closing of the sale of the Apartment Parcel to Developer if the Developer closes on the Apartment Parcel. The Deposit will be used by the Village or West Shore to pay for 50% of the costs of relocating the Pipeline pursuant to the Reimbursement Agreement. The Developer acknowledges the Deposit is non refundable unless the Village defaults under the Redevelopment Agreement or the Reimbursement Agreement as provided in Section 6.1(D) below and fails to cure said default within any applicable cure periods. If it is determined that the actual cost of relocation of the Pipeline exceeds One Million

Five Hundred Thousand Dollars (\$1,500,000.00), then the Developer shall pay to the Village at closing of the Apartment Parcel (or as soon thereafter as such excess is determined under the Reimbursement Agreement), as additional purchase price for the Apartment Parcel, an amount equal to 50% of such excess (the "Overage"). If it is determined that the actual cost of relocation of the Pipeline is less than One Million Five Hundred Thousand Dollars (\$1,500,000), then the Village shall refund to Developer an amount equal to 50% of any such over payment. The Developer shall be responsible for the Overage regardless of whether the Developer closes on the Apartment Parcel unless such failure is as a result of the default by the Village under the Redevelopment Agreement or the Reimbursement Agreement.

- (i) Prior to the conveyance of any parcel or parcels for a particular Phase after the initial land conveyance, the Developer must satisfy the following conditions (the "Standard Conveyance Conditions"): (1) Developer shall deliver a written notice of Developer's desire to acquire a particular Phase (the "Take Down Notice"); (2) prior to closing under the Purchase Contract, Developer shall provide Village with evidence reasonably satisfactory to the Village of the following: (a) the ability to satisfy its construction lender's requirements for funding of any developer equity required to construct the phase of the Project in question in accordance with the Final Plans; (b) a written commitment or other evidence of readily available financing in a form reasonably satisfactory to the Village, to construct the Phase of the Project in question; and (3) if requested, Developer shall provide current financial statements of the Developer. The Property will be subdivided for this purpose into separate tracts of land (each a Phase") as outlined in **Exhibit 5** attached hereto (which shall replace any comparable Exhibit attached to the Redevelopment Agreement. The Property will be conveyed as follows:

- (ii) The Initial Land Conveyance of a portion of the Property constituting the Project shall consist of the construction of the infrastructure and internal roadways per the Final Plans, the Apartment Project, the anchor tenant retail building shown on Parcel J in Exhibit 5, the Village Greenway, and Metra parking (the "Phase I Improvements"). In advance of the infrastructure and internal roadway construction the Village will grant the Developer all necessary easements for the construction and maintenance of such infrastructure on Village owned property. The Initial Land Conveyance for Phase I will consist of parcels 1.1 & 1.2 on **Exhibit 5**. The tract shown as Parcel 1.1 and 1.2 in **Exhibit 5** will be conveyed once West Shore relocates the Pipeline pursuant to the Reimbursement Agreement to an area as contemplated in the Concept Plans and reasonably acceptable to the Village, and the Village determines to its satisfaction that the Developer has satisfied the following conditions (the "Phase I Conditions): (a) Developer has satisfied the Standard Conveyance Conditions as to Phase I; (b) Developer has also provided

reasonable evidence that there exists leases for the Retail Projects on Phase I in an amount required by the lender to facilitate the financing of the construction of Phase I in its entirety, which leases shall include a lease of the anchor tenant building on Parcel 1.2 adjacent to the Village Greenway (the "Anchor Tenant Building") (c)the Developer has paid the Deposit to the Village if and when required hereunder; and (d) the Developer has entered into the necessary agreements with the Village and Metra to convey the East Lot to the Developer or, in lieu of transfer of ownership, has entered into a cost sharing agreement in accordance with Article 2 above. Subject to Uncontrollable Circumstances, the Phase I Conditions must be satisfied by Developer such that Parcel 1.1 and 1.2 can be conveyed to Developer no later than one hundred eighty (180) days after the later of (1) Final PUD Approval; (2) the date on which IDOT commences construction of the signalized intersection at the entrance of the Municipal Campus (3) completion of the relocation of the Pipeline pursuant to the Reimbursement Agreement; provided, however, the Village's right to terminate this Agreement pursuant hereto shall expire immediately upon the conveyance of Parcel 1.1 and 1.2 to the Developer. The Anchor Tenant Building shall be a unique dining and entertainment venue that is mutually acceptable to the Developer and the Village; provided, however, it is agreed that a "Flix Brewhouse" movie house or similar user shall satisfy this requirement. Upon request, Village agrees to indicate in writing for the benefit of Developer whether Developer has satisfied the Phase I Conditions and/or whether the user of the Anchor Tenant Building has been approved by the Village. The land constituting Phase I shall be conveyed in escrow and will close simultaneously with the construction loan.

B. At any time concurrent with or after the conveyance of Phase I, Developer may takedown any of the Retail Projects identified as Retail Pads A-J on **Exhibit 5** hereto, subject to the following conditions. In the event Developer wishes to acquire any of the Retail Projects, such will occur provided that the Developer has satisfied the following conditions (the "Retail Take Down Conditions"): (a) Developer has satisfied the Standard Conveyance Conditions for the Retail Project which Developer desires to acquire; and (b) Developer has entered into a multi-year lease to be approved by the Village,(such approval to not be unreasonably withheld) for a use on the Retail Project requested; (c) Developer has provided evidence, to the reasonable satisfaction of the Village which shall include a written commitment or other evidence of readily available financing in a form reasonable satisfactory to the Village and sufficient for the financing for the construction of the Retail Project in question. It is acknowledged that the users in the pad identified as Pad H.1 in the Retail Projects shall include a quality sit-down restaurant to be approved by the Village, (such approval to not be unreasonably withheld). Upon request, Village agrees to indicate in writing for the benefit of Developer whether: (x) Developer has satisfied the Retail Take Down Conditions; and/or whether a particular user of a Retail Project satisfies the

requirement of being a quality sit down restaurant. Subject to Uncontrollable Circumstances, the conveyance of additional Retail Pads will trigger an affirmative obligation of the Developer to construct those buildings and cause them to be 70% leased within eighteen (18) months of conveyance. Failure to meet this eighteen (18) month deadline shall be construed as a Developer Event of Default triggering the Village's right to repurchase the Retail Pad in question pursuant to the terms of Section 6.3.

C. Each Retail Pad of the Property and the Initial Land Conveyance will be acquired by the Developer pursuant to a Purchase Agreement in substantial conformity with **Exhibit 4**, and the Village is providing no environmental representations or warranties to the Developer relative to the Property. The Property shall be conveyed to the Developer at the time required by such Purchase Agreement in an "as is, where-is" condition. Within five (5) business days of receiving a Take Down Notice, Village shall prepare the Purchase Agreement and the Village and Developer shall promptly execute the same subject to any required modifications agreed upon by the Village and Developer. Anything above to the contrary notwithstanding, in the event that the Developer determines prior to Closing, that the cost to remediate any soil or ground water contamination on any portion of the Property ("Cleanup Costs") will make construction of the Project prohibitively expensive, the Developer may elect by delivery of notice of termination to the Village within three (3) months of this Redevelopment Agreement being fully executed to terminate this Agreement. Prohibitively expensive shall be defined as environmental clean-up and/or remediation costs in excess of Three Hundred Thousand and 00/100 Dollars (\$300,000) per parcel of land conveyed (exclusive of any asbestos remediation within any building). In such case this Agreement or any applicable Purchase Agreement, at Developer's election, may be terminated by Developer and neither Party shall have any right or obligation hereunder.

D. Once the Developer provides a written commitment or other evidence of readily available financing, in a form reasonably satisfactory to the Village, to construct Phase I of the Project, the Village and Developer agree to enter into a satisfactory three party Reimbursement Agreement with West Shore to relocate the Pipeline to an area as provided in the Concept Plan and otherwise as approved by the Village and Developer, provided that the Developer has received Preliminary PUD approval and has complied with the provisions of Section 6.1(A) above. In the event that the cost of relocation exceeds the initial estimate of One Million Five Hundred Thousand Dollars (\$1,500,000), then the Village shall pay fifty percent (50%) of such excess and the purchase Price for the Apartment Parcel shall be increased by fifty percent (50%) of such excess as provided in Section 6.1(A) above. Provided all stated conditions have been met, the relocation of the Pipeline shall be completed by West Shore within one hundred eighty (180) days after the execution of the Reimbursement Agreement by all parties, subject to Uncontrolled Circumstances.

6.2 Closing. The Developer shall declare in writing to the Village, on or before each date set forth in the Purchase Agreement, whether it is prepared to close on a particular Retail Pad of the Property. In addition, on or before each closing date, the Developer shall provide the Village with evidence of its financial condition, including financial statements of Developer for the most recent fiscal year and the organizational documents of the Developer. On or before each closing, the Developer shall provide to the Village reasonable evidence of its satisfaction of the Standard Closing Conditions for the applicable phase of the Project being acquired.

6.3 Village Option to Repurchase Property.

A. Until the recordation of a Certificate of Completion, the Village is hereby granted an option to repurchase the Initial Land Conveyance or each Retail Pad of the Property from the Developer or its assignee, pursuant to the terms and conditions set forth in the Purchase Agreement (with the exception that Developer shall become the Seller and Village shall become the Purchaser thereunder), in the following limited circumstances and subject to the terms set forth below (the following being referred to as "Reverter Events"): (1) if Construction on the parcels that make up the Initial Land Conveyance or on each of the Retail Pads conveyed (as defined below) has not commenced as of the date which is 180 days after title to a parcel vests to the Developer; (2) if the Developer is in default under the Agreement according to Section 15; or (3) if this Agreement is terminated by Developer.

B. Each deed to the parcels that make up the Initial Land Conveyance or the Retail Pads when conveyed to the Developer shall contain an exception for the Village's repurchase rights contained in this Section 6.3 which shall remain in effect until the recording of a Certificate of Completion (at which time said option to repurchase shall be forever null and void). Upon the Village's written demand after the occurrence of a Reverter Event, the Developer shall re-convey title to any parcel that makes up the Initial Land Conveyance or a Retail Pad for which a Certificate of Completion has not been recorded with said conveyance to the Village to be pursuant to the Purchase Agreement. Upon the occurrence of a Reverter Event, and to the extent that there are no liens against the property, the Village will have the right to purchase each Parcel back from the Developer for the amount paid for it (\$1). To the extent that the Developer (or any Member) has incurred any mortgage or mezzanine financing to fund the costs of construction and which must be repaid ("Project Financing") and Village desires to exercise its repurchase option for that particular Phase of the Project prior to the recordation of a the Certificate of Completion, the Village will have the right to purchase each such parcel for a price equal to: (a) \$1 paid to the Developer plus (b) an amount necessary to repay all Project Financing obligations with respect to such Phase. Upon payment of said sum, all legal and equitable title to the Retail Pad in question shall be conveyed back to Village. Once a Reverter Event has occurred, the Village will have one hundred eighty (180) days to exercise its repurchase right to reacquire any Retail Pad transferred to the Developer for which a Certificate of Completion has not been recorded. If Developer cures Reverter Event prior to the Village exercising its

Repurchase Option, said action to repurchase shall become null and void. The Village's repurchase option will be secured by a covenant that will run with the land until such time as a Certificate of Completion is recorded against the Retail Pad in question (at which time the repurchase right of the Village shall be forever null and void). The repurchase option shall be dealt with on a stage by stage process in accordance with each Retail Pad of the development. Upon recordation of a Certificate of Occupancy, the Village's repurchase option for that particular Phase will terminate.

C. "Construction of any land making up the Initial Conveyance or any Retail Pad" shall be deemed to have commenced upon the pouring of the foundation for fifty percent (50%) of the building(s) in a particular Retail Pad of the Project.

ARTICLE SEVEN

VILLAGE COVENANTS AND AGREEMENTS

7.1 Village Cooperation. The Village agrees to cooperate with Developer in Developer's attempts to obtain all necessary approvals from any governmental or quasi-governmental entity, in addition to the Village, and upon request of Developer, will promptly execute any applications or other documents (upon their approval by the Village) which Developer intends to file with such other governmental or quasi-governmental entities in regard to the Project. The Village shall further promptly respond to, and/or process, and consider reasonable requests of Developer for applicable demolition permits, building permits, driveway permits, curb cuts permits, or other permits necessary for the demolition, construction development and leasing of the Project. In no event shall the cost of all building permits including, but not limited to, inspection review and tap-on fees and all Village service charges (as set forth in Title 1.26 of the Village Code) exceed the sum of three hundred thousand and no/100 dollars (\$300,000.00) in the aggregate. Approval of any building permit applications and/or engineering plans shall be contingent on the Developer providing all required and requested documentation including, but not limited to, engineering reports, calculations and plans required to substantiate that said improvements fully conform with all applicable State statutes and all Village ordinances and codes, as well as receipt of all required approvals from any federal, state, regional or county agencies having applicable jurisdiction to the extent said approvals are necessary for the Village to respond. The Developer acknowledges that it must pay the full amount of Impact Fees due and owing pursuant to Section 17.26 of the Village Code.

7.2 TIF Reimbursement.

A. Provided the Developer submits written documentation to the Village to support costs incurred by the Developer relative to the Project, which qualify as "redevelopment project costs" as defined by Section 5/11-74.4-3(q) of the Act, the Village shall reimburse the Developer for certain costs (the "TIF Reimbursement") which are eligible for reimbursement under this Agreement (the "Eligible Redevelopment Costs"). A list of the categories of anticipated Eligible Redevelopment Costs is attached hereto as **Exhibit 7** and made part hereof. The list may be amended during the course

of Construction of the Project. The Village will reimburse the Developer for Eligible Redevelopment Costs in an amount not to exceed Eight Million Six Hundred Thousand and 00/100 Dollars (\$8,600,000) (the "Funding Cap").

B. The reimbursement of these Eligible Redevelopment Costs will be made in the form of Taxable Notes issued to the Developer upon the issuance of a Certificate of Completion for Phase I and for the following combinations of Retail Pads, not in any particular order, Retail Pads A and B shall be defined as Phase II; Retail Pads C,D,F and G shall be defined as Phase III and Retail Pads H.1, H.2 and E shall be defined as Phase IV of the Project in accordance with Section 7.4 below in an aggregate initial principal amount equal to the amount of the Eligible Redevelopment Costs which have been incurred by the Developer for a particular Phase up to the Funding Cap. Developer shall advance (or in certain cases, may have already advanced) all funds and all costs necessary to redevelop the Property with the Project in conformance with the Final Plans or as agreed to between the Parties. To establish its right of reimbursement for Eligible Redevelopment Costs, Developer shall submit to a person or department within the Village (as the same is designated by the Village) such documentation as may be reasonably requested by the Village (including but not limited to a Certificate of Expenditure (defined below), lien waivers, cancelled checks, and paid invoices) verifying: (a) the amount and type of Eligible Redevelopment Costs that Developer has incurred in connection with the development of a particular Phase of the Project, so as to permit the Parties to establish the total Eligible Redevelopment Costs related to that Phase of the Project; and (b) the Eligible Redevelopment Costs that Developer has incurred for which Developer is requesting reimbursement, for approval of the Village. The appropriate Village employee or department shall have ten (10) business days after receipt of such information from Developer to recommend approval or disapproval in writing of such request for reimbursement to the Corporate Authorities and, if a request is disapproved, to provide Developer in writing and in detail with an explanation as to why such Village employee or department will not or can not recommend such reimbursement. If not so disapproved and a Certificate of Completion has been issued by the Village, the Corporate Authorities shall issue the Note related to the Phase in the amount of the Eligible Redevelopment Costs for which the Developer is seeking reimbursement (subject to the Funding Cap).

7.3 Payment of TIF Reimbursement. The following terms and conditions shall apply to the payment of the TIF Reimbursement of Developer's Eligible Redevelopment Costs and the repayment of the Notes:

A. Revenue Sources. In relation to the TIF Reimbursement to Developer of the Eligible Redevelopment Costs, the Village shall pledge only the Net Incremental Property Taxes from following sources of revenue, and no other revenue sources, for the payment of the Notes as set forth below:

- (i) One Hundred Percent (100%) of the Net Incremental Property Taxes generated from the Retail Projects ;

- (ii) Fifty Eight Percent (58%) of the Net Incremental Property Taxes from the Apartment Project; provided, however, if pursuant to the TIF Act, the actual amount required to be set aside for the school district is less than 40% of the Incremental Property Taxes generated by the Apartment Project by virtue of the calculation provided in the TIF Act based on the actual increase in attendance within the school districts resulting from the occupants of the Apartment Project, then the amount of Incremental Property Taxes from the Apartment Project shall only be reduced by the lesser amount required by the TIF Act and not maximum 40% as provided for herein. Additionally, , if pursuant to the TIF Act, the actual amount required to be set aside for the library district is less than 2% of the Incremental Property Taxes generated by the Apartment Project by virtue of the calculation provided in the TIF Act based on the actual increase in patrons of the library district resulting from the occupants of the Apartment Project, then the amount of Incremental Property Taxes from the Apartment Project shall only be reduced by the lesser amount required by the TIF Act and not maximum 2% as provided for herein.

B. Taxable Notes . The Village will issue at least one and up to a maximum of four, taxable notes (one note for Phase I and up to 3 retail notes) substantially in the form attached hereto as **Exhibit 6** and made a part hereof (the “Notes”) to Developer upon the issuance of a Certificate of Completion (the “Issuance Date”) of each Phase. Subject to the Funding Cap, each Note shall be in an aggregate initial principal amount equal to the amount of the Eligible Redevelopment Costs which have been incurred by the Developer for that particular Phase as evidenced by a certificate provided by the Developer and approved by the Village substantiating the Eligible Redevelopment Costs for such Phase (“Certificate of Expenditure”). After the issuance of all of the Notes, if the principal balance of the Notes is less than \$8,600,000, then the principal balance of the final Note will be increased (by the issuance of an amended and restated Note) when the Village approves additional Certificate(s) of Expenditure, up to a maximum of \$8,600,000 for all Notes in the aggregate. Eligible Redevelopment Costs will be certified by the Developer to, and approved by, the Village on the Issuance Date and quarterly thereafter. Interest on the Notes will accrue upon issuance of the Certificate of Completion in accordance with Section 7.4 below at a rate equal to the BBB 20-Year Corporate Bond Index as published by Bloomberg plus 150 basis points (the “Note Interest Rate”), and will bear simple interest. The Notes shall be payable solely from the Revenue Sources in Section 7.3 (A) above. The Notes will begin to accrue interest and payments being made upon the issuance of the Certificate of Completion (as defined below) for the Phase to which they relate.. The Notes will have a first lien on the Net Incremental Property Taxes after the required Library and School statutory payments have been deducted. Any portion of Net Incremental Property Taxes paid to Developer shall be first applied to interest accruing under the Notes and the balance (if any) to the principal amount due there under.

Annual payments on the Notes shall be made on or before December 31st of each year in which Net Incremental Property Taxes are received.

C. **Assignment of Notes.** The Notes may be (i) assigned or pledged as collateral by Developer to any lender under any project financing, or, (ii) following the issuance of the Certificate of Completion sold or assigned by Developer to a Qualified Investor. Notwithstanding the foregoing, the Developer may transfer the Notes at any time to (i) any entity controlling, controlled by or under common control with Developer or (ii) any entity in which the majority equity interest is owned by the parties that have a majority equity interest in Developer.

D. For each Phase, in lieu of issuing a Taxable Note, the Village shall have the option of paying the Developer directly for all or a portion of the Eligible Redevelopment Costs that have been approved by the Village up to a maximum of Eight Million Six Hundred Thousand and 00/100 Dollars (\$8,600,000), with said initial payment to be made within thirty (30) days of the issuance of the Certificate of Completion for each phase, and each subsequent payment within thirty (30) days of each quarterly (three (3) month) anniversary of the issuance of the Certificate of Completion, up to a maximum of Eight Million Six Hundred Thousand and 00/100 Dollar (\$8,600,000) plus accrued interest. In the event the Village exercises its option hereunder, the par value of the original Taxable Notes will be reduced by the amount of the payments that are directly made to the Developer and, upon full payment of the Taxable Notes plus accrued interest, the Taxable Notes shall be fully retired.

7.4 Certificate of Completion Requirements.

The Village shall execute and record in the County records a "Certificate of Completion" for each particular Phase of the Project when the following conditions have been met by the Developer:

- A. Completion of construction for all structures and all public infrastructure improvements required for that Phase of the Project;
- B. Issuance of Certificates of Occupancy for all buildings in that Phase of the Project by the Village, not to be unreasonably withheld; and
- C. A written determination by the Village that the Developer is in substantial compliance with all Village Requirements for that Phase of the Project; and
- D. The retail portion of the Phase at issue is at least 65% leased; and
- E. The apartment building is at least 50% leased so long as all of the units have been issued a Certificate of Occupancy.

The Certificate of Completion shall not be unreasonably withheld, conditioned or delayed by the Village. Subject to Uncontrollable Circumstances, in the event that the Certificate of Completion is not issued by the Village for Phase I of the Project within forty two (42) months of the date on which title to the Phase I Property vests in the

Developer, all Taxable Notes issued by the Village shall become null and void and the Village, at its option, to be exercised within thirty (30) days thereafter, may state its desire to acquire title to all or any portion of the Property conveyed to the Developer in accordance with 6.3 above.

If the option is exercised, the Village shall pay the Developer in accordance with Section 6.3 above. In the event the Village indicates its desire to purchase the Property, the closing in relation thereto shall take place within sixty (60) days thereafter, and this Agreement shall become null and void at the closing of such repurchase.

In connection with said option, Developer shall convey title to the Property to the Village (or its designee) pursuant to the terms of the Real Estate Contract attached as **Exhibit 4**, which shall mean clear and marketable title, free of all monetary liens.

The Village shall have a right to place a lien of record against the Property to enforce said option, in form and substance reasonably acceptable to Developer and its lender. Said lien shall be subordinate to the liens of any lender(s) against the Property and the Village shall execute a subordination agreement or agreements as required by any such lender(s) to confirm said subordination.

7.5 **Compensatory Storage**. The Village hereby agrees to provide, at a cost to the Developer of Three Hundred Thousand and 00/100 DOLLAR (\$300,000), one (1) acre foot of offsite compensatory storage, in Heritage Lake, as depicted in Exhibit 10, attached hereto. The Developer shall include the final calculation of offsite compensatory storage on the record drawings following completion of the Project. The payment required herein shall be made by the Developer prior to the issuance of the initial building construction permit for construction on the land comprising the Initial Land Conveyance.

ARTICLE EIGHT **DEVELOPER'S COVENANTS AND AGREEMENTS**

8.1 **Developer's Redevelopment Obligations**. Developer shall have the obligations set forth in this Article Eight in addition to those obligations set forth elsewhere in this Agreement, for the development, construction, financing, completion and furtherance of the Project.

8.2 Developer's Commitments.

- A. The Developer will construct the Project in conformance with the Final PUD Approval.
- B. Developer shall grant, dedicate or convey all Dedicated Improvements, when and as requested by the Village, provided such are completed by

Developer. The Village shall coordinate said conveyances of the Dedicated Improvements with all applicable utility companies and other applicable governmental bodies and/or agencies.

- C. Developer shall enter into an agreement with the Village that will provide assurances as may be required in the extended Commuter Station Development Agreement, such as a covenant documenting the obligations to maintain commuter parking on the Property for the duration of the agreement.
- D. Developer shall install all water mains, sanitary sewer mains and storm sewers necessary to serve the Property and Project in accordance with Final Plans.
- E. Developer shall provide Village with a surety bond in a form and substance satisfactory to the Village in an amount equal to one hundred ten percent (110%) of the Village Engineer's estimate of the cost of the Dedicated Improvements to secure the construction thereof. Village agrees to accept the same surety bond required by the first mortgage lender on the property provided that the first mortgage lender's requirements are the same or greater than that of the Village and provided that the first mortgage lender provides that the Village is a beneficiary of said surety bond.
- F. Developer shall convey title to all Dedicated Improvements required by the Final PUD Approval by an appropriate instrument of conveyance.
- G. Developer shall park and stage all construction equipment, materials and vehicles to be used in relation to the construction of the Project at such site(s) as may be agreed to between the Village and the Developer from time to time.

8.3 Surety Bonds/Completion Instruments The Village shall be named as a beneficiary on all performance, labor, and material bonds, or any other instruments insuring the completion of the Project (if any) which are issued by a third party (excluding any personal guarantees issued to any lenders by any person or entity associated with the Developer (collectively, the "Construction Sureties"), to the extent such Construction Sureties are required by the Developer's lender(s) relative to the Project. Duplicate originals of said Construction Sureties, naming the Village as a beneficiary, shall be provided to the Village by the Developer within thirty (30) days of the issuance thereof.

8.4 Compliance with Applicable Laws. Developer shall at all times acquire, install, construct, operate and maintain the Project in conformance with all applicable laws, rules, ordinances and regulations. All work with respect to the Project shall conform to all applicable federal, state and local laws, regulations and ordinances as

may be modified by this Agreement and by the Final PUD Approval, including, but not limited to, zoning, subdivision and planned development codes, building codes, environmental laws (including any law relating to public health, safety and the environment and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereafter), life safety codes, property maintenance codes and any other applicable codes and ordinances of the Village, or any of its rules or regulations or amendments thereto which are in effect from time to time during the construction and maintenance of the Project and/or during the term of this Agreement.

8.5 Progress Meetings. Developer shall meet with the Corporate Authorities and Village staff, up to four (4) times a year on a quarterly basis after the Effective Date, at the request of the Village, to make presentations to the Corporate Authorities and Village in order to keep the Village apprised of the status of the Project.

8.6 Fees and Expenses. Subject to Section 7.1 above relating to permits, Developer shall pay to the Village all customary fees and expenses as provided from time to time in the Village's codes and ordinances, including, but not limited to, inspection review and tap-on fees, for the Project, in effect at the date when due and payable or on the date when actually paid, whichever occurs later.

8.7 Developer's Cooperation and Coordination. During the construction of the Project, the Developer shall provide such notices and attend such community and neighborhood meetings as may be reasonably necessary or desirable, as determined by either the Village or the Developer and to keep all the residents reasonably informed of progress on the Project. The Developer shall also use reasonable efforts to stage its construction of the Project to minimize to any reasonable extent any material disruption to adjacent property owners. The Developer agrees to coordinate all construction at the Project with any special events planned by the Village, particularly including, but not limited to, events occurring at or along Dundee Road; provided, however, any delay caused thereby shall be deemed an Uncontrollable Circumstance. In the event of any such special events, such coordination with the Village shall include a specific traffic plan approved by the Village for both vehicles and pedestrians during the special event.

ARTICLE NINE **ADDITIONAL COVENANTS OF DEVELOPER**

9.1 Developer Existence. Developer will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and standing as an Illinois limited liability company, so long as Developer maintains an interest in the Property or has any other remaining obligation pursuant to the terms of this Agreement.

9.2 Subordination. The Village shall not be required to subordinate its rights hereunder to any Project Financing and such Project Financing shall (subject to Section 15.7 below) shall be subject to the covenants in favor of the Village that run with the land as a result of the recording of this Agreement.

9.3 Construction of Project. The Developer shall diligently pursue obtaining all required permits and Developer shall cause construction of the Project on the Property to be prosecuted and completed pursuant to the schedule attached hereto as **Exhibit 8** the terms hereof with due diligence, in good faith and without delay, subject to Uncontrollable Circumstances and the other provisions of this Agreement.

9.4 Further Assistance and Corrective Instruments. The Village and Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any further instruments or documents as may be reasonably required for carrying out the intention of or facilitating the performance of this Agreement to the extent legally permitted and within the Village's and the Developer's sound legal discretion.

9.5 No Gifts. Developer covenants that no officer, member, manager, stockholder, employee or agent of Developer, or any other Person connected with Developer, has made, offered or given, either directly or indirectly, to any member of the Corporate Authorities, or any officer, employee or agent of the Village, or any other Person connected with the Village, any money or anything of value as a gift or bribe or other means of influencing his or her action in his or her capacity with the Village.

9.6 Disclosure. Concurrently with execution of this Agreement, Developer shall disclose to the Village the names, addresses and ownership interests of all persons that: (a) have active day to day control over the Developer; or (b) which own (directly or indirectly) more than ten percent (10%) of the equity interests in Developer, together with such supporting documentation that may be reasonably requested by the Village. Upon request from the Village, Developer further agrees to notify the Village throughout the term of this Agreement of the names, addresses and ownership interests of any new person or Member that meets the aforementioned qualifications.

9.7 Prevailing Wage. Developer shall comply with the Prevailing Wage Act but only in connection with the construction of any Dedicated Improvements.

ARTICLE TEN **ADHERENCE TO VILLAGE CODES AND ORDINANCES**

All development and construction of the Project shall comply in all respects with the provisions in the Building, Plumbing, Mechanical, Electrical, Storm Water Management, Fire Prevention, Property Maintenance, Zoning and Subdivision Codes of the Village and all other germane codes and ordinances of the Village in effect from time to time during the course of construction of the Project (except to the extent the Village grants any modification thereto or relief therefrom, including variances, waivers or special use permits, in accordance with applicable law).

ARTICLE ELEVEN **REPRESENTATIONS AND WARRANTIES OF DEVELOPER**

Developer represents, warrants and agrees, as the basis for the undertakings on its part herein contained, as of the date hereof and until completion of the construction of the Project as follows:

11.1 Organization and Authorization. Developer is limited liability company organized and existing under the laws of the State of Delaware and is duly authorized to transact business in the State of Illinois, and is authorized to and has the power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement. Developer is solvent, able to pay its debts as they mature and financially able to perform the terms of this Agreement. To Developer's knowledge, there are no actions at law or similar proceedings which are pending or threatened against Developer which would result in any material and adverse change to Developer's financial condition, or which would materially and adversely affect the level of Developer's assets as of the date of this Agreement or that would materially and adversely affect the ability of Developer to proceed with the construction and development of the Project.

11.2 Non-Conflict or Breach. Neither the execution and delivery of this Agreement by Developer, the consummation of the transactions contemplated hereby by Developer, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Developer conflicts with or will result in a breach of any of the terms, conditions or provisions of any offerings or disclosure statement made or to be made on behalf of Developer (with Developer's prior written approval), any organizational documents, any restriction, agreement or instrument to which Developer or any of its partners or venturers is now a party or by which Developer or any of its partners or its venturers is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever upon any of the assets or rights of Developer, any related party or any of its venturers under the terms of any instrument or agreement to which Developer, any related party or any of its partners or venturers is now a party or by which Developer, any related party or any of its venturers is bound.

11.3 Limit on Developer Action.

A. Until a Certificate of Completion is issued by the Village for any Phases of the Project, the Developer may not, without the Village's reasonable consent: (i) merge, liquidate or consolidate, (ii) sell, lease or transfer the property in said Phase or all or substantially all of its property (other than leases for space within a particular Phase for a use permitted under applicable law, sale of outlots or retail pads, if applicable, and similar transactions contemplated herein). (iii) enter into any transaction outside the ordinary course of business, (iv) assume or guarantee the obligations of any other person or entity or (v) enter into a transaction that would cause a material and detrimental change to the Developer's condition and its ability to perform its obligations under this Agreement.

11.4 Financial Resources. Developer has or will obtain sufficient financial and economic resources to implement and complete Developer's obligations contained in this Agreement.

11.5 Notice of Violations. The Developer represents and warrants that it has not received any notice from any local, state or federal official that the activities of the Developer with respect to the Property and/or the Project may or will be in violation of any environmental law or regulation. The Developer is not aware of any state or federal claim filed or planned to be filed by any party relating to any violation of any local, state or federal environmental law, regulation or review procedure, and the Developer is not aware of any violation of any local, state or federal law, regulation or review procedure which would give any person a valid claim under any state or federal environmental statute.

ARTICLE TWELVE **REPRESENTATIONS AND WARRANTIES OF THE VILLAGE**

The Village represents, warrants and agrees as the basis for the undertakings on its part herein contained that:

12.1 Organization and Authority. The Village is an Illinois home rule municipal corporation duly organized and validly existing under the laws of the State of Illinois, and has all requisite corporate power and authority to enter into this Agreement.

12.2 Authorization. The execution, delivery and the performance of this Agreement and the consummation by the Village of the transactions provided for herein and the compliance with the provisions of this Agreement (i) have been duly authorized by all necessary corporate action on the part of the Village, (ii) require no other consents, approvals or authorizations on the part of the Village in connection with the Village's execution and delivery of this Agreement, and (iii) shall not, by lapse of time, giving of notice or otherwise result in any breach of any term, condition or provision of any indenture, agreement or other instrument to which the Village is subject.

12.3 Connections. The Village warrants that to the best of its knowledge there is and will be sufficient capacity to serve the Project with all water lines, sanitary and storm sewer lines and Village utility lines existing or constructed near the perimeter of the Property, and that the Developer may connect the Project into such lines. The Developer shall grant or cause to be granted utility easements in favor of the Village as may be necessary or appropriate to accommodate the utilities shown on the Final Plans.

12.4 Recapture. The Village represents that there are no recapture obligations or agreements recorded against or affecting the Property nor are any such agreements or obligations under consideration at present.

12.5 Notice of Violations. The Village represents and warrants that it has not received any notice from any local, state or federal official that the activities of the Village with respect to the Property and/or the Project may or will be in violation of any law or regulation. The Village is not aware of any state or federal claim filed or planned to be filed by any party relating to any violation of any local, state or federal law, regulation or review procedure, and the Village is not aware of any violation of any local, state or federal law, regulation or review procedure which would give any person a valid claim under any state or federal statute. The Village makes no representations or warranties regarding the environmental condition of the Property.

12.6 Payment Obligations. The Village represents and warrants that its payment, repayment and/or reimbursement obligations under this Agreement shall not be impaired or delayed.

ARTICLE THIRTEEN **INSURANCE**

13.1 The Developer, and any successor in interest to the Developer, shall obtain and continuously maintain insurance on the Project and, from time to time at the request of the Village, furnish proof to the Village that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Developer must obtain and continuously maintain, provided that the Developer shall obtain the insurance described in clause (i) below prior to the commencement of construction of any portion of the Project which said insurance may be subject to approval by the Developer's lender(s) (excluding excavation and footings):

- A. Builder's risk insurance, written on the so-called "Builder's Risk - Completed Value Basis", in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.
- B. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy naming the Village and its officers, agents and employees as additional insureds, with limits against bodily injury and property damage of not less than \$2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.

C. Workers compensation insurance, with statutory coverage.

13.2 All insurance required in this Article shall be obtained and continuously maintained in responsible insurance companies selected by the Developer or its successors that are authorized under the laws of the State to assume the risks covered by such policies. Unless otherwise provided in this Article, each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured and the Village at least thirty (30) days before the cancellation or modification becomes effective (or not less than ten (10) days in the case of non-payment of premium). Not less than fifteen (15) days prior to the expiration of any policy, the Developer, or its successor or assign, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Article. In lieu of separate policies, the Developer or its successor or assign, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

ARTICLE FOURTEEN **INDEMNIFICATION, HOLD HARMLESS AND RELEASE PROVISIONS**

14.1 The Developer releases from and agrees that the Village, its governing body members, officers, agents, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Article, collectively the "Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or the Property or arising under this Agreement or actions in furtherance thereof to the extent not attributable to the gross negligence or willful misconduct of the Indemnified Parties.

14.2 Except for gross negligence or willful misconduct of the Indemnified Parties, the Developer agrees to indemnify the Indemnified Parties, now and forever, and further agree to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or of other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to: (a) the representations, covenants or warranties made or obligations undertaken by the Village in this Agreement; or (b) any breach of this Agreement by the Village.

14.3 Except as otherwise set forth in this Agreement, the Village makes no warranties or representations regarding, nor does it indemnify the Developer with respect to, the existence or nonexistence in the vicinity of the Property, or anywhere within the Town Center II TIF District, of any toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum

products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 961-9657, as amended) (collectively, the "Hazardous Substances"). The foregoing disclaimer relates to any Hazardous Substance allegedly generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located in the vicinity of the Property or within the Town Center II TIF District, as well as any activity claimed to have been undertaken in the vicinity of the Property that would cause or contribute to causing (a) the Agreement to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Development Agreement within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §691 *et seq.*, or any similar state law or local ordinance, (b) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from the Property within the meaning of, or otherwise bring any Property within the ambit of, CERCLA, or any similar state law or local ordinance, or (c) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*, or any similar state law or local ordinance. Further, the Village makes no warranties or representations regarding, nor does the Village indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Project or anywhere within the Town Center II TIF District of any substances or conditions in or on the Property that may support a claim or cause of action under RCRA, CERCLA, or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. The Village makes no representations or warranties regarding the existence of any above ground or underground tanks in the Property, or whether any above or underground tanks have been located under, in or about the Property and have subsequently been removed or filled.

ARTICLE FIFTEEN **EVENTS OF DEFAULT AND REMEDIES**

15.1 Developer Events of Default. The following shall be "Events of Default" with respect to this Agreement:

- A. If any material representation made by Developer in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to the Village pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if Developer does not remedy the default within thirty (30) days after written notice from the Village.

- B. Default by Developer for a period of thirty (30) days after written notice thereof in the performance or breach of any material covenant contained in this Agreement, including failure to construct Project in accordance with the schedule set forth in Section 9.3 above or concerning the existence, structure or financial condition of Developer and/or the Project and Property; provided, however, that such default or breach shall not constitute an Event of Default if such default cannot be cured within said thirty (30) days and Developer, within said sixty (60) days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within thirty (30) days after such notice.
1. In the event the Anchor Tenant is not open for business within 24 months of the Initial Land Conveyance, the Village has the option of reducing the TIF Reimbursement by the percentage of retail space occupied by the Anchor Tenant.
- D. The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of Developer in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Developer for any substantial part of the Property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.
- E. The commencement by Developer of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Developer to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Developer or of any substantial part of the Property, or the making by any such entity of any assignment for the benefit of creditors or the failure of Developer generally to pay such entity's debts as such debts become due or the taking of action by Developer in furtherance of any of the foregoing, or a petition is filed in bankruptcy by others and not dismissed within sixty (60) consecutive days.
- F. Developer abandons the Project on the Property. Abandonment shall be deemed to have occurred when all work stops on the Property for more than thirty (30) consecutive days for any reason other than: (i) Uncontrollable Circumstances or (ii) if Developer is ahead of its planned construction schedule.

15.2 Village Events of Default. The following shall be Events of Default with respect to this Agreement:

- A. If any representation made by the Village in this Agreement, or in any certificate, notice, demand or request made by a Party hereto, in writing and delivered to Developer pursuant to or in connection with any of said documents, shall prove to be untrue or incorrect in any material respect as of the date made; provided, however, that such default shall constitute an Event of Default only if the Village does not remedy the default within thirty (30) days after written notice from Developer.
- B. Default by the Village in the performance or breach of any material covenant contained in this Agreement concerning the existence, structure or financial condition of the Village; provided, however, that such default or breach shall constitute an Event of Default only if the Village does not, within thirty (30) days after written notice from Developer, initiate and diligently pursue appropriate measures to remedy the default, or if the Village fails to cure such default within thirty (30) days of written notice of such default.
- C. Default by the Village in the performance or breach of any material covenant, warranty or obligation contained in this Agreement; provided, however, that such default shall not constitute an Event of Default if the Village, commences cure within thirty (30) days after written notice from Developer and in any event cures such default within thirty (30) days after such notice, subject to Uncontrollable Circumstances.
- D. Failure to deliver or pay funds to meet the Village's obligations under this Agreement or any of the Notes, within thirty (30) days after written notice from Developer of such failure.

15.3 Remedies for Default. In the case of an Event of Default hereunder:

- A. The defaulting Party shall, upon written notice (in accordance with the applicable provisions of this Agreement) from the non-defaulting party, take immediate action to cure or remedy such Event of Default. If, in such case, any monetary Event of Default is not cured within thirty (30) days, or if in the case of a non-monetary Event of Default, action is not taken or not diligently pursued, or if action is taken and diligently pursued but such Event of Default or breach shall not be cured or remedied within a reasonable time, but in no event more than sixty (60) additional days after receipt of such notice, unless extended by mutual agreement, the non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to: proceedings to compel specific performance of the defaulting Party's obligations under this Agreement. The non-defaulting Party shall be entitled to reasonable attorney fees in the event a court

action is filed by the non-defaulting Party and the non-defaulting Party is the prevailing Party.

- B. In case the Village shall have proceeded to enforce its rights under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, then, and in every such case, Developer and the Village shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of Developer and the Village shall continue as though no such proceedings had been taken. However, in such event neither Party shall be entitled to reasonable attorneys' fees.
- C. In the case of an Event of Default by Developer or Village and its failure to cure such default after due notice, the non-defaulting party may seek any action at law or equity as its remedy. If the Developer defaults before Certificates of Completion are issued relative to all phases of the Project and fails to timely cure said default, at the option of the Village, all Taxable Notes issued hereunder shall become null and void and the Agreement shall terminate thus terminating any obligation of the Village to pay the TIF Reimbursement under Section 7.2.
- D. In the case of an Event of Default by Village which causes a delay in the performance of Developer's obligations or the completion of the Project in accordance with the schedule attached hereto as **Exhibit 8**, and made a part hereof, then such schedule shall be extended on a day for day basis for each day that such Event of Default on the part of the Village exists.

15.4 Reimbursement of Village for Legal and Other Fees and Expenses.

- A. Within sixty (60) days upon written demand by the Village made by and through its Village Manager, Developer from time to time shall promptly reimburse the Village for all of the reasonable expenses and costs incurred by the Village in the administration and negotiation of the Agreement, including and not limited to reasonable attorneys' fees, engineering and financial consultants, and also all out-of-pocket expenses involving various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents required hereunder, and the negotiation and preparation of this Agreement, surety bonds, and escrow agreements to be entered into as security for the completion of land improvements. In no event shall said collective expenses/fees exceed Seventy-Five Thousand and 00/100 Dollars (\$75,000). Such costs and expenses incurred by Village in the administration or negotiation of the Agreement shall be evidenced to the Developer upon its request, by a sworn statement of the Village; and such costs and expenses may be further confirmed by the Developer at its option from additional documents relevant to determining

such costs and expenses designated from time to time by the Developer. The Village will submit the initial invoices for expenses and fees under this paragraph no later than the date of closing on the first Phase of the Property. The Developer will pay the initial reimbursement under this section to the Village at closing on the Property. Subsequent invoices will be submitted to the Developer on a quarterly basis. The Developer has reimbursed the Village the initial \$75,000.00.

Notwithstanding the immediately preceding paragraph, Developer shall in no event be required to reimburse Village or pay for any expenses or costs of Village as aforesaid more than once, whether such are reimbursed or paid through special assessment proceedings, through fees established by Village ordinances or otherwise.

- B. To the extent not otherwise contrary to Section 15.1 of this Agreement in the event that any third party or parties institute any legal proceedings against the Village due to the actions of the Developer, which relate to the terms of this Agreement, then, in that event, the Developer, on written notice from Village shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:
- (i) Developer shall not make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the reasonable approval of the Village.
 - (ii) If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village and the Developer, on an issue of importance to the Village having a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event the Village exercises such option, then Developer shall reimburse the Village from time to time on written demand from the Village Manager of the Village and notice of the amount due for any expenses, including but not limited to court costs, reasonable attorneys' fees and witnesses' fees, and other expenses of litigation, incurred by the Village in connection therewith.

15.5 No Waiver by Delay or Otherwise. Unless barred by the applicable statute of limitations, any delay by either Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that neither Party should be deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made with respect to any specific Event of Default be considered or treated as a waiver of the rights by the waiving Party

of any future Event of Default hereunder, except to the extent specifically waived in writing. No waiver made with respect to the performance, nor the manner or time thereof, of any obligation or any condition under the Agreement shall be considered a waiver of any rights except if expressly waived in writing.

15.6 Rights and Remedies Cumulative. The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise by such Party, at that time or different times, of any other such remedies for the same Event of Default.

15.7 Mortgagee Protections.

A. Any mortgage or deed of trust that the Developer may hereafter elect to execute and record or permit to be recorded against the Property or any Phase thereof is referred to herein as a "Mortgage." The holder of any Mortgage against the Property or any Phase thereof is referred to therein as a "Mortgagee".

B. In the event that a Mortgagee or any other party shall succeed to the Developer's interest in any Phase pursuant to the exercise of remedies under a Mortgage, whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with Section 17.14 hereof, the Village agrees to agree to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement as to such Phase so long as such Mortgagee or other party accepts all of the obligations and liabilities of "the Developer" hereunder with respect to such Phase. However, if such Mortgagee or other party does not expressly accept an assignment of the Developer's interest hereunder, such party shall be entitled to no rights and benefits under this Agreement, and such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the Property.

C. To the extent requested in writing by Developer, Village agrees to give each lender under any Project Financing copies of any notice of an Event of Default (or any fact or circumstance which with the passage of time could become an Event of Default) given by the Village to Developer provided that Developer gives the Village the address to where notices shall be sent to such lender.

D. In the event that Village provides any notice to Developer of any fact or circumstance which constitutes and Event of Default (or with the passage of time would constitute an Event of Default), then to the extent such is subject to cure hereunder, Village agrees to accept the actions of any Mortgagee which remedies such fact or circumstance as a cure provided such is accomplished within the same time period afforded to Developer hereunder.

ARTICLE SIXTEEN
EQUAL EMPLOYMENT OPPORTUNITY

16.1 No Discrimination. Developer will comply with all federal, state and local laws relating to equal employment opportunity.

16.2 Advertisements. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

16.3 Contractors. Any contracts made by Developer with any general contractor, agent, employee, independent contractor or any other Person in connection with the Project shall contain language similar to that recited in Sections 16.1 and 16.2 above.

ARTICLE SEVENTEEN **MISCELLANEOUS PROVISIONS**

17.1 TIF Provisions. A delineation of the Eligible Redevelopment Costs for the Project is set forth on **Exhibit 7** attached hereto and hereby made a part hereof, and the Village shall not reimburse the Developer for any costs not listed on said Exhibit 7 unless the project incurs additional costs due to unforeseen environmental and geotechnical issues affecting the project's public improvements. In which case the Village shall reimburse Developer for such Eligible Redevelopment costs.

17.2 Cancellation. If prior to the conveyance of Phase I to the Developer, the Developer or the Village shall be prohibited, in any material respect, from performing covenants and agreements or enjoying the rights and privileges herein contained, or contained in the Amended TIF Plan, including Developer's duty to build the Project, by the order of any court of competent jurisdiction, or in the event that all or any part of the Act or any ordinance adopted by the Village in connection with the Project, shall be declared invalid or unconstitutional, in whole or in part, by a final decision of a court of competent jurisdiction and such declaration shall materially affect the covenants and agreements or rights and privileges of Developer or the Village, then and in any such event, the Party so materially and adversely affected may, at its election, cancel or terminate this Agreement in whole (or in part with respect to that portion of the Project materially affected) by giving written notice thereof to the other upon the earlier to occur of: (a) the conveyance of Phase I to the Developer; or (b) the ninetieth (90th) day after such final decision or amendment. If the Village terminates this Agreement pursuant to this Section 17.2, to the extent it is then appropriate, the Village, at its option, may also terminate its duties, obligation and liability under all or any related documents and agreements provided.

17.3 Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service, (b)

electronic communications, whether by telex, telegram or telecopy, (c) overnight courier, or (d) registered or certified first class mail, postage prepaid, return receipt requested.

If to Village: Village President
Village of Wheeling
2 Community Blvd.
Wheeling, Illinois 60090
Fax: (847) 459-9692

With a copy to: Village Manager
Village of Wheeling
2 Community Blvd.
Wheeling, Illinois 60090
Fax: (847) 459-9692

And: Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606-2903
Attention: James V. Ferolo
Fax: (312) 606-7077

If to Developer: Mr. Brad Friedman
WTC , LLC
20 N. Wacker Drive, Suite 4120
Chicago, IL 60606
BFriedman@UrbanR2.com

Mr. Josh Goldstein
The Lynmark Group
Four Executive Boulevard - Suite 200
Suffern, NY 10901

With a copy to: Lucille Falcone
The Lynmark Group
Four Executive Boulevard - Suite 200
Suffern, NY 10901

The Parties, by notice hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier, and any notices, demands or requests sent pursuant to clause (d) shall be deemed received forty-eight (48) hours following deposit in the mail. Notices may be sent by

legal counsel for a party hereunder and (when so sent by an attorney) shall be deemed notice from the party so represented.

17.4 Time of the Essence/Time for Performance. Time is of the essence of this Agreement. Notwithstanding the foregoing, for each day that the Village or Developer is delayed in its performance of any obligation under this Agreement by an Uncontrollable Circumstance, the dates set forth in this Agreement shall be extended by one (1) day.

17.5 Integration. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

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

17.7 Recordation of Agreement. The Parties agree to record this Agreement, with the Cook County Recorder's Office, upon its execution, with Developer paying the costs associated with such recording.

17.8 Severability. If any provision of this Agreement, or any Section, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held to be invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

17.9 Choice of Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and any court proceedings between the parties hereto shall be brought in Cook County, Illinois.

17.10 Entire Agreement and Amendments. This Agreement (together with the exhibits attached hereto) is the entire agreement between the Village and Developer relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Village and Developer, and may not be modified or amended except by a written instrument executed by the Parties hereto.

17.11 Third Parties. Except as provided in Section 15.7, nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other person other than the Village and Developer, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the Village or Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the Village or Developer. Except as provided in Section 15.7, this Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

17.12 Waiver. Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

17.13 Cooperation and Further Assurances. The Village and Developer each covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better clarifying, assuring, developing, mortgaging, conveying, transferring, pledging, assigning and confirming unto the Village or Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

17.14 Successors in Interest. Notwithstanding Section 17.20 of this Agreement, at any time, the Developer may assign its rights or obligations under this Agreement with respect to all or any part of the Property (i) in connection with obtaining financing for the Project or any portion thereof, such as a collateral assignment or pledge of interest or (ii) to any entity in which the Developer or a majority of its members owns a controlling interest; or "(iii) any entity in which Developer or a majority of its members owns a controlling interest may be the grantee in any conveyance deed in connection with the financing of the Project or any portion thereof.

17.15 No Joint Venture, Agency or Partnership Created. Nothing in this Agreement, or any actions of the Parties to this Agreement, shall be construed by the Parties or any third person to create the relationship of a partnership, agency or joint venture between or among such Parties.

17.16 No Personal Liability.

A. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of the Village Manager, any elected official, officer, partner, member, shareholder, manager, director, agent, employee or attorney of the Village, in his or her individual capacity, and no elected official, officer, partner, member, director, agent, employee or attorney of the Village shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

B. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member, manager, partner, agent, employee or attorney of the Developer, in his or her individual capacity, and no member, manager, partner, agent, employee or attorney of the Developer shall be liable personally under

this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery and performance of this Agreement, or any failure in that connection.

17.17 Repealer. To the extent that any ordinance, resolution, rule, order or provision of the Village's code of ordinances, or any part thereof, is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling, to the extent lawful.

17.18 Term. This Agreement shall remain in full force and effect until the Town Center II TIF District expires, at which time the Village, upon request agrees to record a release of this Agreement.

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

17.20 Assignment. Unless set forth herein to the contrary, prior to Certificates of Completion being issued and recorded for the entire Project, this Agreement and the rights and obligations hereunder, may not be assigned by Developer without the prior written consent of the Village in its sole discretion, Notwithstanding the foregoing, after the recordation of a Certificate of Completion as to any Phase, Developer may sell such Phase (and any Notes then issued) without the consent of the Village

ARTICLE EIGHTEEN **EFFECTIVENESS**

The Effective Date for this Agreement shall be the day on which this Agreement is approved and executed by the Village, with said date being inserted on page 1 hereof.

[signatures follow on the next page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

Village of Wheeling,
an Illinois municipal corporation

ATTEST:

By: _____
Village Clerk

By: _____
Village President

DEVELOPER:

WTC LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

ACKNOWLEDGMENTS

State of Illinois)
) SS
County of Cook)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Dean Argiris personally known to me to be the Village President of the Village of Wheeling, and Elaine Simpson, personally known to me to be the Village Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Village President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Village Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2016.

Notary Public

State of Illinois)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of _____, and _____, personally known to me to be the _____ of said Illinois _____, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such _____ and _____, they signed and delivered the said instrument and caused the corporate seal of said Illinois _____ to be affixed thereto, pursuant to authority given by the Members of said Illinois _____, as their free and voluntary act, and as the free and voluntary act and deed of said Illinois _____, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2016.

Notary Public

EXHIBIT 1

LEGAL DESCRIPTION FOR THE PROPERTY
To be agreed upon by the Village and Developer

GROUP EXHIBIT 2

PUD ORDINANCE AND PLANS

To be attached

EXHIBIT 3

LIST OF PROHIBITED USES

Amusement Arcades, except nationally or regionally recognized gaming facilities such as Dave and Busters, Putting Edge, Sluggers, Gameworks, LaserQuest, Monkey Island

Automobile/Motor Vehicle Part Stores, Including, But Not Limited To, Tire and Battery Stores

Automobile/Motor Vehicle Repair Shops

Bed and/or Mattress Stores, With The Exception Of Back To Bed, Bedding Experts, Mattress Giant And Similar National and/or Regional Bed and/or Mattress Stores

Beauty Supply Stores with the exception of Sally Beauty, ULTA and similar National and/or Regional Beauty Supply Stores such as Bath and Body Works.

Consignment Shops

Currency Exchanges

Discount Or Off-Price Retailers Of Any Kind - Primarily Selling Merchandise That Consists Of "Irregular", "Factory-Second" Or Other Imperfect Goods So That By Way Of Example Only, the Following Establishments Shall Not Be Deemed "Discount Or Off-Price Retailers Of Any Kind" Or Otherwise Subject To This Exhibit C: Kohls, Target, Kmart, Walmart, T.J. Max, Pier One, Service Merchandise, Linens And Things, Bed, Bath & Beyond, Office Depot, Office Max, Sports Authority, Petco, Pet Supplies Plus, Petsmart, Tuesday Morning, Nordstrom Rack, Saks Off Fifth, AJ Wright, Marshall's, Anna's Linens And Other Similar Variety And Specialty Merchants, it Being Understood That The Merchants Named Above Are Not Part Of An Exhaustive List But Rather Are Named Only As An Illustration Of The Types And Categories Of Permissible Establishments Contemplated Herein.

Dry Cleaners with On-Site Equipment

Fabric Stores with the exception of Michaels, Hobby Lobby and similar National or Regional stores.

Fast Food Restaurants (Such As McDonalds, Burger King, Wendy's KFC and Taco Bell). Fast Casual Restaurants Such As Panera, Cosi, Au Bon Pain, Potbelly's and Other Similar Establishments Shall Be Allowed

Gas stations

Health clubs or fitness centers in excess of 10,000 square feet

Hosiery stores

Laundromats

Market research companies

Medical/Dental/Lawyer Or Other Professional Services Offices Will Not Be Permitted On The Ground Floor Of Retail Projects, But Are Permitted On Second Floor

News Stands

Party Goods Stores With The Exception Of Party City, Factory Card & Party Outlet and Similar National and/or Regional Party Goods Stores.

Pay Day Loan Stores

Pawn Shops

Pet stores with the exception of nationally or regionally recognized stores such as Bentley's, Noah's Ark, Ruff House, Urban Mutt and Sirius Cooks.,

Sign Shops

Shoe Repair Stores

Surplus Merchandise Stores With The Exception Of Tuesday Morning, Nordstrom Rack, Saks Off Fifth, AJ Wright, Marshalls, Anna's Linens And Similar National and/or Regional Surplus Merchandise Stores

Swimming Pool Sales And Supply Stores

Tattoo/Body Piercing Establishments

Taverns, except nationally or regionally recognized restaurants with bars such as Trax, Firkin, Lantern, Mickey Finn's, Happ Inn, Hackney's, Bluegrass, Landmark, Tap House Grill, Champs, Bar Loui, Yard House and Fireside. A tavern for purposes of this section shall be defined as an establishment that serves liquor but does not serve food from a menu for lunch and dinner.

Tax Exempt Organizations

Telemarketing Services

Thrift Stores

Travel Agencies

Video Rental Stores

Vehicle/Equipment Rental Stores

Wholesale Clubs (I.E., Establishments That Primarily Sell Products In Large Quantities For Resale To Other Retailers And Merchants, Or Industrial, Institutional, and/or Commercial Users), Establishments That Sell A Variety Of Goods To The General Public (Including Establishments That Sell Memberships), Such As Sam's Club, Bj's Wholesale Club, Costco, And Other Comparable Merchants Shall Not Be Deemed "Wholesale Clubs" For Purposes Of This Exhibit.

It is the intent that the above-listed categories of prohibited uses are to be liberally construed such that a use which arguably falls into one of the categories is prohibited. Nothing shall prevent the Village, in its sole and exclusive discretion, from allowing a prohibited use to exist as part of the development, pursuant to a written approval by the Village.

In addition to the above uses which are specifically prohibited, no more than fifteen percent (15%) of the total square footage of the building which make up the ground floor of the entire Project may be occupied by non-sales tax producing uses.

EXHIBIT 4

REAL ESTATE CONTRACT

To be attached

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE (the "Agreement") is made this ___ day of _____, _____, by and between Village of Wheeling, an Illinois public community (the "Seller") and _____ (the "Purchaser"), and its permitted successors and assigns.

WHEREAS, Seller owns those certain contiguous lots, tracts or parcels of land, and the improvements thereon, consisting of an aggregate acreage of approximately _____ acres located at 351 W. Dundee Road, Village of Wheeling, Cook County, Illinois, and being more approximately particularly described on **Exhibit "A"** attached hereto (the "Property");

WHEREAS, Seller and Purchaser on _____, _____ entered into a Redevelopment Agreement that controls the sale of the Property herein, and the redevelopment of the Property by the Purchaser, (hereinafter the "Redevelopment Agreement") in the manner more specifically set forth therein.

WHEREAS, Seller has agreed to sell to Purchaser, and Purchaser has agreed to purchase the Property from Seller, subject to, and in accordance with, the terms and conditions set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby agrees to sell and Purchaser hereby agrees to purchase the Property from Seller subject to, and in accordance with, the terms and conditions set forth hereinbelow.

1. PURCHASE OF THE PROPERTY.

1.1 Purchase Price and Payment. Subject to, and in accordance with the terms and conditions of this Agreement, the purchase price ("Purchase Price") to be paid by Purchaser to Seller for the Property shall be One Dollars (\$1.00) which shall be paid as follows.

1.1.1 The Purchase Price shall be adjusted at Closing (as defined herein) for prorations as provided in Paragraph 11.1 hereinafter.

2. SELLER'S OBLIGATIONS

2.1 Survey. Within thirty (30) days of the Effective Date, Purchaser, at its expense, shall obtain an ALTA survey (the "Survey") of the Property. The Survey shall be prepared by an Illinois Professional Land Surveyor and shall conform to the current requirements of the Illinois Department of Professional Regulation and shall be prepared in accordance with the minimum standard of detail requirements for land title surveys most recently adopted by ALTA, ACSM and MSPS in 2005, "Urban Survey" classification, with the additional items 1-4, 6-11 and 13-16 from Table A described therein. In addition, the Survey shall show no encroachments over any lot lines, building lines, easements (except the cross access easement with the property to the South), roadways, rights of way or other interests in the Land and no encroachments by buildings or other improvements located on adjoining properties onto the Land. If the Survey does not meet the specifications stated above, or if the Survey shows gaps, gores or other matters that would render title unmarketable (collectively, "**Survey Defects**"), and if Purchaser identifies such Survey Defects to Seller in the Objection Notice (defined in Section 5.3 below), then the rights and obligations of the parties with respect to such Survey Defects shall be the same as the rights and obligations of the parties with respect to Unpermitted Matters, as set forth below.

3. QUALITY OF TITLE.

3.1 Title. At Closing, provided Purchaser has fully complied with all of the terms and conditions hereof, Seller shall convey good and marketable fee simple title insurable at standard rates by special warranty deed to the Property and all easements, rights, permits and licenses, appurtenant thereto and connected therewith, free and clear of all liens and encumbrances other than the following permitted exceptions:

3.1.1 General real estate taxes not yet due and payable as of the Closing date and subsequent year's taxes;

3.1.2 The Seller's Repurchase Right set forth in Paragraph 12.3 below and in the Redevelopment Agreement; and

3.1.3 Any covenants, easements and restrictions of record which are not deemed to be Unpermitted Matters per below. The above-referenced items set forth in Paragraphs 5.1.1, 5.1.2, and this paragraph 5.1.3 are hereinafter collectively referred to as the "Permitted Exceptions".

3.2. Special Warranty Deed. The aforesaid special warranty deed shall be executed in recordable form and delivered to Purchaser with payment by Seller for any transfer or documentary stamps, fees or taxes in accordance with Section 8.2 below.

3.3 Title Objections. Within _____ days from the Effective Date, Seller shall provide to Purchaser, at Seller's sole cost and expense, (i) a title commitment for a ALTA Owner's Title Insurance Policy (the "Title Commitment") issued by Chicago Title, in the amount of \$_____ covering title to the Property showing Seller as owner of the Property in fee simple and naming Purchaser, or such other party designated by Purchaser,

as proposed insured and shall contain an endorsement for extended coverage over all of the general exceptions, and (ii) true, complete and legible copies of all documents described in such Title Commitment (the "Title Documents"). Prior to the expiration of the Title & Survey Objection Period Purchaser shall notify Seller (the "**Objection Notice**") which of the liens, encumbrances and other matters described therein are unacceptable to Purchaser (the "**Unpermitted Matters**"). For purposes of this Agreement the Title & Survey Objection Period shall commence on the date that Purchaser receives the last of (i) the Survey, (ii) the Title Commitment and (iii) the Title Documents and shall end fifteen (15) days thereafter. Any items to which Purchaser does not object prior to the expiration of the Title & Survey Objection Period shall be deemed to be permitted exceptions (the "**Permitted Exceptions**"). Seller shall then have until the date that is fifteen (15) days after Seller's receipt of the Objection Notice to (i) remove or not remove (in Seller's sole and absolute discretion) such Unpermitted Matters or in the event Seller elects to remedy same then such matters shall be remedied by Seller in a manner satisfactory to Purchaser in its sole and absolute discretion, and (ii) deliver to Purchaser a revised Title Commitment and Survey reflecting such cure. If Seller is unable to remove or Seller elects not to remove such Unpermitted Matters and delivers written notice of same to Purchaser within the time period described above, then Purchaser shall have the option of proceeding with this Agreement with the Unpermitted Matters uncured. Seller agrees that it will not voluntarily or involuntarily create any additional encumbrances on the Property prior to the Closing without the prior written consent of Purchaser. In the event an additional encumbrance on the Property is created prior to Closing without the prior written consent of Purchaser as required herein, such additional encumbrance shall automatically be deemed an Unpermitted Matter. Prior to Closing, Purchaser shall have the right to update and review the title to the Property. Where such

updating of the title to the Property by Purchaser prior to Closing reveals a title defect which is not a Permitted Exception, Purchaser shall notify Seller of such title defect, and Seller shall have the same obligations and Purchaser shall possess the same rights as more particularly set forth in this Paragraph 5.3 herein.

3.4 Survey Objections. Within ten (10) days of receipt thereof, Purchaser may object to any matters concerning the Survey. If Purchaser shall object to any matters concerning the Survey in a timely manner, then Seller shall have the right, but not the obligation, for twenty (20) days from receipt of notice from Purchaser of such objection, to cure such objection or to commence such actions as are necessary to cure such objection. In the event that Seller fails to cure or elects, in Seller's sole and absolute discretion, not to cure such objection within said twenty (20) day period and Seller so notifies Purchaser of its failure to cure (or its election not to cure) such title defect within said period, then in such event, Purchaser may proceed to close this Agreement taking title subject to such objection without abatement in the Purchase Price.

3.5 Title Policy. At the Closing, and as a further condition of Purchaser's performance of its obligations hereunder, Seller shall cause the Title Company to deliver to Purchaser an owner's title policy (the "**Title Policy**") issued in the amount of the Purchase Price and otherwise in accordance with the provisions of the Title Commitment as specified above, dated as of the time of recording of the deed conveying title to the Property from Seller to Purchaser and subject only to the Permitted Exceptions.

4. POSSESSION. Seller shall deliver exclusive possession of the Property to Purchaser upon Closing, free and clear of all parties in possession and tenancies of every kind. It is agreed and understood that after the Effective Date, Purchaser may market its restaurant/retail

center and may put any signs on the property so long as the proposed signage is approved and in conformity with any and all applicable codes of the Village of Wheeling.

5. PARTIES.

5.1 Identity of Parties. Any provisions of this Agreement to the contrary notwithstanding, this Agreement is not intended to create and does not create legally enforceable promises, obligations or warranties to the benefit of any parties other than Seller and Purchaser and their respective successors and assigns. This Agreement shall not be deemed, held or construed as creating a partnership or joint venture.

5.2 Seller's Status. Seller warrants and represents that: (i) it is a duly organized municipality under the laws of the State of Illinois; (ii) it has the authority to transact business in the State of Illinois; (iii) the individuals executing this Agreement are authorized to execute this Agreement and bind the Village of Wheeling; and (iv) the execution of this Agreement and all of the transactions contemplated hereby have been authorized by all necessary and appropriate action of the Seller.

6. CLOSING.

6.1. Time and Place of Closing. Subject to the terms of this Agreement, the transaction contemplated by this Agreement shall be closed (the "Closing") at Chicago Title, Chicago, Illinois through a deed and money escrow created under an escrow agreement mutually satisfactory to Purchaser and Seller, in their reasonable discretion, including provisions for a so-called "New York style" closing to facilitate delivery to Purchaser of the Title Policy and possession of the Property on the Closing Date. Neither party is obligated to attend the Closing so long as they deliver their documents to the Escrow Agent not later than two (2) business days prior to Closing and deliver their funds to the Escrow Agent on or prior to the day of Closing.

Subject to the provisions of this Agreement, the Closing shall take place no later than sixty (60) days after the end of the Due Diligence Period or upon such other date as Purchaser and Seller mutually agree to in writing. Notwithstanding anything to the contrary herein contained, Closing shall not take place unless the Village is satisfied that the Purchaser has funds sufficient to finance the Project as defined in the Redevelopment Agreement which proof shall be provided to the Village prior to the expiration of the Due Diligence Period.

6.2 Closing Documents.

(i) Seller's Deliveries. Seller shall deliver to Purchaser at Closing the following, all in form and substance reasonably acceptable to Purchaser:

(A) The Title Policy to be provided under Section 5 of this Agreement;

(B) A special warranty deed conveying to Purchaser merchantable fee simple title to the Property, together with all easements and other appurtenances thereto, subject only to the Permitted Exceptions or subject to those Unpermitted Matters accepted by the Purchaser;

(C) An ALTA extended coverage statement and/or title affidavits, gap undertaking, and all other affidavits, certifications and other documents required by the Title Company in connection with its issuance of the Title Policy and closing of the transactions contemplated in under this Agreement;

(D) A FIRPTA Statement from Seller certifying that Seller is not a "foreign person," "foreign estate," "foreign corporation" or "foreign partnership" or any other foreign entity as such terms are defined in Section 1445 of the Internal Revenue Code and the income tax regulations promulgated thereunder; and

(ii) Purchaser's Deliveries. Purchaser shall deliver to Seller at Closing the balance of the Purchase Price, plus or minus prorations, together with such documents reasonably required by the Title Company to issue the Title Policy and close the transaction contemplated under this Agreement.

(iii) Joint Deliveries. Seller and Purchaser shall jointly deliver (i) a closing statement, (ii) all required real estate transfer tax declarations, and (iii) Repurchase Agreement as same is defined herein.

7. DEFAULT AND REMEDY. **TIME IS OF THE ESSENCE OF THIS AGREEMENT.**

7.1 Purchaser's Default. In the event of a default by Purchaser in the performance or observance of Purchaser's duties or obligations herein contained, including but not limited to Purchaser's failure or refusal to close the purchase of Property subject to, and in accordance with, the terms and conditions of this Agreement, and if there has been no default by Seller hereunder, Seller shall be entitled to all remedies for a default provided under the Redevelopment Agreement.

7.2 Seller's Default. In the event of a default by Seller in the performance or observance of Seller's duties or obligations herein contained, including but not limited to Seller's failure or refusal to close on the sale of the Property subject to, and in accordance with, the terms and conditions of this Agreement, Purchaser, at its option, shall have available to it all remedies provided in the Redevelopment Agreement.

8. BROKER INDEMNIFICATION. Seller and Purchaser each warrant to the other that they have dealt with no real estate broker or other person, firm or entity which is entitled to any commission, finder's fee or other compensation in connection with this transaction. Purchaser covenants and agrees to indemnify and hold the Seller harmless from and against any and all loss, liability, cost or expense incurred by Seller in connection with this transaction as a result of the acts, conduct, or representation of Purchaser which result in claims made against the Seller by any broker or person, firm or entity seeking any commission, finder's fees, compensation or reimbursement in connection with the sale and transfer of the Property. Seller likewise covenants and agrees to indemnify and hold the Purchaser harmless from and against any and all loss, liability, cost or expense incurred by Purchaser in connection with this

transaction as a result of acts, conduct or representations of Seller which result in claims made against the Purchaser by any broker or person, firm or entity seeking any commission, finder's fee, compensation or reimbursement in connection with the sale and transfer of the Property. Such right to indemnification shall include reimbursement by the other for any attorney's fees and costs incurred by it as a result of any such claim, proceeding or litigation, including court costs and those costs accruing from appellate proceedings.

9. MISCELLANEOUS.

9.1 Prorations. At Closing, property and ad valorem taxes and any and all assessments which may be due on or related to the Property shall be prorated as follows:

9.1.1 All real estate taxes and assessments, if any, levied or assessed on or against the Property shall be prorated on an accrual basis as of the date of Closing based upon a 365-day year. At the Closing, Purchaser shall receive a credit against the Purchase Price equal to all accrued and unpaid taxes and assessments as of Closing (including, without limitation, all taxes and assessments attributable to the year prior to the Closing but not payable until after the Closing and all taxes and assessments attributable to the year in which the Closing occurs but not payable until the following year).

9.1.2 Any and all other assessments which may be due on or related to the Property shall be prorated on the same basis as the real estate taxes.

9.1.3 All prorations will be based on the most recent assessment and bills and shall be based on 110% of the then most recent taxes and assessments for the Property, and adjustments will be made subsequent to the Closing if later assessments or bills increase or decrease any tax or assessment. Purchaser and Seller mutually understand and agree that the prorations for the taxes on the Property are based upon good faith estimates, and the above-

referenced adjustments made subsequent to Closing will be based upon the actual amounts of taxes levied upon the Property. Such taxes and assessments shall be re-prorated between Seller and Purchaser at the time of issuance of the actual bills therefore and payment of any adjustment based on such re-proration shall be paid by the party owing the other based on such adjustment within fifteen (15) days after receipt by such party of copies of the applicable bills. Notwithstanding anything to the contrary herein contained, at Closing, Seller shall be responsible for the payment of any and all unpaid taxes and assessments, including any penalties and interest due thereon, due and payable as of the Closing Date. The parties agree to enter into a re-proration agreement at closing for this purpose.

9.2 Closing Costs. Closing costs shall be paid by Seller and Purchaser at Closing as follows:

9.2.1 Seller shall pay for its own attorney's fees, for the costs, including premiums, of the Title Commitment and the Title Policy, the costs of removing all Unpermitted Matters from title if Seller, in its sole discretion, chooses to remove such Unpermitted Matters, recording costs for releasing any liens affecting the Property and for curing any other objectionable matters affecting title to the Property that Seller, in its sole discretion, chooses to remove, pursuant to Section 5 above, the preparation of the Special Warranty Deed, any and all documentary stamps, state, county and/or local transfer taxes, and one-half (1/2) of all closing fees charged by the Escrow Agent and/or the Title Company (including escrow and New York Style closing charges) and any and all charges, expenses, taxes, and costs customarily paid by a seller in real estate transactions in Cook County, Illinois; and

9.2.2 Purchaser shall pay for its own attorney's fees, recording costs for the Special Warranty Deed, recording costs for all other documents as may be required by

Purchaser, any lender's title policy, one-half (1/2) of all closing fees charged by the Escrow Agent and/or the Title Company (including escrow and New York Style closing charges) and any and all charges, expenses, taxes, and costs customarily paid by a purchaser in real estate transactions in Cook County, Illinois.

9.3 Notice. Any notices required or permitted hereunder shall be in writing and shall be given by U.S. mail return receipt requested, overnight delivery (ie-FedEx, UPS) facsimile or hand delivery. Notice shall be deemed to have been given (i) on the same date as the date on which such notice is delivered personally or such personal delivery is refused, (ii) on the date that is two (2) business days after the date on which such notice is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, (iii) on the date that is one (1) business day after the date on which such notice is sent by overnight courier services (such as Federal Express or any other similar courier service), or (iv) immediately upon transmittal by email or facsimile (provided that a paper copy of such email transmittal or fax transmission confirmation receipt, as the case may be, is promptly mailed by certified U.S. mail or overnight courier to the addressee along with a copy of the notice).

Notices shall be delivered to the parties at the following addresses:

AS TO PURCHASER:

WITH REQUIRED COPY TO:

AS TO SELLER:

Village Manager
Village of Wheeling
2 Community Boulevard
Wheeling, IL 60090

WITH REQUIRED COPY TO: James V. Ferolo, Esq.
Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, IL 60601
Facsimile: 312-606-7077

AS TO ESCROW AGENT: Chicago Title

Chicago, Illinois
Facsimile:

9.4 Entire Agreement. This Agreement shall: (i) be binding upon and inure to the benefit of Seller, Purchaser and its respective successors and assigns; (ii) be construed under and governed by the laws of the State of Illinois; and (iii) supersede all prior discussions and agreements between the parties with respect to the Property and constitute the entire agreement between the parties with respect thereto. There are no oral or written agreements, understandings or representations among the parties relating to the subject matter of this Agreement not embodied in this Agreement, and no amendment, revision or modification hereof shall be effective or binding upon Seller or Purchaser unless in writing and signed by the parties or their duly authorized representative.

9.5 Assignment. This Agreement may not be assigned by Purchaser, without Seller's prior consent, to any third party other than a wholly owned or controlled affiliate or subsidiary of Purchaser. Notwithstanding the above, Purchaser and Seller acknowledge that Purchaser may assign this Agreement to a partnership of which it is a general partner. Any attempted assignment in violation of this provision shall be void as to the Seller.

9.6 Litigation Expenses. In the event it becomes necessary for either party to litigate or to initiate any claim or proceeding in order to enforce or defend its rights under the terms of this Agreement, then the Prevailing Party shall be entitled to receive, and shall be awarded reimbursement of all of its court costs and reasonable attorneys' fees incurred in any

such claim, proceeding or litigation, including those caused by appellate proceedings. Such costs and fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. As used herein, "**Prevailing Party**" shall mean the party who substantially attains or defeats the relief sought as determined by a judgment entered by a court of competent jurisdiction.

9.7 Survival. The provisions of this Agreement shall survive the Closing and shall not be merged into any deed or other document.

9.8 No Liens. Purchaser shall not place or allow to be placed any lien on the Property, prior to Closing. Should any lien or liens arising by, through or under Purchaser be filed of record, the Purchaser shall promptly cause the same to be released, bonded or satisfied of record. In the event of a default of this covenant by Purchaser, Seller shall be entitled to recover from Purchaser any and all damages sustained as a result thereof, including but not limited to reasonable expenses, court costs and attorney's fees.

9.9 Headings. The paragraph headings used in this Agreement are for convenience only and are not to be considered or construed as adding to or subtracting from the provisions of this Agreement.

9.10 Condemnation. If after the date of this Agreement and before Closing the Property or any part thereof (including any rights of access or other rights benefitting the Property) is or becomes the subject of a condemnation proceeding or the threat of condemnation (or conveyance in lieu thereof) or there occurs any material change in the physical condition of the Property, Seller shall immediately notify Purchaser thereof in writing and Purchaser shall have the option: (a) to proceed with Closing, in which event (i) if the taking is consummated prior to the Closing, take title in accordance with the terms and conditions of this Agreement and

permit Seller to negotiate with the condemning authority and receive the condemnation award, reducing the Purchase Price hereunder by the amount thereof received or receivable by Seller; or (ii) if the taking is not consummated prior to the Closing, Seller shall assign to Purchaser all right, title and interest in and to the condemnation proceeds and awards, and Purchaser shall have the sole and exclusive right to negotiate, contest and settle all such eminent domain proceedings; or (b) to terminate this Agreement and declare its obligations hereunder null and void and of no further effect, in which event all Earnest Money paid by Purchaser under this Agreement shall be immediately returned to Purchaser and neither party shall have any further obligations or liabilities hereunder. Purchaser shall exercise its option under this Section 11.10 by providing Seller with a written notice of its decision within thirty (30) days after Purchaser receives from Seller written notice of the proposed condemnation or taking, together with such additional information concerning the proposed condemnation or taking as Purchaser may reasonably request, and the Closing shall be extended, if necessary, to permit Purchaser to make such election within such time period.

9.11 No Waiver of Right. No failure of any party to exercise any power given such party hereunder or to insist upon strict compliance by any other party to its obligations hereunder, and no custom or practice of the parties in variance with the terms hereof shall constitute a waiver of any party's right to demand exact compliance with the terms of this Agreement.

9.12 Execution. This Agreement may be executed in one or more counterparts, which together shall constitute one and the same instrument. This Agreement may be executed via facsimile and the parties agree that facsimile execution hereof shall be binding upon the parties.

9.13 Business Day. In the event that any date or deadline for either party to perform hereunder falls on a weekend or federal holiday, then such party shall have until the next business day to perform.

10. ENVIRONMENTAL CONDITIONS.

10.1 Seller Representations. Seller represents and warrants to Purchaser that, except as set forth in any Seller's Deliveries provided to Purchaser, its Board of Trustees, Village Manager and Department Heads have no actual present knowledge of the presence on, in or under any part of the Property, any of the following: "toxic substances," "toxic materials," "hazardous waste," "hazardous substances," "pollutants," or "contaminants" [as those terms are defined in the Resource, Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901 et. seq.), the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et. seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801 et. seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et. seq.), the Clean Air Act, as amended (42 U.S.C. §1251 et. seq.), the Illinois Environmental Protection Act, 415 ILCS 5/1 et. seq., and any other federal, state, statutory or common law, or local law, statute, ordinance, rule, regulation, code, order, approval, policy and authorization relating to health, safety or the environment (said laws being hereafter referred to collectively as "Environmental Laws")]; asbestos or asbestos-containing materials; lead or lead-containing materials; oils; petroleum-derived compounds; pesticides; or polychlorinated biphenyls (all of which are hereafter collectively referred to as "Hazardous Materials") in violation of existing Environmental Laws. No part of the Property, to the actual present knowledge of the Seller's Board of Trustees, Village Manager or Department Heads, has been previously used by Seller, or by any other person or entity, for the storage, manufacture or

disposal of Hazardous Materials, except as may be disclosed in the environmental reports provided to Purchaser,(if any)and/or unless done in material compliance with applicable laws. Except as set forth in any Seller's Deliveries provided to the Purchaser, Seller has not received from any governmental body having authority over the Property any written complaint, order, citation or notice with regard to hazardous substances as defined above, air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Property or any part thereof. Except as set forth in any Seller's Deliveries provided to Purchaser, to the actual present knowledge of the Seller's Board of Trustees, Village Manager and Department Heads, there are no regulated or unregulated underground storage tanks or materials located at the Property of any nature located on any part of the Property.

10.2 Property Condition. Purchaser understands, agrees and acknowledges that the Property shall be conveyed to Purchaser on an "as-is, where-is" basis and, except as is otherwise expressly set forth in this Agreement, without any representations or warranties of any kind, express or implied, either oral or written, made by the Seller or any agent or representative of the Seller with respect to the physical, environmental or structural condition of the Property, including but not limited to layout, square footage or susceptibility to flooding. Seller and its agents hereby disclaim any implied warranties regarding fitness for a particular purpose, condition of improvements, quality or merchantability of the Property or any portion thereof.

10.3 Purchaser Representations/Right to Repurchase. Prior to the execution of this Agreement, Purchaser and Seller entered into that certain Redevelopment Agreement concerning the Property. Purchaser and Seller acknowledge that pursuant to Section 6.3 of the Redevelopment Agreement, Seller could repurchase the Property (the "Repurchase Right") from Purchaser under certain circumstances as more particularly provided in the Redevelopment

Agreement. At Closing, Seller and Purchaser shall enter into a separate written agreement in form reasonably acceptable to Purchaser and Seller (the "Repurchase Agreement") which agreement shall in part acknowledge that the conveyance of the Property to Purchaser is made subject to the obligations of the Purchaser set forth in the Redevelopment Agreement entered into by the Seller and Purchaser. In the event that the Purchaser does not meet its obligations as set forth in Section 6.3 of the Redevelopment Agreement, the Seller may in its sole discretion elect to pursue the remedies available to Seller under the terms and conditions of the Redevelopment Agreement, which shall include the unconditional right of the Seller to repurchase the Property from the Purchaser according to the terms set forth in the Redevelopment Agreement and as more specifically set forth in the Repurchase Agreement. The foregoing Repurchase Agreement shall be negotiated between the parties in good faith during the Due Diligence Period and shall be entered into by the parties at Closing and shall be recorded at Closing. The execution of the Repurchase Agreement shall be a condition precedent to the Seller closing on the sale of the Property to Purchaser. In the event Seller repurchases the Property, Seller must reimburse Purchaser for all environmental costs incurred.

(1) Due to the possibility of Seller reacquiring the Property in accordance with the terms of the Redevelopment Agreement, Purchaser hereby represents and warrants that from the date of Closing until the expiration of the Repurchase Period as provided in the Redevelopment Agreement (the "Repurchase Period") that:

A. No part of the Property will be used by Purchaser or its agents, servants, contractors, employees, successors and assigns (collectively "Purchaser Affiliates") or with Purchaser's permission or consent, to

refine, produce, store, handle, transfer, process or transport any hazardous or toxic chemical, material, substance, waste or petroleum. In addition, except as to those conditions existing prior to the Closing, Purchaser Affiliates will not cause any releasing, spilling, leaking, pumping, emitting, pouring emptying or dumping of hazardous substances, hazardous waste or petroleum on, into or from the Property, unless done in material compliance with applicable law. Purchaser Affiliates shall not conduct any unlawful activity on the Property or use the Property in any manner (i) which would cause the Property to become a hazardous waste treatment, storage or disposal facility; (ii) so as to cause a release or a threat of a release of hazardous or toxic substance from the Property; or (iii) so as to cause a discharge of pollutants or effluents into any water source or system. Nothing herein stated shall be construed as a limitation on any lawful use of the Property and shall specifically exclude any activity associated with the historic conditions at the Property as disclosed in Seller's Deliveries.

B. Except as to those conditions existing prior to Closing, Purchaser Affiliates shall comply in all material respects with all applicable environmental, health and safety statues and regulations;

C. Purchaser shall inform the Seller of any environmental monitoring and/or remediation done on the Property by Purchaser Affiliates;

D. In the event that Seller reacquires the Property from Purchaser, Purchaser shall return the Property to substantially the same condition in

which it was found prior to the Closing date, ordinary wear and tear excepted and excepting any remedial work performed to remedy pre-existing conditions at the Property, and excepting any improvements made on the Property in furtherance of the Redevelopment Agreement.

E. In the event that Seller reacquires the Property pursuant to the Redevelopment Agreement, Purchaser shall provide Seller with copies within three (3) business days of Seller's notice to Purchaser of Seller's election to re-acquire the Property as aforesaid, any and all public and non-privileged records, documents or reports of any kind which are produced or prepared during or relate to the time period of the Repurchase Period and which relate or refer to the environmental matters and/or conditions associated directly or indirectly with the Property, including but not limited to written reports of a site assessment, environmental audits, soil test reports, water test reports, laboratory analysis and documents, reports or writings relating or referring to the Property; and

F. Purchaser shall be responsible for all actions taken on the Property by or on behalf of Purchaser including, without limitation, any environmental contamination of the Property caused by Purchaser Affiliates during the Repurchase Period; provided, however, that the foregoing shall not include historic material at the Property which exists at the time of Closing hereunder. Purchaser shall indemnify and hold the Seller harmless against any claim, suit, loss, liability or damage incurred by the Seller in defending itself due to a release of a hazardous or toxic material in

violation of state or federal law on the Property by Purchaser Affiliates during the Repurchase Period; provided, however, the foregoing indemnity obligation shall not be construed or interpreted to include actions taken or not taken with regard to historic conditions or materials that exist at the Property on the date of Closing hereunder.

G. During the Repurchase Period, in the event that any governmental authority having jurisdiction over the Property requires the Seller to address any environmental condition on the Property that existed prior to Closing, or in the event that a Purchaser Affiliate is addressing pre-Closing environmental conditions on the Property:

- (i) No Purchaser Affiliate shall, unless otherwise required by law, communicate with the Department (which shall mean the Illinois Environmental Protection Agency and/or any governmental authority having jurisdiction over the Property) about the environmental condition of the Property or shall enter the Property into the Illinois Site Remediation Program without the Seller's written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Purchaser shall not submit any document to a governmental authority referring or relating to the Property without first submitting the document to the Seller for its review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Purchaser Affiliates shall not enter into negotiations with any governmental authority or agency to develop variances or revisions to laws or regulations with respect to the Property;
- (ii) The Seller reserves to itself, and Purchaser hereby grants to the Seller, its agents, attorneys, employees, consultants and contractors, an irrevocable license, right and authorization to enter upon and inspect the Property for purposes of performing any environmental work that the Seller is required to be performed by the Department (if any), and to perform such tests, and work, including, without limitation, subsurface testing, soil and groundwater testing, and other

work which may physically invade the Property or improvements thereon, as the Seller, in its sole discretion, expense and risk, determines is necessary to protect its interests. Nothing in this paragraph is meant to limit in any way the Seller's rights to enter upon and/or inspect the Property as otherwise permitted by law. Notwithstanding the foregoing (or anything to the contrary contained in this Agreement), the Seller shall not be liable to Purchaser Affiliates for any diminution in the value of the Property, lost profits or rents, or any other loss of business damages or business interruption, nor for any loss of any kind which Purchaser Affiliates suffered or would have suffered because of the presence of the environmental contamination on, at or under the Property.

- (iii) Unless otherwise agreed to in writing by the Purchaser and Seller, or otherwise required by law, the Seller shall retain sole authority during the Repurchase Period, in all negotiations with the Department regarding any reporting, assessment, monitoring, remediation and/or other corrective action activities required by the Department in connection with any environmental measures taken at the Property. During the Repurchase Period, Purchaser shall promptly forward to the Seller copies of all reports, correspondence, tests, data or other information communicated between Purchaser and any third party with respect to any hazardous substance, waste, petroleum or toxic or hazardous materials (as those terms are defined under applicable federal, state or local environmental laws, regulations or rules), which may exist on the Property.
- (iv) Purchaser shall inform the Seller of and the Seller must approve in writing of any environmental monitoring and/or remediation done on the Property by Purchaser Affiliates, which approval shall not be unreasonably withheld, conditioned or delayed. Purchaser shall provide the Seller with copies of any and all records, documents or reports of any kind which relate or refer to the environmental matters and/or conditions associated directly or indirectly with the Property, including but not limited to written reports of a site assessment, environmental audits, soil test reports, water test reports, laboratory analysis and documents, reports or writings relating or referring to the Property.

10.4 Purchaser Obligations. During the Repurchase Period, Purchaser shall cause any Purchaser Affiliates to:

A. Maintain the Property in compliance with all applicable laws (including but not limited to environmental laws); provided, however, Purchaser shall provide to Seller a copy of any document submitted to a governmental authority referring or relating to the Property;

B. Not allow the installation of asbestos containing materials or underground storage tanks on the Property and take all reasonable steps to assure no release of any hazardous or toxic material in violation of state or federal law on the Property;

C. Cure any material violation of applicable laws at the Property at Purchaser's expense to the extent such violation is caused by Purchaser Affiliates during the Repurchase Period; provided, nothing herein shall be construed or interpreted to impose any obligation on Purchaser involving the presence of historic materials or conditions that exist on the Property on the date of Closing hereunder, including without limitation, remediation of any environmental conditions on the Property that existed on the Property as of the date of Closing.

D. Within three (3) business days, Purchaser shall notify Seller in writing of and provide any reasonably requested documents upon learning of any of the following, which arise in connection with the Property:

1. Any claim of liability for response or corrective action, natural resource damage or other harm pursuant to any federal or state environmental law;
2. Any Environmental Claim (which shall mean any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent, decree, penalty, fine, lien, proceeding or claim (whether

administrative, judicial or private in nature) arising (a) pursuant to, or in connection with an actual or alleged violation of, any environmental law, (b) in connection with any hazardous or toxic material or actual or alleged hazardous material activity, (c) from any abatement, removal, remedial, corrective or other response action in connection with a hazardous or toxic material, environmental law or other order of a governmental authority or (d) from any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment;

3. Any release or threatened release of a hazardous or toxic material in violation of an environmental law;
4. Any restriction on the ownership, occupancy, use or transferability arising pursuant to any (i) release or threatened release of a hazardous or toxic material, or (ii) environmental law; or
5. Any environmental, natural resource, health or safety condition which could materially impair the condition of the Property or could have a Material Adverse Effect (which shall mean any changes or effects that individually or in the aggregate are likely to be materially adverse to (i) the assets, business, operations, income or condition (financial or otherwise) of Purchaser, (ii) transactions contemplated by this Agreement, (iii) the ability of Purchaser to perform its obligations under this Agreement; or (iv) the condition or fair market value of the Property);

E. In the event Seller reacquires the Property during the Repurchase Period, Purchaser shall remove from the Property at Purchaser's expense prior to the reconveyance of the Property to Seller any equipment used by Purchaser Affiliates; and

F. Comply with all state and federal laws concerning the transportation or disposition (whether on-site or off-site) of contaminated soil and/or groundwater by Purchaser Affiliates. During the Repurchase Period, Purchaser shall be solely responsible for the storage, treatment and disposal of all contaminated soil or groundwater, which resulted from Purchaser Affiliate's work on the Property.

In the event that Seller does not re-acquire the Property as aforesaid, Seller shall execute a release in form satisfactory to Purchaser and suitable for recording, releasing Purchaser from all post-closing responsibilities described herein, and specifically releasing the conditions described above.

11. SELLER'S CONDITIONS PRECEDENT. Seller shall not be required to close the transactions contemplated by this Agreement unless and until each of the following conditions precedent has occurred to the satisfaction of Seller on or before Closing, unless waived in writing by Seller:

11.1 All of Purchaser's representations and warranties set forth in this Agreement are true and correct in all material respects as of the date hereof and as of the date of Closing;

11.2 Purchaser has fulfilled all of its obligations and requirements required in this Agreement to be fulfilled on or before Closing; and

11.3 Purchaser has obtained formal Village of Wheeling Board approval of the Site Plan for the development and any further approvals required by the Wheeling Village Code for development of the Property.

12. PURCHASER'S CONDITIONS PRECEDENT. Notwithstanding the Due Diligence Period, in no event shall Purchaser be obligated to close the transactions contemplated by this Agreement unless and until each of the following contingencies (the "Closing Contingencies") has been completed or satisfied to Purchaser's satisfaction on or before Closing (or within the time frame specified below), unless waived in writing by Purchaser:

12.1 Seller is able to convey title to the Property of the quality described in Paragraph 5 herein;

12.2 The representations and warranties of Seller contained in this Agreement are true and correct in all material respects as of the date hereof and as of the date of Closing with the same effect as though such representations and warranties had been made on and as of the date of Closing;

12.3 Seller and Escrow Agent have entered into with Purchaser the escrow agreement referenced in Paragraph 1.1.3 herein;

12.4 Seller has fulfilled all of its obligations and requirements required under this Agreement to be fulfilled by Seller on or before Closing; and

12.5 Seller, through its board and planning commission, has approved the final project plans for Purchaser's proposed development of the Property.

12.6 Seller shall not have breached or defaulted in any of its obligations set forth in this Agreement.

12.7 Title Company shall have issued the Title Policy.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

Seller:

VILLAGE OF WHEELING,
A Municipal corporation

By: _____
Village President

ATTEST:

Village Clerk

Purchaser:

By: _____

Title: _____

ATTEST:

Title: _____

VILLAGE'S ACKNOWLEDGMENT

STATE OF ILLINOIS,
COUNTY OF COOK _____ **ss.**

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____ and _____, are personally known to me to be the Village _____ and _____ Village Clerk, respectively, of the Village of _____, an Illinois municipal corporation (the "Village") and also known to me to be the same persons whose names are subscribed to the foregoing instrument and as such Village _____ and _____ Village Clerk, appeared before me this day in person and severally acknowledged that as such Village _____ and Village Clerk, they signed and delivered the said instrument pursuant to the authority given by the _____ Board of Trustees, and as their free and voluntary act, and as the free and voluntary act and deed of the Village, for the uses and purposes therein set forth, and that Village Clerk, as custodian of the corporate seal of the Village, has caused the seal to be affixed thereto.

GIVEN UNDER my hand and Notarial Seal this _____ day of _____, _____.

Notary Public

DEVELOPER'S ACKNOWLEDGMENT

STATE OF ILLINOIS,
COUNTY OF COOK _____ **ss.**

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that _____, as Manager on behalf of _____ IS personally known to me be the same persons whose name IS subscribed to the foregoing instrument, appeared before me this day in person, and being first duly sworn by me, acknowledged that she signed and delivered the foregoing instrument pursuant to authority given by said Company, as her free and voluntary act as Manager and as the free and voluntary act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, _____.

Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT 5
SUBDIVIDED PARCEL WITH LAND DESIGNATIONS 1.1, 1.2, A-L
(attached)



EXHIBIT 6

FORM OF DEVELOPER NOTE

DEVELOPMENT NOTE

**VILLAGE OF WHEELING, COOK AND LAKE COUNTIES, ILLINOIS
INTEREST BEARING NON-RECOURSE DEVELOPMENT NOTE**

**Phase ___ of the
[Town Center Redevelopment Project within
the Town Center II
Tax Increment Financing District]**

Date of Note: _____

Note Number: _____

Original Principal Balance: \$ _____

FOR VALUE RECEIVED, THE VILLAGE OF WHEELING, COOK AND LAKE COUNTIES, ILLINOIS (the "Village"), an Illinois municipal corporation, promises to pay to the order of _____ a Delaware limited liability company (the "Developer") the principal sum of _____ and ___/100 Dollars (\$ _____) pursuant to the Redevelopment Agreement for the Town Center Development Comprising a Part of the Town Center II TIF District of the Village of Wheeling, Illinois, entered into by and between the Village and the Developer, and dated _____, 2016 (the "Redevelopment Agreement"), together with simple interest on the principal balance outstanding from time to time calculated at the rate equal to the BBB 20-year Corporate Bond Index as published by Bloomberg plus 150 basis points per annum, with interest beginning to accrue on the later of the date of this Development Note or the date on which a Certificate of Completion is issued for the Phase of the Project to which this Development Note applies.

This Development Note is made pursuant to Section 7.3B of the Redevelopment Agreement and is one of a series of Development Notes issued pursuant to the Redevelopment Agreement, with the total principal amount of all Development Notes issued not to exceed Eight Million Six Hundred Thousand and No/100 Dollars (\$8,600,000.00). All terms not defined herein shall have the same meanings given them in the Redevelopment Agreement. In the event of any conflict between the terms of this Development Note and the terms of the Redevelopment Agreement, the Redevelopment Agreement shall control. The terms and conditions of the Redevelopment Agreement are hereby incorporated into this Development Note by this reference thereto as if fully set forth herein. Amounts payable pursuant to this Development Note shall be paid in accordance with the provisions of the Redevelopment Agreement.

1. **Authority.** This Development Note is issued by the Village pursuant to: (i) the exercise of the Village's power and authority as a home rule unit of local government; (ii) the TIF Ordinances as defined in the Redevelopment Agreement; and (iii) an ordinance adopted by the Village on _____, 2016 and captioned Ordinance No. _____,
"_____

_____"

which Ordinance authorizes the Redevelopment Agreement that provides for this Development Note.

2. **Purpose.** Payments to Developer under this Development Note shall be in reimbursement of a portion of the Eligible Redevelopment Costs that Developer has incurred, as approved by the Village pursuant to the Redevelopment Agreement.

3. **Payments.** Payments on account of the indebtedness represented by this Development Note shall be made to Developer by the Village in accordance with Article 7 of the Redevelopment Agreement. Notwithstanding anything to the contrary herein contained, this Development Note shall be cancelled automatically on the date that the Redevelopment Agreement terminates, even if the sum of all payments received by the Developer on or prior to said date does not satisfy in full the principal balance of the Development Note and all amounts of interest then due on this Development Note. Payments of interest under this Development Note shall be made by check of the Village, mailed and addressed to the Developer, at the address as set forth in Section 17.3 of the Redevelopment Agreement, unless the Village has been directed to make such interest payments in another manner by written notice given to the Village by the Developer at least fifteen (15) days prior to any payment date. Payments of principal under this Development Note shall be made by check of the Village, upon presentation of this Development Note to the Village's Finance Director, at the Village Hall address, 2 Community Boulevard, Wheeling, Illinois, so the principal payment can be so noted on this Development Note, and the dollar amount of this Development Note reduced thereby as of the date of said principal payment. In this regard, the Village shall provide the Developer with at least fifteen (15) days prior written notice of the Village's desire to make a principal payment, with the amount of said payment and the date said payment will be made being set forth in said notice (the "Payment Notice"). In the event the Developer fails to tender this Development Note to receive the principal payment on the date set forth in the Payment Notice, interest on the principal amount to be paid by the Village, as set forth in the Payment Notice, shall cease to accrue as of the payment date set forth in the Payment Notice.

4. **Non-Recourse.** THIS DEVELOPMENT NOTE AND THE OBLIGATION TO PAY THE AMOUNTS SPECIFIED IN THIS DEVELOPMENT NOTE ARE LIMITED OBLIGATIONS OF THE VILLAGE PAYABLE SOLELY FROM THE NET INCREMENTAL PROPERTY TAXES AS DEFINED IN ARTICLE 2 OF THE REDEVELOPMENT AGREEMENT COLLECTED AND REMITTED TO THE VILLAGE. SAID OBLIGATIONS DO NOT NOW AND SHALL NEVER CONSTITUTE A GENERAL INDEBTEDNESS OF THE VILLAGE WITHIN THE MEANING OF ANY STATE OF ILLINOIS CONSTITUTIONAL OR STATUTORY PROVISION AND SHALL NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE VILLAGE OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER.

5. **Default.** In the event of a default by the Village under this Development Note, the holder of this Development Note may proceed to secure the specific performance of the covenants and agreements contained herein provided that the holder shall have first given the Village a thirty (30) day written notice specifying the default unless, within such thirty (30) day period, the Village cures such default.

6. **Governing Law, Waiver and Notices.** This Development Note shall be governed by the laws of the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Development Note shall be the Circuit Court of the First Judicial Circuit, Cook County, Illinois. A waiver of any part of this Development Note shall be limited to that specific event and shall not be a waiver of the entire Development Note. No delay on the part of the holder of this Development Note in exercising any option to demand payment shall operate as a waiver thereof or preclude the exercise thereof at any time during the continuance of a default. Any notices required in this Development Note shall be effective when given, as provided in the Redevelopment Agreement.

7. **Principal Payments.**

Amount of Principal Payment	Date of Principal Payment	Signature of Finance Director	Signature of Developer Representative
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	

- A. Time is of the essence in regard to this Development Note.
- B. The Village shall not be deemed in default with respect to any of its obligations under this Development Note if the Village fails to timely perform the same and such failure is due in whole or in part to an Uncontrollable Circumstance, acts caused directly or indirectly by the Developer (or its officers, agents or employees) or any other cause beyond the reasonable control of the Village.
- C. Subject to any restrictions of the Redevelopment Agreement, this Development Note may be assigned by the holder hereof by execution of an allonge to this Development Note and upon the giving of notice of such assignment by the assignee to the Village. Upon assignment or other transfer of this Development Note by Developer, the term "Developer" as used herein shall be deemed to mean such assignee or other transferee or successor who may become the holder of this Development Note by virtue of any assignment or transfer of this Development Note. Subject to the terms of the Redevelopment Agreement, this Development Note shall inure to the benefit of the Developer and its successors and assigns and shall be binding upon the Village and its successors and assigns.

IN WITNESS WHEREOF. The Village of Wheeling has caused this Development Note to be executed in its name and on its behalf by its President and its Village Clerk and its corporate seal to be hereunto affixed.

VILLAGE OF WHEELING,
an Illinois municipal corporation

ATTEST:

By: _____

By: _____

Village President

Village Clerk

Dated: _____

Wheeling Town Center

Exhibit 7

TIF Eligible Costs

Architecture, Engineering, Consulting, and Landscape Design Fees	\$ 850,000
Streets & Sidewalks Landscaping	\$ 1,100,000
Village Green	\$ 1,250,000
Off-Site Roadway Improvements	\$ 850,000
Extend and Construct Community Blvd	\$ 1,300,000
Relocate Northgate Parkway	\$ 1,270,000
Metra Parking	\$ 750,000
Site Utilities	\$ 1,700,000
General Site Work / Environmental Assesment	\$ 200,000
Total	\$ 9,270,000

EXHIBIT 8

CONSTRUCTION SCHEDULE
(to be attached)

EXHIBIT 9

MAP OF EAST METRA LOT
(to be attached)

EXHIBIT 10

**MAP OF HERITAGE LAKE
(to be attached)**

**VILLAGE OF WHEELING
LEGISLATIVE COVER MEMORANDUM**

AGENDA ITEM NO(S): #13.C,1-4
(To be inserted by Deputy Clerk)

DATE OF BOARD MEETING: Monday, March 7, 2016

TITLES OF ITEMS SUBMITTED:

- An Ordinance Granting a Text Amendment to Title 19, Zoning, of the Wheeling Municipal Code to Add 'Self-Storage Facility' as a Special Use in the B-2 Neighborhood Commercial District [Docket No. 2016-3A]
- An Ordinance Granting a Rezoning from R-1 Single-Family District to B-2 Neighborhood Commercial District for 2500 E. Hintz Road [Docket No. 2016-3B(1)]
- An Ordinance Granting a Rezoning from R-1 Single-Family District to B-2 Neighborhood Commercial District for 2730 Jackson Drive [Docket No. 2016-3B(2)]
- An Ordinance Granting Special Use-Site Plan Approval for a Self-Storage Facility, 2500 E. Hintz Road [Docket No. 2016-3C]

SUBMITTED BY: Andrew C. Jennings
Director of Community Development

BASIC DESCRIPTION OF ITEM¹: The petitioner is seeking multiple zoning actions to address the legal, nonconforming status of the subject property. The proposal includes a text amendment to the Zoning Code, rezoning of the subject property from R-1 Single-Family Residential to B-2 Neighborhood Commercial District, and a special use for the existing self-storage facility. The Plan Commission has recommended approval of actions related to the existing facility, but did not recommend approval of the rezoning of the vacant parcel on Jackson Drive to facilitate possible expansion in the future.

BUDGET²: N/A
BIDDING³: N/A

EXHIBIT(S) ATTACHED: Ordinances (precede this report)
Fire Dept. & Eng. Div. comments, dated 2.10.2016
Findings of Fact and Recommendation (draft)
Photos of existing conditions (staff)

¹ *The purpose of the proposed item and a description of same. If the issue is site specific, such as an annexation or road improvement, a map must be attached to the memorandum.*

² *If applicable, provide all budgetary considerations as follows: is the item covered in the current budget; fund(s) the item is to be charged to; expenses per fund(s) and total cost; and necessary transfer(s) or supplemental appropriation(s).*

³ *If applicable, describe the bidding process and results for purchases and contracts. If applicable, state whether or not any particular city, state or federal program was considered*

Letter of request, dated 1.14.2016
Ord. No. 2432 (Annexation) & Cook Co. S.U.
Ord.
Plat of survey
Context exhibits and photographs (3 sheets)
Elevations for existing Building A and B (2
sheets)
Conceptual plans for future expansion (2
sheets)
Traffic data
Staff exhibit "Existing vs. Proposed Zoning,
2500 E. Hintz Road" dated 3.07.2016
Staff exhibit "Existing vs. Proposed Zoning,
2730 Jackson Drive" dated 3.07.2016
Updated letter of request and attachments (18
sheets), dated 3.02.2016

RECOMMENDATION: None

SUBMITTED FOR BOARD CONSIDERATION: VILLAGE MANAGER

REQUEST FOR BOARD ACTION

TO: Jon Sfondilis
Village Manager

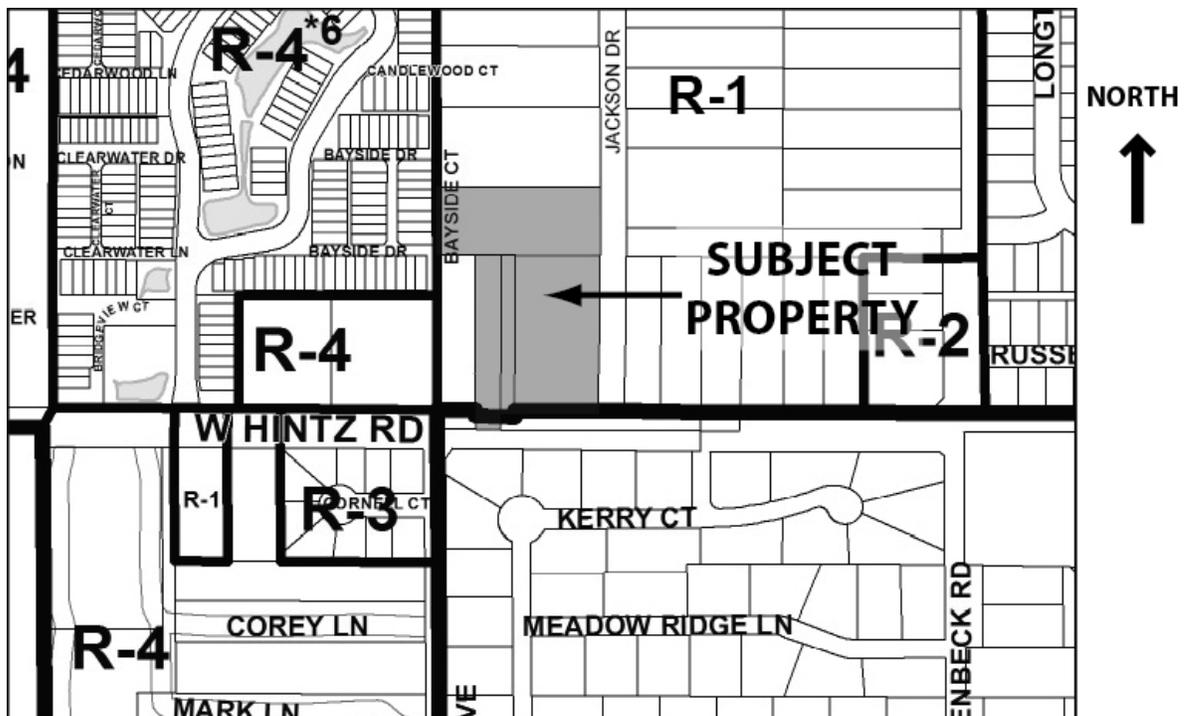
FROM: Andrew C. Jennings
Director of Community Development

DATE: March 7, 2016

SUBJECT: **Docket Nos. 2016-3ABC**
Space Self Storage
2500 E. Hintz Road and 2730 Jackson Drive
(2016-3A) Text Amendment to Title 19, Zoning, to Add 'Self-Storage Facility' as a Special Use in the B-2 Neighborhood Commercial District
(2016-3B1) Rezoning 2500 E. Hintz Road from R-1 Single-Family Residential to B-2 Neighborhood Commercial District
(2016-3B2) Rezoning 2730 Jackson Drive from R-1 Single-Family Residential to B-2 Neighborhood Commercial District
(2016-3C) Special Use-Site Plan Approval for a Self-Storage Facility

PROJECT OVERVIEW: The petitioner is seeking multiple zoning actions to address the legal, nonconforming status of the subject property. The proposal includes a text amendment to the Zoning Code, rezoning of the subject property from R-1 Single-Family Residential to B-2 Neighborhood Commercial District, and a special use for the existing self-storage facility.

LOCATION MAP:



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RE: Plan Commission Docket No. 2016-3ABC

PLAN COMMISSION RECOMMENDATION

At the Plan Commission hearing on Thursday, February 18, 2016, the following motions were made:

Text Amendment to Title 19, Zoning (Docket No. 2016-3A)

Commissioner Johnson moved, seconded by Commissioner Zangara, to recommend approval of Docket No. 2016-3A, amending Title 19, Zoning Code, to read as follows:

Appendix A, Use Table

...

Commercial Districts – Permitted and Special Uses (cont).

P=Permitted Use, S=Special Use Permit, Blank=Not Allowed			
	B-1 Planned Shopping Center District	B-2 Neighborhood Commercial District	B-3 General Commercial and Office District
Storage Uses			
<i>Self-Storage Facility</i>		S	

...

Notes referenced in Appendix A, Use Table

...

16. Maximum lot size 5 acres. Primary access from a Major Arterial on the Official Map and a secondary emergency access from a local street. No more than three storage buildings plus an office. All such facilities shall be the only use allowed on a lot of record. Maximum building height 35'. For new facilities, minimum 50' setback when abutting any residentially zoned district.

On the roll call, the vote was as follows:

AYES: Commissioners Issakoo, Johnson, Ruffatto, Sianis, Zangara
 NAYS: Powers
 ABSENT: Commissioner Dorband
 PRESENT: None
 ABSTAIN: None

There being five affirmative votes, the motion was approved.

Rezoning 2500 E. Hintz Road from R-1 to B-2 (Docket No. 2016-3B(1))

Commissioner Sianis moved, seconded by Commissioner Issakoo, to recommend approval of Docket No. 2016-3Bi, granting a Rezoning from R-1 Single-Family Residential District to B-2

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Neighborhood Commercial District, as illustrated on the staff exhibit “Existing vs. Proposed Zoning” dated February 18, 2016, for 2500 E. Hintz Road, Arlington Heights, Illinois.

On the roll call, the vote was as follows:

AYES: Commissioners Issakoo, Johnson, Powers, Ruffatto, Sianis, Zangara
NAYS: None
ABSENT: Commissioner Dorband
PRESENT: None
ABSTAIN: None

There being six affirmative votes, the motion was approved.

Rezoning 2730 Jackson Drive from R-1 to B-2 (Docket No. 2016-3B(2))

Commissioner Johnson moved, seconded by Commissioner Sianis, to recommend approval of Docket No. 2016-3Bi, granting a Rezoning from R-1 Single-Family Residential District to B-2 Neighborhood Commercial District, as illustrated on the staff exhibit “Existing vs. Proposed Zoning” dated February 18, 2016, for 2730 Jackson Drive, Wheeling, Illinois.

And with the following condition:

1. The legislation for the Board shall include language regarding a restrictive covenant for a self-storage facility to be worked out by the petitioner and Village.

On the roll call, the vote was as follows:

AYES: Commissioner Johnson
NAYS: Commissioners Issakoo, Powers, Ruffatto, Sianis, Zangara
ABSENT: Commissioner Dorband
PRESENT: None
ABSTAIN: None

There being one affirmative vote, the motion was not approved.

Special Use-Site Plan Approval (Docket No. 2016-3C) Commissioner Zangara moved, seconded by Commissioner Johnson, to recommend approval of Docket No. 2016-3C, granting Special Use and associated Site Plan Approval as required under Chapter 19-06 Commercial Districts, Section 19.06.030 B-2 Neighborhood Commercial District and Chapter 19-10 Use Regulations, Section 19.10.030 Special Uses, to permit the existing self-storage facility at 2500 E. Hintz Road, Arlington Heights, Illinois, in accordance with the following plans and documents submitted January 14, 2016:

- Letter of request
- Plat of survey

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- Photographs of south and east elevations (2 sheets)
- Elevation plans for existing Building A and B (2 sheets)
- Traffic data (1 sheet).

And with the following conditions:

1. That the site/landscape plan and elevation plans, which present a concept for the expansion of the self-storage facility onto 2730 Jackson Drive, are not approved at this time.
2. That the Special Use approval is contingent on the approval of Docket Nos. 2016-3A (text amendment) and 2016-3B(1) (rezoning to B-2).

On the roll call, the vote was as follows:

AYES: Commissioners Issakoo, Johnson, Powers, Ruffatto, Sianis, Zangara
NAYS: None
ABSENT: Commissioner Dorband
PRESENT: None
ABSTAIN: None

There being six affirmative votes, the motion was approved.

GENERAL PROPERTY INFORMATION

Applicant Name: Space Self Storage
Property Owner Name: Space Self Storage
Common Property Address: 2500 E. Hintz Rd. and 2730 Jackson Dr.
Common Location: Located at the northwest corner of Hintz Road and Jackson Drive.
Neighboring Property Land Use(s): North: Vacant land / single-family residential
West: Commercial/Single-family residential
South: Single-family residential
East: Multi-family residential
Comprehensive Plan Designation: Single-family residential
Property size: 4.11 acres (total)
2.55 acres (2500 E. Hintz)
1.58 acres (2730 Jackson)
Existing Use of Property: Self-storage facility (2500 E. Hintz)
Vacant (2730 Jackson)

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Proposed Use of Property: Self-storage facility (2500 E. Hintz)
Undeveloped (2730 Jackson)

Existing Property Zoning: R-1 Single-Family Residential

Previous Zoning Action on Property:

1997-15	Rezone R-1 to I-2 (PC motion failed, no Board action)
1999-18	Rezone from R-1 to B-4 (withdrawn)
1999-19	Variation to operate self-storage & auto center (withdrawn)
1999-20	Special use/Site plan to operate self-storage & auto center (withdrawn)
PC-479	Architectural, landscape, lighting & signage approval for Self-storage and auto body facilities (withdrawn)
2001-12	Special use/site plan for a wireless communications facility (failed)
921	Height variation for 150' telecommunication tower (failed)
PC-537	Denied Appearance Approval (Sprint)

DESCRIPTION OF PROPOSAL

Located at the northwest corner of Hintz Road and Jackson Drive, Space Self Storage received a special use permit from Cook County in July of 1987 in order to operate a self-storage facility in the County's C-4 General Commercial District. The subject property was annexed into the Village in May of 1988 as R-1 Single-Family Residential, the standard zoning for newly annexed property. At the time of annexation, the self-storage use became legal nonconforming. The business has attempted on two occasions (1997 and 1999) to rezone the property from R-1 to a district that would allow self-storage as a conforming land use.

While legal nonconforming status protects a business by allowing it to continue operation, the code restricts such businesses from expanding and prohibits reconstruction in the event of significant damage. If the proposed petition is ultimately approved, Space Self Storage would be considered legal and conforming, thus guaranteeing the various protections for expansion and reconstruction that are not available to nonconforming businesses. By comparison, the adjacent landscape business discussed at the Village Board Meeting on January 25th (AB Sanchez) is considered illegal and nonconforming. There is no provision in the zoning code that would allow such a business to continue operation.

On December 10, 2015, the petitioner met with the Plan Commission to discuss options for a multi-part zoning petition that would address the legal nonconforming status of the property. At the Plan Commission concept review meeting, the Commission had the following comments:

1. Explore options for rezoning to B-2 Neighborhood Commercial District;
2. Consider limiting the self-storage facility use to single-use properties; and
3. Consider restrictions to avoid problems from subdividing.

The property owners' current proposal includes the following actions:

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1. Amend the Zoning Code to provide qualifying language to create limited circumstances under which the use (self-storage facility) would be allowed as a special use in the B-2 District;
2. Rezone the property from R-1 to B-2 (2500 E. Hintz Road and 2730 Jackson Drive); and
3. Grant special use / site plan approval for the existing facility (2500 E. Hintz Road only).

Please note that the site/landscaping plan and elevation plan for the proposed expansion of the business onto (2730 Jackson Drive) are only conceptual in nature. The petitioner is not seeking approval of those plans at this time.

ZONING CODE TEXT AMENDMENT (DOCKET 2016-3A)

Appendix A (Use Table): The petitioner is proposing to add the use classification of “Self-Storage Facility” as a Special Use in the B-2, Neighborhood Commercial District. The petitioner has suggested that it be placed under the subheading *General Service Uses*. However, staff believes it would be more appropriate to add “Self-Storage Facility” under a new subheading called *Storage Uses*.

Moreover, the petitioner is proposing restrictive language be added as an end note to the Appendix A (Use Table) specifically only for “Self-Storage Facility” in the B-2 District. Staff has slightly modified the petitioner’s suggested language for the end note. The following language was crafted by staff and agreed upon by the petitioner at the Plan Commission hearing:

Maximum lot size 5 acres. Primary access from a Major Arterial on the Official Map and a secondary emergency access from a local street. No more than three storage buildings plus an office. All such facilities shall be the only use allowed on a lot of record. Maximum building height 35’. For new facilities, minimum 50’ setback when abutting any residentially zoned district.

REZONING (DOCKET 2016-3B(1) and 2016-3B(2))

The petitioner is requesting that the entire property, including the existing self-storage facility on Hintz Road and the undeveloped property on Jackson Drive, be rezoned from R-1 Single-Family Residential to B-2 Neighborhood Commercial District. The decision to pursue the B-2 district was made following a workshop meeting with the Plan Commission. The Plan Commission was not in favor of the original concept proposed by the business, B-3 General Commercial and Office District, because the B-3 District is more widely mapped within the Village.

In the cover letter dated January 14, 2016, the petitioner states that the proposed rezoning will correct an oversight that occurred when the subject property was annexed into the Village in 1988. Staff does not interpret this as an oversight. Staff has reviewed the same documents referenced in the attached letter as well as the entire legislative history for the subject property. Staff has subsequently determined that the Zoning Map was updated to reflect the R-1 zoning

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designation for the subject property when the municipal boundaries were updated per the annexation. The Zoning Codes states that all land annexed into the Village is automatically classified as R-1. A predetermined zoning designation such as, B-2 or I-2, would typically be addressed in an annexation agreement. Staff has not found an annexation agreement for the subject property. At the Plan Commission hearing, the petitioner agreed that the matter was not an oversight.

As noted in the summary of the Plan Commission recommendation (p.2-3 of this report), the Plan Commission elected to separate the rezoning action into two separation motions. The purpose of the separation was to provide a clear recommendation for the Board's consideration: rezone the existing facility (2500 E. Hintz) but deny the rezoning petition on the adjacent vacant parcel (2730 Jackson). The petitioner has submitted an additional letter in response to this aspect of the Plan Commission recommendation (see **Community Development Director Recommendation, below**).

SITE PLAN & APPEARANCE REVIEW **(ASSOCIATED WITH SPECIAL USE DOCKET 2016-3C)**

No site, building, landscaping, lighting or operational changes are proposed to the existing self-storage facility. While the provided site plan shows a concept for the expansion of the self-storage use onto the undeveloped parcel on Jackson Drive, the written description of the proposal states that the petitioner is not seeking approval of the conceptual site plan. The plat of survey, existing elevation plans, traffic data and photographs of the property serve to document the existing use of the property as a self-storage facility. The petitioner is simply seeking special use-site plan approval for the existing operations and site configuration.

As is the case with older business, there are elements of the current operation that do not conform to current Village codes and standards. Building code compliance is triggered through significant renovations to the building, and zoning code compliance is dependent on the nature of the issue. As the zoning code is updated, compliance is generally achieved during the review of new construction, major additions, or changes in the use. The Plan Commission did not recommend any modifications to address the current condition of the business. If it is the consensus of the Board that an item should be address, a specific condition of approval could be added to the Special Use & Site Plan ordinance (Docket No. 2016-3C).

STANDARDS FOR REZONING & TEXT AMENDMENT

Following are standards for the rezoning and text amendment with the petitioner's responses. **(Staff's comments are in bold.)**

1. Will the proposed text amendment and rezoning comply with the intent and purpose of Title 19, Zoning? *(Explain how the proposed uses allowed by the rezoning will conform to the zoning code.)*

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“The proposed text amendment and rezoning will comply with the intent and purpose of the Village’s Zoning Ordinance.

Space Self Storage has been operating at 2500 E. Hintz Road (the “Property”) since approximately 1987. Space Self Storage also owns the adjacent vacant lot at 2730 Jackson Drive. Both lots (the “Properties”) were annexed to the Village of Wheeling (the “Village”) pursuant to Ordinance 2432 on or about May 2, 1988. Since then, and without objection from the Village, neighbors or nearby property owners, the Property has remained a legal non-conforming use in a R-1 Zoning District.

Section B of Ordinance 2431 indicates that the “Village Zoning Administrator shall be directed to amend the official zoning map of the Village of Wheeling to reflect the zoning change by this correspondence.” [emphasis added]. While the zoning map was changed to reflect the Property as being within the Village, it was never amended to reflect the annexed use (i.e, Self-Storage Facility), nor was the zoning district changed from residential to commercial to accommodate the annexed use pursuant to the ordinance. The Petitioner seeks to correct same in order to comply with the Village’s Zoning Ordinance and Ordinance 2432.

A Self-Storage Facility, such as Space Self Storage, is a Special Use found only in the Village’s I-3 General Industrial District. Therefore, the Petitioner first seeks a text amendment for B-2 which allows for self-storage, as a Special Use only. Upon the Village’s approval of said text amendment, the Petitioner proposes rezoning the Properties from R-1 to B-2 while subsequently seeking a Special Use Permit for the existing self-storage facility.

Pursuant to Section 19.02.020(i) of the Village Zoning Ordinance, one of its [the Zoning Ordinance] purposes is “[t]o prohibit uses, buildings or structures which are incompatible with the character of development or the permitted uses within specified zoning districts. In addition to complying with the Zoning Ordinance, the proposed rezoning will allow greater flexibility in the event the Petitioner’s Property is destroyed or damaged.”

The existing use, self-storage facility, is legal nonconforming in the R-1 Single-Family District. The proposed rezoning to B-2 Neighborhood Commercial and text amendment to allow self-storage as a special use in B-2, in combination with the proposed special use request, would provide legal conforming status to the existing business.

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2. Will the proposed text amendment and rezoning comply with the Comprehensive Plan, Official Map and all other plans and policies adopted by the Village? If not, explain why the text amendment and rezoning is in the best interest of the Village. (*Explain in detail how the uses allowed by the text amendment follow the Comprehensive Plan or how a text amendment contrary to the Comprehensive Plan is appropriate.*)

“The Village’s 2003 Comprehensive Plan provides an Existing Land Use Map, dated July 2003. As indicated on the Existing Land Use Map, the Property, and properties located to the east and west of the subject Property, are designated as Commercial Uses. This is a logical use designation given the Property’s location on Hintz Road and its direct ingress and egress to a high traffic roadway separating portions of the Village of Wheeling and the Village of Arlington Heights. Several uses along Hintz Road are Commercial and Industrial Uses. Pursuant to the 2003 Comprehensive Plan, “[w]heeling’s major arterial streets, including Dundee Road, Milwaukee Avenue, Lake Cook Road, Hintz Road ...” are “arterials, given their high traffic volumes and wide roadways...” [emphasis added].

The Comprehensive Plan also sets forth Goals and Objectives for Business and Commercial Areas within the Village. Specifically, one of its Objectives is to “retain existing businesses that serve Wheeling residents.” See Comprehensive Plan, page 16. The proposed rezoning would therefore comply with the Comprehensive Plan’s plan for current and future Commercial Uses.

The Village annexed the Property pursuant to Village Ordinance 2432 which stated in relevant part that the “Village Zoning Administrator shall be directed to amend the official zoning map of the Village of Wheeling to reflect the zoning change...”. Therefore, the proposed rezoning complies with the plans and policies adopted by the Village.”

The Comprehensive Plan designates the future land use of the subject property as Single-Family Residential. The property is currently zoned R-1 Single-Family Residential. 2500 E. Hintz has operated as self-storage facility for nearly 30 years. Instead of redeveloping a viable business into single-family residences, the petitioner proposes to amend the Zoning Code and Zoning Map to make them consistent with the existing land use. 2730 Jackson Drive is undeveloped. The Plan Commission found that the rezoning of 2730 Jackson Drive would not be consistent with the existing single-family uses on Jackson Drive.

3. How have physical or economic conditions pertaining to a subject area changed, making the existing zoning inappropriate and the proposed text amendment appropriate? (*Explain why the current Zoning Code is inadequate. What specific physical or economic conditions indicate that a change in the Zoning Code is required?*)

“Space Self Storage, although a legal non-conforming use in a R-1 District, has been in business for almost 30 years at its current location. These factors speak largely to the Property’s best use as a Self-Storage Facility. The Petitioner is seeking a text amendment and rezoning not because its use has changed, rather because its use and economic conditions have largely remained constant. The proposed text amendment and rezoning for the Properties seeks to comply with the Village’s Zoning Ordinance, Comprehensive Plan and Village Ordinance 2432.

In addition, with the approved zoning requests made herein, the subject properties will become legal conforming. As a result, the Applicant will be able to refinance, permitting it to add to or improve the existing conditions. Without being a legal conforming use, obtaining financing to meet future needs will be difficult at best, thereby limiting the Applicant’s future business options and growth.”

There have been no recent physical or economic changes to the subject area. Because the property is legal nonconforming, the property owner does not have the ability to make changes or improvements to its property.

4. How is the proposed text amendment and rezoning desirable and needed in the Village? (Why is the text amendment needed? What does the rezoning accomplish? How will it benefit the Village?)

“The proposed text amendment and rezoning is needed to correct an oversight that occurred when the Property was annexed to the Village in 1988. Pursuant to Village Ordinance 2432, the “Village Zoning Administrator shall be directed to amend the official zoning map of the Village of Wheeling to reflect the zoning change...”. For one reason or another, this did not occur after the Property was annexed to the Village. Therefore, the proposed rezoning accomplishes the Village’s original intent to rezone the Properties and subsequently bring the Properties into conforming status under the Village’s Zoning Ordinance. The proposed text amendment and rezoning will provide clarity and reinforces the annexation terms.”

Staff does not interpret this as an oversight. Staff has reviewed the same documents referenced in the attached letter as well as the entire legislative history for the subject property. Staff has determined that the Zoning Map was updated to reflect the R-1 zoning designation for the subject property when the municipal boundaries were updated per the annexation. The Zoning Codes states that all land annexed into the Village is automatically classified as R-1. The onus is on the property

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owner/business owner to request changes to the Zoning Code and/or Zoning Map to make the existing use consistent with the code.

5. How will the proposed text amendment and rezoning allow for compatible development that will not unduly depreciate the use and value of surrounding properties? (*Consider the types of uses that could be permitted by the text amendment and rezoning. Are these uses compatible with existing neighboring land uses? Will the potential uses have a negative impact on surrounding property values?*)

“The properties directly east and west of the Property are Commercial Uses, although they also are non-conforming uses in a R-1 Single-Family District, and thus are compatible with Space Self Storage. These annexed properties, which included the Petitioner’s Properties, were all annexed to the Village in 1988 with the understanding that their uses would be annexed as well. The Property’s (2500 E. Hintz) use as a self-storage facility has remained the same for approximately 30 years. Any potential adverse impact to the immediate surrounding property values would already be evident to surrounding neighbors and the Village.”

No changes are proposed to 2500 E. Hintz. Therefore, the text amendment and rezoning will not affect surrounding properties. Any new self-storage facility wishing to locate in the B-2 District will need special use approval. Therefore, before 2730 Jackson Drive or any existing B-2 parcel in the Village can be developed as a self-storage facility, they must first receive special use approval.

6. How will the proposed text amendment and rezoning contribute to a rational pattern of land uses which is beneficial to the Village? (*Is the proposed text amendment sensible? Are intense uses that create traffic, noise, odor, light, or smoke going to be permitted along a narrow residential street?*)

“The proposed text amendment, and rezoning, addresses the Property’s current non-conforming status. The Property’s use as a self-storage facility has existed for approximately 30 years. The Property’s location on a high traffic roadway, surrounded by other Commercial Uses, provides for a less than ideal location for single-family home development. Accordingly, the Property, as a self-storage facility, provides Wheeling residents with needed storage and has been a thriving business in the community for over 25 years.”

The proposed rezoning and text amendment, in combination with the proposed special use request, will allow the property owner of 2500 E. Hintz Road to make improvements to an otherwise nonconforming property. This would allow for rational development of existing land uses. The Plan Commission found that the

proposed rezoning of 2730 Jackson Drive would not contribute to a rational pattern of land uses along Jackson Drive.

STANDARDS FOR SPECIAL USE

Following are standards for special use with the petitioner's responses. **(Staff's comments are in bold.)**

1. State why the Special Use is necessary for the public convenience at the proposed location. (Explain how the proposed use will benefit residents, the neighborhood or the community-at-large.)

"The proposed use and the Property's existing use are identical. Space Self Storage, Inc. has operated at 2500 E. Hintz Road, as a self-storage facility for over 25 years. For those past 25 years, the use has, and if a Special Use Permit is granted, provided Wheeling residents with needed storage services. The sustainability of the business and its longevity at the Property are largely due to the needs it provides to Wheeling residents and the community-at-large.

In addition to benefiting Wheeling residents, the proposed use would bring the Property in conformity with the current Zoning Ordinance and the Village's original intent to annex the uses when the Property was annexed in 1988."

Space Self Storage has serviced the self-storage needs of the community for nearly 30 years.

2. State how the special use will not alter the essential character of the area in which it is to be located. (Explain how the proposed special use is appropriate for the neighborhood or shopping center and how the overall character will not be affected by the special use.)

"The Property at 2500 E. Hintz is located on East Hintz Road which the Comprehensive Plan defines as a "Major street...designed with 100-foot rights-of-way and typically carry the highest traffic volumes". Additionally, the Property is surrounded by other Commercial Uses to its immediate east and west. The proposed use is within existing buildings on the Property, operated by the Space Self Storage. The self-storage facility, although a legal non-conforming use in a R-1 District, has been in business as such for almost 30 years at the Property. The immediate adjacent commercial property uses have been in business for approximately 30 years as well. The essential character of the area would remain unchanged because the proposed use is identical to the Property's existing use. The Petitioner is seeking a Special Use Permit to properly comply with the Zoning

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Ordinance and potentially for future use of the Jackson Property for the same existing use currently at 2500 E. Hintz Road.”

The petitioner is requesting special use approval for the existing operations and site configuration of the self-storage facility. The approval of the special use will not alter the character area because no changes are proposed to the existing business.

3. State how the location and size of the Special Use, the nature and intensity of the operation involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it, will be in harmony with and will not impede the normal, appropriate, and orderly development of the district in which it is to be located and the development of surrounding properties. (Explain how the proposed use will allow the surrounding area to develop appropriately. Is the use too large for the site? Will it be in a location on the lot that will cause conflicts with adjacent properties? Does the use create noise, odor, smoke, or light that will affect other properties?)

“The proposed Special Use addresses the Property’s current non-conforming status. The Property’s use as a self-storage facility has existed for over 25 years. The Property’s location on a high traffic roadway, near other Commercial Uses, provides for an ideal location for the business and Wheeling residents.”

The location, size, nature, and intensity of the existing self-storage facility will not change with the proposed special use request. The continued use of the self-storage facility as legal conforming will not cause conflicts with adjacent properties.

4. State how the location, nature and height of buildings, walls and fences, and the nature and extent of the landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or will not impair the value thereof. (Explain how the proposed use will not prevent development on adjacent properties. Will the proposed use have a negative impact on existing adjacent land uses?)

“The Petitioner does not intend on making any exterior or interior alterations to the existing buildings. Space Self Storage will continue to maintain its Property at the same high standard it has exhibited for approximately the last 25 years. Petitioner may eventually seek approval to develop additional storage units on the Jackson Property. And at such time, will seek all necessary permits and requirements as required by the Village.”

No site modifications are proposed for the existing facility.

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5. State how the parking areas will be of adequate size for the particular use, properly located, and suitably screened from adjoining residential uses, entrance and exit drives shall be laid out so as to prevent traffic hazards and nuisances, and the development will not cause traffic congestion. (Is adequate parking provided? Is parking area visible from adjacent homes? Are the entrance and exit drives designed for safe access to the site? Will the special use generate so much traffic as to cause congestion? Will visitors to the special use access the site through residential streets?)

“There will be no changes to the existing parking arrangement on the Property, since the existing off-street parking number is sufficient for the proposed/existing use.”

No site modifications are proposed for the existing facility.

6. State how the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulation in that zone. (Other than the special use listed in this application, the proposal must meet all other requirements of the Zoning Code. Note any other exceptions.)

“Being an existing group of buildings and use (i.e., self-storage facility), it inherently limits potential users into the space. Size, layout, and location constraints narrow potential user fields as well. The buildings on 2500 E. Hintz Road meet the requirements of the proposed use in both size and location, thus requiring no modifications. Simply put, if the Petitioner could not use the buildings for the proposed/existing use, it would cease to operate and further adversely affect Wheeling residents who regularly use the Petitioner’s storage facilities.”

Without special use approval, the existing business can continue as legal nonconforming.

STAFF REVIEW

Fire Department Review: The Fire Department has provided a comment memo, dated 2.10.2016. The Fire Department has no concerns at this time.

Engineering Review: The Village engineer has provided a comment memo dated 2.10.2016. These comments relate to future improvements.

Impact on adjacent uses: Since no changes are proposed to the existing properties at this time, staff believes the impacts on adjacent uses will be minimal.

Village Planner’s Recommendation to the Plan Commission: Staff recommended that the Plan Commission discuss with the petitioner the modified language that has been suggested by

Request for Board Action

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RE: Plan Commission Docket No. 2016-3ABC

staff for the proposed text amendment to ensure that the petitioner is in agreement. The petitioner was in agreement with staff's suggested language.

CONDITIONS FROM PLAN COMMISSION RECOMMENDATION

The Plan Commission's recommendation for the petition is in four parts. The conditions of approval in each piece of legislation are discussed below.

- I. No conditions were included with the text amendment.
- II. No conditions were included with the rezoning of 2500 E. Hintz Road.
- III. The rezoning of 2730 Jackson Drive included the following condition (which is not listed in the attached rezoning ordinance):
 1. That the legislation for the Board shall include language regarding a restrictive covenant for a self-storage facility to be worked out by the petitioner and Village.

Note: At the Plan Commission hearing the petitioner willingly offered that they will agree to a restrictive covenant for 2730 Jackson Drive so that the future commercial use is limited only to a self-storage facility. This suggestion for a restrictive covenant was incorporated into the condition of approval for Docket No. 2016-3B(2) (rezoning of 2730 Jackson Drive from R-1 to B-2). Because the motion for the rezoning of 2730 Jackson failed, this condition of approval was not included in the attached rezoning ordinance for 2730 Jackson Drive. If the Village Board would like to consider the petitioner's offer to add a restrictive covenant to the property to restrict future commercial use of the property only to a self-storage facility, then a condition of approval can be added to the rezoning ordinance for 2730 Jackson Drive.

- IV. The special use petition included the following two conditions of approval (which are listed in the attached special use ordinance):
 1. That the site/landscape plan and elevation plans, which present a concept for the expansion of the self-storage facility onto 2730 Jackson Drive, are not approved at this time; and
 2. That the special use approval is contingent on the approval of Docket Nos. 2016-3A (text amendment) and 2016-3B(1) (rezoning of 2500 Hintz Road).

Note: If the consensus of the Board is to require modifications to the building or property in conjunction with the Special Use, a specific condition of approval could be added to the Special Use legislation.

MODIFICATIONS FOLLOWING PLAN COMMISSION HEARING

Staff has modified the “Existing vs. Proposed Zoning” exhibit to reflect the recommendation of the Plan Commission, which separated the rezoning of the vacant parcel on Jackson Drive from the rezoning of the occupied parcel on Hintz Road.

DIRECTOR OF COMMUNITY DEVELOPMENT RECOMMENDATION

In order to address concerns raised during the Plan Commission workshop, the Staff report includes information describing the differences between the subject business, the adjacent landscaping business, and home occupations. The subject business is a legal business because it was lawfully established prior to annexation. It is currently limited in its ability to complete major repairs, rebuild in the event of damage/destruction, or expand. The various requested actions seek to address these limitations.

It should be noted that the expansion of any special use is restricted by the provisions of the zoning code. In this case, the expansion potential of the business is largely dependent upon the rezoning of the vacant parcel on Jackson Drive. While the special use application does not include an additional building, the approval of the rezoning of this additional parcel would allow the business to return with a special use amendment for an additional building in the future.

Following the Plan Commission hearing the petitioner submitted a cover letter with attachments to address the recommendation of the Plan Commission. The petitioner indicates that the rezoning would improve the tax revenue of the vacant parcel. While tax revenue is not usually a consideration for a land use review, Staff would counter that the tax increase on the vacant parcel is not anticipated to be a significant difference. It is true that commercial property is taxed at a different rate, but the taxes on the improved land are generally the most significant difference.

As discussed in this report, the condition of approval in the Plan Commission recommendation for the rezoning of the Jackson Drive parcel has been removed because the motion failed. Should the Board wish to approve the rezoning of the Jackson Drive parcel, the condition (which required a restrictive covenant limiting the future use of the land to self-storage) could be re-inserted at the direction of the Board.

In the section of this report discussing the Special Use & Site Plan review, Staff notes that the Plan Commission recommendation was to approve the special use / site plan without modifications to the existing conditions. Should the Board discussion conclude with a consensus to require some type of modification to the existing conditions, a specific condition of approval could be added to the Special Use legislation (Docket 2016-3C).

Four ordinances are attached for the Board’s consideration:

Request for Board Action

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RE: Plan Commission Docket No. 2016-3ABC

1. Docket No. 2016-3A. Ordinance amending Title 19, Zoning, of the Village Code to add the use classification of 'Self Storage Facility' as a Special Use in the B-2 Neighborhood Commercial District. The amendment also includes restrictions intended to address potential impacts of the business by further limiting such businesses to specific size properties and operational configurations.
2. Docket No. 2016-3B(1). Ordinance rezoning of 2500 E. Hintz to B-2, Neighborhood Commercial District. This is the occupied parcel.
3. Docket No. 2016-3B(2). Ordinance rezoning of 2730 Jackson Drive to B-2, Neighborhood Commercial District. This is the vacant parcel.
4. Docket No. 2016-3C. Ordinance granting special use and site plan approval for the existing self-storage facility at 2500 E. Hintz Road.



Andrew C. Jennings
Director of Community Development

Attachments:

- Ordinances (precede this report)
- Fire Department Comments, dated 2.10.2016
- Engineering Division Comments, dated 2.10.2016
- Findings of Fact and Recommendation (draft)
- Photos of existing conditions (staff)
- Letter of request, dated 1.14.2016
- Ordinance No. 2432 (Annexation)
- Cook County Special Use Ordinance
- Plat of survey
- Development context exhibit
- Photographs of south and east elevations (2 sheets)
- Elevation plans for existing Building A and B (2 sheets)
- Conceptual site/landscape plan for possible future expansion
- Conceptual elevation plans for possible future expansion
- Traffic data
- Staff exhibit "Existing vs. Proposed Zoning, 2500 E. Hintz Road" dated 3.07.2016
- Staff exhibit "Existing vs. Proposed Zoning, 2730 Jackson Drive" dated 3.07.2016
- Updated letter of request and attachments (18 pages), dated 3.02.2016



MEMO – Fire Prevention Bureau

TO: Brooke Jones, Senior Planner
FROM: Ronald S. Antor, Fire Inspector
CC: Andrew Jennings, Director of Community Development
Keith Maclsaac, Fire Chief
FPB File
DATE: February 10, 2016
SUBJECT: Proposed Text Amendment, Rezoning and Special Use Approval – 2500 E. Hintz Road – Space Self Storage – Documents received for review by the Fire Department, January 28, 2016.

The Wheeling Fire Department has reviewed the submittals received related to the above referenced project and has the following comments:

1. The documents received for review relate to zoning issues only and there are no site improvements requested by the petitioner. Based on review of available information, it appears that the majority of the buildings on the property are existing structures that have been on the site since at least 1998.
2. The information provided in the submittal documents references potential future improvements to the site that are not a part of the requested zoning approvals. No Fire Department approvals or recommendations are provided for any future improvements to the site even though they are shown in the current submittals.
3. The properties as they currently exist are required to comply with the Village's Fire Prevention Code.

At this time there are no other Fire Department comments related to the recommended zoning changes as presented in the documents reviewed.



MEMORANDUM

TO: Brooke Jones, Senior Planner

FROM: Kyle Goetzelmann, Civil Engineer I

COPY: Jon Tack, Village Engineer

DATE: February 10, 2016

SUBJECT: Space Self Storage Special Use
2500 E. Hintz Road - Review Comments

The Engineering Division received a Project Description and Preliminary Site Plan for the subject project on January 28, 2016.

The Engineering Division has completed a review of the above referenced submittal and offers the following comments at this time:

1. Engineering drawings must include all current storm sewer and storm water detention on the existing conditions page.
2. All storm water shall be conveyed away from the properties to the north. Jackson drive is known to have flooding issues and all runoff must drain to the south.
3. We recommend your engineer investigate the existing drainage along the west side of Jackson Dr. flowing south towards Hintz Rd. and possible alternatives to discharge the on-site flows at this location.
4. There are significant drainage concerns along Jackson drive that have been studied and reports prepared. All future development shall be required to comply with the recommendations of the drainage reports.
5. All future development on this site shall comply with the engineering requirements at the time of development.

DOCKET NO. 2016-3AB&C

**FINDINGS OF FACT
AND RECOMMENDATION**

To: Village President and Board of Trustees

From: Wheeling Plan Commission/Sign Code Board of Appeal

Re: Docket No. 2016-3 AB&C
Space Self Storage
2500 E. Hintz Road & 2730 Jackson Drive
(2016-3A) Text Amendment to Title 19, Zoning, to Add 'Self-Storage Facility' as a Special Use in the B-2 Neighborhood Commercial District
(2016-3B) Rezoning the Subject Property from R-1 Single-Family Residential to B-2 Neighborhood Commercial District
(2016-3C) Special Use-Site Plan Approval for a Self-Storage Facility

Docket No. 2016-3AB&C Kenneth Schaeffges, an owner of Space Self Storage, Inc., property owner, is seeking the following actions for 2500 E. Hintz Road, a developed lot with existing self-storage facilities and 2730 Jackson Drive, a vacant parcel, hereinafter legally described below:

- 2016-3 (A)** A text amendment to Title 19 Zoning, of the Wheeling Municipal Code, to add 'Self-Storage Facility' as a Special Use in the B-2 Neighborhood Commercial District (Under Appendix A, Use Table); and
- 2016-3 (B)** Rezoning the property from R-1 Single-Family Residential to B-2 Neighborhood Commercial District; and
- 2016-3 (C)** Special Use-Site Plan Approval as required under Chapter 19-07 Industrial Districts, Chapter 19-10 Use Regulations, and Chapter 19-12 Site Plan Approval Requirements, and associated sections, in order to establish a Self-Storage Facility in the B-2 Neighborhood Commercial District.

Chairman Ruffatto called Docket No. 2016-3AB&C on February 18, 2016. Present were Commissioners Issakoo, Johnson, Powers, Ruffatto, Sianis and Zangara. Commissioner Dorband was absent with prior notice. Also present were Brooke Jones, Senior Planner and Mallory Milluzzi, Village Attorney.

Commissioner Powers read the following statement aloud.

A zoning Special Use, as defined in Title 19, of the Village of Wheeling (Zoning), is a use of parcel of land that requires review and consideration before approval due to circumstances or effects on the surrounding properties that may adversely affect them. In order to be considered for a special use the petitioner is required to demonstrate through testimony to the Plan Commission at the public

hearing why their request meets the conditions of the village code including, but not limited to, how the proposed use will not damage the enjoyment or use of the surrounding properties. Prior to the public hearing the petitioner provides written statements meant to show that their request for a special use meets the standards established in Title 19. The Commission Chairperson will typically direct that these statements be entered into the record without a full reading of them at the hearing. Based upon the testimony and supporting materials submitted, the Plan Commission will make findings in support of, or against, the petitioner's testimony and report those findings to the Village Board.

Ms. Milluzzi stated the current use was legal, non-conforming. She explained prior to being annexed into the Village of Wheeling, the self storage facility was granted a special use by Cook County. When it was annexed by the Village of Wheeling, it was a legal use under the Cook County Zoning Ordinance. She further explained because the Village Code automatically classifies any annexed territory as R-1 that is why it is non-conforming because self storage facilities are not permitted in an R-1. However, per the Code, because it was a legal use under the Cook County Zoning Ordinance it was allowed to continue with restrictions. It can't expand, it can't be repaired if damaged in a fire, it can't transfer to another non-conforming use and had other restrictions. An illegal, non-confirming use is one that was never allowed under the prior zoning ordinance.

Mr. Dan Shapiro, Attorney, 3663 Woodhead Drive, Northbrook, Mr. Al Maiden, Director of Community Development, Rolf C. Campbell & Associates, 910 Woodlands Parkway, Vernon Hills, IL, Mr. Mike and Ken Schaeffges, Owners of Space Self Storage were present and sworn in.

Mr. Shapiro referred to the previous workshop on December 10th about their desire to rezone the property, have a text amendment in the B-2 and ask for a special use for both the Hintz property and the Jackson Drive property. At that time, they heard the following three points from the Commission and have responded to them.

Consider a request to rezone to B-2 instead of B-3.

Mr. Shapiro stated they responded to the request and modified their original strategy to ask for rezoning to B-2.

Tighten up or work with Staff/Village Attorney on the text amendment so there would not be a self storage with another use on the same lot.

Mr. Shapiro explained they created a proposed text amendment that he believes satisfies that concern.

Talk to the neighbors to see how they felt about it.

Mr. Shapiro stated they had met with the neighbors and Mr. Mike Schaeffges will talk about the meeting later in the presentation.

Mr. Mike Schaeffges reported that Space Self Storage was a family owned business and had been in their current location for 30 years. He explained during that time they've made an effort to be good neighbors. He referred to the billboard they had removed after the Village had told them it was unsightly. He mentioned they had upgraded and improved their facility and wanted to keep doing it

but it required financing. He explained their current status as legal, non-conforming limited what they could do with getting financing and that is why they were asking for the zoning change. He mentioned they were currently at full occupancy with a waiting list so they want to expand the facility. He mentioned some of their customers were also their neighbors.

Mr. Mike Schafges referred to their open house with their neighbors from Jackson Drive. Six households attended and had a preview of tonight's presentation. He explained the feedback they received was mostly positive. The neighbors told them they ran a nice business and was clean and well maintained. They characterized them as good neighbors. He mentioned that about half of the neighbors had no problem with the proposed expansion and the others were opposed to it. They were opposed to the expansion because Jackson Drive was a residential street and they didn't want any commercial development further down Jackson. Mr. Mike Schafges contacted Lakeside Villas and their homeowner's association and they had no problem with the proposed. He referred to the three vacant lots directly to the north of their Jackson property and the owner had no problem with it.

Chairman Ruffatto clarified that the expansion was not part of tonight's discussion. They were conceptual drawings and his preference was not to discuss them but he would allow it for a bit. He explained the reality was the petitioner was present to discuss the text amendment and special use of the property, irrespective of what may or may not happen on the Jackson Drive property.

Mr. Al Maiden referred to their recommendation of a text amendment to a B-2 district in their previous discussion. He looked at the pattern of development in the B-2 district in the area and analyzed the locations of the other B-2 properties. He found they were significantly at smaller locations, less intense than the B-3 areas and there were existing self-storage facilities in the B-3 districts but were much larger than the proposed location. He felt it was more appropriate that the subject site be considered through the B-2 district and the text amendment consistent with the pattern they see for the zoning in the area. He explained based on the review, the applicant had worked with the Village Staff on the wording of the text amendment for the B-2 district. It provided different standards, a maximum lot size of 5 acres, must have primary access from a major arterial street, secondary access must be available to a local street and no more than three buildings for storage plus an office may be considered. All these facilities are allowed on lots of record but with no other use on the same lots with a maximum height of 35' and a minimum setback abutting residential of 50'. He explained these things were additional and above and beyond the normal standards in the B-2 district.

Mr. Maiden provided an exhibit to help illustrate the existing conditions of the subject property as well as what they would like to consider for meeting the expansion needs for the site to the north. The zoning request is to have it included in the B-2 zoning at this time. In his experience, if you don't plan for the expansion, it would pop up somewhere else in the community. He felt this was a much better site and location for the B-2 zoning rather than looking at expansions in the B-3 area with the existing uses. He felt this location was appropriate and that a B-2 use at this location that would not be part of this development would be unthinkable from a standpoint of access. It's not visible from a main road but fits in well this use.

To protect the adjacent property owners, Mr. Maiden explained the site plan would allow for an over 90' setback from the properties on the west, over 60' from the street and properties from the east and 50' from the properties to the north. If this site was left in the R-2 district, the existing conditions on the subject property are that the pavement goes right up to the property line. By allowing this type of concept and including it with the B-2, an extensive buffer can be provided for any properties that may develop to the north or any properties that exist in the area.

Mr. Maiden referred to the landscaping. He explained they were able to build it into the access for the existing system and could have a double row of landscaping and screening to buffer the properties. There is landscaping on the edge of the property lines and there could be landscaping on the foundation plantings. If the property to the north remained in the R-1 district, the subject site will become conforming in regard to the use but there would still be non-conforming conditions because they don't have the 10' setback between the subject property and the property to the north.

Mr. Maiden agrees non-conforming conditions can limit the ability to get financing to maintain the property.

Mr. Maiden referred to the potential for the properties to the north in the R-1 districts and questions whether single family dwellings would be an appropriate use in this area. He mentioned that the R-1 district allowed other alternative uses like religious uses, nursing homes but most require 2 acres and the subject site to the north is only 1.5 acres. He felt the best alternative from a development planning perspective was to have the subject site combined with the vacant sites to the north and have one of the allowed special uses in the R-1 district such as a religious assembly use. He felt the proposed concept to take the access through the existing property with no additional access except the emergency access on Jackson Drive was a much better solution than leaving the northern portion of the subject property in the R-1 district.

Mr. Maiden referred to the special use for the existing conditions. He felt it didn't address the fact there were already existing waiting lists for this property and the potential for that area to be expanded should be considered. He suggested coming up with some assurances that the Commission would find acceptable.

Mr. Maiden referred to changing the essential character of the area standard. He felt the way it was designed and planned would not change the essential character of the area for just the existing conditions or the expanded.

Mr. Maiden referred to the size and intensity of the special use standard. He explained it was the reason they were recommending it into the B-2 district. The size is smaller and the recommended standards were much more stringent that limits the intensity of the use versus what is permitted or allowed for other special uses in the district.

Mr. Maiden referred to the reasonable return on investment standard. He does not feel leaving the property to the north in an R-1 district was appropriate. He felt it would be questionable to have single family in that area.

Mr. Shapiro emphasized the whole impetus for this was to bring it to a conforming state for legal and financing reasons.

Mr. Shapiro addressed the concern for commercial creep going north. He explained the neighbor to the north had no objection. He referred to their access off Hintz with emergency access on Jackson. He felt no commercial enterprise would want to go to the north without visibility or access off of Jackson with the frontage already taken. He felt as a practical manner, the odds of commercial creep going north, was not as alarming or as high as some of the residents feel.

Mr. Shapiro addressed the concern of the rezoning of the northern lot to B-2. He agreed to address it by agreeing to a restrictive covenant requiring that only self storage facilities be on the north lot.

From the audience, Mr. Jeff Creech, 33 N. Jackson Drive was sworn in. He noted that the Space Storage facility was 100% legal, but non-conforming so they could continue to operate their business. He mentioned that the Jackson Drive property had been referred to as Wheeling but thought it should be Arlington Heights. The Hintz Road property had the correct address. He noted, in the packet the property was referred to as the Hintz Road property and the Jackson Drive property as Space Storage which it was not. He explained the property on Jackson Drive had never been allowed to be part of Space Storage for the entire time they had owned the property. Mr. Creech didn't believe the Jackson Drive property was annexed into the Village at the same time as the Space Storage. He thought the Jackson Drive property was annexed much later. He felt Space Storage had been a good neighbor and he had no problem with them staying. He agreed they had kept up their property. He felt the property behind them should remain residential. They don't want commercial going any further north on Jackson Drive.

From the audience, Mr. Phil Mostaccio, 3121 Jackson Drive was sworn in. He stated he had built his home at approximately the same time they built Space Storage in 1987. The north property originally had a home on it. He agreed they were good neighbors. He referred to the billboard and explained the Village had issues with it for 20 years before they finally removed it two years ago. He agreed the facility was clean and accessible from Hintz Road. He wanted single family homes built.

No one else came forward from the audience.

Chairman Ruffatto referred to the changes made to the text amendment and asked Ms. Jones to explain them. Ms. Jones reported that Staff looked at the proposed language for the zoning code text amendment and Staff recommended some slight re-wording changes to fit with the existing structure of the zoning code language and was not a major change to the content. She asked if the petitioner was comfortable with what was drafted in the Staff Report. Mr. Shapiro was in agreement.

Ms. Jones referred to the comment memos that were provided by the Engineering Division and Fire Department. Representatives were not present. She reported they didn't have any problem with the existing business as it operates and since there were no changes proposed, they had no concerns with the petition tonight. The only comments that were made in the memos were more of an fyi to the petitioner if they do go forward and request a special use to expand the business on to the Jackson

Drive property.

Commissioner Sianis struggled with it since he understood the position of Space Self Storage to want to make their current site, legal conforming so if something were to happen they would be able to re-establish their business. He believed the Jackson Drive lot should remain R-1. He referred to the chapter on Ordinance Administration in the Title 19 Zoning Code. He felt like the rezoning of the Jackson Drive lots don't 100 percent follow the intentions of that chapter. He liked that the fact that the residents along Jackson Drive were appreciative of the business.

Ms. Milluzzi clarified that each address (2500 E. Hintz Road and 2730 Jackson Drive) would be handled separately in the rezoning matters.

Commissioner Johnson questioned if the Jackson Drive property was purchased prior to the annexation. Mr. Ken Schaeffges confirmed the Hintz Road properties were purchased first and annexed in by the Village and then the Jackson property was forcibly annexed when the Village took over all of Jackson. He was unsure of the date.

In reply to Commissioner Johnson's question, Mr. Shapiro confirmed they were not looking at any additional access to Jackson Drive if they were to receive the rezoning for that property.

Commissioner Johnson questioned if the property directly to the north was vacant. Mr. Shapiro confirmed the three lots to the north were vacant. The owner of those three lots had no objection to the request.

Commissioner Johnson had noticed some runoff on an aerial view on the north end of the existing property. Mr. Shapiro confirmed there was no runoff. Mr. Ken Schaeffges explained it had been gravel and not runoff.

In reply to Commissioner Zangara's question, Mr. Shapiro explained the property was one ownership with three pins.

Commissioner Zangara questioned if the legal, non-conforming status restricts them from doing anything. Ms. Milluzzi explained the Code specifically states what they can and cannot do. They can make minor improvements and maintenance but cannot enlarge or significantly remodel. Commissioner Zangara was in favor of making the property conforming.

Commissioner Zangara questioned the location of the access point if the Jackson Drive lot was fenced in. Mr. Shapiro confirmed it was fenced in without a reason to access it. Commissioner Zangara questioned if it was opened to the storage facility property. Mr. Shapiro explained there was a fence separating the north Space Storage vacant property from the current property. The fence would be removed if they were able to use the property in the future.

Commissioner Zangara was uncertain about the next property but understood the text was written to prevent it expanding lot-to-lot-lot. He was in favor of changing the legal, non-conforming status.

Commissioner Powers questioned if the petitioner was in agreement with the proposed wording in the text amendment. Mr. Shapiro agreed it was acceptable.

Commissioner Powers referred to the word “oversight” in the petitioner’s memo regarding the transaction and asked for an explanation. Chairman Ruffatto explained that Staff reviewed everything and determined there was not an oversight. Mr. Shapiro requested that the discussion move forward without addressing it.

Commissioner Powers questioned if the Jackson Drive lot was R-1 in the Comprehensive Plan. Ms. Jones confirmed it was single family residential. Mr. Shapiro thought the existing Comprehensive Plan showed it commercial but the future land use showed it as residential. Ms. Jones was unsure of the existing land use in the Comprehensive Plan but confirmed the future land use designation in the Comprehensive Plan was single family residential.

Commissioner Powers was in agreement with bringing the existing property to legal conforming. He was having an issue with the Jackson Drive property.

Commissioner Issakoo asked for clarification for the text amendment that would grant the property from R-1 to B-2. Ms. Milluzzi provided clarification. She further explained if the Jackson Drive property was rezoned to B-2, any B-2 use that was permitted would be able to go in but a self storage facility would require special use approval. Mr. Shapiro reminded the Commission that since Space Self Storage owned the north Jackson Drive property, they would be willing to record a covenant on that property so that it could only be a self storage facility.

Commissioner Issakoo referred to 3C and the reference to the plans. Ms. Milluzzi confirmed that C was only for the existing self storage on Hintz Road and would not include plans for any proposed expansion.

Chairman Ruffatto viewed the Comprehensive Plan at the meeting and confirmed the existing land use in the Comprehensive Plan showed the Jackson Drive parcel as single family.

Chairman Ruffatto was in favor of rezoning the Space Self Storage property on Hintz Road. He expressed a concern about the Jackson Drive parcel.

Ms. Milluzzi referred to the petitioner’s statement that they would be willing to put a restrictive covenant on the Jackson Drive property with the rezoning. She suggested adding a condition that they could work on the language prior to the Board Meeting so that the Village Attorney and petitioner’s attorney can work together to draft an appropriate condition related to it. The condition would be placed on the rezoning for Jackson Drive. Mr. Shapiro was in agreement.

In response to Chairman Ruffatto’s question, Ms. Milluzzi suggested splitting it to 2016-3B1 and 3B2.

From the audience, Mr. Jeff Creech mentioned that 10 new homes had been built on Jackson Drive since Space Storage was built. He mentioned the homes were upscale and there was opportunity for

other homes to be built. Mr. Shapiro appreciated the neighbor’s comments. He reiterated for the reasons stated of refinancing, demands, etc. they want to continue and always be a good neighbor.

Ms. Jones announced that for the special use motion, there was one condition of approval in the Staff Report and she suggested a second condition of approval.

1. That the site/landscape plan and elevation plans, which present a concept for the expansion of the self-storage facility onto 2730 Jackson Drive, are not approved at this time;
2. That the special use is contingent on the approval of Docket No. 2016-3A, the text amendment and 2016-3B, the rezoning to B-2.

Chairman Ruffatto questioned the condition about the covenant. Ms. Jones proposed the following.

1. That the rezoning of the Jackson Drive property is subject to a restrictive covenant that the parcel only be used as a self storage facility use.

Ms. Milluzzi suggested that the restrictive covenant for only self storage uses indicated by the petitioner should be worked out between the Village and petitioner prior to the Board. She suggested, “Legislation going to the Board shall include language regarding a restrictive covenant for a self storage facility to be worked out between petitioner and Village.”

Commissioner Johnson move, seconded by Commissioner Zangara to recommend approval of Docket 2016-3A, amending Title 19, Zoning Code, to read as follows:

Appendix A: Use Table

...

Commercial Districts – Permitted and Special Uses (cont).

P=Permitted Use, S=Special Use Permit, Blank=Not Allowed			
	B-1 Planned Shopping Center District	B-2 Neighborhood Commercial District	B-3 General Commercial and Office District
Storage Uses			
<i>Self-Storage Facility</i>		S	

...

Notes referenced in Appendix A, Use Table

...

16. Maximum lot size 5 acres. Primary access from a Major Arterial on the Official Map and a secondary emergency access from a local street. No more than three storage buildings plus an office. All such facilities shall be the only use allowed on a lot of record. Maximum building height 35’. For new facilities, minimum 50’ setback when abutting any residentially zoned district.

On the roll call, the vote was as follows:

AYES: Commissioners Issakoo, Johnson, Ruffatto, Sianis, Zangara
NAYS: Commissioner Powers
ABSENT: Commissioner Dorband
PRESENT: None
ABSTAIN: None

There being five affirmative votes, the motion was approved.

Commissioner Sianis moved, seconded by Commissioner Issakoo to recommend approval of Docket No. 2016-3Bi, granting a Rezoning from R-1 Single-Family Residential District to B-2 Neighborhood Commercial District, as illustrated on the staff exhibit “Existing vs. Proposed Zoning” dated February 18, 2016, for 2500 E. Hintz Road, Arlington Heights, Illinois

On the roll call, the vote was as follows:

AYES: Commissioners Issakoo, Johnson, Powers, Ruffatto, Sianis, Zangara
NAYS: None
ABSENT: Commissioner Dorband
PRESENT: None
ABSTAIN: None

There being six affirmative votes, the motion was approved.

Commissioner Johnson moved, seconded by Commissioner Sianis to recommend approval of Docket No. 2016-3Bii, granting a Rezoning from R-1 Single-Family Residential District to B-2 Neighborhood Commercial District, as illustrated on the staff exhibit “Existing vs. Proposed Zoning” dated February 18, 2016, for 2730 Jackson Drive, Wheeling, Illinois with the following condition:

1. That the legislation for the Board shall include language regarding a restrictive covenant for a self storage facility to be worked out by the petitioner and Village.

On the roll call, the vote was as follows:

AYES: Commissioners Johnson
NAYS: Commissioners Sianis, Zangara, Issakoo, Powers, Ruffatto
ABSENT: Commissioner Dorband
PRESENT: None
ABSTAIN: None

There being one affirmative vote, the motion was denied.

Commissioner Zangara moved, seconded by Commissioner Johnson to recommend approval of Docket No. 2016-3C Special Use and associated Site Plan Approval as required under Chapter 19-06 Commercial Districts, Section 19.06.030 B-2 Neighborhood Commercial District and Chapter 19-10

Use Regulations, Section 19.10.030 Special Uses, to permit the existing self-storage facility at 2500 E. Hintz Road, Arlington Heights, Illinois, in accordance with the following plans and documents submitted January 14, 2016:

- Letter of request
- Plat of survey
- Photographs of south and east elevations (2 sheets)
- Elevation plans for existing Building A and B (2 sheets)
- Traffic data (1 sheet)

And with the following conditions:

1. That the site/landscape plan and elevation plans, which present a concept for the expansion of the self-storage facility onto 2730 Jackson Drive, are not approved at this time;
2. That the special use approval is contingent on the approval of Docket Nos. 2016-3A, the text amendment and 2016-3Bi rezoning to B-2.

On the roll call, the vote was as follows:

AYES: Commissioners Issakoo, Johnson, Powers, Ruffatto, Sianis, Zangara
NAYS: None
ABSENT: Commissioner Dorband
PRESENT: None
ABSTAIN: None

There being six affirmative votes, the motion was approved.

Commissioner Powers moved, seconded by Commissioner Johnson to close Docket No. 2016-3. The motion was approved by a voice vote.

Respectfully submitted,

Jim Ruffatto, Chairman
Wheeling Plan Commission/
Sign Code Board of Appeals

**DISTRIBUTED TO THE COMMISSION 03.04.2016
FOR APPROVAL ON 03.10.2016**

Space Self Storage – 2500 E. Hintz Road and 2730 Jackson Drive
Docket No. 2016-3AB&C (Text Amendment, Rezoning and Special Use to Permit a
Self-Storage Facility in the B-2 Neighborhood Commercial District)
Plan Commission Meeting – February 18, 2016
Village Board Meeting – March 7, 2016



Existing conditions of storage facility along Hintz Road

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Plan Commission Meeting – February 18, 2016

Village Board Meeting – March 7, 2016



Existing conditions of vacant parcel along Jackson Drive

January 14, 2016

Andrew C. Jennings, AICP
Director of Community Development
Village of Wheeling
Community Development Dept.
Planning Division
2 Community Boulevard, Wheeling, IL 60090

**RE: 2500 E. Hintz Road & 2730 Jackson Drive (“The Property”) -
Request for Text Amendment, Rezoning and Special Use Permit:
Space Self Storage, Inc.**

Dear Mr. Jennings:

Attached please find our applications for a text amendment to the Village of Wheeling Zoning Ordinance (“the Zoning Ordinance”), rezoning and special use permit on behalf of Space Self Storage, Inc. (“Space”).

The property at 2500 E. Hintz Road is approximately 111,000 sq. ft. and is bordered by Hintz Road on the south, Jackson Drive on the east, Lakeside Drive on the west and Dundee Road on the north (the “Improved Property”). The Improved Property contains approximately 700 storage units of varying size and purpose.

Space also owns the approximate 68,000 sq. ft. vacant lot at 2730 Jackson Drive, immediately north of 2500 E. Hintz Road, commonly referred to as the “Jackson Property”. The Jackson Property is part of this request because Space may seek to develop with additional storage units in the future.

2500 E. Hintz Road and 2730 Jackson Drive (collectively referred to herein as the “Properties”) were annexed to the Village of Wheeling (the “Village”) pursuant to Ordinance 2432 on or about May 2, 1988. A copy of Ordinance 2432 is included as part of the submitted materials accompanying this application. It should be noted that previously, the Properties operated under a special use permit in Cook County’s C-4 (commercial) zoning district which was granted by the County on July 6, 1987. A copy of the Ordinance granting the special use is attached to the application for your reference. Since 1988, and without objection from the Village, neighbors or nearby property

owners, 2500 E. Hintz Road has remained a legal non-conforming use in an R-1 Zoning District. The properties directly east and west of the 2500 E. Hintz Road are Commercial Uses and also non-conforming uses.

Section B of Ordinance 2431 states that the “Village Zoning Administrator shall be directed to amend the official zoning map of the Village of Wheeling to reflect the zoning change by this correspondence.” [emphasis added]. While the zoning map was changed to reflect the Properties as being within the Village, it was never amended to reflect the annexed use (i.e, *Self-Storage Facility*), nor was the zoning district changed from residential to commercial to accommodate the use pursuant to the Ordinance. The Petitioner seeks to correct same in order to comply with the Village’s Zoning Ordinance and Ordinance 2432.

The proposed text amendment, rezoning and special use permit are sought to correct an oversight that occurred when the Property was annexed to the Village in 1988. For one reason or another, the official zoning map was not amended after the Property was annexed. Therefore, the requested text amendment, rezoning and special use accomplish the Village’s original intent and will bring the Improved Property into conforming status under the Village’s Zoning Ordinance. In addition, with the approved zoning requests made herein, the subject properties will become legal conforming. As a result, the applicant will be able to refinance, permitting it to add to or improve the existing conditions. Without being a legal conforming use, obtaining financing to meet future needs will be difficult at best, thereby limiting the applicant's future business options and growth.

A *Self-Storage Facility*, such as Space Self Storage, is a Special Use found only in the Village’s I-3 General Industrial District. Therefore, the Petitioner first seeks a text amendment for B-2 which allows for self-storage, as a special use only. Upon the Village’s approval of said text amendment, the Petitioner proposes rezoning the Properties from R-1 to B-2 and subsequently seeking a Special Use Permit for a self-storage facility. That said, we suggest the following amendment to the Text of the Village’s Zoning Ordinance as follows:

In the “General Use” category of the B-2 zoning district, self-storage facilities may be considered as a special use provided they are contained on a lot no larger than 5 acres, are abutting a roadway that is classified as a “Major Arterial” on Exhibit 23, Street System Plan in the Village’s 2003 Comprehensive Plan have a secondary emergency access from a local street and consist of no more than three buildings plus an office. No other uses may be permitted with such facilities on a lot of record. Such self-storage facilities shall not exceed 35’ in height and, for all newly constructed facilities, shall have a minimum 50 setback when abutting any residentially zoned district.

As stated above, the Petitioner may seek to develop 2730 Jackson Drive with additional storage units in the future. That said, our materials include a conceptual site plan and landscape plan for a possible future building. We have located the building in a way which addresses issues relating to detention, set back and landscaping.

Space is aware of the 1980 stormwater management plan for the general area around Hintz / Jackson and will follow the 1980 recommendations to the extent practical. It should be noted that the purpose of attaching the conceptual site plan is **not** to seek its approval, but rather to illustrate the plausibility of a storage building with associated parking and landscaping.

With respect to lighting, attached please find photos of lighting fixtures on the Improved Property. You will note that, Space does not have any light poles on the Improved Property. The lighting is discrete and therefore it is no surprise that Space has not received any complaints about light pollution from its neighbors. It has also helped keep the Improved Property safe from vandalism break-ins, trespass, etc.

With respect to traffic, Space conducted its own traffic counts last fall, the results of which are included in this application. In short, the number of trips in and out of the Improved Property is minimal. Moreover, Space is unaware of any traffic accidents at/near its facility with patrons entering/exiting its facility. It is expected that any future additional storage facility on the Jackson Property will have similar minimal traffic counts; in all resulting in little, if any, impact to the adjacent roadways.

With respect to landscaping, the application includes current photos of the landscaping on the site. Conceptual landscaping is identified on the conceptual site plan, included in this application.

We look forward to working with the Village so that that these Properties not only become conforming under the Village's Zoning Ordinance and Village Ordinance 2431 but also for the possible future development of the Jackson Property. Thank you for your thoughtful consideration of our proposed text amendment, rezoning and special use requests.

Sincerely,



Daniel C. Shapiro
Dan Shapiro Law, LLC
On behalf of Space Self Storage, Inc.

4-11-88

OFFICIAL BUSINESS
VILLAGE OF WHEELING

ORDINANCE NO. 2432

88189270

An Ordinance Annexing Certain Land to the Village of Wheeling
(North Side of Hintz Road at Jackson Drive)

WHEREAS, Cole Taylor Bank/Main, Trustee under Trust 87-208 dated November 10, 1987; Cole Taylor Bank/Main, Trustee under Trust 87-210 dated November 18, 1987; The First National Bank of Des Plaines as Trustee U/T/A dated February 24, 1981, Trust No. 99403125; and Atanacio Sanchez and Belinda Sanchez have requested annexation of the territory hereinafter described to the Village of Wheeling, Cook and Lake Counties, Illinois; and

WHEREAS, the President and Board of Trustees of the Village of Wheeling find it to be in the best interests of the Village to annex certain property described herein; and

WHEREAS, said real estate is contiguous to the Village of Wheeling and is not within the corporate limits of any other municipality; and

WHEREAS, the Village of Wheeling is authorized by the laws of Illinois (Chapter 24, Illinois Revised Statutes, Section 7-1-8) to annex said property; and

WHEREAS, the appropriate fire protection district Board of Trustees and the Wheeling Township Commissioner of Highways and Board of Trustees have been notified of the intended annexation by the Village in accordance with Illinois laws; and

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COUNTIES OF COOK AND LAKE, STATE OF ILLINOIS:

Section A

The following property, legally described below and being indicated on a certain Plat of Annexation, as prepared by George A. Saam, Illinois Registered Land Surveyor No. 2585, on April 1, 1988, attached hereto and made part of, is hereby annexed to the Village of Wheeling, Counties of Cook and Lake, State of Illinois.

The East Half of the Southeast Quarter of Section 9, Township 42 North, Range 11 East of the Third Principal Meridian bounded and described as follows: Commencing at the Southeast corner of the Southeast Quarter of said Section 9; thence West along the South line of the Southeast Quarter of said Section 9, 750.0 feet for a point of beginning; thence continuing West along the last described line, 558.77 feet to the West line of the East Half of the Southeast Quarter of said Section 9; thence North along the West line of the East Half of the Southeast Quarter of said Section 9, 605.75 feet to a point which is 2033.0 feet South of the North line of the Southeast Quarter of said Section 9; thence East along a line parallel with the North line of the Southeast Quarter of said Section 9, 470.92 feet; thence South parallel with the East line of the Southeast Quarter of said Section 9, 100.0 feet; thence East parallel with the North line of the Southeast Quarter of said Section 9, 402.60 feet to a point 435.60 feet West of the East line of the Southeast Quarter of said Section 9; thence South along a line parallel with the East line of the Southeast Quarter of said Section 9,

88189270

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69.67 feet; thence West along a line parallel with the North line of the Southeast Quarter of said Section 9, 314.40 feet; thence South along a line parallel with the East line of the Southeast Quarter of said Section 9, 435.60 feet to the point of beginning, except the South 50.0 feet thereof, all in Cook County, Illinois.

The above described property consists of 7.5 acres and is located on the North side of Hintz Road at Jackson Drive, in unincorporated Cook County, Illinois.

Section B

The Village Zoning Administrator is directed to amend the Official Zoning Map of the Village of Wheeling to reflect the zoning change affected by this Ordinance.

Section C

The Village Clerk is directed to record with the Cook County Recorder of Deeds and file with the Cook County Clerk a certified copy of this Ordinance, together with the Plat of Annexation.

Section D

This Ordinance shall be in full force and effect from and after its passage and approval, according to law.

Trustee ALTIERI moved, seconded by Trustee HARTMAN, that Ordinance No. 2432 be passed.

PASSED this 2nd day of MAY, 1988.

Trustee Abruscato <u>AYE</u>	Trustee Ratajczak <u>AYE</u>
Trustee Altieri <u>AYE</u>	Trustee Rogers <u>AYE</u>
Trustee Hartman <u>AYE</u>	Trustee Whittington <u>ABSENT</u>

APPROVED this 2nd day of MAY, 1988.

Sheila H. Schultz
Sheila H. Schultz
Village President

88189270

ATTEST:

Janet M. D'Argo
Janet M. D'Argo
Village Clerk

APPROVED AS TO FORM:

James A. Rhodes
James A. Rhodes
Village Attorney

- P.I.N. 03-09-401-015-0000
- 03-09-401-016-0000
- 03-09-401-037-0000
- 03-09-401-046-0000
- 03-09-401-048-0000
- 03-09-401-082-0000
- 03-09-401-083-0000

Common Addresses:

- Ken 2801 N. Jackson Drive, Arlington Hts., IL
- only 2814 E. Hintz Road, Arlington Hts., IL
- 2500 E. Hintz Road, Arlington Hts., IL
- 2430 E. Hintz Road, Arlington Hts., IL

8 0 3 1 0 9 2 0

OFFICIAL BUSINESS
VILLAGE OF WHEELING

Exhibit received Jan. 14, 2016

AN ORDINANCE GRANTING A SPECIAL USE
FOR CERTAIN PROPERTY LOCATED IN WHEELING
TOWNSHIP AS AUTHORIZED BY THE COOK
COUNTY ZONING ORDINANCE

WHEREAS, the owner of certain property located in Wheeling Township described in Section 1 herein has petitioned the Cook County Board of Commissioners for a special use for unique use permit for mini-warehouse and watchman's quarters in the C-4 General Commercial District, and

WHEREAS, the said petition was received by the Zoning Board of Appeals of the County of Cook as Docket #4741 and a public hearing was held in regard to said request after due notice, all in accordance with the Cook County Zoning Ordinance and the Statutes of the State of Illinois, and

WHEREAS, the Zoning Board of Appeals entered detailed findings in accordance with the standards set forth in the Ordinance recommending that the Cook County Board of Commissioners grant said application for a special use for unique use permit, and

WHEREAS, it is the determination that said request be granted in accordance with the recommendations of the Zoning Board of Appeals.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Cook County, Illinois:

Section 1: That a special use for unique use permit in the C-4 General Commercial District for a mini-warehouse and watchman's quarters be and hereby is authorized for the following described property.

LEGAL DESCRIPTION

The E. 100.0 ft. of W. 200.0 ft. of S. 435.60 ft.
of the E 1/2 of the SE 1/4 of Section 9, Township 42
North, Range 11 E. of 3rd PM

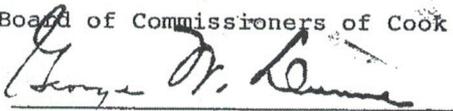
commonly described as approximately 3.4 acres, located at the northwest corner of Hintz Road and Jackson Drive in Wheeling Township.

Section 2: That the special use for unique use in Wheeling Township of the Cook County Zoning Ordinance be and hereby is authorized. That this Ordinance under the provisions of Section 13.10 of the Cook County Zoning Ordinance shall be in full force and effect from and after its passage and approval, except that if said use is not established within one year as provided in Section 13.10-11, said special use shall be null and void.

That said property be developed and constructed pursuant to the detailing set forth in the testimony and contained in the exhibits and findings of the Cook County Zoning Board of Appeals, hereby incorporated by reference into this Ordinance, as provided by law.

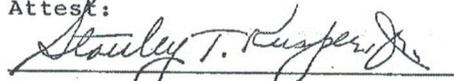
Section 3: That this Ordinance shall be in full force and effect from and after its passage and approval.

This Ordinance adopted by the Board of Commissioners of Cook County on July 6th, 1987.



George W. Dunne, President
Cook County Board of Commissioners

Attest:



Stanley T. Kusper, Jr.
County Clerk of Cook County

APPROVED BY BOARD
COUNTY COMMISSIONERS

JUL 6 1987
142799
COM

Exhibit received Jan. 14, 2016

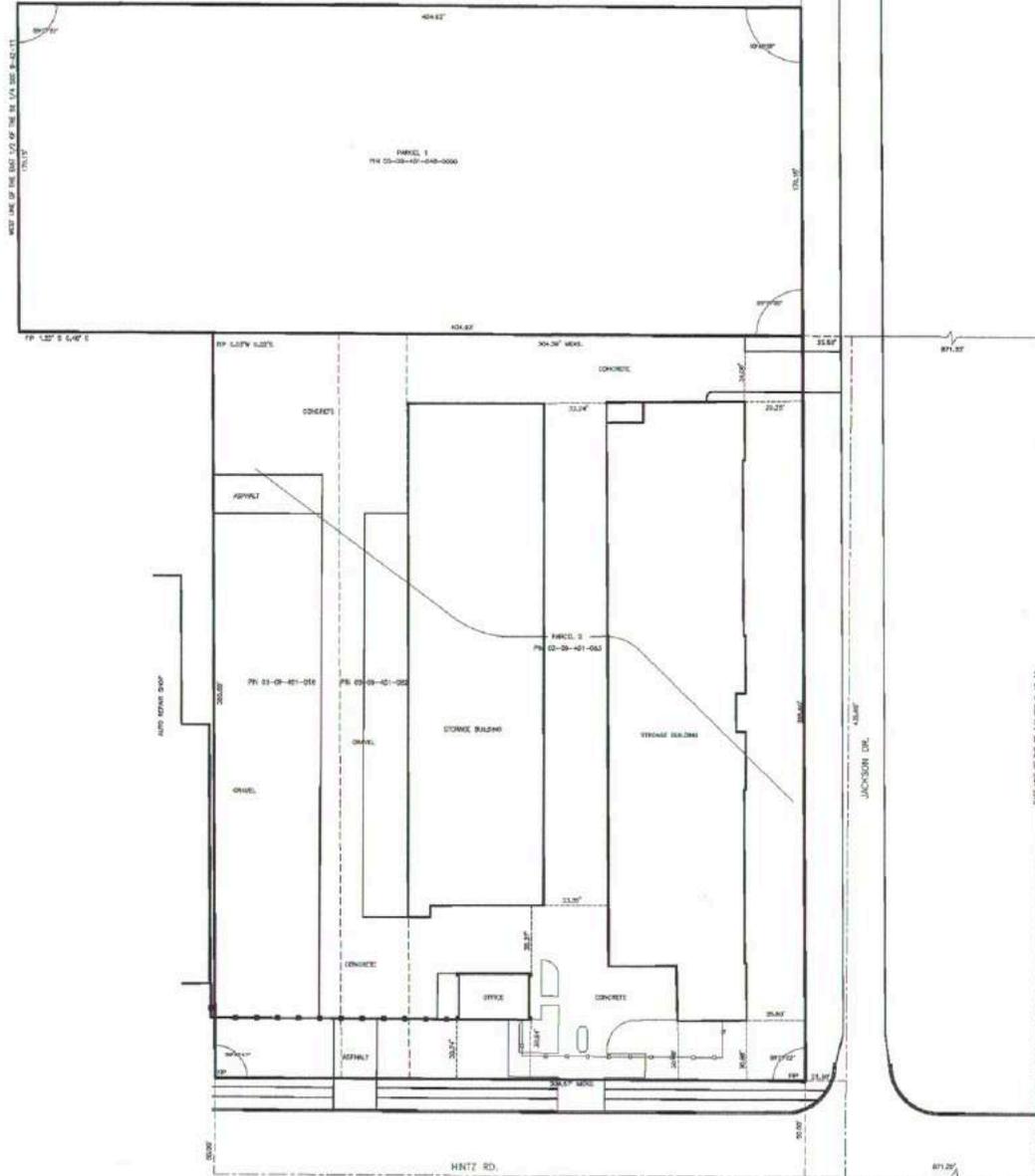
PLAT OF SURVEY
 MORRISON SURVEYING CO., INC.
 2710 N IL Rt 47, Morris, Illinois 60450

PARCEL 1:
 THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THEREFROM THE NORTH 2033 FEET AND THE EAST 904.2 FEET THEREOF), IN COOK COUNTY, ILLINOIS.

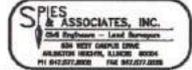
COMMONLY KNOWN AS 2730 JACKSON DR. WHEELING, ILLINOIS.

PARCEL 2:
 THE NORTH 385.60 FEET OF THE SOUTH 435.60 FEET (EXCEPT THE WEST 100.00 FEET THEREOF AND EXCEPT THE EAST 904.2 FEET THEREOF) OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS 2500 E. HINTZ RD. WHEELING, IL.

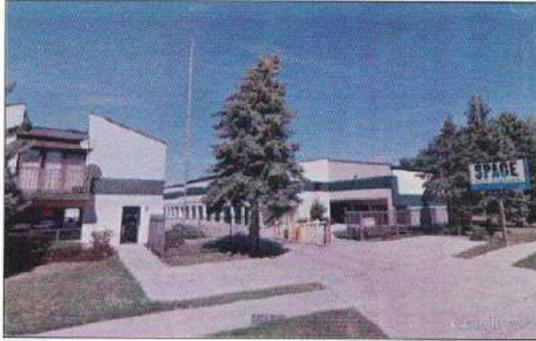


State of Illinois)
 County of Grundy) s.s.
 We, MORRISON SURVEYING CO INC., (PDF License #104-003915) do hereby certify that we have surveyed the property described in the caption to the plat hereon drawn and that this professional service conforms to the current Illinois minimum standards for a boundary survey. All dimensions are in feet and decimal parts of a foot and are correct at a temperature of 68 degrees fahrenheit. Dimensions shown on buildings run to the outside of buildings. Given under my hand and seal of Illinois this 10th day of July, 2015.
 Date: 10/07/15
 [Signature]
 ILLINOIS PROFESSIONAL AND SURVEYOR NO. 35-3735 License Expires 11/30/16



1. THIS IS A PLAT OF SURVEY AND NOT A DEED.
 2. THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE ILLINOIS SURVEYING ACT AND THE ILLINOIS PROFESSIONAL SURVEYOR REGULATION.
 3. ALL DIMENSIONS ARE IN FEET AND DECIMAL PARTS OF A FOOT.
 4. THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE ILLINOIS SURVEYING ACT AND THE ILLINOIS PROFESSIONAL SURVEYOR REGULATION.
 5. THE SURVEYOR'S OFFICE IS LOCATED AT 404 WEST CHICAGO STREET, WHEELING, ILLINOIS 60450.

Exhibit received Jan. 14, 2016



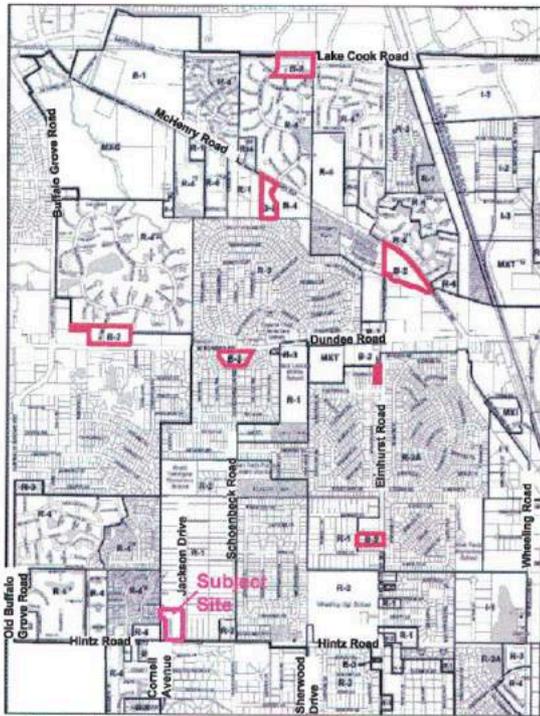
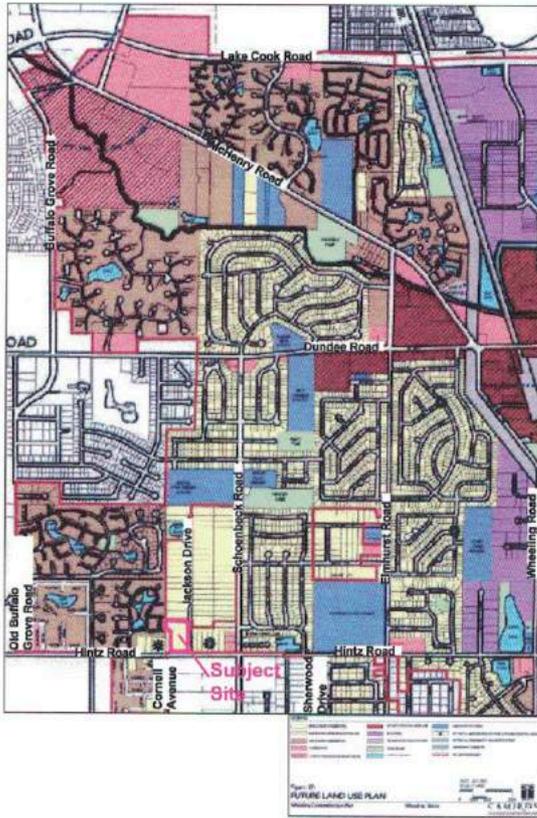
View South from Hintz Road
Google Earth Streetview Picture 2012



View Northwest from Hide Road and Jackson Drive
Google Earth Streetview Picture 2012



2016 Aerial Photograph - Google Earth



B-2 Zoning Patterns Near the Subject Property

VILLAGE OF WHEELING, ILLINOIS
OFFICIAL 2015 ZONING MAP

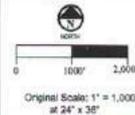
ROLL C. CAMPBELL & ASSOCIATES
A DIVISION OF THE ROLL GROUP

910 Woodlands Parkway
Vernon Hills, Illinois 60061
PHONE: (847) 735-1000 FAX: (847) 735-1010

Development Context Exhibit
(Draft for Client Review Only at this Time)

2500 Hintz Road

Wheeling, Illinois



Original Scale: 1" = 1,000'
at 24" x 36"

Sheet 1 of 4

Date: November 4, 2015 S:\11\WHEEL01.DWG

Revisions
NOVEMBER 24, 2015

JANUARY 14, 2016

Exhibit received Jan. 14, 2016

SOUTH ELEVATION OF BUILDINGS AND LANDSCAPING



Exhibit received Jan. 14, 2016

EAST ELEVATION OF EXISTING BUILDING

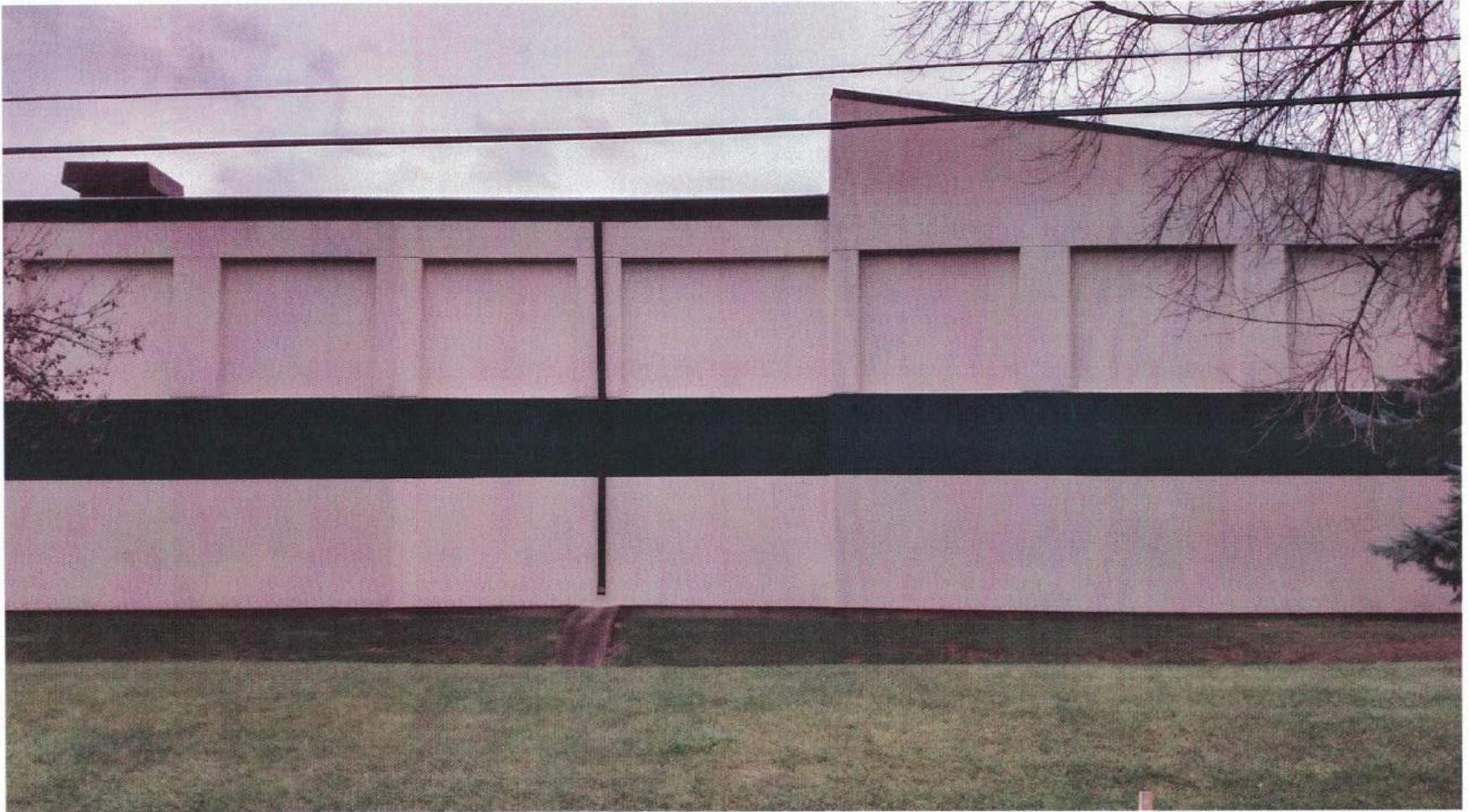
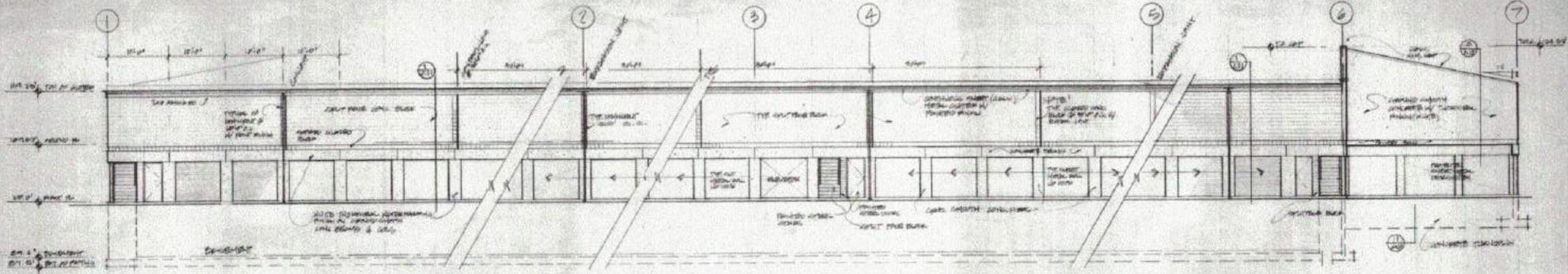
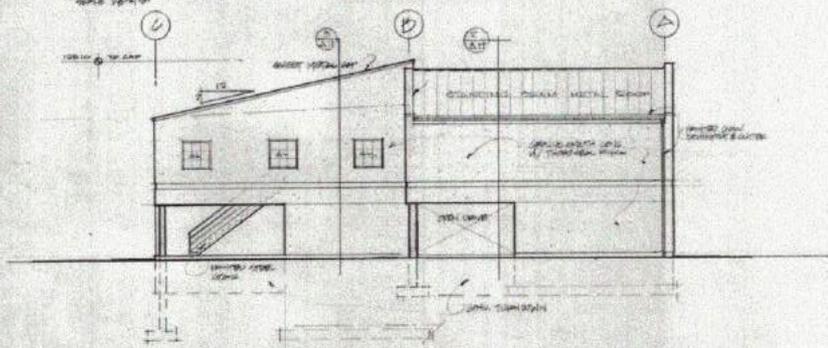


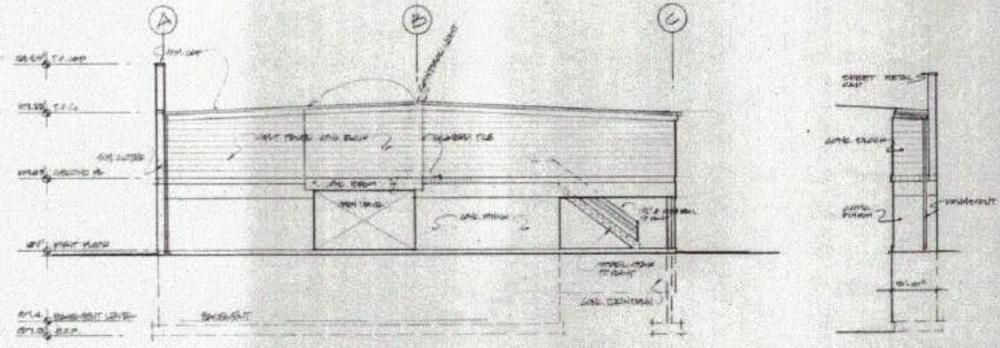
Exhibit received Jan. 14, 2016



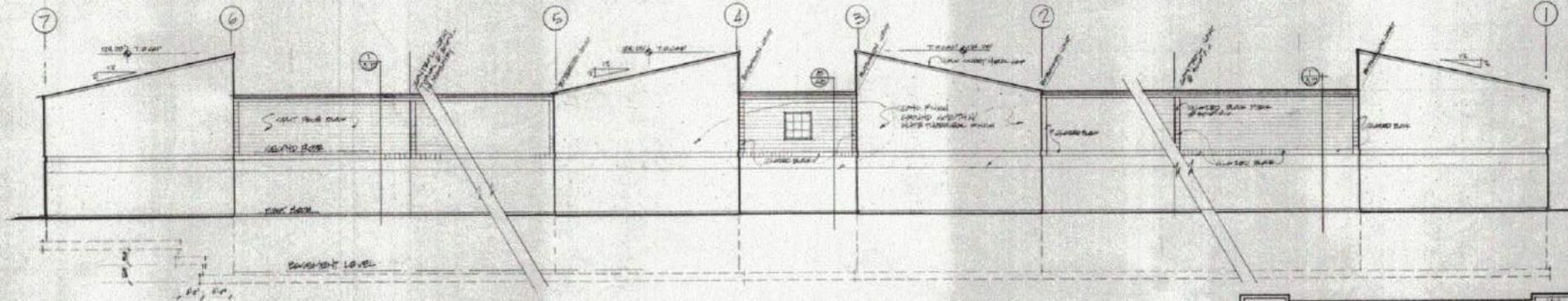
BUILDING A WEST ELEVATION



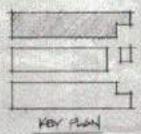
A SOUTH ELEVATION



A NORTH ELEVATION



BUILDING A EAST ELEVATION



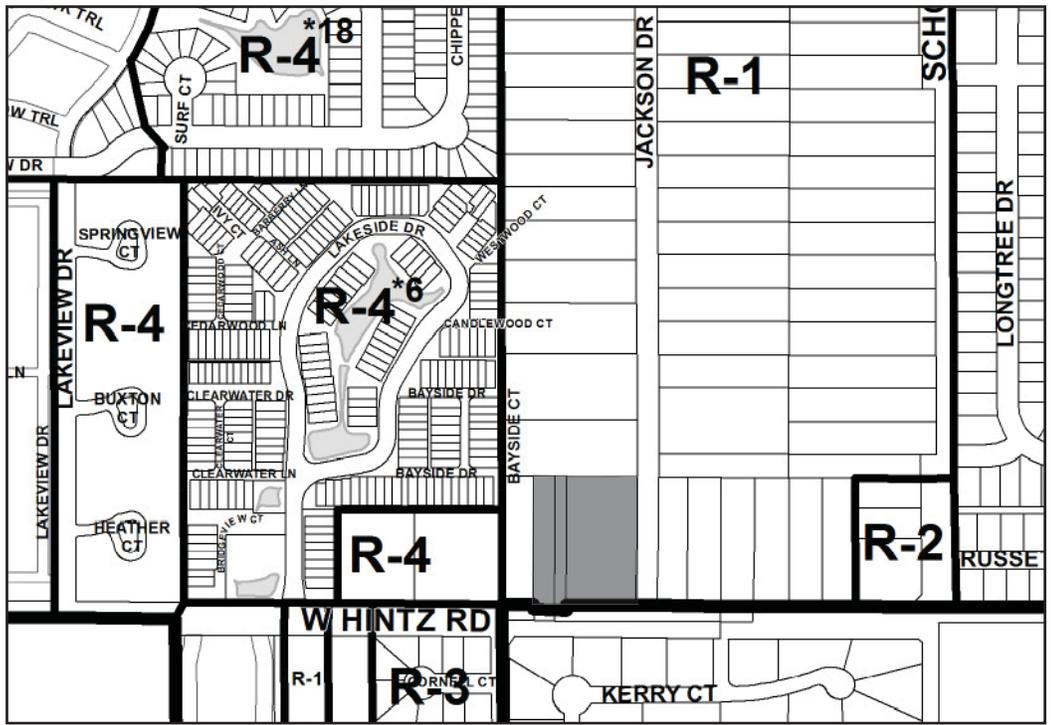
DATE	1988	1988	1988	1988
BY	J.H.D.	J.H.D.	J.H.D.	J.H.D.
PROJECT	SPACE SELF STORAGE	2800 E. 41ST ST	CHICAGO, IL	60617
DATE	1988	1988	1988	1988
BY	J.H.D.	J.H.D.	J.H.D.	J.H.D.
PROJECT	SPACE SELF STORAGE	2800 E. 41ST ST	CHICAGO, IL	60617
DATE	1988	1988	1988	1988
BY	J.H.D.	J.H.D.	J.H.D.	J.H.D.
PROJECT	SPACE SELF STORAGE	2800 E. 41ST ST	CHICAGO, IL	60617
DATE	1988	1988	1988	1988
BY	J.H.D.	J.H.D.	J.H.D.	J.H.D.
PROJECT	SPACE SELF STORAGE	2800 E. 41ST ST	CHICAGO, IL	60617

Exhibit received Jan. 14, 2016

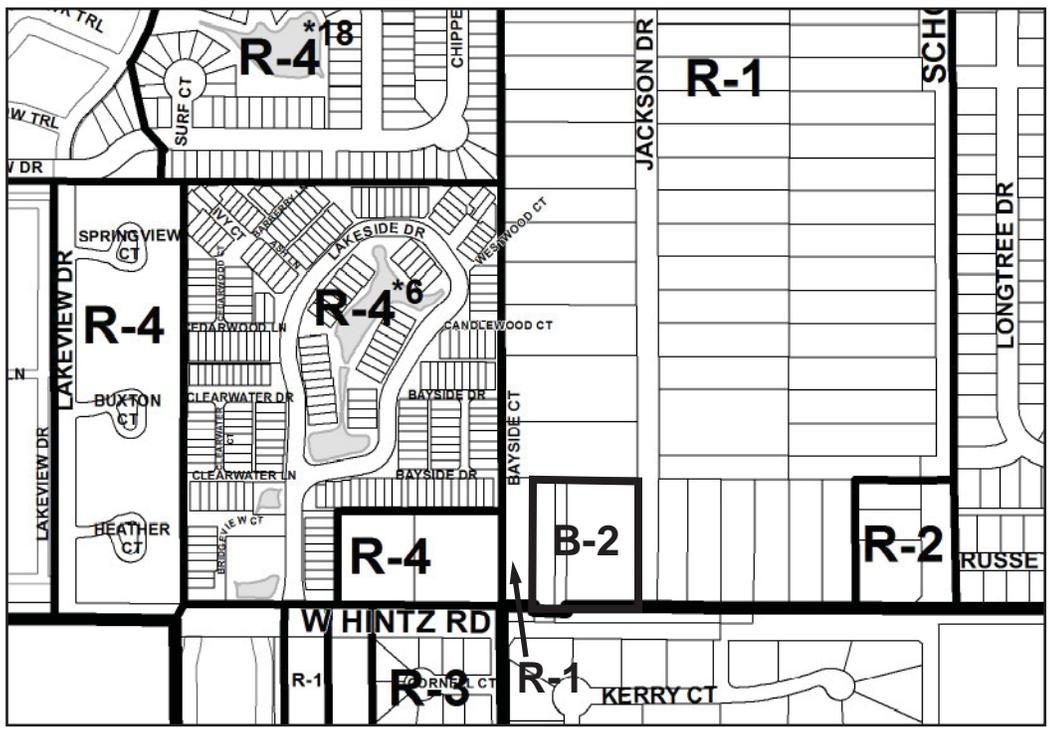
Space Self Storage – Traffic Report

<u>Day of Week</u>	<u>Average # Trips</u>	<u>Peak Hours</u>
Monday-Friday	22 trips/day	6-9am, 25% of daily traffic 3:30-6:30pm, 33% of daily traffic
Saturday	34/day	8am-5pm, 82% of daily traffic
Sunday	5/day	8am-5pm, 100% of daily traffic

Exhibit received Jan. 14, 2016



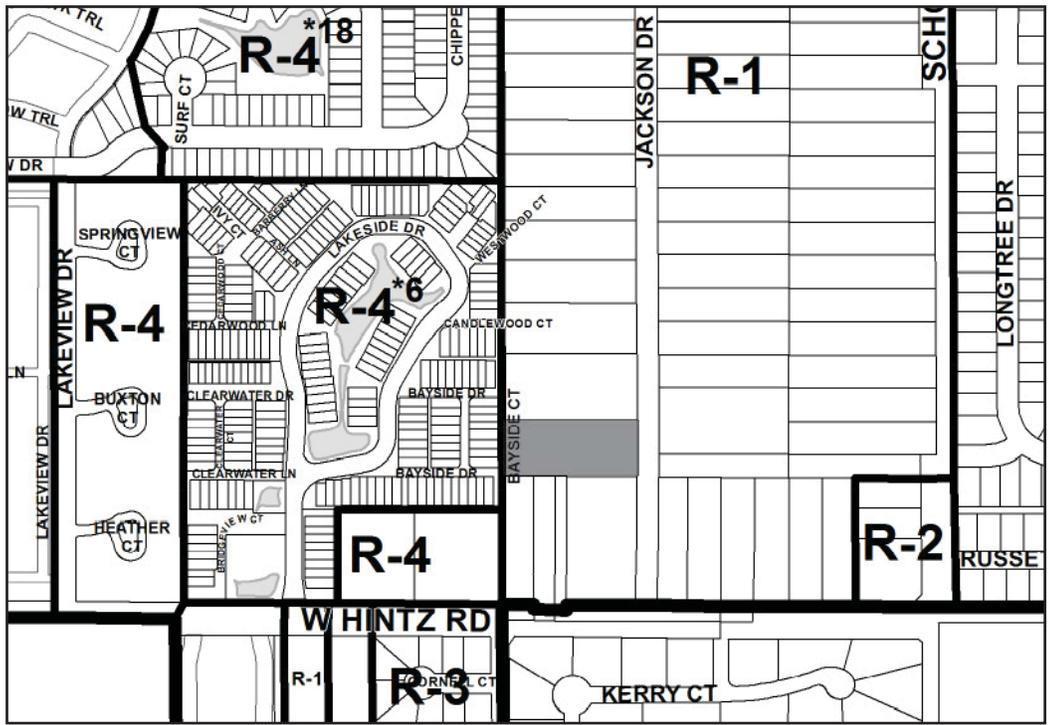
EXISTING ZONING (R-1)



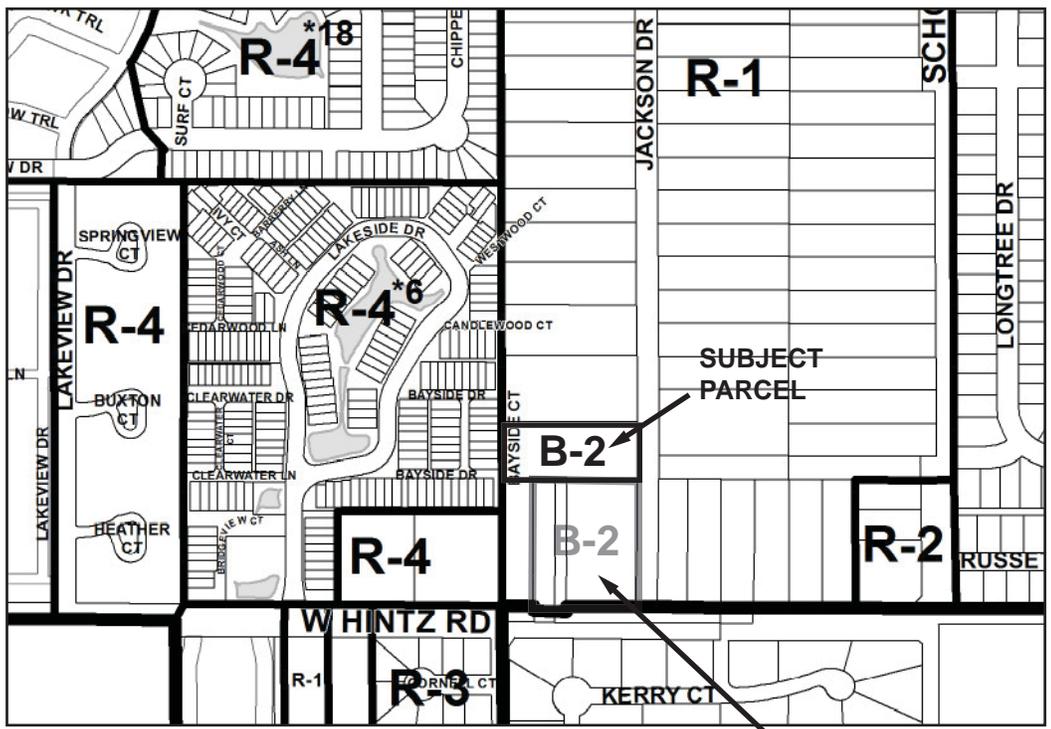
PROPOSED ZONING (B-2)

SPACE SELF STORAGE
 REZONING FROM R-1 TO B-2
 STAFF EXHIBIT - MARCH 7, 2016

EXISTING AND PROPOSED ZONING
 2500 HINTZ ROAD
 DOCKET NO. 2016-3 B (1)



EXISTING ZONING (R-1)



PROPOSED ZONING (B-2)

SEE DOCKET 2016-3B(1)
2500 HINTZ ROAD

SPACE SELF STORAGE
REZONING FROM R-1 TO B-2
STAFF EXHIBIT - MARCH 7, 2016

EXISTING AND PROPOSED ZONING
2730 JACKSON DRIVE
DOCKET NO. 2016-3 B (2)

March 2, 2016

Mr. Jon Sfondilis
Village Manager
Village of Wheeling
2 Community Boulevard
Wheeling, Illinois 60090
jsfondilis@wheelingil.gov

***RE: 2500 E. Hintz Road & 2730 Jackson Drive ("The Property") -
Request for Text Amendment, Rezoning and Special Use Permit:
Space Self Storage, Inc.***

Dear Village President Argiris and Board of Trustees:

On behalf of Space Self Storage, Inc. ("Space"), we have previously filed applications for a text amendment to the Village of Wheeling Zoning Ordinance (the "Zoning Ordinance"), re-zoning and special use permit for the Property. As you know, the Village Plan Commission recommend the approval of the text amendment, re-zoning and special use applications for 2500 E. Hintz Road (the "Hintz Property") but did not recommend the re-zoning for 2730 Jackson Drive (the "Jackson Property"). The purpose of this letter is to ask you to consider reversing the Plan Commission's recommendation relative to the Jackson Property and adopt its recommendations as to the Hintz Property.

The Hintz Property is approximately 111,000 sq. ft. and is bordered by Hintz Road on the south, Jackson Drive on the east and Lakeside Drive on the west. It contains approximately 700 storage units of varying size and purpose.

Space also owns the approximate 68,000 sq. ft. vacant lot at 2730 Jackson Drive, immediately adjacent and north of Hintz Property. The Jackson Property is part of this request because Space intends to improve it with additional storage units in the future.

Presently, Space is at 97% capacity and is trying to respond to the local demand for additional storage units. Space has been an outstanding corporate citizen in the Village for nearly thirty years. Some of its clients reside in the Lakeside Villas subdivision and some live on Jackson Drive to the north of its Properties. Space is proud of earning the trust and good will with the community and will do so in the future.

Prior to the February 18, 2016 public hearing before the Plan Commission, Space not only mailed the required notices but also hand delivered 32 invitations to the residents along Jackson Dr for a neighborhood meeting, which took place on February 9, 2016. It should be stressed that all of the neighbors who attended the neighborhood meeting and the Plan Commission hearing complemented Space. Remarkably, only 2 people at the hearing objected to Space's requests for the Jackson Property. Therefore, it is safe to say that the other neighbors either agree with Space's requests or do not object.

Space has presented its applications for two reasons; (1) to become a legal conforming use with respect to the Hintz Property and (2) to entitle the Jackson Property to respond to community demand. The Jackson Property is appropriate for rezoning for several reasons. First, it will and can only take its access from Hintz through the existing facility. (Except for emergency access) This avoids any future access off Jackson Drive, something that will not likely occur if the Jackson Property remains in an R-1 district. The fact that access will only come through Hintz makes this quite different than the recent request by Space's neighbor to the east. To that end, since there will not be an egress/ingress off Jackson and any potential traffic will be greatly minimized along that street. Second, given the nearby uses, specifically Wheeling Auto Center and Space's existing facility, it is appropriate to allow for the Jackson Property to be used as passive self-storage use. Due to the fact that the Jackson Property abuts the existing Space facility is near Wheeling Auto it is highly unlikely that a single-family home would be constructed on the Jackson Property. Indeed, the future Space Properties, as conceptually laid out on the attached will provide an extensive buffer for properties to the north and west. If the concept plan were to mature into a future development, the landscaping, buffering and setbacks would far exceed that which would be required for a single-family home. With this in mind, Space contacted the owner of the 3 vacant lots immediately north of its Jackson Property as well as the Lakeside Villas Homeowner's Association. Neither of them object to Space's requests. Further, it should also be noted that there are other storage facilities which are adjacent to or near residential subdivisions. Specifically, there is one such facility located, immediately behind the vacant Kmart site on Elmhurst Rd. As you will see on the attached photo, it appears there are 24 buildings containing residential units immediately west of the storage facilities.

Enclosed also find several photographs from the Jackson Property looking south towards the Hintz Property. As you can see, the fence on the Hintz Property abuts the Jackson Property and there is not a landscape buffer. The view from that lot to the south is of the outside storage facilities and trucks. The view from the Jackson Property also includes the back of Wheeling Auto. Neither of these views will be attractive to a single family residence. Alternatively, with Space's concept plan, these views will be mitigated with two of landscaping and large buffering to screen the Jackson property from the neighbors. To ensure that nothing other than a self-storage facility could be built on Space's Jackson Property, if re-zoned to B-2, Space will also agree to the imposition of a restrictive covenant limiting future development to only self-storage.

Lastly, should both of Space's properties be rezoned, the Village will be the beneficiary of increased property taxes. Specifically, based on the 2013 Tax Rates published in the Village of Wheeling Comprehensive Annual Financial Report for 2014, the Village of Wheeling is approximately 12% of the total rate. See table below.

Total Wheeling Rate - all Taxing Bodies (2013)	\$11.9944
Total Village Rate (2013)	\$1.4234
Village Percentage of Total Rate (2013)	11.87%

In 2014, the Hintz and Jackson properties collectively paid \$32,238 directly to the Village of Wheeling. If the Jackson Property was re-zoned B-2 to accommodate a 60,000 sq/ft building on it, the tax bill for the Jackson Property would be similar to Hintz Property, assuming the approximate same size building and lot size. As a result we estimate that the Village of Wheeling would receive about \$61,999/year in property taxes an 88% increase than if the Jackson Property were to remain R-1.

Space's goal is to continue to provide excellent service to the community and continue to be the good neighbor it has always been. The rezoning of its Jackson property will allow it to do so while also maintaining the consistency and integrity of the uses in the area.

We look forward to working with the Village so that that these Properties not only become conforming under the Village's Zoning Ordinance but also for the possible future development of the Jackson Property. Thank you for your thoughtful consideration of our proposed text amendment, rezoning and special use requests.

Sincerely,



Daniel C. Shapiro



Imagery ©2016 DigitalGlobe, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2016 Google 100 ft





















ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 19, ZONING, OF THE WHEELING MUNICIPAL CODE TO ADD 'SELF-STORAGE FACILITY' AS A SPECIAL USE IN THE B-2 NEIGHBORHOOD COMMERCIAL DISTRICT

WHEREAS, the Plan Commission of the Village of Wheeling has held a public hearing, duly noticed, on February 18, 2016, to consider a petition for a text amendment to Title 19, Zoning, of the Wheeling Municipal Code, to add 'Self-Storage Facility' as a Special Use in the B-2 Neighborhood Commercial District (under Appendix A, Use Table); and

WHEREAS, the Special Use petition of Space Self Storage, under Docket No. 2016-3C, is contingent on approval of the text amendments described in this Ordinance; and

WHEREAS, the Plan Commission of the Village of Wheeling has reported its Findings of Fact and Recommendation to the President and Board of Trustees, recommending that the petitioner's request be granted with a vote of 5 ayes, 1 nay, and 1 absent; and

WHEREAS, the President and Board of Trustees deem it to be in the best interest of the Village to grant the petitioner's request, subject to conditions;

NOW THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COUNTIES OF COOK AND LAKE, STATE OF ILLINOIS:

Section A

The Wheeling Municipal Code, Title 19, Zoning, Appendix A, Use Table, is hereby amended to read as follows:

...

Commercial Districts – Permitted and Special Uses (cont).

P=Permitted Use, S=Special Use Permit, Blank=Not Allowed			
	B-1 Planned Shopping Center District	B-2 Neighborhood Commercial District	B-3 General Commercial and Office District
Storage Uses			
<i>Self-Storage Facility</i>		S	

...

Notes referenced in Appendix A, Use Table

...

- Maximum lot size 5 acres. Primary access from a Major Arterial on the Official Map and a secondary emergency access from a local street. No more than three storage buildings plus an office. All such facilities shall be the only use allowed on a lot of record. Maximum building height 35'. For new facilities, minimum 50' setback when abutting any residentially zoned district.

Section B

Those sections and subsections of Title 19 which are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the

intention of this Ordinance not to repeal or amend any portions of the Wheeling Municipal Code other than that expressly amended in Section A of this Ordinance.

Section C

If any section, clause or provision of this Ordinance, or any application thereof to any person, property or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceable provision or application, and to this end the provisions of this Ordinance, are declared to be severable.

Section D

This Ordinance shall be in full force and effect from and after its passage and approval, according to law.

Trustee _____ moved, seconded by Trustee _____,
that Ordinance No. _____ be passed this _____ day of _____, 2016.

President Argiris _____ Trustee Lang _____
Trustee Brady _____ Trustee Papantos _____
Trustee Krueger _____ Trustee Vito _____
Trustee Vogel _____

Dean S. Argiris
Village President

ATTEST:

Elaine E. Simpson, Village Clerk

APPROVED AS TO FORM ONLY:

Village Attorney

PUBLISHED in pamphlet form this _____ day of _____, 2016, by order of the Corporate Authorities of the Village of Wheeling, Cook and Lake Counties, Illinois.

ORDINANCE NO. _____

AN ORDINANCE GRANTING A REZONING FROM R-1 SINGLE FAMILY RESIDENTIAL DISTRICT TO B-2 NEIGHBORHOOD COMMERCIAL DISTRICT FOR 2500 E. HINTZ ROAD

WHEREAS, the Plan Commission of the Village of Wheeling has held a public hearing, duly noticed, on February 18, 2016, to consider a rezoning petition of Space Self Storage, owner, for the property known as 2500 E. Hintz Road legally described herein, zoned R-1 Single Family Residential District to B-2 Neighborhood Commercial District; and

WHEREAS, the Special Use petition of Space Self Storage, under Docket No. 2016-3C, is contingent on approval of the rezoning described in this Ordinance; and

WHEREAS, the Plan Commission of the Village of Wheeling has reported its Findings of Fact and Recommendation to the President and Board of Trustees, recommending that the petitioner's request be granted with a vote of 6 ayes, 0 nays, and 1 absent; and

WHEREAS, the President and Board of Trustees deem it to be in the best interest of the Village to grant the requested rezoning;

NOW THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COUNTIES OF COOK AND LAKE, STATE OF ILLINOIS:

Section A

This Board of Trustees, after considering the Findings of Fact and Recommendation of the Plan Commission and other matters properly before it, hereby finds:

- That the requested rezoning will comply with the intent and purpose of Title 19, Zoning;
- That the requested rezoning will comply with the comprehensive plan, official map, and all other plans and policies adopted by the Village;
- That there are physical or economic conditions pertaining to the subject area which have changed and which make the existing zoning inappropriate and the proposed rezoning appropriate;
- That the proposed rezoning is desirable and needed in the Village;
- That the proposed rezoning is compatible with and would not unduly depreciate the use and value of surrounding properties;
- And that the proposed rezoning will contribute to a rational pattern of land uses which is beneficial to the Village.

Section B

The Zoning Ordinance and the Official Map are hereby amended to revise the zoning classification of the property known as 2500 E. Hintz Road, hereinafter legally described, from

R-1 Single Family Residential District to B-2 Neighborhood Commercial District in accordance with the Staff exhibit "2500 E. Hintz Road Existing and Proposed Zoning" dated March 7, 2016, for the property legally described below:

THE NORTH 385.60 FEET OF THE SOUTH 435.60 FEET 9 (EXCEPT THE WEST 100.00 FEET THEREOF AND EXCEPT THE EAST 904.2 FEET THEREOF) OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINs: 03-09-401-082-0000
03-09-401-083-0000

(The above described property is commonly known as 2500 E. Hintz Road, Wheeling, Illinois. The property is currently zoned R-1 Single Family Residential District.)

Section C

All ordinances or parts of ordinances that are in conflict herewith are hereby repealed.

Section D

This Ordinance shall be in full force and effect from and after its passage and approval, according to law.

Trustee _____ moved, seconded by Trustee _____,
that Ordinance No. _____ be passed this _____ day of _____, 2016.

President Argiris _____ Trustee Lang _____

Trustee Brady _____ Trustee Papantos _____

Trustee Krueger _____ Trustee Vito _____

Trustee Vogel _____

Dean S. Argiris
Village President

ATTEST:

Elaine E. Simpson, Village Clerk

APPROVED AS TO FORM ONLY:

Village Attorney

PUBLISHED in pamphlet form this _____ day of _____, 2016, by order of the Corporate Authorities of the Village of Wheeling, Cook and Lake Counties, Illinois.

ORDINANCE NO. _____

AN ORDINANCE GRANTING A REZONING FROM R-1 SINGLE FAMILY RESIDENTIAL DISTRICT TO B-2 NEIGHBORHOOD COMMERCIAL DISTRICT FOR 2730 JACKSON DRIVE

WHEREAS, the Plan Commission of the Village of Wheeling has held a public hearing, duly noticed, on February 18, 2016, to consider a rezoning petition of Space Self Storage, owner, for the property known as 2730 Jackson Drive legally described herein, zoned R-1 Single Family Residential District to B-2 Neighborhood Commercial District; and

WHEREAS, the Plan Commission has submitted its Findings of Fact and Recommendation to the President and Board of Trustees, with a motion to approve the petitioner's the request that failed by a vote of 1 aye, 5 nays and 1 absent; and

WHEREAS, the President and Board of Trustees deem it to be in the best interest of the Village to grant the requested rezoning;

NOW THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COUNTIES OF COOK AND LAKE, STATE OF ILLINOIS:

Section A

This Board of Trustees, after considering the Findings of Fact and Recommendation of the Plan Commission and other matters properly before it, hereby finds:

- That the requested rezoning will comply with the intent and purpose of Title 19, Zoning;
- That the requested rezoning will comply with the comprehensive plan, official map, and all other plans and policies adopted by the Village;
- That there are physical or economic conditions pertaining to the subject area which have changed and which make the existing zoning inappropriate and the proposed rezoning appropriate;
- That the proposed rezoning is desirable and needed in the Village;
- That the proposed rezoning is compatible with and would not unduly depreciate the use and value of surrounding properties;
- And that the proposed rezoning will contribute to a rational pattern of land uses which is beneficial to the Village.

Section B

The Zoning Ordinance and the Official Map are hereby amended to revise the zoning classification of the vacant property known as 2730 Jackson Drive, hereinafter legally described, from R-1 Single Family Residential District to B-2 Neighborhood Commercial District in

accordance with the Staff exhibit "2730 Jackson Drive Existing and Proposed Zoning" dated March 7, 2016, for the property legally described below:

THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THEREFROM THE NORTH 2033 FEET AND THE EAST 904.2 FEET THEREOF), IN COOK COUNTY, ILLINOIS.

PIN: 03-09-401-048-0000

(The above described property is commonly known as 2730 Jackson Drive, Wheeling, Illinois. The property is currently zoned R-1 Single Family Residential District.)

Section C

All ordinances or parts of ordinances that are in conflict herewith are hereby repealed.

Section D

This Ordinance shall be in full force and effect from and after its passage and approval, according to law.

Trustee _____ moved, seconded by Trustee _____,
that Ordinance No. _____ be passed this _____ day of _____, 2016.

President Argiris _____ Trustee Lang _____

Trustee Brady _____ Trustee Papantos _____

Trustee Krueger _____ Trustee Vito _____

Trustee Vogel _____

Dean S. Argiris
Village President

ATTEST:

Elaine E. Simpson, Village Clerk

APPROVED AS TO FORM ONLY:

Village Attorney

PUBLISHED in pamphlet form this _____ day of _____, 2016, by order of the Corporate Authorities of the Village of Wheeling, Cook and Lake Counties, Illinois.

ORDINANCE NO. _____

**AN ORDINANCE GRANTING SPECIAL USE, SITE PLAN AND BUILDING APPEARANCE
APPROVAL FOR AN EXISTING SELF-STORAGE FACILITY
AT 2500 E. HINTZ ROAD**

WHEREAS, the Plan Commission of the Village of Wheeling has held a public hearing, duly noticed, on February 18, 2016 to consider the petitioner's request for special use-site plan, approval under Title 19, Zoning, of the Wheeling Municipal Code, under Chapter 19-06 Commercial Districts, Section 19.06.030 B-2 Neighborhood Commercial District and Chapter 19-10 Use Regulations, Section 19.10.030 Special Uses, Chapter 19-12 Site Plan Approval Requirements, and associated sections, to permit the existing self-storage facility at 2500 E. Hintz Road, Arlington Heights, Illinois, located on the property legally described below; and

WHEREAS, this Ordinance is related to Docket No. 2016-3A, a petition for a text amendment to Title 19, Zoning, to add 'Self-Storage Facility' as a special use in the B-2 Neighborhood Commercial District, which must be approved prior to approval of the special use petition under Docket No. 2016-3C; and

WHEREAS, this Ordinance is related Docket No. 2016-3Bi, a petition for a rezoning of 2500 E. Hintz Road from R-1 Single-Family Residential to B-2 Neighborhood Commercial District, which must be approved prior to approval of the special use petition under Docket No. 2016-3C; and

WHEREAS, the Plan Commission of the Village of Wheeling has reported its Findings of Fact and Recommendation to the President and Board of Trustees, recommending that the petitioner's request be granted with a vote of 6 ayes, 0 nays and 1 absent; and

WHEREAS, the President and Board of Trustees deem it to be in the best interest of the Village to grant the petitioner's request, subject to conditions;

NOW THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COUNTIES OF COOK AND LAKE, STATE OF ILLINOIS:

Section A

This Board of Trustees, after considering the Findings of Fact and Recommendation of the Plan Commission and other matters properly before it, hereby finds:

- That the special use is necessary for the public convenience at the proposed location;
- That the special use as requested will not alter the essential character of the area in which it is to be located;
- That the location and size of the special use, the nature and intensity of the operation involved in or conducted with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it, will be in harmony with and will not impede the normal, appropriate, and orderly development of the district in which it is located and the development of the surrounding properties;

- That the location, nature and height of buildings, walls and fences, and the nature and extent of the landscaping on site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, and will not impair the value thereof;
- That the parking areas will be of adequate size for the particular use, properly located, and suitably screened from adjoining residential uses, entrance and exit drives shall be laid out as to prevent traffic hazards and nuisances and the development will not cause traffic congestion; and
- That the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zone.

Section B

A special use is hereby granted under Title 19, Zoning, of the Wheeling Municipal Code, Chapter 19-06 Commercial Districts, Section 19.06.030 B-2 Neighborhood Commercial District; Chapter 19-10 Use Regulations; and Chapter 19-12 Site Plan Approval Requirements, and associated sections, to permit an existing self-storage facility in the B-2 Neighborhood Commercial District, at 2500 E. Hintz Road, Wheeling, Illinois, hereinafter legally described:

THE NORTH 385.60 FEET OF THE SOUTH 435.60 FEET 9 (EXCEPT THE WEST 100.00 FEET THEREOF AND EXCEPT THE EAST 904.2 FEET THEREOF) OF THE EAST ½ OF THE SOUTHEAST 1/4 OF SECTION 9, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINs: 03-09-401-082-0000
03-09-401-083-0000

(The above described property is commonly known as 2500 E. Hintz Road, Wheeling, Illinois. The property is currently zoned R-1 Single Family Residential District.)

Section C

Site Plan and Building Appearance Approval is hereby granted under Title 19, Zoning, of the Wheeling Municipal Code, Chapter 19-12 Site Plan Approval Requirements, with the site development to be completed substantially as shown on the following exhibits, herein attached and made part of, submitted January 14, 2016 by Space Self Storage, located at 2500 E. Hintz Road, Wheeling Illinois:

- Letter of request
- Plat of survey
- Photographs of south and east elevations (2 sheets)
- Elevation plans for existing Building A and B (2 sheets)
- Traffic data (1 sheet)

Section D

The Special Use, Site Plan, and Building Appearance Approval granted in Sections B and C of this Ordinance are subject to the following conditions of approval:

- 1. That the site/landscape plan and elevation plans, which present a concept for the expansion of the self-storage facility onto 2730 Jackson Drive, are not approved at this time; and
- 2. That the special use approval is contingent on the approval of Docket Nos. 2016-3A (text amendment) and 2016-3Bi (rezoning of 2730 Jackson Drive to B-2).

Section E

This Ordinance shall be in full force and effect from and after its passage and approval, according to law.

Trustee _____ moved, seconded by Trustee _____,
that Ordinance No. _____ be passed this _____ day of _____, 2016.

President Argiris _____	Trustee Lang _____
Trustee Brady _____	Trustee Papantos _____
Trustee Krueger _____	Trustee Vito _____
	Trustee Vogel _____

Dean S. Argiris
Village President

ATTEST:

Elaine E. Simpson, Village Clerk

APPROVED AS TO FORM ONLY:

Village Attorney

PUBLISHED in pamphlet form this _____ day of _____, 2016, by order of the Corporate Authorities of the Village of Wheeling, Cook and Lake Counties, Illinois.

**VILLAGE OF WHEELING
LEGISLATIVE COVER MEMORANDUM**

AGENDA ITEM NO(S): #13.D
(To be inserted by Deputy Clerk)

DATE OF BOARD MEETING: Monday, March 7, 2016

TITLE OF ITEM SUBMITTED: An Ordinance Amending Title 19, Zoning, of the Wheeling Municipal Code, Relative to Small Cell Antennas [Docket No. 2016-4]

SUBMITTED BY: Andrew C. Jennings
Director of Community Development

BASIC DESCRIPTION OF ITEM¹: The Plan Commission has recommended approval of amendments to Title 19, Zoning, of the Municipal Code. The Village Board recently approved amendments to Title 11 that established a procedure for the installation of small cell antenna within public Rights-of-Way. The purpose of the zoning code amendments is to ensure that the regulations of Title 11 and Title 19 are consistent.

BUDGET²: N/A
BIDDING³: N/A

EXHIBIT(S) ATTACHED: Ordinance
Staff Report
Draft Findings of Fact and Recommendation

RECOMMENDATION: To approve.

SUBMITTED FOR BOARD CONSIDERATION: VILLAGE MANAGER

¹ *The purpose of the proposed item and a description of same. If the issue is site specific, such as an annexation or road improvement, a map must be attached to the memorandum.*

² *If applicable, provide all budgetary considerations as follows: is the item covered in the current budget; fund(s) the item is to be charged to; expenses per fund(s) and total cost; and necessary transfer(s) or supplemental appropriation(s).*

³ *If applicable, describe the bidding process and results for purchases and contracts. If applicable, state whether or not any particular city, state or federal program was considered*

REQUEST FOR BOARD ACTION

TO: Jon Sfondilis
Village Manager

FROM: Andrew C. Jennings
Director of Community Development

DATE: March 7, 2016

SUBJECT: **Docket No. 2016-4**
Village of Wheeling
Amendments to Title 19, Zoning, of the
Wheeling Municipal Code

PROJECT OVERVIEW: On February 16th, the Village Board passed Ordinance No. 4993, which established a procedure for the installation of small cell antennas within public rights-of-way (Title 11, Rights-of-Way, Streets, and Sidewalks). Monopoles and other new cellular service antenna arrays still require review and approval as described in Title 19, Zoning. The Planning Division staff prepared draft amendments to Title 19 to be consistent with the recently approved Title 11 amendments. The Plan Commission has recommended approval of the amendments.

PLAN COMMISSION RECOMMENDATION

At the Plan Commission hearing on February 18, 2016, Commissioner Sianis moved, seconded by Commissioner Powers to recommend approval of Docket No. 2016-4, amending Title 19, Zoning, of the Wheeling Municipal Code, as follows:

1. Amend Section 19.01.010, Definitions, to insert the following:

Small Cell Antennas

A Personal Wireless Telecommunications Facility consisting of an antenna and related equipment either installed singly or as part of a network to provide coverage or enhance capacity in a limited defined area. Such facilities are regulated in Title 11, Rights-of-Way, Streets, and Sidewalks, of the Wheeling Municipal Code.

2. Amend Section 19.01.010, Definitions

Transmission Tower

A structure designed to support one or more reception/transmissions systems. This term includes, but is not limited to, a radio tower, television tower, telephone exchange/microwave relay tower or cellular telephone transmission/personal communications systems tower. *Does not include small cell antennas.*

3. Amend Section 19.10.060, Non-Residential Use Regulations, Subsection F, Wireless Telecommunication Antennas

Section 19.10.060 F, Subsection 2

Special Use Permit Required

With the exception of property owned by the Village of Wheeling, **and *small cell antenna facilities as defined and regulated in Title 11, Rights-of-Way, Streets, and Sidewalks, of the Wheeling Municipal Code***, a *Special Use Permit* shall be required for *wireless communication facilities* in those zoning districts in which *wireless communications facilities* are allowed as *Special Uses*. *Wireless communications facilities* are allowed as *Special Uses* in any zoning district except that in any residentially zoned districts they shall only be allowed on existing *structures*. Written notification of a public hearing shall be required for all new wireless antennas, with the exception of co-location on existing structures on Village-owned property or on existing structures originally approved for additional antenna arrays.

On the roll call, the vote was as follows:

AYES: Commissioners Issakoo, Johnson, Powers, Ruffatto, Sianis, Zangara
NAYS: None
ABSENT: Commissioner Dorband
PRESENT: None
ABSTAIN: None

There being six affirmative votes, the motion was approved.

SUMMARY OF PROPOSED AMENDMENTS

In order to be consistent with the recent amendments to Title 11 (Rights-of-Way) that were approved through Ordinance No. 4993 on February 16, 2016, staff proposed the following draft amendments to Title 19 to reference the procedure for small cell antenna installations and distinguish such facilities from those defined as Transmission Towers in the Zoning Code.

1. Update definitions (19.01.010)

In order to distinguish between small cell antennas and transmission towers, a definition of small cell antennas would be inserted, and the definition of transmission tower would be modified. The suggested modifications are illustrated in the Plan Commission motion above.

2. Update regulations pertaining to Wireless Telecommunication Antennas (19.10.060)

The regulations pertaining to wireless antennas are in Section 19.10.060 F. According to the language of the section, all wireless antennas require a special use permit. The section would be modified as shown in the Plan Commission motion above.

CONDITIONS FROM PLAN COMMISSION RECOMMENDATION

The Plan Commission recommendation did not include any conditions of approval.

MODIFICATIONS FOLLOWING PLAN COMMISSION HEARING

Following the Plan Commission hearing, staff has determined that an additional definition of the Zoning Code should also be slightly modified. Staff recommends that the existing definition for “antenna” be modified to specifically exclude small cell antenna. The proposed ordinance reflects staff’s recommendation.

VILLAGE PLANNER’S RECOMMENDATION TO THE PLAN COMMISSION

Staff recommended approval of the proposed Title 19 amendments.

DIRECTOR OF COMMUNITY DEVELOPMENT RECOMMENDATION

I concur with the Plan Commission’s recommendation to amend the Zoning Code as described in this report. An Ordinance is attached for the Board’s consideration. As noted above, the draft Ordinance includes a minor modification to the definition of “antenna” that was not included in the draft motion provided to the Plan Commission. Excluding small cell antennas from the definition of antenna is consistent with the intent of the proposed amendments.



Andrew C. Jennings
Director of Community Development

Attachments: Ordinance (precedes this report)
Findings of Fact and Recommendation (Draft)

**FINDINGS OF FACT
AND RECOMMENDATION**

To: Village President and Board of Trustees

From: Wheeling Plan Commission/Sign Code Board of Appeal

Re: Docket No. 2016-4
Village of Wheeling
Amendment to Title 19, Zoning, to Address Small Cell Antennas and Distributed
Antenna Systems

The Village of Wheeling is seeking amendments to Title 19, Zoning, of the Wheeling Municipal Code, to address small cell antennas and distributed antenna systems, which includes amendments to the following chapters and sections of the Zoning Code: (1) Chapter 19-01, Definitions; and (2) Chapter 19.10.060 Non-Residential Use Regulations.

Chairman Ruffatto called Docket No. 2016-4 on February 18, 2016. Present were Commissioners Issakoo, Johnson, Powers, Ruffatto, Sianis and Zangara. Commissioner Dorband was absent with prior notice. Also present were Brooke Jones, Associate Planner and Mallory Milluzzi, Village Attorney.

Ms. Jones explained the proposed text amendment was fairly minor. The purpose is to establish a procedure for the installation of small cell antennas within the public rights of way. The two proposed changes are an update to the definition section that 1) defines these new small cell antennas as separate from other transmission towers and 2) to address those under the special use section. She noted that small cell antenna facilities would not require a special use.

Chairman Ruffatto questioned where small cell antennas would be added. Ms. Milluzzi explained they were attached to existing poles either on top or the side and were small.

Commissioner Johnson questioned if “small” should be defined.

Commissioner Issakoo questioned if all small cell antennas were the same size. Ms. Jones explained they were not all exactly the same size but were relatively small and were attached to existing light poles and facilities that were located in the right-of-way.

Ms. Milluzzi mentioned that the proposed text amendment includes the specific definition. Ms. Jones explained that currently under the zoning code small cell antennas were not differentiated between other larger monopoles and other larger transmission towers. This proposed text amendment differentiates the two.

Commissioner Johnson questioned if they were required to be placed in public right-of-ways. Ms. Milluzzi explained the restrictions for the locations were in what was approved by the Board on Monday.

Commissioner Sianis moved, seconded by Commissioner Powers to recommend approval of Docket No. 2016-4, amending Title 19, Zoning, of the Wheeling Municipal Code, as follows:

1. Amend Section 19.01.010, Definitions, to insert the following:

Small Cell Antennas

A Personal Wireless Telecommunications Facility consisting of an antenna and related equipment either installed singly or as part of a network to provide coverage or enhance capacity in a limited defined area. Such facilities are regulated in Title 11, Rights-of-Way, Streets, and Sidewalks, of the Wheeling Municipal Code.

2. Amend Section 19.01.010, Definitions

Transmission Tower

A structure designed to support one or more reception/transmissions systems. This term includes, but is not limited to, a radio tower, television tower, telephone exchange/microwave relay tower or cellular telephone transmission/personal communications systems tower. ***Does not include small cell antennas.***

3. Amend Section 19.10.060, Non-Residential Use Regulations, Subsection F, Wireless Telecommunication Antennas

Section 19.10.060 F, Subsection 2

Special Use Permit Required

With the exception of property owned by the Village of Wheeling, **and *small cell antenna facilities as defined and regulated in Title 11, Rights-of-Way, Streets, and Sidewalks, of the Wheeling Municipal Code,*** a *Special Use Permit* shall be required for *wireless communication facilities* in those zoning districts in which *wireless communications facilities* are allowed as *Special Uses*. *Wireless communications facilities* are allowed as *Special Uses* in any zoning district except that in any residentially zoned districts they shall only be allowed on existing *structures*. Written notification of a public hearing shall be required for all new wireless antennas, with the exception of co-location on existing structures on Village-owned property or on existing structures originally approved for additional antenna arrays.

On the roll call, the vote was as follows:

AYES: Commissioners Issakoo, Johnson, Powers, Ruffatto, Sianis, Zangara
NAYS: None
ABSENT: Commissioner Dorband
PRESENT: None
ABSTAIN: None

**Findings of Fact and
Recommendation**

DOCKET NO. 2016-4

There being six affirmative votes, the motion was approved.

Commissioner Johnson moved, seconded by Commissioner Powers to close Docket No. 2016-4.
The motion was approved by a voice vote.

Respectfully submitted,

Jim Ruffatto, Chairman
Wheeling Plan Commission/
Sign Code Board of Appeals

**DISTRIBUTED TO THE COMMISSION 03.04.2016
FOR APPROVAL ON 03.10.2016**

ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE 19, ZONING, OF THE WHEELING MUNICIPAL CODE,
RELATIVE TO SMALL CELL ANTENNAS**

WHEREAS, the Plan Commission of the Village of Wheeling has held a public hearing, duly noticed, on February 16, 2016, to consider a Village petition for a text amendment to Title 19, Zoning, of the Wheeling Municipal Code, to address small cell antennas, which includes amendments to the following chapters and sections of the Zoning Code: (1) Chapter 19-01, Definitions; and (2) Chapter 19.10.060 Non-Residential Use Regulations; and

WHEREAS, the Plan Commission of the Village of Wheeling has reported its Findings of Fact and Recommendation to the President and Board of Trustees, recommending that the request be granted, with a vote of 6 ayes, 0 nays, and 1 absent; and

WHEREAS, the President and Board of Trustees deem it to be in the best interest of the Village to grant the petitioner's request, subject to conditions;

NOW THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COUNTIES OF COOK AND LAKE, STATE OF ILLINOIS:

SECTION A

The Wheeling Municipal Code, Title 19, Zoning, Chapter 19-01, Definitions, Section 19.01.010, Definitions, is hereby amended to read as follows:

...

Antenna

Equipment used for transmitting or receiving radio frequency signals which is attached to a tower, building or other structure, usually consisting of a series of directional panels, microwave or satellite dishes, or omnidirectional "whip" antennae. ***Does not include small cell antenna.***

Antenna, Small Cell

A Personal Wireless Telecommunications Facility consisting of an antenna and related equipment either installed singly or as part of a network to provide coverage or enhance capacity in a limited defined area. Such facilities are regulated in Title 11, Rights-of-Way, Streets, and Sidewalks, of the Wheeling Municipal Code.

...

Transmission Tower

A structure designed to support one or more reception/transmissions systems. This term includes, but is not limited to, a radio tower, television tower, telephone exchange/microwave relay tower or cellular telephone transmission/personal communications systems tower. ***Does not include small cell antennas.***

...

SECTION B

The Wheeling Municipal Code, Title 19, Zoning, Chapter 19-10, Use Regulations, Section 19.10.060 Non-Residential Use Regulations, Subsection F, Wireless Telecommunication Antennas is hereby amended to read as follows:

...

2. *Special Use Permit* Required

With the exception of property owned by the Village of Wheeling, and **small cell antenna facilities as defined and regulated in Title 11, Rights-of-Way, Streets, and Sidewalks, of the Wheeling Municipal Code**, a *Special Use Permit* shall be required for *wireless communication facilities* in those zoning districts in which *wireless communications facilities* are allowed as *Special Uses*. *Wireless communications facilities* are allowed as *Special Uses* in any zoning district except that in any residentially zoned districts they shall only be allowed on existing *structures*. Written notification of a public hearing shall be required for all new wireless antennas, with the exception of co-location on existing structures on Village-owned property or on existing structures originally approved for additional antenna arrays.

...

SECTION C

Those sections and subsections of Title 19 which are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Wheeling Municipal Code other than those expressly amended in Section A through Section E of this Ordinance.

SECTION D

If any section, clause or provision of this Ordinance, or any application thereof to any person, property or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceable provision or application, and to this end the provisions of this Ordinance, are declared to be severable.

SECTION E

This Ordinance shall be in full force and effect from and after its passage and approval, according to law.

Trustee _____ moved, seconded by Trustee _____,
that Ordinance No. _____ be passed, this _____ day of _____, 2016.

Ordinance No. _____ passed this _____ day of _____, 2016.

President Argiris _____ Trustee Lang _____

Trustee Brady _____ Trustee Papantos _____

Trustee Krueger _____ Trustee Vito _____

Trustee Vogel _____

Dean S. Argiris
Village President

ATTEST:

Elaine E. Simpson, Village Clerk

APPROVED AS TO FORM ONLY:

Village Attorney

PUBLISHED in pamphlet form this _____ day of _____, 2016, by order of the Corporate Authorities of the Village of Wheeling, Cook and Lake Counties, Illinois.

**VILLAGE OF WHEELING
LEGISLATIVE COVER MEMORANDUM**

AGENDA ITEM NO(S): #13.E
(To be inserted by Deputy Clerk)

DATE OF BOARD MEETING: March 7, 2016

TITLE OF ITEM SUBMITTED: Ordinance Amending the Village of Wheeling Annual Budget for the Fiscal Year Beginning January 1, 2015 and Ending December 31, 2015

SUBMITTED BY: Michael Mondschain, Director of Finance

BASIC DESCRIPTION OF ITEM: An ordinance amending the FY 2015 budget for a series of amendments allowing the Village to contribute a portion of the anticipated General Fund surplus to the Village's three pension funds.

BUDGET: This amendment, if approved, increases the total budget by \$1,000,000.

BIDDING: N/A

EXHIBIT(S) ATTACHED: Memo, Ordinance

RECOMMENDATION: Staff recommends approval of the ordinance.

SUBMITTED FOR BOARD APPROVAL: VILLAGE MANAGER



MEMORANDUM

TO: Jon A. Sfondilis, Village Manager
FROM: Michael Mondschain, Finance Director
DATE: March 3, 2016
SUBJECT: FY 2015 Budget Amendment – Surplus Funds

EXECUTIVE SUMMARY

The attached ordinance, if approved, amends the FY 2015 budget to allow the Village to contribute a portion of the anticipated FY 2015 General Fund surplus to the Village's three pension funds.

On January 4, 2016, the Village Board approved a General Fund Surplus Policy that requires it to consider contributing surplus funds in any given fiscal year to the Village's pension funds or Capital Equipment Replacement Fund (CERF). As it stands now, staff anticipates that when the FY 2015 audit process is complete and final numbers are known, the General Fund will reflect a surplus of \$1.7 million or more.

The anticipated surplus is due primarily to four large one-time only sales tax transactions that occurred during the year (totaling nearly \$1.0 million), proceeds from a legal settlement, and lower than anticipated expenditures. The surplus creates an opportunity, consistent with the Village's new policy, to transfer \$1.0 million to the Village's three pension funds and/or CERF to reduce the Village's long-term unfunded liability to each fund.

This year, staff recommends contributing surplus funds to the pension funds (rather than the CERF) because the Village budgeted the full contribution to the CERF for FY 2016. In addition, a pension fund contribution is something that represents an excellent investment opportunity that will be viewed favorably by the bond rating agencies. The recommended contribution is \$1.0 million, which staff sees as appropriate because it strikes a balance between the Village's need to address its long-term unfunded liabilities while also maintaining fund balance at a percentage equal to or in excess of 25%.

To arrive at the specific contribution to each pension fund, staff multiplied \$1.0 million by each fund's percentage share of the Village's total pension liability (e.g. \$49.9 million) as of 12/31/2014, the most recent year for which we have actuarial information. We view this as an equitable way to distribute the funds

because it addresses each fund's unfunded liability on a pro-rated basis. Since the investment rate return assumption used by each pension fund is 7.50%, the Village will effectively earn that return on its contribution. Thus, the decision to use surplus funds for this purpose represents a prudent long-term investment opportunity. If approved by the Board, the surplus funds will be distributed as follows:

1)	Police Pension Fund:	\$411,832
2)	Fire Pension Fund:	\$460,965
3)	IMRF:	<u>\$127,203</u>
	Total:	\$1,000,000

Please place this item on the Board's agenda for March 7, 2016. If you have any questions prior to the meeting, please let me know.

ORDINANCE _____

ORDINANCE AMENDING THE VILLAGE OF WHEELING ANNUAL BUDGET FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2015 AND ENDING DECEMBER 31, 2015

WHEREAS, the Corporate Authorities of the Village of Wheeling have passed a budget adoption ordinance on December 15, 2014 in the amount of \$78,483,796; and

WHEREAS, Section 8-2-9.6 of the Budget Act allows for the amendment of the annual budget; and

WHEREAS, the Corporate Authorities find that an amendment to the annual budget ordinance is necessary to more accurately reflect the experience of the current fiscal year.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COUNTIES OF COOK AND LAKE, STATE OF ILLINOIS as follows:

Section 1: That in order to more accurately reflect the experiences of the current fiscal year, certain amendments within funds are necessary from time to time.

Section 2: That Village staff amend the General Fund budget by increasing account 2100-5109 by \$411,832 to allow for the distribution of surplus funds to the Village's Police Pension Fund.

Section 3: That Village staff amend the General Fund budget by increasing account 2200-5109 by \$460,965 to allow for the distribution of surplus funds to the Village's Fire Pension Fund.

Section 4: That Village staff amend the General Fund budget by increasing account 1600-5108 by \$127,203 to allow for the distribution of surplus funds to the Illinois Municipal Retirement Fund (IMRF).

Section 5: That these amendments should reflect the actual expenses for the fiscal year.

Section 6: That this ordinance shall be in full force and effect after the passage and publication pursuant to the laws of the State of Illinois and the Village of Wheeling.

Section 7: That the revised total budget for Fiscal Year 2015 shall be \$79,483,796.

President Argiris_____

Trustee Brady_____

Trustee Krueger_____

Trustee Lang_____

Trustee Papantos_____

Trustee Vito_____

Trustee Vogel_____

APPROVED this _____ day of March, 2016, by the President and Board of Trustees of the Village of Wheeling, Illinois

Dean S. Argiris
Village President

ATTEST:

Elaine E. Simpson
Village Clerk

APPROVED AS TO FORM:

James V. Ferolo
Village Attorney

PUBLISHED in pamphlet form this _____ day of _____, _____, by order of the Corporate Authorities of the Village of Wheeling, Cook and Lake Counties, Illinois.

**VILLAGE OF WHEELING
LEGISLATIVE COVER MEMORANDUM**

AGENDA ITEM NO(S): #13.F

(To be inserted by Deputy Clerk)

DATE OF BOARD MEETING: March 7, 2016

TITLE OF ITEM SUBMITTED: DISCUSSION RE: Concept Review of Proposed
Orange Crush Asphalt Plant Relocation to 571 S.
Wheeling Road

BASIC DESCRIPTION OF ITEM¹: Discussion to review with the Board the current plan for the proposed relocation of the existing asphalt plant at 231 S. Wheeling Road to 571 S. Wheeling Road, and to seek Board feedback on several unique aspects of the plan.

BUDGET²: N/A

BIDDING³: N/A

EXHIBIT(S) ATTACHED: Staff memo

SUBMITTED FOR BOARD CONSIDERATION: VILLAGE MANAGER

¹ *The purpose of the proposed item and a description of same. If the issue is site specific, such as an annexation or road improvement, a map must be attached to the memorandum.*

² *If applicable, provide all budgetary considerations as follows: is the item covered in the current budget; fund(s) the item is to be charged to; expenses per fund(s) and total cost; and necessary transfer(s) or supplemental appropriation(s).*

³ *If applicable, describe the bidding process and results for purchases and contracts. If applicable, state whether or not any particular city, state or federal program was considered*