

Prepared by:

For recorder's use only

ANNEXATION AGREEMENT

This Annexation Agreement ("Agreement") is made and entered into this ____ day of August 2021 by and between the Village of Romeoville, an Illinois municipal corporation ("Village") and, DND Endeavors, LLC, a Pennsylvania Limited Liability Company, admitted to do business in Illinois ("DND" or "Owner").

RECITALS:

WHEREAS, DND is the owner of record of the tract(s) of land legally described on Exhibit A, a copy of which is attached hereto and incorporated herein (the "Territory"), which is not within the corporate limits of any municipality; and

WHEREAS, the Territory is sometimes hereinafter referred to as "the property subject to this Agreement", or by words of similar import; and

WHEREAS, the Territory consists of or will be subdivided pursuant to this Agreement into three separate lots or tracts of property (such lots or tracts being sometimes hereinafter respectively referred to as the Lots 1, 2 and 3, as legally described or otherwise depicted on Exhibit C-3, a copy of which is attached hereto and incorporated herein by reference; and

WHEREAS, DND desires to have the Territory annexed to the Village in accordance with the provisions of Article 7 and Article 11, Division 15.1 of the Illinois Municipal Code (65 ILCS 5/7-1-1 et. seq., and 65 ILCS 5/11-15.1-1 et. seq.) and in accordance with the terms and conditions hereinafter set forth and in the manner hereinafter provided; and

WHEREAS, DND has filed with the Village Clerk a petition to annex all of the Territory into the corporate limits of the Village (the "Petition") signed by DND; and

WHEREAS, the Territory is presently contiguous to the corporate limits of the Village and is presently vacant or unimproved, and no electors reside within the Territory; and

WHEREAS, DND proposes to develop the Territory as a full service Mercedes Benz motor vehicle sales and service facility, with uses permitted by the Village's B-3 zoning district, all pursuant to the terms of this Agreement as detailed in the preliminary engineering plan prepared by Manhard Engineers, Plan bearing a last revision date of May 7, 2021, Sheets 1-14, together with the exhibits attached thereto and the architectural plans prepared by Simon Yu Architects, Plan bearing last revision date of July 8, 2020, Sheets A4.10 and A4.11, as the same are set forth and included within Exhibit C-1 hereto; and

WHEREAS, DND has submitted the applications respectively required of them to the Village for annexation and zoning approval and approval of a special use permit for planned unit development—General Development Plan (“GDP”) approval; and

WHEREAS, the aforesaid applications have been reviewed and reported on by the Village Development Review Committee and referred as necessary to the Planning and Zoning Commission of the Village; and

WHEREAS, upon due notice and advertisement as provided by law, the Planning and Zoning Commission has held such public hearings on the aforesaid applications as are required by law, and after due deliberation thereon and the receipt of public comment with respect thereto, has made determinations and findings of fact with respect to the aforesaid application to the extent required by applicable law and the ordinances of the Village; and

WHEREAS, the Corporate Authorities of the Village have received the report of the Development Review Committee and the recommendations of the Planning and Zoning Commission of the Village with respect to the aforesaid applications, and in connection therewith have received and reviewed a proposed annexation agreement in substance and form substantially the same as this Agreement, and have held a public hearing on said proposed annexation agreement as required by Article 11 Division 15.1 of the Illinois Municipal Code (65 ILCS 5/11-15.1-1 et. seq.) and

WHEREAS, due notice as required by Section 1 of Article 7, Division 1 of the Illinois Municipal Code (65 ILCS 5/7-1-1) has been sent to all the trustees of the fire protection and public library districts having jurisdiction over the Territory (with an affidavit attesting to such notice having been duly recorded with the Will County Recorder of Deeds), the Township Commissioner

of Highways and Town Board of Trustees of all townships having jurisdiction over highways presently located within the Territory, the election authorities having jurisdiction over the Territory, and the branches of the United States Post Office serving the Territory; and

WHEREAS, DND is legally authorized to enter into this Agreement with the Village and to perform all undertakings and covenants set forth therein; and

WHEREAS, the Corporate Authorities of the Village have considered the annexation of the Territory described in the Petition according to the terms of this Agreement; and

WHEREAS, the Village, after due and careful consideration, has concluded that the annexation, zoning and development of the Territory and the zoning and development of the Territory pursuant to the terms and conditions hereinafter set forth would further the growth of the Village, enable to Village to control the development of the area, increase the taxable value of the property within the Village, extend the corporate limits and jurisdiction of the Village, permit the sound planning and development of the Village and otherwise enhance and promote the general welfare of the Village; and

WHEREAS, the corporate authorities of the Village, after due deliberation have, by ordinance duly passed, approved entering into this Annexation Agreement and directed the President and Clerk of the Village to execute this Agreement.

NOW, THEREFORE, in consideration of the promises, undertakings and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged by the parties hereto, DND and the Village agree as follows:

1. **RECITALS.** The foregoing recitals are hereby incorporated into this Agreement as if fully set forth herein.

2. **ANNEXATION.** Upon the approval of this Agreement by the Village, and subject to DND's receipt of notice that its franchisor, Mercedes Benz of North America, has approved DND's tenant for the Territory as contemplated to be developed hereunder, the corporate authorities of the Village shall, not later than that date which is three (3) months from the date of this Agreement, adopt two ordinances collectively annexing ("Annexation Ordinances") all of the Territory legally described in Exhibit A and depicted graphically on the plat of annexation attached hereto and incorporated herein as Exhibit B ("Annexation Plat") into the corporate limits of the Village, and shall thereafter cause the same to be recorded and filed

with the Will County Recorder and the Will County Clerk's Office, subject to the Village's receipt within such three (3) month period from the date of this Agreement of a fully executed copy of this Agreement, a copy of the recorded deed evidencing DND's ownership of the Territory, and written notice from DND advising the Village that DND has received the notice of approval for its intended tenant for the territory as set forth above. In the event that the Village does not receive a fully executed copy of this Agreement within such three (3) month period from the date of this Agreement together with copies of the deed to the Territory and the notice referred to in the preceding sentence, then this Agreement shall thereafter be null and void and of no further effect without any further actions of the parties.

3. ZONING AND PUD SPECIAL USE PERMIT APPROVAL.

3.1 Within thirty (30) days after the approval of the Annexation Ordinance(s) duly annexing the same into the corporate limits of the Village, the corporate authorities of the Village shall adopt such ordinances as are necessary to cause the Territory to be classified into the B-3 zoning district.

3.2 Within thirty (30) days after the approval of the Annexation Ordinance(s) duly annexing the same into the corporate limits of the Village, the corporate authorities of the Village shall adopt such ordinances as are necessary to cause the approval of a special use permit ordinance for planned unit development—general development plan for the Territory (the "GDP Ordinance"). The terms and conditions of the GDP Ordinance shall include at least the general development plan attached hereto and incorporated herein as Exhibit C-1 and the list of exceptions to the Village Code of Ordinances attached hereto and incorporated herein as Exhibit C-2, and the provisions of Exhibits C-1 and C-2 shall govern the development of the property subject thereto notwithstanding any contrary, conflicting or less restrictive provisions of the Village Zoning Ordinance.

3.3 DND shall make all necessary submittals to the Village for Final Development Plan approval as contemplated by Chapter 159.155 of the Village Code of Ordinances. Such submittals shall be reviewed by the Village staff, and if the same shall be in compliance with applicable Village ordinances as modified or supplemented by this Agreement, applicable requirements of other governmental agencies having jurisdiction over the development of the Territory, and substantially in accordance with the GDP Ordinance, shall be approved by the Village Board without any further public hearing. For

purposes of the preceding sentence, DND's submittals shall be deemed to be substantially in compliance with the GDP Ordinance if such submittals do not (i) involve changes in the uses to be made of the Territory, (ii) require any variances or deviations from Village ordinances other than those expressly contemplated by this Agreement, including but not limited to those exceptions from applicable Village ordinance requirements set forth in Exhibit C-2, (iii) adversely affect the quality or functionality of any public improvements, (iv) involve increases in the gross floor area or height of the buildings contemplated to be built within the Territory in excess of the limits established by Village ordinance or this Agreement, (v) involve increases in the amount of impervious surface contemplated to be developed within the Territory in excess of the limits established by Village ordinance or this Agreement, (vi) involve reductions in the amount of passenger vehicle parking spaces below the standards established by Village ordinance other than those expressly approved and contemplated by this agreement or (vii) involve modifications to the type or number of access points between the Territory and any public roadway. Final Development Plan submittals not substantially in accordance with the GDP Ordinance shall be treated as a request for a major change or amendment to the ordinance approving the GDP Ordinance, and shall require an additional public hearing and Village Board action as contemplated by Chapter 159.156.

4. PLAN APPROVAL. Any development of the Development Parcel described in Exhibit A shall conform to the requirements of the Village Zoning Ordinance and Development with appropriate site, engineering, general and final planned development and landscape plan reviews and approvals by Planning and Zoning Commission and Board of Trustees and with general and final development plans and other required submittals reviewed and approved as required by the Village Zoning Ordinance and Development Regulations. Nothing herein shall relieve any owner or developer of property subject to this Agreement from the obligations to have site plans, engineering plans, landscape plans, general development plans and final development plans and other required development submittals for the Territory reviewed and considered by the Village Staff, Planning and Zoning Commission and Board of Trustees with respect to each and every phase or portion of the Territory sought to be developed from time to time, or from the obligation to make such submittals in such form as the Village shall from time to time require.

5. UTILITIES AND INFRASTRUCTURE RECAPTURE FEES AND

IMPROVEMENTS; REMA ACCESS EASEMENT.

5.1 To the best of the Village's knowledge and belief, there is no administrative, judicial, or any legislative action pending or being threatened that would result in a reduction of, or limitation upon, the right or any owner of property subject to this Agreement to use the sanitary sewer and potable water supplies and systems serving the Village.

5.2 To the fullest extent permitted by law, the Village waives all recapture and facility reimbursement fees associated with the Territory, and hereby agrees to indemnify DND from the payment of any such fees to the Village or any other person or entity, including and interest, attorney's fees or other costs associated therewith.

5.3 DND shall extend and loop Village water and sewer mains within the Territory, as required by and sized as determined by the Village Engineer, for future extensions thereof, and shall coordinate all connections between water and sewer mains within the Territory, as approved by the Village. In addition, to provide appropriate looping for the Territory in its entirety, DND shall be responsible to extend a Village water main through the Territory to a point on the eastern boundary thereof, and thereafter (through any existing Village rights of way or easements, or through rights of way or easements acquired from third parties) extend the same to connect with the existing Village water main located within a public utility easement within the developed parcel of real estate having a common address of 500 S. Pinnacle Drive, Romeoville, IL, all in a manner consistent with the concept plan therefor attached hereto and incorporated herein as Exhibit D, and in accordance with the otherwise applicable ordinances of the Village. The parties acknowledge that the looping is required to obtain IEPA approval of the use and operation of the water main.

5.4 As a condition of the Village's issuance of final occupancy permits for all buildings constructed within the Territory, DND shall pay to Village sanitary sewer and water tap-on fees calculated in accordance with the then-current ordinances of the Village.

5.5 Installation of all utilities serving the Territory shall be underground and pursuant to the requirements of the utility companies providing the utility service or pursuant to the agreements of the Village with such entities.

5.6 Developer acknowledges that the Village presently holds a license, lease or

easement to use certain property owned by the Joliet Regional Port District to the south of the Territory, the purpose of which is to provide the Village's Romeoville Emergency Management Agency ("REMA") with a location from which to operate a tornado warning siren. To facilitate REMA's use and operation of the aforementioned tornado siren, and in the event that DND's construction of the southernmost access point between Weber Road and the Territory shall adversely affect the Village's existing access to the REMA siren site, DND shall work in good faith with the Village to provide an alternative access easement to the Village to reach the REMA siren site, the conceptual location of which is presently depicted in Exhibit D-1.

6. ROADWAY AND OTHER PUBLIC IMPROVEMENTS. Any on or off-site roadway or other public improvements required by the development of the Territory as contemplated herein or which may be required by applicable Village Ordinances shall be constructed by DND at no cost to the Village, except as provided by this or any other agreement between DND and the Village, and the Village shall have no responsibility for the construction of any such roadway or public improvements, provided, however, that in lieu of requiring the construction of any such improvements (or if such improvements have already been constructed by the Village), the Village may elect to require DND to contribute a sum of money in an amount approved by the Village Engineer equivalent to one half of the cost of constructing such improvements adjacent to any relevant portion of the Territory otherwise to be required by the Village where such property lies only on one side of the proposed improvements, or equivalent to the entire cost of constructing such improvements adjacent to the Territory where the relevant portion thereof lies on both sides of the proposed improvements. The completion of the construction of all such roadway or other public improvements shall be secured by a letter of credit or completion bond posted with the Village by DND in accordance with the requirements of the Village Development Regulations.

DND shall be responsible for providing the Village with copies of all engineering drawings and plans for any roadway or other public improvements required or contemplated hereunder prior to the commencement thereof, for review and approval by the Village, in such form as the Village may require from time to time. Upon completion of all on and off-site roadway or other public improvements necessitated by the development of the Territory, the Village, after its inspection and approval thereof, shall accept the dedication of such improvements (together with the

necessary easements and rights-of-way therefor) from the party having constructed the same, free and clear of all liens and encumbrances, and shall thereafter be responsible for the operation, maintenance, repair and replacement thereof, subject, however, to all maintenance and repair obligations of the party responsible for the construction of the same under the Village Development Regulations, and provided, further, that the party responsible for the construction of the same shall additionally be responsible to repair or replace any roadway or other public improvements damaged by the use of such improvements in conjunction with construction or development within the Territory. Notwithstanding any other term or provision of this Agreement, the obligations of DND under Section 9 hereof shall expressly extend to all construction of public improvements undertaken hereunder.

In the event that DND constructs and installs any on or off-site roadway or other public improvements contemplated by this Agreement or required by the Village Development Regulations, and, upon the request of the Village, constructs and installs such roadway or other public improvements in a fashion designed and intended to benefit owners, developers or users of property other than the Territory, then the Village and the party constructing the same shall enter into a recapture agreement in accordance with 65 ILCS 5/9-5-1 et. seq., which recapture agreement shall provide, among other things, that the party constructing the same shall be entitled to reimbursements from the owners, developers and users of property other than the Territory benefited by such roadway or other public improvements of that portion of the actual costs, together with reasonable interest thereon, to design, construct and install such additional improvements which the Village deems to have been incurred for, and to have inured to, the benefit of the owners, developers or users of property other than the Territory.

7. DEVELOPMENT WITHIN FLOODPLAIN; STORMWATER MANAGEMENT REQUIREMENTS.

7.1 DND acknowledges that as depicted in the flood study map shown in Exhibit E, a copy of which is attached hereto and incorporated herein, and as reflected in Letter of Map Revision (“LOMR”) No. 20-05-3060P, portions of the Territory are subject to the presence of floodplain in excess of that depicted in the Village FIRM map included as Appendix F to Chapter 160 of the Village Code of Ordinances (see Map Panel G therein, and specifically Map Panel Nos. 17197C0135G effective 2/15/2019 through and including 17197C0155G), and further acknowledges that its ownership and development of the

Territory shall comply with the provisions of Chapter 160 of the Village Code of Ordinances, and with the regulations or other requirements of other governmental agencies having jurisdiction.

7.2 The Village has established criteria for dry bottom and naturalized detention basins, and the USFW has also established regulatory criteria for infiltration and minimizing impacts on wildlife. The parties also recognize that the USFW and the Village may have differing regulatory concerns and development criteria relative to the Territory based on the Territory's location within the buffer zone of the federally endangered Hines Emerald Green Dragonfly. The parties acknowledge the difficulty in adhering to these two sets of dry bottom and naturalized detention basin criteria, and agree that the design of all detention areas with the Territory shall be coordinated by the parties in conjunction with the USFW, and acknowledge that the design of dry bottom and naturalized detention basins within the Territory shall incorporate BMPs to address the concerns reflected in the respective criteria of USFW and the Village. Provided that USFW approves the design of the dry bottom and naturalized detention basins to be constructed within the Territory, the Village agrees to consider variances from its dry bottom and naturalized detention basin criteria contained within any detention basin design approved by USFW, provided, however, that the Village shall have no obligation to entertain or approve any such variances unless and until DND demonstrates to the Village that the variances in question will not (i) create any adverse downstream or offsite drainage or stormwater impacts, (ii) create any measurable increase in the probability of flood damage or (iii) create any danger to public health and safety from the manner in which stormwater is proposed to be stored and released. Subject to the demonstration that any proposed variances comply with the requirements set forth in the preceding sentence, and also with the variance procedures and standards set forth in Chapter 160 of the Village Code of Ordinances, the Village shall entertain and approve requests for such variances from the provisions of Chapter 160 of the Village Code of Ordinances or other applicable ordinances of the Village. The long term maintenance of all dry bottom and naturalized detention basins within the Territory shall be tied to performance criteria to be established in a Planting and Maintenance Plan prepared by a recognized wetlands consulting firm reasonably acceptable to the Village and provided to the Village. Notwithstanding anything herein to the contrary, nothing in

this Agreement shall be deemed to approve the size, depth or any specification for any detention facility in the Territory unless the size, depth or other specification to be so approved is expressly set forth in this Agreement.

7.3 Contemporaneously with the issuance of the first certificate of occupancy for any building or structure constructed within the Territory, DND shall execute a maintenance agreement with the Village guaranteeing that the then-current owners and all future owners thereof will maintain the stormwater drainage system serving the Territory, and acknowledging that the ultimate responsibility for the maintenance of the stormwater drainage system rests with such owners and not the Village. The maintenance agreement shall also specifically authorize representatives of the Village to enter onto the Territory for the purpose of inspections and, if deemed necessary by the Village, emergency maintenance of the drainage system at the expense of DND or the then-owners of the Territory. Such agreement shall be recorded with the Recorder of Deeds of Will County. The maintenance agreement shall include a schedule for regular maintenance of each aspect of the stormwater drainage system for the Territory and shall provide for access to the system for inspection by authorized personnel of the Village. The maintenance agreement shall also stipulate that if the Village notifies the then-owner of the Territory in writing of maintenance problems that require correction, the then-owner shall commence corrective measures within thirty (30) calendar days of such notification, and shall complete such corrective measures in an expeditious manner. If the corrections are not commenced within this time period, or completed in a timely manner, the Village may have the necessary work completed and assess the cost to the Territory owner. Notwithstanding the foregoing, the Territory owner shall be entitled to assert any good faith dispute in writing the necessity, scope and/or reasonableness of any claimed maintenance problems or corrective measures. The maintenance agreement shall also set forth the consent of DND to the creation of a special service area as hereinafter described. Additionally, DND shall, prior to the issuance of a certificate of occupancy, agree to and cooperate with the Village in the establishment of a special service area (“SSA”) for the Territory to be utilized as a backup mechanism for the care, maintenance, renewal and replacement of the stormwater drainage facilities, including but not limited to any nuisance waterfowl reduction or elimination systems installed on or used in connection with all or any part of

such stormwater drainage facilities. In the event the Territory is developed into more than one lot or parcel requiring one or more stormwater drainage facilities, DND shall ensure that all of such lots hereinafter at all times remain under common ownership, and in consideration of this undertaking, the Village shall waive its otherwise applicable requirement for the establishment of an owner's association to assume stormwater management responsibilities with respect to such lots. Further, DND shall in such covenants consent to the creation of an SSA on behalf of DND, their subsequent grantees, and their successors in interest. If at any time such owners, developers or tenants fail to perform such care, maintenance, renewal or replacement of the stormwater drainage facilities, then the Village shall have the right, but not the obligation, to undertake such care, maintenance, renewal or replacement and utilize the SSA to provide sufficient funds to pay the costs of such care, maintenance, renewal or replacement undertaken by the Village. Notwithstanding the forgoing, the special tax roll shall not be levied hereunder, and the SSA shall be "dormant" and shall take effect only if the Village finds that the owners or developers of the Territory or a tenant thereof has failed to conduct such care, maintenance, renewal or replacement.

In the event that the stormwater management capacity for the Territory is provided in whole or in part by the owners of property other than the Territory or some association thereof, DND agrees that it shall take such actions as are necessary to become party to such an agreement or to become member of such an association of property owners as may be necessary to ensure that DND and its successor owners participate on a pro rata basis in the cost of maintaining the offsite stormwater management facilities that provide stormwater management capacity (or some portion thereof) for the Territory.

8. DEVELOPMENT FEES. The Village agrees that no new types or classifications of land development, subdivision, impact or building permit fees, donations, requirements, costs or impositions not in existence as of the date first above named will be imposed upon the Territory or upon any owner or developer of the same in connection with the development thereof during the term of this Agreement unless the same shall be imposed by a Village ordinance of general applicability, and DND agrees to pay the Village all such types and classifications of fees, donations, costs and impositions in the manner and to the extent required by the ordinances of the

Village. However, the Village may waive, modify or reduce such fees, donations, costs or impositions for other developers or owners of similarly situated land developments in the future without having to waive or reduce such fee, donation, cost or imposition in connection with the ownership or development of the Territory.

9. INDEMNIFICATION. Except as otherwise provided in Section herein, DND and its successors and assigns shall indemnify and hold the Village of Romeoville, an Illinois municipal corporation, its President, Trustees, officers, agents, employees, consultants and their heirs, executors, representatives and assigns (collectively sometimes hereinafter referred to as "Village") harmless from any and all actions, causes of action, claims, suits, demands, and any judicial, governmental or regulatory proceedings or any other actions which may arise or are claimed to arise out of or due to this Agreement or any of the activities or uses proposed or contemplated upon the Territory being annexed, including but expressly not limited to any and all construction activities conducted by then upon the Territory or upon any public rights of way or property. In the event the Village is made a party to any such event or proceeding identified herein, DND and its successors and assigns shall indemnify, defend and hold harmless the Village, individually and collectively, from any such event or proceeding, and such indemnification obligation shall include, but not be limited to, the obligations to pay all judgments, comply or bear the cost of the Village's compliance with all orders, injunctions, decrees or other like enforcement provisions directed against the Village and to pay all costs and expenses of every nature and kind arising therefrom. The obligations of DND and its successors and assigns hereunder shall specifically include but not be limited to the payment of reasonable attorneys' fees for the representation of the Village in such proceedings together with all expert witness fees and expenses, court costs and fees. It is expressly understood that the Village shall have the right to employ all such attorneys to represent the Village. The Village shall have the right to appeal to the courts of appellate jurisdiction any judgment taken against the Village in this respect. The parties agree this indemnification provision shall be liberally construed in favor of the Village and this Section and the indemnification and hold harmless agreements contained herein shall survive any determination by a court of competent jurisdiction of the invalidity of the Agreement or any party thereof. Notwithstanding anything contained herein, the indemnification in this Section shall not apply to an action or a claim brought by DND, or its successors and assigns against the Village or by the Village against DND or its successors and assigns, nor with respect to any action by

DND of a subdivided lot or a tenant within a building on the Territory for gross negligent action or inaction by the Village outside the scope of this Agreement which affects such a party.

10. INGRESS AND EGRESS. DND shall be responsible for submitting to the Village all proposed public right-of-way connections from the Territory to any public right-of-way. Upon Village approval, the proposed right-of-way connections shall be submitted to the relevant jurisdictional authorities for their review and approval. The Village hereby further expresses its support for the installation of two right in, right out access points on Weber Road Lot 2 (as the same is depicted in Exhibit C-3), as the same may be approved by the Will County Department of Transportation.

11. BUILDING AND OTHER PERMITS AFTER APPROVAL OF FINAL DEVELOPMENT PLAN.

11.1 Following Village approval of a Special Use Permit for Planned Unit Development—Final Development Plan for the Territory, the Village acknowledges that DND may apply for, and that the Village shall issue, without undue delay, building permits to begin construction, provided that the application complies with all requirements of the Village Ordinances and this Agreement. If the application is disapproved, the Village shall provide DND with a statement in writing without undue delay specifying the reasons for denial of the application.

11.2 Installation of hard surfaced streets (i.e., binder course) passable for emergency vehicles, along with storm sewers, sanitary sewers, and water and storm water management facilities shall be completed in conformance with Village Ordinances before the issuance of building permits for the structures to be constructed.

11.3 Notwithstanding any contrary provision of this Agreement or of the applicable ordinances of the Village, DND shall be permitted to commence grading and mass excavation activities within the Territory (including demolition of structures, excavation, preliminary grading work, filling and soil stockpiling) prior to the approval of any final plat, final development plan, final plat or final engineering plans subject to the conditions hereinafter set forth, provided, however, that such permission shall automatically deemed to be revoked and to become null and void without further action being required of the Village in the event that of any breach of or failure to comply with such conditions: (a) DND shall post a letter of credit equal to 125 percent of the Village-

approved estimated cost of the proposed grading and mass excavation activities prior to the conduct of such activities, or shall post the financial security contemplated by Section 6 of this Agreement prior to the conduct of such activities and cause the same to be available to the Village in the event of any failure to adhere to the requirements of this Agreement or the otherwise applicable ordinances of the Village as the same may pertain to grading and mass excavation activities, (b) DND shall submit to the Village for Village review and approval an engineering plan conforming to the requirements of the Village detailing all grading and mass excavation activities proposed to be conducted providing at a minimum for appropriate interim stormwater management, erosion and sedimentation control measures, and shall receive approval of such plan prior to conducting any such activities, (c) DND shall only stockpile topsoil in locations designated by the Village and pursuant to a soil stockpiling plan approved by the Village, and (d) DND shall assume any and all risks at its sole cost and expense associated with proceeding with grading and mass excavation activities prior to the approval of any final plat, final development plan, final PUD plat or final engineering plans, and specifically acknowledges that it shall be obligated to modify any such grading or mass excavation work in the manner and to the extent necessary to comply with the terms of any approved final plat, final development plan, final PUD plat or final engineering plans, or to the extent necessary to comply with the requirements of any other governmental entity having jurisdiction.

11.4 Subject to the final approval by the Plan Commission of the Village and the Village Board, the parties agree that the signage requirements of Mercedes Benz North America (the Franchisor), attached hereto as Exhibit E, and such other minor adjustments to such requirements as may be required by the Franchisor to obtain final site approval, shall be permitted as minor exceptions to the otherwise applicable signage requirements of the Village.

11.5 The parties agree that the Floor Area Ratio as detailed in the Code of Ordinances of the Village shall be calculated with respect to the Territory in its entirety, notwithstanding that the Territory shall be subdivided into three lots.

11.6 The parties further acknowledge that while this Agreement provides for the development of the Territory as an automobile dealership concentrating its business primarily in the sale of new Mercedes passenger automobiles, but also including the

servicing of vehicles and the sale of used vehicles in connection therewith, nothing in this Agreement shall prohibit DND from expanding the range of brands of new automobiles sold or offered for sale from the dealership to be located within the Territory, so long as DND continues to sell or offer for sale new Mercedes passenger automobiles from the dealership to be located within the Territory.

12. MISCELLANEOUS.

12.1 The parties acknowledge and agree that the individuals who are members of the group constituting the corporate authorities of the Village are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.

12.2 (a) This Agreement shall be valid and binding for a term of twenty (20) years after the date first above named, upon the Village and upon DND, together with their respective successors and assigns, and is further intended to be binding upon each successive lot owner of any lots of record created by the approval and recording of final plats hereunder, and shall constitute a covenant running with the land. This Agreement shall be recorded with the Will County Recorder's Office.

(b) This Agreement may be assigned without Village approval, but only in connection with the conveyance by the assignor in such a case of all or any part of the property subject to this Agreement then owned by such assignor, and upon said assignment and acceptance by an assignee, the assignor shall have no further obligations hereunder as to the that portion of the property subject to this Agreement so conveyed, but shall continue to be bound by this Agreement and shall retain the obligations created thereby with respect to any property subject to this Agreement retained and not conveyed. If DND or its successors and assigns sell a portion of the property subject to this Agreement, the seller shall be deemed to have assigned to the purchaser any and all rights and obligations it may have under this Agreement (excluding rights of recapture) which affect the property sold or conveyed and thereafter the seller shall have no further obligations under this Agreement as it relates to the property so conveyed, but any such seller shall retain any rights and obligations it may have under this Agreement with respect to any

part of such property retained and not conveyed by such seller. Notwithstanding any such assignment of this Agreement or any such sale or conveyance, unless the successor to or assignee of DND shall have deposited and substituted its letter of credit as security for the construction, repair and maintenance of roadway or other public improvements with the Village, the assignor or seller though otherwise released from all obligations hereunder, shall keep its letter of credit on deposit with the Village until such time as the successor or assignee has provided a substitute letter of credit.

12.3 Any conveyance, dedication or donation of real estate to the Village or other governmental authorities required of DND (hereinafter referred to as “Grantor” in this Section) under this Agreement shall be made in conformance with the following requirements and any other applicable provisions of this Agreement.

(a) Fee Simple Title. The conveyance, dedication or donation shall be of a fee simple title.

(b) Marketable Title. Title to the real estate shall be good and marketable.

(c) Form and Contents of Deed. The conveyance, dedication or donation shall be by delivery of a good, sufficient and recordable general warranty deed, plat of dedication, or appropriate dedication on a recorded plat of subdivision. The deed, conveyance or dedication may be subject only to:

(i) Covenants, restrictions and easements of record, provided the same do not render the real estate materially unsuitable for the purposes for which it is being conveyed, dedicated or donated;

(ii) Terms of this Agreement;

(iii) General taxes for the year in which the deed, conveyance or dedication is delivered or made and for the prior year if the amount of prior year’s taxes is not determinable at the time of delivery, conveyance or dedication; and

(iv) Such other exceptions as may be agreed to in writing by the Village.

(d) Title Insurance. Grantor shall provide to the Village, not less than

ten (10) days prior to the time for delivery of the deed, conveyance or dedication, a commitment for title insurance from the Chicago Title Insurance Company or such other title insurance company as may be acceptable to the Village. The commitment for title insurance shall be in usual and customary form subject only to:

- (i) The usual and customary standard exceptions contained therein;
- (ii) Taxes for the year in which the deed is delivered and for the prior year if the amount of such prior year's taxes is not determinable at the time of delivery of the deed, conveyance or dedication;
- (iii) Covenants, restrictions and easements of record, provided the same do not render the real estate materially unsuitable for the purposes for which it is being conveyed, dedicated or donated;
- (iv) Terms of this Agreement; and
- (v) Such other exceptions as may be agreed to in writing by the Village.

The commitment for title insurance shall be in the amount of the estimated fair market value of the portion of the Territory conveyed as determined by the Grantor and as reasonably approved by the Village, which estimate shall be dated not less than twenty (20) days prior to the time for delivery of the deed, conveyance or dedication. Grantor shall further cause to be issued within thirty (30) days after delivery of the deed, conveyance or dedication a title insurance policy in such amount from the company issuing the commitment for title insurance, subject only to the exceptions stated hereinabove. All title insurance charges herein provided shall be borne by Grantor.

(e) Taxes, Liens, Assessments, Etc. General taxes and all other taxes, assessments, liens and charges of whatever nature affecting that portion of the Territory conveyed shall be paid and released prior to delivery of the deed, conveyance or dedication. To the extent that any such item cannot be removed prior to delivery of the deed, conveyance or dedication because the amount of the same cannot then be determined, Grantor hereby covenants that it will promptly

pay the same upon determination of such amount and that it will indemnify, hold harmless and defend the Village against any loss or expense arising as a result of a breach of the foregoing covenant.

(f) Delivery of Deed, Conveyance or Dedication. To the extent not provided in this Agreement, the delivery of any deed, conveyance or dedication required by this Section shall occur at a date, time and place mutually agreeable to Grantor and Village, otherwise at a date, time and place set by Village not more than thirty (30) days after notice thereof is given by Village to Grantor.

(g) Environmental Assessment. Not less than thirty (30) days prior to any conveyance, dedication or donation of any portion of the Territory required under this Agreement, any Village ordinance or other requirement, the Grantor shall deliver to the Village a written report of a site assessment and environmental audit (the “Environmental Audit”) prepared by an independent, competent and qualified environmental engineer (“Engineer”). The Environmental Audit shall assure that the Engineer made all appropriate inquiry into the previous ownership and uses of the Territory consistent with good commercial and customary environmental engineering practice and procedure, which takes into account and satisfies the “innocent landowner” provision set forth at 42 U.S.C. 9601 (35) and any applicable governmental rules, guidelines or regulations. The Environmental Audit shall assure that no evidence came to light which would suggest there was a release of substances on the Territory which could necessitate an environmental response action, and which further evidences that the property, based upon the Environmental Audit, does not deviate from, all applicable federal, state, county, regional and local environmental statutes, laws, ordinances, rules and regulations (“Environmental Laws”), including the provisions of any licenses, permits or certificates required thereunder. If the Grantor obtains any such Environmental Audit for its lender, such Audit shall be deemed satisfactory to the Village.

The Grantor agrees that, in the event that an Environmental Audit or any other source of information known to the Village discloses a material, health, safety

or environmental hazard, with respect to any Territory contemplated to be conveyed under this Section, then the Village shall not be obligated to take title to any land if, in its sole and exclusive judgment (including, without limitation, information revealed by the Environmental Audit), the use or condition of the Territory, or any part thereof, poses a material health, safety or environmental hazard. If such part of the Territory does pose a material health, safety or environmental hazard, then the Grantor must convey suitable substitute land at a location(s) subject to the approval by the Village which approval shall not be unreasonably withheld.

(h) Ordinance Compliance. Property to be conveyed hereunder to the Village shall also comply with any and all other standards, ordinances, resolutions or regulations adopted by the Village. For purposes of determining such compliance, Village may examine Grantor's use of any property to be conveyed to the Village hereunder as if Village owned the same as of the time of such use, and without regard to the actual date on which such property was or was to be conveyed to the Village.

12.4 From and after the effective date of this Agreement, and upon demand by Village made by and through its President, DND shall from time to time promptly reimburse Village for all reasonable expenses and costs incurred by Village in the negotiation and administration of this Agreement, including engineering fees, attorneys' fees and 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, the negotiation and preparation of letters of credit as security for the completion of required roadway or other public improvements and the enforcement of this Agreement or any applicable ordinances of the Village by any administrative proceedings under the ordinances of the Village, or under any state statute or by any court action, including but not limited to prosecutions for violation of this Agreement or any such ordinances.

12.5 The failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant,

agreement or condition, but the same shall continue in full force and effect. No action taken by any party to this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any party at law or equity.

12.6 This Agreement may only be amended by the Village's adoption of an ordinance authorizing the execution of such amendment, after a public hearing in accordance with Article 11, Division 15.1 of the Illinois Municipal Code (65 ILCS 5/11-15.1-1 et. seq.) and the subsequent execution of such amendment by all of the other parties hereto.

12.7 In the event that any pertinent existing regulations, resolutions or ordinances of the Village are inconsistent with or conflict with the terms or provisions of this Agreement, the terms or provisions of this Agreement shall supersede the regulations, resolutions or ordinances in question to the extent of such inconsistency or conflict. Absent any such conflict or inconsistency, the pertinent existing regulations, resolutions and ordinances of the Village, as the same may be amended from time to time, shall apply to the development of the Territory.

12.8 (a) Upon a breach of this Agreement, any of the parties may secure the specific performance of the covenants and agreements herein contained as its sole and exclusive remedy for such breach, the sole venue for which shall be in the Circuit Court for the Twelfth Judicial Circuit, Will County, Illinois.

(b) In the event of a material breach of this Agreement, the parties agree that the party alleged to be in breach shall have thirty (30) days after written notice of said breach to correct the same prior to the non-breaching party seeking a judicial remedy as provided for herein (provided, however, that said thirty (30) day period shall be extended if the defaulting party has commenced to cure said default and is diligently proceeding to cure the same).

(c) If the performance of any covenant to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (including, without limitation, acts of God, war, terrorist acts, strikes, inclement weather conditions, pandemics, emergency orders of governmental agencies or bodies having jurisdiction, inability to secure

governmental permits, or similar acts), the time for such performance shall be extended by the length of such delay provided, however that the party that seeks the benefit of this provision shall give the other(s) written notice of both its intent to rely upon this provision and the specific reason which permits the party to avail itself of the benefit of this provision.

12.9 This Agreement sets forth all agreements, understandings, and covenants between and among the parties. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and is a full integration of the entire Agreement of the parties.

12.10 If any provision, clause, word, or designation of this Agreement is held to be invalid by any court of competent jurisdiction, such provision, clause, word or designation shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any other provision, clause, word, or designation contained herein. Furthermore, if any provision of this Agreement is held invalid, the invalidity thereof shall not affect any zoning classification which has been approved by the Village pursuant to the provisions of the Village's ordinances and the valid provisions of this Agreement, and such zoning classifications shall not otherwise be changed during the term of this Agreement without DND's approval and shall survive this Agreement and continue to be the zoning classification of the Territory unless changed in accordance with law.

12.11 The Corporate Authorities agree to cooperate reasonably in dealing with any and all applicable governmental bodies and agencies in obtaining utility and other governmental services for the property subject to this Agreement, at the expense of DND. Furthermore, it is understood and agreed by the parties hereto that the successful consummation of this Agreement requires their continued cooperation. The parties hereby evidence their intent to always cooperate in the resolution of mutual problems and their willingness to facilitate the uses of the property subject to this Agreement, as contemplated by the provisions of this Agreement. Without otherwise limiting the generality of the foregoing, DND specifically acknowledges and agrees to cooperate with Village by entering into the Village's standard form private property traffic ordinance enforcement

agreement or private property common area enforcement agreement upon request therefor from the Village and to take all such steps as may be necessary (including but not limited to the recordation of appropriate restrictive covenants against the property) to ensure that all sales and use taxes imposed by the State of Illinois with respect to the conduct of any business that is now or may hereinafter be lawfully developed within or conducted from the Territory shall be deemed to have resulted from and to have been generated within the corporate limits of the Village, so as to facilitate the Village's receipt of such distributive share thereof from the State of Illinois as it may be entitled to from time to time.

12.12 This Agreement may be executed in multiple counterparts, all of which when taken together shall constitute one Agreement.

12.13 The headings of the Sections of this Agreement are for convenience and reference only and do not form a part hereof and do not modify, interpret or construe the understandings of the parties hereto.

12.14 This Agreement may be reproduced by means of carbons, xerox process or otherwise. Each such reproduction, if manually executed by the parties, shall for all purposes be deemed, and the same is hereby declared, to be a duplicate original of this Agreement.

12.15 Terms used in this Agreement shall be read in the singular or the plural as may be appropriate to the context in which they are used.

12.16 Village and DND acknowledge that in furtherance and support of DND's efforts to acquire and develop the Territory, the Village on January 20, 2021 adopted legislation authorizing the execution of an economic incentive agreement with Suncera Motors Cars, Inc. (DND's intended tenant for the Territory as contemplated to be developed hereunder), and that the Village and have subsequently executed such agreement in the form attached hereto and incorporated herein as Exhibit G ("Incentive Agreement"). To further facilitate the same, Village shall within thirty (30) days after the full execution of this Agreement, adopt legislation authorizing an amendment to the Incentive Agreement (the "Incentive Amendment"), in substantially the form attached hereto and incorporated herein as Exhibit G-1, and the Village and Suncera Motors Cars, Inc. shall thereafter fully execute the same.

12.17 Notices, including Notices to effect a change as to the persons hereinafter

designated to receive Notice(s), or other writings which any party is required to or may wish to serve upon any other party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Village or
the corporate authorities:

Village of Romeoville
1050 W. Romeo Road
Romeoville, Illinois 60446
Attention: Village Manager

With a copy to:

Richard E. Vogel
Village Attorney
Tracy, Johnson & Wilson
2801 Black Road
Joliet, Illinois 60435

If to DND:

David Nocera, Manager
DND Endeavors. LLC
8430 W. 159th Street
Orland Park, IL 60462
Email: dnocera@mbop.com

With a copy to:

David B. Sosin
Sosin, Arnold and Schoenbeck, Ltd.
9501 W. 144th Street, Suite 205
Orland Park, IL 60462
Email: dsosin@sosinarnold.com

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers duly authorized to execute the same, the day and year first above written.

VILLAGE OF ROMEOVILLE,
a municipal corporation

ATTEST:

By: _____
Village President

By: _____
Village Clerk

DND ENDEAVORS, LLC,
a Pennsylvania limited liability company

By: _____
Daniel Sunderland, Manager