

PREAPPROVAL GRADING DEVELOPMENT AGREEMENT

This **PREAPPROVAL GRADING DEVELOPMENT AGREEMENT** (the "Agreement"), is made and entered into this _____ day of _____, 2016, A.D., by and between the Village of Romeoville, an Illinois Home Rule Municipal Corporation (hereinafter sometimes referred to as "Village") and Venture One Real Estate, LLC (hereinafter sometimes collectively referred to as "Developer"). The Village and Developer may sometimes be referred to individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, the Developer is the owner or contract purchaser of certain property located in Romeoville, Illinois and legally described in Exhibit A hereto (the "Subject Property"), commonly known as 1200 N. Schmidt Road, Romeoville, Illinois 60446; and

WHEREAS, the Subject Property consists of vacant property which Developer intends to develop with a new industrial building; and

WHEREAS, the Developer does not presently have the necessary approvals from the Village Board or any other approvals whatsoever from the Village to begin any proposed work or improvements under the applicable ordinances of the Village at the Subject Property; and

WHEREAS, the Developer has requested the Village to enter into this Agreement pursuant to the provisions of Chapter 158.005(J) of the Village Code of Ordinances in connection with its proposed commencement of grading on the Subject Property prior to Village approval of final engineering plans for the proposed development due to certain critical path issues with respect to its construction schedule, namely that it has ordered and expects to take delivery of pre cast walls for the contemplated building to be developed at the above-referenced property at a time anticipated to be prior to the time that its otherwise required submittals can be reviewed and approved by the Village; and

WHEREAS, the Developer expressly acknowledges that its current hardship has arisen entirely as a result of its actions in ordering precast walls prior to its submission of engineering plans to the Village for the contemplated development of the above-referenced site, and prior to the Village having the opportunity to review and approve such plans and other required submittals for the development of the Subject Property; and

WHEREAS, the Developer has petitioned the Village Board to enter into this Agreement pertaining to preapproval grading for the Subject Property at its sole and absolute risk as relief from the consequences of having ordered precast walls prior to submittal, review or approval of its engineering plans or any other required submittals; and

WHEREAS, the Developer acknowledges and agrees that it is undertaking all such grading prior to Village Board approval of its engineering plans at its sole and absolute risk and that nothing in this Agreement constitutes any express or implied approval of any work whatsoever actually undertaken by the Developer; and

WHEREAS, Developer has represented to Village that it is willing to enter into a development agreement containing the terms and conditions hereinabove proposed by Village and containing such other terms and conditions as the Village shall require, and as may be required by applicable Village Ordinances; and

WHEREAS, pursuant to Article VII, Section 10, of the Constitution of the State of Illinois, which permits Units of Local Government to contract with individuals, associations or corporations in any manner not prohibited by law or by ordinance, the Village and Developer desire to enter into this Agreement in order to regulate certain matters pertaining to the development of the Subject Property in the manner and upon the terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration of the foregoing premises and in further consideration of the mutual covenants, conditions and agreements herein contained, Developer and Village hereby agree as follows:

SECTION ONE: Incorporation of Preambles - The recitals contained in the Preamble hereto are material and are hereby incorporated as a part of this Agreement, and are acknowledged by the parties as an accurate representation of the factual basis leading to the execution of this Agreement by the parties. Developer and the Village shall fully cooperate with each other in carrying out the terms of this Agreement.

SECTION TWO: Developer's Preapproval Grading Obligations - Developer acknowledges and accepts that the terms set forth in Chapter 158(J)(2) of the Village Code of Ordinances shall apply to any grading activities that it elects to conduct prior to receiving approval of its final engineering plans for the development of the Subject Property (such grading activities may sometimes hereinabove or hereinafter be collectively referred to as "preapproval grading activities" or "preapproval grading"), that it has read and understood those terms, and that it voluntarily has sought out entering into this Agreement with the Village based on its desire to conduct preapproval grading of the Subject Property in accordance therewith. Such terms are set forth below in this Section 2, together with any additional terms that shall apply to the Developer's conduct of preapproval grading of the Subject Property.

A. All preapproval grading work that the Developer elects to conduct on the Subject Property shall be undertaken at the sole and absolute risk of the Developer. Neither the existence of Chapter 158.005(J) nor the approval of this Agreement pursuant thereto shall grant or be construed as approval or acceptance of any work planned or performed by the Developer in connection therewith.

B. The parties acknowledge that the Subject Property contains wetlands. Accordingly, the Developer shall not develop, disturb, encroach upon or touch any such wetlands until such time as the Corporate Authorities of the Village have approved variances or other relief to permit the same under the provisions of the Village Code of Ordinances. Any violation of the terms of the preceding sentence shall entitle the Village to immediately issue an order to the Developer to cease all preapproval grading activities on the Subject Property, and shall

subject the Developer to enforcement actions, including but not limited to the imposition of fines, or the commencement of enforcement proceedings in court.

C. The Developer has represented to the Village that its preapproval grading activities may include grading activities on property other than the Subject Property, and upon property located outside of the corporate limits of the Village. Developer shall not proceed with any such offsite or extraterritorial preapproval grading activities until such time as it has presented the Village with written agreements, permits or other approvals satisfactory to the Village evidencing the consent of all offsite landowners and all authorities having jurisdiction outside of the corporate limits of the Village to the conduct of such offsite or extraterritorial preapproval grading activities.

D. In the event that the Village is made a party defendant in any litigation, arbitration or other proceeding relating to or in any way arising out of the provisions of Chapter 158(J), the provisions of this Agreement between the developer and the Village, or any actions planned or undertaken by Developer based upon or relating to Chapter 158(J) or this Agreement, Developer shall defend, indemnify and hold harmless the Village, its president, trustees, officers and employees, and the consultants and agents of the Village (collectively, the "Village Indemnitees"), individually and collectively, from any suits and from any claims, demands, setoffs or other actions including, but not limited to judgments and any costs of compliance resulting or arising therefrom. The obligation of the developer hereunder shall include and extend to payment of reasonable attorneys' fees for the representation of the Village and all Village Indemnitees in such litigation and shall include all related expenses, expert witness fees, court costs and fees; it being understood that the Village shall have the right to employ all such attorneys to represent the Village and the Village Indemnitees in such litigation. The provisions of this Section 2.D. shall survive any termination or expiration of this Agreement, and any amendment or repeal of Chapter 158(J).

E. In consideration of the execution of this Agreement by the Village, Developer, on its own behalf, and on behalf of its heirs, administrators, executors, successors and assigns, hereby fully and forever releases, acquits and discharges the Village, its president, trustees, elected and appointed officials and officers, employees, and the consultants and agents of the Village (collectively, the "Village Releasees"), individually and collectively, together with all other persons, firms, entities or corporations which may be legally liable, from any and all actions, causes of action, claims and demands of whatsoever kind or nature, whether in law or in equity which the Developer now has, has ever had, or at any time in the future has against the Village Releasees and any other persons, firms, entities or corporations which may be legally liable for or because of any matter or thing done, permitted to be done, suffered to be done, or omitted from being done by the Village Releasees including but expressly not limited to all injuries, losses and damages and the consequences thereof sustained at any time in the past, at the present time or at any time in the future by the Developer resulting from the execution and approval of this Agreement by the Village, the adoption by the Village of Chapter 158.005(J) of its Code of Ordinances, or the Developer's performance of any preapproval grading activities upon the Subject Property, including but expressly not limited to any such injuries, losses and damages and the consequences relating to Developer's expenditures, reliance, or changes in its position occasioned by or resulting from its conduct of preapproval grading activities and any costs or expenses incurred by Developer in the event that Village approval of final engineering plans for the Subject Property or its enforcement of the provisions of the Village Code of

Ordinances require modification, removal, repair or other alteration of work previously performed by the Developer. The provisions of this Section 2.E. shall survive any termination or expiration of this Agreement, and any amendment or repeal of Chapter 158(J).

F. Developer shall post an irrevocable letter of credit with the Village in the amount of 125 percent of its estimated cost of all preapproval grading activities proposed to be undertaken by the Developer. The parties acknowledge that the amount of such security shall be \$794,043.50. Notwithstanding any contrary provisions of the ordinances of the Village, the aforementioned letter of credit shall not be reduced nor released until such time as the Corporate Authorities of the Village shall have approved Developer's final engineering plans for the development of the Subject Property, and the Developer shall have submitted to the Village an irrevocable letter of credit for all public improvements and other work for which financial security is then required under the applicable ordinances of the Village.

G. Developer shall, contemporaneously with the Village's approval of this Agreement, and until such time as the Corporate Authorities of the Village shall approve final engineering plans for the Subject Property, obtain and maintain in full force and effect, a policy of commercial general liability insurance insuring the Developer and the Village with respect to occurrences arising out of or related to the Developer's conduct of preapproval grading activities, with such coverage having combined single limits of double the amount of the letter of credit to be posted by the Developer under Section 2.F. of this Agreement, or \$1,000,000.00, whichever is greater, for personal injury, death and property damage per occurrence, and in the aggregate, which coverage shall specifically refer to Chapter 158.005(J) and to this Agreement. All such insurance coverage shall also provide that it is primary and noncontributory to any insurance coverage of the Village, and shall waive all rights of recovery against the Village. Copies of all policies and certificates of insurance shall be provided to the Village prior to the commencement of any preapproval grading activities, together with a written endorsement to such coverage expressly naming the Village as an additional named insured thereunder. All such coverage shall provide that it cannot be canceled except upon thirty (30) days' prior written notice to the Village.

H. Developer shall perform all preapproval grading work pursuant to Chapter 158(J) and this Agreement in compliance with all applicable ordinances of the Village, and all applicable regulations or requirements of other governmental agencies having jurisdiction over the work.

SECTION THREE: Preapproval Grading Administrative Fee - Pursuant to Chapter 158.005(J)(3) of the Village Code of Ordinances, and in recognition of the potentially significant additional administrative costs and exposure to liability faced by the Village as a result of Developer's performance of preapproval grading activities on the Subject Property, which the parties acknowledge to be difficult and impractical to accurately estimate at the present time, the Developer shall, contemporaneously with the Village's approval of this Agreement, pay to the Village a Preapproval Grading Administrative Fee in the amount of \$84,280.00, calculated at a rate of \$5,000.00 per acre for the 16.856 acres contained within the Subject Property. Developer acknowledges that the Preapproval Administrative Grading Fee is in addition to all other fees, costs and expenses for which the Developer may be liable to the Village under this Agreement and the applicable ordinances of the Village in connection with the development of the Territory.

SECTION FOUR: Village's Fees and Expenses - From and after the effective date of this Agreement, and upon demand by Village made by and through its President, Developer from time to time shall promptly reimburse Village for all reasonable expenses and costs incurred by Village in the 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. The provision of this Section shall survive any termination or expiration of this Agreement or any provision thereof.

SECTION FIVE: General Provisions

A. Interest in Subject Property: Developer represents and warrants to the Village that Developer is the owner or contract purchaser of the Subject Property, and that it holds or will hold sole legal and/or sole equitable title to the Subject Property.

B. No Waiver or Relinquishment of Right to Enforce Agreement: The failure of any party to this Development Agreement to insist upon 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 rights, to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect. No waiver by the Village shall be valid or binding on the Village unless it is in writing signed by the Village and only to the extent therein set forth.

C. Remedies: Unless expressly provided otherwise herein, any rights and remedies of the parties to enforce this Agreement shall be cumulative and concurrent and shall include all rights and remedies available at law or in equity, which may be pursued singly, successively or together, at the sole and absolute discretion of either party and may be exercised at any time and as often as occasion therefor shall arise.

D. Other Ordinances, Codes, Rules, Regulations, Resolutions and Applicable Law: Nothing herein contained is intended to relieve Developer of its obligations under the ordinances, codes, rules, regulations, and/or resolutions of the Village of Romeoville, except as expressly set forth herein, and all such ordinances, codes, rules, regulations, and/or resolutions shall be deemed to apply to Developer and the Subject Property except as expressly modified by this Agreement. In addition, wherever this Agreement provides that a particular ordinance, code, rule, regulation or resolution is applicable, said provisions shall also automatically include any other applicable laws and any amendments thereto, except as expressly set forth in this Agreement.

E. Singular and Plural: Wherever appropriate in this Agreement, the singular shall include the plural, and the plural shall include the singular.

F. Section Headings and Subheadings: All section headings or other headings in this Agreement are for the general aid of the reader and shall not limit the plain meaning or applicability of any of the provisions thereunder whether covered by or relevant to such heading or not.

G. Recording: All ordinances, plats, and any other agreements and/or documents required or contemplated hereby shall be recorded by and at the sole cost and expense of the Developer.

H. Public Improvements: Unless otherwise provided herein, the construction and installation of all public improvements shall conform to and be in compliance with the Village ordinances then in effect at the time of the construction and installation of the same.

I. Actions by Parties/Right to Cure: In the event of an alleged default on all or any part of this Development Agreement, prior to and as a condition of instituting legal proceedings, the non-defaulting party shall give the defaulting party specific written notice of such default, in the manner provided herein. The alleged defaulting party shall have thirty (30) days to cure said default. If the defaulting party does not cure said default during the thirty (30) day period, the non-defaulting party may take any and all steps necessary to address such default, including, but not limited to, instituting any necessary legal action. Developer shall not have a right to recover a judgment for monetary damages against any elected or appointed official of the Village for any breach of any of the terms of this Development Agreement. The Village reserves the right to maintain an action to recover damages or any sums which Developer has agreed to pay pursuant to this Agreement and which have become due and remain unpaid. In the event the Village maintains such an action and judgment is entered in favor of the Village or the Village accepts a settlement, then the Village is entitled to repayment of its reasonable attorneys fees for prosecuting said action.

J. No Personal Liability of Corporate Authorities: 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.

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

If to the Village:

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

with a copy to:

Richard E. Vogel
2801 Black Road 2d Floor
Joliet, IL 60435

If to the Developer:

Venture One Real Estate, LLC

with a copy to:

or to such other address as any party may from time to time designate in a written notice to the other party.

L. Amendments: This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Developer and the Village relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them. In the event such amendment applies only to a portion of the Subject Property, then only the owners of the portion of the Subject Property proposed to be affected by such amendment shall be required to consent to and execute such amendment.

M. Invalidity of any Provision: 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.

T. Survival: The agreements contained herein shall survive the development of the Subject Property, and shall not be merged or expunged by the development of the Subject Property or any part thereof.

U. No Third-Party Beneficiaries: Nothing in this Agreement is intended to confer any rights, remedies or benefits whatsoever upon any person or entity that is not a party to this Agreement, and the existence of any such rights, remedies or benefits is hereby expressly disclaimed.

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

Village:

Attest:

VILLAGE OF ROMEOVILLE,
An Illinois Municipal Corporation

By: _____

By: _____

Name: _____

Name: _____

Its: Village Clerk

Its: Village President

Dated: _____

Dated: _____

Developer:

Venture One Real Estate, LLC

By: _____

Its: _____

Dated: _____

EXHIBIT A—LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

LOT 1 OF HAWKEYE SUBDIVISION, BEING A SUBDIVISION OF PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 16, 2016 AS DOCUMENT NO. R2016044645 WITH THE WILL COUNTY RECORDER.

PART OF PIN 12-02-200-008-0000