

**AGREEMENT
BETWEEN THE COUNTY OF DuPAGE, ILLINOIS
AND BLOOMINGDALE OWNER, LLC
FOR TRAFFIC SIGNALS
LOCATED AT ENTRANCE AT CH 11/ARMY TRAIL ROAD AND BLOOMINGDALE COURT**

This Agreement (hereinafter referred to as "AGREEMENT") is executed this _____ day of _____, 2025, between the County of DuPage (hereinafter referred to as "COUNTY"), a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois and Bloomingdale Owner, LLC (hereinafter "OWNER"), a Delaware Limited Liability Company with offices at 100 Constitution Plaza, 7th Floor, Hartford, CT 06103-1703. The COUNTY and the OWNER are hereinafter sometimes individually referred to as a "party" or as the "parties."

RECITALS

WHEREAS, the COUNTY and the previous owner entered into an agreement (hereinafter "PREVIOUS AGREEMENT") executed January 8, 2002, for the maintenance and energy responsibilities for traffic signals on CH 11/Army Trail Road at Bloomingdale Court entrance road (hereinafter referred to as the "SIGNALS" - see map Exhibit A); and

WHEREAS, the PREVIOUS AGREEMENT expired on November 22, 2024, when the previous owner sold the real estate property known as Bloomingdale Court, located at 364 W. Army Trail Road, Bloomingdale, Illinois 60108 (the "PROPERTY"), to the new OWNER and failed to notify the COUNTY by written notice; and

WHEREAS, the COUNTY and OWNER, as successor owner of the PROPERTY have determined that it is in each party's mutual best interest to enter into a new agreement for the continued maintenance and energy responsibilities and/or future modernization/reconstruction costs of said SIGNALS; and

WHEREAS, the COUNTY by virtue of its power set forth in "Counties Code" (55 ILCS 5/5-1001 et seq.) and "Illinois Highway Code" (605 ILCS 5/5-101 et seq.), is authorized to enter into this AGREEMENT.

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each party to the other, the parties do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION

- 1.1. All recitals set forth above are incorporated herein and made part thereof, the same constituting the factual basis for this AGREEMENT.
- 1.2. The headings of the paragraphs and subparagraphs of this AGREEMENT are the inserts for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

2.0 EFFECTIVE DATE

- 2.1. As of the date of sale of the PROPERTY, November 22, 2024, the PREVIOUS AGREEMENT became null and void in its entirety between the COUNTY and previous owner.
- 2.2 This AGREEMENT is effective once executed by both parties and subsequently recorded with the DuPage County Recorder's Office for purpose of maintaining property records of current and future ownership.

3.0 RESPONSIBILITIES OF THE COUNTY

- 3.1. The COUNTY shall provide and pay for all costs associated with the repair, maintenance, and replacement of the SIGNALS with reimbursement of the SIGNALS repair, maintenance, and replacement costs by OWNER as outlined hereinafter.
- 3.2. The COUNTY retains the right to control and regulate the sequence and all other aspects of phasing and timing of the SIGNALS.
- 3.3. The COUNTY shall remain responsible for all pavement markings concerning the SIGNALS except as outlined hereinafter in paragraph 4.5.

4.0 RESPONSIBILITIES OF OWNER

- 4.1. OWNER shall pay all energy costs for the SIGNALS and shall be invoiced directly by the energy provider for the SIGNALS.
- 4.2. OWNER shall reimburse the COUNTY for the routine maintenance costs including pre-emption equipment, etc. for the SIGNALS by annual invoice from the COUNTY. Routine maintenance shall be invoiced to OWNER at the same unit price paid by the COUNTY without mark up for the COUNTY Traffic Signal Maintenance Contract in place at the time of the annual invoice.

- 4.3. OWNER agrees that non-payment of invoice(s) from the COUNTY related to the SIGNALS within forty-five (45) days of the date of invoice shall be considered reason to remove said SIGNALS, provided that at least sixty (60) days prior to the removal of the SIGNALS, the COUNTY shall give written notice to OWNER of the date certain of removal, and provided that if OWNER fully pays for all outstanding invoices prior to such date certain of removal, the COUNTY shall not remove the SIGNALS. Costs incurred by COUNTY to remove the SIGNALS shall be 100% reimbursement by OWNER. The date notice is mailed out by the COUNTY constitutes the date of service to OWNER.
- 4.4. OWNER agrees that the COUNTY shall replace or repair damages to the SIGNALS caused by motor vehicles or construction activities by third parties and shall first use reasonable efforts to recover all such costs of replacement or repairs from such third parties. The COUNTY shall invoice OWNER for all said costs not recovered by the COUNTY. COUNTY agrees to execute any necessary documentation subrogating COUNTY's rights to OWNER for recovery of said cost.
- 4.5. OWNER shall maintain all pavement markings on the approach to the intersections from PROPERTY entrance/exit roads for the SIGNALS.
- 4.6. OWNER shall notify the COUNTY by letter to contact given in Article 8.0 herein, within 30 days of the sale of the PROPERTY and new owners contact information.

5.0 FUTURE MODERNIZATION/RECONSTRUCTION

- 5.1 If, in the future, it is determined that the SIGNALS requires modernization or reconstruction due to age, condition, etc. or if the COUNTY improves CH 11/Army Trail Road which results in the need to modernize or reconstruct the SIGNALS, the COUNTY shall notify OWNER at least three (3) months prior to the improvement to allow OWNER to review the cost proposal and budget for the cost. OWNER shall have the option to either have the SIGNALS removed at the time of the improvement or pay the cost to upgrade the SIGNALS. All costs, either for the removal of the SIGNALS or the upgrade cost shall be paid by OWNER within forty-five (45) days from receipt of a documented invoice from the COUNTY.

6.0 INDEMNIFICATION

- 6.1. The COUNTY shall be liable and responsible for and shall, to the extent permitted by law, indemnify, hold harmless and defend OWNER, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of

defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the COUNTY's negligent or willful acts, errors or omissions in its performance under this AGREEMENT, provided that the foregoing shall not apply to any gross negligence or willful misconduct of OWNER.

6.1.1. The COUNTY and OWNER acknowledge that the COUNTY has made no representations, assurances or guaranties regarding the COUNTY'S or any successor's or assign's authority and legal capacity to indemnify OWNER as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that the COUNTY, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless OWNER, or any person or entity claiming a right through OWNER, or in the event of change in the laws of the State of Illinois governing the COUNTY's or any successor's or assign's indemnification authority, such occurrence(s) shall not affect the validity and enforceability of the remainder of this AGREEMENT or the parties rights and obligations provided for therein.

6.2. OWNER shall be liable and responsible for and shall indemnify, hold harmless and defend the COUNTY, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, OWNER's negligent or willful acts, errors or omissions in its performance under this AGREEMENT to the extent permitted by law, provided that the foregoing shall not apply to any gross negligence or willful misconduct of the COUNTY. OWNER does not hereby waive any defenses or immunity available to it with respect to third parties.

6.3. Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Pursuant to Illinois law, 55 ILCS 5/3-9005, any attorney representing the COUNTY, under this paragraph or paragraph 6.1, who is not already an Assistant State's Attorney, is to be appointed a Special Assistant State's Attorney, as provided in 55 ILCS 5/3-9008. The COUNTY's participation in its defense shall not remove OWNER's duty to indemnify, defend, and hold the COUNTY harmless, as set forth above.

- 6.4. The COUNTY does not waive, by these indemnity requirements, any defenses or protections under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.) or otherwise available to it, or OWNER, under the law.
- 6.5. Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided.

7.0 ENTIRE AGREEMENT

- 7.1. This AGREEMENT represents the entire AGREEMENT between the parties with respect to the SIGNALS and supersedes all previous communications or understandings whether oral or written.

8.0 NOTICES

- 8.1. Any notice required hereunder shall be deemed properly given to the party to be notified at the time it is personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the party's address. The address of each party is as specified below; either party may change its address for receiving notices by giving notices thereof in compliance with the terms of this subsection.

For OWNER:

Bloomington Owner, LLC
c/o The Hutensky Group, LLC
100 Constitution Plaza, 7th Floor,
Hartford, Connecticut 06103-1073
Attn: Brad M. Hutensky
Phone: 860.527.2222
Email: bhutensky@hcpfund.com

For COUNTY:

DuPage County Division of Transportation
421 N. County Farm Road
Wheaton, IL 60187
Attn: Stephen M. Travia, P.E.
Director of Transportation
Phone: 630.407.6900
Email: stephen.travia@dupagecounty.gov

9.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

- 9.1. No modification or amendment to, or termination of, this AGREEMENT shall be effective until approved by the parties in writing.

10.0 NON-ASSIGNMENT

- 10.1. Subject to paragraph 10.2 hereinafter, this AGREEMENT shall not be assigned by either party without the written consent of the other party, whose consent shall not be unreasonably withheld.
- 10.2. In the event OWNER, or its successor or assign, sells all or substantially all of the PROPERTY, OWNER may, upon written notice to the COUNTY, but without the COUNTY's consent, assign all of its interest in and to this AGREEMENT to the purchaser of such PROPERTY.

11.0 GOVERNING LAW

- 11.1. This AGREEMENT shall be governed by the laws of the State of Illinois as to both interpretation and performance. The forum for resolving any disputes concerning the parties' respective performance, or failure to perform, under this AGREEMENT, shall be the Judicial Circuit Court for DuPage County.

12.0 SEVERABILITY

- 12.1. In the event any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.

13.0 FORCE MAJEURE

- 13.1 Neither party shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their control including but not limited to Acts of God, war, civil unrest, strikes, walkouts, fires and natural disasters.

14.0 BINDING EFFECT; RUNS WITH LAND

- 14.1. The parties hereto agree that this AGREEMENT, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns thereof and shall constitute covenants running with the PROPERTY and once executed by all parties, the COUNTY shall record this AGREEMENT. Notwithstanding anything to the contrary in this AGREEMENT, upon OWNER's, or its successor's or assign's, sale of all of its property comprising a part of the PROPERTY, OWNER or such successor or assign shall be released from all un-accrued liabilities and other obligations arising under this AGREEMENT from and after the effective day of such sale. Subject to the other provisions hereto, this AGREEMENT shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns.

15.0 ESTOPPEL CERTIFICATE

15.1. Each party, within fifteen (15) days following receipt of a written request by the other party, shall issue to the requesting party and any third party designated by the requesting party an estoppel certificate certifying (a) that the Agreement is in full force and effect and has not been modified or amended except as set forth in the estoppel, (b) whether the requesting party is in default of the Agreement, and if so, the details of the default, (c) as to any other matters reasonably requested by the requesting party.

IN WITNESS whereof, the parties set their hands and seals as of the date first written above.

COUNTY OF DuPAGE

BLOOMINGDALE OWNER, LLC.
A Delaware Limited Liability Company

Signature on file

Deborah A. Conroy, Chair
DuPage County Board

Authorized Signatory

Brad Hutensky
Print Name

Authorized Signatory
Title

ATTEST:

ATTEST:

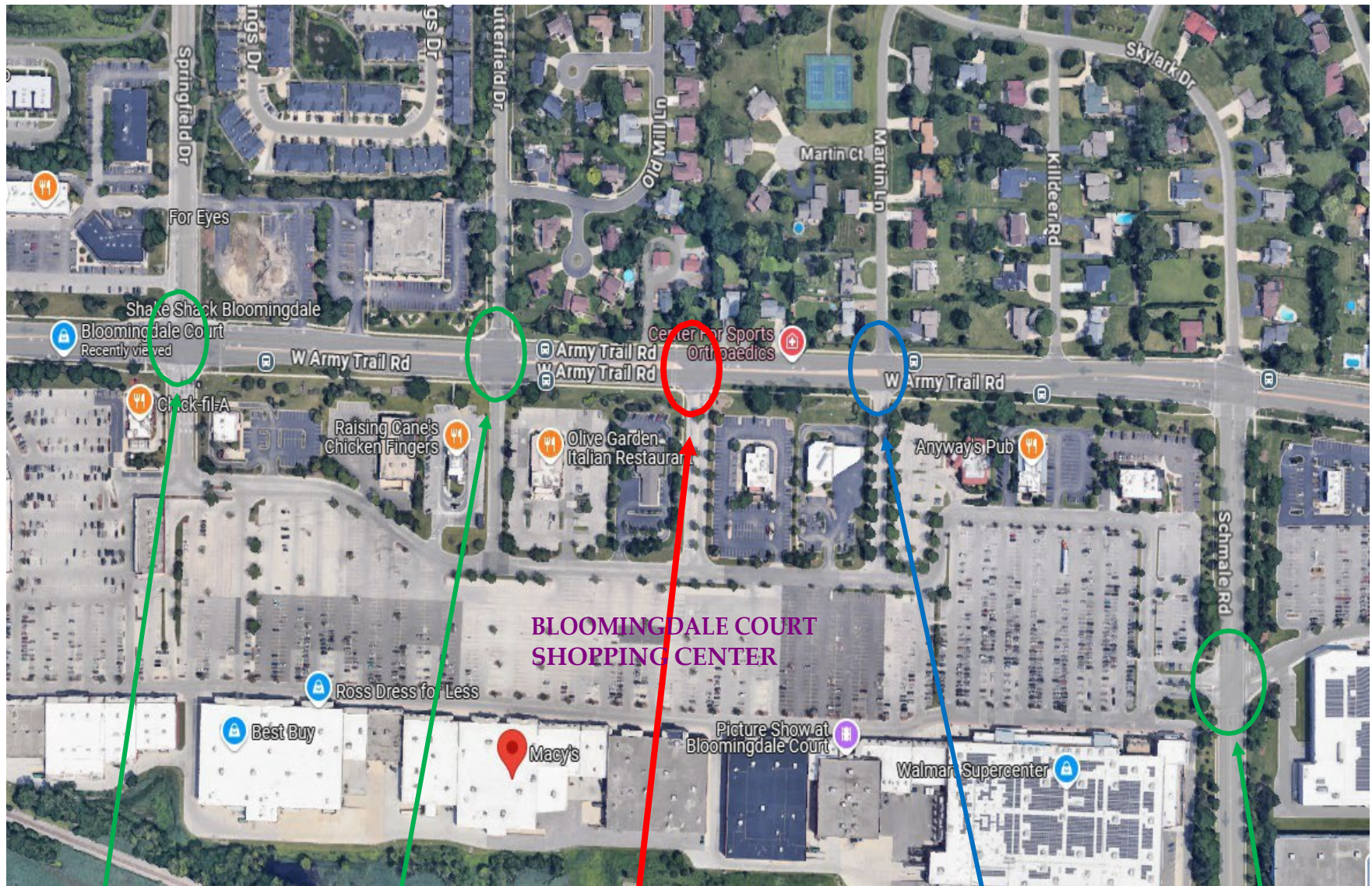
Signature on file

Jean Kaczmarek, County Clerk

Veronique V. Peres
Print Name

Asset Manager & Vice President
Title

EXHIBIT A
BLOOMINGDALE COURT SHOPPING CENTER
ENTRANCE ROADS AND TRAFFIC SIGNALS



Springfield Drive
& Army Trail Road

Butterfield Drive
& Army Trail Road

Bloomingdale Court
& Army Trail Road

Martin Lane &
Army Trail Road
(No Traffic Signals)

Target/Walmart
Entrances &
Schmale Road