

**ECONOMIC INCENTIVE AGREEMENT BY AND AMONG
THE CITY OF AURORA, ATLANTA LAND L.K.E. LLC, AND US FOODS, INC.**

THIS ECONOMIC INCENTIVE AGREEMENT BY AND BETWEEN THE CITY OF AURORA, ATLANTA LAND L.K.E. LLC, AND US FOODS, INC. ("**Agreement**") is made and entered into as of this _____ day of _____, 2023, by and among the **CITY OF AURORA**, an Illinois municipal corporation ("**City**"), **ATLANTA LAND L.K.E. LLC**, a Delaware limited liability company ("**Owner**") and **US FOODS, INC.**, a Delaware corporation ("**Developer**").

IN CONSIDERATION OF the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Owner, Developer and the City hereby agree as follows:

SECTION 1. RECITALS.

A. The City is a home rule Illinois municipality which enters into this Agreement pursuant to its home rule powers and the authority granted to it by 65 ILCS 5/8-1-2.5.

B. Pursuant to Section 6(a) of Article VII of the Constitution of the State of Illinois of 1970, the City has determined that it has the authority to enter into this Agreement.

C. The Owner is the owner of the approximately 49.79-acre parcel located at 2810 Duke Parkway, Aurora, Illinois, and legally described in **Exhibit A** attached to and, by this reference, incorporated herein ("**Land**").

D. The Owner, which is a subsidiary of the Developer, intends to enter into a ground lease for the Land (the "**Ground Lease**") to a third party as the ground lessee who in turn intends to enter into a sublease of the Land and the Improvements (as defined below), once constructed, with the Developer, as sublessee ("**Lease**" and such ground lessee in its capacity as lessor under the Lease is referred to herein as the "**Lessor**") as part of a synthetic lease transaction to provide financing for the construction of the Improvements.

E. In connection with the Lease, the Lessor, will appoint the Developer as the construction agent for Lessor to do all acts necessary and required, pursuant to the terms of a separate agreement between Lessor and Developer ("**Construction Agent Agreement**"), to cause to be constructed on the Land a distribution facility ("**Improvements**" and together with the Land, collectively the "**Property**"), which Developer intends to lease from Lessor, and operate as a distribution facility, along with accessory uses such as vehicle maintenance

F. The Developer desires to be appointed as construction agent to cause the construction of the Improvements on the Land and thereafter in its capacity as a lessee, enter into the Lease with Lessor for the Improvements and the Land.

G. The City anticipates that the Project (as defined below) will be a significant contributor to the economic stability of the City through contributions of substantial Property Tax and Sales Tax revenues and employment opportunities.

H. The cost of the Improvements shall be substantial. The Improvements constructed by the Developer, as construction agent, on the Land and Developer's operation of the Project as the lessee under the Lease, are expected to increase the value of the Property and permit sales to be conducted from the Property, thereby increasing Property Tax and Sales Tax revenues for

the City which assist, and will continue to assist, the City in providing essential municipal services to members of the public.

I. The City, the Owner, and the Developer desire to enter into this Agreement to foster the long-term use and development of the Property and to enable the use of the Property in a manner that will enhance the business environment of the City.

J. On _____, 2023, the Corporate Authorities adopted Resolution No. _____, in which they authorized the execution of this Agreement.

SECTION 2. DEFINITIONS. Whenever used in this Agreement, the following terms have the following meanings unless a different meaning is required by the context:

A. “**Commencement Date**” means the date established pursuant to Section 3.C of this Agreement.

B. “**Corporate Authorities**” means the Mayor and City Council of the City of Aurora, Illinois.

C. “**Effective Date**” means the date first written in the first paragraph of the first page of this Agreement.

D. “**Force Majeure**” means a strike, lockout, act of God, global, national or local pandemic or other factor beyond a Party’s reasonable control and reasonable ability to remedy; provided, however, that Force Majeure does not include: (i) delays caused by weather conditions, unless those conditions are unusually severe or abnormal considering the time of year and the particular location of the Property; and (ii) economic hardship, impracticability of performance, or commercial, economic, or market conditions.

E. “**IDOR**” means the State of Illinois Department of Revenue.

F. “**Municipal Property Taxes**” means that portion or component of the Property Taxes paid for the Property attributable solely to the City’s property tax levy, and none other, that the City actually receives from DuPage County, excluding any portion of the City’s property tax levy for pension funding.

G. “**Municipal Sales Taxes**” means that portion or component of the Sales Taxes generated by the Developer from sales on the Property that the City actually receives from the State of Illinois.

H. “**New Sales Taxes**” means the amount equal to the amount of Municipal Sales Taxes generated in a Tax Year.

I. “**Party**” means the City and the Developer, individually, and “**Parties**” means the City and the Developer, collectively.

J. “**Project**” means the use of the Property by Developer for Developer’s business that is engaged in the sale of food and related merchandise, and includes the construction of the Improvements on the Land in general conformity with the site plan and description attached as **Exhibit B** attached to and, by this reference, incorporated herein.

K. **“Property Tax Rebate”** means the rebate payment to the Developer of a portion of the Municipal Property Taxes that the City is required to make pursuant to this Agreement.

L. **“Property Taxes”** means only those taxes imposed and collected pursuant to the Property Tax Code, 35 ILCS 200/1-1, *et seq.*, as amended, but excludes special assessment taxes and special service area taxes.

M. **“Rebates”** means the Property Tax Rebate and the Sales Tax Rebate, collectively.

N. **“Requirements of Law”** means all applicable laws, statutes, codes, ordinances, resolutions, rules, regulations, and policies of the City and any federal, state, local government, or governmental agency with jurisdiction over the Property.

O. **“Sales Taxes”** means only those taxes imposed and collected by the State of Illinois pursuant to the Retailer’s Occupation Tax Act, 35 ILCS 120/1 *et seq.*, as amended, the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*, as amended, the Home Rule Municipal Retailers’ Occupation Tax Act, 65 ILCS 5/8-11-1, as amended, and the Home Rule Municipal Service Occupation Tax Act, 65 ILCS 5/8-11-5, as amended.

P. **“Sales Tax Rebate”** means the rebate payment to the Developer of a portion of the Municipal Sales Taxes that the City is required to make pursuant to this Agreement.

Q. **“Tax Year”** means the period of time commencing on the Commencement Date and ending on the immediately following December 31; and each of the subsequent 12-month periods thereafter, for ten full 12-month periods.

SECTION 3. DEVELOPMENT.

A. **Development, Use, Operation, and Maintenance.** The Property and the Project must be developed, used, operated, and maintained in compliance with all Requirements of Law and, during the term of this Agreement, this Agreement. Development, use, operation, and maintenance of the Property or the Project in a manner deviating from these requirements is a violation of this Agreement and the Developer’s obligations hereunder, as the case may be, and a breach pursuant to Section 11 of this Agreement, subject to any applicable notice or cure period.

B. Development Timeline.

1. The Construction Agent Agreement, Lease, and Ground Lease will be in effect within 120 days of the Effective Date of this Agreement.

2. Developer will apply for all necessary permits for the construction of the Improvements within 90 days of the Effective Date of this Agreement.

3. Developer will begin construction of the Improvements within 90 days of the issuance of all necessary permits for the Project.

C. **Commencement Date.** The **“Commencement Date”** under this Agreement is the second January 1 after the date on which the City issues a final certificate of occupancy for the operation of the Project. In the event that a final certificate of occupancy is not issued on or before December 31, 2025, or such later date as approved by the City Mayor or his designee, then either

Party will have the right to terminate this Agreement upon the provision of written notice to the other Party.

SECTION 4. INCENTIVES.

A. **Completion of Improvements and Verification of Project Costs.** Notwithstanding any provision of this Agreement to the contrary, the City will not have any obligation to pay any Rebates to the Developer prior to completion of construction of the Improvements by the Developer, as evidenced by the issuance of a certificate of occupancy for the use of the new Improvements by the City, and submission by the Developer to the City of verification of payment of all construction costs related to the initial construction of the Improvements, all to the satisfaction of the City Chief Financial Officer, or their designees.

B. **Building Permit Plan Review Expediting Fee Waiver.** The City will suspend its building permit plan review expediting fee for the Project ("***Expediting Fee***"). The Expediting Fee is estimated to be \$216,000. If the Developer achieves the Commencement Date as set forth in, and within the time required in this Agreement, the City will waive the Expediting Fee. If the City provided the Project with an expedited building permit plan review, and if the Developer fails to achieve the Commencement Date as set forth in, and within the time required in, this Agreement, the Developer will promptly pay, via check to the City, the Expediting Fee.

C. **Calculation of Property Tax Rebate.** Beginning on the Commencement Date, the City will pay to the Developer fifty percent (50%) of the Municipal Property Taxes (which by definition in Section 2.F excludes any portion of the City's property tax levy for pension funding) generated by the Property during each Tax Year.

D. **Calculation of Sales Tax Rebate.** Beginning on the Commencement Date, the City will pay to the Developer fifty percent (50%) of the New Sales Taxes generated by the Developer on the Property during each Tax Year.

E. Rebates Payments.

1. **Property Tax Rebate.** Within 270 days after the end of each Tax Year, and after the City receives written proof of payment of the Property Taxes from the Developer for that Tax Year, the City will pay the applicable Property Tax Rebate for that particular Tax Year to the Developer, based on the records of DuPage County. If, for any reason, DuPage County fails to distribute the Municipal Property Taxes revenue to the City in sufficient time for the City to make the annual payments, the City will make the required Property Tax Rebate payment within 60 days after the date on which the City actually receives the Municipal Property Taxes revenue due the City for the applicable annual payment period. If the City identifies the need to adjust and reconcile the amount of any Property Tax Rebate payment to account for any provision of this Agreement or to account for the amount of Municipal Property Taxes actually paid to the City, the City and the Developer agree to reasonably cooperate with each other to accomplish the reconciliation.

2. **Sales Tax Rebate.** Within 150 days after the end of each Tax Year, and after the City receives the summary of Sales Taxes paid from the Property for the applicable year from IDOR, the City will pay the applicable Sales Tax Rebate for that particular Tax Year to the Developer, based on the records of IDOR. If, for any reason, the State of Illinois fails to distribute the Municipal Sales Taxes revenue to the City in sufficient time for the City to make the annual payments, the City will make the required Sales Tax Rebate payment within 60 days after the date on which the City actually receives the Municipal Sales Taxes revenue due the City for the

applicable annual payment period. If the City identifies the need to adjust and reconcile the amount of any Sales Tax Rebate payment to account for any provision of this Agreement or to account for the amount of Sales Tax actually paid by the State of Illinois to the City, the City and the Developer agree to reasonably cooperate with each other to accomplish the reconciliation. Any information received by the City from the Developer under this Agreement regarding Municipal Sales Taxes will be kept confidential to the extent allowed by the Requirements of Law.

F. **Change in the Law.** The City and the Developer acknowledge and agree that the City's obligation to pay the Rebates to the Developer is predicated on existing State law governing the distribution of Property Taxes and Sales Taxes to the City. The City and the Developer further acknowledge that the General Assembly of the State has, from time to time, considered proposals to modify or eliminate the distribution of Property Taxes and Sales Taxes to Illinois municipalities. In the event that Property Taxes or Sales Taxes are no longer distributed to the City, or if the distribution is altered in a manner that prevents the City and the Developer from determining with a reasonable degree of certainty the amount of the Municipal Property Taxes or the Municipal Sales Taxes ("**Change in Law**"), the provisions of this Agreement with regard to Municipal Property Taxes or Municipal Sales Taxes generated from the Property on or after the effective date of the Change in Law will automatically terminate and become null and void and be of no further force or effect, and the City will have no obligation whatsoever to pay to the Developer any of the Municipal Property Taxes or the Municipal Sales Taxes, as the case may be, generated on or after the effective date of the Change in Law. However, if, at any time during the term of this Agreement, there is another Change in Law that either results in the distribution of Property Taxes or Sales Taxes to the City, or allows the City and the Developer to determine with a reasonable degree of certainty the amount of the Municipal Property Taxes or Municipal Sales Taxes, the provisions of this Agreement with regard to Municipal Property Taxes or Municipal Sales Taxes generated from the Property will automatically be reinstated and will continue through the remainder of the term of this Agreement.

G. **No Guarantee.** The Parties acknowledge and agree that none of the terms, conditions, or provisions of this Agreement are to be construed, deemed, or interpreted as a guarantee that the City will receive any Property Taxes or Sales Taxes as a result of the operation of the Project on the Property.

H. **Limited Liability.** Notwithstanding any other provision of this Agreement to the contrary, the City's obligation to pay the Rebates payments is not and will not be a general debt or obligation of the City or a charge against its general credit or taxing powers, but is and will be a special limited obligation payable solely from Municipal Property Taxes and Municipal Sales Taxes received by the City, in accordance with this Agreement. The Developer has and will have no right to, and agrees that it may not, compel any exercise of the taxing power of the City to pay the Rebates, and no execution of any claim, demand, cause of action or judgment may be levied upon or collected from the general credit, general funds or other property of the City. No recourse may be had for any payment pursuant to this Agreement against any past, present, or future elected or appointed officer, official, agent, representative, employee, or attorney of the City in their individual capacity.

I. **Closure; Refund of Rebates.**

1. In the event that, at any time before ten Tax Years have passed, the Project is abandoned, closed, or terminated ("**Closure**"), then: (a) the provisions of this Agreement with regard to Municipal Property Taxes and Municipal Sales Taxes generated from the Property will, as of the date of the Closure, automatically terminate and become null and void and be of no

further force or effect, and the City will have no obligation whatsoever to perform any of the Rebates obligations in Section 4 of this Agreement; and (b) within 90 days after the date of Closure, the Developer must refund to the City a portion of the Rebates received by the Developer prior to the date of the Closure, as follows:

<u>Date of Closure</u>	<u>% of Rebates Payments to be Refunded</u>
During the first Tax Year	0% (no Rebates will have been paid)
During the second Tax Year	90%
During the third Tax Year	80%
During the fourth Tax Year	70%
During the fifth Tax Year	60%
During the sixth Tax Year	50%
During the seventh Tax Year	40%
During the eighth Tax Year	30%
During the ninth Tax Year	20%
During the tenth Tax Year	10%

2. The Developer must provide the City with no less than 180 days written notice prior to any abandonment, closure, or termination of the use of the Property for the Project.

J. **Limitations on Payment of Rebates.** The Developer acknowledges and agrees that the Property must be used and maintained in strict compliance with Requirements of Law and the Developer's obligations in this Agreement. If the Developer fails to comply in all respects with the Requirements of Law, its obligations in this Agreement, or cure any defects as allowed in this Agreement, the City will have the right to suspend payment of the Rebates for the period that the Developer is not in material compliance with the Requirements of Law or its obligations in this Agreement, and the City will have no further obligation to pay any Rebates to the Developer until the City determines in its reasonable discretion that the Developer is in material compliance with the Requirements of Law or its obligations in this Agreement.

K. **Commitment to Fair Employment Practices; Prevailing Wage.** Developer will comply with all federal, State, and local laws relating to equal employment opportunities with respect to construction and operation of the Project. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin. Developer will pay the prevailing rate of wages as established under 820 ILCS 130/0.01 *et seq.*, as amended ("***Prevailing Wage Act***") to all workers involved with the Project, and will comply with the Prevailing Wage Act, regardless of whether such prevailing wages are required to be paid under Illinois law, or whether the Prevailing Wage Act is required to be followed relative to the Project.

L. **Filing and Reporting.** Within 30 days of the Effective Date, a report regarding this Agreement, and a copy of this Agreement, will be filed electronically with IDOR pursuant to 65 ILCS 5/8-11-21(c). The Developer will reasonably cooperate with the City in preparing and filing

the report, and the Developer will provide information and materials needed by the City to prepare and file the report.

SECTION 5. PROPERTY VALUATION.

The Developer recognizes that the City has legitimate interests and concerns regarding the valuation and assessment of the Property for property tax purposes. Accordingly, Owner, all successor owners of any portion of the Property, and all persons and entities related thereto or affiliated therewith, must: (a) not otherwise initiate any protest or appeal that seeks a property valuation for the Property that is below the minimum assessed valuation of \$17,400,000; and (b) notify the City prior to the commencement or initiation of any protest or appeal by the Developer or any such person or entity of the real property valuation established by the DuPage County Assessor for the Property. The Developer must timely notify the City if refunds or credits for any portion of the remitted Property Taxes are made as a result of the protest or appeal. In the event of such a refund or credit, the City will be entitled to deduct an amount equal to the refunded or credited amount from subsequent payments of Property Tax Rebates made pursuant to this Agreement.

SECTION 6. FORCE MAJEURE.

Except as expressly provided to the contrary in this Agreement, whenever a period of time is provided for in this Agreement for either the Developer or the City to perform any act or obligation, and the Developer or the City, as the case may be, is unable to perform or complete the act or obligation because of a Force Majeure, then upon the occurrence of the Force Majeure, the time period for the performance and completion of the acts or obligations will be extended automatically for a reasonable time to accommodate the delay caused by the Force Majeure.

SECTION 7. LITIGATION AND DEFENSE OF AGREEMENT; INDEMNITY.

A. **Litigation.** If, during the term of this Agreement, any lawsuits or proceedings are filed or initiated against either Party before any court, commission, board, bureau, agency, unit of government or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of either Party to perform its obligations under, or otherwise to comply with, this Agreement ("***Litigation***"), the Party against which the Litigation is filed or initiated must promptly deliver a copy of the complaint or charge related thereto to the other Party, and must thereafter keep the other Party fully informed concerning all aspects of the Litigation.

B. **Defense.** The City and the Developer must use their respective best efforts to defend the validity of this Agreement, and all ordinances and resolutions adopted and agreements executed by such Party pursuant to this Agreement, including every portion thereof and every approval given, and every action taken, pursuant thereto. Each Party will have the right to retain its own independent legal counsel, at its own expense, for any matter. The City and the Developer agree to reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

C. **No Liability for City Review.** The Developer acknowledges and agrees that: (1) the City is not, and will not be, in any way liable for any violations of restrictive covenants applicable to the Property that may occur, or for any damages or injuries that may be sustained, as the result of the City's review and approval of any plans for the Property, or as a result of the issuance of any approvals, permits, certificates, or acceptances relating to the use and development of the Property; and (2) the City's review and approval of any of the plans and the

issuance of any of the approvals, permits, certificates, or acceptances does not, and will not, in any way, be deemed to insure the Developer, or any of its heirs, successors, assigns, tenants, or licensees, or any third party, against restrictive covenant violations or damage or injury of any kind at any time.

D. **City Procedures.** The Developer acknowledges that notices, meetings, and hearings have been properly given and held by the City with respect to the approval of this Agreement, and agrees not to challenge any of those actions on the grounds of any procedural infirmity or of any denial of any procedural right.

E. **Indemnity.** The Developer agrees to, and does hereby, hold harmless, defend with counsel of the City's choosing, and indemnify the City, the Corporate Authorities, all City elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all third-party claims that may, at any time, be asserted against any of those Parties in connection with (i) the City's review and approval of any plans, or the issuance of any approvals, permits, certificates, or acceptances relating to the use and development of the Property; (ii) any actions taken by the City pursuant to this Agreement; (iii) the development, construction, and maintenance of the Property; and (iv) the performance by the Developer of its obligations under this Agreement and all related ordinances, resolutions, or other agreements.

F. **Defense Expenses.** The Developer hereby agrees to pay, without protest, all expenses incurred by the City in defending itself with regard to any and all of the claims identified in Section 7.E of this Agreement. These expenses may include, without limitation: (1) all out-of-pocket expenses, including attorneys' and experts' fees, not to exceed their usual and customary fee rates to the City; and (2) the reasonable value of any services rendered by any employees of the City, not to exceed their actual salaries.

SECTION 8. TERM.

This Agreement will be in full force and effect for a period commencing on the Commencement Date and through the first to occur of: (a) December 31, 203_; and (b) the eleventh December 31 after the Commencement Date ("**Term**"); provided, however, that because payments of the Rebates are in arrears, the City's obligation to make Rebates payments earned by, and owed to, the Developer will survive the expiration of the Term to the extent that the City has not at that time received the Municipal Property Taxes or the Municipal Sales Taxes from which the Property Tax Rebate or the Sales Tax Rebate payments will be made. During the Term, this Agreement inures to the benefit of and is enforceable by the Developer and the City, and any of their respective permitted legal representatives, heirs, grantees, successors, and assigns.

SECTION 9. RELEASE OF INFORMATION.

A. **Property Tax Reports and Data.** The Developer agrees to provide documentation and information to the City to verify the amount of Property Taxes generated from the Property, including copies of paid tax bills, during each of the Tax Years.

B. **Sales Tax Reports and Data.** The Developer agrees to execute and provide all documentation reasonably necessary to cause IDOR to release to the City the amount of Sales Taxes generated from the Property, including copies of State of Illinois Sales Tax Reports, during each of the Tax Years pursuant to applicable State law. The Developer will submit to the City an executed IDOR form PTAX 1002-21 for the Project with a reporting period from the Effective Date

through December 31, 203_. The Developer will provide the City with certified documentation and information establishing the amount of the Sales Taxes upon request from the City.

C. **Sales Tax Audits and Refunds.** The Developer must timely notify the City if it initiates any protest or audit of the Sales Taxes remitted from the Property to the State of Illinois, and if the State of Illinois refunds or credits to the Developer any portion of the remitted Sales Taxes as a result of the protest or audit. In the event of such a refund or credit, the City will be entitled to deduct an amount equal to the refunded or credited amount from subsequent payments of Sales Tax Rebates made pursuant to this Agreement.

D. **Compliance.** Failure by the Developer to provide the information or materials, or execute and provide the documentation, required by this Section 9 will relieve the City from performance of any duty or obligation under this Agreement until such time as the Developer has cured such failure.

SECTION 10. PAYMENT OF CITY FEES AND COSTS.

In addition to any other costs, payments, fees, charges, contributions, or dedications specifically required by this Agreement, the Developer must pay to the City, as and when due, all application, inspection, and permit fees, all other fees, charges, and contributions required by applicable City codes, ordinances, resolutions, rules, or regulations.

SECTION 11. ENFORCEMENT.

A. **Enforcement.** The Parties to this Agreement may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement; provided, however, that the Developer agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the City, or any past, present, or future director, elected or appointed officer, official, agent, representative, employee, or attorney, of the City on account of the negotiation, execution, performance, or breach of this Agreement. In addition to every other remedy permitted by law for the enforcement of the terms of this Agreement, the City will be entitled to withhold the issuance of building permits or certificates of occupancy for any and all buildings and structures within the Property at any time when the Developer has failed or refused to meet fully any of its obligations under this Agreement. In the event of a judicial proceeding brought by one Party to this Agreement against the other Party to this Agreement pursuant to this Section, the prevailing Party will be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including without limitation reasonable attorneys' fees, incurred in connection with the judicial proceeding.

B. **Notice and Cure.** Neither Party may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to Section 11.A of this Agreement without first providing written notice to the other Party of the breach or alleged breach and allowing 15 days to cure the breach or alleged breach. If the breach cannot be cured within the 15-day period ("**Time for Cure**"), then the Time for Cure will be extended accordingly, provided that the notified Party has promptly commenced to cure the breach within the Time for Cure and continued to prosecute the cure of the breach with diligence, but in no event will the Time for Cure exceed 45 days from the date of the written notice.

SECTION 12. NATURE, SURVIVAL, AND TRANSFER OF OBLIGATIONS.

A. **Obligations.** The Parties agree that all charges payable pursuant to this Agreement, together with interest and costs of collection, including reasonable attorneys' fees, constitute both the personal obligation of the Party liable for its payment, and the successors of that Party.

B. **Binding Effect.** The Parties hereto each acknowledge and agree that this Agreement is binding upon itself, and any and all of their respective heirs, successors, permitted assigns, and successor owners of all or any portion of the Project. The obligations of the Owner in Section 5 are binding upon the Owner, and any and all of its heirs, successors, permitted assigns, and successor owners of all or any portion of the Property, and run with title to the Property.

C. **Transferee Assumption; Collateral Assignment.** To assure that any of the Developer's potential heir, successor, or permitted assign has notice of this Agreement and the benefits and obligations created by it, the Developer agrees to require, prior to the transfer of a legal or beneficial interest in all or any portion of the Project, the transferee to execute an enforceable transferee assumption agreement in a form acceptable to the City Corporation Counsel ("**Transferee Assumption Agreement**"). The City agrees that, upon a successor becoming bound to the personal obligation created in this Agreement in the manner provided, the liability of the Developer or other predecessor obligor will be released to the extent of the transferee's assumption of liability. The Developer agrees to notify the City in writing at least 30 days prior to the date on which the Developer proposes to transfer a legal or beneficial interest in all or any portion of the Project to a transferee. The Developer must, at the same time, provide the City with a fully executed copy of the Transferee Assumption Agreement. Notwithstanding any provision to the contrary set forth herein, provided that the Lease states that the benefits and obligations of Developer under this Agreement shall remain the benefits and obligations of Developer following the execution of the Lease, so long as the Lease is in effect, the City does hereby approve the Lease and the Ground Lease as permitted transfers. The Developer will provide the City with confidential copies of the relevant portions, upon execution, of the Construction Agent Agreement, the Ground Lease, and the Lease. Notwithstanding any provision to the contrary set forth herein, the Developer shall be permitted to collaterally assign this Agreement to the Lessor and to any other person or entity providing financing for the construction of the Improvements, without the requirement of first obtaining the consent of the City, provided however that the City may enter into a written consent to such collateral assignment if requested by Developer, provided that no such collateral assignment may create any additional obligation, cost, or duty on the City beyond those in this Agreement.

D. **Transfer Defined.** For purposes of this Agreement, the term "transfer" includes any assignment, transfer, sale, transfer to a receiver or to a trustee in bankruptcy, transfer in trust, or other disposition of the Project, in whole or in part, by voluntary or involuntary assignments sale, foreclosure, restructuring, merger, sale and leaseback, consolidation, or otherwise.

E. **Prohibited Assignments.** It is the express intent of the Parties that, except as expressly provided or allowed herein, this Agreement, and all of the rights and privileges granted herein, are for the sole and exclusive benefit of the Developer for development and operation of the Project on the Property. Accordingly, notwithstanding any provision of this Agreement, in the event that the Developer does, or attempts to, voluntarily or involuntarily transfer its interest in the Project, in whole or in part, without the prior consent of the Corporate Authorities, which consent may be granted or denied in the sole and absolute discretion of the Corporate Authorities, this

Agreement, and all of the rights and privileges granted herein, will, at the option of the City, become null and void and be of no force or effect. Notwithstanding the foregoing provision, nothing herein shall be construed as to prohibit the Lease or the Ground Lease.

F. **Survival**. The Developer's obligations in Sections 7 and 10 of this Agreement will survive and continue even if this Agreement is on longer in effect.

SECTION 13. REPRESENTATIONS AND WARRANTIES.

In order to induce the City to enter into this Agreement, to adopt the resolution, and to grant the rights herein provided for, the Developer hereby warrants and represents to the City as follows:

A. The Developer is duly organized, validly existing in the State of Delaware, in good standing under the laws of, and authorized to conduct business in, the State of Illinois.

B. The Developer has the corporate authority and the legal right to make, deliver, execute, and perform this Agreement and has taken all necessary actions to authorize the execution, delivery, and performance of this Agreement.

C. All necessary consents of any board of directors, shareholders, creditors, investors, partners, judicial, or administrative bodies, governmental authorities, or other parties including specifically, but without limitation, all parties with ownership or security interests in the Property regarding the execution and delivery of this Agreement have been obtained.

D. The consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the City) is not required in connection with the execution, delivery, performance, validity, or enforceability of this Agreement, except with respect to such consents and authorizations that Developer has obtained as of the date hereof.

E. The individuals executing this Agreement on behalf of the Developer have the power and authority to execute and deliver this Agreement on behalf of the Developer.

F. The execution, delivery, and performance of this Agreement: (i) is not prohibited by any Requirement of Law or under any contractual obligation of the Developer; (ii) will not result in a breach or default under any agreement to which the Developer is a Party or to which the Developer, in whole or in part, is bound; and (iii) will not violate any restriction, court order, or agreement to which the Owner, the Developer, or the Property, in whole or in part, is or are subject.

SECTION 14. GENERAL PROVISIONS.

A. **Entire Agreement**. This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.

B. **Amendments and Modifications**. No amendment or modification to this Agreement will be effective until it is reduced to writing and approved and executed by all Parties to this Agreement in accordance with all applicable statutory procedures.

C. **Notices.** Any notice, communication, or demand required or permitted to be given under this Agreement must be in writing and must be delivered: (i) personally, (ii) by a reputable overnight courier, or (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise provided in this Agreement, notices will be deemed received after the first to occur of: (a) the date of actual receipt; or (b) the date that is one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) the date that is three business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each Party to this Agreement has the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address will be effective until actually received.

Notices and communications to the City must be addressed to, and delivered at, the following address:

City of Aurora
44 East Downer Place
Aurora, Illinois 60507
Attention: City Clerk

With copies to: City of Aurora
44 East Downer Place
Aurora, Illinois 60507
Attention: Corporation Counsel

And: Elrod Friedman LLP
325 North LaSalle Street, Suite 450
Chicago, Illinois 60654
Attention: Gregory T. Smith

Notices and communications to the Developer must be addressed to, and delivered at, the following address:

Atlanta Land L.K.E. LLC
9399 W. Higgins Road, Suite 100
Rosemont, Illinois 60018
Attention: Real Estate Department

Notices and communications to the Owner must be addressed to, and delivered at, the following address:

US Foods, Inc.
9399 W. Higgins Road, Suite 100
Rosemont, Illinois 60018
Attention: Legal Department

D. **Governing Law; Venue.** This Agreement is to be governed by, and enforced in accordance with, the laws, but not the conflict of laws rules, of the State of Illinois. Exclusive jurisdiction with regard to the any actions or proceedings arising from, relating to, or in connection with this Agreement will be in the 16th Judicial Circuit Court in Kane County, Illinois. The Parties waive their respective right to transfer or change the venue of any litigation filed in the 16th Judicial Circuit Court in Kane County, Illinois.

E. **Interpretation**. This Agreement is to be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement is to be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting Party is not applicable to this Agreement.

F. **Change in Laws**. Except as otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations of any kind includes the laws, ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

G. **Headings**. The headings, titles, and captions in this Agreement are only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

H. **Time of Essence**. Time is of the essence in the performance of this Agreement.

I. **No Third Party Beneficiaries**. Except as expressly provided in this Agreement, no claim as a third party beneficiary under this Agreement by any person, firm, or corporation may be made or will be valid against the City or the Developer.

J. **Severability**. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions will remain in full force and effect and will in no way be affected, impaired, or invalidated.

K. **Recording**. This Agreement will be recorded on title to the Land at the Developer's cost, and the Owner's obligations shall run with title to the Land and bind future owners of any portion of the Land, provided however, that the City and the Developer acknowledge and agree both that the Land does not constitute collateral for any obligations in this Agreement, and that the respective obligations of the City and the Developer are the personal responsibilities of each, as applicable, and not the Owner.

L. **Calendar Days and Time**. Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" means calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

M. **Exhibits**. **Exhibits A and B** are attached to this Agreement, and by this reference incorporated in and made a part of, this Agreement. In the event of a conflict between an Exhibit and the text of this Agreement, the text of this Agreement will control.

N. **Counterparts**. This Agreement may be executed in several counterparts, each of which, when executed, is to be deemed to be an original, but all of which together constitute one and the same instrument.

O. **Waiver**. Neither the City nor the Developer are or will be under any obligation to exercise any of the rights granted to them in this Agreement except as it determines to be in its best interest from time to time. The failure of the City or the Developer to exercise at any time any of those rights is not to be deemed or construed as a waiver of that right, nor will the failure void or affect the City's or the Developer's right, as the case may be, to enforce those rights or any other rights.

P. **Rights Cumulative.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement are cumulative and are not exclusive of any other rights, remedies, and benefits allowed by law.

Q. **Consents.** Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any Party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any Party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent must be in writing.

R. **Grammatical Usage and Construction.** In construing this Agreement, pronouns include all genders and the plural includes the singular and vice versa.

S. **City Authority to Execute.** The City hereby warrants and represents to the Developer that the persons executing this Agreement on its behalf have been properly authorized to do so by the Corporate Authorities.

T. **Developer as Construction Agent.** The Owner and the City acknowledge that Developer has been appointed as agent for the Lessor in respect of the design, development and construction of the Project.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties and Owner have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

CITY:

ATTEST:

CITY OF AURORA

City Clerk

Mayor

DEVELOPER:

US FOODS, INC., a Delaware corporation

By: Dirk J. Locascio

Name: Dirk J. Locascio

Title: Chief Financial Officer

OWNER:

ATLANTA LAND L.K.E. LLC,
a Delaware limited liability company, solely as
Owner under Section 5 of this Agreement

By: Dirk J. Locascio

Name: Dirk J. Locascio

Title: Chief Financial Officer

STATE OF ILLINOIS)
)
COUNTY OF KANE) SS

This instrument was acknowledged before me on _____, 2023 by Richard Irvin, the Mayor of the **CITY OF AURORA**, an Illinois municipal corporation, and by Jennifer Stallings, the City Clerk of said municipal corporation.

Given under my hand and notarial seal this _____ day of _____, 2023.

Notary Public

My Commission Expires:

(SEAL)

STATE OF ILLINOIS)
)
COUNTY OF Cook)

SS

I, Brendan K. Marren a Notary Public in and for said County, in the State aforesaid, do hereby certify that Dirk J. Locascio, personally known to me to be the Chief Financial Officer of ATLANTA LAND L.K.E. LLC, a Delaware limited liability company, appeared before me this day in person and acknowledged that as such officer he signed and delivered said instrument as his free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 22 day of March, 2023.

Brendan K. Marren
Notary Public

My Commission Expires: 10/19/2025

(SEAL)

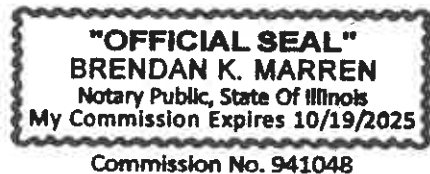


EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

LOT 2A IN BUTTERFIELD EAST UNIT 1 RESUBDIVISION OF LOT 2, BEING A PART OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN AND PART OF SECTIONS 4 AND 5, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 23, 2010 AS DOCUMENT R2010-080281.

LESS AND EXCEPT A PARCEL DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHERN MOST SOUTHEAST CORNER OF LOT 2A OF SAID BUTTERFIELD EAST UNIT ONE RESUBDIVISION OF LOT 2; THENCE NORTH 00 DEGREES 28 MINUTES 47 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 2A, A DISTANCE OF 614.80 FEET; THENCE CONTINUING NORTH 00 DEGREES 28 MINUTES 47 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 2A, A DISTANCE OF 86.67 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG SAID LOT 2A, BEING A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 233.00 FEET, AN ARC DISTANCE OF 147.86 FEET; WITH A CHORD BEARING OF NORTH 17 DEGREES 42 MINUTES 00 SECONDS EAST TO THE POINT OF BEGINNING; THENCE NORTH 13 DEGREES 03 MINUTES 13 SECONDS EAST A DISTANCE OF 43.13 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG A CURVE TO CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 242.00 FEET, AN ARC DISTANCE OF 55.02 FEET WITH A CHORD BEARING OF NORTH 06 DEGREES 32 MINUTES 24 SECONDS EAST TO A POINT ON THE EAST LINE OF SAID LOT 2A; THENCE SOUTH 17 DEGREES 42 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 2A, A DISTANCE OF 76.23 FEET TO A CORNER OF SAID LOT 2A AND A POINT OF CURVATURE; THENCE SOUTHWESTERLY ALONG SAID LOT 2A BEING A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 233.00 FEET AN ARC DISTANCE OF 26.22 FEET WITH A CHORD BEARING OF SOUTH 39 DEGREES 06 MINUTES 12 SECONDS WEST TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

P.I.N.: 04-33-301-011 (Winfield Township) and 07-04-101-019 (Naperville Township)

Commonly known as 2810 Duke Parkway, Aurora, Illinois

EXHIBIT B

PROJECT SITE PLAN AND DESCRIPTION

Description of Improvements

On the approximately 49.79 acre parcel of Land will be constructed an approximately a 313,007 square foot distribution center facility housed in one main warehouse building and two minor support outbuildings. The main floor of the warehouse, totaling approximately 280,735 square feet, will include space for freezer storage, cold storage, ambient storage, warehouse support, docks, and first floor offices, and the mezzanine level will consist of additional office space totaling approximately 19,622 square feet. The outbuildings are comprised of a truck maintenance facility and fire protection pumphouse totaling approximately 12,650 square feet. The site contains ancillary parking and circulation for passenger vehicles and tractor trailer operations. The foregoing description is subject to any such modifications as set forth in the final plans that will be approved by the City of Aurora in connection with the issuance of the building permit.

