

## **EXHIBIT "A"**

### **ANNEXATION AGREEMENT FOR APPROXIMATELY 4.958 ACRES LOCATED ALONG SUNRISE ROAD AND WEST OF MERIDIAN ROAD**

This ANNEXATION AGREEMENT, hereinafter referred to as "AGREEMENT", is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the CITY OF AURORA, ILLINOIS, a municipal corporation, "CITY"; and OLD DOMINION FREIGHT LINES, INC., "OWNER" and "DEVELOPER". The City, Owner, and Developer are referred to as "Party" or "Parties".

#### **WITNESSETH:**

1. The Owner is record title holder of the Subject Property consisting of approximately 4.958 acres, legally described in Attachment "A" attached hereto (the "Subject Property").
2. The Owner has attached hereto as Attachment "B" a disclosure of the beneficial owners of any land trust holding title to all or a portion of the Subject Property, if any or a statement indicating that there are none.
3. The Parties to this Agreement desire that the Subject Property be annexed to the City of Aurora with the benefits of the Subject Property being as follows:
  - a. Full development potential of the Subject Property;
  - b. Establishment of high quality development standards that will elevate, support and stabilize property values for the proposed land uses;
  - c. Provision of a water supply system that has been engineered to supply water services to the Subject Property;
  - d. Provision of a sanitary sewer system that has been engineered to supply services to the Subject Property through the Fox Metro Water Reclamation District's facilities, or the City's facilities;
  - e. Provision of police protection by the City's fully trained, staffed and equipped Police Department;
  - f. Provision of fire protection by the City's fully trained, staffed and equipped Fire Department; and,
  - g. Favorable insurance rates due to the City's Fire Department having a Class 2 rating.
4. The Subject Property is contiguous to the city limits of the City of Aurora, Illinois, and is not within the corporate limits of any other municipality.
5. This Agreement is made pursuant to 65 ILCS 5/11-15.1-1 and 65 ILCS 5/7-1-1 of the Illinois Compiled Statutes.

All notices, publications, public hearings, and all other matters attendant to said Agreement as required by State statute and the ordinances, regulations, and procedures of the City have been met prior to the execution by the Parties to this Agreement.

NOW, THEREFORE, it is agreed by and between the Parties hereto as follows:

**SECTION A                    Duration, Applicability and Owner/Developer Responsibility**

1. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, successor owners of record and/or Developers of the Subject Property, or any part thereof, which is the subject of this Agreement, and their heirs, executors, administrators, successors, assignees, lessees, devisees and upon any successor municipalities for a period of fifteen (15) years from the date of execution hereof, unless changed in accordance with the law.
2. It is understood and agreed by the Parties hereto that, in the event all or any portion of the Subject Property is sold or conveyed at any time during the term of this Agreement, all the obligations and responsibilities of the Owner, as herein set forth shall devolve upon and be assumed by such purchaser or grantee, and the Owner shall be released from all obligations which relate to that portion of the Subject Property as may have been sold or conveyed.
3. Owner agrees to record a copy of the City ordinance providing for the execution of this agreement and an executed copy of this Agreement with the appropriate county recorder within sixty (60) days of the approval of said ordinance.
4. Owner agrees to file with the City Clerk a properly executed Annexation Petition pursuant to this Agreement covering the properties described in Attachment "A" not later than ninety (90) days after the execution of this Agreement.
5. Owner agrees to petition and diligently pursue the Fox Valley Park District for annexation of the entire Subject Property within ninety (90) days of annexation to the City.
6. Owner agrees to petition and diligently pursue the Fox Metro Water Reclamation District for annexation of the entire Subject Property within ninety (90) days of annexation to the City.
7. Owner agrees to petition and diligently pursue the appropriate U.S. Post Office for an "Aurora" mailing address on the Subject Property of this Agreement, within ninety (90) days of annexation to the City.
8. Owner agrees to dedicate right of way for proposed roadways on, through, adjacent, to the Subject Property, at the time of the approval of the final plat and plan of the Subject Property as specified herein. To the extent there are existing roadways that have come under the jurisdiction of the City as part of the annexation of the Subject Property but are not formally owned by the City, the Owner shall make the necessary dedication of such right of ways at the time it submits for final plan and plat approval.
9. Developer agrees that all existing structures on the Subject Property shall be razed and removed within one (1) year after the first final plan and/or plat approval for any portion of the Subject Property

10. Developer agrees to connect to the public sanitary sewer system at the time the Subject Property is developed and shall pay charges for sewer service as are prescribed by City ordinances and by the Fox Metro Water Reclamation District.
11. Developer agrees to establish cross-access easements with regard to private drives on the Subject Property that are mutually agreeable with Owner/Developer and the adjacent property owner.
12. Developer agrees that one-hundred percent (100%) of the public improvements costs required to serve development to be constructed on the Subject Property shall be the Developer's responsibility.
13. Developer agrees that the cost of roadway improvements described in Section E as the "Developer's Responsibility" shall be constructed at one-hundred percent (100%) the Developer's cost.
14. Owner agrees to cooperate with the City in establishing any special service areas required by the City concerning storm water control and common areas maintenance for Subject Property and shall establish any required specific Special Service Area ("SSA") within 60 days after Final Plan, Plat, and Final Engineering approval, and prior to any conveyance of any parcels to any non-Developer/Owner controlled person or entity. Owner waives any objection to the establishment of an SSA for the Subject Property, and agree that failure to comply and have a required SSA established may result in the City withholding Occupancy Permits in the Development. Owners of land in the Butterfield Center for Commerce and Industry have set up a not for profit corporation to act as the Property Owner's Association called the Butterfield Owner's Association and Developer shall bind the Subject Property to the covenants and conditions of this association.
15. [Owner agrees to coordinate with the other owners of property within Butterfield Phase II Unit 4 in petitioning and receiving approval of the modifications and revisions to the Butterfield Planned Development District \(P.D.D.\) as set forth in Section D.a herein.](#)

**SECTION B. Annexation, Zoning and City Responsibility**

1. Subsequent to the approval of this Annexation Agreement, the City agrees to adopt an ordinance annexing the Subject Property to the City pursuant to an Annexation Petition, subject to the terms and conditions herein.
2. In the event that an Annexation Petition for the Subject Property is not filed within ninety (90) days, the City may void this Agreement by ordinance.
3. [Subsequent to the approval of the Plan Description Revision set forth in Section A.15 herein, and](#) Subsequent to Annexation the City agrees to adopt an ordinance zoning the Subject Property as part of the Area B "Manufacturing (Office/Research/Industrial)" of the Butterfield Planned Development District (P.D.D.) except for variations which are specifically set forth as part of Area B "Manufacturing (Office/Research/Industrial)" of the Butterfield Planned Development District (P.D.D.) and accompanying Plan Description- [with the additional modifications and revisions as set forth in Section D herein.](#)

- ~~4. The City agrees to adopt the Preliminary Plan and Plat documents incorporated herein as Attachment "C" by separate Resolution, upon and concurrently with annexation of the Subject Property.~~
- ~~4. City agrees to adopt a recapture ordinance(s) to reimburse Developer, as specifically requested subsequent to this agreement, for the cost of installing Meridian Road and Sunrise Road, including engineering, construction, and other costs from owners of property which may be reasonably expect to benefit from such facilities. The recapture ordinance shall be for fifty percent (50%) of the cost of any full cross section improvement of the roadway installations across the frontage of the parcels that are not included in this annexation to the extent such properties are annexed to the City either along the east side of Meridian or the south side of Sunrise. The City shall adopt the recapture ordinance within a reasonable time following notice from Developer that facilities are complete, and provided that the Developer supplies all information required by the City to process said ordinance(s). The recapture ordinance shall provide for Developer to be paid by said owners a reasonable amount of interest of no more than five percent (5%) on the amount expended in completing the improvements, which interest shall be calculated from and after the date of completion and acceptance of the improvement, said interest shall accrue for a maximum of ten (10) years, and for the payment of all recapture sums due at the time of connection, or use by any benefited property owner.~~
- 5.4. The City agrees that the dedication of land or cash in lieu of land is not required as the Subject Property is being zoned ~~ORI~~non-residential.

## SECTION C Development Review

1. No portion of the Subject Property shall be developed until and unless the City in accordance with the conditions has approved such development hereinafter set forth.
2. The Subject Property described in Attachment "A" shall be governed by all of the requirements contained in the Aurora Zoning Ordinance No. 3100, as rezoned to be ~~treated as part of the~~incorporated under Area B "Manufacturing (Office/Research/Industrial)" of the Butterfield Planned Development District (P.D.D.) except for variations which are specifically set forth in the accompanying Plan Description with the additional modifications and revisions as set forth in Section D herein.
3. Except as provided herein, the provisions of the Aurora Subdivision Control Ordinance shall govern all development of the Subject Property regardless of the size of a parcel being developed at any one time. If no subdivision plats for the Subject Property are required, then Owner agrees that the public improvements and other subdivision control requirements of the Aurora Subdivision Control Ordinance shall be applicable to the Subject Property, except for variations which are specifically set forth as part of Area B "Manufacturing (Office/Research/Industrial)" of the Butterfield Planned Development District (P.D.D.) and accompanying Plan Description with the modifications and revisions as set forth in Section D herein.
4. Preliminary plans and plats and final plans and plats may be submitted and approved simultaneously.
5. Final plats may be presented to the City for approval individually.

6. Building elevations shall be presented for approval with the Final Plat and/or Plan and will be evaluated based on quality and variety of building materials, orientation and presentation from the public street, and the use of architectural elements.
7. The construction of buildings on the Subject Property shall be in accordance with the Aurora Building Code requirements in force at the time of issuance of building permits.
9. All codes and ordinances of the City of Aurora not amended by the Butterfield Plan Description and all codes and ordinances applicable Citywide adopted by the City after the execution and entering into of this Agreement by the Parties hereto shall apply to the Subject Property.
10. Engineering plans and specifications for the improvements to be installed in each phase of the development shall be submitted to the City together with the final subdivision plat for such phase.

## **SECTION D            Variations and Special Uses**

The variations and conditions as set forth in the Area B “Manufacturing (Office/Research/Industrial)” of the Butterfield Planned Development District (P.D.D.) and accompanying Plan Description and the additional modifications and revisions listed below are hereby requested and agreed to.

- a. That the following uses listed under the Description of Land Uses for Area B “Manufacturing (Office/Research/Industrial)” be prohibited on all Lots within Unit 4 except Lot 402:
  - i. Motor freight terminal, private
  - ii. Truck terminal, excluding exchange and handling of freight
  - iii. Truck, tractor, trailer or bus storage or parking yard, lot or garage.
  - iv. Vehicle terminals and vehicle storage yards, major (3310)
  - v. Vehicle storage yards, minor (3310)
  - vi. Truck and freight transportation services (4140)
- b. That the following buffer yard enhancements be installed when the facility is across the street (Meridian Road and Sunrise Road) from a residential use:
  - i. Buffer yard landscaping shall be installed on both sides of the street(s).
  - ii. The landscaping materials shall be upsized to be four (4) inch caliper for canopy trees and twelve (12) foot height for evergreen trees.
  - iii. Berms shall be installed between four (4) to ten (10) feet in height. The design and height of said berms shall be subject to review and approval at the time of Final Plan.

iv. A temporary sound wall shall be installed at the back of the curb of the truck parking lot, to be removed by the owner if and when there are no longer residential uses located across the street. The design and height of said wall shall be subject to review and approval at the time of Final Plan, however it is anticipated that the wall will be between eight (8) and twenty (20) feet .

c. Equipment which are enabled with backup horns shall use the white noise equipment.

## SECTION E

### **Roads, Public Utilities and Storm Water Management**

1. Frieder Lane —~~A portion of the public right of way has been dedicated for Frieder Lane and~~ is located along the western property line of the Subject Property. Said right of way shall be established at 66 feet with a cross section of 39 feet of pavement width back to back with B6-12 curb and gutter. ~~DEVELOPER RESPONSIBILITY: The responsibility for dedicating any necessary right of way to meet the 66 foot width along the entire frontage of the Subject Property shall be with the development of as part of Lot 401. The Developer shall be responsible for dedicating intersection right of way triangles at the northwest and southwest corners of Lot 402 as requested by the Engineering Division. The responsibility for construction of a full cross section improvement from Ferry Lane to Sunrise Road shall be with the development of Lot 401.~~A portion of the public right of way has been dedicated for Frieder Lane and a portion of the roadway installed at the northwest corner of the lot. Due to the need to determine the profile and location of public utilities (in particular storm sewer) once Lot 401 is developed, no sidewalk will be required on the west side of Lot 402. for Lot 401 said roadway improvement shall not be required with the development of Lot 402 but with the development of Lot 401. DEVELOPER RESPONSIBILITY: The Developer shall be responsible for dedicating any necessary intersection right-of-way triangles at the northwest corners of Lot 402 as requested by the Engineering Division. The Developer of Lot 402 shall not be responsible for constructing the full cross section improvement from Frieder Lane to Sunrise Road or the five foot sidewalk on the east side of the road. However, if Frieder Lane has not been extended to Sunrise Road prior to occupancy of Lot 402, a turnaround for the dead end of Sunrise Road shall be required prior to an occupancy permit being issued for Lot 402. In lieu of the Developer constructing improvements for Frieder Lane the Developer shall be responsible for constructing a full (the typically half) improvements for the other two roadway frontages being Meridian Road and Sunrise Road without recapture.
2. Meridian Road – The public right of way has been dedicated for Meridian Road and is located along the eastern property line of the Subject Property. Said right of way shall be established at 66 feet, with a cross section of 39 feet of roadway width from back of curb to back of curb with B6-12 curb and gutter. ~~DEVELOPER RESPONSIBILITY: The Developer shall be responsible for dedicating any necessary right-of-way to meet the 66 foot width along the entire frontage of the Subject Property and intersection right-of-way triangles as requested by the Engineering Division. The Developer shall be responsible for construction of a full cross section improvement from Ferry Road to Sunrise Road.~~along their entire eastern frontage to Sunrise Road (approximately nine hundred and sixty feet) and a five foot sidewalk on the west side of the road. The cost of said improvements adjacent shall include, but not be limited to, engineering, construction, utilities, interest and other costs. The principal access point(s) from

the existing public right-of-way and/or proposed roadway extension for the Subject Property shall be from Meridian Road. ~~Developer shall construct a sidewalk along the east side of Lot 402.~~

3. Sunrise Road – The public right of way has been dedicated for Sunrise Road and is located along the southern property line of the Subject Property. Said right of way shall be established at 80 feet with a cross section of 39 feet of pavement width back to back with B6-12 curb and gutter. DEVELOPER RESPONSIBILITY: The Developer shall be responsible for dedicating any necessary right-of-way to meet the 80 foot width along the entire frontage of the Subject Property and intersection right-of-way triangles as requested by the Engineering Division. The Developer shall be responsible for construction of a full cross section improvement from Meridian Road ~~to Frieder Lane. If Frieder Lane has not been extended to Sunrise Road prior to occupancy of Lot 402, a turnaround for Sunrise Road shall be required prior to an occupancy permit being issued for Lot 402.~~ along their entire southern frontage to the future extension of Frieder Lane (approximately one thousand feet) and a five foot sidewalk on the north side of the road. The cost of said improvements shall include, but not be limited to, engineering, construction, utilities, interest and other costs. ~~Developer shall construct a sidewalk along the north side of Sunrise Road.~~ The City recognizes that ~~Sunrise Road will not connect to future~~ Frieder Lane will not extend south to Sunrise Road until Lot 401 is developed.

- ~~4.~~ A double-fed public water main system is required to provide adequate fire protection and water service for the Subject Property and each lot.

#### ~~5.4.~~ Sanitary Sewer Language

- ~~6.5.~~ Development of the Subject Property requires that adequate storm and sanitary discharge plans, and other related plans, have been approved by the appropriate City of Aurora Department, or agency with responsible jurisdiction.
- ~~7.6.~~ Owner has already supplied evidence to the City that the Subject Property is not subject to any jurisdictional review by the Army Corps of Engineers relating to wetland mitigation and wetland/floodplain mitigation shall be subject to review and approval in accordance with the applicable Kane County ordinances.
- ~~8.7.~~ A subsurface drainage investigation report shall be submitted to the City's Engineering Division for review, as per the requirements of the Stormwater Ordinance. Any and all field tiles on the Subject Property must be protected during construction and shall be re-routed so as to not run under any building. Any filling operations must be done in such a manner so as not to raise the emergency overland flow elevations on adjacent properties. When, as and if said field tile is re-routed or damaged Owner and Developer shall repair all damaged field tile, but shall not be required to use any tile of a type, kind or character other than is the same or equal to that presently used in the field tile in question. If the tile is run under any paved area, or within public right of way, then concrete tile must be used.
- ~~9.8.~~ Retaining walls utilized within the development shall not exceed three (3) feet in height. The stepping of retaining walls is allowed up to six (6) feet in overall height with a minimum run of three (3) feet between steps.



~~10.9.~~ All improvements, buildings and structures shall be required to follow the Kane County Stormwater Ordinance requirements as adopted by the City.

**SECTION F                    General Provisions**

1. In the event that any section, subsection or paragraph of this Agreement is held to be invalid, the invalidity of such section, subsection or paragraph shall not affect any of the other provisions of this Agreement. None of the parties to this Agreement shall challenge the validity or enforceability of this Agreement nor any provision of this Agreement, nor assert the invalidity or unenforceability of this Agreement or any provision thereof as defense to any claim by any other party seeking to enforce this Agreement.
2. Any notice or demand hereunder from any Party hereto to another Party hereto shall be in writing and shall be deemed served if mailed by prepaid registered or certified mail addressed as follows:

If to the CITY:                    Mayor of Aurora  
City of Aurora  
44 East Downer  
Aurora, Illinois 60507

With copy to:                    Aurora Corporation Counsel  
City of Aurora  
5 East Downer Place, Suite F  
Aurora, Illinois 60507

If to the OWNER/DEVELOPER:                    Old Dominion Freight Lines, Inc.  
500 Old Dominion Way  
Thomasville, NC 27360  
Attention: Phil Danner

With a copy to:                    Dykema Gossett PLLC  
4200 Commerce Court, Suite 300  
Lisle, Illinois 60532  
Attn: Bruce Goldsmith

3. Should correspondence to Owner be a notification of violation of any provision of this Annexation Agreement, Owner shall have thirty (30) days in which to correct such violation. The thirty-day period shall begin at the time of the mailing of said notice.
4. The Parties hereto agree to cooperate in applying the provisions of this Agreement and to fulfill the intent of the provisions set forth herein.
5. The Parties agree that the Parties or their successors in title may enforce this Agreement in any court of competent jurisdiction, in an appropriate action at law or in equity, as provided in 65 ILCS 5/11.1-4, as amended, including the right of any of the Parties to seek specific performance of the terms of this Agreement.



6. Owner and Developer understand and agree that the Subject Property shall be subject to any lawful fees enacted by the City with regard to development so long as said fees are uniformly applied in the City except for fees that the City elects to rebate to developers pursuant to an annexation or development agreement.

**(SIGNATURE PAGES TO FOLLOW)**

Executed in Aurora, Illinois.

**SIGNED BY OWNER and DEVELOPER** on the \_\_\_\_ day of \_\_\_\_\_, 2016.

Name: Old Dominion Freight Lines, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SIGNED BY CITY OF AURORA** on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF AURORA, an Illinois Municipal Corporation

By; \_\_\_\_\_

Thomas Weisner, Mayor

Attest: \_\_\_\_\_

Wendy McCambridge, City Clerk

## **ATTACHMENT "A"**

### **LEGAL DESCRIPTION OF SUBJECT PROPERTY**

LOT 15; TOGETHER WITH THAT PART OF PRAIRIE LANE (NOW KNOWN AS MERIDIAN ROAD) LYING EAST OF AND ADJOINING SAID LOT 15; TOGETHER WITH THAT PART OF SUNRISE ROAD LYING SOUTH OF AND ADJOINING SAID LOT 15; TOGETHER WITH THAT PART OF SAID SUNRISE ROAD LYING SOUTH OF AND ADJOINING SAID PRAIRIE LANE; ALL IN ARTHUR T. MCINTOSH AND COMPANY'S FERRY ROAD FARMS, BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF SECTION 4, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 12, 1943 AS DOCUMENT NO. 455751, IN DUPAGE COUNTY, ILLINOIS.

PARCEL NUMBERS: 07-04-102-007 and 07-04-102-008

ATTACHMENT ~~"B"~~

**NOT APPLICABLE**

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**~~ATTACHMENT “C”~~**

**~~PRELIMINARY PLAN AND PLAT PREPARED BY MANHARD CONSULTING~~**

## **PRELIMINARY PLAN CONDITIONS**

- ~~1. The proposed fences that are not Simtek screening fences shall be decorative metal fences.~~
- ~~2. The truck parking stalls shall be modified to be a minimum of ten (10) feet in width and forty-five (45) feet in length.~~
- ~~3. The roadway improvements for Sunrise Road, including a sidewalk on the north frontage, shall be shown from Meridian Road to Frieder Lane extended. This extension can be shown as a construction obligation to be completed by the developer of Lot 401 pursuant to the Annexation Agreement.~~
- ~~4. The fencing used for screening and sound attenuation from the entrance on Meridian to a point on Sunrise noted in the Landscape Plan shall be eight (8) feet in height, using the Simtek type fencing. On the Sunrise Road side, the fence shall be twelve (12) feet in height for the first two hundred (200) feet and then at eight (8) feet to the far end of the third house on the road, all as shown on the Landscape Plan.~~
- ~~5. The evergreens to be planted south of the entrance on Meridian Road and along the north and Sunrise Road shall be twelve (12) feet in height. There will also be twelve (12) feet evergreens along the south side of Sunrise in front of the first house (two story). Evergreens are also shown at six (6) feet in height along the south side of Sunrise where it is expected construction will remove existing plantings. These commitments are shown on the Landscape Plan.~~
- ~~6. All street trees shall be four (4) inch caliper in lieu of the City's standards 2 1/2 inch caliper requirement along both sides of Meridian from Ferry Road to Sunrise Road. Street trees shall be four (4) inch caliper on the north side of Sunrise Road from Meridian to the secondary fire access lane. These commitments are noted in the Landscape Plan.~~
- ~~7. Backup horns on the spotters shall use the white noise equipment.~~
- ~~8. Berms on the Meridian Road south of the entrance shall be from six (6) to ten (10) feet in height as shown on the Landscape Plan. Berms on the Sunrise Road side in front of the three houses on the south side of Sunrise Road shall be six (6) feet in height with the remainder at four (4) feet as shown on the Landscape Plan.~~

## **DISCLOSURE OF THE BENEFICIAL OWNERS**

There are no beneficial owners of any land trust holding title to any portion of the Subject Property