

**RESOLUTION 2011-027**

**A RESOLUTION AUTHORIZING THE TEMPORARY CLOSING OF ATRIUM DRIVE TO ALLOW CONSTRUCTION RELATED ACTIVITIES FOR VICTORY CENTRE OF VERNON HILLS**

**WHEREAS**, Atrium Drive is a publically dedicated right-of-way owned by the Village of Vernon Hills which extends from its intersection with Phillip Drive and runs generally south and east to its intersection with Deerpath, as depicted in Exhibit A; and

**WHEREAS**, Vernon Hills SLF Associates LP and Vernon Hills SA Associates LP are the owners of the property upon which Victory Centre of Vernon Hills is being constructed and Joseph J, Duffy Company is the general contractor for said project; and

**WHEREAS**, the Victory Centre of Vernon Hills project is located at the southwest corner of the intersection of Atrium Drive and Phillip Road; and

**WHEREAS**, as a part of constructing this project, Joseph J, Duffy Company is requesting approval from the Village to temporarily close the portion of Atrium Drive located immediately adjacent to the project location to allow various construction related activities associated with the Victory Centre of Vernon Hills project to occur within the Atrium Road right-of-way, said closure area being depicted in Exhibit B; and

**WHEREAS**, the Board of Trustees supports the Victory Centre of Vernon Hills project and agrees to allow Joseph J, Duffy Company to temporarily close the portion of Atrium Drive located immediately adjacent to the property, subject to certain terms and conditions.

**NOW THEREFORE BE IT RESOLVED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS:**

That the Joseph J, Duffy Company, acting as the authorized representative for the property owners Vernon Hills SLF Associates LP and Vernon Hills SA Associates LP, is authorized to temporarily close the portion of Atrium Drive located immediately adjacent to the Victory Centre of Vernon Hills property, subject to the following:

1. The limits of the closure shall be consistent with the attached plans as setforth in Exhibit B
2. The closure shall be subject to the Terms and Conditions as setforth in Exhibit C
3. Joseph J, Duffy Company shall acknowledge its agreement to the Terms and Conditions in a written agreement prepared by the Village Attorney prior to closing the road.

I have hereunto set my hand and seal the 15<sup>th</sup> day of March 2011.

Adopted by roll call vote as follows:

AYES: 5 – Schultz, Schwartz, Koch, Hebda, Marquardt

NAYS: 0 - None

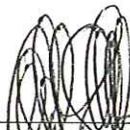
ABSENT AND NOT VOTING: 1 - Williams

PASSED: 3/15/2011

APPROVED: 3/15/2011

ATTEST: 3/16/2011

  
\_\_\_\_\_  
Roger L. Byrne, Village President

  
\_\_\_\_\_  
Michael Allison, Village Clerk



**Exhibit A**

Location of Atrium Drive

# Exhibit A

3-10-11

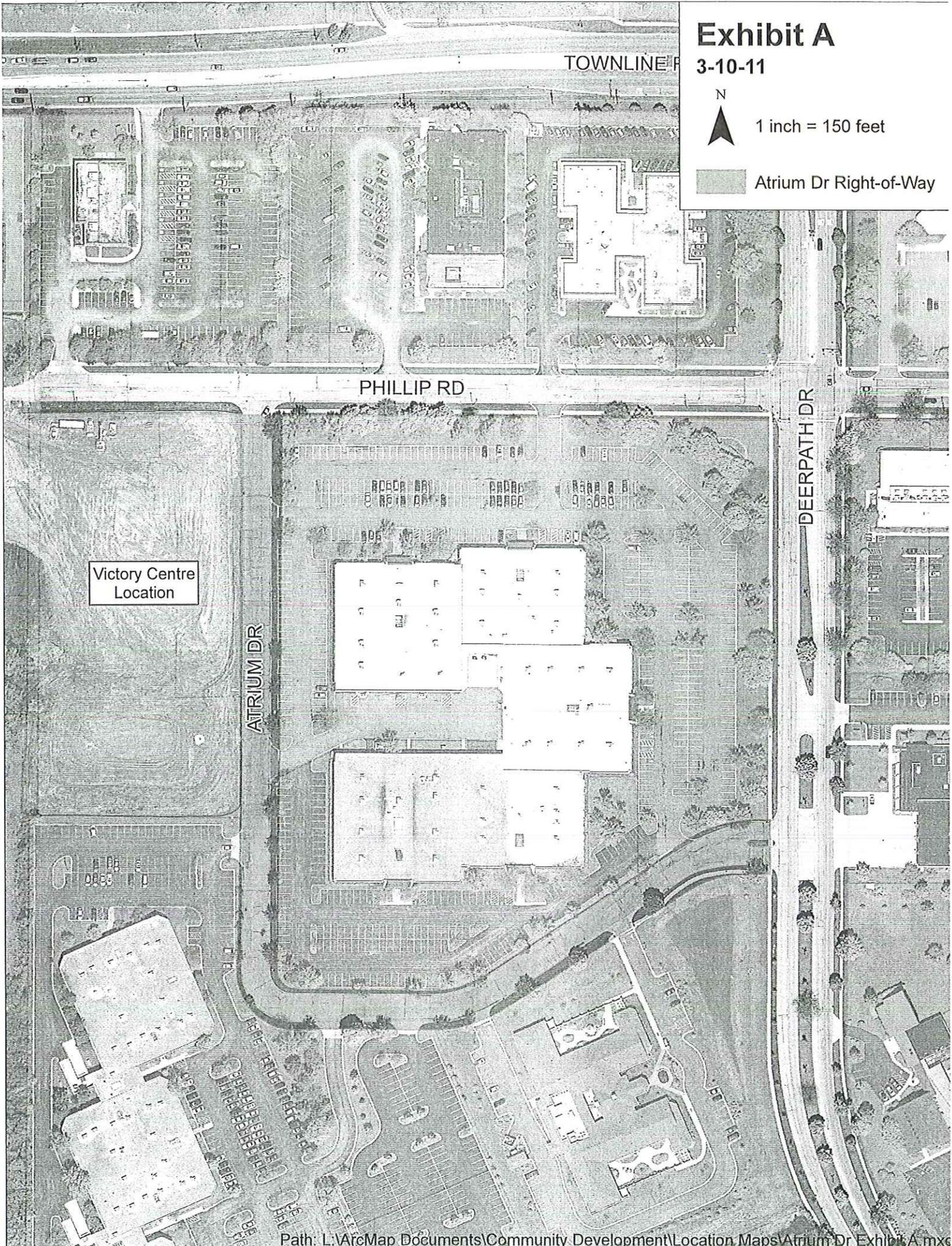
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1 inch = 150 feet



Atrium Dr Right-of-Way



Victory Centre  
Location

ATRIUM DR

PHILLIP RD

TOWNLINE P

DEERPATH DR

**Exhibit B**

Location of Temporary Road Closure

# Exhibit B

3-10-11

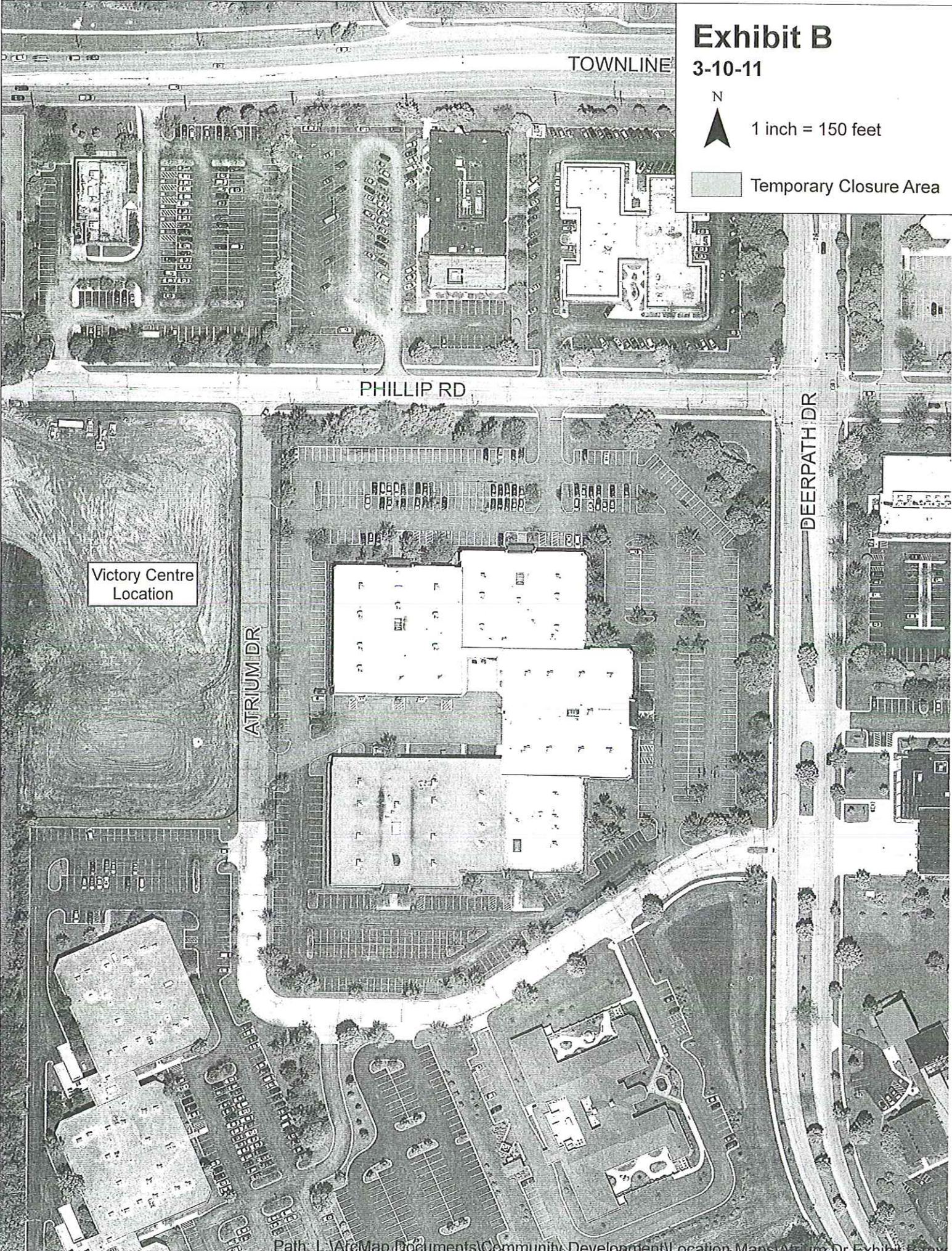
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1 inch = 150 feet



Temporary Closure Area



Victory Centre  
Location

TOWNLINE

PHILLIP RD

ATRIUM DR

DEERPATH DR

**Exhibit C**

Terms and Conditions for the temporary closing of Atrium Drive

1. The closure of Atrium Drive is considered temporary.
2. The road may be closed from April 1 thru October 1, 2011. An extension of time of not more than 30 days may be granted by the Village Manager for good cause.
3. The purpose of the closure is to allow construction of the buildings, utilities and related work along with certain road and landscaping improvements for this portion of Atrium Drive. It is not intention of this road closure to provide for employee parking related to the construction activities for this project.
4. The Village shall require the contractor to defend, indemnify, and hold harmless the Village for damages and expenses arising out of the ongoing work or service being performed. The contractor's indemnification responsibilities shall include defending and/or indemnifying the Village of Vernon Hills for incidents in which the contractor causes the loss, in whole or in part and also "arising out of the ongoing work" on the property, either of the building(s) and/or roadway itself.
5. Adequate signage, subject to review and approval of the Village Engineer, shall be posted advising of the road closure from the adjacent public rights of way. The Village Engineer may require that the contractor prepare a signage plan.
6. Written notification of the pending closure shall be provided to the adjacent lots owners and tenants within the Deerpath Atrium development at least one week prior to the road being closed.
7. Written notification of the pending closure shall be provided to the Countryside Fire Protection District, Village of Vernon Hills and Lake County Public Works at least one week prior to the road being closed.
8. All fencing and enclosures shall be reviewed and approved by the Village of Vernon Hills and shall be maintained in good working order.
9. The general contractor shall provide to the Village a revised schedule of work on the first day of each month. The schedule should include the timeline for the improvements to Victory Center and to Atrium Drive during this closure.
10. The general contractor shall provide access through the road closure from the end of the work day on July 1 thru mid-day on July 5. The purpose of this access is to allow passage through the closure area of marching units for the Village's 4<sup>th</sup> of July parade. The minimum width of this passage way, its location and how the closure area will be secured shall be determined by the Village Engineer or his designated representative and the general contractor no later than June 24, 2011.

TEMPORARY LICENSE AGREEMENT

This TEMPORARY LICENSE AGREEMENT ("Agreement") is made as of this 6<sup>th</sup> day of April, 2011, by and between VILLAGE OF VERNON HILLS, an Illinois municipal corporation ("Village") and JOSEPH J. DUFFY COMPANY, an Illinois Corporation ("Licensee").

(NOTE: VERIFY DUFFY ENTITY)

The following recitals of fact are a material part of this Agreement.

A. Village is an Illinois Municipal Corporation, pursuant to 65 ILCS 5/1-1-1;

B. Village is the owner of the Atrium Drive right of way, located in the Village of Vernon Hills, County of Lake and State of Illinois, a portion of which is graphically depicted on Exhibit "A" attached hereto and made a part hereof.

C. Vernon Hills SLF Associates LP and Vernon Hills SA Associates LP (hereinafter collectively as "Owners") are the owners of Lot 4 in the Atrium Drive Subdivision ("Property and intend on constructing two (2) senior housing facilities to be known as Victory Center on Lot 4 in the Atrium Drive Subdivision.

D. Licensee is the general contractor hired by Owners to construct the senior living facilities on the Property.

E. Village wishes to grant, and Licensee wishes to receive a non-exclusive license to utilize that portion of the Atrium Drive right of way located immediately east of and adjacent to Lot 4 in the Atrium Drive Subdivision as depicted on Exhibit "A" ("Right of Way") for a limited period of time for construction activities on Lot 4 and on the Right of Way.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual agreement of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**1. Grant of License for Temporary and Non-Exclusive Use of the Right of Way.** Village hereby grants to Licensee, a temporary and non-exclusive license for use of the Right of Way for the purpose of staging construction on the buildings on Lot 4, utilities and for related construction activities, services overnight storage of construction equipment, vehicles and materials, along with certain road and landscaping improvements to that portion of Atrium Drive located within the Right of Way ("Construction Activities"). Licensee shall prohibit construction employees from parking in the Right of Way during the term of this License.

**2. Term of License.** The license granted hereunder shall commence on April 1, 2011 and shall terminate (the "Termination Date") upon the earlier of: (a) a breach of the terms hereof; or (b) on October 1, 2011. Upon the occurrence of either of the events described in the preceding sentence, this License shall immediately expire and Licensee shall remove all

45 construction equipment, vehicles and materials from the Right of Way and shall restore the  
46 Right of Way to the condition existing on the date of this License Agreement. An extension of  
47 not more than thirty (30) days beyond October 1, 2011 (unless this License is otherwise  
48 terminated) may be considered by the Village Manager for good cause shown.  
49

50 **3. License Only.** This Agreement creates a license only and Licensee acknowledges  
51 that Licensee does not and shall not claim at any time any interest or estate of any kind or extent  
52 whatsoever in the Right of Way by virtue of this license.  
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54 **4. Closure of Right of Way to Through Traffic.** The Village adopted Resolution  
55 No. 2011-027 authorizing the temporary closure of the Atrium Drive Right of Way from April 1,  
56 2011 to October 1, 2011. The purpose of the closure is to prohibit public traffic from utilizing the  
57 Right of Way during the closure period. Notwithstanding the foregoing, the Licensee  
58 acknowledges and agrees that the Village shall have unrestricted access upon an agreed upon  
59 portion of the Right of Way for the purpose of staging community events, including the  
60 Village's parade over the 4<sup>th</sup> of July celebration weekend. Licensee shall guarantee the agreed  
61 upon portion of the Right of Way to the Village from the end of the work day on July 1, 2011  
62 through 2:00 pm on July 5, 2011 and hereby agrees to relocate all construction activities,  
63 equipment, vehicles and other materials onto Lot 4 for the period of time required by the  
64 Village to accommodate the staging of the parade and activities. The minimum width of the  
65 passageway through the enclosed area, the location of the passageway and how the balance of  
66 the enclosed area will be secured and segregated from the passageway shall be reviewed and  
67 approved by the Village Engineer and general contractor no later than June 24, 2011. In the  
68 absence of an agreed upon plan for the passageway by June 24, 2011, all street pavement in the  
69 Right of Way shall be cleared and made fully accessible for use by the Village for its parade  
70 activities, and all construction materials, equipment and vehicles shall be located behind  
71 construction fencing so as not be accessible to the public.  
72

73 **5. Signage.** Adequate signage shall be posted along adjacent roadways in  
74 locations to advise the motoring public of the road closure, including signage in strategic  
75 locations that will allow them to travel alternative routes without having to turn around. A  
76 signage plan shall be prepared and be provided to the Village Engineer and such signage shall  
77 be posted after the signage plan is approved by the Village Engineer but before the Right of  
78 Way is closed.  
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80 **6. Notice of Right of Way Closure.**  
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82 **a. Notice to Adjacent Lot Owners and Tenants.** Written notice shall be delivered  
83 by Licensee to all the Lot Owners and tenants within the Deerpath Atrium  
84 Subdivision at least one (1) week prior to the Right of Way being closed.  
85

86 **b. Notice to Countryside Fire Protection District, Lake County Department of**  
87 **Public Works and Village of Vernon Hills.** Written notice shall be delivered by  
88 Licensee to the Countryside Fire Protection District Fire Chief, the Lake County  
89 Department of Public Works and the Village of Vernon Hills Public Works  
90 Department at least one (1) week prior to the Right of Way being closed.  
91

92           7.     **Fencing Enclosure.** All fencing and enclosures shall be reviewed and approved  
93 by the Village prior to their erection. The fencing and enclosures shall be maintained in good  
94 working order at all times.

95  
96     8.     **Written Monthly Work Schedule Reports.** Licensee shall provide, or arrange  
97 for the general contractor to provide to John Kalmar in the Village an updated schedule of work  
98 on the first working day of each month. The work schedule shall include the updated  
99 construction schedule for the buildings under construction on the Property as well as the  
100 construction of the improvements to the Right of Way.

101  
102           9.     **Return of the Right of Way.** At the termination of Licensee's license, Licensee  
103 shall reconstruct the Right of Way according to the engineering plans to be approved by the  
104 Village, which shall include a reduced pavement width once completed.

105  
106           10.    **Code Compliance.** During the term of this license, Licensee shall comply with  
107 all applicable laws, statutes, ordinances, codes, rules, regulations, orders and decrees.

108  
109           11.    **Reservation of Rights by Village.** The right to use the Right of Way owned by  
110 the Village is expressly reserved by Village, its successors, grantees, invitees and assigns. In  
111 addition, and not by limitation but by way of example, the Village, its successors, grantees,  
112 invitees and assigns, reserve the right from time to time to grant additional licenses upon the  
113 Right of Way, provided that such licenses do not unreasonably interfere with Licensee's use of  
114 the Right of Way pursuant to the terms hereof. The Village also reserves the right to utilize the  
115 Right of Way for emergency purposes without prior notice to Licensee.

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117           12.    **No Transfer by Licensee.** Licensee shall not transfer any of its rights hereunder  
118 without the prior written consent of Village. Any such assignment made without the prior  
119 written consent of Village shall be null and void and of no further force or effect and this  
120 License shall automatically terminate.

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122           13.    **Indemnity.** Licensee for and on behalf of itself and all successors, grantees,  
123 invitees and assigns, assumes sole and entire responsibility for any and all loss of life, injury to  
124 persons or damage to property (wherever such property may be located) that may be sustained  
125 directly or indirectly or arising out of the on going activities, construction work, operations,  
126 and/or existence of the construction activities, services, equipment, vehicles and materials on  
127 the Right of Way by Licensee, its successors, grantees, invitees and assigns and all of their  
128 officers, directors, employees, representatives and agents. Further, Licensee, for itself, its  
129 successors, grantees, invitees and assigns, and for those claiming by, through or under any of  
130 them, hereby releases Village, its members, agents and employees (collectively, the  
131 "Indemnitees") from any and all claims or demands for loss, liability, expense, cost or damage  
132 (whether to person or property), including, without limitation, reasonable attorneys' fees and  
133 litigation costs incurred by the Indemnitees in connection therewith, that may arise from the use  
134 of the Right of Way by Licensee, including entry upon the Right of Way, its successors,  
135 grantees, invitees and assigns, and all of their officers, directors, employees, representatives and  
136 agents. Licensee hereby agrees to indemnify, defend and hold harmless the Indemnitees from  
137 and against any and all liability, loss, claim, demand, lien, damage, penalty, fines, interest, cost  
138 and expense (including without limitation, reasonable attorneys' fees and litigation costs)

139 incurred by the Indemnites for injuries to persons (including, without limitation, loss of life)  
140 and for damage, destruction or theft of property which is directly or indirectly due to or arising  
141 out of the on-going activities, construction work, operations, and/or existence of construction  
142 activities, services, equipment, vehicles and materials, or thing done, permitted or suffered by  
143 Licensee and/or the contractors in connection with on-going construction activities, services,  
144 equipment, vehicles, other materials on the Right of Way or for any act or omission of Licensee,  
145 its successors, grantees, invitees and assigns and any of their officers, directors, employees,  
146 representatives and agents. Licensee shall cooperate with Village in the defense of any such  
147 claims, demands or action, including, without limitation, the employment, at the sole expense of  
148 Licensee, of legal counsel satisfactory to Village.

149  
150 **14. Insurance.** Licensee, at its sole cost and expense, shall purchase and keep in full  
151 force and effect during the term hereof, Commercial General Public Liability Insurance  
152 (including, but not limited to, contractual liability insurance covering, without limitation,  
153 Licensee's indemnification obligations hereunder) in an amount not less than Two Million and  
154 no/100 Dollars (\$2,000,000.00) per occurrence whether involving bodily injury liability (or death  
155 resulting therefrom) or property damage liability or a combination thereof with a minimum  
156 aggregate limit of Five Million and no/100 Dollars (\$5,000,000.00) and provided that same shall  
157 not be cancelled without thirty (30) days prior notice to Owner.

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159 Licensee, concurrently with execution hereof, or prior to Licensee's placement of the  
160 construction activities, equipment, vehicles and other materials on the Right of Way as  
161 permitted hereunder, whichever is earlier, shall deposit with Village, insurance certificates  
162 evidencing the foregoing coverage, together with satisfactory evidence of payment of the  
163 premiums thereon. All such insurance shall name the Indemnites as additional insureds.  
164 Licensee shall deliver said insurance certificates to the Village Manager's office at 290 Evergreen  
165 Drive, Vernon Hills, Illinois, 60061, or as otherwise directed by Village from time to time.

166  
167 **15. No Liens.** Licensee shall not permit any lien to be filed against any portion of  
168 the Right of Way for any labor or materials in connection with work of any character performed  
169 or claimed to have been performed on the Property or on the Right of Way at the direction or  
170 sufferance of Licensee.

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172 In the event any such lien is filed against any portion of the Right of Way or any  
173 improvements thereon, Licensee shall remove or cause to be removed such lien within thirty  
174 (30) days of written notice from Village. In the event Licensee does not remove or cause to be  
175 removed such lien within said thirty (30) day period, Village shall have the right, but not the  
176 obligation, to cause such lien to be released and Licensee shall pay on demand all of Village's  
177 costs in connection therewith, together with interest thereon at the interest rate set forth in  
178 Paragraph 13 hereof, accruing from and after the date of such demand until Village's receipt of  
179 full payment therefor.

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181 **16. Code Violation.** Licensee shall not permit any code violation to be filed against  
182 the Right of Way as a result of Licensee's construction activities.

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184 In the event Licensee receives notice of such a code violation, either from the Village or  
185 its successors, Licensee shall remove or cause to be removed such violation within the time

186 specified in said code violation notice. In the event Licensee does not remove or cause to be  
187 removed such code violation within said time period, Village shall have the right, but not the  
188 obligation, to cause such violation removed and Licensee shall pay on demand all of Village's  
189 costs in connection therewith, together with interest thereon at the interest rate set forth in  
190 Paragraph 13 hereof, accruing from and after the date of such demand until Village's receipt of  
191 full payment therefor.

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193 **17. Breach by Licensee.** If Licensee breaches any provision in this License  
194 Agreement and fails to cure any such breach within two (2) days after written notice thereof, in  
195 addition to any other right or remedy available at law or in equity, including but not limited to  
196 termination of this License Agreement, the Village shall have the right, but not the obligation, to  
197 cure any such breach and Licensee agrees to reimburse Village for the cost thereof upon  
198 demand, together with interest accruing thereon at an annual rate of interest equal to eighteen  
199 percent (18%) from and after the date of Village's demand therefor until Village's receipt of full  
200 payment therefor.

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202 **18. No Warranty; Integration.** Village hereby makes, and has made, no  
203 representations, statements, warranties or agreements to Licensee in or in connection with this  
204 License Agreement or the Right of Way. This License Agreement embodies the entire  
205 understanding of the parties hereto, and there are no further or other agreements or  
206 understanding, written or oral, in effect between the parties relating to the subject matter  
207 hereof.

208  
209 **19. Notices.** All notices and other communications given pursuant to this License  
210 Agreement shall be in writing and shall be deemed properly served if delivered in person to the  
211 party to whom it is addressed or on the third (3<sup>rd</sup>) day after deposit in the U.S. mail as registered  
212 or certified mail, return receipt requested, postage prepaid or sent by facsimile transmission, as  
213 follows:

214  
215 If to Village: Village of Vernon Hills  
216 290 Evergreen Drive  
217 Vernon Hills, Illinois 60061  
218 Attention: Village Clerk  
219 Fax: (847) 367-0880  
220

221 With copies to: Schain, Burney, Banks & Kenny, Ltd.  
222 70 West Madison Street, Suite 4500  
223 Chicago, Illinois 60602  
224 Attention: Robert C. Kenny  
225 Fax: (312) 345-5701  
226

227 If to Owners: Robert Helle  
228 Vernon Hills SLF Associates LP and  
229 Vernon Hills SA Associates LP  
230 701 Lee Street  
231 Des Plaines, IL 60016  
232 Fax: (847) 635-2148

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With a copy to: Steven Friedland  
Applegate & Thorne-Thomsen, P.C.  
322 S. Green Street  
Suite 400  
Chicago, IL 60607

If to Licensee: Joseph J. Duffy Company

With a copy to:

20. **Prevailing Party.** In the event either party shall use legal counsel to enforce this Agreement, the non-prevailing party shall pay the legal fees of the prevailing party.

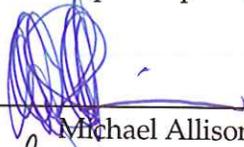
21. **Binding on Successors.** This Agreement shall be binding upon and shall inure to the benefit of the Village and the Licensee and the respective successors and permitted assigns of each upon execution hereof by the Village and the Licensee. Two (2) duly executed duplicate originals of this License Agreement shall be provided to each party. This Agreement creates no rights as a third party beneficiary or otherwise in any person not a party.

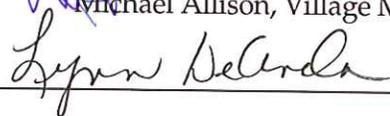
22. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**VILLAGE:**

VILLAGE OF VERNON HILLS,  
an Illinois municipal corporation

By:   
Michael Allison, Village Manager

Attest:   
Lynn Belenda



**EXHIBIT A**  
Plan of Property

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# Exhibit A

4-6-11

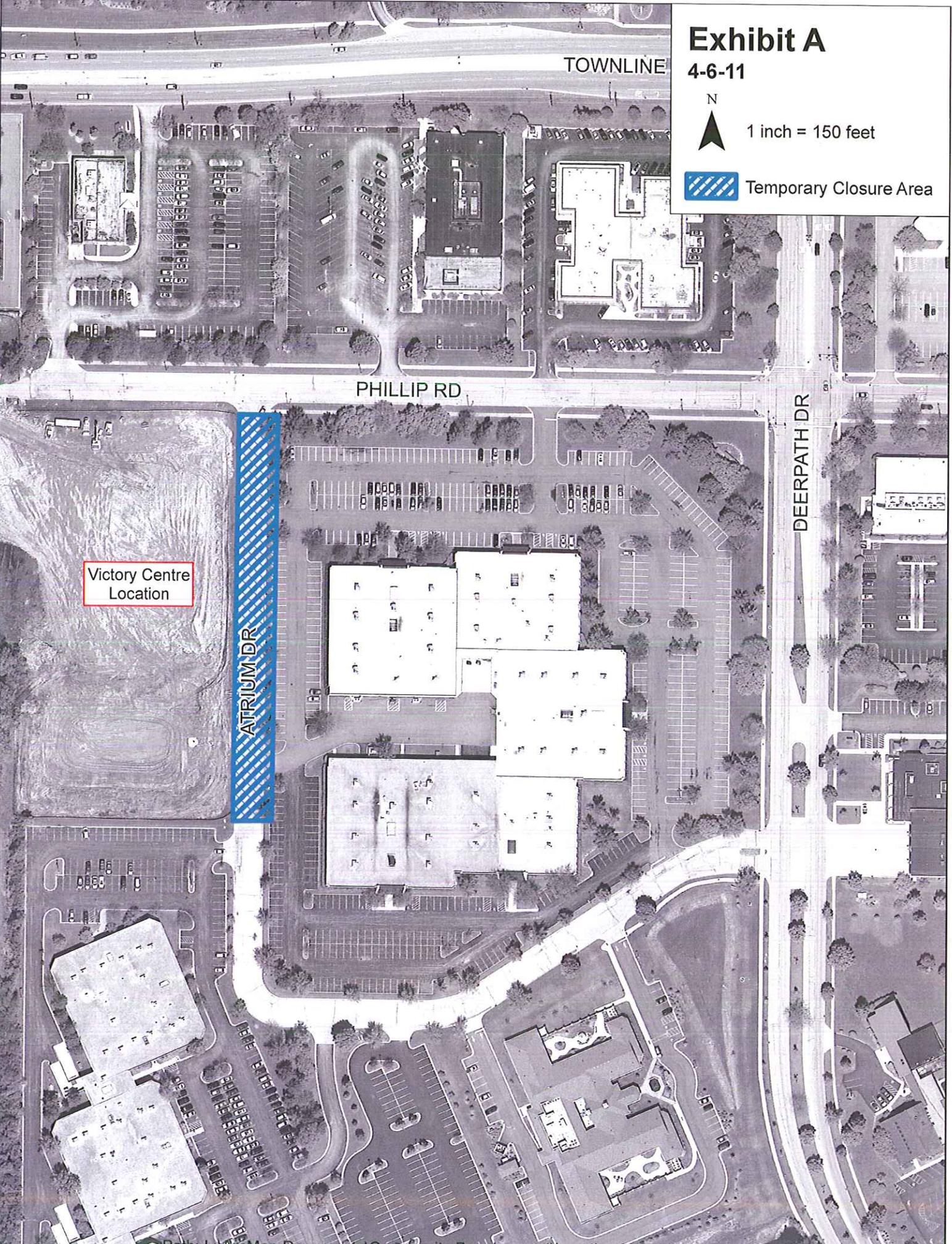
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Victory Centre  
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