



**Village of Itasca  
Community Development Department**

550 W. Irving Park Road, Itasca, IL 60143  
PHONE: 630-773-5568 | FAX: 630-773-0852  
[www.itasca.com](http://www.itasca.com)

**MEMORANDUM**

TO: President Jeff Pruyn  
Village Board of Trustees

RE: RagingWire/NTT Recapture Agreement Payment and Reimbursement to Hamilton Lakes Land, LLC

FROM: Shannon Malik Jarmusz  
CD Director

VB: October 6, 2020

CC: Carie Anne Ergo  
Village Administrator

ENCL:

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**BACKGROUND**

As a part of the permit fees collected for issuance of RagingWire’s first building permit in 2019, a water recapture fee in the amount of \$119,224.87 was paid by RagingWire at the time of permit issuance. The Village’s roll is to serve as a pass through, and that payment can now be conveyed to Hamilton Lakes Land, LLC, the successor to the original recapture agreement between the Village and Tantillo Corporation, (Ord. 989.98).

Further, the *RagingWire Data Centers, Inc. Development Agreement- First Amendment*, approved by the Village Board on November 5, 2019, mandates that the Village will ensure conveyance of the fee collected, as laid out on Page 6 of the attached development agreement.

**RECOMMENDATION**

Staff recommends authorization of the recapture payment to Hamilton Lakes Land, LLC of the recapture fees paid by RagingWire, now known as NTT, to consider the 1998 recapture payment for this particular site resolved.

**RESOLUTION NO. 1153-19**

**A RESOLUTION APPROVING FIRST AMENDED DEVELOPMENT  
AGREEMENT WITH RAGING WIRE DATA CENTERS  
(VACANT LOT NORTH OF TERMINUS OF HAMILTON LAKES DRIVE AT PIERCE  
ROAD)**

WHEREAS, RagingWire Data Centers, Inc. (hereinafter "RagingWire") is the proposed developer of a data center on a parcel of vacant real estate located north of the terminus of Hamilton Lakes Drive at Pierce Road in the Village of Itasca (hereinafter "Village"), Illinois; and

WHEREAS, the Village and RagingWire entered into a Development Agreement in 2017 with Resolution No. 891-17; and

WHEREAS, subsequently, RagingWire proposed changes to its development which required the Itasca Plan Commission and Village Board to consider the modifications; and

WHEREAS, the Itasca Plan Commission recommended approval and the Village Board approved the proposed modification in Ordinance No. 1920-19; and

WHEREAS, the Village and RagingWire wish to amend the existing Development Agreement to reflect the approved modifications to the development and to further the construction of the proposed development; and

WHEREAS, the Village and RagingWire have drafted a Development Agreement – First Amendment, which is attached hereto as Exhibit A and incorporated herein.

NOW, THEREFORE, BE IT RESOLVED by the Village President and the Board of Trustees of the Village of Itasca, DuPage County, Illinois, as follows:

SECTION ONE: The corporate authorities of the Village of Itasca hereby approve the Development Agreement – First Amendment, attached hereto as Exhibit A and incorporated herein by reference, between the Village of Itasca and RagingWire Data Centers, Inc.

SECTION TWO: The Village President, or his designee, is hereby authorized to sign and execute the Development Agreement- First Amendment, Exhibit A, on behalf of the Village.

SECTION THREE: SEVERABILITY. If any section, paragraph, or provision of this Resolution shall be held invalid, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Resolution.

SECTION FOUR: REPEAL OF PRIOR RESOLUTIONS. All prior Resolutions and Ordinances in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION FIVE: EFFECTIVE DATE. This Resolution shall be in effect immediately from and after its passage and approval.

AYES: Aiani, Latoria, Leahy, Linsner

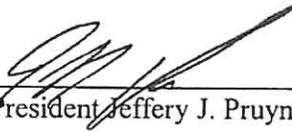
NAYS: None

ABSENT: Gauanes, Madaras

ABSTAIN: None

APPROVED and ADOPTED by the Village President and Board of Trustees of the Village of Itasca this 1<sup>st</sup> day of October, 2019.

APPROVED:

  
\_\_\_\_\_  
Village President Jeffery J. Pruyn

ATTEST:

  
\_\_\_\_\_  
Village Clerk Jody Condi



See Pg. 6



**RAGINGWIRE DATA CENTERS, INC  
DEVELOPMENT AGREEMENT- FIRST AMENDMENT**

This Development Agreement – First Amendment (“Agreement”) is made and entered into as of the 5 day of November, 2019 (“Effective Date”), by and between the Village of Itasca, an Illinois municipal corporation located in DuPage County, Illinois (the “Village”) and RagingWire Data Centers, Inc. (the “Developer”). The Village and the Developer are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties”.

**WITNESSETH:**

WHEREAS, the Developer is the purchasers and proposed developer of a parcel of vacant real estate within the Village of Itasca consisting of approximately 18.8 acres, generally located north of the terminus of Hamilton Lakes Dr. at Pierce Road (portions of PIN 03-05-200-23 and 03-05-200-038) and legally described in Exhibit A attached hereto (the “Subject Property”); and

WHEREAS, the Developer requested amendments to construct a data center and associated improvements (the “Development”); and

WHEREAS, the Village Board previously adopted Ordinance No. 1852-17 granting project entitlements for a data center and associated improvements (“the Development”) and Resolution 891-17 authorizing the Village to enter into a Development Agreement in furtherance of construction of the proposed project; and

WHEREAS, the Developer subsequently proposed Development changes which required the Itasca Plan Commission (the “Plan Commission”) to hold a duly noticed public hearing on July 17, 2019 to consider modifications to the originally approved Development, and the Plan Commission recommended approval of the changes to the Development to the Village Board of Trustees (the “Village Board”), with conditions; and

WHEREAS, the Village adopted Ordinance No. 1920-19, which: (i) amended the Chancellory at Hamilton Lakes Concept Plan to permit a 2-story data center; (ii) approved the Planned Development by Special use to allow more than one principal building on a lot; (iii) approved the Class I Site Plan Review for the purpose of constructing a data center in the ROC district; and (iv) approved the request for final plat of subdivision for the Subject Property.

WHEREAS, the Developer and the Village wish to revise this Agreement with respect to the Subject Property and the Development, upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the premises, mutual covenants and agreements herein set forth, the Parties hereto agree as follows:

1. Recitals and Exhibits. The above recitals are hereby incorporated into and made a part of this Agreement. The Exhibits referred to in this Agreement and attached to or incorporated into it by textual reference are made a part of this Agreement as though they were fully set forth in this Section 1. The Parties acknowledge the accuracy and validity of those Exhibits.

2. Plans. The Developer's construction of the Development shall be in substantial compliance with the Village Board approved plans and subsequent final engineering approved plans including the following plans and agreed to conditions:

- a. Hamilton Lakes Master Concept Plan – showing site plan changes, dated June 7, 2019 (Exhibit B)
- b. Architecture Perspectives, Elevations, Floor and Roof plans, dated July 3, 2019 (Exhibit C)
- c. Project Description and Parking Analysis, dated June 6, 2019 (Exhibit D)
- d. Landscape Plan, dated July 3, 2019 (Exhibit E)
- e. Revised Preliminary Engineering Plans with Fire Truck Turning Exhibit, dated July 3, 2019 (Exhibit F)
- f. Hamilton Lakes Resubdivision No. 2, dated June 13, 2019 (Exhibit G)
- g. Lighting Photometric Plans, dated July 3, 2019 (Exhibit H)
- h. Security Fencing Details, dated June 7, 2019 (Exhibit I)
- i. Technical Memorandum regarding Traffic Impact Study, prepared by Civiltech, dated May 5, 2017 with addendum dated July 3, 2019. (Exhibit J)
- j. Response to Planning Review memorandum on June 24, 2017, dated July 3, 2019 (Exhibit K)
- k. Engineering review memorandum dated June 21, 2019, and subsequent memos. (Exhibit L)
- l. Itasca Fire District review memorandum dated June 19, 2019, and subsequent memos. (Exhibit M)

3. Should Developer fail to develop the Subject Property in substantial compliance with the approved plans (as listed above in Section 2) or should Developer seek to depart from or modify these approved plans, Developer shall then be required to again go before the Plan Commission and Village Board to seek the necessary approvals of such departure or modification, as outlined in the Itasca Zoning Ordinance and Subdivision Regulations. Notwithstanding the foregoing, any departures from or modifications to the approved plans hereafter sought by the Developer which are deemed minor in the discretion of the Community Development Director, or his or her designee, may be approved by said Director or designee without public hearings and without formal amendment to this Agreement.

4. Compliance with Applicable Ordinances / Conflicts.

- a. In constructing the Development, the Developer agrees to comply with: (i) the Itasca Zoning Ordinance and Subdivision Ordinance, as they exist as of the Effective Date of this Agreement, and as applicable to the Development; (ii) all Village Board approvals as outlined in this Agreement; (iii) all plans referenced in Section 2 above; and (iv) subject to the provisions of Sections 4(b) and (c) below, all other Village codes, ordinances, regulations, standards and specifications, as amended from time to time.

- b. In the event of a conflict or inconsistency between the Village's codes, ordinances, regulations, standards and specifications, as amended from time to time, on the one hand, and this Agreement (including the plans and exhibits attached to this Agreement), the ordinance adopted by the Village Board pursuant to this Agreement or the Final Development Plans, on the other hand, the latter shall govern and control. In the event of a conflict or inconsistency between the text of this Agreement and either the plans and exhibits attached to this Agreement or the Final Development Plans, the plans and exhibits to this Agreement and the Final Development Plans shall govern and control. In the event of a conflict or inconsistency between the plans and exhibits attached to this Agreement and the Final Development Plans, the Final Development Plans shall govern and control.
- c. Should Developer fail to commence any construction of the Development within two years from the Effective Date of this Agreement, Developer would be required to follow all Village ordinances and building codes as they exist at that time, and, pursuant to Village Ordinance, the Village Plan Commission may recommend to the Village Board that any zoning related to the Development be affirmed or repealed to the most appropriate district classification in accordance with the Village's Zoning Ordinance.
- d. Following the Village's issuance of final certificates of occupancy, any construction or repair work performed must comply with all existing Village codes, ordinances, regulations, and standards.

5. Construction Schedule. The Developer anticipates construction to proceed in two (2) phases over the course of three to five years, as shown in Exhibit F, Revised Preliminary Engineering Plans. Phase 1 will consist of an approximately 228,000 square foot, 2-story building and all underground improvements for that facility and partial underground improvements for the site, as well as, site improvements associated with the first structure (landscaping). Phase II will consist of an approximately 228,000 square foot, 2-story building and all remaining underground improvements and site improvements. If there is a delay of more than 365 days between the completion of one phase and the commencement of the next phase, the Developer will seed or sod undeveloped portions of the property.

6. Site Improvements. In connection with its construction of the Development, Developer, at its sole cost and expense, shall construct all of the following improvements to the extent identified on the Final Engineering Plans (collectively, the "Site Improvements"): (i) all water mains and service lines, fire hydrants, and appurtenances, including the 8-inch water main which encircles the building; (ii) all stormwater management facilities, storm sewer mains and related facilities, including those described in Section 7 of this Agreement, (iii) all sanitary sewer mains, service lines, and appurtenances; (iv) a private access drive from the intersection of Hamilton Lakes Drive and Pierce Road to the building, as depicted on Exhibit D, Preliminary Engineering Plans (hereinafter "Private Drive"); (v) improvements at the intersection of Hamilton Lakes/access drive and Pierce Road, including traffic signal installation at the intersection; and (vi) emergency access on the southeast side of the development as shown on the "Depiction of Emergency Access Easement," attached hereto and incorporated herein as Exhibit L. The construction of all Site Improvements shall be subject to inspection by and the approval of the

Village Engineer in accordance with the Village's Development Standards and Specifications, this Agreement and all other applicable provisions of the Village Code.

All work performed on the Site Improvements shall be conducted in a good and workmanlike manner and with due dispatch in accordance with this Agreement. Reasonable care shall be taken to avoid damage to existing and new public improvements, including utilities, streets, and curbs during construction. Any public improvement damaged during construction shall be repaired to the reasonable satisfaction of the Village Engineer and in substantial compliance with this Agreement and all applicable Village codes and ordinances.

7. Stormwater Management System. Stormwater management shall be provided in compliance with the DuPage County Stormwater Ordinance. Final grading and landscaping of the stormwater management system shall be completed in conjunction with the installation of the landscaping depicted on the Final Landscaping Plans, if not completed prior to this activity.

Sediment and erosion control measures shall be implemented in compliance with the DuPage County Stormwater Ordinance and the requirements of the Development's NPDES permit. Said measures shall be put in place by the Developer concurrently with its commencement of mass grading activities on the Subject Property, maintained during the entire construction process, and inspected and repaired as necessary after each significant rainfall. Failure to do so may constitute a default pursuant to Section 14 of this Agreement.

8. Improvement Security. Prior to the Village's issuance of a permit to construct the Site Improvements, the Developer shall deliver to the Village one or more bonds or letter of credit ("Improvement Security") to secure the due and proper construction of the Site Improvements. The Improvement Security shall be in a total amount equal to 110% of the Developer's Engineer's estimated costs of construction of the Site Improvements, as approved by the Village Engineer, and in a form approved by the Village Attorney. This security shall be subject to partial reduction as Site Improvements are completed, inspected, and approved by the Village Engineer, and as Public Improvements are completed and conveyed to and accepted by the Village pursuant to Section 9 below.

9. Conveyance and Acceptance of Public Improvements. For purposes of this Agreement, the following improvements shall be deemed "Public Improvements" which the Developer shall construct and ultimately convey to the Village pursuant to this Section:

- a. Portion of sanitary sewer which serves more than one customer, including the portion underneath the pond to the west of the property, which are depicted on the Final Engineering Plans; and
- b. Traffic improvements and signals at the intersection of Hamilton Lakes Drive/Private Drive and Pierce Road as depicted on the Final Engineering Plans.

The Village will accept the Developer's conveyance of the Public Improvements on an improvement-by-improvement basis, by resolution, following the Village Engineer's inspection and approval of the same and the Developer's delivery of a customary form bill of sale to the Village. The Corporate Authorities shall not accept any Public Improvements proposed for

acceptance until: (i) all deficiencies described in a final punch list have been satisfactorily completed and approved by the Village Engineer; (ii) the Developer has delivered final record drawings (as-builts) of the Public Improvements to be conveyed to the Community Development Director and such “as-builts” are approved by the Village Engineer, or his or her designee; and (iii) the Developer has delivered a maintenance bond to the Community Development Director, in a form approved by the Village Attorney and in an amount equal to 10% of the cost of Public Improvements as estimated by the Developer’s engineer and approved by the Village Engineer (“Maintenance Bond”), which Maintenance Bond shall guarantee for a period of two years that all construction of the Public Improvements was done in a workmanlike manner and in substantial compliance with the Final Engineering Plans and all applicable provisions of the Village Code. The Maintenance Bond shall be returned to the Developer at the expiration of said two-year period unless at such time the Village Engineer has identified deficiencies in such construction which have not yet been corrected by the Developer.

At the Developer’s request, the Village and the Developer will work together in good faith to finalize and make effective a recapture agreement that will permit the Developer to recapture a portion of the costs it incurs in constructing the sanitary sewer system described in Section 9(a) above from future property owners that desire or are required to also use such sanitary sewer system.

10. Maintenance by the Village. Upon conveyance and acceptance of the Public Improvements by the Village, as outlined in Section 9, the Village, at its sole cost, shall maintain, replace and repair the Public Improvements described in Section 9. The Village shall not be responsible for snow removal on the private access road or maintenance of the water main loop through the Subject Property.

11. Ownership and Maintenance by the Developer. The Developer, at its sole cost, shall maintain in good and operational conditions at all times the Private Drive, the emergency access road on the southeast side of the property, the fire lane around the building, and the water main loop which encircles the building. The Developer shall be responsible for snow removal on the Private Drive, the fire lane and the emergency access road. The Developer shall maintain the fire lane and emergency access road in a manner to ensure emergency vehicles have access to the Development 24 hours a day, 7 days a week.

12. Easement Agreements.

The Preliminary Plat of Subdivision contemplates re-subdividing Parcels 3, 4, and 5 of Chancellory Assessment Plat No. 2 (Document R92-254005) into four new lots: Lots 1, 2, 3, and 4. The Developer agrees to obtain the following access easements, which will be reflected on the Final Plat of Subdivision:

- a. Lot 2 Access Easement. The Developer has agreed to construct emergency access on the southeast side of the development, as described in Section 6 above. Ingress and egress to this emergency access will be through the neighboring property to the east of Lot 2. The Developer shall enter into an agreement, subject to the approval of the Village Engineer and Village Attorney, which shall not be unreasonably withheld, with the neighboring property owner to provide a permanent easement

for ingress and egress of emergency vehicles and equipment to the emergency access on the southeast side of the Development.

- b. Lots 3 and 4 Access Easement. Lots 3 and 4 shall have access to the Private Drive described in Section 6 above. The Developer shall enter into an agreement, subject to the approval of the Village Engineer and Village Attorney, which shall not be unreasonably withheld, with the owner of Lots 3 and 4 to provide a permanent easement for ingress and egress using the Private Drive. In such agreement or in a separately recorded agreement, the Developer and the owner of Lots 3 and 4 may provide that the owner(s) of Lots 3 and 4 shall reimburse the Developer (or its successor in interest) for their respective proportionate shares of the costs of construction and maintenance of the Private Drive. The distance between the centerline of Pierce Road and the centerline of the future ingress and egress curb cuts for Lots 3 and 4, as measured along centerline of the Private Drive, shall be no less than 250 feet.

Additionally, the Developer agrees to provide the Village with easements for emergency repairs to the water mains and service lines, fire hydrants, and appurtenances, including the 8-inch water main which encircles the building, and the stormwater management facilities described in Section 6 above. Regular, non-emergency maintenance shall be allocated as described in Sections 10 and 11 above. After construction, Developer agrees to provide the Village and record a Plat of Easement, with the as-built location of utilities, for the Village to have access for such repairs. The Developer also agrees to provide the Village with an easement to use the Private Drive for emergency response, including fire, police, and ambulance.

 13. Fees.

- a. Recapture Fee. Developer acknowledges that the Village entered into an agreement with Tantillo Corporation and its successors which was approved and incorporated into Ordinance No. 989-98 and that this agreement with Tantillo Corporation and its successors requires the Village to collect certain proportional fees to recapture the costs paid by Tantillo Corporation for improvements which benefit the Subject Property. The Developer acknowledges and agrees that Ordinance NO. 989-98 and the agreement with Tantillo Corporation and its successors is applicable to the Subject Property and that the Village is authorized to collect a recapture fee in the amount of \$119,224.87. Therefore, the Developer shall pay \$119,224.87 in connection with Developer's construction of the Development. 
- b. The Developer shall be responsible for all other fees and costs required by the Itasca Code of Ordinances, the Itasca Zoning Ordinance, and the Itasca Subdivision Regulations, as they exist as of the Effective Date of this Agreement, as well as applicable County, state and federal laws and regulations, including but not limited to the DuPage County Department of Transportation fee.

14. Default. In the event of any violation of any term or portion of this Agreement, the Party not in default or violation shall serve written notice upon the Party in default or violation,

which notice shall be in writing and shall specify the particular violation or default. All Parties hereto reserve the right to cure any violation of this Agreement within thirty (30) days after receipt of written notice of such violation or default; provided, however, that said thirty (30) day period shall be extended: (i) if the alleged violation or default is not reasonably susceptible to being cured within said thirty (30) day period, (ii) if the Party in violation or default has promptly initiated a cure of the violation or default, and (iii) if the Party in violation or default diligently and continuously pursues a cure of the violation or default until its completion.

In the event either Party hereto is delayed, hindered or prevented in performing any act required hereunder by reason of any act or occurrence beyond its reasonable control and not the fault of such Party, including labor disputes, acts of God, material shortages, governmental restrictions or regulations, extreme adverse weather conditions, wet soil conditions, fire, civil insurrection, war or other such reason, the Party so delayed, hindered or prevented shall, if reasonably practicable hereunder, be excused from performance only for the period of such delay, hindrance and/or prevention and shall reasonably promptly tender said performance upon the removal and/or reconciliation of said interference.

The failure of a Party to exercise any right or remedy or to insist upon the due performance of an obligation under this Agreement on any given occasion shall not be deemed or construed to be a waiver of such right or remedy or of the right to insist upon such due performance on any subsequent occasion.

15. Notices. Any notice, request, demand, or other communication provided for by this Agreement must be in writing and will be deemed to have been duly received on (i) actual receipt if personally delivered and the sender received written confirmation of personal delivery, (ii) receipt as indicated by written or electronic verification of delivery when delivered by overnight courier, (iii) receipt as indicated by the electronic transmission confirmation when sent via facsimile transmission, or (iv) three calendar days after the sender deposits the notice with the U.S. Post Office when sent by certified or registered mail, return receipt requested. Notice must be sent to the addresses set forth below or to another address if specified in writing by a party.

If to Developer:

RagingWire Data Centers, Inc.  
5470 Kietzke Lane, Suite 230  
Reno, Nevada 89511  
Attn: Seshma Kumararatne/Legal  
Fax: 916-921-4150

with a copy to:

Franklin T. Watson  
Watson Law Firm  
1849 Iron Point Road, Suite 140  
Folsom, California 95630  
Fax: 916-986-9797

If to the Village:

Village of Itasca  
Attn: Village Administrator  
550 W. Irving Park Road  
Itasca, Illinois 60143  
Fax: 630-773-2505

with a copy to:

Charles E. Hervas  
Hervas, Condon & Bersani, P.C.  
333 Pierce Rd. Suite 195  
Itasca, Illinois 60143  
Fax: 630-773-4851

16. Cooperation of the Parties. The Village and Developer agree to cooperate reasonably with each other when requested to do so concerning the development of the Subject Property. Notwithstanding any provision of this Section, the Village shall not be required to take any action which may decrease real estate or other tax revenues generated by the Property or the use of the Property.

17. Integrated Agreement. This Agreement and the ordinances adopted by the Village Board pursuant to this Agreement constitute the entire agreement between the Parties, superseding any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.

18. Successors. The provisions of this Agreement shall inure to the benefit of and be binding on the successors and assigns of the Parties. Should Developer sell the Development or Subject Property or should new ownership take control of the Developer prior to the completion of the Development, the Village shall be provided at least thirty (30) days' notice of such change and shall have an opportunity prior to any change to meet with the new ownership to review this Agreement. This Agreement shall not be binding on successor owners of the Development or Subject Property without Village approval.

19. Amendments. No amendment or any other change of any kind to this Agreement will be valid or binding unless it is in writing and signed by authorized representatives of the Village and the Developer or their successors or assigns.

20. Choice of Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Illinois. The Venue for any action under or resulting from this Agreement shall be in the Circuit Court of the Eighteenth Judicial Circuit of the State of Illinois, located in DuPage County, Illinois.

21. Captions and Headings. The captions and section headings used in this Agreement are for convenience only and are not a part of this Agreement and shall not be used in construing it.

22. No Third-Party Beneficiary Intended. No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation shall be made, or be valid, against the Village or Developer.

23. Severability. Each provision hereof is intended to be severable, and the invalidity or unenforceability of any portion of this Agreement shall not affect the validity or enforceability of the remainder hereof, provided the overall intentions of the parties and the purposes of this Agreement, each as expressed herein, are not materially impaired. Neither of the parties 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 of it.

24. Representation of Binding Effect. The Developer and the Village each represent that this Agreement has been properly approved and executed and is legally binding on them.

25. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original document and together shall constitute the same instrument.

26. Definitions. As used in this Agreement, the terms "Final Development Plan(s)," "Final Engineering Plan(s)" and "Final Landscaping Plan(s)" shall have the same meaning as the terms are used in the Itasca Zoning Ordinance, Itasca Subdivision Ordinance, and Itasca Development Standards.

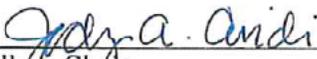
27. This Agreement shall be recorded with the DuPage County Recorder's Office by the Developer.

IN WITNESS WHEREOF, the Developer and the Village have caused this Agreement to be properly executed as of the Effective Date.

VILLAGE OF ITASCA, an Illinois  
Municipal Corporation

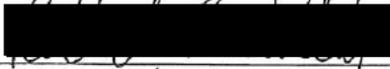
By:   
Hon. Jeff Pruyn, Mayor

Dated: 11/19/19

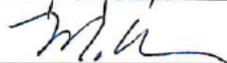
Attest:   
Village Clerk

Dated: 11/19/19

RagingWire Data Centers, Inc. 

By: 

Dated: 11/5/19

Attest: 

Dated: 11/5/19

R98-074226

98 APR 21 PM 3:00

RECORDER  
DU PAGE COUNTY

*Barney*

ORDINANCE NO. 989 - 98

AN ORDINANCE APPROVING AND DIRECTING  
THE EXECUTION OF A RECAPTURE AGREEMENT  
BETWEEN THE TANTILLO CORPORATION  
AND THE VILLAGE OF ITASCA

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WHEREAS, the Tantillo Corporation, a Delaware corporation, owns or has the right to acquire certain land in the Village of Itasca, DuPage County, Illinois, which land is the subject of an annexation agreement entered into between Tantillo and the Village on June 26, 1996; and,

WHEREAS, Tantillo has developed and is now developing said land for residential uses; and,

WHEREAS, Tantillo's land was not sufficiently served by the Village's municipal water and sewer systems prior to annexation to the Village, and, therefore, Tantillo has agreed to extend those systems to the Tantillo property; and,

WHEREAS, the Village has determined, upon advice and recommendation of its Village Engineer, that it is in the best interests of the community that any water and sewer system to serve Tantillo be designed, constructed, and routed in such manner as to be capable of serving a larger area of land, part of which presently lies within the Village limits and the remainder of which lies in such relation to the Village limits that it may be annexed to the Village in the future, pursuant to then existing law and pursuant to such action as the corporate authorities of the Village, at their discretion, may wish to take from time to time; and,

WHEREAS, Tantillo offered to construct and extend the Village's municipal water and sewer systems upon the understanding that the Village would provide by appropriate ordinance and related procedures for Tantillo to recapture an equitable portion of the costs thereof from other lands to benefit therefrom upon connection thereof to said water and sewer systems; and,

( Village of Itasca  
100 N Walnut St  
Itasca, IL 60148 )

WHEREAS, pursuant to 65 ILCS 5/9-5-1, the Village has accepted the above offer, and the terms and conditions relating thereto were incorporated in the recapture agreement between Tantillo and the Village; and,

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Itasca, DuPage County, Illinois as follows:

SECTION ONE: That the recapture agreement between Tantillo and the Village, a copy of which is appended hereto as Exhibit A and expressly incorporated herein by this reference, is hereby approved.

SECTION TWO: That the Village President and the Village Clerk are hereby authorized and empowered to sign and attest, respectfully, the said recapture agreement on behalf of the Village of Itasca.

SECTION THREE: That the Village Clerk is authorized and directed to cause a certified copy of this Ordinance, and a properly executed copy of the recapture agreement, to be recorded with the Recorder of Deeds of DuPage County, Illinois.

SECTION FOUR: SEVERABILITY. The various provisions of this Ordinance are to be considered as severable, and if any part or portion of this Ordinance shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

SECTION FIVE: REPEAL OF PRIOR ORDINANCES. All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION SIX: EFFECTIVE DATE: This Ordinance shall be in full force and effect 10 days after its passage, approval and publication in pamphlet form.

AYES: Aiani, Geske, Leahy, Pruyn, Putzell and Reynolds

NAYES: -0-

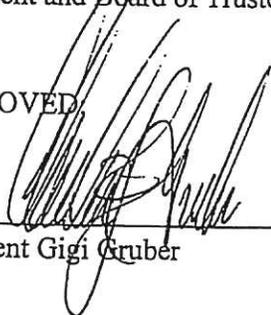
ABSENT: -0-

ABSTAIN: -0-

R98-074226

APPROVED and ADOPTED by the Village President and Board of Trustees of the Village of Itasca this 7th day of April, 1998.

APPROVED

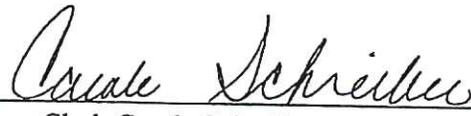
  
\_\_\_\_\_  
President Gigi Gruber

ATTEST:

  
\_\_\_\_\_  
Village Clerk Carole Schreiber

**CERTIFICATION**

I, the undersigned, do hereby certify that I am the Village Clerk of the Village of Itasca, DuPage County, Illinois, and that the foregoing is a true, complete and exact copy of Ordinance 989 - 98 enacted on April 7, 1998, and approved on April 7, 1998, as the same appears from the official records of the Village of Itasca.

  
\_\_\_\_\_  
Village Clerk Carole Schreiber

PASSED: April 7, 1998

APPROVED: April 7, 1998

RECORDED: April 8, 1998

R98-074226

**RECAPTURE AGREEMENT**

THIS RECAPTURE AGREEMENT (this "Agreement") is made and entered into this \_\_\_ day of February, 1998, by and between the VILLAGE OF ITASCA, a municipal corporation of the State of Illinois (the "Village"), whose address is 100 North Walnut Street, Itasca, Illinois 60143, and THE TANTILLO CORPORATION, an Illinois corporation, d/b/a Tantillo Homes ("Developer"), whose business address is 9450 West Bryn Mawr, Suite 260, Rosemont, Illinois 60018.

**WITNESSETH:**

WHEREAS, the parties are authorized to enter into this Recapture Agreement under the Illinois Municipal Code, 65 ILCS 5/9-5-1; and

WHEREAS, Developer owns, or has the right to acquire, approximately 23.218 acres of real property located in unincorporated DuPage County, Illinois, legally described on Exhibit A attached hereto (the "Property"), which Property is the subject of an annexation agreement with the Village dated as of June 26, 1996; and

WHEREAS, as a condition of approving Developer's proposed development of the Property ( the "Development"), the Village required the construction and installation, at Developer's expense, of certain public improvements consisting of water mains ("Water Improvements") and sanitary sewer and equipment accessory thereto ("Sewer Improvements"), as more particularly described on Exhibit B and Exhibit C attached hereto (collectively, the "Public Improvements"); and

WHEREAS, it is the opinion of the corporate authorities of the Village that the Water Improvements are adequate and will be available for the direct and indirect benefit of certain other property (the "Water Property") described on Exhibit D attached hereto and not part of the Development, which Exhibit also sets forth each parcel's share of the cost of the Water Improvements; and

WHEREAS, it is the opinion of the corporate authorities of the Village that the Sewer Improvements are adequate and will be available for the direct and indirect benefit of certain other property (the "Sewer Property" and together with the Water Property, the "Other Property") described on Exhibit E attached hereto and not part of the Development, which Exhibit also sets forth each parcel's share of the cost of the Sewer Improvements; and

WHEREAS, the Village and Developer agree that this Agreement is for and in the best interests of all concerned, including the citizenry of the Village, and that Developer should be reimbursed by the owners of the Other Property in connection with construction of the Public Improvements; and

WHEREAS, pursuant to the legal power and authority granted to it, the Village is willing to obtain reimbursement for Developer from the owners of the Other Property for a portion of the costs incurred by Developer in connection with the construction of the Public Improvements;

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, the

R98-074226

parties hereby agree as follows:

1. Construction of Public Improvements. Developer shall work diligently to complete the Public Improvements. Upon completion, Developer shall convey to the Village all right, title and interest in and to the Public Improvements. The Public Improvements shall be deemed completed when approved by the Village Engineer (which approval shall not be unreasonably withheld or delayed) and formally accepted by the village corporate authorities by a written certificate of completion. However, delivery of a written certificate of completion does not release Developer from its warranty obligations under paragraph 5 of this Agreement.

2. Reimbursement Expense. The Village shall reimburse Developer for that portion of the cost of the Public Improvements, whether constructed by Developer or the Village, that was incurred by Developer for the direct or indirect benefit of the Other Property (the "Recapture Expense"). The Village shall collect the Recapture Expense from the owners of the Other Property at the time provided in paragraph C below. However, any obligation to collect the Recapture Expense under this Agreement shall be non-recourse to the Village, and the Village shall not be responsible in the event there is no development to the Other Property, the owners of the Other Property do not tap-on to the Public Improvements or the Recapture Expenses are otherwise uncollected for any reason other than the failure of the Village to in good faith make reasonable attempts to collect the same.

The Village shall make reasonable attempts to collect the Recapture Expense but shall not be obligated to bring any suit to enforce collection of the Recapture Expense. Developer shall bear the cost of enforcing or defending this Agreement and hereby agrees to hold harmless and defend the Village, its officers, employees and agents against any claim, suit or action of any kind whatsoever brought against them as a result of the entry into or enforcement of this Agreement.

The reimbursement to Developer shall take place when funds are collected by the Village from the owners of the Other Property as set forth below:

A. Cost of Public Improvements.

Developer and the Village agree that the preliminary Total Cost of the Public Improvements as determined by Cowhey Gudmundson Leder, Ltd. ("Engineer") is \$1,240,801.90, and that such preliminary costs are subject to change as set forth below. Neither party shall question or challenge the Total Cost of the Public Improvements as finally determined by Engineer.

Developer and the Village acknowledge that the Total Cost of Public Improvements as set forth above and on the exhibits attached hereto are based on estimates received by Developer. Because the construction of the Public Improvements will not take place until after the date hereof, the Total Cost of Public Improvements is subject to change based on the final cost of construction. Developer and the Village shall execute an amendment to this Agreement to reflect the final Total Cost of Public Improvements. Any owner of the Other Property who taps on to the Public Improvements after the date of this Agreement and before the final Total cost of Public Improvements is determined shall pay its Total Reimbursement based on the estimated Total Cost

of Public Improvements set forth above. In the event that the final Total Cost of the Public Improvements is less than set forth above, Developer shall refund any overage to the Village, and the Village shall be solely responsible for refunding such overage to the affected owner of the Other Property. If the final Total Cost of Public Improvements is more than set forth above, the Village shall (i) recalculate the amount owed using the final Total Cost of Public Improvements and as set forth above, (ii) bill such owner of the Other Property for the amount owed, and (iii) promptly remit such amount to Developer upon receipt.

B. Pro Rata Share.

The Total Reimbursement due from each owner of the respective Other Property potentially benefitting from the Public Improvements shall equal the portion of the Recapture Expense set forth on Exhibit D and/or Exhibit E, as applicable, plus seven percent (7%) per annum from the date of completion of the Public Improvements to the time provided in paragraph C below (the "Interest Factor"). In no event shall the total sums paid to Developer exceed the Total Cost of Public Improvements applicable to the Other Property plus the total Interest Factor.

C. Collection of Recapture Fees. For those portions of the Other Property being developed, when an owner or developer of any portion of any parcel of the Other Property applies for a tap-on permit in order to use the Public Improvements, said owner or developer shall be obligated to pay to the Village the amount of the Total Reimbursement from such owner or developer for the entire parcel which its property is a part as set forth on Exhibit D and/or Exhibit E, plus a ten percent (10%) collection fee to be retained by the Village. If one of the parcels identified in Exhibit D or Exhibit E is subdivided prior to application for tap-on, the amount collected shall be prorated based on the subdivided area of that portion of the lot applying for tap-on.

3. Collection of Costs. The Village shall collect the Total Reimbursement as set forth in Paragraph 2 above from the owners or developers of the Other Property, but, in any and all events, prior to the connection and use of the Public Improvements by the respective owners or developers of the Other Property and the Village shall pay these sums to Developer. In no event shall any owner of the Other Property obtain any approvals from the Village for construction of improvements on the Other Property unless the owner of the Other Property has concurrently with issuance of the approvals paid its share of the Recapture Expense. In the event the Village fails to collect any portion of the Recapture Expense that it is obligated to collect, Developer shall be entitled to collect same from a non-paying owner of the Other Property. Developer shall be deemed to be a third-party beneficiary of any agreement between the Village and an owner of the Other Property that has the effect of permitting an owner of the Other Property to use the Public Improvements, whether or not such agreement expressly requires the owner of the Other Property to pay a portion of the Recapture Expense.

4. Agent. The Village shall act solely as recapture agent under the terms of this Agreement, but it shall in no way be responsible pecuniarily or otherwise for any error of the Village, or on the part of its officers, employees or agents, or bear any responsibility whatsoever, for issuing any permit in error or for any failure or failure for whatever reason to effect the

collection of money as contemplated by this Agreement.

5. Maintenance of Improvements. The Developer shall, at its own expense, maintain, repair and replace the Public Improvements for a period of three (3) years after final acceptance of such Public Improvements. After the expiration of such 3-year period, Developer shall assign to the Village any and all warranties made from Developer's contractor to Developer with respect to the Public Improvements, and the Village shall thereafter be responsible at its own expense to maintain, repair and replace the Public Improvements (except to the extent covered by the contractor's warranty) and Developer shall have no further responsibility in any way for this obligation. Developer makes no warranty, express or implied, regarding the Public Improvements other than as set forth above.

6. Other Fees. The collection by the Village of the fees contemplated hereinabove shall be in addition to any and all other building permit fees, water tap-on fees, and/or any or all other fees required to be paid by the ordinances of the Village, other local regulations and/or the statutes of the State of Illinois.

7. Exclusion from Recapture Expense. It is specifically understood and agreed that, in consideration of the payment by Trammel Crow Co. or a Trammel Crow Co. related entity (collectively, "Trammel Entity") of a portion of the cost of constructing certain of the Public Improvements, there will be no Recapture Expense due from a Trammel Entity with respect to the property described on Exhibit F attached hereto and made a part hereof to the extent of the sum identified on said Exhibit in the event a Trammel Entity taps on to the Public Improvements, provided, however, that if any of the property described on Exhibit F is sold or transferred by a Trammel Entity to any other party or developer which is not a Trammel Entity, the waiver of the Recapture Expense set forth in this paragraph shall be null and void and such property shall be subject to its proportionate share of Recapture Expenses as set forth in this Agreement based upon the acreage of the property so transferred. In determining whether or not the property described on Exhibit F is subject to Recapture Expense, the Village shall not be required to make an independent determination, but shall not collect said amount if at the time of application for tap-on, the Village is presented with a letter from Developer stating that the Recapture Expense for said parcel is waived as set forth above. The Village is authorized to rely on said letter from Developer and Developer agrees to hold the Village harmless with respect to the non-collection of Recapture Expense in the event the Village is so presented with a letter from Developer. In the event no letter from Developer is so presented, the Village shall collect the applicable Recapture Expense.

8. Term. This Agreement shall terminate in twenty (20) years from the date of this Agreement or on the date on which any obligation on the part of the Village to collect and remit to Developer the Recapture Expense and accrued interest shall be been satisfied in full, whichever comes first.

9. Successors and Assigns. All of the terms and conditions of this Agreement shall run with the land, and shall be binding upon and inure to the benefit of the parties to this Agreement and the owners of the Other Property, and their legal representatives, grantees, heirs, successors and assigns.

10. Amendment. This Agreement may not be amended, modified or annulled except by a written agreement executed by the Village and Developer, or by their respective legal representatives, grantees, heirs, successors or assigns. Duly executed amendments shall become effective upon recording with the Recorder of Deeds of DuPage County, Illinois.

11. Recordation. This Agreement shall be recorded with the Recorder of Deeds of DuPage County, Illinois. All contracts, deeds of conveyance, mortgages and instruments of record relating to the Property, or any part thereof, shall be subject to the provisions of this Agreement.

12. Choice of Law. This Agreement shall be construed and enforced pursuant to the laws of the State of Illinois, without reference to its principles of conflicts of laws.

13. Entire Agreement. This Agreement sets forth the entire agreement between the parties with respect to the matters set forth herein, and supersedes any and all other agreements between the parties, either oral or written and replaces all other previous agreements relating to the matters set forth herein.

14. Due Execution. Each of the parties represents and warrants to one another that this Agreement has been duly authorized, executed and delivered and that this Agreement is binding upon and enforceable against each of the parties hereto.

15. Notices. Any notice that a party is required or may desire to give the other shall be in writing and shall be sent by personal delivery or by mail (either (a) by United States registered or certified mail, return receipt requested, postage prepaid, or (b) by Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery), addressed as follows (subject to the right of a party to designate a different address for itself by notice similarly given):

To the Village:

Village of Itasca  
100 North Walnut Street  
Itasca, Illinois 60143  
Attn: Village Clerk  
Fax: 630-773-2505

With copies to:

Hervas, Sotos, Condon & Bersani, P.C.  
333 Pierce Rd  
Suite 195  
Itasca, Illinois 60143  
Attn: Michael D Bersani  
Fax: 630-773-4851

To the Developer:

Citadel Homes, Inc.  
9450 W. Bryn Mawr  
Suite 260  
Rosemont, Illinois 60018  
Attn: Gregory Paulus  
Fax: 847-678-7147

With copies to:

Belz, McWilliams & Haugh  
525 Dee Lane  
Roselle, Illinois 60172  
Attn: Scott C. Haugh, Esq.  
Fax: 630-894-9927

and

Trammell Crow Company  
2001 Ross Avenue  
Suite 3500  
Dallas, Texas 75201  
Attn: Ms. Mary Murphy  
Fax: 214-979-5481

Any notice so given by mail shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by the U.S. Post Office return receipt of the overnight carrier's proof of delivery, as the case may be. Any such notice not so given shall be deemed given upon receipt of the same by the party to whom the same is to be given.

16. Partial Invalidity of Agreement. If any provision of this Agreement, or its application to any person, entity or property is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect the application or validity of any other terms, conditions and provision of this Agreement, to that end, any terms, conditions and provisions of this Agreement are declared to be severable.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be made and their respective officials, officers, partners or trustees have signed and affirmed their respective seals on the day and year first above written.

**VILLAGE:**

VILLAGE OF ITASCA  
an Illinois municipal corporation

By: [Signature]  
Title: President

Attest:  
[Signature]  
Title: Village Clerk

**DEVELOPER:**

THE TANTILLO CORPORATION,  
an Illinois corporation d/b/a Tantillo  
Homes

By: [Redacted Signature]  
Name: ANTHONY J. TANTILLO  
Title: PRESIDENT & CEO

ACKNOWLEDGMENT

State of *Illinois* )  
County of *Cook* )ss.

I, the undersigned, a Notary Public in and for the said County and State aforesaid, do hereby certify that Anthony J. Tantillo, President of The Tantillo Corporation, an Illinois corporation d/b/a Tantillo Homes, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and NOTARIAL SEAL this *29* day of *January*, 1998.

*[Signature]*  
Notary Public

My commission expires: *9/20/00*



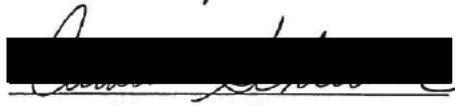
R98-074226

ACKNOWLEDGMENT

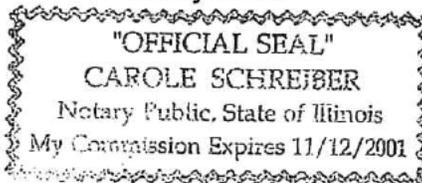
STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF DUPAGE    )

I, the undersigned, a Notary Public in and for the said County and State aforesaid, do hereby certify that Gigi Gruber, Village President and Carole Schreiber, Village Clerk of the Village of Itasca, personally known to me to be the same person whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act as the free and voluntary act of said Village for the uses and purposes therein set forth.

Given under my hand and NOTARIAL SEAL this 7th day of April, 1988.



Notary Public



My commission expires:

11-11-11 11:11 AM

**RESOLUTION NO. 1239-20**

**A RESOLUTION APPROVING PAYMENT OF A RECAPTURE FEE IN THE AMOUNT OF \$119,224.87 TO HAMILTON LAKES LAND, LLC**

WHEREAS, the Raging Wire Data Center Development at Hamilton Lakes was subject to a Development Agreement which was approved by the Village Board on November 5, 2019; and

WHEREAS, the Development Agreement provides that the Village shall collect recapture fees through the building permit process; and

WHEREAS, pursuant to the Development Agreement, the Village collected recapture fees in the amount of \$119,224.87 from the Raging Wire Data Center Development; and

WHEREAS, pursuant to the Development Agreement, the Village is obligated to pay Hamilton Lakes Land, LLC the recapture fees collected by the Village.

NOW, THEREFORE, BE IT RESOLVED by the Village President and the Board of Trustees of the Village of Itasca, DuPage County, Illinois, as follows:

SECTION ONE: The corporate authorities of the Village of Itasca hereby approve the payment of recapture fees in the amount of \$119,224.87 to Hamilton Lakes Land, LLC.

SECTION TWO: SEVERABILITY. If any section, paragraph, or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Resolution.

SECTION THREE: REPEAL OF PRIOR RESOLUTIONS. All prior Resolutions and Ordinances in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION FOUR: EFFECTIVE DATE. This Resolution shall be in effect immediately from and after its passage and approval.

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

APPROVED and ADOPTED by the Village President and Board of Trustees of the Village of Itasca this 6<sup>th</sup> day of October, 2020.

ATTEST:

APPROVED:

\_\_\_\_\_  
Village President Jeffery J. Pruyn

\_\_\_\_\_  
Village Clerk Jody Conidi