AGENDA
Planning and Zoning Commission
July 3, 2019
6:00 PM

A. ROLL CALL

B. APPROVAL OF AGENDA (Additions or Deletions)

C. APPROVAL OF MINUTES

D. PUBLIC PARTICIPATION (Open Floor to Anyone Wishing to Speak on Record)

E. NEW BUSINESS

1. Public Hearing – Petition by Park 88 Group, LLC for approval of an amendment to the development agreement for Park 88 approved by Ordinance No. 04-53 and the annexation agreement approved by Ordinance 07-61 to accommodate changes to the land use, setbacks, building height, interior roadway alignments, Peace Road improvements, roadways costs, building appearance and landscape standards, signage, lighting, fences and pedestrian/bicycle paths for an approximately 570 acre site located generally on the west side of Peace Road, south of E. Lincoln Highway and north of Fairview Drive. The petitioner is also requesting the rezoning of approximately 102 acres from “SFR1” Single-Family Residential to “PD-I” Planned Development Industrial and “PD-C” Planned Development Commercial zoning.

F. REPORTS

1. Relocation of City Hall

G. ADJOURNMENT
STAFF REPORT
June 28, 2019

TO: Planning and Zoning Commission

FROM: Dan Olson, Principal Planner

RE: Approval of an amendment to the annexation and development agreement for Park 88 to accommodate future growth; rezoning from “SFR1” Single-Family Residential to “PD-I” Planned Development Industrial and “PD-C” Planned Development Commercial. (Park 88 Group, LLC)

I. GENERAL INFORMATION

A. Purpose Amend the Park 88 annexation and development agreement to facilitate the development of the remaining undeveloped lands within the project

B. Owner/Applicant Park 88 Group, LLC

C. Location and Size West side of Peace Road between E. Lincoln Hwy and Fairview Dr.; 570 acres

D. Existing Zoning and Land Use “PD-I” and “SFR1”; distribution centers

E. Proposed Zoning and Land Use “PD-I” and “PD-C”; additional warehouse, office, manufacturing, & commercial uses

F. Surrounding Zoning and Land Use
   North– Unincorporated, HI, GC, LC; various commercial/industrial uses
   South – ORI, SFR1; office, warehouse, single family
   East – Unincorporated, PDC, PDI; vacant, agriculture
   West – Unincorporated, LI; RR, various commercial uses

G. Comprehensive Plan Designation Commercial, Office/Research, Light Ind.
I. BACKGROUND AND ANALYSIS

The applicant, Park 88 Group, LLC, is requesting approval of an amendment to the development agreement for Park 88 approved by Ordinance No. 04-53 and the annexation agreement approved by Ordinance 07-61 to accommodate future growth in the Park 88 development. The Park 88 is approximately 570 acres in size and located generally on the west side of Peace Road, south of E. Lincoln Highway and north of Fairview Drive. The petitioner is also requesting that approximately 102 acres of property (Orr Parcel) in the northeast portion of the development be rezoned from “SFR1” Single-Family Residential to “PD-I” Planned Development Industrial and “PD-C” Planned Development Commercial.

At the present time, Park 88 Group, LLC is the owner of the remaining undeveloped parcels within Park 88, including the Orr Parcel. Park 88 Group, LLC is proposing to amend and restate the original development agreement in its entirety to facilitate the development of the remaining undeveloped lands within Park 88 as a modern commercial and industrial property. The applicant proposes to update the standards related to land use, setbacks, building height, interior roadway alignments, Peace Road improvements, roadways costs and maintenance, building appearance, landscape standards, signage, lighting, fences and pedestrian/bicycle paths. Previously developed properties within Park 88 will remain governed by the provisions of the original development agreement from 2004. There are no new buildings proposed with this request, just amendments to the existing agreements to facilitate future development.

The development agreement includes the approval of a new Concept Plan for the area including potential building pads, parking/loading areas and access points. Preliminary and Final Plans for the individual undeveloped lots will require review and approval by the Planning and Zoning Commission and City Council

In order to facilitate the development of the undeveloped properties remaining within Park 88 (in particular the Orr Parcel), the applicant is also requesting to amend the terms of the 2007 Annexation Agreement (Orr Parcel). Accordingly, to be consistent with the zoning of the developed parcels in Park 88, the Orr Parcel (which is currently zoned SRF1) is requested to be rezoned to the PD-C and PD-I classifications. The PD-C zoning is proposed to apply to the area within 400 feet of the southerly right-of-way of E. Lincoln Highway, with the remaining being rezoned to PD-I.

A summary of the approval history of Park 88 is provided below:

**Ord 04-53;** Passed June 28, 2004: Authorized the Execution of a development agreement with DeKalb Associates regarding Park 88 for property generally bounded by the UP RR on the west, Fairview Dr. on the south, Peace Rd. on the east, and the north property line of the existing Target Distribution Center. Established PD-I zoning for the site and approved a Preliminary Development Plan and Plat for Park 88. Agreement did not include property currently shown on the City’s zoning map as SFR1 (Orr Property). The agreement approved the Target Distribution Center and included the extension of Macom Dr.
Ord 04-71 and Ord.04-72; Passed July 26, 2004: Approved the Final Plat for the lots west and north of Macom Drive, but not all the way to Peace Road. Approved the Final Plat and Final Development Plans for the Target Distribution Center.

Ord 07-39; Passed April 9, 2007: Approved the Final Plat and Final Plan for the first 3M building along Fairview Dr.

Ord 07-61 and Ord. 07-62; Passed July 16, 2007: Authorized the execution of an Annexation Agreement with Park 88, LLC and annexed property (Orr Property) located west of Peace Road, south of E. Lincoln Highway and to the north of the existing Park 88 development.

Ord 10-40; Passed June 28, 2010: Approved the Final Plan and Plat for the second 3M building.


A brief summary of the changes between the 2004 and 2007 Ordinances and the proposed development and annexation agreement is below:

Land Uses

The list of permitted uses was expanded and is more specific. The allowable uses are more reflective with the current UDO list of uses. For the area of the site within 400 feet of E. Lincoln Highway (to be rezoned PD-C), retail and service uses are added.

Bulk Regulations - Setbacks, Building Height

Establishes setback standards for buildings and parking lots from the ComEd right-of-way (along the west side of Peace Road) that are more consistent with the setbacks in the agreement from a street right-of-way. Maximum building height remains at 100 feet; however, an amendment increases the height from 40 feet to 60 feet when additional setbacks apply.

The maximum site coverage (75% - 90%) in the 2004 Ordinance is proposed to be amended to 70%. The floor area ratio (FAR) will remain at 75%.

Interior Roadway Alignments

Potential future building and roadway layouts are better defined in the northeast portion of the site, east of Target (Orr Parcel). An area of smaller lots and an internal public roadway at the northwest corner of Peace Road and Fairview Drive is proposed for removal. The area is to be replaced with one large building with private roadway access points.
Peace Road Improvements and Roadways Costs

The City has presently programmed the portion of Peace Road from I-88 to Illinois Route 38 (Lincoln Highway) for improvements at an estimated total cost of 10 million dollars and it is presently included within a federal and state grant program that results in the provision of eighty percent (80%) of the costs of designing and constructing the improvements from grant funding, with a twenty percent (20%) local funding obligation. The owner has agreed to be responsible for the payment of $750,000.00 for any local share of the cost of designing and constructing this portion of Peace Road. The agreement also stipulates the City will perform maintenance work on Macom Drive in 2020.

Although not mentioned specifically in the agreement, the City is working with ComEd on obtaining an access easement across the ComEd right-of-way next to Peace Road so adequate access can be provided to the northeast portion of the site (area east of Target).

Architectural Standards and Building Appearance

Proposed language establishes architectural guidelines with acceptable materials, prohibited materials and compatibility between buildings. Removes private development guidelines and Development Review Committee that was in the 2004 Ordinance.

Landscape Standards

Landscaping standards are being modified for easier understanding and to be more consistent with the current UDO standards. Language is also included to ensure that proper screening of semi/truck parking from adjacent roadways is obtained. Landscaping details and cross section profiles are included as exhibits to agreement to provide clear guidance on requirements.

Signage, Lighting and Fences

For signage, the language is proposed to be more in-line with the current UDO standards and contains more specific language regarding allowable wall signage and address features on buildings. Overall maximum wall sign sizes for non-retail and service uses are proposed instead of maximum sizes based upon lineal feet of building frontage.

Lighting standards were expanded to be “dark sky” compliant and to be more consistent with the current UDO regulations. Maximum pole heights are proposed at 35 feet compared to a 30-foot maximum in the UDO. Justification is warranted for higher poles based on larger buildings and parking areas associated with typical warehouse and distribution centers.

More specific language was added for fencing including allowing fencing up to eight feet
in height in the front yards if 10 feet away from the right-of-way. Fences must also have a “wrought iron look” with powder coated black color. Fencing in the side and rear yards will be allowed up to eight feet in height with a “wrought iron look” or black vinyl coated chain-link fences. Due to the large outdoor parking areas and security needs of potential users of Park 88, the proposed standards are justified.

**Pedestrian/Bicycle Paths**

The 2004 agreement waived the requirement for sidewalks along Fairview Drive and Peace Road provided that a 10 foot wide path was constructed. For the other streets, a sidewalk or path on one side of the street was approved. A sidewalk was constructed along the north and west sides of Macom Dr. The amended agreement requires the owner to make a on-time contribution to the City of $120,000 for a public bike path. It is anticipated the City will construct a path on the north side of Fairview Dr. to allow for the safe movement of employees who walk or ride bikes to the various employers along the roadway.

**III. STANDARDS OF REZONING (Orr Parcel – 102 Acres)**

1. **The proposed rezoning conforms to the Comprehensive Plan, or conditions have changed to warrant the need for different types of land uses in that area.** The proposed rezoning is appropriate considering the length of time the property has been vacant, as originally zoned, and taking into account the surrounding areas trend in development.

   The 2005 Comprehensive Plan recommends commercial uses on the northern portion of the “Orr” site fronting on E. Lincoln Highway and Light Industrial and Office/Research uses for the remainder of the site. The trend of development in the area over the last few years has been commercial including the construction of the 978,000 sq. ft. 3M Distribution Center and a Casey’s General Store at the northwest corner of Peace Road and E. Lincoln Highway. The rezoning of the 102 acre “Orr Property” to the PD-I and PD-C zoning districts meets the intent of the Comprehensive Plan and is compatible with the trend of development in the area.

2. **The proposed rezoning conforms to the intent and purpose of the Unified Development Ordinance.**

   Re-zoning of the subject site to the PD-I and PD-C Districts will allow the project to comply with the regulations of the UDO except as stated in the development agreement. The “PD-C” and “PD-I” zoning districts, as provided under the City of DeKalb’s Unified Development Ordinance, will be the most appropriate zoning classifications for the remaining undeveloped properties within Park 88.

3. **The proposed rezoning will not have a significantly detrimental effect on the long-range development of adjacent properties or adjacent land uses.**
Areas to the north, west and south are mostly developed. The proposed zoning and land uses are consistent with and compatible with the surrounding area and the Comprehensive Plan. The proposed rezoning to PD-I and PD-C should not have a detrimental effect on the adjacent properties or land uses.

4. **The proposed rezoning constitutes an expansion of an existing zoning district that, due to the lack of undeveloped land, can no longer meet the demand for the intended land uses.**

The subject property is proposed for "PD-C" Planned Development - Commercial and "PD-I" Planned Development – Industrial zoning. The “PD-C” and “PD-I” district designations will allow uses on the site that will be compatible with the surrounding area. In addition, the rezoning will enhance the Park 88 area with higher standards of design than other adjacent properties and will be consistent with the Comprehensive Plan recommendations.

5. **Adequate public facilities and services exist or can be provided.**

Existing utilities already serve the site or will be extended to meet the needs of future development.

IV. **STANDARDS FOR PLANNED DEVELOPMENT**

General Standards: The approval of the Development Plan may provide for such exceptions from the regulations associated with traditional zoning districts as may be necessary or desirable to achieve the objectives of the proposed planned development. However, such exceptions shall consistent with the City’s Comprehensive Plan and the standards contained in this Section and have been specifically requested in the application for a planned development; and further, that no planned development shall be allowed which would result in:

1. **Inadequate or unsafe access to the planned development;**

The subject site abuts Peace Road and will have access to Macom Drive, which connects to Fairview Drive and Peace Road (signalized intersection).

2. **Traffic volumes exceeding the anticipated capacity of the proposed major street network in the vicinity;**

Provisions are included in the development agreement to provide improvements along Peace Road and Macom Drive to accommodate future growth.

3. **An undue burden on public parks, recreation areas, schools, fire and police protection and other public facilities which serve or are proposed to serve the planned development;**
The Planned Development designation will not have any undue impact on public parks, recreation areas, schools, fire and police protection or other public facilities. The zoning of the site to PD-I and PD-C will have a positive impact on these public facilities due to the increased property taxes that will be generated.

4. **A development which will be incompatible with the intent and purposes of this Ordinance;**

The applicant is requesting PD-I and PD-C zoning, which allows the City to approve regulations that will control the zoning, development and maintenance, operations and other property improvement related issues.

5. **Detrimental impact on surrounding area including, but not limited to, visual pollution;**

The surrounding area is mostly developed to the west, north and south. The proposed zoning and land uses are consistent and compatible with the surrounding area and Comprehensive Plan. The proposed rezoning should not have a detrimental effect on the adjacent properties or land uses. Development restrictions will be placed on the site to ensure there is no detrimental effect to surrounding areas.

V. **Citizen Comments**

The City received a Citizen Response Form from Gary Tadd representing 407 Industrial Drive (Pinkston-Tadd Roofing Services) indicating their support for the rezoning and amendments (copy provided in packet). We also received a Citizen Response Form from Panduit (1700 E. Fairview Dr.) containing some comments/questions regarding the petition. Staff responded to the questions posed and a copy is provided in the Commissioner’s packet.

VI. **CONCLUSIONS AND RECOMMENDATION**

Staff believes that Park 88 Group LLC’s proposed use of the remaining undeveloped properties within Park 88 will be compatible with and will further the planning objectives of the City and the redevelopment of those properties will be of benefit to the community, will permit orderly growth, increase the tax base, and will promote and enhance the general welfare of the City and its residents.

**Sample Motion:**

Based upon the submitted petition and testimony presented, I move that the Planning and Zoning Commission forward its findings of fact and recommend to the City Council approval of an amendment to the development agreement for Park 88 approved by Ordinance No. 04-53 and the annexation agreement approved by Ordinance 07-61 to accommodate future growth on the subject site and to recommend approval of the rezoning from “SFR1” Single-Family Residential to “PD-I” Planned Development
Industrial and “PD-C” Planned Development Commercial for approximately 102 acres per the Amended and Restated Park 88 Development Agreement attached as Exhibit A to the report, with PD-C zoning applying to the area within 400 feet of the southerly right-of-way of E. Lincoln Highway.
Document prepared by
and after recording return to:

________________________________
_________________________________
_______________________________
_______________________________

AMENDED AND RESTATED PARK 88 DEVELOPMENT AGREEMENT
AMENDED AND RESTATED PARK 88 DEVELOPMENT AGREEMENT

This Amended and Restated Park 88 Development Agreement (the "Agreement") is made and entered the____ day of _________________, 2019 by and among the City of DeKalb, an Illinois municipal corporation located in DeKalb County, Illinois, (the "City"), and Park 88 Group, LLC, a Delaware limited liability company (the “Owner”). The City and Owner are collectively referred to as “Parties” and individually referred to as a “Party.”

RECITALS

A. Situated at the southeastern end of the City of DeKalb is a parcel of property of approximately 465 acres, which property is legally described on Exhibit A attached hereto and incorporated herein by reference as the “Property”.

B. The City and Owner (as successor to DeKalb Associates, an Illinois partnership) entered into a certain Park 88 Development Agreement dated as of June 28, 2004 and recorded with the DeKalb County Recorder’s Office on August 5, 2004 as Document No. 2004016020 (“Original Agreement”). Under the terms of the Original Agreement, one or more amendments may be entered into by and between the owner of a parcel or parcels and the City of DeKalb, without requiring the consent of all owners of all parcels subject to the Original Agreement.

C. The City and Owner (as successor to Park 88, LLC, an Illinois limited liability company) entered into a certain Annexation Agreement dated as of July 9, 2007 and recorded with the DeKalb County Recorder’s Office on August 15, 2007 as Document No. 2007014519 regarding that certain portion of the Owner Properties (defined below) commonly referred to as the “Orr Parcel” (“Orr Parcel Annexation Agreement”).

D. At the present time, Owner is the owner of those parcels of property legally described and identified in the attached Exhibit B-1 and depicted in Exhibit B-2 (the “Owner Properties”). Owner and the City have agreed to amend and restate the Original Agreement in its entirety with respect to the Owner Properties only in order to facilitate the development of the Owner Properties as a commercial and industrial property in accordance with the Development Standards attached hereto as Exhibit C, and incorporated herein by reference (the "Development Standards"). The Parties acknowledge that any portion of the Property which is not within the Owner Properties (referred to herein as the “Previously Developed Properties”) shall remain governed by the provisions of the Original Agreement and its accompanying standards.

E. In order to facilitate the development of the Owner Properties as a commercial and industrial property in accordance with the Development Standards, Owner and the City also desire to amend the terms of the Orr Parcel Annexation Agreement, subject to and in accordance with the terms and conditions of this Agreement.

F. The portion of the Owner Properties identified on Exhibit L hereto is currently zoned SRF1 and Owner seeks to provide for the immediate rezoning of the entire Owner Properties by the City as set forth herein and in the Development Standards, and the City has agreed to so
rezone of the Owner Properties as PD-C / PD-I with a list of permitted, prohibited and special uses as provided in the Development Standards.

**G.** The City acknowledges that Owner's proposed use of the Owner Properties, as set forth in this Agreement, will be compatible with and will further the planning objectives of the City and that the redevelopment of the Owner Properties will be of benefit to the City, will permit orderly growth, planning and development of the City, will increase the tax base of the City, and will promote and enhance the general welfare of the City and its residents. Owner acknowledges that the City is not obligated to amend the Original Agreement or the Orr Parcel Annexation Agreement, and that the City’s agreement to amend the Original Agreement and the Orr Parcel Annexation Agreement, to rezone the Owner Properties in accordance with the provisions of this Agreement, to provide access to public utility services and other City services, and to otherwise perform the City’s obligations under this Agreement constitutes valuable, bargained-for consideration that benefits Owner and the Owner Properties.

**H.** The City acknowledges and Owner agrees that the “PD-C” and “PD-I” Planned Development-Commercial and Industrial Zoning District, as provided under the City of DeKalb Unified Development Ordinance (the “UDO”) will be the most appropriate zoning classifications for the development of the respective portions of the Owner Properties as regulated within the Development Standards.

**I.** The City has agreed to zone the Owner Properties as hereinafter described, upon the appropriate petition(s) of Owner being duly filed with the City Clerk, including all necessary supporting materials and documentation as outlined herein and in the City’s UDO.

**J.** Pursuant to notice, as required by statute and ordinance, public hearings were held by the City’s Planning and Zoning Commission on the requested zoning of the Owner Properties, and the findings of fact and recommendations made by said body relative to such requests have been forwarded to the Mayor and City Council of the City (collectively, “Corporate Authorities”).

**K.** All other and further notices, publications, procedures, public hearings and other matters attendant to the consideration and approval of this Agreement and the rezoning of the Owner Properties have been given, made, held and performed by the City as required by the Illinois Municipal Code, and all other applicable statutes, and all applicable ordinances, regulations and procedures of the City.

**L.** The Corporate Authorities have duly considered all necessary matters to enter into this Agreement, have considered the recommendations of the City’s Planning and Zoning Commission in connection with the proposed zoning of the Owner Properties and have further duly considered the terms and provisions of this Agreement and have, by a resolution or ordinance duly adopted by a vote of two-thirds (2/3) of the Corporate Authorities then holding office, authorized the Mayor to execute, and the City Clerk to attest, this Agreement on behalf of the City.

**NOW, THEREFORE,** in consideration of the foregoing recitals and the mutual covenants and agreements herein made, the Parties hereby agree as follows:
ARTICLE I
RECITALS

The Parties acknowledge that the statements and representations contained in the recitals, both inclusive of the foregoing recitals are true and accurate and incorporate such recitals into this Agreement as if fully set forth in this Article I.

ARTICLE II
AMENDMENT AND RESTATEMENT OF THE ORIGINAL AGREEMENT

A. Amendment and Restatement of Original Agreement: This Agreement is an amendment and restatement of the Original Agreement in its entirety with respect to the Owner Properties only. The Original Agreement is terminated and will be of no further force or effect regarding the Owner Properties.

B. Original Entitlements: Contemporaneous Approvals: The Property was previously annexed to the City. The Parties acknowledge that at the time of the Original Agreement and thereafter, there were zoning approvals, plan approvals, and related approvals granted to the Property which may or may not have complied with the then-applicable requirements (hereafter, the “Original Entitlements”). At the present date, the Parties acknowledge that there is this Agreement, the ordinances passing this Agreement, the Development Standards approved herewith, the Exhibits attached hereto (hereafter, the “Contemporaneous Approvals”). The Parties expressly agree and acknowledge that the Contemporaneous Approvals shall supersede the Original Entitlements regarding the Owner Properties, shall supersede the Original Agreement regarding the Owner Properties, and shall govern the future development of the Owner Properties. The Parties also acknowledge that this Agreement shall affirm and ratify the Original Entitlements and all previous approvals granted by the City for the Previously Developed Properties, even to the extent that they may be inconsistent with the Contemporaneous Approvals. Upon approval of this Agreement, the Corporate Authorities shall proceed, subject to the terms and conditions set forth in this Agreement, to rezone the Owner Properties in accordance with the terms of this Agreement. All ordinances, plats, affidavits and other documents necessary to accomplish said rezoning and approvals contemplated by this Agreement shall be recorded by the City at Owner's expense. Owner shall hereafter develop the Owner Properties in accordance with this Agreement and shall not petition to disconnect any portion or all of said Owner Properties from the City hereafter.

C. Conveyance of Public Use Site: Owner shall convey to the City of DeKalb by general warranty deed, with clear title free of any exceptions or liens that are not reasonably acceptable to the City, the municipal site described in Section 4.03A of the Original Agreement, which site is legally described on Exhibit D hereto (“Public Use Site”). That conveyance will occur within ninety (90) days of the date of approval of this Agreement and will satisfy the obligations of the Developer under Section 4.03A of the Original Agreement. Owner represents and warrants to the City that Owner has no actual knowledge of any environmental contamination on the Public Use Site.
D. Future Development of Previously Developed Properties: The Parties agree and acknowledge that the Previously Developed Properties have been improved and sold to third parties, which third parties are not signatories to this Agreement. Accordingly, this Agreement shall not serve to modify or amend any provision of the Original Agreement as relating to the Previously Developed Properties or to bind or otherwise encumber the Previously Developed Properties, nor shall it serve to amend any previously granted approvals relating to such properties. In the event that any party seeks to undertake future development of one or more of the Previously Developed Properties, such party may either undertake such development pursuant to the Original Agreement and standards contained therein, or may request that the City entertain an amendment to the Original Agreement as pertaining to said parcel or parcels.

E. CCR’s: The City hereby approves that certain Declaration of Protective Covenants for Park 88 Business Park recorded with the DeKalb County Recorder on September 24, 2004 as Document No. 2004019754 (“CCR’s”) and waives the requirement in the Original Agreement that the Declaration of Covenants, Conditions and Restrictions attached to the Original Agreement as Exhibit D be recorded against the Property. Owner will cause the CCR’s to encumber any portion of the Owner Properties not presently encumbered by the CCR’s by executing a Supplemental Declaration of Protective Covenants for Park 88 Business Park in the form attached hereto as Exhibit J and will cause that document to be recorded with the DeKalb County, Illinois Recorder, at Owner’s expense, concurrently with the recording of this Agreement with the DeKalb County, Illinois Recorder. The CCRs provided for the creation of a property owners’ association (“Owners Association”), which shall, after the amendment of the CCR’s referred to above, include the current or future owners of the Owner Properties. Owner shall also take such steps as shall be reasonably necessary to cause fee title to the parcel identified as PIN 08-25-100-022 to be conveyed to the Owners Association.

ARTICLE III
ZONING OF THE PROPERTY

A. Default Zoning. The Corporate Authority shall enact such ordinances as are necessary to rezone the Owner Properties to “PD-C PD-I” Planned Development-Commercial, in accordance with the Development Standards and the terms of this Agreement. The Development Standards shall serve as the basis of development for the Owner Properties, and all future development of the Owner Properties shall be in conformity with the Development Standards and the terms and conditions of this Agreement. No residential housing or occupancy shall be permitted anywhere on the Owner Properties.

B. “PD-C / PD-I” Provisions. It is herein agreed that except as provided below, the PD-I zoning, which shall apply to the entirety of the Owner Properties, shall conform to the Development Standards with regard to permitted, prohibited and special uses. Any use not specifically approved therein as a Permitted or Special Use shall be a Prohibited Use. Parking, Outdoor Storage, Setbacks and related zoning considerations shall be governed by the Development Standards.

1. Lincoln Highway Frontage: With regard to that portion of the Owner Properties which are within four hundred feet of the southerly right of way of Lincoln
Highway (hereafter, the “Lincoln Highway Frontage”), the following zoning and use restrictions shall apply:

a. Lincoln Highway Frontage Needed for Development of Lot 20: The Parties acknowledge that between the Commonwealth Edison Right of Way adjacent to the westerly right of way of Peace Road (hereafter, the “COMED ROW”) and the portion of the Previously Developed Properties currently in use as a Target Distribution Center, a portion of the Owner Properties is comprised of a large parcel identified as Lot 20 on the Concept Plan attached hereto as Exhibit F (“Lot 20”). In the event that Owner is able to demonstrate to the City’s reasonable satisfaction that the Lincoln Highway Frontage should be used in connection with the development of Lot 20 or any portion thereof (for example, for stormwater detention, signage/monumentation, parking or landscape buffer), then, after reasonable approval by the City, the Lincoln Highway Frontage may be utilized for any such purpose and Owner shall provide a proposed development plan for said areas including enhanced landscaping and signage amenities, in form and content reasonably acceptable to the City.

b. Lincoln Highway Frontage Not Needed for Development of Lot 20: In the event that the Lincoln Highway Frontage will not be used in connection with the development of Lot 20 or any portion thereof (for example, for stormwater detention, signage/monumentation, parking or landscape buffer), as determined under subsection III(B)(1)(a) above, then Owner shall locate its drainage and stormwater detention in such a fashion as to preserve the Lincoln Highway Frontage for development with commercial uses in accordance with the permitted, special and prohibited uses afforded under the PD-C zoning designation contemplated herein.

c. Zoning: The Lincoln Highway Frontage shall be zoned PD-C and shall have the permitted, special and prohibited uses and development restrictions as contemplated by the Development Standards. The balance of the Owner Properties (other than the Lincoln Highway Frontage) shall be zoned PD-I and shall be subject to the Permitted Land Uses described under Section II(A) of the Development Standards.

C. Development Standards

1. Compliance with Development Standards: The Owner Properties shall be developed in a fashion consistent with the Development Standards. At the time of submission of any preliminary or final plat or plans or the submission of any site plan contemplating the construction of a structure, or at the time of application for any building permit that does not require the separate approval of final plats or plans, Owner shall submit building elevations to demonstrate compliance with the Development Standards. Prior to issuance of building permits, such elevations shall be modified to comply with the Development Standards. Provided that the
elevations comply with the Development Standards, the City shall not unreasonably condition or withhold approval. The Community Development Director shall be authorized to provide such approval or may, at her discretion, refer the approval to the City Council for consideration.

2. **Signage:** Any permanent signs of any form on the Owner Properties shall hereafter be installed only in strict compliance with the applicable provisions of the Development Standards. Said signage may be installed and maintained for the period that this PD-C / PD-I zoning designation remains effective for the Property.
   
a. **Temporary Signage:** Any marketing signs, off-site signage, temporary signs or other non-permanent signs shall be permitted only as authorized under the then-current UDO.

3. **Fencing and Landscaping:** All fencing and landscaping installed hereafter on the Owner Properties shall conform to the requirements outlined in the Development Standards, and fences shall be installed where required by said Development Standards.

4. **Stormwater Detention:** Subject to the terms of this Agreement, any future development of the Owner Properties shall be required to comply with the then-current and applicable stormwater-related standards of the City, including but not limited to stormwater discharge rate standards. Stormwater detention basins constructed on the Owner Properties will be maintained in substantial accordance with the standards described on Exhibit I hereto.

D. **Density of the Project:** Individual lots shall be allowed site coverage (as defined in Article 3 of the UDO) of up to seventy percent (70%). The Floor Area Ratio (as defined in the UDO) shall not exceed seventy-five percent (75%) for any individual lot containing a single-story building. Any future development of the Owner Properties contemplating greater density or site coverage shall require an amendment of this Agreement and the PD-I / PD-C zoning on terms and conditions mutually acceptable to the Parties.

E. **City Right of Entry Under CCR’s:** The rights of the City to enter portions of the Owner Properties under Section 4.13 or Section 7.4 of the CCR’s, including without limitation, those provisions that permit the City to enter such areas and perform maintenance thereon, will not be amended without the City’s prior written consent.

F. **Special Service Area:** Owner acknowledges that a portion of the Owner Properties are currently subject to Park 88 Special Service Area (City of DeKalb SSA No. 8 as described by Ordinance 04-78 recorded October 6, 2004 as Document No. 2004020709). Owner and its respective successors, assignees and grantees, shall not object to and agree to cooperate with the City in establishing a special service area (“SSA”) for areas of the Owner Properties which are not currently subject to an appropriate backup SSA. Such an SSA will provide the City with a source of revenue for maintaining, repairing, reconstructing or replacing the storm water drainage system, detention and retention areas, common areas, special management areas or other improvements.
located on the Owner Properties, should the Owners Association fail to perform its responsibility in accordance with City Codes, other applicable requirements of law, or pursuant to the CCR’s. Owner and Owner’s successors or assigns, in interest or otherwise, agree to and do hereby waive any and all protests, objections and/or rights to petition for disconnection regarding any such SSA. The SSA is for the exclusive purpose of creating a revenue source for the City for said maintenance, and is not intended and shall not be construed to create an obligation of the City to provide such maintenance. The City agrees that it will only levy against said SSA in the instance that, after notice and opportunity to correct, the Owners Association has failed to fulfill the obligations stated herein in accordance with the terms of the CCR’s.

G. Excavation and Grading

1. At-Risk Work: Owner shall have the right, prior to obtaining approval of final engineering drawings and prior to approval of a Final Development Plan of any phase of the Owner Properties, to undertake excavation, preliminary grading work, filling and soil stockpiling on the Owner Properties in preparation for the development of the Owner Properties, upon reasonable approval of preliminary engineering, grading, soil erosion and sedimentation control plans by the Community Development Director, and the posting of security in form required by City codes and ordinances (collectively, “City Code”), in an amount not less than 120% of the engineer’s estimate of probable cost of such work. All permits related to IEPA NPDES Construction Activities will be procured prior to the start of any work. Such work shall be undertaken at Owner’s sole risk and without injury to the property of surrounding property owners. Authorization for at-risk work shall not constitute approval of the development proposed therein.

2. IEPA Violations: The Parties agree that, to the best of their knowledge, as of the date of this Agreement there are no pending IEPA investigations of or environmental contamination issues with the Owner Properties. Owner shall immediately notify the City of any future written notices of environmental contamination regarding any portion of the Owner Properties which are received by Owner from any governmental agency having jurisdiction over the Owner Properties prior to the issuance of a certificate of occupancy for that portion of the Owner Properties.

3. Truck Staging, Lane Closure: During any period of time after the issuance of permits for excavation, preliminary grading work, filling or soil stockpiling regarding any portion of the Owner Properties but before the issuance of a final certificate of occupancy for that portion of the Owner Properties (the “Construction Period”), (a) Owner shall provide adequate space on the Owner Properties at all times for staging of trucks on the property, and construction deliveries or pickups shall not be permitted to queue on any public street, and (b) Owner shall provide a designated on-site location for stockpiling of construction materials that permits trucks to load and unload entirely on the Owner Properties, without obstructing the flow of traffic on any public street or sidewalk. In the event that Owner’s construction plans require the temporary closure of any public street
or sidewalk, prior to such closure, Owner shall submit a traffic control plan to the Community Development Director, shall modify such plan to be reasonably acceptable to the Community Development Director in accordance with the requirements of City Code, and shall thereafter abide by such plan in all material respects. Owner shall not engage in any truck staging or lane closure on public rights-of-way outside of the Construction Period without the City’s prior approval, not to be unreasonably withheld or conditioned.

4. **Stockpiles:** Owner will cause the existing stockpile of dirt and fill located on Lot 13 (as Lot 13 is identified on the Concept Plan attached hereto as Exhibit F) (“Lot 13”) to be removed within twelve (12) months after the date of execution and delivery of this Agreement by both Owner and the City. The location of any stockpiles of dirt, fill or other similar materials on the Owner Properties (other than the existing stockpile referred to above) will be determined during the site plan approval process for a particular project. The configuration and location of such stockpiles shall be required to be approved through City approval of preliminary or final engineering plans prior to their establishment, which approval shall not be unreasonably withheld or conditioned. Owner will provide security to the City in accordance with Section III.H to ensure removal of such stockpile in accordance with the requirements of this Section. All stockpiles shall be maintained with sedimentation control in accordance with applicable laws, and with weed control in accordance with City Code, while in place. All such stockpiles, other than stockpiles of clay reasonably necessary for future development of the Owner Properties, shall be removed from the Owner Properties within thirty-six (36) months after the issuance of a temporary certificate of occupancy for the project to which they relate. Stockpiles of clay reasonably necessary for future development of the Owner Properties may remain beyond such thirty-six (36) month period, subject to the maintenance requirements of this section.

5. **Construction Trailers; Marketing Trailers, Advertising Trailers:** Prior to locating any construction or marketing trailer on-site, Owner shall provide the City with a plan showing the location of any proposed construction or marketing trailer and any utility connections for said trailer. No construction or marketing trailer shall be located on the Owner Properties prior to approval of a plan showing the proposed location, access route, utility services and parking facilities for the proposed trailers by the Community Development Director (such approval not to be unreasonably conditioned or withheld), nor prior to obtaining any required permits for the trailer or utility services for said trailer. Nothing in this Agreement will prohibit Owner from maintaining one marketing trailer served by power at the Owner Properties at a location designated by Owner and approved by the City (which approval will not be unreasonably conditioned or withheld). Owner will provide security to the City in accordance with Section III.H to ensure removal of any construction or marketing trailers and their related improvements in accordance with the requirements of this Section. The existing marketing trailer on Lot 20 will be relocated to another site on the Owner Properties prior to the issuance of a temporary certificate of occupancy of a building on Lot 20. The existing
advertising trailer located on Lot 20 will be removed prior to the issuance of a temporary certificate of occupancy of a building on Lot 20 and will not be replaced. All marketing trailers on the Owner Properties shall be removed within three (3) months of the date of issuance of a building permit for the last developable lot in the Owner Properties. All construction trailers on the Owner Properties shall be removed within three (3) months of the date of issuance of a final certificate of occupancy for the lot to which they relate.

H. Security for Public Improvements

Security to be provided by Owner for the completion of the public improvements benefitting the Owner Properties or related public off-site improvements benefitting the Owner Properties, including but not limited to the curbing, striping, utility connections, drainage improvements and related improvements within the public right of way shall be provided prior to the commencement of construction and shall be in accordance with the terms of this Agreement and applicable City ordinances, as modified by this Agreement. Owner shall provide such security to the City in the form of cash, irrevocable letters of credit or performance bonds ("Completion Guaranty"). Bonds and letters of credit shall be in a form reasonably acceptable to the City Attorney and be issued by an entity reasonably acceptable to the City Manager from a bank or financial institution located in the United States of America. Any bonds required under City Code or this Agreement shall be from a company licensed to do business in the State of Illinois. Any letters of credit required under City Code or this Agreement shall be from a financial institution reasonably acceptable to the City Manager, and Owner shall provide such information or documentation as to the status of the proposed financial institution as the City Manager shall reasonably require, to demonstrate its creditworthiness and stability. The amount of a Completion Guaranty posted with the City shall at all times equal one hundred twenty percent (120%) of the cost of completing required public improvements. The City Council shall authorize the reduction of such Completion Guaranty from time to time, but no more than once every one hundred and eighty (180) days, as related offsite work or public improvements within the Owner Properties are completed and reasonably approved by the Community Development Director and prior to their acceptance of such improvements by the City. Owner will also be required to provide a Completion Guaranty to the City in accordance with this paragraph, to secure Owner’s obligation to remove stockpiles of dirt, fill or other similar materials under Section III.G.4 and removal of trailers under Section III.G.5 above. In the event that Owner determines to undertake at-risk work in accordance with the terms of this Agreement, Owner shall provide Security in accordance with the requirements of this Section prior to initiating such work. Where any obligation of this Agreement contemplates the provision of security for a multi-year period (e.g. trailer security under Section III.G.5 above), Owner shall provide security with a minimum term equal to or longer than the applicable period being secured, and shall maintain such security with a term extending to or beyond the applicable period,

1. Acceptance of Public Improvements and Maintenance Bond for Public Improvements: Upon completion of public improvements and acceptance by the City, Owner shall provide a signed bill of sale for any items of personal property to be transferred to the City, and shall execute all documentation reasonably required to denote acceptance and transfer of ownership, warranties, and similar interests.
Prior to the acceptance of the streets by the City, the streets shall be in a condition acceptable to the City in accordance with the requirements of the UDO and completed with the final lift of asphalt and any other required final improvements, and all punchlist items previously identified by the City shall be satisfied. Upon acceptance of any public improvement by the City in accordance with this Agreement, Owner shall be entitled to a corresponding release or reduction of any Completion Guaranty. For a 12 month period following acceptance of any public improvement, Owner shall guarantee the workmanship of any public improvements constructed, and shall be responsible for the performance of any repairs or remediation required on such public improvements, as reasonably determined by the Community Development Director, to return them to a condition in which they would be appropriate for initial acceptance by the City, including the repair of any ordinary wear and tear on the aforesaid improvements or the repair of any broken or damaged improvements. To secure the performance of this obligation, Owner shall provide a maintenance bond which shall remain in place for a 12 month period from date of acceptance by the City. Said maintenance bond shall be equivalent to five percent (5%) of the value of the improvement constructed, and shall be in the form of a cash escrow, letter of credit, bond or other security acceptable in form and content to the City. Owner shall also be responsible for the repair of damage to any public improvement caused through the intentional or negligent conduct of Owner, its contractors, subcontractors, agents, successors and assignees, and for the repair of any design or construction defect in any public improvement that is identified prior to or during the 12 month maintenance period (e.g. sagging sewer, sinkhole in roadway, etc.).

I. Plan Review and Construction Supervision: Owner shall establish an escrow account with the City pursuant to a professional fee reimbursement agreement substantially in the form attached hereto as Exhibit E, and shall be responsible for the payment of all reasonable third party planning and civil engineering fees incurred by the City with respect to the plan review, inspection or construction observation associated with the Property. Owner shall maintain a minimum balance in said escrow account of not less than Ten Thousand Dollars ($10,000) until all initial development on the Owner Properties is completed.

J. Plat and Plan Approval: Any development on the Owner Properties shall be subject to this Agreement, including, without limitation, the Development Standards attached hereto and applicable City Code. In the event of a conflict between the Development Standards, this Agreement, and City Code, this Agreement shall prevail over the Development Standards and the City Code, and the Development Standards shall prevail over City Code. The City reserves review and approval of all preliminary and final plats, stormwater and engineering plans, landscaping plans, proposed architectural designs, elevations, renderings or plans, mass grading plans, and all related development or design plans which the City shall seek review and approval of during the time of development, proposal of concept plans, preliminary or final plat review, building permit application, or any other aspect of site development, which approval shall not be unreasonably conditioned or withheld provided that the submittal is in compliance with this Agreement and applicable provisions of the City Code.
1. **Review Process for Development:** The City agrees that it shall take all reasonable steps possible to ensure that any areas of the Owner Properties undergo a streamlined review process. In order to ensure such streamlined review process, Owner agrees that it shall comply with the professional fee reimbursement obligation described in subsection (I) above.

   a. **Concept Plans / Staff Review Only:** The City hereby approves the Concept Plan attached hereto as Exhibit F ("Concept Plan") as a conceptual site development plan with the understanding and agreement that, notwithstanding anything in this Agreement to the contrary, so long as Owner submits preliminary and final plans and plats in general conformance with the Concept Plan, such plans and plats shall be approved by the City in the ordinary course of the development plan review procedure; provided, however, it is understood that Owner may in the course of development of the Owner Properties make changes to the Concept Plan at its own risk including, without limitation, changes in lot configuration and size, buildings and signs, and provisions for certain amenities so long as such changes do not conflict with a specific provision contained elsewhere in this Agreement or affect the essential character of the proposed development. Owner may submit changes to the Concept Plan for review and consideration by City Staff. Such review shall be performed at Owner’s request and shall be utilized to provide preliminary review comments regarding conformity with the Development Standards. However, any final staff comments shall be reserved pending the submission of Preliminary Plans or Final Plans that are submitted for formal approval. No Owner initiated changes to the Concept Plan shall be deemed approved by the City until the Preliminary Plans or Final Plans relating to the area in question have been approved by the City.

   b. **Preliminary Plans:** Owner may submit Preliminary Plans for approval. Preliminary Plans shall be subject to a staff review and following such review and completion of requested revisions, shall be forwarded to the Planning and Zoning Commission for review and recommendation. Such Planning and Zoning Commission review and recommendation shall be completed at a public meeting, but shall not require the conduct of a public hearing. Following the issuance of a written recommendation by the Planning and Zoning Commission, the preliminary plans and the recommendation shall be forwarded to the City Council for review and approval, rejection, or conditional approval subject to the impositions of such conditions and restrictions as the City Council shall determine to be appropriate. If Owner elects to submit Preliminary Plans, all reasonable comments and conditions imposed by the City Council in accordance with City Code shall be addressed prior to the submittal of Final Plans. If Preliminary Plans are approved, the City shall approve any Final Plans that are submitted in conformance therewith. Preliminary Plans shall include, at minimum, the following documents:

   1) An ALTA survey for the portion of the Owner Properties at issue;
   2) A preliminary plat of subdivision;
   3) Preliminary engineering plans (including lighting and photometric
plans, topographical survey, proposed grading, and details of any proposed public improvements, water mains/services, sewer mains/services, and stormwater conveyance or detention improvements); 

4) A site plan, fully dimensionalized, inclusive of setbacks and improvements; 

5) Preliminary landscaping plans, including on-site and adjoining right-of-way landscaping as required by the Development Standards; 

6) Conceptual building elevations; 

7) To the extend required under Section IV.B.3, an updated traffic study addressing such portion of the Owner Properties as is proposed to be developed; 

8) Any off-site drainage, utility or traffic improvements necessary to facilitate the proposed development; 

9) Any other documents required under the UDO or other applicable laws, ordinances or regulations (e.g. FAA regulations, IDNR regulations, etc.); and 

10) Such other documents as shall be reasonably requested by the Community Development Director. 

c. **Final Plans:** Owner may submit Final Plans following the review of Concept and/or Preliminary Plans (in which case the Final Plans shall reflect modifications consistent with all comments, conditions and approvals previously provided), or may elect to submit Final Plans without having previously submitted Preliminary Plans, in the event that expedited review and approval is necessary. In either case, Final Plans shall be reviewed utilizing the same mechanism as Preliminary Plans (i.e. staff review, Planning and Zoning Commission recommendation at a public meeting, and City Council approval, conditional approval or rejection). In the event that any Final Plan is approved subject to any condition requiring revision, Owner shall submit revised Final Plans as required. The Community Development Director is thereafter authorized to review and to approve the revised Final Plans, if revised in conformity with the applicable requirements or conditions. In the event that the Community Development Director does not conclude that the Final Plans have been revised as required, the Community Development Director shall reject such plans. If Owner wishes to proceed with development of the rejected Final Plans at such time, Owner shall resubmit the Final Plans and they shall be subject to a new review process and for approval or rejection by the City Council. All final plats shall have signature blocks included in form and content reasonably acceptable to the Community Development Director. Once approved, Final Plans shall be valid for a period of thirty-six (36) months. In the event that Owner fails to develop the subject lots within that period, Final Plans shall be re-submitted for review and approval prior to construction.

d. **Site Plans:** In the case of any portion of the Owner Properties that has a
previously approved Final Plan that Owner intends to build in compliance with, and which is served by existing public and private utilities including water, sewer, storm sewer, stormwater detention and similar facilities, Owner may submit a Site Plan for review and approval. In the event that staff review of the Site Plan concludes that the Site Plan meets all applicable standards and is in accordance with a previously approved Final Plan, the Site Plan may be approved at the staff level without requirement of consideration by the Planning and Zoning Commission or City Council.

e. Buildings on Platted Lot: One or more principal buildings may be placed upon any platted lot without any requirement of subdivision or resubdivision; provided that the entire affected platted lot is owned by the same owner or owners. Separation and conveyance of one building on such a platted lot to a separate owner is allowed only if authorized by the City as part of a lawful subdivision process after confirming that the separate lots conform individually to City Codes and the terms of this Agreement, and provide for adequate cross-access easements and common area maintenance.

2. Overlay Zoning District: The Parties acknowledge that the entirety of the Owner Properties shall have overlay zoning as contemplated above, and thus that configuration or reconfiguration of portions or the entirety of the Owner Properties with varying uses which are permissible under this Agreement shall not require a rezoning. Accordingly, following the initial rezoning of the Owner Properties, use of the Owner Properties in accordance with this Agreement and the overlay PD-C / PD-I zoning imposed hereunder shall not require a public hearing or the other statutory processes associated with a rezoning. Notwithstanding the foregoing, the provisions of this Agreement relating to commercial uses being required on the Lincoln Highway Frontage shall remain in full force and effect.

3. Phasing of Development: The Owner Properties may be developed in one or more phases. Such phases shall be configured in such a manner that each such phase shall be served by all utilities, including adequate service capacity and looping within that particular phase (and contained solely within the Property). Owner shall provide not less than one point of access, comprised of a full access point to a public road, for each phase, unless waived by the City. To the extent that roadway and utility improvements may be developed or installed in phases, the City shall inspect and accept the same on a phase by phase basis provided that such improvements are sufficient to service the phase developed on a stand alone basis, as reasonably determined by the Community Development Director. Each phase shall be required to adhere to all applicable provisions of this Agreement.

K. Rezoning of Property: The Parties agree that, for the term of this Agreement, the Owner Properties shall not be rezoned to any zoning other than that imposed under this Agreement without the approval of the City and Owner, with such rezoning requiring consent from the City in the sole and absolute discretion of the City and the agreement of Owner to an amendment of this Agreement on terms and conditions acceptable to Owner, and further agree that the approvals described in this Agreement are based upon Owner and Owner’s agreement with the zoning imposed under this
Agreement; any amendment of said zoning shall require an amendment to this Agreement, on
terms and conditions acceptable to the Parties.

L. **Building Permits:** The City shall issue building permits for which Owner applies within
twenty-one (21) days of the City’s receipt of the last of the documents required by the UDO, this
Agreement (such as final plat and plan approval) or the City Code to support such application. If
the application is denied, the City shall provide the applicant with a written statement specifying
the reasons for denial of the application and a list of additional materials and information required
to obtain approval, including specifications of the requirements of law which the application or
supporting documents fail to meet. An applicant may apply for building permits for portions of
the Owner Properties prior to the availability of storm sewer and sanitary sewer service to such
portion of the Owner Properties, provided that applicant installs those minimum life safety
improvements as identified and required by the City. Notwithstanding the foregoing, no temporary
occupancy permits shall be issued for such portions of the Owner Properties until the availability
and connection of such utilities is demonstrated to the reasonable satisfaction of the City.
Notwithstanding anything in this Agreement to the contrary, the City agrees to issue necessary
permits to the applicant, upon application by the applicant, prior to applicant’s submission of plans
for any entire building to allow (i) grading or the installation of drainage and utility facilities on
the Owner Properties, provided that the applicant submits a mass grading plan which complies
with applicable City Code, and (ii) construction of building foundations, provided the applicant
submits exterior enclosure drawings and foundation drawings which comply with applicable City
Code; provided, however, that the issuance of any such permits shall not authorize nor be construed
to authorize or to permit the construction of any portion of a building or an improvement, the plans
for which have not been reviewed and approved by the City and all such construction shall be at
Owner’s sole risk, it being acknowledged that until approval by the City, the plans for the entire
building (inclusive of work that was previously permitted and/or installed) may require revision.

**ARTICLE IV**
**INFRASTRUCTURE**

A. **Water Mains and Potable Water Supply**

1. **City Water Supply:** The City shall assist Owner in obtaining all required
permission to have access to any City water mains, at Owner’s sole expense.
Provided that there remains adequate pressure and flow at the time of proposed
connection, Owner shall have the right to connect to and use such system and mains
upon payment of those capital, tap-on and user fees required by the then-current
City ordinance or resolution. Tap-on / connection and capital fees shall otherwise
be due on a unit by unit basis at the time of building permit application in
accordance with the requirements established by then-current City Code. Said fees
may be changed by the City from time to time in the City’s sole and absolute
discretion, and Owner agrees to pay the amount as required by the City at the time
such payment is due as long as such amount is payable by similarly situated owners
generally and is not being applied on a discriminatory basis. Owner has verified
that there is current volume and pressure available in the water mains to service the
Owner Properties, as of the date of this Agreement, for the potable water and fire suppression needs of the Owner Properties. Owner shall be responsible for constructing all on-site and off-site improvements necessary to connect to the Owner Properties and any development on the Owner Properties to the presently existing water mains and potable water supply of the City, in the fashion and orientation contemplated by the then-approved Final Plans. Owner shall be exclusively responsible for the payment of all costs, expenses and charges associated with the design, construction and permitting of such improvements, including but not limited to any security required under this Agreement or applicable law, any permits required by the City, the Illinois Environmental Protection Agency, the Illinois Department of Transportation, or any other agency having jurisdiction.

B. Streets, Access and Public Rights of Way

1. **ROW Dedications:** Relative to the Owner Properties, all right-of-way dedications shall be made at the time of Final Plat and shall conform to the widths, dimensions and amounts as approved in the Final Plans. The roadway specifications for the Owner Properties shall be in accordance with the Development Standards or, if not identified therein, in accordance with the requirements of the UDO and the approvals of the City Council.

2. **Road Improvements:** Owner shall be responsible for the construction of all on-site public and private road improvements reflected on any approved Final Plans, and for the construction of those off-site public road improvements reflected on any approved Final Plans.

3. **Traffic Controls:**
   a. **New Traffic Study.** To the extent that proposed development of the Owner Properties is consistent with the underlying assumptions of that certain traffic study commissioned by the City through Kimley-Horn and Associates, Inc. to evaluate traffic operation along Peace Road and dated June 14, 2016, which traffic study is the subject of an independent review by Sam Schwartz Consulting, L.L.C. dated June 16, 2016 (“Existing Traffic Study”), no new traffic study or further update of the Existing Traffic Study will be required. To the extent that proposed development of the Owner Properties exceeds or is materially different from the underlying assumptions of the Existing Traffic Study or contemplates an additional access point to Peace Road at the Peace Road Intersection (defined below) for the benefit of that development, then as a component of such new plan submittals, Owner shall submit a traffic study to the City (which may be an update of the Existing Traffic Study) for review in form and content reasonably acceptable to the Community Development Director, or alternatively request that City prepare such a study at Owner’s cost. Where said study (or the City’s reasonable review of the same) determines that the proposed development of the Owner Properties will warrant traffic control devices or signalization, a traffic control and signalization plan...
plan, potentially including plans for off-site traffic control devices and stoplights on perimeter roads adjacent to the Property (including but not limited to Peace Road adjacent to the COMED ROW), shall be submitted for review and approval by the Community Development Director prior to final plat approval, and Owner shall be responsible for installing all such improvements pursuant to the schedule indicated in the plan. Under those circumstances, Owner will be entitled to recapture from other properties benefitting from those traffic improvements.

4. **Bike Path Contribution:** Owner shall, within ninety (90) days of the date of approval of this Agreement, make a one-time contribution of $120,000, which funding may be utilized by the City towards the costs of constructing a public bike path to service the Property and surrounding development.

5. **Internal Roadways:** All concept, preliminary and final plans shall comply with the following requirements.

   a. **Access to Fairview Road:** Owner shall be only granted one additional access point to Fairview Road, to be located at the lot line between existing Lots 12 and 13. Said access point shall be restricted to use as an emergency access point only, and shall be controlled with a gate and fence in configuration reasonably acceptable to the Community Development Director, with the City’s Police and Fire Department having use of said access point. This access point shall be controlled by an emergency access system reasonably acceptable to the Community Development Director.

   b. **Internal Roads:** The Parties acknowledge that Owner shall not be required to construct “Hartman Road” or any other previously contemplated internal roads identified in various previous concept plans regarding both the Owner Properties and the Property generally and that the City will not require such construction of “Hartman Road” or any other such contemplated internal roads under the Original Agreement, including, without limitation, a North/South internal road extending from Macom Drive to Industrial Drive or an internal East/West road ("East/West Road") commencing at Peace Road (aligning with the currently proposed signalized intersection entrance into the development on the Easterly side of Peace Road commonly referred to as DeKalb Commons ("Peace Road Intersection")) and terminating at the westerly edge of the Property, at the boundary line with that certain parcel of property identified in the Original Agreement as the Algus Retained Property.

   c. **Dedication of Additional Rights-of-Way:** Owner shall, at the time of approval of any preliminary or final plat for Lot 20, dedicate to the City rights of way in final configuration, form and content reasonably acceptable to the City but substantially similar to those depicted on the plan attached hereto as Exhibit K as the “Industrial Drive Cul-de-Sac,” the “Industrial Drive Southern Extension” and the “Algus Extension,” respectively.
6. **Signalized Intersection:** To the extent a traffic study reasonably acceptable to the City and Owner demonstrates that minimum warrants therefor are met under the provisions of the then-current Manual on Uniform Traffic Control Devices, a signalized intersection will be constructed at the Peace Road Intersection. To the extent so recommended, the developer of the first to develop of the Peace Road Lots (by Owner) or the DeKalb Commons property (by that owner) shall construct that signalized intersection at the time of improvement of said property (prior to the issuance of final certificates of occupancy for any portion thereof adjacent to the proposed location of the signal (or in the case of the Owner Properties, adjacent to the COMED ROW adjacent thereto)). Said intersection shall be constructed and signalized concurrently with the first to occur of the construction of the East/West Road or the approval of a final plan for the Peace Road Lots if not previously constructed. In the event that a final plan is approved for the Peace Road Lots that does not include a requirement for the East/West Road, then the signalized intersection shall be utilized to provide primary access to the Peace Road Lots. In the event that the owner of the DeKalb Commons property constructs said signalized intersection, Owner agrees that it shall be responsible for the payment of recapture in an amount equal to fifty percent (50%) of the costs of designing and constructing said intersection and signalization, and agrees to dedicate and donate any right of way required for said intersection at no cost. Such recapture cost shall be payable at the time of final platting of the Peace Road Lots and will only be applicable to the owner of the Peace Road Lots at that time. In the event that Owner constructs said signalized intersection, the owner of the DeKalb Commons property shall be responsible for the payment of recapture in an amount equal to fifty percent (50%) of the costs of designing and constructing said intersection and signalization, and will be required to dedicate and donate any right of way required for said intersection at no cost. Such recapture cost shall be payable at the time of final platting of the DeKalb Commons property. Internal roadways constructed on Owner Properties may, in Owner’s discretion, be either private roadways that are privately maintained by Owner or the Property Owners Association, inclusive of all maintenance, snow removal, deicing or other activities, or public roadways.

**C. Storm Water Retention, Facilities and Improvements**

1. **Owner Responsibility:** Except as provided in Article IV(C)(2) below, Owner shall provide all necessary storm sewers, overland flow routes, detention systems and compensatory storage for the Owner Properties in compliance with the UDO, the existing flood plain ordinance of the City and all other applicable laws and regulations, as modified or amended pursuant to the terms of this Agreement. In determining whether any parcel within the Owner Properties satisfies zoning standards, any part thereof within a detention or retention system may be included as part of the area of said parcel. In the event Owner elects to construct a combined detention or retention system which serves all or a portion of the parcels that comprise the Owner Properties, the land area dedicated to the retention or detention system for a specific parcel shall be included in the land area of the parcel for calculations of zoning standards with regard to maximum site coverage. Owner
shall, at the time of development of any lot within the Owner Properties, encumber with an easement of record any portion of the land area within that lot dedicated to storm water retention or detention for the benefit of any property other than the lot in question.

2. **Existing Storm Water Retention, Facilities and Drainage Improvements:**
Owner and Owner’s predecessors in interest have previously constructed certain existing storm water facilities on the Property in accordance with the terms of a storm water management plan attached hereto as Exhibit G (“Existing Storm Water Plan”), which Existing Storm Water Plan has been approved by the City. Requirements for the construction of future detention or storm water facilities shall be based upon the new needs for storm water detention based upon the impervious surface area generated by any proposed future development of the Owner Properties. In the event of any future modification of the City’s storm water retention and detention codes, any development proposed to occur on the Owner Properties after the effective date of such modification shall comply with the standards outlined therein (but all development completed prior to that date shall comply with the City’s regulations applicable at the time of development). All new development of the Owner Properties shall require new detention facilities and compensable storage other than Lots 2, 3, 5, 8, 10 and 13 (as identified on the Concept Plan, it being acknowledged that Lots 2, 3, 5, 8, 10, 13 and portions of Lot 20 have been provided detention within the Existing Storm Water Plan.

3. **Future Detention Basins:** Owner shall comply with the following conditions for any future detention basins:

   a. **Lincoln Highway Setback:** In the event that the Lincoln Highway Frontage develops with commercial use pursuant to Article III(B)(1)(b) above, no detention basin shall be constructed within four hundred (400) feet of the southerly right of way line of Lincoln Highway. In the event that the Lincoln Highway Frontage is developed as part of the development of all or a portion of Lot 20, as contemplated in Article III(B)(1)(a), the provisions of that section shall govern with regard to the installation of detention, signage and screening. All detention setbacks shall comply with Public Act 86-616.

   b. **Runway Protection Zone:** Any detention basin constructed on the Owner Properties within an officially recognized Runway Protection Zone or other similar regulatory area shall include such modifications and improvements as shall be required to comply with then-applicable regulations in a manner reasonably acceptable to the Community Development Director. All storm water basins within such Runway Protection Zones shall comply with FAA Advisory Circular 150-5200-33B (or the then-current and applicable requirements). Said requirements shall also apply to the existing detention basin located the northwestern corner of Peace Road and Fairview Drive (“Lot 13 Pond”). Owner will either remove the Lot 13 Pond or will modify the Lot 13 Pond to comply with applicable requirements described above within thirty-six (36) months after the date of execution and
delivery of this Agreement by both Owner and the City.

c. **Future “North” Detention Basin:** Owner agrees and acknowledges that there is a present drainage/detention issue on adjacent properties. As a condition of development of the Owner Properties, Owner agrees that it shall provide an oversized northerly detention basin, generally contemplated to be north of the existing Target development, in form and configuration reasonably acceptable to the Community Development Director, to accommodate a release rate of 0.03 CFS/acre, which is lower than the maximum permitted under the then-current storm water ordinance. Such basin shall be oversized in an effort to accommodate existing offsite and onsite stormwater flows and to address a present (and contemplated future) stormwater concern to Owner’s reasonable ability.

d. **Regional Storm Water Drainage:** Owner shall provide all necessary storm sewers, detention systems, and compensatory storage to develop the Owner Properties in compliance with the applicable provisions of the UDO and all other applicable laws and regulations; provided, however, that said sewers and storage facilities may be provided as a phase or part of the regional storm drainage system as the various portions of the region are developed and provided that, at the time a parcel within the Owner Properties is developed, the portion of the storm water drainage and detention system serving that parcel has sufficient capacity (or is expanded to provide such sufficient capacity) to accommodate storm water discharge from that parcel into that system in accordance with the standards outlined above.

D. **Sanitary Sewers**

1. **Sanitary Sewer Service:** The City shall cooperate with Owner and execute all applications, permit requests and other documents required to obtain sanitary sewage treatment service from the Kishwaukee Water Reclamation District in order to allow Owner’s connection to the existing and future sanitary sewer lines installed on the interior and exterior of the Property. Owner shall pay to the requisite governmental entity its respective shares of all permits, inspection and tap on fees that are required at the time of connection to such sanitary sewer system. The City shall cooperate with Owner in obtaining all necessary easements and shall grant Owner access to all City owned rights of way to enable Owner to access the sanitary sewer service for the Owner Properties, in accordance with the approved Final Plans.

2. **Owner Responsibility:** It shall be Owner’s responsibility to contact the Kishwaukee Water Reclamation District to ascertain the status of and make the appropriate contributions toward any existing recapture agreements pertaining to sanitary sewer lines, lift stations or other sanitary system infrastructure, or contributions, accommodations, or agreements regarding the oversizing of sanitary sewer lines or other sanitary system improvements required by the Kishwaukee Water Reclamation District. Owner acknowledges that the City shall have no
responsibility or liability for any recapture related to sanitary sewers. No separate sanitary sewer fees are due to the City, except for standard building permits, connection and inspection fees, and any fees collected by the City on behalf of the Kishwaukee Water Reclamation District payable City-wide as a condition to connection to and the use of the system by all properties.

ARTICLE V
INTENTIONALLY DELETED

ARTICLE VI
NEW BUILDINGS

No new buildings or structures shall be erected on the Property, except in compliance with all applicable provisions of this Agreement.

ARTICLE VII
FEES

A. Fees: Owner shall pay all fees, in the amount and at the time as required by any applicable City Ordinance.

B. Peace Road Contribution: The Parties acknowledge that Owner has benefitted substantially from the construction, improvement and maintenance of Peace Road, which road provides the Owner Properties with their primary access to both Lincoln Highway and the I-88 tollway. Owner agrees to contribute to the future improvement of Peace Road as follows:

1. I-88 to IL Route 38 (Lincoln Highway): Owner acknowledges that the City has presently programmed that portion of Peace Road from I-88 to Illinois Route 38 (Lincoln Highway) for improvement, and it is presently included within a federal and state grant program that results in the provision of eighty percent (80%) of the costs of designing and constructing improvements from grant funding, with a twenty percent (20%) local funding obligation. Owner shall be responsible for the payment of Seven Hundred Fifty Thousand and No/100ths Dollars ($750,000.00) as Owner’s portion of any local share of the cost of designing and constructing this portion of Peace Roadway, to be paid to the City in accordance with Section VII(B)(3) below.

2. Macom Drive: The cost of maintaining Macom Drive (which is owned by the City) will be the exclusive responsibility of the City. In calendar year 2020, the City shall perform crack-filling and other necessary surface repairs to Macom Drive (as determined by the City in its sole discretion) at the City’s sole cost.

3. Payment of Obligation: Amounts payable to the City by Owner under Section VII(B)(1) above will be allocated pro rata (determined on a per acre basis) among subdivided lots within the Owner Properties and will be payable into escrow within sixty
(60) days after delivery of written notice to Owner that bids for the programmed improvements to Peace Road from I-88 to Illinois Route 38 have been awarded. That escrow may be with the Chicago, loop office of a nationally recognized title company or with the City pursuant to a form of escrow agreement agreeable to the Parties.

4. Grants Toward Obligation: The Parties agree that Owner may satisfy all or some portion of its obligation towards the above-referenced costs through the identification and provision of other forms of grant funding to satisfy the local match requirement. In the event that the Parties successfully obtain additional grants that can be utilized to satisfy the local match, and said grants are based upon the development or other activities within the Property, such grants shall be applied as a credit against Owner’s obligation, on a prorata basis, up to the full amount of such obligation. If the Parties are able to secure additional grants to cover the full twenty percent (20%) local share based upon the development or activities occurring on the Property, Owner would not be required to make a further contribution towards project costs.

C. Other Grants: The Parties shall reasonably cooperate with each other in seeking available financial assistance from available grant programs that may benefit the Owner Properties or which may provide for the funding or construction of public improvements that benefit the Owner Properties. During the Construction Period regarding a particular development site at the Owner Properties, Owner will exercise reasonable efforts to secure the cooperation of prospective occupants of that site regarding available grant programs that may benefit the Owner Properties or which may provide for the funding or construction of public improvements that benefit the Owner Properties.

ARTICLE VIII
DEVELOPMENT RESTRICTIONS

A. Stop Work Orders: The City may issue stop orders in accordance with City Code as necessary to insure development occurs as required by this Agreement and City Ordinances. Unless issued in case of emergency, said stop orders shall be preceded by reasonable notice (not less than three days) and opportunity to comply.

B. Compliance with City Ordinances: The City and Owner agree that, except as specifically modified in this Agreement and as shown in applicable Final Plans, the Owner Properties shall be developed in compliance with all ordinances, codes and regulations of the City in effect at the time of development, including but not limited to the City Subdivision Control Ordinance. The Parties acknowledge that it is the ultimate responsibility of Owner to comply with any and all requirements of this Agreement and applicable City Codes.

C. Engineering Review and Permits: All construction shall be in accordance with the Final Plans. Any issues not addressed by the Final Plans or any proposed changes to the Final Plans shall be required to comply with the City Codes and any comments which are included within the Final Plan approval. All such comments must be addressed prior to site development. All versions of the plat, including the final plat, shall be subject to the requirements of the Development
Standards. All permits from the Illinois Environmental Protection Agency or any other agency with jurisdiction over the Property must be issued prior to work on water main, sanitary sewer or storm sewer improvements commences; the City will reasonably cooperate with Owner in signing such applications.

D. Utility Extensions: The installation of the necessary and appropriate on-site electric, natural gas, cable, television, telephone facilities, future internet access facilities and other utilities (when available) to the Property shall be by underground installation and pursuant to the requirements of such utility companies or pursuant to the agreement of the City with such entities and at no cost to the City. Owner agrees to bury all overhead utility lines existing at the time of development that run within the Property at the time of development of the area in question.

E. Traffic Enforcement: Owner will not unreasonably object to the City’s traffic law enforcement on private parking lots, roads and commercial areas of the Owner Properties in accordance with City Code. Owner and the City agree and acknowledge that said enforcement shall be limited to enforcement of accessible parking restrictions and fire lane parking zones.

F. Site Control: Owner acknowledges that, depending on weather conditions, construction traffic entering and leaving a construction site creates debris, especially dirt, dust, and mud clots on streets and roadways adjacent to a construction site on the Owner Properties. Owner agrees that during the Construction Period it shall inspect and clean the streets and roadways adjacent to and within 1,000 feet of the entrance to Owner’s construction site on the Owner Properties of debris that came from the Owner Properties or in relation to the development thereof, and take reasonable measures to control dust as needed daily while construction is occurring on said site. Within the Owner Properties, Owner further agrees during the Construction Period to mow vegetation exceeding eight inches, pick up trash and debris and repair and replace soil erosion control fencing so as to comply with applicable ordinances of the City, all of which activities may be contracted to its development trades and contractors. During the Construction Period Owner shall also patch or repair damage to any roadway, path, driveway, sidewalk or other similar improvement within or adjoining the Owner Properties, prior to the conclusion of the maintenance period for any such improvement. As security for such obligations, and as a condition of the issuance of any filling or grading permits, Owner agrees to deposit with the City the sum of twenty thousand ($20,000.00) dollars (“Site Control Escrow”) prior to commencing any development work of any kind on the Owner Properties. In the event Owner, during the Construction Period, fails to clean, snow plow or de-ice the streets, mow weeds, pick-up debris or repair or replace soil erosion control fencing, or fails to patch or repair any street, path, roadway or sidewalk prior to the acceptance of such street, path, roadway or sidewalk as herein provided, within forty-eight (48) hours after receipt of notice from the City of Owner’s failure to comply with this provision, then the City may perform or contract with others to perform such undertaking and deduct the cost thereof from the Site Control Escrow. In the event that the City reasonably determines that the 48 hour waiting period presents an undue hazard to public welfare or safety, the City may take action without satisfying such waiting period. Owner shall, within 15 business days following written notice from the City, replenish the Site Control Escrow as funds are from time to time properly withdrawn there from by the City, so as to maintain the same at a twenty thousand ($20,000.00) dollar balance. All sums remaining on deposit with the City pursuant to this provision shall be credited against other fees or charges due from Owner upon conclusion of the last of the maintenance periods for public
improvements within the Property, or completion of the development of all lots and units within the Owner Properties in accordance with the last Final Plat thereof, whichever shall be the last to occur. Any unused balance will be returned to Owner.

G. Sidewalks: Concrete sidewalks, as required and specified by applicable City Codes and the terms of this Agreement, shall not be installed between November 15th and April 15th of any given year, unless otherwise permitted by the City Building Department or by ACI Code. If Owner constructs the East/West Road, Owner shall construct a public sidewalk as part of that improvement. In addition, to the extent the owner of the COMED ROW grants a recorded easement permitting the extension of the existing sidewalk at the east end of Macom Road to the Peace Road right-of-way, then Owner, at Owner’s expense, will cause the existing sidewalk at the east end of Macom Road to be extended over the COMED ROW to the Peace Road right-of-way in accordance with permits therefore issued by the City and in accordance with the terms of any such recorded easement. Other than the foregoing sidewalks, Owner will not be required to construct any public sidewalks in connection with the Owner Properties. Nothing in this paragraph affects Owner’s obligations under this Agreement to repair or replace any existing or future sidewalks damaged in connection with Owner’s construction activities on the Owner Properties.

H. Building Codes: Subject to the terms of this Agreement, all development on the Owner Properties shall conform to the then-current and applicable City Codes.

I. Certificates of Occupancy:

The City shall issue certificates of occupancy to applicant in a timely fashion, or issue a letter of denial informing applicant specifically what corrections are necessary as a condition to the issuance of a certificate and quoting the section of any applicable code, ordinance or regulation relied upon by the City in its request for correction. The City shall grant individual certificates of occupancy for multi-tenant commercial or industrial buildings on a unit-by-unit or store-by-store basis in accordance with the then-current building code.

Owner may request issuance of a Temporary Certificate of Occupancy (TCO) for a structure where the structure and site meet all applicable minimum building, safety and fire code requirements but where not all improvements related to the structure have been completed so as to justify issuance of a final certificate of occupancy. Temporary certificates of occupancy shall not be delayed in the event adverse weather conditions prevent construction of final surface courses on private drives, final landscaping, and final exterior facade improvements (provided that the building is weathertight and passes all applicable inspections for life-safety and occupancy concerns). If Owner seeks a TCO, Owner shall post with the City an irrevocable letter of credit or bond from a financial institution or surety reasonably acceptable to the City, in an amount not less than one hundred and twenty percent (120%) of the anticipated completion costs for any remaining improvements. A TCO shall have a maximum term of ninety (90) days for any interior issue and a maximum term of six (6) months for any exterior issue. Such terms may be extended by the City for up to three successive extensions of not more than thirty (30) days each. The Community Development Director shall be authorized to issue TCOs, to approve of letters of credit or bonds and cost completion estimates, to approve of TCO extensions, and to revoke or terminate a TCO; provided that Owner may appeal any such revocation or termination to the City Council.
J. **Utility Easement Encroachments:** Owner and Developer will reasonably cooperate with each other in good faith to resolve any public utility encroachments (i.e., public utilities constructed by Owner outside of public utility easements) at the Owner Properties in a mutually agreeable fashion.

**ARTICLE IX**
**MUTUAL ASSISTANCE**

A. **Mutual Cooperation:** The Parties shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement; to aid and assist each other in carrying out the terms and objectives of this Agreement and the intentions of the Parties as reflected by said terms, including, without limitation, the giving of such notices, the holding of such public hearings, the enactment by the City of such resolutions and ordinances and the taking of such other actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement and as may be necessary to give effect to the terms and objectives of this Agreement.

**ARTICLE X**
**REMEDIES**

A. Upon a breach of this Agreement, any of the Parties, in any court of competent jurisdiction, by an action or proceedings at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance or both. No action taken by any party hereto pursuant to the provisions of this Article or pursuant to the provisions of any other Article of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and nonexclusive of any other remedy either set forth herein or available to any party at law or in equity.

B. In the event of a material breach of this Agreement, the Parties agree that the party alleged to be in breach shall have thirty (30) days after written notice of said breach to correct the same prior to the non-breaching party's seeking of any remedy provided for herein (provided, however, that said thirty (30) day period shall be extended if the defaulting party has initiated the cure of said default and is diligently proceeding to cure the same).

C. If any of the Parties shall fail to perform any of its obligations hereunder, and the party affected by such default shall have given written notice of such default to the defaulting party, and such defaulting party shall have failed to cure such default within thirty (30) day of such default notice (provided, however, that said thirty (30) day period shall be extended if the defaulting party has initiated the cure of said default and is diligently proceeding to cure the same), then, in addition to any and all other remedies that may be available, either in law or equity, the party affected by such default shall have the right (but not the obligation) to take such action as in its reasonable discretion and judgment shall be necessary to cure such default.

D. The failure of the Parties to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party
imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

E. If the performance of any covenant to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include acts of God, war, acts of civil disobedience, weather, terrorist acts of a direct or indirect nature, material shortages, flooding, strikes or similar acts), the time for such performance shall be extended by the amount of time of such delay.

ARTICLE XI
TERM

This Agreement shall be binding upon the Parties and their respective successors and assigns for forty (40) years, commencing as of the date hereof, and for such further terms as may hereinafter be authorized by statute and by City ordinance. In the event that a Court of competent jurisdiction determines that for any reason a term of forty years is unenforceable, then the preceding sentence of this Article XI shall be severed and stricken from this Agreement and this Agreement shall have a term of twenty (20) years commencing on the date hereof. The expiration of the Term of this Agreement shall not affect the continuing validity of the zoning of the Property or any ordinance enacted by the City pursuant to this Agreement.

ARTICLE XII
MISCELLANEOUS

A. Amendment: This Agreement, and the exhibits attached hereto, may be amended only by mutual consent of the City and owner of an affected parcel, by adoption of an ordinance by the City approving said amendment as provided by law, and by the execution of said amendment by the City and that owner. Notwithstanding the foregoing, the City and Owner may agree to amend the provisions of this Agreement, during its term, without the approval or consent of the owners of individual commercial lots that have been sold during the term of this Agreement, provided that the amendment agreed to by the City and Owner does not create any new obligation or burden for the individual lot owner(s). Purchase of any parcel within the Owner Properties after the recording of this Agreement constitutes acceptance of the provisions of this Agreement, and waiver of the right to object to any amendment authorized under this Article XII(A).

B. Severability: If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements and portions of this Agreement, and to that end, all provisions, covenants, agreements and portions of the Agreement are declared to be severable. If for any reason the zoning of the Owner Properties is ruled invalid, in whole or in part, the Corporate Authorities, as soon as possible, shall take such actions (including the holding of such public hearings and the adoption of such ordinances and resolutions) as may be necessary to give effect to the spirit and intent of this Agreement and the objectives of the Parties, as disclosed by this Agreement, provided that the foregoing shall be undertaken at the expense of Owner, as applicable.
C. **Entire Agreement:** This Agreement sets forth all agreements, undertakings and covenants between and among the Parties regarding the Owner Properties. This Agreement supersedes all contrary ordinances, prior agreements, negotiations and understandings, written and oral, and is a full integration of the entire agreement of the Parties regarding the Owner Properties. In the event of any conflict between two or more components of this Agreement providing standards, guidelines or requirements for Owner to act upon in or around the Owner Properties, construction or related activities for the Owner Properties, if Owner and City are able to agree upon the applicable standard in a writing acceptable to both parties, said agreed upon standard may be utilized without an amendment to this Agreement.

D. **Successors and Assigns:** This Agreement shall inure to the benefit of, and be binding upon, successors of Owner and its respective successors, grantees, lessees, and assigns, and upon successor corporate authorities of the City and successor municipalities, and shall constitute a covenant running with the land. This Agreement may be assigned without the City's approval, and, subject to the terms and conditions of this section, upon said assignment and acceptance by an assignee, the assignor shall have no further obligations hereunder.

Notwithstanding the foregoing, no owner of a Developed Parcel (as defined below) shall have any liability under this Agreement for any “Obligation” (as defined below) except for Obligations relating solely to the use of that Developed Parcel or the construction or maintenance of improvements thereon, and, further, no breach of this Agreement by Owner or any other party will restrict, impair or otherwise affect any Developed Parcel or the owner thereof. For purposes hereof, a “Developed Parcel” means any subdivided parcel of the Owner Properties that has been developed with a building for which a certificate of occupancy has been issued by the City and for which all public improvements required by this Agreement to be completed prior to occupancy of that building have been so completed (such building, public improvements and the related parcel of land being referred to herein as a “Developed Parcel”).

All portions of the Owner Properties, other than Developed Parcels, will be subject to and bound by all the terms of and obligations under this Agreement that govern or regulate the use and development of that specific parcel of undeveloped land and the construction of as yet unconstructed public improvements required under this Agreement in connection with the Owner Properties but will not be bound by obligations under this Agreement that only govern or regulate the use and development of other portions of the Owner Properties.

Upon a conveyance of any portion of the Owner Properties, the party conveying such portion shall be released from any further obligations under this Agreement related to the Owner Properties conveyed that accrue after the date of that conveyance; provided, however, that, to the extent a bond, letter of credit or other security regarding the construction or maintenance of public improvements (“Improvement Guaranty”) has been delivered to the City in connection with the portion of the Owner Properties being conveyed, the current Owner will not be released from the obligations secured by that Improvement Guaranty until such time as the new owner has delivered a replacement Improvement Guaranty to the City.

As used in this Agreement the term “Owner” will mean Park 88 Group, LLC, a Delaware limited
liability company as the owner of the Owner Properties as of the date hereof and any person or entity who acquires fee title to any undeveloped portion of the Owner Properties from Owner.

Upon satisfaction of the duties and obligations of Owner under this Agreement to pay recapture, if applicable, and to construct and maintain public and private improvements regarding a Developed Parcel ("Obligations"), the City shall, at the request of Owner, issue a certificate in recordable form confirming that the Obligations have been fully satisfied for purposes of this Agreement regarding that Developed Parcel, and the Parties agree that such Obligations shall be deemed to be fully satisfied regarding that Developed Parcel for all purposes of this Agreement thereafter.

E. City Designees: Any reference to a specified City employee or official as contained herein shall be deemed to refer to the specified employee or official, or his or her designee, or in the absence of a specific reference, the City Manager or a designee thereof.

F. Notices: Any notice required or permitted by the provisions of this Agreement shall be in writing and sent by certified mail, return receipt requested, or personally delivered, to the Parties at the following addresses, or at such other addresses as the Parties may, by notice, designate:

City Clerk
City of DeKalb
200 South 4th Street
DeKalb, IL 60115
Telephone: 815-748-2095

With copies to:
City Manager
City of DeKalb
223 South Fourth Street, Suite A
DeKalb, IL 60115
Telephone: 815-748-2090

City Attorney
City of DeKalb
200 South 4th Street
DeKalb, IL 60115
Telephone: 815-748-2093

If to Owner:
Park 88 Group, LLC
c/o Venture One Real Estate
9500 Bryn Mawr, Suite 340
Rosemont, IL 60018

With a copy to:
Howard I. Goldblatt
O'Rourke, Hogan, Fowler & Dwyer, LLC
10 S. LaSalle Street, Suite 3700
Chicago, IL 60603
Notices shall be deemed given on the third (3rd) business day following deposit in the U.S. Mail, if given by certified mail as aforesaid, and upon receipt or refusal of delivery, if personally delivered or if delivered via overnight courier.

G. Amendment to Orr Parcel Annexation Agreement: Except as modified or amended by this Agreement, the provisions, conditions and terms of the Orr Parcel Annexation Agreement will remain unchanged and in full force and effect. In the case of any inconsistency between any of the provisions of this Agreement and any of the provisions of the Orr Parcel Annexation Agreement, the provisions of this Agreement will govern and control. In particular, (1) Article III and Section XII.K of the Orr Parcel Annexation Agreement are each superseded by the terms of this Agreement and will be of no further force or effect, (2) the concept plan attached as Exhibit B to the Orr Parcel Annexation Agreement is superseded by the Concept Plan attached hereto as Exhibit F and will be of no further force or effect, and (3) Owner will not have any obligation to grant access or utility easements through applicable portions of any of the Owner Properties to serve the “Deegan Property” (as that term is used in the Orr Parcel Annexation Agreement).

H. Obligations to Algus Retained Property: Nothing in this Agreement will modify or affect Owner’s obligations for the benefit of the Algus Retained Property under Section 14.09 of the Original Agreement.

I. Time of Essence: Time is of the essence of this Agreement and of each and every provision hereof.

J. Indemnification: Owner covenants and agrees to pay, at its expense, any and all damages, expenses, liabilities and losses resulting from this Agreement, the construction and development activities of Owner, or its agents, contractors and subcontractors regarding the development of the Owner Properties, and to defend and indemnify and save the City and its officers, elected and appointed agents, employees, engineers and attorneys (collectively, the “Indemnifieds”) harmless of, from and against such damages, expenses, liabilities and losses, except to the extent such damages, expenses, liabilities and losses arise by reason of the gross negligence or willful or wanton act or omission of the Indemnifieds. Owner shall provide satisfactory proof of insurance covering such defense and indemnity of the Indemnifieds.

K. Written Assurance: Upon a written request from Owner or the owner of the lot within the Owner Properties, the City will execute and deliver a “Written Assurance” (defined below) to Owner, the owner of that lot or to a prospective purchaser or mortgage lender. A “Written Assurance” is a writing which states that, except as otherwise provided in that Written Assurance: (a) this Agreement has not been amended or modified in any manner not of record with the DeKalb County, Illinois Recorder; (b) to the best knowledge of the party executing and delivering the Written Assurance there are no defaults presently existing under this Agreement by the requesting party; (c) there are no amounts presently due and owing to the party executing and delivering the Written Assurance from the party requesting the Written Assurance under this Agreement; and (d) except as provided in the Written Assurance all duties and obligations of Owner under this Agreement have been satisfied with respect to that portion of the Owner Properties and no duties or obligations remain to be performed by the owner of that portion of the Owner Properties under this Agreement.
L. **Exhibits:** The following Exhibits referred to herein and attached to this Agreement are hereby made a part of this Agreement:

- **Exhibit A**  Legal Description of the Property
- **Exhibit B-1**  Legal Description of Owner Properties
- **Exhibit B-2**  Depiction of Owner Properties
- **Exhibit C**  Development Standards
- **Exhibit D**  Legal Description of Public Use Parcel
- **Exhibit E**  Form of Professional Fee Reimbursement Agreement
- **Exhibit F**  Approved Concept Plan
- **Exhibit G**  Existing Storm Water Plan
- **Exhibit H**  Intentionally Deleted
- **Exhibit I**  Stormwater Detention Basin Maintenance Standards
- **Exhibit J**  Supplemental Declaration of Protective Covenants for Park 88 Business Park
- **Exhibit K**  Depiction of Proposed Internal Road Improvements
- **Exhibit L**  Depiction of Portion of Owner Properties Currently Zoned SFR1
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written and, by so executing, each of the Parties warrants that it possesses full right and authority to enter into this Agreement.

CITY:

CITY OF DEKALB, an Illinois Municipal corporation

By: _______________________________  Attest: _______________________________

STATE OF ILLINOIS  )
COUNTY OF DEKALB )

I, ________________________, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT ____________________________, being the _____________ and ____________________________ being the _____________ of the City of DeKalb, an Illinois home rule municipal corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said municipal corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this ___ day of ___________________, 2019.

____________________________________
Notary Public

My Commission Expires:__________________
OWNER:

PARK 88 GROUP, LLC, a Delaware limited liability company

By: ____________________________________
Its: ____________________________________

STATE OF ILLINOIS )
COUNTY OF ________ )

I, ________________________, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Mark Goode, being the Authorized Signatory of Park 88 Group, LLC, a Delaware limited liability company, 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/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said company for the uses and purposes therein set forth.

Given under my hand and notarial seal this ___ day of ___________________, 2019.

__________________________________________
Notary Public

My Commission Expires: ____________________
EXHIBIT A – LEGAL DESCRIPTION OF THE ENTIRE PROPERTY

THAT PART OF THE WEST HALF OF SECTION 25 AND THAT PART OF SECTION 26, AND THAT PART OF THE SOUTHWEST QUARTER OF SECTION 24, ALL IN TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF OUTLOT A IN PARK 88 UNIT 1, PER DOCUMENT NUMBER 2004019757; THEREFORE THE FOLLOWING 3 COURSES ALONG THE LIMITS OF SAID PARK 88 UNIT 1: 1) NORTH 00 DEGREES 15 MINUTES 42 SECONDS EAST, A DISTANCE OF 43.94 FEET; 2) THENCE NORTH 24 DEGREES 28 MINUTES 05 SECONDS EAST, A DISTANCE OF 417.61 FEET; 3) THENCE NORTH 89 DEGREES 31 MINUTES 26 SECONDS EAST, A DISTANCE OF 221.64 FEET; 4) THENCE NORTH 00 DEGREES 19 MINUTES 28 SECONDS EAST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 25, A DISTANCE OF 651.28 FEET TO THE LIMITS OF LINCOLN INDUSTRIAL PARK SUBDIVISION PER DOCUMENT NUMBER 387022; THEREFORE THE FOLLOWING 4 COURSES ALONG THE LIMITS OF SAID LINCOLN INDUSTRIAL PARK SUBDIVISION: 1) SOUTH 89 DEGREES 47 MINUTES 54 SECONDS EAST, A DISTANCE OF 908.22 FEET; 2) THENCE NORTH 00 DEGREES 22 MINUTES 56 SECONDS EAST, A DISTANCE OF 1084.85 FEET; 3) THENCE SOUTH 76 DEGREES 47 MINUTES 54 SECONDS EAST, A DISTANCE OF 124.01 FEET; 4) THENCE SOUTH 02 DEGREES 07 MINUTES 30 SECONDS WEST ALONG SAID LIMITS AND SAID LIMITS EXTENDED SOUTHERLY, A DISTANCE OF 364.47 FEET; 5) THENCE SOUTH 82 DEGREES 38 MINUTES 50 SECONDS EAST, A DISTANCE OF 298.72 FEET; 6) THENCE NORTH 00 DEGREES 12 MINUTES 22 SECONDS EAST, A DISTANCE OF 56 SECONDS EAST, A DISTANCE OF 99.66 FEET; 7) THENCE SOUTH 89 DEGREES 46 MINUTES 01 SECONDS EAST, A DISTANCE OF 580.57 FEET; 8) THENCE NORTH 10 DEGREES 57 MINUTES 09 SECONDS EAST, A DISTANCE OF 135.06 FEET; 9) THENCE SOUTH 75 DEGREES 56 MINUTES 07 SECONDS EAST, A DISTANCE OF 186.85 FEET; 10) THENCE NORTH 04 DEGREES 28 MINUTES 51 SECONDS EAST, A DISTANCE OF 233.01 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF ILLINOIS ROUTE 38 (LINCOLN HIGHWAY); 11) THENCE THE FOLLOWING 2 COURSES ALONG SAID SOUTHERLY RIGHT OF WAY LINE: 1) SOUTH 70 DEGREES 47 MINUTES 28 SECONDS EAST, A DISTANCE OF 22.58 FEET; 2) THENCE SOUTH 74 DEGREES 56 MINUTES 50 SECONDS EAST, A DISTANCE OF 235.57 FEET; 3) THENCE SOUTH 00 DEGREES 31 MINUTES 01 SECONDS WEST, A DISTANCE OF 89.61 FEET; 4) THENCE SOUTH 75 DEGREES 40 MINUTES 15 SECONDS EAST, A DISTANCE OF 137.90 FEET TO A LINE 92.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST QUARTER OF SECTION 26; 5) THENCE SOUTH 00 DEGREES 16 MINUTES 41 SECONDS WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 111.10 FEET TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER; 6) THENCE SOUTH 00 DEGREES 26 MINUTES 26 SECONDS WEST ALONG A LINE 92.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID WEST HALF OF SECTION 25, A DISTANCE OF 5279.33 FEET TO THE NORTH LINE OF FAIRVIEW DRIVE; 7) THENCE THE FOLLOWING 25 COURSES ALONG SAID NORTH LINE: 1) NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 607.26 FEET; 2) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 7.00 FEET; 3) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 60.00 FEET; 4) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 10.00 FEET; 5) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 200.00 FEET; 6) THENCE SOUTH 00 DEGREES 29 MINUTES 34 SECONDS WEST, A DISTANCE OF 10.00 FEET; 7) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 100.00 FEET; 8) THENCE SOUTH 00 DEGREES 29 MINUTES 34 SECONDS WEST, A DISTANCE OF 7.00 FEET; 9) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 200.00 FEET; 10) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 7.00 FEET; 11) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 860.00 FEET; 12) THENCE SOUTH 00 DEGREES 29 MINUTES 34 SECONDS WEST, A DISTANCE OF 7.00 FEET; 13) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 130.68 FEET; 14) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 2.00 FEET; 15) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 61.28 FEET; 16) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 15.00 FEET; 17) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 311.18 FEET; 18) THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS WEST, A DISTANCE OF 1658.83 FEET; 19) THENCE SOUTH 00 DEGREES 15 MINUTES 51 SECONDS WEST, A DISTANCE OF 17.00 FEET; 20) THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS WEST, A DISTANCE OF 329.31 FEET; 21) THENCE NORTH 00 DEGREES 15 MINUTES 51 SECONDS EAST, A DISTANCE OF 7.00 FEET; 22) THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS WEST, A DISTANCE OF 428.42 FEET; 23) THENCE NORTH 00 DEGREES 15 MINUTES 51 SECONDS EAST, A DISTANCE OF 10.00 FEET; 24) THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS WEST, A DISTANCE OF 171.45 FEET; 25) THENCE NORTH 89 DEGREES 48 MINUTES 13 SECONDS WEST, A DISTANCE OF 1285.39 FEET TO SAID POINT OF BEGINNING, IN DEKALB COUNTY, ILLINOIS.
Legal Description of Owner Properties

EXHIBIT B-1 – LEGAL DESCRIPTION OF OWNER PROPERTIES

LOT 2 IN PARK 88 UNIT 1, BEING A SUBDIVISION OF THAT PART OF THE WEST HALF OF SECTION 25 AND THAT PART OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 24, 2004 AS DOCUMENT NUMBER 2004015757, IN DEKALB COUNTY, ILLINOIS;

TOGETHER WITH

LOT 3 IN PARK 88 UNIT 1, BEING A SUBDIVISION OF THAT PART OF THE WEST HALF OF SECTION 25 AND THAT PART OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 24, 2004 AS DOCUMENT NUMBER 2004015757, IN DEKALB COUNTY, ILLINOIS;

TOGETHER WITH

LOT 5 IN PARK 88 UNIT 1, BEING A SUBDIVISION OF THAT PART OF THE WEST HALF OF SECTION 25 AND THAT PART OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 24, 2004 AS DOCUMENT NUMBER 2004015757, IN DEKALB COUNTY, ILLINOIS;

TOGETHER WITH

OUTLOT "A" IN PARK 88 UNIT 1, BEING A SUBDIVISION OF THAT PART OF THE WEST HALF OF SECTION 25 AND THAT PART OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 24, 2004 AS DOCUMENT NUMBER 2004015757, IN DEKALB COUNTY, ILLINOIS;

TOGETHER WITH

OUTLOT "B" IN PARK 88 UNIT 1, BEING A SUBDIVISION OF THAT PART OF THE WEST HALF OF SECTION 25 AND THAT PART OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 24, 2004 AS DOCUMENT NUMBER 2004015757, IN DEKALB COUNTY, ILLINOIS;

TOGETHER WITH

OUTLOT "C" IN PARK 88 UNIT 1, BEING A SUBDIVISION OF THAT PART OF THE WEST HALF OF SECTION 25 AND THAT PART OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 24, 2004 AS DOCUMENT NUMBER 2004015757, IN DEKALB COUNTY, ILLINOIS;

TOGETHER WITH

OUTLOT "D" IN PARK 88 UNIT 1, BEING A SUBDIVISION OF THAT PART OF THE WEST HALF OF SECTION 25 AND THAT PART OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 24, 2004 AS DOCUMENT NUMBER 2004015757, IN DEKALB COUNTY, ILLINOIS;
EXHIBIT B-1 — LEGAL DESCRIPTION OF OWNER PROPERTIES

TOGETHER WITH

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHEAST CORNER OF LOT 9 IN PARK 88 UNIT 2, PER DOCUMENT NUMBER 2007013086, SAID POINT ALSO BEING ON THE NORTHERLY RIGHT OF WAY LINE OF FAIRVIEW DRIVE AS DEDICATED PER DOCUMENT NUMBER 2007013086; THENCE THE FOLLOWING 4 COURSES ALONG SAID NORTHERLY RIGHT OF WAY LINE: 1) SOUTH 00 DEGREES 15 MINUTES 51 SECONDS WEST, A DISTANCE OF 17.00 FEET; 2) THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS WEST, A DISTANCE OF 329.31 FEET; 3) THENCE NORTH 00 DEGREES 15 MINUTES 51 SECONDS EAST, A DISTANCE OF 7.00 FEET; 4) THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS WEST, A DISTANCE OF 428.42 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MACOM DRIVE AS DEDICATED PER DOCUMENT NUMBER 2004019757, THENCE THE FOLLOWING 7 COURSES ALONG THE EASTERLY AND SOUTHERLY RIGHT OF WAY LINE OF SAID MACOM DRIVE: 1) NORTH 00 DEGREES 15 MINUTES 51 SECONDS EAST, A DISTANCE OF 10.00 FEET; 2) THENCE NORTH 44 DEGREES 52 MINUTES 15 SECONDS WEST, A DISTANCE OF 59.34 FEET; 3) THENCE NORTH 00 DEGREES 01 MINUTES 17 SECONDS WEST, A DISTANCE OF 149.17 FEET; 4) THENCE NORTH 03 DEGREES 50 MINUTES 07 SECONDS WEST, A DISTANCE OF 466.95 FEET; 5) THENCE NORTH 00 DEGREES 01 MINUTES 17 SECONDS WEST, A DISTANCE OF 697.35 FEET TO A POINT OF CURVATURE; 6) THENCE NORTHEASTERLY, 744.72 FEET ALONG A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 471.50 FEET, CHORD DISTANCE OF 669.69 FEET AND BEARING NORTH 45 DEGREES 13 MINUTES 38 SECONDS EAST TO A POINT OF TANGENCY; 7) THENCE SOUTH 89 DEGREES 31 MINUTES 26 SECONDS EAST, A DISTANCE OF 1200.89 FEET TO THE NORTHWEST CORNER OF LOT 11 IN PARK 88 UNIT 3, PER DOCUMENT NUMBER 2010007689; THENCE SOUTH 00 DEGREES 28 MINUTES 34 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 11, A DISTANCE OF 690.00 FEET TO THE NORTHEAST CORNER OF LOT 9 IN PARK 88 UNIT 2, PER DOCUMENT NUMBER 2007013086; THENCE NORTH 89 DEGREES 31 MINUTES 26 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT 9, A DISTANCE OF 830.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 9; THENCE SOUTH 00 DEGREES 28 MINUTES 34 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 9, A DISTANCE OF 1135.61 FEET TO THE POINT OF BEGINNING; ALL IN DEKALB COUNTY, ILLINOIS.

TOGETHER WITH

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHWEST CORNER OF LOT 12 IN PARK 88 UNIT 4, PER DOCUMENT NUMBER 2015008354, SAID POINT ALSO BEING ON THE NORTHERLY RIGHT OF WAY LINE OF FAIRVIEW DRIVE AS DEDICATED PER DOCUMENT NUMBER 2015008354; THENCE NORTH 00 DEGREES 28 MINUTES 34 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 12, A DISTANCE OF 1799.23 FEET; THENCE CONTINUING ON SAID EAST LINE NORTH 45 DEGREES 28 MINUTES 34 SECONDS EAST, A DISTANCE OF 28.99 FEET TO THE NORTHEAST CORNER OF SAID LOT 12, SAID POINT ALSO BEING ON THE SOUTHERLY RIGHT OF WAY LINE OF MACOM DRIVE AS DEDICATED PER DOCUMENT NUMBER 2004019757, THENCE THE FOLLOWING 4 COURSES ALONG SAID SOUTHERLY RIGHT OF WAY LINE: 1) SOUTH 89 DEGREES 31 MINUTES 26 SECONDS EAST, A DISTANCE OF 447.11 FEET; 2) THENCE SOUTH 87 DEGREES 53 MINUTES 15 SECONDS EAST, A DISTANCE OF 377.17 FEET; 3) THENCE SOUTH 83 DEGREES 44 MINUTES 23 SECONDS EAST, A DISTANCE OF 166.49 FEET; 4) THENCE SOUTH 89 DEGREES 41 MINUTES 52 SECONDS EAST, A DISTANCE OF 16.77 FEET TO A LINE 92.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE WEST HALF OF SECTION 25; THENCE SOUTH 00 DEGREES 26 MINUTES 26 SECONDS WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 1809.53 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF FAIRVIEW DRIVE; THENCE THE FOLLOWING 10 COURSES ALONG SAID NORTHERLY RIGHT OF WAY LINE: 1) NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 607.26 FEET; 2) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 7.00 FEET; 3) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 60.00 FEET; 4) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 10.00 FEET; 5) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 200.00 FEET; 6) THENCE SOUTH 00 DEGREES 29 MINUTES 34 SECONDS WEST, A DISTANCE OF 10.00 FEET; 7) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 100.00 FEET; 8) THENCE SOUTH 00 DEGREES 29 MINUTES 34 SECONDS WEST, A DISTANCE OF 7.00 FEET; 9) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 60.88 FEET; 10) THENCE NORTH 00 DEGREES 28 MINUTES 34 SECONDS EAST, A DISTANCE OF 17.00 FEET TO THE POINT OF BEGINNING; ALL IN DEKALB COUNTY, ILLINOIS.
EXHIBIT B-1 — LEGAL DESCRIPTION OF OWNER PROPERTIES

TOGETHER WITH

THAT PART OF THE SOUTH-WEST QUARTER OF SECTION 24, AND THAT PART OF THE WEST HALF OF SECTION 25, ALL IN TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING at the Southeast corner of Lot 9 in Park 58 Unit 1, as recorded in Document Number 2004019757, said point also being on the northerly right of way line of Macom Drive as dedicated per Document Number 2004019757; thence North 00 degrees 22 minutes 56 seconds East along the East lines of Lots 6 and 7 in said Park 58 Unit 1, a distance of 1954.38 feet to the Northeast corner of said Lot 9; thence North 89 degrees 31 minutes 26 seconds West along the South line of said Lot 9, a distance of 906.69 feet to the Northwest corner of said Lot 9; said point also lying on the West line of the Northwest quarter of said Section 25; thence North 00 degrees 22 minutes 56 seconds East along the West line of the Northwest quarter of said Section 25, a distance of 651.28 feet to the limits of Lincoln Industrial Park Subdivision per Document Number 387022; thence the following 4 courses along the limits of said Lincoln Industrial Park Subdivision: 1) South 89 degrees 47 minutes 54 seconds East, a distance of 908.22 feet; 2) Thence North 00 degrees 22 minutes 56 seconds East, a distance of 1084.85 feet; 3) Thence South 76 degrees 47 minutes 54 seconds East, a distance of 124.01 feet; 4) Thence South 02 degrees 07 minutes 30 seconds West along said limits and said limits extended southerly, a distance of 364.47 feet; thence South 82 degrees 38 minutes 50 seconds East, a distance of 298.72 feet; thence North 00 degrees 22 minutes 56 seconds East, a distance of 99.66 feet; thence South 89 degrees 46 minutes 01 seconds East, a distance of 580.57 feet; thence North 10 degrees 57 minutes 09 seconds East, a distance of 135.69 feet; thence South 75 degrees 36 minutes 07 seconds East, a distance of 186.85 feet; thence North 14 degrees 23 minutes 51 seconds East, a distance of 221.01 feet to the southerly right of way line of Illinois Route 38 (Lincoln Highway); thence the following 2 courses along said southerly right of way line: 1) South 70 degrees 47 minutes 28 seconds East, a distance of 22.58 feet; 2) thence South 74 degrees 56 minutes 50 seconds East, a distance of 235.57 feet; thence South 00 degrees 31 minutes 01 seconds West, a distance of 89.61 feet; thence South 75 degrees 40 minutes 15 seconds East, a distance of 137.90 feet to a line 92.00 feet west of and parallel with the East line of said Southwest quarter of Section 24; thence South 00 degrees 16 minutes 41 seconds West along said parallel line, a distance of 111.10 feet to the South line of said Southwest quarter; thence South 00 degrees 26 minutes 26 seconds West along a line 92.00 feet west of and parallel with the East line of said West half of Section 25, a distance of 3356.80 feet to the Northerly right of way line of Macom Drive as dedicated per Document Number 2004019757; thence the following 3 courses along said northerly right of way line: 1) North 89 degrees 31 minutes 26 seconds West, a distance of 17.05 feet; 2) thence South 88 degrees 50 minutes 22 seconds West, a distance of 542.72 feet; 3) thence North 89 degrees 31 minutes 26 seconds West, a distance of 1067.58 feet to the Point of Beginning; in DeKalb County, Illinois.

TOGETHER WITH

LOT 4 IN PARK 58 UNIT 1, BEING A SUBDIVISION OF THAT PART OF THE WEST HALF OF SECTION 25 AND THAT PART OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 24, 2004, AS DOCUMENT NUMBER 2004019757, IN DEKALB COUNTY, ILLINOIS;

***THIS PARCEL IS TO BE CONVEYED TO THE CITY OF DEKALB ONCE DEVELOPMENT AGREEMENT IS ADOPTED***

Survey No.: R48
Ordered By: VENTURE ONE
Description: PARK 58 — EXHIBIT B-1
Date Prepared: October 16, 2010
Scale: 1" = N/A
Sheet: 3/3

JACOB & HEFNER
ASSOCIATES

125 Butterfield Road, Lisle, IL 60532
P: (630) 412-4800, F: (630) 412-4841
www.jacobhefner.com

Licensed Professional Land Surveyor

License No. 455-46978 Exp. 6/30/18
Exhibit C
Development Standards

I. General:

A. Any improvements, modifications, additions or demolitions of any kind performed on any of the Property within the business park must be designed and constructed according to the Uniform Development Ordinance of the City of DeKalb, IL, except as amended herein.

II. Permitted Land Uses:

A. The following land uses and developments are permitted by right anywhere on the site:

1. Accessory Uses;
2. Advertising agencies, commercial graphics and drafting services;
3. Laboratories and ancillary uses (in enclosed structures) for research and development including, but not limited to:
   a. Engineering and testing laboratories;
   b. Medical and dental research laboratories;
   c. Agricultural research laboratories. (Conduct of animal, plant or other biological and genetic research activities outdoors is prohibited);
4. Manufacturing, including, but not limited to, electronic, scientific and precision instruments manufacture and repair, experimental product development and plastic products design and assembly, cloth products manufacture, light machinery production and assembly, printing and publishing; but not including those uses which may be obnoxious or offensive by reason of emission of toxic or hazardous substances, odor, noise, dust, smoke, or gas;
5. Offices, excluding medical and dental offices or clinics providing patient diagnostics and/or treatment;
6. Pilot plants in which processes planned for use in production elsewhere can be treated to the extent reasonably necessary for full investigation of the merits of a product or process including commercial viability;
7. Production of prototype products when limited to the scale reasonably necessary for full investigation of the merits of a product, including commercial viability;
8. Retail activities, but only where it is incidental or secondary to a principal building containing forty thousand (40,000) or more square feet of gross floor area. One (1) or more uses hereinafter set forth may be operated as accessory uses if each such use meets the following conditions: (1) is provided for the convenience of the owner and/or tenants, (2) does not have exterior signs of any type, (3) does not have separate outside entrance facing any street and (4) is not evident from any street:
   a. Blueprinting and reprographic establishments;
   b. Book and stationery store;
   c. Barbershop, or beauty parlor;
   d. Camera and photographic supply shops;
   e. Candy, ice cream, deli, and sandwich shops;
   f. Drug stores;
   g. Gift shops and newsstands;
h. Office supply store;
i. Optician, optometrist;
j. Parcel delivery station of not more than two-hundred fifty (250) square feet;
k. Photographic development and processing;
l. Postal substations and telegraph office;
m. Travel bureau and transportation ticket office;
n. Typewriter, computer and office machine sales and drop-off repair service;
o. Valet shop, cleaning pick-up and drop-off only (no plant on premises).

9. Warehousing and distribution facilities, including motor freight terminals;

10. Any use whose primary purpose includes the light manufacturing, fabricating, assembly, disassembly, processing or treatment of goods and products, including but not limited to:
   a. appliances, small motors;
   b. books, printed materials;
   c. clothing and textiles;
   d. drugs;
   e. electrical components;
   f. glass and ceramics;
   g. paper and paper products;
   h. plastic and fiberglass;
   i. sheet metal;
   j. tools;
   k. wood assembly and finishing;

11. Building-contractors office;
12. Cartage and express faciliy;
13. Dwelling unit (one only) only when used by the caretaker and their families, who own or are employed in the allowable commercial or industrial use of the premises, and which may be located on the ground floor;
14. Fruit, Vegetable and grain processing, packaging, and storage;
15. Ice processing, sales and storage;
16. Lumberyards;
17. Machinery sales, service and storage;
18. Machine shops;
19. Motor and rail freight terminals;
20. Newspaper offices;
21. Plating establishments;
22. Plumbing and heating service and equipment stores;
23. Printing and publishing establishments, duplicating services;
24. Public buildings used by any department of the City, School District (except school buildings), Township, Park District, County, State, and Federal governments;
25. Research laboratories and facilities;
26. Showrooms and retail outlets associated with warehouse or manufacturing facilities where the showroom or retail portion does not exceed thirty (30) percent of the total floor area;
27. Sign shops;
28. Tool and dye shops;
29. Union halls, hiring halls, and trade association offices/meeting rooms;
30. Warehouse and wholesale establishments, distribution centers;
31. Welding;
32. Any use whose primary purpose includes the heavy manufacturing, fabrication, assembly 
   (does not include disassembly), processing or treatment of goods and services, including but 
   not limited to:
   a. boats,
   b. construction equipment,
   c. containers and storage units,
   d. motor vehicles and engines,
   e. paints, inks,
   f. stoneware, earthware;
33. Railroad switching yards;
34. Radio television and recording studios

B. The following additional uses are allowed only in an area located within (400) feet of the Lincoln 
   Avenue right-of-way, provided however that stores that sell used or rented goods are prohibited:

   1. Hotels and motels, including conference centers, meeting and dining facilities
   2. Automobile, truck and recreational vehicle sales, boat and marine sales, and farm 
      equipment sales, where a majority of units sold are new
   3. Day care centers;
   4. Drop-off cleaning establishments and laundries;
   5. Banks and Savings and Loans;
   6. Offices and office buildings for accountants, bookkeepers, architects, engineers, planners, 
      financial consultants, income tax preparers, insurance salespersons, lawyers, real estate 
      salespersons, real estate brokers, real estate appraisers, and other similar type offices;
   7. Service facilities including barber shops and beauty shops; copying and duplicating 
      services; artists' studios; photographers; locksmith; shoe repair; tailors; music and dance 
      instruction studios; typing and stenography services; suntan parlors; travel agencies and 
      ticketing offices; and other similar type uses.
   8. Specialty shops including antique shops; art and school supplies; bookstores; camera 
      shops, including film developing; card and stationery shops; candy shops; florists; 
      newspaper and magazine stores; gift and novelty shops; jewelry stores; pet shops; record 
      shops; hobby shops; and other similar type uses;
   9. Video sales and rental stores;
   10. Drug stores;
   11. Food stores and grocery stores; convenience stores (excluding sale of motor fuel on the 
       premises); meat markets and bakeries;
   12. Medical and dental offices;
   13. Automobile parts and accessory stores;
   14. Clothing and shoe stores;
   15. Department and variety stores;
   16. Furniture stores;
   17. Hardware stores, including carpet, paint and wallpaper stores
   18. Office supply stores;
   19. Pet supply stores and animal grooming;
   20. Radio and television stores, sales and service;
21. Recreation centers, health clubs, athletic clubs, and fitness centers;
22. Professional or technical training schools;
23. Sporting goods stores;
24. Toy Stores;
25. Micro-Distillery;
26. Distillery;
27. Offices

III. Setbacks:

A. Building and parking setbacks from property lines adjacent to street rights of way shall be a
minimum of thirty feet (30'). Parking setbacks from property lines adjacent to Commonwealth
Edison rights of way shall be a minimum of ten feet (10'). Building setbacks from property lines
adjacent to Commonwealth Edison rights of way shall be a minimum of thirty feet (30'). Building
setbacks from property lines not adjacent to a right of way shall be a minimum of twenty feet (20').
Parking setbacks from property lines not adjacent to a right of way shall be a minimum of five feet
(5'), except for driveways where cross-access between adjacent lots has been authorized by the
City. The minimum building setbacks shall be adjusted in accordance with the provisions of
paragraph IV.A below.

IV. Maximum Building Height:

A. The maximum height of any building or appurtenance thereto or any structure is one-hundred feet
(100'), provided that for any structure or building exceeding sixty feet (60') in height, the required
setback shall be increased by one foot for every foot that the building exceeds sixty feet (60') in
height.

V. Building Architecture/ Materials:

A. **General:** The purpose of the Architectural Guidelines is to produce an orderly and
aesthetically pleasing development of high quality architecture in harmony with the
environment, consistent with the theme of the business park, and consistent with the intended
use of the buildings.

B. **Design Compatibility:** An overall continuity will be achieved by use of similar or compatible
materials, colors and textures. Within developments comprised of two or more structures,
heights, massing and form articulation should be of similar character. Buildings should be
responsive to the Illinois climate and indigenous landscape. Colors used on buildings should
complement the business park’s development scheme. Buildings shall exhibit diversity and
individuality in style while maintaining a comprehensive campus like environment through
the use on all buildings of similar signage, exterior lighting components, and landscape
material.

C. **Elevations:** All elevations of a structure shall be constructed of the same material. This is not
to require that glass features or other entry area highlights be added to the back of a building.
This is, however, to require that if the front elevation of a building is constructed with
smooth precast with cast-in reveals, then the other three elevations shall be constructed with smooth precast with cast-in reveals (except as provided below for walls enclosing a freezer/cooler space (or a wall specifically designed as an expansion wall). Main entrances to the buildings shall be well defined. Service doors shall be integrated into the overall design of the building. Stairs or elevators required for multi-story facilities shall be contained inside the facilities. Elevations along Peace Road and Lincoln Highway shall incorporate relief and changes in color and materials to avoid monotony.

D. **Materials:** Precast/Site Cast: All precast or site cast concrete wall panels shall have a smooth exterior finish with cast-in reveals. All concrete wall panels shall be stained or painted.

E. **Highlights:** The following materials shall be allowed as highlight material for entry areas or other architecturally significant areas of a structure:

- EIFS
- Standing Seam Metal
- Architectural Metal Panels
- Glass
- Block/Brick/Stone (Brick shall be utility size and of high quality and low moisture absorbing. Block shall be allowed only as a highlight base material and shall be of a high quality and low moisture absorbing and shall have a smooth or rough-cut limestone appearance.)

F. **Prohibited Materials:** The following materials are prohibited on the exterior of any structure:

- “Ribbed” or “raked” precast panels
- “Double T” precast panels
- EIFS in any location lower than five (5) feet above grade.
- Standard concrete block.
- Wood
- Ceramic Tile
- Quarry Tile
- Metal wall panels (other than the exterior wall of a freezer/cooler space within a structure (or a wall specifically designed as an expansion wall)
- Asphalt shingles.

VI. **Site Paving:**

A. **Entrance Aprons:** Entrance aprons shall include a depressed curb and gutter (or a curb and gutter which has had the back of the curb removed via sawing) and at least fifteen (15) feet of concrete.

B. **Asphalt Pavement:** All areas designed exclusively for automobile traffic will be paved with not less than three (3) inches of asphalt (in two lifts) placed over no less than eight (8) inches of compacted CA-6. All areas designed for truck traffic will be paved with no less than four (4) inches of asphalt (in two lifts) placed over no less than ten (10) inches of compacted
CA-6. All asphalt paved areas shall be graded to slope at least 1.0% for drainage purposes. A 6" non-reinforced slab installed over a 4" aggregate base may be substituted for heavy duty paving and the truck apron (required below).

C. **Truck Docks:** All facilities shall be designed and constructed to provide adequate maneuvering on-site without the need to maneuver on the street to access any truck docks located on that site. All exterior truck docks shall have a concrete apron at least seventy (60) feet adjacent to the dock wall.

D. **Curbing:** All paved areas (asphalt and concrete) shall be bounded by a concrete curb. All landscape areas shall be separated from paved areas with a concrete curb. Where bio-swales overland flood routes or snow clearing areas are used, breaks in curbs shall be allowed to collect and route water into swales.

**VII. Signage:**

A. **General:** The purpose of the signage requirements is to provide an attractive, coordinated, and logical signage program for the Property.

B. **Building Monument/Ground Signs:** A building monument/ground sign of up to (75) square feet per side shall be allowed for each building, with each sign not to exceed ten feet (12') in overall height. Sign square footage shall not include any sign base four feet or less in height provided there is no sign copy (other than the address not exceeding six inch high lettering) in the sign base. The sign base shall be included in the calculation of sign height. If a building has automobile and/or truck entry points on more than one street, or the building is over four hundred (400) feet in length measured parallel to the adjacent roadway, it will be allowed two monument signs; in either case, the signs must be able to be placed at least three hundred (300) feet apart measured along the adjacent roadway and must be placed at access points to the site. Lighting of monument signs will be per the Site Lighting section herein. Building Monument/Ground signs shall be set back from the property line not less than two feet (2') and not in a 25' clear sight triangle. The clear sight triangle shall be measured as the triangle formed by drawing a line between a point on the property line that is 25' from the driveway and a point 25' from the property line extending into the property along the curb line.

C. **Address Feature:** Each tenant in a building will be allowed one wall-mounted address feature of no more than (60) square feet. If a building has automobile and/or truck entry points on more than one street, or the building is over four hundred (400) feet in length measured parallel to the adjacent roadway it will be allowed two address features; in either case, the address features must be able to be placed at least three hundred (300) feet apart measured along the adjacent roadway. Lighting of address features will be per the Site Lighting section herein.

D. **Wall Signs:** Wall signs shall be individual letters or logos pin-mounted to the wall. Each tenant having an individual entrance in a building will be allowed one wall sign of up to (300) square feet, provided the height of any sign feature may not exceed ten feet (10'). Commercial tenants located within (400) feet of Lincoln Highway shall comply with the requirements of the Unified Development Ordinance. Commercial tenants located in buildings within (400) feet of
Lincoln Highway shall be permitted one square feet of wall signage for every one linear feet of building frontage. Lighting of wall signs will be per the Site Lighting section herein.

E. Directional Signs: Directional signs not exceeding fifteen square feet and six feet in height shall be permitted where it is necessary to direct motorists in locations per the approved site plans.

F. Pole Mounted Signs: Pole mounted signs are prohibited.

VIII. Landscaping:

A. General: The purpose of the Landscaping requirements is to provide a visually attractive, functional and coordinated environment that is reasonable to maintain and relatively tolerant or resistant to disease. Each site shall, at a minimum, conform to all requirements of the City of DeKalb Uniform Development Ordinances, except as amended herein. The Park 88 Landscape Standards are graphically depicted in the following drawing sheets 1 – 4 dated 1-15-2018 as prepared by Jacob & Hefner Associates.

B. Irrigation: Lawn areas and foundation landscaping adjacent to tenant office entrances shall be irrigated.

C. Building and Parking Setback Yards: Except as provided below in Paragraphs D and E, front, side and rear yards adjoining any street or Commonwealth Edison right-of-way shall have a minimum of one (1) deciduous shade tree of minimum two and a half inch (2-1/2") trunk diameter measured twelve inches (12") above the ground, or one evergreen tree minimum height six feet (6’), for each sixty feet (60’) of public ROW frontage. Strategic grouping of trees is encouraged (as opposed to even spacing of trees).

D. Truck dock screening along Commonwealth Edison and Fairview rights-of-way. Projects that include truck parking, maneuvering or loading immediately adjacent the Commonwealth Edison right-of-way along Peace Road and Fairview must provide a landscaped berm in the required parking lot setback area. Plantings shall include an appropriate mix of evergreen and deciduous trees, shrubs, perennials.

E. Northwest corner of Fairview and Peace. Project identification signage and/or landscaped design features are required at this location and shall be completed as part of any development of Lot 13.

F. Miscellaneous Plantings: Landscaped yard areas along walls not having truck dock loading facilities shall have additional shrub or perennial plantings at a ratio of one (1) shrub or perennial for every twenty feet (20’) of wall.

G. Berms: Earth berms shall be incorporated wherever practical to screen truck parking and loading areas. Berms should undulate in height and should generally not exceed a slope of three to one.
H. **Lawn Areas:** All areas which are not improved with building or paving, or planted with landscape material may be seeded or sodded in the building and parking lot setback area, and sodded within one hundred feet (100') of main building entrances. Other areas may be seeded.

I. **Parking Lot Islands:** Automobile parking lots shall include a tree island, 9’ x 18’ in size for every forty thirty (40) parking spots in a continuous row. Automobile parking shall not be placed directly against any building, but shall respect the “Foundation Yards” provided below. Each 9’x18’ island shall be planted with one (1) 2.5” caliper deciduous shade tree.

J. **Retaining Wall/Terracing:** Where it is necessary to utilize retaining walls to transition grade, no individual wall shall exceed six (6) feet in height. If a transition of greater height is required multiple walls shall be used and terraced with a minimum horizontal offset between walls of six (6) feet. Walls shall be built using integrally colored split face concrete modular units.

**IX. Foundation Yards:**

A. **General:** All buildings constructed on the Property will maintain the following minimum foundation landscape yards:

1. Ten feet (10’) along any building elevation that is parallel to a street or Commonwealth Edison right-of-way, except truck dock areas.
2. 5’ at all side and rear elevations that are not parallel to a street or Commonwealth Edison right-of-way, except truck dock areas

**X. Exterior Lighting:**

A. **Site Lighting:** Site lighting shall be designed and installed to provide a safe, functional, attractive, and coordinated exterior environment and to minimize the amount of glare visible from, and light spillage onto neighboring properties.

- All exterior fixtures shall be mounted on the building or on clear anodized, tapered, aluminum poles. Poles shall not exceed (35) feet in height.
- Fixtures shall be prefinished aluminum and shall use high pressure sodium bulbs with a maximum wattage of (400), or, alternatively, LED bulbs with a similar light output, and shall be “Dark Sky” compliant.
- Fixtures mounted on buildings shall not exceed (35) feet in height.
- Fixtures used near exit doors shall be “dark sky” compliant and shall use high pressure sodium bulbs with a maximum wattage of (150), or, alternatively, LED bulbs with a similar light output.
- Bollards shall be prefinished aluminum and shall use bulbs with a maximum wattage of (60) watts.
- Ground mounted monument sign lighting shall use bulbs with a maximum wattage of (150) watts.
- Building mounted sign lighting shall be accomplished by backlighting and/or internal lighting.
- Flag pole lighting, ground mounted building accent lighting, “up lighting” of landscape, and security lighting shall comply with local ordinances.
XI. Screening:

A. **General:** Great care should be taken to locate pipes, flues and hoods out of view from the adjacent roads.

B. **Mechanical and Utility Equipment:** All ground mounted mechanical or electrical equipment and all office roof top mechanical equipment visible from the adjacent property line shall be screened from view. Equipment required to be screened shall be accomplished by utilizing one or more of the following methods:

- Landscaping
- Architectural metal panels mounted horizontally, with a baked-on enamel finish to match the building color.
- EIFS designed to match the building panels.
- Precast
- Parapet walls
- Opaque glass
- Proprietary integrated equipment screens.
- By virtue of building height and equipment set-backs from building perimeter (so that roof-top mounted equipment is not visible from adjacent property lines).

C. **Communications Equipment:** Rooftop radio, TV, microwave, and other antennas that are accessory to a permitted use may be used and will not require screening, provided they are placed on the roof top of buildings. Ground mounted communications equipment that is accessory to a permitted use is allowed and shall not require screening, provided they are not placed in yards between an adjoining right-of-way and a building line.

D. **Loading Docks and Truck and Trailer Parking Facilities:** All loading docks and truck and trailer parking facilities shall be set back at least one hundred feet (100') from any public right-of-way. Loading docks and truck and trailer parking facilities visible from adjacent right-of-ways shall be screened through the use of landscaped rolling earth berms pursuant to Section VIII above.

E. **Trash Containers/Dumpsters:** Trash containers/dumpsters located away from buildings shall be provided and screened through the use of landscaped masonry enclosures at least eight feet (8') in height. Trash containers/dumpsters located at dock positions will not require screening other than that required for the docks.

XII. Outdoor Storage:

A. **General:** It is required that all activity such as processing, manufacturing, or assembling takes place within a fully enclosed building.

XIII. Fencing:

A. **General:** Where it is necessary to use fencing the following requirements shall apply:
B. **Front Yards, Corner Side Yards, and Rear Yards Adjoining Right-of-Way:** Fencing running parallel to front, corner side and rear yards adjoining rights-of-way shall be located no closer to the right-of-way than ten feet (10’) and in no instance in any easement. Fence material shall be aluminum (wrought iron look) and shall be powder coated black. Maximum height shall be eight (8) feet.

C. **Side/Rear Yards:** Fencing shall be located on the property line. Fence material shall be aluminum (wrought iron look) powder coated black, or chain link with black vinyl coating. Maximum height shall be eight (8) feet.

**XIV. Exterior Stairs/Railings:**

A. **General:** Exterior stairs, railings, and landings shall be constructed of steel or brushed aluminum or painted aluminum with a baked-on finish.

**XV. Examples of Compliant Buildings:**

3M – 978,120 SF  
Park 88  
1650 Macom Drive, DeKalb, IL
3M – 650,760 SF
Park 88
1250 Macom Drive, DeKalb, IL

3M – 410,400 SF
Park 88
1211 Fairview Drive, DeKalb, IL
LOT 4 IN PARK 88 UNIT 1, BEING A SUBDIVISION OF THAT PART OF THE WEST HALF OF SECTION 25 AND THAT PART OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 24, 2004 AS DOCUMENT NUMBER 2004019757, IN DEKALB COUNTY, ILLINOIS;

***THIS PARCEL IS TO BE CONVEYED TO THE CITY OF DEKALB ONCE DEVELOPMENT AGREEMENT IS ADOPTED***
Professional Fee Reimbursement Agreement

This Professional Fee Reimbursement Agreement ("Agreement") is entered into as of the _____ day of __________, 201__, between the City of DeKalb ("the City"), whose address is 200 S. Fourth Street, DeKalb, Illinois, and (“Applicant”), whose address is ___________, with the City and the Applicant hereafter being referred to as “the Parties”.

WHEREAS, on (date) __________ the Applicant has filed with the City a certain request for review ("Request") in the form of a:

- Petition for Annexation
- Plat of Subdivision
- Building Permit Request
- Site Plan Review Request
- Request to Construct or Alter a Public Improvement
- Other (specify):

and;

WHEREAS, the Request filed by Applicant contemplates ___________, more fully described on the Request, which shall hereafter be referred to as “the Project”.

WHEREAS, Applicant desires that the City, by and through its staff and professional consultants including but not limited to engineers, surveyors, planners and other consultants as the City shall deem necessary ("Professional Consultants"), review the Request and Project and evaluate them for conformity with the City’s Codes and Ordinances; and,

WHEREAS, if approved, Applicant wishes to construct the Project and understands that the City may use Professional Consultants to review the Project and the construction thereof to ensure conformity with any applicable permits, permissions, restrictions, codes, ordinances or other regulations; and,

WHEREAS, the Applicant recognizes that the City requires the Applicant to bear the cost of the Professional Consultants review of the Request and the Project pursuant to the terms and conditions of this Agreement; and,

WHEREAS, the Applicant wishes to benefit from the review of the Request and Project by the Professional Consultants in order to enable the Applicant to seek permission to construct the Project in accordance with applicable codes and regulations; and,

WHEREAS, it is the intent of the Applicant and the City to have the Applicant bear the expense of Professional Consultants utilized by the City relative to the Request and the Project;

Revised JL 7.28.2015
NOW THEREFORE, in consideration of the City’s agreement to utilize Professional Consultants to review the Request and Project and provide a summary of the results of such Professional Consultants’ review to the Applicant, and for other good and adequate consideration, the sufficiency of which is hereby acknowledged by the Parties, IT IS HEREBY AGREED AS FOLLOWS:

1. **Incorporation of Recitals:** The recitals to this agreement are incorporated by reference as if fully stated herein.

2. **Professional Fee Reimbursement:** The Applicant hereby agrees to reimburse, indemnify and hold harmless the City from any and all fees, charges, expenses or costs associated with the review and ongoing administration of the Request or the Project by the Professional Consultants, plus a five percent administrative fee imposed by the City ("Fees"). For purposes of this Agreement, Fees shall also include any legal expenses, costs, interest or other additional costs or penalties of any kind which the City or the Professional Consultants incur as a result of Applicant’s failure to maintain sufficient funding in the Escrow Account. Applicant acknowledges that the selection of the Professional Consultants to be utilized hereunder shall be at the City’s sole and absolute discretion. The Parties acknowledge that building plan review costs and building inspection costs are to be separately handled under the City’s building permit fees. All obligations herein shall be in accordance with the provisions of City Code Section 9.05.

3. **Escrow Account to be Established:** The Applicant hereby agrees to submit to the City the sum of $______, which shall be held by the City separately in an escrow account for the payment of Fees. The City shall provide the Applicant with a copy of any invoice to be paid out of the escrow account within thirty (30) days of its receipt. The Applicant shall be responsible for providing additional funding to maintain the funding in the escrow account at the amount prescribed above for the duration of the evaluation of the Request and the construction of the Project. The Applicant expressly acknowledges that the failure of the Applicant to maintain the escrow account at the prescribed level shall constitute grounds for the City to discontinue review of the Request or Project, refuse to issue permits or permissions for the Project, revoke existing permits or permissions for the Project, and/or issue stop work orders on the Project, in the City’s sole and absolute discretion. In the alternative, the City may file suit to enforce the provisions of this Agreement.

4. **Expenses Subject to this Agreement:** The escrow account established by this Agreement may be utilized to pay any expense due and owing the City. Without regard to the escrow account, the Applicant agrees and acknowledges that it shall be responsible for all Fees incurred by the City in the review of the Request or Project, and any interest or penalties accruing thereupon.

5. **Termination of Escrow:** Within a reasonable time after completion of the Project or termination of the Request, the City shall deduct from the funds in the escrow account an amount sufficient to compensate all Professional Consultants for services rendered. In the event the amount in the escrow account is insufficient to cover such
expenses, Applicant shall be responsible for forwarding payment of any expenses not funded by the escrow account to the City within thirty (30) days of receipt of a notice from the City of the amount due. In the event the Applicant fails to forward payment within that timeframe, the City may choose from any combination of the following remedies: 1) revoke any permits or permissions issued for the Project or any other project involving the Applicant until all amounts due are satisfied and/or issue one or more stop work orders on the Project or any other projects involving the Applicant until all amounts due are satisfied; 2) refuse to consider any new Request or Project from the Applicant, or any new Request or Project pertaining to the Property which was the subject of the original Request until all amounts due are satisfied; 3) file suit in a court of competent jurisdiction under this Agreement or otherwise pursue collection of the amount claimed as due; 4) file a lien on any property relating to the Request or Project; or, 5) pursue any other remedy in law or equity which the City shall deem appropriate.

6. Term. This Agreement shall remain in place and effective until one year after the full and final satisfaction of any obligation of the Applicant hereunder, with such date being not earlier than one year after the conclusion of the Project or one year after the withdrawal of the Request by the Applicant, or such earlier date as the City shall deem appropriate.

7. Enforceability and Severability. This Agreement shall be enforceable by any party hereto by any appropriate action at law or in equity to secure the performance of the covenants herein contained. If any provision of this Agreement is held invalid, such provision shall be deemed to be excised from and the invalidity thereof shall not affect any of the other provisions contained herein.


A. Any notice of demand hereunder from either party to the other shall be in writing and shall be deemed duly served if mailed by prepaid registered or certified mail, return receipt requested, or personally delivered with evidence of receipt addressed as noted in the introduction to this Agreement, or to such address as any party may from time to time designate by notice to the other party.

B. This Agreement may be executed in two or more counterparts, each of which, taken together, shall constitute one and the same instrument.

C. Applicant shall be required to reimburse all Fees through the City and shall not make or attempt to make any payment directly to any Professional Consultant.

D. This Agreement will be governed by and construed in accordance with the laws of the State of Illinois.

E. No provision of this Agreement and no obligation of either party under this Agreement may be waived or amended except by an instrument in writing signed by both parties.

F. Time is of the essence in the performance of each and every term, condition and covenant of this Agreement.
G. It is expressly agreed by the Parties that any dispute arising out of this Agreement shall be heard in the courts of the Twenty-Third Judicial Circuit, DeKalb County, Illinois.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

City of DeKalb:

BY: ___________________________

ITS: __________________________

Applicant:

BY: ___________________________

ITS: __________________________

Escrow Reimbursement contact information

Contact Person: ___________________________ Printed Name

Billing Address: ___________________________

Street

___________________________ City  ______________ State  ____________ Zip Code

Contact Phone Number: ___________________________
Exhibit F
Approved Concept Plan
Exhibit G

Existing Storm Water Plan
Exhibit H

Intentionally Deleted
1.0 Overview
The stormwater management basin is designed to temporarily receive and store stormwater runoff from the property. This protects manages flooding of the area and protects downstream water resources during rain events. Basic maintenance is required in order to preserve the aesthetic value and function of the basin on a long-term basis.

2.0 Long Term Management

Maintenance standards are outlined below. Table 1 outlines the recommended maintenance activities and the frequency in which they should be conducted.

<table>
<thead>
<tr>
<th>Task</th>
<th>APR</th>
<th>MAY</th>
<th>JUN</th>
<th>JUL</th>
<th>AUG</th>
<th>SEP</th>
<th>OCT</th>
<th>NOV</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Assessment</td>
<td></td>
<td></td>
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<td></td>
<td>Site is assessed in spring to determine any changes or repairs needed.</td>
</tr>
<tr>
<td>Debris Removal</td>
<td>x</td>
<td></td>
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<td></td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td>Removal of windblown debris.</td>
</tr>
<tr>
<td>Inlet/Outlet Inspection and Cleaning</td>
<td></td>
<td></td>
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<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Removal of accumulated sediments in structures.</td>
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<td>Confirm Normal Water Level (NWL) is being maintained.</td>
</tr>
<tr>
<td>Turf Perimeter Mowing</td>
<td></td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td>Perimeter should be mown as necessary</td>
</tr>
<tr>
<td>Weed Control</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td>Annual weed control in spring and fall. Herbicide applications only if necessary</td>
</tr>
</tbody>
</table>
3.0 Maintenance Standards

Site Assessment: A site assessment consists of an on-site inspection to evaluate the condition of the native vegetation, inlets, outlets, and not any erosion problems. The assessment includes a brief report outlining the overall basin condition and any necessary actions (i.e. gully repair, over seeding, etc.).

Debris Removal: The removal and legal disposal of wind-blown refuse from the basin areas.

Inlet/Outlet Cleaning: Refuse, lawn clippings, and sediment carried by stormwater runoff shall be removed from the flared end sections associated with inlet and outlet storm structures. This work includes the flared end sections located in both ponds.

Turf Perimeter Mowing: Turf shall may mowed weekly to a height of 3” from April through November, or as needed. No more than 1/3 of the grass blade is to be removed per cutting. Mowing height may be seasonally adjusted depending upon weather conditions in order to reduce stress and promote healthy turf. Mowing patterns shall be altered on a weekly basis wherever possible.

Weed Control: Annual weeds and perennial weeds can be spot sprayed as necessary as determined by annual site assessment.
Supplemental Declaration of Protective Covenants for Park 88 Business Park

This Supplemental Declaration of Protective Covenants for Park 88 Business Park ("Supplemental Declaration") is dated as of ____________, 2019 and is made by Park 88 Group, LLC, a Delaware limited liability company ("Developer").

Recitals:

A. Developer is the successor to DeKalb Associates, an Illinois general partnership as the "Developer" under that certain Declaration of Protective Covenants for Park 88 Business Park ("Original Declaration") dated as of September 21, 2004 and recorded with the DeKalb County Recorder on September 24, 2004 as Document 2004019754.

B. Section 1.2 of the Original Declaration gives Developer the right to add to the Property Additional Land that is contiguous or in reasonable proximity to the Property by recording a Supplemental Declaration of Protective Covenants for Park 88 Business Park which satisfies the requirements of that section.

C. Developer is the record owner in fee simple of that certain parcel of real property legally described on Exhibit A hereto ("Additional Land"), which Additional Land is contiguous to or in reasonable proximity to the Property and Developer desires to make the Additional Land subject to the terms of the Original Declaration subject to and in accordance with the terms and provisions of this Supplemental Declaration.

Now, therefore, in consideration of the foregoing Recitals (all of which are incorporated into and made a part of this Supplemental Declaration, as if fully set forth herein), Developer hereby covenants and agrees as follows:

1. Defined Terms. Terms that are capitalized but not otherwise defined in this Supplemental Declaration but are defined in the Original Declaration will have the same meaning herein as given to them in the Original Declaration.
2. **Addition of Additional Land.** Developer is the record owner in fee simple of the Additional Land. The Additional Land is contiguous to or in reasonable proximity to the Property. The Additional Land is hereby included in the “Property” and is hereby subjected to all of the terms, provisions and conditions of the Original Declaration as if it were included in the definition of “Property” thereunder and a legal description thereof were included on Exhibit A thereto. The term “Property” as used in the Original Declaration is hereby amended to include the Additional Land.

3. **Amendments to the Original Declaration for Additional Land.** Section 1.2 of the Original Declaration permits Developer to specify any of the Protective Covenants to which the Additional Land will not be subject and any of the Protective Covenants to which the Additional Land will be subject in modified form. Consequently, the Original Declaration is hereby modified as follows solely as it affects and encumbers the Additional Land:

   (a) Section 4.11 of the Original Declaration will not apply to the Additional Land. The Additional Property will be subject to that certain Amended and Restated Park 88 Development Agreement dated as of ____________, 2019 and recorded with the DeKalb County Recorder as Document No. __________________ (“Amended Development Agreement”). Each Owner of any portion of the Additional Land will comply with the Amended Development Agreement and no Owner of any portion of the Additional Land will agree to any amendment to or modification of the Amended Development Agreement without the Board’s express prior written consent.

   (b) Section 4.13 of the Original Declaration will not apply to the Additional Land.

   (c) Notwithstanding anything in Section 11.11 of the Original Declaration to the contrary, no modification of the terms of this Section 3 will be effective against any portion of the Additional Land without the consent of the Owner thereof.

4. **Reaffirmation of Original Declaration.** To the extent this Supplemental Declaration is deemed an amendment to the Original Declaration, the Original Declaration, as amended by this Supplemental Declaration, shall continue in full force and effect, subject to the terms and provisions thereof and hereof.

[Signatures on Following Pages]
In Witness Whereof, Developer has caused this Supplemental Declaration to be executed and delivered as of the date first written above.

“Developer”

Park 88 Group, LLC, a Delaware limited liability company

By: __________________________
Name: __________________________
Its: __________________________

Acknowledgement

STATE OF _______________) ss
COUNTY OF _________________)

I, ____________________________, a notary public in and for said County, in the State of aforesaid, DO HEREBY CERTIFY THAT ______________________ is personally known to me to be the _________________ of Park 88 Group, LLC, a Delaware limited liability company; that the aforementioned person is personally known to me to be the same person whose name is subscribed to the foregoing instrument and appeared before me this day in person and severally acknowledged that as such ________________ he/she signed and delivered this Supplemental Declaration as his/her free and voluntary act, and as the authorized and free and voluntary act and deed of said company, for the uses and purposes therein set forth.

Given, under my hand and notarial seal this ____ day of _________, 201__.

___________________________
NOTARY PUBLIC

My Commission Expires:

___________________________
[SEAL]
Lender’s Consent to
Supplemental Declaration of Protective Covenants for Park 88 Business Park

_________________________, a(n) _________________________ (‘Lender’) is the holder of a mortgage lien on all or a portion of the Additional Land. Lender hereby consents to the terms and conditions of the foregoing Supplemental Declaration of Protective Covenants for Park 88 Business Park (‘Supplemental Declaration’) and agrees that its interest in the Additional Land will be subject and subordinate to the Supplemental Declaration.

Lender:

________________________________________

By: ______________________________
Name: ______________________________
Its: ______________________________

Acknowledgement

STATE OF _______________

COUNTY OF ____________

I, ________________________________, a notary public in and for said County, in the State of aforesaid, DO HEREBY CERTIFY THAT ____________________, personally known to me to be the ____________________ of ______________________________, and 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 severally acknowledged that he/she signed and delivered the said instrument on behalf of Lender, as his/her free and voluntary act, and as the authorized and free and voluntary act and deed of Lender, for the uses and purposes therein set forth.

Given, under my hand and notarial seal this ____ day of ________, 201__.

____________________________________
NOTARY PUBLIC

My Commission Expires:

________________________

[SEAL]
Exhibit A

Legal Description of Additional Land
Exhibit K

Depiction of Proposed Internal Road Improvements
Exhibit L
Depiction of Portion of Owner Properties Currently Zoned SFR1
AMENDED AND RESTATED PARK 88 DEVELOPMENT AGREEMENT

SUMMARY

A. Situated at the southeastern end of the City of DeKalb, Park 88 is a parcel of property of approximately 465 acres owned by Park 88 Group, LLC.

B. The City and Park 88 Group, LLC (as successor to DeKalb Associates, an Illinois partnership) originally entered into a Park 88 Development Agreement dated as of June 28, 2004 and recorded with the DeKalb County Recorder’s Office on August 5, 2004 as Document No. 2004016020.

C. The City and Park 88 Group LLC (as successor to Park 88, LLC, an Illinois limited liability company) subsequently entered into an Annexation Agreement dated as of July 9, 2007 and recorded with the DeKalb County Recorder’s Office on August 15, 2007 as Document No. 2007014519 regarding a portion of Park 88 Group LLC’s properties commonly referred to as the “Orr Parcel”. At the time of the annexation, the Orr Parcel automatically came into the City under an SFRI zoning classification.

D. At the present time, Park 88 Group LLC is the owner of the remaining undeveloped lands within Park 88, including the Orr Parcel. Park 88 Group LLC and the City have agreed to amend and restate the original development agreement in its entirety to facilitate the development of the remaining undeveloped lands within Park 88 as a modern commercial and industrial property in accordance with updated provisions and standards addressing matters such as land use, setbacks, building height, interior roadway alignments, Peace Road improvements, roadways costs and maintenance, building appearance/landscape standards, signage, lighting, fences and pedestrian/bicycle paths. Previously developed properties within Park 88 will remain governed by the provisions of the original development agreement.

E. In order to facilitate the development of the undeveloped properties remaining within Park 88 (in particular the Orr Parcel) as a modern commercial and industrial property, Park 88 Group LLC and the City desire to amend the terms of the Orr Parcel Annexation Agreement. Accordingly, to be consistent with the zoning of the developed parcels in Park 88, the Orr Parcel (which is currently zoned SRF1) would be immediately rezoned as PD-C/PD-I.

G. The City believes that Park 88 Group LLC’s proposed use of the remaining undeveloped properties within Park 88 will be compatible with and will further the planning objectives of the City and that the redevelopment of those properties will be of benefit to the City, will permit orderly growth, planning and development of the City, will increase the tax base of the City, and will promote and enhance the general welfare of the City and its residents.

H. The City believes that the “PD-C” and “PD-I” Planned Development-Commercial and Industrial Zoning District, as provided under the City of DeKalb Unified Development Ordinance (the “UDO”) will be the most appropriate zoning classifications for the development of the remaining undeveloped properties within Park 88 (including the Orr Parcel).
TO:  City Council, City Clerk, and Mayor of the City of DeKalb, Illinois

FROM:  
Petitioner Name(s):  Park 88 Group, LLC  
Petitioner's Representative:  Mark Goode  
Mailing Address:  9500 W. Bryn Mawr Ave, Suite 340  
Rosemont, IL 60018  

Property Owner:  Park 88 Group, LLC  
Mailing Address:  9500 W. Bryn Mawr Ave, Suite 340  
Rosemont, IL 60018  

Telephone:  847-243-4300  
Cell:  847-274-6089  
Email:  MckG@VentureOneRE.com

1. The petitioner hereby petitions the City of DeKalb to rezone the following property:

A. Legal Description and Parcel Number(s) – If necessary, attach the full legal description on a separate piece of paper: See attached legal description for an approximately 570 acre site described in Legal A and the property described in Legal B be rezoned from “SFR1” Single-Family Residential to “PD-I” Planned Development Industrial and “PD-C”.

B. Street Address or Common Location:  South of E. Lincoln Hwy, west of Peace Road, north of Fairview Dr. and east of the Union Pacific Railway, Park 88, DeKalb, IL.

C. Size (square feet or acres):  Approximately 570 acres

D. Existing Zoning District:  PD-I and SFR-1

E. Proposed Zoning District:  See attached page - Amendment to the development agreement for Park 88 approved by Ordinance No. 04-53 and the annexation agreement approved by Ordinance 07-61 to accommodate changes to the land use, setbacks, building height, interior roadway alignments, Peace Road improvements, roadways costs, building appearance and landscape standards, signage, lighting, fences and pedestrian/bicycle paths

F. Reason for request: On a separate piece of paper, describe the reasons for the rezoning request and the intended types of land uses, if any, for the property. Also, indicate whether or not the proposed rezoning would: a) be in conformance with the City’s Comprehensive Plan and how the proposed rezoning may; b) impact adjacent existing and future land uses; c) impact adjacent property values; and d) impact the general public’s health, safety and welfare. SEE ATTACHED PAGE AND AMENDED AND RESTATE PARK 88 DEVELOPMENT AGREEMENT
2. The petitioner hereby submits the following information:

☑ Vicinity map of the area proposed for the special use

☑ List of current owner and mailing addresses of all property within 250 feet (exclusive of right-of-way) of the property proposed to be rezoned

☑ All files (e.g. site plans, building elevations, legal description, reasons for request) shall be provided on a CD, DVD or flash device that will become part of the application file

☑ Petition fee ($500.00)

3. The petitioner hereby states that a pre-application conference ☑ was ☐ was not held with City staff prior to the submittal of this petition.

   *Date of pre-application conference: March 5, 2019

   Those in attendance: Dan Olson, Dean Frieders, Bill Nicklas, Mark Goode, Jeff Raduechel and Bill Bohn

   *(Note to Petitioner: A pre-application conference with staff is highly encouraged to avoid delays and help in the timely processing of this petition.)

4. The petitioner hereby agrees that this petition will be placed on the Planning and Zoning Commission’s agenda only if it is completed in full and submitted in advance of established deadlines.

5. The petitioner has read and completed all of the above information and affirms that it is true and correct.

Updated: March 2017
6. Petitioner/property owner(s) hereby give the City of DeKalb permission to post a public notice sign(s) on the subject property.

Petitioner Signature

Date

Subscribed and sworn to before me
this 10th day of June, 2019.

Notary Public Signature

I hereby affirm that I am the legal owner (or authorized agent or representative of the owner – proof attached) of the subject property and authorize the petitioner to pursue this Rezoning petition as described above (petitioner must sign if s/he is the owner).

Property Owner Signature

Date

Subscribed and sworn to before me
this 10th day of June, 2019.

Notary Public Signature
THAT PART OF THE WEST HALF OF SECTION 25 AND THAT PART OF SECTION 26, AND THAT PART OF THE SOUTHWEST QUARTER OF SECTION 24, ALL IN TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF OUTLOT A IN PARK 88 UNIT 1, PER DOCUMENT NUMBER 2004019757; THENCE

THE FOLLOWING 3 COURSES ALONG THE LIMITS OF SAID PARK 88 UNIT 1: 1) NORTH 00 DEGREES 15 MINUTES 42 SECONDS EAST, A DISTANCE OF 43.94 FEET; 2) THENCE NORTH 24 DEGREES 28 MINUTES 05 SECONDS EAST, A DISTANCE OF 4176.61 FEET; 3) THENCE SOUTH 89 DEGREES 31 MINUTES 26 SECONDS EAST, A DISTANCE OF 2216.49 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 28 SECONDS EAST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 2S, A DISTANCE OF 651.28 FEET TO THE LIMITS OF LINCOLN INDUSTRIAL PARK SUBDIVISION PER DOCUMENT NUMBER 387022; THENCE THE FOLLOWING 4 COURSES ALONG THE LIMITS OF SAID LINCOLN INDUSTRIAL PARK SUBDIVISION: 1) SOUTH 89 DEGREES 47 MINUTES 54 SECONDS EAST, A DISTANCE OF 908.22 FEET; 2) THENCE NORTH 00 DEGREES 22 MINUTES 56 SECONDS EAST, A DISTANCE OF 1084.85 FEET; THENCE SOUTH 76 DEGREES 47 MINUTES 54 SECONDS EAST, A DISTANCE OF 1240.01 FEET; 4) THENCE SOUTH 02 DEGREES 07 MINUTES 30 SECONDS WEST ALONG SAID LIMITS AND SAID LIMITS EXTENDED SOUTHERLY, A DISTANCE OF 364.47 FEET; THENCE SOUTH 82 DEGREES 38 MINUTES 00 SECONDS EAST, A DISTANCE OF 298.72 FEET; THENCE NORTH 00 DEGREES 22 MINUTES 56 SECONDS EAST, A DISTANCE OF 99.66 FEET; THENCE SOUTH 89 DEGREES 46 MINUTES 01 SECONDS EAST, A DISTANCE OF 580.57 FEET; THENCE NORTH 10 DEGREES 57 MINUTES 09 SECONDS EAST, A DISTANCE OF 135.69 FEET; THENCE SOUTH 75 DEGREES 36 MINUTES 07 SECONDS EAST, A DISTANCE OF 186.85 FEET; THENCE NORTH 14 DEGREES 23 MINUTES 51 SECONDS EAST, A DISTANCE OF 221.01 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF ILLINOIS ROUTE 38 (LINCOLN HIGHWAY); THENCE THE FOLLOWING 2 COURSES ALONG SAID SOUTHERLY RIGHT OF WAY LINE: 1) SOUTH 70 DEGREES 47 MINUTES 28 SECONDS EAST, A DISTANCE OF 22.58 FEET; 2) THENCE SOUTH 74 DEGREES 56 MINUTES 50 SECONDS EAST, A DISTANCE OF 238.57 FEET; THENCE SOUTH 00 DEGREES 31 MINUTES 01 SECONDS WEST, A DISTANCE OF 89.61 FEET; THENCE SOUTH 75 DEGREES 40 MINUTES 15 SECONDS EAST, A DISTANCE OF 137.90 FEET TO A LINE 92.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST QUARTER OF SECTION 24; THENCE SOUTH 00 DEGREES 16 MINUTES 41 SECONDS WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 111.10 FEET TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER; THENCE SOUTH 00 DEGREES 26 MINUTES 26 SECONDS WEST ALONG A LINE 92.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID WEST HALF OF SECTION 25, A DISTANCE OF 5279.33
FEET TO THE NORTH LINE OF FAIRVIEW DRIVE; THENCE THE FOLLOWING 25 COURSES ALONG SAID NORTH LINE: 1) NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 607.26 FEET; 2) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 7.00 FEET; 3) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 60.00 FEET; 4) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 10.00 FEET; 5) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 200.00 FEET; 6) THENCE SOUTH 00 DEGREES 29 MINUTES 34 SECONDS WEST, A DISTANCE OF 7.00 FEET; 7) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 10.00 FEET; 8) THENCE SOUTH 00 DEGREES 29 MINUTES 34 SECONDS WEST, A DISTANCE OF 7.00 FEET; 9) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 200.00 FEET; 10) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 7.00 FEET; 11) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 860.00 FEET; 12) THENCE SOUTH 00 DEGREES 29 MINUTES 34 SECONDS WEST, A DISTANCE OF 100.00 FEET; 13) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 200.00 FEET; 14) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 7.00 FEET; 15) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 7.00 FEET; 16) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 10.00 FEET; 17) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 311.18 FEET; 18) THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS WEST, A DISTANCE OF 1658.83 FEET; 19) THENCE SOUTH 00 DEGREES 15 MINUTES 51 SECONDS EAST, A DISTANCE OF 17.00 FEET; 20) THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS WEST, A DISTANCE OF 329.31 FEET; 21) THENCE NORTH 00 DEGREES 15 MINUTES 51 SECONDS EAST, A DISTANCE OF 7.00 FEET; 22) THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS WEST, A DISTANCE OF 428.42 FEET; 23) THENCE NORTH 00 DEGREES 15 MINUTES 51 SECONDS EAST, A DISTANCE OF 10.00 FEET; 24) THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS WEST, A DISTANCE OF 171.45 FEET; 25) THENCE NORTH 89 DEGREES 48 MINUTES 13 SECONDS WEST, A DISTANCE OF 1285.39 FEET TO SAID POINT OF BEGINNING, IN DEKALB COUNTY, ILLINOIS.

Legal B

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 24 AND PART OF THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHWEST 1/4; THENCE WESTERLY, ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, 92.0 FEET FOR A POINT OF BEGINNING; THENCE NORTHERLY, AT AN ANGLE OF 89 DEGREES 57 MINUTES 05 SECONDS MEASURED COUNTERCLOCKWISE FROM SAID NORTH LINE, PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST 1/4, 111.10 FEET; THENCE NORTHWesterLY, AT
AN ANGLE OF 104 DEGREES 09 MINUTES 08 SECONDS MEASURED CLOCKWISE FROM SAID PARALLEL LINE, 137.62 FEET; THENCE NORTHERLY, AT AN ANGLE OF 104 DEGREES 09 MINUTES 52 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 89.41 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF ILLINOIS ROUTE 38 (LINCOLN HIGHWAY); THENCE NORTHWESTERLY, AT AN ANGLE OF 104 DEGREES 50 MINUTES 53 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID RIGHT OF WAY LINE, 235.60 FEET; THENCE CONTINUING NORTHWESTERLY, AT AN ANGLE OF 176 DEGREES 19 MINUTES 11 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID RIGHT OF WAY LINE, 22.63 FEET; THENCE SOUTHWESTERLY, AT AN ANGLE OF 85 DEGREES 33 MINUTES 13 SECONDS MEASURED CLOCKWISE FROM SAID RIGHT OF WAY LINE, 221.15 FEET; THENCE NORTHWESTERLY, AT AN ANGLE OF 89 DEGREES 57 MINUTES 42 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 186.80 FEET; THENCE SOUTHWESTERLY, AT AN ANGLE OF 86 DEGREES 39 MINUTES 16 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, 135.62 FEET TO THE SOUTH LINE OF SAID SOUTHWEST 1/4; THENCE WESTERLY, AT AN ANGLE OF 100 DEGREES 48 MINUTES 45 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID SOUTH LINE, 580.48 FEET TO THE WEST LINE OF THE EAST HALF OF SAID NORTHWEST 1/4; THENCE SOUTHERLY, AT AN ANGLE OF 90 DEGREES 09 MINUTES 04 SECONDS MEASURED CLOCKWISE FROM SAID SOUTH LINE, ALONG SAID EAST LINE, 99.66 FEET; THENCE NORTHWESTERLY, AT AN ANGLE OF 83 DEGREES 03 MINUTES 16 SECONDS MEASURED COUNTERCLOCKWISE FROM SAID EAST LINE, 298.72 FEET; THENCE NORTHERLY, AT AN ANGLE OF 95 DEGREES 12 MINUTES 14 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 364.47 FEET TO THE NORTHEAST CORNER OF OUTLOT "B" OF LINCOLN INDUSTRIAL PARK; THENCE NORTHWESTERLY, AT AN ANGLE OF 101 DEGREES 12 MINUTES 04 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG THE NORTH LINE OF SAID OUTLOT "B", 124.08 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTHERLY, AT AN ANGLE OF 77 DEGREES 03 MINUTES 27 SECONDS MEASURED COUNTERCLOCKWISE FROM SAID NORTH LINE, PARALLEL WITH THE EAST LINE OF THE WEST 1/2 OF SAID NORTHWEST 1/4, 2,975.02 FEET TO THE SOUTH LINE OF SAID NORTHWEST 1/4; THENCE EASTERLY, AT AN ANGLE OF 89 DEGREES 54 MINUTES 08 SECONDS MEASURED CLOCKWISE FROM SAID PARALLEL LINE, ALONG SAID SOUTH LINE, 1,627.01 FEET TO A POINT THAT IS 92.0 FEET WESTERLY OF THE SOUTHEAST CORNER OF SAID NORTHWEST 1/4; THENCE NORTHERLY, AT AN ANGLE OF 90 DEGREES 09 MINUTES 27 SECONDS MEASURED CLOCKWISE FROM SAID SOUTH LINE, PARALLEL WITH THE EAST LINE OF SAID NORTHWEST 1/4, 2,646.92 FEET TO THE POINT OF BEGINNING, ALL IN DEKALB TOWNSHIP, DEKALB COUNTY, ILLINOIS.
1. F. As established in the amendment to the development agreement for Park 88 approved by Ordinance No. 04-53 and the annexation agreement approved by Ordinance 07-61 to accommodate changes to the land use, setbacks, building height, interior roadway alignments, Peace Road improvements, roadways costs, building appearance and landscape standards, signage, lighting, fences and pedestrian/bicycle paths the reason for this rezoning request make it so that Owner's Properties will be compatible with and will further the planning objectives of the City and that the redevelopment of the Owner Properties will be of benefit to the City, will permit orderly growth, planning and development of the City, will increase the tax base of the City, and will promote and enhance the general welfare of the City and its residents.

“PD-C” and “PD-I” Planned Development-Commercial and Industrial Zoning District, as provided under the City of DeKalb Unified Development Ordinance will be the most appropriate zoning classifications for the development of the respective portions of the Owner Properties as regulated within the Development Standards.

a) The proposed zoning change is in conformance with the City’s comprehensive plan, b) will be consistent with and not impact adjacent existing and future land uses. In addition, the proposed rezoning will not negatively impact c) adjacent property values or d) the general public’s health, safety and welfare.
Park 88
Citizen Response Form

Owners Name:  Gary Tadd

Property Address:  407 Industrial Drive

Basic Input:

✓ I support the proposal. Petition by Park 88 Group LLC.
☐ I support the proposal in general but would like to see specifics before I decide.
☐ I do not support the proposal.

Written Comments:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
Good morning Dan,

Thank you for your quick response on this. Bill Murphy is our Manager for this request. Bill will get back to you if we have any additional questions or concerns.

Thanks and kindest regards,

Melissa (Lisa) Rourke
Administrative Assistant, Sr. - GRE
X81343

From: Olson, Dan <Dan.Olson@CITYOFDEKALB.com>
Sent: Thursday, June 27, 2019 11:30 AM
To: Lisa Rourke <Melissa.Rourke@panduit.com>
Cc: Nicklas, Bill <bill.nicklas@CITYOFDEKALB.com>; Faivre, Bryan <BFAIVRE@CITYOFDEKALB.com>; William Murphy <William.Murphy@panduit.com>
Subject: FW: Panduit - 1700 Fairview Drive Response - Park 88

Melissa,

Thanks for your comments/questions regarding the proposed amendments to the Park 88 project. Please see responses below. A copy will be provided to the Planning and Zoning Commission and the applicant.

Variance Requests

- Park 88 has existing development standards from a 2004 Ordinance, which they are proposing to modifying to accommodate future growth and to be more consistent with the City’s current zoning and development regulations. I’ve attached the proposed development agreement language.

Fire Flow

Our Assistant Public Works Director indicates there should be no negative impacts on Panduit’s fire flows based on proposed amendments or potential new construction. Additional looping of water mains within Park 88 due to new construction may actually improve fire flows. Looping of 16” water
main that is currently stubbed across I-88 to the south of Panduit back to Rt. 23 along Gurler Rd.
should also improve fire flows for Panduit. If there are any additional questions regarding your
current or future fire flows, you can contact our Asst. PW Director, Bryan Faivre, at 815-748-8131 or
BFAIVRE@CITYOFDEKALB.com I’ve cc: Bryan on this e-mail.

Impact Fees - Traffic
-
Panduit will not be subject to any impact fees for traffic improvements related to Park 88.

If you have any additional questions, please let me know.

Dan Olson | Principal Planner
City of DeKalb | 200 South Fourth Street | DeKalb, IL 60115
Phone: 815-748-2361 | Fax: 815-748-2091
Email: dan.olson@cityofdekalb.com | Website: www.cityofdekalb.com

From: Lisa Rourke <Melissa.Rourke@panduit.com>
Sent: Wednesday, June 26, 2019 1:42 PM
To: Olson, Dan <Dan.Olson@CITYOFDEKALB.com>
Cc: William Murphy <William.Murphy@panduit.com>; Lisa Rourke <Melissa.Rourke@panduit.com>
Subject: Panduit - 1700 Fairview Drive Response - Park 88

[NOTICE: This message originated outside of the City Of DeKalb mail system -- DO NOT
CLICK on links or open attachments unless you are sure the content is safe.]

Good afternoon Dan,

Sending this on behalf of Bill Murphy. Attached is our comments on Park 88.

Thanks and Kindest Regards,

Melissa (Lisa) Rourke | Administrative Assistant Sr., Global Real Estate
18900 Panduit Drive, Tinley Park, IL 60487 | 708.532.1800 x 81343 | Melissa.rourke@panduit.com

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are not the intended recipient, copying or distributing the contents of this message is expressly
prohibited. If you have received this message in error, please destroy it and notify the City immediately. This email is the property of the City of DeKalb and the City reserves the right to retrieve and read any message created, sent or received, including the right to monitor messages of City employees or representatives at any time, without notice. Freedom of Information Act Requests should be submitted on the City’s website at http://www.cityofdekalb.com/.
Park 88
Citizen Response Form

Owners Name: Panduit, Inc.

Property Address: 1700 E. Fairview Drive, DeKalb, IL 60115

Basic Input:

☐ I support the proposal.
☐ I support the proposal in general but would like to see specifics before I decide.
☐ I do not support the proposal.

Written Comments:

Are there any variance requests in the attached petition or are all of the requirements stated already existing for this type of zoning.

Currently, our fire pump flow test are marginally acceptable as far as residual pressure when flowing 150% of the pump capacity

Will this new development have any effect on our current water supply for our fire protection system? What steps will the city of DeKalb take to ensure we maintain an adequate water supply to our facility?

Will Panduit be subject to any impact fees for traffic improvements.

The documents indicate that other companies benefiting from the traffic improvements will be required to share the expense for these improvements.
LEGAL NOTICE

NOTICE is hereby given that a public hearing will be held before the DeKalb Planning and Zoning Commission at its regular meeting on Wednesday, July 3, 2019 at 6:00 p.m. in the DeKalb Municipal Building, 200 South Fourth Street, DeKalb, Illinois, on the petition by Park 88 Group, LLC for approval of an amendment to the development agreement for Park 88 approved by Ordinance No. 04-53 and the annexation agreement approved by Ordinance 07-61 to accommodate changes to the land use, setbacks, building height, interior roadway alignments, Peace Road improvements, roadways costs, building appearance and landscape standards, signage, lighting, fences and pedestrian/bicycle paths for an approximately 570 acre site located generally on the west side of Peace Road, south of E. Lincoln Highway and north of Fairview Drive and described below in Legal A. The petitioner is also requesting the property described in Legal B below be rezoned from “SFR1” Single-Family Residential to “PD-I” Planned Development Industrial and “PD-C” Planned Development Commercial.

Legal A

THAT PART OF THE WEST HALF OF SECTION 25 AND THAT PART OF SECTION 26, AND THAT PART OF THE SOUTHWEST QUARTER OF SECTION 24, ALL IN TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF OUTLOT A IN PARK 88 UNIT 1, PER DOCUMENT NUMBER 2004019757; THENCE

THE FOLLOWING 3 COURSES ALONG THE LIMITS OF SAID PARK 88 UNIT 1: 1) NORTH 00 DEGREES 1S MINUTES 42 SECONDS EAST, A DISTANCE OF 43.94 FEET; 2) THENCE NORTH 24 DEGREES 28 MINUTES 0S SECONDS EAST, A DISTANCE OF 4176.61 FEET; 3) THENCE SOUTH 89 DEGREES 31 MINUTES 26 SECONDS EAST, A DISTANCE OF 2216.49 FEET; THENCE NORTH 00 DEGREES 19 MINUTES 28 SECONDS EAST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 2S, A DISTANCE OF 651.28 FEET TO THE LIMITS OF LINCOLN INDUSTRIAL PARK SUBDIVISION PER DOCUMENT NUMBER 387022; THENCE THE FOLLOWING 4 COURSES ALONG THE LIMITS OF SAID LINCOLN INDUSTRIAL PARK SUBDIVISION: 1) SOUTH 89 DEGREES 47 MINUTES 54 SECONDS EAST, A DISTANCE OF 908.22 FEET; 2) THENCE NORTH 00 DEGREES 22 MINUTES 56 SECONDS EAST, A DISTANCE OF 1084.85 FEET; THENCE SOUTH 76 DEGREES 47 MINUTES 30 SECONDS EAST, A DISTANCE OF 364.47 FEET; THENCE SOUTH 02 DEGREES 07 MINUTES 30 SECONDS WEST ALONG SAID LIMITS AND SAID LIMITS EXTENDED SOUTHERLY, A DISTANCE OF 364.47 FEET; THENCE SOUTH 82 DEGREES 38 MINUTES 30 SECONDS EAST, A DISTANCE OF 298.72 FEET; THENCE NORTH 00 DEGREES 22 MINUTES 30 SECONDS EAST, A DISTANCE OF 99.66 FEET; THENCE SOUTH 89 DEGREES 46 MINUTES 30 SECONDS EAST, A DISTANCE OF 580.57 FEET; THENCE NORTH 10 DEGREES 57 MINUTES 09 SECONDS EAST, A DISTANCE OF 135.69 FEET;
THENCE SOUTH 75 DEGREES 36 MINUTES 07 SECONDS EAST, A DISTANCE OF 186.85 FEET; THENCE NORTH 14 DEGREES 23 MINUTES 51 SECONDS EAST, A DISTANCE OF 221.01 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF ILLINOIS ROUTE 38 (LINCOLN HIGHWAY); THENCE THE FOLLOWING 2 COURSES ALONG SAID SOUTHERLY RIGHT OF WAY LINE; 1) SOUTH 70 DEGREES 47 MINUTES 28 SECONDS EAST, A DISTANCE OF 22.58 FEET; 2) THENCE SOUTH 74 DEGREES 56 MINUTES 50 SECONDS EAST, A DISTANCE OF 235.57 FEET; THENCE SOUTH 00 DEGREES 31 MINUTES 01 SECONDS WEST, A DISTANCE OF 89.61 FEET; THENCE SOUTH 75 DEGREES 40 MINUTES 15 SECONDS EAST, A DISTANCE OF 137.90 FEET TO A LINE 92.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST QUARTER OF SECTION 24; THENCE SOUTH 00 DEGREES 16 MINUTES 41 SECONDS WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 111.10 FEET TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER; THENCE SOUTH 00 DEGREES 26 MINUTES 26 SECONDS WEST ALONG A LINE 92.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID WEST HALF OF SECTION 25, A DISTANCE OF 5279.33 FEET TO THE NORTH LINE OF FAIRVIEW DRIVE; THENCE THE FOLLOWING 25 COURSES ALONG SAID NORTH LINE: 1) NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 607.26 FEET; 2) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 7.00 FEET; 3) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 60.00 FEET; 4) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 10.00 FEET; 5) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 200.00 FEET; 6) THENCE SOUTH 00 DEGREES 29 MINUTES 34 SECONDS WEST, A DISTANCE OF 10.00 FEET; 7) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 200.00 FEET; 8) THENCE SOUTH 00 DEGREES 29 MINUTES 34 SECONDS WEST, A DISTANCE OF 7.00 FEET; 9) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 200.00 FEET; 10) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 7.00 FEET; 11) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 860.00 FEET; 12) THENCE SOUTH 00 DEGREES 29 MINUTES 34 SECONDS WEST, A DISTANCE OF 7.00 FEET; 13) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 130.68 FEET; 14) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 2.00 FEET; 15) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 311.18 FEET; 16) THENCE NORTH 00 DEGREES 29 MINUTES 34 SECONDS EAST, A DISTANCE OF 60.21 FEET; 17) THENCE NORTH 89 DEGREES 30 MINUTES 26 SECONDS WEST, A DISTANCE OF 428.42 FEET; 18) THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS WEST, A DISTANCE OF 1658.83 FEET; 19) THENCE SOUTH 00 DEGREES 15 MINUTES 51 SECONDS WEST, A DISTANCE OF 17.00 FEET; 20) THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS WEST, A DISTANCE OF 329.31 FEET; 21) THENCE NORTH 00 DEGREES 15 MINUTES 51 SECONDS EAST, A DISTANCE OF 7.00 FEET; 22) THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS WEST, A DISTANCE OF 428.42 FEET; 23) THENCE NORTH 00 DEGREES 15 MINUTES 51 SECONDS EAST,
DISTANCE OF 10.00 FEET; 24) THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS WEST, A DISTANCE OF 171.4S FEET; 25) THENCE NORTH 89 DEGREES 48 MINUTES 13 SECONDS WEST, A DISTANCE OF 1285.39 FEET TO SAID POINT OF BEGINNING, IN DEKALB COUNTY, ILLINOIS.

Legal B

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 24 AND PART OF THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHWEST 1/4; THENCE WESTERLY, ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, 92.0 FEET FOR A POINT OF BEGINNING; THENCE NORTHERLY, AT AN ANGLE OF 89 DEGREES 57 MINUTES 05 SECONDS MEASURED COUNTERCLOCKWISE FROM SAID NORTH LINE, PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST 1/4, 111.10 FEET; THENCE NORTHWESERTLY, AT AN ANGLE OF 104 DEGREES 09 MINUTES 08 SECONDS MEASURED CLOCKWISE FROM SAID PARALLEL LINE, 137.62 FEET; THENCE NORTHERLY, AT AN ANGLE OF 104 DEGREES 09 MINUTES 52 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 89.41 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF ILLINOIS ROUTE 38 (LINCOLN HIGHWAY); THENCE NORTHWESERTLY, AT AN ANGLE OF 104 DEGREES 50 MINUTES 53 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID RIGHT OF WAY LINE, 235.60 FEET; THENCE CONTINUING NORTHWESERTLY, AT AN ANGLE OF 176 DEGREES 19 MINUTES 11 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID RIGHT OF WAY LINE, 22.63 FEET; THENCE SOUTHWESERTLY, AT AN ANGLE OF 85 DEGREES 33 MINUTES 13 SECONDS MEASURED CLOCKWISE FROM SAID RIGHT OF WAY LINE, 221.15 FEET; THENCE NORTHWESERTLY, AT AN ANGLE OF 89 DEGREES 57 MINUTES 42 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 186.80 FEET; THENCE SOUTHWESERTLY, AT AN ANGLE OF 86 DEGREES 39 MINUTES 20 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, 135.62 FEET TO THE SOUTH LINE OF SAID SOUTHWEST 1/4; THENCE WESTERLY, AT AN ANGLE OF 100 DEGREES 48 MINUTES 45 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID SOUTH LINE, 580.48 FEET TO THE WEST LINE OF THE EAST HALF OF SAID NORTHWEST 1/4; THENCE SOUTHERLY, AT AN ANGLE OF 90 DEGREES 09 MINUTES 04 SECONDS MEASURED CLOCKWISE FROM SAID SOUTH LINE, ALONG SAID EAST LINE, 99.66 FEET; THENCE NORTHWESERTLY, AT AN ANGLE OF 83 DEGREES 03 MINUTES 16 SECONDS MEASURED COUNTERCLOCKWISE FROM SAID EAST LINE, 298.72 FEET; THENCE NORTHERLY, AT AN ANGLE OF 95 DEGREES 12 MINUTES 14 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 364.47 FEET TO THE NORTHEAST CORNER OF OUTLOT "B" OF LINCOLN INDUSTRIAL PARK; THENCE NORTHWESERTLY, AT AN ANGLE OF 101 DEGREES 12 MINUTES 04 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG
THE NORTH LINE OF SAID OUTLOT "B", 124.08 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTHERLY, AT AN ANGLE OF 77 DEGREES 03 MINUTES 27 SECONDS MEASURED CLOCKWISE FROM SAID NORTH LINE, PARALLEL WITH THE EAST LINE OF THE WEST 1/2 OF SAID NORTHWEST 1/4, 2,975.02 FEET TO THE SOUTH LINE OF SAID NORTHWEST 1/4; THENCE EASTERLY, AT AN ANGLE OF 89 DEGREES 54 MINUTES 08 SECONDS MEASURED CLOCKWISE FROM SAID PARALLEL LINE, ALONG SAID SOUTH LINE, 1,627.01 FEET TO A POINT THAT IS 92.0 FEET WESTERLY OF THE SOUTHEAST CORNER OF SAID NORTHWEST 1/4; THENCE NORTHERLY, AT AN ANGLE OF 90 DEGREES 09 MINUTES 27 SECONDS MEASURED CLOCKWISE FROM SAID SOUTH LINE, PARALLEL WITH THE EAST LINE OF SAID NORTHWEST 1/4, 2,646.92 FEET TO THE POINT OF BEGINNING, ALL IN DEKALB TOWNSHIP, DEKALB COUNTY, ILLINOIS.

All interested persons are invited to appear and be heard at the time and place listed above. Interested persons are also encouraged to submit written comments on these proposals to the City of DeKalb, Community Development Department, 200 South Fourth Street, DeKalb, Illinois, 60115 or by e-mail to dan.olson@cityofdekalb.com by 5:00 p.m. on Wednesday, June 26, 2019. Further information regarding the petition is available from the Community Development Department at (815) 748-2361 or on the City of DeKalb’s web page at https://www.cityofdekalb.com/1103/Public-Hearings.

Christina Doe, Chair
DeKalb Planning and Zoning Commission
ORDINANCE 04-53        Passed: June 28, 2004

AUTHORIZING THE EXECUTION OF A
DEVELOPMENT AGREEMENT WITH DEKALB
ASSOCIATES REGARDING PARK 88.

WHEREAS, DeKalb Associates have petitioned for a development agreement with the City of DeKalb; and,

WHEREAS, the proposed Agreement has been reviewed by the Plan Commission at its May 26, 2004, meeting and approval was recommended by a vote of 4-0-1 (Davis absent); and,

WHEREAS, the City Council of the City of DeKalb held a public hearing on this request pursuant to Illinois Statute at it’s regular meeting of June 14, 2004; and,

WHEREAS, it is in the best interests of the City of DeKalb to enter into this Agreement; now,

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. The Mayor of the City of DeKalb is authorized and directed to execute a Development Agreement with DeKalb Associates related to Park 88, a copy of which is attached hereto as Exhibit “A”;

Section 2. The City Clerk of the City of DeKalb, Illinois, is authorized and directed to attest to the Mayor’s signature, and to record said Agreement with the DeKalb County Recorder.


ATTEST:

[Signatures]

DONNA S. JOHNSON, City Clerk

GREG SPARROW, Mayor
PARK 88
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (This "Agreement") is made and entered into in duplicate original this 28th day of June, 2004, by and between the CITY OF DEKALB, an Illinois home rule municipal corporation located in DeKalb County, Illinois (the “City”), and DEKALB ASSOCIATES, an Illinois Partnership by and between The Macom Corporation, a Delaware corporation, and Rivermist Development Corporation, an Illinois corporation(the "Developer"), (the City and Developer are hereinafter collectively referred to as "Parties" and individually referred to as a "Party").

RECITALS

A. Developer is the owner of record of approximately 152 acres of real property ("Trust 5503 Property") located generally at the Northwest corner of Peace Road and Fairview Drive in DeKalb County, Illinois, formerly owned by Merchants National Bank of Aurora, as Trustee under a certain Trust Agreement dated October 7, 1999 and known as Trust No. 5503, which property is legally described as Parcel 1 on the Schedule of Real Estate, marked Exhibit “A” and attached hereto and incorporated herein by reference.

B. Developer is the owner of record of approximately 157.386 acres of real property ("McCormick Property") located immediately west and contiguous to the Trust 5503 Property, formerly owned by John K. McCormick, Catherine Hakala, Herb Lagermeier, and Roseann Shipman, which is legally described as Parcel 2 on the Schedule of Real Estate.

C. Developer is the owner of record of approximately 115.977 acres of real property ("Alqus Park 88 Property") located immediately north and contiguous to the McCormick Property, which is legally described as Parcel 3 on the Schedule of Real Estate. Immediately north and contiguous to the Alqus Park 88 Property is additional property ("Alqus Retained Property"), which is legally described as Parcel 5 on the Schedule of Real Estate, owned by Alqus Real Estate, LLC, an Illinois limited liability company, as more fully described in Recital Clause V herein ("Alqus"). The Alqus Park 88 Property and Alqus Retained Property (collectively the “Alqus Property”)
collectively comprise the entire property that is subject to an annexation agreement with the City dated April 7, 1997 recorded as Document No. 97003977 in DeKalb County.

D. Developer is the contract purchaser of approximately 39.67 acres of real property ("Trust 1791 Property") located north of the Trust 5503 Property and east of the Algus Property, owned by Castle Bank N.A. (f/k/a First National Bank in DeKalb, Illinois), a national bank, as Trustee under a certain trust agreement dated January 21, 1997 and known as Trust No. 1791 ("Trust 1791"), which property is legally described as Parcel 4 on the Schedule of Real Estate.

E. The Trust 5503 Property has been annexed to the City pursuant to an Annexation Agreement dated February 23, 1995 between the City and IAA Trust Company as Trustee under a Trust Agreement dated October 11, 1983 and known as Trust No. 228 (the "Trust 5503 Agreement") and the McCormick Property has been annexed to the City pursuant to an Annexation Agreement dated July 6, 1995 and recorded as Document Number 95006492 (the "McCormick Agreement").

F. The Trust 1791 Property has been annexed to the City at a previous time without an Annexation Agreement.

G. The Algus Property is not presently located within the corporate limits of any municipality, but is contiguous to and may be annexed to the City as provided in Article 7 of the Illinois Municipal Code, 65 ILCS 5/7-1-1 et seq., in accordance with the terms of the Algus Agreement.

H. The Trust 5503 Property, the McCormick Property, and the Algus Property are the subject matter of three (3) separate Annexation Agreements, each being between the City and the respective owners of each subject property, said Annexation Agreements being recorded with the DeKalb County Records of Deeds on the following dates:

- McCormick Property - July 6, 1995, as Document No. 95006492 (the "McCormick Agreement")
- Algus Property - April 7, 1997, as Document No. 97003977 (the "Algus Agreement")
- Trust 5503 Property - February 23, 1995, as Document No. 95001688 (the "Trust 5503 Agreement")

I. The Developer intends to improve the Trust 5503 Property, McCormick Property, Algus Park 88 Property and Trust 1791 Property (collectively the “Property”) as a Business and Industrial Park in accordance with the concept plan attached hereto as Exhibit "B" and incorporated herein by reference (the "Concept Plan").

J. The City acknowledges the Developer's proposed use of the Property will be compatible with and will further the planning objectives of the City, will be of substantial benefit to the City, either has or will extend the corporate limits and jurisdiction of the City, will
permit orderly growth, planning, and development of the City, will increase the tax base of the City, and will promote and enhance the general welfare of the City and its residents.

K. The "PD-I" Planning Development - Industrial zoning district classification under the City's Unified Development Ordinance, as currently amended (the "UDO"), will be the most appropriate zoning classification for the use and development of the Property pursuant to the Concept Plan.

L. The City is an Illinois Home Rule Corporation and is authorized by Article 7, Section 10(a) of the 1970 Illinois Constitution to contract with a corporation in any manner not prohibited by law and to use its home rule powers to enter into agreements, establish credit, revenues, and other resources to pay costs and to service debt related to such contract or agreement.

M. The City may desire to enter into certain agreements as provided in Article 7 below, which shall induce Developer to develop the Property as contemplated in the Concept Plan (as hereinabove defined) and to construct certain public improvements thereon, as hereinafter provided, and which shall commit the City to finance some of the costs of such public improvements in the manner that may later be provided.

N. Among the matters of mutual inducement which have resulted in the Agreement are the following:

1. The Parties have determined that assistance from the City to Developer to assist in the development of the Property as contemplated in the Concept Plan would be beneficial to both the Developer and the City.

2. The City, after careful consideration, has determined that the development of the Property as contemplated in the Concept Plan will further the growth of the City, improve the environment of the City, provide additional and enhanced services to the City, increase the assessed valuation of real estate situated within the City, increase the sales tax revenues realized by the City, foster increased economic activity within the City, increase employment opportunities within the City, and otherwise be in the best interest of the City and its residents and taxpayers by furthering the health, safety, and welfare of its residents and taxpayers, and the City is therefore willing to enter into this Agreement with Developer and, among other things, to make the payments to Developer as provided herein.

3. The City and Developer acknowledge that the development of the Property as contemplated in the Concept Plan requires economic assistance from the City in order to complete such development and that, but for the economic assistance to be given by the City, the development of the Property as contemplated in the Concept Plan would not be economically viable at this time.
O. All other and further notices, publications, procedures, public hearing, and other matters attendant to the consideration and approval of this Agreement and other matters contained in this Agreement have been given, made, held, and performed by the City as required by Section 7-18 et. seq. of the Illinois Municipal Code, 65 ILCS 5/7-1-8 et.seq., and all other applicable statutes, and all applicable ordinances, regulations, and procedures of the City.

P. The Mayor and City Council of the City (hereinafter collectively referred to as the "Corporate Authorities") have duly considered all necessary petitions to enter into this Agreement and have further duly considered the terms and provisions of this Agreement and, by an ordinance duly adopted by a majority vote of the City Council, have authorized the Mayor to execute and the City Clerk to attest to this Agreement on behalf of the City.

Q. Developer has expended substantial sums of money and has materially altered its position in reliance upon the execution of this Agreement and the performance of its terms and provisions by the City.

R. Pursuant to Notice as required by Statute and ordinance, public hearings were held by the Plan Commission on the requested zoning of the Property, and the findings of fact and recommendations made by said body relative to the request have been forwarded to the Corporate Authorities.

S. Pursuant to Notice as required by Statute, an Agreement similar in substance and in form to this Agreement was submitted to the Corporate Authorities and a public hearing was held thereon as though this was an Annexation Agreement.

T. Developer has provided the City with a proper petition and an accurate map for the annexation of the Algus Park 88 Property, as well as proper petitions and backup materials for rezoning to the “PD-I” Planned Development Industrial zoning district, for approval of a Preliminary Plan for the development, and for approval of a Preliminary Plat of Subdivision.

U. This Agreement is intended to amend the prior Annexation Agreements, outlined above in Section H of the Recitals, as such Agreements apply to the Property, and this Agreement is intended to apply to the development of the Trust 1791 Property, pursuant to the terms herein. Because this Agreement includes terms which extend beyond the anticipated development of the Property, it is the intent and purpose of this Agreement to constitute more than just an Annexation Agreement, but rather a covenant running with the land, pursuant to the terms herein.

V. The City and the Developer acknowledge and agree that, though not a signatory to this Agreement, Algus Real Estate, LLC and its successors, assigns and future owners and users of the Algus Retained Property assigns and future owners and users of the Algus Retained Property (collectively hereinafter the “Algus Beneficiaries”) are intended to be third party beneficiaries of Article 14.09 of this Agreement and that, relying upon the terms of this Agreement, Algus Real Estate, LLC has separately amended a prior existing private agreement with Developer and will enter into a separate further agreement with the City affecting rights of access to and from the Algus Retained Property through the
Property subject to this Park 88 Development Agreement. The City and Developer agree that the Algus Beneficiaries shall have the right to bring suit to enforce any of the provisions of Section 14.09 of this Agreement and to recover their reasonable attorney fees from any party found in default of a provision of the Agreement intended to benefit the Algus Beneficiaries.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements herein made, the Parties hereby agree as follows:

1

RECITALS; PART OF AGREEMENT

The Parties acknowledge that the statements and representations contained in the foregoing Recitals are true and accurate and such Recitals are incorporated into this Agreement as if fully set forth in this Article I.

2

CONDITIONS PRECEDENT

2.01. Except as specifically provided in Section 14.09 hereof with respect to improvements to be extended by Developer to the Algus Retained Property, the Developer shall be under no obligation to commence development of the Property unless and until the following matters (the "Conditions Precedent") have been satisfied or waived by Developer:

A. The balance of the Property not presently annexed to the City has been properly annexed to the City on the same terms and conditions as that portion of the Property presently annexed.

B. Pursuant to notice, as required by statute and ordinance, a public hearing has been held by the Plan Commission and/or other applicable body on the proposed "PD-I" zoning of the Property and the Preliminary Plat and Preliminary Plan to permit development of the Property in general conformance with the Concept Plan; the findings of fact and recommendations made by the City Plan Commission or other applicable body relative to such requests have been forwarded to the Corporate Authorities; and the Corporate Authorities have considered the recommendations of the Plan Commission or other body in connection with such approvals.

C. Developer and the DeKalb Sanitary District shall have entered into an annexation agreement in form and substance satisfactory to the Developer which annexation agreement shall have been approved by the Board of the DeKalb Sanitary District.

2.02. City shall be under no obligation to annex and zone the Property as provided herein, unless and until the following Conditions Precedent have been satisfied:
A. The Developer possesses full title of all parcels of the Property except the Trust 1791 Property, all as outlined herein, and the persons executing the Agreement have the authority and direction to execute this Agreement on behalf of the Developer and other entities as outlined herein.

B. The Developer has provided the City with proper petitions for annexation of the Alges Park 88 Property and rezoning of all of the Property, along with correct and complete exhibits, documents, drawings, engineering plans, plats, and similar backup materials, supporting said petitions.

3

ZONING AND DEVELOPMENT OF THE PROPERTY

3.01 Concept Plan.

A. The Corporate Authorities hereby approve the Concept Plan as a conceptual site development plan with the understanding and agreement that so long as Developer submits preliminary and final plans and plats in general conformance with the Concept Plan, such plans and plats shall be approved by the City in the ordinary course of the development plan review procedure, and that the City shall proceed with all due diligence in reviewing and approving the same; provided, however, it is understood that Developer may in the course of development of the Property make certain changes to the Concept Plan including, without limitation, changes in lot configuration and size, buildings and signs, and provisions for certain amenities so long as such changes do not conflict with a specific provision contained elsewhere in this Agreement or affect the essential character of the proposed development.

B. The Corporate Authorities shall enact such ordinances, adopt such resolutions, and take such other actions as are necessary to approve Developer's preliminary plat of subdivision for the Property and Developer's preliminary plan for the Property, including those considerations described herein or otherwise made a part of this Agreement (said plan and plat hereinafter sometimes collectively referred to as the "Preliminary Plan") provided that the Preliminary Plan is in general conformance with the Concept Plan.

C. In addition to the relief granted to the Developer as described within this Agreement, upon the mutual agreement of the City and Developer, the City shall grant such other relief, including necessary variations, exceptions, or departures from applicable City codes and ordinances, as may be necessary to permit the development of the Property in general conformance with the Concept Plan and the Preliminary Plan.

3.02 Zoning.

Concurrent with the approval of the Preliminary Plan, the Corporate Authorities shall enact such ordinances, adopt such resolutions, and take such other actions as are necessary to zone the Property in the "PD-I" zoning district classification, and said action shall include the additional conditions and limitations as set forth below and elsewhere within this Agreement. The "PD-I"
zoning classification shall become a permanent zoning classification for the Property (unless changed by the City at Developer's request) which shall remain in effect throughout the Term of this Agreement and thereafter unless and until amended in the manner provided by law for the amendment of zoning classifications. The City acknowledges that the Developer has and will expend substantial sums of money in reliance upon such zoning and will be detrimentally affected if the Property is rezoned without Developer's consent.

A. **Setbacks:** Building and Parking Setbacks from property lines adjacent to a right of way shall be a minimum of thirty feet (30'). Building setbacks from property lines not adjacent to a right of way shall be a minimum of twenty feet (20'). Parking setbacks from property lines not adjacent to a right of way shall be a minimum of five feet (5'), except in areas allowing for cross-access between adjacent lots, which case the required parking setback shall be zero. The minimum building setbacks shall increase by one foot for each foot that a proposed building exceeds forty feet in height as outlined in Paragraph C, below.

B. **Site Coverage and Floor Area Ratio:** Individual lots shall be allowed site coverage (as defined in Article 3 of the Unified Development Ordinance ("UDO")) of up to seventy (70) and may, subject to criteria herein, be allowed up to ninety (90) percent. In order to qualify for site coverage of ninety (90) percent, it is agreed that, at the time of submittal of the preliminary plat and plan, the Developer must demonstrate compliance with four (4) of the performance criteria listed in Section 5.13.07 (4) (b) of the UDO, including but not limited to:

   a. Providing a release rate from a storm water detention/retention facility that is significantly and appreciably stricter than otherwise required;
   b. Submitting for approval of developments on tracts that are fifteen (15) acres or larger in size;
   c. Construction of separate pedestrian and bicycle paths;
   d. Providing for sufficiently screened loading and unloading areas that are located in side or rear yards;
   e. Demonstration of a development using highly innovative architectural, site planning and land use design of a caliber not previously used in the DeKalb area and of such quality as to set an excellent example for subsequent developments.

The Floor Area Ratio shall not exceed 0.75 (75%) for any individual lot containing a single story building. The Floor Area Ratio may be increased to 1.0 (100%) for buildings that are two stories or greater, subject to the discretion of the Developer.

C. **Maximum Height:** The maximum height of any building or appurtenance thereto or any structure is one-hundred feet (100'), provided that, for any structure or building exceeding forty feet in height, the required setback shall be increased by one foot for every foot that the building exceeds forty feet (40') in height.

D. **Development Guidelines, Covenants, Conditions and Restrictions:** The Developer shall adopt separate and private Development Guidelines (attached hereto as Exhibit "C") that outline the design and physical requirements and criteria for the development. In cases where those Guidelines vary from the standards set forth in the City of DeKalb Unified Development Ordinance, the more restrictive standard shall apply, unless otherwise modified by this Agreement.
The Developer shall adopt separate and private **Covenants, Conditions and Restrictions** (attached hereto as **Exhibit “D”**) governing the installation of public and private improvements and the ongoing maintenance of private improvements and common facilities. The City shall be made a party to these Covenants to the degree that, should the Owners’ Association fail to perform its duties as outlined therein, the City shall have the authority, but not the obligation, to take action through legal proceedings or similar action to compel the performance obligations of the Owners’ Association.

Any changes or amendments to the Development Guidelines and/or Covenants, Conditions and Restrictions shall be subject to the review and approval of the City. All proposed changes or amendments shall be forwarded to the Community Development Director of the City. If the Community Development Director deems that the proposed amendment(s) are substantive enough to change the intent and/or quality of the proposed development, the Community Development Director shall forward the proposed amendment(s) to the Plan Commission and City Council for review and approval.

E. **Parking Dimensions and Parking Lot Drainage:** The length of a ninety (90) degree automobile parking stall may be reduced to eighteen (18) feet, and thereby also reduce the width, curb to curb or aisle to aisle, from sixty-two (62) foot to sixty (60) feet. The length of a ninety (90) degree parking stall may be reduced by another foot, to seventeen (17) feet, provided that a curbed, landscaped area is provided for the additional car overhang, with a minimum of one foot (1’) clear overhang at the front of the stalls. In no case, however, shall drive aisles be less than twenty-four (24) feet in width.

The requirement of one catch basin per each 20,000 square feet, or fraction thereof, of contributing drainage area shall be waived to a lesser requirement proposed by Developer as part of an alternative design system, so long as such design system otherwise is consistent with the purpose and intent of the storm drainage management section of the Unified Development Ordinance and so long as Developer obtains the consent of the City Engineer, which consent shall not be unreasonably withheld or unduly delayed.

F. **Allowed Uses:** The uses allowed within this “PD-I” Planned Development shall include all permitted uses listed in Article 5.10 of the Unified Development Ordinance, “ORI” Office Research and Light Industrial District, as well as stormwater retention or detention and drainage facilities, parks and recreational facilities, public or private. In addition, any use (a) listed as a special use in the “ORI” District classification or (b) any permitted or special use listed in either the “LI” Light Industrial or “HI” Heavy Industrial zoning districts, which are not otherwise an allowed use under the “ORI” District regulations, shall be considered a special use in this Planned Development. Further, the following uses shall be permitted on Lots 13 through 24, (as labelled on the **Concept Plan**), as it is deemed that such uses contribute to the convenience, comfort, and service of the primary users within the development:

- a. Athletic club or fitness center;
- b. Business schools;
- c. Day care centers;
- d. Drug stores or pharmacies;
- e. Dry cleaners or laundry service;
f. Financial institutions, with or without drive through facilities;
g. Hotel or motel, with or without restaurants and/or banquet facilities;
h. Office supply store, office equipment sales and/or service, and copy services;
i. Police or Fire Stations, which shall also be allowed on Lot 4;
j. Public utility services, which shall also be allowed on Lot 4;
k. Restaurants, with or without drive through facilities.

Similar uses may be allowed at the discretion of the Developer and subject to the concurrence of the Community Development Director upon finding that the proposed use is consistent with the intent and purpose of this Agreement and contributes to the convenience and service of the primary users within the Property.

Any use listed as a Special Use in the “GC” General Commercial zoning district shall be considered as a Special Use on Lots 13 through 24, inclusive, and shall be reviewed in the same fashion and procedure as any other Special Use as outlined in the UDO.

G. Prohibited Uses: The following uses shall be prohibited:

a. Acetylene gas manufacture;
b. Acid manufacture;
c. Adult oriented uses;
d. Ammonia, bleaching powder or chlorine manufacturer;
e. Arsenal;
f. Asphalt manufacture or refinement;
g. Auto wrecking, junk storage or salvage yard;
h. Blast furnaces;
i. Cement, lime, gypsum or plaster of paris manufacture;
j. Commercial excavation of building or construction materials, except in the usual course of construction
k. Creosote manufacture or treatment;
l. Distillation of bones, coal or wood;
m. Explosives or fireworks manufacture or storage;
n. Fat rendering;
o. Fertilizer manufacture;
p. Forge plants;
q. Garbage, offal or dead animals, reduction or dumping;
r. Gas manufacture;
s. Glue, size or gelatin manufacture;
t. Landfill;
u. Junk yards and recycling facilities and garbage/waste transfer or sorting facilities;
v. Oil drilling, water drilling, oil refining, quarrying, or mining operations, and all construction incident thereto;
w. Ore reduction;
x. Paint manufacture;
y. Penal, correctional and other institutions necessitating restraint of inhabitants; and
z. Refinement or storage of petroleum or its products;
aa. Residential uses of any kind, provided that this shall not prohibit hotels or similar transient lodging facilities renting sleeping facilities for temporary guests for stays not exceeding thirty (30) days;
bb. Rolling mills;
cc. Smelting of tin, copper, zinc or iron ores;
dd. Stone mills or quarries;
e. Stockyard or slaughter of animals or fowls;
ff. Tanning, curing or storage of raw hides or skins.

H. Development Signage

The City agrees to allow a development identification sign to be located near the intersection of Peace Road and Fairview Drive. It is herein agreed that neither the background landscaping, retaining walls, nor supporting structure of said sign shall be counted toward the area of said sign, and it is agreed that the same may exceed the maximum sign height of ten feet, but in no case shall exceed thirty five feet. It is further agreed that the sign area shall be calculated by using the smallest rectangular shape which fully encloses the lettered and/or sign areas located upon the supporting structure, and the total area of any signage or lettering shall not exceed one hundred square feet.

The City agrees to allow development entry signage within curbed islands located within the right of way of major entry roads into the development. Said signs shall not exceed one hundred square feet in total area (per sign side), including the sign supporting structure, and shall be located in a manner that does not restrict safe visibility for vehicles at the intersection(s). This allowance shall not obligate the City to maintain said signage, which shall remain the responsibility of the Developer and/or Owners’ Association.

If desired by Algus, as owner of the Algus Retained Property, Developer shall be allowed to install a monument sign for identification of and direction to the Algus Retained Property at any intersection of any roadway right-of-way extending northerly to the Algus Retained Property from the connector roadway right-of-way ("Macom Drive") between Peace Road and Fairview Drive, subject to the same provisions such as size, height, color, design and location, as any other Directional Sign per Section V, Sign Standards, subsection B, of the Development Guidelines (Exhibit “C”).

The City agrees to permit no more than two (2) off-site billboard type development advertising signs for the singular purpose of promoting the sales, availability of land and/or buildings, or similar aspects of the Development. Such signs, if constructed, shall only be placed along the frontage of Interstate 88 (Tollway). The Developer shall be responsible for acquisition of a parcel(s), lease(s) and/or appropriate easement(s) upon which said signs are to be located. Said signs may contain changeable letter copy, but shall not contain any flashing or electronic message type displays, and shall not include any movement. Said signs shall not exceed six hundred and forty (640) square feet in area per sign, and shall be limited to a duration of no longer than ten years from the date of this Agreement or the sale of the final lot within the Development, whichever occurs first. Within 30 days of the expiration of that timeline, the signs and all related supporting structures shall be completely removed by the Developer, and at no time shall either of the signs be converted to any other form of advertising sign. Said signs shall
only be subject to application and approval of a sign permit by the Director of Community Development, and compliance with the Highway Advertising Act.

3.03 Buildings on Zoning Lot.

One or more principal buildings may be placed upon any zoning lot without any requirement of subdivision or resubdivision.

3.04 Subdivision and Development Plan Approval

A. Right to Subdivide. The Developer shall have the right, but not the obligation, to subdivide or resubdivide, from time to time, the Property, or any portion thereof, and nothing contained in this Agreement or in any City ordinance shall be construed or interpreted so as to prevent such resubdivision. Upon the Developer's request, the City shall approve, or cause to be approved, pursuant to the procedures set forth in the City's Subdivision Code, final plats of subdivision or resubdivision for the Property concurrently with, and at the same public hearings or meetings considering approval of preliminary plats of subdivision or resubdivision. Approval of plats of subdivision or resubdivision need not be undertaken in conjunction with request for approval of a Preliminary or Final Development Plan processed pursuant to this Agreement or otherwise.

B. Subdivision/Plan Approval Process. City and Developer agree, notwithstanding any contrary requirements of Articles 5.13 or 15, that a Final Plat and Final Development Plan for any phase of development shall be subject to review and approval of the Plan Commission and City Council. Such review and approval shall not require further public hearings, and such approval shall not be unreasonably withheld if said plans and/or plats are in conformity with the approved Preliminary Plat and Plan.

C. Amendments, Minor and Major. City and Developer agree that any proposed amendments to any approved final plat or final development plan shall be submitted to the Community Development Director for review. If the Director deems that the proposed amendment is a Minor Amendment, as further defined below, the Director may approve the amendment. If the Director determines that the proposed amendment is a major amendment, then the Director shall forward the plat to the Plan Commission and City Council for review and approval as if it were a new final plat.

Minor Amendments include any change that does not materially affect the infrastructure, design, use or character of the development. Minor amendments include, but are not necessarily limited to:

1. An adjustment of a lot line of less than one hundred feet, or any combination of lot lines which would not result in any major changes;
2. An increase in the amount of landscaped area, or a reduction of less than ten percent;
3. An increase in building setbacks;
4. A change in location of an access point by less than fifty feet, or a reduction in the number of access locations;
5. An increase in the proposed right-of-way width to be dedicated;
6. An adjustment to utility easements which have not yet been recorded and are not yet occupied by physical utility facilities;
7. A change in the location of any structure, parking area, loading dock or open space which is not a significant reorientation of the improved areas of the site;
8. A subdivision of a multi-tenant building into fee-simple, zero-lot-line lots or condominium units;
9. Any other minor dimensional or other adjustments which are not Major Amendments and which otherwise are consistent with the character of development on the site and do not significantly change the overall orientation of the improved areas on the site or the infrastructure serving the site.

Major Amendments are changes that potentially affect the infrastructure, design, use or character of the development. Major Amendments include, but are not necessarily limited to:

1. An increase in the number of access locations from those shown on the approved plan, or a change in the location of those access points by fifty feet or more;
2. Adjustment of a lot line of more than 100 feet;
3. Any change which requires vacation of a street right of way or utility easement, decreases the size of a proposed right of way or easement, or relocates a right of way or easement by more than 100 feet;
4. Any change which decreases the amount of land to be conveyed or reserved for any public body.
5. Any other change not meeting the terms or requirements of a Minor Amendment, as outlined above.

3.05 Staged Development.

The Preliminary Plan shall serve as the standard for the development of the Property. It is contemplated that the development of the Property pursuant to the Preliminary Plan may be implemented by Developer in stages. Accordingly, Developer shall have the right to submit the final development plans and/or final subdivision plats for the Property in phases or stages and shall not be required to submit a single final development plan or final subdivision plat for the entire Property. No time limits shall be imposed upon Developer with respect to the submission of such final development plans or final subdivision plats for the several phases of the proposed development, nor shall there be any limits imposed upon Developer with respect to the number of final development plans or final subdivision plats for the several phases. The Corporate Authorities agree to approve the final development plans and/or final subdivision plats and to issue clearing, grading, building, or other permits for phases of construction as Developer elects to construct from time to time, based on final plans, subdivision plats, specifications and drawings submitted by Developer, provided that such final plans or plats shall substantially conform to the terms and provisions of this Agreement, the Preliminary Plan and comply with all applicable City ordinances, rules, and regulations in existence as of the date hereof except as may be modified or amended pursuant to the terms of this Agreement.
3.06 Subdivision Improvements

A. Public Improvements: City and Developer agree, notwithstanding any contrary requirements of Article 15, that (a) improvements within specific lots within the development shall not be construed as "public improvements" as such term is used in said Article, and (b) improvements (excluding earthwork and grading) to be constructed by Developer within the public right-of-way, either the existing or to-be-dedicated, shall not be started without Developer evidencing to the City that a performance bond or similar instrument, in form and amount reasonably acceptable to the City and naming the City as co-beneficiary, is in place in lieu of any bonding, escrow or other security arrangement under said Section and (c) notwithstanding anything in Section 15.08, Developer shall have posted a letter or letters of credit in the aggregate amount of $100,000 or a lesser amount determined by the City Engineer, prior to the issuance of any temporary or permanent certificate of occupancy to ensure that the improvements within the Property are completed in accordance with the Site Plan prepared as specified in the Unified Development Ordinance.

B. Sidewalks: The requirement for concrete sidewalks along Fairview Drive and Peace Road shall be waived, provided that a bituminous concrete fitness trail is constructed with a minimum width of ten feet (10') in an alignment and to specifications approved by the City Engineer.

The requirement of providing sidewalks on both sides of the street (Article 9.03.03) shall be waived in favor of the Developer providing a minimum six (6) foot wide concrete sidewalk or a minimum eight (8) foot wide bituminous paved pathway on one side of the street, the alignment and specifications of which are subject to the approval of the City Engineer.

C. Dead End Streets and Cul-de-sacs: Notwithstanding the requirements of Article 9.02.05, the City agrees to allow for dead end streets exceeding 700 feet in length, provided that (i) any temporary dead-end street shall be terminated with a temporary cul-de-sac located within an appropriate easement and (ii) any permanent dead end street shall be terminated in a cul-de-sac, and any such dead end street exceeding 700 feet in length shall be provided a cross-access easement and connection to another public street through a fire lane located upon the intervening property or properties and (iii) no permanent dead end street shall exceed 1,200 feet between the centerline of the nearest street intersection and the center point of the cul-de-sac bulb.

All water mains serving dead-end streets shall be adequately looped for the purpose of maintaining high water quality and adequate flows for fire protection. The City recognizes that such looping may be provided with the fire protection mains constructed as part of the development of individual lots.

D. Street Intersections and Access Locations: Notwithstanding the provisions of Article 9.02.06, the location of access points and street intersections along Fairview Drive shall be subject to the review and approval of the City Engineer. No more than three, and no fewer than two, public streets shall be allowed to intersect with Fairview Drive. These intersections shall be placed as follows:

1. The centerline of the easternmost intersection shall be no closer than 1,320 feet westerly from the centerline of Peace Road;
2. The centerline of the westernmost intersection shall be no closer than 1,100 feet easterly of the centerline of South Seventh Street;
3. The central street, if constructed, shall be located as close to the midpoint of the centerlines of the above listed intersections as practicable.

In addition to the above-listed streets, no more than four private access points shall be allowed along Fairview Drive, and in no case shall the total number of street intersections and private drives exceed six. No private drive shall be located between Peace Road and the easternmost intersection outlined in paragraph 1, above. The private access points shall be spaced no closer than 500 feet from the centerline to the centerline of any other access point on the same side of the street. Any variation from this dimension shall only be allowed to accommodate an access point which lines up directly with an existing access on the south side of Fairview Drive.

Only one street intersection shall be allowed at Peace Road, to be placed generally at the location shown on the Concept Plan, with a minimum distance of 1600 feet north of the centerline of Fairview Drive, and no additional access points, public or private, shall be allowed. Lots 14, 17, 19, 21, 22, and 24 (as shown on the Concept Plan) shall not be allowed access to Peace Road or Fairview Drive.

E. Rail Service: The City agrees to cooperate with the Developer in obtaining grants or other financing for the extension of rail lines and spurs within the Development. In such instances the City may, from time to time, be required to accept ownership of rail lines and spurs that service the Development. In all cases, and notwithstanding the City’s obligation to a grant provider to accept maintenance responsibilities, the Developer agrees to provide for the ongoing maintenance of said facilities, regardless of actual ownership, through the Owner’s Association, and the City shall have no obligation to accept maintenance of any rail line or spur, other than setting standards for maintenance to which the Association must adhere, and/or to compel the Association to maintain the rail line or spur to the City’s satisfaction.

The Developer further agrees to adopt appropriate regulations, as part of the Covenants, Conditions and Restrictions (Exhibit “D”) to restrict the time and quantity of rail car parking on sidings and spurs within the Development, including the following minimum standards:

a. No rail car shall be parked upon a siding that directly services a building for more than thirty days, and in no case shall a rail car be used for any purpose other than the delivery or shipping of raw materials or goods related to that use;

b. No rail car shall be parked upon a spur or internal passing track for more than seven days;

c. No rail car shall be parked upon a public right-of-way or in a location or manner that restricts visibility or access for vehicular traffic upon any public street. The only time rail cars shall be allowed within a public right-of-way or area that restricts visibility or access is during active manuevering; and

d. No rail car shall be parked upon the Union Pacific siding and/or passing track, which runs generally north/south on the western edge of the Development, for more than seven days.

F. Stormwater Retention: Developer agrees that all Covenants, Conditions and Restrictions (Exhibit “D”) and related documents are drafted and shall be recorded in such a fashion that the Owners Association shall be clearly and irrevocably responsible for all maintenance, including but not limited to mowing, weed control, sedimentation removal and
structural maintenance, of all stormwater retention and/or detention facilities on the Property, regardless of ownership by the City or other entity.

G. Common Area Maintenance: It is agreed that the City shall create and establish a Special Service Area for the Property subject to 35 ILCS 200/27-5, et.seq., as amended, to provide the City with a source of revenue for maintaining, repairing, reconstructing or replacing the stormwater drainage system, detention and retention areas, common areas, special management areas or other improvements located on the Property, should the Owners Association fail to perform its responsibility in accordance with City codes and ordinances, other applicable requirements of law, or pursuant to the Covenants, Conditions and Restrictions (Exhibit “D”) and related documents. The Developer and any of the Developer’s successors or assigns, in interest or otherwise, agree to and do hereby waive any and all protests, objections and/or rights to petition for disconnection regarding the Special Service Area for the Property. The Special Service Area is for the exclusive purpose of creating a revenue source for the City for said maintenance, and is not intended and shall not be construed to create an obligation of the City to provide such maintenance. The City agrees that it will only levy against said Special Service Area in the instance that, after notice and opportunity to correct, the Owners Association has failed to fulfill the obligations stated herein.

4 CODES AND ORDINANCES; FEES

4.01 Codes and Ordinances; Conflict with Agreement.

To the extent of any conflict, ambiguity, or inconsistency between the terms, provisions or standards contained in this Agreement and the terms, provisions or standards, either presently existing or hereafter adopted, of the Development Ordinance and any other City code, ordinance or regulation, the terms, provisions and standards of this Agreement shall govern and control.

4.02 Codes and Ordinances; Amendments.

All codes, ordinances, rules and regulations of the City in effect as of the date hereof shall continue in effect insofar as they relate to the development of the Property during the entire term of this Agreement except for amendments mandated by state or federal requirements pertaining to the public’s health and safety. All codes, ordinances, rules and regulations of the City in effect as of the date hereof which relate to building, plumbing, electrical and related restrictions affecting development of the Property shall continue in effect insofar as they relate to the development of the Property during the entire term of this Agreement, except as otherwise provided herein and except to the extent that said codes, ordinances, rules and regulations are amended on a general basis so as to be applicable to all property within the City for purposes of furthering the public health and safety. Notwithstanding the foregoing provisions of Section 4.01 and 4.02, if any City code, ordinance or regulation is hereafter adopted, amended or interpreted so as to be less restrictive upon Developer with respect to the development of the Property than is the case under the existing law, then, at the option of the Developer, such less restrictive amendment or interpretation shall control.
4.03 Fees, Donations, and Dedications.

A. Public Use Site: Developer agrees to donate to the City a public utility and public services site of approximately 2.5 to 3 acres in size. The site shall have direct access to and frontage upon a public street and shall be located generally in the area of Lot 4 on the Concept Plan or as otherwise agreed to between City and Developer. The site shall be improved with adjacent paved streets and shall have all utilities readily available. The site shall be of sufficient size and dimension to accommodate the proposed uses in a reasonable fashion, as shown diagrammatically on Exhibit “E”, without placing undue burden upon the City for construction or improvement of the site. The final layout and location of the site is subject to the approval of the City as may be agreeable to the Developer. The site is intended to be improved by the City (in the future) with a water storage facility and a Fire Station, and may be improved with other public utilities, structures, buildings or services subject to the terms of this Agreement, from time to time, as the City sees fit, subject to the restrictions and requirements of the Development Guidelines and Covenants, Conditions and Restrictions.

The Developer donation shall be in the form of a Warranty Deed with Title Insurance in an amount to be determined acceptable by the City Attorney. The donation shall occur at a mutually agreeable time in the future, not to exceed five years from the date of this Agreement, or upon final platting of any phase wherein fifty percent (50%) or more of the total area of Property is or has been subdivided by City approval of Final Plats. Said timing or implementation may be extended upon mutual agreement between the Parties provided said agreement is executed in writing.

Should at any time in the future the City desire to dispose of the site, the Developer shall be given the right of first refusal, and should the Developer decide to execute that right, the site shall be deeded back to the Developer at no cost to the Developer. This agreement may be memorialized as a covenant or deed restriction on the Warranty Deed at the time the property is granted to the City.

This donation is in exchange for other considerations as provided within this Agreement.

B. Fairview Drive Right Of Way: Developer agrees to dedicate, upon recording of any plat including land adjacent to Fairview Drive, a full fifty foot (50’) right of way from the centerline of Fairview Drive.

C. Pond “E” : Developer agrees to construct, at no cost to the City, a retention pond including approximately 49 acre-feet of stormwater retention area, shown as Pond E on the Concept Plan. Developer agrees to transfer ownership of said pond to the City, through warranty deed with an appropriate amount title insurance deemed acceptable to the City Attorney, and the City agrees to accept said ownership, subject to terms and conditions found elsewhere in this Agreement.
5 UTILITIES AND ROADWAYS

5.01 Potable Water Service.

All inspection, tap-on and user fees assessed by the City in connection with the providing of potable water service to the Property shall be assessed in the manner provided by Ordinance, provided said Ordinance is applicable to all property within the City. The City shall cooperate with Developer in obtaining all easements necessary, and shall grant Developer access to all City-owned rights-of-way to enable Developer’s providing of potable water service to the Property. The Developer shall dedicate easements on parcels within its control at no charge to the City for utility improvements necessary for the development of the Property. Upon Developer’s completion of construction of on-site water mains of six inches in diameter or greater, as well as required valves and hydrants, and appurtenances in accordance with the provisions of the Unified Development Ordinance and any relevant state codes and local regulations, and upon approval and acceptance by the City in accordance therewith, Developer shall dedicate such mains, valves, hydrants, appurtenances and easements to the City, and the City shall accept the dedication of same and, thereafter, the City shall be solely responsible for the subsequent operation, maintenance and repair of same.

5.02 Regional Stormwater Drainage.

Developer shall provide all necessary storm sewers, detention systems, and compensatory storage to develop the Property and to comply with its obligations relative to the Algus Retained Property under section 14.09 hereof in compliance with the applicable provisions of the Unified Development Ordinance, RUST Study on the Del Monte/Bradt Park Watershed dated January, 1997, and all other applicable laws and regulations; provided, however, that said sewers and storage facilities may be provided as a phase or part of the regional storm drainage system as the various portions of the region are developed. In determining whether any lot on the Property satisfies zoning standards, any part thereof within a detention or retention system may be included as part of the area of said lot. The City also agrees that it has or will construct, at no cost to Developer, a storm water sewer line beginning on the east right-of-way line of the Union Pacific Railroad Company and continuing westward, as detailed in the RUST Study described above, that will adequately drain said Storm Water Storage Facility as the City deems necessary or advisable.

5.03 Peace Road Improvements.

The Final Plat or Final Plan for the first phase of any development within the Property shall include final engineering design for the construction of Macom Drive, from Peace Road to Fairview Drive, as well as the intersection design for the intersection of Macom Drive with Peace Road, which are subject to the approval of the City Engineer. Upon approval of the first phase of any development within the Property, the Developer shall commence the construction of improvements provided on said plans. Said improvements shall include, at a minimum, the following:
a. A northbound left turn lane on Peace Road;
b. A southbound right turn lane on Peace Road;

and either:

c. Full signalization of the intersection of Peace Road and Macom Drive; or
d. A southbound acceleration lane on Peace Road, extending from Macom Drive to Fairview Drive, and striped as a merge lane with a taper and transition to a right turn lane at Fairview Drive.

The Final Plat or Final Plan for the phase of development within the Property that includes the potential construction of the three-millionth square foot (3,000,000) of cumulative potential building area, shall include the final engineering design of the remaining improvement, of either c or d (above), if such has not yet been constructed. Said plans are subject to the approval of the City Engineer. Upon approval of the Final Plat or Final Plan of said phase, the Developer shall commence the construction of the remaining improvements to the Peace Road right of way.

6

CONSTRUCTION OF INFRASTRUCTURE IMPROVEMENTS

6.01 Construction of Improvements.

Some of the Improvements shall be constructed as part of the first phase of the development, including at a minimum the following:

A. Macom Drive, including all water mains, sanitary sewer and storm sewer, from Fairview Drive to Peace Road;

B. at least one storm water management facility located immediately east of and contiguous to the west property line of the Property.

The remainder of the Improvements shall be constructed as part of a subsequent phase or phases of the development, with each phase provided with sufficient improvements to adequately service the lots platted within that phase.

6.02 Contracts.

Developer shall act as the City's agent for purposes of managing and overseeing the engineering, design, and construction of those Improvements; provided, however, that (a) Developer shall secure all required permits or approval from all applicable agencies or units of government, (b) Developer shall supply the City with copies of all proposed contracts, prior to letting of contracts, for review, and (c) Developer shall submit all required plans and specifications for all such Improvements to the City and any other applicable agency or unit of government for their prior review and approval. Developer shall cause the General Contractor to add the City as an additional insured on commercial general liability insurance policies and coverages maintained by the General Contractor (including, without limitation, as co-beneficiary on the performance bonds), in conjunction with the construction of the Improvements. Developer shall submit to the City for its review and approval a copy of such bond and certificate of insurance prior to the
commencement of such construction. Developer shall not be required to advertise for bids or to submit multiple bids to the City. The City acknowledges that the General Contractor may be an affiliate of the Developer. With respect to such contracts for the Improvements, the City, in accordance with Section 8-9-1 of the Illinois Municipal Code, 65 ILCS 5/8-9-1, hereby waives any advertising for bids by, or on behalf of, the City. During construction of all public work infrastructure improvements by the Developer, the City shall have the right to inspect the work to determine if such work is being constructed in accordance with the approved plans, specifications, and all applicable codes and regulations and shall promptly notify the Developer of any deficiencies as to which Developer will cause corrective action to be taken.

6.03 Documentation with Respect to Construction of Improvements.

As soon as practicable following completion of any public Improvements, but prior to acceptance by the City, the Developer shall submit to the City a set of record drawings, sealed by an Illinois licensed professional engineer, and a sworn statement of the contractor performing work in connection with the completed Improvements, specifying the work performed on such Improvements and the cost thereof, and executed waivers of lien relating thereto.

7
ECONOMIC INCENTIVES

The City and Developer may, from time to time, enter into supplemental agreements providing mutual incentives for specific development projects within this Property. Such agreements may revise the terms or provisions of this Agreement, and be made without specific amendment to this Agreement, provided that any said Agreements shall be executed in writing and recorded.

8
GENERAL CONSTRUCTION MATTERS

8.01 Excavation, Grading, and Preparation of the Property for Development.

Prior to the construction of any improvements on the Property (public or private), Developer shall secure any required permits and approvals from any applicable federal or state agencies relating to archeological significance, endangered species, or wetlands. Subject to the further provisions of Section 14.09 hereof, Developer shall have the right, prior to obtaining approval of final engineering drawings and prior to approval of any final development plan or final plat of subdivision by the City, to undertake demolition of structures, excavation, preliminary grading work, filling, and soil stockpiling on the Property in preparation for the development of the Property based solely on submittal of a grading plan and soil erosion and sedimentation control plan and drainage plan to the City, which plans shall be approved by the City Engineer provided said plans are in accordance with all applicable City codes and ordinances. Such work shall be undertaken without injury to the property of surrounding property owners. A letter of credit, bond or other security in an amount not to exceed $100,000, or less as determined by the City Engineer, to assure proper site restoration shall be required and submitted by Developer as a condition precedent to the commencement of such work, as the cost of performing and installing necessary grading and detention pond(s) for the phase of the development then being constructed. Said letter of credit, bond or other security will be released upon the completion and
approval of such grading and detention pond(s), provided partial reductions shall be permitted based upon the percentage of the work completed.

8.02 Building Permits.

Subject to the further provisions of Section 14.09 hereof, the City shall issue building permits for which Developer or a subsequent owner of a Lot in the Property applies within twenty-one (21) days of the City's receipt of the last of the documents required by the Unified Development Ordinance and the DeKalb Municipal Code to support such application. If the application is denied, the City shall provide the applicant with a written statement specifying the reasons for denial of the application and a list of additional materials and information required to obtain approval, including specifications of the requirements of law which the application or supporting documents fail to meet. Subject to the further provisions of Section 14.09 hereof, the City shall issue such building permits upon the applicant's compliance with those requirements. In the event (a) the City intends to forward materials in support of any request or application to an independent consultant for review, and (b) such materials are to be forwarded because of the extraordinary number of requests and applications then being processed, the City shall notify the applicant at the time of his submission of the required plans and materials that the same are being forwarded for independent review and in such event the applicant shall pay the cost of such review. Subject to the further provisions of Section 14.09 hereof, an applicant may apply for building permits for portions of the Property prior to the availability of storm sewer and sanitary sewer service to such portion of the Property, provided that the Developer or applicant installs those minimum life safety improvements as identified and required by the City. Notwithstanding the foregoing, no temporary occupancy permits shall be issued for such portions of the Property until the availability and connection of such utilities is demonstrated to the satisfaction of the City. Subject to the further provisions of Section 14.09 hereof, but otherwise notwithstanding anything to the contrary contained in this Agreement, the City agrees to issue necessary permits to the applicant, upon application by the applicant, prior to applicant's or Developer's submission of plans for any entire building to allow (i) grading or the installation of drainage and utility facilities on the Property, provided that the Developer or applicant submits a mass grading plan which complies with applicable City codes and ordinances, and (ii) construction of building foundations, provided the applicant submits exterior enclosure drawings and foundation drawings which comply with applicable City codes and ordinances; provided, however, that the issuance of any such permits shall not authorize nor be construed to authorize or to permit the construction of any portion of a building or an improvement, the plans for which have not been reviewed and approved by the City.

8.03 Stop Work Orders.

The City shall not issue any stop work orders directing work stoppage on any development of the Property or on the construction of any buildings or other improvements on the Property except if done in accordance with the locally-adopted codes and ordinances or to enforce the specific terms of Section 14.09 hereof. All stop work orders shall set forth the section or sections of the applicable City code or ordinance alleged to have been violated and the exact nature of the violation and applicant shall forthwith proceed to correct any such violations which may in fact exist.
8.04 Certificates of Occupancy.

A. The City shall issue certificates of occupancy to applicant in a timely fashion, or issue a letter of denial informing applicant specifically what corrections are necessary as a condition to the issuance of a certificate and quoting the section of any applicable code, ordinance or regulation relied upon by the City in its request for correction. Temporary certificates of occupancy shall not be delayed in the event adverse weather conditions prevent construction of final surface courses on private drives, final landscaping, and final exterior facade improvements.

B. The City shall grant individual certificates of occupancy for multi-tenant commercial or industrial buildings on a unit-by-unit or store-by-store basis in accordance with the 2003 International Building Code.

9 
FORE MAJEURE

No Party shall be considered in breach of or in default of obligations under this Agreement, in the event of any delay caused by force majeure, including, without limitation, damage or destruction by fire or other casualty, eminent domain, strike, lockout, civil disorder, war, restrictive governmental regulations, shortage of materials or fuel, acts of God, unusually adverse weather or wet soils conditions, or other cause beyond the reasonable control of any such Party. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause of any such delay, provided that written notice claiming such extension is sent by the Party claiming any such delay not more than thirty (30) days after commencement of the cause for delay.

10 MUTUAL ASSISTANCE

10.01. The Parties shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms and objectives of this Agreement and the intentions of the Parties as reflected by said terms, including, without limitation, the giving of such notices, the holding of such public hearings, the enactment by the City of such resolutions and ordinances and the taking of such other actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement and as may be necessary to give effect to the terms and objectives of this Agreement and the intentions of the Parties as reflected by said terms.

10.02. The Parties shall cooperate fully with each other in seeking from any or all appropriate governmental bodies (whether federal, state, county, or local) financial or other aid and assistance required or useful for the construction or improvement of property and facilities in and on the Property or for the provision of services to occupants of the Property, including, without limitation, grants and assistance for public transportation, roads and highways, water and sanitary sewage facilities, and storm water disposal facilities.

10.03. Notwithstanding anything to the contrary contained in this Agreement, the Owners shall only be responsible for the obligations of the Owners, if any, under this Agreement, and shall not be responsible for the obligations of the Developer under this Agreement.
11
REMEDIES

11.01. Upon breach of this Agreement, any of the Parties, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Upon breach of any provision of Section 14.09 of this Agreement, the Algus Beneficiaries, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements contained in Section 14.09, may be awarded damages for failure of performance, or both. No action taken by any Party or by the Algus Beneficiaries pursuant to the provisions of this Article 11 or pursuant to the provisions of any other Article of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity.

11.02. In the event of a material breach of this Agreement, the Parties agree that the Party alleged to be in breach shall have thirty (30) days after written notice of said breach to correct the same prior to the non-breaching Party's seeking of any remedy provided for herein (provided, however, that said thirty (30) day period shall be extended if the defaulting Party has initiated the cure of said default and is diligently proceeding to cure the same).

11.03. If any of the Parties shall fail to perform any of its obligations hereunder, and the Party affected by such default shall have given written notice of such default to the defaulting Party, and such defaulting Party shall have failed to cure such default within thirty (30) days of such default notice (provided, however, that said thirty (30) day period shall be extended if the defaulting Party has initiated the cure of said default and is diligently proceeding to cure the same), then, in addition to any and all other remedies that may be available, either at law or in equity, the Party affected by such default shall have the right (but not the obligation) to take such action as in its reasonable discretion and judgment shall be necessary to cure such default. In such event, the defaulting Party hereby agrees to pay and reimburse the Party affected by such default for all reasonable costs and expenses (including attorneys' fees and litigation expenses) incurred by it in connection with any action taken to cure such default.

11.04 The failure of the Parties or the Algus Beneficiaries to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained or any of them, upon any Party imposed, shall not constitute or be construed as a waiver or relinquishment of any Party's or Algus Beneficiaries' right thereafter to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

12
TERM

This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns with no term, and shall constitute a covenant running with the land.
13
SEVERABILITY

If any provision, covenant, agreement, or portion of this Agreement or its application to any person, entity, or property is held invalid, such invalidity will not affect the application or validity of any other provisions, covenants, or portions of this Agreement, and to that end, all provisions, covenants, agreements, and portions of this Agreement are declared to be severable. If for any reason the annexation or zoning of the Property is ruled invalid, in whole or in part, the Corporate Authorities, as soon as possible, will take such actions (including the holding of such public hearings and the adoption of such ordinances and resolutions) as may be necessary to give effect to the spirit and intent of this Agreement and the objectives of the Parties, as disclosed by this Agreement, provided that the foregoing shall be undertaken as the expense of Developer.

14
MISCELLANEOUS

14.01 Amendment.

This Agreement, and the exhibits attached hereto, may be amended in writing by the mutual consent of the Parties through the adoption of an ordinance or by the City approving said amendment as provided by law and by the execution of said amendment by the Parties or their successors in interest. Notwithstanding the foregoing, (a) where the subject matter of an amendment to this Agreement affects only a portion of the Property, such amendment need only be executed by the City and the then-owner of such affected portion of the Property and (b) no provision of Section 14.09 of the Agreement for the benefit of the Algus Retained Property, Algus Real Estate, LLC or other Algus Beneficiaries may be amended, stricken or otherwise modified without the prior express written consent of Algus Real Estate LLC or its successors or assigns; and that, in the event that the City and/or the Developer choose to terminate the Agreement in whole or in part, the provisions of Section 14.09 for the benefit of the Algus Retained Property, Algus Real Estate, LLC or other Algus Beneficiaries shall nevertheless remain binding upon said Parties and shall run with the land included in the Property.

14.02 Entire Agreement.

This Agreement sets forth all agreements, understandings, and covenants between and among the Parties. This Agreement supersedes all prior agreements, negotiations, and understandings, written and oral, and is a full integration of the entire agreement of the Parties. This Agreement is intended to amend, preempt, vacate and repeal any and all conflicting provisions of prior Agreements as such may relate to the Property.

14.03 Additional Agreements

Nothing in this Agreement shall be construed to prohibit the adoption or approval of separate or more specific agreements for individual properties or lots within this Development, provided that the minimum terms of zoning and land development included herein shall serve as the standard for the development of the entire Property.
14.04 Survival.

The provisions contained herein shall survive the annexation of the Property and shall not be merged or expunged by the annexation of the Property to the City.

14.05 Successors and Assigns.

This Agreement shall inure to the benefit of, and shall be binding upon Developer and its respective successors, grantees, lessees, and assigns and upon successor corporate authorities of the City and successor municipalities, and shall constitute a covenant running with the land. This Agreement may not be assigned without the prior written approval of the City; such approval may not be unreasonably withheld except this Agreement may be collaterally assigned without the City's consent to any Holder of a collateral assignment. Upon said assignment and acceptance by an assignee, the assignor shall have no further obligations hereunder. If a portion of the Property is sold, the seller shall be deemed to have assigned to the purchaser any and all obligations it may have under this Agreement which affect the portion of the Property sold or conveyed and thereafter the seller shall have no further obligations under this Agreement as it relates to the portion of the Property conveyed; provided, however, the Developer shall not be relieved of its obligations under Article 2.02 or 4.03 hereof.

14.06 Notices.

Any notice to be given or served hereunder or under any documents or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefor; or (ii) sent by telecopy facsimile with original sent by pre-paid first-class United States mail; or (iii) sent by a recognized overnight courier service; or (iv) delivered by the United States registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the Parties at their respective addresses set forth below, and the same shall be effective (a) upon receipt or refusal if delivered personally or by telecopy facsimile; (b) one (1) business day after depositing such with an overnight courier service; or (c) two (2) business days after deposit in the mail, if mailed. A Party may change its address for receipt of notices by service of a notice of such change in accordance herewith. All notices by telecopy facsimile shall be subsequently confirmed by U. S. certified or registered mail.

If to City:                  City Manager
                            City of DeKalb
                            200 South Fourth Street
                            DeKalb, Illinois 60115

with a copy to:             City Attorney
                            City of DeKalb
                            200 South Fourth Street
                            DeKalb, Illinois 60115

If to Developer:            DeKalb Associates
                            25033 W. 91st Street
                            Naperville, Illinois 60564
                            Attn: Paul J. Lehman
with a copy to: Boyle, Cordes, Witheft & Brown
301 E. Lincoln Highway
DeKalb, Illinois 60115

14.07 Time of Essence.

Time is of the essence of this Agreement and of each and every provision hereof.

14.08 City Approval.

Wherever any approval or consent of the City, or of any departments, officials, or employees of the City, is called for under this Agreement, the same shall not be unreasonably withheld, conditioned, or delayed.

14.09 Algus Retained Property.

The following provisions of this Section 14.09 are intended to benefit the Algus Retained Property and the Algus Beneficiaries. If at any time Developer or its successors or assigns are in breach of any of the following provisions of this Section 14.09, and an Algus Beneficiary has served written notice upon the City of said breach, then, until the breach has been remedied in full, the City agrees not to issue any building permits or approve any plans for improvements or work in whole or in part within the Property unless the improvements or work authorized by the City’s permit or plan approval is (i) an addition to or modification of improvements in existence prior to the date of said Notice, or (ii) a direct continuation of improvements or work for which the City has issued a building permit prior to the date of said Notice. The following provisions of this Section shall be binding on the City and Developer, and said Parties agree to perform as follows, notwithstanding the failure of any condition precedent or contingency otherwise applicable to performance of the City and/or Developer as provided elsewhere in this Agreement:

(a) By the times and in accordance with the improvement specifications further detailed in the following subsections of this Section 14.09, the City agrees that it shall require, at no cost to the City but at Developer’s sole cost, that access be provided to the Algus Retained Property through the Property for either direct or indirect access via public right-of-way to either Fairview Drive or Peace Road and that it shall require, at no cost to the City but at Developer’s sole cost, that sanitary sewer, storm sewer and potable water mains and roadway improvements be (i) constructed to applicable City standards in effect from time to time and (ii) fully extended through the Property to the southern boundary of the Algus Retained Property. The City agrees to require surety of Developer for construction of improvements described in this Section 14.09 in accordance with normal City practice in effect for public improvements from time to time. In the event that Developer fails to perform as required under this Section 14.09 and the City takes over completion of any improvements otherwise to have been completed by Developer hereunder, the City agrees to apply surety funds secured from Developer and to complete construction of all improvements provided for under this Section 14.09 in accordance with normal City practice.
(b) The Developer shall cause, at Developer's sole cost, the following improvements to be fully constructed to applicable City (or other applicable government) standards in effect from time to time, to be fully extended through the Property (as shown on the attached Exhibit “F”) to the southern boundary of the Algu Retained Property, to be fully useable for the benefit of the Algu Retained Property on or before July 1, 2006 and to be finally accepted by the City (or other applicable unit of local government), on or before July 1, 2007: (i) sanitary sewer service of not less than eight (8) inches in diameter; (ii) potable water mains of not less than twelve (12) inches in diameter; and (iii) storm water conveyance improvements (either underground pipe or overland drainage, or a combination thereof, as may be acceptable to the City), of sufficient depth, design and capacity to convey by gravity all storm water discharge offsite from the Algu Retained Property as if the Algu Retained Property were then developed to its maximum density under industrial zoning as permitted pursuant to the Algu [April 7, 1997, Annexation] Agreement. This provision does not preclude the obligation of the Algu Beneficiaries to provide storm management facilities and conveyance improvements as may be required by the City upon development within the Algu Retained Property.

(c) Access to and from the Algu Retained Property shall be provided by the Developer on or before July 1, 2006 via one (1) of the following options: (i) to Fairview Drive through the Algu Park 88 Property and the McCormick Property, (ii) to Fairview Drive through the Trust 1791 Property and the McCormick Property, or (iii) to Peace Road through the Trust 1791 Property and other property located between the Trust 1791 Property and Peace Road (“Orr Property” as depicted on the attached Exhibit F). Any roadway improvements within a route specified herein must be constructed to standards acceptable to the City and must be fully accepted by the City of DeKalb as public roadway along its entire length between (a) Fairview Avenue or Peace Road and (b) the Algu Retained Property on or before July 1, 2007.

(d) Using the City's best efforts, the City shall require that access via public roadway between the Algu Retained Property and Peace Road through the Trust 1791 Property be included in any plats of subdivision for the Trust 1791 Property, it being understood that the Algu preferred route for the public roadway is adjacent to the southern boundary of the property described as Parcel 7 on Exhibit “A” (hereinafter the “Goodrich Property”) and would extend in more or less a straight line eastward to facilitate connection of the Algu Retained Property to Peace Road. As part of its next updates or revisions of its Comprehensive Plan and related policy documents, the City agrees to include within such Plan and documents graphic representations and textual descriptions of the described roadway. In the event that Developer (or its successors, assigns or affiliate) acquires the Trust 1791 Property, in whole or in part, and regardless of whether Developer has provided access in accordance with the terms of Subsection 14.09 (c) (i) or (ii) hereinabove, Developer or its successors or assigns shall be required to dedicate and fully construct, and the City agrees to accept if constructed to City standards, land and completed improvements for a public roadway suitable for industrial truck traffic to connect the Algu Retained Property to Peace Road through the Trust 1791 Property in accordance with the specifications described hereinabove as part of the first phase of any development on the Trust 1791 Property. That portion of the Trust 1791 Property shown as Lot 7 on the Concept Plan, and consisting of a part of Project Temecula, shall not be construed to consist of the first phase of any development of the Trust 1791 Property.
(e) Using the City's best efforts, the City shall require that access via public roadway between the Alpus Retained Property and Peace Road through the Orr Property be provided for in any annexation agreement for the Orr Property to the City, it being understood that the Alpus preferred route for the public roadway is adjacent to a line corresponding to an extension of the southern boundary line of the Goodrich Property and would extend in more or less a straight line eastward to facilitate connection of the Alpus Retained Property to Peace Road. As part of its next updates or revisions of its Comprehensive Plan and related policy documents, the City agrees to include within such Plan and documents graphic representations and textual descriptions of the described roadway. In the event that Developer (or its successors, assigns or affiliate) acquires the Orr Property, in whole or in part, and regardless of whether Developer has provided access in accordance with the terms of Subsection 14.09 (c) (i) or (ii) hereinafore, Developer or its successors or assigns shall be required to dedicate and fully construct, and the City agrees to accept if constructed to City standards, land and completed improvements for a public roadway suitable for industrial truck traffic to connect the Alpus Retained Property to Peace Road through the Orr Property as part of the first phase of any development on the Orr Property.

14.10 Trust 1791 Property.

This Agreement and the provisions contained herein shall not be effective until the first to occur of either, and concurrent with, (a) the Developer acquiring fee simple title to the Trust 1791 Property or (b) Trust 1791 agreeing in writing, by separate recordable document, to the City to be bound by the provisions of this Agreement. If, on or before December 31, 2004, the Developer has not acquired fee simple title to the Trust 1791 Property or Trust 1791 has not agreed in writing to the City to be bound by this Agreement, then this Agreement shall automatically, without the required action of any Party hereto, be terminated as to the Trust 1791 Property and shall be null and void as to said Trust 1791 Property.

14.11 Indemnification.

Developer covenants and agrees to pay, at its expense, any and all claims, damages, demands, expenses, liabilities and losses of any nature whatsoever resulting from this Agreement, the construction and development activities of Developer, its agents, contractors and subcontractors with respect to the development of Property, and to defend and indemnify and save the City and its officers, elected and appointed, agents, employees, engineers and attorneys (the "Indemnitees") harmless of, from and against such claims, damages, demands, expenses, liabilities and losses, except to the extent such claims, damages, demands, expenses, liabilities and losses arise by reason of the gross negligence or willful or wanton act or omission of the City or other Indemnitees. Developer shall provide satisfactory proof of insurance covering such defense and indemnity of the City or other Indemnitees.
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written and by so executing each of the Parties warrants that it possesses full right and authority to enter into this Agreement.

CITY OF DEKALB, an Illinois municipal corporation

By:

[Signature]
GREG SPARROW, Mayor

ATTEST:

[Signature]
Donna Johnson, City Clerk

DEVELOPER:

DEKALB ASSOCIATES, an Illinois partnership

By:

[Signature]
Paul J. Lehman
President
THE MACOM CORPORATION

By:

[Signature]
F. D. Spooner
President
RIVERNMIST DEVELOPMENT CORP.
LIST OF EXHIBITS

EXHIBIT "A" LEGAL DESCRIPTIONS
PARCEL 1: TRUST 5503 PROPERTY
PARCEL 2: MCCORMICK PROPERTY
PARCEL 3: ALGUS PARK 88 PROPERTY
PARCEL 4: TRUST 1791 PROPERTY
PARCEL 5: ALGUS RETAINED PROPERTY
PARCEL 6: GOODRICH PROPERTY

EXHIBIT "B": CONCEPT PLAN

EXHIBIT "C": DEVELOPMENT GUIDELINES

EXHIBIT "D": COVENANTS, CONDITIONS AND RESTRICTIONS

EXHIBIT "E": PUBLIC USE SITE

EXHIBIT "F": ALGUS ACCESS ALTERNATIVES
Legal Description Parcel 1 “Trust 5503 Property”

PARCEL 1: The Northwest Quarter of the Southwest Quarter of Section 25, Township 40 North, Range 4 East of the Third Principal Meridian, DeKalb Township, DeKalb County, Illinois.

PARCEL 2- The Northeast Quarter of the Southwest Quarter of Section 25, Township 40 North, Range 4 East of the Third Principal Meridian, excepting therefrom the east 92.0 feet thereof, all in DeKalb Township, DeKalb County, Illinois.

PARCEL 3 - The west 700.0 feet of the south 560.0 feet of the Southwest Quarter of the Southwest Quarter of Section 25, Township 40 North, Range 4 East of the Third Principal Meridian, DeKalb Township, DeKalb County, Illinois.

PARCEL 4: That part of the Southwest Quarter of the Southwest Quarter of Section 25, Township 40 North, Range 4 East of the Third Principal Meridian lying northerly of the northerly right of way line of Fairview Drive, excepting therefrom the west 700.0 feet of the south 560.0 feet of said Section 25, all in DeKalb Township, DeKalb County, Illinois.

PARCEL 5: That part of the Southeast Quarter of the Southwest Quarter of Section 25, Township 40 North, Range 4 East of the Third Principal Meridian lying northerly of the northerly right of way line of Fairview Drive, excepting therefrom the east 92.0 feet of said Southeast Quarter, all in DeKalb Township, DeKalb County, Illinois.

Legal Description Parcel 2: “McCormick Property”

That part of the South Half of Section 26, Township 40 North, Range 4 East of the Third Principal Meridian, described as follows: Commencing at the Southeast corner of said Section 26; thence Westerly along the South line of said Section 26 a distance of 50.0 feet; thence Northerly parallel with the East line of said Section 26 a distance of 40.0 feet for a point of beginning; thence Westerly parallel with said South line, 388.06 feet; thence Southerly at right angle to the last described course, 7.0 feet; thence Westerly parallel with said South line, 400.0 feet; thence Northerly at right angle to the last described course, 7.0 feet; thence Westerly parallel with said South line, 300.0 feet; thence Southerly at right angle to the last described course 7.0 feet; thence Westerly parallel with said South line, 900.0 feet; thence Northerly at right angle to the last described course, 7.0 feet; thence Westerly parallel with said South line 599.85 feet to the West line of the Southeast Quarter of said Section 26; thence continuing Westerly parallel with the South line of the Southwest Quarter of said Section 26 a distance of 600.05 feet; thence Southerly at right angle to the last described course, 7.0 feet; thence Westerly parallel with said South line, 685.34 feet; thence Northerly at an angle of 89 degrees 42 minutes 05 seconds measured counterclockwise from the last described course, 61.23 feet to the Southeasterly right-of-way line of the Chicago and Northwestern Railroad; thence Northeasterly at an angle of 156 degrees 01 minutes 04 seconds, along said Southeasterly right-of-way line 2110.78 feet to a point that is 631.70 feet Southerly of, as measured at right angle to, the North line of said South Half;
Exhibit “A” Schedule of Real Estate Park 88 Development Agreement

(Legal Description Parcel 2 “McCormick Property” continued)

thence Easterly at an angle of 114 degrees 20 minutes 42 seconds measured counterclockwise from said Southeasterly right-of-way line, parallel with said North line, 3010.54 feet to a point that is 50.0 feet Westerly of, as measured at right angle to the said East line; thence Southerly at an angle of 89 degrees 46 minutes 34 seconds measured counterclockwise from the last described course, parallel with said East line, 1984.64 feet to the point of beginning, containing 157.372 acres, all in the Township of DeKalb, County of DeKalb and State of Illinois, together with that portion of Fairview Drive adjoining said property

Legal Description Parcel 3: “Algus Park 88 Property”

THAT PART OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOWLLWS BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 26; THENCE SOUTH 0 DEGREES 21 MINUTES 11 SECONDS WEST ALONG THE EAST LINE OF SAID SECTION 26 TO THE SOUTHEAST CORNER OF SAID SECTION 26; THENCE NORTH 89 DEGREES 38 MINUTES 49 SECONDS WEST, 50.00 FEET ALONG THE SOUTH LINE OF SAID SECTION 26; THENCE NORTH 0 DEGREES 21 MINUTES 11 SECONDS EAST, 2024.65 FEET; THENCE NORTH 89 DEGREES 52 MINUTES 25 SECONDS WEST, 3011.13 FEET TO THE EASTERLY LINE OF THE CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY; THENCE NORTH 24 DEGREES 28 MINUTES 05 SECONDS EAST, 2065.76 FEET, ALONG THE EASTERLY LINE OF THE CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY; THENCE SOUTH 89 DEGREES 31 MINUTES 26 SECONDS EAST, 2216.52 FEET, TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 26, THENCE SOUTH 0 DEGREES 19 MINUTES 32 SECONDS WEST, 1237.23 TO THE POINT OF BEGINNING. CONTAINING 5,053,519 SQUARE FEET OR 116.013 ACRES MORE OR LESS.

Legal Description Parcel 4: “Trust 1791 Property”

That part of the West ½ of the Northwest ¼ of Section 25, Township 40 North, Range 4 East of the Third Principal Meridian, described as follows: Beginning at a point in the West line of Section 25 aforesaid at the Southwest corner of Lot 9 of the First Addition to Lincoln Industrial Park Subdivision, according to the plat thereof recorded in Book “Q” of Plats, page 84 as Document No. 387022, thence run South along the West line of Section 25 to the Southwest corner of the Northwest ¼ of Section 25 aforesaid, thence run along the South line of the Northwest ¼ to a point that is 407.22 feet West of the Southeast corner of the West ½ of the Northwest ¼ of Section 25, run thence North parallel to the East line of the West ½ of the Northwest Quarter of Section 25 to the Southeast corner of Lot 8 in the First Addition to Lincoln Industrial Park Subdivision, thence West along the Southerly line of said First Addition to Lincoln Industrial Park Subdivision to the point of beginning, in DeKalb County, Illinois.
Legal Description Parcel 5: Algus Retained Property

That part of the Southeast Quarter of Section 23 and part of Section 26, Township 40 North, Range 4 East of the Third Principal Meridian described as follows: Commencing at the southeast corner of said Section 26; thence northerly along the east line of said Section 26, 33.0 feet to a line drawn parallel with and 33.0 feet northerly of the south line (measured at right angles thereto) of said Section 26 for a point of beginning; thence westerly along said parallel line 50.0 feet to a line drawn parallel with and 50.0 feet westerly of said east line (measured at right angles thereto); thence northerly parallel with said east line 1991.64 feet; thence westerly parallel with the north line of the South Half of said Section 26, 3011.06 feet to the easterly right of way line of the Chicago and Northwestern Transportation Company; thence northeasterly along said easterly right of way line 3809.74 feet to the northwest corner of Parcel G as shown on the Plat of Evans Subdivision, DeKalb, Illinois; thence easterly along the north line of said Parcel G, 182.54 feet to the northeast corner of said Parcel G; thence southerly along the easterly line of said Parcel G, 192.77 feet to the southeasterly corner of said Parcel G; thence easterly along the southerly line of Parcel E of said Evans Subdivision 1290.63 feet to the southwesterly corner of Parcel K of said Evans Subdivision; thence northerly along the westerly line of said Parcel K, 988.51 feet to the northwesterly corner of said Parcel K; thence southeasterly along the northerly line of said Parcel K, 32.67 feet to the northeasterly corner of said Parcel K; thence southerly along the easterly line of said Parcel K, 975.61 feet to the southeasterly corner of said Parcel K, being also the northeast corner of the Northeast Quarter of said Section 26; thence southerly along the east line of said Northeast Quarter 275.0 feet to the northeast corner of Lot “A” as shown on a Plat of part of the Northeast Quarter of Section 26, Township 40 North, Range 4 East of the Third Principal Meridian, DeKalb County Illinois, recorded as Document No. 287908; thence westerly along the northerly line of said Lot “A” at right angles to the last described course 283.0 feet to the northwest corner thereof; thence southerly along the west line of said Lot “A” parallel with the east line of said Northeast Quarter 615.69 feet to the southwest corner thereof; thence easterly along the south line of said Lot “A” at right angles to the last described course 283.0 feet to the east line of said Northeast Quarter; thence southerly along the east line of said Northeast Quarter 1753.85 feet to the southeast corner of said Northeast Quarter; thence southerly along the east line of the Southeast Quarter of said Section 26, 2623.40 feet to the point of beginning;

and excepting therefrom:

That part of the Southeast Quarter of Section 23 and part of Section 26, Township 40 North, Range 4, East of the Third Principal Meridian, described as follows: Commencing at the southeast corner of said Section 26; thence northerly along the east line of said Section 26, 33.0 feet to a line drawn parallel with and 33.0 feet northerly of the south line (measured at right angles thereto) of said Section 26 for a point of beginning; thence westerly along said parallel line, 50.0 feet to a line drawn parallel with and 50.0 feet westerly of said east line (measured at right angles thereto); thence northerly parallel with said east line, 1991.64 feet; thence westerly parallel with the north line of the South Half of said Section 26, 3011.08 feet to the easterly right of way line of the Chicago and Northwestern Transportation Company; thence northeasterly along said easterly right of way line, 2065.72 feet to a point that is 1744.02 feet southwesterly of the northwest corner of Parcel G as shown on the plat of Evans Subdivision, DeKalb, Illinois; thence easterly along a line forming an angle of 66 degrees 00
minutes 40 seconds with the prolongation of the last described course, 2217.55 feet to the east line of
the Northeast Quarter of said Section 26; thence southerly along said east line of the Northeast Quarter
1237.22 feet to the southeast corner of said Northeast Quarter; thence southerly along the east line of
the Southeast Quarter of said Section 26, 2623.40 feet to the point of beginning, in DeKalb Township,
DeKalb County, Illinois.

Legal Description Parcel 6: Goodrich Property

Commencing at the Northeast corner of Section 26, Township 40 North, Range 4, East of the Third
Principal Meridian, thence Southerly along the East line of said Section 26, a distance of 275 feet to a
point, which point is the place of beginning; thence continuing Southerly along the said East line of
Section 26, a distance of 615.69 feet to a point; thence Westerly at right angles to the last described
course, a distance of 283.0 feet; thence Northerly parallel to the said East line of Section 26, a distance
of 615.69 feet to a point; thence Easterly at right angles to the last described course, a distance of 283.0
feet to the place of beginning, in DeKalb County, Illinois.
DEVELOPMENT GUIDELINES

DeKalb Associates
DEVELOPER
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I. Introduction

These Development Guidelines have been established pursuant to the Declaration of Covenants, Conditions and Restrictions by the Development Review Committee to serve as a practical reference regarding various aspects of site development Within Park 88, and are intended to supplement and clarify the Declaration. If there are any conflicts or inconsistencies between the provisions of Illinois law, the Articles of Incorporation, the Declaration, and these By-Laws, then the provisions of Illinois law, the Declaration, the Articles of Incorporation and the By-Laws (in that order) shall prevail. All standards set forth in these guidelines are subject to all applicable governmental regulations. Drawings included herein are for illustration only, and are not intended to represent actual improvements. Amendments to the Guidelines may be made at any time by the Committee.

It is the intent of the Developer that the Guidelines and Declaration will ensure a high quality environment for business, with ample landscaped areas and attractive structures. The Guidelines and Declaration also serve to protect Owners and Occupants against improper uses within the Park, as well as development which are inconsistent with the Park's character.

All plans for development within the Park are reviewed for approval by the Committee. The Committee shall assist, and cooperate with, Owners, architects and developers to assure compliance with the Guidelines and Declaration.
II. Development Review and Approval Procedures

Plans and specifications for all Improvements (including exterior remodeling or alteration of existing structures) within the Park must be submitted to and approved in writing by the Committee prior to the commencement of any construction. Applicants are responsible for securing all necessary local, state and federal permits, and for payment of all fees associated with the development.

Applicants are encouraged to have a preliminary conference with the Committee to review the application process and discuss issues of design and construction which are particular to the site.

Three (3) complete sets via Federal Express or similar transmittal of the required information must be submitted to the Committee for review and approval. One set will be returned to the Applicant with written approval, including any conditions, or disapproval.

The Committee shall endeavor to approve or disapprove all Plans within thirty (30) days after receipt of a completed application and payment of the Review Fee. If the Committee fails to approve or disapprove the Plans within thirty (30) days of receiving the documents, approval shall be deemed to have been denied, unless Applicant delivers to the Committee within five (5) days after the expiration of the thirty (30) day period a notice of non-action. If the Committee fails to respond to said notice within ten (10) days of receipt of the notice, Applicant may consider all Plans approved.

If any variance to the Covenants, Guidelines or Zoning Ordinance is desired, the request shall be specifically stated in the submittal with full documentation of the reason. Failure by the Committee to respond to a request for a variance will be considered disapproval.

In addition to the required Plans submitted to the Committee for review, an Applicant must submit the required Review Fee established by the Committee. The fee is currently estimated to be $250 per acre and covers Developer's costs to review Plans for conformance to the Guidelines. This payment shall be made payable to Park 88 LLC, or its designee.
Development Guidelines

The following list identifies the minimum required information to be submitted by the Applicant to the Committee:

A. Development Approval Application
   All plans submitted for review must be accompanied by a completed Development Approval Application. (See Appendix III)

B. Site Plan Illustrating Location & Dimensions of:
   (See Development Standards)
   1. Proposed setbacks for building and parking areas
   2. Building, storage, loading and trash areas
   3. Parking areas, total spaces provided and landscape islands
   4. All means of ingress to and egress from the Site, including driveways and pedestrian walkways
   5. Sidewalks, if required by the City
   6. Location of Site identification signs

C. Engineering Plan Illustrating:
   (See Development Standards)
   1. Drainage, clearing and grading
   2. Utility connections, location of existing utilities on Site and in perimeter Streets, and method of installation, i.e., cutting, boring, etc.
   3. Erosion control measures
   4. Lighting (including fixture selection)
Development Guidelines

D. Architectural Plan Illustrating:
   (See Architectural Design Standards)
   1. Building Elevations, showing location of any building mounted signs
   2. Ground floor plans with finished floor elevations
   3. Building materials and colors
   4. Brief description of mechanical systems, including the treatment of screening all mechanical equipment

E. Landscape Plan Illustrating:
   (See Landscape Standards)
   1. A complete plant list, including location, size and species of all trees, shrubs and ground covers and areas to be seeded or sodded
   2. Irrigation plan for the Secondary Landscape Area described in Article VI.A.2
   3. Landscape grading plan
   4. Specifications for landscaping installation
   5. Hardscape areas including Site Furniture, if any

F. Sign Plan Illustrating:
   (See Sign Standards)
   1. Size and location of all Signs to be installed on the Site
   2. Materials and colors
   3. Lighting relating to the Sign(s)
   4. Sign message including all graphics, copy and layout
Development Guidelines

III. Development Standards
The purpose of the Development Standards is to ensure that all site development within the Park is of a consistently high quality, thus helping protect and enhance the enjoyment and investment of all those locating within the Park.

A. Site Uses
1. The permitted uses are those described in Appendix IV.
2. The following uses shall not be permitted in any part of the Park:
   a. Any use that is in violation of any statute, law, ordinance, regulation or ruling of any public authority having jurisdiction
   b. Any use that in the opinion of the Committee could produce adverse effects upon the Park in terms of the health, safety or welfare of Persons or which may be harmful to the Improvements or which in the opinion of the Committee does not comport with the intent of the development plan for the Park
3. Any use not specified as permitted is prohibited unless approved by the Committee

B. Floor-Area-Ratio
1. The maximum floor-area-ratio for all Sites shall be 0.75, subject to increase to 1.0 on individual Sites if deemed appropriate by the Committee to the proposed character and use.

C. Site Grading
1. Site grading shall be done in such a way as to preserve and enhance the topographic features and to provide positive drainage.
2. No slopes of any type shall be steeper than 3:1, unless approved by the Committee.
   Where space limitations demand, terracing with approved retaining walls shall be utilized. (See Fig. 1)
Development Guidelines

3. Where retaining walls are required, they shall be of a material compatible with the Building architecture.
4. Berms, channels, swales, etc. shall be graded in such a way as to be an integral part of the grading and paved surface, and designed with smooth transitions between changes in slope.
5. Existing drainage ditches on a Site shall not be altered without approval of the Committee, and storm water overflow routes shall be maintained.
6. Site grading and drainage shall take into consideration drainage from adjacent Lots.
D. Setbacks and Landscape Yards

Building Setback Lines for the Park have been designed to establish a coordinated streetscape image, as well as to provide sufficient space between streets and Buildings and parking areas ensuring privacy and sound control. To accomplish these goals, no Building shall be constructed in the area located between a Building Setback Line and Site Boundary Line as described below:

Yard Setback Requirements

<table>
<thead>
<tr>
<th>Yard</th>
<th>Building Setback</th>
<th>Parking Setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front Yard</td>
<td>30'</td>
<td>30'</td>
</tr>
<tr>
<td>Corner Side Yard</td>
<td>30'</td>
<td>30'</td>
</tr>
<tr>
<td>Interior Side Yard</td>
<td>30'</td>
<td>5'</td>
</tr>
<tr>
<td>Rear Yard</td>
<td>20'</td>
<td>5'</td>
</tr>
</tbody>
</table>

The Committee Shall have the discretion to approve or disapprove a front yard setback equivalent in area to the length of the Lot frontage x 30 feet, but at no point less than 10 feet.
Development Guidelines

Setbacks and Building Height: The maximum building height allowable is 100 feet. Additional Building Setback Lines for building heights over 40 feet are required. These setbacks shall be increased by one (1) foot for each additional one (1) foot in height above 40 feet.

Exclusions: The following improvements may be excluded by the Committee from these setback restrictions:

1. Improvements below and covered by the ground
2. Steps, sidewalks, driveways and curbing as approved by the Committee
3. Landscaping as approved by the Committee
4. Signs and Site Furniture - natural objects, flagpoles, statues, benches, tables, etc. as approved by the Committee

E. Parking, Driveways and Sidewalks
1. No overnight on-street parking is allowed within the Park. On-site parking areas shall be sufficient to serve the business use conducted on each Site.
2. The number and location of access drives per Site will be subject to review by the Committee to ensure traffic safety and the intended landscape continuity of setbacks, while allowing the necessary flexibility for development.
3. Adjacent Sites may share a driveway with Committee approval.
4. All surfaces used as parking, driveways or walkways shall be paved with a material acceptable to the Committee.
5. All paved areas used for auto parking or entrance driveways shall be bordered by curbs and gutters.
6. Concurrent with the construction of improvements in a Lot, the owner shall construct paved sidewalks in accordance with the Development Guidelines. The owner shall maintain and repair all sidewalks at all times.
F. Loading and Servicing Areas
   1. Loading and servicing areas shall be designed so that the entire operation is conducted within the confines of the Site. No loading vehicles may extend beyond the Site Boundary Line, and no turning movements will be permitted in the Streets.
   2. Loading and servicing areas shall be adequately screened from Streets and Building entrances by architectural or landscape features and shall be designed as an integral part of the Building architecture.
   3. No loading or servicing shall be conducted between a Building and any Street without written approval by the Committee. All areas used for loading and servicing shall be paved.
   4. All areas used for loading and servicing shall be paved.

G. Outside Storage and Equipment
   1. No articles, goods, materials, fixed machinery or equipment, vehicles, trash, animals or similar items shall be stored or kept in the open or exposed to view from adjacent Sites and Streets without the prior written approval of the Committee.
   2. Any articles, goods or materials to be stored other than in a Building shall be screened from adjacent Sites and Streets.
   3. Vehicles shall be stored in approved areas only.
   4. Approval shall not be required for the temporary storage of materials, equipment and supplies needed for the construction of permanent improvements upon a Site, provided they are completely removed immediately upon completion of construction.
H. Fencing and Walls
   1. No fence or wall of any kind shall be constructed unless written approval is secured from
      the Committee.
   2. Materials and colors for fences and walls shall be compatible with Building Architecture.
   3. Black vinyl coated chain link fencing is permitted except within 30' of a public right-of-way.

I. Waste and Refuse
   All waste materials or refuse shall be stored and maintained in closed containers screened
   from view by permanent structures, fencing, or landscaping compatible with the Building's
   design. All waste and refuse shall be frequently and regularly removed from the Site.

J. Site Lighting
   1. Lights shall be placed so as not to cause glare or excessive light spillage on other Sites;
      intensity shall be no greater than required for vehicle and pedestrian safety.
   2. All light pole bases are to have matching base covers. All concrete poles are to be at
      grade except in paved areas.

(Fig. 2) Site Lighting
3. Building-mounted lighting is restricted to loading and storage locations or similar service areas at the back or along the sides of Buildings and shall not be used for lighting parking areas or sidewalks. Building-mounted light fixtures shall be shielded and shall not project above the fascia or roofline. The shields shall be painted to match the surface to which they are attached.

K. Utility Installation
1. All permanent utility lines shall be underground, and should be located and installed so as to avoid damage to existing vegetation.
2. All utility appurtenances including telephone pedestals, utility meters, transformers, etc. shall be located as far from the Street as practicable and shall be screened so as not to be visible from the Street.
3. No open cuts in the Streets where final surface has been installed shall be made for utility connections without approval of the Developer.

L. Construction Phase
1. It is important that the Park's Storm Water Facilities, including detention ponds and any wetland ponds, remain free of siltation during the construction phase. In order to minimize soil erosion by water and wind, practical combinations of the following procedures shall be used:
   a. Expose smallest practicable area of cleared land during construction.
   b. Temporary ditches, dikes, vegetation and/or mulching shall be used to protect critical areas exposed during construction.
   c. Sedimentation controls (i.e., debris basins, desilting basins, silt traps/fencing or straw bales) around the construction area shall be installed and maintained to remove sediment from runoff waters during construction.
d. Permanent landscaping shall be installed promptly within Sixty (60) days after occupancy permit approval, subject to seasonal constraints.

e. Owner shall remove any silt accumulation in basins and ditches upon completion of construction.

2. Owners of Sites adjacent to detention ponds shall fence off such areas during the entire period of construction with silt fencing and hay bales until all landscaping is installed and a vegetative cover crop has been established on the Site.

3. All Park utilities, including irrigation, are underground, and the Applicant is responsible for knowing their whereabouts and protecting them during construction. Any damage to utilities shall be reported immediately to the Association, and the cost of repairs shall be paid by Applicant.

4. Construction sites shall be maintained in a neat and orderly manner, and work shall be conducted in a manner so as to prevent dirt and debris from accumulating beyond boundary lines of the Site. All trash shall be kept in enclosed containers and removed frequently.

5. Construction access shall be coordinated with and approved by the Committee. The but not limited to, fencing of existing parkway trees. The Owner shall be responsible for any damage to Streets and Improvements within or bordering the Site.

6. The Owner is responsible for keeping existing Streets free and clear of all dirt, soils, construction material or debris on a daily basis.

7. A construction site plan shall be submitted showing the locations of the contractor's field office or trailer, material stockpiling, parking, fences, access points, loading and unloading and temporary signs.
M. Storm water Management
   1. Owners may replace open drainage ditches on their Site with underground storm water pipe upon approval of the Committee.

IV. Architectural Design Standards
The Purpose of the Architectural Design Standards is to assist the Applicant in achieving a style, character and quality of architectural design which serves to enhance not only the individual facility, but also the overall aesthetic appearance of the Park.

   1. The approval of exterior Building materials, including type, color, texture and durability, and the extent of use of any single material or combination of materials shall be solely at the discretion of the Committee.
   2. All Buildings on a Site shall be of similar, compatible design and materials.
   3. No HVAC, electrical or other equipment shall be installed on the roof of any building or hung on the exterior walls unless screened, covered or installed in a manner approved by the Committee.
   4. Objects such as water towers, storage tanks, processing equipment, cooling towers, communication towers, vents and any other improvements or equipment shall be compatible with the Building architecture or screened from adjacent Sites and Streets.
V. Sign Standards

The purpose of the Sign Standards is to establish a coordinated program that provides for graphic communication in a distinctive, consistent and aesthetically pleasing manner. All proposed Signs must be submitted to the Committee for approval before installation. All Signs shall be maintained in a safe and presentable condition at all times.

There are four (4) types of signs employed within the Park: Identification, Directional, Traffic Control and Temporary Signs. Any other type of Sign treatment requires a request for variance prior to approval. The following defines the function, location, graphic and basic construction criteria for each category. Construction specifications, including Park standard colors and copy size, for each category are available from the Development Committee.

A. Identification Signs

There are two types of Identification Signs: Streetscape Identification, located at the entrance to a Site from a street, and Building Identification, located at the entrance to a building.

1. Streetscape Identification Signs

There are two types of Streetscape Identification Signs that are used in the Park: Internally Illuminated or Post and Panel. Signs shall be single faced and mounted parallel to the street.

a. Internally Illuminated Streetscape Identification Signs

1. Size

There are three sign lengths available: five (5), ten (10) or fifteen (15) foot. The five (5) foot length is to be used for identifying a single occupant only. The ten (10) foot length may be used for single or dual occupant identification. The fifteen (15) foot length sign may be used for one, two, or three occupants. All signs are to be a standard total height of four (4) feet (See Fig. 3)
Development Guidelines

2. Layout

A designated area is reserved for occupant identification and may include the occupant’s logo and/or logotype. A margin of 6” must be maintained around this area. Address numerals are to be located in the designated area at the top of the sign.

Address numerals and occupant identification shall be cut-out, push thru illuminated copy. Address numerals shall be in the standard type "Galliard Roman." (See fig. 3)

3. Construction

These signs are to be freestanding, ground-mounted units of aluminum construction with no visible fasteners or retainers.

4. Colors

Address panel, occupant panel, return sides, reveals and base cover are to be painted in the Park standard sign colors. Cut-out push thru copy shall use the Park standard plexi-glass lens with a white diffuser back-up.
b. Post and Panel Streetscape Identification Signs

1. Size

There are two Sign lengths available: five (5) or ten (10) foot. The five (5) foot length is to be used for identifying a single occupant only. The ten (10) foot length may be used for single or dual occupant identification. All Signs are to be a standard total height of four (4) feet. (See Fig. 4)

2. Layout

A designated area is reserved for occupant identification and may include the occupant's logo and/or logotype. Occupant identification may be silk screened or pattern cut vinyl copy. A margin of 3” must be maintained around this area.

Address numerals are to be located in the designated area at the top of the sign, and are to be silk screened or pattern cut vinyl in the standard type "Gilliard Roman." (See Fig. 4)
3. Construction

These Signs are to be freestanding, ground-mounted units of aluminum construction with no visible fasteners or retainers.

4. Colors

Address and occupant name panels. Panel supports, reveals and address numerals are to be painted the standard Park sign colors. Occupant identification copy shall be the Park standard color in pattern-cut vinyl.

2. Building Identification Signs

An occupant may use either ground mounted or building mounted Building Identification Signs. These Signs shall be designated so as to be compatible with the building's architecture, material and color.

All such signs must be approved by the Committee prior to installation.

B. Directional Signs

Directional Signs display directional and/or regulating information for circulation within the Site. They may be either building mounted or aluminum post and panel units with a maximum height of 9'6". Sign panels are to be 18" or 24" in width and 24" in height. Sign panels and sign posts are to be painted in the Park standard colors. Copy for directional information is to be black reflective pattern-cut vinyl Helvetica Medium letters and pattern arrow.

C. Traffic Control Signs

All Traffic Control Signs shall be of aluminum construction and shall have panel faces and heights which meet the requirements of the U.S. Transportation Department. Posts shall be Unistrut Telespar or equivalent with an aluminum tube sleeve painted the Park standard color.
D. Temporary Signs
Temporary construction signs are allowed within the Park. Temporary real estate marketing Signs are allowed only if consented to by the Committee. Only one temporary Sign shall be permitted on a Site at any given time and must be removed immediately upon completion of the construction or marketing activity. A single Temporary Sign may contain both marketing and construction information. All Temporary Signs must be approved by the Committee prior to erection. (See Fig. 5)
1. Size and Construction

Temporary Signs shall be single faced and mounted parallel to the street. Construction is to be post and panel using vinyl coated wood with aluminum posts. The signs shall use a vertically mounted 4' X 8' panel and have a total height of 10'-0". The maximum overall width for Temporary Sign is 5'-0". These Signs shall be located a minimum of 12' (twelve) feet from the curb.

2. Layout and Colors

Two designated areas allow for building information and contractor or marketing information. A margin of 3" must be maintained around these areas.

The support posts and sign panel are to be painted in the Park standard sign colors.

Typography for message copy shall be Helvetica Medium pattern-cut vinyl letters, using the Park standard colors.

F. Sign Lighting

Floodlighting of any Sign other than Post and Panel Identification Signs is not permitted. All lighting of Post and Panel Identification signs must be approved by the Development Review Committee.
VI. Landscape Standards

The Landscape Standards are intended to promote compatible and continuous landscape treatment throughout the Park, and to minimize disturbance to and loss of native trees and woodlands. The primary design objective is to visually integrate new development with the natural surroundings. The landscape plan should emphasize naturalized design by utilizing plant material that is sympathetic in color, form and texture to the naturalized planting goals.

More specifically, the standards are intended to provide for an attractive, well-maintained appearance in areas not covered by Buildings or parking, and minimize the adverse visual impact of large paved areas.

A. Landscape Area Designations

A hierarchy of landscape areas has been established to give the Park a sense of order and orientation. The following identifies each landscape area as well as the responsibilities of both the Owner and the Association specifically as they relate to installation and maintenance. (See Fig. 6)

(Fig. 6) Landscape Area Designations
1. Primary Landscape Area

Landscaping within the Primary Landscape Areas, and at the Park entrances, shall be installed by the Developer and maintained by the Association, pursuant to easement reservations where these areas lie within a Site. Any disturbance to the grading or landscaping of these areas must be approved by the Committee and must be repaired or replaced in kind.

2. Secondary Landscape Area

Landscaping within the Secondary Landscaping Area shall be installed by the Owner. Subject to a minimum one-year warranty, following acceptance the maintenance responsibility shall be transferred to the Association.

a. In all cases these areas shall have a ground plane of lawn to maintain continuity and shall incorporate berming to give relief to the landscape and to adequately screen parking. A minimum of 6 inches of topsoil shall be used for lawn and plant beds.

b. Continuous berming 2'-3' in height, except at curb cuts, is required, with smooth transitions to existing berms. The slope towards the street shall not exceed a 4:1 ratio. Supplementary trees of not less than 2 1/2 inches in caliper shall be installed and shall not be less in number than one for every twenty-five (25) lineal feet of Street frontage. Trees shall be massed informally to articulate the Building facade and should not be spaced evenly along the Street. (See Fig. 7)
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c. Supplementary trees may include, but are not limited to, the following:

<table>
<thead>
<tr>
<th>Scientific Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acer platanoides</td>
<td>Norway Maple</td>
</tr>
<tr>
<td>Celtis occidentalis</td>
<td>Hackberry</td>
</tr>
<tr>
<td>Fraxinus Americana</td>
<td>White Ash</td>
</tr>
<tr>
<td>Fraxinus pennsylvanica</td>
<td>Green Ash</td>
</tr>
<tr>
<td>Ginko biloba</td>
<td>Ginko (male cultivar only)</td>
</tr>
<tr>
<td>Phellodendron amurense</td>
<td>Amur Cork</td>
</tr>
<tr>
<td>Gleditsia-all inermis species</td>
<td>Honeylocust (thornless)</td>
</tr>
<tr>
<td>Pyrus calleryana</td>
<td>Pear</td>
</tr>
<tr>
<td>Quercus-all species</td>
<td>Oak</td>
</tr>
<tr>
<td>Tilia-all species</td>
<td>Linden</td>
</tr>
</tbody>
</table>

d. An irrigation system, which connects to the Park's overall system, shall be required for the Secondary Landscape Area.

3. Site Landscape Area

The Site Landscape Area consists of the area within the Site Boundary Lines not covered by Buildings or vehicular paving or identified as a Primary, Secondary or Parking Landscape Area. Installation and maintenance of landscaping within the Site Landscape Area is the responsibility of the Owner, and the landscape plan must be approved by the Committee.

a. The minimum Site landscaping requirement shall be a lawn ground plane and shall include not less than one 2 1/2 inch caliper tree per 1500 square feet of landscaped area. This landscaping should be designated to minimize the adverse effects of long expanses of Building wall, exposed parking and service areas. Parking areas adjacent to Streets shall be adequately screened by berms or plantings. Lawn areas may be sodded or seeded. (See Fig. 8)

b. As an exception to the minimum Site landscaping requirements, Owners anticipating future Building expansion may request an exemption from the Committee from the tree planting requirement in the area redesignated as being within the future Building footprint. All other landscape requirements apply to expansion areas.
4. Parking Landscape Area

The Parking Landscape Area consists of the landscape islands within the parking area. Installation and maintenance of landscaping within the Parking Landscape Area is the responsibility of the Owner.

a. It is the general intent that parking areas be adequately screened from Street view and from view from adjacent Sites. (See Fig. 8)

b. Landscape islands within the automobile parking area shall be a minimum of 150 square feet and shall include a minimum of one 2 1/2 inch caliper tree. They shall be located so as to break up large expanses of paved surface.

c. The automobile parking landscape area shall have a minimum of one 2 1/2 inch caliper tree for every 20 parking spaces.

(Fig. 8) Parking Lot Screening
B. Preservation of Parkway Trees
All reasonable efforts shall be made to preserve existing parkway trees and, if damaged, they shall be replaced promptly by Owner. Fencing shall be installed around the drip line of all parkway trees during the construction period.

C. Landscape Installation
2. In all cases in this Section IV where a tree with a caliper of no less than 2 1/2 inches is required and an Owner elects to use coniferous or multi-stem trees in place of some or all of the same, the minimum heights shall be 7 feet and 8 feet respectively.
3. Lawns shall be seeded or sodded. All Primary and Secondary areas shall be sod.
VII. Maintenance Standards
The purpose of the Maintenance Standards is to define the maintenance responsibilities for
Improvements within the Park in order to ensure a uniform, neat and orderly appearance.

A. Maintenance of Landscaping
1. Primary and Secondary Landscape Areas and Park entrance areas, including irrigation,
   are maintained by the Association. Secondary Landscape Areas, however, are
   maintained by the Owner until such time as they are accepted by the Association
2. Site landscape Areas and Parking Landscape Areas shall be maintained by the Owner
   and shall include the following:
   a. All plantings shall be maintained in a healthy growing condition. Fertilization,
      cultivation, pruning, weeding and watering shall be carried out on a regular basis.
   b. Dead or dying plants shall be removed promptly and replaced as soon as weather
      conditions permit.
   c. All plantings are to be watered as often as necessary to maintain healthy growing
      conditions.
   d. All lawns shall be kept neat and mowed to a maximum of three (3) inches in height

B. Maintenance of Improvements Other than Landscaping
Owner Responsibility:
1. All Owners and Occupants shall maintain their Improvements in good and sufficient repair
   and in an aesthetically pleasing manner.
2. Improvements which are damaged by the elements, vehicles, fire or any other cause shall
   be repaired as promptly as the extent of damage will permit.
3. Buildings which are vacant for any reason shall be kept locked and the windows shall be
   glazed in order to prevent entrance by vandals.
4. The Site shall be maintained in a safe, clean and neat condition free of rubbish and
   weeds. Roads and pavements shall be kept true to line and grade and in good repair
Appendix I

Glossary

**Park 88.** "Park 88" (sometimes herein referred to as the "Park") is the name of the property and the improvements located thereon.

**Applicant.** "Applicant" shall mean an Owner or the agent of an Owner or Person possessing valid power of attorney or other proxy or authorization of an Owner, sufficient in the reasonable judgment of the Committee to empower such person to act on Owner's behalf for the purpose of securing approval of plans and specifications for an improvement within the Park.

**Architect.** "Architect" shall mean a person holding a valid and effective license to practice architecture in the State of Illinois.

**Association.** "Association" shall mean Park 88 Association, an Illinois not-for-profit corporation, created by Article III of the Declaration.

**Building.** "Building" shall mean and include the principal structures on any Site, including all projections or extensions thereof, and all garages, outside platforms, outbuildings, decks and other ancillary structures and facilities except where herein ancillary structures and facilities are otherwise specifically referred to.

**Building Setback Areas.** "Building Setback Areas" are those areas lying between the Building Setback Lines and the Individual Lot Property Lines.

**Building Setback Lines.** "Building Setback Lines" are those lines so designated on the Subdivision Plat.

**City.** "City" shall mean the City of DeKalb, State of Illinois.

**Committee.** "Committee" shall mean the Development Review Committee created by Article 8 of the Declaration.

**Common Area Outlots.** "Common Area Outlots" shall mean all Lots now or in the future designated on the Subdivision Plat as common areas and which are owned by the Association for the common use and enjoyment of the Owners.

**Declaration.** "Declaration" shall mean the Park 88 Declaration of Protective Covenants as recorded.
Development Guidelines

**Developer.** "Developer" shall mean DeKalb Associates, an Illinois Partnership, its successors and assigns.

**Guidelines.** "Guidelines" shall mean these written Development Guidelines promulgated by the Developer for the development of the Park as the same may be modified or supplemented by the Developer or Committee, from time to time, which set forth the design standards and requirements for the construction and maintenance Improvements on a Site, which Guidelines shall be referred to by the Committee in determining the acceptability of a particular proposed Improvement and/or use of a Site.

**Improvements.** "Improvements" shall mean buildings, private roads, driveways and walkways, parking areas, outdoor lighting, fences, screening walls and barriers, retaining walls, stairs, decks, windbreaks, irrigation systems, utilities and related equipment, landscaping, sculpture, poles, signs, loading areas and all other installations, structures and landscape improvements, whether above or underground.

**Lot.** "Lot" shall mean any portion of the Property which is shown as a subdivided lot in the Official Records or on the Subdivision Plat.

**Occupant.** "Occupant" shall mean any Person legally entitled to occupy or use any part of a Site.


**Owner.** "Owner" shall mean the record owner of a fee simple title to any Site, whether one or more Persons, and including the Developer.

**Park.** "Park" shall mean Park 88.

**Parking Setback Areas.** "Parking Setback Areas" are those areas lying between the Parking Setback Lines and the Site Boundary Lines.

**Parking Setback Lines.** "Parking Setback Lines" are those lines so designated in the Guidelines.

**Person.** "Person" shall mean any natural individual, corporation, partnership, trustee, or any other legal entity capable of holding title to real property.

**Property.** "Property" shall mean all of the real property described in Article I of the Covenants and such additional real property as may be added from time to time.

**Record / Recorded.** "Record" or "Recorded" shall mean, with respect to any document, the recordation of said document in the Official Records.

**DeKalb Associates.**

Development Guidelines
Development Guidelines

**Review Fee.** "Review Fee" shall mean the amount charged by the Committee to review an application for development within the Park.

**Sign.** "Sign" shall mean any structure, device or contrivance and all parts thereof which are erected or used for advertising, directional or identification purposes or any poster, bill, bulletin, printing, lettering, painting, device or other advertising of any kind whatsoever, which is placed, posted or otherwise fastened or affixed to the ground and/or structures within the boundaries of the Property.

**Site.** "Site" shall mean a contiguous area of land within the Property which is owned of Record by the same Owner, which has frontage upon a street and which is used or intended for the construction of Improvements, whether or not shown on any Subdivision Plat as one Lot or as a combination of contiguous Lots or portions of contiguous Lots or one parcel of real property or a combination of parcels or portions of parcels.

**Site Boundary Line.** "Site Boundary Line" shall mean a line bounding a Site as shown on a survey or Plat of Subdivision.

**Site Furniture.** "Site Furniture" shall mean any man-made or natural object used on the Site for decorative or incidental purposes (including flagpoles, fountains, statues, benches, tables, and decorative walls) which is not a building, Sign, parking area, railroad track, driveway or landscaping. Any Site Furniture is considered a variance and required Committee approval prior to installation.

**Storm Water Facilities.** "Storm Water Facilities" shall mean the storm water system serving the Property, including areas designated a stormwater drainage, retention or detention easements on the Subdivision Plat, conduits, inlet and outlet storm sewers and structures, wells (including electrical service and discharge pipes) designed to replenish retention ponds, catch basins, inlets, inlet leads, catch basin leads, detention basins, retention ponds, and any rip-rap extending above water line of such basins or ponds. The Storm Water Facilities do not include: (a) any facility dedicated to and accepted by any governmental body which has agreed or is authorized to maintain it, and (b) the storm water collecting facilities on any Site the principal purpose of which is to serve that Site.

**Street.** "Street" shall mean any publicly dedicated thoroughfare within or adjacent to the Property and shown on any Subdivision Plat, parcel map, or record of survey, whether designated thereon as a street, boulevard, place, drive, road, terrace, way, lane, path, cul de sac, circle, court or any similar designation.

**Subdivision Plat.** "Subdivision Plat" shall mean any plat of the Property or portion of the Property now or in the future legally recorded in the Official Records.

**Zoning Ordinance.** "Zoning Ordinance" shall mean the zoning ordinance enacted by the City of DeKalb.

DeKalb Associates
Development Guidelines

Page 28
Appendix II

Development Review Committee

All correspondence with the Development Review Committee should be directed to:

Park 88
Development Review Committee
c/o DeKalb Associates
25033 West 91st Street
Naperville, IL 60564
Appendix III

Park 88
Development Approval Application

Project Address

Applicant (name) (telephone)

(address)

Project Contact (Individual with long-term responsibility for the project)

(address)

Owner (If other than Applicant) (name) (telephone)

(address)

Project Architect/Designer (name) (telephone)

(address)

Project General Contractor (name) (telephone)

(address)

Project Landscape Architect (name) (telephone)

(address)

Review Fee $ (See Article II, Development Guidelines) Total Site Area ___________ sq. ft.

Total Site Landscape Area ___________ sq. ft. (See Article VI, Section A-3, Development Guidelines) Total Paved Parking Area ___________ sq. ft.

DEKALB ASSOCIATES Development Guidelines
Development Guidelines

Total Landscaping Parking Area ______________________ sq. ft.

(See Article VI, Section A-4, Development Guidelines)

Number of Parking Stalls __________________________

Building(s) Height ______________________ ft.

Total Building(s) Area ______________________ sq. ft.

Floor-Area-Ratio
(See Article III, Section B, Development Guidelines)

Proposed Use (Include information on any measures taken to mitigate adverse effects of any industrial/commercial process)

________________________________________________________________________

________________________________________________________________________

Number of employees or persons occupying Property (current/projected) __________

________________________________________________________________________

Proposed Construction Schedule (include all phases of construction)

________________________________________________________________________

________________________________________________________________________

Request for Variance(s) (Include all pertinent data)

________________________________________________________________________

Date Received
Park 88

Development Review Committee

By: __________________________________________

Name: ________________________________________

DEKALB ASSOCIATES
Development Guidelines
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

DEKALB ASSOCIATES

DEVELOPER

2004016020
ARTICLE I
DEFINITIONS

Section 1. "Association" or "Property Owners Association" shall mean and refer to the Park 88 Association, an Illinois not-for-profit corporation, its successors and assigns.

Section 2. "Board" shall mean and refer to the Board of Directors of the Park 88 Association. The "Board" shall be the elected body having its normal meaning under Illinois law.

Section 4. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which by contract or otherwise become the responsibility of the Association. In addition, the office of any property manager employed by or contracting with the Association and located on the Properties and any public right-of-way may be part of the Area of Common Responsibility.

Section 5. "Common Area" shall mean all real and personal property and land easements which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of the Owners.

Section 6. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws of Park 88 Association, attached as Exhibit "D" to this Declaration and incorporated herein, and the Articles of Incorporation of the Association.

Section 7. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined and set forth by the Board of Directors of the Association.

Section 8. "Covenantor" shall refer to Old Kent State Bank as the Successor Trustee to Merchants National Bank of Aurora as Trustee under Trust Agreement dated the 12th of July A.D. 1996 and known as Trust No. 5102, or any successor, successor-in-title, or assign who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and sale, and who is designated as the Covenantor hereunder in a recorded instrument executed by the immediately preceding Covenantor. "Covenantor" shall mean and refer to its successors or assigns (other than the purchaser of a Lot).

Section 9. "General Assessment" shall mean and refer to assessments levied by the Association to fund expenses applicable to all Members of the Association.

Section 10. "Mortgage" shall refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

Section 11. "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

Section 12. "Mortgagor" shall refer to any Person who gives a mortgage.
Section 13. "Property" or "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto and such real property described in Exhibit "A" attached hereto and such additional property as may hereafter be annexed by Subsequent Amendment to this Declaration (the Properties shall sometimes be referred to as Park 88 herein).

Section 14. "Special Assessment" shall mean and refer to assessments levied in accordance with Article X, Section 3 of this Declaration.

Section 15. "Subsequent Amendment" shall mean an amendment to this Declaration that imposes, expressly or by reference, additional restrictions and obligations on the properties described therein, or both.

Section 16. "Lot" shall mean a portion of the Properties, whether developed or undeveloped, intended for any type of independent ownership for use and occupancy as permitted by applicable zoning ordinances, as such zoning may be amended or modified from time to time. The term shall include all portions of the land owned, including any structure thereon, as well as unimproved property intended for such permitted development, and shall specifically include, without limitation, office, institutional, light industrial, warehouse, research and development, retail, restaurant, and neighborhood business properties.

Section 17. "Land Easement" shall mean any portion of a Lot
   1. Created by Covenantor
   2. Created by others; accepted by the Association
   3. Vacate if approved by the Board of Directors of the Association and vacation approved by the property Owner; effective 30 days after notice to membership.

Section 18. "Covenants and Restrictions" shall mean and refer to the covenants, restrictions, conditions, reservations, easements, charges, and liens specified in this Declaration.

Section 19. "Development Tract" shall mean the property herein referred to and legally described in Exhibit A which by this Declaration is submitted to the covenants, restrictions, conditions, reservations, easements, charges, and liens herein described. (The Tract shall sometimes be referred to as Park 88 herein.)

Section 20. "Gross acreage of the Development Tract" shall mean the gross acres less right-of-way dedications and shall be deemed to be ______ acres.

Section 21. "Member" shall mean and refer to a Person or entity which holds membership in the Association. There shall be three (3) classes of Members: "A" - Owner of Lots with no rail availability; "B" - owners of Lots that are rail users or have rail availability; or "C" - the Covenantors. "A" or "B" shall be designated at the time of sale of any property by the Covenantors. Modification of "A" or "B" membership may be made annually by the Covenantor. "A" or "B" referred to herein shall collectively be all "A" and "B" Members.

Section 22. "Occupant" shall mean a Person or entity, other than an Owner, in lawful possession of a Lot within the Development Tract.

Section 23. "Owner" shall mean the Person or Persons or entity whose estates or interests, individually or collectively, aggregate fee simple ownership of a Lot within the Development Tract, and its successors and assigns. For the purpose of this Declaration unless otherwise specifically provided
herein, the word "Owner" shall include(;) any trust and beneficiary of a trust, holding legal title to a Lot and(;) the Covenantor as to all unsold lots within the Development Tract.

Section 24. "Person" shall mean a natural individual, corporation, partnership, or other entity capable of holding title to or any lesser interest in real property.

Section 25. "Record" or "Place of Record" shall mean to record in the Office of the Recorder of Deeds of DeKalb County, Illinois.

Section 26. "Stormwater Management System" shall mean that network of interrelated drainage facilities, including storm sewers, culverts, lakes, ponds, dry-bottom detention basins, curbs and gutters, underdrains, depressions, swales, ditches, berms, overland flood routes and all associated appurtenances which serve collectively to 1) convey surface runoff and subsurface flows, resulting from storm precipitation, through the site, 2) attenuate peak flows and accommodate temporary storage of excess runoff volumes, and 3) provide for release of storm runoff, at controlled rates, to downstream receptors.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Subdivided Property. The real property, legally described in Exhibit A, is and shall be held, sold, conveyed, transferred, occupied, mortgaged, and encumbered subject to this Declaration.

Section 2. Burden Upon the Property. The Covenantor declares that this Declaration and the covenants, restrictions and conditions, shall be covenants to run with the land. Said covenants and restrictions shall inure to the benefit of and shall be binding upon each and every Owner and his respective mortgagees, heirs, administrators, executors, legal representatives, successors and assigns, purchasers, and lessees. By the recording or acceptance of the conveyance of Property or any interest therein, the Person or entity to whom such interest is conveyed shall be deemed to accept and agree to be bound by the provisions of this Declaration.

Section 3. Non-Severability of Rights. The rights, liabilities, and obligations set forth herein shall attach to and run with the ownership of a Lot as more specifically set forth below, and may not be severed or alienated from such ownership.

ARTICLE III

PROPERTY OWNERS ASSOCIATION

Section 1. Creation. Not later than forty-five (45) days after the recording of this Declaration, the Covenantor shall cause to be incorporated under the laws of the State of Illinois a not-for-profit corporation to be named the Park 88 Association.

Section 2. Membership. Every Person or entity who is a record Owner of a Lot in the Development Tract or who is the beneficiary of a land trust holding title to a Lot in the Development Tract shall be a Member of the Association
irrespective of the inclusion, exclusion, incorporation by reference or any specific expression or lack thereof to the effect in the deed or other documents of conveyance. Membership is appurtenant to and shall not be separated from ownership of a Lot. Thus, membership shall automatically terminate upon the sale, transfer, or other disposition by a Member of his ownership of a Lot in the Development Tract at which time the new Owner shall automatically become a Member of the Park 88 Association.

Such membership may not be sold or transferred other than in conjunction with the sale or transfer of the title interest in the Lot to which it is pertuant. No Member shall have any right or power to disclaim, terminate, or withdraw from his membership in the Association or from any of his obligations as such Member for any reason.

If more than one Person or entity is the record Owner of or a beneficiary of a land trust holding title to a Lot in the Development Tract, all such Persons or entities shall be Members.

Each Member of the Association shall be bound by and shall observe the terms and provisions of this Declaration, the Articles of Incorporation, the By-Laws of the Association, and the rules and regulations promulgated from time to time by the Association or its Board of Directors.

Any Person or entity who holds an interest in a Lot in the Development Tract merely as a security for the performance of an obligation or any Person in possession of a Lot under a contract to purchase such Lot shall not be a Member of the Association.

Ownership of a Lot in the Development Tract shall be the sole qualification for membership and there shall be one membership for each Lot.

Section 3. Voting Rights. The Association shall have three (3) classes of voting Members. The Class "A" or "B" Members shall be entitled to one (1) vote for each one full gross acre (exclusive of right-of-way) of a Lot owned by the Member within the Development Tract. If a Member should own a Lot which is less than one acre (exclusive of right-of-way) in size, the Member shall be entitled to one vote. If more than one Member is the record Owner or beneficiary of the title-holding land trust of a Lot, then the vote for that Lot shall be exercised as those Members amongst themselves determine. A Member may delegate all, or any portion, of his voting rights to a tenant or tenants by giving written notice to the Association.

The Association shall have the right to suspend the voting rights of any Member for any period during which an assessment levied by the Association against the Member's Lot remains unpaid.

The Class "C" Member shall be entitled to five (5) votes for each one full gross acre (exclusive of right-of-way) of The Development Tract owned by the Member within the Development Tract.

Section 4. Powers, Duties and Responsibility. The Association is created to carry out the purpose of this Declaration of Covenants and Restrictions. In
order to carry out that purpose, the Association shall be the governing body for all of the owners and beneficiaries of title-holding land trusts of lots in the Development Tract. It shall exercise the following powers and shall assume the following duties and responsibilities:

a. to provide for highest standards of maintenance of the Development Tract and to make and promote the desired quality and character of Park 88;
b. to maintain, repair, replace, trim, and water all landscaping and vegetation on any Land Easements accepted by the Association within the Development Tract;
c. to maintain, repair, and replace all entrance monuments, gates and signs, and accompanying landscaping, vegetation, grass, and fencing;
d. to maintain, repair, and replace the Stormwater management facilities which comprises the Stormwater Management System which are located within the public right-of-way, or property owned by the Association or Land Easements;
e. to maintain the median islands in Park 88;
f. to provide for a general fund to enable the Association to exercise its powers, duties, and responsibilities as delineated in the Declaration, its Articles of Incorporation, and its By-Laws by levying an annual assessment of special assessment;
g. to enforce any lien for non-payment of any assessment;
h. to review and control the construction, installation, remodeling or rebuilding of buildings or structures within Park 88, subsequent to initial occupancy of a Lot.
i. to take any action necessary to effectuate the purposes of this Declaration.

Section 5. Board of Directors. The affairs of the Association shall be managed by a Board of Directors.

The initial control and management of the Association shall be entrusted to an initial Board of Directors which shall consist of three directors. Said initial Board of Directors shall be appointed by the Covenantor. The initial Board of Directors shall hold office until the first Monday in September of the year following the year in which one hundred (100%) percent of the lots of the Development Tract have been conveyed by the Covenantor to Persons or entities other than the Covenantor (or any subsidiary or affiliated corporations of the Covenantor). The initial Board of Directors reserves the right to transfer control and management of the Association to the second Board of Directors at any time it so decides if prior to the criteria set forth in this paragraph.

Notwithstanding any other provision contained herein:

(a) At the next Annual Meeting, after the time Class "A" or "B" Members other than the Covenantor own fifty (50%) percent of the total acreage described on Exhibits "A" and "B" of the Declaration, or whenever the Covenantor earlier determines, the Association shall call a special meeting to be held at which Members other than the Covenantor shall elect one (1) of the three (3) directors. The remaining two (2) directors shall be appointees of the Class "C" Member. The directors so elected shall not be subject to removal by the Covenantor acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subparagraph (b) below, whichever is shorter;

(b) At the next Annual Meeting, after the time Class "A" or "B" Members other than the Covenantor own fifty (50%) percent of the total acreage described
on Exhibits "A" and "B" of the Declaration, or whenever the Covenantor earlier determines, the number of directors shall be increased to five (5) and the Association shall call a special meeting at which Members other than the Covenantor shall elect two (2) of the five (5) directors. The remaining three (3) directors shall be appointees of the Class "C" Member. The directors so elected shall not be subject to removal by Covenantor acting alone and shall be elected for a term of two (2) years or until the first annual meeting after termination of the Class "B" membership, whichever is shorter.

(e) At the first annual meeting of the membership after the termination of the Class "C" membership, all directors shall be elected by the Members. The initial terms of the Members of the first Board of Directors elected entirely by the membership shall be fixed at the time of their election as they among themselves shall determine. So long as there are five (5) directors, three (3) directors shall serve an initial term of two (2) years. Thereafter, directors shall be elected at each annual meeting of the Association. At the expiration of the term of office of each director, a successor shall be elected to serve for a term of two (2) years. The Members of the Board of Directors shall hold office until their respective successors shall have been elected. Directors may be elected to serve any number of consecutive terms.

At each election, the Members may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. There shall be no cumulative voting. The Persons receiving the largest number of votes shall be elected.

There shall be an annual election to fill the offices of the directors whose terms are expiring. Said election shall occur at the annual membership meeting to be held on the third Monday of September of each year or at such other reasonable time or date not more than thirty (30) days before or after said date as may be designated by written notice of the Board of Directors delivered to the membership no less than ten (10) days prior to the date fixed for said new meeting. Cumulative voting shall not apply in the election of the directors. Each Lot shall have the number of votes as specified in Article III, Section 3 herein.

The Board of Directors shall have the power to fill any vacancy that may occur in their own number or in any office of the Association. The directors or officers so appointed shall serve for the unexpired term of the director or office replaced. If any director fails to attend a majority of the number of meetings of the Board in any fiscal year, the Board may, in its sole discretion, declare the position vacant.

The regular meeting of the Board of Directors shall be held immediately after and at the same place as each annual membership meeting. Special meetings may be called on the order of the president or on the motion in writing of a majority of the directors. At least two days' notice of such special meeting, specifying its purpose, shall be given by mail, facsimile transmission machine, or personal service to each director.

A majority of the Board of Directors shall constitute a quorum for the transaction of business and the action of a majority of such quorum shall be the action of the Board of Directors. If a quorum is not present, a lesser number of directors may adjourn the meeting to another date.

The officers of the Association shall be president, vice president, and secretary/treasurer. They shall all be directors and elected by the directors
at the regular meeting of the Board of Directors subsequent to the annual
election of directors and shall hold their respective office for one year and/or
until their successors are elected and qualified. The officers shall be subject
to the control of the Board of Directors and may be removed by the majority of
the directors at any regular meeting or any special meeting called for that
purpose. The Board of Directors may elect such other officers as it deems
necessary. The officers shall exercise their functions according to the By-Laws
of the Association.

The Members of the Board (including the initial Board of three directors
and the subsequent Boards of Directors), the officers of the Association, and
the managing agent shall not be liable to the Association for any mistake of
judgment or acts or omissions made in good faith while acting in their capacity
as directors, officers or agent. The Association shall indemnify and hold
harmless the Members of the Board and the officers thereof against all
contractual liability to others rising out of contracts made by them, unless
such contracts shall have been made in bad faith or with knowledge that same was
contrary to the provisions of this Declaration. The liability of any Owner
shall be limited to an amount which is the proportion of the Owner's gross
acreage of his Lot or lots (exclusive of right-of-way) to the gross acreage of
the Development Tract. All contracts and agreements entered into by the Board,
officers, or the managing agent shall be deemed executed by said parties as the
case may be as agent for the Owners or the Association.

In the event of any disagreement between any Member of the Association
relating to the maintenance, repair, or replacement of the landscaping within
Land Basements or Association owned property, entrance monuments, gates, signs,
Association owned Stormwater Management Facilities, lakes or median islands, or
any questions or interpretation or application of the provisions of this
Declaration or the By-Law of the Association, the determination thereof by the
Board shall be final and binding on each and all such Members of the
Association.

Section 6. Meetings. The initial meeting of the voting Members of the
Association shall be held as specified in Article III, Section 5 herein. The
Covenantor or the initial Board of Directors shall notify the Members of said
initial meeting at least ten (10) days prior to the date of the meeting.
Thereafter, there shall be an annual meeting of the voting Members on the third
Monday in September or at such other reasonable time or date no more than thirty
(30) days before or after said date as may be designated by written notice of
the Board of Directors delivered to the membership no less than ten (10) days
prior to the date fixed for said new meeting. The purpose of the annual
membership meetings shall be to elect directors and to conduct Association
business. Special meetings of the voting Members may be called at any time for
the purpose of considering matters which by the terms of this Declaration
require the approval of all or some of the voting Members, or for any other
reasonable purpose. Said meetings shall be held as provided in the Association
By-Laws.

The presence in Person or by written proxy at any meeting of the voting
Members having fifty (50%) percent of the total votes of the Association shall
constitute a quorum for the transaction of business. Unless otherwise expressly
provided herein or required by the General Not-For-Profit Corporation Act or the
Articles of Incorporation of the Association, any action may be taken at any
meeting of the voting Members at which a quorum is present upon the affirmative
vote of the voting Members having a majority of the total votes present at such meeting.

Section 7. Management. The Board of Directors may retain a professional management company, professional manager, or full-time employees to manage or perform the duties and responsibilities of the Association.

The Board shall enter into management contracts only if such contracts shall (i) permit the termination thereof for cause by the Association upon sixty (60) days prior written notice and (ii) be for a period of not more than two years. Such contracts may permit renewals thereof for periods not to exceed one year at a time by mutual consent.

Managing Agent???

ARTICLE IV

MAINTENANCE

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of (a) all landscaping and other flora, structures, improvements, lakes, and ponds situated upon the Common Areas or within Land Basements (b) all entrance monuments and markers and traffic and directional signs pertaining to the Properties, and all road pavers situated either upon the Common Area or within Public Right of Way; and (c) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Subsequent Amendment, or by contract of agreement for maintenance thereof by the Association.

The Association may, at the discretion of its Board, assume the maintenance responsibilities imposed upon Owners individually by this Declaration or any Subsequent Amendment. In such event, all costs of such maintenance shall be assessed only against those Owners on behalf of whom the services are provided. This assumption of responsibility may take place either by contract or agreement or because, in the opinion of the Board, the level and quality of maintenance then being provided by the Owner is not consistent with the Community-Wide Standards of Park 88. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the CommLoty-Wide Standard.

Section 2. Owner's Responsibility. All maintenance, repair and replacement ("maintenance") of a Lot and all structures, parking areas, and other improvements upon a Lot shall be the sole responsibility of the Owner thereof who shall perform such maintenance in a manner consistent with the Community-Wide Standard, this Declaration, and any other applicable covenants. If maintenance is not properly performed by the Owner, the Association may perform it and assess 115% of all costs incurred by the Association against the Lot and
the Owner thereof; provided, however, unless entry is required due to an
emergency situation, the Association shall first afford the Owner reasonable
notice, of not less than 15 days, the opportunity to cure the problem before
proceeding.

ARTICLE V

ASSESSMENTS

Section 1. Creation of Assessments. There are hereby authorized assessments
for Common Expenses as may from time to time specifically be authorized by the
Board of Directors, to be commenced at the time and in the manner set forth as
follows: (a) General Assessments to fund Common Expenses for the benefit of all
Members of the Association; (b) Special Assessments as described in Section 3 of
this Article; and (c) Specific Assessments levied against a particular Lot or
Lots to reimburse the Association for costs incurred in bringing the Member or
his Lot into compliance with the provisions of this Declaration, the By-Laws, or
rules and regulations of the Association, which may be levied upon a vote of the
Board after notice to the Member and an opportunity for a hearing. General and
Special Assessments shall be allocated among all Lots subject to assessment
under Section 6 hereof in the same proportion as the total square footage of the
land comprising the Lot bears to the total square footage of all Lots within the
Properties. Each Owner, by acceptance of his or her deed or recorded contract
of sale, is deemed to covenant and agrees to pay these assessments. All such
assessments, together with reasonable late charges, interest at a rate not to
exceed the highest rate allowed by Illinois law computed from the date the
delinquency first occurs, costs, and reasonable attorney's fees, shall be a
charge on the land and shall be a continuing lien upon the Lot against which
each assessment is made.

All assessments, together with late charges, interest, costs, and
reasonable attorney's fees, shall also be the personal obligation of the Person
who was the Owner of such Lot at the time the assessment was due and payable,
and his or her grantee shall be jointly and severally liable for such portion
thereof as may be due and payable at the time of conveyance. A Mortgagee who
obtains title to a Lot pursuant to the remedies provided in a Mortgage shall be
liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, within five (5) days of receiving a written request
therefore, furnish to any Owner liable for any type of assessment a certificate
in writing signed by an officer of the Association setting forth whether such
assessment has been paid as to any particular Lot. Such certificate shall be
conclusive evidence of payment of such assessment to the Association therein
stated to have been paid. The Association may require the advance payment of a
processing fee determined annually by the Board for the issuance of each such
certificate.

Assessments shall be paid in such manner and on such dates as may be fixed
by the Board of Directors which may include, without limitation, acceleration of
the annual General Assessment for delinquents. Unless the Board otherwise
provides, General Assessments shall be paid in quarterly installments.

No Owner may waive or otherwise exempt himself from liability for the
assessments provided for herein, including, by way of illustration and not
limitation, by non-use of Common Areas or abandonment of the Lot. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

Anything herein to the contrary notwithstanding, Covenantor may annually elect in writing either of the following alternatives as a method of paying its assessments:

(a) pay the assessments set forth in this Article for an Owner of a Lot; or

(b) pay to the Association in the form of a subsidy or an "in kind" contribution of services or materials or a combination of services and materials, the difference between the amount received in assessments from all Owners other than Covenantor and the amount of the actual expenditures required to operate the Association for the year, including a reasonable contribution to capital reserves. Payment under either of the foregoing options shall constitute full payment of all assessments owed under this Declaration.

Section 2. Computation of General Assessment. It shall be the duty of the Board, at least thirty (30) days before the beginning of the fiscal year, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget may include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared. The Board shall cause a copy of the budget and the amount of the General Assessments to be levied against each Lot for the following year to be delivered to each Owner at least thirty (30) days prior to the end of the fiscal year. The budget and the General Assessment shall become effective unless; within ten (10) days thereafter, Members holding then (10%) percent of the combined total Class "A" and "B" vote in the Association shall petition to call a special meeting in accordance with Article II of the By-Laws to consider the budget and unless the budget is disapproved at said meeting by a vote of Members holding at least a majority of the total votes in the Association and the Class "C" Member.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year at a rate of 105% of the prior year's budget.

Section 3. Special Assessments. In addition to the General Assessment, the Association may levy a Special Assessment or Special Assessments from time to time; provided, however, such assessment shall be approved by Members holding at least fifty-one (51%) percent of the Class "A" and "B" vote in the Association and by the Class "C" Member, if such exists.

Section 4. Lien for Assessments. Upon recording of a notice of lien, there shall exist a perfected lien for unpaid assessments on the respective Lot prior
and superior to all other liens, except (a) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (b) the lien or charge of any first Mortgage of record (meaning any Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be assessed or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro-rated share of the assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses, late charges, interest, costs, and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same. After notice and hearing, the Board may temporarily suspend the vote of a Member who is in default in payment of any assessment.

Section 5. Capital Budget and Contribution. The Board of Directors may annually prepare a capital budget which takes into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect to both amount and timing of any annual assessments over the period of the budget. The capital contribution, if fixed by the Board, shall be included within the budget and assessment, as provided in Section 2 of this Article. A copy of the capital budget, if prepared, shall be distributed to each Member in the same manner as the operating budget.

Section 6. Date of Commencement of Assessments. The obligation to pay assessments provided for herein shall commence as to all Lots on the first day of the month following the date of conveyance of the first Lot by the Covenantor. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual General Assessment shall be adjusted according to the number of months remaining in the fiscal year at the time the Lot becomes subject to assessment.

Section 7. Subordination of the Lien to First Mortgages. The lien of assessments, including interest, late charges (subject to the limitations of Illinois law), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee under a first Mortgage of record obtains title pursuant to the remedies set forth in the Mortgage, neither it nor its successors and assigns shall be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Lots, including such acquirer, its successors and assigns.
ARTICLE VI
INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Area, if any. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a combined single limit for bodily injury and property damage liability per occurrence. Six Million ($6,000,000.00) Dollars

Premiums for all insurance on the Common Area shall be common expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

Cost of insurance coverage obtained by the Association for the Common Area shall be included in the General Assessment, as defined in Article I and as more particularly described in Article V, Section 1.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in Illinois which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or if not available, the most nearly equivalent rating.

(b) Exclusive authority to adjust losses under policies in force on the Properties obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

(d) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement, with an annual review by one or more qualified Persons, at least one of whom must be in the real estate industry and familiar with construction in the DeKalb County, Illinois, area.
(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, employees, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) a statement that no policy may be canceled, invalidated, suspended, or subjected to non renewal on account of any one or more individual Owners;

(iv) a statement that no policy may be canceled, invalidated, suspended, or subjected to non renewal on account of the conduct of any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that the Association shall be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non renewal, except for nonpayment of premium which shall require at least ten (10) days prior written notice.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent required by law; directors' and officers' liability insurance, if reasonably available; and flood insurance, if required. The Board shall also obtain a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds, if reasonably available. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than the maximum amount of Association funds expected to be on hand at any given time. Bonds shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non renewal.

Section 2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on his Lot(s) and structures constructed thereon meeting the same requirements of insurance provided for in Section 1 of this Article VI. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less that total destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is substantially or totally destroyed, the Owner may determine not to rebuild or to reconstruct; however, in such event, the Owner shall clear the Lot of all debris and thereafter shall maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.
Section 3. Disbursement of Proceeds. Proceeds of casualty insurance policies maintained by the Association under Section 1 shall be disbursed as follows: If the damage or destruction for which the proceeds are paid is for repair or reconstruction, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. After defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, any unused proceeds shall be retained by and for the benefit of the Association and placed in a capital improvements account for use as the Board of Directors deems appropriate.

Section 4. Damage and Destruction. Immediately after damage or destruction by any casualty to all or any part of the Common Area covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Area. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Area to substantially the same condition in which it existed prior to the fire or other casualty.

Any damage or destruction to the Common Area shall be repaired or reconstructed unless Members holding at least seventy-five (75%) percent of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

Section 5. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners in accordance with the assessment formula provided in Article V, Section 1. Additional assessments may be made in a like manner at any time during or following the completion of any repair or reconstruction.
ARTICLE VII

COVENANTOR'S RESERVED RIGHTS

Section 1. Easements. Notwithstanding any provisions contained herein to the contrary, all covenants, restrictions, conditions, reservations, easements, charges, and liens created under this Declaration shall be subject to easements of record on the date hereof and to any easements which may hereafter be granted by the Covenantor.

Section 2. General Rights. The Covenantor shall have the right to execute all documents or undertake any actions affecting the Development Tract which in its sole opinion are either desirable or necessary to fulfill or implement, either directly or indirectly, any of the rights granted or reserved to it in this Declaration.

The Covenantor shall have the right to amend this Declaration without complying with Article XI of the Declaration. This right shall cease upon the appointment of the first Board comprised of entirely Class "A" or "B" Members.

Section 3. Individual Property Owner Associations. The Covenantor reserves the right to review and approve the Articles of Incorporation, Declaration of Covenants and Restrictions, By-laws, and rules and regulations of any property owners association created for any portion of the Development Tract. Said documents must be in furtherance of the purpose of Park 88 Association and be consistent with the duties, responsibilities, obligations, and procedures of the Park 88 Association. No articles of incorporation shall be filed with the Secretary of State, no declaration of covenants and restrictions shall be recorded, and no by-laws or rules and regulations shall be effective unless and until the Covenantor approves said documents in writing.

Section 4. Variances. The Covenantor reserves the right to grant reasonable variances from provisions of this Declaration or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein, provided, however, that said variances shall not materially injure any of the property or improvements in Park 88. No variance granted pursuant to the authority granted herein shall constitute a waiver of any provision of this Declaration as applied to any other Person or Lot.
ARTICLE VIII

ARCHITECTURAL STANDARDS

Section 1. Development Criteria. Each Lot within the Development Tract shall be developed in accordance with the Development Guidelines, Final Site Engineering Plans, and Landscape Development Plans for Park 88 which shall be promulgated from time to time by the Covenantor or subsequently by the Association. Said Development Guidelines may provide criteria, restrictions and conditions for land uses, design standards, circulation, grading and utilities, landscaping, lighting and signage. Further, the Development Guidelines may set forth a process by which all development plans, grading plans and landscaping plans are reviewed and approved. The Final Site Engineering Guidelines and Landscape Development Plans may set forth specific criteria for the engineering and landscaping of each Lot within the Development Tract. The Development Guidelines, Final Site Engineering Guidelines, and Landscape Development Guidelines, as promulgated from time to time, shall be incorporated into and made a part of this Declaration.

The Development Review Committee provided for in said Development Guidelines shall be deemed to be the Covenantor or its assignee.

The requirements of this Declaration, the Development Guidelines, Final Site Engineering Guidelines, and Landscape Development Guidelines are in addition to any governmental regulations, the most restrictive of which shall apply to the Development Tract.

Section 2. Development Review. It is understood and agreed that the purpose of architectural controls is to secure an attractive and harmonious development having continuing appeal. No building, structure, fence, wall, or other improvement shall be commenced, erected, or maintained, nor shall any exterior remodeling, reconstruction, renovation, or rebuilding of any building, structure, fence, wall or other improvement be commenced, erected or maintained, nor shall any change in the exterior of any building, structure, or other improvement be made without the written approval of the Design Review Committee. In order to obtain such approval, the Owner of the Lot shall submit three copies of, via Federal Express or similar transmittal, the following information: a) construction plans and specifications, showing the nature, kind, shape, height, materials, color scheme, and location on the Lot, b) grading plan of the Lot, c) landscape plan of the Lot, and d) a plat of survey showing the location of the proposed improvement in relation to existing buildings, structures, and improvements on the Lot and surrounding lots. The Development Review Committee shall have the right to refuse to approve any such construction plans or specifications, grading plans, or landscape plans which are not suitable or desirable in its opinion for aesthetic or other reasons; and in so passing on such construction plans and specifications, grading plan or landscape plans, the Development Review Committee shall have the right to take into consideration the suitability of the proposed improvement with the surroundings, and the effect of the improvement on the view from adjacent or neighboring properties.

All plans, specifications and other materials shall be filed with the Development Review Committee, or its assignee, for approval or disapproval. A report in writing setting forth the decision of the Development Review Committee and the reason therefore shall thereafter be transmitted to the applicant by the
Development Review Committee within thirty (30) days after the date of the receipt of the plans, specifications and other materials. In the event the Development Review Committee fails to approve or disapprove such application within thirty (30) days after receipt of the plans, specifications and other materials as required in this Declaration, its approval shall be deemed to have been denied unless applicant delivers to the Development Review Committee within five (5) days after the expiration of the thirty (30) day period a notice of non action. If the Development Review Committee fails to respond to said notice within ten (10) days of receipt of notice, applicant may consider all plans approved, however, the applicant shall be required to comply with all other provisions of this Declaration and the applicable Development Guidelines as provided herein.

Section 3. Completion of Construction. After commencement of construction of any improvements upon a Lot, the Owner shall diligently prosecute the work thereon, to the end that the improvements shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof. The Owner of the Lot on which improvements are being constructed shall at all times keep all public streets free from any dirt, garbage, trash or other debris which might be occasioned by construction of the improvement. The Owner shall also be liable to repair or replace any of the property the Association is responsible to maintain in the Development Tract, any public property, or any other property in the Development Tract which was damaged due to the construction of the improvement.

Section 4. Excavation. No clearing or excavation shall be made except in connection with the construction, maintenance or repair of any improvements located on a Lot and in accordance with an approved plan. Upon completion thereof, exposed openings shall be leveled, graded, seeded and landscaped.

Section 5. Subdivision of Property. No Lot shall be subdivided or replatted without the prior written consent of the Covenantor. If subdivided, the parcels created thereby shall be governed by this Declaration.

Section 6. Outside Storage or Operations. No outside storage or operations of any kind shall be permitted (except during the period of construction of improvements but subject to Section 3 of this Article) unless such activity is visually screened from public view in a manner which is architecturally compatible and is approved by the Covenantor by its approval of the development plans. No boats, trailers, campers, horse trailers, busses, inoperative vehicles or associated equipment of a recreational or commercial nature shall be parked or stored permanently or semi-permanently on any Lot unless properly screened from public view in a manner approved by the Design Review Committee by its approval of the development plans.

Section 7. Temporary Structures. No temporary building or structure other than construction offices and structures for related purposes during the construction period shall be installed or maintained on any Lot without the prior written approval of the Covenantor. All temporary structures used for construction purposes must receive approval by the Covenantor with regard to location and appearance and must be removed within fourteen days after completion of construction. In no event may any such temporary structures be located or stored on any public street.

Section 8. Rezoning. No Owner shall petition for consent to or request rezoning of any portion of the property unless agreed to in writing by the Covenantor.
Section 9. Sidewalks. Concurrent with the construction of improvements on a Lot, the Owner shall construct paved sidewalks in accordance with the Development Guidelines. The Owner shall maintain and repair all sidewalks at all times.

Section 10. Antennae and Satellite Dishes. No antennae for receipt or transmission of television signals, satellite dishes or any other form of electromagnetic radiation shall be erected, used or maintained on any Lot without the prior written approval of the Covenantor.

Section 11. Quiet Enjoyment. No unlawful, noxious, immoral, or offensive activity shall be carried on or in any Lot within the Development Tract, nor shall anything be done therein either willfully or negligently, which may become an annoyance or nuisance to any property Owner or occupant within the Development Tract.

No Owner or occupant shall operate any machines, appliances, accessories, or equipment in such manner as to cause, in the judgment of the Board of Directors, an unreasonable disturbance to others.

Section 12. Application of Government Regulations. All structures to be erected shall comply with all government regulations, including zoning and building codes.

Section 13. Deviations. The Covenantor or its assignee, at its sole discretion, is hereby authorized and empowered to grant reasonable waivers and variances from the provisions of the Development Guidelines, Final Site Engineering Guidelines, and Landscape Development Guidelines or any portion thereof; provided, however, that said waivers and variances shall not materially injure any of the lots within the Development Tract. Such approvals must be granted in writing and no variance shall constitute a waiver of any provision of these documents as applied to any other Person or Lot, nor shall the granting of a waiver or variance to one Owner entitle another Owner to receive a similar waiver or variance.

ARTICLE IX

NO PARTITION

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any such judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit
the Board of Directors from acquiring and disposing of tangible personal property.

ARTICLE X

CONDEMNATION

Subject to the agreement of the Covenantor, so long as the Covenantor owns any property described on Exhibits "A" or "B" of this Declaration, and Members holding at least seventy-five (75%) percent of the total Class "A" and "B" vote of the Association, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

ARTICLE XI

ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Annexation Without Approval of Class "A" or "B" membership. As the Owner thereof, or if not the Owner, with the consent of the Owner thereof, Covenantor shall have the unilateral right, privilege, and option, from time to time at any time until all property described in Exhibit "B" has been subjected to this Declaration or January 1, 2025, whichever is earlier, to subject to the provisions of the Declaration and the jurisdiction of the Association all or any portion of the contiguous real property described in Exhibit "B", generally
located within Sections 25, 26 and 36 of DeKalb Township, and Sections 30 and 31 of Cortland Township, County of DeKalb, State of Illinois attached hereto and by reference made a part hereof.

Such annexation shall be accomplished by filing in the public records of DeKalb County, Illinois, a Subsequent Amendment annexing such properties. Such Subsequent Amendment shall not require the vote of Members. Any such annexation shall be effective upon the filing for record of such Subsequent Amendment unless otherwise provided therein.

Covenantor shall have the unilateral right to transfer to any other Person the said right privilege, and option to annex additional property which is herein reserved to Covenantor, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibit "A", "B" or "C" and that such transfer is memorialized in a written, recorded instrument.

Section 2. Acquisition to Additional Common Area. Covenantor may convey to the Association additional real estate, improved or unimproved, located within the properties and annexed to the Association as described in Exhibits "A", "B" or "C" which, upon conveyance or dedication to the Association, shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 3. Amendment. This Article shall not be amended without the written consent of Covenantor so long as the Covenantor owns any property described in Exhibits "A", "B" or "C" of this Declaration.

ARTICLE XII

AMENDMENTS

Section 1. Amendment. The provisions of this Declaration may be changed, modified, or rescinded by an instrument in writing setting forth such change, modification, or rescission, certified by the Secretary of the Board of Directors. Said change, modification, or rescission shall be approved by a majority of the number of votes of the Association present in Person or by written proxy at a membership meeting called for this purpose. The presence in Person or by written proxy at said meeting of the voting Members of the Association having fifty (50%) percent of the total votes shall constitute a quorum. However, said change, modification, or rescission must be approved by not less than fifty (50%) percent of the total number of votes of the Association able to be cast. Section 2. Amendment. The Covenantor may unilaterally amend this Declaration for any purpose so long as it still owns property described in Exhibits "A", "B" or "C" for development as part of the Property and so long as the amendment has no material adverse effect upon any right of any Owner. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding seventy five (75%) of the total votes of the Association, including seventy five (75%) percent of the votes held by Members other than the Covenantor, and the consent of the Class "C" Member, if any. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment shall be effective until recorded in the public records of DeKalb County, Illinois.
Section 2. Notice of Amendment. The change, modification, or rescission, accomplished under the provisions of the preceding paragraph, shall be effective upon recordation of such instrument in the Office of the Recorder of Deeds of DeKalb County, Illinois.

Section 3. Rights of Covenantor. No amendment which shall adversely affect the rights of the Covenantor shall be effective without the Covenantor's express written consent thereto. Covenantor shall have the right, but not the obligation, to assign either individually or collectively any and all rights or obligations contained in this declaration of conditions, covenants and restrictions to the Association at any time deemed appropriate by Covenantor, in its sole discretion.

ARTICLE XIII

USE RESTRICTIONS

The Properties shall be used only for such purposes as may be permitted by applicable zoning for the Properties, this Declaration, and amendments thereto. The Association, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of Lots and Common Area, in addition to those contained herein, and to impose reasonable user fees for facilities within common areas, including, but not limited to, vehicle storage areas, pathway systems, and parking facilities, if any. Such regulations and use restrictions shall be binding upon all Owners, occupants and invitees until and unless overruled, canceled or modified in a regular or special meeting of the Association by Members holding both(;) a majority of the total Class "A" or "B" votes in the Association and(;) by the vote of the Class "C" Member, so long as such membership shall exist.

Section 1. Signs. All signs shall comply with applicable local ordinances and the Design Guidelines attached hereto as Exhibit "D", as they may be amended from time to time. Covenantor shall have the right to erect signs without the approval of the Association.

Section 2. Occupants Bound. All provisions of the Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of any Lot. All leases on any portion of the Properties shall provide that lessees shall be bound by the terms and provisions of this Declaration, the By-Laws and rules and regulations of the Association.

Section 3. Parking. Vehicles shall be parked only in appropriate parking spaces or designated areas. No Owner or Occupant shall permanently or
temporarily park or store any boat, airplane, helicopter, house trailer, camper, or recreational vehicle on any portion of the Properties except within a building. Parking in parking areas shall be limited to conventional passenger automobiles, motorcycles, bicycles or other vehicles used for the transportation of the Owners and occupants of the Properties, their employees, agents, and invitees. Commercial vehicles may be parked only in parking areas designated at the time of Architectural Review. "Commercial vehicles," as used herein, shall refer to trucks, trailers, vans, and any vehicle which has signs or other printed material on its body advertising or making other reference to any commercial undertaking. All parking shall be subject to such rules and regulations as the Board of Directors may adopt.

Section 4. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot without the prior written consent of the Board of Directors.

Section 5. Nuisance. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on its Lot. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noisy or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property adjacent to the Lot or any other Lot. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No toxic or hazardous materials or waste shall be created, accumulated, kept or stored on any Lot or any portion of the Properties, nor transported through the Properties. The Association shall not be liable to any Person for any actual or threatened claim, damage, loss or injury related to or arising out of the existence of any hazardous or toxic materials within the Properties nor have any responsibility for the care, supervision or control thereof.

Section 6. Antennas. No exterior antennae or satellite dishes of any kind shall be placed, allowed, or maintained upon any portion of the Properties without prior written approval pursuant to Article VIII. However, the Board reserves the right (but shall not be obligated) to erect a master antennae, satellite dish, or other similar master system for the benefit of the Properties. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor antennae or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received.

Section 7. Mechanical Equipment, Garbage Cans, Trash Containers, Tanks, Etc. All storage areas, loading and unloading areas, mechanical equipment and service buildings, including, without limitation, roof-top mechanical equipment, duct work, flues, stacks, and fans, and all garbage cans, trash containers, above-ground tanks, and other similar items shall be located or screened so as to be concealed from view of other Lots, streets, and Common Area. All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be
allowed to accumulate thereon. Burning of rubbish or trash is prohibited within
the Properties.

Section 8. Subdivision of Lot. No Lot shall be subdivided or its boundary
lines changed except with the prior written approval of the Board of Directors
of the Association, which shall not unreasonably be withheld. Covenantor,
however, hereby expressly reserves the right to subdivide or change the boundary
lines of any Lot or Lots which it owns. Any such division, boundary line
change, or replatting shall not be in violation of the applicable subdivision
and zoning regulations.

Section 9. Irrigation. No sprinkler or irrigation systems of any type which
draw upon water from creeks, streams, rivers, lakes, ponds, canals or other
waterways within the Properties shall be installed, constructed or operated
within the Properties unless prior written approval has been received in
accordance with Article VIII of this Declaration.

Section 10. Drainage. Catch basins and drainage areas are for the purpose of
natural flow of water only. No obstructions or debris shall be placed in these
areas. No Owner or Occupant may obstruct or rechannel the drainage flows after
location and installation of drainage swales, storm sewers, or storm drains.
Covenantor hereby reserves a perpetual easement across the Properties for the
purpose of altering drainage and water flow.

Section 11. Site Distance at Intersections. All property located at street
intersections shall be landscaped so as to permit safe sight across the street
corners. Nothing higher than 24” above grade shall be installed within a
triangle consisting of 30’ adjacent to each right-of-way.

Section 12. Tents, Trailers and Temporary Structures. Owners or occupants shall
not place upon a Lot or any part of the Properties any tent or trailer or any
structure of a temporary nature, such as a tent, shack, or utility shed, except
as may be permitted by the Design Review Committee during initial construction
on the Lot.

Section 13. Tree Removal. No trees shall be removed, except for (a)
diseased or dead trees; and (b) trees reasonably needing to be removed to
promote the growth of other trees or for safety reasons, unless approved as
provided in Article VIII.

Section 14. Utility Lines. All new utility lines, including electrical,
telephone, water, cable television and other utility lines and the connections
thereto, shall be installed underground, except for temporary lines as required
during construction. Notwithstanding the above, the Design Review Committee
may, in its sole discretion, permit certain equipment such as electrical
transformers and high voltage power lines to be located above ground.

Section 15. Governmental Compliance. All laws, ordinances, and regulations of
all governmental and quasi-governmental agencies or authorities having
jurisdiction over the Properties shall be observed, and violations of laws,
orders, rules, regulations, or requirements of any governmental or quasi-
governmental agency or authority having jurisdiction over the Properties shall
be immediately corrected and/or removed by, and at the sole expense of, the
Owner responsible for the same.
Section 16. Lighting. Except for seasonal Christmas decorative lights, all exterior lights must be approved as provided in Article VIII, provided, however, the Board may adopt reasonable rules regulating seasonal lights as to scope and time.

Section 17. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on any Lot except inside of buildings on the Lot. Exterior sculpture, fountains, flags, and similar items must be approved as provided in Article VIII.

Section 18. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure and is approved as provided in Article VIII.

Section 19. Compliance With Insurance Requirements. No Owner or Occupant of the Properties shall commit, suffer, or fail to do any act in violation of insurance policies which may be procured and maintained by the Association, and no Owner or Occupant shall do or permit anything to be done, or keep or permit anything to be kept, or suffer any condition to exist, which is reasonably likely to or which does (a) result in termination of any such policies; (b) adversely affect any party's right of recovery thereunder; (c) result in reputable insurance companies refusing to provide insurance as required or permitted by the By-Laws of the Association; or (d) result in an increase in the insurance rate or premium to be charged to the Association, unless, in the case of such increase, the Owner or Occupant responsible for such increase shall immediately pay the same.

Section 20. Lakes and Ponds. All lakes, ponds and other bodies of water within the Common Areas of the Properties shall be for aesthetic purposes and drainage only, and no other use thereof, including, without limitation, swimming, boating, wading, use of personal flotation devices and playing, shall be permitted. Notwithstanding the above, the Board of Directors may, but shall not be obligated to, permit fishing from the shorelines or banks of lakes, ponds and streams within the Properties. The Association shall not be responsible for any loss, damage or injury to any Person or property arising out of the authorized or unauthorized use of lakes, ponds or other water bodies within the Properties.

Section 21. Other Prohibited Uses. In addition to uses which are inconsistent with zoning for the Properties or otherwise prohibited by this Declaration, the following uses and activities are prohibited within the Properties:

(a) residential uses of any kind, including trailer courts, mobile home parks, and campgrounds, provided that this shall not prohibit hotels;

(b) oil drilling, water drilling, oil refining, quarrying, or mining operations and all construction incident thereto;

(c) junk yards and recycling facilities and garbage/waste transfer or sorting facilities; and

(d) commercial excavation of building or construction materials, except in the usual course of construction of improvements.
ARTICLE XIV

GENERAL PROVISIONS

Section 1. Term. The Covenants and Restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any portion of the Properties, their respective legal representatives, heirs, successors, and assigns, for a term of thirty-five (35) years from the date this Declaration is recorded, after which time they shall automatically be extended for successive periods of five (5) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive five (5) year period agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same. Notwithstanding the foregoing, the easements created, reserved, or declared by this Declaration shall, unless extinguished or terminated by operation of law, be perpetual in duration.

No amendment may remove, revoke, or modify any right or privilege of Covenantor without the written consent of Covenantor or the assignee of such right or privilege.

Section 3. Indemnification. The Association shall indemnify every officer, director, and committee Member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area or as between said adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Association.
Section 5. Easements for Utilities, Etc. Covenantor hereby reserves for itself and its designees (which may include, without limitation, the City of DeKalb in the County of DeKalb, Illinois and any utility) blanket easements upon, across, over, and under all of the Common Area and to the extent any easements are shown on any plat over the Lots for ingress, egress, installation, replacing, repairing, and maintaining broad band cable television systems, master television antennae systems, security, and similar systems, walkways, and all utilities, including but not limited to water, sanitary sewers, storm sewers, meter boxes, telephones, gas and electricity. This reserved easement may be assigned by Covenantor by written instrument to the Association, and the Association shall accept the assignment upon such terms and conditions as are acceptable to Covenantor. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may reasonably be necessary for the development of any Properties described in Exhibit "A" or that may be annexed in accordance with Article XI of this Declaration.

Without limiting the generality of the foregoing, there are hereby reserved for the local suppliers of natural gas and water easements across all Lots on the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining gas and water meters, respectively.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated within said easements, except as installed during the development and sale of the Properties by Covenantor or as may be approved by the Association's Board of Directors. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement on said Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate all or part of the Common Area to the City of DeKalb in the County of DeKalb, Illinois or to any other local, state, or federal governmental entity.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 7. Right of Entry. The Association shall have the right, but shall not be obligated, to enter onto any portion of the Properties for maintenance, emergency, security, and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

Section 8. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue.
only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 9. Litigation. After termination of the Class "C" membership, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75%) percent of all Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration; (b) the imposition and collection of assessments; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 10. Use of the Words Park 88 Association. No Person shall use the words Park 88 Association or any derivative thereof, or any tradename, trademark or logo developed by or belonging to the Covenantor or its affiliates, in the name of any building or any business or enterprise or in any printed or promotional material without the prior written consent of the Covenantor. However, Owners or occupants may use the terms in printed or promotional matter where such term is used solely to specify that particular property is located within the Properties.

Section 11. Ownership of Lot by the United States. Covenantor shall have the right to exempt the United States, as the Owner of a Lot, from any of the restrictions contained in this Declaration, or the By-Laws, or rules and regulations of the Association if such exemption is required by the Loted States.

Section 12. Liability of Land Trusts and Beneficiaries of Land Trusts. In the event title to any Lot is conveyed to a title-holding trust under the terms of which all powers of management, operation, and control remain vested in the trust beneficiary or beneficiaries, then the beneficiary or beneficiaries thereunder shall be responsible for the performance of all obligations, the payment of all liens or indebtedness, and for compliance with all agreements, covenants, and undertakings, including the payment of all costs assessed against such Lots. No claim shall be made against the trustee of any such title-holding trust personally for payment of any lien or obligation created hereunder, and such trustee shall not be obligated to sequestrate funds or trust property to apply, in whole or in part, against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Lot so owned and the obligation of the beneficiaries of such trust, notwithstanding any transfer or attempted transfer of the beneficial interest in any such trust or any transfer or attempted transfer of title to such Lot. (Add disclosure provision)

ARTICLE XV

TRUSTEE EXCULPATION

This Declaration is executed by ___________________________ Bank as trustee in exercise of the power and authority conferred upon and vested in it as such trustee, and nothing herein shall be construed as creating any individual liability on ___________________________ Bank.
IN WITNESS WHEREOF, the undersigned Covenantor has executed this Declaration this _____ day of _____________________, 20__.

_________________________________________ BANK, solely in its capacity is trustee under that Trust Agreement dated _____ day of _____________________, 20___, and known as Trust No. ____________________.

By: __________________________

Title: __________________________

Attest: _________________________

Title: __________________________

[seal]

TABLE OF EXHIBITS

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2004016020
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CERTIFICATION

2004016020
BY-LAWS
OF
PARK 88 ASSOCIATION

ARTICLE I
NAME, PRINCIPAL OFFICE, AND DEFINITIONS

Section 1. Name. The name of the Association shall be Park 88 Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the Association in the State of Illinois shall be located in the County of DeKalb. The Association may have such other offices, either within or without the State of Illinois, as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Park 88 (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall prohibit.
ARTICLE II.

ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

Section 1. Membership. The Association shall have three (3) classes of membership, Class "A", "B", and "C", as more fully set forth in that Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference. The three classes of members shall be: "A" - non-rail availability; "B" - rail user or has rail availability; or "C" - shall be the Covenantor. "A" or "B" shall be designated at the time of sale of any property by the Covenantor. Modification of "A" or "B" membership may be made annually by the Covenantor. "A" or "B" referred to herein shall collectively be all "A" and "B" members.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors either within the Properties or as convenient thereto as possible and practical.

Section 3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. The next annual meeting shall be set by the Board so as to occur at least ninety (90) days, but not more than one hundred and twenty (120) days, before the close of the Association’s fiscal year. Subsequent regular annual meetings shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting shall be held on such date and at such time as set by the Board of Directors.

Section 4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Members representing at least twenty (20%) percent of the total votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than sixty (60) days before the date of such meeting by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.
Section 6. Waiver of Notice. Waiver of notice of any meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting, either before or after such meeting. Attendance at a meeting by a Member or his proxy shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to waiver of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 7. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that Members or their proxies representing at least twenty-five (25%) percent of the total votes of the Association remain present, and provided further that any action taken shall be approved by at least a majority of the Members required to constitute a quorum.

Section 8. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

Section 9. Proxies. Any member entitled to vote may do so by written proxy duly executed by the Member setting forth the meeting for which it is valid. To be valid, the proxy shall be filed with the Secretary prior to the meeting for which it is to be used. Proxies must be dated and may be revoked only by written notice delivered to the Secretary of the Association. Presence in person by the giver of the proxy at the meeting for which a proxy is given shall automatically invalidate the proxy.

Section 10. Majority. As used in these By-Laws, the term “majority” shall mean more than fifty (50%) percent of the total number of persons or things of which a majority is required.

Section 11. Quorum. Except as otherwise provided in these By-laws or in the Declaration, the presence in person or by proxy of Members representing one-third (1/3) of the total vote of the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

Section 12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as record of all transactions occurring at such meeting.
Section 13. Action Without A Meeting. Any action required by law to be taken at a meeting of the Association, or any action which may be taken at a meeting of the Association, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Members.

ARTICLE III

BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. COMPOSITION AND SELECTION

Section 1. Governing Body. Composition. The affairs of the Association shall be governed by a Board of Directors each of whom shall have one vote. Except as provided in Section 2 of this Article, the Directors shall be Members or, in the case of a corporate owner or partnership, such individual designated by the Owner to exercise its privileges of membership as provided in Article III, Section 1 of the Declaration.

Section 2. Directors During Covenator Control. Except as provided in Section 6 of this Article, the Directors shall be selected by the Class “A” or “B” Member acting in its sole discretion and shall serve at the pleasure of the Class “A” or “B” Member so long as the Class “B” membership exists, as set forth in the Declaration, unless the Class “A” or “B” member shall earlier surrender this right to select directors. The directors selected by the Class “C” member need not be members. After the period of Class “C” Member appointment, all directors must meet the requirements of Section 1 of this Article.

Section 3. Veto. This Section 3 may not be amended without the express, written consent of the Covenantor for a period of two (2) years after termination of the Class “B” membership.

From and after the termination of the Class “B” membership, the Covenantor shall have a veto power over all actions of the Board and the Modifications Committee, as is more fully provided in this Section. This power shall expire when the Covenantor no longer owns any land described in Exhibits “A” or “B” to the Declaration or January 1, 2025 whichever occurs first, unless earlier surrendered. This veto power shall be exercisable only by Covenantor, its representatives or its agents, or its successors and assigns who specifically take this power in a recorded instrument. The veto shall be as follows:

No action authorized by the Board of Directors or Modifications Committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) Covenantor shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or Modifications Committee by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meetings with Article III, Sections 8, 9, and 10, of these By-Laws regarding regular and special meetings of the Directors and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and
(b) Covenantor shall be given the opportunity at any such meeting to join in or to have its representatives or gents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board, the Modifications Committee, or the Association. Covenantor and its representatives or agents shall make its concerns, thoughts, and suggestions known to the members of the Modifications Committee or the Association and/or the Board. Covenantor shall have and is hereby granted a veto power over any such action, policy, or program authorized by the Modifications Committee or the Board of Directors and to be taken by such Committee or Board or the Association or any individual member of the Association if Board, Committee or Association approval is necessary for said action. This veto may be exercised by Covenantor, its representatives, or agents at any time within then (10) days following the meeting held pursuant to the terms and provisions hereof. Any veto power shall not extend to the requiring of any action or counteraction on behalf of any Committee, the Board, or the Association.

Section 4. Number of Directors. The number of directors shall be not less than three (3) nor more than five (5), as the board of Directors may from time to time determine by resolution. The initial Board shall consist of three (3) members.

Section 5. Nomination of Directors. Except with respect to directors selected by the Class "B" Member, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Association to serve a term of one (1) year, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of vacancies or terms to be filled. Nominations shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Section 6. Election and Term of Office. Notwithstanding any other provision contained herein:

(a) At the next Annual Meeting, after the time Class "A" or "B" members other than the Covenantor own fifty (50%) percent of the total acreage described on Exhibits "A" and "B" of the Declaration, or whenever the Covenantor earlier determines, the Association shall call a special meeting to be held at which Members other than the Covenantor shall elect one (1) of the three (3) directors. The remaining two (2) directors shall be appointees of the Class "C" Member. The directors so elected shall not be subject to removal by the Covenantor acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subparagraph (b) below, whichever is shorter;

(b) At the next Annual Meeting, after the time Class "A" or "B" Members other than the Covenantor own fifty (50%) percent of the total acreage described on Exhibits "A" and "B" of the Declaration, or whenever the Covenantor earlier determines, the number of directors shall be increased to five (5) and the Association shall call a special meeting at which Members other than the Covenantor shall elect two (2) of the five (5) directors. The remaining three (3) directors shall be appointees of the Class "C" member. The directors so elected shall not be subject to removal by Covenantor acting alone and shall be elected for a term of two (2) years or until the first annual meeting after termination of the Class "B" membership, whichever is shorter.

Park 88 By Laws
(c) At the first annual meeting of the membership after the termination of the Class "C" membership, all directors shall be elected by the members. The initial terms of the members of the first Board of Directors elected entirely by the membership shall be fixed at the time of their election as they among themselves shall determine. So long as there are five (5) directors, three (3) directors shall serve an initial term of two (2) years. Thereafter, directors shall be elected at each annual meeting of the Association. At the expiration of the term of office of each director, a successor shall be elected to serve for a term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected. Directors may be elected to serve any number of consecutive terms.

At each election, the members may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. There shall be no cumulative voting. The persons receiving the largest number of votes shall be elected.

Section 7. Removal of Directors and Vacancies. Any director elected by the members may be removed by a vote of a majority of the Members present at a meeting called for that purpose, with or without cause. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. A director who was elected solely by the votes of members other than the Covenator may be removed from office prior to the expiration of his or her term only by the votes of a majority of Members other than the Covenator. Upon removal of a director, a successor shall then and there be elected by the members to fill the vacancy for the remainder of the term of the director so removed.

In the event of death or resignation of a director, his or her successor shall be selected by a majority of the remaining members of the Board and shall serve until the next annual meeting, at which a successor shall be elected by the membership to serve for the remainder of the term of the predecessor.

Any director elected by the Members who has three (3) or more consecutive unexcused absences from Board meetings may be removed by a majority of the directors present at a regular or special meeting of the Board at which a quorum is present and a successor may be appointed by the Board to fill the vacancy thus created until the next annual meeting, at which a successor shall be elected by the membership to serve for the remainder of the term.

B. MEETINGS

Section 8. Organization Meetings. The first meeting of the members of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least two (2) such meetings shall be held during each fiscal year with at least one (1) during the first six (6) months of the fiscal year and one (1) during the last six (6) months. Notice of the time and place of the meeting shall be communicated to directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.
Section 10. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President, or Secretary of the Association, or by a majority of directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company, respectively at least seventy-two (72) hours before the time set for the meeting.

Section 11. Waiver of Notice. The transactions of any meetings of the Board of Directors, however called and noticed or wherever held, shall be valid as though taken at a meeting duly held after regular call and notice if:

(a) a quorum is present, and

(b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes.

The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 12. Quorum of Board of Directors. At all meetings of the Board of directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total vote of the Association at a regular or special meeting of the Association; provided, any director may be reimbursed or expenses incurred on behalf of the Association upon approval of majority of the other directors.

Section 14. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.
Section 15. Open Meetings. Subject to the provisions of Section 16 of this Article, all meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board. In such case, the Board may limit the time any member may speak.

Section 16. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. POWERS AND DUTIES

Section 17. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the Members.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter by adopted, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;

(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual General Assessment, provided, unless otherwise determined by the Board of Directors. The annual General Assessment for each Unit's proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;

(c) providing for the operation, care, upkeep, and maintenance of all of the Area of Common Responsibility;

(d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Area of Common Responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;
(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the authorized signatories therefore;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these By-laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;

(m) making available to any prospective purchaser of a Unit, any Owner of a Unit, and any first Mortgagee current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules governing the Unit, and all other books, records, and financial statements of the Association; and

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties.

Section 18. Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject of the Board's supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 17 of this Article. The Covenantor, or an affiliate of the Covenantor, may be employed as managing agent or manager.

Section 19. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principals and shall be employed;

(b) accounting and controls should conform to generally accepted accounting principals and should include, without limitation,

   (i) a segregation of accounting duties,
(ii) two (2) signatures for all disbursements by check, and

(iii) a limitation on cash disbursements to amounts of Fifty ($50.00) Dollars and under;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors; and

(f) commencing at the end of the month in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet of the last day of the preceding period; and

(v) a delinquency report listing all owners who are delinquent in paying any assessment at the time of the report and describing the status of any action to collect such assessments which remain delinquent (A monthly installment of the General Assessment shall be considered to be delinquent on the fifteenth (15th) day of each month unless otherwise determined by the Board of Directors.); and

(g) an annual report consisting of at least the following shall be distributed to all Members within one hundred and twenty (120) days after the close of the fiscal year; (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited or reviewed basis, as determined by the Board, by an independent public accountant; provided, it shall be prepared on an audited basis for any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand ($75,000.00) Dollars. If said report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association.

Section 20. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Common Area and facilities without the approval of the Members of the Association. The Board shall have the power to borrow money for other purposes; provided, the Board shall obtain member approval in the same
manner provided in Article V, Section 3, of the Declaration for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or or adding amenities, and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeting gross expenses of the Association for that fiscal year.

Section 21. Rights of the Association. With respect to the Common Areas or other Association responsibilities owed, and in accordance with the Articles of Incorporation and By-Laws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other community associations, both within and without the Properties. Such agreements shall require the consent of two-thirds (2/3) of all directors of the Association.

Section 22. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize he Association or the Board of Directors to limit ingress and egress to or from a Unit. In the event that any occupant of a Unit violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator with written notice;

(i) describing the nature of the alleged violation;

(ii) identifying the proposed sanction to be imposed;

(iii) granting a period of not less than ten (10) days within which the alleged violator may present a written request to the Board of Directors for a hearing; and

(iv) containing a statement that the proposed sanction shall be imposed as described in the notice unless challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested in a timely manner, the hearing shall be held in executive session affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting, and Article VIII, Section 3, of the Declaration shall be complied with. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The decision of the Board of Directors after hearing shall be final. The Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the period stated in the
notice. Such suspension shall of constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these By-laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations, as provided below) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the owner or occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney’s fees.

ARTICLE IV

OFFICERS

Section 1. Officers. The offices of the Association shall be a President, Vice President, Secretary, and Treasurer. The Board of Directors may elect such other officers, including one (1) or more Assistant Secretaries and one (1) or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, as set forth in Article III of these By-Laws. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
Section 6. **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by the President and Treasurer or by such other person or persons as may be designated by resolution of the Board of Directors.

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**ARTICLE V**

**COMMITTEES**

**Section 1. General.** Committees to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

**Section 2. Covenants Committee.** The Board of Directors may appoint a Covenants Committee consisting of at least five (5) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if appointed, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article III, Section 3 of these By-Laws.
ARTICLE VI
MISCELLANEOUS

Section 1. Fiscal Year. The initial fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of a resolution, the fiscal year shall be the calendar year.

Section 2. Parliamentary Rules. Except as may be modified by Board Resolution establishing modified procedures, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Illinois law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of Illinois law, the Articles of Incorporation, the Declaration, and these By-Laws, then the provisions of Illinois law, the Declaration, the Articles of Incorporation and the By-Laws (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration and By-Laws, membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Mortgagee, member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Properties as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made;

and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or
(b) if the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6. Amendment. Prior to the sale of the first Unit, Covenantor may unilaterally amend these By-Laws. After such sale, the Covenantor may unilaterally amend these By-Laws so long as it still owns property described in Exhibits "A" or "B" to the Declaration for development as part of the Properties and so long as the amendment has no adverse effect upon any right of any Member. Thereafter and otherwise, these By-Laws may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total votes of the Association, including majority of votes other than votes of the Covenantor, and the consent of the Class "B" member, if any. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment shall be effective until recorded in the public records of DeKalb County, Illinois.

No amendment of these By-Laws may remove, revoke or modify any right or privilege of Covenantor without the written consent of Covenantor or the assignee of such right or privilege, as applicable.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Park 88 Association, Inc., an Illinois corporation.

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the ______ day of ___________________, 20______.

______________________________
Secretary

(seal)

Park 88 By Laws
This Declaration of Covenants, Conditions, and Restrictions is made this _____ day of
____________________, 20____, by ___________________________ Bank, as
trustee under that Trust Agreement dated _____ day of ________________, 20____,
and known as Trust No. ________________ (hereinafter referred to as "Covenantor").

Covenantor is the owner of the real property described in Exhibit "A" attached
hereto and incorporated herein by reference. Covenantor intends by this Declaration to
impose upon the Properties (as defined herein) mutually beneficial restrictions under a
general Plan of improvement for the benefit of all owners of property made subject to this
Declaration initially or by amendments thereto, by the recording of this Declaration.
Covenantor desires to provide a flexible and reasonable procedure for the overall
development of the Properties and to establish a method for the administration,
maintenance, preservation, use and enjoyment of such Properties as are now or hereafter
subjected to this Declaration.

Covenantor hereby declares that all of the Properties described in Exhibit "A" and
any additional property as is hereafter subjected to this Declaration shall be held, sold, and
conveyed subject to the following easements, restrictions, covenants, and conditions which
are for the purpose of protecting the value and desirability of and which shall run with the real
property subjected to this Declaration and which shall be binding on all parties having any
right, title, or interest in the described Properties or any part thereof, their heirs, successors,
successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.
Exhibit “E”: Public Use Site

Option 1: Square Site (minimum dimensions)

Option 2: Rectangular Site (minimum dimensions)
ORDINANCE 07-61  Passed: July 16, 2007

AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT WITH PARK 88, LLC REGARDING PROPERTY LOCATED WEST OF PEACE ROAD AND SOUTH OF ILLINOIS STATE ROUTE 38.

WHEREAS, Park 88 LLC, property owner, has petitioned for an annexation agreement with the City of DeKalb; and,

WHEREAS, a public hearing on the proposed Agreement and the proposed zoning and development was held by the Plan Commission at the May 16, 2007 meeting, and approval was recommended by a vote of 5-0-1 (Welsh absent); and,

WHEREAS, the City Council of the City of DeKalb held a public hearing on this request pursuant to Illinois Statute at its regular meeting of June 11, 2007 which was continued to the June 25, 2007 Council Meeting; and,

WHEREAS, it is in the best interests of the City of DeKalb to enter into this Agreement; now,

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. The Mayor of the City of DeKalb is authorized and directed to execute an Annexation Agreement with Park 88, LLC pertaining to the property legally described therein, a copy of which is attached hereto and made a part hereof as Exhibit “A.”

Section 2. The City Clerk of the City of DeKalb, Illinois, is authorized and directed to attest to the Mayor’s signature, and to record said Agreement with the DeKalb County Recorder.


ATTEST:

[Signatures]

DONNA S. JOHNSON, City Clerk

FRANK VAN BUIER, Mayor
THAT PART OF THE SOUTHWEST 1/4 OF SECTION 24 AND PART OF THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHWEST 1/4; THENCE WESTERLY, ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, 92.0 FEET FOR A POINT OF BEGINNING; THENCE NORTHERLY, AT AN ANGLE OF 89 DEGREES 57 MINUTES 05 SECONDS MEASURED COUNTERCLOCKWISE FROM SAID NORTH LINE, PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST 1/4, 111.10 FEET; THENCE NORTHWESTERLY, AT AN ANGLE OF 104 DEGREES 09 MINUTES 08 SECONDS MEASURED CLOCKWISE FROM SAID PARALLEL LINE, 137.62 FEET; THENCE NORTHERLY, AT AN ANGLE OF 104 DEGREES 09 MINUTES 52 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 89.41 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF ILLINOIS ROUTE 38 (LINCOLN HIGHWAY); THENCE, NORTHWESTERLY, AT AN ANGLE OF 104 DEGREES 50 MINUTES 53 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID RIGHT OF WAY LINE, 235.60 FEET; THENCE CONTINUING NORTHWESTERLY, AT AN ANGLE OF 176 DEGREES 19 MINUTES 11 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID RIGHT OF WAY LINE, 22.63 FEET; THENCE SOUTHWESTERLY, AT AN ANGLE OF 85 DEGREES 33 MINUTES 13 SECONDS MEASURED CLOCKWISE FROM SAID RIGHT OF WAY LINE, 221.15 FEET; THENCE NORTHWESTERLY, AT AN ANGLE OF 89 DEGREES 57 MINUTES 42 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 186.80 FEET; THENCE SOUTHWESTERLY, AT AN ANGLE OF 86 DEGREES 39 MINUTES 20 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, 135.62 FEET TO THE SOUTH LINE OF SAID SOUTHWEST 1/4; THENCE WESTERLY, AT AN ANGLE OF 100 DEGREES 48 MINUTES 45 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID SOUTH LINE, 580.48 FEET TO THE WEST LINE OF THE EAST HALF OF SAID NORTHWEST 1/4; THENCE SOUTHERLY, AT AN ANGLE OF 90 DEGREES 09 MINUTES 04 SECONDS MEASURED CLOCKWISE FROM SAID SOUTH LINE, ALONG SAID EAST LINE, 99.66 FEET; THENCE NORTHWESTERLY, AT AN ANGLE OF 83 DEGREES 03 MINUTES 16 SECONDS MEASURED COUNTERCLOCKWISE FROM SAID EAST LINE, 298.72 FEET; THENCE NORTHERLY, AT AN ANGLE OF 95 DEGREES 12 MINUTES 14 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 364.47 FEET TO THE NORTHEAST CORNER OF OUTLOT "B" OF LINCOLN INDUSTRIAL PARK; THENCE NORTHWESTERLY, AT AN ANGLE OF 101 DEGREES 12 MINUTES 04 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG THE NORTH LINE OF SAID OUTLOT "B", 124.08
FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTHERLY, AT AN ANGLE OF 77 DEGREES 03 MINUTES 27 SECONDS MEASURED CLOCKWISE FROM SAID NORTH LINE, PARALLEL WITH THE EAST LINE OF THE WEST 1/2 OF SAID NORTHWEST 1/4, 2,975.02 FEET TO THE SOUTH LINE OF SAID NORTHWEST 1/4; THENCE EASTERLY, AT AN ANGLE OF 89 DEGREES 54 MINUTES 08 SECONDS MEASURED CLOCKWISE FROM SAID PARALLEL LINE, ALONG SAID SOUTH LINE, 1,627.01 FEET TO A POINT THAT IS 92.0 FEET WESTERLY OF THE SOUTHEAST CORNER OF SAID NORTHWEST 1/4; THENCE NORTHERLY, AT AN ANGLE OF 90 DEGREES 09 MINUTES 27 SECONDS MEASURED CLOCKWISE FROM SAID SOUTH LINE, PARALLEL WITH THE EAST LINE OF SAID NORTHWEST 1/4, 2,646.92 FEET TO THE POINT OF BEGINNING, ALL IN DEKALB TOWNSHIP, DEKALB COUNTY, ILLINOIS.

The property is commonly known as the "Orr Property," situated on the south side of East Lincoln Highway and west of Peace Road.
THAT PART OF THE SOUTHWEST 1/4 OF SECTION 24 AND PART OF THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHWEST 1/4; THENCE WESTERLY, ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, 92.0 FEET FOR A POINT OF BEGINNING; THENCE NORTHERLY, AT AN ANGLE OF 89 DEGREES 57 MINUTES 05 SECONDS MEASURED COUNTERCLOCKWISE FROM SAID NORTH LINE, PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST 1/4, 111.10 FEET; THENCE NORTHWESTERLY, AT AN ANGLE OF 104 DEGREES 09 MINUTES 08 SECONDS MEASURED CLOCKWISE FROM SAID PARALLEL LINE, 137.62 FEET; THENCE NORTHERLY, AT AN ANGLE OF 104 DEGREES 09 MINUTES 52 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 89.41 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF ILLINOIS ROUTE 38 (LINCOLN HIGHWAY); THENCE, NORTHWESTERLY, AT AN ANGLE OF 104 DEGREES 50 MINUTES 53 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID RIGHT OF WAY LINE, 235.60 FEET; THENCE CONTINUING NORTHWESTERLY, AT AN ANGLE OF 176 DEGREES 19 MINUTES 11 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID RIGHT OF WAY LINE, 22.63 FEET; THENCE SOUTHWESTERLY, AT AN ANGLE OF 85 DEGREES 33 MINUTES 13 SECONDS MEASURED CLOCKWISE FROM SAID RIGHT OF WAY LINE, 221.15 FEET; THENCE NORTHWESTERLY, AT AN ANGLE OF 89 DEGREES 57 MINUTES 42 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 186.80 FEET; THENCE SOUTHWESTERLY, AT AN ANGLE OF 86 DEGREES 39 MINUTES 20 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, 135.62 FEET TO THE SOUTH LINE OF SAID SOUTHWEST 1/4; THENCE WESTERLY, AT AN ANGLE OF 100 DEGREES 48 MINUTES 45 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID SOUTH LINE, 580.46 FEET TO THE WEST LINE OF THE EAST HALF OF SAID NORTHWEST 1/4; THENCE SOUTHERLY, AT AN ANGLE OF 90 DEGREES 09 MINUTES 04 SECONDS MEASURED CLOCKWISE FROM SAID SOUTH LINE, ALONG SAID EAST LINE, 99.66 FEET; THENCE NORTHWESTERLY, AT AN ANGLE OF 83 DEGREES 03 MINUTES 16 SECONDS MEASURED COUNTERCLOCKWISE FROM SAID EAST LINE, 298.72 FEET; THENCE NORTHERLY, AT AN ANGLE OF 95 DEGREES 12 MINUTES 14 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 364.47 FEET TO THE NORTHEAST CORNER OF OUTLOT "B" OF LINCOLN INDUSTRIAL PARK; THENCE NORTHWESTERLY, AT AN ANGLE OF 101 DEGREES 12 MINUTES 04 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG THE NORTH LINE OF SAID OUTLOT "B", 124.08 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTHERLY, AT AN ANGLE OF 77 DEGREES 03 MINUTES 27 SECONDS MEASURED CLOCKWISE FROM SAID NORTH LINE, PARALLEL WITH THE EAST LINE OF THE WEST 1/2 OF SAID NORTHWEST 1/4, 2,975.02 FEET TO THE SOUTH LINE OF SAID NORTHWEST 1/4; THENCE EASTERLY, AT AN ANGLE OF 89 DEGREES 54 MINUTES 08 SECONDS MEASURED CLOCKWISE FROM SAID PARALLEL LINE, ALONG SAID SOUTH LINE, 1,627.01 FEET TO A POINT THAT IS 92.0 FEET WESTERLY OF THE SOUTHEAST CORNER OF SAID NORTHWEST 1/4; THENCE NORTHERLY, AT AN ANGLE OF 90 DEGREES 09 MINUTES 27 SECONDS MEASURED
CLOCKWISE FROM SAID SOUTH LINE, PARALLEL WITH THE EAST LINE OF SAID NORTHWEST 1/4, 2,646.92 FEET TO THE POINT OF BEGINNING, ALL IN DEKALB TOWNSHIP, DEKALB COUNTY, ILLINOIS.

The property is commonly known as the "Orr Property," situated on the south side of East Lincoln Highway and west of Peace Road.
ANNEXATION AGREEMENT

This Annexation Agreement (the Agreement), is made and entered into this 9th day of July, 2007, by, among and between the City of DeKalb, an Illinois municipal corporation located in DeKalb County, Illinois, (the "CITY"), and Park 88, LLC, an Illinois limited liability company ("OWNER") (City and Owner hereinafter also referred to individually as a “PARTY” and collectively as the “PARTIES”.)

RECITALS

A. Park 88, LLC is the owner of record of approximately 101.857 acres of real property located generally on the south side of East Lincoln Highway (Illinois State Route 38) and west side of Peace Road, in DeKalb County, Illinois, which property is legally described on Exhibit A, attached hereto and incorporated herein by reference (the "PROPERTY").

B. The Parties desire to enter into this Agreement pursuant to the provisions of 65 ILCS 5/11-15.1- et. seq. (1996), in accordance with the terms and conditions hereinafter set forth.

C. The Property is not presently located within the corporate limits of any municipality, but is contiguous to and may be annexed to the City of DeKalb as provided in Article 7 of the Illinois Municipal Code (65 ILCS 5/7-1-1 et. seq. 1996).

D. The Owner is a single member limited liability company whose sole Member is Macom-Rivermist, LLC, an Illinois limited liability company. Macom-Rivermist, LLC is a single member limited liability company whose sole Member is DeKalb Associates, an Illinois partnership. The City and DeKalb Associates entered into a Development Agreement for Park 88 on the 28th day of June, 2004, which was recorded on the 4th day of August, 2004, as Document Number 2004016020, which sets forth the zoning and particular development regulations and performance standards for Park 88.
E. The Owner seeks immediate annexation and zoning of the Property, through inclusion of the Property into the adjoining Park 88 Project, also owned by the Owner.

F. The City and the Owner seek to assure that the future development and use of the Property will be compatible with and will further the planning objectives of the City, and that the annexation of the Property to the City will be of substantial benefit to the City, will extend the corporate limits and jurisdiction of the City, will permit orderly growth, planning and development of the City, will increase the tax base of the City, and will promote and enhance the general welfare of the City and its residents.

G. The Planned Development Commercial (PD-C) and Planned Development Industrial (PD-I) classifications under the City Zoning Ordinances, as currently amended (the "Zoning Ordinance"), are anticipated to be the most appropriate zoning classifications for the development of the Property.

H. The City has agreed to annex the Property to the City and to zone the Property as hereinafter described, upon the petition of Owner being duly filed with the Clerk of the City of DeKalb.

I. Pursuant to the applicable provisions of the Illinois Municipal Code, a proposed Annexation Agreement similar in substance and in form to this Agreement was submitted to the Mayor and City Council of the City (hereinafter collectively referred to as the "Corporate Authorities") and a public hearing was held thereon pursuant to notice, as provided by statute.

J. Pursuant to notice, as required by statute and ordinance, public hearings were held by the City Plan Commission on the requested zoning of the Property, and a recommendation made by said body relative to such request has been forwarded to the Corporate Authorities.

K. All other and further notices, publications, procedures, public hearings and other matters attendant to the consideration and approval of this Agreement have been given, made, held and performed by the City as required by the Illinois Municipal Code, and all other applicable statutes and all applicable ordinances, regulations and procedures of the City. This Agreement is made and entered into by the Parties pursuant to the provisions of Section 5/11-15.1-1 et. seq. of the Illinois Municipal Code.

L. The Corporate Authorities have duly considered all necessary matters to enter into this Agreement, have considered the recommendations of the Plan Commission in connection with the proposed zoning of the Property and have further duly considered the terms and provision of this Agreement and have, by an Ordinance duly adopted by a vote of not less than two-thirds (2/3) of the Corporate Authorities then holding office, authorized the Mayor to execute, and the City Clerk to attest, this Agreement on behalf of the City.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements herein made, the Parties hereby agree as follows:
ARTICLE I

RECITALS

The Parties acknowledge that the statements and representations contained in the foregoing recitals are true and accurate and incorporate such recitals into this Agreement as if fully set forth in this Article I.

ARTICLE II

ANNEXATION OF THE PROPERTY

A. Upon approval of this Agreement, the Corporate Authorities shall proceed, subject to the terms and conditions set forth in this Agreement, to consider the question of annexing the Property to the City and do all things during the processing of said petition that are necessary or appropriate to cause the Property to be validly annexed to the City. All ordinances, plats, affidavits, and other documents necessary to accomplish annexation shall be recorded by the City at the Owner’s expense.

B. This Agreement in its entirety, at the option of the Owner, shall be null, void and of no force and effect unless the Property is validly annexed to the City upon approval of this Agreement. Without Owner’s written consent and except as hereinafter provided, no action shall be taken by the Corporate Authorities to annex the Property to the City unless: (i) This Agreement has been fully executed by all Parties; and (ii) the Property is annexed to the City only upon the petition of Owner being first duly filed.

ARTICLE III

ZONING AND DEVELOPMENT OF THE PROPERTY

A. Upon annexation of all or a portion of the Property, the property shall receive the default zoning of “SFR-1” Single Family Residential – 1. At a later date, upon submission of a Preliminary Plat and Plan in substantial conformance with the Concept Plan (Exhibit “B”), as hereinafter described, and the City of DeKalb’s Unified Development Ordinance (the “UDO”), the Corporate Authority shall enact such ordinances as are necessary to rezone the Subject Property to “PD-I” Planned Development Industrial, except Lot 29 (as shown on the Concept Plan), which shall be zoned “PD-C Planned Development Commercial. The accompanying Concept Plan, attached hereto as Exhibit B, shall serve as the basis of development for the property, and all development shall be in substantial conformity with that Plan and the terms and conditions of the Development Agreement for Park 88.

Notwithstanding the “PD-I” zoning, the City may also consider “PD-C” Planned Development Commercial zoning for portions of the Property, and may rezone property to “PD-C” upon appropriate petitions and plans submitted by the Owner in the future. The City therefore agrees to cooperate and permit the Owner or its successors and assigns to request, pursuant to the Unified Development Ordinances or other applicable laws, amendments to this Agreement and official zoning map from time to time as development of
the Property becomes known; provided, however, that residential uses, adult oriented uses and billboards shall be prohibited uses in any of said districts.

B. Notwithstanding the "PD-I" Planned Development - Industrial and "PD-C" Planned Development – Commercial zoning classification that shall be granted upon submission of a Preliminary Plat and Plan in substantial conformance with the Concept Plan (Exhibit "B") and the UDO, the City will not proceed to consider the issue of subdivision plat approval, or any other development approvals for the Property, unless and until a Development Agreement and a complete Preliminary Plat and Plan have been submitted, with all required supporting documents, and approved by the City Council for the entire property. Said Agreement shall include a Preliminary Plan and Final Plat, which shall show all major streets and trunk line infrastructure, as well as the proposed uses of the various lots therein, other requirements which may be deemed necessary by the City at that time, and the requirements further outlined below, and shall be considered and adopted as part of this Agreement or as an amendment thereto, and shall thereafter bind and inure to the benefit of all future development of the Property in the same fashion as this Agreement, either of which may be amended from time to time as set forth elsewhere herein.

C. No more than one (1) full access location will be allowed to Peace Road along said frontage, which shall be located pursuant to sound engineering practices and shall account for the intersection spacing of existing and proposed public streets between the Property and Peace Road. Said access shall be for a public street as demonstrated on the Concept Plan. No more than one (1) full access location will be allowed to Illinois State Route 38 along said frontage of the Property which shall be located in accordance with sound engineering practices and shall account for the intersection spacing of existing and proposed public streets between the Property and Illinois State Route 38. Said access shall service only Lot 29, but may be designed to service additional adjacent property, if also zoned and developed in a plan approved by the City Council. Owner acknowledges that Illinois State Route 38 is subject to the jurisdiction of the Illinois State Department of Transportation ("IDOT"), and acknowledges that IDOT regulations may differ from City regulations pertaining to the access to Illinois State Route 38 and that said IDOT regulations shall apply hereto. Right-in/right-out restricted access to Peace Road may be considered by the City but shall not be a right of Owner and shall be granted at the sole discretion of the City.

Owner agrees to construct those roadway improvements to Peace Road and to Illinois State Route 38 in accordance with the requirements of the future Development Agreement.

Owner agrees to provide a traffic study and appropriate improvements to Peace Road and Illinois State Route 38 as may be required pursuant to said traffic study, as may be required as part of any future Development Agreement.

D. The Owner and the City acknowledge that regional storm water drainage issues occur in this area in times of high levels of rain, primarily causing surface flooding downstream. The City and the Owner agree to work towards mutually acceptable regional storm water improvements to correct this situation.

E. The Owner agrees to allow reasonable cross-access and utility easements through Lot 30 to the Proposed Road, in order to serve the Deegan Property, located east of the ComEd right of way, as identified in Concept Plan.
ARTICLE IV

CODES AND ORDINANCES: FEES

A. To the extent of any conflict, ambiguity or inconsistency between the terms, provisions or standards contained in this Agreement and the terms, provisions or standards, either presently existing or hereafter adopted, of the Municipal Code, the Unified Development Ordinance, or any other City code, ordinance or regulation, the terms, provisions and standards of this Agreement shall govern and control.

B. All codes, ordinances, rules and regulations of the City in effect as of the date hereof shall continue in effect insofar as they relate to the development of the Property, during the entire Term of this Agreement, except as other-wise provided herein and except to the extent of amendments mandated by State or Federal requirements. All codes, ordinances, rules and regulations of the City in effect as of the date hereof which relate to building, housing, plumbing, electrical and related restrictions affecting development of the Property shall continue in effect, insofar as they relate to the development of the Property, during the entire Term of this Agreement, except as otherwise provided herein and except to the extent that said codes, ordinances, rules and regulations are amended on a general basis as to be applicable to all property within the City, for purposes of directly furthering the public health and safety on each lot therein.

ARTICLE V

SANITARY SEWER SERVICE

A. The City shall cooperate with Owner and execute all applications, permit requests and other documents required to obtain sanitary sewage treatment service from the DeKalb Sanitary District and in order to allow Owner’s connection to the sanitary sewer lines when installed in the right-of-way of public roads or easements adjacent to the Property. Owner shall pay to the requisite governmental entity all permit, inspection and capital connection fees and tap-on fees that are required at the time of connection to such sanitary sewer system. The City shall cooperate with Owner in obtaining all necessary easements to, and shall grant Owner access to all City-owned rights-of-way to, enable Owner’s provisions of sanitary sewer service to the Property.

ARTICLE VI

POTABLE WATER SERVICE

A. The City represents and warrants that it owns, operates and maintains a potable water supply and distribution system within its borders and water mains within public rights-of-way and recorded easements. The Owner shall have the right to connect to and use such system and mains upon payment of customary and ordinary tap-on user fees, as may be modified within the terms of the Development Agreement.

B. It is understood that the developer of the Property will be responsible for providing a complete fire flow analysis as part of the application for development of the Property or building permits for any
structures to be built on any portion of the Property. The results of said analysis will determine the size and location of major trunk line water main extensions that may be required as part of the development of the Property.

ARTICLE VII

CONTINUATION OF CURRENT USES

All of the Property is presently being used for agricultural cropland and related ancillary and accessory uses. In reviewing this Agreement, the City has given due consideration to the continuation of such current uses. Accordingly, and notwithstanding any provisions of the Municipal Code, the Unified Development Ordinance, or any other code, ordinance or regulation, now in effect or adopted during the term of this Agreement, and notwithstanding the City's subsequent zoning of the Property pursuant to the terms hereof, the current uses of the Property shall be permitted to continue, and any structures, improvements, buildings and roadways now located thereon shall be permitted to remain and be used notwithstanding their lack of conformance to City zoning, building, health, safety or fire codes.

ARTICLE VIII

MUTUAL ASSISTANCE

A. The Parties shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement; to aid and assist each other in carrying out the terms and objectives of this Agreement and the intentions of the Parties as reflected by said terms, including, without limitation, the giving of such notices, the holding of such public hearings, the enactment by the City of such resolutions and ordinances and the taking of such other actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement and as may be necessary to give effect to the terms and objectives of this Agreement and the intentions of the Parties as reflected by said terms.

B. All Parties shall cooperate fully with each other in seeking from any or all appropriate governmental bodies (whether Federal, State, County or local) financial or other aid and assistance required or useful for the construction or improvement of the Property and facilities in and on the Property or for the provision of services to occupants of the Property, including, without limitation, grants and assistance for public transportation, roads and highways, water and sanitary sewage facilities and storm water disposal facilities.

ARTICLE IX

REMEDIES

A. Upon a breach of this Agreement, any Party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance or both. No action taken by any Party
hereto pursuant to the provisions of this Article IX or pursuant to the provisions of any other Article of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and nonexclusive of any other remedy either set forth herein or available to any Party at law or in equity.

B. In the event of a material breach of this Agreement, the Parties agree that the Party alleged to be in breach shall have thirty (30) days after written notice of said breach to correct the same prior to the non-breaching Party’s seeking of any remedy provided for herein; provided, however, that said thirty (30) day period shall be extended if the defaulting Party has initiated the cure of said default and is diligently proceeding to cure the same.

C. If any Party shall fail to perform any of its obligations hereunder, and the Party affected by such default shall have given written notice of such default to the defaulting Party, and such defaulting Party shall have failed to cure such default within thirty (30) days of such default notice (provided, however, that said thirty (30) day period shall be extended if the defaulting Party has initiated the cure of said default and is diligently proceeding to cure the same), then, in addition to any and all other remedies that may be available, either in law or equity, the Party affected by such default shall have the right (but not the obligation) to take such action as in its reasonable discretion and judgment shall be necessary to cure such default. In such event, the defaulting Party hereby agrees to pay and reimburse the Party affected by such default for all reasonable costs and expenses (including attorney’s fees and litigation expenses) incurred by it in connection with action taken to cure such default.

D. The failure of the Parties to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any Party’s right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

E. If the performance of any covenant to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include acts of God, war, acts of civil disobedience, strikes or similar acts), the time for such performance shall be extended by the amount of time of such delay.

ARTICLE X

SPECIAL SERVICE AREAS AND SPECIAL ASSESSMENTS

A. Failure to Maintain Common Areas. In the event the City reasonably determines that either the Owner or any subsequent Owners with responsibility for the Property’s Common Areas has failed to properly maintain the Common Areas, the City may, but is not required to, enter or authorize others to enter onto the Property to maintain or cause others to maintain the Common Areas, and in such event the City shall be paid for same pursuant to the imposition of a Special Service Area tax or assessment as set forth herein.

B. Special Service Area. Owner hereby consents to the establishment of a Special Service Area, pursuant to the provisions of Illinois law, including 35 ILCS 200/27-5, et seq., (“Special Service Areas”). Neither the Owner, its successors, assignees, transferees nor any Subsequent Owner(s) in the Property shall

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object or cause anyone else to object to the creation of the Special Service Areas. The Special Service Area shall be created prior to any building being conveyed within the subject area, but shall be maintained in inactive status unless and until the City determines that neither the Owner nor the Subsequent Owner(s) has properly maintained the Common Areas on an ongoing basis. The Special Service Area shall continue indefinitely unless the City determines otherwise or as otherwise limited by law.

ARTICLE XI

TERM

This Agreement shall be binding upon the Parties and their respective successors and assigns for twenty (20) years, commencing as of the date hereof, and for such further terms as may hereinafter be authorized by statute and by City ordinance. If any of the terms of this Agreement, or the annexation or zoning of the Property, is challenged in any court proceeding, then, to the extent permitted by law, the period of time during which such litigation is pending shall not be included in calculating said twenty (20) year period. The expiration of Term of this Agreement shall not affect the continuing validity of the zoning of the Property or any ordinance enacted by the City pursuant to this Agreement.

ARTICLE XII

MISCELLANEOUS

A. Amendment. This Agreement, and the exhibits attached hereto, may be amended only by mutual consent of the Parties and by adoption of an ordinance by the City approving said amendment as Parties or their successors in interest.

B. Severability. If any provision, covenant, agreement or portion or this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements and portions of this Agreement, and, to that end, all provisions, covenants, agreements and portions of the Agreement are declared to be severable. If for any reason the annexation or zoning of the Property is ruled invalid, in whole or in part, the Corporate Authorities, as soon as possible, shall take such actions (including the holding of such public hearings and the adoption of such ordinances and resolutions) as may be necessary to give effect to the spirit and intent of this Agreement and the objectives of the Parties, as disclosed by this Agreement, provided that the foregoing shall be undertaken at the expense of the Developer.

C. Entire Agreement. This Agreement sets forth all agreements, undertakings and covenants between and among the Parties. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and is a full integration of the entire agreement of the Parties.

D. Survival. The provisions contained herein shall survive the annexation of the Property and shall not be merged or expunged by the annexation of the Property to the City.

E. Successors and Assigns. The Agreement shall inure to the benefit of, and be binding upon, successors of the Owner and its respective successors, grantees, lessees, and assigns, and upon successor
corporate authorities of the City and successor municipalities, and shall constitute a covenant running with the land. This Agreement may be assigned without City approval, and upon said assignment and acceptance by an assignee, the assignor shall have no further obligations hereunder. If a portion of the Property is sold, the seller shall be deemed to have assigned to the purchaser any and all rights and obligations seller may have under this Agreement which affect the portion of the Property sold or conveyed and thereafter the seller shall have no further obligations under this Agreement as it relates to the portion of the Property conveyed.

F. **Notices.** Any notice required or permitted by the provisions of this Agreement shall be in writing and personally served, sent by certified mail, return receipt requested, or sent via a nationally recognized overnight courier, to the Parties at the following addresses, or at such other addresses as the Parties may, by notice, designate:

If to City: City Clerk
City of DeKalb
200 South Fourth Street
DeKalb, Illinois 60115

With copy to: City Attorney
City of DeKalb
200 South Fourth Street
DeKalb, Illinois 60115

If to Owner: Park 88, LLC
3380 Lacrosse Lane, Suite 100
Naperville, Illinois 60564
Attn: Paul J. Lehman

With copy to: Gary W. Cordes
Klein, Stoddard, Buck, Waller, & Lewis
2045 Aberdeen Court, Suite A
Sycamore, IL 60178

Notices shall be deemed given on upon receipt, if personally served, on the fifth (5th) business day following deposit in the U.S. Mail, if given by certified mail as aforesaid, or on the first (1st) business day following deposit with an overnight courier as aforesaid.

G. **Time of Essence.** Time is of the essence of this Agreement and of each and every provision hereof.

H. **City Approval.** Wherever any approval or consent of the City, or of any of its departments, officials or employees, is called for under this Agreement, the same shall not be unreasonably withheld or delayed.

I. **Indemnification.** Owner covenants and agrees to pay, at its expense, any and all claims, damages, demands, expenses, liabilities and losses of any nature whatsoever resulting from this Agreement, the construction and development activities of Owner, its agents, contractors and subcontractors with respect to the development of Property, and to defend and indemnify and save the City and its officers, elected and appointed, agents, employees, engineers and attorneys (the “Indemnitees”) harmless of, from and against such claims, damages, demands, expenses, liabilities and losses, except to the extent such claims, damages, demands, expenses, liabilities and losses arise by reason of gross negligence or willful or wanton act or omission of the City or other Indemnitees. Owner shall provide satisfactory proof of insurance covering such defense and indemnity of the City or other Indemnitees.

J. **Entrance Monumentation.** The City agrees to permit entry signage within a landscape median within the right-of-way of the Proposed Roadway at the intersection with Peace Road as shown on the Site Plan. The sign shall not exceed 22 feet in height and 16 feet in width, shall be located in a manner that does not restrict safe visibility for vehicles at the intersection, and the sign shall match the other signs on the site.
installed in Park 88 in design and material. This allowance shall not obligate the City to maintain said signage, which shall remain the responsibility of the Developer and/or Owners' Association.

K. Algus Retained Property. Owner covenants that provisions were made pertaining to providing access to Peace Road for the Algus Retained Property as described in the Park 88 Development Agreement. Owner and City agree that the Proposed Roadway shall satisfy Owner's obligation under the Park 88 Development Agreement. Owner and City agree that concurrent with construction of the first building on any of Lots 27, 29 and/or 30 as shown on the Site Plan (except if a portion of Lot 27 not exceeding 25% of the area Lot 27 is included in the final platting of a Lot with access solely from Macom Drive), the Proposed Roadway shall be constructed extending from Peace Road to Industrial Drive. Subsequent to both the construction of the Proposed Roadway between Peace Road and Industrial Drive, and the request of the owner of the Algus Retained Property, the Owner and City agree that a roadway access shall be extended to the Algus Retained Property from either Industrial Drive (Alternative A, that being the original proposed location of Taylor Street) or from the Proposed Roadway (Alternative B, across the northerly portion of Lot 29 as shown on the Site Plan). The owner of the Algus Retained Property shall have the sole right to determine which of either Alternative A or B shall be constructed, and the Owner and City agree that the cost obligation for installation of either Alternative A or B shall not be that of either the City or owner of the Algus Retained Property.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written and, by so executing, each of the Parties warrants that it possesses full right and authority to enter into this Agreement.

PARK 88, LLC
by: [Signature]
Paul J. Lehman, Manager

CITY OF DEKALB
by: [Signature]
Frank Van Buer, Mayor

Attest: [Signature]
Donna S. Johnson, City Clerk
EXHIBIT A: LEGAL DESCRIPTION

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 24 AND PART OF THE NORTHWEST 1/4 OF SECTION 25, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHWEST 1/4; THENCE WESTERLY, ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, 92.0 FEET FOR A POINT OF BEGINNING; THENCE NORTHERLY, AT AN ANGLE OF 89 DEGREES 57 MINUTES 05 SECONDS MEASURED COUNTERCLOCKWISE FROM SAID NORTH LINE, PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST 1/4, 111.10 FEET; THENCE NORTHEASTERLY, AT AN ANGLE OF 104 DEGREES 09 MINUTES 08 SECONDS MEASURED CLOCKWISE FROM SAID PARALLEL LINE, 137.62 FEET; THENCE NORTHERLY, AT AN ANGLE OF 104 DEGREES 09 MINUTES 52 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 89.41 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF ILLINOIS ROUTE 38 (LINCOLN HIGHWAY); THENCE NORTHEASTERLY, AT AN ANGLE OF 104 DEGREES 50 MINUTES 53 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID RIGHT OF WAY LINE, 235.60 FEET; THENCE CONTINUING NORTHEASTERLY, AT AN ANGLE OF 176 DEGREES 19 MINUTES 11 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID RIGHT OF WAY LINE, 22.63 FEET; THENCE SOUTHEASTERLY, AT AN ANGLE OF 85 DEGREES 33 MINUTES 13 SECONDS MEASURED CLOCKWISE FROM SAID RIGHT OF WAY LINE, 221.15 FEET; THENCE NORTHEASTERLY, AT AN ANGLE OF 89 DEGREES 57 MINUTES 42 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 186.80 FEET; THENCE SOUTHEASTERLY, AT AN ANGLE OF 86 DEGREES 39 MINUTES 20 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, 135.62 FEET TO THE SOUTH LINE OF SAID SOUTHWEST 1/4; THENCE WESTERLY, AT AN ANGLE OF 100 DEGREES 48 MINUTES 45 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID SOUTH LINE, 580.45 FEET TO THE WEST LINE OF THE EAST HALF OF SAID NORTHWEST 1/4; THENCE SOUTHERLY, AT AN ANGLE OF 90 DEGREES 09 MINUTES 04 SECONDS MEASURED CLOCKWISE FROM SAID SOUTH LINE, ALONG SAID EAST LINE, 99.88 FEET; THENCE NORTHEASTERLY, AT AN ANGLE OF 83 DEGREES 03 MINUTES 16 SECONDS MEASURED COUNTERCLOCKWISE FROM SAID EAST LINE, 298.72 FEET; THENCE NORTHERLY, AT AN ANGLE OF 95 DEGREES 12 MINUTES 14 SECONDS MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 384.47 FEET TO THE NORTHEAST CORNER OF OUTLOT "B" OF LINCOLN INDUSTRIAL PARK; THENCE NORTHEASTERLY, AT AN ANGLE OF 101 DEGREES 12 MINUTES 04 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG THE NORTH LINE OF SAID OUTLOT "B", 124.08 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTHERLY, AT AN ANGLE OF 77 DEGREES 03 MINUTES 27 SECONDS MEASURED CLOCKWISE FROM SAID NORTH LINE, PARALLEL WITH THE EAST LINE OF THE WEST 1/2 OF SAID NORTHWEST 1/4, 2,975.02 FEET TO THE SOUTH LINE OF SAID NORTHWEST 1/4; THENCE EASTERLY, AT AN ANGLE OF 89 DEGREES 54 MINUTES 08 SECONDS MEASURED CLOCKWISE FROM SAID PARALLEL LINE, ALONG SAID SOUTH LINE, 1,827.01 FEET TO A POINT THAT IS 92.0 FEET WESTERLY OF THE SOUTHEAST CORNER OF SAID NORTHWEST 1/4; THENCE NORTHERLY, AT AN ANGLE OF 90 DEGREES 09 MINUTES 27 SECONDS MEASURED
CLOCKWISE FROM SAID SOUTH LINE, PARALLEL WITH THE EAST LINE OF SAID NORTHWEST 1/4, 2,646.82 FEET TO THE POINT OF BEGINNING, ALL IN DEKALB TOWNSHIP, DEKALB COUNTY, ILLINOIS.

The property is commonly known as the "Orr Property," situated on the south side of East Lincoln Highway and west of Peace Road.
August 7, 2007

Gary W. Cordes  
Klein, Stoddard, Buck, Waller & Lewis  
2045 Aberdeen Court, Suite A  
Sycamore, IL 60178

RE: Annexation Agreement of Park 88, LLC

Dear Mr. Cordes:

Enclosed please a fully executed original of the above-named document.

By a copy of this letter to Donna Johnson, City Clerk for the City of DeKalb, I am requesting that she record the attached original with the County Clerk’s Office. Once we receive the document back from the County Clerk’s office, we will forward you a copy of the recorded document.

If you have any questions, please feel free to contact me.

Sincerely,

Norma J. Guess  
City Attorney

Annexation Agreement of Park 88, LLC

Enclosures

CC: Donna Johnson – (ORIGINAL)  
Mark Biernacki, City Manager (w/ copy of enclosure)  
Russ Farmum (w/ copy of enclosure)