I, RUTH A. SCOTT, do hereby certify that I am the duly appointed Deputy City Clerk of the City of DeKalb, DeKalb County, Illinois, and as such officer I am the keeper of the records and files of the City Council of said City.

I do further certify that the attached is a true and correct original of:

ORDINANCE 2016-007

APPROVING AN ANNEXATION AGREEMENT (AND THE ANNEXATION OF PROPERTY CONTEMPLATED THEREBY) FOR THE PURI DEKALB DEVELOPMENT, AND APPROVING ZONING, PRELIMINARY PLANS, AND GRANTING RELATED DEVELOPMENTAL APPROVALS WITHIN THE CITY OF DEKALB, ILLINOIS.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 14th day of March, 2016.

The property to be annexed and rezoned is legally described as:

That part of Section 13, Township 40 North, Range 4 East of the Third Principal Meridian, which is bounded on the West by the right-of-way of the Chicago, Milwaukee and St. Paul Railroad, and on the North by the Section line between Sections 12 and 13 in said Township and Range, and on the East by the Illinois State Route No. 23, known also as the DeKalb-Sycamore Road, and which property is also described as: That part of the following described real estate on Section 13, Township 40 North, Range 4 East of the Third Principal Meridian, of the entire piece of property which is described as follows: A part of Assessor's Lot Fifty-eight (58) on Section 12, and a part of Assessor's Lot Four (4) on Section 13, Township 40 North, Range 4 East of the Third Principal Meridian, beginning at a point on the Section line between Sections 12 and 13, 1440.4 feet East of the Section corner common to Sections 11, 12, 13 and 14, and on the East line of the right-of-way of the Chicago, Milwaukee and St. Paul Railroad, (formerly Chicago, Milwaukee & Gary Railroad); thence North 0 degrees 37' West 443 feet on said right-of-way line; thence North 15 degrees 53' East 150.7 feet; thence South 75 degrees 59' East 414.9 feet; thence South 62 degrees 38' East 297.7 feet to the center line of the DeKalb and Sycamore Road; thence South 40 degrees 40' West on said centerline 464 feet to the Section line; thence South 40 degrees 40' West on said center line 607.8 feet to the East right-of-way line of
said railroad; thence North 0 degrees 37' West on said right-of-way line 461.5 feet to the place of beginning; situated in the County of DeKalb and State of Illinois.

The aforementioned legal description is comprised of Parcel Identification Number (PIN) 08-13-126-001 and is generally bound by the nature trail on the west, a commercial development on the north, and Sycamore Road on the East and South.

WITNESS my hand and the official seal of said City this 29th day of July, 2016.

RUTH A. SCOTT, Deputy City Clerk

Prepared by: and Return to:
Deputy City Clerk
City of DeKalb
200 South Fourth Street
DeKalb, IL 60115-3733
ORDINANCE 2016-007           PASSED: MARCH 14, 2016

APPROVING AN ANNEXATION AGREEMENT (AND THE ANNEXATION OF PROPERTY CONTEMPLATED THEREBY) FOR THE PURI DEKALB DEVELOPMENT, AND APPROVING ZONING, PRELIMINARY PLANS, AND GRANTING RELATED DEVELOPMENTAL APPROVALS WITHIN THE CITY OF DEKALB, ILLINOIS.

WHEREAS, the City of DeKalb is a home rule Illinois municipal corporation, with the power and authority granted to it under the Illinois Constitution of 1970, the Illinois Municipal Code, and the City Code of Ordinances; and,

WHEREAS, under Illinois law, the City of DeKalb has the ability and authority to enter into annexation and development agreements that provide for the annexation and subsequent orderly development of real property within the City; and,

WHEREAS, the City has complied with all applicable conditions precedent to the annexation of property and precedent to the execution of an annexation agreement, including the conduct of numerous and extensive public hearings, receiving recommendations from the Planning and Zoning Commission, and considering the input of the public and of other units of government and public agencies that will be impacted by the proposed development of the property commonly referred to as the Puri-DeKalb Development; and,

WHEREAS, through such extensive public process, there has been discussion, compromise and significant revision to the proposed development and related plans. Through that process, a draft annexation agreement has been developed, a copy of which is attached hereto as Exhibit A ("the Annexation Agreement"); and,

WHEREAS, based upon the extensive process that this project has undergone, the City Council has determined that the most effective method for providing for the orderly development of the project is to approve this Ordinance, which includes an extensive list of requirements and conditions. The annexation and development of the property is authorized by this Ordinance, provided that all plans and the draft Annexation Agreement are updated to fully comply with these requirements; and,

WHEREAS, the City has determined that such annexation, annexation agreement, and subsequent development complies with all applicable laws and regulations and is in the best interests of the public, and preserves the public health, welfare, safety and morals;

THEREFORE BE IT ORDAINED AS FOLLOWS by the City Council of the City of DeKalb:

SECTION 1: ANNEXATION AGREEMENT APPROVED

The Mayor of the City of DeKalb is authorized and directed to execute the Annexation Agreement attached hereto as Exhibit A, substantially in the form as attached. In this instance, as the development is being approved with Preliminary Plans that will be subject to review and
revision consistent with the requirements of City Staff, the Mayor is authorized to approve of amendments to the Annexation Agreement that are based upon and effectuate the comments outlined to date, as well as future comments based upon revisions to the Preliminary Plans, and such other amendments as he shall deem appropriate to effectuate the direction of the City Council.

This Ordinance shall also approve the annexation of the Property contemplated by the Annexation Agreement, and its immediate rezoning to the PD-C zoning contemplated by the Agreement, with the deviations, exceptions, and special development conditions described therein. In addition, the preliminary plats and plans described in the Agreement are approved, and all preliminary approvals contemplated to be given contemporaneously with the approval of the Agreement are granted, subject to the conditions outlined herein. The City reserves all further and future approvals, including but not limited to phasing, final plats and plans, and related matters. Prior to approval and execution of the above-described documents (and prior to rezoning), the City Manager shall require that the developer make all revisions necessary to comply with the conditions or requirements imposed by the City Council at the time of approval, if any, and shall confirm that revised documentation complies with such conditions. Such conditions shall expressly include the following:

1) Revision of the Preliminary Plans to comply with all comments outlined in the Annexation Agreement and the Agenda Memorandum accompanying this Ordinance when presented to City Council.

2) Revision of the Preliminary Plans to address all outstanding comments or further or future comments of City staff, including but not limited to the City Manager, Community Development Director and City Engineer.

The City Manager is authorized to approve of revised plans and to certify the Final Plans as being in compliance with this Ordinance. Thereafter, the City Manager shall present the Final Plans and the final Annexation Agreement to the Mayor for consideration, approval and execution. Said Final Plans and final Annexation Agreement shall be utilized as the City’s approved plans and documents, and the Annexation Agreement shall be recorded against the property at issue.

Approval of final plans shall be in the absolute and sole discretion of City staff. If the plans are acceptable to the City Manager, they shall be submitted to the Mayor as outlined above. If the plans are not acceptable to the City Manager, or in the event that the developer fails to return revised plans to the City Manager that meet all outstanding staff comments within sixty days of the date of this Ordinance being passed, then this Ordinance shall automatically return to the City Council for reconsideration, at which time the City Council may repeal this Ordinance, may amend this Ordinance or extend the timeline for the developer to provide final plans, or may take direct action to approve of Final Plans and a final version of the Annexation Agreement. The annexation of the Property (and the corresponding approvals contemplated herein) shall not occur until the Mayor has approved of the Final Plans and final Annexation Agreement and has executed the same, with the recommendation of the City Manager.
SECTION 2: GENERAL PROVISIONS

REPEALER: All ordinances or portions thereof in conflict with this ordinance are hereby repealed.

SEVERABILITY: Should any provision of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and affect the same as if the invalid provision had not been a part of this Ordinance.

EFFECTIVE DATE: This Ordinance shall be in full force and effect on and after its approval, passage and publication in pamphlet form as provided by law. Publication date: March 15, 2016. Effective date: March 24, 2016.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a regular meeting thereof held on the 14th day of March, 2016 and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote on First Reading and waiver of Second Reading. Aye: Jacobson, Finucane, Marquardt, Snow, Noreiko, Baker, Favier, Rey.

ATTEST:

JENNIFER JEEP JOHNSON, City Clerk

JOHN A. REY, Mayor
ANNEXATION AGREEMENT

This Annexation Agreement (the "Agreement") is made and entered the 24th day of March, 2016 by and among the City of DeKalb, an Illinois municipal corporation located in DeKalb County, Illinois, (the "City"), and Corral Dyn, LLC. (the “Owner” or “Developer”). The City and the Owner are collectively referred to as “Parties” and individually referred to as a “Party.”

RECITALS

A. The Owner is the Owner of record of approximately 2.124 acres of real property (1.379 net of right of way) situated on Sycamore Road in DeKalb County, Illinois, which property is legally described on Exhibit A attached hereto and incorporated herein by reference as the “Property”.

B. The Owner proposes to annex the Property and develop it as a commercial property in accordance with the Plans attached hereto as Group Exhibit "B", and incorporated herein by reference, which includes the Engineering Plan, the Site Plan, building architectural elevations and the balance of plans included therein (collectively, the "Final Plans").

C. The City and the Owner desire to enter into this Agreement pursuant to the provisions of 65 ILCS 5/11-15.1-1, et. seq., in accordance with the terms and conditions hereinafter set forth.

D. The 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 65 ILCS 5/7-1-1, et seq, and this Agreement provides for the annexation of the Property, subject to the terms of this Agreement, as a voluntary, Owner-initiated annexation.

E. Owner seeks to provide for the immediate annexation of the Property to the City and the rezoning of the Property by the City as set forth herein and in the Final Plans.

F. The Owner represents to the City that there are no electors that reside on the Property.

G. The City acknowledges that the Owner’s proposed use of the Property as set forth in this Agreement, 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 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. The Owner acknowledges that the City is not
obligated to annex or provide services to the Property, and that the City’s agreement to annex the
Property, to rezone the Property 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
the Owner and the Property.

H. The City acknowledges and the Owner agrees that the “PD-C” Planned
Development-Commercial 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 Property as depicted on the Final Plans.

I. The City has agreed to annex the Property to the City concurrently with the
approval of this Agreement, and has agreed to zone the Property 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 the applicable provisions of 65 ILCS 5/7-1-1 et seq., 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.

K. Pursuant to notice, as required by statute and ordinance, public hearings were held
by the City’s Plan Commission on the requested zoning of the Property, and the findings of fact
and recommendations made by said body relative to such requests have been forwarded to the
Corporate Authorities.

L. All other and further notices, publications, procedures, public hearings and other
matters attendant to the consideration and approval of this Agreement and the annexation and
re zoning of the Property 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 65 ILCS 5/11-15.1-1.

M. The Corporate Authorities have duly considered all necessary matters to enter into
this Agreement, have considered the recommendations of the City’s Plan Commission in
connection with the proposed zoning of the Property and have further duly considered the terms
and provisions of this Agreement and have, by a resolution 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 1
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
ANNEXATION OF THE PROPERTY

The Owner has previously filed a petition for annexation with the City Clerk. Upon approval of this Agreement, the Corporate Authorities shall proceed, subject to the terms and conditions set forth in this Agreement, to annex the Property to the City and do all things 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 Owner's expense. Owner shall develop the Property in accordance with this Agreement and shall not petition to disconnect any portion or all of said Property from the CITY hereafter.

ARTICLE III
ZONING OF THE PROPERTY

A. Default Zoning. Upon annexation of the Property, the Corporate Authority shall enact such ordinances as are necessary to rezone the Property to "PD-C" Planned Development-Commercial, in accordance with the Final Plans and the terms of this Agreement. The Final Plans shall serve as the basis of development for the Property, and all development shall be in conformity with the Final Plans and the terms and conditions of this Agreement. No residential housing or occupancy shall be permitted on the Property.

B. "PD-C" Provisions. It is herein agreed that the PD-C zoning for the property shall include the following provisions and restrictions:

1. Allowed Uses: The uses allowed in the "GC" General Commercial zoning district shall be allowed on the Property only to the extent permitted herein, provided that adequate parking is afforded in compliance with the minimum standards of the City’s Unified Development Ordinance:

   (i) Retail Uses. Purely Retail uses shall be permitted unless otherwise prohibited or limited. Minor, indoor incidental services shall be permitted as a component of Retail uses (e.g. sale of computers with incidental computer servicing, jewelry store providing incidental jeweler services).

   (ii) Restaurants and retail food establishments, including fast-food, sit-down or other similar establishments, provided that any Restaurant seeking to serve alcoholic beverages shall be eligible for a liquor license that requires the sale of real food with a corresponding sale of alcoholic beverages for
at least some portion of the establishment (currently codified as a Restaurant liquor license under City Code). Restaurants shall not include establishments such as bars or taverns that sell alcoholic beverages without a corresponding sale of real food (although a permitted restaurant may have a bar area if permitted under City Code).

(iii) Professional Service Offices, such as medical offices for licensed doctors or chiropractors, urgent care, dental office, legal office, optometrist/ophthalmologist, accountant, or other similar professional service-based offices (with the determination of what constitutes a similar professional office being made by the City Manager). Notwithstanding the foregoing, no more than 1/3 of the total proposed commercial square footage on the Property shall be permitted to be utilized for this purpose (and Professional Service Offices shall be prohibited in any areas in excess of 1/3 of such square footage on the Property). This square footage limitation shall be calculated on the basis of total square footage proposed for the Property, based upon the approved Final Plans.

2. **Prohibited Uses:** None of the following uses shall be allowed in or on the "PD-C" zoned property:

(i) Adult oriented uses; adult bookstores or other establishment displaying, leasing, trading, selling pornographic materials or any similar use as defined in the UDO, whether as a principal use or accessory to an allowed principal use (the foregoing not prohibiting a general audiences bookstore with not more than 1% of its merchandise being adult-oriented);

(ii) Animal boarding;

(iii) Fire, bankruptcy sale, wholesale, overstock auction house or their equivalent (except that a Court-Ordered bankruptcy sale of less than thirty days duration shall be permitted);

(iv) Massage parlor or other similar massage establishment;

(v) Bar, tavern, package liquor store, dance hall or any other similar facility, with the exception of a sit down restaurant serving beer, liquor or wine (as described above);

(vi) "Head shop", marijuana dispensary, hookah bars, or establishments that specialize primarily in the sale of tobacco, tobacco paraphernalia, glass pipes, implements utilized to burn or concentrate a substance for the purpose of permitting the smoke, fumes or vapor therefrom to be inhaled, or drug paraphernalia;

(vii) Community residences;

(viii) Group homes;

(ix) Parking lots, as a principal use;

(x) Cemeteries and mausoleums;

(xi) Funeral homes and mortuaries;

(xii) Rooming houses or lodging houses;

(xiii) Automobile, truck, motorcycle, ATV, motor-scooter or motor
vehicle/recreational vehicle/implement repair, service, sales, rentals, parts or components sales or installation, or maintenance;
(xiv) Contractor offices associated with onsite storage of vehicles, supplies or equipment, building material or equipment sales, building or equipment service or maintenance offices, or the equivalent (except that temporary contractor offices present during construction activities on the Property shall be permitted);
(xv) Warehouses, whether accessory to a retail use, or self-service storage;
(xvi) Tattoo parlor, massage parlor, psychic reading / tarot card shop;
(xvii) Church or religious uses;
(xviii) Gas or fuel station or any form of car wash or auto detailing center;
(xix) Any form of residential use;
(xx) A dollar store or a discount department store or wholesale establishment,;
(xxi) A second-hand store;
(xxii) A cash for gold store;
(xxiii) A full service, FDIC-insured bank, credit union, retail bank, consumer banking institution or savings and loan.
(xxiv) A tax preparation facility, storefront mortgage company, real estate or stock brokerage company, title or title insurance company or financial planning or financial services office.
(xxv) Currency exchange, money wiring, check cashing facility or equivalent;
(xxvi) Auto title loan or post dated check or payday loan facility or equivalent, unless associated with a full-service federally-insured bank, credit union or savings and loan;
(xxvii) Pawn shops;
(xxviii) Other service-based offices such as seamstress/dry cleaners, salons, personal or pet grooming;
(xxix) Fitness clubs or workout facilities.
(xxx) Any other use not authorized as a Permitted Use.

3. **Special Uses:** Any other use not prohibited above, which is listed as a Special Use in the “GC” General Commercial zoning district shall require a Special Use Permit in this “PD-C” Planned Development Commercial zoning district.

4. **Parking Provisions:** Parking shall conform to the requirements of the UDO.

5. **Permitted Outdoor Storage:** Outdoor dumpsters, trash compactors, and similar rubbish disposal facilities shall be permitted within the PD-C portion of the Property, provided that all such facilities shall be completely screened from view with either landscaping and/or a wall or fence constructed of materials and colors matching the principal building it services. For purposes of this subsection, “similar rubbish disposal facilities” shall include development-specific rubbish containers (e.g. grease containers for restaurant use. Any such proposed outdoor rubbish disposal facilities and their related landscaping/screening shall be subject to prior review and approval by the City Manager or his designee to confirm compliance with this section. Such review shall occur at the time of submission,
by the Owner, of site plans showing the proposed location and screening for the rubbages storage, and showing elevations of the proposed principal building served by the rubbish storage.

6. **Outdoor Sales:** Outdoor sales shall only be permitted in the PD-C portion of the Property as follows below.

   a. **Permitted Outdoor Sales:** Outdoor sales promotions by businesses within the Retail Development shall be permitted provided that: 1) such sales areas are limited to the sidewalks directly in front of such business; 2) such sales and promotions for individual Retail Development tenant, occupant or owner shall not exceed one hundred eighty (180) days in the aggregate in any calendar year; and, 3) such outdoor sales promotion does not interfere with site ingress and egress, flow of traffic through the development, emergency access to the development, or use of parking lots, sidewalks and common areas by other commercial enterprises within or outside the Property, as determined by the City.

   Any such proposed outdoor sales shall be subject to prior review and approval by the City Manager or her designee to confirm compliance with this section. Such review shall occur at the time of submission, by the Owner, of site plans showing the proposed location for the outdoor sales, and showing such other information as shall be required by the City Manager or her designee.

   b. **Prohibited Outdoor Sales:** All other outdoor sales are prohibited.

7. **Electronic Banking:** Automatic Teller Machines shall be allowed provided said facilities are wall mounted or flush to the building and designed for walk-up service only. In addition, an Electronic Banking Facility or Automatic Teller Machine shall be permitted inside a retail store. Standalone Automatic Teller Machines shall be prohibited.

8. **Setbacks:** The City may permit those portions of dry bottom detention basins which are located above the design high water level for such basins to be included within the landscaping/setback requirements applicable to the Property without requiring an amendment of this Agreement or other action of the City Council, provided that such design is acceptable to the City Engineer in his sole discretion. Unless otherwise approved by the City through the approval of an amended final plat, a deed restriction shall be recorded on all final plats for all platted lots prohibiting re-subdivision of those lots subsequent to recording the final plat.

C. **Architecture and Design Provisions**

1. **Compliance with Design and Development Standards:** All buildings constructed on the Property shall be built in compliance with the Final Plans and
the Architectural Design Specifications and Development Standards attached hereto as Exhibit C in terms of design, elevations, appearance, aesthetics and building materials. Overall private signage plans and specifications shall be in substantial conformity with the UDO, except as modified herein.

In addition to the signage permitted under the UDO, the City agrees to allow the following signage to be used in the development, only on private property and not on any rights of way or easements, as approved by the City: Project Signs, Sales or Marketing Signs/Flags, Temporary For Sale/Promotional Signs, and Directional Signs. Such signs marketing the sale of lots in the Property may not be installed until such time as the City has reviewed and approved Final plats for the Property, and shall be removed by Developer upon sale or lease of such number of properties as to equal one hundred percent (100%) the total number of commercial units in the development.

There shall only be up to 1 monument signs at the Property, and such sign shall comply with the UDO. No Developer name or logo may appear on any permanent signage at the Property.

All structures in each phased development shall comply with the designs reflected in the Final Plans and the development restrictions contained herein. The Developer shall design, install and/or construct all signage, landscaping, lighting and improvements in substantial conformance with the Final Plans. The exterior design, elevations, appearance, dimensions and building materials proposed for any structure or sign proposed to be built on the Property which does not directly comply with the Architectural Design Specifications or Private Sign Restrictions shall be subject to separate review and approval by the City Council, in its sole and absolute discretion. Such review, or approval of modifications to the Architectural Design Specifications or Private Sign Restrictions may be done by City Council, at its discretion, and shall not require an amendment of this Agreement.

Developer shall be responsible for installing approved parking lot area lighting as shown on the Final Plans. Prior to the issuance of any building permits for any area of the Property, the Developer shall provide the City with a development plan showing the timing of installation and the timing of illumination of lighting, showing that lighting will be adequate, as required under the UDO, to provide safe conditions in the areas under development, and to provide final lighting prior to the issuance of certificates of occupancy. The expense of installing and operating such lighting shall be exclusively borne by the Owner. All lights shall be designed and installed to conform to the requirements of the Final Plans, which shall comply with the UDO with regard to parking area lighting.

Developer shall take all steps required, including acquisition of easements or rights of way and construction of all required facilities, driveways and parking
areas, to provide an on-site pedestrian and vehicle connection with the adjoining commercial development to the North.

2. **Review by City:** The City’s determination as to whether or not proposed buildings, building materials, signs and development layout conform to the above-referenced Exhibits shall be in the City’s sole and absolute discretion.

3. **Signage:** Any permanent signs, marketing signs, off-site signage, temporary signs or other signs of any form shall be installed only in strict compliance with the applicable provisions of the City’s Unified Development Ordinance ("UDO") pertaining to permitting and authorization of such signs.

4. **Knox Box:** The Owner shall install and maintain a ‘Knox Box’ entry systems for use by City of DeKalb emergency responders, at locations designated by the City of DeKalb Fire Chief, and shall ensure that such systems are available for use and operational at all times, to allow access to all portions of the structure constructed on the Property.

D. **Density of the Project:** The density and site coverage contemplated by the Final Plans shall constitute the approved maximum density of the Property. Any future development contemplating greater density or more intensive use or site coverage shall require an amendment of this Agreement and the PD-C zoning.

E. **Detention Basin Maintenance:** The Parties acknowledge that stormwater detention shown on the Final Plans shall be maintained by the Owner. This maintenance obligation shall be for the area starting at and extending below the design high water line of such detention basins, regardless of whether the basins are designed as a wet bottom, dry bottom, wetland bottom, or other design. The obligation of the Owner to maintain the detention basins shall be backed up by the commercial backup special service areas described herein. As a component of the required maintenance obligation, the Owner shall have an inspection of any underground stormwater detention areas completed at least annually, by a qualified person acceptable to the City Engineer. A copy of such inspection report shall be filed with the City. The Owner shall comply with any maintenance or repair recommendations provided in such report.

F. **Special Service Area:** 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 the Property. Owner shall submit a consent executed by the then Record Owner of the Property, agreeing and waiving any objection to the creation of a back-up Special Tax Service Area that shall pay for the cost of maintenance of all detention and earthen berms or dams, underground stormwater detention facilities, drains, tiles, waterways, valves and related appurtenances, open space, and common areas (including islands) of the said areas, commercial property monumentation, landscaping, signage, maintenance of all private curbs and roadways, parking lots and parking areas, driveways and drive aisles, and any other common areas of said areas ("Common Facilities"). Such SSA shall also cover any costs associated with mosquito abatement within the Property.
Execution of this Agreement by the Owner constitutes the waiver of objection to the establishment of a single SSA to cover all commercial portions of the Property. This waiver of objection shall be binding upon all successor Owners of the Property or any portion thereof, for the term of this Agreement. Owner shall have the primary responsibility of providing for the above referenced maintenance, so as to keep the same in a clean, sightly and first class condition (the "Common Facilities Maintenance"). If at any time such Owners fail to conduct the Common Facilities Maintenance, then the City shall have the right, but not the obligation, to undertake such maintenance and utilize the SSA to provide sufficient funds to pay the costs of the Common Facilities Maintenance undertaken by the City. The Special Tax Service Area shall be recorded prior to or concurrent with the recording of the First Final Plat of Subdivision for the commercial areas. Said SSA shall have a rate as reasonably determined by the City Engineer.

A maintenance easement ("Common Facilities Maintenance Easement") shall be established over all of those Common Facilities located on the Final Plat for the Common Facilities Maintenance. The substance of the Common Facilities Maintenance Easement shall be as approved by legal counsel for the City and Owner, which approvals shall not be unreasonably withheld.

Any purchaser of property subject to this Agreement shall be deemed to consent to the City's establishment of one or more active special service areas (individually, an "SSA") hereafter described. As indicated above, the Owner shall own and maintain the stormwater management systems and all improvements related thereto, including stormwater management systems included within areas dedicated to the City.

Nothing in this Agreement shall prevent the City from levying or imposing property taxes, including but not limited to special service areas, special assessment areas, or other ad valorem or flat rate taxes upon the Property in the manner provided by law which are applicable to and apply equally to all other properties within the City or from establishing a special service area that encompasses solely the Property, and from levying and imposing special service area taxes solely on the Property. The City shall have no obligation to provide such additional municipal services unless and until such special service area is established.

G. **Excavation and Grading**

1. **At-Risk Work:** The Owner shall have the right, prior to obtaining approval of final engineering drawings and prior to approval of a building permit for any phase of the Property, to undertake excavation, preliminary grading work, filling and soil stockpiling on the Property in preparation for the development of the Property, upon approval of grading, soil erosion and sedimentation control plans by the City Engineer. Such work shall be undertaken at the Owner's sole risk and without injury to the property of surrounding property owners.

2. **IEPA Violations:** The Parties agree that, to the best of their knowledge, there are no pending IEPA investigations of or environmental contamination issues with the Property.
3. **Truck Staging, Stockpile, Lane Closure:** Owner shall provide adequate space on the Property at all times for staging of trucks on the property, and construction deliveries or pickups shall not be permitted to queue on Sycamore Road. Additionally, Owner shall provide a designated on-site location for stockpiling of construction materials that permits trucks to load and unload entirely on the Property, 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 City Engineer, shall modify such plan to be acceptable to the City Engineer, and shall thereafter abide by such plan.

**H. Security for Public Improvements**

Security to be provided by the Owner for the completion of the public improvements benefiting the Property or related off-site improvements, including but not limited to the curbing, striping, utility connections 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. The Owner shall provide such security to the City in the form of cash, irrevocable letters of credit or performance bonds. Bonds and letters of credit shall be in a form approved by the City Attorney and be issued by an entity approved by the City Manager or his designee 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 acceptable to the City Manager, and the Owner shall provide such information or documentation as to the status of the proposed financial institution as the City Manager shall require, to demonstrate their creditworthiness and stability. The amount of security posted with the City shall at all time equal one hundred twenty percent (120%) of the cost of completing required public improvements. The City Council shall authorize the reduction of such security 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 Property are completed and approved by the City Engineer and prior to their acceptance of such improvements by the City.

1. **Acceptance of Public Improvements and Maintenance Bond for Public Improvements:** Upon completion of public improvements and acceptance by the City, the 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 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 Uniform Development Ordinance 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 Subdivision Performance Bond or Letter of Credit. For a 18 month period following acceptance of any public improvement, the
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 determined by the City Engineer, 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, the Owner shall provide a Maintenance Bond which shall remain in place for a 18 month period from date of acceptance by the City. Said maintenance bond shall be equivalent to twenty percent (20%) 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 at all times comply with the then-current Section 9.05 of the City Code or other applicable provisions of City Code pertaining to the establishment of an escrow for planning and civil engineering services, and shall be responsible for the payment of all internal and 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 has presently paid the City a Plan Review Fee equivalent to three and one half percent (3.5%) of the Engineer’s Estimate of Probable Costs for the plan review and civil engineering construction observation relating to the Property. Owner acknowledges that the City has outsourced those services relative to this project, at Owner’s request, to expedite the review. In the event that the fee posted to date is inadequate to cover the City’s direct cost of such outsourced review/observation, Owner agrees that it shall post additional funds with the City, in an amount reasonably determined by the City, as shall be necessary to fully cover such costs, plus a three percent (3%) administration fee payable to the City. Such payments shall be made to the City within fifteen (15) days of the date of any request by the City. The City shall provide Owner with copies of all invoices payable from such funds, upon request.

J. Rezoning of Property: The Parties agree that, for the term of this Agreement, the Property shall not be rezoned to any zoning other than that imposed under this Agreement without the approval of the City and the Owner, with such rezoning requiring consent from the City in the sole and absolute discretion of the City without regard to statutory or common law zoning prerequisites and the agreement of the Owner to an amendment of this Agreement on terms and conditions acceptable to the Owner, and further agree that the approvals described in this Agreement are based upon the 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.
K. **Required Amendments to Final Plans:** The Final Plans shall be prepared to address all comments of the City Engineer and Community Development Department. At the time of drafting of this Agreement, the Owner had been provided with certain comments. Additional comments which must be addressed in a fashion acceptable to the City in its sole and absolute discretion include:

1. Owner must revise the Final Plans to address any conditions identified in the approval provided by City Council.
2. Owner shall construct a water main connection (with corresponding valves) to the existing water main on the opposite side of Sycamore Road, and shall also construct a water main loop connecting to the existing water main on the commercial property to the Northeast of the Property, both in locations and configurations acceptable to the City Engineer.
3. Owner shall provide landscaping, lighting, retention walls and similar improvements in the vicinity of the existing recreational path at the rear of the property, in a format acceptable to the City; the City may consult with the DeKalb Park District regarding their requests relative to such items.
4. Owner shall amend the Final Plat for the property to include such certifications, signatures and approvals as the City Engineer shall require.

Owner shall submit revised Final Plans as required herein, prior to recording of this Agreement. Revised final plans shall be prepared prior to recording of this Agreement, and shall be attached to this Agreement as updated exhibits prior to recording. Such final, revised plans shall be required to be submitted within sixty (60) days of the date of approval of this Agreement. In the event that the Owner fails to comply with the required modifications herein, this Agreement shall return to the City Council, which shall have the option to either strictly enforce this Agreement or to terminate this Agreement. Notwithstanding any other provision of this Agreement, until the revised Final Plans are submitted to and approved by the City, the documents appended hereto shall not be considered the Final Plans.

L. **Non-Conforming Final Plat or Plan:** Should the Parties mutually agree that an amendment to the Final Plat and Plan that deviates from exhibits included herein, the Parties may jointly elect to approve a Final Plat and Plan including those different terms or conditions of development, without requiring an amendment to this Agreement. Any such changes in the Final Plat and Plan that deviate from the requirements of the Plans included herein, as those plans are defined in and contemplated by this Agreement, shall require the mutual consent of both Parties, and neither party shall: a) be obligated to accept deviations from the Final Plans; or, b) be obligated to accept deviations from the Final Plans contemplated herein without first requiring an amendment to this Agreement on terms and conditions acceptable to both parties.

M. **Economic Incentive:** The Parties acknowledge that Developer has an existing obligation to the City, to develop a commercial retail site including new retail users under the Development Agreement between the City and the Developer, dated December 17, 2008, which obligation must be satisfied prior to consideration of additional economic incentives for the Property.
INFRASTRUCTURE

A. Water Mains and Potable Water Supply

1. **City Water Supply:** 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 the rights of way of Sycamore Road. The City shall assist the Owner in obtaining all required permission from the to have access to the water mains located within the rights of way of Sycamore Road, at the Owner’s sole expense. Provided that there remains adequate pressure and flow at the time of proposed connection, the 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 Developer agrees to pay the amount as required by the City at the time such payment is due. The Owner has verified that there is current volume and pressure available in the water mains to service the Property, as of the date of this Agreement, for the potable water and fire suppression needs of the Property. The Owner shall be responsible for constructing all on-site and off-site improvements necessary to connect to the Property and any development on the Property to the presently existing water mains and potable water supply of the City, in the fashion and orientation contemplated by the Final Plans. The 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 or any other agency having jurisdiction, or any other costs whatsoever. The Owner shall loop existing water mains and connect to two points on the existing water mains of the City in a fashion acceptable to the City Engineer.

B. Streets, Access and Public Rights of Way

1. **ROW Dedications:** All rights-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 Property shall be in accordance with the Final Plans.

a. **IDOT ROW Dedication:** A portion of the Property is currently located within right of way utilized by the Illinois Department of Transportation for the maintenance of public roads and sidewalks. Owner shall dedicate such portion of the Property to the Illinois Department of Transportation or to the City at the City’s preference, at the time of recording of the Final Plans, in a fashion acceptable to the City Engineer.
2. **Road Improvements:** Owner shall be responsible for the construction of all on-site public and private road improvements reflected on the approved Final Plans, and for the construction of those off-site public road improvements reflected on the Final Plans. The Owner shall construct sidewalks as reflected on the attached Final Plans.

3. **Traffic Controls:** A traffic control and signalization plan, including plans for off-site traffic control devices and stoplights on perimeter roads adjacent to the Property, shall be submitted and approved by the City Engineer prior to final plat approval, and Owner shall be responsible for installing all such improvements.

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

1. **Owner Responsibility:** The Owner shall provide all necessary storm sewers, detention systems and compensatory storage 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 including all storm water calculations prepared by a licensed Illinois engineer. In determining whether any Parcel 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 the Owner elects to construct a combined detention or retention system which serves all or a portion of the Parcels, 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.

**D. Sanitary Sewers**

1. **Sanitary Sewer Service:** The City shall cooperate with the Owners and execute all applications, permit requests and other documents required to obtain sanitary sewage treatment service from the DeKalb Sanitary District in order to allow the Owner’s connection to the existing and future sanitary sewer lines installed on the interior and exterior of the Property. The Owner shall pay to the requisite governmental entity their 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 the Owner in obtaining all necessary easements and shall grant the Owner access to all City owned rights of way to enable the Owner to access the sanitary sewer service for the Property, in accordance with the approved Final Plans.

2. **Owner Responsibility:** It shall be the Owner’s responsibility to contact the DeKalb Sanitary 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 DeKalb Sanitary District.
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 DeKalb Sanitary District payable City-wide as a condition to connection to and the use of the system by all properties.

**ARTICLE V**

**RECAPTURE AGREEMENT**

Any recapture agreement or obligation with respect to any improvement owned or operated by the DeKalb Sanitary District shall be the subject of a separate agreement and/or ordinance between the Owner and the DeKalb Sanitary District. The Owner acknowledges that the City shall have no responsibility or liability for any recapture related to sanitary sewers. In addition, Owner shall be responsible for the payment of any recapture to which the Property is presently obligated or to which the Property becomes obligated in the future.

The Parties acknowledge that there is an existing recapture agreement that the Property is subject to, with respect to the extension of utility connections and traffic access points to the Property (as a benefitted property) from adjacent properties. The Developer agrees and acknowledges that it shall be responsible for payment of all recapture sums due under such agreement at the time required under the agreement, and that it shall indemnify, defend and hold harmless the City from any claim arising out of or relating to said recapture. The Developer agrees to pay all required sums in good faith, and not under protest or any other limitation.

**ARTICLE VI**

**CONTINUATION OF CURRENT USES**

No new buildings or structures shall be erected on the Property, except in compliance with all applicable provisions of this Agreement. The Parties acknowledge that the Property is currently vacant and not being utilized for any commercial purpose. Accordingly, and notwithstanding any provision of the City Code, the UDO, or any other code, ordinance or regulation, now in effect or adopted during the term of this Agreement, and notwithstanding the City's zoning of the Property pursuant to the terms hereof, but subject to the express terms of this Agreement specifically relating thereto, the property shall continue to be unused until such time that a Final Engineering Plan, and construction has commenced, for any part of the Property is approved by the City, with no temporary or interim uses permitted. The Property shall be maintained in accordance with all City property maintenance regulations. No new or additional wells or septic systems shall be constructed on the Property. No new buildings or structures shall be erected on the Property, except in compliance with all applicable provisions of this Agreement, after approval of a Final Plat and Plan for that portion of the Property in which the building or structure is proposed to be constructed.

The Parties expressly agree and covenant that the billboard and all related structures located on the Property shall be removed within thirty (30) days of the date of execution of this Agreement and shall not be reconstructed. Any underground tanks, septic systems, wells, foundations or other underground installations other than public utilities and private utility services that are going to be used by the development of the Property shall be removed in
accordance with all applicable environmental regulations prior to the approval of a final plat for
the Property.

**ARTICLE VII**

**FEES**

A. **Fees:** The Owner shall pay all fees, in the amount and at the time as required by any
applicable City Ordinance. The Parties further agree that the fees and donations contained within
this Agreement are specifically and uniquely attributable to the development of the Property and
that the Owner participated in the calculation and reconciliation of said fees, and neither the
Owner nor any successor, hereby agree they will neither file any lawsuit nor take any other legal
action challenging the imposition, collection, use, necessity enforceability, validity, or
applicability of the fees, nor shall Owner pay any such fees under protest.

**ARTICLE VIII**

**DEVELOPMENT RESTRICTIONS**

A. **Stop Work Orders:** The City shall issue stop orders 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 the attached Final Plans, the Property
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 the Owner to comply with any
and all requirements of this Agreement and applicable City Codes. Thus, in the event that up to,
but prior to construction or any time after execution of this Agreement, the City or its consultants
issue a permit or give an approval not consistent with the terms of this Agreement or any
applicable City Codes, such erroneous permit or approval may be of no force and effect and thus
may be revoked. The Owner agrees that it may not rely on any such issued permit or approval
for purposes of vested rights or estoppels to compel an improvement not consistent with the
terms of this Agreement or applicable City Codes. Owner hereby waives any claims of damages,
of any type or character, against the City, its employees or its consultants based on such
erroneously issued permits or approvals.

C. **Easements to be Provided:** A public access easement shall be provided over all
bike/pedestrian paths on private property within the Property. A generic utility easement shall be
provided by the Owner as may be requested by the City Engineer. All additional easements or
dedications as may be requested by the City or City Engineer at the time of final plat approval
shall be provided by the Owner. In the event that during the development of the Property, Owner
determines that any existing utility easements and/or underground lines require relocation to
facilitate the completion of Owner’s obligation for the Property in accordance with the Standards set
forth in this Agreement, the City shall fully cooperate with Owner in causing the vacation and
relocation of such existing easements and/or utilities, however, all costs incurred in furtherance
thereof shall be borne by the Owner. If any easement granted to the City as a part of the development of the Property is subsequently determined to be in error or located in a manner inconsistent with the intended development of the Property as reflected on the Standards set forth in this Agreement and in this Agreement, the City shall cooperate with Owner in vacating and relocating such easement and utility facilities located therein, which costs shall be borne by Owner. Notwithstanding the foregoing, and as a condition precedent to any vacation of easement, Owner shall pay for the cost of design and relocation of any such easement and the public utilities located therein.

D. 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 ordinances and any comments of the City Engineer, City Planner or other City consultants which shall be provided at the time of plan review. 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 Final Plans or, if revised, shall be subject to such revised Engineering Specifications or Engineering Comments as shall be promulgated by the City or the City Engineers. 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 the Owner in signing such applications. Prior to issuance of any such permits, Owner shall provide such documentation required by the City Engineer to establish compliance with all regulations applicable to wetlands, and to establish compliance with all erosion control standards applicable.

E. 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.

F. Traffic Enforcement Agreement: Contemporaneously with the recording of this Agreement, the Owner and City shall enter into a separate written agreement providing for traffic law enforcement on all private parking lots, roads and commercial areas of the Property covered by the Final Plat or Plan, in form acceptable to the City. The City Manager or designee thereof is authorized to execute such agreement.

G. 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 the construction site. Owner agrees that it shall inspect and clean the streets and roadways adjacent to and within 1,000 feet of the entrance to Owner's construction site of debris that came from the Property or in relation to the development thereof, and take measures to control dust as needed daily while construction is occurring on said site. Within the Property, Owner further agrees to periodically mow weeds, 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. Owner shall also patch or repair damage to any roadway, path, driveway, sidewalk or other similar improvement within the Property, 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"). In the event Owner fails to clean, snow plow or de-ice the streets, mow weeds, pick-up debris or repair or replace soil erosion control fencing as required, 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 the 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 Property in accordance with the last Final Plat thereof, whichever shall be the last to occur. At the City’s option, such escrow may be utilized to satisfy any other obligation of the Owner to the City, where lawful.

H. Sidewalks: Concrete sidewalks, as required and specified by applicable City codes and the terms of this Agreement, shall not be installed between October 31st and April 15th of any given year, unless otherwise permitted by the City Building Department.

I. Commercial Property Registration and Inspection: Owner and all successor owners of the Property shall voluntarily comply with the City’s then-current requirements with regard to the registration and inspection of commercial or industrial properties within the City.

**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 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. 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 Owner.

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 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 Owner, as applicable.

C. Entire Agreement. This Agreement sets forth all agreements, undertakings and covenants between and among the Parties. 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. 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 Property, construction or related activities for the Property, if the 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. 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. This 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 the City's 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.

1. Sale to Third Party: Upon the conveyance of all or a portion of the Property and full compliance with all of the applicable provisions of this Agreement relating to such conveyances or transfers in interest, Owner as the case may be, shall be released of any and all obligation or liability under this Agreement for that portion of the Property conveyed (if the entire Property is not so conveyed), immediately upon conveyance and
the substitution of any performance bond or other security required under the terms of this Agreement, including but not limited to the Site Control Escrow. However, Owner or its successor shall remain liable for all public improvements until accepted by the City, and thereafter until completion of any required maintenance period.

F. **Hazardous Materials.** Each Owner or occupant of all or a portion of a Parcel shall use, or permit the use of Hazardous Materials on, about, under or in its Parcel, only in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Each Owner agrees to defend, protect, indemnify and hold harmless each other Owner and the City from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereof, including but not limited to costs of investigation, remedial response, and reasonable attorneys’ fees and cost of suit, arising out of or resulting from any Hazardous Materials used or permitted to be used by such Party, whether or not in the ordinary course of business. For the purpose of this Agreement, the term "Hazardous Materials" shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law; and the term "Environmental Laws" shall mean all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

G. **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 the Owner:

With a copy to:

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, if personally delivered.

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

I. Indemnification. The 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 the Owner, or its agents, contractors and subcontractors, 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. The Owner shall provide satisfactory proof of insurance covering such defense and indemnity of the Indemnifieds. Owner further agrees to indemnify, defend and hold harmless the City and the Corporate Authorities, officers, agents, employees, and consultants (collectively “Indemnitees”) from all claims, liabilities, costs and expenses incurred by or brought against all or any of the Indemnitees as a direct and proximate result of the construction activities of the Owner, unless any such claim is based in whole upon the negligence or willful act of the Indemnitees.

1. Wetland and Floodplain Issues: Without limiting the applicability of the foregoing indemnification provisions, the Owner and Developer expressly and without limitation agrees that they shall indemnify and hold harmless the City from any claims, damages, fines, penalties, legal fees or other costs or expenses whatsoever, arising out of Developer’s activities or construction on the Property and relating to any federally protected wetland, the delineation or failure to delineate wetlands, the protection or mitigation or failure to protect or mitigate wetlands, the identification of floodplains, or the construction of any improvement or structure in or near any wetland or floodplain area, within or outside the Property. In addition, Owner shall not engage in any construction activities within or near any identified wetlands on the Property without the express, separate written approval of the City Engineer, which approval shall be conditioned upon the Owner providing an acceptable plan for the preservation, replacement, relocation or mitigation of the wetlands.

2. Compliance with Laws: The Developer certifies that it has and will comply with all other applicable laws, regulations, ordinances or restrictions applicable to any component of the development process, this Agreement, or any services or materials provided in connection herewith. The Developer acknowledges that it is responsible for identifying and complying with all applicable laws, ordinances, rules and regulations, and that it shall indemnify and hold harmless the City of DeKalb from any claim, liability or
damages arising out of the Developer or any contractor or subcontractor thereto's failure to identify or comply with any such applicable legal restriction.

J. 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

**Group Exhibit B**
Final Plans

**Exhibit C**
Architectural Design Specifications and Development Restrictions


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: [Signature]
John Rey, Mayor

Attest: [Signature]
Jennifer Jeep Johnson, City Clerk

OWNER:

CORRAL DYN, L.L.C., an Illinois limited liability company

By: [Signature]
Sunil Puri, Manager

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EXHIBIT A

The property to be annexed and rezoned is legally described as:

That part of Section 13, Township 40 North, Range 4 East of the Third Principal Meridian, which is bounded on the West by the right-of-way of the Chicago, Milwaukee and St. Paul Railroad, and on the North by the Section line between Sections 12 and 13 in said Township and Range, and on the East by the Illinois State Route No. 23, known also as the DeKalb-Sycamore Road, and which property is also described as: That part of the following described real estate on Section 13, Township 40 North, Range 4 East of the Third Principal Meridian, of the entire piece of property which is described as follows: A part of Assessor's Lot Fifty-eight (58) on Section 12, and a part of Assessor's Lot Four (4) on Section 13, Township 40 North, Range 4 East of the Third Principal Meridian, beginning at a point on the Section line between Sections 12 and 13, 1440.4 feet East of the Section corner common to Sections 11, 12, 13 and 14, and on the East line of the right-of-way of the Chicago, Milwaukee and St. Paul Railroad, (formerly Chicago, Milwaukee & Gary Railroad); thence North 0 degrees 37' West 443 feet on said right-of-way line; thence North 15 degrees 53' East 150.7 feet; thence South 75 degrees 59' East 414.9 feet; thence South 62 degrees 38' East 297.7 feet to the center line of the DeKalb and Sycamore Road; thence South 40 degrees 40' West on said centerline 464 feet to the Section line; thence South 40 degrees 40' West on said center line 607.8 feet to the East right-of-way line of said railroad; thence North 0 degrees 37' West on said right-of-way line 461.5 feet to the place of beginning; situated in the County of DeKalb and State of Illinois.

The aforementioned legal description is comprised of Parcel Identification Number (PIN) 08-13-126-001 and is generally bound by the nature trail on the west, a commercial development on the north, and Sycamore Road on the East and South.
PD-C Planned Development Commercial Zoning
Zoning Exhibit
Gross Floor Area: 11,535
Building Coverage Percentage: 19.24
Gross Acreage: 2.124
Net Acreage: 1.379
Off Street Parking: 64 spaces
Required Off Street Parking: Varies based on use.
Lot Coverage: 69%
Exhibit C:
Architectural Design Specifications and Design Standards

Classes of Materials. Materials utilized on any exterior wall of any structure on the Property shall be divided into Class I, Class II, Class III and Class IV categories as follows:

Class I:
- brick
- natural stone
- glass
- masonry stucco
- copper panels
- other comparable or superior materials as determined by the Principal Planner

Class II:
- specialty concrete block such as textured, burnished block or rock faced block
- architecturally precast textured concrete panels
- exterior insulating finishing system (EIFS)
- other comparable or superior materials as determined by the Principal Planner

Class III
- opaque panels
- ornamental metal

Class IV:
- smooth concrete block
- smooth scored concrete block
- smooth concrete tip up panels
- ceramic
- glass block
- wood
- other comparable or superior materials as determined by the Principal Planner

All building finishes shall be of a color and consistency acceptable to the City. Buildings shall incorporate classes of materials in the following manner:

Office and commercial building must use at least two Class I materials and must be composed of at least 50% Class I materials; not more than 50% Class II or Class III and not more than 10% of Class IV.

The use of Class II, III or IV materials shall be distributed throughout the exterior of a building unless the City agrees that materials consolidated on more visible locations provides the most positive architectural appeal to the general public.

A distinctively different color of brick may be considered as a second Class I material. However, minor blended color variations shall not be considered as a separate material.

To be counted as a primary material, the product must comprise at least 5% of the exterior wall.

Building may be constructed primarily of one specific Class I material provided the design is obviously superior, as determined by the City, to the general intent of this ordinance provides variation in detailing, footprint of the structure or deviations in long wall sections to provide visual interest.

Window trim, flashing accent items and the like, shall not constitute required materials that make up the exterior of a building.
As viewed from ground levels at a variety of locations, all mechanical equipment located on the roof or around the perimeter of a structure shall be screened by a raised parapet or with comparable and compatible with exterior building materials.

A raised parapet or other architectural feature that is an integral part(s) of the building may be required as screening for rooftop mechanical equipment or to soften rooftop views.

Screening for rooftop mechanical equipment shall incorporate similar architectural features of the building and/or be constructed of a material and color compatible with other elements of the building.

Incidental rooftop equipment deemed unnecessary to be screened by the Principal Planner or a designee shall be of color to match the roof or the sky, whichever is more effective.

Exposed roof material shall be similar to, or an architectural equivalent of asphalt or fiberglass shingles, wooden shingle, standing sea, metal roof or better. The roof of any building may be flat.

Garish or bright accent colors (i.e. bright orange, bright yellow, or fluorescent colors) for such buildings such as cloth or metal awnings, trim, banding, walls, entries or any portion of the building shall be minimized, but in no case shall such coloring exceed 20% of each wall area.

Equipment used for mechanical, processing, bulk storage tanks, or equipment used for suppressing noise, odors, and like that protrudes from a side of a building or is located on the ground adjacent to a building shall be screened from public views as much as practical with materials matching the design of the building. Where miscellaneous exterior equipment cannot be fully screened with matching building materials, landscaping may be used as additional screening.

The buildings to be development within the Property shall be compatible and harmonious with each other in their exterior architectural design features. Compatibility of architectural design features may be achieved by similarity of some design elements, while allowing dissimilarity of others. Buildings shall be considered compatible if at least two of the following five design elements are similar, when comparing any proposed building:

a) Type of material (brick, stone, wood, metal, etc.).

b) Color and textures of exterior surfaces.

c) Architectural scale (size and height of building, both actual and perceived).

d) Placement and rhythm of doors, windows, wall panels, visible wall joints, and visible roof elements.

e) Architectural style (example of architectural style include reference to recognized historic or modern architectural styles, repetitive use of particulate shapes, angles, features such as cornices, type or roof, etc.)

All City approvals contemplated herein shall require the written approval of the Principal Planner, in his sole and absolute discretion. The Principal Planner may, but shall not be required to, submit any proposed design and elevation to the City Council for consideration and approval.