STATE OF ILLINOIS 
COUNTY OF DEKALB ) SS 
CITY OF DEKALB 

I, STEVEN C. KAPITAN, do hereby certify that I am the duly elected and acting 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 copy of:

ORDINANCE 11-34

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS TO SIGN AN ANNEXATION AGREEMENT WITH THOMAS AND TERESA GEARHART REGARDING PROPERTY LOCATED AT 3131 NORTH FIRST STREET, DEKALB.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 8th day of August, 2011. The original is now on file in my office.

WITNESS my hand and the official seal of said City this 27th day of September, 2011.

STEVEN C. KAPITAN, City Clerk

Prepared by and return to:
Steve Kapitan
City Clerk
City of DeKalb
200 South Fourth Street
DeKalb, IL 60115-3733
AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS TO SIGN AN ANNEXATION AGREEMENT WITH THOMAS AND TERESA GEARHART REGARDING PROPERTY LOCATED AT 3131 NORTH FIRST STREET, DEKALB.

WHEREAS, Thomas N and Teresa Gearhart, property owners, have petitioned for an annexation agreement with the City of DeKalb; and,

WHEREAS, the proposed Agreement has been reviewed by the Planning and Zoning Commission at the June 15, 2011 meeting and approval was recommended by a vote of 7-0; 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 August 8, 2011; 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 Thomas N and Teresa Gearhart, 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.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois by a two-thirds vote of the Corporate Authorities at a regular meeting thereof held on the 8th day of August, 2011 and approved by me as Mayor on the same day. Received and filed by voice vote and passed on second reading by roll call vote: 6-0-1. Aye: Jacobson, Teresinski, Lash, Gallagher, Baker, O'Leary. Nay: None. Absent: Naylor.

ATTEST:

STEVE KAPITAN, City Clerk

KRAIS POVLSEN, Mayor
ANNEXATION AGREEMENT

This Annexation Agreement (the "Agreement") is made and entered the 9th day of August, 2011 by and among the City of DeKalb, an Illinois municipal corporation located in DeKalb County, Illinois, (the "City"), and Thomas N. and Teresa Gearhart (the "Owner"). 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 3.74 contiguous acres of real property situated at 3131 North First Street in DeKalb County, Illinois, which property is legally described on Exhibit “A” attached hereto and incorporated herein by reference as the “Property”.

B. The City has sought to involuntarily annex the Property to the City and in lieu of such involuntary annexation, the Parties have agreed to a voluntary annexation of the Property to the City.

C. The Property is currently used as a residence; however, Owner may wish to subdivide the Property and develop it as a six lot Planned Unit Development residential subdivision or sell and/or lease portions of the Property to third party owners (the "Project") in the future.

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

E. The Property is not presently located within the corporate limits of any municipality, but is contiguous to and may be annexed, voluntarily or involuntarily, to the City as provided for in 65 ILCS 5/7-1-1 et seq.

F. 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 Preliminary/Concept Plan, attached hereto as Exhibit “B”.

G. The Owner represents to the City that there are two (2) electors that reside on the Property. At least fifty-one per cent (51%) of said electors have consented in writing to the voluntary annexation of the Property to the City.

H. The City acknowledges that the Owner’s proposed use of the Property, as set forth on the Preliminary/Concept Plan, 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.

I. The City acknowledges and the Owner agrees that the “SFR-1” Single Family Residential 1 zoning, as provided under the City of DeKalb Unified Development Ordinance (the “UDO”) will be the most appropriate zoning classification for the use of the Property upon annexation.

J. The parties agree that SFR-1 zoning is proper and consistent with the current use of the Property. During the term of this Agreement, should the Owner submit an application for rezoning of the Property, in substantial conformance with the Preliminary/Concept Plan (Exhibit “B”) and complete the process for rezoning as required by the City, the City shall grant Planned Development Residential “PD-R” zoning.

K. 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 and at least fifty-one per cent (51%) of the electors being duly filed with the City Clerk, including all necessary supporting materials and documentation as outlined herein and in the City’s UDO.

L. 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.

M. 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 rezoning 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.

N. The Corporate Authorities have duly considered all necessary matters to enter into this Agreement, 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.

O. The Owner 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.
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 Paragraphs A through O, 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

A. Upon Owner's petition for annexation duly filed with the City Clerk and concurrently with the 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 necessary or appropriate to cause the Property to be validly annexed to the City. Such action shall take place no later than August ___, 2011. 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 Parties, shall be null, void and of no force and effect unless the Property is legally annexed to the City contemporaneously with the execution of this Agreement, and legally zoned and classified, in accordance with and as contemplated by this Agreement, at the time of its annexation to the City. Without the written consent of the Owner, no action shall be taken by the Corporate Authorities to annex the Property to the City unless: (i) the Agreement has been fully executed by the Owner; and (ii) the Property is annexed to the City upon the petition(s) of the necessary Party being first duly filed.

ARTICLE III
ZONING AND DEVELOPMENT 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 “SFR-1” Single Family Residential, in accordance with the current use of the property, which consists of one (1) residence, one (1) guest house, a pool and accessory structures. The Corporate Authority recognizes the property’s potential for minor agricultural uses consisting of one (1) horse per one (1) acre of pastureland and one (1) rooster and twenty (20) hens subject to the following:

1. Any building and/or structure housing large and/or small animals and any yard, runway, pen or manure pile shall be no closer than 100 feet from any occupied structure other than the dwelling unit of the occupant of the premises. Manure piles shall not be located within 150 feet of a water well.

2. Structures, pens, yards, and grazing areas of large and small animals shall be kept in a clean and sanitary condition as determined and enforced by the DeKalb County Health Department.
3. For purposes of this agreement, pastureland is defined as a fenced enclosure or confined area used for the grazing of livestock or small animals.

B. Future Zoning.

During the term of this Agreement, should the Owner submit an application for rezoning of the Property, in substantial conformance with the Preliminary/Concept Plan (Exhibit “B”) and complete the process for rezoning as required by the City, the City shall grant Planned Development Residential “PD-R” zoning upon the removal of any and all livestock previously granted elsewhere in this agreement. The Preliminary/Concept Plan shall serve as the basis of development for the Property, and all development shall be in substantial conformity with the Preliminary/Concept Plan and the terms and conditions of this Agreement. The Preliminary/Concept Plan provides for four (4) single-family residential lots and one lot that will be occupied by the pool house that has a kitchen, bath and sleeping quarters.

The Owner may make minor amendments to the Preliminary/Concept Plan as long as the overall land use, open space, and number of dwelling units in the Project do not adjust by more than ten percent (10%) of the approved Preliminary/Concept Plan.

C. Building Permits and Occupancy.

1. Permits. The City shall issue building permits within twenty-one (21) days after receipt of a complete building permit application and payment of the requisite fees from the Owner. If the building permit application is denied, the City shall provide the Owner with a written statement specifying the reasons for denial of the building permit application; including, the corrective measures necessary to obtain the permit. The City shall issue such building permits upon compliance with those requirements. The Owner may apply for building permits for its respective Parcels of the Property after approval of the Final Development Plan for each respective building and/or Parcel. The City and the Owner agree that standard City policies shall apply in regard to site improvements required to proceed with utility or building construction, except as may be specifically modified herein.

2. Occupancy Permits. The City shall issue certificates of final occupancy to the Owner within two (2) working days of scheduled occupancy inspection, or issue a notice of failed inspection within said period informing the Owner specifically as to 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 demand for correction. The Owner’s inability, as specifically limited to adverse weather conditions, to (a) complete offsite roadway or traffic signal improvements as required; or (b) install driveways, service walks, public sidewalks, stoops, landscaping and final grading, shall not delay the issuance of a certificate of occupancy. The City shall have the right to require the posting of security in an amount not to exceed one hundred twenty percent (120%) of such uncompleted improvements, on issuance of such certificate of occupancy, in order to ensure completion of such uncompleted items and the Owner may provide such security by a cash deposit with the City, irrevocable letter of credit or performance bond. The amount of security posted with the City shall at all times equal one hundred twenty percent (120%) of the cost of completing the required public improvements. The City may authorize a reduction in such security from time to time, but no less than every ninety
(90) 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.

D. Security for Public Improvements.

Security to be provided by the Owner for the completion of the public improvements benefitting any parcel within the Property or related off-site improvements, if any, shall be provided prior to the commencement of construction on each parcel or right-of-way 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. 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 shall authorize the reduction of such security from time to time, but no more than every three hundred sixty-five (365) 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.

E. Plat and Plan Approval

1. The parties acknowledge that the Property may be developed in phases requiring the submittal of a Final Plan and Plat for each phase of the Property. This process shall be subject to all applicable provisions of this Agreement and in substantial conformity to the Preliminary Plat and Plat.

2. It is understood and agreed among the parties that the Owner shall not be required to seek Final Plan and Plat approval for the entire Property as one whole unit, but may seek separate approvals of a Final Plan and Plat for a phase of the Property to allow for the phasing of development of the Property in such manner as the Owner may subsequently determine, so long as such phasing does not violate any provision of this Agreement, or the City’s ordinances and provides for the orderly installation of public improvements.

3. The City agrees to approve Final Plans of the Property upon submission by the petitioners of complete and proper materials as required for the issuance of appropriate building and other permits and subdivision approval based on a Final Development Plan, plans and drawings of the development of the Property or any of its phases submitted by petitioners and approved by the City Engineer, provided that said plans and other materials shall substantially conform to the attached Preliminary Plan and all applicable laws and ordinances. Each phase shall comply fully with all applicable laws and ordinances in all engineering specifics, including, but not limited to, the provision of adequate utility services including storm water drainage and retention/detention.
F. Special Service Area

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 Declaration of Property Ownership, Covenants, Conditions, Easements and Restrictions and related documents. The Owner and any of the 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 the Special Service Area for the Property or the creation of the Special Service Area. 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 or in the Declaration.

ARTICLE IV
INFRASTRUCTURE

A. Water Mains and Potable Water Supply

1. 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 North First Street. The Property is currently served by a private fresh water well, which the Owner may continue to operate, until such time as it fails. Repair or replacement of the private fresh water well shall be subject to the requirement of Section 10.03.02(4) of the UDO. The private fresh water well may not be altered, expanded, enlarged or deepened. In the event that the private fresh water well fails, the Owner may be required to connect to the City’s water system, pursuant to Section 10.03.02 of the UDO. In the event the Owner believes that such connection would meet the requirements for the issuance of a variance by the Corporate Authorities, the Owner shall file his application for variance, in accordance with Section 10.03.02(3), et seq. of the UDO. The Corporate Authorities shall consider such application and its decision shall be final and binding upon the Owner. In the event of a connection to the water system, the Owner shall have the right to connect to and use such system and mains upon payment of customary and ordinary capital, tap-on and user fees. The Owner has verified, and the City has confirmed, 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, when developed in accordance with (i) the engineering and site plans required by the City when development occurs; and (ii) the specifications of the City Engineer.

2. The Owner agrees that it shall be bound by the provisions of Chapter 7 of the City of DeKalb’s Municipal Code adopting the water capital fees for impacts to the City’s potable water system, and that the payment of such fees shall be made in accordance with the provisions of the ordinance. There will be no other extraordinary expenses or surcharges other than ordinary
capital, tap, meter and inspection fees payable City-wide, as a condition to connection to and use of the system for the Property. Said fees may change from time to time and Owner agrees to pay the amount as exists at the time such payment is due.

B. Streets, Access and Public right of ways

1. The dedication of Right of Way to the Centerline of North First Street to shall be made at the time of Annexation.

2. The City agrees to allow Owner to develop, or cause to be developed streets of lesser dimension than would otherwise be required for local streets, provided that such streets remain private streets and that the final Plat containing said private street is submitted in conformance with Section 9.04 of the UDO. Owner further agrees to provide in the Declaration of Covenants, Conditions and Restrictions of Record, which constitutes an integral part of the Final Plat of development, that the Homeowners’ Association shall be responsible for maintaining any and all private streets in a reasonably safe condition, including, but not limited to, repairs of said streets and the removal of snow from said streets.

3. Owners shall be required to provide sidewalk along North First Street only if required by City’s Subdivision Ordinances as part of the subdivision process, provided the property owners along the north and south side of North First Street provide for and pay for sidewalks along North First Street to the north and south adjacent and contiguous to Owners property.

C. Storm Water Retention, Facilities and Improvements.

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 Property, 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. The Owner shall, at the City’s request, provide storm water calculations prepared by a licensed Illinois engineer to verify that the storm water generated by the development of a parcel, whether designed to be contained on its parcel or to share the Retention/Detention Parcel, shall be fully accommodated by the storm drainage facilities constructed in accordance with this Article. The Declaration of Covenants, Conditions and Restrictions of Record, as hereinafter required, shall provide for the insurance, real estate taxes and maintenance of the Retention/Detention Parcel including but not limited to mowing and landscape maintenance, regular litter pickup, flume repairs and underground pipe cleaning or repairs.

E. Sanitary Sewers

1. The City shall cooperate with the Owner and execute all applications, permit requests and other documents when 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.

2. 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.

3. The property is currently served by a private septic system, which the owner may continue to operate subject to the restrictions of the DeKalb Sanitary District set forth in its letter dated August 2, 2011 a copy of which is attached hereto as “Exhibit E” and is made a part hereof.

ARTICLE VI
CONTINUATION OF CURRENT USES

Portions of the Property are presently being used for one (1) residence, one (1) guest house, a pool and accessory structures. In reviewing the Annexation Agreement, the City has given due consideration to the continuation of such current uses. 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 current land uses shall be permitted to continue until such time that an application for rezoning is received for the Property, in substantial conformance with the Preliminary/Concept Plan (Exhibit “B”) and the process for rezoning is completed. At that time, the Property shall then be subject to the zoning created pursuant to Article III, herein. The Owners agree that no livestock other than previously defined and allowed shall be kept on the Property. This Article shall not be interpreted to allow the expansion of the existing uses, or increase the intensity or scope of any nonconforming use. The Property shall continue to be maintained in accordance with all City property maintenance regulations.
ARTICLE VII
ANNEXATION FEES, IMPACT FEES,
DONATIONS & CONTRIBUTIONS

A. ANNEXATION FEE. In exchange for the First Street Right of Way Dedication as indicated on the preliminary plan, the City agrees to waive an annexation petition fee in the amount of THREE HUNDRED DOLLARS ($300.00) and an annexation agreement fee in the amount of FIVE HUNDRED DOLLARS ($500.00). The applicant is responsible for the annexation fee of FOUR THOUSAND ONE HUNDRED AND FORTY-TWO DOLLARS ($4,142.00) at the time of the filing of the petition for annexation. See “Exhibit C”

B. CITY-RELATED FEES AND CONTRIBUTIONS. At the time of Owner’s submission of application for rezoning and development of the property in accordance with Art. III, paragraph B, the Owner shall pay the following contributions to the City or the current rate of impact fees at the time of development whichever is generally applicable at that time:

1. Owner shall pay to the City of DeKalb a ROADWAY CONTRIBUTION in the amount of ONE THOUSAND THREE HUNDRED AND TWENTY-NINE Dollars ($1,329.00) per residential dwelling unit. Said contribution shall be paid at the time of building permit. See “Exhibit C”

2. Owner shall pay to the City of DeKalb a PUBLIC BUILDING CONTRIBUTION in the amount of ONE THOUSAND ONE HUNDRED AND SEVEN Dollars ($1,107.00) per residential dwelling unit. Said contribution shall be paid at the time of building permit. See “Exhibit C”

3. There are no Public Building Sites shown on the Preliminary/Concept Plan.

C. SCHOOL DISTRICT FEES AND CONTRIBUTIONS. At the time of Owner’s submission of application for rezoning and development of the property in accordance with Art. III, paragraph B, the Owner shall pay the following:

1. Owner shall pay the DeKalb Community Unit School District Number 428, a SCHOOL CAPITAL CONTRIBUTION in the amount of ONE THOUSAND NINE HUNDRED NINETY-THREE AND 50/100 Dollars ($1,993.50) per bedroom for each additional residential dwelling unit being developed beyond that which existed on the Property as of the date of annexation to the City. Said contribution shall be paid at the time of issuance of a building permit. See “Exhibit C”

2. Owner shall pay the DeKalb Community Unit School District Number 428, a SCHOOL TRANSITION CONTRIBUTION in the amount of One Thousand One Hundred and Seven Dollars ($1,107.00) per each additional residential dwelling unit being developed beyond that which existed on the Property as of the date of annexation to the City. Said contribution shall be paid at the time of issuance of a building permit.
D. **PARK DISTRICT FEES AND CONTRIBUTIONS.** Owner shall pay the DeKalb Park District a LAND CASH CONTRIBUTION in the amount of $10,017.00 per thousand persons of expected population, with an improved land value of One Hundred Ten Thousand and Seventeen Dollars ($110,017.00) per acre. All other terms of Article 8.02 of the Unified Development Ordinance shall apply. Said fee shall be paid to the Park District for the area being platted only at the time of approval of the Final Plat for each and every phase of development of the Property.

E. **COST OF LIVING ADJUSTMENTS:** The above fees and cash contributions shall be adjusted annually, on the first day of January, beginning January 1, 2012, in accordance with the then current Consumer Price Index (CPI) Adjustment Rate for the Chicago, Gary and Lake County Region. The adjustments shall be rounded up to the nearest whole dollar. At no point shall the fees or contributions be less than those listed above nor more than the fees currently in effect at the time of approval of the final plat. The value of dedicated land and/or improvements thereupon shall not be subject to this annual adjustment, but in no case shall the developer dedicate less land or improvements than shown on the Preliminary Plan and/or outlined herein.

**ARTICLE VI**

**HOMEOWNERS’ ASSOCIATION**

At the time of the Owner’s submission of application for rezoning and development of the property in accordance with Art. III, paragraph B, the Owner shall also submit a proposed Declaration of Covenants, Conditions and Restrictions of Record ("Declaration") for review and approval by the City. Said Declaration shall contain provisions for the assessment of the Owner and any and all subsequent transferees and assignees for funds sufficient to provide for the maintenance, repair and snowplowing of any and all private streets within the Property and the detention/retention parcel(s) set forth on the Preliminary/Concept Plan and said Declarations shall include provisions to fulfill the intent and implementation of design guidelines set forth in **Residential Design Guidelines for DeKalb, Illinois** dated November 28, 2005 attached hereto as Exhibit "D".

**ARTICLE VII**

**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 or County) financial or other aid and assistance required or useful for the (i) construction of the relocation of Bethany Road; (ii) the construction or improvement of property and facilities in and on the Property; (iii) connections from the Property and/or its individual Parcels to the City’s potable water supply and distribution system;
(iv) connections from the Property or its Parcels to the DeKalb Sanitary District; or (v) provision of services to occupants or businesses located on 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 VIII
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 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. 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) 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, 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 IX
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 X
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 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. This Agreement shall inure to the benefit of, and be binding upon, successors of the Owners 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.
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 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. Declarations. In addition to the terms and conditions of this Agreement the Property's shall be subject to the “Declarations of Easements, Restrictions and Covenants” duly recorded from time to time as each parcel is developed and annexed to the City.

H. 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
Fax: 815-748-2089
Email: steve.kapitan@cityofdekalb.com

With copies to:
Principal Planner
City of DeKalb
223 South Fourth Street, Suite A
DeKalb, IL 60115
Telephone: 815-748-2060
Fax: 815-748-2359
Email: derek.hiland@cityofdekalb.com
Legal Division
City of DeKalb
200 South 4th Street
DeKalb, IL 60115
Telephone: 815-748-2093
Fax: 815-748-2320

If to the Owner:
Thomas & Teresa Gearhart
3131 North First Street
DeKalb, IL 60115
Telephone: 815-793-7100

With a copy to:
Gary Cordes,
Klein, Stoddard, Buck, Waller and Lewis, LLC
2045 Aberdeen Court
Sycamore, IL 60178
Telephone: 815-748-0380
Fax: 815-748-4030
Email: Gary.Cordes@ksbwl.com

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.

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

J. 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.

K. 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 "Indemnified") 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.
L. 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  Preliminary/Concept Plan
Exhibit C  2011 City of DeKalb Impact Fees
Exhibit D  *Residential Design Guidelines for DeKalb, Illinois* dated November 28, 2005
Exhibit E  Letter from the Sanitary District regarding continuation of uses

*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]  Kris Polvsen, Mayor

Attest: [Signature]  Steven C. Kapitan, City Clerk

**OWNER:**

Thomas N. Gearhart

Teresa Gearhart

Gearhart Annexation Agreement -8-02-11

Page 15 of 20
Exhibit A:

THAT PART OF THE SOUTHEAST ¼ OF SECTION 2 AND THE NORTHEAST ¼ OF SECTION 11, ALL IN TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 2; THENCE NORTHERLY ALONG THE WEST LINE OF SAID SECTION, 759.74 FEET (RECORD 761.0 FEET) TO THE SOUTH LINE OF LOT "D" OF THE FLINN FARM PLAT; THENCE EASTERLY, ALONG SAID LINE, 2205.64 FEET (RECORD 2205.5 FEET) TO THE SOUTHEAST CORNER OF SAID LOT "D"; THENCE EASTERLY, ALONG THE SOUTH LINE OF LOT "C" OF SAID FLINN FARM PLAT, 814.42 FEET (RECORD 814.4 FEET) TO THE SOUTHWESTERLY LINE OF LOT "B" OF SAID FLINN FARM PLAT; THENCE SOUTHEASTERLY, ALONG SAID SOUTHWESTERLY LINE, 646.91 FEET (RECORD 647.0 FEET) TO THE CENTER LINE OF NORTH FIRST STREET (COUNTY HIGHWAY NO. 22); THENCE SOUTHWESTERLY, ALONG SAID CENTER LINE, 339.0 FEET TO A POINT OF BEGINNING; THENCE NORTHWESTERLY, AT RIGHT ANGLE TO SAID CENTER LINE, 435.0 FEET; THENCE SOUTHWESTERLY, AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE, PARALLEL WITH SAID CENTER LINE, 375.0 FEET; THENCE SOUTHEASTERLY, AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE, 435.0 FEET TO SAID CENTERLINE; THENCE NORTHEASTERLY, ALONG SAID CENTER LINE AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE, 375.0 FEET TO THE POINT OF BEGINNING; ALL IN DEKALB TOWNSHIP, DEKALB COUNTY, ILLINOIS.
# 2011 City of DeKalb Impact Fees

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<th>5-8</th>
<th>9-12</th>
<th>School Land/Cash Contribution***</th>
<th>School Capital Contribution*</th>
<th>School Transition Contribution*</th>
<th>Park Land/Cash Impact Fees**</th>
<th>Roadway Contribution*</th>
<th>Public Building Contribution*</th>
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*Fee Adjustments Based on Compounded 2006 - 2010 Rates (1.06656, 1.03434, 1.04365, 1.0151 & 1.0046)
** Fees Adjusted based Compounded 2007 - 2010 Rates (1.03434, 1.04365, 1.0151 & 1.0040)
*** No Fee Adjustment per Article 8 of the Unified Development Ordinance dated January 2007, updated April 2007

Water Capital Fee (Effective May 1, 2006, includes 2):
- Tap 2011 Fee
  - 3/4" - $1,253
  - 1" - $2,238
  - 1 1/2" - $5,035
  - 2" - $8,952
  - 3" - $20,142
  - 4" - $35,810
  - 6" - $42,635
  - 8" - $42,635
  - 10" - $42,635
  - 12" - $42,635

All fees are to be adjusted on or before January 1 of each year.

The fee calculation using the CPI was from September to September. This utilizes the most recent data available to calculate fees that are effective in January of the following year.
Residential Design Guidelines
For DeKalb, Illinois
November 2005
August 2, 2011

Gary Cordes
2045 Aberdeen Ct., Suite A
Sycamore, IL 60178

Re: Gearhart property – 3131 N. 1st Street

Gary:

As per our phone conversation yesterday in regards to the above property, the DeKalb Sanitary District has not forced annexation in the past unless the septic system fails. When the septic system fails we have been contacted by the County Health Dept. and informed of such.

At this time we would not force the annexation to the Sanitary District or request the connection fee as long as the system is working. In the future should this property be redeveloped or the septic system fails for the single family home, the DeKalb Sanitary District would require the annexation and connection fees be paid accordingly.

If you have any other questions, please feel free to contact Mark Eddington or myself.

Sincerely,

Janice Tripp
Assistant Manager Administration
DeKalb Sanitary District

cc: Mark Eddington
    File