

2018009727

DOUGLAS J. JOHNSON
RECORDER - DEKALB COUNTY, IL
RECORDED: 10/18/2018 08:54 AM
REC FEE: 64.00

STATE OF ILLINOIS)
COUNTY OF DEKALB) SS
CITY OF DEKALB)

PAGES: 13

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 copy of:

RESOLUTION 2018-096

**AUTHORIZING A CORNERSTONE DEVELOPMENT
PARKING AGREEMENT AND LIMITED PURCHASE
OPTION.**

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, on the 23rd day of July, 2018, and the original is now on file at the City of DeKalb Municipal Building.

WITNESS my hand and the official seal of said City this 18th day of October, 2018.

RUTH A. SCOTT, Deputy City Clerk



Prepared by and Return to:

Deputy City Clerk Ruth Scott
City of DeKalb
200 South Fourth Street
DeKalb, IL 60115

RESOLUTION 2018-096

PASSED: JULY 23, 2018

**AUTHORIZING A CORNERSTONE DEVELOPMENT
PARKING AGREEMENT AND LIMITED PURCHASE
OPTION.**

WHEREAS, Ordinance 2017-011, approved by the City Council on February 27, 2017, authorized a Development Agreement (hereinafter referred to as "Agreement") between the City and the Owner; and

WHEREAS, the Agreement included a provision requiring the City Council's approval of a Parking Agreement that provides the City with a 50-year option to "purchase" the property at no cost when and if the City determines it necessary and financially feasible to proceed with the construction of a new parking structure; and

WHEREAS, the City Council now determines it would be in the best interests of the City of DeKalb to approve the Parking Agreement.

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

Section 1. That the Mayor of the City of DeKalb be authorized and directed to execute a Cornerstone Development Parking Agreement and Limited Purchase Option, a copy of which is attached hereto and made a part hereof as Exhibit "A", subject to such changes as shall be acceptable to him.

Section 2. That the Deputy City Clerk of the City of DeKalb be authorized and directed to attest to the Mayor's signature.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 23rd day of July, 2018, and approved by me as Mayor on the same day. Passed on a 7-0-1 roll call vote. Aye: Jacobson, Finucane, Marquardt, Noreiko, Verbic, Faivre, Smith. Nay: None. Absent: Fagan.

ATTEST:


RUTH A. SCOTT, Deputy City Clerk


JERRY SMITH, Mayor



The seal of the City of DeKalb, Illinois, is circular with a double-line border. The outer ring contains the text "CITY OF DE KALB" at the top and "STATE OF ILLINOIS" at the bottom. The inner circle features a central emblem depicting a figure holding a scale and a sword, with the word "DEKALB" written below it.

07/19/18

Prepared By and Return To
City of DeKalb
ATTN: City Attorney
200 S. Fourth Street
DeKalb, IL 60115

Exhibit A

CORNERSTONE DEVELOPMENT
PARKING AGREEMENT AND LIMITED PURCHASE OPTION
CITY OF DEKALB

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This Parking Agreement and Limited Purchase Option (the "Agreement") is made and entered the 23rd day of July, 2018, by and among the City of DeKalb, an Illinois municipal corporation located in DeKalb County, Illinois, (the "City"), and Cornerstone DeKalb, LLC (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 a certain multi-unit mixed-use structure located at the southeasterly corner of First Street and Lincoln Highway in DeKalb, Illinois which property is legally described on Exhibit A attached hereto and incorporated herein by reference as the "Property", which property is within the corporate limits of the City. The Property includes an area immediately south to the building located on the Property that has been improved as a parking lot adjacent to the City's public parking lot. The private parking lot on the Property is referred to herein as the Cornerstone Lot, which is legally described in the attached Exhibit B.

B. The Parties have previously entered into that certain Cornerstone Development Agreement dated February 27, 2017 ("the Development Agreement"), whereby the Parties agreed that the City would provide a financial incentive for the construction of the development, and the Parties would later come to agreement on the terms relating to parking the development. The Development Agreement further provided that the Owner would grant the City a fifty-year option to purchase the Cornerstone Lot, at no cost and for the construction of a parking structure, provided that Owner retained the ability to use parking within said parking structure.

C. The Parties have reviewed available parking within the area, as well as the parking needs for the development's commercial and residential uses. The Parties acknowledge that the Property, while zoned as a planned development, is located in the City's Central Business District ("CBD"), and that within the CBD, there is generally *not* a requirement for on-site parking, the intent of such district being to encourage denser and more walkable development while utilizing available shared parking facilities. Under the terms of this Agreement, the Parties are providing for the use of the Cornerstone Lot to facilitate the development of the Property, both for residential and commercial use, and are providing for the allocation of a limited number of parking spaces within a City owned lot, to be made available on a pay for permit basis to residents of the development. The Parties further acknowledge that the residential tenants in other buildings within the CBD similarly have access to parking permits for City-owned lots. The spaces made available under the terms of this Agreement shall be made available pursuant to the City's standard provisions for CBD resident parking permits as a temporary and provisional license (as may be amended from time to time), and this Agreement shall not constitute a lease or the granting of any interest in real property owned by the City.

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

F. The Corporate Authorities have duly considered all necessary matters to enter into this Agreement and have further duly considered the terms and provisions of this Agreement and have authorized the Mayor to execute, and the City Clerk to attest, this Agreement on behalf of the City.

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

ARTICLE I: INCORPORATION OF RECITALS

The Parties acknowledge that the statements and representations contained in Paragraphs A through F, 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: NO-COST OPTION TO ACQUIRE CORNERSTONE LOT

The Parties acknowledge that under the Development Agreement, Owner was required to grant the City a fifty-year, no-cost option to acquire the Cornerstone Lot (defined in the Development Agreement as the Future Parking Area). Through the execution and recording of this Agreement, the Owner does hereby grant the City an irrevocable fifty-year option to acquire the Cornerstone Lot, subject to the terms and conditions provided below.

1. The City shall not be obligated to pay any funds or make any direct payments to Owner by virtue of exercising the option to purchase; said option shall be a “no-cost” option for the City. However, the option shall be limited consistent with the terms of this Agreement.
2. The City may only exercise the option for the purpose of acquiring the Cornerstone Lot so as to construct a multi-level parking structure, which structure shall be located in whole or in part on the Cornerstone Lot.
3. In the event that the City does proceed with the exercise of the option and construction of the parking structure, during the term of construction, the City shall reserve for use by the Owner parking spaces within another City-owned parking lot, in a number equal to the number of parking spaces then-presently within the Cornerstone Lot (“the Cornerstone Parking Allocation”), so that the Owner shall continue to have parking available for use by the Property.
4. Following construction of the parking structure, the City agrees that it shall convey to the Owner, by deed, easement, agreement or license (and at no cost to Owner), the right to use a number of parking spaces within the parking structure that is equal to the Cornerstone Parking Allocation.
5. This option may be exercised by the City at any time during the term commencing on the date of execution of this Agreement and concluding on the fiftieth anniversary of execution of this Agreement, through the provision of written notice to the Owner (or then owner).
6. The Owner shall not sell, transfer or otherwise encumber the Cornerstone Lot in a fashion that inhibits the ability of the City to so exercise this option. Should the City exercise this option at any time, the Owner shall be responsible for all costs necessary to deliver fee simple title to the City of DeKalb, via general warranty deed, without any claims against title other than those acceptable to the City of DeKalb in its reasonable discretion. Should the City exercise this option, the City shall be responsible for the costs of title insurance and closing costs.
7. At the time of exercise of the option, the Parties may enter into one or more agreements relating to any proposed connections between the parking structure and the Cornerstone building, or other related items. Owner specifically acknowledges that should the City exercise its option to construct the parking lot structure, the structure will be multi-level and will be constructed, in whole or in part, adjacent to the Cornerstone development. Owner agrees to waive any claim arising out of or relating to any claimed diminution in value, loss of lighting or view, or other claims whatsoever relating to the construction of the parking structure. Owner further agrees that it shall grant the City any easements reasonably necessary for the construction of the parking facility, provided that such easements do not unreasonably interfere with the use or

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operation of the Cornerstone development. The City agrees that it shall consult with Owner regarding the design and configuration of the parking structure, but acknowledge that final design shall be within the City's reasonable discretion.

ARTICLE III: CURRENT USE OF CORNERSTONE LOT

The Parties acknowledge that the presently proposed use of the Cornerstone Lot shall be for parking associated with the Cornerstone development, inclusive of residential and commercial use. The Cornerstone Lot shall be a private parking lot under the control and ownership of Cornerstone DeKalb, LLC. Parking spaces therein shall be allocated for use both by commercial and residential tenants within the development, and shall be appropriately signed by the Owner to indicate that the Cornerstone Lot is private parking. Owner shall also be responsible for enforcement of any parking restrictions therein, provided however that Owner specifically authorizes the City to enforce any fire zone or handicapped parking restrictions. Owner shall be responsible for all construction, maintenance, snow removal and deicing operations in the Cornerstone Lot, and shall reasonably coordinate snow removal operations with the City so as to avoid unnecessarily depositing snow or ice on City-owned parking spaces.

ARTICLE IV: PARKING PERMITS IN VAUGHN PARKING LOT

The City currently owns, maintains and operates the Vaughn Parking Lot, located generally between First and Second Streets and south of the railroad tracks. The City agrees that it shall make available for use by residential tenants within the Cornerstone development thirty (30) parking spaces within the Vaughn Parking Lot. Said parking spaces shall be available to tenants based on the then-current terms, conditions and cost associated with City of DeKalb CBD resident parking passes. The City reserves the right to reassign the parking spaces to other lots within the CBD, either on a temporary or permanent basis, and reserves the right to alter the terms, conditions or cost of said parking at any time, in its reasonable discretion. The City shall be responsible for maintaining the Vaughn Parking Lot and for installing appropriate signage regulating the parking located therein.

ARTICLE V: MUTUAL ASSISTANCE:

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 VI: REMEDIES:

A. Breach Generally:

Upon a breach of this Agreement, any of the Parties, solely in the venue as provided hereinafter, 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

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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.

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).

If any of the Parties shall fail to perform any of its obligations hereunder, and the Party affected by such default shall have given written notice of such default to the defaulting party, and such defaulting Party shall have failed to cure such default within thirty (30) days of such default notice (provided, however, that said thirty (30) day period shall be extended if the defaulting party has initiated the cure of said default and is diligently proceeding to cure the same), then, in addition to any and all other remedies that may be available, either 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.

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' rights thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

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 VII: TERM:

This agreement shall have a term of fifty (50) years from the date of execution.

ARTICLE VIII: MISCELLANEOUS:

A. Amendment:

This Agreement, and the exhibits attached hereto, may be amended only by mutual consent of the City and Owner, by adoption of an ordinance or resolution 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 special service area contemplated herein is ruled invalid, in whole or in part, the Owner and City, 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.

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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. 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, the more restrictive provision shall apply unless the City agrees otherwise.

D. Successors and Assigns:

1. This Agreement shall inure to the benefit of, and be binding upon the Owner and its successors, grantees, Owners, and assigns, and upon the City and successor corporate authorities of the City and successor municipalities, and shall constitute a covenant running with the land. Following the payment of the incentive and establishment of the special service area, this Agreement may be assigned to a successor owner of the Property 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.

E. 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:

Interim City Manager
City of DeKalb
200 South Fourth Street
DeKalb, IL 60115
Telephone: 815-748-2060
Email: Molly.Talkington@cityofdekalb.com

City Attorney

City of DeKalb
200 South 4th Street
DeKalb, IL 60115
Telephone: 815-748-2093
Email: dean@frieders.com

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If to the Owner: Cornerstone DeKalb, LLC
c/o John Pappas, Member/Manager
3 Fairway Circle
DeKalb, IL 60115

With a Copy To: Mark P. Doherty
The Doherty Law Firm, LLC
125 North First Street
DeKalb, IL 60115
Email: mark@dohertylawfirm.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.

F. Time of Essence:

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

G. Exhibits:

The following Exhibits referred to herein and attached to this Agreement are hereby made a part of this Agreement:

Exhibit A: Cornerstone Legal Description
Exhibit B: Cornerstone Lot Legal Description

H. Venue:

Jurisdiction and venue for any dispute arising out of relating to the terms of this Agreement, the zoning or restrictions imposed hereunder, the development of the Property or otherwise relating to the relationship of the Parties or contents hereof shall have its jurisdiction and venue exclusively fixed in the Twenty-Third Judicial Circuit, DeKalb County, Illinois, and the parties expressly and intentionally waive the right to pursue claims in any other jurisdiction or venue.

I. Survival of Provisions:

The provisions of this Agreement relating to the remedies upon default and/or the recovery of any portion of the Development Incentive (through legal action, foreclosure, deed in lieu or other process) shall survive any termination of this Agreement.

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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:

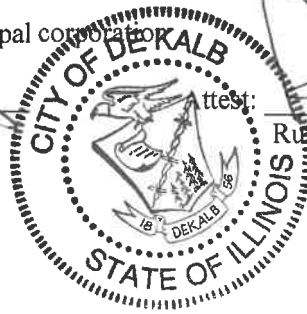
CITY OF DEKALB, an Illinois Municipal corporation

By: _____

Jerry Smith, Mayor

Attest: _____

Ruth A. Scott, Deputy City Clerk



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OWNER:

Cornerstone DeKalb, an Illinois Limited Liability Company

By: 
Signature

Printed Name: John Pappas
John Pappas

Attest: 
Signature

Printed Name: Michelle Jureczek



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Exhibit A: Cornerstone Legal Description

The property is legally described as:

LOT 1 IN CORNERSTONE SUBDIVISION PUD, BEING A RESUBDIVISION OF PART OF LOTS 1, 2, 3, 4, 5 & 6 IN RUBY'S SUBDIVISION OF A PART OF BLOCK 2 IN THE ORIGINAL TOWN (NOW CITY) OF DEKALB, AND AN ADDITIONAL PART OF SAID BLOCK 2, AND ALSO THAT PART OF THE 18 FOOT WIDE ALLEY LYING EAST OF THE WEST LINE OF SAID BLOCK 2 AND THE SOUTHERLY EXTENSION OF THE WEST LINE OF THE EAST 4 FEET OF SAID LOT 6, IN THE CITY OF DEKALB, DEKALB COUNTY, ILLINOIS.

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Exhibit B: Cornerstone Lot Legal Description

The property is legally described as:

LOT 2 IN CORNERSTONE SUBDIVISION PUD, BEING A RESUBDIVISION OF PART OF LOTS 1, 2, 3, 4, 5 & 6 IN RUBY'S SUBDIVISION OF A PART OF BLOCK 2 IN THE ORIGINAL TOWN (NOW CITY) OF DEKALB, AND AN ADDITIONAL PART OF SAID BLOCK 2, AND ALSO THAT PART OF THE 18 FOOT WIDE ALLEY LYING EAST OF THE WEST LINE OF SAID BLOCK 2 AND THE SOUTHERLY EXTENSION OF THE WEST LINE OF THE EAST 4 FEET OF SAID LOT 6, IN THE CITY OF DEKALB, DEKALB COUNTY, ILLINOIS.