I, LYNN A. FAZEKAS, do hereby certify that I am the duly appointed 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 2019-040

AUTHORIZING A ZONING MAP AMENDMENT FOR THE “CBD” CENTRAL BUSINESS DISTRICT TO THE “PD-C” PLANNED DEVELOPMENT – COMMERCIAL DISTRICT; AUTHORIZING A PLANNED DEVELOPMENT PRELIMINARY AND FINAL PLAN; AND AUTHORIZING WAIVERS TO THE UNIFIED DEVELOPMENT ORDINANCE (LOVELL’S DISCOUNT TIRE – 424 E. LINCOLN HIGHWAY, DEKALB, ILLINOIS).

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, on the 28th day of May 2019. The original will be kept on file at the City of DeKalb Municipal Building.

WITNESS my hand and the official seal of said City this 19th day of June 2019.

LYNN A. FAZEKAS, City Clerk

Prepared by and Return to:

City of DeKalb
City Clerk’s Office
200 S. Fourth Street
DeKalb, Illinois 60115
ORDINANCE 2019-040  

PASSED: MAY 28, 2019

AUTHORIZING A ZONING MAP AMENDMENT FOR THE “CBD” CENTRAL BUSINESS DISTRICT TO THE “PD-C” PLANNED DEVELOPMENT – COMMERCIAL DISTRICT; AUTHORIZING A PLANNED DEVELOPMENT PRELIMINARY AND FINAL PLAN; AND AUTHORIZING WAIVERS TO THE UNIFIED DEVELOPMENT ORDINANCE (LOVELL’S DISCOUNT TIRE – 424 E. LINCOLN HIGHWAY, DEKALB, ILLINOIS.)

WHEREAS, the City of DeKalb is a home rule municipality with the power and authority conferred upon it by the Illinois Municipal Code and the Constitution of the State of Illinois; and

WHEREAS, Kevin and Melissa Lovell (herein referred to as “Owner”) of the property commonly known as 424 E. Lincoln Highway (Lovell’s Discount Tire), DeKalb, Illinois (herein referred to as “Subject Property”), has petitioned the City of DeKalb for approval of a zoning map amendment from the “CBD” Central Business District to the “PD-C” Planned Development – Commercial District, in order to expand the existing legal non-conforming tire service to include additional vehicle repair services on the Subject Property; and

WHEREAS, the City and Owner seek to enter into a Development Agreement for the Subject Property contemplated and approved therein; and

WHEREAS, pursuant to proper legal notice, a public hearing was conducted by the Planning and Zoning Commission on May 8, 2019; and

WHEREAS, the City and Owner have conducted all required public hearings before the Planning and Zoning Commission of the City of DeKalb for the rezoning for the Subject Property, and have otherwise satisfied all conditions precedent to the adoption of this Ordinance; and

WHEREAS, the City Council has reviewed and adopts the following findings of fact of the Planning and Zoning Commission of the City of DeKalb, finds that the proposed rezoning is in conformance with the applicable zoning factors contained therein, and finds that approval of the rezoning for the Subject Property is in the public interest and promotes the public health, safety and welfare;

STANDARDS OF REZONING

1. The proposed rezoning conforms to the Comprehensive Plan, or conditions have changed to warrant the need for different types of land uses in that area. The proposed rezoning is appropriate considering the length of time the property has been vacant, as originally zoned, and taking into account the surrounding areas trend in development.
The 2005 Comprehensive Plan recommends the subject site for commercial uses. The property has had a tire repair service on the site since 1987 and the current building was constructed in 1998. The re-development of the property with the proposed additional vehicle repair services meets the intent of the Comprehensive Plan.

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

Re-zoning of the subject site to the PD-C District will allow the project to comply with the regulations of the UDO except for waivers for parking setbacks, landscaping requirements maximum site coverage and for a Planned Development less than two acres. The exceptions to the UDO are justified based upon the size of the site, location, and the desire to maintain a legal non-conforming use on the site. The rezoning of the subject property provides the opportunity to allow for uses that are currently prohibited in the CBD District and will allow the business to operate in a manner that is benefit to the community and the downtown area.

3. The proposed rezoning will not have a significantly detrimental effect on the long-range development of adjacent properties or adjacent land uses.

The surrounding area is already fully developed, and the proposed zoning and land use is consistent and compatible with the neighborhood. The proposed rezoning should not have a detrimental effect on the adjacent properties or land uses. Restrictions will be placed on the site regarding where vehicle repair work can occur, limitations on inoperable vehicles and that no outside storage or display of materials is allowed.

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

The subject property is proposed for “PD-C” Planned Development - Commercial zoning. The “PD-C” District designation will allow uses on the site that will be compatible with the surrounding neighborhood, enhance the area with higher standards of design than other adjacent properties and provide consistency with the Comprehensive Plan recommendations.

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

Existing utilities already serve the site.

STANDARDS FOR PLANNED DEVELOPMENT

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

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

   The existing eastern full access from E. Lincoln Highway and the S. 4th. St. access will be maintained and have functioned in a safe manner over the years. The access at the corner of E. Lincoln Highway and S. 4th St. will be removed and replaced with a barrier curb and gutter.

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

   The project is the redevelopment of a site that has contained a tire repair service for several decades. The site is located at the intersection of E. Lincoln Highway and S. 4th St. which is signalized and has the capacity to handle the traffic from the site.

3. **An undue burden on public parks, recreation areas, schools, fire and police protection and other public facilities which serve or are proposed to serve the planned development;**

   The project will not have any undue impact on public parks, recreation areas, schools, fire and police protection or other public facilities.

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

   The applicant is requesting Planned Development Zoning, which allows the City to approve regulations that will control the zoning, development and maintenance, operations and other property improvement related issues. Waivers to the Unified Development Ordinance for parking setbacks, landscaping requirements, maximum site coverage and a Planned Development less than two acres and are justified based upon the size of the site, location, and the desire to maintain a legal non-conforming use on the site.

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

   The surrounding area is already fully developed, and the proposed zoning and land use is consistent and compatible with the neighborhood and Comprehensive Plan. The proposed rezoning should not have a detrimental effect on the adjacent properties or land uses. Restrictions will be placed on the site regarding where vehicle repair work can occur, limitations on inoperable vehicles and that no outside storage or display of materials is allowed.
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL of the City of DeKalb, Illinois as follows:

SECTION 1. The recitals set forth in the preamble are hereby incorporated herein by reference and made a part of this Ordinance.

SECTION 2. This Ordinance is limited and restricted to the Subject Property legally described as follows:


SECTION 3. A zoning map amendment from the “CBD” Central Business District to the “PD-C” Planned Development – Commercial District to expand the existing legal non-conforming tire service to include additional vehicle repair services is hereby granted for the Subject Property.

SECTION 4. The City Council of the City of DeKalb hereby approves of the Planned Development Agreement attached hereto as Exhibit A (“the Agreement”), and authorizes and directs the Mayor of the City of DeKalb to execute the Agreement, subject to such changes as shall be acceptable to him with the recommendation of City Staff. The approvals, conditions, and restrictions in the Agreement are incorporated into and made a part of this Ordinance.

SECTION 5. PD-C Planned Development Commercial Standards: The provisions and restrictions related to the permitted uses, prohibited uses and other development and maintenance standards as described in the Agreement are hereby approved.

SECTION 6. Approved Plans: The “Plans” attached as “Group Exhibit B” to the Agreement are hereby approved subject to revisions acceptable to the City Manager or designee, in accordance with the staff report dated May 3, 2019 from the City of DeKalb, all provisions and requirements of this approval, the findings of fact and the Agreement. Approval of the “Final Plans” shall be in accordance with the governing provisions of the Agreement.

SECTION 7. 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.
SECTION 8. That all provisions of the Unified Development Ordinance shall remain in full force and effect and this Ordinance shall take effect upon its passage and approval according to Law. The City Clerk or designee shall record a copy of this Ordinance included herein after execution of this Ordinance.


ATTEST:

LYNN A. FAZEKAS, City Clerk

JERRY SMITH, Mayor
This Planned Development Agreement (the "Agreement") is made and entered the 29th day of May 2019 by and among the City of DeKalb, an Illinois municipal corporation located in DeKalb County, Illinois, (the "City"), and Kevin B. Lovell and Melissa G. Lovell Declaration of Trust Dated April 3, 1998, d/b/a Lovell's Discount Tire (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 0.54 contiguous acres of real property situated near the southeast intersection of 4th Street and Lincoln Highway in the City of DeKalb, DeKalb County, Illinois, which property is legally described on Exhibit A attached hereto and incorporated herein by reference as the "Property".

B. The Property is presently improved with buildings. The Property is proposed to be developed in accordance with the plans attached hereto as Group Exhibit B ("the Plans"), except as such plans are required to be modified under the terms of this Agreement, to include the continued operation of a vehicle service center, the construction of those improvements depicted in the Plans, and similar improvements.

C. The Parties acknowledge that the configuration and use of the property creates unique planning and development impacts for the City of DeKalb, and that thus the only way of accommodating the proposed development would be to utilize Planned Development-Commercial ("PDC") zoning. The Parties further acknowledge that use of PDC zoning requires a development agreement to provide definition of the terms and requirements of the zoning district, and that this Agreement has been entered into to provide such definition. Based upon the size of the Property and nature of the proposed development, the Property cannot comply with any existing zoning designation but for a PDC designation.

D. The City and the Owner thus have negotiated and have voluntarily entered into this Agreement for purposes of enabling the development of the Property consistent with the Plans and this Agreement.

E. 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 development of the Property to the City will be of benefit to the City, will permit orderly growth, planning and development of the City, will increase the tax base of the City, and will promote and enhance the general welfare of the City and its residents. The Owner acknowledges that the City is not required to rezone the Property as PDC, and that the City's agreement to rezone the Property in accordance with the provisions of this Agreement, and to otherwise perform the City's obligations under this Agreement constitutes valuable, bargained-for consideration that benefits the Owner and the Property.
F. The City acknowledges, and the Owner agrees, that the PDC, as provided under the City of DeKalb Unified Development Ordinance (the "UDO") will be the most appropriate zoning classification for the development of the Property.

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

H. All other and further notices, publications, procedures, public hearings and other matters attendant to the consideration and approval of this Agreement and the rezoning of the 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.

I. The Corporate Authorities have duly considered all necessary matters to enter into this Agreement, have considered the recommendations of the City's Planning and Zoning Commission in connection with the proposed zoning of the Property 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.

J. The Parties have heretofore entered into that certain Development Incentive Agreement approved by Resolution 2018-095, and by virtue of the approvals contemplated herein, the Owner shall have satisfied the zoning contingency contained within the aforesaid Development Incentive Agreement.

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 I, 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: ZONING OF THE PROPERTY

A. Zoning and Density Restrictions

By virtue of the approval of this Agreement, the Property is hereby rezoned to Planned Development – Commercial zoning (PDC). The Property is approved for the vehicle repair services and related future commercial use in compliance with the plans attached hereto as Group Exhibit B ("the Plans"). The Plans consist of:
• Trash Dumpster Enclosure and Signage Details received on 2/5/18 prepared by Architectural Resources.

• Site Plan (Sheet 1) dated 4/3/19 prepared by Rempe-Sharpe Consulting Engineers

• Landscape Plan (sheet L1) dated 4/11/19 prepared by Rempe-Sharpe Consulting Engineers

• Photometric Plan dated 4/11/19 prepared by Rempe-Sharpe Consulting Engineers

• Engineering Plans dated 4/11/19 prepared by Rempe-Sharpe Consulting Engineers

• Final Plat of Lovells Resubdivision dated 2-28-17 prepared by W.E. Hanna Surveyors

No further expansion, subdivision or modification of the Property shall be permitted.

B. Permitted Uses

Uses permitted within the City’s Central Business District (CBD) zoning district shall be permitted. In addition, Owner shall be permitted to operate a Vehicle Service Facility and indoor car wash as defined under the City’s Unified Development Ordinance.

Uses incidental to the permitted use as described above shall be permitted where authorized by this Agreement or where approved by the City Manager or designee in writing, in the Manager’s sole and absolute discretion.

C. Prohibited Uses

As per Section II(B), all other uses shall be expressly prohibited, including but not limited to Vehicle Wrecking Yards.

D. Special Uses

Special uses shall be as provided in the CBD zoning district.

E. Parking Provisions

All parking shall comply with applicable provisions of the UDO.

F. Permitted Outdoor Storage

Outdoor storage shall only be permitted in accordance with the UDO.
G. Setbacks and Building Lines

Setbacks, building lines, floor area ratios, building dimension limitations, height restrictions and other similar lot/building size/shape restrictions and regulations shall meet those standards as set forth in the UDO, except as otherwise permitted herein.

H. Design and Appearance Provisions

The design and appearance of any structure proposed to be constructed on any portion of the Property shall be subject to the review and approval of the City Manager. If the Manager refuses to approve a given design or elevation, the Owner may appeal said determination to the Planning and Zoning Commission for a recommendation, and to the City Council for a final decision.

Following the installation of such materials, the Owner shall maintain such materials (including the exterior of the building, landscaping, parking areas and other portions of the Property) in good condition and shall take appropriate actions necessary to prevent the deterioration of the Property or its appearance, excepting ordinary wear and tear that does not violate applicable property maintenance codes. The failure to maintain the building façade, architectural improvements, landscaping or other aesthetic components of the Property that are either described herein or contemplated by future designs shall constitute a violation of the zoning authorization provided under the PDC designation contemplated herein.

I. Revisions to Plans

Approval of this Agreement shall constitute conditional approval of the Plans, subject to modification in accordance with the terms of this Agreement:

1. Parking information related to the number of provided parking spaces and the number of required parking spaces based upon the UDO should be added to the Site Plan, Sheet 1. Vehicle Service Centers and Repair Facilities require 1 space for every employee on the maximum shift and 3 spaces for every service bay. The number of parking spaces for the body art establishment is 1 space per 250 sq. ft. of floor area. As defined in the UDO, “floor area” does not include storage areas, restrooms or mechanical rooms.

2. The “Site Coverage” calculation, as defined in the UDO, should be provided on the Site Plan, Sheet 1.

3. Add note to Landscape Plan that adequate overhang depth is provided for the 18-foot-long parking stalls along E. Lincoln Highway in order to protect the proposed landscaping per Article 12.06 of the UDO.
4. Provide more detail for the proposed ground sign indicating full dimensions and design. Any ground signs will require approval by the City Manager and must comply with the applicable provisions of the UDO.

5. If any buildings/structures are constructed on-site, access to them using the Knox system will be required.

6. Any fire alarms on-site will need to be monitored by an outside vendor.

7. The Plans shall be amended to reflect that the entirety of the parking area shall be resurfaced.

The City Manager is thereafter authorized to review and approve such plans (if conforming to the conditions of approval), and to append the revised Final Plans to this Agreement, prior to recording of this Agreement as more fully described below. If such plans do not comply with the terms of this Agreement, the City Manager shall determine whether the plans shall be processed as a Minor Amendment or Major Amendment as provided below. The determination as to whether such plans require a Minor Amendment or Major Amendment shall be in the sole and exclusive discretion of the City Manager. Any reference to “Plans” as contained herein shall be interpreted to refer to the final plans approved by the City as being in compliance with the terms and conditions of this Agreement and shall be read to reflect the last date of revision of the City-approved plans.

1. **Minor Amendments:** In the event that, following approval of this agreement and prior to the issuance of a temporary or final certificate of occupancy, the Owner identifies minor revisions required to the Final Plans, the Owner may request review and approval of said minor revisions at the staff level. In the event that the City Manager agrees that the requested revisions are consistent with the zoning and use restrictions imposed herein, do not fundamentally alter the nature or configuration of the Property and are otherwise appropriate for review and approval at the staff level, the Manager may review and approve such minor revisions. In the event that the City Manager does not reach that conclusion, the Manager shall refer such plans for recommendation by the Planning and Zoning Commission and for review and consideration of approval by the City Council. If a change is processed as a minor change and is subject to staff review, any condition or denial imposed during the staff review may be appealed to the City Council by Owner’s request to have the same be considered a major amendment.

2. **Major Amendments:** Review and approval/denial of any such requested changes proposed by the Owner shall be reviewed by the City Manager to determine whether such changes constitute a major or minor change. Any proposed change treated as a major amendment to the proposed development shall require a public hearing before the City’s Planning and Zoning Commission along with its review and recommendation, and City Council review and approval/denial. Application packet submittal requirements for a major amendment shall be as determined by the City Manager.
J. Rezoning of Property

The Parties agree that, for a period of forty (40) years from the date of execution 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 and OWNER without regard to statutory or common law zoning requisites and the agreement of the CITY and the OWNER to an amendment of this Agreement on terms and conditions mutually acceptable to the CITY and 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. The Parties further agree that in the event the Owner seeks a rezoning or alteration of the zoning standards applicable to the Property, any provisions in the UDO contemplating a defined time period for review, comment or approval of a zoning application shall be deemed waived. Following that initial forty-year term, the Property may be rezoned in accordance with the then-current practices and procedures applicable to rezoning requests. The expiration of the 40-year term shall not affect the continuing validity of this zoning designation.

K. Additional Development Standards:

Notwithstanding any contrary provision of the UDO or the terms of this Agreement referring to the UDO, the zoning of the Property shall include the following restrictions:

1. The outside storage or display of parts, tools, supplies and/or other equipment or materials is prohibited.

2. Parking or storage of inoperable or unlicensed vehicles shall be prohibited.

3. No damaged vehicles requiring body work or vehicles with flat tires shall be parked outside overnight.

4. No inoperable vehicles associated with the special use shall be parked off-site.

5. All vehicle repair work must be conducted indoors.

6. The storage of any vehicles on the subject site not associated with the business is prohibited.

By virtue of the approval of this Agreement and the PDC zoning granted herein, the following deviations from the UDO are specifically approved:

1. Compliance with Article 12.03(6)(a) shall be excused to reduce the parking setback along E. Lincoln Highway and the east property line from 10 feet to 5 feet and 0 feet as shown on the Site Plan (Sheet 1) dated 4/3/19 prepared by Rempe-Sharpe Consulting Engineers.
2. Compliance with Article 12.04(3) and 12.04(4) shall be excused to reduce the required landscaping quantities along the front yard adjacent to a street and the side yard as shown on the Landscape Plan (sheet L1) dated 4/11/19 prepared by Rempe-Sharpe Consulting Engineers.

3. Compliance with Article 5.13.07 (4) shall be excused to allow an increase in “Site Coverage” from 70% to 95% for a Planned Development as shown on the Site Plan (Sheet 1) dated 4/3/19 prepared by Rempe-Sharpe Consulting Engineers.

4. Compliance with Article 5.13.06 shall be excused to allow a Planned Development on a site less than two acres.

ARTICLE III: DEVELOPMENT AND MAINTENANCE OF THE PROPERTY

A. Owner’s Responsibility to Maintain

The Owner shall be responsible for the maintenance and care of any and all common areas, parking lots or other improvements within the Property and for maintaining all buildings on the Property in accordance with all City Building, Zoning and Property Maintenance Codes, and in accordance with the terms set forth in this Agreement. The Owner shall assume full responsibility for ensuring the property’s compliance with the applicable codes and requirements. The Owner shall also be responsible for construction of all new improvements, pathways and amenities as depicted in the Plans.

Owner shall also be responsible for maintenance of all on-site landscaping and improvements. Any landscaping, plant materials or trees that die or which are not in good condition shall be replaced as soon as practical with new and good condition materials of a size reasonably acceptable to the City.

B. Backup Special Service Area

OWNER and its successors, assignees and grantees, shall not object to and agree to cooperate with the CITY in establishing a special service area ("SSA") after Closing, for the Property, to be utilized as a backup mechanism for the care and maintenance of the Common Facilities, which include but are not limited to, lighting, parking lots, paved areas, drains, valves and related appurtenances, landscaped areas, bike/pedestrian paths, racks, property monumentation, signage, rubbish disposal facility enclosures, open space and any other common areas of the Property.

Owner shall have the primary responsibility of providing for the regular care, maintenance, renewal and replacement of the Common Facilities including, without limitation, the mowing and fertilizing of grass, removal of debris or garbage, pruning and trimming of trees and bushes, lighting, sidewalks, removal and replacement of diseased or dead landscape materials, installation or maintenance of detention/retention basins, property monumentation and signage, maintenance of waterways, valves and related appurtenances, landscaping, maintenance of all private curbs and roadways, driveways and drive aisles, and the repair and replacement of signs, so as to keep the same in a
clean, slightly and first class condition (the "Common Facilities Maintenance"). Common Facilities Maintenance shall be limited to the maintenance and upkeep of existing improvements, improvements described herein, and any then-current improvements at the time of performing maintenance.

If at any time the Owner fails to conduct the Common Facilities Maintenance within a reasonable time after being notified by the City to do so, 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 Owner shall, upon the request of the City, grant the City an easement ("Common Facilities Maintenance Easement") over all of those Common Facilities located on the Property in favor of the CITY. The substance of the Common Facilities Maintenance Easement shall be as approved by legal counsel for the CITY. Said SSA shall have a rate as reasonably determined by the City Engineer.

Approval of this Agreement shall be deemed to constitute consent to the City's establishment of one or more special service areas (individually, an "SSA") hereafter described.

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.

C. Environmental

The OWNER has provided documentation indicating that there are no pending IEPA investigations or environmental contamination issues with the Property.

D. Security for Public Improvements

In the event that the Owner constructs any public improvements (inclusive of improvements within or adjacent to a public right of way), then the provisions of this Agreement pertaining to such public improvements shall be invoked. Security to be provided by the Owner for the completion of the public improvements within or adjacent to the Property or related off-site improvements, if any, shall be provided prior to the commencement of construction on the Property 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 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 (or designee), and the Owner shall provide such information or documentation as to the
status of the proposed financial institution as the City Manager (or designee) 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.

E. 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 customarily required by the City to denote acceptance and transfer of ownership. Owner shall be responsible for the repair of any damage caused to public rights of way during the course of construction. Owner Prior to the acceptance of the streets by the CITY, the streets shall be in a condition acceptable to the CITY and completed with the final lift of asphalt, and all punchlist items previously identified by the City shall be satisfied. Upon acceptance of any public improvement by the City as described above, OWNER shall be entitled to a corresponding release or reduction of any Subdivision Performance Bond or Letter of Credit. For an 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 reasonably 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 an 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, or other security acceptable in form and content to the City.

F. 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. In the event that the Owner fails to meet any deadline imposed under the terms of this Agreement or otherwise violates any provision of this Agreement, the City may issue stop work orders for any work at the Property, pending either the posting of a security acceptable to the City to guarantee the completion of all work required, or the entry of the Parties into an amendment to this Agreement.
G. Compliance with City Ordinances and Applicable Regulations

The Parties agree that, except as specifically modified in this Agreement and the attached drawings and Exhibits, the Property shall be developed in compliance with all ordinances, codes and regulations of the City in effect at the time of development. 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. The 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. A generic utility easement shall be provided by the Owner as may be requested by the City Engineer. All construction shall be in accordance with the City codes and ordinances and any comments of the City Manager 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 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. In addition, Owner shall obtain all required permits, flaggers, insurance or other approvals required by the adjacent railroad when operating in or near the railroad right of way in accordance with applicable laws.

H. 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 500 feet of the entrance to OWNER’S construction site and take measures to control dust as needed daily while construction is occurring on said site. 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 which may be damaged during the course of Owner's construction or maintenance activities.

In addition, Owner shall be required to conduct a preconstruction meeting with the City prior to commencing any activities on the Property. At the time of such meeting, Owner shall provide a draft construction plan for review and approval by the City Manager.
I. Building Codes

In constructing improvements and conducting renovation on the Property, the Owner shall comply with all then-current building codes of the City of DeKalb or any other agency having jurisdiction over the Property. At the time of any future amendments or modifications of the building or the Property, the Owner shall comply with the then-current code requirements of the City.

J. Fire Suppression / Alarm

In the event the Owner installs a fire suppression and alarm system required by applicable codes as determined by the Fire Chief or designee, the Owner shall, except during reasonable periods of maintenance, thereafter, keep such systems in service, operational and in good repair.

ARTICLE IV: INFRASTRUCTURE

A. Water Mains and Potable Water Supply

Owner shall have the right to connect to and use the City’s potable water 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 be due at the time of building permit application. Said fees may be changed by the City from time to time in the City’s sole and absolute discretion, and Owner agrees to pay the amount as required by the City at the time such payment is due. 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. 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. At any time that Owner replaces any water mains on the Property at any point in the future, all water mains replaced shall be replaced with a water main of a size and configuration acceptable to the City.

B. Road Improvements

Prior to commencing any work within any public right of way or any work that alters the access point(s) for the Property, Owner shall have first obtained the approval of the City, as well as any required permits or permissions. No certificate of occupancy shall be granted until all access points and work within the public right of way (including sidewalk modifications) are completed, inspected and accepted by the City. Neither the approval of this Agreement nor the approval of final Plans shall be deemed to constitute permit
issuance.

C. Sanitary Sewers

Owner shall be responsible for taking all actions and paying all fees as required by the Kishwaukee Water Reclamation District in order to provide for the construction of a permitted connection to the District's wastewater collection infrastructure.

D. Utility Connections

The installation of the necessary and appropriate on-site electric, natural gas, cable, television, telephone facilities, and future internet access facilities (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. The City agrees to cooperate with the Owner to permit the extension of all such utilities along existing public rights-of-way and/or City owned property and otherwise allow the extension of all necessary utilities to the Property, provided, however, that the City's agreement to cooperate with the Owner to allow the extension of utilities to the Property shall in no way relieve the Owner of their obligations to obtain any and all easements and permits necessary to do so, at Owner's sole cost and expense.

E. Grant of Easements / Right of Way

The Parties acknowledge that at present, the City does not contemplate the installation of additional public utilities or street improvements in the vicinity of the Property. However, the Owner agrees and acknowledges that it shall grant to the City, at no cost to the City, easements or right of way along the perimeter of the Property upon request, if required for the construction or maintenance of public improvements owned or operated by the City, or by any governmental entity providing services to the Property. Such easements shall be limited in size as reasonably required to provide area for public improvements and shall not extend beyond fifteen feet from the edge of the Property without the Owner's express, written consent.

ARTICLE VI: PROPERTY RELATED PROVISIONS

Owner shall comply with the following restrictions which shall be deemed to be applicable to the entire Building and Property, as a condition of this Agreement and the incentives included herein, and as a component of the zoning relief granted herein.

1. Owner shall collaborate with the City on the location and installation of fiber optic cables on the Property, in such locations as the City shall reasonably request, to permit service of the Property or other properties by fiber optic connections. Where and if Owner is installing fiber optic service within the Building, Owner shall install additional fiber optic cables for use by the City in providing public wireless internet access and/or security cameras as described herein, at the cost and expense of the City, upon request (and Owner shall reasonably collaborate with the City on such routing). Where Owner is running fiber optic cables on the Property or permitting
others to cross the Property with such cables, Owner shall provide the City an opportunity to provide its own cables to be installed in the same location, at the cost and expense of the City.

2. Owner shall, upon request of the City, provide the City with access to the property and a source of 120v power and an internet connection in a convenient location, to provide power for the installation of public security cameras viewing exterior areas of the Property or public areas surrounding the Property. Installation and maintenance of City-owned cameras shall be at the City’s expense (provided that Owner shall provide power and internet access). Such cameras shall be for use in viewing exterior common areas of the Property (and surrounding public or private outdoor areas) only.

3. Owner shall grant the City such public access and/or public utility easements as shall be reasonably requested by the City at the time of final plan approval.

ARTICLE VII: FEES AND CONTRIBUTIONS

A. Specified Fees

The Owner shall pay all fees imposed under City Ordinance in the amount and in the time as described by such applicable Ordinance. The City and Owner shall, at the time of payment of any required fee, cooperate to determine the amount of the fee due.

B. Fees Specifically and Uniquely Attributable

The Parties further agree that the fees 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 fee, 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 fee, nor shall OWNER pay any such fee under protest. The Parties acknowledge that there are no impact fees or land dedications due by virtue of the development of the Property (other than with regard to easements and rights of way contemplated by the approved Plans). Notwithstanding the foregoing, OWNER or the subsequent owners or developers of any portion of the Property shall be responsible for payment of all future fees, charges and assessments relating to their use or modification of the property, including but not limited to building permit fees for remodeling of any structure on the development, and similar charges or fees.

C. Owner Responsibility for Costs

Owner agrees and acknowledges that, as a result of the preparation of this Agreement and related documents, and as a result of the ongoing commitment of resources by the City that is caused as a direct result of this Agreement, the process of creating this Agreement, and the Development that is to be constructed under the terms of this Agreement, the City may incur substantial expenses at the request of Owner, and the Owner may become responsible for substantial charges and fees in order to perform its
obligations under this Agreement. The Parties acknowledge that this subsection VII(C) does not, itself, impose any new or separate fees or charges, but only relates to other fees that may come due during ownership or development of the Property by virtue of generally applicable City Codes. Owner acknowledges that assignment or transfer of any interest in any property subject to this Agreement can increase the complexity of recovering those costs for the City and, in order to induce the City to enter into this Agreement, Owner agrees as follows:

1. Prior to the sale, assignment, lease or other transfer of any portion or portions of the Property, Owner shall provide not less than thirty (30) days' notice to the City that such transfer is contemplated. Transfers among or between family members related by blood or marriage, or between trusts, corporations, partnerships or limited liability companies which are entirely owned or controlled by family members related by blood or marriage, shall not be construed as transfers giving rise to a potential obligation under this subsection.

2. Within fifteen (15) days of the receipt of such notice, the City shall provide Owner with a calculation of the total amount believed to be outstanding as costs for which Owner is responsible.

3. Prior to, or at the closing of, the consummation of such transfer, Owner shall cause all such amounts to be paid to the City.

4. At any time within ninety (90) days following consummation of such a transfer, the City shall provide final calculations of the total amount due from Owner and Owner shall pay all such amounts within thirty days of the City providing such notice.

5. In the event of a failure of Owner to comply with this subsection, Owner, along with the interest holder to which an interest in the property subject to this Agreement was transferred, shall be jointly and severally liable to the City for all such amounts described above, plus attorneys' fees, court costs, other collection costs, and interest at a rate not to exceed eight (8%) percent per annum, until such amount, including costs and interest, is paid in full.

6. Any notice of amounts so due under this agreement shall include accurate and complete (to the extent that such documentation exists) documentation from the City.

Owner further acknowledges that, at any point, if Owner fails to make a payment requested by the City within thirty (30) days of such request, or such additional time as the City shall agree to provide (with any such extension being acknowledged by the City in writing), the City may unilaterally choose to implement any or all of the following remedies until such point in time as Owner has paid all amounts due and/or restored any escrow accounts maintained by the Owner by virtue of this Agreement:

1. Issuance of a stop work order on any portion of the Development.
2. Refusal to issue further permits for building, occupancy, water tap on, or other development related work.

3. Cessation of any utility service provided by the City to any property owned or maintained by Owner or their successors or assigns.

4. Institution of appropriate legal action to recover any and all amounts due, in which case the City will be entitled to attorneys' fees, court costs, other collection costs, and interest at a rate of eight (8%) percent per annum, until such amount, including costs and interest, is paid in full.

5. Cessation of any or all work on or pertaining to the Property by City staff, employees or consultants.

ARTICLE VIII: OPERATION OF THE PROPERTY

A. Acknowledgment of Application of Operational Standards

The Parties acknowledge and agree that the provisions of this Article VIII relating to the operation of the Property following its rezoning and development are critical and integral to the zoning standards provided for herein. The Owner agrees and acknowledges to comply with the following standards and requirements, and acknowledges that they have been drafted to address the public safety concerns otherwise arising out of the operation of a development with a zoning density that greatly exceeds the use intensity otherwise contemplated by permissible zoning allowances.

B. Operation and Lease Provisions

In consideration of the provisions herein and in order to construct and maintain a development of the quality intended by the Owners and expected by the City, the Owners agree to secure, through covenants, operational policies or other means acceptable to the City, to provide management of the Property that will comport with the following standards, subject to applicable superior governmental mandates:

1. Owner shall comply with the City's then-current ordinances applicable to the licensure, operation and inspection of commercial properties.

2. Owner shall designate an individual as the Property Manager. Said Manager shall provide the City with a 24-hour emergency contact cellular telephone number and shall be available to respond to any public safety or other emergencies at the Property at any time and shall respond upon request of the City. The Manager shall have authority to grant access to any portion of the Property, upon the request of the City's Fire Department or Police Department, at any time. The Manager shall be the Owner's designee and shall be legally responsible for any citations issued to the Property for violation of any City Ordinance, including but not limited to property maintenance violations. At any time that the Property is occupied, and the Manager is unavailable, Owner shall provide the City with a supplemental responsible party who shall be
available and who shall be accessible at a 24-hour emergency contact cellular telephone number.

Owner agrees and acknowledges that it believes each of the foregoing conditions are fully in accordance with all applicable superior governmental mandates, and that it intends to enforce such requirements based upon current law.

C. Public Safety Regulations: Trespass/Patrol Agreement

The Parties shall keep in place at all times a No-Trespass Enforcement Agreement, in the then-current format utilized by the City of DeKalb (with such agreement currently being in the form attached hereto as Exhibit C), and shall cooperate at all times with regard to the enforcement of such Agreements. Further, and without regard to the content of such Agreements for exterior common areas of the Property and shall authorize and request the routine patrol of such areas by the City of DeKalb Police Department or other sworn officers, based upon the availability of resources for such details. Additionally, the Owner shall grant the City access to interior common areas of the Property upon request, in response to a complaint or in response to or in investigation of a possible crime.

Owner shall also make itself and its management representative available for meetings with the City on a periodic basis (or as otherwise requested by the City) for the purpose of reviewing security plans, trespass enforcement lists or similar issues.

D. Knox Boxes

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.

E. Intentionally Omitted

F. Common Area Surveillance

The Parties acknowledge that if the Owner installs cameras or other equipment utilized to provide video surveillance and security coverage for the parking lot and for exterior common areas of the Property inclusive of entrances to the interior of the Property in a format and in locations acceptable to the Chief of Police or designee, then the Owner agrees to maintain the system and provide to the City a connection and inter-link so that the City can remotely monitor such exterior common area surveillance videos from the City Police Department. The Owner shall be responsible for providing and maintaining all technology required to establish an external, static IP address securely accessible by the City with video feed in a format acceptable to the City Police Department (or providing video interlink in another fashion acceptable to the Chief of Police or designee). With regard to such interlink, the Parties agree to mutually indemnify and hold harmless the other party from any claim arising out of the monitoring or failure to monitor such systems. Such interlink shall permit the City to access a digital feed of live data collected on the Property and shall also allow the City to access data stored in any recording devices.
installed or maintained by Owner with respect to such surveillance. The Owner and a representative of the City's Police Department shall meet within thirty days of the date of execution of this Agreement to review the Property and determine mutually acceptable locations for cameras to be utilized in such system to their mutual satisfaction, which agreement shall not be unreasonably withheld or conditioned. All security cameras and security equipment in place on the Property shall be maintained in good and fully operable condition, acts of God and other reasonable and unforeseeable temporary interruptions excluded. All security cameras shall be equipped with a recording system that permits the retention and review of all footage obtained for a period of not less than fourteen days, and Owner shall provide the City with access to such archive and shall provide copies of any footage retained therein at any time upon request. Nothing contained herein shall be construed to create a duty on the part of the City to monitor such cameras at any time, nor to in any way enhance or alter the City's patrol or public safety responsibilities relative to the Property or any surrounding property.

G. Conflict with Federal Law and Regulations

In the event that any provision of this Agreement conflicts with applicable federal laws or regulations, the City and Owner recognize that the federal law shall supersede local regulation to the extent required under federal law. Nothing in this Agreement shall be construed in a fashion that violates any federal statute. Notwithstanding the foregoing, the Owner and City agree and acknowledge that they have reviewed and negotiated the terms of this Agreement with great care and precision, and both agree and covenant that they believe in good faith that the terms hereof are in compliance with all applicable laws. In the event that a federal law supersedes any provision hereof, the Parties agree that they shall negotiate in good faith to approve an amendment to this Agreement that complies with the applicable federal law, and which accomplishes the objective of the term of this Agreement which violates federal law.

ARTICLE IX: 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 X: REMEDIES

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.

In the event of a material breach of this Agreement, the Parties agree that the party alleged to be in breach shall have forty-five (45) 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 forty-five (45) 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 forty-five (45) days of such default notice (provided, however, that said forty-five (45) 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.

The violation of any provision of this Agreement may be deemed by the City to be a violation of the PDC zoning contemplated herein, which may be prosecuted in the fashion of any other violation of the City’s Uniform Development Ordinance, or may be grounds for initiation of a proceeding under Article XII (J) hereof.

ARTICLE XI: TERM

The Parties acknowledge that this Agreement has been negotiated in furtherance of the designation of the Property with PDC zoning that authorizes the density, development standard waivers and approvals contemplated herein. Accordingly, except as otherwise provided herein, it is the intention of the Parties to maintain this Agreement in full force and effect for the full duration of the time that the Property maintains PDC zoning and, to the fullest extent of the law, the Parties intend that this Agreement not terminate unless and until the Parties agree to amend this Agreement.
In the event that the law requires any lesser term for this Agreement, then this Agreement shall remain in full force and effect for the maximum duration permitted by law, and in the event that any applicable law requires the specification of a duration, such duration shall be not less than forty (40) years.

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 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. 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

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 potion 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 S. Fourth Street
DeKalb, IL 60115
Phone: (815) 748-2095
Fax: (815) 748-2091

With copies to:
City Manager
City of DeKalb
200 S. Fourth Street
DeKalb, IL 60115
Phone: (815) 748-2090
Fax: (815) 748-2091

City Attorney
City of DeKalb
200 S. Fourth Street
DeKalb, IL 60115
Phone: (815) 748-2093
Fax: (815) 748-2091

If to the Owner:
Kevin B. and Melissa G. Lovell
1335 Florence Drive
Sycamore, IL 60178

With a Copy To:
Richard D. Larson, P.C.
Attorney at Law
313 E. State Street
PO Box 323
Sycamore, IL 60178-0323

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. 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 Indemnified. The Owner shall provide satisfactory proof of insurance covering such defense and indemnity of the Indemnified. 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.

Without limiting the applicability of the foregoing indemnification provisions, the Owner expressly and without limitation agrees that it shall indemnify and hold harmless the City from any claims, damages, fines, penalties, legal fees or other costs or expenses whatsoever, arising out of Owner'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.

H. Exhibits

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

Exhibit A: Legal Description
Group Exhibit B: Plans
Exhibit C: No Trespass Agreement
Exhibit D: Traffic Enforcement Agreement
Exhibit E: Architectural and Design Standards

I. 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.
J. Revocation of Zoning and Termination of Planned Development Agreement:

In the event that the Owner violates the terms of this Agreement, the City shall issue a written notice to Owner. Said notice shall indicate that the City shall terminate the Agreement in accordance with this provision, after affording the Owner an opportunity to present evidence as to why the Agreement has not been violated, in a due process hearing before an officer designated by the City Manager or designee thereof, conducted in the same fashion as a hearing to revoke a Special Use. After the conduct of such hearing, the City shall be authorized and entitled to terminate this Agreement, at which time the Property shall be converted back to its previous status as CBD, and the City shall record a notice of such zoning change against the Property. The Owner and City have devised and agreed to the process contained herein so as to afford the Owner with a due process proceeding and so as to avoid an unlawful zoning reversion. Once the improvements contemplated herein are timely completed, inspected and approved with a final certificate of occupancy in place, the zoning approvals contemplated herein shall no longer be subject to revocation under this Section.

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]

Jerry Smith, Mayor

Attest: [Signature]

Lynn A. Fazekas, City Clerk

OWNER

[Signature]

By: [Signature]

Attest: [Signature]

Print Name: Melissa Lovell

Print Name: Dan Olson
EXHIBIT A
LEGAL DESCRIPTION

The property is legally described as:

EXHIBIT B

FLOOR PLAN
SCALE: 1/4" = 1'-0"

(4) #4's w/ #3 TIES @ 18" O.C.

FOUNDATION PLAN
SCALE: 1/4" = 1'-0"

(4) #4's w/ #3 TIES @ 18" O.C.

ARCHITECTURAL RESOURCES
W. Alex Teipel — Architect
427 West State Street
Geneva, Illinois 60134
(630) - 232 - 1774

SUBURBAN TIRE
State Route 38
St. Charles, Illinois

Date 07/20/05
Scale AS NOTED
Drawn R.M.A.
Job 03-1446
FRONT ELEV.
SCALE: 1/4" = 1'-0"

SIDE / REAR ELEV
SCALE: 1/4" = 1'-0"

ARCHITECTURAL RESOURCES
W. Alex Teipel — Architect
427 West State Street
Geneva, Illinois 60134
(630) 232-1774

Date 07/20/05
Scale AS NOTED
Drawn R.M.A.
Job 03-1446
SECTION
SCALE: 1/2" = 1'-0"

PRECAST CONC. CAP

BLOCK TO MATCH EXSTG
w/ LADDER TYPE REINFORCING
1ST AND 2ND COARSE & EVERY
OTHER COARSE THEREAFTER

4" CONC. SLAB (TURN DOWN 1 8" TYP)
ON 4" MIN. GRAVEL BASE (TYP.)

SUBURBAN TIRE
State Route 38
St. Charles, Illinois

ARCHITECTURAL RESOURCES
W. Alex Teipel --- Architect
427 West State Street
Geneva, Illinois 60134
(630) 232-1774

Date 07/20/05
Scale AS NOTED
Drawn R.M.A.
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427 West State Street
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SUBURBAN TIRE
State Route 38
St. Charles, Illinois

Date 07/20/05
Scale AS NOTED
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Job 03-1446
FRONT ELEV.
SCALE: 1/4" = 1'-0"

SIDE / REAR ELEV
SCALE: 1/4" = 1'-0"

ARCHITECTURAL RESOURCES
W. Alex Teipe — Architect
427 West State Street
Geneva, Illinois 60134
(630) - 232 - 1774

SUBURBAN TIRE
State Route 38
St. Charles, Illinois

Date 07/20/05
Scale AS NOTED
Drawn R.M.A.
Job 03-1446
SECTION
SCALE: 1/2" = 1'-0"

PRECAST CONC. CAP

4" CONC. SLAB (TURN DOWN 18" TYP) ON 4" MIN. GRAVEL BASE (TYP.)

BLOCK TO MATCH EXSTG w/ LADDER TYPE REINFORCING
1ST AND 2ND COARSE & EVERY OTHER COARSE THEREAFTER

SUBURBAN TIRE
State Route 38
St. Charles, Illinois

ARCHITECTURAL RESOURCES
W. Alex Teipel — Architect
427 West State Street
Geneva, Illinois 60134
(630) - 232 - 1774

Date 07/20/05
Scale AS NOTED
Drawn R.M.A.
Job 03-1446
ENGINEERING PLANS FOR:

LOVELL'S DISCOUNT TIRE PARKING LOT IMPROVEMENTS
424 EAST LINCOLN HIGHWAY
DEKALB, ILLINOIS

LOCATION MAP

REFERENCE SURVEYMARKS:
NORTHEAST TAB BOLT ON FIRE HYDRANT LOCATED AT THE INTERSECTION OF LINCOLN HIGHWAY (S. ROUTE 38) AND FIFTH STREET.
ELEV = 582.30

SITE DESCRIPTION:
CAPPED SQUARE CUT OUT BY OTHER IN THE WESTERLY FACE OF CONCRETE BARRIER TO A TRAFFIC SIGNAL LOCATED ON THE SOUTHERN SIDE OF EAST LINCOLN HIGHWAY (S. ROUTE 38).
ELEV = 582.00

OWNER/DEVELOPER:
Lovell's Discount Tire, Inc.
424 East Lincoln Highway
DeKalb, IL 60115
Ph: 815-756-6356
Karie Lovell

SUMMARY OF QUANTITIES

NOT FOR CONSTRUCTION

PROJECT

Lovell's Discount Parking Lot Improvements
DeKalb, Illinois

COVER SHEET
EXHIBIT C
NO TRESPASS / PATROL AGREEMENT

Common Area Patrol / No-Trespass Enforcement Agreement

Property Address: 424 E. Lincoln Highway
Commonly Known As: Lowell's Discount Tire
Property Owner: Kevin and Melissa Lowell
Contact #: 815-751-1608 815-751-9118
Property Manager: Same
Contact #: Same
24 Hour Contact #: Same

This Common Area Patrol / No-Trespass Enforcement Agreement ("Agreement") is entered into by and between the Owner of the Property identified above ("Owner" and "the Property") and the City of DeKalb ("City"). Under the terms of this Agreement, the Owner expressly authorizes and requests that the City utilize its Police Department and City Employees to undertake the following actions:

- **No-Trespass Warnings and Arrests:** The Owner appoints the City of DeKalb, its employees and agents, as an agent of the Owner, authorized and requested to undertake any actions which the Owner could lawfully take with regard to persons present on any public or private area of the Property. The City's personnel shall be deemed to be representatives of the Owner for purposes of enforcing no-trespass laws and ordinances and signing and testifying with regard to related complaints only. This includes providing no-trespass warnings, verbal or written, to any person on the Property other than a tenant of the Property. The City shall also be authorized to sign complaints, serve as complaining witness, and arrest or cite any person who has violated such a no-trespass warning, or who remains on the Property after being asked to leave. The City has the complete authority to enforce any State Statute or City Ordinance relating to trespass. The City shall maintain accurate records of all persons who have been advised not to trespass on the Property and shall provide a copy of the same to Owner upon request.

- **Patrol Common Areas:** The City, its employees and agents are authorized and requested to enter into any common area of the Property that is accessible either to the public or to tenants of the Premises, including parking lots, open spaces, common hallways, gathering areas, or other similar common areas of the Property, for purposes of patrolling, observing, and enforcing the Codes and Ordinances of the City of DeKalb or any applicable State Statutes. For purposes of this Agreement and any charges arising out of the City's activities on the Property, the City and its personnel shall be deemed to have been invited upon the common areas of the Property. Notwithstanding the foregoing, this shall not constitute authority for the City to enter into tenant private
areas (e.g. individual tenant apartments or individual tenant businesses) without required legal authority (such as a search warrant, probable cause, exigent circumstances, etc. where required). The City is authorized to sign complaints, serve as complaining witness, and arrest or cite any person who has violated a State Statute or City Ordinance.

- **Report Cars for Relocation:** Owner employs the entity described at signs posted at the Property for purposes of relocating unlawfully parked cars from the Property. The City is authorized and requested to contact the tow relocator to report any vehicles on the Property that appear to be unlawfully parked, so that said vehicles may be towed in accordance with applicable regulations.

The Owner agrees that, if necessary, Owner or its authorized representative shall appear at any trial or proceeding arising out of the performance of this Agreement. Owner further acknowledges that the City shall not have any duty to patrol the Property, and that the Owner is responsible for the condition and monitoring of its Property. The City is not undertaking any special relationship with or obligation to Owner, other than the authority to enter the Property's common areas, and to take the actions outlined above. The City is not an agent or representative of the Owner for any purpose other than having authority to provide warnings or direct persons to leave the Property, and for serving as complaining witness and for signing complaints for legal violations occurring on the Property.

The City agrees that it shall provide notice to the Owner of any legal violations occurring on the Property upon request, and also in accordance with the requirements of City Code.

Owner shall post appropriate signage on the Property advising that its common areas, including but not limited to parking lots and open areas, are posted for No Trespassing, and appropriate signage advising of any parking restrictions for vehicles in its parking lots. Owner is encouraged to post additional signage advising that the Police Department may engage in regular patrols of common areas.

This Agreement shall remain in full force and effect until terminated in writing by either party. Notices shall be delivered to Owner at the address listed above, or to the City at 200 S. Fourth Street, DeKalb, Illinois, 60115, Attention City Attorney.

Agreed this 15th day of June, 2019.

**Owner or Representative Signature:**

**Print Name:**

**City of DeKalb:**

Jerry Smith, Mayor

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EXHIBIT D
PRIVATE PROPERTY TRAFFIC ENFORCEMENT AGREEMENT

WHEREAS, Kevin Lovell, its affiliates or subsidiaries (hereinafter collectively "OWNER"), are the owners of a certain commercial facility, or other facility as described in the Illinois Vehicle Code identified below, and named or identified as "Lovell’s Discount Tire"; and

WHEREAS, the OWNER and the CITY are desirous of protecting the public health, welfare and safety by the regulation of vehicles in those areas of the COMPLEX which have not been dedicated to the CITY and are intended for public use; and

WHEREAS, it is intended by the parties that this Agreement should apply to any property in the COMPLEX where a question may arise as to whether any particular portion of the COMPLEX which is intended to be or become public property through dedication or otherwise, has been so dedicated, or to any portion which is to remain private property but available for general public use; and

WHEREAS, the CITY has the authority to contract with the OWNER to provide such regulation under the provisions of §11-209 of the Illinois Vehicle Code (625 ILCS 5/11-209);

IT IS THEREFORE AGREED by and between the OWNER and the CITY, in consideration of the public health, welfare and safety, as follows:

1. That the CITY is empowered to accomplish all or any part of the provisions enumerated in the above referenced statutory provision, including, but not limited to the following, within the COMPLEX:

   A. Erect traffic regulatory signs, parking, including handicapped parking, and all other traffic control signs.

   B. Regulate the turning of vehicles or restrict vehicle types.

   C. Regulate pedestrian crosswalks within parking lots.

   D. Designate one-way traffic lanes.

   E. Establish and regulate loading zones.

   F. Regulate stopping, standing or parking in specified areas of lots.

   G. Designate fire lanes and safety zones.
H. Provide for removal and storage of vehicles during public emergencies, or of abandoned vehicles, and the payment of reasonable charges therefor.

I. Provide for cost sharing of planning, installation and maintenance of traffic regulations.

J. Contract for or provide by ordinance, resolution or other official action of the CITY, reasonable additional rules.

2. That the cost of the planning, installation and maintenance of parking and traffic regulations, markings, signs, striping and painting pursuant to this Agreement, and pursuant to the Development Agreement between the parties and the subdivision control ordinance of the CITY, shall be borne by the OWNER. OWNER shall be responsible for maintaining all traffic control measures and markings within the Property in good condition.

3. This Agreement shall be effective and enforceable three days after it has been recorded in the Office of the Recorder of Deeds of the county in which the COMPLEX is located and shall continue to be in full force and effect for a period of twenty years, except that after one year from the effective date of this Agreement, either party may cancel this Agreement upon sixty days' written notice to the other party.

EXECUTED this 13th day of June, 2019.

Owner or Representative Signature:  

City of DeKalb:

Print Name:  

Jerry Smith, Mayor
VIA EMAIL AT dan.olson@cityofdekalb.com

Mayor Jerry Smith & City Council Members

c/o Mr. Dan Olson, Principal Planner

200 S. 4th Street
DeKalb, IL 60115

Re: Lovell’s Discount Tire Project

404-424 E. Lincoln Highway & 120 S. 4th Street

Dear Mayor Jerry Smith & City Council Members;

On May 8, 2019, the City of DeKalb Planning and Zoning Commission unanimously approved applicants and owners Kevin B. Lovell and Melissa G. Lovell, as Co-Trustees of the Kevin B. Lovell and Melissa G. Lovell Declaration of Trust dated April 3, 1998, request for a Special Use Permit at:

404-424 E. Lincoln Highway & 120 S. 4th Street

Kevin B. Lovell and Melissa G. Lovell respectfully request that the City Council waive the second reading requirement in this matter and approve the Special Use Permit on first reading.

Please feel free to contact the undersigned or Mr. Lovell at (815) 751-1608 with any further questions. Thank you in advance for your consideration of this matter.

Sincerely,

Richard D. Larson

RDL/tad

cc: Kevin B. & Melissa G. Lovell (via email)
TO: Planning and Zoning Commission

FROM: Dan Olson, Principal Planner

RE: Zoning Map Amendment from the "CBD" Central Business District to the "PD-C" Planned Development – Commercial District; Approval of Planned Development Preliminary and Final Plan; Waivers to the UDO – 424 E. Lincoln Highway (Lovell’s Discount Tire)

I. GENERAL INFORMATION

A. Purpose

To allow for the expansion of an existing tire service to include additional vehicle repair services.

B. Owner/Applicant

Kevin and Melissa Lovell

C. Location and Size

424 E. Lincoln Hwy.; .54 acres

D. Existing Zoning and Land Use

"CBD" Central Business District; Tire service business

E. Proposed Zoning and Land Use

"PD-C" Planned Development Commercial; Expand existing tire service to include additional vehicle repair services

F. Surrounding Zoning and Land Use

North – CBD; RR, Park
South – CBD; Automotive repair
East – CBD; Various commercial uses
West – CBD; RR, Various commercial uses

G. Comprehensive Plan Designation

Commercial
II. BACKGROUND AND ANALYSIS

The applicant is requesting a Zoning Map Amendment from the “CBD” Central Business District to the “PD-C” Planned Development – Commercial District and approval of a Planned Development Preliminary and Final Plan for a .54 acre site located at 424 E. Lincoln Highway in order to expand the existing legal non-conforming tire service (Lovell’s Discount Tire) to include additional vehicle repair services. Consideration is also requested to approve waivers to the Unified Development Ordinance for parking setbacks, landscaping requirements, maximum site coverage and a Planned Development less than two acres.

Lovell’s Discount Tire started in 1987 on the site and the current building was constructed in 1998. The petitioner is requesting a rezoning in order to allow for the existing tire service business to include additional vehicle repair services currently not allowed under the “CBD” regulations. The “CBD” District prohibits “Vehicle Repair and/or Service Facilities”. Per the UDO, vehicle repair facilities involve both minor and major repairs of vehicles including mechanical overhauling, paint and body work, while vehicle service facilities involve minor repairs and services such as oil changes. The applicant desires to just add the services allowed under the definition for “Vehicle Service Facility”, which will include the existing tire service, oil changes, and minor repairs such as brake, muffler, exhaust and shocks services. The applicant is also proposing to have an occasional indoor car wash operation located in the building. Given that the existing business pre-dates the current UDO (adopted in 1993), Lovell’s is considered a legal non-conforming use, and subject to restrictions. The applicant is also requesting that the uses currently permitted in the “CBD” District be allowed on the site. There is an existing body art establishment (Proton Tattoo) at the west end of the building that is currently a permitted use in the “CBD” District and will be remaining. Restrictions will be placed on the site regarding where vehicle repair work can occur, limitations on inoperable vehicles and that no outside storage or display of materials is allowed.

In 2013, the applicant applied for a similar request and was recommended for approval by the Planning and Zoning Commission, however, the petition was withdrawn by the applicant prior to City Council consideration. Since that time, the owner has acquired and demolished a small building that used to be on the corner in front of the main building and has continued to investigate costs for finalizing site improvements. On July 23, 2018, the City Council authorized a tax increment financing incentive agreement for planned improvements for Lovell’s. The planned improvements included the complete resurfacing of the parking lot, IDOT required improvements in the right-of-way of E. Lincoln Highway and S. 4th St. and the continuation of the streetscape along the frontage of the project (i.e. paver blocks). The agreement provided that the incentive was contingent upon the applicant applying for and receiving PD-C zoning designation within six months of approval of the agreement. A six-month extension was granted by the City in January to July 23, 2019.

The applicant intends to resurface the entire parking lot and redesign it by adding
additional parking spaces, landscaping, streetscape improvements and adding a new ground sign. Streetscape improvements include paver bricks in the sidewalk along E. Lincoln Highway to match areas to the east and west and removing the access at the corner with a barrier curb and gutter. These changes are at the direction of IDOT and the City and will improve the appearance of the intersection. The existing access to E. Lincoln Highway at the far east end of the site will remain as will the full access to S. 4th St. Access to the alley at the southeast portion of the site will also be maintained. The parking lot will be resurfaced and striped per the construction and design standards of the UDO. There are about 19 parking spaces on-site now and with the proposed improvements there will be a total of 23 parking spaces provided. The number of required parking spaces per the UDO requirements is 19.

A landscape plan is provided which shows the planting of deciduous shrubs, ornamental grasses, shrubs and perennials and three new shade trees along the E. Lincoln Highway/S. 4th St, frontage, which will almost double the amount of plantings that currently exist. The existing parking spaces along the E. Lincoln Highway frontage are four (4) feet from the property line, which encroaches within the 10-foot setback requirement, however a waiver is requested. All the new parking spaces along E. Lincoln Highway/S. 4th St., except the handicap space, will meet the 10-foot setback requirement. The existing parking spaces along the east property line are at the property line and will remain. A photometric plan was also submitted and meets the illumination standards in the UDO. There will be no change to the building facade beyond some new wall signage. A new ground sign is proposed along E. Lincoln Highway and the trash dumpster will be relocated to the southeast portion of the site and screened per the UDO standards.

The applicant is requesting waivers to the UDO regarding parking setbacks, landscaping requirements, maximum site coverage and a Planned Development less than two acres. The UDO requires parking spaces and access drives be a minimum of 10 feet from the property line (right-of-way) adjoining a public street. The existing parking spaces along E. Lincoln Highway and the east property line are within the setbacks, however all new parking spaces will meet the minimum setback, except the one handicap space. The landscaping required in the setback areas along E. Lincoln Highway and the east property line are requested to be waived since there is not enough room to plant the required vegetation. For “PD-C” Planned Development – Commercial zoned sites, the maximum site coverage allowed is 70%, and the site coverage is about 95%. A waiver is needed since the building and most of the parking lot is existing and currently exceeds the maximum site coverage allowed. The area where the new parking is located has landscaping and meets the 10-foot setback to the roadway. Finally, the UDO requires Planned Developments be over 2 acres. The subject site is .54 acres. The proposed development needs relief from this standard of the UDO due the site size, location, and to make it economically feasible. The City has waived this requirement in other recent projects including Cornerstone, Plaza DeKalb, 1114 Blackhawk Road (Sigma NU Fraternity) and Pizza Hut.
Planned Development Plans and Final Plat

The applicant is requesting the plans submitted be approved on a preliminary and final level. The plans have been reviewed by staff and comments will be finalized early next week and will be presented to the Commission at Wednesday's meeting. The City staff has worked with the applicant and their engineer on the plan for some time and it is anticipated the remaining comments will be minor in nature and once addressed, will not affect the layout of the site. A final plat of resubdivision was also submitted creating one lot over the entire property.

III. STANDARDS OF REZONING

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

The 2005 Comprehensive Plan recommends the subject site for commercial uses. The property has had a tire repair service on the site since 1987 and the current building was constructed in 1998. The re-development of the property with the proposed additional vehicle repair services meets the intent of the Comprehensive Plan.

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

Re-zoning of the subject site to the PD-C District will allow the project to comply with the regulations of the UDO except for waivers for parking setbacks, landscaping requirements maximum site coverage and for a Planned Development less than two acres. The exceptions to the UDO are justified based upon the size of the site, location, and the desire to maintain a legal non-conforming use on the site. The rezoning of the subject property provides the opportunity to allow for uses that are currently prohibited in the CBD District and will allow the business to operate in a manner that is benefit to the community and the downtown area.

3. The proposed rezoning will not have a significantly detrimental effect on the long-range development of adjacent properties or adjacent land uses.

The surrounding area is already fully developed, and the proposed zoning and land use is consistent and compatible with the neighborhood. The proposed rezoning should not have a detrimental effect on the adjacent properties or land uses. Restrictions will be placed on the site regarding where vehicle repair work can occur, limitations on inoperable vehicles and that no outside storage or display of materials is allowed.

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

The subject property is proposed for "PD-C" Planned Development - Commercial zoning. The "PD-C" District designation will allow uses on the site that will be compatible with the surrounding neighborhood, enhance the area with higher standards of design than other adjacent properties and provide consistency with the Comprehensive Plan recommendations.

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

Existing utilities already serve the site.

IV. STANDARDS FOR PLANNED DEVELOPMENT

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

1. Inadequate or unsafe access to the planned development;

The existing eastern full access from E. Lincoln Highway and the S. 4th St. access will be maintained and have functioned in a safe manner over the years. The access at the corner of E. Lincoln Highway and S. 4th St. will be removed and replaced with a barrier curb and gutter.

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

The project is the redevelopment of a site that has contained a tire repair service for several decades. The site is located at the intersection of E. Lincoln Highway and S. 4th St. which is signalized and has the capacity to handle the traffic from the site.

3. An undue burden on public parks, recreation areas, schools, fire and police protection and other public facilities which serve or are proposed to serve the planned development;

The project will not have any undue impact on public parks, recreation areas, schools, fire and police protection or other public facilities.

4. A development which will be incompatible with the intent and purposes of this Ordinance;
The applicant is requesting Planned Development Zoning, which allows the City to approve regulations that will control the zoning, development and maintenance, operations and other property improvement related issues. Waivers to the Unified Development Ordinance for parking setbacks, landscaping requirements, maximum site coverage and a Planned Development less than two acres and are justified based upon the size of the site, location, and the desire to maintain a legal non-conforming use on the site.

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

The surrounding area is already fully developed, and the proposed zoning and land use is consistent and compatible with the neighborhood and Comprehensive Plan. The proposed rezoning should not have a detrimental effect on the adjacent properties or land uses. Restrictions will be placed on the site regarding where vehicle repair work can occur, limitations on inoperable vehicles and that no outside storage or display of materials is allowed.

V. Citizen Comments

As of May 3, 2019, we have not received any public comment regarding the proposal.

VI. RECOMMENDATION

Full staff comments regarding the plans have not been fully developed yet, however we will provide those at Wednesday's meeting. The City staff has worked with the applicant and their engineer on the plan for some time and it is anticipated the remaining comments will be minor in nature and once addressed, will not affect the layout of the site. A sample motion has been prepared and staff is recommending approval of the petition and plans.

Sample Motion:

Based upon the submitted petition and testimony presented, I move that the Planning and Zoning Commission forward its findings of fact and recommend to the City Council approval of a Zoning Map Amendment from the "CBD" Central Business District to the "PD-C" Planned Development Commercial District and approval of a Planned Development Preliminary and Final Plan for the subject site located at 424 E. Lincoln Highway in order to expand the existing legal non-conforming tire service to include uses allowed under "Vehicle Service Facility" as defined in the UDO, an indoor car wash operation and all permitted uses in the "CBD" Central Business District per the Planned Development Preliminary and Final Plans and Development Standards listed in Exhibit A and subject to all staff comments being addressed prior to final City Council action as listed in Exhibit B.
Exhibit A

Planned Development Plans:

- Trash Dumpster Enclosure and Signage Details received on 2/5/18 prepared by Architectural Resources
- Site Plan (Sheet 1) dated 4/3/19 prepared by Rempe-Sharpe Consulting Engineers
- Landscape Plan (sheet L1) dated 4/11/19 prepared by Rempe-Sharpe Consulting Engineers
- Photometric Plan dated 4/11/19 prepared by Rempe-Sharpe Consulting Engineers
- Engineering Plans dated 4/11/19 prepared by Rempe-Sharpe Consulting Engineers
- Final Plat of Lovells Resubdivision dated 2-28-17 prepared by W.E. Hanna Surveyors

Development Standards:

1. The outside storage or display of parts, tools, supplies and/or other equipment or materials is prohibited.

2. Parking or storage of inoperable or unlicensed vehicles shall be prohibited.

3. No damaged vehicles requiring body work or vehicles with flat tires shall be parked outside overnight.

4. No inoperable vehicles associated with the special use shall be parked off-site.

5. All vehicle repair work must be conducted indoors.

6. The storage of any vehicles on the subject site not associated with the business is prohibited.

Development of the subject site shall be per the “CBD” Central Business District standards in the UDO except for the waivers as provided:

1. Article 12.03(6)(a) to reduce the parking setback along E. Lincoln Highway and the east property line from 10 feet to 5 feet and 0 feet as shown on the Site Plan (Sheet 1) dated 4/3/19 prepared by Rempe-Sharpe Consulting Engineers.
2. Article 12.04(3) and 12.04(4) to reduce the required landscaping quantities along the front yard adjacent to a street and the side yard as shown on the Landscape Plan (sheet L1) dated 4/11/19 prepared by Rempe-Sharpe Consulting Engineers.

3. Article 5.13.07 (4) to allow an increase in "Site Coverage" from 70% to 95% for a Planned Development as shown on the Site Plan (Sheet 1) dated 4/3/19 prepared by Rempe-Sharpe Consulting Engineers.

4. Article 5.13.06 to allow a Planned Development on a site less than two acres.
Planning and Zoning Commission
City of DeKalb
200 S. 4th Street
DeKalb, IL  60115

Re:  Lovell’s Discount Tire Project
404-424 E. Lincoln Highway & 120 S. 4th Street

Dear Ladies/Gentlemen;

Kevin B. Lovell and Melissa G. Lovell, as Co-Trustees of the Kevin B. Lovell and Melissa G. Lovell Declaration of Trust dated April 3, 1998, and as the owners of the above-described property are seeking your approval of a rezoning of the above-described property from its current Central Business District (CBD) zoning to Plan Development Commercial (PD-C).

The Lovells have demolished the small vacant structure formerly located in the southeast corner of the intersection of 4th Street and Lincoln Highway, and intend to redesign the parking lot of the remaining Lovell’s Discount Tire structure by adding additional parking stalls, landscaping, streetscape improvements (paver bricks), and signage to improve the appearance of the corner and allow the remaining building to accommodate additional vehicle services which would require additional equipment. These modifications will soften the hardscape of the corner. This rezoning request for a planned development which currently exists as a legal non-conforming use on the subject property would not necessarily introduce any new uses or detrimental uses to the CBD.

The owners propose to confine the uses of the subject property to those permitted land uses and developments in the CBD as are enumerated in paragraph 5.09.02 of the Zoning District Regulations; in addition, they propose to use the property as a vehicle repair and/or service facility and occasional indoor car wash incident to the primary focus of their business which is tire sales and repair, and sales of related automotive accessories. At present, they intend to seek waivers of the following provisions of the UDO:

- Planned Development under 2 acres - Article 5.13.06
- Landscaping requirements adjacent to streets – Article 12.04(3)
- Parking setbacks for front, side and rear yards – Article 12.03(6)(a)
- Maximum Site Coverage for PD-C zoned site – Article 5.13.07(4)
Planning and Zoning Commission
April 5, 2019
Page Two

The owners are prepared to agree to any reasonable conditions relating to the use of the subject property recommended by the City Planning staff.

Please feel free to contact the undersigned or Mr. Lovell at (815) 751-1608 with any further questions. Thank you in advance for your consideration of this matter.

Sincerely,

[Signature]

Richard D. Larson

RDL/tad

cc: Kevin B. & Melissa G. Lovell (via email)
TO: City Council, City Clerk, and Mayor of the City of DeKalb, Illinois

FROM: Petitioner Name(s): Kevin and Melissa Lovell  
Petitioner’s Representative: Michael Carpenter  
Mailing Address: 1731 DeKalb Ave., Sycamore, IL, 60178

Property Owner: Kevin and Melissa Lovell  
Mailing Address: 1335 Florence Dr., Sycamore, IL, 60178

Telephone: 815-754-4000  
Cell: 815-540-5101  
Email: mcarpenter@nvcommercial.com

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

   A. Legal Description and Parcel Number(s) – If necessary, attach the full legal description on a separate piece of paper: DeKalb (Original Town) Resub - Lots E & F Block 23 & W-LY 1/2 VAC Alley E & ADJ  
      Parcel: 0823302026 - Building size = 7,300 Square Feet

   B. Street Address or Common Location: 424 E. Lincoln Hwy., DeKalb, IL 60115-3706

   C. Size (square feet or acres): 23,087 sq. ft.

   D. Existing Zoning District: "CBD“ – Central Business District

   E. Proposed Zoning District: "PD-C“ – Planned Development Commercial

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

☐ Vicinity map of the area proposed for the special use

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

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

☐ Petition fee ($500.00)

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

   *Date of pre-application conference: February 5, 2018

   Those in attendance: Dan Olson, Jason Michnich, JoEllen Carlton, Kevin Lovell, Jim Elliot, & Mike Carpenter

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

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

5. The petitioner has read and completed all of the above information and affirms that it is true and correct.
6. Petitioner/property owner(s) hereby give the City of DeKalb permission to post a public notice sign(s) on the subject property.

Petitioner Signature

Date

Petitioner Signature

Date

Subscribed and sworn to before me this ___ day of __________, 20__.

Notary Public Signature

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

Property Owner Signature

Date

Property Owner Signature

Date

Subscribed and sworn to before me this ______ day of __________, 20__.

Notary Public Signature
LEGAL NOTICE

NOTICE is hereby given that a public hearing will be held before the DeKalb Planning and Zoning Commission at its regular meeting on Wednesday, May 8, 2019, at 6:00 p.m. in the DeKalb Municipal Building, 200 South Fourth Street, DeKalb, Illinois, on the petition by Kevin and Melissa Lovell for approval of a Zoning Map Amendment from the “CBD” Central Business District to the “PD-C” Planned Development – Commercial District and approval of a Planned Development Preliminary and Final Plan for a .53 acre site located at 424 E. Lincoln Highway in order to expand the existing tire service to include full vehicle repair services. Consideration is also requested to approve waivers to the Unified Development Ordinance for parking setbacks, landscaping requirements, maximum site coverage and a Planned Development less than two acres and other approvals as required for the subject property to allow for the construction as proposed.

The property is commonly described as Lovell’s Discount Tire located at 424 E. Lincoln Highway DeKalb, IL and has a Parcel Identification Number (PIN) of 08-23-302-026.

All interested persons are invited to appear and be heard at the time and place listed above. Interested persons are also encouraged to submit written comments on the proposal to the City of DeKalb, Community Development Department, 200 South Fourth Street, DeKalb, Illinois, 60115 by 5:00 p.m. on Wednesday, May 1, 2019. Additional information regarding the public hearing can be found on the City of DeKalb’s web page at https://www.cityofdekalb.com/1103/Public-Hearings or by calling the Community Development Department by calling (815) 748-2361.

Christina Doe, Chair
DeKalb Planning and Zoning Commission