

(subdivision name) ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (hereinafter referred to as "Agreement"), is made and is effective on this _____ day of _____, 20_, by and between the **(municipality name)**, a Municipal Corporation organized and existing under and by virtue of the laws of the State of Illinois (hereinafter referred to as "City/Village"), by and through its Mayor/President and City Council/Village Board (hereinafter referred to as "the Corporate Authorities"), **developer's name**, an Illinois Limited Partnership (hereinafter referred to as "Developer"), and **property owner(s) name(s)** (hereinafter collectively referred to as "Owner"). Each of the City/Village, Owner and Developer may also be individually referred to herein as "Party" or any two or more thereof as "Parties."

WITNESSETH:

WHEREAS, Owner is the owner of record of the real property described in **Exhibit "A"** attached hereto and incorporated herein (hereinafter referred to as "Subject Property"), which property is contiguous to the City/Village and not within the corporate limits of any municipality; and

WHEREAS, the City/Village is a municipal corporation organized and existing under the Laws of the State of Illinois; and

WHEREAS, **developer's name**, and Illinois Limited Partnership, is the proposed developer of the Subject Property; and

WHEREAS, there has been filed with the City/Village Clerk of the City/Village a Petition for Annexation, consented to or signed by the owner of record of the real property described in **Exhibit "A"**; and

WHEREAS, the Owner and Developer, hereinafter referred to as "Petitioners", desire the annexation of the Subject Property pursuant to the terms and conditions hereinafter set forth; and

WHEREAS, Petitioners propose that the Subject Property be zoned and substantially developed in accordance with the Preliminary Plat of Subdivision attached hereto as **Exhibit "B"**, and in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Plan Commission, being the commission duly designated by the Corporate Authorities of the City/Village to hold a public hearing on the proposed Preliminary Plat of Subdivision, zoning, this Agreement, and Annexation, has theretofore held a public hearing on the application of the Owner for said actions pursuant to the provisions of the Zoning Ordinance of the **city/village name** and the Illinois Compiled Statutes, as amended; and due notice of said public hearing was published in the manner required by law, and said public hearing was held in all respects in a manner conforming to the law; and

WHEREAS, the Plan Commission of the City/Village has made its report and recommendations to the Corporate Authorities of the City/Village, all in accordance with the ordinances of the City/Village and the statutes of the State of Illinois, said report being attached hereto as **Exhibit "G"** as though it were contained herein; and

WHEREAS, any fire protection district, library district, Board of Town Trustees, Commissioner of Highways and other entity or person entitled to notice prior to annexation of the Subject Property to the City/Village has been given notice thereof by City/Village as required by law; and

WHEREAS, all other matters, in addition to those specifically referred to above which are included in this Agreement, have been considered by the parties hereto, and the development of the Subject Property for the use as permitted under the Zoning Ordinance of the City/Village and in accordance with the terms and conditions of this Agreement, will inure to the benefit and improvements of the City/Village and its residents, and will promote the sound planning and development of the City/Village and will otherwise enhance and promote the general welfare of the people of the City/Village; and

WHEREAS, the Corporate Authorities have duly considered all necessary matters to enter into this Agreement, have considered the recommendations of the Plan Commission in connection with zoning, have considered the Petition for Annexation, and did, by a resolution duly adopted by a vote of two-thirds (2/3) of the Corporate Authorities then holding office, authorize the Mayor/President to execute, and the City/Village Clerk to attest to, this Agreement on behalf of the City/Village; and

WHEREAS, in reliance upon the execution of this Agreement by the City/Village and the performance by the City/Village of the undertakings hereinafter set forth to be performed by it, there has been submitted the aforesaid Petition for Annexation, and the Parties are willing to undertake certain obligations as hereinafter set forth, and have or will have materially changed their positions in reliance upon the said Agreement and the undertakings contained therein; and

WHEREAS, it is the desire of the Parties hereto that the development of the Subject Property proceed as conveniently as may be and be subject to the terms and conditions hereinafter contained.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements herein contained, the Parties hereto agree as follows:

1. APPLICABLE LAW

This Agreement is made pursuant to and in accordance with the provisions of 65 ILCS 5/11-15.1-1 of the Illinois Compiled Statutes. The preceding "Whereas" clauses are hereby made a part of this Agreement and incorporated herein as if fully set forth.

2. AGREEMENT: COMPLIANCE AND VIABILITY

A proper Petition has been filed with the City/Village Clerk pursuant to and in accordance with provisions of 65 ILCS 5/11-15.1-1.

3. ANNEXATION ORDINANCE AND FEES

3.1. The City/Village will enact a valid and binding ordinance (hereinafter referred to as the "Annexation Ordinance") annexing the Subject Property to the City/Village as hereinafter set forth. Said Annexation Ordinance shall be recorded with the DeKalb County Recorder's Officer along with the Plat of Annexation. Recording shall take place no more than ten (10) days after the enactment of the Annexation Ordinance. The City/Village shall send all notices required by law to be sent in connection with the enactment of such Ordinance.

NOTE: The following sections may be deleted or used as a model for the application of local ordinances that require pre-annexation fees.

3.2. *Developer shall have the option of dividing the Subject Property into several parcels after annexation and submitting separate final plats for each such parcel. The Pre-Annexation utility Fee assessed in accordance with Section xxx of the City Code of city/village, Illinois as amended from time to time, or any successor provision ("Pre-Annexation utility Fee"), shall not be due and payable as to each parcel until the respective final plat is submitted and approved. At the time each final plat for the Subject Property is approved, the Developer and Owner, jointly and severally, shall be responsible for paying the Pre-Annexation utility Fee at the then current rate per gross acre, as determined by City/Village Ordinance. Nothing in this Agreement, however, shall prohibit Developer and Owner from pre-paying the Pre-Annexation utility Fee if they so choose.*

3.3. *For purposes of this Agreement, "Gross Acreage" shall include street rights-of-way, cul-de-sacs, boulevard islands and the like, but shall exclude: (1) private parks and acreage dedicated to the city/village name Park District; (2) acreage dedicated to the school district name School District; and (3) acreage required by the City/Village Engineer for storm water storage, or acreage dedicated as private conservation land.*

3.4. *Developer and Owner shall have the jointly exercisable option of paying the required Pre-Annexation utility Fee or filing a letter of credit drawn on a financial institution and in form acceptable to the City/Village Attorney with City/Village until the retention facility is constructed and title is accepted by the city name Park District or deeded to a homeowners association. On request by the City/Village Attorney, the Developer and Owner shall submit for review the form of Declaration, by-laws, budget and reserve of the proposed Homeowners Association for the purpose of assuring the City/Village that the Association is properly funded and organized to take care of its*

maintenance responsibilities without recourse to the City/Village. The Association shall fully comply with the provisions of sections x, y and z of the City/Village Zoning Ordinance.

4. ENACTMENT OF ZONING ORDINANCE

Contemporaneously with the passage of the Annexation Ordinance, the City/Village shall rezone the Subject Property to the zoning classifications petitioned for and shown on **Exhibit "B"**, and legally described as shown on **Exhibit "A"**. No further action need be taken by the Owner to cause the property to be zoned as set forth above once the Subject Property is annexed to the City/Village.

5. APPROVAL OF PLATS

5.1. The Developer and Owner shall have the option of dividing the Subject Property into several parcels after annexation and submitting separate final plats for each such parcel. The Parties acknowledge that the Subject Property will be developed in stages, requiring the submittal of plats and plans for each stage or unit. Accordingly, the Parties agree that the Owner shall not be required to seek final plat approval for the Subject Property as one whole unit, but may seek separate approvals of final plats for a portion or portions of the Subject Property to allow for the phasing of development of the Subject Property in such manner as the Developer and Owner may subsequently determine, so long as such phasing does not violate this Agreement or applicable laws and ordinances then in effect (excepting therefrom any change in lots sizes, setbacks and stormwater detention requirements that would affect the entire Subject Property), and provides for orderly installation of public improvements.

5.2. The City/Village agrees to approve engineering plans and the final plats of subdivision of the Subject Property upon submission by the Developer and Owner of complete and proper materials as required for the issuance of appropriate building and other permits and subdivision approval based on final plans and drawings of the development of the Subject Property submitted by Developer and Owner and approved by the City/Village Engineer, provided that said plat and other materials shall substantially conform to the terms of this Agreement, the Preliminary Plat of Subdivision attached hereto as **Exhibit "B"**, and all applicable laws and ordinances (excepting there therefrom any change in lots sizes, setbacks and stormwater detention requirements that would affect the entire Subject Property) then in effect.

6. COMPLIANCE WITH APPLICABLE ORDINANCES

6.1. The Developer and Owner agree to comply with all ordinances of the City/Village in effect at the time of annexation of the Subject Property unless expressly waived or varied in this Agreement or pursuant thereto. All new ordinances, amendments, rules and regulations relating to zoning, building and subdivision of land adopted after the date of this Agreement shall not be arbitrarily or discriminatorily applied to the Subject Property, but shall be equally applicable to all property similarly zoned. Notwithstanding anything to the contrary herein contained, it is

understood that the zoning of the Subject Property shall not be reclassified without Owner's consent during the term of this Agreement.

NOTE: The following sections may be deleted or used as a model for a local ordinance that restricts the number of building permits per year per project.

6.2. *Notwithstanding anything herein to the contrary, in the event City/Village enacts any ordinance that modifies Ordinance xxx regarding pace of development, and such modification creates a less restrictive pace of development than the ordinance in effect at the time of annexation, Owner and Developer shall be entitled to the benefit of such less restrictive ordinance. Similarly, in the event City/Village enters into an annexation agreement with another owner or developer of land, and the terms of such annexation agreement allow a pace of development that is less restrictive than the ordinance in effect at the time of this annexation, Owner and Developer shall be entitled to the benefit of such less restrictive terms regarding pace of development.*

6.3. *Notwithstanding anything herein to the contrary, in the event City/Village enacts or modifies any ordinance regarding pace of development that is more restrictive than Ordinance xxx, such ordinance shall not apply to Owner and Developer with respect to the Subject Property.*

7. STORM SEWER, SANITARY SEWER AND WATER MAIN SYSTEMS

NOTE: Italicized words may be deleted or modified.

7.1. Sanitary sewer and water lines are available at or near the Subject Property. The aforementioned sanitary sewer and water shall be extended at the joint and several expense of Owner and Developer to and through the Subject Property as required by the City/Village Engineer. The City/Village will cooperate with the Developer and Owner in obtaining any required easements and permits for any utilities; provided that the City's/Village's obligation to cooperate shall not be deemed to include the maintenance of any litigation other than eminent domain, and the Developer and Owner, jointly and severally, shall indemnify and hold the City/Village harmless from any cost or expenses, including but not limited to Court costs, reasonable expert witness fees and attorney's fee incurred as a result of the City's/Village's cooperation in this regard, any cost or expense incurred by the City/Village being payable by the Developer and Owner, jointly and severally, from time to time immediately after demand by the City/Village.

7.2. The Developer and Owner shall provide proper storm sewer, sanitary sewer and water main systems in accordance with the City's/Village's standards and ordinances. Except as otherwise provided in this Agreement, the Developer or Owner shall be permitted to connect to and extend any storm sewer, sanitary sewer or water main owned by the City/Village at no charge other than the sewer connection charges, *Pre-Annexation utility Fees*, inspection fees, usage fees, and water connection fees. *The Pre-Annexation utility Fee shall be payable by Owner and Developer, jointly and severally, at the rate then in effect at the time each final plat is approved.* The City/Village agrees to cooperate with the Developer in obtaining the necessary permits as may be required from time to time by both federal and state law, including, but not limited to, those permits required by the

Illinois Environmental Protection Agency; provided that the City's/Village's obligation to cooperate shall not be deemed to include the maintenance of any litigation, except for eminent domain, and the Developer and Owner, jointly and severally, shall indemnify and hold the City/Village harmless from any cost or expense, including but not limited to court costs, reasonable expert witness fees and attorney's fees, incurred as a result of the City's/Village's cooperation in this regard, any cost or expense incurred by the City/Village being payable by the Developer from time to time immediately after demand by the City/Village. Upon the proper completion of construction and satisfactory testing of the storm sewer, sanitary sewer and water main systems, the City/Village shall promptly accept such improvements and thereafter maintain such improvements, except service connections.

7.3. The location of all water mains and sanitary sewer lines shall be as set forth in the Water Main and Sanitary Sewer Exhibits attached hereto as **Exhibit "C"** and **Exhibit "D"** respectively.

7.4. The Developer and Owner hereby represent and warrant to the City/Village that all improvements accepted by the City/Village will be free from any defect in construction or performance for a period of one (1) year from acceptance. In the event the foregoing warranty shall be untrue, then the City/Village may, after giving Developer and Owner thirty (30) days prior written notice during which Developer and Owner may cure the defect, proceed to repair or replace the defective improvements if not so cured by Developer and Owner, and Developer and Owner, jointly and severally, agree to indemnify and hold harmless the City/Village from any loss or expense, including but not limited to court costs and attorney's fees incurred thereby, any loss or expense incurred by the City/Village being payable by the Developer and Owner, jointly and severally, from time to time immediately after demand by the City/Village.

7.5. All water mains shall be properly loped at the expense of Developer and Owner, jointly and severally. Any existing sanitary sewer, storm sewer or water main located on the Subject Property that must be relocated to fit proposed street layouts shall be relocated at the cost and expense of Developer and Owner, jointly and severally.

7.6. Prior to issuing building permits in any and all phases of the Subject Property, the public improvements to be installed by Developer as to any such phase, including lines for water, sanitary sewer, storm sewer (including storm water detention facilities to which it drains), curbs and gutters, base course of roadways, and site grading, shall be substantially complete as determined by the City/Village Engineer. No occupancy permit shall be issued for any building until the bottom course of bituminous surface has been constructed on the adjacent street(s).

7.7. In order to prevent problems associated with sanitary sewer surcharging, no interior plumbing fixtures located below the elevation of the lowest grade immediately adjacent to the building shall connect to the building drain system without an overhead sewer system using a sewer ejector unit.

8. ROADWAYS

8.1. The City/Village agrees to cooperate and support the efforts of Developer and Owner in obtaining the necessary approvals from the DeKalb County Highway Department.

8.2. All streets shown on **Exhibit "B"** serving the Subject Property shall be connected to existing streets at Developer's and Owner's, jointly and severally, expense as required by the City/Village Engineer.

8.3. Except as otherwise set forth herein, adjoining road improvements shall be constructed upon approval of each final plat as each phase is developed.

8.4. The Developer and Owner shall construct all roadways required to be developed on the Subject Property. Said construction shall be completed in accordance with the City's/Village's standards and ordinances and shall include the installation of concrete curb and gutter, stone base, bituminous surface, sidewalks, street lights and all appurtenances. The Developer and Owner shall maintain the stone base and shall sealcoat the same to control dust if required by City/Village prior to the installation of the bituminous surface.

NOTE: The following sections are examples of negotiated improvements to existing roads, and may be deleted or replaced with project-specific language

8.5. *Developer and Owner shall be responsible, at their sole cost and expense for improvements to Rural Road along the Subject Property's frontage on Rural Road. Rural Road shall be reconstructed to a width determined by a traffic study, however the width shall not be less than 35 feet measured back-to-back of curb.*

The street construction shall consist of twelve inch (12") crushed run limestone, six inches (6") of CA-6 crushed limestone, bituminous prime coat materials and four-and-one-half inches (4½") of bituminous concrete surface course, installed in three (3) lifts. Combination curb and gutter will be required on both sides of Rural Road. The Developer and Owner may choose one of the following options for sidewalk installation: (a) in standard configuration, on both side of Rural Road, or (b) along the south side only, but consisting of a bituminous sidewalk of ten feet (10') in width that will serve as a combination bike path/sidewalk, along with an additional five feet (5') of dedicated right-of-way. Additional right-of-way shall be dedicated to the City/Village at no cost, but shall not exceed fifty five feet (55') from the centerline of Rural Road.

8.6. *Developer and Owner shall be responsible, at their sole cost and expense, for the reconstruction of Old Rural Road from Some Road north to the north line of the Subject Property. Old Rural Road shall be reconstructed to a width determined by a traffic study, however, the width shall not be less than 35 feet measured back-to-back of curb.*

The street construction shall consist of ten inch (10") crushed run limestone, five inches (5") of CA-6 crushed limestone, bituminous prime coat materials and four inches (4") of bituminous concrete surface course, Class I, installed in two (2) lifts. Combination curb and gutter will be required on both sides of Old Rural Road. The reconstruction of Old Rural Road shall being with

the approval of the final subdivision plat for any portion of the Subject Property that adjoins Old Rural Road. Sidewalks shall be provided along the west side of Old Rural Road adjoining the Subject Property. In the event that Old Rural Road is resurfaced under a City/Village contract prior to the commencement of the required reconstruction work, Developer and Owner shall reimburse the City/Village for the cost of the bituminous resurfacing for that portion of the contract adjoining the Subject Property. Developer and Owner shall have the right to recapture, in accordance with Section 27 of this Agreement, a portion of the cost of reconstructing Old Rural Road as further annexations adjoining the limits of reconstruction of Old Rural Road area approved by the City/Village.

8.7. *Subject to the recapture provisions of Section 27 of this Agreement, Developer and Owner shall be responsible for construction of all of the road widening improvements and traffic signals, when these become warranted, at the intersection of Some Road and Another Street. The total cost of the traffic signals shall include all engineering, labor and materials for providing traffic signals, materials, equipment and appurtenances.*

8.8. Upon the proper completion of the street construction, the City/Village shall promptly accept such improvements and thereafter maintain such improvements. Prior to the occupancy of any building, the bottom courses of bituminous surface shall be constructed to the approved thickness. The Developer and Owner hereby represent and warrant to the City/Village that all improvements accepted by the City/Village will be free from any defect in construction performance for a period of one (1) year from acceptance. In the event the foregoing warranty shall be untrue, then the City/Village may, after giving Developer and Owner thirty (30) days prior written notice and if after such notice Developer does not exercise due diligence in fulfilling its warranty, proceed to repair or replace the defective improvement; and the Developer and Owner, jointly and severally, agree to indemnify and hold harmless the City/Village from any loss or expense, including but not limited to court costs and attorney's fees incurred thereby, any loss or expense incurred by the City/Village being payable by the Developer and Owner, jointly and severally, from time to time immediately after demand by the City/Village.

8.9. In addition to the foregoing warranty, the Developer and Owner, jointly and severally, hereby undertake to *comply with the provisions of Section xxx of the City/Village Code of municipal name, as amended from time to time, and to repair prior to acceptance by the City/Village, at the sole cost and expense of Developer and Owner, jointly and severally, any damage or deterioration to a bituminous surface.*

8.10. *Developer and Owner shall reserve a 120-foot right-of-way as depicted on **Exhibit "B"** for future dedication, with no compensation, for the possible realignment of Some Road.*

8.11. Typical Roadway Cross-Sections are attached hereto as **Exhibit "E"**.

9. STORM WATER STORAGE

The Developer and Owner shall provide storm water storage in accordance with the City's/Village's standards and ordinances. The surface area of the storm water storage basins shall be maintained by a homeowners' association to be established by Developer, unless said obligation is assumed by the **municipal name** Park District. All manholes, gratings, pipe and related items shall be maintained by the City/Village after acceptance. All storm water storage areas shall be at elevations approved by the City/Village Engineer.

10. APPROVAL BY CITY/VILLAGE ENGINEER OF ALL ENGINEERING DESIGN

Developer and Owner agree that all engineering design with regard to size, capacity, storage, materials and other specifications regarding storm sewer, sanitary sewer and water main systems, construction or modifications, and storm water storage shall be subject to reasonable approval by the City/Village Engineer, pursuant to applicable City/Village ordinances and regulations.

11. DEDICATION OF IMPROVEMENTS

11.1. The Developer and Owner shall dedicate to the City/Village the roadways, the public improvements (except as hereinabove set forth in Section 7), water lines, sanitary sewers, and storm sewers (but not including private service lines). The City/Village shall not be obligated to accept any public improvement within any phase of development of the subject property until all improvements within that phase are completed to the satisfaction of the City/Village engineer. Once all of the sanitary sewer, water, storm sewer, curb, gutter, gravel base and initial lift of asphalt in any phase have been completed to the satisfaction of the City/Village Engineer, then the City/Village shall, subject to the following conditions, act to accept the sanitary sewer, water, and storm sewer improvements. Once the City/Village Engineer shall so certify, the City/Village shall proceed diligently to obtain a resolution of the City Council/Village Board accepting such of the public improvements as have been completed in accordance with the terms of this Section. The acceptance of any public improvements shall not occur by dedication, but shall instead occur only upon the adoption of such a resolution accepting a dedication or tender of completed improvements. The City/Village shall not be obligated to maintain any public improvement until after it has been accepted by the City/Village in accordance with the terms of this Agreement, except that the City/Village shall agree to perform routine maintenance (except to the asphalt surface or road base itself) on any public streets after such time as the City/Village Engineer shall certify that the first lift of asphalt is complete to such an extent that routine maintenance operations can safely occur. In exchange for the City's/Village's undertaking to plow snow prior to acceptance of the roadway, the Developer and Owner hereby release and hold the City/Village harmless from any and all such damage, whether to person or property, that may occur as a result of such routine maintenance operations, agreeing to defend and indemnify the City/Village from any loss or expense related thereto, including, but not limited to, court costs, reasonable expert witness fees and attorney's fees incurred thereby, and loss or expense incurred by the City/Village being payable by the Developer and Owner, jointly and severally, from time to time immediately after demand by the City/Village. In the event the City/Village elects to hire its own counsel to defend any action, the City/Village shall be solely responsible for all court costs, reasonable expert witness fees and attorney's fees incurred through such separate counsel. Any damage to an accepted improvement occasioned by

the installation of any subsequent lift of asphalt shall be repaired by the Developer and Owner, jointly and severally.

11.2. The Developer and Owner hereby represent and warrant to the City/Village that all improvements accepted by the City/Village will be free from any defect in construction or performance for a period of one (1) year from acceptance. In the event the foregoing warranty shall be untrue, then the City/Village may, after giving Developer and Owner thirty (30) days prior written notice and if after such notice Developer does not exercise due diligence in fulfilling its warranty, proceed to repair or replace the defective improvement; and the Developer and Owner, jointly and severally, agree to indemnify and hold harmless the City/Village from any reasonable loss or expense, including but not limited to court costs and attorney's fees incurred thereby, any loss or expense incurred by the City/Village being payable by the Developer and Owner, jointly and severally, from time to time immediately after demand by the City/Village.

11.3. The Developer and Owner shall grant to the City/Village nonexclusive utility easements (except with respect to water and sewer lines, which easements shall be exclusive) (the "Easements") for maintenance and repair of the aforesaid underground utilities to be constructed on the Subject Property and dedicated to the City/Village as indicated on the final plat(s) to be recorded as referred to above. For the purpose of this Section 11.3., underground utilities shall include ground-level facilities and above-ground-level facilities of a height not greater than three (3) feet associated with said utilities, including, by way of example, manholes and hydrants.

12. IRREVOCABLE LETTER OF CREDIT

In lieu of a construction bond or development bond or bonds, the City/Village will require an irrevocable letter of credit in form and substance reasonably satisfactory to the City/Village from a financial institution to guarantee construction and quality of all public facilities to be constructed in any stage or unit of development for which approval is sought. Said letter of credit shall be in the amount of one hundred percent (100%) of the contract costs of construction of all of the public facilities in the unit or stage or one hundred ten percent (110%) of Developer's engineer's contract estimate for the unit or stage as approved by the City/Village Engineer; and shall be reduced from time to time as work is certified by the City/Village Engineer to have been completed. Said letter of credit shall be payable to the City/Village.

13. INTERIM USES

All or any portion of the Subject Property may be used for farming (other than livestock) and ancillary uses prior to commencement of construction on such portion of the Subject Property.

14. MODEL HOMES

Subject to the restrictions of Section 16 of this Agreement, and the further limitation that no more than twenty percent (20%) of the lots in any unit, or 10 lots per unit, whichever is less, may at

any time be so used, the Developer (or its assigns) may utilize model sales facilities and paved temporary parking facilities in any residential unit or stage on the Subject Property from the time a final plat is recorded for such part of the Subject Property and sewer, water and street improvements for the unit have been completed, until ninety (90) days after occupancy permits have been issued for ninety percent (90%) of the dwelling units permitted within the Subject Property; such paved temporary parking facilities shall be removed by Developer or its assigns at the end of such ninety (90) day period, at the request of the City/Village. Any model sales facility shall be constructed in accordance with the terms of all applicable codes and ordinances, following the issuance of all necessary permits, and shall only be used after the issuance of a certificate of occupancy therefor.

15. SCHOOL DISTRICT AND PARK DISTRICT DONATIONS

NOTE: The details of this section are examples, and should be tailored to specific projects.

15.1. The Developer and Owner shall donate xxx acres for an elementary school site.

15.2. In addition, Developer and Owner agreed to contribute \$xxx per lot to the **district name** School District in addition to the impact fee required by City/Village ordinance, or as may subsequently be enacted from time to time.

15.3. The Developer and Owner shall make a cash or land donation to the **district name** Park District in the amount as provided by City/Village Ordinance now in effect or as subsequently enacted or amended from time to time, and as may be acceptable to the **district name** Park District through negotiation with Developer and Owner. Such cash or land donation shall be agreed to by both parties prior to the recording of any final plat for any phase or stage of the Subject Property.

16. BUILDING PERMIT TIMING

The issuance of all building permits shall be in accordance with Article xxx of the City/Village Code. No building permit shall be issued for construction of any building on any part of the Subject Property until after the engineering plans and a final plat have been approved and a final plat has been recorded for the unit or phase in which the building permit(s) is requested, nor shall any building permit be issued prior to the time that sewer and water, curb and gutter are installed, and stone bases are constructed, and roads are passable for ingress and egress by emergency, inspection and service vehicles. Certificates of occupancy shall not be granted until the first lift of asphalt has been installed.

17. REGULATORY APPROVALS

The Owner and Developer, jointly and severally, agree to submit the necessary documentation to the State and federal regulatory agencies having jurisdiction for approval for any proposed filling, dredging, culvert installation, stream alterations, utility crossings, etc. in and along any wetland, floodplain and floodway. In the event that any building lot or lots shown on the

Preliminary Plat will be located within the regulatory 100-year flood elevation, and cannot be removed from the special flood hazard area, then said lots shall be deleted from the final plat and be converted to green space or open space only.

18. MOWING OF OPEN AREAS AND RETENTION AREAS

The Developer and Owner agree that, until accepted by the **district name** Park District, or until maintenance is provided by a homeowners' association, the Developer and Owner shall mow all open areas and retention areas that are not being farmed during all phases of construction pursuant to City/Village ordinance.

19. SIGNS

Permanent signs identifying the Subdivision, and which shall be maintained by the homeowners' association, shall be in accordance with the City/Village sign regulations in effect at the time of the execution of this Agreement.

NOTE: The following may be deleted or replaced with municipal or project-specific language.

The Developer and Owner may erect signs during the construction and sales period as follows:

- o One 12' x 12' sign for each street frontage adjoining the Subject Property;*
- o Monument signs identifying each model home in the model area, said signs not to exceed 24" x 48" in area;*
- o Directional signs within the Subdivision directing traffic to model home areas, said signs not to exceed 24" x 36" in size.*

All signs shall be kept in good repair and shall be removed within six (6) months after the sales office is closed.

20. LANDSCAPE STANDARDS

Developer agrees to comply with the applicable landscape standards contained in Section xxx of the City/Village Zoning Ordinance. Adequate means shall be provided by the Developer and Owner, jointly and severally, for the necessary irrigation and maintenance of landscaping features, including the provision of, but not limited to, yard hydrants as determined necessary by the City/Village Engineer, but not more frequently than one each 200 feet.

21. ELEVATION OF BUILDINGS

All buildings adjoining storm water storage basins, open drainage channels, etc., shall have the lowest grade immediately adjacent to the building at least three (3) feet above the projected 100-year high water elevation.

22. DRAINAGE EASEMENTS

The Developer and Owner agree that the drainage easements shown on each final plat that are in excess of twenty feet (20') in width shall be easements for the purpose of transporting underground and overland storm water flow. No overhead utility lines, pedestals, buildings, structures, trees, shrubs, gardens, children's play equipment, fences, sheds, etc. shall be permitted within the limits of such drainage easements. Underground utility lines may lie within the limits of such drainage easements.

23. BIKE PATHS

The Developer and Owner shall be responsible, at their sole cost and expense, for the construction of the bike paths shown on **Exhibit "B"**. All bike paths shall be constructed to a minimum width of ten feet (10') and shall have a minimum eight-inch (8") aggregate based and two-inch (2") bituminous concrete surface course. The bike paths shall be at the elevations approved by the City/Village Engineer. In the event that the **district name** Park District chooses not to accept ownership and maintenance responsibility for the bike paths, the maintenance of the bike paths shall be the responsibility of the homeowners' association.

24. DONATION TO CITY/VILLAGE

NOTE: The following section may be deleted or used if additional fees beyond normal impact fees and developer contributions are negotiated, and for the donation of land for specific public purposes beyond schools and parks.

24.1. The Developer and Owner agree to contribute \$xxx per lot to the City's/Village's general operating fund. This contribution shall be over and above such other regularly required fees that are paid at the time of permitting by a permittee. Notwithstanding anything herein to the contrary, in the event the City/Village enacts or modifies any ordinance, the result of which creates a new annexation or filing fee for final plats, which fee is not in place at the time of execution of this Agreement, then in such event, the voluntary contributions set forth herein shall be deemed a credit against the new fees.

*24.2. The Developer and Owner agree to contribute xx acres, as depicted on **Exhibit "B"**, for the purpose of a future water tower site.*

25. PARK DISTRICT ANNEXATION

The Developer and Owner, jointly and severally, agree to submit the Subject Property for annexation into the **district name** Park District concurrently with the annexation to the City/Village.

26. PAYMENT OF FEES

In consideration of the expenses incurred by the City/Village in the review and inspection of the various documents and land improvements required for this project, the Developer agrees to pay the City/Village: (a) the City's/Village's reasonable expenses for attorney's fees incurred in connection with the review and negotiation of the terms of this Agreement, within thirty (30) days after notice from the City/Village to the Developer; (b) the City's/Village's reasonable expenses for its planning consultant's fees incurred in connection with the review and negotiation of the details of the project, zoning and subdivision, within thirty (30) days after notice from the City/Village to the Developer; and (c) the City's/Village's reasonable expenses for City/Village Engineer's fees incurred in connection with the review subdivision and associated public improvements, within thirty (30) days after notice from the City/Village to the Developer. Additionally, Developer and Owner, jointly and severally, shall pay School and Park District impact fees in the amount of the current ordinance even if such ordinance is found invalid, subject to the right of Developer and Owner to negotiate with the respective Districts for payment by land in whole or in part, and to further negotiate that any cash paid to the Park District be utilized for improvement or maintenance of the parks within the Subject Property.

27. RECAPTURE

NOTE: The following sections serve as examples of the types of public improvements that may warrant a recapture element to an annexation agreement.

*27.1 The City/Village acknowledges that the Developer and Owner, jointly and severally, are expending significant monies to construct the intersection improvements at the intersection of Some Road and Another Street which will benefit other properties adjacent to or near the intersection. Accordingly, Developer and Owner are entitled to recapture fifty percent (50%) of said costs, including interest at the prime rate announced from time to time in the Wall Street Journal, with a total of twenty five percent (25%) being derived from the property identified on **Exhibit "F"** as the Other property, and a total of twenty five percent (25%) being derived from the property identified on **Exhibit "F"** as the Stillanother property.*

27.2 The City/Village acknowledges that the Developer and Owner, jointly and severally, are expending significant monies to reconstruct Old Rural Road from Some Road north to the north line of the Subject Property, which will benefit other properties with frontage on the reconstructed portion of Old Rural Road. Accordingly, Developer and Owner are entitled to recapture the costs of reconstruction, including interest at the prime rate announced from time to time in the Wall Street Journal, based on the ratio of the front footage of any future parcel of land along Old Rural Road adjoining the Subject Property that is annexed to the City/Village to the overall front footage of the street improvements completed by Developer and Owner, times the total cost of said street improvement of Old Rural Road as certified by the City/Village Engineer.

27.3 The City/Village acknowledges that the Developer and Owner, jointly and severally, are expending significant monies to construct and oversize certain sanitary sewers for the purpose of serving additional properties in the nearby area of the Subject Property. The City/Village agrees that it will, as a condition of approving the development of any territory served by the oversized sanitary sewer system to be constructed by Developer and Owner, required that, at the time any connection is made to said sanitary sewer system, the cost of any pipe, only, associated with the oversized system incurred by the Developer and Owner, not including labor, but including interest at the prime rate announced from time to time in the Wall Street Journal shall be recouped by the Developer and Owner (in such proportion as between them they shall agree) based on the ratio that the anticipated additional population to be served by the connection bears to the total anticipated additional population that could potentially be served by the oversized portion of the system. All costs of oversizing shall be approved by the City/Village Engineer.

27.4 The Developer and Owner acknowledge that the City/Village has approved a contract in the amount of \$xxx to provide an eighteen inch (18") sanitary sewer beneath State Route, to serve the Subject Property and other properties in the general area. The Developer and Owner, jointly and severally, agree to pay to the City/Village an amount of \$xx per residential unit at the time of the City's/Village's approval of each final plat as a recapture fee to the City/Village for the cost of the aforementioned sanitary sewer.

28. ENFORCEMENT OF THE AGREEMENT

28.1. Upon a breach of this Agreement, any of the Parties, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreement herein contained, or may be awarded damages for failure of performance. Provided, however, that the Developer shall not be entitled to disconnect any portion of the Subject Property previously annexed to the City/Village. No action taken by any party hereto pursuant to the provisions of Section 7 of this Agreement or pursuant to the provisions of any other Article of this Agreement shall be deemed to constitute an election of remedies and any 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.

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

28.3. If any of the Parties shall fail to perform any of its obligations hereunder, and the Party affected by such default shall have given written notice of such default to the defaulting Party, and such defaulting Party shall have failed to cure such default within thirty (30) days of such default notice, provided, however, that said thirty (30) day period shall be extended if the defaulting Party has initiated the cure of said default and is diligently proceeding to cure the same or if weather

conditions are such as to make such period unreasonable, 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 judgement shall be necessary to cure such default. In such event, the defaulting Party hereby agrees to pay and reimburse the Party affected by such default for all reasonable costs and expenses, including reasonable expert witness fees and attorney's fees, incurred by it in connection with action taken to cure such default.

28.4. 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 as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenants, agreement or condition, but the same shall continue in full force and effect.

28.5. If the performance of any covenant to be performed hereunder by any Party is delayed as a result of circumstances that are beyond the reasonable control of such Party, which circumstances may include acts of God, war, acts of civil disobedience, strikes or similar acts, the time for such performance shall be extended by the amount of time of such delay.

28.6. If any provision of this Agreement is held invalid, such provisions shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained in this Agreement.

28.7. It is the agreement of the Parties that, if any pertinent existing ordinances or resolutions, or interpretations thereof, of the City/Village be in any way inconsistent or in conflict with the provisions of this Agreement, then the provisions of this Agreement shall constitute a lawful binding amendment thereof, and shall supercede the terms of said inconsistent ordinances or resolutions or interpretations thereof as they may relate to the Subject Property.

29. TERM OF AGREEMENT

This Agreement shall be binding upon the Parties and their respective successors and assigns for twenty (20) years, commencing as of the date hereon, and for such further terms as may hereinafter be authorized by statutes and by City/Village ordinance. If any of the terms of this Agreement, or the annexation or zoning of the property, is challenged in any court proceeding, then, to the extent permitted by law, the period of time during which such litigation is pending shall not be included in calculating said twenty (20) year period. The expiration of the term of this Agreement shall not affect the continuing validity of the zoning of the Subject Property or any ordinance enacted by the City/Village pursuant to this Agreement.

30. BINDING EFFECT OF AGREEMENT; RECORDING

30.1. This Agreement shall inure to the benefit of, and be binding upon, successors of the Developer and Owner and their respective successors, grantees, lessees, and assigns, and upon

successor corporate authorities of the City/Village and successor municipalities, and shall constitute a covenant running with the land. This Agreement may be assigned without the City's/Village's prior written approval, and upon said assignment and acceptance by an assignee, the assignor shall have no further obligations hereunder. If a portion of the Subject Property is sold, the seller shall be deemed to have assigned to the purchaser any and all rights and obligations the seller may have under this Agreement that affect the portion of the Subject Property sold or conveyed and thereafter the seller shall have no further obligations under this Agreement as it relates to the portion of the Subject Property conveyed.

30.2. Withing thirty (30) days after the execution of this Agreement, the text of this Agreement, or a suitable memorandum hereof, shall be recorded at the sole cost and expense of the Developer in the Office of the Recorder of DeKalb County, Illinois.

31. SUPERSESION OF AGREEMENT

Except as otherwise expressly provided, this Agreement supercedes all prior agreements, negotiations and exhibits, and is a full integration of the entire agreement of the Parties, and may not be amended except by further written agreement duly authorized by the Corporate Authorities.

32. CONFLICTS

In the event of any conflict or inconsistency between the terms and provisions of this Agreement and any existing or hereafter adopted ordinances, codes or regulations by the City/Village, the terms and provisions of this Agreement shall supercede and control.

33. TIME OF THE ESSENCE AGREEMENT

It is understood and agreed by the Parties hereto that time is of the essence of this Agreement, and that all Parties will make every reasonable effort to expedite the subject matter hereof. It is further understood and agreed by the Parties that the successful consummation of this Agreement requires the continued cooperation of all parties.

34. NOTICES

Any notice required pursuant to the provisions of this Agreement shall be in writing and be sent by certified mails, express mail or hand delivered to the following addresses until written notice of change is given, and thereafter to such other address, and shall be deemed received on the fifth (5th) business day following deposit in the U.S. Mail properly addressed, or on the date of hand delivery:

If to the developer: **name and address**

If to the City/Village: **name and address**

LIST OF EXHIBITS

- A. Legal Description of Subject Property
- B. Preliminary Plat of Subdivision
- C. Water Mains
- D. Sanitary Sewers
- E. Typical Roadway Cross-Sections
- F. Recapture
- G. Plan Commission Findings of Fact

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