CITY OF CRYSTAL LAKE
AGENDA
CITY COUNCIL
REGULAR MEETING

City of Crystal Lake
100 West Woodstock Street, Crystal Lake, IL
City Council Chambers
July 7, 2020
7:00 p.m.

1. **Call to Order**

2. **Roll Call**

3. **Pledge of Allegiance**

4. **Swearing In of City Councilmember Mandy Montford**

5. **Approval of Minutes - June 16, 2020 City Council Meeting**

6. **Accounts Payable**

7. **Public Presentation**
   The public is invited to make an issue oriented comment on any matter of public concern not otherwise on the agenda. The public comment may be no longer than 5 minutes in duration. Interrogation of the City staff, Mayor or City Council will not be allowed at this time, nor will any comment from the Council. Personal invectives against City staff or elected officials are not permitted.

8. **Acting Mayor's Report**

9. **City Council Reports**

10. **Consent Agenda**

11. **1120 Central Park Drive – Continental Properties, The Springs - Annexation Public Hearing, Preliminary and Final Planned Unit Development for a 280-unit residential apartment development, Preliminary and Final Plat of Subdivision for a two-lot subdivision, and an Annexation Agreement Amendment to allow for a 280-unit residential apartment development and 320 townhomes on the remainder of the original Lutter Center Property**

12. **Lakeside Legacy Foundation 2020 Lakeside Fest and Fireworks Show**

13. **Residential/Small Business Electrical Aggregation RFP**

14. **Joint Funding Agreement between the United States Department of the Interior, United States Geological Survey (USGS) and the City of Crystal Lake for a Water Resource Investigation of Crystal Lake with a City share of $111,110**

15. **Lou Street Lockup Lease Agreement**

16. **State Joint Purchase - Mobile Radios for Chief Fire Officer Vehicles**

17. **Council Inquiries and Requests**

18. **Exceed Flooring, 5186 Northwest Highway – Sign Variation adding 89.24 square feet of signage to the front facade**

19. Adjourn to Executive Session for the purpose of discussing matters of pending and probable litigation, the sale, purchase or lease of real property, collective bargaining and personnel

20. Reconvene to Regular Session

21. Adjourn

If Regular assistance is needed in order to participate in a City of Crystal Lake public meeting, please contact Melanie Nebel, Executive Assistant, at 815-459-2020, at least 24 hours prior to the meeting, if possible, to make arrangements.

Agenda Item No: 11

City Council
Agenda Supplement

Meeting Date: June 16, 2020 continued to July 7, 2020

Item: **ANNEXATION PUBLIC HEARING**

REPORT OF THE PLANNING & ZONING COMMISSION

Request: 1. Preliminary and Final Planned Unit Development (PUD) for a 280-unit residential apartment development and Preliminary and Final Plat of Subdivision for a two-lot subdivision.
2. An Annexation Agreement Amendment to allow for a 280-unit residential apartment development and 320 townhomes on the remainder of the original Lutter Center Property.

Petitioner: Joe Gottemoller, attorney
Eric Thom, Continental Properties
1120 Central Park Drive

Recommendation: 1. To approve an Amendment to the Annexation Agreement to allow a 280-unit residential apartment development and 320-unit townhome development at the residential portion of the Lutter Center Property.
2. To approve the PZC recommendation and adopt an Ordinance for a Preliminary and Final Planned Unit Development for a 280-unit residential apartment development and Preliminary and Final Plat of Subdivision for a two-lot subdivision at 1120 Central Park Drive.

Staff Contact: Michelle Rentzsch, Director of Community Development
Katie Cowlin, Assistant City Planner

Background:

- The proposed development is located at the southern portion of the multi-family area of the original Lutter Center PUD.
- The property was previously granted Preliminary PUD for 600 townhome units on the full 67 acres. This approval was also granted through an annexation agreement, which is valid through 2025.
- The petitioner is proposing a 280-unit apartment development and the remainder of the property would be allotted 320 townhome units.

Request:

- Preliminary and Final PUD for a 280-unit apartment development,
- Preliminary and Final Plat of Subdivision to create two lots, and
- Variations to allow:
    - A net density of 15.4 dwelling units per acre,
    - 539 parking spaces, a variation of 7 spaces,
    - A freestanding sign that is 6 feet in height and 33 square feet in area, and
    - Three 20 square-foot wall signs for the clubhouse.
- An Annexation Agreement Amendment to allow the proposed development and limit the future development on Lot 2 (northern lot) to 320 townhome units.

Key Points:

- The current Comprehensive Plan land use designation is High Density Residential. This is the appropriate land use designation for an apartment development.
- The proposed development would consist of 14 two-story apartment buildings. The buildings have 20 units in each building. There would be a total of 280 apartment units.
- The development complies with the setback requirements of the R-3B zoning district.
- The buildings have a 50-foot setback from the eastern property line and southern property line.
- The proposed net density is 15.4 dwelling units per acre for the apartment community. The R-3B zoning district allows for 9 dwelling units per acre. A PUD variation is being requested.
- The existing tree line will remain with minimal tree removal. The petitioner will remove dead or dying trees and proposes adding canopy and ornamental trees.
- The petitioner is providing a landscape buffer that is approximately 30 feet wide along the east and south property lines. The UDO does not require a landscape buffer between multi-family and attached single-family residential properties.

PZC Highlights:

- The petitioner agreed with the recommended conditions of approval except for condition two regarding signage.
- The Cary neighbors wanted to verify the existing tree line would remain and the new development would be screened. The petitioner verified the existing tree line would remain and where trees have to be removed, new plantings would be installed.
- A neighbor from the Monticello Subdivision had no issues with the proposal and liked the concept that a lower density development would abut the single-family subdivision.

- The PZC expressed concern about safety at the Central Park and Lutter Drive intersection and directed staff to explore options to improve safety. *Since the meeting, staff has requested the addition of a speed limit sign for eastbound and westbound traffic on Central Park Drive and for the trees along Central Park Drive to be trimmed to increase visibility. A traffic signal is being explored for the intersection as well.*
- The PZC stated that the Findings of Fact had been met.

The PZC recommended **approval (5-0)** of the petitioner's request with the following conditions:

1. Approved plans, reflecting staff and advisory board recommendations, as approved by the City Council:
   A. Application (Continental Properties, dated 05/04/2020, received 05/12/2020)
   B. Final Plat of Subdivision (Manhard Consulting Ltd, dated 05/04/2020, received 05/12/2020)
   C. Site Plan (Manhard Consulting Ltd, dated 05/04/2020, received 05/12/2020)
   D. Engineering Plan (Manhard Consulting Ltd, dated 05/04/2020, received 05/12/2020)
   E. Sign Plan (Sign Systems Inc, dated 04/30/2020, received 05/12/2020)
   F. Landscape Plan (Manhard Consulting Ltd, dated 05/04/2020, received 05/12/2020)
   G. Elevations (Continental Properties, received 05/12/2020)
   H. Lighting Plan (Excel, dated 05/06/2020, received 05/12/2020)
   I. Tree Survey (Manhard Consulting Ltd, dated 05/06/2020, received 05/12/2020)
   J. Traffic Study (Sam Schwartz, dated 05/01/2020)

~~2. The freestanding sign must meet the UDO standards of 16 square feet in size and four feet in height.~~ **(Removed by PZC)**

3. Add evergreen tree species to the common areas and perimeter buffer area along the eastern property line.

4. Work with staff to finalize easement locations for municipal utilities.

5. Emergency Access Route.
   A. The Owners shall prepare and submit a proposed emergency access roadway for review and approval by city staff. The approved emergency access roadway shall be installed prior to the issuance of the 201st certificate of occupancy.
   B. The temporary access can be constructed with a temporary material such as RAP (reclaimed asphalt pavement) as the access will be removed when Central Park Drive is extended/completed. Work with staff to determine an appropriate material.

6. Traffic/Future Roadway Improvements.
   A. The petitioner must contribute their proportionate fair share of the construction costs for the improvements to Central Park Drive/ Lutter Drive and Route 31/Rakow Road/Central Park Drive based on the projected traffic volume increase for the proposed development as determined by the traffic impact study dated 05 May 2020 by Sam Schwartz. Said contributions are 12.4% and 3%, respectively.

B. The petitioner shall provide a Letter of Credit, Bond or Escrow payment for its share of the above mentioned improvements. Cost participation for off-site improvements will be calculated once a cost estimate has been provided based on the recommendation of the City's traffic engineering consultant as approved by the City's Director of Public Works. In the event that the final cost sharing amount is not determined prior to the time the petitioner is issued a building permit for the site, the petitioner shall provide a Letter of Credit, Bond or Escrow payment in an amount reasonably estimated by the Director of Public Works, by the issuance of a certificate of occupancy for any building on the site. Notwithstanding the foregoing, in the event that the petitioner executes an agreement (which shall be in a form reasonably satisfactory to the Director of Public Works and the City Attorney) to be recorded against the site that ensures the payment of the final cost-sharing amount by the petitioner or petitioner's successor in ownership, the requirement for a Letter of Credit, Bond or Escrow payment shall be waived.

C. Staff is to explore opportunities to improve the operation and safety at the Central Park and Lutter intersection based on the existing concerns identified in the traffic study. (Added by PZC)

7. The petitioner shall address all of the review comments and requirements of the Community Development, Public Works, Police and Fire Rescue Departments, as well as the City's stormwater consultant, Christopher B. Burke Engineering.

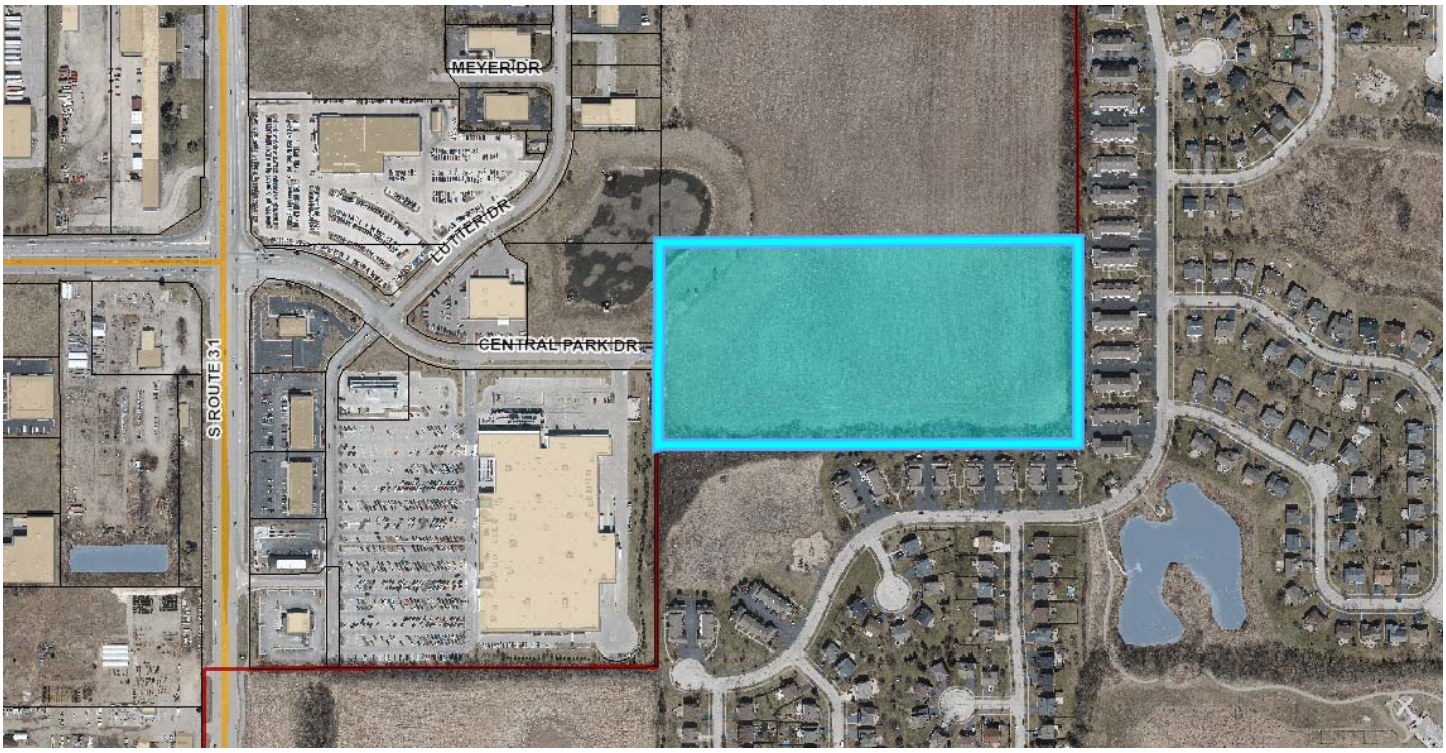
8. The northern lot line of Lot 1 may shift north by approximately 30 feet to accommodate a proposed berm. (Added due to proposed landscape berm)

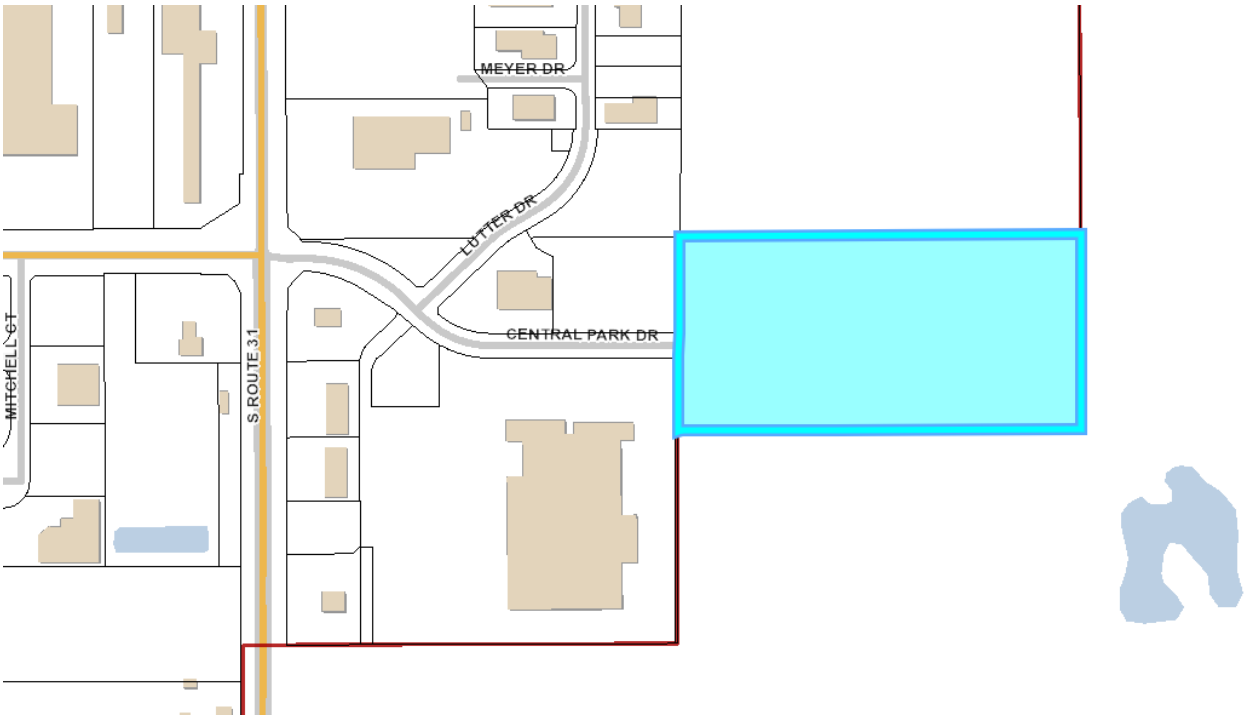
The Lutter Center Annexation Agreement stated that the residential parcel would be developed with 600 townhome units. The proposed Amendment to the Annexation Agreement would allow for the 280-unit apartment development and 320 townhome units. The Amendment also allows for the temporary fire access roadway until Central Park Drive is fully improved. The Amendment to the Annexation Agreement has been reviewed by the petitioner and the city's legal counsel.

Votes Required to Pass:

A simple majority for the Preliminary/Final PUD and Plat and a super majority for the Annexation Agreement Amendment.

PLN-2020-00034 THE SPRINGS – PRELIMINARY-FINAL PUD





DRAFT

Ord. No. ….
File No. …

The City of Crystal Lake Illinois

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT AMENDMENT

WHEREAS, CHICAGO TITLE LAND TRUST COMPANY as Trustee of a Trust Agreement dated April 30, 2017, and known as Trust Number 8002364049 and CONTINENTAL 544 FUND LLC (hereinafter, "the Owner") is the record title owner of a certain tract of land located in Algonquin Township in Crystal Lake, Illinois, and legally described in Exhibit A attached hereto and by this reference incorporated herein and made a part hereof (the "Subject Property"); and

WHEREAS, there are no electors residing on the subject property; and

WHEREAS, the Subject Property consists of approximately 67 acres; and

WHEREAS, the Subject Property was previously annexed to the corporate limits of the City; and

WHEREAS, pursuant to the provisions of Section 11-15.1-1 *et seq*. of the Illinois Municipal Code, a proposed annexation agreement amendment, in substance and form substantially the same as the agreement attached hereto as Exhibit B, was submitted to the Corporate Authorities of the City of Crystal Lake and, pursuant to notice published in the Northwest Herald on May 30, 2020, as provided by statute, a public hearing was held thereon by the Corporate Authorities commencing on June 16, 2020 and continued to July 7, 2020.

Ord. No. ….
File No. …

WHEREAS, the Mayor and City Council of the City of Crystal Lake have found and determined that it is in the best interests of the City that an annexation agreement amendment with the Owner be approved and the execution and attestation of such agreement be authorized;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE, MCHENRY ILLINOIS, AS FOLLOWS:

SECTION I: The foregoing recitals are incorporated as though fully set forth herein.

SECTION II: That the Mayor be and he is hereby authorized and directed to execute, and the City Clerk is directed to attest, the Annexation Agreement Amendment, a copy of which is attached hereto and made a part hereof as Exhibit B.

SECTION III: That this Ordinance shall be in full force and effect from and after its passage, approval and publication as provide by law.

AYES:

NAYS:

ABSENT:

PASSED this 7th day of July, 2020.

APPROVED by me this 7th day of July, 2020.

City of Crystal Lake, an
Illinois municipal corporation

_____

Haig Haleblian, Acting Mayor

SEAL

ATTEST:

_____
Nick Kachiroubas, City Clerk

Passed: July 7, 2020
Approved: July 7, 2020

EHIBIT A
LEGAL DESCRIPTION OF SUBJECT PROPERTY

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 10 AND THE NORTHEAST QUARTER OF SECTION 15, BOTH IN TOWNSHIP 43 NORTH RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTHEAST CORNER OF MONTICELLO SUBDIVISION UNIT 2, RECORDED JULY 13, 1988 AS DOCUMENT NUMBER 88R021123; THENCE SOUTH 00 DEGREES 18 MINUTES 26 SECONDS EAST, ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER, 1,709.66 FEET, TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 00 DEGREES 01 MINUTES 41 SECONDS EAST, ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, 633.85 FEET, TO A CORNER IN THE NORTHERLY LINE OF CAMBRIA – UNIT 11 SUBDIVISION, RECORDED OCTOBER 12, 2001 AS DOCUMENT NUMBER 2001R0076599; THENCE SOUTH 89 DEGREES 45 MINUTES 53 SECONDS WEST, ALONG A LINE NORTH LINE OF SAID CAMBRIA SUBDIVISION, 1,291.58 FEET, TO THE SOUTHERLY EXTENSION OF THE EASTERLY LINE OF LUTTER INDUSTRIAL PARK, RECORDED JULY 17, 1985 AS DOCUMENT NUMBER 912463; THENCE NORTH 00 DEGREES 01 MINUTES 01 SECONDS WEST, ALONG SAID SOUTHERLY EXTENSION AND SAID EASTERLY LINE AND THE NORTHERLY EXTENSION OF SAID LINE 2,282.34 FEET, TO THE INTERSECTION WITH A WESTERLY EXTENSION OF A SOUTHERLY LINE OF SAID MONTICELLO SUBDIVISION UNIT 2; THENCE EASTERLY ALONG THE SOUTHERLY LINES OF SAID MONTICELLO SUBDIVISION UNIT 2 AND IT'S WESTERLY EXTENSION THROUGH THE FOLLOWING DESCRIBED 3 COURSES; THENCE SOUTH 85 DEGREES 15 MINUTES 09 SECONDS EAST, 509.98 FEET; THENCE NORTH 87 DEGREES 39 MINUTES 37 SECONDS EAST, 304.91 FEET; THENCE NORTH 78 DEGREES 25 MINUTES 46 SECONDS EAST, 479.62 FEET, TO THE POINT OF BEGINNING.

AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SAID SOUTHEAST CORNER OF MONTICELLO SUBDIVISION UNIT 2, RECORDED JULY 13, 1988 AS DOCUMENT NUMBER 88R021123; THENCE SOUTH 00 DEGREES 18 MINUTES 26 SECONDS EAST, ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 1652.176 FEET TO THE POINT OF BEGINNING.

THENCE SOUTH 00 DEGREES 18 MINUTES 26 SECONDS EAST, ALONG SAID EAST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 57.48 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 00 DEGREES 01 MINUTES 41 SECONDS EAST, ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, 633.85 FEET, TO A CORNER IN THE NORTHERLY LINE OF CAMBRIA – UNIT 11 SUBDIVISION, RECORDED OCTOBER 12, 2001 AS DOCUMENT NUMBER 2001R0076599; THENCE SOUTH 89 DEGREES 45 MINUTES 53 SECONDS WEST, ALONG SAID NORTH LINE OF SAID CAMBRIA SUBDIVISION, A DISTANCE OF 1291.58 FEET TO THE SOUTHERLY EXTENSION OF THE EASTERLY LINE OF LUTTER INDUSTRIAL PARK, RECORDED JULY 17, 1985 AS DOCUMENT NUMBER 912463, ALSO BEING NORTHEASTERLY LINE OF LUTTER CENTER SUBDIVISION RECORDED AS DOCUMENT NUMBER 2007R0008220; THENCE NORTH 00 DEGREES 01 MINUTES 01 SECONDS WEST, ALONG SAID SOUTHERLY EXTENSION AND SAID NORTHEASTERLY LINE A DISTANCE OF 322.81 FEET; THENCE NORTH 89 DEGREES 51 MINUTES 42 SECONDS EAST, A DISTANCE OF 1.61 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY, ALONG A CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 90.00 FEET, AN ARC DISTANCE OF 81.17 FEET, A CHORD BEARING NORTH 64 DEGREES 01 MINUTES 23 SECONDS EAST, AND A CHORD DISTANCE OF 78.45 FEET TO A POINT OF TANGENCY; THENCE NORTH 38 DEGREES 11 MINUTES 04 SECONDS EAST, A DISTANCE OF 307.39 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY, ALONG A CURVE, CONCAVE TO THE WEST, HAVING A RADIUS OF 120.00 FEET, AN ARC DISTANCE OF 86.92 FEET, A CHORD BEARING NORTH 17 DEGREES 26 MINUTES 00 SECONDS EAST, AND A CHORD DISTANCE OF 85.03 FEET TO A POINT OF TANGENCY; THENCE NORTH 03 DEGREES 19 MINUTES 04 SECONDS WEST, A DISTANCE OF 12.62 FEET TO THE LINE 691.33 FEET NORTH AND PARALLEL WITH THE SAID NORTH LINE OF SAID CAMBIA – UNIT 11 SUBDIVISION; THENCE NORTH 89 DEGREES 45 MINUTES 53 SECONDS EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 1004.15 FEET TO THE POINT OF BEGINNING, ALL IN MCHENRY COUNTY, ILLINOIS.

PIN No: 19-10-476-011 & 19-15-200-011
Common Address: 1120 Central Park Drive

EXHIBIT B
ANNEXATION AGREEMENT AMENDMENT

THIS INSTRUMENT HAS BEEN PREPARED BY, AND AFTER RECORDING PLEASE RETURN TO:

Betsy Gates-Alford
Filippini Law Firm LLP
990 Grove Street, Suite 220
Evanston, IL 60201
(312) 300-6549
betsy.gates@filippinilawfirm.com

PINS: See **Exhibit "A"** attached hereto

FIRST AMENDMENT TO ANNEXATION AGREEMENT AND PLANNED DEVELOPMENT AGREEMENT FOR A PORTION OF THE LUTTER CENTER PROPERTY (GENERALLY LOCATED ALONG CENTRAL PARK DRIVE EAST OF ROUTE 31)

THIS FIRST AMENDMENT TO ANNEXATION AGREEMENT AND PLANNED DEVELOPMENT AGREEMENT FOR A PORTION OF THE LUTTER CENTER PROPERTY (***"Amended Agreement"***) is made as of _____, 2020 (the ***Effective Date***), by, between and among the **CITY OF CRYSTAL LAKE,** a home rule Illinois municipal corporation (***"City"***), **CHICAGO TITLE LAND TRUST COMPANY** as Trustee of a Trust Agreement dated April 30, 2017, and known as Trust Number 8002364049 ("***Owner***") and **CONTINENTAL 544 FUND LLC,** a Delaware limited liability company (the "***Developer***"). The City, Owner and Developer are hereinafter sometimes individually referred to as a ***"Party"*** and collectively as the ***"Parties"***.

RECITALS

A. The City and Lutter Center, LLC, an Illinois limited liability company (***"Original Developer"***) previously entered into an Annexation Agreement dated March 15, 2005 (***"Original Annexation Agreement"***) relating to certain property as legally described therein (the ***"Whole Property"***), which Whole Property consists of approximately 123 acres generally situated along Central Park Drive east of Illinois Route 31. The Original Annexation Agreement, which was approved by the City's adoption of City Ordinance No. 5915 on March 15, 2005. Thereafter, the Whole Property was duly annexed into the City.

B. The Original Annexation Agreement established terms and conditions for the rezoning of approximately 55.88 acres of the Whole Property (the ***"Commercial Parcel"***) into the City's "B-3" Planned Business zoning district and the development of such Commercial Parcel for retail and commercial purposes.

C. The Original Annexation Agreement also established terms and conditions for the rezoning of approximately 67.13 acres of the Whole Property (the ***"Residential Parcel"***) into the City's "R-3B PUD" Attached Residence Plan Unit Development zoning district and the development of such Residential Parcel with not more than 600 townhomes. The Residential Parcel is legally described in **Exhibit A** hereto.

D. The City, pursuant to the Original Annexation Agreement and the City's Unified Development Ordinance (***"UDO"***): (1) rezoned the Commercial Parcel B-3 Planned Business district; (2) rezoned the Residential Parcel to the R-3B PUD District; and (3) approved special use permits, preliminary planned unit development (***"PUD"***) plans, and certain zoning variations for the development of Whole Property in accordance with the Original Annexation Agreement, all by the adoption of City Ordinance No. 5917 dated March 15, 2005 (***"Original PUD Ordinance")***.

E. The Commercial Parcel has since been developed with various commercial buildings and related improvements, consistent with the Original Annexation Agreement. The Residential Parcel has not been developed as contemplated by the Original Annexation Agreement and is currently vacant.

F. Owner(s) is the current record owner of the Residential Parcel as the successor in title to the Original Developer. The Original Developer no longer has any ownership interest in the Residential Parcel.

G. Developer is the contract purchaser and prospective developer of the southern approximately 18.15 acres of the Residential Parcel (the ***"Phase I Parcel"***).

H. Owner and Developer desire to develop the Residential Parcel in two phases, but in a manner to ensure that the two phases of development will be in conformity with the overall density for the Residential Parcel as contemplated in the Original Annexation Agreement, to-wit: (1) development of the Phase I Parcel with a multi-building apartment development containing not more than 280 individual apartment dwelling units in total, together with related public and private improvements including surface and garage parking, a clubhouse, common open space, landscaping, and utilities (***"Phase I"***); and (2) development of the northern approximately 48.98 acres of the Residential Parcel (the ***"Phase II Parcel"***) containing not more than 320 townhome dwelling units, together with related public and private improvements (the ***"Phase II"***). Phase I and Phase II are referred to herein collectively as the ***"Development."***

I. Developer desires to complete Phase I of the Development, and Owner desires to complete Phase II of the Development, all in accordance with the provisions of the Original Annexation Agreement as amended by this Amended Agreement, the UDO, this Amended Agreement, and other Requirements of Law, as defined herein.

J. In furtherance thereof, Owner has submitted to the City an amended request for the Residential Parcel (the "***Amended PUD Plan***"), a copy of which is attached hereto as **Exhibit B**;

K. In furtherance of Developer's construction of Phase I, Developer has submitted the following additional plans and materials:

1. The Springs: General Development Plan, consisting of one sheet being Sheet 9, prepared by Manhard Consulting Ltd., dated 4 May 2020 (the ***"Phase I Site Plan"***);

2. A Portion of Lutter Center: Zoning Parcels Exhibit [undated] (the ***"Parcel Map"***);

3. The Springs Preliminary and Final Engineering Plans, consisting of 38 sheets, prepared by Manhard Consulting Ltd., dated 4 May 2020, plus the following additional documents: (a) Overall Stormwater Management Report dated April 2020; (b) Traffic Impact Study, by Sam Schwartz, dated 1 May 2020; all subject

to modification in accordance with the 20 May 2020 review letter from the City of Crystal Lake Engineering Division and Christopher Burke Engineering captioned "City of Crystal Lake Engineering Division Plan Review" consisting of 47 pages (the ***"Phase I Engineering Plan"***);

4. The Springs Landscape Plan, consisting of nine sheets being labeled Sheets L-01, L-02, L-04 through L-09 prepared by Manhard Consulting Ltd. dated 4 May 2020; all subject to modification in accordance with the 20 May 2020 plan review from the City of Crystal Lake Planning & Economic Development Division captioned "Planning Review" consisting of 9 pages (the ***"Phase I Landscape Plan"***);

5. The Springs Final Plat of Subdivision prepared by Manhard Consulting Ltd., consists of 3 pages, and bears a most recent revision date of April 28, 2020 ("***Phase I Plat of Subdivision"***);

6. The Springs Elevations, consisting of 15 pages labeled Apartments B20E prepared by Continental Properties;

7. The Springs Sign Plan, consisting of four pages prepared by Sign Systems Inc. dated April 30, 2020.

(collectively, the "***Phase I Final PUD Plans***," copies of which are attached hereto as **Exhibit C**).

L. In conjunction with Phase I, Developer also desires to facilitate completion of certain off-site roadway improvements by the City at the intersection of Central Park Drive and Lutter Drive and at the intersection of Central Park Drive/James R. Rakow Road and Illinois Route 31 in accordance with a traffic impact study dated 5 May 2020 and prepared by Sam Schwartz, a copy of which is attached hereto as **Exhibit D** (the "***Off-Site Intersection Improvements***").

M. On June 3, 2020 the City's Planning and Zoning Commission, after giving all notices required by law, held a public hearing on the Developer's application for: (i) an amendment to the Original PUD Ordinance with respect to the development of the Residential Parcel; (ii) approval of the Amended Preliminary and final PUD approval for Phase I consistent with the Phase I Final PUD Plans.

N. The City, Owner, and Developer have reached agreement on certain terms pertaining to the Developer's construction of Phase I and the Off-Site Intersection Improvements and Owner's future construction of Phase II, and the Parties wish to confirm those terms by: (i) amending certain provisions of the Original Annexation Agreement that apply exclusively to the Residential Parcel, as set forth in Title I of this Amended Agreement; and (ii) entering into a further agreement to set forth additional terms relating to the development of the Residential Parcel, as set forth in Title II of this Amended Agreement.

O. On July 7, 2020, after giving due notice of and conducting the legally required public hearing on the amendments to the Original Annexation Agreement set forth in Title I of this Amended Agreement, the Corporate Authorities, by a two-thirds vote of the Corporate Authorities then holding office, approved the form of this Amended Agreement and authorized and directed the Mayor and City Clerk to execute it in a final form approved by the City Attorney.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and agreements set forth herein, and pursuant to the City's home rule authority and the provisions of Section 11-15.1-1 *et seq.* of the Illinois Municipal Code (65 ILCS 5/11-15.1-1 *et seq*.), the Parties agree as follows:

RECITALS

The Parties hereby confirm the truth and accuracy of the foregoing recitals and incorporate them into this Amended Agreement as if restated in their entirety.

TITLE I

AMENDMENT TO ORIGINAL ANNEXATION AGREEMENT

The Original Annexation Agreement is hereby amended in part, as set forth in this Title I. The amendments set forth in this Title I are intended, and shall be construed, to apply exclusively to the Residential Parcel (identified in the Original Annexation Agreement as "Parcel 2" or the "townhome property"), the Owner of the Residential Parcel, and the Owner's successors and assigns in title and interest thereto.

A. Amendment to Section 4. Section 4 of the Original Annexation Agreement is hereby amended in part illustrated below and any section not specifically amended remains valid. The amended part shall hereafter be and read as follows:

> 4. The City agrees immediately upon execution of this Agreement to enact an ordinance classifying the Subject Property as follows:
>
> Parcel 1 will be classified as B-3 Planned Business District, including approval of the following uses: gasoline service station, outdoor storage, internally illuminated signage adjacent to a residential district as shown with the Big Box Retail Center; and a drive through shall be allowed on the Big Box Retail Center pursuant to the PUD and Special Use Permit approval process. In addition, a drive through shall be allowed on all lots, subject to the PUD process.
>
> A. The City agrees to issue the following Variances for Parcel 1:
>
> 1. To allow parking within ten (10) feet of the future IDOT approved Route 31 right- of-way;
> 2. To increase the maximum light pole height to forty-two (42) feet versus the required maximum of thirty-five (35) feet only on Lot 1.
> 3. 4.4-1 from the required lot area of 80,000 feet in the B-3 Planned Business District to allow a minimum of 67,500 square feet.
> 4. 4.4-10 from the maximum building height of 25 feet to allow 36 feet for Lot 1.
> 5. 5.3-3.5 from the required parking lot setback of 80 feet along Rakow Road extended to allow a minimum of 35 feet for Lot 1.
> 6. 5.3-3.6(E) from the requirement for landscaping the interior of a parking lot for Lot 1.
> 7. Subdivision Variation from Sections:
>   a) 3.4-2 from the required collector road design except as required by

the Traffic Impact Study dated February 10, 2005.

b) 3.7-3 in order to defer the subdivision requirement to bury existing overhead utility lines until an area wide program; However if developer undertakes the burial he is not responsible for the upgrading of any duct package but only the burial of existing lines.

Parcel 2 will be classified as R-3b PUD Attached Residence Plan Unit Development District and developed with preliminary planned unit development for ~~town homes with 600 units~~ **not more than 280 apartment units on the southern approximately 18.15 acres of Parcel 2 and not more than 320 market-rate townhome units on the northern approximately 48.98 acres of Parcel 2**.

B. The City agrees to issue the following variances for Parcel 2:

1. 4.4-3 from the required front yard setback of 30 feet to allow 20 feet along the private roadways.
2. 4.4-6 from the required yard abutting street setback of 30 feet to allow less.
3. 4.9-2.18 from the maximum encroachment of 4 feet for non-enclosed steps, stairs, patios and decks attached to a principal structure to allow an 8 foot encroachment.
4. 6.5-10 from the various standards for PUDs.
5. 6.5-10.4(J) from the maximum net density of 8.43 units/acre to allow 600 units.
6. 6.5-10.5(9) from the Growth Management Plan requirement for a minimum buildout of 6.6 years to allow 4 year buildout.
7. Subdivision Variation from Sections
   a) 3.4-2 from the required collector road design except as required by the Traffic Impact Study dated February 10, 2005.

In addition, the following PUD variations required for Phase I:

1. Article 3-200(A)(6) Maximum Net Density (DU/Acre) of 9DU/acre to allow 15.4DU/acre.

2. Article 4-200(D)(4) Minimum number of spaces required of 546 spaces to allow 539 spaces (includes 31 land banked spaces).

3. Article 4-1000(D)(2) Signs to allow a freestanding sign that is 6 feet in height and 33 square feet in area, a variation of 2 feet and 17 square feet and three 20 square-foot wall signs at the clubhouse.

* * *

B. Amendment to Section 5. Section 5 of the Original Annexation Agreement is hereby amended in part illustrated below and any section not specifically amended remains valid. The amended part shall hereafter be and read as follows:

PRELIMINARY AND FINAL PLATS OF SUBDIVISION AND PLANNED UNIT DEVELOPMENTS.

The City hereby approves the preliminary plat and preliminary planned unit development site plans, engineering plans, storm water management plans, and landscape plans, including the following:

A. Preliminary Plat of Subdivision - Unit l (Manhard, dated 1/6/05, received l/7 /05).
B. Preliminary Plat of Subdivision - Unit 2 (Manhard, dated 1/6/05, received l/7 /05).
C. Tree Classification Survey (received l /7/05).
D. Overall Site Plan (Manhard, dated 1/5/05, received 1/7/05).
E. Wal-Mart Site Plan (Atwell-Hicks, dated 1/7/05, received 1/7/05).
F. 16-unit Condominium Elevations/Plans (Centex, received 1/7/05).
G. 6-unit 2-car Townhome Elevations/Plans (Centex, received 1/24/05).
H. 6-unit 1-car Townhome Elevations/Plans (Centex, received 1/7/05).
I. 4-unit 2-car Townhome Elevations/Plans (Centex, received 1/31/05).
J. Wal-Mart building elevations and building signage (BRR Architects, dated 1/25/05, received 1/26/05).
K. Centex freestanding sign elevations (received 1/24/05).
L. Townhome covenants (received 1/12/05).
M. Condominium covenants (received 1/12/05).

(collectively, the "2005 Plans"). ~~These plans~~**The 2005 Plans** shall be modified to include City Council conditions.

Immediately after the approval and execution of the First Amendment to this Annexation Agreement, the City agrees to take all steps necessary to adopt a valid and binding ordinance amending the City's approval of the 2005 Plans by supplementing and modifying them to include the following (collectively, the "2020 Plans"):

A. Amended PUD request bearing a most recent revision date of June 10, 2020;

B. The Springs: General Development Plan, consisting of one sheet being Sheet 9, prepared by Manhard Consulting Ltd., dated 4 May 2020;

C. A Portion of Lutter Center: Zoning Parcels Exhibit [undated];

D. The Springs Preliminary and Final Engineering Plans, consisting of 38 sheets, prepared by Manhard Consulting Ltd., dated 4 May 2020, plus the following additional documents: (a) Overall Stormwater Management Report dated April 2020; (b) Traffic Impact Study, by Sam Schwartz, dated 1 May 2020; all subject to modification in accordance with the 20 May 2020 review letter from the City of Crystal Lake Engineering Division and Christopher Burke Engineering captioned "City of Crystal Lake Engineering Division Plan Review" consisting of 4 pages;

E. **The Springs Landscape Plan, consisting of nine sheets being labeled Sheets L-01, L-02, L-04 through L-09 prepared by Manhard Consulting Ltd. dated 4 May 2020; all subject to modification in accordance with therecommended conditions found in the City Council summary report dated June 16, 2020;**

F. **The Springs Final Plat of Subdivision prepared by Manhard Consulting Ltd., consists of 3 pages, and bears a most recent revision date of April 28, 2020;**

G. **The Springs Elevations, consisting of 15 pages labeled Apartments B20E prepared by Continental Properties;**

H. **The Springs Sign Plan, consisting of four pages prepared by Sign Systems Inc. dated April 30, 2020.**

In the case of conflict between the 2005 Plans and the 2020 Plans, the 2005 Plans shall control with respect to Parcel 1, and the 2020 Plans shall control with respect to Parcel 2.

The City agrees to approve all final site plans, engineering plans, stormwater management plans and landscape plans that are similar to the approved preliminary plans.

* * *

C. **Amendment to Section 13**. Section 13 of the Original Annexation Agreement is hereby amended in part and shall hereafter be and read as follows:

13. Park and School Donations: No park or school donations (whether in cash or in kind) shall be required by reason of the annexation of the commercial portion of the Subject Property. ~~The townhome property~~ **The Parcel 2 Owner(s)** shall be required to pay cash donations in lieu of land donations for such school and park donations required at the time of building permit **issuance** pursuant to City ordinances **then in effect**. **Neither the** Owners **nor the Developer** shall be required to pay any transition fees for the school districts during the life of this agreement.

D. Term of Title I. This Title I shall be in full force and effect upon the Effective Date of this Agreement and shall continue in full force and effect until the expiration of the Original Annexation Agreement, at which time this Title I, and the balance of the terms of the Original Annexation Agreement, shall be incorporated in, and shall continue in full force and effect as additional provisions of, Title II of this Amended Agreement, for the balance of the term set forth in Section 12 hereof.

TITLE II

DEVELOPMENT AGREEMENT FOR THE RESIDENTIAL PARCEL

SECTION 1. DEFINITIONS. In addition to the definitions set forth in the recitals, which are incorporated herein, the following terms shall have the following meanings when used in this Agreement:

"Annexation Agreement": The Original Annexation Agreement, as amended.

"***Applicable City Codes and Ordinances*****":** The City Code, Unified Development Ordinance, Building Code, and all other codes and ordinances adopted by the City, as amended from time-to-time.

***"Building* Code":** Chapter 187, entitled "Building Code," of the City Code, as the same has been and may, from time to time hereafter, be amended.

"Corporate Authorities": The Mayor and City Council of the City.

"Final Engineering Plan": The final engineering plan for development of the Residential Parcel, or any individual phase thereof, that receives the approval of the Corporate Authorities pursuant to Section 2 of this Amended Agreement and in accordance with the Requirements of Law. Upon such approval, said Final Engineering Plan shall, automatically and without further action by the Corporate Authorities, be deemed to be incorporated in, and made a part of, this Amended Agreement and shall, for all purposes in this Amended Agreement, supersede the Phase I Engineering Plans and/or the Amended Preliminary PUD Plan, as applicable, and any other engineering plans previously submitted for consideration or conceptual approvals for the same portion of the Residential Parcel.

"Final Landscaping Plan": The landscaping plan for development of the Residential Parcel, or any individual phase thereof, that receives the approval of the Corporate Authorities pursuant to Section 2 of this Amended Agreement and in accordance with the Requirements of Law. Upon such approval, said Final Landscaping Plan shall, automatically and without further action by the Corporate Authorities, be deemed to be incorporated in, and made a part of, this Amended Agreement and shall, for all purposes in this Amended Agreement, supersede the Phase I Landscape Plan and/ or Amended Preliminary PUD Plan, as applicable, and any other landscaping plans previously submitted for consideration or conceptual approvals for the same portion of the Residential Parcel.

"Final PUD Plans": The final planned unit development plans for development of the Residential Parcel, or any individual phase thereof, that receive the approval of the Corporate Authorities pursuant to Section 2 of this Amended Agreement and in accordance with the Requirements of Law. Upon such approval, said Final PUD Plans shall, automatically and without further action by the Corporate Authorities, be deemed to be incorporated in, and made a part of, this Amended Agreement and shall, for all purposes in this Amended Agreement, supersede the

Phase I Final PUD Plans and/or the Amended Preliminary PUD Plan, as applicable, and any other PUD plans previously submitted for consideration or conceptual approvals for the same portion of the Phase I Parcel.

"Final PUD Plat": The final planned unit development plat for development of the Residential Parcel, or any individual phase thereof, that receives the approval of the Corporate Authorities pursuant to Section 2 of this Amended Agreement and in accordance with the Requirements of Law. Upon such approval, said Final PUD Plat shall, automatically and without further action by the Corporate Authorities, be deemed to be incorporated in, and made a part of, this Amended Agreement and shall, for all purposes in this Amended Agreement, supersede the Phase I Site Plan and/or the Amended Preliminary PUD Plan, as applicable, and any other PUD plat previously submitted for consideration or conceptual approvals for the same portion of the Residential Parcel.

"Final Subdivision Plat": The plat of subdivision for the Residential Parcel, or any individual phase thereof, that receives the approval of the Corporate Authorities pursuant to Section 2 of this Amended Agreement and in accordance with the Requirements of Law. Upon such approval, said Final Subdivision Plat shall, automatically and without further action by the Corporate Authorities, be deemed to be incorporated in, and made a part of, this Amended Agreement and shall, for all purposes in this Amended Agreement, supersede the Preliminary Subdivision Plat and any other subdivision plat previously submitted for consideration or conceptual approvals for the same portion of the Residential Parcel.

"Final Plans": The approved Final Engineering Plan, Final Landscaping Plan, Final PUD Plans, Final PUD Plat, and Final Subdivision Plat, collectively.

"Force Majeure": Strikes, lockouts, acts of God, pandemics, or other factors beyond a party's reasonable control and reasonable ability to remedy; provided, however, that Force Majeure shall not include delays caused by weather conditions, unless such weather conditions are unusually severe or abnormal considering the time of year and the particular location involved.

"***Lot***": A lot of record comprising a portion of the Residential Parcel, as depicted on a Final Subdivision Plat.

"***Market Rate Townhomes***"***:*** Single-family attached townhouse dwelling units (as those terms are defined in the UDO) that are made available for sale or rent based on prevailing market rates and without any restriction regarding resale price or rental adjustment.

"Planning and Zoning Commission": The Planning and Zoning Commission of the City as established by the City Code, as the same has been and may, from time to time hereafter, be amended.

"Project Improvements"**:** All of the improvements and facilities that are required or authorized to be made, constructed, or installed in connection with the subdivision and development of the Residential Parcel, which improvements and facilities are (i) generally set forth on the Amended PUD Plan and shall be specifically set forth on the approved Final PUD Plans. The Project Improvements specifically exclude the Off-site Intersection Improvements that will be designed, permitted and constructed solely by the City.

"Requirements of Law"**:** Applicable City Codes and Ordinances, rules, and regulations, and all applicable laws, statutes, codes, ordinances, resolutions, rules, and regulations of the

governments of the United States, the State of Illinois, the County of McHenry, and other governmental bodies having jurisdiction with respect to the Residential Parcel.

"***Structural Improvements***," being those Project Improvements consisting of buildings and structures authorized to be constructed on the Residential Parcel, as well as the parking lot areas on the Residential Parcel.

SECTION 2. ZONING OF THE RESIDENTIAL PARCEL.

1. **Approval of Amended Preliminary PUD Plan and Phase I Final PUD Plans.** Immediately after the approval and execution of this Amended Agreement by all parties, the City shall take all steps necessary to adopt a valid and binding ordinance in the form attached hereto as **Exhibit E**: (i) amending the Original PUD Ordinance to grant a special use permit for a planned unit development for the Residential Parcel; (ii) approving the Amended Preliminary PUD Plan for the Residential Parcel; and (iii) approving the Phase I Final PUD Plans and granting final PUD approval for the Phase I Parcel (collectively, the ***"PUD Amendment"***). As set forth in the PUD Amendment, the development of the Residential Parcel shall be conditioned on Owner and Developer developing the Phase I Parcel in substantial conformance with the Phase I Final PUD Plans, Owner developing the Phase II Parcel in substantial conformance with the Final PUD Plans for Phase II as defined below, and Owner and Developer developing not more than 600 residential units on the entire Residential Parcel.

2. **Phasing; Submission of Preliminary and Final PUD Plans for Phase II.** The Parties agree that Owner and Developer will complete the Development in two phases: Phase I and Phase II as depicted on the Amended PUD Plan. The parties further agree that Phase II will most likely be developed in multiple sub-phases; provided that no portion of the Residential Parcel may be approved as a separate phase or sub-phase of the Development unless such phase or subphase can be developed independently. At such time, if any, that Owner elects to develop Phase II of the Development, the Owner shall submit Preliminary and Final PUD Plans (including a Final Engineering Plan, Final Landscaping Plan, Final PUD Plan, Final PUD Plat, and Final Subdivision Plat) for Phase II of the Development, or a sub-phase or sub-phases thereof, which would be developed independently from Phase I.

3. **Approval if Substantially Conform to Amended Preliminary PUD Plan.** After the Final PUD Plans for Phase II (or any sub-phase thereof) have been submitted to the City, the City shall cause them to be promptly reviewed and shall cause such meetings to be conducted as may be necessary to consider approval in the manner provided by the UDO. After the Phase II Final PUD Plans have been reviewed and such meetings have been held, and provided such Final PUD Plans are in substantial conformance with the Preliminary PUD Plan ((but replacing the portion of the 2005 Plans that consisted of 16-Unit Condominium Elevations (item F) with 6-unit 2-car, 6-unit-1car and 4-unit 2-car Townhome Elevations (items G, H and I)) and do not provide for the development of more than 320 Market-Rate Townhomes on the Phase II Parcel (provided further that the Final PUD Plans may, upon Owner's request and the reasonable approval of the City Engineer, be modified to accommodate changes necessary to obtain required permits for utility facilities, wetlands, water facilities, and stormwater detention and drainage improvements and in compliance with all applicable Requirements of Law, but may not be modified to increase the number of dwelling units to be developed on the Phase II parcel above 320 units), then the City shall promptly adopt an ordinance approving the Final PUD Plans for Phase II and directing all required City signatures and certifications to be affixed to the Final Subdivision Plat for Phase II (the "***Phase II Final PUD Ordinance***"). If Owner elects to develop Phase II in multiple sub-phases, the terms "Final PUD Plans for Phase II", "Final Subdivision Plat for Phase II", "Phase II Final PUD Ordinance" and other similar terms shall be deemed to apply to the applicable phase,

or sub-phase so approved, and govern the development of such applicable phase, or sub-phase, as the case may be.

4. **Conditions on Approval of Final PUD Plans.** Notwithstanding the foregoing, the approval of the PUD Amendment and the Phase II Final PUD Ordinance shall be conditioned upon Owner and/or Developer, as applicable,: (A) obtaining all other approvals, sworn statements, signatures, and certifications required for the aforesaid Final Subdivision Plat for each phase of the Development, as applicable; (B) presenting the City with adequate evidence of merchantable fee simple title to the affected portion of the Residential Parcel; (C) reimbursing the City for all of its legal, engineering, consulting, and administrative fees, costs, and expenses relating to the review and approval of the Final PUD Plans for the affected portion of the Residential Parcel or otherwise due in accordance with Section 2 of this Amended Agreement; (D) delivering all performance and other financial security as required by the Annexation Agreement, this Amended Agreement, and the Applicable City Codes and Ordinances for the completion of the improvements identified in said Final PUD Plans; and (E) depositing with the City Clerk a sufficient sum, in current funds, to reimburse the City for the actual cost of recording the PUD Amendment or the Phase II Final PUD Ordinance, as the case may be, and the Final Subdivision Plat for the affected portion of the Residential Parcel; and subject to the further understanding that the City will not affix its signatures and certifications to any approved Final Subdivision Plat until said conditions have been satisfied with respect to each such plat. After final approval, execution, and certification by the City, the City shall promptly cause the PUD Amendment and Final Subdivision Plat for Phase I (or the Phase II Final PUD Ordinance and Final Subdivision Plat for Phase II, as the case may be) to be properly recorded with the McHenry County Recorder of Deeds. The City acknowledges and agrees that a Final PUD Plan, Final PUD Plat, and Final Subdivision Plat for any single phase of the Development may be incorporated into one and the same document.

5. **Regarding Maximum Development Density**. Owner acknowledges that the Phase I portion of the Development has a substantially higher density than is contemplated for the Residential Parcel as a whole under the Original Annexation Agreement, the Annexation Agreement as amended, this Amended Agreement, and the longstanding planning and development goals established by the City for the Residential Property. In recognition thereof, and in furtherance of Owner's desire to develop the Phase I Parcel prior to the Phase II Parcel, Owner desires and agrees the entire Residential Parcel is limited to a development density to not more than 600 residential units in total. The City acknowledges that Phase II is intended to have 320 units.

6. **Regarding a PUD Development Agreement for Phase II.** In order to bind the remaining Phase II property beyond the expiration of the Original Annexation Agreement, the Owner and the City agree that this Amendment Agreement shall be and constitute a PUD development agreement for Phase II of the residential development, for the term set forth in Section 12 below, which will allow for the development of no more than 320 units on the Phase II Parcel.

SECTION 3. DEVELOPMENT OF THE PROPERTY.

The Residential Parcel shall be used and developed, except for minor alterations due to final engineering and site work approved by the City Engineer, only pursuant to and in accordance with the following:

i. the Annexation Agreement;

ii. this Amended Agreement;

iii. the Final PUD Plat and Final Subdivision Plat;

iv. the Final Engineering Plans;

v. the Final Landscape Plans;

vi. the PUD Amendment and Phase II Final PUD Ordinance, as applicable;

vii. all other applicable provisions of the UDO;

viii. the City Code, including without limitation the Building Code; and

ix. the Requirements of Law.

Unless otherwise provided in this Amended Agreement, either specifically or in context, in the event of a conflict between or among any of the plans and documents set forth in this Section, the document that provides the greatest control and protection for the City (as determined by the City) shall control. All of the plans and documents set forth in this Section shall be interpreted so that the duties and requirements imposed by any one of them are cumulative among all of them, unless otherwise provided in this Amended Agreement or the Annexation Agreement either specifically or in context.

SECTION 4. PROJECT IMPROVEMENTS.

A. **Description of Project Improvements.** The Owner and Developer shall, at their sole cost and expense, design, construct, and install all of the Project Improvements on and serving the Residential Parcel that are identified on the Amended Preliminary PUD Plan and in the approved Final PUD Plans for each phase of the Development and in accordance with the following specifications (provided, however, that Developer shall have responsibility only for the aspects of the Development that relate to Phase I and, from and after closing of the sale of Phase I to Developer, Owner shall have no responsibility for the aspects of the Development that relate to Phase I):

(i) Landscaping. Landscaping on the Residential Parcel shall be installed in substantial conformity with the Final Landscape Plans and shall be subject to City review and approval. The Owner and Developer shall be required to maintain the landscaping on the Residential Parcel in accordance with good arboricultural and landscaping practices. If, for whatever reason, any of the plantings depicted on any approved landscaping plan are removed, destroyed, or otherwise fail to survive two years following (i) the issuance of a certificate of occupancy for the improvements on a particular lot or (ii) initial installation of such plantings, whichever is later, the Owner and Developer shall, not later than the next planting season occurring at least 30 days after the Owner or Developer receives notice from the City, replace such plantings with substitute plantings that substantially conform to the size and type of the original plantings, as depicted on the Final Landscape Plans. For purposes of this Subsection, a "planting season" shall be either the period between 15 April and 15 June or the period between 1 September and 1 November in any calendar year.

(ii) Screening Along Boundaries. The Developer shall install landscape screening along the boundaries of the Phase I Parcel in a manner acceptable to the

City at locations specified by, and in substantial accordance, with the approved Phase I Final PUD Plans.

(iii) Sanitary Sewer. Sanitary sewer service shall be provided to the Residential Parcel through the City's public sanitary sewer system. The Owner and Developer shall be responsible for constructing and completing any extensions and facilities necessary to facilitate connection of the Project Improvements to the City's sanitary sewer system in accordance with the Final Engineering Plans.

(iv) Water. Water service shall be provided to the Residential Parcel through the City's public water system. The Owner and Developer shall be responsible for constructing and completing any extensions and facilities necessary to facilitate connection of the Project Improvements to the City's water system in accordance with the Final Engineering Plans.

(v) Roadway Improvements. All roads within the Development, as well as access improvements to and from the Residential Parcel, shall be constructed and completed in accordance with the Final Engineering Plans.

(vi) Emergency Access Route. The Developer shall construct and complete, at its sole cost and expense, an emergency access roadway in accordance with plans approved by the City (the ***"Emergency Access Road"***) as part of the Phase I development. The purpose of the Emergency Access Road shall be to provide a secondary access point and means of emergency ingress and egress from Lutter Drive to the Phase I Parcel and to the Phase II Parcel until such time as Central Park Drive (including the northern intersection of Central Park Drive and Lutter Drive) is fully improved as part of Phase II. The Emergency Access Road shall extend from the terminus of Central Park Drive at the north lot line of the Phase I Parcel to Lutter Drive either: (i) at the planned northern connection point of Central Park Drive and Lutter Drive as depicted on the Amended Preliminary PUD Plans, or (ii) at another point on Lutter Drive that is approved by the City and acceptable to Owner. The Emergency Access Road must be installed prior to the issuance of the 201st certificate of occupancy for a residential dwelling unit on the Phase I Parcel and prior to any building permits for the Phase II Parcel. Once the Emergency Access Road has been installed, building and occupancy permits shall be available and issued in the normal course by the City for the Phase II Parcel and the balance of the units on the Phase I Parcel regardless of the status of the extension of Central Park Drive through Phase II to the planned northern connection point at Lutter Drive. The Owner and Developer shall be responsible for obtaining, at their sole cost and expense, any and all property rights necessary to construct the Emergency Access Road. The Emergency Access Road must be at least 20 feet in width and located in an easement approximately 20 feet in width (the "**Emergency Access Road Easement**"), run along the western boundary line of the Phase II Parcel, and be constructed in a manner, and of materials, that will support the weight of emergency equipment, all as provided in the Emergency Access Road Plans and Specifications attached hereto and made a part hereof as **Exhibit F**. The area of this Emergency Access Road and Emergency Access Road Easement shall be incorporated into the applicable lot set-backs of the homes to be constructed on the Phase II Parcel. The Owner shall have a right to construct an approved Emergency Access Road if a secondary means of access is required for Phase II and Phase I has not been constructed. In addition, Owner shall have the right, but not the obligation, to extend Central Park Drive and utilities (the "Remainder Parcel Required Access Road and Utilities") through the dedicated right-of-way therefore from the west

lot line of the Phase I Parcel to the north lot line of the Phase I Parcel if Developer fails to substantially complete such extension of the Remainder Parcel Required Access Road and Utilities on or before the first to occur or (i) twelve (12) months following Developer's closing on the Phase I Parcel, or (ii) the date of issuance of the first temporary certificate of occupancy for a residential building on the Phase I Parcel. Upon completion of the extension of Central Park Drive through Phase II to the planned northern connection point at Lutter Drive to the level sufficient for fire safety purposes, the Emergency Access Road Easement shall terminate and be automatically vacated by the City and Developer shall promptly remove the Emergency Access Road and return the area of the Emergency Access Road Easement to its state prior to construction of the Emergency Access Road.

B. **Off-Site Intersection Improvements**. Developer acknowledges that the Off-Site Intersection Improvements to be constructed by the City are necessary to improve the existing intersections of: (i) Central Park Drive and Lutter Drive, and (ii) Illinois Route 31 and James R. Rakow Road/Central Park Drive in order to accommodate the projected traffic volume increase for the proposed Phase I development as determined by the traffic impact study attached hereto as **Exhibit D**. Developer agrees to contribute a pro-rata share of the costs associated with the Off-Site Intersection Improvements. The Developer's pro rata share shall be 12.4% of the total cost of the Intersection Improvements at the intersection of Central Park Drive and Lutter Drive and 3.0% of the total cost of the Intersection Improvements at the intersection of Illinois Route 31 and James R. Rakow Road/Central Park Drive. The amount of estimated costs of both projects as approved by the Director of Public works is $350,000 dollars. The Developers share is $53,900_dollars. The Developer shall provide either a Letter of Credit, Bond or Escrow payment for its share of the above mentioned improvements. Developer intends to post these funds in escrow in order to complete its contribution to the project. Notwithstanding the foregoing, in the event that the Developer executes an agreement (which shall be in a form reasonably satisfactory to the Director of Public Works and the City Attorney) to be recorded against the site that ensures the payment of the final cost-sharing amount by the petitioner or petitioner's successor in ownership, the requirement for a Letter of Credit, Bond or Escrow payment shall be waived. The development of the Phase II Parcel will require a separate traffic impact study and a contribution estimate for the off-site intersection improvements relating to Phase II will be the responsibility of the development team of such Phase II.

C. **Construction Hours.** Unless otherwise approved in advance by the City's Director of Community Development, or his or her designee, no exterior construction work shall be permitted to occur on the Residential Parcel before 7:00 a.m. or after 7:00 p.m. on Mondays through Fridays, before 8:00 a.m. or after 6:00 p.m. on Saturdays, or at any time on Sundays and State or federal holidays.

D. **Construction Traffic; Street Maintenance.** The City reserves the right to designate certain prescribed routes of access to the Residential Parcel for construction traffic to provide for the protection of pedestrians and to minimize disruption of traffic and damage to paved street surfaces; provided, however, that such designated routes shall not be unreasonably or unduly circuitous nor unreasonably or unduly hinder or obstruct direct and efficient access to the Residential Parcel for construction traffic.

E. **Street Maintenance.** At all times during the construction of the Project Improvements, and until completion, approval, and, where appropriate, acceptance of the Project Improvements by the City, the Owner (solely with respect to Phase II) and the Developer (solely with respect to Phase I) shall be responsible for the maintenance of all streets within the Development (including street light systems and street signage); shall keep all streets routes used for construction traffic

free and clear of mud, dirt, debris, obstructions, and hazards; shall repair any damage caused by such construction traffic; and shall ensure that the streets are at all times passable for emergency and other purposes. The City shall not be obligated to keep any street within the Development cleared, plowed, or otherwise maintained unless and until such street has been completed, approved, dedicated to, and accepted by the City in accordance with this Amended Agreement and the UDO or until other arrangements satisfactory to the City, in its sole discretion, shall have been made.

F. **Completion of the Project Improvements.** All Project Improvements shall be completed and made ready for inspection, approval, and, where appropriate, acceptance by the City (or other public body) in accordance with the Final PUD Plans. The Owner and Developer shall be allowed extensions of time beyond the completion dates set forth in such construction schedule only for unavoidable delay caused by Force Majeure. Owner and Developer shall provide, at their sole cost and expense, all engineering services for the design and construction of the Project Improvements. Owner or Developer shall notify the City Engineer when it believes that any or all of the Project Improvements have been fully and properly completed and shall request final inspection and approval of such Project Improvements by the City. The City shall complete such inspections and, where appropriate, accept dedicated Project Improvements in accordance with the City's UDO and all other Applicable City Codes and Ordinance, unless otherwise provided by the Annexation Agreement.

G. **Issuance of Permits and Certificates.**

(i) Performance Security. The City shall not be required to issue any permits in connection with any Project Improvements or other development activities relating to the Residential Parcel until the Owner or Developer shall have delivered to the City all performance securities required by the Annexation Agreement, this Amended Agreement, and the Applicable City Codes and Ordinances.

(ii) Right to Withhold Permits and Certificates. The City shall have the absolute right to withhold any building permit, final inspection, or certificate of occupancy in connection with the Development at any time the Owner or Developer is in breach of the terms of this Amended Agreement for their respective phases, subject to the City providing written notice of such violation and providing the Owner and/or Developer, as applicable, with an opportunity to cure such violation within 30 days of such notice or such longer period as may be provided therein. The City shall not have (i) the right to hold up permits for Phase II or take other enforcement action against Owner with respect to Developer's breach of the terms of this Amended Agreement with respect to Phase I or (ii) the right to hold up permits for Phase I or take other enforcement action against Developer with respect to Owner's breach of the terms of this Amended Agreement with respect to Phase II.

(iii) Completion of Improvements. The City shall have no obligation to issue certificates of occupancy for any dwelling units or other Structural Improvements located on the Residential Parcel until all Project Improvements are completed by the Owner or Developer in accordance with the Final PUD Plans and this Amended Agreement for their respective phases. The issuance of any building permit or certificate of occupancy by the City at any time prior to completion of all the Project Improvements and approval and, where appropriate, acceptance thereof by the City shall not confer on the Owner or Developer any right or entitlement to any other building permit or certificate of occupancy.

H. **Abandonment of Proposed Development.** Subject to Force Majeure, if the Owner and Developer fail to diligently pursue all construction as required in, or permitted by, this Amended Agreement to completion within the time period prescribed in the building permit or permits issued by the City for such construction, and if the building permit or permits are not renewed within three months after the expiration thereof, the Owner and Developer shall, within 60 days after notice from the City, remove any partially constructed or partially completed Project Improvements from the Residential Parcel and take any other actions necessary in order to secure and/or make safe the Residential Parcel, including the installation of turf or other ground cover to prevent undue run-off from any portion of the Residential Parcel. In the event the Owner or Developer fails or refuses to remove Project Improvements and secure or make safe the Residential Parcel, as required by the preceding sentence, the City shall have, and is hereby granted, in addition to all other rights afforded to the City in this Amended Agreement and by law, the right, at its option, to secure and/or make safe the Residential Parcel, including, if necessary, demolishing and/or removing any unsafe Project Improvements, and the City shall have the right to apply any applicable security or otherwise charge the Owner and Developer for an amount sufficient to defray the entire cost of the work, including reasonable legal and administrative costs. If the amount charged is not paid by the Owner or Developer within 30 days following a demand in writing by the City for payment, the charge, together with interest and costs of collection (including reasonable attorneys' fees)(collectively, the "***Correction Costs***"), shall become a lien against the Residential Parcel or such portion thereof, as the case may be, on which the work was performed, and the City shall have the right to collect the Correction Costs, with interest and costs, and to enforce the lien in the same manner as mortgage foreclosure proceedings.

I. **Damage to the Property and Other Property**. The Owner and Developer shall each maintain its respective Phase of the Residential Parcel and all streets and sidewalks in and adjacent thereto in a safe condition at all times during development of such Phase the Residential Parcel and construction of the Project Improvements. Further, (i) the Owner shall promptly clean all debris deposited on any street, sidewalk, or other public property in or adjacent to the Residential Parcel by the Owner or any agent of or contractor hired by, or on behalf of, the Owner, and shall repair any damage to such property that may be caused by the activities of the Owner or any agent of or contractor hired by, or on its behalf, and (ii) the Developer shall promptly clean all debris deposited on any street, sidewalk, or other public property in or adjacent to the Residential Parcel by the Developer or any agent of or contractor hired by, or on behalf of, the Developer; and shall repair any damage to such property that may be caused by the activities of the Developer or any agent of or contractor hired by, or on its behalf.

J. **Dedications.** The Owner shall dedicate sites, easements, and rights-of-way as required by this Amended Agreement and as depicted on the Final PUD Plans.

SECTION 5. PAYMENT OF CITY FEES AND COSTS.

A. **General Requirements.** In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement, the Owner and Developer shall pay to the City, as and when due, all application, inspection, review, and permit fees, and all other fees, charges, and contributions required by the Applicable City Codes and Ordinances.

B. **Special Requirements.** In addition to any other costs, payments, fees, charges, contributions or dedications required by this Amended Agreement or by the Applicable City Codes and Ordinances, the Owner and Developer shall pay to the City, within 30 days of presentation of a written demand or demands therefor, all reasonable legal, engineering, and other consulting or administrative fees, costs, and expenses incurred or accrued in connection with the review and processing of plans for the development of the Residential Parcel and in connection with the

negotiation, preparation, consideration, review, implementation, and enforcement of this Amended Agreement. In connection with such requirement, the Owner or Developer shall also submit, and replenish as needed, an escrow to the City in accordance with City requirements. Payment of all such fees, costs, and expenses for which demand has been made, but payment has not been received, by the City prior to execution of this Amended Agreement shall be made by a certified or cashier's check within 30 days of presentation of an invoice therefor.

SECTION 6. BUILDING PERMITS, PRELIMINARY AND TEMPORARY WORK, CERTIFICATES OF OCCUPANCY, MODEL HOMES, AND PROMOTIONAL ACTIVITIES.

A. **Building Permits.**

(i) Master Building Blueprints. Owner and Developer, as applicable, shall have the right to submit master building blueprints for the various types of dwelling units to be constructed on the Residential Parcel. Subsequent to the approval of any master building blueprints and plans, no further submission or approval of building blueprints or plans will be required for the issuance of a building permit for the construction of any unit pursuant to an approved master building plan unless the building permit application reflects substantial deviations from the approved mast blueprint or plan.

(ii) Issuance of Building Permits. After receipt of the last of the documents and information required to support a building permit application for the Residential Parcel, the City shall promptly approve or disapprove the requested building permit. If the application is disapproved, the City shall provide the applicant with a statement in writing specifying the reasons for denial of the application, including specification of the Requirements of Law that the application and supporting documents fail to meet. The City agrees to issue such building permits upon the applicant's compliance with those Requirements of Law so specified by the City.

B. **Earthwork.** The City will not allow mass grading operations until such time as Final Engineering Plans are approved unless: (i) Owner or Developer, as applicable, has submitted and the City has approved a mass grading plan and an erosion control plan, and (ii) Owner or Developer, as applicable, has delivered all required performance and payment security for such mass grading work to the City, and (iii) all work is undertaken at the sole risk of Owner or Developer, as applicable, and without injury to the property of surrounding property owners in the event that the Final Engineering Plans as approved require changes to the grading work already undertaken.

C. **Temporary Structures.** Owner and Developer shall have the right, subject to compliance with City permitting requirements and the Final PUD Plans, to maintain temporary offices, structures, trailers, and facilities on any part of the Residential Parcel, and to use said facilities for rental or sale of units or construction purposes and for purposes of storage of construction materials, supplies, and equipment. Such structures and storage shall, however, be maintained in a safe, neat and sanitary condition, and shall be located as approved by the City.

D. **Certificates of Occupancy.**

(i) Issuance. The City shall approve or disapprove certificates of occupancy for any building, structure, or dwelling constructed on the Residential Parcel within three

working days of proper application therefor or within three working days of the receipt of the last of the documents or information required to support such application, whichever is later. If the application is disapproved, the City shall provide the applicant with a statement in writing of the reasons for denial of the application, including specification of the Requirements of Law that the application and supporting documents fail to meet.

(ii) Temporary Certificates. Temporary certificates of occupancy shall not be issued by the City except in accordance with Section 19.B of the Annexation Agreement or unless the City reasonably determines that interior or exterior work cannot be completed due to Force Majeure conditions that are beyond the reasonable control of the Owner, provided that: (a) adequate security, as determined by the City, has been posted with the City or arrangements have been made with a title company designated by Owner in order to ensure the completion of such improvements; (b) streets and necessary sanitary sewer and water facilities and improvements are properly installed to such units; and (c) the City Building Commissioner determines such units are safe and fit for human occupancy, notwithstanding that certain elements of the building are not completed; and (d) all applicable fees have been paid.

(iii) Prerequisites. No Certificate of Occupancy shall be applied for by Owner or Developer, or issued by the City until the unit which is the subject of the application is connected to and able to be served by public sanitary sewer and water systems; provided, however that temporary Certificates of Occupancy may be issued for models and sales offices as herein provided.

SECTION 7. FUTURE COOPERATION

A. **In General.** The City agrees to provide to the Owner and Developer such cooperation, support, and assistance as may be reasonably necessary to implement the provisions of this Amended Agreement and to obtain any and all permits and approvals from other governmental entities with jurisdiction required to allow the development of the Residential Parcel in accordance with this Amended Agreement, the Amended PUD Ordinance, and the Phase II Final PUD Ordinance, including but not limited to permits and approvals for roadway, water service, sanitary sewer service, storm water management improvements in accordance with the Requirements of Law; provided, however, that any reasonable costs incurred by the City in its cooperation, support, and assistance shall be fully reimbursed by Owner and Developer. The City agrees to grant the Owner such access and easement rights to City rights of way as are reasonably necessary to construct the potable water and sanitary sewer improvements necessary to provide service to the Residential Parcel in conformance with the approved Final Engineering Plans. In the event that the Owner is unable to secure easements or other property rights reasonably required for the extension of utilities for the Development or construction of roadway improvements in accordance with the Final Engineering Plans, then the City agrees, to the extent permitted by law and within the City's authority and jurisdiction, to provide assistance in securing such property rights; provided, however, that any such assistance shall be at no cost to the City, and the City shall have no obligation to authorize use of its eminent domain power.

B. **Additional Land.** Owner shall be permitted to request amendments to the Amended PUD Plan and this Amended Agreement to add additional adjacent property to the Development, provided that all necessary public notices and hearings are held, including but not limited to planning, zoning, and annexation agreement hearings, and provided that no more than 600 residential dwelling units shall be constructed on the original Residential Parcel.

SECTION 8. LIABILITY AND INDEMNITY OF CITY.

A. **City Review.** The Owner and Developer acknowledge and agree that the City is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the City's review and approval of any plans for the Residential Parcel or the Project Improvements, or the issuance of any approvals, permits, certificates, or acceptances, for the development or use of the Residential Parcel or the Project Improvements, and that the City's review and approval of any such plans and the Project Improvements and issuance of any such approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure the Owner or Developer, or any of their heirs, successors, assigns, tenants, and licensees, or any third party, against damage or injury of any kind at any time, except as may be caused by the City's gross negligence or willful misconduct.

B. **City Procedure and Legal Challenges.** To the best of the parties' knowledge and understanding, the Owner, Developer, and City acknowledge and agree that all notices, meetings, and hearings have been properly given and held by the City with respect to the approval of this Amended Agreement and agree not to challenge such approval on the grounds of any procedural infirmity or of any denial of any procedural right. Furthermore, neither the City, Owner, nor Developer shall assert the invalidity or unenforceability of this Amended Agreement, or any provision of this Amended Agreement, nor shall either contest the validity or enforceability of this Amended Agreement, or any provision in this Amended Agreement, or the zoning of the Residential Parcel pursuant to this Amended Agreement. In the event that the zoning of Phase I of the Residential Parcel is challenged by any person by an action at law or in equity, the City shall, upon request of the Developer: (i) vigorously defend such action with the City Counsel or such other counsel as is mutually acceptable to the City and the Developer and cooperate with the Owner and Developer in the defense of such action, and the Developer shall reimburse the City for all costs and fees (including reasonable attorneys' fees) that the City may incur in defending such action and in rendering such cooperation, and provided further that the Developer shall have the right, upon not less than 30 days prior notice to the City, to elect to terminate its future reimbursement obligations but in the event that the Developer exercises such right, the City shall be relieved from any obligation to defend such action or render such cooperation; and (ii) take such other actions pursuant to the Illinois Municipal Code as are necessary to reconsider and reauthorize the execution of this Amended Agreement by the Mayor and City Clerk and to zone Phase I of the Residential Parcel in the manner contemplated by this Amended Agreement in a legally sustainable manner. In the event that the zoning of Phase II of the Residential Parcel is challenged by any person by an action at law or in equity, the City shall, upon request of the Owner: (i) vigorously defend such action with the City Counsel or such other counsel as is mutually acceptable to the City and the Owner and cooperate with the Owner and Developer in the defense of such action, and the Owner shall reimburse the City for all costs and fees (including reasonable attorneys' fees) that the City may incur in defending such action and in rendering such cooperation, and provided further that the Owner shall have the right, upon not less than 30 days prior notice to the City, to elect to terminate its future reimbursement obligations but in the event that the Owner exercises such right, the City shall be relieved from any obligation to defend such action or render such cooperation; and (ii) take such other actions pursuant to the Illinois Municipal Code as are necessary to reconsider and reauthorize the execution of this Amended Agreement by the Mayor and City Clerk and to zone Phase II of the Residential Parcel in the manner contemplated by this Amended Agreement in a legally sustainable manner. The Owner and the Developer, as applicable, shall each be permitted to select, hire, and designate co-counsel to the City in any matter pertaining to litigation relating to the provisions of this Amended Agreement. The City shall waive, in writing, any conflict of interest such co-counsel may have in the matter

pertaining to co-counsel's representation of two or more of the City, the Owner and/or the Developer, as the case may be.

C. **Indemnity.** Subject to the terms, conditions and release provisions set forth in Section 9 of this Title II below, the Owner and Developer agree to, and do hereby, hold harmless and indemnify the City, the Corporate Authorities, and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of such parties in connection with (i) the City's review and approval of this Amended Agreement or any plans for the Residential Parcel or the Project Improvements; (ii) the issuance to the Owner or Developer of any approval, permit, certificate, or acceptance for the Residential Parcel or the Project Improvements; (iii) the Owner's or Developer's development, construction, maintenance, or use of any portion of the Residential Parcel or the Project Improvements; and (iv) the performance by the Owner or Developer of their obligations under this Amended Agreement, except as may be caused by the City's gross negligence or willful misconduct.

D. Defense Expense. Except as limited in Paragraph C, above, the Owner and Developer shall, and do hereby agree to, pay all expenses, including reasonable legal fees and administrative expenses, incurred by the City in defending itself with regard to any and all of the claims referenced in this Section of this Amended Agreement.

SECTION 9. NATURE, SURVIVAL, AND TRANSFER OF OBLIGATIONS.

In the event the Developer does not purchase Phase I from the Owner, Owner may terminate this First Amendment to the Annexation Agreement and Planned Unit Development Agreement. In order to terminate this Amended Agreement Owner shall notify the City of its decision within 90 days of the termination of sale contract with the Developer. Upon notification (i) this Amended Agreement shall terminate and be of no further force or effect, (ii) the Original Annexation Agreement will remain in place without any of these amendments, and (iii) the zoning and other entitlements for the Residential Parcel shall revert to the status of same immediately prior to the Effective Date of this Amended Agreement.

All obligations assumed by the Owner and Developer under this Amended Agreement shall be binding upon the Owner and Developer, upon any and all of their heirs, successors, and assigns, and upon any and all of the respective successor legal or beneficial owners of all or any portion of the Residential Parcel. To assure that all such heirs, successors, assigns and successor owners have notice of this Amended Agreement and the obligations created by it, the Owner shall:

(i) Deposit with the City Clerk, contemporaneously with the City's approval of this Amended Agreement, any consents or other documents necessary to authorize the City to record this Amended Agreement (with or without oversized exhibits) with the McHenry County Recorder of Deeds; and

(ii) Notify the City in writing when the Owner transfers a legal or beneficial interest in any portion of the Residential Parcel to any party not a party to this Amended Agreement (provided that any Owner's failure to do so shall not be a material default hereunder); and

(iii) Require, prior to the transfer of all or any portion of the Residential Parcel, or any legal or equitable interest therein to any party not a party

to this Amended Agreement, the transferee of said portion of the Residential Parcel to execute an enforceable written agreement, in a form and substance acceptable to the City Manager and City Attorney, agreeing to be bound by the provisions of this Amended Agreement, ("***Transferee Assumption Agreement***");

provided, however, that the requirements stated in the three preceding clauses shall not apply to any contract for, or transfer of, an individual Lot, unit, or building or group of Lots, units, or buildings for which all Project Improvements have been completed and approved pursuant to this Amended Agreement. The City agrees that upon a successor becoming bound to the personal obligation created in the manner provided in this Amended Agreement and providing the financial assurances required herein, the liability of the Owner or Developer shall be released to the extent of the transferee's assumption of such liability. The failure of the Owner or Developer to provide the City with a fully executed copy of a Transferee Assumption Agreement and, if requested by the City, with the transferee's proposed assurances of financial capability before completing any such transfer shall result in the Owner or Developer remaining fully liable for all of the applicable Owner's or Developer's obligations under this Amended Agreement but shall not relieve the transferee of its liability for all such obligations as a successor thereto. Notwithstanding the foregoing, the City hereby acknowledges and agrees that Developer, *alone*, is the proposed developer of Phase I and that upon Developer's closing on Phase I, Owner has no obligations of any kind (development, contribution, indemnity, etc.) with respect to the Phase I property purchased by Developer or Developer's Phase I development thereof. The City agrees, within 10 days of the City's receipt of a written request by the Owner therefor, to respond to a request for an estoppel certificate concerning compliance with this Amended Agreement.

SECTION 10. <u>ENFORCEMENT</u>.

The Parties to this Amended Agreement may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce, or compel the performance of this Amended Agreement; provided, however, that the Owner and Developer agree that they will not seek, and do not have the right to seek, to recover a judgment for monetary damages against the City or any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Amended Agreement; and provided, further, that the City shall have no authority to seek specific performance for completion of the Structural Improvements for the Development. In addition to every other remedy permitted by law for the enforcement of the terms of this PUD Agreement, the City shall, upon a material breach of this Amended Agreement, be entitled to withhold the issuance of building permits or certificates of occupancy associated with the applicable Phase I or Phase II of the Development for any Structural Improvements within such Phase I or Phase II at any time the Owner or Developer has failed or refused to meet fully any of their obligations under this Agreement. In the event of a breach of this Amended Agreement, the Parties agree that the Party alleged to be in breach shall have, unless specifically provided otherwise by any other provision of this Amended Agreement, 15 days after notice of said breach delivered in accordance with Section 9 of this Amended Agreement to correct the same prior to the non-breaching Party's pursuit of any remedy provided for in this Section; provided, however, that said 15-day period shall be extended, but only (i) if the alleged breach is not reasonably susceptible to being cured within said 15-day period, and (ii) if the defaulting Party has promptly initiated the cure of said breach, and (iii) if the defaulting Party diligently and continuously pursues the cure of said breach until its completion.

SECTION 11. <u>GENERAL PROVISIONS</u>.

A. **Notice.** Any notice or communication required or permitted to be given under this Amended Agreement shall be in writing and shall be delivered (i), personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("***e-mail***"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Amended Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) three (3) business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications shall be addressed to, and delivered at, the following address:

If to the City:

City of Crystal Lake
100 W. Woodstock Street
Crystal Lake, Illinois 60014
Attention: City Manager

With a copy to:

Victor P. Filippini, Jr.
Filippini Law Firm
990 Grove Street, Suite 220
Evanston, Illinois 60201

If to the Owner:

c/o Wade Light
105 S. Wynstone Park Drive
North Barrington, IL 60010

With a copy to:

Scott Gudmundson
Gudmundson Law, P.C.
250 Parkway Drive, Suite 150
Lincolnshire, IL 60069

If to the Developer:

Eric Thom
Continental 544 Fund LLC
W134 N8675 Executive Parkway
Menomonee Falls, WI 53051-3310
Attn: Development

With a copy to:
Continental 544 Fund LLC
W134 N8675 Executive Parkway
Menomonee Falls, WI 53051-3310
Attn: Legal

With a copy to:

Joe Gottemoller
Gottemoller and Associates
1 N. Virginia St, Unit A
Crystal Lake, Illinois 60014

B. **Time of the Essence.** Time is of the essence in the performance of all terms and provisions of this Amended Agreement.

C. **Rights Cumulative.** Unless expressly provided to the contrary in this Amended Agreement, each and every one of the rights, remedies and benefits provided by this Amended Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

D. **Non-Waiver.** Neither party shall be under any obligation to exercise any of the rights granted to it in this Amended Agreement. The failure of any party to exercise at any time any such right shall not be deemed or construed to be a waiver thereof, nor shall such failure void or affect that party's right to enforce such right or any other right.

E. **Consents.** Whenever the consent or approval of any party hereto is required in this Amended Agreement such consent or approval shall be in writing and shall not be unreasonably withheld or delayed, and, in all matters contained herein, all parties shall have an implied obligation of reasonableness, except as may be expressly set forth otherwise.

F. **Governing Law.** This Amended Agreement shall be governed by, and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

G. **Severability.** It is hereby expressed to be the intent of the parties hereto that should any provision, covenant, agreement, or portion of this Amended Agreement or its application to any person, entity, or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Amended Agreement and the validity, enforceability, and application to any person, entity, or property shall not be impaired thereby, but such remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Amended Agreement to the greatest extent permitted by applicable law.

H. **Entire Agreement.** This Amended Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Amended Agreement.

I. **Grammatical Usage and Construction.** In construing this Amended Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

J. **Interpretation.** This Amended Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Amended Agreement. Moreover, each and every provision of this PUD Agreement shall be construed as though all parties to this Amended Agreement participated equally in the drafting of this Amended Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Amended Agreement.

K. **Headings.** The table of contents, heading, titles, and captions in this Amended Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Amended Agreement.

L. **Exhibits**. Exhibits A through E attached to this Amended Agreement are, by this reference, incorporated in and made a part of this Amended Agreement. In the event of a conflict between an exhibit and the text of this Amended Agreement, the text of this Amended Agreement shall control.

M. **Conflicts.** In the event of a conflict between this Amended Agreement and Applicable City Codes and Ordinances, the former shall supersede and control. All Applicable City Codes and Ordinances which do not conflict with this Amended Agreement, however, shall apply to the Residential Parcel. In the event of a conflict between this Amended Agreement and the Annexation Agreement, this Amended Agreement shall control to the extent the matter in conflict can be construed to relate exclusively to the Residential Parcel. To the extent that a matter in conflict cannot be construed to relate exclusively to the Residential Parcel, then the Annexation Agreement shall control during its term.

N. **Amendments and Modifications.** No amendment or modification to this Amended Agreement shall be effective unless and until it is reduced to writing and approved and executed by all parties to this Amended Agreement in accordance with all applicable statutory procedures.

O. **Changes in Laws.** Unless otherwise explicitly provided in this Amended Agreement, any reference to any Requirements of Law shall be deemed to include any modifications of, or amendments to such Requirements of Law as may, from time to time, hereinafter occur. Provided, however, that where such changes in law are under the exclusive control of the City, such changes shall not affect Owner or Developer until three months following the effective date of the Ordinance, rule, or regulation causing the change.

P. **Exculpation.** The City acknowledges that Developer is executing this Amended Agreement solely as the contract purchaser and prospective developer of the Phase I Parcel and that Developer shall have no personal liability for the performance of Owner's obligations with respect to the Phase II Parcel under this Amended Agreement unless Developer should become a successor in title to Owner with respect to all or an portion of such Phase II Parcel.

Q. **Authority to Execute.** The City hereby warrants and represents to the Owner and Developer that the persons executing this Amended Agreement on its behalf have been properly authorized to do so by the Corporate Authorities. The Owner and Developer each hereby warrant and represent to the City that: (i) it is or will become the record and beneficial owner of, or contract purchaser of, fee simple title to the Residential Parcel or a portion thereof, (ii) that no other person or entity has any legal, beneficial, contractual or security interest in the Residential Parcel except the Owner and Developer; (iii) that it has the full and complete right, power and authority to enter into this Amended Agreement and to agree to the terms, provisions, and conditions set forth in and to bind the Residential Parcel as set forth in this Amended Agreement, (iv) that all legal actions needed to authorize the execution, delivery, and performance of this Amended Agreement have been taken, and (v) that neither the execution of this Amended Agreement nor the performance of the obligations assumed by the Owner or Developer will (a) result in a breach or default under any agreement to which the Owner or Developer is a party or to which it or the Residential Parcel is bound or (b) violate any statute, law, restriction, court order or agreement to which the Owner, Developer, or the Residential Parcel are subject.

R. **Calendar Days and Time.** Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or Federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or Federal holiday.

S. **No Third Party Beneficiaries.** No claim as a third party beneficiary under this Amended Agreement by any person, firm or corporation shall be made, or be valid, against the City or the Owner or Developer.

SECTION 12. TERM. This Amended Agreement shall be in full force and effect from its Effective Date through the date that is 5 years following the expiration of the Original Annexation Agreement; provided however that Title I of this Amended Agreement shall be in full force and effect as of the Effective Date and continuing until expiration of the Original Annexation Agreement in accordance with Title I, Paragraph D of this Amended Agreement, at which time it shall be incorporated into Title II of this Amended Agreement as provided in said Section. Upon expiration of the term of this Amended Agreement, the Owner shall have a right to pursue an extension of this Amended Agreement for additional 5-year term; provided the intent of the Annexation Agreement and this Amended Agreement is met.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized corporate officers as of the dates set forth below their respective signatures.

CITY OF CRYSTAL LAKE, an Illinois municipal corporation

By: _____
Mayor

Attest: _____
City Clerk

Date of Execution: _____

CONTINENTAL 544 FUND LLC, a Delaware limited liability company

By: Continental Properties Company, Inc., a Wisconsin corporation, its manager

President, Daniel J. Minahan:

_____

Date of Execution: _____:

CHICAGO TITLE LAND TRUST COMPANY as Trustee of a Trust Agreement dated April 30, 2017, and known as Trust Number 8002364049

By: _____

Date of Execution: _____

[Notarial blocks for signatures appear on following page.]

STATE OF ILLINOIS)
) SS
COUNTY OF McHENRY)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____ and _____, personally known to me to be the Mayor and City Clerk, respectively, of the CITY OF CRYSTAL LAKE, and personally known to me to be the same persons whose names are subscribed to the foregoing First Amendment to Annexation Agreement and Planned Development Agreement, appeared before me this day in person and severally acknowledged that they signed and delivered said First Amendment to Annexation Agreement and Planned Development Agreement as such Mayor and Clerk of said City pursuant to authority given by the Corporate Authorities of said City, as their free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

Given under my hand and official seal, this ___ day of _____, 2020.

_____
Notary Public

My Commission Expires:

_____

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, _____, a notary public in and for the County and State aforesaid, do hereby certify that _____, personally known to me to be the _____ of **CHICAGO TITLE LAND TRUST COMPANY** as Trustee of a Trust Agreement dated April 30, 2017, and known as Trust Number 8002364049, and personally known to me to be the same person whose name is subscribed to the foregoing First Amendment to Annexation Agreement and Planned Development Agreement, appeared before me this day in person and acknowledged that s/he signed and delivered said Amended Agreement to Annexation and Development Agreement as _____ of said corporation, as his/her free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this ___ day of _____, 2020.

_____
Notary Public

My Commission Expires:

_____

STATE OF _____)
) SS
COUNTY OF _____)

I, _____, a notary public in and for the County and State aforesaid, do hereby certify that Daniel J. Minahan, personally known to me to be the President of Continental Properties Company, Inc., a Wisconsin corporation, manager of **CONTINENTAL 544 FUND LLC**, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing First Amendment to Annexation Agreement and Planned Development Agreement, appeared before me this day in person and acknowledged that he/she signed and delivered said Amended Agreement to Annexation and Development Agreement as President of said corporation, as his free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this ___ day of _____, 2020.

_____
Notary Public

My Commission Expires:

_____

TABLE OF EXHIBITS

EXHIBIT A **LEGAL DESCRIPTION AND PINS**

EXHIBIT B **AMENDED PUD PLAN**

EXHIBIT C **PHASE I FINAL PUD PLANS**

EXHIBIT D **TRAFFIC STUDY**

EXHIBIT E **PUD AMENDMENT ORDINANCE**

EXHIBIT F **EMERGENCY ACCESS ROAD PLANS AND SPECIFICATIONS**

EXHIBIT A

LEGAL DESCRIPTION AND PINS

EXHIBIT B

AMENDED PUD PLAN

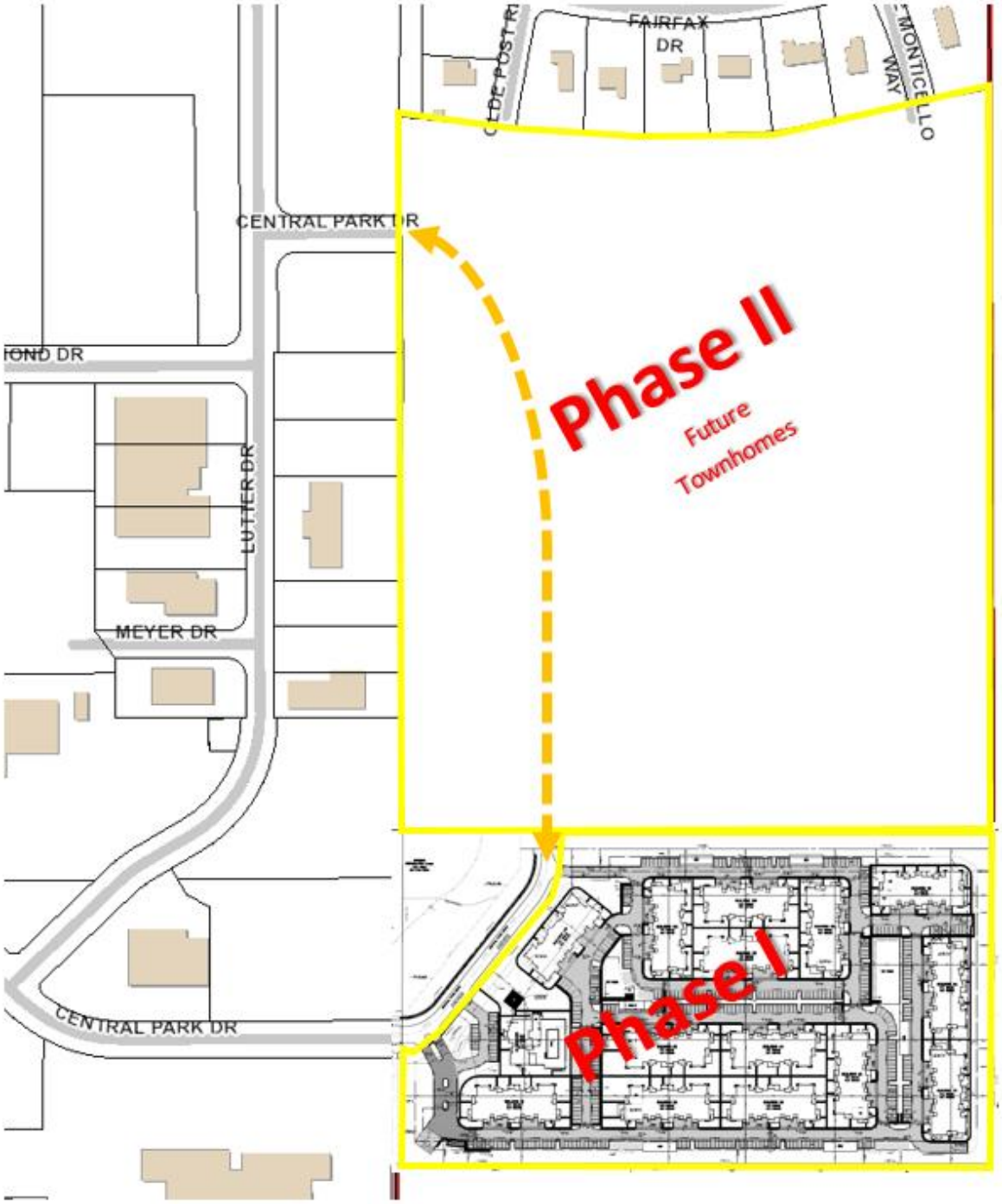


EXHIBIT C

PHASE I FINAL PUD PLANS

[See attached]

EXHIBIT D

TRAFFIC STUDY

[See attached]

EXHIBIT E

PUD AMENDMENT ORDINANCE

[See attached]

EXHIBIT F

EMERGENCY ACCESS ROAD PLANS AND SPECIFICATIONS

[See attached]

DRAFT

Ord. No. ….
File No….

The City of Crystal Lake Illinois

AN ORDINANCE GRANTING A PRELIMINARY AND FINAL PLANNED UNIT DEVELOPMENT AND PRELIMINARY AND FINAL PLAT FOR THE SPRINGS

WHEREAS, pursuant to the terms of the Petition (File #PLN-2020-00034) before the Crystal Lake Planning and Zoning Commission, the Petitioner has requested a Preliminary and Final Planned Unit Development and Preliminary and Final Plat of Subdivision for The Springs, a 280-unit residential apartment development at 1120 Central Park Drive; and

WHEREAS, the Planning and Zoning Commission of the City of Crystal Lake, pursuant to notice duly published on May 16, 2020 in the Northwest Herald, held a public hearing at 7:30 p.m., on June 3, 2020 at City Hall at 100 W. Woodstock Street, Crystal Lake, Illinois to consider the proposed Preliminary and Final Planned Unit Development and Preliminary and Final Plat of Subdivision; and

WHEREAS, on June 3, 2020, the Planning and Zoning Commission, having fully heard and considered the testimony of all those present at the public hearing who wished to testify, made findings of fact as required by law and recommended to the Mayor and City Council of the City of Crystal Lake that the proposed Preliminary and Final Planned Unit Development and Preliminary and Final Plat of Subdivision be approved, all as more specifically set forth in that certain Report of the Planning and Zoning Commission in Case #PLN-2020-00034, dated as of June 4, 2020; and

WHEREAS, it is in the best interests of the City of Crystal Lake that the Amendment to the Final Planned Unit Development be granted as requested in said Petition,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE, McHENRY COUNTY, ILLINOIS, as follows:

SECTION I: That a Preliminary and Final Planned Unit Development and Preliminary and Final Plat of Subdivision be granted to permit a 280-unit residential apartment development and two lot subdivision at 1120 Central Park Drive (19-10-476-011 & 19-15-200-011), Crystal Lake, Illinois.

SECTION II: That the Preliminary and Final Planned Unit Development be granted with the following conditions:

1. Approved plans, reflecting staff and advisory board recommendations, as approved by the City Council:
   A. Application (Continental Properties, dated 05/04/2020, received 05/12/2020)
   B. Final Plat of Subdivision (Manhard Consulting Ltd, dated 05/04/2020, received 05/12/2020)
   C. Site Plan (Manhard Consulting Ltd, dated 05/04/2020, received 05/12/2020)
   D. Engineering Plan (Manhard Consulting Ltd, dated 05/04/2020, received 05/12/2020)
   E. Sign Plan (Sign Systems Inc, dated 04/30/2020, received 05/12/2020)
   F. Landscape Plan (Manhard Consulting Ltd, dated 05/04/2020, received 05/12/2020)
   G. Elevations (Continental Properties, received 05/12/2020)
   H. Lighting Plan (Excel, dated 05/06/2020, received 05/12/2020)
   I. Tree Survey (Manhard Consulting Ltd, dated 05/06/2020, received 05/12/2020)
   J. Traffic Study (Sam Schwartz, dated 05/01/2020)

2. Add evergreen tree species to the common areas and perimeter buffer area along the eastern property line.

3. Work with staff to finalize easement locations for municipal utilities.

4. Emergency Access Route.
   A. The Owners shall prepare and submit a proposed emergency access roadway for review and approval by city staff. The approved emergency access roadway shall be installed prior to the issuance of the 201st certificate of occupancy.
   B. The temporary access can be constructed with a temporary material such as RAP (reclaimed asphalt pavement) as the access will be removed when Central Park Drive is extended/completed. Work with staff to determine an appropriate material.

5. Traffic/Future Roadway Improvements.
   A. The petitioner must contribute their proportionate fair share of the construction costs for the improvements to Central Park Drive/ Lutter Drive and IL Route 31/James R. Rakow Road/Central Park Drive based on the projected traffic volume increase for the proposed development as determined by the traffic impact study dated 05 May 2020 by Sam Schwartz. Said contributions are 12.4% and 3%, respectively.
   B. The petitioner shall provide a Letter of Credit, Bond or Escrow payment for its share of the above mentioned improvements. Cost participation for off-site improvements will be calculated once a cost estimate has been provided based on the recommendation of the City's traffic engineering consultant as approved by the City's Director of Public Works. In the event that the final cost sharing amount is not determined prior to the time the petitioner is issued a building permit for the site, the petitioner shall provide a Letter of Credit, Bond or

Escrow payment in an amount reasonably estimated by the Director of Public Works, by the issuance of a certificate of occupancy for any building on the site. Notwithstanding the foregoing, in the event that the petitioner executes an agreement (which shall be in a form reasonably satisfactory to the Director of Public Works and the City Attorney) to be recorded against the site that ensures the payment of the final cost-sharing amount by the petitioner or petitioner's successor in ownership, the requirement for a Letter of Credit, Bond or Escrow payment shall be waived.

C. Staff is to explore opportunities to improve the operation and safety at the Central Park and Lutter intersection based on the existing concerns identified in the traffic study.

6. The petitioner shall address all of the review comments and requirements of the Community Development, Public Works, Police and Fire Rescue Departments, as well as the City's stormwater consultant, Christopher B. Burke Engineering.

7. The northern lot line of lot 1 may shift north by approximately 30 feet to accommodate a proposed berm. (Added due to proposed landscape berm)

SECTION III: That the City Clerk be and is hereby directed to amend all pertinent records of the City of Crystal Lake to show the issuance of a Preliminary and Final Planned Unit Development and Preliminary and Final Plat of Subdivision in accordance with the provisions of this Ordinance, as provided by law.

SECTION IV: That this Ordinance shall be in full force and effect from and after its passage, approval and publication as provide by law.

Ord. No.
File No.

DATED at Crystal Lake, Illinois, this 7th day of July, 2020.

City of Crystal Lake, an
Illinois municipal corporation

_____
Haig Haleblian, Acting Mayor

SEAL

ATTEST:

_____
Nick Kachiroubas, City Clerk

Passed: July 7, 2020
Approved: July 7, 2020

Agenda Item No: 12

City Council
Agenda Supplement

Meeting Date: July 7, 2020

Item: Lakeside Legacy Foundation 2020 Lakeside Fest and Fireworks Show

Council Discretion:

1. Motion to rescind the special event application approval of the 2020 Lakeside Festival planned to be held September 18 through September 20, 2020.

2. Motion to adopt a resolution authorizing the City Manager to issue a written work suspension notice to American Fireworks Company suspending the 2020 fireworks show indefinitely, per Article 3.5 of the Contract between the City of Crystal Lake and American Fireworks dated March 3, 2020.

Staff Contact: Eric T. Helm, Deputy City Manager
Michelle Rentzsch, Director of Community Development

Background:

2020 Lakeside Festival Cancellation

At the June 16, 2020 City Council meeting, the City Council approved the special event application request of the Lakeside Legacy Foundation for the 2020 Lakeside Festival for September 18 through September 20, 2020. The City recently received notification that the Lakeside Legacy Foundation will be cancelling the Festival due to ongoing uncertainty related to the COVID-19 pandemic.

Per the Governor's Restore Illinois Plan, festivals are allowed to operate when the State or Region reaches Phase 5 - Restored. Currently McHenry County is in Phase 4 - Revitalization. Since reaching Phase 5 is unlikely this fall, the organizers felt cancellation was the most prudent decision.

Suspension of 2020 Fireworks Show

As the Council is aware, the final status of the 2020 fireworks show, initially scheduled for Sunday, July 5, 2020, has yet to be formally determined. The fireworks show is typically the last day of the Lakeside Festival; however, with the cancellation of the Lakeside Festival, the 2020 fireworks show cannot coincide with this event.

The City has the option of either rescheduling the show to another date in 2020 or indefinitely suspending the 2020 show. If the show is indefinitely suspended, there would be no fireworks show in 2020.

City staff was initially notified by the fireworks vendor that the City would be responsible for costs in the range of $10,000 - $15,000 if the City determined that the show would not proceed in 2020. The vendor explained that these costs were for pre-paid insurance and shipping costs. Since that time, the City's legal counsel has been able to communicate with the vendor that the City is not responsible for these costs per section 3.5 of the City's contract with American Fireworks, which allows the City to suspend services at any time.

> 3.5 Suspension of Services. The City, at any time and for any reason, may suspend work on any or all Services by issuing a written work suspension notice to the Consultant. The Consultant must stop the performance of all Services within the scope of the suspension notice until the City directs the Consultant in writing to resume performance.

There is no requirement that the contractor receive compensation until the show is actually performed. Based on the contract, the City Council could suspend the 2020 show indefinitely, with no financial obligation to the vendor if the show is not performed in 2020. The vendor is still under contract for the performance of the 2021 show, which is scheduled for Sunday, July 4, 2021.

Votes Required to Pass:

Simple majority vote

DRAFT

Res. 20R-___

RESOLUTION

BE IT RESOLVED BY THE ACTING MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE that the City Manager is authorized to issue a written work suspension notice to American Fireworks Company suspending the 2020 fireworks show indefinitely per Article 3.5 of the Contract between the City of Crystal Lake and American Fireworks dated March 3, 2020.

DATED this 7th day of July, 2020.

CITY OF CRYSTAL LAKE, an
Illinois municipal corporation,

By: _____
ACTING MAYOR

SEAL

ATTEST

_____
CITY CLERK

PASSED: July 7, 2020
APPROVED: July 7, 2020

Agenda Item No: 13

City Council
Agenda Supplement

Meeting Date: July 7, 2020

Item: Residential/Small Business Electrical Aggregation RFP

Council Discretion:

Option 1 – Fixed Rate Aggregation Program
Adopt a Resolution authorizing the City Manager to execute a contract for the purchase of electricity with a supplier for a 12, 24, or 36 month term for the fixed rate supply of electricity, based on pricing to be presented at the July 7th City Council meeting.

Option 2 – ComEd Rate Match Aggregation Program with Annual Civic Contribution and Renewable Energy Option
Adopt a Resolution authorizing the City Manager to execute a contract for the purchase of electricity with MC Squared Energy Services for a 24 month term, and elect one of the following options:

- 100% renewable energy with a $32,000 Civic Contribution; or
- 50% renewable energy with a $76,000 Civic Contribution; or
- 25% renewable energy with a $98,000 Civic Contribution; or
- 0% renewable energy with a $120,000 Civic Contribution.

Option 3 – Discontinue Aggregation Program
Motion to adopt a Resolution to reject all bids for electrical aggregation supply services and revert to default ComEd pricing.

If Option 1 or 2 are selected:
Motion to award the contract for consultant services for residential /small business electrical aggregation to Northern Illinois Municipal Electric Collaborative (NIMEC) and adopt a Resolution authorizing the City Manager to execute an agreement with NIMEC in the amount of $.00129/kWh.

Staff Contact: Eric T. Helm, Deputy City Manager

In 2012, City voters approved a referendum allowing the City of Crystal Lake to have the authority to arrange for the supply of electricity for residents and small commercial retail establishments (those that use less than 15,000 annual kWh) through aggregation. The City's electrical aggregation program is scheduled to expire in October 2020. With the expiration of the current program, the City has three options: *one, continue the aggregation program by acquiring a fixed rate for all Crystal Lake participants; or two, continue the aggregation program by providing electrical supply pricing that matches the variable ComEd rate with an annual civic contribution and renewable energy option; or three, end the aggregation program and revert all participants to ComEd.*

These three options are summarized in the table on page 2 of this agenda supplement.

	Option 1 – Fixed Rate	*Option 2 – ComEd Match with Annual Civic Contribution and Renewable Energy Option*	*Option 3 – End Aggregation Program*
Program Type:	Electrical Aggregation*	Electrical Aggregation*	-
Participant Electricity Rate:	Fixed rate for term of program based on supplier pricing	Variable ComEd Rate	Variable ComEd Rate
Advantages:	Residents will pay a consistent, flat rate for the term of the program.	• Residents are guaranteed to pay the ComEd Rate. • *Renewable Energy Option:* The City can select renewable energy sources through the purchase of Renewable Energy Certificates (REC). • *City Receives a Civic Contribution:* Based on the amount of RECs purchased, the City would receive a civic contribution. This contribution is available with no restrictions on usage.	Residents are guaranteed to pay the ComEd Rate.
Disadvantages:	• Due the anticipated future pricing environment, the City's electrical consultant does not recommend this option. • As the ComEd Rate fluctuates, there is a possibility that the resident will pay more than the ComEd Rate.	The ComEd Rate will be between 6.41 cents to 7.41 cents from June 2020 to May 2021. If the flat rate is less than the ComEd Rate, residents will have benefited from the flat rate program.	The ComEd Rate will be between 6.41 cents to 7.41 cents from June 2020 to May 2021. If the flat rate is less than the ComEd Rate, residents will have benefited from the flat rate program.

* Electrical Aggregation program has the following attributes:

- *Participants can choose to participate, with flexibility to "opt-out":* All Crystal Lake residents shall be initially opted into the program, but may "opt-out" at any time. If residents or small businesses find a lower rate they can use the supplier of their choice.
- *No Termination or Joining Fees:* Participants may revert to ComEd or any other supplier without suffering any financial penalty. Participants can also join the program during the term without penalty from the City selected supplier.
- *Participants will still receive a bill from ComEd and ComEd will still be responsible for the transmission of electricity.*
- *Participants can still utilize budget billing and ComEd hourly billing.*

City special legal counsel David Pardys reviewed the RFP, agreement documents, and the program scope. He confirmed that the program complies with State law and that the agreement documents are acceptable.

Electrical Supply Pricing

NIMEC received bid pricing for Option 1 and Option 2 for the City's consideration. NIMEC is an electrical broker that manages electrical supply contracts and bidding for numerous municipalities in the Chicago suburbs. NIMEC has managed the City's electrical aggregation program, along with many other communities, for the past eight years. NIMEC was originally selected through a process outlined on page 5 of this agenda supplement. The pricing for Option 1 will be presented at the July 7th meeting and the Option 2 pricing is shown below.

Option 1 - Fixed Rate Aggregation Program
For the past eight years, the City's aggregation program has focused on using the collective buying power of the entire City to receive a fixed rate for an electrical supply price which is lower than the ComEd rate. The City has been largely successful in this objective. Recently, pricing for the fixed rate aggregation program has not been competitive when compared to the ComEd rate and fewer communities have been using this option. Electrical supply pricing is a commodity, so the price changes from day to day. Due to this fact, the pricing for the fixed rate will be supplied at the July 7th City Council meeting for the City Council's consideration.

Option 2 - ComEd Rate Match with Annual Civic Contribution and Renewable Energy Option
The second option, is an aggregation program that requires the supplier to match the ComEd rate and provide other benefits to the City. This is still an aggregation program since it also uses the collective buying power of the entire City to receive advantageous terms from an electric supplier. This type of program is becoming popular among other Chicago areas communities including Arlington Heights, Buffalo Grove, Gurnee, Libertyville, Orland Park, Oswego, South Elgin and Tinley Park.

This program involves the City receiving renewable energy and a civic contribution. The level of the contribution is based on the amount of renewable energy that the City selects. For example, using the figures from MC Squared Energy Services, if the City elects to receive 100% of the program's electricity from renewable sources, it would receive a civic contribution of $32,000; however, if the City elects to receive 0% from renewable sources, it would receive a civic contribution of $120,000.

Renewable Energy Certificate (REC)	√ MC Squared Energy Services Civic Contribution	Eligo Energy Civic Contribution
0%	$120,000	$107,947
25%	$98,000	$85,447
50%	$76,000	$62,948
100%	$32,000	$17,950

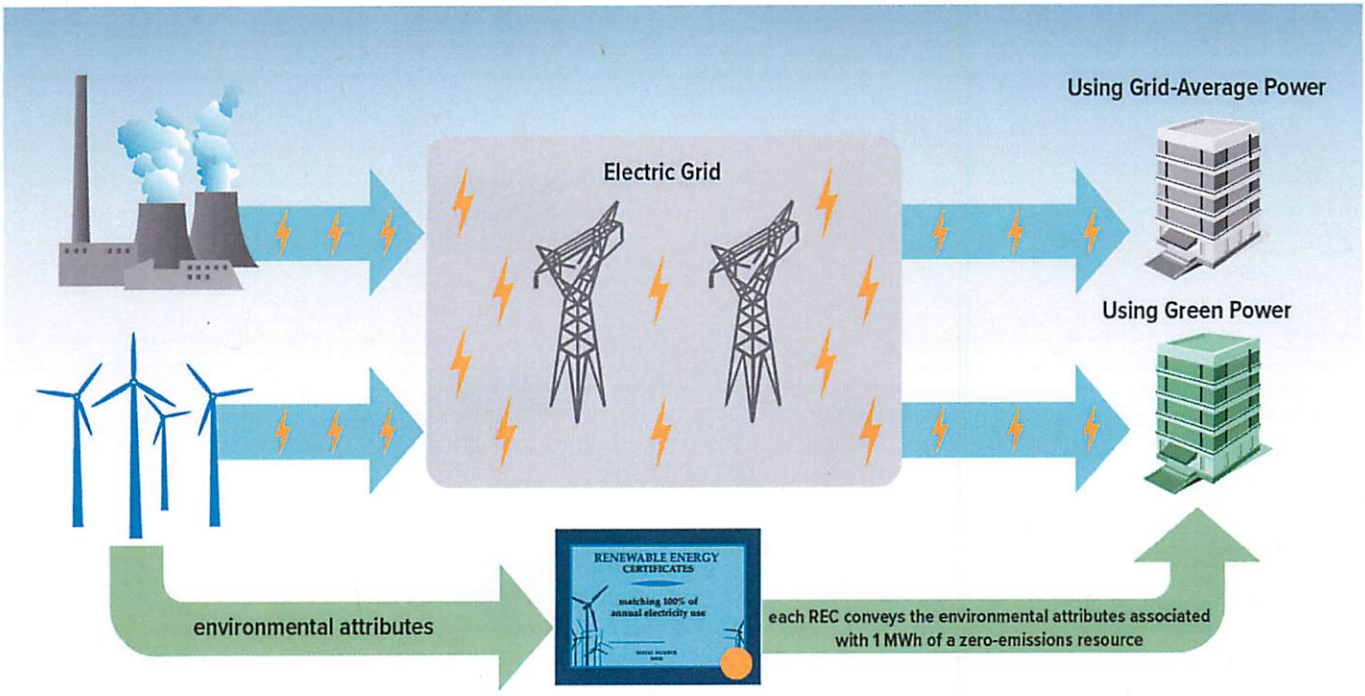
√ Recommended proposer, if the City Council selects Option 2.

Based on the amount of civic contribution, if the City Council would choose this option, NIMEC recommends that the City choose MC Squared Energy Service for a 24-month term.

The mechanics of the renewable energy certificates and the supplier's business model for this option are defined on pages 4 and 5 of this agenda supplement.

Renewable Energy Certificates (REC)

The RFP provides the option that the supplier must purchase Renewable Energy Certificates (REC) for up to 100% of the power supplied to program participants at no additional cost to program participants. Attached to this agenda supplement are documents from the Environmental Protection Agency (EPA) describing REC. The below graphic shows the logistics of the REC and how it corresponds to energy use.

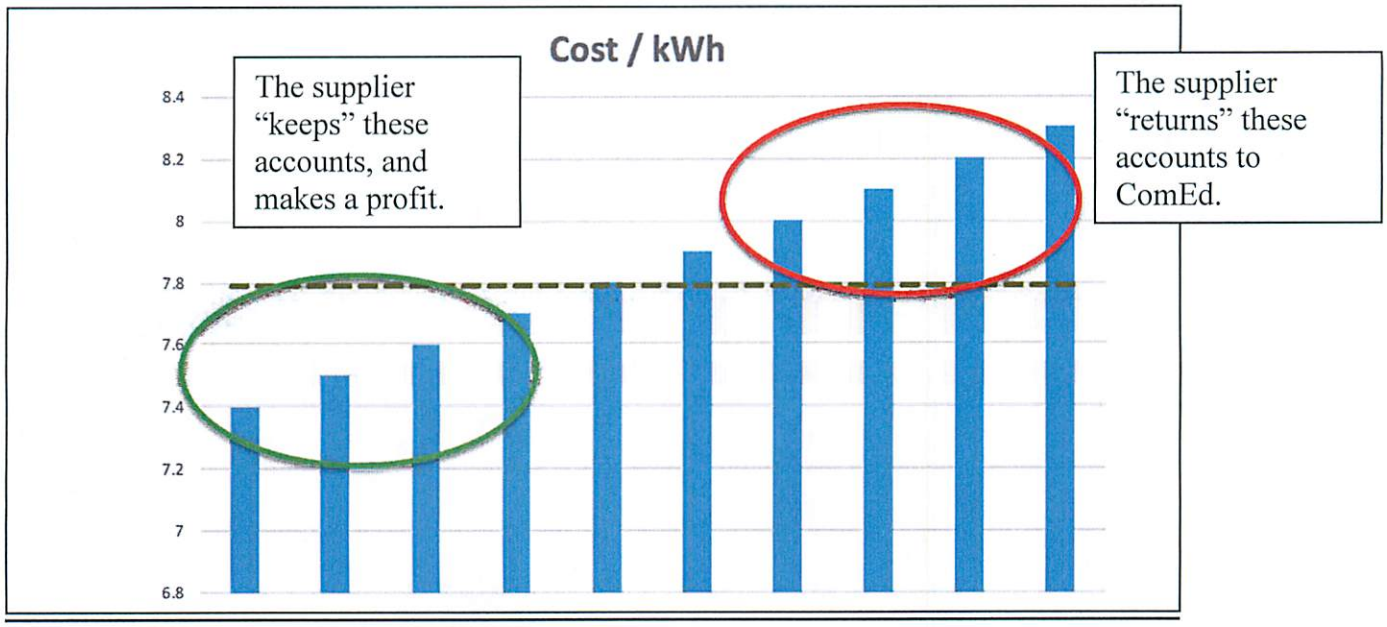


Source: EPA Green Power Partnership ("Offsets and RECs: What's the Difference?")

As shown in the above graphic, electricity generated by renewable and non-renewable sources alike enter the electric grid. The method used to supply the electricity is indistinguishable to the end user. REC contain a unique serial number attached to each megawatt-hour of renewable electricity generated for the electric grid. Municipalities can purchase these units through a REC for each megawatt-hour used by the municipality. These funds then encourage renewable energy production. This allows the municipality to claim the use of renewable electricity. REC are highly regulated by the Federal government, so the purchase can be tied to renewable energy production. Additional information is available in a four-minute video at www.tinyurl.com/GreenEPA.

Supplier Business Model

The electrical supplier is able to offer a civic contribution and REC due to their unique ability to bifurcate Crystal Lake resident accounts once these accounts are aggregated. Individual Crystal Lake households use different amounts of electricity at different times. Using this information, the supplier will return some of the accounts to ComEd, while keeping other accounts. The supplier makes a profit on the accounts that they serve by charging these accounts the ComEd rate, but actually buying electricity for the account on the wholesale market at a lower rate than the ComEd rate. The difference is the supplier's profit. The accounts that will not be profitable are returned to ComEd. ***It is important to note that all Crystal Lake accounts will be charged the same rate, the current ComEd rate.*** This process is shown in the below chart. Each blue bar represents a hypothetical Crystal Lake household account for illustrative purposes.



In this example, the ComEd rate is 7.8 cents. The actual costs to serve the accounts vary from 7.4 cents to 8.3 cents.

Aggregation Consultant Selection

In order to prepare an RFP for the aggregation of electrical supply, it is important to contract with a consultant/broker.

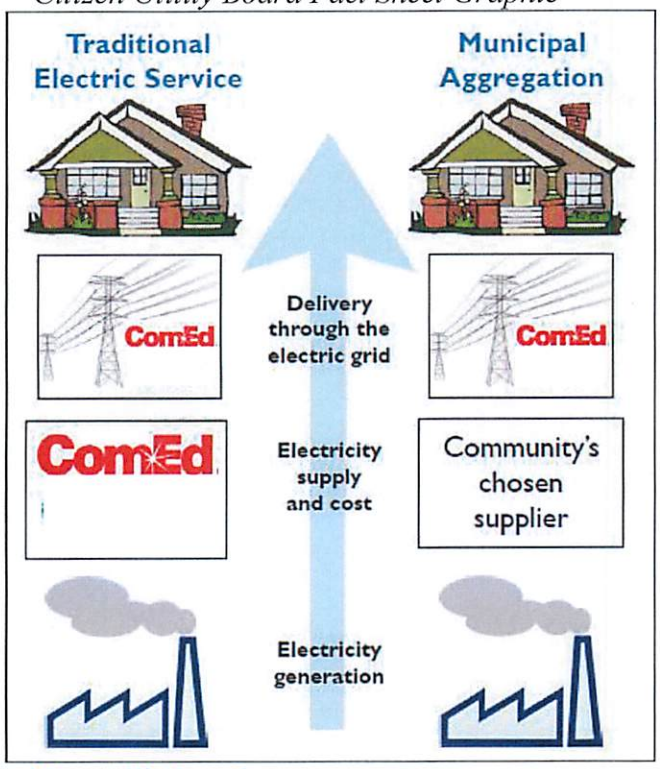
The broker is responsible for drafting the operations plan, completing the RFP, overseeing the transition to the new Alternative Retail Electric Supplier (ARES), and monitoring the contract. The City does not pay the broker directly, but the broker receives compensation from the winning ARES through the final electric supply rate charged to the residents. Without a consultant, the implementation of a municipal aggregation program brings about its own set of unique challenges. The City would need to be able to compile, review and analyze load data, develop the requirements for a successful RFP process, conduct negotiations with the ARES, and provide the staff required to manage day-to-day contract monitoring on behalf of the residents.

Based on the result of a competitive proposal process performed by the McHenry County Council of Governments in 2012, it is recommended that the City continue to contract with the Northern Illinois Municipal Electric Collaborative (NIMEC) for its aggregation consultant services. NIMEC was selected by the City in March 2012 to perform the initial electrical aggregation bid. During the entire process, City staff has been very satisfied with the services provided by NIMEC and would recommend using them again. The proposed contract with NIMEC is also attached. If the City does not select any of the bids received, and chooses not to pursue electrical aggregation, NIMEC will not receive compensation and the contract with the broker consultant will be nullified. NIMEC's fee is embedded in the aggregation pricing paid by customers and is not a direct fee for the City. Including this fee, residents will still pay a rate equal to the ComEd rate for the term of the program.

Municipal Electricity Aggregation Background

Electrical aggregation is depicted in the below graphic. This graphic compares the traditional electric service model, with only one supplier being ComEd, and the municipal aggregation model, which allows each municipality to choose a supplier for the community. Municipal aggregation allows communities to use the collective buying power of its residents to potentially receive beneficial pricing from electric suppliers. *An important element of the aggregation concept is that all residents and small businesses have a choice as to whether to participate in the program through an "opt-out" period. Residents are allowed to remain in the City's aggregation program or use any supplier of their choice.*

Citizen Utility Board Fact Sheet Graphic



www.citizenutilityboard.org

In essence, within a competitive energy marketplace, municipal aggregation provides local governments the purchasing power to buy in bulk by bidding out the total electric usage of its residents and small businesses resulting in beneficial electric rates for their respective customers. It is important to note at the onset of any discussion concerning municipal aggregation that this type of program will only address the "electricity supply" costs for a community's residents and does not, in any way, modify or reduce the associated distribution costs that are charged on their electric bills by Commonwealth Edison (ComEd).

ComEd is paid a distribution charge, which is utilized to fund the operations of the electric distribution system. The distribution charges imposed by ComEd are regulated, reviewed and approved by the ICC. ComEd is not allowed to add any additional mark-up for the energy charges included on their electric bills and must pass on only the associated costs to the end users. The energy charges normally incurred on a resident's electric bill typically represent more than 50% of the total bill and can range even higher depending on the electricity usage at each individual residence.

It is important to note that ComEd remains solely responsible for the distribution of all electricity to our residents no matter which electric supplier is selected to serve as the customers' chosen supplier. Any loss of power, downed wires, or other distribution issues will continue to be serviced by ComEd, even if the City decides to move forward in the future with a municipal aggregation program and the residents approve the associated referendum.

History of Municipal Aggregation

In December of 1997, the Illinois State Legislature adopted the Electric Service Customer Choice and Rate Relief Law of 1997 (Public Act 90-561). This law paved the way for deregulation and the formation of a competitive marketplace for the purchase of electricity, allowing all of ComEd's customers to eventually be able to choose their own electric suppliers, technically referred to as Alternative Retail Electric Suppliers (ARES). The law also required ComEd to transition from functioning as a combined electric supplier and distributor to instead focus on only providing distribution services to its customers, in effect requiring ComEd to sell or transfer all of its power generation capabilities.

The State Legislature eventually amended the Illinois Power Agency Act to allow for the implementation of municipal aggregation programs. The Act also required a report be completed by the Illinois Commerce Commission (ICC) and provided to the State Legislature that would review the value of municipal aggregation programs. A variety of states, including Massachusetts, Ohio, California and Pennsylvania, have all conducted the deregulation of their respective electric generation and adopted a competitive marketplace for the purchase of energy. In addition, each of these states has also instituted municipal aggregation programs.

The City utilizes an opt-out municipal aggregation program. In this model, with limited exceptions, all residents and small business are included within this program unless they return a notice indicating their intention to opt out. Again, a contract is negotiated on behalf of the residents and small businesses that are eventually transitioned to the new electric supplier selected by the municipal aggregation process. Residents and small businesses that are currently under contract with another ARES are automatically excluded from the opt-out program. In addition, residents and small businesses that have elected ComEd's hourly rate (RRTP for residential) or are on a "bundled hold" because they have recently returned to ComEd after being with a different supplier, may not transfer to the ARES. The remaining residents and small businesses that are still on the ComEd rate plan are notified by the new electric supplier and provided a window to indicate their desire to opt out of the program. If the customer fails to contact the chosen electric supplier within the opt-out timeframe, they are automatically converted to the new electric supplier. This type of program normally results in a beneficial electric rate achieved for all participants.

Votes Required to Pass:
Simple majority

DRAFT

Res. _____

RESOLUTION

A RESOLUTION AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH NORTHERN ILLINOIS MUNICIPAL ELECTRIC COLLABORATIVE

WHEREAS, on March 20, 2012, ballot voters approved a referendum allowing the City of Crystal Lake to undertake municipal electric aggregation, as allowed under the Illinois Power Agency Act, 20 ILCS 3855/1-92, and the City thereafter established an electric aggregation program for residential and small commercial retail customers; and

WHEREAS, the process of municipal electric aggregation requires technical expertise and the City of Crystal Lake, through a formal review process, conducted in 2012, determined that Northern Illinois Municipal Electric Collaborative ("NIMEC") was best qualified to provide the desired services; and

WHEREAS, NIMEC has provided consulting services to the City of Crystal Lake in connection with the development, procurement, and implementation of its municipal electric aggregation program since 2012, and NIMEC has performed such services in a highly satisfactory manner; and

WHEREAS, the Mayor and City Council have determined that it is in the best interests of the City and its residents to continue to utilize NIMEC's consulting services in connection with the City's municipal electric aggregation program;

NOW, THEREFORE, BE IT RESOLVED by the Acting Mayor and City Council of the City of Crystal Lake that the Northern Illinois Municipal Electric Collaborative (NIMEC) is hereby appointed as the City's broker for purposes of obtaining a supply of electricity for residential and small business customers through the aggregation of electricity and for the City's municipal needs, and City Staff is hereby directed to take all actions necessary to establish said broker relationship.

BE IT FURTHER RESOLVED that the City Manager be and he is hereby authorized and directed to execute a contract for consultant services for residential/small business electrical aggregation and municipal electricity purchasing with NIMEC substantially in the form attached hereto as Exhibit A, and in a final form approved by the City Manager in consultation with the City Attorney.

DATED this 7th day of July, 2020

CITY OF CRYSTAL LAKE, an
Illinois municipal corporation,

By:_____
HAIG HALEBLIAN, ACTING MAYOR

SEAL
ATTEST

_____
CITY CLERK

PASSED: July 7, 2020
APPROVED: July 7, 2020

DRAFT

RESOLUTION

A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH _____ FOR ELECTRICAL AGGREGATION SERVICES

WHEREAS, the City of Crystal Lake, on December 6, 2011, passed a resolution placing a public question on the March 20, 2012 ballot. The public question was approved by voters and allows the City of Crystal Lake to undertake municipal electric aggregation, as allowed under the Illinois Power Agency Act, 20 ILCS 3855/1-92.

WHEREAS, the City thereafter established a municipal electric aggregation program for residential and small commercial retail customers; and

WHEREAS, pursuant to such electric aggregation program, the City has issued a request for proposals ("RFP") seeking competitive bids from alternate retail electric suppliers; and

WHEREAS, the City has evaluated the response to the RFP and determined that _____ is the lowest responsive and responsible bidder;

NOW, THEREFORE, BE IT RESOLVED by the Acting Mayor and City Council of the City of Crystal Lake that the City Manager be is hereby authorized to execute a _____ month contract with the lowest responsible and responsive bidder _____ in the amount of _____ cents per kWh, for _____ months.

DATED this 7th day of July, 2020

CITY OF CRYSTAL LAKE, an
Illinois municipal corporation,

By:_____
HAIG HALEBLIAN, ACTING MAYOR

SEAL

ATTEST

_____
CITY CLERK

PASSED: July 7, 2020
APPROVED: July 7, 2020

DRAFT

Res. _____

RESOLUTION _____

A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH _____ FOR ELECTRICAL AGGREGATION SERVICES

WHEREAS, the City of Crystal Lake, on December 6, 2011, passed a resolution placing a public question on the March 20, 2012 ballot, which public question was approved by voters and allows the City of Crystal Lake to undertake municipal electric aggregation, as allowed under the Illinois Power Agency Act, 20 ILCS 3855/1-92; and

WHEREAS, the City thereafter established a municipal electric aggregation program for residential and small commercial retail customers; and

WHEREAS, pursuant to such electric aggregation program, the City has issued a request for proposals ("RFP") seeking competitive bids from alternate retail electric suppliers; and

WHEREAS, the City has evaluated the response to the RFP and determined that MC Squared Energy Services is the lowest responsive and responsible bidder;

NOW, THEREFORE, BE IT RESOLVED by the Acting Mayor and City Council of the City of Crystal Lake that the City Manager be is hereby authorized to execute a 24 month contract with MC Squared Energy and procuring Renewable Energy Certificates for ____% of the energy procured for the aggregation program, including a civic contribution of $_____, in substantially the form attached hereto as Exhibit A, and in a final form approved by the City Manager in consultation with the City Attorney.

DATED this 7th day of July, 2020

CITY OF CRYSTAL LAKE, an
Illinois municipal corporation,

By:_____
HAIG HALEBLIAN ACTING MAYOR

SEAL

ATTEST

_____
CITY CLERK

PASSED: July 7, 2020
APPROVED: July 7, 2020

DRAFT

Res. _____

RESOLUTION _____

A RESOLUTION AUTHORIZING CHANGES TO THE CITY'S ELECTRICAL AGGREGATION SERVICES

WHEREAS, the City of Crystal Lake, on December 6, 2011, passed a resolution placing a public question on the March 20, 2012 ballot, which public question was approved by voters and allows the City of Crystal Lake to undertake municipal electric aggregation, as allowed under the Illinois Power Agency Act, 20 ILCS 3855/1-92; and

WHEREAS, the City thereafter established a municipal electric aggregation program for residential and small commercial retail customers; and

WHEREAS, pursuant to such electric aggregation program, the City has issued a request for proposals ("RFP") seeking competitive bids from alternate retail electric suppliers; and

WHEREAS, the City has evaluated the response to the RFP and determined that it is in the best interests of the City and its residents to reject all bids received, suspend the aggregation program, and revert to Commonwealth Edison supply for of electricity;

NOW, THEREFORE, BE IT RESOLVED by the Acting Mayor and City Council of the City of Crystal Lake that the City Manager be is hereby authorized to suspend the aggregation program and revert all residential and small commercial retail customers that utilized aggregated electrical supply pricing, back to Commonwealth Edison for the supply of electricity.

DATED this 7th day of July, 2020

CITY OF CRYSTAL LAKE, an
Illinois municipal corporation,

By:_____
HAIG HALEBLIAN, ACTING MAYOR

SEAL

ATTEST

_____
CITY CLERK

PASSED: July 7, 2020
APPROVED: July 7, 2020

Agenda Item No: 14

City Council
Agenda Supplement

Meeting Date: July 7, 2020

Item: Joint Funding Agreement between the United States Department of the Interior, United States Geological Survey (USGS) and the City of Crystal Lake for a Water Resource Investigation of Crystal Lake with a City share of $111,100.

Staff Recommendation: Motion to adopt a Resolution authorizing the City Manager to execute the Joint Funding Agreement between the United States Department of the Interior, United States Geological Survey and the City of Crystal Lake for a Water Resource Investigation of Crystal Lake with a City share of $111,100.

Staff Contact: Michael Magnuson, P.E., Director of Public Works and Engineering

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Background

In 2017, after large, successive heavy rainfall events, the City started the Stormwater Solutions Initiative. Through this initiative, staff divided the flooding concerns into nine study areas and held over 20 neighborhood stakeholder meetings with the residents to obtain their feedback. One common question raised throughout these meetings was regarding how water leaves the lake and can the flow be altered or seasonally controlled. The multi-year program developed from the Stormwater Solutions initiative identified the need to study the outfall of the lake (the weir and culvert under Lake Avenue).

Crystal Lake, the City's namesake, is fed by groundwater. There is no direct inlet into the lake. Water leaves the lake through groundwater and through a weir and culvert structure near Main Beach. According to an Illinois State Water Survey report published in 1957, the original dam across the lake was constructed in 1915 by the Knickerbocker Ice Company. The current weir and culvert was built in 1921 (almost 100 years ago.) It does not appear that there has been any significant modifications to the weir and culvert since 1921. The elevation and configuration of the weir structure controls how much surface water can leave the lake under normal conditions.

During the 2017 flooding event, the water in the lake was so high it overtopped the banks of the lake, west of the weir, and crossed over Lake Avenue causing large flooding and damage to nearby homes in the Country Club area. This was the first time, that City staff is aware of, that the lake

overtopped and crossed Lake Avenue. Since 2017, due to the unprecedented amounts of rainfall that has been seen over recent years, water has flowed over the banks of the lake, but not crossed Lake Avenue. In May of this year, the lake overtopped and water was observed up to the edge of Lake Avenue (close to overtopping).

Surface water leaves the lake at the weir (start of Crystal Creek) and flows through a series of culverts (recently replaced and upsized) past the Crystal Lake Country Club where it flows into an undersized storm sewer behind the back of South Elementary School and in front of Lundahl Middle School. This undersized sewer results in surface flooding in the vicinity of the Country Club. South of the middle school, it returns to surface flow "in the creek" and passes under Barlina Road, McHenry Avenue and Dartmoor Drive where it flows alongside of the City's South Wastewater Treatment Plant/McHenry Avenue before flowing underneath Rakow Road and eventually reaching the Fox River in Algonquin (see attached map).

Current Efforts

As mentioned above, the City replaced and upsized the failing culverts underneath Broadway Avenue, Country Club Road, Barlina Road, McHenry Avenue and Dartmoor Drive in 2019. The City has also included "re-opening" the section of the creek between the schools in the multi-year Capital Improvement Program (CIP). The City is currently completing a watershed plan that will be submitted for approval by the Illinois Environmental Protection Agency (IEPA). This plan will make the City eligible for IEPA Section 319 grants to help fund restoring the creek to a natural setting along the schools. "Opening" of the creek is necessary in order to accommodate any additional flows out of the lake. Adjustments/changes to the weir cannot take place until this is accomplished.

U.S Geological Survey Study

Groundwater plays a significant role with the lake both as its primary source of water into the lake and as water leaving the lake. Prior to assessing whether changes in the weir would have measurable benefits, the interaction of groundwater flows has to be understood just as much as the surface water flows. Studying groundwater flows is complex and requires special expertise. Any proposed modifications to the weir must be based on robust and defensible research and study. Staff contacted the USGS to see if they would be interested in conducting such a study of Crystal Lake. They have agreed to conduct *and also partially fund* the study. A copy of the scope of services is attached. The total cost of the study is $158,600. The City's share is $111,100 and USGS share is $47,500.

The study will take 3 years to complete and the costs for each year are broken down as follows:

	2020	**2021**	**2022**	**Total**
City of Crystal Lake	$48,600	$50,300	$12,200	**$111,100**
USGS	$20,800	$21,500	$5,200	**$47,500**

The first year to year and a half will consist of groundwater monitoring to understand the flows entering and exiting the lake. The last year will focus on analysis. The City will conduct public

meetings as the study moves into the analysis phase. This study is a precursor to formally considering any alterations of the weir.

Funds for the first year of the study have been budgeted in the City's FY 2020/2021 Budget ($59,400) with an additional $61,500 identified in the Capital Improvement Plan for FY 2022. If the City Council agrees to fund the study, staff will also reach out to Lakewood and the Crystal Lake Park District to seek their future financial participation as well.

Upon completion of this study, there will be a better understanding of how lowering or widening the weir structure affects the lake and the groundwater levels surrounding the lake. This study is necessary prior to studying any type of alteration (permanent or seasonal) to the weir.

Votes Required to Pass:
A simple majority vote.



LOCATION MAP

DRAFT

RESOLUTION

BE IT RESOLVED BY THE ACTING MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE that the City Manager has the authority to execute a Joint Funding Agreement with the United States Department of the Interior, United States Geological Survey for a Water Resource Investigation associated with the Assessment of Groundwater and Surface Water Interaction and Lake Management Resiliency for Crystal Lake.

DATED this 7th day of July, 2020.

CITY OF CRYSTAL LAKE, an
Illinois Municipal Corporation,

By: _____
Haig Haleblian, ACTING MAYOR

SEAL

ATTEST

_____
CITY CLERK

PASSED: July 7, 2020
APPROVED: July 7, 2020

Agenda Item No: 15

City Council
Agenda Supplement

Meeting Date: July 7, 2020

Item: Lease Agreement with Lou Street Lockup

Staff Recommendation: Motion to adopt a Resolution authorizing the City Manager to execute a one-year lease agreement with Lou Street Lockup for the use of the property at 6210 Lou Street, at a rate of $2,000 per month.

Staff Contact: Eric T. Helm, Deputy City Manager

Background:

The City's Police Department utilizes off-site storage for vehicles and equipment that have been impounded and are required to be stored. Since 2007, the City has utilized Lou Street Lockup, located at 6210 Lou Street, for this purpose. The facility currently meets the City's storage needs and the monthly rent of $2,000 has not increased since 2007. Due to these factors, it is recommended that the lease with Lou Street Lockup continue until July 17, 2021.

There is no change to the attached "Industrial Building Lease" language that was previously reviewed and approved by City legal counsel.

Votes Required to Pass:

Simple majority

DRAFT

Res. _____

RESOLUTION

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE that the City Manager be and he is hereby authorized and directed to execute a one (1) year lease agreement with Lou Street Lockup in the form attached hereto as Exhibit A for the use of the property at 6210 Lou Street, Suite 1 at a rate of $2,000 per month.

DATED this 7th day of July, 2020.

CITY OF CRYSTAL LAKE, an
Illinois municipal corporation,

By:_____
ACTING MAYOR

SEAL

ATTEST:

_____
CITY CLERK

PASSED: July 7, 2020
APPROVED: July 7, 2020

Agenda Item No: 16

City Council
Agenda Supplement

Meeting Date: July 7, 2020

Item: Mobile Radios for Chief Fire Officer Vehicles

Staff Recommendation: Motion to adopt a Resolution authorizing the City Manager to execute an agreement with Motorola Solutions, Inc., for the purchase of six (6) dual band, mobile radios in the total amount of $41,761.02 through the State of Illinois Joint Purchase Program.

Staff Contact: Paul DeRaedt, Fire Rescue Chief

Background:

On June 4, 2019, the City of Crystal Lake adopted a Resolution for the migration of the City's public safety radio system to the State of Illinois STARCOM 21 public safety radio network, the authorization of the monthly subscription requirements, and the purchase of mobile and portable radios and radio equipment associated with this migration.

The State of Illinois radio network is operated by Motorola Solutions, Inc. as part of the Illinois Joint Purchase Program. The STARCOM 21 Master Contract (DIT7016660) allows for a 27% discount off the Motorola catalog list price for STARCOM 21 related products for STARCOM 21 subscribers.

The STARCOM 21 radio system is the State of Illinois foundation for interoperable communications. Police, Fire, EMS, Public Works, and Emergency Management are examples of agencies that operate on this system daily. Being able to communicate effectively on this system we are now a part of is critical to our ability to deliver our services.

The six (6) dual band, mobile radios that are capable of operating on the State's STARCOM 21 radio network will be installed in the Department's Chief Fire Officer vehicles. During incident operations, it is common practice for a Chief Officer to work on 2-3 radio frequencies at one time to provide direction to our personnel operating on the scene, as well as communicating with our dispatch center and other agencies. As our Chief Fire Officers also respond to other communities to provide mutual aid, it is becoming common that dual band radios are necessary to achieve interoperable communications. These radios will support our communications capabilities that are already in place.

Recommendation:

It is the Fire Rescue Department's recommendation to purchase six (6) dual band, mobile radios from Motorola Solutions, Inc. through the State of Illinois Joint Purchase Program in the total amount of $41,761.02. Funds have been allocated in the current fiscal year budget for this expense.

Votes Required to Pass:

Simple majority

DRAFT

RESOLUTION

BE IT RESOLVED BY THE ACTING MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE that the City Manager be and he is hereby authorized and directed to execute, and the City Clerk is hereby directed to attest, the purchase of six (6) dual band, mobile radios from Motorola Solutions, Inc. at the cost of $41,761.02 through the State of Illinois Joint Purchase Program.

Dated this 7th day of July, 2020.

CITY OF CRYSTAL LAKE, an
Illinois Municipal Corporation

By: _____
Haig Haleblian, Acting Mayor

SEAL

ATTEST:

_____
Nick Kachiroubas, City Clerk

PASSED: July 7, 2020

APPROVED: July 7, 2020

Agenda Item No: 18

City Council
Agenda Supplement

Meeting Date: July 7, 2020

Item: Sign Variation for Exceed Flooring adding 89.24 square feet of signage to the front facade.

Petitioner: Penny Hughes, petitioner
5186 Northwest Highway

Recommendation: City Council Discretion:
A. Motion to approve an Ordinance with the recommended conditions for the variations as requested.
B. Motion to deny the variation request.

Staff Contact: Michelle Rentzsch, Community Development Director
Elizabeth Maxwell, City Planner

Background:

- In 1993, a sign variation was granted at this location for Carpet One to allow 122 square feet of wall signage. After that, the location changed names to Studio Blue Kitchens & Interiors and then to the current Exceed Flooring. For the past two occupants of the building, the wall signage has been 46 square feet in area.
- The other multiple tenants in the building are permitted 50 square feet of signage. These tenants' signs are much smaller, between 10 square feet and 25 square feet in area.

Analysis

- Multi-tenant buildings are permitted 50 square feet of signage per tenant space. This building is unique as the main tenant is a large box store that looks like a single tenant building with small multiple tenant spaces along one side.
- If Exceed Flooring were considered a single-tenant building, the UDO would permit 150 square feet of wall signage. The request is to permit the Exceed Flooring space 135.24 square feet of wall signage.

An analysis of other big box retailers offers the following comparisons. The requested wall signage for Exceed Flooring would be in keeping with other recently-approved wall signage.

NAME	BLDG SIZE	DISTANCE TO ROAD	BLDG WIDTH	WALL SIGN SIZE	
Best Buy	38,000	444'	157'	195 sf	
Bed Bath Beyond	51,000	493'	180'	256 sf	
Hobby Lobby	58,000	767'	267'	148 sf	2 frontages
Exceed	61,000	135'	175'	46 sf	2 frontages
Burlington	61,000	287'	300'	194 sf	
Harbor Freight	65,000	332'	81'	108 sf	
Mariano's	74,800	300'	330'	591 sf	2 frontages
Steinhafel's	96,000	435'	305'	571 sf	

Exceed Flooring is requesting additional signage to highlight the full range of services and products they offer.

Exceed Flooring	46 SF (existing wall sign)
Design Studio	22.36 SF
Kitchen & Baths	33 SF
Cabinets	13.5 SF
Countertops	20.38 SF
	135.24 SF Total signage for Exceed Flooring

The City Council can grant a variation from the requirements of the Ordinance to overcome an exceptional condition, which poses practical difficulty or particular hardship in such a way as to prevent the display of a sign as intended by the Ordinance and where the following standards are met:

A. The proposed variation will not serve merely as a convenience, but alleviate some demonstrable and unusual hardship.

B. The proposed variation will not be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood. The proposed variation will not by itself, or with other signs, contribute to the creation of a visual distraction which may lead to personal injury or a substantial reduction in the value of the property.

C. The proposed variation is in harmony with the intent, purpose and objectives of the Ordinance.

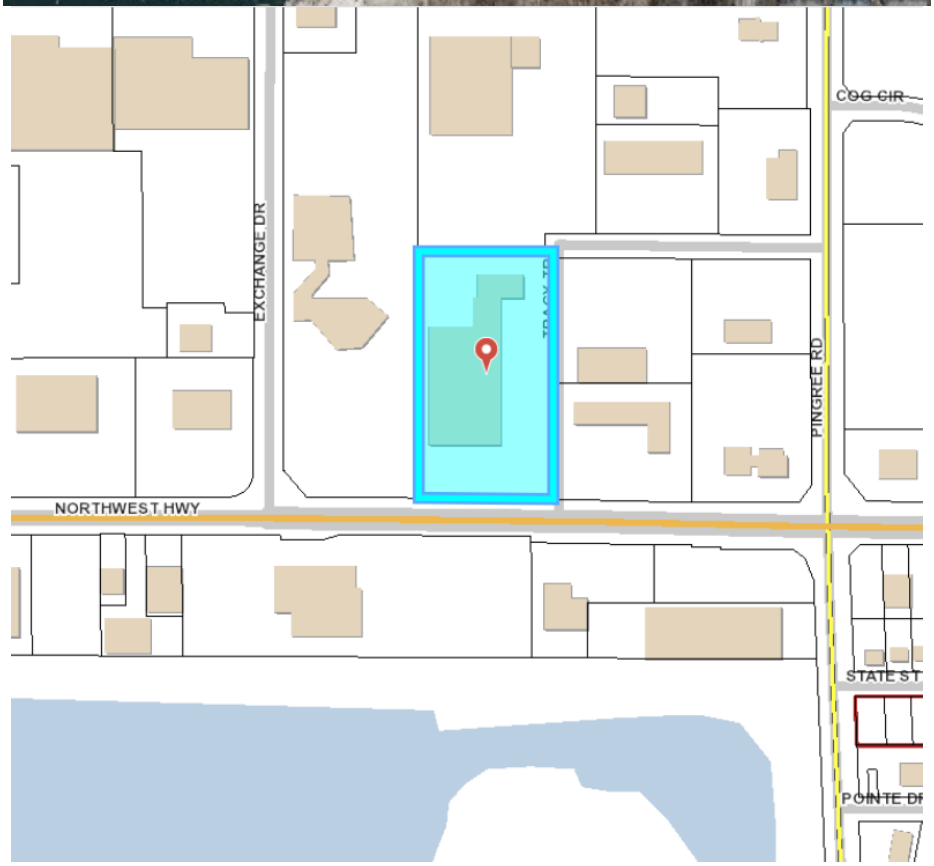
If a motion for approval is made, the following condition is suggested:

1. Signage plans as approved by the City Council:
   A. Application (Hughes, received 06/16/20)
   B. Sign Plan (Hughes, undated, received 06/16/20)

Votes Required to Pass: Simple majority vote

PIQ Map
5186 Northwest Highway





Ord. No. ____
File No. ___

DRAFT

The City of Crystal Lake Illinois

AN ORDINANCE GRANTING A SIGN VARIATION FOR EXCEED FLOORING AT 5186 NORTHWEST HIGHWAY

WHEREAS, pursuant to the terms of a Petition (File #PLN-2020-101) before the City of Crystal Lake, the Petitioner has requested a sign variation to add 89.24 square feet of wall signage to the front façade for a total of 135.24 square feet of wall signage for Exceed Flooring at 5186 Northwest Highway; and

WHEREAS, a hearing of the request was held before the City of Crystal Lake City Council on July 7, 2020 in the manner and in the form as prescribed by Ordinance and Statute; and

WHEREAS, as a result of said hearing, the City Council made a motion to approve the sign variation as requested; and

WHEREAS, it is in the best interests of the City of Crystal Lake that the sign variation be granted as requested,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CRYSTAL LAKE, McHENRY COUNTY, ILLINOIS, as follows:

Section I: That a sign variation be granted to allow an additional 89.24 square feet of wall signage to the front façade for Exceed Flooring located at 5186 Northwest Highway (19-04-400-019), Crystal Lake, Illinois.

Section II: Said sign variation is approved with the following conditions:

1. Signage Plans, as approved by the City Council:
    A. Application (Hughes, received 06/16/20)
    B. Sign Plan (Hughes, undated, received 06/16/20)

Section III: That the City Clerk be and is hereby directed that all pertinent records of the City of Crystal Lake to show the issuance of the sign variation in accordance with the provisions of this Ordinance, as provided by law.

Ord. No. ____
File No. ___

Section IV: That this Ordinance shall be in full force and effect from and after its passage, approval and publication as provide by law.

DATED at Crystal Lake, Illinois, this 7th day of July, 2020.

Roll Call	Yes	No	Other
Brady			
Ferguson			
Hopkins			
Hubbard			
Montford			
Philpot			
Haleblian		recused	

City of Crystal Lake, an
Illinois municipal corporation

_____
Mayor Pro-Temp

SEAL

ATTEST:

_____
Nick Kachiroubas, City Clerk

Passed: July 7, 2020
Approved: July 7, 2020