

THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Charles A. Radovich  
City Attorney, City of Geneva  
22 South First Street  
Geneva, Illinois 60134

### ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (hereinafter sometimes referred to as this “**Agreement**”), is made and entered into as of the \_\_\_ day of \_\_\_\_\_ 2023, by and between the CITY OF GENEVA, an Illinois municipal corporation located in Kane County, Illinois (“**City**”), by and through the Mayor and City Council of the City (collectively the “**Corporate Authorities**”) and Fabyan Vacant Lot I LLC, a Florida limited liability company, Fabyan Vacant II LLC, a Florida limited liability company, Geneva Contractors Yard LLC, a Wyoming limited liability company, Fabyan Office Plaza LLC, a Wyoming limited liability company, and Geneva Land Company LLC, a Wyoming limited liability company, (collectively referred to as “**Owner**”, otherwise each owner will be identified by name). The City and Owner are sometimes herein referred to individually as a “**Party**” and collectively as the “**Parties**”.

#### RECITALS:

A. Owner is the owner of record of certain real estate constituting a contiguous tract of land, the legal description of which is set forth in Exhibit “A” attached hereto (“**Subject Realty**”). The Subject Realty is depicted on the Plat of Annexation attached hereto as Exhibit “B” (“**Plat of Annexation**”).

B. The Subject Realty is located within unincorporated Kane County, Illinois (“**County**”) and is not located within the corporate boundaries of any municipal corporation.

C. The Subject Realty is within the planning jurisdiction of the City and is contiguous to the corporate boundaries of the City.

D. Owner desires to have the Subject Realty annexed to the City as soon as reasonably practicable following the execution of this Agreement, upon the terms and conditions hereinafter set forth.

E. Owner has heretofore filed a petition with the City requesting the City enter into this Agreement, providing for the annexation of the Subject Realty to the City upon the execution of this Agreement by all Parties hereto and the development of the Subject Realty in accordance with the terms and provisions of this Agreement.

F. Pursuant to due notice and advertisement pursuant to Sections 11-15.1-1 through 11-15.1-5 of the Illinois Municipal Code, the City's Planning and Zoning Commission has held a public hearing and made its determination with respect to the requested zoning classifications.

G. Pursuant to the provisions of Section 5/11-15.1-1 *et.seq.*, of the Illinois Municipal Code (Chapter 65, Illinois Compiled Statutes 2016, as amended) a proposed Annexation Agreement was submitted to the Corporate Authorities and a public hearing was held thereon pursuant to notice as provided by Statute.

H. The Mayor and City Council after due and careful consideration have concluded that the annexation of the Subject Realty to the City and its zoning and development on the terms and conditions herein set forth would further enable the City to control the development of the area and would serve the best interests of the City.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, IT IS HEREBY AGREED BY AND BETWEEN THE CITY AND OWNER as follows:

1. **APPLICABLE LAW.** This Agreement is made pursuant to and in accordance with the provisions of Section 5/11-15.1-1 *et.seq.*, of the Illinois Municipal Code (Chapter 65, Illinois Compiled Statutes 2016, as amended). The preceding recitals are hereby made a part of this Agreement.

2. **AGREEMENT: COMPLIANCE AND VALIDITY.** Owner has filed with the City Clerk of City a proper petition pursuant to and in accordance with the provisions of Section 5/7-1-8 of the Illinois Municipal Code (Chapter 65, Illinois Compiled Statutes 2016, as amended) conditioned on the execution of this Agreement and the compliance with the terms and provisions contained herein, to annex the Subject Realty to the City. It is understood and agreed that this Agreement in its entirety, together with the aforesaid petition for annexation, shall be null, void and of no force and effect unless the Subject Realty is validly annexed to the City and is validly zoned and classified as contemplated in this Agreement.

3. **ANNEXATION.** The City agrees to enact a valid and binding ordinance ("**Annexation Ordinance**") annexing the Subject Realty within the corporate boundaries of the City within twenty-one (21) days following the execution of this Agreement, subject to the applicable provisions of statutes and the terms and conditions hereinafter set forth, and to further grant the approvals herein provided for the Subject Realty to facilitate the development of the Subject Realty in the manner contemplated in this Agreement. Said Annexation Ordinance together with the Plat of Annexation shall be recorded at the Kane County Recorder's office.

4. **GRANT OF PUBLIC UTILITY EASEMENT.** Intentionally omitted.

5. **ZONING.** Upon annexation of the Subject Realty to the City, the Subject Realty shall be zoned by the City pursuant to the provisions of Exhibit E attached hereto and made a part of entitled An Ordinance Granting a Special Use as I1 Light Industrial District Planned Unit Development, herein called the "PUD Ordinance", all pursuant to the provisions of Chapter 7,

Article B of the City of Geneva Zoning Ordinance, as amended (hereinafter sometimes referred to as the “**Zoning Ordinance**”), but subject to the additional conditions, variations, and restrictions hereinafter set forth and shall be developed only in accordance with the provisions of this Agreement and applicable statutes and ordinances. Paragraph 1 of Exhibit E references a certain Preliminary Plat of Subdivision and Preliminary Improvement Plan prepared by Engineering Resource Associates, Inc., dated April 29, 2022, with latest revision date of March 1, 2023, therein and herein referred to as the “Preliminary Plan”. The City specifically approves a 25’ landscape buffer along Fabyan Parkway. Owner’s proposed setbacks under the Zoning Ordinance and Preliminary Improvement Plan are depicted on Exhibit “I.” A variance from the requirements of Section 11-9-5A.4. is granted to provide as follows: The plan for final development approval for any part of the Subject Realty shall be submitted by the developer not later than the later of the following: (i) ten (10) years after the date of the City’s execution of this Annexation Agreement; (ii) ten (10) years after the installation of all of the following utilities to the Subject Realty: electric utilities with 10,000 amp capacity along the Subject Realty boundary accessible by the Subject Realty at the locations depicted on Exhibit F; a functioning public water main along the Subject Realty boundary accessible at the locations depicted on Exhibit F; and a functioning public sanitary sewer line to the Subject Realty at the location depicted on Exhibit G; or (iii) such additional time, as may be authorized by the City’s Planning and Zoning Commission). The City shall notify Owner of the respective dates of installation of public electric utilities, water main facilities and sanitary sewer facilities serving the Subject Realty.

A. Fabyan Office Plaza. The existing one-story 11,610 square foot office/warehouse building identified by Property Index Parcel Numbers 12-12-400-004 and 12-13-200-001, commonly known as Fabyan Office Plaza, 33W480 Fabyan Parkway, West Chicago, IL 60185, is a Permitted Use under the I1 Light Industrial District. The existing signage is nonconforming subject to the prohibitions in the regulations in Geneva Code 11-12-11. Wall signs on the existing buildings may be added if not already at a maximum and subject to the specifications for signage in the Zoning Ordinance. Freestanding signs may be added if not already at a maximum and subject to the terms of the Zoning Ordinance, Exhibit E. The existing buildings and structures were constructed in unincorporated Kane County prior to annexation and shall be deemed nonconforming buildings and structures. Subject to the provisions of Geneva Code 11-13-4, unless required by State law, the installation of fire sprinklers shall not be required for existing uses. The building is currently served by a well. Within three (3) years from the City’s notice to Owner of City’s acceptance of a functioning public water main which serves said property, Owner shall apply for a permit to connect to said water main and promptly thereafter disconnect the building from the well and connect the building to said public water main. Thereupon, the well shall not be permitted to service any buildings or structures on the property with potable water nor to attach to any part of the public water main. The well may continue to provide non-potable water for landscaping purposes. Notwithstanding the above, if any well is determined to be a health hazard by the County of Kane or is beyond its useful life, Owner shall disconnect the building from the well and connect the building to the functioning public water main and abandon the well.

B. Geneva Contractor’s Yard. The existing improvements identified on Property Index Parcel Numbers 12-12-300- 022, 12-12-300-063, 12-12-400-004, 12-12-400-029 and 12-13-100-013, commonly known as Geneva Contractors Yard, 35W518 Fabyan Parkway, Geneva, IL 60134 consisting of paved and unpaved parking and storage areas for operational and

nonoperational vehicles, equipment, containers, contractor's supplies and materials and various enclosed and non-enclosed storage structures, construction offices, temporary structures, above ground gasoline storage for vehicles and equipment, black top and granular material parking surfaces are not Permitted Uses under the I1 Light Industrial District unless it is an Accessory use. Accordingly, the existing outdoor storage use of land as of the date of this Agreement shall be deemed a legal nonconforming use subject to provisions of Title 11-13-4. The existing signs shall be deemed nonconforming subject to sign regulations and prohibitions in Geneva Code 11-12-11. Unless required by State law, the installation of fire sprinklers shall not be required for an existing use in the existing structure. Installation of fire sprinklers may be required when a change of use to a more hazardous use or expansion of a use or structure occurs. The Yard currently is served by a well. If a building is constructed on the property, within three (3) years from the City's notice to Owner of the City's acceptance of a functioning public water main which serves said property, Owner shall apply for a permit to connect to said water main and shall promptly thereafter connect to the public water main. Thereupon, the well shall not be permitted to service any buildings on the property with potable water, nor to attach to any part of the public water main. The well may continue to provide non-potable water for landscaping purposes. Notwithstanding the above, if any well is determined to be a health hazard by the County of Kane or is beyond its useful life, Owner shall disconnect the building from the well and connect the building to the functioning public water main and abandon the well.

**6. MAINTENANCE OF EXISTING USE:** Geneva Contractor's Yard. If the Geneva Contractor's Yard is still in use as an open storage contractor's yard within Sixty (60) months from the date of this Agreement, Owner will screen the Outdoor Storage area from Fabyan Parkway. Owner will screen the outdoor storage area from adjacent properties to the north and west, respectively, within two (2) years of the issuance of building permits for construction on said adjacent property, if the Geneva Contractor's Yard is still then in use as an open storage contractor's yard.

**7. DEVELOPMENT RIGHTS.** Subject to Section 16 below any modifications of the land uses, zoning uses and/or the configurations of the Subject Realty after the annexation the Subject Realty shall require compliance with the City's then current editions of its Subdivision Control Ordinance, Zoning Ordinance and Comprehensive Land Use Plan, as the case may be, but subject to the provisions of the PUD Ordinance, in order (i) to promote the realization of the official plan of the City, (ii) to provide for reasonable requirements for public streets and public infrastructure improvements in accordance with the public health, safety and welfare of the residents of the city and continuous territory. Pursuant to Title 2, Chapter 2 of the City's Code of Ordinance ("City Code"), the City shall not require the Owner to record a plat of subdivision as a prerequisite to conveyance, or recording of any deed or mortgage, as long as such conveyance or recording satisfies the requirements of Illinois Plat Act or the PUD Ordinance.

**8. UTILITIES AND PUBLIC IMPROVEMENTS.**

**A. Sanitary Sewer Facilities.**

- (i) Current Location. As of the date of the execution of this Agreement, the sanitary sewer system of the City proximate to the

Subject Realty only exists at Dawn Blvd, the west boundary of the Subject Realty, which western acreage of the Subject Realty is currently vacant.

(ii) Distribution and Extension for Current Improvements.

(a) Upon annexation of the real property adjoining and lying immediately east of the most easterly parcel of the Subject Realty to the City (hereafter referred to as "Southeast Development Area"), and pursuant to the Southeast Development Area proposed development plans, Kautz Road is to be extended southerly from Illinois State Route 38 to Fabyan Parkway. As a part of the roadway extension, the City agrees to include the extension of City sanitary sewer facilities to the Subject Realty.

(b) Upon the annexation and development of the Southeast Development Area, the City shall require the dedication of a public utility easement to allow for the extension of the sanitary sewer from the south leg extension of Kautz Road to the northeast corner of the Fabyan Office Plaza parcel, at the location and elevation as shown on the attached Exhibit G.

(c) Within one year of the installation of a public sanitary sewer serving that portion of the Southeast Development Area known as Property Index Parcel Number 12-12-400-015, proximate to the Subject Realty, the City, at no cost or recapture to the Owner, will cause the extension of the sanitary sewer main to the property boundary line of the Subject Realty, at the location and elevation as shown on the attached Exhibit G, sized as shown on Exhibit G, with a manhole and invert elevation as depicted on Exhibit G.

(d) After the utility extensions are completed, as set forth above, and at the time of an application for connection to the City's sanitary sewer system, the timing of which shall be at Owner's discretion, within three (3) years of the City's notice to Owner of City's acceptance of the public sanitary sewer line constructed to the northeast corner of the Fabyan Office Plaza parcel, the Owner shall apply for a permit to connect the building to the public sanitary sewer line, and promptly connect same. The City will waive the then applicable connection fee for the use of the sanitary sewer for the current building improvements on the Subject Realty known as Fabyan Office Plaza. This connection fee waiver shall extend only to Fabyan Office Plaza and not to any other part of the Subject Realty.

- (iii) Sanitary Sewer Design and Construction for Future Improvements. Upon the application for new construction of improvements or redevelopment of the Subject Realty or portion thereof, the terms and conditions of the design, construction and financial obligations of sanitary sewer service required to serve the proposed development area shall be subject to the City's approval under the provisions of Title 11, Chapter 9 or Title 12, Chapters 2 and 3, of the Geneva City Code, as the case may be.

(a) Should the Owner elect to connect to the existing sanitary sewer at Dawn Blvd., one or more private lift stations would be necessary. The City approves the use of private lift stations for sanitary sewer service from this location, provided the private lift stations are sized appropriately for the future proposed improvements to be constructed. The terms and conditions of the design, construction and financial obligation of the private lift stations required to serve the proposed development area shall be subject to the City's approval. The City shall have no financial or operational obligation for the construction, use or maintenance of the private lift stations.

B. Water Facilities.

- (i) Capacity and Current Location. As of the date of the execution of this Agreement, the public water system of the City proximate to the Subject Realty only exists at Dawn Blvd, the west boundary of the Subject Realty, which western acreage is currently vacant. The City represents that the City water distribution system has the capacity to serve the existing uses on the Subject Realty and the potential future uses of the Subject Realty, if developed in accordance with the terms and conditions of this Agreement.

- (ii) Potable Water Distribution and Extension for Current Improvements.

(a) There currently is no City water main proximate to Fabyan Office Plaza. Should City water become proximate to Fabyan Office Plaza in the future, at the time of an application by the Owner of the Fabyan Office Plaza to connect to a City water main that is proximate to the Fabyan Office Plaza, the City will waive the then applicable connection fee for the extension of water service from the new water main to the current building improvements on the Subject Realty known as Fabyan Office Plaza. The Owner shall be responsible for all the cost of service line and meters from the water main to each served building or structure.

- (iii) Potable Water Distribution and Extension for Future Construction of Building on Existing Vacant Lots. At no cost to Owner, the City shall cause the extension of the existing water main at Dawn Blvd underneath Dawn Blvd. to the east side of Dawn Blvd in two locations to provide service to Lot 1 of the Subject Realty, as shown on Exhibit F. Furthermore, a future water main is planned to be constructed in a public utility easement adjoining the west boundary of Lot 5 of the Subject Realty. The City agrees to permit the Owner to connect to said future water main from Lot 5 as shown on Exhibit F, after the water main has been accepted by the City. Upon an application for new construction improvements on existing Vacant Lots of the Subject Realty or portions thereof, the terms and conditions of the design, construction and financial obligation of water service required to serve the proposed development area shall be subject to the City's approval under the provisions of Title 11, Chapter 9 or Title 12, Chapters 2 and 3 of the Geneva City Code, as the case may be.

C. Electric Service.

- (i) The City represents that it owns, operates and maintains its own electrical distribution system (hereinafter referred to as "electric system"). The City represents that its electrical system, as of the date of this Agreement, has sufficient capacity to service the existing uses on the Subject Realty with electricity.
- (ii) The current improved properties within the Subject Realty known as Fabyan Office Properties and Geneva Contractors Yard are presently served by Commonwealth Edison, an investor-owned public utility.
- (iii) Pursuant to 65 ILCS 5/11-117-6 (b), the Subject Realty, as a nonresidential customer, may continue to receive service at the existing meter locations from Commonwealth Edison for a period of two (2) years after the date of annexation.
- (iv) After the expiration of the 2-year period, Commonwealth Edison may continue to provide service to a nonresidential customer, or the nonresidential customer may apply for service from the City at which time the investor-owned public utility shall promptly, and consistent with prudent utility practice, facilitate the electric service transfer to the City as soon as practical.

- (v) There is a planned future electric line extension to be constructed in a public utility easement adjoining the west boundary of Lot 5 and the north boundary of Lot 1 of the Subject Realty. The City agrees to permit the Owner to connect to said future electric service line from Lot 5, and from Lot 1, as shown on Exhibit F, after said electric line has been constructed. The City may waive the then applicable connection fees to the City electric system, subject to final engineering, but the owner is responsible for cost of electric meters as well as any building modifications to accommodate the City's meter.
- (vi) Upon an application for construction of new improvements or redevelopment of the Subject Realty or portion thereof, the terms and conditions of the design, construction and financial obligations of electric service required to serve the proposed development area shall be subject to the City's building permit approval.

D. Public Improvements to be constructed by Owner. Subject to subsections A-C above, Owner shall construct and pay for the improvements utilized in conjunction with the development of the Subject Realty as required by the Subdivision Control Ordinance which, subject to modifications as may be required in connection with Final Engineering, are identified on the Preliminary Plan and Owner shall grant to the City at no cost to the City, all easements for the public utilities installed by Owner. Prior to the approval of each final plat for the Subject Realty or any part of the Subject Realty, the City shall have the right to designate which easements, dedications and land improvements will be accepted by the City. Owner shall also grant at the time of approval of each final plat such other easements, dedications and land improvements required to support the Final Engineering plan. All such improvements to be accepted by the City shall be, in the case of land, by Deed and, in the case of personal property, by Bill of Sale. All improvements as described above shall be warranted by the Owner for one (1) year after acceptance by City. All necessary repairs or alterations to the improvements which should become necessary within such one (1) year period shall be promptly carried out by the Owner at Owner' s expense. The security posted shall be in accord with the City Ordinance which is in force at the date hereof.

E. Storm Water. Owner has provided preliminary storm water engineering calculations based on the maximum lot coverage allowed under the PUD Ordinance in the Preliminary Plan, which calculations have been reviewed and substantially approved by the City engineer.

F. Police/Fire/Utility Easements. A blanket easement over and upon all private common driveways and parking areas within the Subject Realty for access for police and fire protection shall be provided by plat in favor of the City, their respective officers, employees and agents, together with related emergency and service vehicles and equipment and a comparable blanket easement for access for fire protection shall be provided by plat. Easements over and

under and upon specific locations within open space areas, private streets, private common driveways and parking areas within the Subject Realty for the operation and access for maintenance, repair, replacement and customary servicing of all electricity and telephone lines, natural gas supply systems and sanitary sewer, storm drainage and water main systems, communication facilities and other utilities shall be provided by plat in favor of all of the involved utility companies, now or in the future, receiving a City franchise, their respective officers, employees and agents, together with related emergency and service vehicles and equipment. Owner shall provide that all existing and new utilities and communications facilities including, but not limited to, telephone, electric and cable television to serve the Property shall be underground.

G. Letters of Credit. After approval of each Final Plat and prior to signature by the City, the Owner shall present an undertaking by Owner, secured by an irrevocable Letter of Credit, escrow account or irrevocable commitment certifying that adequate funds are and will be available at a sound and reputable banking or financial institution authorized to do business in the State of Illinois. The basic form of Letter of Credit shall be as attached hereto as Exhibit H, modified to refer to the specific circumstances applicable to the Subject Realty.

H. Public Street. Upon annexation of the Subject Realty, the City agrees to accept the turnover of jurisdiction from Kane County of Dawn Boulevard, which was previously dedicated to Kane County.

I. Owner's Access Easement. Ingress and egress access to portions of the Subject Realty may further be had through Owners Access Easement lying on a portion of the adjoining property to the north of the Subject Realty and running east from Dawn Blvd., parallel to Fabyan Parkway. ("Owner's Access Easement"). The legal description of Owner's Access Easement is attached as Exhibit D-1. A survey of the Owner's Access Easement is attached as Exhibit D-2. A copy of the Owners Access Easement Agreement is attached as Exhibit D-3

9a. MAINTENANCE OF PRIVATE FACILITIES. The Owner of record, from time to time, agrees to repair and maintain any private streets and drives, retention and detention basins, water mains, sanitary sewer lines, storm sewer lines, surface drainage facilities, electric facilities and any other land improvements, common areas or facilities which are not conveyed to and accepted by the City. In the event of the conveyance or assignment of all or any part of the Subject Realty, such conveyance shall be subject to the terms of this paragraph which shall be deemed to constitute a covenant running with the land and shall be binding upon successors in title. Upon each separate conveyance the then current owner of record shall be released from all obligations under this Agreement arising after the date of such conveyance, as to the portion of the Subject Realty conveyed, except that such release shall not release or exculpate Owner from obligations secured by bonds or letters of credit nor obligate the City to release the bond or letter of credit until such release would have occurred notwithstanding any intervening conveyance.

9b. MAINTENANCE OF COMMON FACILITIES. Certain public improvements are of specific benefit to the development only, and are deemed to be common

facilities. If the Subject Realty, with the exception of the Fabyan Office Plaza, is developed in separate parcels, the Owner shall create an Owners' Association for the purpose of constructing, repairing, restoring (by dredging if needed), and maintaining such common facilities. These common facilities include, but may not be limited to:

Lot 6 and the storm water control areas and related landscaping, and the landscaping and signage in Outlot A located on the east side of the Dawn Blvd. identified in Exhibit E.

The Owners' Association shall be responsible for the cost of constructing, reconstructing, repairing, restoring or maintaining such common facilities from financing generated by owners' assessments. The City will establish a backup Special Service Area as the City deems advisable covering the common facilities of the Subject Realty. In the event the City determines that the common facilities are not being reasonably and adequately maintained, the City may repair, restore and maintain the common facilities by means of the backup Special Service Area by contracted services approved by the City pursuant to a public bidding process.

10. **SOIL EROSION.** With regard to any stockpile maintained on the Subject Realty, Owner agrees to keep weeds cut and will plant vegetation for a neat appearance as well as soil erosion control purposes. Removal of excess topsoil may be accomplished through removal from site or redistribution within the Subject Realty. The existing stockpiles on the Subject Realty may be removed without a permit.

11. **FPA BOUNDARIES.** As of the date of this Agreement, all of the Subject Realty is within the Geneva Facilities Planned Area (FPA) for purposes of sanitary sewer service.

12. **SCHOOL AND PARK CONTRIBUTIONS.** Pursuant to the provisions of Chapter 4 of Subdivision Control Ordinance of the City (sometimes herein referred to as the "**Subdivision Regulations**"), the City and Owner agree that land contributions, or cash in lieu of land contributions, is not applicable to the Subject Realty as no residential use is proposed or authorized for the Subject Realty hereunder.

13. **FEEES AND CONTRIBUTIONS.** Owner shall comply in all respects with the requirements of the City's codified Ordinances as amended, altered or varied by this Agreement.

14. **OVERSIZING OF IMPROVEMENTS.** No oversizing shall be required for and of the public improvements constructed within or adjacent to the Subject Realty.

15. **REQUIREMENTS OF OTHER JURISDICTIONS.** It is agreed that the City is not liable or responsible for any restrictions on the City's obligations under this Agreement that may be required or imposed by any superior governmental bodies or agencies having jurisdiction over the Subject Realty, the City, or Owner, including, but not limited to, county, state and federal regulatory bodies. In any event, however, the City shall honor any "grandfather" provision contained in the legislation of such superior governmental authority which exempts the Subject Realty from such legislative regulation.

16. **APPLICABILITY OF CITY CODES AND ORDINANCES.** Except as may be otherwise specifically provided for in this Agreement or in the Zoning Ordinance, all ordinances, regulations, and codes of the City, including, but not limited to, subdivision controls, zoning, storm water management and drainage, official plan, and related restrictions, as they presently exist, except as amended, varied, or modified by the terms of this Agreement, shall apply to the Subject Realty and its development.

A. More Restrictive Ordinances. For period of the first five (5) years after the date the City executes this Annexation Agreement any existing, amended, modified, or new ordinances, codes or regulations of general applicability throughout the community to a land developer or subdivider affecting the zoning, subdivision, development, construction of improvements, building or appurtenances, or other regulatory ordinances are amended or modified in any manner to impose more stringent requirements regarding the above, the burden of such more restrictive requirements shall not apply to the Subject Realty, unless the more restrictive ordinances adopted subsequent to this Agreement are (i) mandated by a superior governmental agency or (ii) are nondiscriminatory and applied generally throughout the City, for the purposes of directly furthering the public health, safety and welfare.

17. **BINDING EFFECT, SUCCESSION IN INTEREST.** This Agreement shall constitute a covenant running with the land and be binding upon and inure to the benefit of the Parties hereto, their successors in interest, assignees, lessees, and upon any successor municipal authorities of the City and successor municipalities. Except as otherwise expressly provided herein, upon the conveyance or assignment by Owner of its interest in the Subject Realty to any successor, assignee, or nominee, Owner shall be released from any and all further liability or responsibility under this Agreement, and the City shall thereafter look only to the successor, assignee, or nominee of Owner concerning the performance of such duties and obligations of Owner hereby undertaken. Any such assignment or transfer of the rights and duties of Owner shall be effective only if in a written instrument expressly referring to this Agreement and recorded against the Subject Realty, provided, however, the recordation of a deed from Owner shall automatically transfer all of Owner's rights and duties hereunder. In no event, however, shall any of the obligations of Owner hereunder be deemed to have transferred to or be assumed by a bona fide purchaser for value of a lot improved with a dwelling unit for residential occupation.

18. **DISCONNECTION.** Once the Subject Realty has been annexed to City, Owner agrees not to petition for disconnection of any part of the Subject Realty from the City without City approval under any statutory provision.

19. **SEVERABILITY.** The provisions hereof shall be deemed to be severable; and if any section, paragraph, clause, provision or item herein shall be held invalid, the invalidity of such section, paragraph, clause, provision, or item shall not affect any other provision hereof, provided, however, City shall under no circumstances be required to incur any liability, loss or incur any expense for any reason in the event that any such section, paragraph, clause, provision or item is held invalid.

20. **NOTICE.** Any notice required or desired to be given under this Agreement, unless expressly provided to the contrary herein, shall be in writing and shall be deemed to have been given on the date of personal delivery, on the date of confirmed tele facsimile transmission provided a hard copy of such notice is deposited in the regular mail addressed to the recipient within twenty-four hours following the tele facsimile transmission, or on the date when deposited in the U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

If to the City: CITY OF GENEVA  
22 S. First Street  
Geneva, IL 60134

with copies to: City Clerk  
CITY OF GENEVA  
22 S. First Street  
Geneva, IL 60134

City Attorney  
CITY OF GENEVA  
22 S. First Street  
Geneva, IL 60134

If to Owner: Fabyan Vacant I LLC  
Fabyan Vacant II LLC  
Catherine Sorrentino, Manager  
1051 Ketel Avenue, Suite 200  
North Aurora, IL 60542-0542

and: Geneva Land Company LLC  
Geneva Contractors Yard LLC  
Fabyan Office Plaza, LLC  
Mark Sorrentino, Manager  
1051 Ketel Avenue, Suite 200  
North Aurora, IL 60542-0542

with a copy to: Robert A. McNees  
McNees & Associates, LLC  
195 Hiawatha Dr.  
Carol Stream, IL 60188

The names and addresses provided in this Paragraph may be changed from time to time by notice duly given in compliance with the provisions of this Paragraph.

21. **AMENDMENT.** This Agreement, and any exhibits or attachments hereto, may be amended from time to time in writing with the consent of the Parties hereto, pursuant to applicable provisions of the City of Geneva Code of Ordinances and the Illinois Compiled

Statutes. This Agreement may be amended from time to time by written agreement between the City and the then legal owner of fee title to that portion of the Subject Realty which is subject to and affected by such amendment; provided, that such amendment, if not executed by the then legal owner or owners of any other portion of the Subject Realty, shall in no manner alter, amend, or modify any of the rights, duties or obligations as set forth in this Agreement as they pertain to such other portions of the Subject Realty.

22. **CONVEYANCES.** Nothing contained in this Agreement shall be construed to restrict or limit the right of the Owner to sell or convey all or any portion of the Subject Realty, whether improved or unimproved.

23. **NECESSARY ORDINANCES AND RESOLUTIONS.** The City shall pass all ordinances and resolutions necessary to permit Owner to develop the Subject Realty in accordance with the provisions of this Agreement, provided said ordinances and/or resolutions are not contrary to law.

24. **TERM OF AGREEMENT.** This Agreement shall remain in force and effect for a period of twenty (20) years.

25. **CAPTIONS AND PARAGRAPH HEADINGS.** The captions and paragraph headings used herein are for convenience only and shall not be used in construing any term or provision of this Agreement.

26. **RECORDING.** This Agreement shall be recorded in the office of the Recorder of Deeds, Kane County, Illinois, by Owner at Owner's expense.

27. **PREAMBLES AND EXHIBITS.** The preambles set forth at the beginning of this Agreement, and the exhibits attached hereto, are incorporated herein by this reference and shall constitute substantive provisions of this Agreement.

28. **GOVERNING LAW AND VENUE.** This Agreement, and the terms and provisions contained herein, shall be construed and governed under the laws of the State of Illinois. The 16<sup>th</sup> Judicial Circuit Courts, Kane County, Illinois, shall be the sole judicial jurisdiction for proceedings to enforce the terms of this Agreement.

29. **COUNTERPARTS/FACSIMILE.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be one and the same instrument. For purposes of executing this Agreement, any signed copy of this Agreement may be transmitted by facsimile machine and the signature of any party thereon shall for purposes of execution hereof be considered an original signature. Any facsimile document shall, at the request of either party, be re-executed by the other party in an original form, and neither party shall raise the use of a facsimile machine, or the fact that any signature or document was transmitted thereby, as a defense to the effectiveness of this Agreement.

**IN WITNESS WHEREOF**, the Parties have hereunto placed their hands and seals as of the date firth above written.

**CITY:**

CITY OF GENEVA, an Illinois municipal corporation

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

**OWNER:**

Fabyan Vacant I LLC  
Fabyan Vacant II LLC

By: \_\_\_\_\_  
Catherine Sorrentino  
Title: Manager

**OWNER:**

Geneva Land Company, LLC  
Geneva Contractors Yard LLC  
Fabyan Office Plaza, LLC

By: \_\_\_\_\_  
Mark Sorrentino  
Title: Manager

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF KANE         )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, Mayor and \_\_\_\_\_, City Clerk, of the CITY OF GENEVA, an Illinois municipal corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instruments as such Mayor and City Clerk, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said City Clerk then and there acknowledged that he, as custodian of the records of the corporation, did affix the corporate seal of said corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF KANE         )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Catherine Sorrentino, as Manager of Fabyan Vacant I LLC, a Florida limited liability company, and as Manager of Fabyan Vacant II LLC, a Florida limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF KANE         )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Mark E. Sorrentino as Manager of Geneva Land Company, LLC, a Wyoming limited liability company, and as Manager of Geneva Contractors Yard LLC, a Wyoming limited liability company, and as Manager of Fabyan Office Place, LLC, a Wyoming limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

**SCHEDULE OF EXHIBITS**

EXHIBIT "A":	Legal Description of Subject Realty
EXHIBIT "B":	Plat of Annexation
EXHIBIT C	Public Utility Easements-Intentionally Omitted
EXHIBIT "D-1":	Legal Description of Owner's Access Easement
EXHIBIT "D-2":	Survey of Owner's Access Easement
EXHIBIT "D-3"	Owner's Access Easement Agreement
EXHIBIT "E":	Zoning Ordinance
EXHIBIT "F":	Proposed Water Main & Electric Utility Extensions
EXHIBIT "G":	Proposed Sanitary Sewer Extension
EXHIBIT "H":	Letter of Credit form
EXHIBIT "I":	Proposed Setbacks

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF SUBJECT REALTY**

See attached

Parcel No.: 12-12-300-063

Parcel No.: 12-12-400-029

Legal Description:

That part of the South Half of Section 12, Township 39 North, Range 8, East of the Third Principal Meridian, described as follows: Commencing at the Southwest corner of the Southeast Quarter of said Section 12; thence North 89 degrees 17 minutes 43 seconds East along the South line of said Southeast Quarter 298.98 feet to the Westerly line of a tract of land conveyed to H.H. Simpson by Warranty Deed recorded as Document 1271011; thence North 00 degrees 36 minutes 00 seconds East along said Westerly line 132.0 feet; thence South 85 degrees 07 minutes 00 seconds West 470.60 feet; thence South 00 degrees 15 minutes 00 seconds East 413.30 feet to the former center line of County Farm Road; thence South 82 degrees 31 minutes 00 seconds West along said former center line 100.60 feet; thence North 00 degrees 15 minutes 00 seconds West 420.2 feet for a point of beginning; thence South 85 degrees 59 minutes 43 seconds West along a line, which if extended, intersects the Northeast corner of a tract of land conveyed to William E. Schultz and wife by Document 690638, 154.83 feet to the Westerly line extended Southerly of Lot 4 of the Assessment Map of Martin Schock Estate according to the Plat thereof filed in Plat Book 20 at Page 23 in the Recorder's Office of Kane County, Illinois; thence North 00 degrees 27 minutes 54 seconds East along the Westerly line extended of said Lot 697.38 feet to a point that is 30.0 feet Southerly of the Southwest corner of said Lot; thence South 84 degrees 55 minutes 42 seconds East 726.34 feet to a point on the Westerly line of said Simpson Tract that is 708.10 feet North 00 degrees 36 minutes 00 seconds East of the point of intersection of said Westerly line with the South line of said Southeast Quarter; thence South 00 degrees 36 minutes 00 seconds West along the Westerly line of said Simpson Tract 576.10 feet; thence South 85 degrees 07 minutes 00 seconds West 470.60 feet; thence South 86 degrees 26 minutes 35 seconds West 99.97 feet to the point of beginning, in Geneva, Kane County, Illinois.

Property Owner: Geneva Land Company, LLC, a Wyoming limited liability company

Address: vacant land north of Fabyan Parkway, Kane County, Illinois

Parcel No.: 12-12-400-004

Parcel No.: 12-13-200-001

Legal Description

That part of the South Half of Section 12 and part of the North Half of Section 13, Township 39 North, Range 8, East of the Third Principal Meridian, described as follows: Beginning at a point in the South line of Section 12 aforesaid, 4.53 chains East of the Southwest corner of the Southeast Quarter thereof; thence North 00 degrees 36 minutes East, 132 feet; thence South 85 degrees 07 minutes West, 222.02 feet; thence South 00 degrees 36 minutes West, 351.64 feet; thence South 34 degrees 20 minutes East, 38.62 feet to the angle point in the center line of the Old Road; thence North 55 degrees 40 minutes East along the center of the Old Road, 242.6 feet; thence North 00 degrees 36 minutes East, 133.6 feet to the point of beginning, in the Township of Geneva, Kane County, Illinois.

Property Owner: Fabyan Office Plaza, LLC, a Wyoming limited liability company

Address: 33W480 Fabyan Parkway, West Chicago, IL 60185

Parcel No.: 12-13-100-013

Parcel No.: 12-12-300-022

Legal Description

That part of the South half of Section 12 and part of the North half of Section 13, in Township 39 North, Range 8 East of the Third Principal Meridian, Described as follows: Commencing at the Southeast corner of said Southwest Quarter of Section 12, in Township 39 North, Range 8 East; thence Easterly along the South line of said Section 12, a distance of 298.98 feet; thence North 00 degrees 36 minutes East, 132.0 feet; thence South 85 degrees 07 minutes West 222.02 feet for the point of beginning; thence South 00 degrees 36 minutes West 351.64 feet; thence South 34 degrees 20 minutes East 38.62 feet to an angle point in the centerline of the Old Road; thence South 79 degrees 05 minutes West along said center line, 264.88 feet; thence North 00 degrees 36 minutes East 413.42 feet; thence North 85 degrees 07 minutes East 248.52 feet to the point of beginning in Kane County, Illinois

Property Owner: Geneva Contractor's Yard, LLC, a Wyoming limited liability company

Address: vacant land, north side of Fabyan Parkway, Kane County, Illinois

Parcel No.: 12-12-300-064

Parcel No.: 12-13-100-012

Legal Description

That part of the Southwest Quarter of Section 12 and part of the Northwest Quarter of Section 13, Township 39 North, Range 8 East of the Third Principal Meridian, described as follows: Commencing at the Southwest corner of the Southeast Quarter of said Section 12; thence North 89 degrees 17 minutes 43 seconds East along the South line of said Southeast Quarter 298.98 feet to the Westerly line of a tract of land conveyed to H.H. Simpson by Warranty Deed recorded as Document 1271011; thence North 00 degrees 36 minutes 00 seconds East along said Westerly line 132.0 feet; thence South 85 degrees 07 minutes 00 seconds West 470.6 feet for a point of beginning; thence South 00 degrees 15 minutes 00 seconds East 413.30 feet to the former center line of County Farm Road; thence South 82 degrees 31 minutes 00 seconds West along said former center line 100.60 feet; thence North 0 degrees 15 minutes 00 seconds West 420.20 feet; thence North 86 degrees 26 minutes 35 seconds East 99.97 feet to the point of beginning, in Geneva Township, Kane County, Illinois

Property Owner: Fabyan Vacant Lot 1, LLC, a Florida limited liability company

Address: vacant land, north side of Fabyan Parkway, Kane County, Illinois

Parcel No.: 12-13-100-040

Parcel No.: 12-12-300-068

Legal Description

That part of the Southwest Quarter of Section 12 and part of the Northwest Quarter of Section 13, Township 39 North, Range 8 East of the Third Principal Meridian, described as follows: Commencing at the Southeast corner of said Southwest Quarter of said Section 12; thence East along the South line of Section 12, 298.98 feet; thence North 00 degrees 36 minutes East, 132.0 feet; thence South 85 degrees 07 minutes West, 470.6 feet; thence South 00 degrees 15 minutes East, 413.30 feet to the center line of Former County Farm Road; thence South 82 degrees 31 minutes West along said center line, 100.60 feet; thence North 0 degrees 15 minutes West, 420.20 feet for a point of beginning; thence South 85 degrees 59 minutes 43 seconds West along a line which, if extended, intersects the Northeast corner of a tract of land conveyed to William E. Schultz and wife by deed recorded as Document 690638, 170.17 feet to a point on said line that is 678.61 feet North 85 degrees 59 minutes 43 seconds East of the Northeast corner of said Schultz Tract; thence South at an angle of 93 degrees 45 minutes 16 seconds measured clockwise from the last described course 397.07 feet to the North line of Fabyan Parkway as established by Document 1160180; thence North 90 degrees 01 minutes 03 seconds East along said North line, 169.80 feet to a line drawn South 00 degrees 15 minutes East from the point of beginning; thence North 00 degrees 15 minutes West 390.26 feet to the point of beginning in Geneva Township, Kane County, Illinois

Property Owner: Fabyan Vacant Lot 1, LLC, a Florida limited liability company

Address: vacant land, north side of Fabyan Parkway, Kane County, Illinois

Parcel No.: 12-13-100-039

Parcel No.: 12-12-300-067

Legal Description

That part of the Southwest Quarter of Section 12 and part of the Northwest Quarter of Section 13, Township 39 North, Range 8 East of the Third Principal Meridian, described as follows: Commencing at the Southeast corner of said Southwest Quarter of said Section 12; thence East along the South line of Section 12, 298.98 feet; thence North 00 degrees 36 minutes East 132.0 feet; thence South 85 degrees 07 minutes West 470.60 feet; thence South 00 degrees 15 minutes East 413.30 feet to the center line of County Farm Road; thence South 82 degrees 31 minutes West along said center line 100.60 feet; thence North 00 degrees 15 minutes West 420.20 feet; thence South 85 degrees 59 minutes 43 seconds West along a line which, if extended, intersects the Northeast corner of a tract of land conveyed to William E. Schultz and wife by deed recorded as Document 690638, 170.17 feet to a point on said line that is 678.61 feet North 85 degrees 59 minutes 43 seconds East of the Northeast corner of said Schultz tract for a point of beginning; thence Westerly along the last described course, 282.30 feet to the Easterly line of the Dawn Boulevard as recorded by Document 98K029217, thence Southerly at an angle of 93 degrees 48 minutes 11 seconds measured clockwise from the last described course, 360.49 feet to the Northerly line of Fabyan Parkway per Document 1160180; thence Easterly at an angle of 89 degrees 58 minutes 08 seconds measured clockwise from said Easterly line, 282.00 feet; thence Northerly parallel with said Easterly line, 379.07 feet to the point of beginning, in Geneva Township, Kane County, Illinois

Property Owner: Fabyan Vacant Lot II, LLC, a Florida limited liability company

Address: vacant land, north side of Fabyan Parkway, Kane County, Illinois

**EXHIBIT "B"**

**PLAT OF ANNEXATION**

See attached



# PLAT OF ANNEXATION TO THE CITY OF GENEVA, ILLINOIS

PART OF THE SOUTH HALF OF SECTION 12 AND THE NORTH HALF OF SECTION 13, TOWNSHIP 29 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, JANE COUNTY, ILLINOIS

12-12-00-004 (PARCEL 1)	N/A
12-12-00-005 (PARCEL 2)	N/A
12-12-00-006 (PARCEL 3)	N/A
12-12-00-007 (PARCEL 4)	N/A
12-12-00-008 (PARCEL 5)	N/A
12-12-00-009 (PARCEL 6)	N/A
12-12-00-010 (PARCEL 7)	N/A
12-12-00-011 (PARCEL 8)	N/A
12-12-00-012 (PARCEL 9)	N/A
12-12-00-013 (PARCEL 10)	N/A
12-12-00-014 (PARCEL 11)	N/A
12-12-00-015 (PARCEL 12)	N/A
12-12-00-016 (PARCEL 13)	N/A
12-12-00-017 (PARCEL 14)	N/A
12-12-00-018 (PARCEL 15)	N/A
12-12-00-019 (PARCEL 16)	N/A
12-12-00-020 (PARCEL 17)	N/A
12-12-00-021 (PARCEL 18)	N/A
12-12-00-022 (PARCEL 19)	N/A
12-12-00-023 (PARCEL 20)	N/A

**OWNER'S CERTIFICATE (PARCEL 1)**  
STATE OF ILLINOIS }  
COUNTY OF JANE }  
SS

THIS IS TO CERTIFY THAT NEWMARKET REALTY, LLC, IS THE OWNER OF THE PROPERTY DESCRIBED ABOVE AND SAID OWNER, HAS CAUSED THE SAME TO BE PLATTED AS SHOWN HEREON FOR THE USES AND PURPOSES THEREIN SET FORTH AND DOES HEREBY ACKNOWLEDGE AND ACCEPT THE SAME UNDER THE PROVISIONS OF THE ILLINOIS CONVEYANCE ACT. THIS IS TO CERTIFY THAT THE PROPERTY BEING SUBMITTED HEREON AND TO THE BEST OF THE OWNER'S KNOWLEDGE AND BELIEF, LIES ENTIRELY WITHIN THE LIMITS OF SCHOOL DISTRICT 204.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_.

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
AGENT TITLE: \_\_\_\_\_

**NEWMARKET REALTY, LLC**  
STATE OF ILLINOIS }  
COUNTY OF JANE }  
SS

A NOTARY PUBLIC IN AND FOR THE SAID COUNTY IN THE STATE OF ILLINOIS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT WAS DULY EXECUTED BY THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT AS SAID OWNERS, THAT SAID INSTRUMENT IS THE TRUE AND CORRECT COPY OF THE ORIGINAL AND THAT THE SAID INSTRUMENT IS THE TRUE AND CORRECT COPY OF THE ORIGINAL AND VOLUNTARILY EXECUTED BY THE SAID OWNERS FOR THE USES AND PURPOSES SET FORTH HEREIN.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_.

**OWNER'S CERTIFICATE (PARCEL 2)**  
STATE OF ILLINOIS }  
COUNTY OF JANE }  
SS

THIS IS TO CERTIFY THAT NEWMARKET REALTY, LLC, IS THE OWNER OF THE PROPERTY DESCRIBED ABOVE AND SAID OWNER, HAS CAUSED THE SAME TO BE PLATTED AS SHOWN HEREON FOR THE USES AND PURPOSES THEREIN SET FORTH AND DOES HEREBY ACKNOWLEDGE AND ACCEPT THE SAME UNDER THE PROVISIONS OF THE ILLINOIS CONVEYANCE ACT. THIS IS TO CERTIFY THAT THE PROPERTY BEING SUBMITTED HEREON AND TO THE BEST OF THE OWNER'S KNOWLEDGE AND BELIEF, LIES ENTIRELY WITHIN THE LIMITS OF SCHOOL DISTRICT 204.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_.

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
AGENT TITLE: \_\_\_\_\_

**NEWMARKET REALTY, LLC**  
STATE OF ILLINOIS }  
COUNTY OF JANE }  
SS

A NOTARY PUBLIC IN AND FOR THE SAID COUNTY IN THE STATE OF ILLINOIS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT WAS DULY EXECUTED BY THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT AS SAID OWNERS, THAT SAID INSTRUMENT IS THE TRUE AND CORRECT COPY OF THE ORIGINAL AND THAT THE SAID INSTRUMENT IS THE TRUE AND CORRECT COPY OF THE ORIGINAL AND VOLUNTARILY EXECUTED BY THE SAID OWNERS FOR THE USES AND PURPOSES SET FORTH HEREIN.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_.

**OWNER'S CERTIFICATE (PARCEL 3)**  
STATE OF ILLINOIS }  
COUNTY OF JANE }  
SS

THIS IS TO CERTIFY THAT NEWMARKET REALTY, LLC, IS THE OWNER OF THE PROPERTY DESCRIBED ABOVE AND SAID OWNER, HAS CAUSED THE SAME TO BE PLATTED AS SHOWN HEREON FOR THE USES AND PURPOSES THEREIN SET FORTH AND DOES HEREBY ACKNOWLEDGE AND ACCEPT THE SAME UNDER THE PROVISIONS OF THE ILLINOIS CONVEYANCE ACT. THIS IS TO CERTIFY THAT THE PROPERTY BEING SUBMITTED HEREON AND TO THE BEST OF THE OWNER'S KNOWLEDGE AND BELIEF, LIES ENTIRELY WITHIN THE LIMITS OF SCHOOL DISTRICT 204.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_.

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
AGENT TITLE: \_\_\_\_\_

**NEWMARKET REALTY, LLC**  
STATE OF ILLINOIS }  
COUNTY OF JANE }  
SS

A NOTARY PUBLIC IN AND FOR THE SAID COUNTY IN THE STATE OF ILLINOIS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT WAS DULY EXECUTED BY THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT AS SAID OWNERS, THAT SAID INSTRUMENT IS THE TRUE AND CORRECT COPY OF THE ORIGINAL AND THAT THE SAID INSTRUMENT IS THE TRUE AND CORRECT COPY OF THE ORIGINAL AND VOLUNTARILY EXECUTED BY THE SAID OWNERS FOR THE USES AND PURPOSES SET FORTH HEREIN.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_.

**OWNER'S CERTIFICATE (PARCEL 4)**  
STATE OF ILLINOIS }  
COUNTY OF JANE }  
SS

THIS IS TO CERTIFY THAT NEWMARKET REALTY, LLC, IS THE OWNER OF THE PROPERTY DESCRIBED ABOVE AND SAID OWNER, HAS CAUSED THE SAME TO BE PLATTED AS SHOWN HEREON FOR THE USES AND PURPOSES THEREIN SET FORTH AND DOES HEREBY ACKNOWLEDGE AND ACCEPT THE SAME UNDER THE PROVISIONS OF THE ILLINOIS CONVEYANCE ACT. THIS IS TO CERTIFY THAT THE PROPERTY BEING SUBMITTED HEREON AND TO THE BEST OF THE OWNER'S KNOWLEDGE AND BELIEF, LIES ENTIRELY WITHIN THE LIMITS OF SCHOOL DISTRICT 204.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_.

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
AGENT TITLE: \_\_\_\_\_

**NEWMARKET REALTY, LLC**  
STATE OF ILLINOIS }  
COUNTY OF JANE }  
SS

A NOTARY PUBLIC IN AND FOR THE SAID COUNTY IN THE STATE OF ILLINOIS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT WAS DULY EXECUTED BY THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT AS SAID OWNERS, THAT SAID INSTRUMENT IS THE TRUE AND CORRECT COPY OF THE ORIGINAL AND THAT THE SAID INSTRUMENT IS THE TRUE AND CORRECT COPY OF THE ORIGINAL AND VOLUNTARILY EXECUTED BY THE SAID OWNERS FOR THE USES AND PURPOSES SET FORTH HEREIN.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_.

**OWNER'S CERTIFICATE (PARCEL 5)**  
STATE OF ILLINOIS }  
COUNTY OF JANE }  
SS

THIS IS TO CERTIFY THAT NEWMARKET REALTY, LLC, IS THE OWNER OF THE PROPERTY DESCRIBED ABOVE AND SAID OWNER, HAS CAUSED THE SAME TO BE PLATTED AS SHOWN HEREON FOR THE USES AND PURPOSES THEREIN SET FORTH AND DOES HEREBY ACKNOWLEDGE AND ACCEPT THE SAME UNDER THE PROVISIONS OF THE ILLINOIS CONVEYANCE ACT. THIS IS TO CERTIFY THAT THE PROPERTY BEING SUBMITTED HEREON AND TO THE BEST OF THE OWNER'S KNOWLEDGE AND BELIEF, LIES ENTIRELY WITHIN THE LIMITS OF SCHOOL DISTRICT 204.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_.

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
AGENT TITLE: \_\_\_\_\_

**NEWMARKET REALTY, LLC**  
STATE OF ILLINOIS }  
COUNTY OF JANE }  
SS

A NOTARY PUBLIC IN AND FOR THE SAID COUNTY IN THE STATE OF ILLINOIS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT WAS DULY EXECUTED BY THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT AS SAID OWNERS, THAT SAID INSTRUMENT IS THE TRUE AND CORRECT COPY OF THE ORIGINAL AND THAT THE SAID INSTRUMENT IS THE TRUE AND CORRECT COPY OF THE ORIGINAL AND VOLUNTARILY EXECUTED BY THE SAID OWNERS FOR THE USES AND PURPOSES SET FORTH HEREIN.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_.

**CITY COUNCIL CERTIFICATE**  
STATE OF ILLINOIS }  
COUNTY OF JANE }  
SS

ANNOUNCED AND ACCEPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GENEVA, ILLINOIS AT A MEETING HELD ON \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
CITY CLERK

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
AGENT TITLE: \_\_\_\_\_

**STATE OF ILLINOIS**  
COUNTY OF JANE }  
SS

I, THOMAS R. WALKER, AN ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 032-02781, HEREBY CERTIFY THAT THIS PLATTING HAS BEEN REPRODUCED ACCORDING TO THE PROVISIONS OF THE ILLINOIS CONVEYANCE ACT AND THAT THE SAID INSTRUMENT IS THE TRUE AND CORRECT COPY OF THE ORIGINAL AND VOLUNTARILY EXECUTED BY THE SAID OWNERS FOR THE USES AND PURPOSES SET FORTH HEREIN.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_.



**EXHIBIT "C"**

**PUBLIC UTILITY EASEMENTS**

Intentionally omitted

**EXHIBIT "D-1"**

**LEGAL DESCRIPTION OF OWNER'S ACCESS EASEMENT**

See attached

**EXHIBIT "D-1"**

**LEGAL DESCRIPTION OF OWNER'S ACCESS EASEMENT**

THAT PART OF THE SOUTH HALF OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:  
COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 12; THENCE NORTH 89 DEGREES 17 MINUTES 43 SECONDS EAST ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER 298.98 FEET TO THE WESTERLY LINE OF A TRACT OF LAND CONVEYED TO H.H. SIMPSON BY WARRANTY DEED RECORDED AS DOCUMENT 1271011; THENCE NORTH 00 DEGREES 36 MINUTES 00 SECONDS EAST ALONG SAID WESTERLY LINE 198.30 FEET FOR A POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 36 MINUTES 00 SECONDS WEST ALONG SAID WESTERLY LINE 66.30 FEET; THENCE SOUTH 85 DEGREES 07 MINUTES 00 SECONDS WEST 470.60 FEET; THENCE SOUTH 86 DEGREES 26 MINUTES 35 SECONDS WEST 99.97 FEET TO A POINT THAT IS 420.20 FEET NORTH 00 DEGREES 15 MINUTES 00 SECONDS WEST OF A POINT ON THE FORMER CENTER LINE OF COUNTY FARM ROAD THAT IS 100.60 FEET SOUTH 82 DEGREES 31 MINUTES 00 SECONDS WEST OF A LINE DRAWN SOUTH 00 DEGREES 15 MINUTES 00 SECONDS EAST FROM THE LAST DESCRIBED POINT; THENCE SOUTH 85 DEGREES 59 MINUTES 43 SECONDS WEST ALONG A TRACT OF LAND CONVEYED TO WILLIAM E. SCHULTZ AND WIFE BY DOCUMENT 690638, 534.83 FEET; THENCE NORTH 00 DEGREES 15 MINUTES 00 SECONDS WEST 66.14 FEET; THENCE NORTH 85 DEGREES 59 MINUTES 43 SECONDS EAST 530.76 FEET; THENCE NORTH 86 DEGREES 26 MINUTES 35 SECONDS EAST 99.46 FEET TO A LINE DRAWN SOUTH 85 DEGREES 07 MINUTES 00 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 85 DEGREES 07 MINUTES 00 SECONDS EAST 476.17 FEET TO THE POINT OF BEGINNING, IN GENEVA TOWNSHIP, KANE COUNTY, ILLINOIS.

**EXHIBIT "D-2"**

**SURVEY OF OWNER'S ACCESS EASEMENT**

See attached



**EXHIBIT "D-3"**

**OWNER'S ACCESS EASEMENT AGREEMENT**

See attached

AMENDED

REPLACEMENT  
EASEMENT

FILED FOR RECORD  
KANE COUNTY, ILL.

072497;073097;100897

hss\ease6.dk2

98K029218

98 APR -9 PM 1:15

THIS INSTRUMENT PREPARED  
BY AND MAIL TO:

Henry S. Stillwell, III  
Rathje, Woodward, Dyer & Burt  
300 E. Roosevelt Road  
P.O. Box 786  
Wheaton, IL 60189

(CURRENTLY IN  
PLACE)

*Lynnda M. Revised*  
RECORDER

(Reserved for Recorder's Use)

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT ("Agreement"), is made and entered as of the 14th day of February, 1998, by and between OLD SECOND NATIONAL BANK, as Successor Trustee to Kane County Bank, as Trustee under Trust Agreement dated September 9, 1985 and known as Trust No. 699 ("Trust 699"), DK II PARTNERSHIP, an Illinois limited partnership ("DK II") (Trust 699 and DK II collectively "Grantors"), WASTE MANAGEMENT OF ILLINOIS, INC., a Delaware corporation ("Waste Management") and FIRST NATIONAL BANK OF LAGRANGE, as Trustee under Trust Agreement dated May 15, 1985 and known as Trust No. 2558 ("Trust 2558") (Waste Management and Trust 2558 collectively "Grantees").

RECITALS:

A. Grantors and Grantees have heretofore entered into that certain unrecorded Agreement to Abrogate and Grant Access Easements dated February 10, 1997 ("Prior Agreement"), providing in pertinent part for:

- (i) The release and abrogation by Grantees of that certain access easement granted and established by that certain instrument entitled Easement, recorded in Kane County, Illinois on November 3, 1977 as document number 1431011 ("Existing Easement"), which established an access easement over and across the real estate legally described in Exhibit "A" attached hereto ("Existing Easement Premises"), which Existing Easement Premises is depicted as Parcel 5 on Exhibit "D" attached hereto ("Site Drawing"); and
- (ii) The grant and establishment by Grantors of a 66 feet wide access easement to replace the Existing Easement ("Replacement Easement") over, across and upon the real estate legally described in Exhibit "B" attached hereto ("Replacement Easement Premises"), which Replacement Easement Premises is depicted on the Site Drawing attached hereto as Exhibit "D".

B. Grantors are desirous of granting to Grantees the Replacement Easement over, across and upon the Replacement Easement Premises, in accordance with the terms and conditions set forth in this Agreement, for the purpose of providing ingress and egress to and

*Not Title / 55.00*

SSW  
12/31/88 # 39426

(18)

98K029218

from the real estate collectively owned by Grantees as legally described in Exhibit "C" attached hereto ("**Dominant Estate**") and Fabyan Parkway, by way of the eighty (80) feet wide collector road right-of-way established by that certain Plat of Dedication recorded in Kane County, Illinois as document number 98K029217 ("**Plat of Dedication**"), which collector road right-of-way is depicted on the Site Drawing attached hereto as Exhibit "D".

C. In consideration for the grant of the Replacement Easement, Grantees, as the collective owners of the Dominant Estate and the successors in interest to the rights and privileges established by the Existing Easement, are desirous of irrevocably releasing and abrogating the Existing Easement and terminating all rights, obligations and encumbrances with respect thereto.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **GRANT OF REPLACEMENT EASEMENT.** Grantors hereby grant to Grantees, and Grantees respective successors, assigns, tenants, servants, employees, visitors, invitees and licensees, for the benefit of the Dominant Estate, a perpetual, non-exclusive access easement appurtenant (i.e. the Replacement Easement) for (i) ingress and egress to and from the Dominant Estate over, across and upon the Replacement Easement Premises as legally defined in Exhibit "B" attached hereto, and (ii) the movement of men, equipment and materials for the construction, maintenance, repair, replacement, renewal and removal over, upon and across the Replacement Easement Premises of access drive improvements consisting of curb, gutter, gravel base, and binder and surface courses of asphalt, but expressly excluding underground utilities other than storm sewer lines and structures required to service such access drive (collectively the "**Access Drive Improvements**").

2. **RELEASE AND ABROGATION OF EXISTING EASEMENT.** Grantees, for themselves and their respective successors and assigns in interest in the Dominant Estate, hereby fully, completely and irrevocably release, abrogate, discharge and terminate the Existing Easement, and do hereby release the Existing Easement Premises from all obligations, rights, duties and encumbrances created by or under the Existing Easement. The Existing Easement shall hereafter be of no further force or effect and no past, present or future rights, duties, privileges or obligations shall hereafter exist, or be claimed to exist, thereunder.

3. **DIVISION OF DOMINANT ESTATE.** The parties hereto contemplate that the Dominant Estate will hereafter be divided into two or more parcels and/or subdivided lots by plat of plats of subdivision, divisions by deed or otherwise. No such division of the Dominant Estate, and no development and use carried out upon any such divided lot or parcel, shall be deemed to exceed the burden permitted and intended by Grantors and Grantees hereunder with respect to the use and maintenance of the Replacement Easement and the Replacement Easement Premises by the Dominant Estate for ingress and egress. Each such divided lot and/or parcel from time to time contained within the Dominant Estate shall be entitled and subject to the rights, privileges, duties

and liabilities running to the benefit of, and imposed upon, the Dominant Estate pursuant to the terms of this Agreement.

4. **USE OF EASEMENT.** Grantors hereby retain all rights to the use and enjoyment of the Replacement Easement Premises, including, without limitation, the construction and/or use for ingress and egress of any Access Drive Improvements from time to time located thereon, and the construction of access drive intersections connecting to the Access Drive Improvements, provided no such use shall be inconsistent with the purpose and intent of the Replacement Easement. Grantors further reserve the right and authority to grant easement rights for ingress and egress over, across and upon the Replacement Easement Premises to others, provided no such grant shall unreasonably interfere with Grantees' use and enjoyment of the Replacement Easement Premises as provided for and authorized pursuant to this Agreement.

5. **CONSTRUCTION AND MAINTENANCE OF ACCESS DRIVE IMPROVEMENTS.**

5.01 **Construction:** All Access Drive Improvements from time to time constructed by either or both of Grantees or any of their respective successors, assigns, grantees or transferees (a "Constructing Party") within the Replacement Easement Premises shall be constructed in full compliance with applicable laws, regulations and permits. All costs and expenses incurred by a Constructing Party in constructing the Access Drive Improvements shall be paid by the Constructing Party in a timely manner without default and the Constructing Party shall not permit or cause any liens or encumbrances to be filed against the Replacement Easement Premises as a result of such work. In the event a lien claim is filed against the Replacement Easement Premises as a result of any work carried out thereon by, through or on behalf of a Constructing Party, the Constructing Party shall cause such lien to be released of record within ten (10) business days following the Constructing Party's receipt of written request therefor from the fee title owner or owners of the Replacement Easement Premises or its authorized agents ("Easement Owner").

5.02 **Maintenance:** All Access Drive Improvements from time to time constructed within the Replacement Easement Premises by a Constructing Party, shall at all times be maintained by the fee title owners of the Dominant Estate (sometimes collectively the "Maintaining Parties"), at their joint and several expense, in a clean, sightly, safe and passable condition, free of potholes and accumulations of ice and snow, and in a manner consistent with the maintenance standards utilized by first class shopping centers in the Chicago Metropolitan Area. The Maintaining Parties, shall, at their expense, remove snow and ice from the Access Drive Improvements in a prompt and timely manner and seal coat and stripe the asphalt pavement contained in the Access Drive Improvements as from time to time reasonably necessary. The foregoing to the contrary notwithstanding, if at any time or from time to time the Easement Owner makes or authorizes direct connection to and use of the Access Drive Improvements for the benefit of property other than the Dominant Estate ("Other Benefitted Property"), the Easement Owner shall be deemed one of the Maintaining Parties and shall be responsible for contributing a prorata share toward the costs of maintaining the Access Drive Improvements as

required hereunder, which prorata share shall be based upon a ratio equal to the number of daily traffic movements upon the Access Drive Improvements generated by the Other Benefitted Property divided by the total number of daily traffic movements upon the Access Drive Improvements ("Easement Owner's Share"). The Easement Owner shall have the right and authority to assign all or any portion of the Easement Owner's Share to owners and/or tenants of all or portions of the Other Benefitted Property ("Assignees") by written instruments recorded against the Replacement Easement Premises ("Assignment Instrument"). In such event, the other Maintaining Parties shall look solely to such Assignees for collection or enforcement of the Easement Owner's Share as to the portions thereof for which an Assignment Instrument has been recorded. All costs and expenses incurred by the Maintaining Parties in maintaining the Access Drive Improvements shall be paid by the Maintaining Parties in a timely manner without default and the Maintaining Parties shall not permit or cause any liens or encumbrances to be filed against the Replacement Easement Premises as a result of such work. In the event a lien claim is filed against the Replacement Easement Premises as a result of any work carried out thereon by, through or on behalf of the Maintaining Parties, the Maintaining Parties shall cause such lien to be released of record within ten (10) business days following any or all of the Maintaining Parties' receipt of written request therefor from the Easement Owner. In the event the Maintaining Parties fail to cause any such lien to be released within said ten business day period, the Easement Owner may elect, in its sole discretion, to pay the amount necessary to obtain a release of such lien, in which event the Maintaining Parties shall pay to the Easement Owner an amount equal to one hundred twenty-five percent (125%) of the amount paid by the Easement Owner, plus interest thereon at the rate of ten percent (10%) per annum from the date of payment by the Easement Owner, within ten (10) days following the Easement Owner's written request for the same.

6. **RESTORATION.** The Constructing Party shall, at its expense and within fifteen (15) days following the completion of any work within the Replacement Easement Premises, restore the Replacement Easement Premises to its condition preceding such work, to the extent reasonably practicable.

7. **INDEMNIFICATION/INSURANCE.**

7.01 **Indemnification:** Grantees shall indemnify, defend and hold harmless Grantors and the Easement Owner and each of their respective beneficial owners, partners, shareholders, officers and employees (collectively "Indemnitees") from any and all claims, liabilities, judgments, costs and expenses, including, without limitation, reasonable attorney's fees, court costs and expert witness fees, incurred by or brought against all or any of the Indemnitees as a result of the construction or maintenance of the Access Drive Improvements or due to any use of the Replacement Easement Premises by Grantees, a Constructing Party, the Maintaining Parties or any of their contractors, tenants, servants, employees, guests or invitees.

7.02 **Insurance:** Prior to beginning any work on the Replacement Easement Premises, the Constructing Party or Maintaining Parties, as the case may be, Grantees and each independent contractor engaged to perform work on the Replacement Easement Premises shall purchase the

following insurance coverages, which shall be maintained in force throughout the period such work is performed:

- (a) Workers' Compensation Insurance with limits as required by the applicable statutes of the State of Illinois.
- (b) Employer's Liability Insurance with limits of not less than \$500,000.00 each accident/injury; \$500,000.00 each employee/disease.
- (c) Commercial General Liability Insurance with limits of not less than \$2,000,000.00 per occurrence bodily injury/property damage combined single limit, \$2,000,000.00 aggregate bodily injury/property damage combined single limit. The insurance shall include, but not necessarily be limited to, the following:
  - (i) property/operations coverage;
  - (ii) products/completed operations coverage;
  - (iii) contractual liability coverage (specifically covering the indemnification obligations referred to herein);
  - (iv) personal injury coverage (with the employment exclusion deleted);
  - (v) broad form property damage coverage;
  - (vi) explosion, collapse and underground coverage; and
  - (vii) independent contractor liability coverage.
- (d) Comprehensive Motor Vehicle Liability Insurance with limits of not less than \$1,000,000.00 per accident bodily injury/property damage combined single limit.

The foregoing insurance coverages shall be provided by companies authorized to transact business in the State of Illinois and acceptable to and approved by the Easement Owner. The policy of Commercial General Liability Insurance shall include an endorsement naming the Easement Owner as additional insureds and shall not be subject to cancellation or modification without at least 30 days' prior written notice to Seller. The person responsible to provide such insurance coverage shall provide the Easement Owner with a Certificate of Insurance for each of the coverages specified above and, if requested, copies of the policies issued by the insurers. The coverage limits required under subsections (c) and (d) above may be satisfied through a combination of primary and excess coverage. The Constructing Party or Maintaining Parties, as the case may be, shall not allow any contractor to commence work on the Replacement Easement Premises until all the insurance coverages required under this section have been obtained and satisfactory evidence thereof has been furnished to the Easement Owner.

8. **MUTUAL COOPERATION.** Grantors and Grantees agree that the Dominant Estate and adjacent land owned by Grantors constitute large tracts of vacant land contemplated for future development for commercial, industrial, office and other uses. Grantors and Grantees agree to at all times reasonably cooperate with each other in the design and location of the Access

Drive Improvements so as to promote the efficient development and use of their respective properties. The Constructing Party shall deliver a copy of the engineering plans for any proposed Access Drive Improvements to Grantors not less than sixty (60) days prior to commencing construction of such improvements, and shall not commence such construction without the Easement Owner's prior written approval of such engineering plans, which approval shall not be unreasonably withheld or delayed. The failure of the Easement Owner to deliver to the Constructing Party a written objection to said plans within thirty (30) days following the Easement Owner's receipt thereof shall constitute such the Easement Owner's approval of said engineering plans.

9. GENERAL PROVISIONS.

9.01 Notices: Any notice required or desired to be given under this Agreement, unless expressly provided to the contrary herein, shall be in writing and shall be deemed to have been given on the date of personal delivery, on the date of confirmed telefacsimile transmission provided a hard copy of such notice is deposited in the regular mail addressed to the recipient within twenty-four hours following the telefacsimile transmission, or on the date when deposited in the U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

(i) If to Grantors:

DKII Partnership  
140 First Street  
Batavia, IL 60510  
Attn: Gerard Dempsey  
Phone: (630) 879-3680  
Fax: (630) 879-3684

with a copy to:

Rathje, Woodward, Dyer & Burt  
P.O. Box 786  
Wheaton, IL 60189  
Attn: Henry S. Stillwell, III  
Phone: (630) 668-8500  
Fax: (630) 668-7350

and:

OLD SECOND NATIONAL BANK OF AURORA  
ELBURN OFFICE  
122 NORTH MAIN STREET  
ELBURN, ILLINOIS 60119

(ii) If to Grantees:

Waste Management of Illinois, Inc.  
3003 Butterfield Road  
Oakbrook, IL 60521  
Attn: Director - Real Estate  
Phone: (630) 572-8872  
Fax: (630) 218-1596

with a copy to:

Waste Management of North America  
3003 Butterfield Road

Oakbrook, IL 60521  
Attn: General Counsel  
Phone: (630) 572-8800  
Fax: (630) 218-1596

- (iii) **If to the Easement Owner and/or the Maintaining Parties:**

To the name and address identified in the public records for the receipt of general real estate tax bills for the Replacement Easement Premises or the Dominant Estate, as the case may be.

- (iv) **If to a Constructing Party:**

If no name and address is provided through submittals made pursuant to Paragraph 8 hereof, then the names and addresses identified in the public records for the receipt of general real estate tax bills for the Dominant Estate.

9.02 **Benefits and Burdens:** All provisions and covenants of this Agreement, including the benefits and burdens set forth herein, shall run with the land and shall be binding upon, enforceable against and shall inure to the benefit of the successors, assigns, transferees, grantees and tenants of Grantors and Grantees. All references to Grantees in this Agreement shall be construed to include all of Grantees' successors, assigns and transferees in interest in fee title to all or any portion of the Dominant Estate. All references to Grantors in this Agreement shall be construed to include all of Grantors' successors, assigns and transferees in interest in fee title to all or any portion of the Replacement Easement Premises.

9.03 **Termination of Liability:** Upon the transfer or termination of an interest in any of the real estate herein described, the transferor or terminating party shall have not liability or responsibility hereunder for any breach of a covenant, right or duty herein pertaining to such transferred or terminated interest which occurs subsequent to such transfer or termination, and the other parties in interest hereunder shall look solely to the transferee of, or successor in interest to, such interest with respect to such breach.

9.04 **Amendments:** Except as otherwise provided herein, this Agreement may be amended or modified by, and only by, a written instrument duly authorized and executed by all of the owners of record of the Replacement Easement Premises and the Dominant Estate.

9.05 **Construction:** This Agreement shall be liberally construed to effectuate the purpose and intent of the parties as set forth herein.

9.06 Enforcement/Venue/Attorney's Fees: Any of the parties hereto may enforce this Agreement, or any provision hereof, by an appropriate action at law or in equity, including, without limitation, specific performance and injunctive relief. In no event, however, shall the termination of this Agreement be permitted as a remedy for the breach of any covenant, obligation or duty hereunder. Venue for any enforcement action shall be in Kane County, Illinois. The prevailing party in any such litigation shall be entitled to, as recoverable costs, its reasonable attorney's fees, court costs and expert witness fees.

9.07 Captions and Paragraph Headings: The captions and paragraph headings inserted in this Agreement are for convenience only and are not intended to, and shall not be construed to limit, enlarge, or affect the scope or intent of this Agreement nor the meaning of any provision hereof.

9.08 Recitals and Exhibits: The recitals set forth at the beginning of this Agreement and the exhibits attached hereto are hereby incorporated into this Agreement and made a part of the substance hereof.

9.09 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

9.10 Interpretation: The terms "hereby," "hereof," "hereto," "herein," "hereunder," and any similar terms shall refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of this Agreement. Words of the masculine, feminine, or neuter gender shall mean and include the correlative words of other genders, and the words importing the singular number shall mean and include the plural number and vice versa. Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations, and other legal entities, including public bodies, as well as natural persons. The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to."

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date first above written.

**GRANTORS:**

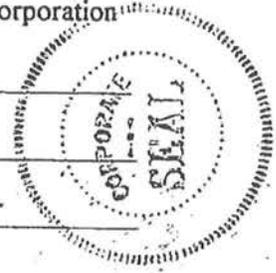
DK II PARTNERSHIP, an Illinois limited partnership

By: [Signature]  
Title: Partner

**GRANTEES:**

WASTE MANAGEMENT OF ILLINOIS, INC., a Delaware corporation

By: [Signature]  
Title: President  
Attest: [Signature]  
Title: Secretary



OLD SECOND NATIONAL BANK, as Successor Trustee to Kane County Bank, as Trustee under Trust Agreement dated September 9, 1985 and known as Trust No. 699

By: [Signature]  
Title: Vice President & Trust Officer  
Attest: [Signature]  
Title: AVP/CASHIER

FIRST NATIONAL BANK OF LAGRANGE, as Trustee under Trust Agreement dated May 15, 1985 and known as Trust No. 2558

By: [Signature]  
Title: SENIOR VICE-PRESIDENT  
Attest: [Signature]  
Title: TRUST OFFICER

Formerly known as  
**KANE COUNTY BANK & TRUST CO.**  
AS TRUSTEE UIT # 699  
Now known as  
**THE OLD SECOND NATIONAL BANK OF AURORA**  
AS TRUSTEE UIT # 699(48-6167)

This document is made by the First National Bank of La Grange as Trustee and accepted upon the express understanding that the First National Bank of La Grange enters into the same not personally, but only as Trustee and that no personal liability is assumed by nor shall be asserted or enforced against the First National Bank of La Grange because of or on account of the making or executing this document or of anything therein contained, all such liability, if any being expressly waived, nor shall the First National Bank of La Grange be held personally liable upon or in consequence of any of the covenants of this document, either expressed, or implied.

This instrument is executed by THE OLD SECOND NATIONAL BANK of Aurora, Illinois, not personally but solely as Trustee, as intended. All the covenants and conditions to be performed hereunder by THE OLD SECOND NATIONAL BANK are intended to be for the benefit of the State, as intended and shall not be enforced or liability shall be asserted or be enforced against THE OLD SECOND NATIONAL BANK by reason of any of the covenants, statements or representations contained in the instrument.

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Recorder Not Responsible  
For Reproductions

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF ~~DEKALB~~ )  
DEKALB

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that the above named Janice Docherty,  
V.P. + T.O. and Peggy Nelson, AVP/Cashier of OLD  
SECOND NATIONAL BANK, as Trustee under Trust Agreement dated September 9, 1985 and known as Trust No. 699 ("Trustee") personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such V.P. + T.O. and AVP/Cashier respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of Trustee for the uses and purposes therein set forth, and the said V.P. + T.O. then and there acknowledged that said V.P. + T.O. as custodian of the corporate seal of Trustee, caused the corporate seal of Trustee to be affixed to said instrument as said V.P. + T.O.'s own free and voluntary act and as the free and voluntary act of said corporation as said Trustee, for the uses and purposes therein set forth.

Given under my hand and seal this 19<sup>th</sup> day of December 1997.

"OFFICIAL SEAL"  
GAN HEWITTE  
Notary Public, State of Illinois  
Exp. 7/25/99  
NOTARY PUBLIC

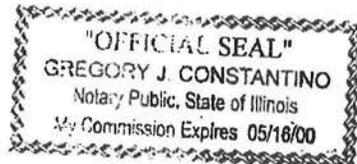
Unofficial

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF DUPAGE    )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Bruce Malec, President and Dennis Wilt, Secretary of WASTE MANAGEMENT OF ILLINOIS, INC., a Delaware corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instruments as such President and Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth; and the said Secretary then and there acknowledged that he, as custodian of the records of the corporation, did affix the corporate seal of said corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of February, 1998.

*Gregory J. Constantino*  
\_\_\_\_\_  
Notary Public



Unofficial

STATE OF ILLINOIS )  
Cook ) SS  
COUNTY OF ~~DUPAGE~~ )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO  
HEREBY CERTIFY, that the above named CHRISTOPHER JOYCE,  
SEN. VICE PRES and KAREN RULO, TRUST OFFICER of FIRST NATIONAL  
BANK OF LAGRANGE, as Trustee under Trust Agreement dated May 15, 1985 and known as  
Trust No. 2558 ("Trustee") personally known to me to be the same persons whose names are  
subscribed to the foregoing instrument as such SEN V-P and TRUST OFFICER,  
respectively, appeared before me this day in person and acknowledged that they signed and  
delivered the said instrument as their own free and voluntary act and as the free and voluntary act  
of Trustee for the uses and purposes therein set forth, and the said TRUST OFFICER then and  
there acknowledged that said TRUST OFFICER as custodian of the corporate seal of Trustee,  
caused the corporate seal of Trustee to be affixed to said instrument as said TRUST OFFICER  
own free and voluntary act and as the free and voluntary act of said corporation as said Trustee,  
for the uses and purposes therein set forth.

Given under my hand and seal this 14<sup>th</sup> day of FEB, 1998.



Patricia A. Hillebold  
NOTARY PUBLIC

**SCHEDULE OF EXHIBITS**

Exhibit "A":	Legal Description of Existing Easement Premises
Exhibit "B":	Legal Description of Replacement Easement Premises
Exhibit "C":	Legal Description of Dominant Estate
Exhibit "D":	Site Drawing

Unofficial

EXHIBIT "A"

LEGAL DESCRIPTION OF EXISTING EASEMENT PREMISES

THAT PART OF THE SOUTH HALF OF SECTION 12 AND THAT PART OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED BY COMMENCING OF THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 12; THENCE NORTH 89 DEGREES 17 MINUTES 43 SECONDS EAST ALONG THE SOUTHERLY LINE OF SAID SOUTHEAST QUARTER 298.98 FEET; THENCE NORTH 00 DEGREES 36 MINUTES 00 SECONDS EAST 198.30 FEET FOR A POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 36 MINUTES 00 SECONDS WEST ALONG THE LAST DESCRIBED COURSE 66.30 FEET; THENCE SOUTH 85 DEGREES 07 MINUTES 00 SECONDS WEST 470.60 FEET; THENCE SOUTH 00 DEGREES 15 MINUTES 00 SECONDS EAST 413.30 FEET (BEING TO THE CENTER LINE OF THE FORMER COUNTY FARM ROAD), THENCE SOUTH 82 DEGREES 31 MINUTES 00 SECONDS WEST ALONG SAID CENTER LINE 66.53 FEET; THENCE NORTH 00 DEGREES 15 MINUTES 00 SECONDS WEST 482.58 FEET TO A LINE DRAWN SOUTH 85 DEGREES 07 MINUTES 00 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 85 DEGREES 07 MINUTES 00 SECONDS EAST ALONG SAID LINE 537.60 FEET TO THE POINT OF BEGINNING IN GENEVA TOWNSHIP, KANE COUNTY, ILLINOIS.

Unofficial

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF REPLACEMENT EASEMENT PREMISES**

THAT PART OF THE SOUTH HALF OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 12; THENCE NORTH 89 DEGREES 17 MINUTES 43 SECONDS EAST ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER 298.98 FEET TO THE WESTERLY LINE OF A TRACT OF LAND CONVEYED TO H.H. SIMPSON BY WARRANTY DEED RECORDED AS DOCUMENT 1271011; THENCE NORTH 00 DEGREES 36 MINUTES 00 SECONDS EAST ALONG SAID WESTERLY LINE 198.30 FEET FOR A POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 36 MINUTES 00 SECONDS WEST 470.60 FEET; THENCE SOUTH 86 DEGREES 26 MINUTES 35 SECONDS WEST 99.97 FEET TO A POINT THAT IS 420.20 FEET NORTH 00 DEGREES 15 MINUTES 00 SECONDS WEST OF A POINT ON THE FORMER CENTER LINE OF COUNTY FARM ROAD THAT IS 100.60 FEET SOUTH 82 DEGREES 31 MINUTES 00 SECONDS WEST OF A LINE DRAWN SOUTH 00 DEGREES 15 MINUTES 00 SECONDS EAST FROM THE LAST DESCRIBED POINT; THENCE SOUTH 85 DEGREES 59 MINUTES 43 SECONDS WEST ALONG A TRACT OF LAND CONVEYED TO WILLIAM E. SCHULTZ AND WIFE BY DOCUMENT 690638, 534.83 FEET; THENCE NORTH 00 DEGREES 15 MINUTES 00 SECONDS WEST 66.14 FEET; THENCE NORTH 85 DEGREES 59 MINUTES 43 SECONDS EAST 530.76 FEET; THENCE NORTH 86 DEGREES 26 MINUTES 35 SECONDS EAST 99.46 FEET TO A LINE DRAWN SOUTH 85 DEGREES 07 MINUTES 00 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 85 DEGREES 07 MINUTES 00 SECONDS EAST 476.17 FEET TO THE POINT OF BEGINNING, IN GENEVA TOWNSHIP, KANE COUNTY, ILLINOIS.

Unrecorded

LEGAL DESCRIPTION OF DOMINANT ESTATE

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 12 AND THAT PART OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 12; THENCE NORTH 89 DEGREES SEVENTEEN MINUTES 43 SECONDS EAST ALONG THE SOUTHERLY LINE OF SAID SOUTHEAST QUARTER 298.98 FEET FOR A POINT OF BEGINNING; THENCE NORTH 00 DEGREES 36 MINUTES 00 SECONDS EAST ALONG AN OLD FENCE LINE 738.10 FEET; THENCE NORTH 00 DEGREES 26 MINUTES 00 SECONDS EAST ALONG AN OLD FENCE LINE 12125.40 FEET; THENCE SOUTH 83 DEGREES 36 MINUTES 07 SECONDS EAST 461.40 FEET TO AN OLD LIMESTONE MONUMENT AT THE NORTHEASTERLY CORNER OF A TRACT OF LAND CONVEYED TO CHANCY MATTOON BY DEED RECORDED IN BOOK 10 AT PAGE 70 IN THE RECORDER'S OFFICE OF KANE COUNTY, ILLINOIS; THENCE SOUTH 11 DEGREES 50 MINUTES 22 SECONDS EAST ALONG THE EASTERLY LINE OF SAID MATTOON TRACT 1502.47 FEET TO THE CENTER LINE OF THE FORMER COUNTY FARM ROAD (NOW VACATED); THENCE NORTH 88 DEGREES 57 MINUTES 21 SECONDS WEST ALONG SAID CENTER LINE 40.74 FEET TO AN ANGLE IN SAID CENTER LINE; THENCE SOUTH 73 DEGREES 53 MINUTES 00 SECONDS WEST ALONG SAID CENTER LINE 194.72 FEET TO AN ANGLE IN SAID CENTER LINE; THENCE SOUTH 61 DEGREES 28 MINUTES 00 SECONDS WEST ALONG SAID CENTER LINE 114.00 FEET TO AN ANGLE IN SAID CENTER LINE; THENCE SOUTH 44 DEGREES 59 MINUTES 00 SECONDS WEST ALONG SAID CENTER LINE 646.70 FEET TO A LINE DRAWN SOUTH 00 DEGREES 36 MINUTES 00 SECONDS WEST FROM THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 36 MINUTES 00 SECONDS EAST ALONG SAID LINE 183.71 FEET TO THE POINT OF BEGINNING, IN THE TOWNSHIP OF GENEVA, KANE COUNTY, ILLINOIS.

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**EXHIBIT "E"**

**ZONING ORDINANCE**

See attached

**EXHIBIT "F"**

**PROPOSED WATER MAIN AND ELECTRIC UTILITY EXTENSIONS**

See attached





**EXHIBIT "G"**

**PROPOSED SANITARY SEWER EXTENSION**

See attached



**EXHIBIT "H"**

**LETTER OF CREDIT FORM**

See attached

**EXHIBIT "I"**

**PROPOSED SETBACKS**

See attached

