



# MOLINE CITY COUNCIL AGENDA

Tuesday, February 25, 2014

6:30 p.m.

(immediately following the Committee-of-the-Whole meeting)

City Hall

Council Chambers – 2<sup>nd</sup> Floor

619 16th Street

Moline, IL

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## CALL TO ORDER

## PLEDGE OF ALLEGIANCE

## ROLL CALL

## CONSENT AGENDA

All items under the consent agenda are considered to be routine in nature and will be enacted by one motion. There will be no separate discussions of these items unless a council member so requests, in which event the item will be removed from the consent agenda and considered as the first item after approval of the consent agenda.

COUNCIL MEMBER	PRESENT	ABSENT
Knaack		
Parker		
Bender		
Brown		
Turner		
Schoonmaker		
Liddell		
Acri		
Mayor Raes		

## APPROVAL OF MINUTES

Committee-of-the-Whole and Council meeting minutes of February 18, 2014.

## SECOND READING ORDINANCES

## RESOLUTIONS

### 1. Council Bill/Resolution 1027-2014

A Resolution authorizing the Mayor and City Clerk to execute a Law Enforcement Services Agreement between the City of Moline and AlliedBarton Security Services, LLC, setting forth the terms for assignment of uniformed police officers to the SouthPark Mall complex for the period January 1, 2014 through December 31, 2014.

**EXPLANATION:** Annual agreement for the assignment of uniformed police officers to the SouthPark Mall police substation. In part, the proposed agreement provides a schedule of specific hours each day that a police officer will be present in the Mall, and provides for AlliedBarton Security Services to reimburse the City of Moline the sum of \$127,000. Staffing of the schedule will be accomplished by allocating hours and days off among the three officers assigned to the program.

**FISCAL IMPACT:** Reimbursement of \$127,000.

**PUBLIC NOTICE/RECORDING:** N/A

### 2. Council Bill/Resolution 1028-2014

A Resolution authorizing approval of a Reconciliation Change Order # 1 with Miller Trucking and Excavating for Project #1160, 2013 Sanitary Sewer Replacement Project in the amount of \$5,457.10.

**EXPLANATION:** Project #1160 included the replacement of sanitary sewer, water main, storm water, and concrete pavement on 24<sup>th</sup> Avenue, 27<sup>th</sup> Streets – 30<sup>th</sup> Streets and 25<sup>th</sup> Avenue A, 29<sup>th</sup> – 30<sup>th</sup> Streets. In order to make final payment to the contractor and close out the contract a reconciliation change order is needed in the amount of \$5,457.10. The change order reflects the difference between the estimated bid quantities and final quantities constructed. The change order increases the original contract value of \$1,047,155.30 by 0.5% to \$1,052,612.40.

**FISCAL IMPACT:** Funds are budgeted and available from Utility Tax, Water, WPC and Storm.

**PUBLIC NOTICE/RECORDING:** N/A

**3. Council Bill/Resolution 1029-2014**

A Resolution authorizing approval of a Reconciliation Change Order #1 with Valley Construction Company for Project #1174, 2013 Residential Resurfacing Project, in the amount of \$120,834.28.

**EXPLANATION:** Project #1174 included pavement sanitary sewer work, storm sewer work, pavement patching and resurfacing of 5<sup>th</sup> Street from 23<sup>rd</sup> – 24<sup>th</sup> Avenues, 24<sup>th</sup> Avenue from 31<sup>st</sup> - 34<sup>th</sup> Streets, 32<sup>nd</sup> Avenue from 35<sup>th</sup> - 41<sup>st</sup> Street, and 34<sup>th</sup> Street from 12<sup>th</sup> - 23<sup>rd</sup> Avenue.

In order to make final payment to the contractor and close out the contract, a reconciliation change order is needed in the amount of \$120,834.28. The majority of this change order reflects additional pavement patching and storm sewer replacement which was unknown at bid time and for work related to complying with new ADA standards for sidewalks and ramps which were implemented after bids were received. The change order increases the original contract value of \$942,364.20 by 12.8% to \$1,063,198.48

**FISCAL IMPACT:** Funds are budgeted and available from Utility Tax, Water, WPC and Storm.

**PUBLIC NOTICE/RECORDING:** N/A

**4. Council Bill/Resolution 1030-2014**

A Resolution authorizing the Mayor and City Clerk to execute a contract with Walter D. Laud, Inc. for Project # 1204, 2014 Inlet/Catch Basin Replacement Program, in the amount of \$103,390.30.

**EXPLANATION:** Bids were solicited with Walter D. Laud, Inc. submitting the lowest responsible and responsive bid.

**FISCAL IMPACT:** Funds are budgeted and available in #330-1971-433.08-35

**PUBLIC NOTICE/RECORDING:** N/A

**5. Council Bill/Resolution 1031-2014**

A Resolution authorizing the Mayor and City Clerk to execute a contract with Denler, Inc. for Project # 1205, 2014 Joint & Crack Sealing Program, in the amount of \$56,970.00.

**EXPLANATION:** Bids were solicited with Denler, Inc. submitting the lowest responsible and responsive bid.

**FISCAL IMPACT:** Funds are budgeted and available in CIP

**PUBLIC NOTICE/RECORDING:** N/A

**6. Council Bill/Resolution 1032-2014**

A Resolution authorizing approval of Authorizations #1-3 for MFT Section 12-00253-00-RS, Avenue of the Cities Resurfacing, 41<sup>st</sup> - 43<sup>rd</sup> Streets.

**EXPLANATION:** The Illinois Department of Transportation (IDOT) solicited bids and contracted for the work in MFT Section 12-00253-00-RS. Since Federal transportation funds were used as partial funding for the project. In order to make final payment to the contractor and close out the contract, IDOT requests the City of Moline's concurrence with Authorizations #1, #2, and #3 in the amount of \$55,436.47. The majority of the extra work included in these Authorizations is for additional pavement patching and curb and gutter replacement that was unknown at bid time and for work related to complying with new ADA standards for sidewalks and ramps which were implemented bids were received.

**FISCAL IMPACT:** Funds are budgeted and available in MFT & Federal

**PUBLIC NOTICE/RECORDING:** N/A

**7. Council Bill/Resolution 1033-2014**

A Resolution authorizing the Mayor and City Clerk to execute a Licensing Agreement with Mark Roemer to install a sign and awnings overhanging 5<sup>th</sup> Avenue and 15<sup>th</sup> Street right-of-ways at 425 15<sup>th</sup> Street, Moline.

**EXPLANATION:** There is a new tenant (Brix) going into the former Wide Open location at 425 15<sup>th</sup> Street, Moline. This property is located at the northwest corner of 15<sup>th</sup> Street and 5<sup>th</sup> Avenue. The applicant would like to install awnings and a sign that overhang the 5<sup>th</sup> Avenue public sidewalk. The awnings would be installed on both the 15<sup>th</sup> Street and 5<sup>th</sup> Avenue facades.

**FISCAL IMPACT:** \$30 annual fee to the City

**PUBLIC NOTICE/RECORDING:** N/A

**OMNIBUS VOTE**

**ITEMS NOT ON CONSENT**

**SECOND READING ORDINANCES**

**8. Council Bill/Special Ordinance 4004-2014**

A Special Ordinance authorizing the Mayor and City Clerk to execute a three-year agreement with Retail Strategies, LLC for the purpose of market analysis, strategic planning and retail recruitment within the City of Moline, Illinois; and authorizing City staff to begin work upon the execution of the agreement and to do all things necessary to implement said retail recruitment program.

**EXPLANATION:** The City is an Illinois municipal corporation possessing home rule powers under Section 6 of Article VII of the Illinois Constitution and has the authority to prevent the spread of blight and encourage private development to enhance the local tax base and to enter into contractual agreements for the purpose of achieving these purposes. Retail recruitment has been an on-going Council goal, and a long-term comprehensive strategic plan for retail recruitment is essential to implement this goal. Retail Strategies, LLC has developed a professional services proposal for the City, and the City Council’s Committee-of-the Whole has reviewed said proposal (Exhibit A) and made a recommendation including staff authorization to negotiate an agreement. The proposal and the agreement (Exhibit B) include the necessary components of research and assessment, strategic plan and recruitment of retailers.

**FISCAL IMPACT:** \$50,000 from Contingency Fund

**PUBLIC NOTICE/RECORDING:** NA

**9. Council Bill/Special Ordinance 4005-2014**

A Special Ordinance authorizing the Mayor and City Clerk to execute a Development Agreement between the City of Moline and Macerich South Park Mall LLC for the South Park Mall Redevelopment project and to execute any necessary agreements referenced therein; and authorizing all appropriate City officers and staff to do all things necessary to complete each of the City’s responsibilities pursuant to said agreement.

**EXPLANATION:** Macerich South Park Mall LLC seeks to enter into a Development Agreement with the City to facilitate redevelopment of property located at 4500 16<sup>th</sup> Street Moline, for the South Park Mall Redevelopment project. The Project will consist of the following elements: demolition of the existing portions of South Park Mall, installation of certain public

OMNIBUS VOTE		
Council Member	Aye	Nay
Schoonmaker		
Liddell		
Acri		
Knaack		
Parker		
Bender		
Brown		
Turner		
Mayor Raes		

4004-2014		
Council Member	Aye	Nay
Schoonmaker		
Liddell		
Acri		
Knaack		
Parker		
Bender		
Brown		
Turner		
Mayor Raes		

4005-2014		
Council Member	Aye	Nay
Schoonmaker		
Liddell		
Acri		
Knaack		
Parker		
Bender		
Brown		
Turner		
Mayor Raes		

improvements, new signage and lighting, re-surfacing of parking lots, and other improvements to redevelop this site. The City wishes to support the redevelopment within the Project through the granting of certain lawful incentives to Developer, including but not limited to those available through Tax Increment Financing (“TIF”) pursuant to the Tax Increment Allocation Redevelopment Act, found generally at 65 ILCS 5/11-74.4-1 et. seq. (the “Act” or the “TIF Act”).

**FISCAL IMPACT:** N/A

**PUBLIC NOTICE/RECORDING:** N/A

### **FIRST READING ORDINANCES**

#### **10. Council Bill/General Ordinance 3004-2014**

An Ordinance amending Chapter 20 “MOTOR VEHICLES AND TRAFFIC,” of the Moline Code of Ordinances, Appendix 10 thereof, “PARKING PROHIBITED AT ANY TIME,” by including 31<sup>st</sup> Street, on the east side, between 12<sup>th</sup> Avenue and 11<sup>th</sup> Avenue C.

**EXPLANATION:** Traffic Committee reviewed request and recommends approval.

**FISCAL IMPACT:** N/A

**PUBLIC NOTICE/RECORDING REQUIRED:** N/A

#### **11. Council Bill/Special Ordinance 4006-2014**

A Special Ordinance authorizing the Mayor and City Clerk to execute a Lease Agreement with McCarthy Improvement Company to store construction materials from March 4, 2014 through December 31, 2015 on a portion of City-owned property located at 3620 38<sup>th</sup> Avenue, Moline, Illinois (RICO Parcel 07-223-13).

**EXPLANATION:** McCarthy Improvement Company (MCI) will be constructing the overpass at John Deere Road and 38<sup>th</sup> Street starting this spring. MCI would like to enter into a Lease Agreement for the purpose of storing fill materials and construction equipment on City-owned property at 3620 38<sup>th</sup> Avenue, Moline. This is the former CCI building. MCI has agreed to pay \$1000/month to the City during the term of the lease. Staff recommends approval.

**FISCAL IMPACT:** City will receive \$1000/month income through the lease term.

**PUBLIC NOTICE/RECORDING:** N/A

### **MISCELLANEOUS BUSINESS**

#### **PUBLIC COMMENT**

Members of the public are permitted to speak after first stating their name and address.

### **EXECUTIVE SESSION**

Council Bill/Resolution No. 1027-2014

Sponsor: \_\_\_\_\_

A RESOLUTION

AUTHORIZING the Mayor and City Clerk to execute a Law Enforcement Services Agreement between the City of Moline and AlliedBarton Security Services LLC, setting forth the terms for assignment of uniformed police officers to the SouthPark Mall complex for the period January 1, 2014 through December 31, 2014.

WHEREAS, in 1996 the police department obtained a federal grant to assign three police officers to work in SouthPark Mall on a full-time basis through March 1999; and

WHEREAS, in recognition of the success of this program, the City and mall representatives have annually proposed an agreement for the continued funding of the program; and

WHEREAS, in part, the proposed agreement provides a schedule of specific hours each day that a police officer will be present in the Mall, and for AlliedBarton Security Services to reimburse the City the sum of \$127,000; and

WHEREAS, staffing of the schedule will be accomplished by allocating hours and days off among the three officers assigned to the program.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

That the Mayor and City Clerk are hereby authorized to execute a Law Enforcement Services Agreement between the City of Moline and AlliedBarton Security Services LLC, setting forth the terms for assignment of uniformed police officers to the SouthPark Mall complex for the period January 1, 2014 through December 31, 2014, provided said agreement is substantially similar in form and content to Exhibit A, attached hereto and incorporated herein by this reference thereto, and has been approved as to form by the City Attorney.

CITY OF MOLINE, ILLINOIS

\_\_\_\_\_  
Mayor

February 25, 2014

\_\_\_\_\_  
Date

Passed: February 25, 2014  
\_\_\_\_\_

Approved: March 4, 2014  
\_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

## LAW ENFORCEMENT SERVICES AGREEMENT

This Law Enforcement Services Agreement (referred to herein as the "Agreement"), is made as of this 12th day of February, 2014, by and between AlliedBarton Security Services LLC (referred to herein as "AlliedBarton"), and City of Moline, Illinois (referred to herein as "Agency"), based upon the following facts and circumstances.

A. AlliedBarton provides security officer services to the owner(s) of the shopping center located at 4500 16<sup>th</sup> Street, Moline, Illinois and commonly known as SouthPark Mall (referred to herein as the "Center"); and,

B. AlliedBarton desires to retain Agency to perform Law Enforcement Services (as defined below) at the Center pursuant to the terms of this Agreement. In consideration of the fees to be paid by AlliedBarton to Agency and the covenants to be performed by each of the parties hereunder, AlliedBarton and Agency do hereby enter into this Agreement upon the terms and conditions hereinafter set forth.

1. **Law Enforcement Services.** Subject to the terms and conditions set forth in this Agreement, Agency hereby agrees to provide AlliedBarton with uniformed officers ("Officers") to perform law enforcement functions at the Center (referred to herein as the "Law Enforcement Services") at the times and for the amounts set forth and further described in **Exhibit A**, attached hereto and incorporated herein by this reference, which exhibit may be modified by the parties from time to time to meet the specific needs of the Center and the Agency. Agency's primary responsibility is to provide Officers to protect life and property, to keep the peace, and to enforce local, state, and federal laws. Officers working at the Center are subject to Agency's policies and procedures and, as such, are required to observe Agency's standards of conduct and uniform and shall not be required to perform tasks that are outside the routine services provided by Agency to the general public. Discipline for Officers will be initiated by Agency only and AlliedBarton shall have no liability with respect to any disciplinary action taken against any Officer. It is understood by the parties that Agency and its Officers do not owe a greater level of police services or protection under this Agreement than is owed to the public generally. Agency agrees that such Officers are not employees of AlliedBarton.

2. **Term.** The term of this Agreement shall commence on January 1, 2014, and shall expire on December 31, 2014, unless sooner terminated as provided for herein. Either party may terminate this Agreement at any time and without cause upon ninety (90) days prior written notice unless the Center is sold to a third party or the Center replaces AlliedBarton as its security officer service provider at which time notice shall be given as soon as practicable. Agency may, at its discretion, cancel any or all contracted Law Enforcement Services at any time due to unavailability of Officers or emergencies.

3. **Payment for Services.** AlliedBarton shall pay to Agency, within thirty (30) days of receipt of an invoice from Agency, the agreed upon costs (as set forth in **Exhibit A**) to Agency for providing the Law Enforcement Services at the Center.

4. **Indemnity/Release** The City shall indemnify, defend, and hold harmless Allied, their subsidiaries, affiliates, partners, officers, directors, employees, and agents, from and against all claims under the Workers Compensation, Occupational Disease, or similar statutes for injury or illness, resulting to the assigned employees from such assignment. In addition, the City shall indemnify, defend, and hold harmless Allied, their subsidiaries, affiliates, partners, officers, directors, employees, and agents, from and against all claims, demands, damages, costs, expenses (including reasonable attorney fees), suits, actions, or liability, whether at law or in equity, resulting to third parties, the

mall, its owners, managers, or tenants (including employees of tenants) for the negligent acts or omissions or willful misconduct of the City, its employees, agents, or representatives which occur during the course of police activity at or from the mall which arises out of this agreement, except for liability, loss, claims, costs or damages caused by the negligence or willful misconduct of AlliedBarton or their subsidiaries, affiliates, partners, officers, directors, employees, and agents. Provided, however, that once the City accepts its responsibility to defend and indemnify Allied, any attorney fees incurred by Allied by appointment of or employment of additional counsel to that retained or assigned by the City shall be the sole and exclusive cost and expense of Allied and the City shall not be liable therefor.

**5. Notices.** All notices, demands, requests and other communications hereunder shall be in writing either personally delivered or mailed, via certified mail, return receipt requested, or sent by reputable overnight courier to the following addresses:

If to AlliedBarton, to: AlliedBarton Security Services LLC  
1771 Diehl Road  
Naperville, IL 60563  
Attention: Brian Rosbury, District Manager

If to Agency, to: City of Moline  
619 16<sup>th</sup> Street  
Moline, IL 61265  
Attn: Police Chief

With a copy to City Attorney

or to such other address as either party may direct by notice given to the other as hereinabove provided. Notices will be deemed to have been given upon either receipt or rejection. For notices to be delivered to AlliedBarton, a copy shall also be sent to the manager for the Center.

**6. Miscellaneous.**

**A.** If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

**B.** This Agreement shall be governed by and construed in accordance with the laws of the state in which the Center is located.

**C.** In the event of any dispute or legal proceeding between the parties arising out of or relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to attorneys' and expert witness fees, incurred in connection with such dispute or legal proceeding.

**D.** Except as the parties may specify in writing, neither party shall have the authority, express or implied, to act on behalf of the other party in any capacity whatsoever as an agent. Neither party shall have any authority, express or implied, pursuant to this Agreement to bind the other to any obligation whatsoever.

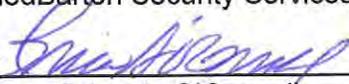
**E.** Agency's relationship to AlliedBarton shall be that of an independent contractor. All Officers furnished by Agency will be employees of Agency

only, and will at all times be subject to the direct supervision and control of Agency. Agency shall have the sole responsibility of paying the salaries, statutory benefits (including Worker's Compensation), insurance, taxes (including, but not limited to, Federal Social Security Taxes and Federal and State Unemployment Taxes) and all other expenses relating to each such employee of Agency, as applicable.

F. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right thereunder.

G. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendment to this Agreement must be in writing and executed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date aforesaid.

AlliedBarton Security Services LLC  
By   
Brian A. O'Connell  
Title: Vice President/General Manager

City of Moline, Illinois  
By \_\_\_\_\_  
Mayor

Attest:  
  
\_\_\_\_\_  
City Clerk

Approved as to Form:  
  
\_\_\_\_\_  
City Attorney

Exhibit A

**One Moline Police Officer will be assigned to SouthPark Mall (“Center”) during the hours of:**

Monday	2:00 – 8:00 pm	6 hours
Tuesday	2:00 – 8:00 pm	6 hours
Wednesday	2:00 – 8:00 pm	6 hours
Thursday	2:00 – 8:00 pm	6 hours
Friday	2:00 – 9:30 pm	7.5 hours
Saturday	2:00 – 9:30 pm	7.5 hours
Sunday	12:00 – 5:00 pm	<u>5 hours</u>
Total Hours per week		44 Hours (2288 hours annually)

1. AlliedBarton shall remit a total annual payment of One hundred twenty-seven thousand and 00/100 dollars (\$127,000.00) to the City of Moline for Law Enforcement Services to be paid in equal installments on a quarterly basis. The City will invoice AlliedBarton on a quarterly basis for this payment as well as for any additional overtime costs incurred in the prior quarter.
2. The Officer assigned at the Center will not be dispatched off site for routine calls, however in the event of an emergency the Officer may be required to respond until such time as they can be replaced at the emergency and return to the Center. When such an emergency occurs, the Officer will notify AlliedBarton personnel.
3. Every attempt will be made to use other manpower to transport arrestees away from the Center for booking. If the Officer assigned to the Center needs to transport an arrestee, the Officer will notify AlliedBarton personnel.
4. The City will make reasonable attempts to backfill the position at the Center if the Officer assigned is unable to work due to sickness or other unforeseen circumstances.
5. For special events or other special needs outside the regular schedule or staffing levels, AlliedBarton will request additional officers with at least 48 hours written notice, and City will provide additional officers at a rate of \$55.50 per hour as long as the City does not have to call in officers for overtime to fill the request. If the City has to call in overtime to provide officers, the rate charged to the AlliedBarton shall be time and a half of the above rate. All overtime work shall be performed and paid in two hour increments.

Council Bill/Resolution No.: 1028-2014

Sponsor: \_\_\_\_\_

A RESOLUTION

AUTHORIZING approval of a Reconciliation Change Order #1 with Miller Trucking and Excavating for Project #1160, 2013 Sanitary Sewer Replacement Project in the amount of \$5,457.10.

\_\_\_\_\_

WHEREAS, in order to make final payment to the contractor and close out this contract, a Reconciliation Change Order is needed in the amount of \$5,457.10; and

WHEREAS, said change order reflects the difference between the estimated bid quantities and final quantities constructed; and

WHEREAS, said change order increases the original contract value of \$1,047,155.30 by 0.5% to \$1,052,612.40.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

That the City Council finds it in the best interest of the City of Moline, Illinois, to authorize approval of a Reconciliation Change Order #1 with Miller Trucking and Excavating for Project #1160, 2013 Sanitary Sewer Replacement Project in the amount of \$5,457.10; provided, however, that said change order is substantially similar in form and content to that attached hereto and incorporated herein by this reference thereto as Exhibit "A" and has been approved as to form by the City Attorney.

CITY OF MOLINE, ILLINOIS

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
February 25, 2014

Date

Passed: February 25, 2014

Approved: March 4, 2014

Attest: \_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

# CITY OF MOLINE

## CONTRACT CHANGE ORDER

Project No. : 1160

Description: 2013 Sanitary Sewer Reconstruct

Contractor : Miller Trucking and Excavating

Date : 02/04/13

Change Order No. : 1 and FINAL

Sheet 1 of 1

CONTRACT	
Original Contract	\$1,047,155.30
Changes To-Date	\$5,457.10
Adjusted Contract	\$1,052,612.40
% Change	0.5%

*	Item	Description	Quantity	Unit	Price	Addition	Deduction
		<b>CAPITAL IMPROVEMENT FUNDS</b>					
	1	Geotechnical Fabric for Ground Stabilization	-138.7	SY	\$1.00		(\$138.70)
	2	Seeding Special Complete	-56	SY	\$1.25		(\$70.00)
	3	Aggregate Base Course Type C, 6"	-138.7	SY	\$8.00		(\$1,109.60)
	4	PCC Pavement, 7" with int. curb	-82.3	SY	\$42.00		(\$3,456.60)
	5	PCC Driveway Pavement	34.9	SY	\$53.00	\$1,849.70	
	6	PCC Sidewalk, 4"	756.6	SF	\$5.00	\$3,783.00	
	7	Tree Removal (Over 15 units in Diameter)	5.6	UNIT	\$20.00	\$112.00	
	8	Pavement Removal	-22.3	SY	\$9.00		(\$200.70)
	9	Driveway Pavement Removal	38.53	SY	\$9.00	\$346.77	
	10	Sidewalk Removal	908.9	SF	\$1.00	\$908.90	
	11	Traffic Control and Protection	0	LS	\$37,000.00		
*	61	High Early Concrete	1	DOL	\$500.00	\$500.00	
*	62	PCC Steps Complete	6	EA	\$750.00	\$4,500.00	
		<b>WATER FUNDS</b>					
	12	Water Main DIP P CL 350 6"	42.1	LF	\$88.00	\$3,704.80	
	13	Water Main DIP P CL 350 8"	-32.2	LF	\$60.00		(\$1,932.00)
	14	6X6 Tap Tee w/6" Valve and Box	0	EA	\$3,170.00		
	15	8X8X6 Tee	0	EA	\$350.00		
	16	8X8X8 Tee	0	EA	\$450.00		
	17	90 Degree Bend, 6"	0	EA	\$200.00		
	18	DIMJ Plug, 8"	0	EA	\$95.00		
	19	8X6 Reducer	-1	EA	\$200.00		(\$200.00)
	20	11.25 Degree Bend, 8"	-3	EA	\$250.00		(\$750.00)
	21	22.5 Degree Bend, 8"	0	EA	\$250.00		
	22	Valve & Valve Box, 8"	0	EA	\$1,100.00		
	23	Fire Hydrant Assembly Complete	0	EA	\$3,700.00		
	24	Valve Box Remove	-1	EA	\$75.00		(\$75.00)
	25	Valve and Valve Vault Removal	-1	EA	\$450.00		(\$450.00)
	26	Fire Hydrant Remove	0	EA	\$350.00		
	27	Standard Test Connection, 1"	0	EA	\$250.00		
	28	Valve Box Adjust	-1	EA	\$100.00		(\$100.00)
	29	Water Service Connection, 1"	2	EA	\$550.00	\$1,100.00	
	30	Water Service Pipe, 1"	-56.7	LF	\$25.00		(\$1,417.50)
	31	Curb Stop and Box, 1"	2	LF	\$555.00	\$1,110.00	
	32	Water Service Connection Complete, 1"	-1	EA	\$800.00		(\$800.00)
	33	Water Main Encasement	-56	LF	\$72.10		(\$4,037.60)
	34	Trench Backfill Water	-560.2	CY	\$17.80		(\$9,971.56)
*	56	45 Degree Bend 8"	5	EA	\$250.00	\$1,250.00	

WPC FUNDS						
35	Sanitary Sewer 8 DIP P CL 350	-28	LF	\$90.00		(\$2,520.00)
36	Sanitary Sewer 10 DIP P CL 350	-30.2	LF	\$99.00		(\$2,989.80)
37	Sanitary Sewer 12 DIP P CL 350	-18.5	LF	\$113.00		(\$2,090.50)
38	Manhole Type A, 4' DIA T1 F & Closed Lid	1	EA	\$3,350.00	\$3,350.00	
39	Sanitary Sewer Service 6"	25.3	LF	\$65.00	\$1,644.50	
40	Reconnect Sanitary Lateral 6"	1	EA	\$300.00	\$300.00	
41	Remove Manhole Sanitary	0	EA	\$351.00		
42	Cleanout to be Adjusted	0	EA	\$50.00		
43	Sanitary Manhole Adjust	-2	EA	\$500.00		(\$1,000.00)
44	Trench Backfill Sanitary	0	CY	\$17.75		
*	56 Install Drop in Manhole	1	DOL	\$1,173.99	\$1,173.99	
*	60 Reroute Sanitary Sewer - Field Change	1	DOL	\$5,231.47	\$5,231.47	
STORMWATER FUNDS						
45	Pipe Underdrain Complete 4"	-7.1	LF	\$10.50		(\$74.55)
46	Pipe Underdrain Complete 4" Solid	-26	LF	\$10.50		(\$273.00)
47	Storm Manhole Adjust	-1	EA	\$525.00		(\$525.00)
48	Storm Sewer DIP P CL 350 18"	-25	LF	\$150.00		(\$3,750.00)
49	Inlet Double Adjust	0	EA	\$800.00		
50	Inlet Special Adjust	0	EA	\$550.00		
51	Inlet Single Adjust	1	EA	\$550.00	\$550.00	
52	Remove Inlet	-1	EA	\$370.00		(\$370.00)
53	Catch Basin Single	-1	EA	\$2,100.00		(\$2,100.00)
54	Catch Basin Special No. 1	0	EA	\$3,500.00		
55	Trench Backfill Storm	-5	CY	\$28.00		(\$140.00)
*	58 Replace Storm Sewer	1	DOL	\$6,927.22	\$6,927.22	
*	59 Install Catch Basin	1	DOL	\$7,656.86	\$7,656.86	
* Denotes new item added to contract				Totals		\$45,999.21 (\$40,542.11)
Previous Changes =				Total Changes To-Date = \$5,457.10		Net Change \$5,457.10

**REASON FOR CHANGE**

1-55: Adjustments for Final Field Measurements

56: 45 Degree Bends: Needed for propoer tie ins and for elevation changes

57: Drop in manhole needed to be installed because of elevation changes

58: Replacement of storm sewer and manhole because of deficient materials.

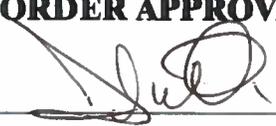
59: Catch basin and storm sewer installed because of poor drainage.

60: Field change of sanitary sewer alignment because of poor angles and slope changes.

61: High early concrete in order to open intersection early.

62: Steps needed to be installed in from of properties on 24th Avenue because of elevation change.

**CHANGE ORDER APPROVAL**

Contractor: 

Date: 2-4-14

Council Bill/Resolution No.: 1029-2014

Sponsor: \_\_\_\_\_

A RESOLUTION

AUTHORIZING approval of a Reconciliation Change Order #1 with Valley Construction Company for Project #1174, 2013 Residential Resurfacing Project, in the amount of \$120,834.28.

\_\_\_\_\_

WHEREAS, in order to make final payment to the contractor and close out this contract, a Reconciliation Change Order is needed in the amount of \$120,834.28; and

WHEREAS, said change order reflects the difference between the estimated bid quantities and final quantities actually constructed; and

WHEREAS, said change order increases the original contract value of \$942,364.20 by 12.8% to \$1,063,198.48

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

That the City Council finds it in the best interest of the City of Moline, Illinois, to authorize approval of a Reconciliation Change Order #1 with Valley Construction Company for Project #1174, 2013 Residential Resurfacing Project, in the amount of \$120,834.28; provided, however, that said change order is substantially similar in form and content to that attached hereto and incorporated herein by this reference thereto as Exhibit "A" and has been approved as to form by the City Attorney.

CITY OF MOLINE, ILLINOIS

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
February 25, 2014  
Date

Passed: February 25, 2014

Approved: March 4, 2014

Attest: \_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

# CITY OF MOLINE

## CONTRACT CHANGE ORDER

Project No. : 1174

Description: 2013 Residential Resurfacing

Contractor : Valley Construction

Date : 10/23/13

Change Order No. : 1 and FINAL

Sheet 1 of 3

CONTRACT	
Original Contract	\$942,364.20
Changes To-Date	\$120,834.28
Adjusted Contract	\$1,063,198.48
% Change	12.8%

*	Item	Description	Quantity	Unit	Price	Addition	Deduction
		<b>UTILITY TAX FUNDS</b>					
	1	HMA Surface Removal (CM) 3"	-553.12	SY	\$4.25		(\$2,350.76)
	2	Tree Removal (6-15 Units Diameter)	-15.8	UNIT	\$18.00		(\$284.40)
	3	Tree Removal (Over 15 units in Diameter)	16.93	UNIT	\$22.50	\$380.93	
	4	Bituminous Materials Prime Coat	111	GAL	\$5.90	\$654.90	
	5	Mixture for Cracks, Joints, and Flangeways	-45.62	TON	\$150.00		(\$6,843.00)
	6	Poly Leveling Binder MM II 4.75, N50, 1"	-591.16	SY	\$5.95		(\$3,517.40)
	7	PHMA Surface Course Mix D N50 2"	-591.16	SY	\$9.95		(\$5,882.04)
	8	Incidental HMA Surfacing	-12	TON	\$300.00		(\$3,600.00)
	9	Aggregate Surface Course TB	0	TON	\$50.00		
	10	Temporary Ramp	-25.34	SY	\$25.00		(\$633.50)
	11	Class B Patch Type II, 7"	136.54	SY	\$149.90	\$20,467.35	
	12	Class B Patch Type III, 7"	273.61	SY	\$129.50	\$35,432.50	
	13	Class B Patch Type IV, 7"	376.07	SY	\$99.50	\$37,418.97	
	14	Class B Patch Type IV, 8"	147.75	SY	\$110.50	\$16,326.38	
	15	Sidewalk Removal	814.06	SF	\$1.50	\$1,221.09	
	16	PCC Sidewalk	761.59	SF	\$6.00	\$4,569.54	
	17	Detectable Warnings	8	SF	\$38.00	\$304.00	
	18	Seeding Special Complete	333.93	SY	\$1.75	\$584.38	
	19	Detector Loop	111	LF	\$15.25	\$1,692.75	
	20	Traffic Control and Protection	0	LS	\$11,785.00		
*	58	Traffic Control Deficiency Deduction	-500	DOL	\$1.00		(\$500.00)
*	59	Pavement Removal	22.2	SY	\$41.00	\$910.20	
*	61	Curb Removal	83.8	LF	\$11.00	\$921.80	
*	62	PCC Driveway Remove and Replace	11	SY	\$72.00	\$792.00	
		<b>WATER FUNDS</b>					
	21	Water Main DIP P CL 350 8"	11.4	LF	\$50.00	\$570.00	
	22	6X6 Tapping Tee with 6" Valve and Box	0	EA	\$3,250.00		
	23	8X8X6 Tee	0	EA	\$400.00		
	24	DIMJ Cap 6"	0	EA	\$110.00		
	25	8X6 Reducer	0	EA	\$250.00		
	26	45 Degree Bend 8"	0	EA	\$300.00		
	27	11.25 Degree Bend, 8"	-1	EA	\$280.00		(\$280.00)
	28	Fire Hydrant Assembly Complete	0	EA	\$3,990.00		
	29	Remove Frame and Top Section of Vault	0	EA	\$430.00		
	30	Fire Hydrant to be Removed	0	EA	\$430.00		
	31	Standard Test Connection, 1"	0	EA	\$430.00		
	32	Water Service Connection Complete, 1"	0	EA	\$330.00		
	33	Water Service Pipe, 1"	-26.4	LF	\$25.00		(\$660.00)
	34	Water Service Pipe, 1" (Bored)	66	LF	\$27.80	\$1,834.80	
	35	Curb Stop and Box, 1"		EA	\$325.00		
	36	Trench Backfill (Water)	-37.46	SY	\$28.00		(\$1,048.88)
	37	Valve Box Adjust	1	EA	\$745.00	\$745.00	
	38	Valve Vault Adjust	-1	EA	\$900.00		(\$900.00)
	39	Domestic Water Service to Be Removed	-1	EA	\$630.00		(\$630.00)
*	63	8" Solid Sleeve	1	EA	\$354.00	\$354.00	

WPC FUNDS						
40	Sanitary Sewer 8 DIP P CL 350	-8.55	LF	\$170.00		(\$1,453.50)
41	Sanitary Sewer 10 DIP P CL 350	1.4	LF	\$80.00	\$112.00	
42	Manhole Type A, 4' DIA T1 F & Closed Lid		EA	\$4,700.00		
43	Manhole Type A, 5' DIA T1 F & Closed Lid		EA	\$5,695.00		
44	Sanitary Sewer Service 6"	-73.07	LF	\$70.00		(\$5,114.90)
45	Sanitary Lateral Connection 8x6 Wye	-1	EA	\$750.00		(\$750.00)
46	Trench Backfill (Sanitary)	-117.94	CY	\$26.00		(\$3,066.44)
47	Sanitary Manhole Adjust	3	EA	\$900.00	\$2,700.00	
48	Remove Sanitary Manhole	0	EA	\$275.00		
*	67 Force Account for Sanitary Manhole Repairs	1	LS	\$3,263.60	\$3,263.60	

STORMWATER FUNDS						
49	Pipe Underdrain Complete 4"	0	LF	\$12.00		
50	Catch Basin Adjust	-1	EA	\$900.00		(\$900.00)
51	Inlet Single Adjust	1	EA	\$900.00	\$900.00	
52	Inlet Double to Be Adjusted	1	EA	\$1,250.00	\$1,250.00	
53	Remove Inlet Single	-1	EA	\$150.00		(\$150.00)
54	Remove Inlet Double	-1	EA	\$250.00		(\$250.00)
55	Catch Basin Single	-1	EA	\$1,800.00		(\$1,800.00)
56	Catch Basin Double	-1	EA	\$2,000.00		(\$2,000.00)
57	Manhole Type A, 6' DIA T1F & Closed Lid	0	EA	\$13,975.00		
*	60 Trench Backfill (Storm)	473	SY	\$26.00	\$12,298.00	
*	64 A-2000 Storm Replacement	1	LS	\$5,453.00	\$5,453.00	
*	65 72" Barrel Section	1	EA	\$925.00	\$925.00	
*	66 Force Account for Filling Storm Manhole and Repairs	1	LS	\$8,714.96	\$8,714.96	
*	68 Force Account for Cutting Holes in Storm Manhole	1	EA	\$2,651.98	\$2,651.98	

* Denotes new item added to contract			Totals		\$163,449.10	(\$42,614.82)
Previous Changes =			Total Changes To-Date = \$120,834.28		Net Change	\$120,834.28

**REASON FOR CHANGE**

See attached page for reasons

**CHANGE ORDER APPROVAL**

Contractor: \_\_\_\_\_ Date: \_\_\_\_\_

Council Bill/Resolution No.: 1030-2014

Sponsor: \_\_\_\_\_

A RESOLUTION

AUTHORIZING the Mayor and City Clerk to execute a contract with Walter D. Laud, Inc. for Project # 1204, 2014 Inlet/Catch Basin Replacement Program, in the amount of \$103,390.30.

\_\_\_\_\_  
WHEREAS, bids were publicly read on February 11, 2014; and

WHEREAS, bids were solicited with Walter D. Laud, Inc. submitting the lowest responsible and responsive bid; and

WHEREAS, staff recommends authorization of said contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

That the Mayor and City Clerk are hereby authorized to execute a contract with Walter D. Laud, Inc. for Project # 1204, 2014 Inlet/Catch Basin Replacement Program, in the amount of \$103,390.30; provided, however, that said contract is substantially similar in form and content to that attached hereto and incorporated herein by this reference thereto as Exhibit "A" and has been approved as to form by the City Attorney.

CITY OF MOLINE, ILLINOIS

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
February 25, 2014

Date

Passed: February 25, 2014

Approved: March 4, 2014

Attest: \_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

# CITY OF MOLINE CONTRACT

THIS AGREEMENT, made and concluded this \_\_\_\_ day of \_\_\_\_\_, A.D., 2014, between **WALTER D. LAUD, INC.** of **P.O. BOX 88, EAST MOLINE, IL 61244**, hereinafter referred to as the “CONTRACTOR,” and the CITY OF MOLINE, ILLINOIS, hereinafter referred to as the “CITY;”

WITNESSETH, that the CONTRACTOR for and in consideration of the payments to be made to it by the CITY in the amount of **ONE HUNDRED THREE THOUSAND THREE HUNDRED NINETY AND 30/100 (\$103,390.30) DOLLARS**, hereby covenants and agrees, to and with the CITY, that it shall and will in good and workmanlike manner, furnish all the labor and material for **PROJECT NO. 1204, 2014 INLET/CATCH BASIN REPLACEMENT PROGRAM** as set out in the plans and specifications.

Such work to be under the direction and to the satisfaction of the City Engineer, and in accordance with the plans and specifications, which are a part of this contract. The work to be commenced not later than 10 days after the execution of this contract; to progress regularly and uninterruptedly after it shall have been begun excepting as shall otherwise be ordered by the City Council of the City of Moline (hereinafter referred to as the “City Council”), or its authorized representative, and shall be finished and fully completed within the timeframe set forth in the specifications; the time of commencement, rate of progress and time of completion being essential conditions of this contract; PROVIDED, however that if the time of the performance of the contract herein be for any reason either expressly or by implication extended, such extension shall not affect the validity of this contract.

The Contractor further agrees that the unit prices submitted are for the purpose of obtaining a gross sum, and for use in computing the value of extras and deductions; that if there is a discrepancy between the gross sum bid and that resulting from the summation of the quantities multiplied by their

respective unit prices, the latter shall apply. When this contract shall be wholly carried out and completed on the part of the Contractor, and when said work has been accepted by the City, a sum of money shall be computed by multiplying the following unit prices by the quantity of items completed, it being understood that the following total sum of money listed is for the purpose of determining the amount of the performance, labor, material and maintenance bond only. Such payment shall be made as provided for in the said specifications.

This Contract calls for the construction of a “public work” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. (“the Act”). The Act requires contractors, subcontractors, and truckers to pay laborers, workers, and mechanics performing services on public works projects not less than the “prevailing rate of wages” (hourly cash wages plus fringe benefits) in the county where the work is performed. The prevailing wage rates for projects for the City of Moline required by Moline Special Ordinance 4024-2013 are updated monthly by the Illinois Department of Labor and may be found at:

[http://www.state.il.us/agency/idol/rates/ODDMO/ROCK\\_ISL.htm](http://www.state.il.us/agency/idol/rates/ODDMO/ROCK_ISL.htm).

All contractors, subcontractors, and truckers rendering services under this contract must comply with all requirements of the Act, including but not limited to, all wage, notice and record keeping duties. All contractors, subcontractors, and truckers shall keep an accurate record showing the names and occupations of all laborers, workers, and mechanics employed by them on this contract, and also showing the actual hourly wages paid to each of such persons and shall preserve their weekly payroll records for a period of three (3) years from the date of completion of the contract. Weekly certified payrolls shall be sent to the City Engineer.

For further information, please refer to the Illinois Department of Labor’s website at:  
<http://www.state.il.us/agency/idol>.

It is further provided that the CONTRACTOR shall upon the sealing of this contract, file with the CITY a good and sufficient bond in the penal sum of **ONE HUNDRED THREE THOUSAND**

**THREE HUNDRED NINETY AND 30/100 (\$103,390.30) DOLLARS** conditioned upon the faithful performance and execution of the work covered by this contract according to the complete and detailed specifications and full and complete drawings, profiles and models therefore, and according to the terms and conditions of this contract, and conditioned also that the CONTRACTOR shall pay all debts incurred by said CONTRACTOR in the prosecution of such work, including those for labor and materials furnished. The CONTRACTOR further agrees to pay liquidated damages as set forth in the specifications for failure to complete the Project by the date specified.

IN WITNESS WHEREOF, the said Parties have executed these presents on the date above mentioned.

CONTRACTOR:

CITY:

\_\_\_\_\_

CITY OF MOLINE, ILLINOIS

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

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

Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Performance Bond Attached

Certificate of Insurance Attached

Council Bill/Resolution No.: 1031-2014

Sponsor: \_\_\_\_\_

A RESOLUTION

AUTHORIZING the Mayor and City Clerk to execute a contract with Denler, Inc. for Project #1205, 2014 Joint & Crack Sealing Program, in the amount of \$56,970.00.

\_\_\_\_\_  
WHEREAS, bids were publicly read on February 11, 2014; and

WHEREAS, bids were solicited with Denler, Inc. submitting the lowest responsible and responsive bid; and

WHEREAS, staff recommends authorization of said contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

That the Mayor and City Clerk are hereby authorized to execute a contract with Denler, Inc. for Project # 1205, 2014 Joint & Crack Sealing Program, in the amount of \$56,970.00; provided, however, that said contract is substantially similar in form and content to that attached hereto and incorporated herein by this reference thereto as Exhibit "A" and has been approved as to form by the City Attorney.

CITY OF MOLINE, ILLINOIS

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
February 25, 2014  
Date

Passed: February 25, 2014

Approved: March 4, 2014

Attest: \_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

# CITY OF MOLINE CONTRACT

THIS AGREEMENT, made and concluded this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2014, between **DENLER, INC.** of **19148 S. 104<sup>TH</sup> AVENUE, MOKENA, IL 60448**, hereinafter referred to as the “CONTRACTOR,” and the CITY OF MOLINE, ILLINOIS, hereinafter referred to as the “CITY;”

WITNESSETH, that the CONTRACTOR for and in consideration of the payments to be made to it by the CITY in the amount of **FIFTY SIX THOUSAND NINE HUNDRED SEVENTY AND 00/100 (\$56,970.00) DOLLARS**, hereby covenants and agrees, to and with the CITY, that it shall and will in good and workmanlike manner, furnish all the labor and material for **PROJECT NO. 1205, 2014 JOINT & CRACK SEALING PROGRAM** as set out in the plans and specifications.

Such work to be under the direction and to the satisfaction of the City Engineer, and in accordance with the plans and specifications, which are a part of this contract. The work to be commenced not later than 10 days after the execution of this contract; to progress regularly and uninterruptedly after it shall have been begun excepting as shall otherwise be ordered by the City Council of the City of Moline (hereinafter referred to as the “City Council”), or its authorized representative, and shall be finished and fully completed within the timeframe set forth in the specifications; the time of commencement, rate of progress and time of completion being essential conditions of this contract; PROVIDED, however that if the time of the performance of the contract herein be for any reason either expressly or by implication extended, such extension shall not affect the validity of this contract.

The Contractor further agrees that the unit prices submitted are for the purpose of obtaining a gross sum, and for use in computing the value of extras and deductions; that if there is a discrepancy between the gross sum bid and that resulting from the summation of the quantities multiplied by their respective unit prices, the latter shall apply. When this contract shall be wholly carried out and

completed on the part of the Contractor, and when said work has been accepted by the City, a sum of money shall be computed by multiplying the following unit prices by the quantity of items completed, it being understood that the following total sum of money listed is for the purpose of determining the amount of the performance, labor, material and maintenance bond only. Such payment shall be made as provided for in the said specifications.

This Contract calls for the construction of a “public work” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. (“the Act”). The Act requires contractors, subcontractors, and truckers to pay laborers, workers, and mechanics performing services on public works projects not less than the “prevailing rate of wages” (hourly cash wages plus fringe benefits) in the county where the work is performed. The prevailing wage rates for projects for the City of Moline required by Moline Special Ordinance 4024-2013 are updated monthly by the Illinois Department of Labor and may be found at:

[http://www.state.il.us/agency/idol/rates/ODDMO/ROCK\\_ISL.htm](http://www.state.il.us/agency/idol/rates/ODDMO/ROCK_ISL.htm).

All contractors, subcontractors, and truckers rendering services under this contract must comply with all requirements of the Act, including but not limited to, all wage, notice and record keeping duties. All contractors, subcontractors, and truckers shall keep an accurate record showing the names and occupations of all laborers, workers, and mechanics employed by them on this contract, and also showing the actual hourly wages paid to each of such persons and shall preserve their weekly payroll records for a period of three (3) years from the date of completion of the contract. Weekly certified payrolls shall be sent to the City Engineer.

For further information, please refer to the Illinois Department of Labor’s website at:  
<http://www.state.il.us/agency/idol>.

It is further provided that the CONTRACTOR shall upon the sealing of this contract, file with the CITY a good and sufficient bond in the penal sum of **FIFTY SIX THOUSAND NINE HUNDRED SEVENTY AND 00/100 (\$56,970.00) DOLLARS** conditioned upon the faithful

performance and execution of the work covered by this contract according to the complete and detailed specifications and full and complete drawings, profiles and models therefore, and according to the terms and conditions of this contract, and conditioned also that the CONTRACTOR shall pay all debts incurred by said CONTRACTOR in the prosecution of such work, including those for labor and materials furnished. The CONTRACTOR further agrees to pay liquidated damages as set forth in the specifications for failure to complete the Project by the date specified.

IN WITNESS WHEREOF, the said Parties have executed these presents on the date above mentioned.

CONTRACTOR:

CITY:

\_\_\_\_\_

CITY OF MOLINE, ILLINOIS

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

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

Mayor

\_\_\_\_\_

Attest: \_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Performance Bond Attached

Certificate of Insurance Attached

Council Bill/Resolution No.: 1032-2014

Sponsor: \_\_\_\_\_

A RESOLUTION

AUTHORIZING approval of Authorizations #1-3 for MFT Section 12-00253-00-RS, Avenue of the Cities Resurfacing, 41<sup>st</sup> - 43<sup>rd</sup> Streets.

WHEREAS, due to use of Federal transportation funds, the Illinois Department of Transportation (IDOT) solicited bids and contracted for the work in MFT Section 12-00253-00-RS; and

WHEREAS, in order to make final payment and close said contract, IDOT requests concurrence with Authorizations #1-3 in the amount of \$55,436.47; and

WHEREAS, the majority of work included in these Authorizations is for additional pavement patching and curb and gutter replacement that was unknown at bid time and also work related to complying with new ADA standards for sidewalks and ramps implemented after bids were received; and

WHEREAS, the change order increases the original contract value of \$714,943.65 by 7.8% to \$770,380.12; and

WHEREAS, staff recommends approval of authorization.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

That the City Council finds it in the best interest of the City of Moline, Illinois, to approve of Authorizations #1-3 for MFT Section 12-00253-00-RS, Avenue of the Cities Resurfacing, 41<sup>st</sup> -43<sup>rd</sup> Streets.

CITY OF MOLINE, ILLINOIS

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
February 25, 2014

Date

Passed: February 25, 2014

Approved: March 4, 2014

Attest: \_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney



<input checked="" type="checkbox"/> Contract Adjustment	<input type="checkbox"/> FHWA-Exempt
<input type="checkbox"/> Change Order	<input checked="" type="checkbox"/> Non-Exempt
<input type="checkbox"/> Consultant	<input type="checkbox"/> Major Change
<input checked="" type="checkbox"/> InHouse	<input checked="" type="checkbox"/> Minor Change

**Date:** 12/10/2013  
**County:** Rock Island  
**Section:** 12-00253-00-RS (Moline)  
**Route:** FAU 5773 (AVE OF THE CITIES)  
**District:** 02  
**Contract:** 85567  
**Job No.:** C9211912  
**Project No.:** M-5074(91)

Consultant's Name:

**Contractor:** McCarthy Improvement Company  
**Address:** 5401 Victoria Drive  
 Davenport IA 52807-

The following change from the plans in the construction of the above designated section of highway improvement is authorized and directed. The estimated quantities are shown below at the awarded contract prices except as indicated. The first addition of an item not in the original contract under the fund type or county is indicated by an asterisk.

Item No.	*	Cat	Pay Item	Unit	Quantity	Unit Price	A/D	Addition	Deduction	
			FAS ID: L23EU01	CCS Code 1610005						
FRC0003A	*	33	INLET REPAIR	DOLLAR	3,441.590	1.0000	A	\$3,441.59	\$0.00	
FRC0003B	*	33	BROKEN PIPE REPAIR	DOLLAR	4,747.930	1.0000	A	\$4,747.93	\$0.00	
Amount of Original Contract: \$714,943.65								<b>Totals:</b>	\$8,189.52	\$0.00
Net Change To Date: \$55,436.47								Percent Change: 7.75%	Net Change:	8,189.52

**Project Location:** Avenue of the Cities and 41st Street intersection

**Description and Reason:** AOTC & 41st Street Intersection. FRC0003A-Inlet adjustment called out in the plans was unrepairable, therefore required extra work for inlet repair. FRC0003B-repair to pipe that was collapsed under sidewalk as a result of inlet repair in FRC0003A.

**Determination:** (G1) The undersigned determine that the change is germane to the original contract as signed, because provision for this work is included in the original contract.

<b>THE STATE OF ILLINOIS</b> By the Department of Transportation	
Ann L. Schneider, Secretary	Date
Tony Small, Acting Director of F&A	Date
Michael A. Forti, Chief Counsel	Date

Date \_\_\_\_\_ Deputy Director Division of Highways  
Regional Engineer

Date \_\_\_\_\_ Engineer of Construction

Date \_\_\_\_\_ Director of Highways Chief Engineer

**Supervisor:** Ali Mansour

**Resident:** Eric McLaughlin, Missman

Supervisor Date \_\_\_\_\_

*E. Forti (Moline)*  
Resident Date \_\_\_\_\_

FHWA Acceptable to Proceed:  Yes  No

FHWA Participation:  Yes  No

**Print Date:** 12/10/2013

FHWA Representative \_\_\_\_\_ Date  
BC22 (rev. 10/13)



Authorization No. 2

Sheet 1 of 5

Authorization of Contract Changes

MPI 230  
CONSTRUCTION  
CHANGES ORDER

<input checked="" type="checkbox"/> Contract Adjustment	<input type="checkbox"/> FHWA-Exempt
<input type="checkbox"/> Change Order	<input checked="" type="checkbox"/> Non-Exempt
<input type="checkbox"/> Consultant	<input type="checkbox"/> Major Change
<input checked="" type="checkbox"/> InHouse	<input checked="" type="checkbox"/> Minor Change

Date: 10/05/2013  
 County: Rock Island  
 Section: 12-00253-00-RS (Moline)  
 Route: FAU 5773 (AVE OF THE CITIES)  
 District: 02  
 Contract: 85567  
 Job No.: C9211912  
 Project No.: M-5074(91)

Consultant's Name:

Contractor: McCarthy Improvement Company  
 Address: 5401 Victoria Drive  
 Davenport IA 52807-

The following change from the plans in the construction of the above designated section of highway improvement is authorized and directed. The estimated quantities are shown below at the awarded contract prices except as indicated. The first addition of an item not in the original contract under the fund type or county is indicated by an asterisk.

Item No.	* Cat	Pay Item	Unit	Quantity	Unit Price	A/D	Addition	Deduction
		FAS ID: 07COU01	CCS Code 1610043					
20800150	33	TRENCH BACKFILL	CU YD	24.000	50.0000	D	\$0.00	\$1,200.00
XX002119	33	SS DI 18	FOOT	1.000	160.0000	A	\$160.00	\$0.00
Z0058300	33	SAN SEW T1 8	FOOT	3.000	68.0000	D	\$0.00	\$204.00
		FAS ID: L23EU01	CCS Code 1610005					
40600100	33	BIT MATLS PR CT	GALLON	86.000	6.0000	A	\$516.00	\$0.00
40600400	33	MIX CR JTS FLANGEWYS	TON	6.000	325.0000	D	\$0.00	\$1,950.00
40600827	33	P LB MM IL-4.75 N50	TON	45.000	124.0000	A	\$5,580.00	\$0.00

Project Location: Avenue of the Cities and 41st Street Intersection

Description and Reason: City of Moline AOTC- Final Measured Quantities Balancing Authorization. See Attachment A and prior approval forms.

Determination: (G1) The undersigned determine that the change is germane to the original contract as signed, because provision for this work is included in the original contract.

THE STATE OF ILLINOIS  
By the Department of Transportation

Ann L. Schneider, Secretary	Date
Tony Small, Acting Director of F&A	Date
Michael A. Forti, Chief Counsel	Date

Date	Deputy Director Division of Highways Regional Engineer
Date	Engineer of Construction
Date	Director of Highways Chief Engineer

Supervisor: All Mansour

Resident: Eric McLaughlin

Supervisor: *E. Mansour* (Date: *10/5/13*)  
 Resident: *Eric McLaughlin* (Date: *10/5/13*)

FHWA Acceptable to Proceed:  Yes  No

FHWA Participation:  Yes  No

Print Date: 10/05/2013

FHWA Representative \_\_\_\_\_ Date BC 22 (Rev. 01/13)



**Authorization of Contract Changes**

<input checked="" type="checkbox"/> Contract Adjustment	<input type="checkbox"/> FHWA-Exempt
<input type="checkbox"/> Change Order	<input checked="" type="checkbox"/> Non-Exempt
<input type="checkbox"/> Consultant	<input type="checkbox"/> Major Change
<input checked="" type="checkbox"/> InHouse	<input checked="" type="checkbox"/> Minor Change

Date: 10/05/2013  
 County: Rock Island  
 Section: 12-00253-00-RS (Moline)  
 Route: FAU 5773 (AVE OF THE CITIES)  
 District: 02  
 Contract: 85567  
 Job No.: C9211912  
 Project No.: M-5074(91)

Consultant's Name:

Contractor: McCarthy Improvement Company  
 Address: 5401 Victoria Drive  
 Davenport IA 52807-

The following change from the plans in the construction of the above designated section of highway improvement is authorized and directed. The estimated quantities are shown below at the awarded contract prices except as indicated. The first addition of an item not in the original contract under the fund type or county is indicated by an asterisk.

Item No.	*	Cat	Pay Item	Unit	Quantity	Unit Price	A/D	Addition	Deduction
40600990		33	TEMPORARY RAMP	SQ YD	339.000	12.0000	D	\$0.00	\$4,068.00
40603535		33	P HMA SC "D" N50	TON	23.000	104.0000	A	\$2,392.00	\$0.00
42300300		33	PCC DRIVEWAY PAVT 7	SQ YD	96.000	90.0000	A	\$8,640.00	\$0.00
42400100		33	PC CONC SIDEWALK 4	SQ FT	302.000	10.0000	A	\$3,020.00	\$0.00
42400800		33	DETECTABLE WARNINGS	SQ FT	13.000	37.0000	A	\$481.00	\$0.00
44000161		33	HMA SURF REM 3	SQ YD	71.000	3.0000	A	\$213.00	\$0.00
44000200		33	DRIVE PAVEMENT REM	SQ YD	79.000	15.0000	A	\$1,185.00	\$0.00
44000300		33	CURB REM	FOOT	12.000	2.0000	A	\$24.00	\$0.00

Project Location: Avenue of the Cities and 41st Street Intersection

Description and Reason: City of Moline AOTC- Final Measured Quantities Balancing Authorization. See Attachment A and prior approval forms.

Determination: (G1) The undersigned determine that the change is germane to the original contract as signed, because provision for this work is included in the original contract.

THE STATE OF ILLINOIS By the Department of Transportation	
Ann L. Schneider, Secretary	Date
Tony Smal, Acting Director of F&A	Date
Michael A. Forti, Chief Counsel	Date

Date	Deputy Director Division of Highways Regional Engineer
Date	Engineer of Construction
Date	Director of Highways Chief Engineer

Supervisor: Ali Mansour

Resident: Eric McLaughlin

Supervisor	Date
Resident	Date

FHWA Acceptable to Proceed:  Yes  No

FHWA Participation:  Yes  No

FHWA Representative \_\_\_\_\_ Date  
BC 22 (Rev. 01/13)



Authorization No. 2  
 Sheet 3 of 9

**Authorization of Contract Changes**

<input checked="" type="checkbox"/> Contract Adjustment	<input type="checkbox"/> FHWA-Exempt
<input type="checkbox"/> Change Order	<input checked="" type="checkbox"/> Non-Exempt
<input type="checkbox"/> Consultant	<input type="checkbox"/> Major Change
<input checked="" type="checkbox"/> InHouse	<input checked="" type="checkbox"/> Minor Change

Date: 10/05/2013  
 County: Rock Island  
 Section: 12-00253-00-RS (Moline)  
 Route: FAU 5773 (AVE OF THE CITIES)  
 District: 02  
 Contract: 85567  
 Job No.: C9211912  
 Project No.: M-5074(91)

Consultant's Name:

Contractor: McCarthy Improvement Company  
 Address: 5401 Victoria Drive  
 Davenport IA 52807-

The following change from the plans in the construction of the above designated section of highway improvement is authorized and directed. The estimated quantities are shown below at the awarded contract prices except as indicated. The first addition of an item not in the original contract under the fund type or county is indicated by an asterisk.

Item No.	*	Cat	Pay Item	Unit	Quantity	Unit Price	A/D	Addition	Deduction
44000500		33	COMB CURB GUTTER REM	FOOT	216.000	2.0000	A	\$432.00	\$0.00
44000600		33	SIDEWALK REM	SQ FT	568.000	1.4000	A	\$795.20	\$0.00
44200934		33	CL B PATCH T2 8	SQ YD	9.000	110.0000	A	\$990.00	\$0.00
44200942		33	CL B PATCH T3 8	SQ YD	137.000	110.0000	A	\$15,070.00	\$0.00
44200944		33	CL B PATCH T4 8	SQ YD	56.000	111.0000	A	\$6,216.00	\$0.00
60255500		33	MAN ADJUST	EACH	1.000	1,750.0000	D	\$0.00	\$1,750.00
60260100		33	INLETS ADJUST	EACH	1.000	1,550.0000	D	\$0.00	\$1,550.00
60265700		33	VV ADJUST	EACH	1.000	1,550.0000	A	\$1,550.00	\$0.00

Project Location: Avenue of the Cities and 41st Street Intersection

Description and Reason: City of Moline AOTC- Final Measured Quantities Balancing Authorization. See Attachment A and prior approval forms.

Determination: (G1) The undersigned determine that the change is germane to the original contract as signed, because provision for this work is included in the original contract.

THE STATE OF ILLINOIS By the Department of Transportation	
Ann L. Schneider, Secretary	Date
Tony Smail, Acting Director of F&A	Date
Michael A. Forti, Chief Counsel	Date

Date \_\_\_\_\_ Deputy Director Division of Highways Regional Engineer

Date \_\_\_\_\_ Engineer of Construction

Date \_\_\_\_\_ Director of Highways Chief Engineer

Supervisor: Ali Mansour

Resident: Eric McLaughlin

Supervisor \_\_\_\_\_ Date \_\_\_\_\_

Resident \_\_\_\_\_ Date \_\_\_\_\_

FHWA Acceptable to Proceed:  Yes  No

FHWA Participation:  Yes  No

FHWA Representative \_\_\_\_\_ Date \_\_\_\_\_

Print Date: 10/05/2013

BC 22 (Rev. 01/13)



Authorization No. 2

Sheet 4 of 8

9

**Authorization of Contract Changes**

<input checked="" type="checkbox"/> Contract Adjustment	<input type="checkbox"/> FHWA-Exempt
<input type="checkbox"/> Change Order	<input checked="" type="checkbox"/> Non-Exempt
<input type="checkbox"/> Consultant	<input type="checkbox"/> Major Change
<input checked="" type="checkbox"/> InHouse	<input checked="" type="checkbox"/> Minor Change

Date: 10/05/2013  
 County: Rock Island  
 Section: 12-00253-00-RS (Moline)  
 Route: FAU 5773 (AVE OF THE CITIES)  
 District: 02  
 Contract: 85567  
 Job No.: C9211912  
 Project No.: M-5074(91)

Consultant's Name:

Contractor: McCarthy Improvement Company  
 Address: 5401 Victoria Drive  
 Davenport IA 52807-

The following change from the plans in the construction of the above designated section of highway improvement is authorized and directed. The estimated quantities are shown below at the awarded contract prices except as indicated. The first addition of an item not in the original contract under the fund type or county is indicated by an asterisk.

Item No.	*	Cat	Pay Item	Unit	Quantity	Unit Price	A/D	Addition	Deduction
60605100		33	COMB CC&G TB6.24 AEP	FOOT	283.000	41.0000	A	\$11,603.00	\$0.00
70300100		33	SHORT TERM PAVT MKING	FOOT	740.000	0.5000	D	\$0.00	\$370.00
70301000		33	WORK ZONE PAVT MK REM	SQ FT	37.000	1.7500	A	\$64.75	\$0.00
78000200		33	THPL PVT MK LINE 4	FOOT	189.000	0.7500	A	\$141.75	\$0.00
78000400		33	THPL PVT MK LINE 6	FOOT	16.000	1.2500	A	\$20.00	\$0.00
78000600		33	THPL PVT MK LINE 12	FOOT	3.000	2.5000	A	\$7.50	\$0.00
78000650		33	THPL PVT MK LINE 24	FOOT	18.000	4.7500	D	\$0.00	\$85.50
78100100		33	RAISED REFL PAVT MKR	EACH	17.000	40.0000	A	\$680.00	\$0.00

Project Location: Avenue of the Cities and 41st Street intersection

Description and Reason: City of Moline AOTC- Final Measured Quantities Balancing Authorization. See Attachment A and prior approval forms.

Determination: (G1) The undersigned determine that the change is germane to the original contract as signed, because provision for this work is included in the original contract.

THE STATE OF ILLINOIS By the Department of Transportation	
Ann L. Schneider, Secretary	Date
Tony Small, Acting Director of F&A	Date
Michael A. Forti, Chief Counsel	Date

Date \_\_\_\_\_ Deputy Director Division of Highways Regional Engineer

Supervisor: Ali Mansour

Date \_\_\_\_\_ Engineer of Construction

Supervisor Date

Resident: Eric McLaughlin

Date \_\_\_\_\_ Director of Highways Chief Engineer

Resident Date

FHWA Acceptable to Proceed:  Yes  No

FHWA Participation:  Yes  No

\_\_\_\_\_  
FHWA Representative Date

Print Date: 10/05/2013

BC 22 (Rev. 01/13)



**Authorization of Contract Changes**

<input checked="" type="checkbox"/> Contract Adjustment	<input type="checkbox"/> FHWA-Exempt
<input type="checkbox"/> Change Order	<input checked="" type="checkbox"/> Non-Exempt
<input type="checkbox"/> Consultant	<input type="checkbox"/> Major Change
<input checked="" type="checkbox"/> InHouse	<input checked="" type="checkbox"/> Minor Change

Date: 10/05/2013  
 County: Rock Island  
 Section: 12-00253-00-RS (Moline)  
 Route: FAU 5773 (AVE OF THE CITIES)  
 District: 02  
 Contract: 85567  
 Job No.: C9211912  
 Project No.: M-5074(91)

Consultant's Name:

Contractor: McCarthy Improvement Company  
 Address: 5401 Victoria Drive  
 Davenport IA 52807-

The following change from the plans in the construction of the above designated section of highway improvement is authorized and directed. The estimated quantities are shown below at the awarded contract prices except as indicated. The first addition of an item not in the original contract under the fund type or county is indicated by an asterisk.

Item No.	*	Cat	Pay Item	Unit	Quantity	Unit Price	A/D	Addition	Deduction
78300200		33	RAISED REF PVT MK REM	EACH	37.000	19.2500	A	\$712.25	\$0.00
X8140115		33	HANDHOLE TO BE ADJUST	EACH	3.000	725.0000	D	\$0.00	\$2,175.00
XX006343		33	SEEDING (COMPLETE)	SQ YD	86.000	71.0000	A	\$6,106.00	\$0.00
Amount of Original Contract: \$714,943.85								Totals: \$66,599.45	\$13,352.50
Net Change To Date \$47,246.95								Percent Change: 6.61%	Net Change: 53,246.95

Project Location: Avenue of the Cities and 41st Street intersection

Description and Reason: City of Moline AOTC- Final Measured Quantities Balancing Authorization. See Attachment A and prior approval forms.

Determination: (G1) The undersigned determine that the change is germane to the original contract as signed, because provision for this work is included in the original contract.

THE STATE OF ILLINOIS	
By the Department of Transportation	
Ann L. Schneider, Secretary	Date
Tony Smail, Acting Director of F&A	Date
Michael A. Forti, Chief Counsel	Date

Date \_\_\_\_\_ Deputy Director Division of Highways Regional Engineer

Supervisor: Ali Mansour

Date \_\_\_\_\_ Engineer of Construction

Supervisor Date

Date \_\_\_\_\_ Director of Highways Chief Engineer

Resident: Eric McLaughlin

Resident Date

FHWA Acceptable to Proceed:  Yes  No

FHWA Participation:  Yes  No

FHWA Representative \_\_\_\_\_ Date



**Illinois Department  
of Transportation**

**Prior Approval Authorization  
of Contract Change**

Please attach a copy of this approved form to the BC 22, Authorization of Contract Change, submitted for this work.

Contract Number: 85567

Authorization Number: 1

FHWA Approval Required  Yes  No

Awarded Contract Value: \$714,943.65

Estimated Cost of this Authorization: \$20,000.00

**Determination**

The undersigned determine that the change is germane to the original contract as signed, because:

- Provision for this work is included in the original contract.
- Work of this type was included in the original contract, and the additional efforts of this work are within the intent of the contract and Department policy.
- The change represents an adjustment required by the contract, based on unpredictable developments in the work.
- The change in design is necessary to fulfill the original intent of the contract.
- Other. Explain:

Location and Description of Work: See attached letter.

Reason: See attached letter.

County: Rock Island  
Section: 12-00253-00-RS  
Route: FAU 5773  
District: 2  
Contract No.: 85567  
Job No.: C-92-119-12  
Project: M-5074(091)

<b>THE STATE OF ILLINOIS</b>	
By the Department of Transportation	
By _____	Date _____
Secretary	
By _____	Date _____
Director - Finance & Administration	
By _____	Date _____
Chief Counsel	

6/11/13 Date  
[Signature] Prepared By  
6/12-13 Date  
[Signature] Regional Engineer  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Date  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Engineer of Construction  
\_\_\_\_\_  
Director of Highways, Chief Engineer

<b>FHWA</b>	
Acceptable to Proceed:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Approved for Participation:	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____ FHWA Representative	_____ Date

Council Bill/Resolution No. 1033-2014

Sponsor: \_\_\_\_\_

A RESOLUTION

AUTHORIZING the Mayor and City Clerk to execute a Licensing Agreement with Mark Roemer to install a sign and awnings overhanging 5<sup>th</sup> Avenue and 15<sup>th</sup> Street right-of-ways at 425 15<sup>th</sup> Street, Moline.

WHEREAS, Mark Roemer wishes to install a sign and awnings overhanging 5<sup>th</sup> Avenue and 15<sup>th</sup> Street right-of-ways at 425 15<sup>th</sup> Street, Moline; and

WHEREAS, the placement of the sign and awnings overhanging the right-of-ways should not pose any hazards to motorists or pedestrians.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

That the Mayor and City Clerk are hereby authorized to execute a Licensing Agreement with Mark Roemer to install a sign and awnings overhanging 5<sup>th</sup> Avenue and 15<sup>th</sup> Street right-of-ways at 425 15<sup>th</sup> Street, Moline; provided, however, that said agreement is in substantially similar form and content to that attached hereto and incorporated herein by this reference thereto as Exhibit "A," and has been approved as to form by the City Attorney.

CITY OF MOLINE, ILLINOIS

\_\_\_\_\_  
Mayor

February 25, 2014

Date

Passed: February 25, 2014

Approved: March 4, 2014

Attest: \_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

**Exhibit "A"**

**LICENSEE:** Mark Roemer – 425 15<sup>th</sup> Street, Moline, IL 61265

**LICENSING AGREEMENT**

**PARTIES:** The LICENSOR is the City of Moline, Illinois, a municipal corporation, hereinafter called the CITY.

The LICENSEE is Mark Roemer, 425 15<sup>th</sup> Street, Moline, IL, hereinafter called the LICENSEE.

**PREMISES:** The northern 5 feet of 5<sup>th</sup> Avenue right of way adjacent to 425 15<sup>th</sup> Street and the western 5 feet of 15<sup>th</sup> Street right of way adjacent to 425 15<sup>th</sup> Street, as depicted in greater detail on the attached Exhibit "B".

**USE:** LICENSEE shall be allowed only to: Install a sign and awnings overhanging premises as depicted on Exhibit "B".

**INTEREST ACQUIRED:** LICENSEE acquires only the right to: Install a sign and awnings overhanging premises as depicted on Exhibit "B".

The Licensing Agreement is not assignable without prior written approval of the CITY and the LICENSEE shall give the CITY at least twenty-one (21) days notice in writing of the intention to assign. If assignment is made without notice and approval, the CITY, in addition to any remedies for breach hereof, may hold the LICENSEE responsible for all things to be done, fees to be paid and documents to be filed under the terms hereof. No possessory, possessory, leasehold, ownership, or other property right or interest, except as specifically given herein, is conveyed to or acquired by the LICENSEE and the CITY and LICENSEE specifically disclaim any such acquisition or conveyance.

**TERM:** The first term of this Licensing Agreement is from February 25, 2014 to December 31, 2014. Succeeding years shall be from January 1 to December 31 and shall be automatically renewed, subject to LICENSEE ' S submission of insurance certification and payment of fees. The CITY or the LICENSEE may terminate this Licensing Agreement by giving the other party 30 days written notice.

**FEE:** The annual usage charge is \$30.00.

**CONDITIONS:** LICENSEE shall indemnify and hold the CITY harmless from all acts in connection with use or misuse of the premises, and from any/all accidents on the premises. LICENSEE shall procure a policy of insurance also naming the CITY as additional insured to protect the CITY from all damages to person or property on the premises resulting from accidents on the premises. Said policy or certificate of same shall be deposited with the CITY and shall remain in force or be replaced with one in force prior to the effective date of any cancellation notice.

LICENSEE shall be the primary insured.

LICENSEE shall have the duty and responsibility to maintain the premises in a safe and neat condition, as determined by the CITY.

Upon termination of the Licensing Agreement, LICENSEE shall restore the premises to its condition prior to issuance of Licensing Agreement, or at City ' s sole and exclusive option, said property on the premises shall become the property of the CITY - at the CITY's option.

Construction on the premises shall be done under the direction of the CITY. The CITY and its authorized agents shall have the right to enter upon the premises for municipal purposes.

LICENSEE:

By: \_\_\_\_\_  
Licensee

Date: \_\_\_\_\_

CITY OF MOLINE, ILLINOIS:

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

Attest: \_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney



5TH AVENUE ELEVATION



14TH STREET ELEVATION

Exhibit "B"



CUSTOMER: BRiX

JOB DESCRIPTION TYPE: Exterior Sign

DATE PROOFED: \_\_\_\_\_ APPROVED BY CUSTOMER: \_\_\_\_\_

[SIGNATURE & DATE, PLEASE]

ALL ORIGINAL ART/WORK CREATED BY IMPACT SIGN CO. IS THE PROPERTY OF IMPACT SIGN CO. UNLESS WRITTEN APPROVAL IS PROVIDED.



Sponsor: \_\_\_\_\_

A SPECIAL ORDINANCE

AUTHORIZING the Mayor and City Clerk to execute a three-year agreement with Retail Strategies, LLC for the purpose of market analysis, strategic planning and retail recruitment within the City of Moline, Illinois; and

AUTHORIZING City staff to begin work upon the execution of the agreement and to do all things necessary to implement said retail recruitment program.

\_\_\_\_\_  
WHEREAS, the City is an Illinois municipal corporation possessing home rule powers under Section 6 of Article VII of the Illinois Constitution and has the authority to prevent the spread of blight and encourage private development to enhance the local tax base and to enter into contractual agreements for the purpose of achieving these purposes; and

WHEREAS, retail recruitment has been an on-going Council goal, and a long-term comprehensive strategic plan for retail recruitment is essential to implement this goal; and

WHEREAS, Retail Strategies, LLC developed a professional services proposal for the City, and, after obtaining approval from the Committee-of-the-Whole, staff negotiated an agreement with Retail Strategies, LLC; and

WHEREAS, the agreement includes the necessary components of research and assessment, strategic planning and recruitment of retailers.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

**Section 1** – That the Mayor and City Clerk are hereby authorized to execute a three-year agreement with Retail Strategies, LLC for the purpose of market analysis, strategic planning and retail recruitment within the City of Moline, Illinois; provided, however, that said agreement is in substantially similar form and content to that attached hereto and incorporated herein by this reference thereto as Exhibit “A” and has been approved as to form by the City Attorney.

**Section 2** – That City staff is hereby authorized to begin work upon the execution of the agreement and to do all things necessary to implement said retail recruitment program.

**Section 3** – That this ordinance is an exercise of the City’s home rule powers granted to it by virtue of Article VII, Section 6 of the 1970 Illinois Constitution, and shall therefore take precedence over any conflicting State statutes or rules.

**Section 4** – That this ordinance shall not constitute a repeal of any or all ordinances or resolutions in conflict herewith but shall be construed as a one-time variance to Chapter 27 with regard to such conflicting ordinances or resolutions.

**Section 5** – That this ordinance shall be in full force and effect from and after its passage, approval, and, if required by law, publication in the manner provided for by law.

CITY OF MOLINE, ILLINOIS

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

Passed: \_\_\_\_\_

Approved: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney



**AGREEMENT TO PROVIDE  
PROFESSIONAL CONSULTING AND RELATED SERVICES**

**THIS AGREEMENT** is entered into by and between Retail Strategies, LLC, an Alabama limited liability company (hereinafter referred to as “Consultant”) and the City of Moline, Illinois (hereinafter referred to as “Client”) on this the \_\_\_th day of February, 2014, as follows:

**WHEREAS**, the Client desires to have performed those services identified on Exhibit A attached hereto (the “Project”) for the City of Moline, IL, which it believes will promote the efficient operation of the Client; and,

**WHEREAS**, Consultant made a proposal to the Client to provide consulting services related to the Project, and Client accepted the proposal as further set forth below.

**W-I-T-N-E-S-S-E-T-H:**

**NOW, THEREFORE**, this agreement is made and entered into on the date first above written by and between the Client and Consultant, by which Consultant will provide professional consulting and related services to the Client as hereinafter specified, through individuals possessing a high degree of professional skill where the personality of the individual will play a decisive role as follows:

**1. SCOPE OF SERVICES**

Consultant agrees, for the consideration as stated herein, to provide professional consulting and related services to the Client for the Project as set out in Exhibit A, which is attached hereto and incorporated herein by reference.

## **2. TIME OF PERFORMANCE**

Consultant shall provide services pursuant to this agreement and expeditiously and in good faith conduct its work in such a manner as to complete the Project for Client within three (3) calendar years which shall be calculated as **February 25, 2014 to February 24, 2017**.

Consultant shall commence, carry on and complete the Project with all practicable dispatch, in a sound, economical and efficient manner, in accordance with the provisions hereof and applicable laws. In accomplishing the Project, Consultant shall take such steps as are appropriate to insure that the work involved is properly coordinated with related work and policies being carried on by the Client.

## **3. COMPENSATION**

The Client agrees to pay Consultant for the services as set forth herein, the sum of **\$50,000.00** for the first year. Payment of the \$50,000.00 is to be made upon execution of this agreement and receipt of the invoice from Retail Strategies, LLC. Client will remit payment to Consultant upon receipt of invoice but no later than within thirty (30) days from receipt of invoice. The compensation for years two and three shall be **\$25,000.00** per year payable in the same manner as set forth above. The Client shall have the right to renew the contract for additional years, starting in year four, at the rate of **\$25,000.00** per year and thereafter as mutually agreed to in writing between Client and Consultant. Client acknowledges that affiliates of Consultant act in the capacity of a real estate brokerage service business and may earn fees for services including brokerage, development, leasing and management fees in the performance of such affiliates' services as part of the scope of the Project. Such fees of affiliates shall not be paid by Client.

## **4. CLIENT RESPONSIBILITIES**

In addition to paying Consultant for services according to the preceding paragraph, the Client shall also provide for Consultant: access to its relevant personnel, facilities, and materials including, but not necessarily limited to, those items specified in Exhibit A, and such records, reports, and information as reasonably requested by Consultant and in Client's possession.

## **5. LEVEL OF COMPETENCE**

Consultant represents and warrants to the Client that it and all of its employees that will be working on the project for the Client are qualified and competent to perform the services

required. Such personnel shall not be employees of or have any pre-existing contractual relationship with the Client. All of the services required hereunder will be performed by Consultant or under its supervision.

The Project Directors for the performance of services by Consultant pursuant to the terms and conditions of this agreement shall be Joseph Fackel, Chuck Branch and Robert Jolly, or other employees as deemed necessary by Consultant. Consultant may also use additional employees to assist with the performance of this agreement as Consultant deems appropriate in Consultant's discretion.

**6. MATERIALS/CONFIDENTIALITY**

The Client agrees to cooperate with and provide Consultant with access to facilities and information within its reasonable possession and control, requested by Consultant for its review and use in performing the services set forth in Exhibit A. Provided, however, all such documents, information, results, memoranda and all other written information ("information") shall be held confidential by Consultant and any of its sub-contractors and shall not, without the prior written consent of the Client, be used for any purpose other than the performance of this agreement nor be disclosed to any other entity not connected with performance of this agreement. Upon completion of services, Consultant shall return all such information to the Client. The Client shall retain ownership of all such information it provides.

**7. INTELLECTUAL PROPERTY**

The Client and Consultant, jointly and separately, acknowledge and agree that the intellectual property of both parties shall remain owned by the respective party. With the exception of Consultant's periodic and final reports generated for performance of this agreement to or for the Client, all reports, memorandums, electronic mail, facsimile transmissions and other written and prepared documents shall be owned by the party who authored, generated or who originally possessed the same and nothing in this agreement shall contravene said rights.

**8. INFORMATION AND REPORTS**

Consultant shall furnish an electronic version of a final written report and such periodic reports concerning the status of the Project as may be requested by the Client's representative pursuant to the schedule to be provided by Consultant. Consultant shall furnish the Client, upon request, with electronic copies of all documents and other material prepared or developed in

relation with or as part of the Project. Such requests shall be reasonable and within normal business practices for such work.

**9. COPYRIGHT INFORMATION**

The Client acknowledges that all intellectual property developed during the course of this agreement by Consultant shall belong exclusively to Consultant. However, the Client may utilize any of the foregoing for and on behalf of its internal operations, but will take steps reasonably necessary with its employees with respect to the use, copying, protection and security of the foregoing.

**10. APPLICABLE LAWS**

Consultant shall register and comply with all State or Federal laws and/or regulations as they may relate to the services or activities of the Consultant to the Client.

**11. INDEMNIFICATION**

Consultant shall indemnify and hold the Client, its officers, agents and employees free and harmless from and against any and all claims, actions, damages, expenses, fees, liabilities and/or attorney's fees arising out of, by virtue of or associated with the negligence of Consultant or its respective owners, officers and employees in the performance of this agreement. Client shall indemnify and hold the Consultant, its officers, agents and employees harmless from and against any claims, actions, damages, expenses, fees, liabilities arising out of, by virtue of or associated with the negligence of the Client or its respective agents, officers and employees in the performance of this agreement.

**12. INSURANCE**

Consultant shall carry all appropriate and necessary insurance to be in compliance with state and national laws regarding the insurance coverage of its employees.

**13. TERMINATION**

Should Consultant violate any of the terms of this agreement or otherwise fail to fulfill its obligations set forth under Exhibit A of this agreement, Client shall provide to Consultant written notice of any alleged deficiencies in performance and Consultant shall have thirty (30) days from the date notice is received to cure any alleged deficiencies in performance. In no way shall more

than two (2) opportunities to cure be afforded to Consultant within a twelve month period. Should Consultant fail to remedy the alleged defect in performance after being given the opportunity to do so, Client shall have the right to terminate this agreement by mailing a written notice of termination. Client may terminate this agreement by giving Consultant thirty (30) days prior written notice, with or without cause. If the agreement is terminated due to defects in performance by the Consultant, Consultant will retain fees only for the time provided and expenses incurred on the Project, up to the termination date, and the remainder will be refunded to Client. If the agreement is terminated by the Client for its convenience, then all fees paid to date are not subject to refund.

**14. CONFLICT OF INTEREST**

The Consultant represents and warrants to the Client, to the best of its knowledge, that neither it nor its Project Directors are aware of any conflict of interest which exists by means of its provision of services to the Client pursuant to the terms and conditions of this agreement.

**15. NOTICES/PARTIES REPRESENTATIVES**

The representative of the Client for this agreement shall be Ray Forsythe, Director of Economic Development, City of Moline, IL.

All notices, bills, invoices and reports required by this agreement shall be sufficient if sent by the parties hereto in the United States Mail, postage prepaid thereon to the addresses noted below:

Client:	Ray Forsythe City of Moline, IL 619 16 <sup>th</sup> Street Moline, IL 61265	With a copy to: Maureen Riggs City Attorney 619 16 <sup>th</sup> Street Moline, IL 61265
Consultant:	Retail Strategies, LLC 120 18 <sup>th</sup> Street South Suite 201 Birmingham, AL 35233 Attention: Chuck Branch	

**16. REPRESENTATIVE CAPACITY**

While Consultant's role will be that of consultant to the Client, Consultant shall be and remain an independent contractor and not act in the role of an agent or legal representative on behalf of the Client. Consultant shall not have the authority to bind or obligate the Client, its officers, agents or employees.

17. **MISCELLANEOUS**

**Capacity:** Each party to this agreement represents and warrants to the other as follows:

A. That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.

B. That each has full power and capacity to enter into this agreement, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.

C. That to the extent required, each party has obtained the necessary approval of its governing body, board, council or other appropriate governing body and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the party.

D. That each party has duly authorized and empowered a representative to execute this agreement on their respective behalf and the execution of this agreement by such representative fully and completely binds the party to the terms and conditions hereof.

E. That absent fraud, the execution of this agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other party shall be entitled to rely upon the same. To the extent a party is a partnership, limited liability company or joint venture, the execution of this agreement by any member thereof shall bind the party and to the extent that the execution of agreement is limited to a manager, managing partner or specific member then the person so executing this agreement is duly authorized to act in such capacity for the party.

F. That each party represents and warrants to the other that, to the best of its knowledge, there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon this transaction or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this agreement.

G. That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this agreement.

**Third Party Beneficiaries:** It is the intent of the parties hereto that there shall be no third party beneficiaries to this agreement.

**Final Integration:** This agreement, together with any exhibits or amendments hereto, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this agreement or expressly referred to herein have been relied on by any party in entering into this agreement.

**Force Majeure:** Neither party to this agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

**Amendment in Writing:** This agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

**Binding Effect:** This agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatee, distributees, successors, and assigns. If any provision in this agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Independent Contractor:** Nothing herein shall be deemed to create an employer-employee relationship or principal and agent relationship between Consultant and Client.

**Captions:** The captions of this agreement are for convenience and reference only, are not a part of this agreement, and in no way define, describe, extend, or limit the scope or intent of this agreement.

**Construction:** This agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

**Mandatory and Permissive:** “Shall”, “will”, and “agrees” are mandatory; “may” is permissive.

**Governing Law:** The laws of the State of Illinois, but without regard to conflict of laws principles, shall govern the validity of this agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this agreement.

**Prohibition on Assignment and Delegation:** No party to this agreement may assign or delegate its interests or obligations hereunder without the written consent of all other parties hereto obtained in advance of any such assignment or delegation. No such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning or delegating party shall in all respects remain liable hereunder irrespective of such assignment or delegation.

**Waiver:** Non-enforcement of any provision of this agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remaining terms and conditions of the agreement.

**Agreement Date/Counterparts:** The date of this agreement is intended as and for a date for the convenient identification of this agreement and is not intended to indicate that this agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an

original, but all such counterparts shall together constitute but one and the same instrument.

**Dispute Resolution/Remedies:** Any claims or disputes between Client and Consultant arising out of the services to be provided under this agreement shall be submitted to non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. This provision shall not limit the remedies, legal and equitable, available to each party pursuant to law.

CLIENT:

City of Moline, IL

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

Date \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

CONSULTANT:  
RETAIL STRATEGIES, LLC

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## EXHIBIT A

### **METHODOLOGY AND APPROACH:**

#### **SUMMARY OF RETAIL ANALYSIS AND SERVICES:**

- Custom Demographic Research – Historical, Current, and Projected Demographics – to include market trade areas by radius/drive-time, and custom trade areas associated with Moline
- Tapestry Lifestyles – Psychographic Profile of Trade Area / Market Segmentation Analysis
- Retail GAP Analysis
- Retail Peer Analysis
- Thematic Mapping and Aerial Imagery by trade area
- Retail Competitor Mapping/Analysis
- Consumer Attitudes and Behaviors
- Market Maximization Summary and Strategic Leasing Plan
- Identification of Retail Prospects
- Retailer Recruitment and execution of the Retail Leasing Strategic Plan
- City Marketing Flyer

#### **RETAIL STRATEGIES RESEARCH:**

Our research solutions are not a “one size fits all” or pre-formatted by an industry standard radius or drive-time area. Each city, community, or retail trade area requires unique analysis based on numerous factors including natural boundary areas, current retail tenant mix, travel times, radius areas and existing sites/buildings. Our research focuses on identifying the data points that are most likely to influence the site location decisions of retailers. Once these data points are determined – we provide thematic maps, aerial photos, asset maps, and customized research reports by retail concept.

Retail Strategies primary data resources include:

#### **CENSUS, AGS AND ESRI DEMOGRAPHICS**

By incorporating demographic data from multiple sources, DDR is able to better understand the population, income and retail spending shifts taking place in the current economic environment.

#### **BUSINESS LOCATION DATA**

This location data is ideal for competitive analysis, understanding market opportunities and evaluating market dynamics.

Sourced to D&B®, the world's most trusted source of sales and marketing solutions, all D&B information is powered by DUNSRight™, D&B's Quality Process which gives you the insight you need to identify and target prospects.

## **CONSUMER EXPENDITURES**

This data includes 18 reports and close to 1,000 variables that collectively cover almost 95% of household spending. Based on extensive modeling of the BLS Consumer Expenditure Survey, CEX provides reliable estimates of market demand and average household expenditures.

## **RETAIL POTENTIAL**

This new tabulation utilizes the Census of Retail Trade tables which cross-tabulates store type by merchandise line. The Consumer Expenditure data was aggregated to the merchandise line classification and then distributed to each of the major store types.

## **TAPESTRY**

Tapestry classifies US neighborhoods into 65 market segments based on socioeconomic and demographic factors, then consolidates them into LifeMode and Urbanization Groups.

## **FINAL DELIVERABLE AND STRATEGIC RETAIL RECRUITMENT PLAN:**

Upon completion of the research component of our engagement, the Retail Strategies team will create an online account through our BASECAMP platform available to the appropriate contacts in Moline to access all research, analysis and the strategic plan.

1. Retailer Overview and Recruitment Plan- Summary of the primary retail gaps inclusive of the key retailers to be pursued with a prototypical overview of each retailer relative to size, economics, etc.
2. Local Property Catalog- Retail Strategies, LLC and its partners will work with the city to catalog all local commercial properties that may be suitable sites to present to prospective new retailers. This will include maps, marked aerials and all pertinent contact and site specific information relative to each site.
3. Call List and Recruitment Update- an ongoing tracking form to keep the identified city contacts updated relative to recruitment efforts and specific interaction with prospective retailers.

Council Bill/Special Ordinance No. 4005-2014

Sponsor: \_\_\_\_\_

A SPECIAL ORDINANCE

AUTHORIZING the Mayor and City Clerk to execute a Development Agreement between the City of Moline and Macherich South Park Mall LLC for the South Park Mall Redevelopment project and to execute any necessary agreements referenced therein; and

AUTHORIZING all appropriate City officers and staff to do all things necessary to complete each of the City's responsibilities pursuant to said agreement.

\_\_\_\_\_  
WHEREAS, Macerich South Park Mall LLC ("Developer") seeks to enter into a Development Agreement with the City to facilitate redevelopment of property located at 4500 16<sup>th</sup> Street Moline, for the South Park Mall Redevelopment ("Project"); and

WHEREAS, the Project will consist of the following elements: demolition of the existing portions of South Park Mall, installation of certain public improvements, new signage and lighting, re-surfacing of the parking lots, and other improvements to redevelop this site; and

WHEREAS, the City wishes to support the redevelopment within the Project through the granting of certain lawful incentives to Developer, including but not limited to those available through Tax Increment Financing ("TIF") pursuant to the Tax Increment Allocation Redevelopment Act, found generally at 65 ILCS 5/11-74.4-1 et. seq. (the "Act" or the "TIF Act"); and

WHEREAS, the City created the new TIF District to provided the reimbursements of eligible expenses from the Redevelopment Project and possibly future phases incurred by the Developer; and

WHEREAS, to secure its contribution, prior to the disbursement of any TIF net incremental, the Developer shall provide commercially reasonable documentation of the actual TIF eligible expenses incurred on the Project by the Developer, which pay request shall be reviewed and approved within thirty (30) days of receipt, and failure to provide documentation of TIF eligible expenses for the purposes of calculating the TIF net incremental annual real estate tax rebate payments shall not relieve the City of its obligation to make payments but shall only defer payment due the Developer until verification; and

WHEREAS, the City believes that the Redevelopment Project to be located on the Property and the fulfillment generally of the terms of this Development Agreement are in the vital and best interests of the City and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

**Section 1** – That the Mayor and City Clerk are hereby authorized to execute a Development Agreement between the City of Moline and Macerich South Park Mall LLC for the South Park Mall Redevelopment project and to execute any necessary agreements referenced therein; and authorizing all appropriate City officers and staff to do all things necessary to complete each of the City’s responsibilities pursuant to said agreement; provided, however, that said agreement is in substantially similar form and content to that attached hereto and incorporated herein by this reference thereto as Exhibit “A,” and has been approved as to form by the City Attorney.

**Section 2** – That this ordinance shall be in full force and effect from and after passage and approval, and if required by law, publication in the manner provided for by law.

CITY OF MOLINE, ILLINOIS

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

Passed: \_\_\_\_\_

Approved: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

**EXECUTION****DEVELOPMENT AGREEMENT**

Between the

**CITY OF MOLINE**

and

**MACERICH SOUTH PARK MALL LLC**

THIS INDENTURE ("Development Agreement") made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2014 ("Effective Date"), by and between the City of Moline, an Illinois municipal corporation ("City"), and Macerich South Park Mall LLC, a Delaware limited liability company ("Developer") and collectively the "Parties."

WITNESSETH:

WHEREAS, the City wishes to engage in certain lawful activities authorized by applicable law to assist private persons and entities in carrying out certain redevelopment activities, pursuant to the Illinois Tax Increment Allocation Redevelopment Act, found generally at 65 ILCS 5/11-74.4-1 *et seq.* (the "Act"); and

WHEREAS, pursuant to Ordinance Numbers 3034-2012, 3035-2012 and 3036-2012 ("TIF Ordinances"), the City approved a redevelopment plan and project (the "TIF Plan"), designated the redevelopment project area (the "South Park Mall Redevelopment Project Area"), and adopted tax increment allocation financing relative to the South Park Mall Tax Incremental Financing District (the "TIF District"); said South Park Mall Redevelopment Project Area being legally described and depicted as set forth in Exhibit A, attached hereto and made a part hereof; and

WHEREAS, the Developer owns a certain parcel of real property located within the South Park Mall Redevelopment Project Area described as tax parcel number SM-14989 (P.I.N. 17-16-107-006) ("Developer Parcel"), said Developer Parcel being a portion of that overall property commonly known as the South Park Mall, generally located at 4500 16<sup>th</sup> Street, Moline, Illinois, defined to also include tax parcel numbers SM-14988 (P.I.N. 17-16-107-002) and SM-347-4 (P.I.N. 17-16-100-020), all of which are more particularly described in Exhibit B, "Legal Description," attached hereto and incorporated herein by this reference thereto (collectively, the "Property"); and

WHEREAS, the City wishes to enter into this Development Agreement with the Developer in order to facilitate redevelopment of the Property; and

WHEREAS, Developer proposes to redevelop portions of the Property to consist of the following elements:

- i. Demolition of existing portions of South Park Mall and rehabilitation of portions of the remaining mall façade structure to an updated design as substantially depicted on the schematic designs attached hereto and incorporated herein by reference as Exhibit C; and
- ii. Installation of certain public improvements including but not limited to streets and street improvements such as turning lanes, traffic signals and signage, sidewalks, public utilities (sewer, water, storm water) including the new entrance and exit to John Deere Road and any connecting streets on the Property in accordance with the Federal Highway Authority, Illinois Department of Transportation, and City of Moline standards and requirements; and
- iii. New mall signage, lighting, re-surfacing and re-striping of parking lots, landscaping and other improvements to redevelop the site.

The foregoing elements of the Property redevelopment shall hereinafter be collectively referred to as the "Redevelopment Project," as may be partially depicted in Exhibit C, unless individually identified; and

WHEREAS, it is necessary for the successful completion of the Redevelopment Project that the City enter into this Development Agreement with Developer to provide for the redevelopment of the Property, thereby implementing the TIF Plan; and

WHEREAS, but for certain incentives to be provided by the City in accordance with the Act and pursuant to the home rule powers of the City, which the City is willing to provide under the terms and conditions contained herein, the Parties acknowledge and agree that but for the incentives, to be provided by the City as set forth herein, Developer cannot successfully and economically develop the Property substantially in conformance with the Redevelopment Project. The City has determined that it is desirable and in the City's best interests to assist Developer in the manner set forth herein and as this Development Agreement may be supplemented and amended from time to time; and

WHEREAS, the City wishes to assist private developers in carrying out projects that expand employment opportunities and create commercial enterprises in the City; and

WHEREAS, the City believes that the Redevelopment Project to be located on the Property and the fulfillment generally of the terms of this Development Agreement are in the vital and best interests of the City and its residents, and are in accord with its duty, authority, and the public purposes and conditions arising under the Act and all applicable state and local laws and requirements.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained herein and for other good and valuable consideration, the receipt

and sufficiency of which are hereby acknowledged, the parties do hereby stipulate, covenant, contract and agree as follows, to-wit:

**I. CITY'S AGREEMENT TO PROVIDE ASSISTANCE.**

The following sets forth the intentions, undertakings and contractual obligations and responsibilities of the City under this Development Agreement in accordance with the following:

- A. Creation of a Tax Increment Financing District. The City created the new TIF District to provide for the reimbursement of eligible expenses from the Redevelopment Project (and possibly future phases) incurred by the Developer.
- B. Maximum TIF Payment. The City's total payment to Developer paid from the net incremental annual real estate tax generated by the Redevelopment Project under this section shall not exceed 100% of the net incremental annual real estate tax generated by the Redevelopment Project ("Maximum TIF Payment") during the life of the TIF District, as may be extended, modified or amended, minus the total actual costs incurred by the Quad Cities Chamber of Commerce to conduct the feasibility study necessary for the creation of the TIF District, in an amount not to exceed Forty Thousand Dollars (\$40,000). The first Forty Thousand Dollars of net incremental annual real estate taxes generated by the Redevelopment Project shall be rebated to the Quad Cities Chamber of Commerce by the City, and Developer consents to said reimbursement and releases any interest in or claim as to the first Forty Thousand Dollars (\$40,000.00) of tax increment generated by the Redevelopment Project.
- C. Property Tax Rebate. Subject to Developer paying the annual real estate taxes for the Developer Parcel when due and payable, the City shall pay through its TIF Fund to Developer 100% of the net incremental annual real estate taxes for any Act eligible redevelopment expenses incurred by Developer as categorized on Exhibit D, attached hereto and made a part hereof ("TIF Eligible Expenses"), until the Maximum TIF Payment is reached. The net incremental annual real estate taxes shall be reimbursed to the Developer up to and only for TIF Eligible Expenses under the Act. Should the real estate taxes not be paid on all of the parcels in the Property, Developer shall only be entitled to a rebate of the net incremental annual real estate taxes actually paid.

The base year for computation purposes of the net incremental annual real estate taxes is agreed to be 2012, and the base Equalized Assessed Valuation (EAV) for the base year 2012 for the Property is Thirteen Million Four Hundred Eight Thousand Seven Hundred Sixty-Nine Dollars (\$13,408,769). The net incremental annual real estate tax rebate period

will start with the first year in which the EAV surpasses the 2012 Base EAV, which is estimated to be full assessment year 2015 and payment year 2016. The payment shall be from the net incremental annual property tax generated solely by the Property and paid to the City's TIF Account. The City shall remit the net incremental annual real estate property tax rebate to the Developer within thirty (30) days after receipt of annual payment into said City's TIF Account from Rock Island County.

- D. Maximum Amount of Property Tax Rebate. Pursuant to the Act, the Maximum TIF Payment shall not exceed the sum of all TIF Eligible Expenses incurred or incidental to the Redevelopment Project.
- E. Final Payment. Upon final payment to reach the Maximum TIF Payment or upon expiration of the TIF district, the City's obligations under this Development Agreement shall be fully paid and satisfied regardless of the total amount of payments actually received by the Developer.
- F. Interest. There shall be no interest charged to the City or due to the Developer pursuant to this Development Agreement at any time, and no interest shall ever be paid to the Developer from the City pursuant to this Development Agreement, irrespective of whether or not the City is delinquent or otherwise tardy in making payments required hereunder.
- G. Grants and Loan Applications. The City agrees to use its best efforts to support the Developer in applying to state and federal grant or loan programs that will enhance the Redevelopment Project.
- H. TIF Amendments. The parties expressly understand and agree that all payments provided for in the paragraphs set forth above shall be at all times subject to the requirements and restrictions of the Act.
- I. No Other Incentives. The City agrees to rebate 100% of the net incremental annual real estate taxes generated from the Redevelopment Project, minus reimbursement to the Quad Cities Chamber of Commerce for the cost of the feasibility study, to the Developer and therefore the City will offer, unless mutually agreed otherwise, no other incentives or contributions to the Developer or other developers of the Property as long as this Development Agreement is in effect.
- J. Enterprise Zone Benefits. City shall take no action to eliminate the Enterprise Zone while still authorized by statute for the benefit and duration of the Redevelopment Project by which means materials can be purchased for the construction of the Redevelopment Project without the imposition of sales tax and other economic benefits may be obtained under the Enterprise Zone guidelines as are available under the law. City will cooperate and assist Developer in its application for all Enterprise

Zone benefits, if any, but City does not warrant or assure or guarantee that any such benefits will be available to Developer.

- K. Prevailing Wage. The City makes no representations or warranties as to whether or not the Illinois Prevailing Wage Act applies to this Redevelopment Project. Payment of Prevailing Wage and compliance with the Prevailing Wage Act, if required, is the sole responsibility of Developer and/or its contractors and subcontractors. Developer agrees to indemnify and hold harmless the City and the agents, officers and employees thereof against all losses, damages, claims, suits, liabilities, judgments, costs and expenses (including any liabilities, judgments, costs and expenses and reasonable attorney's fees) which may arise from any claims pertaining to the Illinois Prevailing Wage Act.

## II. DEVELOPER AGREEMENT TO DEVELOP PROPERTY.

- A. The Developer proposes to develop the Redevelopment Project substantially in accordance with the drawings depicted on Exhibit C, in accordance with all applicable rules, codes, regulations, ordinances and laws.
- B. Redevelopment Project Elements. Developer proposes to commence construction of the following Redevelopment Project elements within 120 days of the Effective Date:
- i. Demolition of existing portions of SouthPark Mall and rehabilitation of the existing mall to an updated design substantially as depicted on the schematic designs attached as Exhibit C.
  - ii. Installation of public improvements including but not limited to streets and street improvements such as turning lanes, traffic signals and signage, sidewalks, public utilities (sewer, water, storm water)
- A. Developer has requested that a new entrance be created to access the Redevelopment Project from John Deere Road. The Illinois Department of Transportation has authorized the construction of a right in/right out signaled intersection from the Redevelopment Project to John Deere Road. Such construction shall be performed and at cost undertaken by Developer, at no cost and expense to the City in accordance with all applicable Federal Highway Authority, Illinois Department of Transportation, and City of Moline standards and requirements. Those requirements include the dedication of public right-of-way in the Redevelopment Project to the City by the Developer as required by state or federal authorities. Developer agrees to

dedicate the public right-of-way necessary to meet requirements and will maintain the public right-of-way located in the Redevelopment Project in accordance with a separate licensing agreement to be executed between the City and Developer.

B. City agrees to the relocation of such public-right-of-way located within the Redevelopment Project should Developer require relocation as part of its redevelopment of the site as long as such relocation complies with all federal, state and City requirements. Such relocation shall be done at Developer's sole cost and expense and the City shall be obligated, within thirty (30) days of written request by Developer, pursuant to and as required under 65 ILCS 5/11-91 *et seq.*, to take any and all actions to vacate such dedicated rights of way back only to Developer and in no event to any other party, without consideration or compensation for the right-of-way.

iii. New mall signage, lighting, re-surfacing and re-striping of parking lots, landscaping and other improvements to redevelop the site.

C. Code Compliance. To the best of the Developer's knowledge, the Redevelopment Project, as designed, shall be in full compliance with all applicable state and local laws and ordinances. Further, Developer warrants that the City Building Official shall have approved all building plans submitted and agrees to follow all requirements of the City Code.

### III. CONDITIONS PRECEDENT TO CITY'S INCENTIVE PAYMENTS HEREUNDER.

Prior to the disbursement of any TIF net incremental annual real estate tax rebate payments, Developer shall provide commercially reasonable documentation of the actual TIF Eligible Expenses incurred for the Project by Developer, which pay request shall be reviewed and approved within thirty (30) days of receipt. In the event the City disapproves payment of pay request item as not being a TIF Eligible Expense, the City shall notify the Developer within such thirty (30) day period. To the extent the City and Developer cannot agree on a TIF Eligible Expense incurred by Developer, then within fifteen (15) days after the City's disapproval, the parties shall mutually submit the disputed item(s) to a mutually agreed upon third party TIF consultant to verify eligibility, or not. Failure to provide documentation of TIF Eligible Expenses for purposes of calculating the TIF net incremental annual real estate tax rebate payments shall not relieve the City of its obligation to make payments hereunder, but, instead, shall only defer payment due the Developer until verification.

### IV. WARRANTIES OF THE CITY.

A. The City represents and warrants to the Developer that it is empowered and authorized to execute and deliver this Development Agreement and to lend and

deliver the assistance described herein upon proof of eligible "redevelopment project costs" pursuant to Section 5/11-74.4-3(q) of the Act as TIF Eligible Expenses under this Development Agreement, and to execute and deliver all other agreements and documents, if any, required hereunder to be executed and delivered by the City. This Development Agreement has been, and each such document at the time it is executed and delivered will be, duly executed and delivered on behalf of the City pursuant to its legal power and authority to do so. When executed and delivered to the Developer, all such agreements shall constitute a legal, valid, and binding obligation of the City, enforceable in accordance with the terms of all such agreements.

B. There is no action, suit or proceeding pending, or to the knowledge of the City threatened, against or affecting the City, at law or in equity, or before any governmental authority which, if adversely determined, would impair the City's ability to perform its obligations under this Development Agreement.

C. Until such time as the Maximum TIF Payments due under this Development Agreement have been made or the termination of its obligations under this Development Agreement, whichever occurs first, the City (1) will not pledge or apply any portion of the net incremental annual real estate taxes to any other purpose or payment of any other obligation of the City; (2) will not take any action or omit to take any action that will affect the continued existence of the net incremental annual real estate taxes; (3) will take all reasonable actions in order to receive and segregate, as required under the Act, all net incremental annual real estate taxes.

D. The City represents that there are currently no special assessments in place or contemplated relative to the Property.

## **V. WARRANTIES OF THE DEVELOPER.**

A. The Developer represents and warrants to the City that the Developer is a Delaware limited liability company authorized to do business in and that all proceedings of the Developer necessary to authorize the negotiation and execution of this Development Agreement and the consummation of the transaction contemplated by this Development Agreement have been taken in accordance with applicable law.

B. The Developer represents and warrants to the City that this Development Agreement has been duly authorized, executed, and delivered by the Developer, and will be enforceable against the Developer by its terms, except to the extent that such enforceability shall be limited by bankruptcy, or solvency, or similar laws of general application affecting the enforcement of creditor rights, and by equitable principles.

C. The Developer represents and warrants to the City that the execution and delivery of this Development Agreement, and the consummation of the transactions contemplated in this Development Agreement will not violate any provision of its operating agreement or any other contract, agreement, court order or decree to which

the Developer may be a party or to which the Developer may be subject, or any applicable federal or state law or municipal ordinance.

## **VI. INDEMNIFICATION.**

A. The Developer shall indemnify and hold harmless the City, its agents, officers and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses (including any liabilities, judgments, costs and expenses and reasonable attorney's fees) actually incurred by the City which may arise directly or indirectly from the failure of the Developer or any contractor, subcontractor or agent or employee thereof (so long as such contractor, subcontractor or agent or employee thereof is hired by the Developer) to timely pay any contractor, subcontractor, laborer or materialman, from any default or breach of the terms of this Development Agreement by the Developer, or from any negligence or reckless or willful misconduct of the Developer or any contractor, subcontractor agent or employee thereof (so long as such contractor, subcontractor or agent or employee is hired by the Developer or Developer's contractor). The Developer shall, at the Developer's sole cost and expense, appear, defend and pay all charges, attorneys' fees of attorney(s) mutually agreed upon by the City and Developer, costs and other expenses arising therefrom or incurred in connection therewith. If any judgment shall be rendered against the City, its agents, officers, officials or employees in any such action, the Developer shall, at the Developer's sole cost and expense, satisfy and discharge the same. This paragraph shall not apply, and the Developer shall have no obligation whatsoever, with respect to any acts of intentional negligence, reckless or willful misconduct on the part of the City or any of its officers, agents, employees or contractors.

B. In the event that any court or governmental agency having jurisdiction over enforcement of the Act and the subject matter contemplated by this Development Agreement shall determine that this Development Agreement, or payments to be made hereunder, are contrary to law, or in the event that the legitimacy of the TIF Ordinances are otherwise challenged before a court or governmental agency having jurisdiction thereof and such challenge would affect the payments to be made under this Development Agreement, the City shall at its sole cost defend the integrity of the TIF Ordinances and this Development Agreement unless such challenge is as a direct result of the acts or omissions of the Developer. The Developer shall fully cooperate with the City in connection with the foregoing. In the event of an adverse lower court or agency ruling, payments shall be suspended during the pendency of any appeal thereof, but such payments shall be reinstated retroactively if such adverse ruling is reversed by the reviewing court or agency. The City shall not seek to set aside, or otherwise challenge, its obligations under this Development Agreement during the pendency of any appeal.

## **VII. ENTIRE AGREEMENT.**

This Development Agreement and exhibits hereto contain the entire agreement between the Developer and the City. The terms and conditions of this Development Agreement, its burdens and benefits, shall inure to the benefit of, and shall be binding

upon the parties hereto and their respective heirs, executors, successors, and assigns. A memorandum of this Development Agreement shall be recorded against the Developer Parcel as set forth below, and may be modified only by written amendment signed by the Developer and the City, which amendment shall become effective upon recording by either party in the Recorder's Office in Rock Island County, Illinois.

#### **VIII. ASSIGNMENT.**

The Developer hereunder may assign the rights, duties, and obligations of the Developer only with the prior written consent of the City (which consent may not unreasonably be withheld). For the purposes of this paragraph, consent shall be deemed given by the City upon execution of this Agreement for any assignment to any person or entity having a verified net worth of not less than Ten Million and No/100 Dollars (\$10,000,000.00). If a request for consent is not denied in writing on or before thirty (30) days after written request, such consent shall be deemed given. The Developer may, however, for the purpose of obtaining any financing for the Redevelopment Project, provide a collateral assignment of this Development Agreement to any lender or any successor or subsequent lender (the "Lender") as collateral security, without the City's consent.

#### **IX. SURVIVAL OF WARRANTIES AND REPRESENTATIONS.**

Any warranty, representation, or agreement herein contained shall survive the execution of the Development Agreement.

#### **X. NOTICE OF DEFAULT.**

In the event either party is in default hereunder (the "Defaulting Party"), the other party (the "Non-Defaulting Party") shall be entitled to take any action allowed by applicable law by virtue of said default provided that the Non-Defaulting Party first gives the Defaulting Party written notice of default describing the nature of the default, what action, if any, is deemed necessary to cure the same and specifying a time period of not less than thirty (30) days in which the default may be cured by the Defaulting Party.

#### **XI. REMEDIES UPON DEFAULT.**

A. If, in the City's judgment, the Developer is in material default of this Development Agreement, the City shall provide the Developer with a written statement indicating in adequate detail any failure on the Developer's part to fulfill its obligations under this Development Agreement. Except as required to protect against further damages, the City may not exercise any remedies against the Developer in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the Developer diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this

Development Agreement. A default not cured as provided above shall constitute a breach of this Development Agreement. Any failure or delay by the City in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach or of any rights or remedies it may have as a result of such default or breach.

B. If the Developer materially fails to fulfill its obligations under this Development Agreement after notice is given by the City and any cure periods described in Paragraph A above have expired or if all or a portion of any such agreement is terminated, the City may elect to terminate this Development Agreement or exercise any right or remedy it may have at law or in equity, including without limitation the right to specifically enforce the terms and conditions of this Development Agreement. If any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy or insolvency act shall be filed by or against the Developer, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare the Developer insolvent or unable to pay the Developer's debts, or the Developer makes an assignment for the benefit of its creditors, or a trustee or receiver is appointed for the Developer or for the major part of the Developer's property, the City may elect, to the extent such election is permitted by law and is not unenforceable under applicable federal bankruptcy laws, but is not required, with or without notice of such election and with or without entry or other action by the City, to forthwith terminate this Development Agreement. To effect the City's termination of this Development Agreement under this Section XI.B., the City's sole obligation shall be to record, in the office of the Rock Island County Recorder, a Certificate of Default executed by the Mayor of the City or such other person as shall be designated by the City, stating that this Development Agreement is terminated pursuant to the provisions of this Section XI.B., in which event this Development Agreement by virtue of the recording of such certificate, shall *ipso facto* automatically become null and void and of no further force and effect.

C. If, in the Developer's judgment, the City is in material default of this Development Agreement, the Developer shall provide the City with a written statement indicating in adequate detail any failure on the City's part to fulfill its obligations under this Development Agreement. The Developer may not exercise any remedies against the City in connection with such failure until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the City diligently proceeds with such cure; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Development Agreement. A default not cured as provided above shall constitute a breach of this Development Agreement. Any failure or delay by the Developer in asserting any right or remedy as to any default or any alleged default or breach shall not operate as a waiver of any such default or breach or of any rights or remedies it may have as a result of such default or breach.

D. In addition to any other rights or remedies, a party may institute legal action against the other party to cure, correct or remedy any default, or to obtain any other remedy consistent with the purpose of this Development Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance. Notwithstanding the foregoing, in the event either party shall institute and complete legal action against the other party because of a breach of any agreement or obligation contained in this Development Agreement, the substantially prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.

E. The rights and remedies of the parties are cumulative and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or for any other default by the other party.

## **XII. NON-DISCRIMINATION.**

The Developer agrees that neither the Property nor any portion thereof, shall be sold to, leased, or used by the Developer in a manner to permit discrimination or restriction on the basis of race, creed, ethnic origin or identity, color, gender, sexual orientation, religion, marital status, age, handicap, or national origin, and that the development of and construction and operations on the Property shall be in compliance with all effective laws, ordinances, and regulations relating to discrimination on any of the foregoing grounds.

## **XIII. NOTICES.**

Any notice required or permitted hereunder shall be in writing, signed by the party giving the notice, and shall be deemed given when (a) hand delivered to the party to whom the notice is addressed; (b) mailed by certified mail, return receipt requested, United States mail, postage prepaid; or (c) delivered by overnight courier delivery service (i.e. Federal Express, UPS, etc.) and addressed to the party at the address shown as follows:

TO CITY: City Administrator and City Clerk  
619 16<sup>th</sup> Street  
Moline, IL 61265

WITH A COPY TO: City Attorney  
619 16<sup>th</sup> Street  
Moline, IL 61265

TO DEVELOPER: Macerich South Park Mall LLC  
Attention: Center Manager  
4500 16<sup>th</sup> Street  
Moline, IL 61265-7078

WITH A COPY TO: Nicholas S. Peppers  
Storino, Ramello & Durkin  
9501 West Devon Avenue  
Rosemont, IL 60018

WITH A COPY TO: Steve Spector  
Senior Vice President & General Counsel  
Macerich  
401 Wilshire Boulevard, Suite 700  
Santa Monica, CA 90401

Any party may change the address to which notices shall be sent by notice given in accordance with the terms of this paragraph.

#### **XIV. COUNTERPARTS.**

This Development Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

#### **XV. HEADINGS.**

Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Development Agreement.

#### **XVI. APPLICABLE LAW.**

This Development Agreement, and each of its subparts and incorporated items thereto, shall be interpreted under the laws of the State of Illinois and any action brought to enforce or interpret any of its provisions or otherwise involving this Development Agreement must be filed in a Rock Island County, Illinois, court of competent jurisdiction.

#### **XVII. SEVERABILITY.**

Should any part of this Development Agreement be determined to be illegal, invalid, or otherwise unenforceable, then all such remaining parts not so affected by such illegality, invalidity, or unenforceability shall continue in full force and effect, fully binding both parties, their respective heirs and assigns, as to such remaining terms.

#### **XVIII. NO JOINT VENTURE, AGENCY OR PARTNERSHIP CREATED.**

Neither anything in this Development Agreement nor any acts of the parties to this Development Agreement shall be construed by the parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such parties.

**XIX. ASSURANCE OF FURTHER ACTION.**

From time to time hereafter and without further consideration, each of the parties to this Development Agreement shall execute and deliver, or cause to be executed and delivered, such recordable memoranda, further instruments, and agreements, and shall take such other actions, as any other party may reasonably request, in order to more effectively memorialize, confirm, and effectuate the intentions, undertakings, and obligations contemplated by this Development Agreement.

**XX. DELAYED EXECUTION.**

After this Development Agreement is approved by the Moline City Council and duly signed by the Mayor and attested by the City Clerk, the Developer shall have up to ten days (10) from that date to execute this Development Agreement, and this Development Agreement shall not be binding on the parties until duly executed by both parties.

**XXI. DISCLAIMER OF THIRD PARTY BENEFITS.**

The intentions, affirmations, authorizations and agreements between the parties hereto as expressed herein are approved solely by and between the parties hereto and no other; and provided further, however, that neither and none of such intentions, affirmations, authorizations or agreements may be relied upon by any person or entity, to such entity or person(s) detriment, or for any reason whatsoever, whether third person or otherwise. Any such reliance or purported reliance as a third party beneficiary to this Development Agreement or predicated upon any other relationship to any of the parties hereto and each of them, whether real or alleged, is specifically disclaimed by the parties herein.

**XXII. TIME IS OF THE ESSENCE.**

Time is of the essence of this Development Agreement.

**XXIII. REPEALER.**

To the extent that any ordinance, resolution, rule, order or provision of the City's code of ordinances, or any part thereof, is in conflict with the provisions of this Development Agreement, the provisions of this Development Agreement shall be controlling, to the extent lawful.

**XXIV. ESTOPPEL CERTIFICATES.**

Each of the Parties hereto agrees to provide the other, upon not less than ten (10) business days prior request, a certificate ("Estoppel Certificate") certifying that this Development Agreement is in full force and effect (unless such is not the case, in which such Parties shall specify the basis for such claim), that the requesting Party is not in

default of any term, provision or condition of this Development Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting Party. If either Party fails to comply with this provision within the time limit specified, it shall be deemed to have appointed the other as its attorney-in-fact for execution of same on its behalf as to that specific request only.

## **XXV. UNCONTROLLABLE CIRCUMSTANCE.**

Each party's performance hereunder shall be subject to an uncontrollable circumstance (the "Uncontrollable Circumstance"), which means any event which:

1. is beyond the reasonable control of and without the fault of the Party relying thereon; and

2. is one or more of the following events:

a. a change in law, which means the occurrence, after the Effective Date, of an event described below in this definition, provided such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Development Agreement and such event is not caused by the Party relying thereon. Change in Law means any of the following: (i) the enactment, adoption, promulgation or modification of any federal, state or local law, ordinance, code, rule or regulation (other than by the City or with respect to those made by the City, only if they violate the terms of this Development Agreement); (ii) the order or judgment of any federal or state court, administrative agency or other governmental body (other than the City); or (3) the adoption, promulgation, modification or interpretation in writing of a written guideline or policy statement by a governmental agency (other than the City, or, with respect to those made by the City, only if they violate the terms of this Development Agreement). Change in Law, for purposes of this Development Agreement, shall also include the imposition of any conditions on, or delays in, the issuance or renewal of any governmental license, approval or permit (or the suspension, termination, interruption, revocation, modification, denial or failure of issuance or renewal thereof) necessary for the undertaking of the actions to be performed under this Development Agreement (except any imposition of any conditions on, or delays in, any such issuance or renewal by the City, except as provided herein);

b. insurrection, riot, civil disturbance, sabotage, act of the public enemy, explosion, fire, nuclear incident, war or naval blockade;

c. epidemic, hurricane, tornado, landslide, earthquake, lightning, fire, windstorm, extraordinary weather condition or other similar acts of God;

d. governmental condemnation or taking other than by the City;

- e. strikes or labor disputes, or work stoppages not initiated by the Developer;
- f. unreasonable delay in the issuance of building or other permits or approvals by the City or other governmental authorities having jurisdiction other than the City;
- g. shortage or unavailability of essential materials, which materially change the ability of the Party relying thereon to carry out its obligations under this Development Agreement;
- h. unknown or unforeseeable geo-technical or environmental conditions;
- i. major environmental disturbances;
- j. vandalism; or
- k. terrorist acts.

Uncontrollable Circumstance shall not include: economic hardship; unavailability of materials (except as described in subsection 2.g. above); or a failure of performance by a contractor (except as caused by events which are Uncontrollable Circumstances as to the contractor).

For each day that the City or the Developer is delayed by an Uncontrollable Circumstance, the dates set forth in the Development Agreement shall be extended by one (1) day for each day of the resulting delay.

#### **XXVI. TERM.**

This Agreement shall be in full force and effect from and after execution hereof by the last party to execute same and shall remain in full force and effect to and until the later of (i) December 31, 2037 and (ii) the final net incremental annual real estate property tax payment generated under the TIF Ordinances for TIF Eligible Expenses have been received by Developer.

[SIGNATURE PAGE TO FOLLOW]



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

State of California

County of Los Angeles

On 2/3/14 before me, Joanne E. Hill, a Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Stephen L. Spector  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature: Joanne E. Hill  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Development Agreement between City of Malibu & Macerich South Park Mall, LLC

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

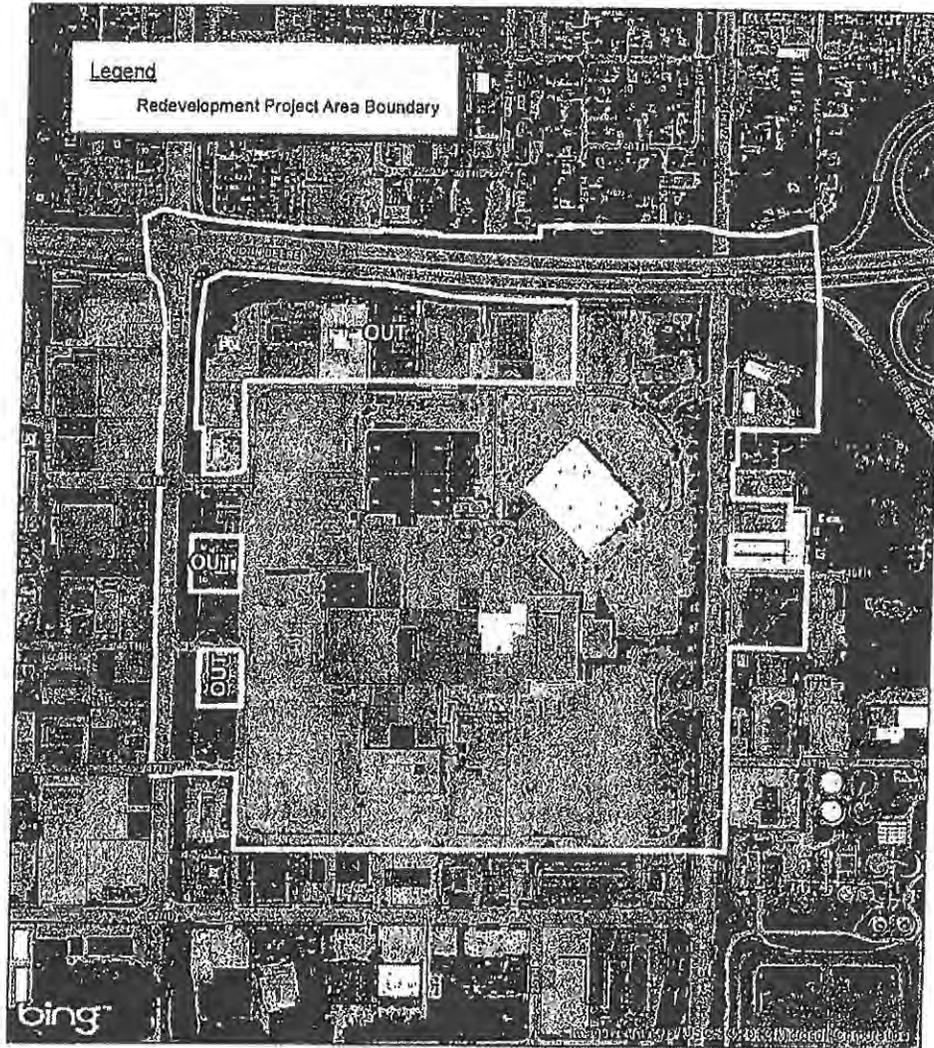
**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

- Corporate Officer -- Title(s): \_\_\_\_\_  Corporate Officer -- Title(s): \_\_\_\_\_
- Individual  Individual
- Partner --  Limited  General  Partner --  Limited  General
- Attorney in Fact  Attorney in Fact
- Trustee  Trustee
- Guardian or Conservator  Guardian or Conservator
- Other: \_\_\_\_\_  Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_

**EXHIBIT A**  
**REDEVELOPMENT PROJECT AREA**



**Exhibit A**  
**Redevelopment Project Area Boundary**  
 SouthPark Redevelopment Project Area  
 City of Moline, Illinois



May 2012

**EXHIBIT B****DEVELOPER PARCEL AND  
PROPERTY LEGAL DESCRIPTION****DEVELOPER PARCEL**

Lot 4 of Southpark Mall Subdivision First Addition; situated in the City of Moline, Rock Island County, Illinois; according to the Plat thereof recorded May 11, 2006 in Plat Book 47. Page 415 as Document No. 2006-11052.

EXCEPTING therefrom the following described parcels

Lots 1, 2, 5, and 6 of Southpark Mall Second Addition; situated in the City of Moline, Rock Island County, Illinois; according to the Plat thereof recorded December 4, 2007 in Plat Book 48. Page 27 as Document No. 2007-29528.

ALSO EXCEPTING:

Lot 1 Nellis First Addition; situated in the City of Moline, Rock Island County, Illinois; according to the Plat thereof recorded December 11, 2008 in Plat Book 48, page 56 as Document No. 2008-26392.

**BALANCE OF PROPERTY**

Part of the Northwest Quarter of Section 16, Township 17 North, Range 1 West of the 4<sup>th</sup> P.M. Moline, Rock Island County, Illinois, more particularly described as follows:

Commencing at a point of reference at the Northwest Corner of said Section 16;

Thence North 89 degrees 19 minutes 30 seconds East 546.65 feet along the North line of said Northwest Quarter of Section 16 (for purposes of this description the said North line of the Northwest Quarter of Section 16 is assumed to bear North 89 degrees 19 minutes 30 seconds East);

Thence South 00 degrees 02 minutes 48 seconds East 1,322.66 feet;

Thence North 89 degrees 12 minutes East 50.00 feet to a point on the East right-of-way line of 16<sup>th</sup> Street;

Thence South 00 degrees 00 minutes 05 seconds West 1,098.78 feet along the said East right-of-way line of 16<sup>th</sup> Street;

Thence North 89 degrees 28 minutes 50 seconds East 586.16 feet to the point of beginning of the parcel herein described;

Thence continuing North 89 degrees 28 minutes 50 seconds East 701.02 feet;

Thence North 00 degrees 39 minutes 20 seconds West 541.02 feet;  
Thence South 89 degrees 20 minutes 40 seconds West 216.00 feet;  
Thence South 00 degrees 39 minutes 20 seconds East 145.00 feet;  
Thence South 89 degrees 20 minutes 40 seconds West 350.00 feet;  
Thence North 00 degrees 39 minutes 20 seconds West 180.68 feet;  
Thence South 89 degrees 20 minutes 40 seconds West 135.00 feet;  
Thence South 00 degrees 39 minutes 20 seconds East 575.03 feet to the said  
point of beginning.

This parcel contains 7.639 acres, more or less.

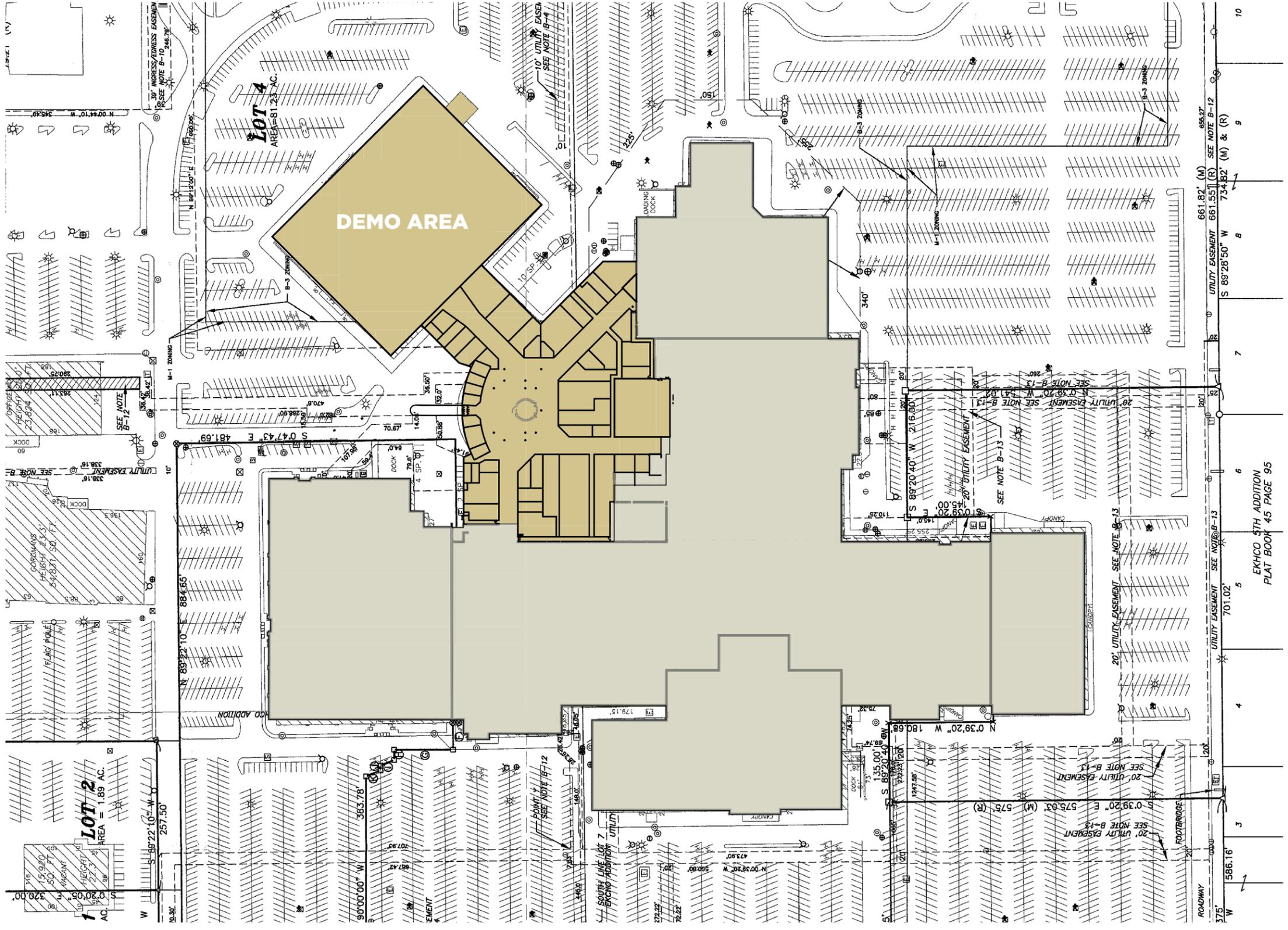
AND

Lot 3 of Southpark Mall First Addition; situated in the City of Moline, Rock Island  
County, Illinois; according to the Plat thereof recorded May 11, 2006 in Plat Book 47,  
Page 415 as Document No. 2006-11052.

**EXHIBIT C**  
**SCHEMATIC DESIGN DRAWINGS OF REDEVELOPMENT PROJECT**

# SOUTHPARK MALL | PRELIMINARY CONCEPT DESIGN

January 28, 2014

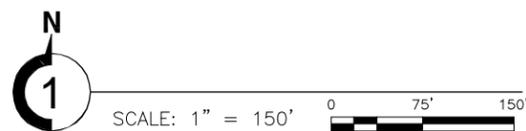


**DEMOLITION PLAN**

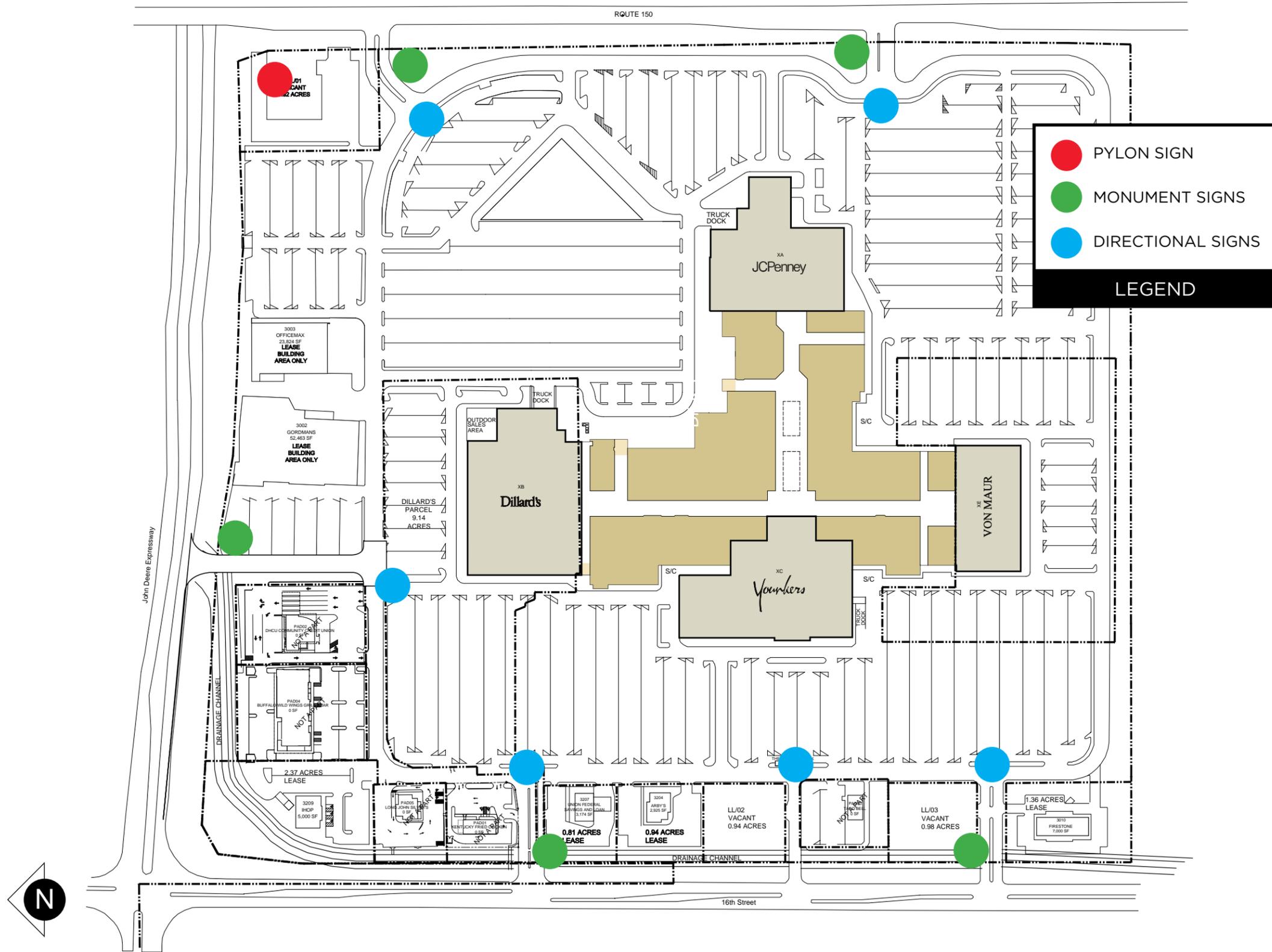
EKHCO 5TH ADDITION  
PLAT BOOK 45 PAGE 95



Preliminary For review Only

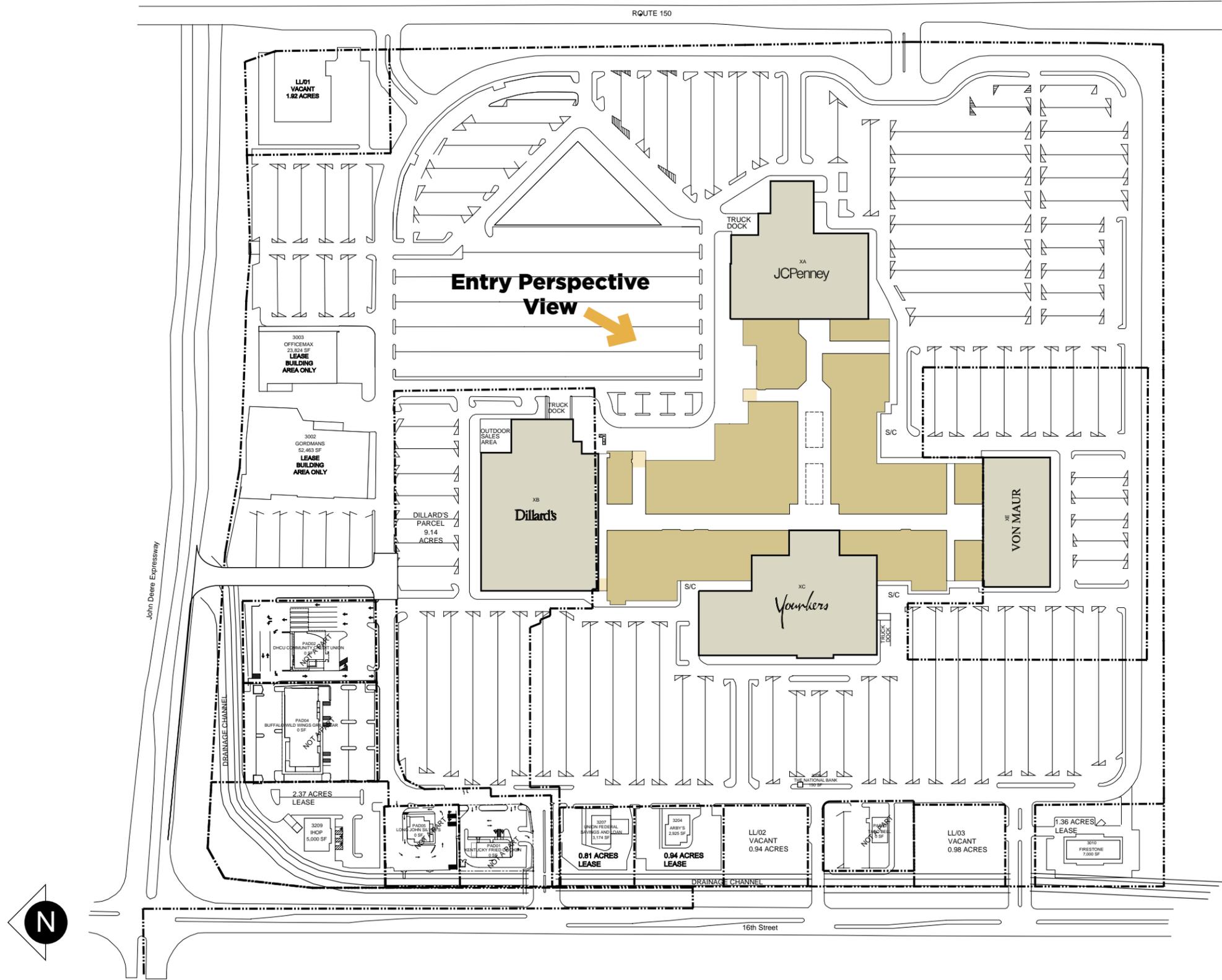


**PROPOSED NEW MALL ENTRANCE LOCATION**



**PROPOSED MALL ID LOCATION PLAN**

SCALE: NTS



**SITE PLAN**



**PYLON SIGN  
CONCEPT 1**



**MONUMENT SIGN  
CONCEPT 1**



**ENTRY PERSPECTIVE VIEW  
CONCEPT 1**



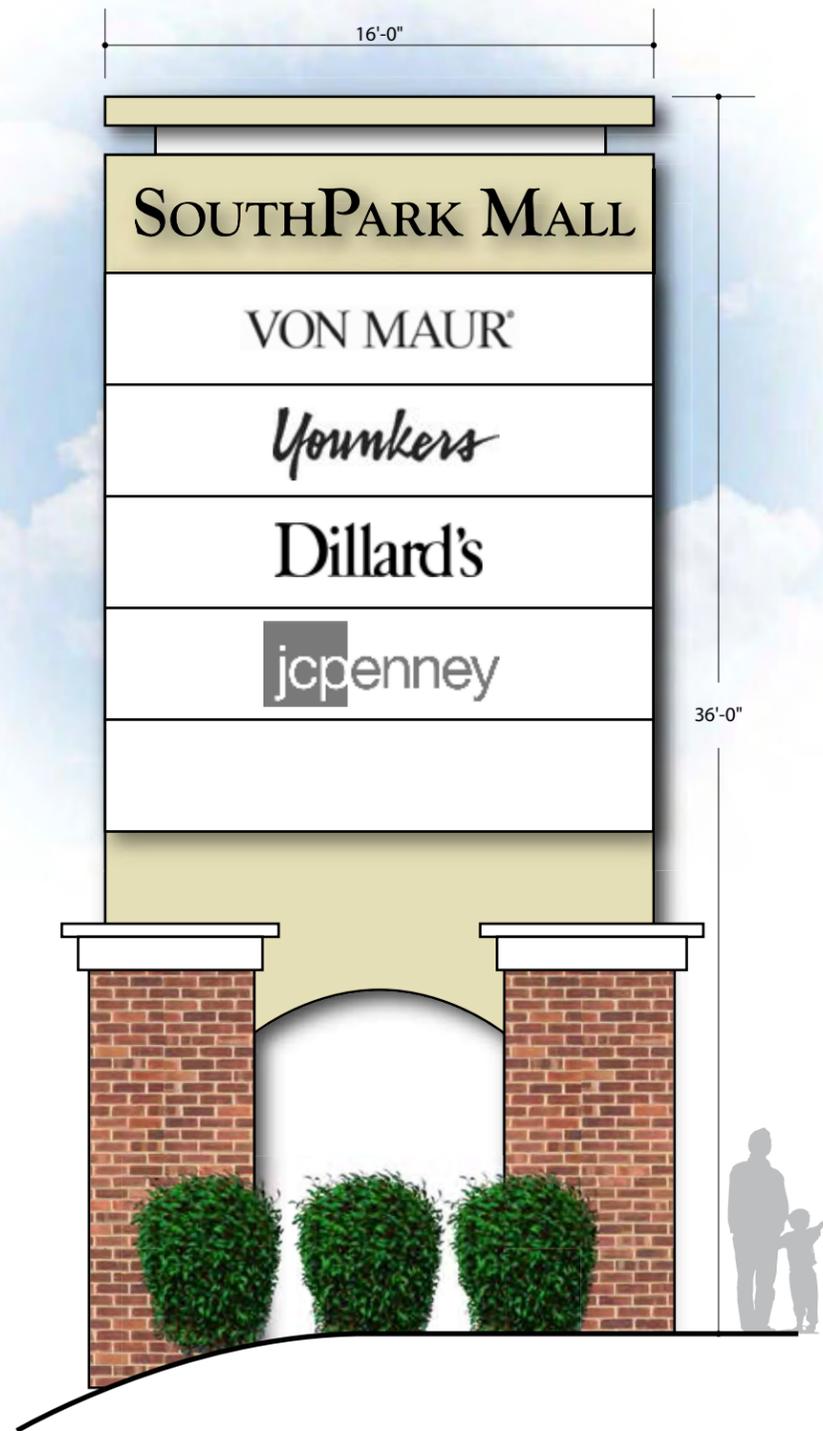
**PYLON SIGN  
CONCEPT 2**



**MONUMENT SIGN  
CONCEPT 2**



**ENTRY PERSPECTIVE VIEW  
CONCEPT 2**



**PYLON SIGN  
CONCEPT 3**



**MONUMENT SIGN  
CONCEPT 3**



**ENTRY PERSPECTIVE VIEW  
CONCEPT 3**



**CONCOURSE VIEW**



**EXHIBIT D  
TIF ELIGIBLE EXPENSES**

**Costs as Permitted Pursuant to the Act, including but not limited to:**

- Acquisition and other Property Assembly Costs
- Development Services Design and Engineering Services
- Legal/Appraisal
- Surveys and Environmental Reports Related to Property Assembly or Reconstruction, Remodeling, Repair, or Rehabilitation
- Reconstruction, rehabilitation, repair or remodeling
- Public improvements
- And other items permitted by the Act

Council Bill/General Ordinance No.: 3004-2014  
Sponsor: \_\_\_\_\_

AN ORDINANCE

AMENDING Chapter 20 "MOTOR VEHICLES AND TRAFFIC," of the Moline Code of Ordinances, Appendix 10 thereof, "PARKING PROHIBITED AT ANY TIME," by including 31<sup>st</sup> Street, on the east side, between 12<sup>th</sup> Avenue and 11<sup>th</sup> Avenue C.

\_\_\_\_\_

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

**Section 1** – Chapter 20 "MOTOR VEHICLES AND TRAFFIC," of the Moline Code of Ordinances, Appendix 10 thereof, "PARKING PROHIBITED AT ANY TIME," by including 31<sup>st</sup> Street, on the east side, between 12<sup>th</sup> Avenue and 11<sup>th</sup> Avenue C.

**Section 2** – That pursuant to Section 1-1107 of the Moline Code of Ordinances, any person, firm or corporation violating any of the provisions of this Ordinance shall be fined not more than seven hundred fifty dollars (\$750.00) for each offense.

**Section 3** – That this ordinance shall be in full force and effect from and after its passage and approval; and, if required by law, publication in the manner provided for by law.

CITY OF MOLINE, ILLINOIS

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

Passed: \_\_\_\_\_

Approved: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

Sponsor: \_\_\_\_\_

A SPECIAL ORDINANCE

AUTHORIZING the Mayor and City Clerk to execute a Lease Agreement with McCarthy Improvement Company to store construction materials from March 4, 2014 through December 31, 2015 on a portion of City-owned property located at 3620 38<sup>th</sup> Avenue, Moline, Illinois (RICO Parcel 07-223-13).

WHEREAS, McCarthy Improvement Company (hereinafter "Lessee"), desires to enter into a Lease Agreement with the City of Moline for the purpose of storing construction materials on a portion of City-owned property located at 3620 38<sup>th</sup> Avenue, Moline (hereinafter "Property"), being more particularly described in Exhibit "A," attached hereto and incorporated herein; and

WHEREAS, the City of Moline recognizes that the Illinois Department of Transportation ("IDOT") has planned to construct an overpass near 38<sup>th</sup> Street and John Deere Road as part of the John Deere Road improvement project; and

WHEREAS, IDOT has awarded the overpass construction project to Lessee; and

WHEREAS, the City of Moline has determined that the project can be more easily and efficiently completed by leasing the Property to Lessee; and

WHEREAS, Lessee's lease payment to the City shall be \$1000 per month for the term of the lease.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, AS FOLLOWS:

**Section 1** – That the Mayor and City Clerk are hereby authorized to execute, on behalf of the City of Moline, a Lease Agreement with McCarthy Improvement Company to store construction materials from March 4, 2014 through December 31, 2015 on a portion of City-owned property located at 3620 38<sup>th</sup> Avenue, Moline, Illinois (RICO Parcel 07-223-13); provided, however, that said agreement is in substantially similar form and content to that attached hereto and incorporated herein by this reference thereto as Exhibit "A," and has been approved as to form by the City Attorney.

**Section 2** – That this ordinance shall be in full force and effect from and after passage, approval, and, if required by law, publication in the manner provided for by law.

CITY OF MOLINE, ILLINOIS

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

Passed: \_\_\_\_\_

Approved: \_\_\_\_\_

Attest: \_\_\_\_\_

City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

## EXHIBIT "A"

### LEASE AGREEMENT

**THIS LEASE AGREEMENT** is made and entered into this 4<sup>th</sup> day of March, 2014, by and between the City of Moline, Illinois, a municipal corporation (hereinafter "Owner"), and McCarthy Improvement Company, (hereinafter "Lessee") (hereinafter collectively "Parties") to lease portions of the City-owned property located at 3620 38<sup>th</sup> Avenue, Moline, IL (hereinafter "Property").

WHEREAS, Owner recognizes that the Illinois Department of Transportation (IDOT) has planned construct an overpass near 38<sup>th</sup> Street and John Deere Road as part of the John Deere Road improvement project; and

WHEREAS, IDOT has awarded the overpass construction project to Lessee; and

WHEREAS, Owner has determined that the project can be more easily and efficiently completed by leasing the Property to Lessee; and

WHEREAS, Owner wishes to contract with Lessee to allow the storage of construction materials and fill materials from the overpass construction project on a portion of the Property subject to the terms, conditions, restrictions, limitations and reservations stated herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. DEFINITIONS
  - a) Premises: Portions of the Property being more particularly described in **Exhibits "1,"** and **"1-A"** attached hereto and incorporated herein.
  - b) Service(s)/Operation(s): The storage of Owner approved construction materials and fill by Lessee.
  - c) Lessee Property: All property provided by Lessee for the Operation including but not limited to the construction materials, fill, and vehicles.
2. USE
  - a) Owner shall lease the Premises to Lessee solely for the storage of construction materials or fill related to the overpass construction project. Under no circumstances shall the Premises be used for any other use. Storage or sale of items not required for completion of the overpass construction project shall not be allowed.
  - b) Lessee shall be allowed to store approved materials on the Premises 24 hours a day, 7 days a week, during the term of the lease.
3. LESSEE'S RESPONSIBILITIES.

## EXHIBIT "A"

- a) The Parties agree that Lessee is an independent contractor. Lessee shall have the exclusive responsibility for the Operation without undue influence by Owner except in cases specifically referred to in this Agreement; however, at times mutually agreeable, Lessee and Owner or Owner's designee(s) shall discuss and consider the matters which may be of mutual interest in maintaining an efficient and safe operation.
- b) Lessee shall at all times devote reasonable time, attention and energies to the management of the storage operation. Lessee acknowledges the Premises is public property and agrees that the Owner must have the right to make and enforce rules and regulations governing the Premises, which rules and regulations shall be considered covenants of this Agreement. Present rules and regulations are set forth in **Exhibit "2,"** attached hereto and incorporated by reference herein.
- c) Lessee shall be responsible for all Lessee Property associated with the Operation and shall pay all operational and maintenance costs for same.
- d) Lessee shall keep any equipment utilized in the Operation in good working order and shall permit Owner to make periodic inspections of same for the purpose of determining compliance with this requirement.
- e) Lessee shall comply with and at all times operate in a manner which meets all applicable Federal, State and Municipal laws, ordinances and regulations and guiding rules.
- g) Lessee shall be responsible for all staffing, taxes, insurance, and appropriate licensing associated with and necessary for the Operation. Lessee's employees shall not be deemed employees of Owner for any purpose whatsoever and shall not be eligible to participate in any benefit program provided by the Owner for its employees. Lessee shall be exclusively responsible for the payment of all wages and salaries, taxes, withholding payment, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension or other deferred compensation plans including, but not limited to, workers compensation and Social Security obligations, licensing fees, etc., and the filing of all necessary documents, forms and returns pertinent to all of the foregoing. Lessee shall not bring any cause of action alleging Owner is the employer of Lessee or any of Lessee's employees, officers or agents, and Lessee shall indemnify, defend and hold harmless Owner against all claims, losses, costs, or expenses associated with the employment of said employees by Lessee.
- h) Lessee shall also be responsible for compliance with the City of Moline's Stormwater requirements, as outlined in Chapter 34 of the Moline Code of Ordinances. The Lessee is required to practice erosion and sediment control where necessary. The gravel drive shall be maintained so that there is no tracking of mud and sediment on to the public street.

## EXHIBIT "A"

- i) No hazardous or environmentally-sensitive materials shall be brought on to the Property at any time nor stored temporarily or permanently on the premises.
  - j) At the end of the lease the Lessee will return the Property to its original condition, removing all debris, fill, and construction materials. The Lessee may be permitted to fill the site if the amount and type of fill are approved by the Owner.
4. RENT. Lessee shall pay lease payments to Owner as follows:
- a) \$1000.00 per month due on or before the fifth day of each month during the lease term.
  - b) Delinquent payments shall accrue interest at a rate of eight percent per annum.
  - c) Payments shall be made to the City of Moline Finance Department 1630 8<sup>th</sup> Avenue, Moline, Illinois 61265.
5. TERM AND TERMINATION
- a) The term of this Agreement shall commence on March 4, 2014 (hereinafter "Commencement Date") and shall continue through December 31, 2015. Any holding over after the expiration of the term hereof without the consent of the Owner shall be construed to be a tenancy from month to month at the rental five times the last rental rate in effect and shall otherwise be on the terms and conditions herein specified, as far as applicable.
  - b) In addition to any other remedies provided by law or equity, in the event of any default or breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party or successor shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach within thirty (30) days after receipt of such notice. Said written notice shall describe the nature of the default, and what action, if any, is deemed necessary to cure the same. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, but in no event longer than thirty (30) days after receipt such notice unless mutually agreed to in writing by the parties, the aggrieved party may terminate this Agreement by providing final written notice to the other or institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations. Upon termination of the Agreement by either party, Lessee must peacefully surrender the Premises to Owner; Owner must peacefully surrender Lessee's equipment to Lessee. The Premises leased herein shall include all appurtenant fixtures to said real estate, which, upon termination of this Agreement shall remain with the Premises and return to Owner.
6. HOLD HARMLESS/INDEMNIFY.

## EXHIBIT "A"

- a) In consideration for permission to use the Premises and Owner's property as granted above, Lessee hereby agrees to defend, hold harmless and indemnify Owner, its subsidiaries and affiliates, their respective officers, directors, employees, agents, assigns, servants and contractors from and against all claims, demands, actions, or proceedings, all costs, damages, expenses, or other liability of any nature whatsoever due to personal injury or property damage (including damage to the Premises and Owner's property other than reasonable wear and tear), any of which arises directly or indirectly from or in connection with, in whole or in part, the permission to use and/or use of the Premises and Owner's property granted hereinunder, unless caused or contributed to by the willful acts or omissions of Owner, its officers, directors, employees, agents or assigns, in which case Lessee shall have no duty to defend, hold harmless or indemnify.
  - b) This Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties thereto.
7. LESSEE'S INSURANCE COVERAGE. Lessee shall, throughout the term of this Agreement and at Lessee's expense, carry and keep in full force and effect comprehensive general liability insurance with respect to the Premises, with a carrier and in a form satisfactory to Owner, which policy or policies shall:
- a) Have limits of \$1,000,000.00 per occurrence personal injury and \$100,000.00 per occurrence property damage.
  - b) Name Owner as an additional insured party.
  - c) Contain a clause that the insurance carrier will not cancel or change the insurance without first giving the Owner thirty (30) days prior written notice in a form similar to that attached hereto as **Exhibit "3."**
  - d) Contain fire and extended perils insurance covering Lessee's own property and insuring Lessee's possessions on the Premises; Owner shall have no duty to insure Lessee's possessions, the possessions of Lessee's guests, invitees or permittees, or to replace same in the event of any calamity or other disaster.
  - e) Each such policy of insurance shall contain a waiver of subrogation provision.
- To the extent required by law, Lessee shall further carry workers' compensation insurance. Workers' compensation and public liability insurance shall be paid by Lessee from the Operation. Certificates of all insurance coverage shall be delivered to Owner seven (7) days prior to the Commencement Date.
8. NOTICES. Any notice required or permitted hereunder shall be in writing, signed by the party giving the notice, and shall be deemed given when:
- a) Hand delivered to the party to whom the notice is addressed, or

**EXHIBIT "A"**

b) Mailed by certified mail, return receipt requested, United States mail, postage prepaid, and addressed to the party at the address shown below:

Owner:  
City of Moline  
Attn: Chris Mathias  
Property Management Coordinator  
619 16<sup>th</sup> Street  
Moline, IL 61265

Lessee:  
McCarthy Improvement Company  
5401 Victoria Avenue  
Davenport, IA 52807

Either party may change the address and individual(s) to whom the notice is to be directed by written notice sent to the other party in the manner provided above.

9. OBSERVANCE OF LAWS AND ORDINANCES. Lessee must, at its sole cost and expense, promptly correct any violation and comply with all laws, ordinances, notices, permits, requirements, orders, regulations and recommendations now or in the future in effect, of whatever nature, of all federal, state, county, municipal and other authorities, with respect to Lessee's conduct or use of the premises.
10. SURRENDER OF PREMISES. At the end or termination of the term hereby demised, Lessee covenants to surrender and deliver up the Premises hereby leased in as good as condition as they now are, or may hereafter be put, destruction by fire, reasonable use, ordinary wear and tear, and the effects of time excepted.
11. ASSIGNMENT AND SUBLEASING. Lessee shall not have the right to assign this Agreement or sell, transfer or sublet any portion of the Premises herein without the express written consent of Owner, and consent of Owner shall not release or discharge Lessee from any obligations hereunder.
12. EFFECT OF PARTIAL INVALIDITY. The invalidity of any part of this Agreement will not and shall not be deemed to affect the validity of any other part. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.
13. WAIVER. Waiver by Owner of any breach of any covenant or duty of Lessee under this Agreement is not a waiver of a breach of any other covenant or duty of Lessee, or of any subsequent breach of the same covenant or duty.
14. CHOICE OF LAW. This Agreement shall be governed by the laws of the State of Illinois, and the sole and exclusive venue for any disputes arising out of this Agreement shall be any state court located within Rock Island County, Illinois, or federal court located within the same venue.

**EXHIBIT "A"**

15. TAXES. Lessee shall also be responsible for and pay all real estate taxes assessed against the lease premises if any are so assessed and shall furnish to Owner proof of payment within thirty (30) days after payment is due.
16. MISCELLANEOUS.
- a) This Agreement and each and every one of the terms and provisions thereof shall be for the benefit of and be binding upon the parties hereto and each of them and their respective heirs, executors, administrators, grantees, successors and assigns.
  - b) This Agreement contains the entire understanding between the parties hereto and supersedes any and all prior agreements, undertakings and arrangements between the parties relating to the subject matter hereof. All amendments, changes, modifications or alterations of the terms and conditions hereof shall be in writing and signed by all parties hereto.
  - c) The captions of the Agreement are used for convenience of reference only and shall have no significance in construing the text of the Agreement.

**IN WITNESS WHEREOF**, this Lease and Concession Agreement is executed in Moline, Illinois, as of the date hereof first above written.

**CITY OF MOLINE, ILLINOIS  
(OWNER)**

**MCCARTHY IMPROVEMENT COMPANY  
(LESSEE)**

By: \_\_\_\_\_  
Scott Raes, Mayor

BY: \_\_\_\_\_  
, \_\_\_\_\_  
Print Title

ATTEST:

\_\_\_\_\_  
Tracy Koranda, City Clerk

DATE: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

**EXHIBIT "1"**  
**DESCRIPTION**

A portion of City-owned property located at 3620 38<sup>th</sup> Avenue, Moline, IL described as follows: The point of beginning being located 75 feet south of the NE property corner of RICO Parcel SM-223-13; thence commencing South 330 feet more or less following the eastern property line; thence West 270 feet more or less; thence North 330 feet more or less; thence East 270 feet to the more or less to the point of beginning, said Premises depicted in the diagram attached hereto and incorporated herein as Exhibit "1-A."

**SEE ATTACHED DIAGRAM**  
**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

# Exhibit "1-A"



38th Ave

38th Ave

John Deere Rd

John Deere



Excavated Material Storage Area



Material Storage Area



Addition of Asphalt Millings

## **EXHIBIT "2"**

### **RULES AND REGULATIONS**

1. Use of Name: Lessee shall not use the name of the Owner, or any simulation or abbreviation thereof, as its name or as part of its name without Owner's prior written consent.
2. Obstruction: Lessee, its customers, invitees and guests shall not obstruct the public bike/walking path that runs through the Premises.
3. Noises and Odors: Lessee shall not make noises, cause disturbances or vibrations, or use or operate any electrical or electronic devices or other devices that emit sound or other waves or disturbances, or create odors, any of which may be reasonably offensive to other users of the Premises or unduly disturb any wildlife in and around the Premises.
4. Solicitation: Lessee shall not exhibit, sell or offer to sell, use, rent or exchange any item or service from the Premises unless ordinarily embraced within Lessee's use of the Premises specified herein.
5. Lessee Shall Not Interfere With Reserved Rights: Lessee shall not attempt to exercise any of the rights specifically reserved by Owner or interfere in any way with the exercise of these rights by Owner.

## EXHIBIT "3"

### INSURANCE REQUIREMENTS

- 1) City should be listed as Additional Insured.
- 2) Certificate should evidence the addition of a special provision by which Insurer waives its right of subrogation with regard to the City of Moline.
- 2) Certificate Holder should read:  
City of Moline  
619 16<sup>th</sup> Street  
Moline, Illinois 61265
- 3) Cancellation should read: ***Should any of the above described policies be cancelled before the expiration date thereof, the issuing insured will endeavor to mail 15 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.***