

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") entered into this ____ day of _____, 2016 is between the City of Aurora, an Illinois municipal corporation, located in Kane, Kendall, Will and DuPage Counties, Illinois ("City"); and 88 Orchard TMG, LLC, an Illinois limited liability company, the entity owning the Subject Property ("Owner"), sometimes hereinafter referred to individually as "Party" and collectively as the "Parties."

RECITALS

A. The City of Aurora has a population of more than 25,000 persons and is a home rule unit under subsection (a) of Section 6 of Article VII of the 1970 Constitution of the State of Illinois; and

B. The Owner is the owner of that certain real estate located in the City of Aurora, Kane County, Illinois, consisting of approximately 10.74 acres including proposed right of way, and legally described in Exhibit A, attached hereto (the "Subject Property").

C. The Owner is planning to develop the Subject Property with a building designed to serve multiple tenants, all in accordance with the approved Preliminary Plan attached hereto as Exhibit B, in a subdivision to be known as "88 Orchard Industrial " (the "Development").

D. The Owner desires to construct infrastructure and other improvements, including improvements to the intersection of Sullivan Road and Deerpath Road ("Intersection Improvements") in order to eliminate the offset between the two roads. The City recognizes that the Intersection Improvements will have a substantial public benefit and particularly will benefit the two property owners identified in Exhibit C, who own land on the Southeast and Southwest corners of the intersection of Deerpath Road and Sullivan Road. As a result, the City is willing to enter into a Recapture Agreement as set out in Exhibit D to bind these two property owners to contributing their fair share to the Intersection Improvements.

E. This Agreement has been submitted to the Corporate Authorities of the City for consideration and review and the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make this Agreement binding upon the City in accordance with its terms. Owner has taken all actions necessary and adopted the requisite resolutions or authorizations to make this Agreement binding upon Owner according to the terms hereof.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Owner hereby agree as follows:

ARTICLE ONE

Recitals and Exhibits Part of Agreement

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article One. All exhibits referenced in the recitals or the body of this Agreement, whether attached at the time of signing or later, are treated as incorporated by reference into the body of this Agreement.

ARTICLE TWO

Mutual Assistance and Further Assurances

Owner and the City agree to take such actions in a timely manner, including the execution and delivery of such documents, instruments, petitions, and certifications (and in the City's case, the adoption of such ordinances and resolutions), as may be necessary or appropriate from time to time to carry out the terms, provisions and intent of this Agreement.

ARTICLE THREE

Public Improvements

3.1 Construction of the Intersection Improvements by the Owner. The City recognizes that the Intersection Improvements which will be constructed by the Owner as part of the Development will be of benefit to the public health, safety and welfare subject to the following :

a) The construction of the Intersection Improvements will improve traffic flow, handle anticipated truck traffic from the Development and other adjacent properties, and promote safe traffic movements, benefiting the Subject Property, the adjacent properties to the southeast and southwest of such intersection, and the general public.

b) The City also acknowledges that the Resurrection Lutheran Church on the northeast corner of the Intersection has deposited with the City \$56,--- to be used for such Intersection Improvements and the City shall transmit such monies to Owner at such time as the City accepts the Intersection Improvements. The total estimated costs of such Intersection Improvements is set out in Exhibit E.

c) The Intersection Improvements shall be completed by Owner prior to the City's issuance of a certificate of occupancy for the building on the Subject Property to be constructed by Owner, unless Owner, with the City's assistance, has been unable to obtain any necessary construction easements from the adjacent owners.

d) Before undertaking the Intersection Improvements, Owner shall undertake a preliminary alignment study for the extension of Dancer Drive to the property to the west of

the Subject Property. Owner shall share the results of this study with the owner of the adjacent property to the west if that owner will meet with Owner. In the event that Owner has made a good faith effort to meet with that owner and the owner fails or refuses to meet, Owner will have fulfilled the obligation of this subsection d.

3.2 Submission and Approval of Plans. The Owner has submitted to the City for approval by the City a plat of vacation of existing Dancer Drive, a plat of dedication of relocated Dancer Drive, a plat of consolidation of the current four lot subdivision on the Subject Property, and a final plat of resubdivision, Final Engineering Plans, Final Landscaping Plans, and Construction Plans consistent with the approved Preliminary Plans. To the extent desired by Owner, construction plans can be done in one or more phases (collectively, the "Construction Plans") prior to commencement of construction. All work with respect to the construction of the Public Improvements by the Owner shall be performed in conformity with the approved Preliminary Plan or Plans. Based on this approach, the City waives the need to file separate Final Plans, as the City is treating the Preliminary Plans as complete.

3.3 Public Improvements Constructed on City's Right-of-Way and Public Lands. The City shall grant or cause to be granted to the Owner easements and/or licenses with respect to the City's right-of-way and public lands, which are necessary to permit the Owner to construct the Public Improvements in a form and substance acceptable to the Owner and the City. All such easements and licenses shall be duly executed and, if necessary, recorded prior to the commencement of construction. The City shall also reasonably assist the Owner in obtaining necessary approvals from other governmental entities and in obtaining any necessary construction easements from adjacent property owners to the Intersection Improvements.

3.4 Vacation of Dancer Drive. Owner shall vacate Dancer Drive from the middle of the Subject Property and relocate it to the south of the Subject Property as follows:

(a) Owner has submitted a proposed Plat of Vacation as well as a proposed Plat of Dedication for Dancer Drive, which plats will be recorded concurrently.

(b) The cost of removing Dancer Drive and any utilities in this right of way and relocating such utilities shall be at Owner's sole cost and expense.

(c) The Parties have agreed that the Waiver of Sullivan Road improvements contemplated by Resolution PDFNL07-036 is superseded by this Agreement and Owner's undertaking of the Intersection Improvements.

3.5 Easements Benefiting the City. To the extent necessary, Owner is vacating certain easements along Dancer Drive and relocating utilities to the relocated Dancer Drive with all necessary easement grants. Owner is granting to the City any necessary easements in the final plat of subdivision, without cost to the City.

3.6 Conformance to Federal, State, and Local Requirement. All work with respect to the Public Improvements shall conform to all applicable ordinances, codes, rules and regulations in effect as of the date of this Agreement and all applicable federal, state and local laws,

regulations, codes, rules and ordinances including, without limitation, the City's Subdivision Control Ordinance.

3.7 Rights of Inspection. During construction of the Public Improvements undertaken by the Owner, the City or its designee shall have the right at any time and from time to time to enter upon the Subject Property and the Public Improvements for the purpose of conducting such inspections as the City may deem appropriate. In the event that the City or its designee discovers a defect or deficiency in the construction of the Public Improvements, the City or its designee shall promptly notify the Owner thereof. Any such inspection by the City of the Public Improvements shall not be construed as a representation by the City that there has been compliance with the Construction Plans or that the Public Improvements will be or are free of faulty materials or workmanship, or as a waiver of any right that the City or any other party may have against the Owner or any other party for failure to comply with the Construction Plans or the provisions of this Agreement. Prior to the City's acceptance, the Owner shall provide the City with final lien waivers and the Public Improvements shall be free of all liens and encumbrances. The City shall then accept the Public Improvements upon completion, as long as they are in conformance with the approved Construction Plans.

ARTICLE FOUR **Recapture Obligations**

4.1 In recognition of the benefit that the Intersection Improvements will provide to the owners of the properties at the southeast and southwest corners of the Intersection, the City agrees to enter into the Recapture Agreement found in Exhibit D and allow Owner to record this agreement against the other two property owners land.

4.2 Owner shall maintain records of the costs of the Intersection Improvements for the purpose of the City determining the costs subject to recapture.

ARTICLE FIVE **Development Conditions**

5.1 Owner will revise its west elevation in the Preliminary Plan submittal package to reduce the number of truck docks on the west face of the proposed building from 33 to 23. These docks may be spaced along the west elevation as Owner sees fit.

5.2 The Development will be in keeping with the Bulk Standards already established for the subdivision under the City's ORI zoning classification.

ARTICLE SIX **Owner Indemnification of the City**

The Owner agrees to indemnify, defend and hold the City and its officers, employees, attorneys, engineers and consultants harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), to the extent resulting from, arising out of, or based upon: (i) any material breach or default on the part of the Owner in the performance of any of its obligations under or in respect of this Agreement; (ii) willful or intentional misconduct of the Owner or any of its agents, contractors, servants or employees; (iii) any violation by the Owner of any easements, laws, ordinances or codes affecting the Subject Property, the City's property, the Development or the Public Improvements; or (iv) any claims made against the City as a result of it being a Party to this Agreement. In case any such claim shall be made or action brought based upon any such claim in respect of which indemnity may be sought against the Owner, upon receipt of notice in writing from the City setting forth the particulars of such claim or action, the Owner shall assume the defense thereof including the employment of counsel reasonably acceptable to the City and the payment of all costs and reasonable expenses. The City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the City.

ARTICLE SEVEN

Authority

7.1 Powers. The City hereby represents and warrants to the other Party that the Party making such representations and warranties has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions and all necessary Owner actions. The Owner hereby represents and warrants to the City that in making such representations and warranties Owner has lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary authority. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Parties, enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority.

7.2 Authorized Parties. Whenever under the provisions of this Agreement and other related documents and instruments or any supplemental agreements any request, demand, approval, notice or consent of any Party is required, or any Party is required to agree or to take some action at the request of the other Party, such request, demand, approval, notice or consent, or agreement shall be given for the City, unless otherwise provided herein, by the Mayor or his or her written designee and for the Owner by Owner, or its written designee; and any Party shall be authorized to act on any, such request, demand, approval, notice or consent, or agreement or other action and any Party hereto shall not have any complaint against the other Party as a result of any such action taken.

ARTICLE EIGHT

General Provisions

8.1 Time of Essence. Time is of the essence of this Agreement.

8.2 Breach. A Party shall be in "breach of this Agreement" if it shall fail to perform any of its respective obligations under this Agreement and after written notice from the other Party of such failure to perform, does not commence performance and diligently prosecute the same to completion, or cure the breach within thirty (30) days after such notice. Each of the Parties shall have all remedies available at law or in equity to enforce this Agreement or recover damages in case of a breach of this Agreement beyond any applicable cure periods.

8.3 Amendment. This Agreement, and any exhibits incorporated herein by reference, may be amended only by: (i) the agreement of both Parties as evidenced by a written amendment, with the adoption of an ordinance or resolution of the City approving the written amendment; or (ii) as provided by law. The City shall not be responsible to make any payments under this Agreement to a person or entity who has not agreed, in writing, to become obligated under this Agreement.

8.4 Entire Agreement. This Agreement sets forth all agreements, understandings and covenants between the Parties relative to the matters herein contained. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and shall be deemed a full integration of the entire agreement of the Parties.

8.5 Severability. If any provisions, covenants, agreements or portions of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and to that end all provisions, covenants, agreements or portions of this Agreement are declared to be severable. However, if the invalidity of a provision in this Agreement results in any Party not receiving a substantial benefit of what it had bargained for, then that Party shall have the right to declare this Agreement null and void.

8.6 Illinois Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Illinois. The Parties agree that in the event it is necessary to enforce the terms of this Agreement, the Parties shall submit to the jurisdiction of the Circuit Court for the 16th Judicial Circuit, Kane County, Illinois and they waive any objection to such jurisdiction, including *forum non-conveniens*.

8.7 Interpretation. This Agreement has been negotiated by the Parties with the assistance of counsel of their choosing. No interpretative covenant shall be employed benefitting the non-drafting Party. Rather, this Agreement shall be interpreted liberally to achieve the intention of the Parties.

8.8 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be: (i) delivered personally,

with a receipt requested therefor; or (ii) sent by confirmed facsimile; or (iii) sent by a recognized overnight courier service; or (iv) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the Party at its respective addresses set forth below, and the same shall be effective: (a) upon receipt or refusal if delivered personally or by facsimile; (b) one (1) business day after depositing with such an overnight courier service; or (c) two (2) business days after deposit in the mails, if mailed. A Party may change its address for receipt of notices by service of a notice of such change in accordance herewith:

If to the City:	City of Aurora 44 E. Downers Place Aurora, IL 60507 Attn: City Clerk
With a Copy to:	City of Aurora 5 E. Downer Place Aurora, Il 60507 Attn: Corporation Counsel
If to Owner:	Orchard 88 TMG, LLC c/o The Missner Group 1700 W. Higgins Road Des Plaines, Illinois Attn: Barry Missner
With a Copy to:	Dykema Gossett PLLC 4200 Commerce Court, Suite 300 Lisle, IL 60532 Attn: Bruce Goldsmith

8.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

8.10 Consent or Approval. Except as otherwise provided in this Agreement, whenever consent or approval of a Party is required, such consent or approval shall not be unreasonably withheld.

8.11 Effective Date. This Agreement shall become effective upon the date first above written by the Parties.

City of Aurora, an Illinois municipal corporation

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

Owner:

Orchard 88 TMG, LLC

By: Missner Group Asset Management, its Manager

By: _____

Name: _____

Its: _____

EXHIBIT LIST

- A. Legal Description – Subject Property
- B. Approved Preliminary Plan for 88 Orchard Industrial
- C-1. Legal Description of Property at the Southeast Corner of Sullivan Road and Deerpath Road
- C-2. Legal Description of Property at the Southwest Corner of Sullivan Road and Deerpath Road
- D. Recapture Agreement
- E. Estimate of Costs for Certain Public Improvements

EXHIBIT A
(Legal Description – Subject Property)

EXHIBIT B
(Approved Preliminary Plan for 88 Orchard Industrial)

EXHIBIT C-1
(Legal Description of Property at Southeast Corner of Sullivan and Deerpath)

EXHIBIT C-2
(Legal Description of Property at Southeast Corner of Sullivan and Deerpath)

EXHIBIT D
(Recapture Agreement)

EXHIBIT E
(Estimate of Costs for Intersection Improvements)
