

**FRED BUCHOLZ**

**DUPAGE COUNTY RECORDER**

**MAR.17,2010**

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**Prepared by:**

Duke Realty Corporation

Lisa Starceвич

6133 N River Road, Suite 200

Rosemont, IL 60018

**Return Address:**

First American Title Insurance Comp.

Attn: Heather Vree

30 N LaSalle Street, Suite 2700

Chicago, IL 60602

**Declaration of Easements, Restrictions, and  
Covenants for Butterfield East Owners' Association**

**Property Address:**

2805 Duke Parkway

Aurora, IL 60504

**NCS-423407**

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**DECLARATION OF EASEMENTS, RESTRICTIONS, AND  
COVENANTS FOR  
BUTTERFIELD EAST OWNERS' ASSOCIATION**

**THIS DECLARATION** (this "Declaration") made and entered into this 10<sup>th</sup> day of March, 2010, by DUKE REALTY LIMITED PARTNERSHIP, an Indiana limited partnership (hereinafter referred to as the "Owner") and **BUTTERFIELD EAST OWNERS' ASSOCIATION**, an Illinois not-for-profit corporation (hereinafter the "Association").

**WHEREAS**, the Owner is the owner in fee simple of certain Property (as hereinafter defined) in the City of Aurora ("City"), County of DuPage and State of Illinois; and

**WHEREAS**, the Owner desires to provide for the preservation of the value and the harmonious, beneficial, and proper use of the Property and to this end the Owner desires to subject the Property to the rights, easements, covenants, restrictions, charges, and liens hereinafter set forth; and

**NOW, THEREFORE**, the Owner hereby declares that the Property shall be held, conveyed, occupied, and encumbered subject to the rights, easements, covenants, restrictions, charges, and liens hereinafter set forth, each and all of which shall, with respect to the Property, attach to and constitute covenants running with the land.

1. **Definitions.** The following terms shall have the following meanings:
  - (a) **Alteration.** Any change in the exterior appearance of any Improvement or in the grading or drainage pattern of any Parcel.
  - (b) **Board.** The Board of Directors of the Association.
  - (c) **By-laws.** The By-laws of the Association, as they may be amended pursuant thereto.
  - (d) **Common Area.** All property, real or personal, owned by the Association, and which shall initially include the real estate depicted on **Exhibit B** attached hereto.
  - (e) **Developer Related Person.** Owner or any affiliate thereof engaged in the real estate development business, including any partnership which has a general partner any principal, partner, agent or employee of Owner or any partner of any partnership that is one of the partners comprising Owner or any corporation the majority interest of the stock of which is controlled by one or more such Persons. Developer Related Person shall include any assignee of Owner's rights under this Declaration as part of a sale of all remaining Property owned by Owner or Developer Related Person.
  - (f) **Improvements.** Any permanent structure attached to the Property which is erected after the date hereof and for which the City requires the issuance of a building

permit and in addition any ancillary facilities such as parking areas, driveways, curbs, fences, and sidewalks and landscaping not occupied by such Improvements and their ancillary facilities.

(g) Maintenance Fund. All monies collected by the Association pursuant to the terms hereof.

(h) Member. Each person or entity who is a member of the Association, as provided in the By-laws.

(i) Parcel. Each individual parcel of Real Estate.

(j) Parcel Owner. The person or persons whose estate or interests, individually or collectively, aggregate fee simple ownership of a Parcel (without reference to the interests of lien holders or tenants for terms of years or otherwise).

(k) Percentage Interest. The interest of each Parcel Owner as set forth on **Exhibit C** attached hereto and made a part hereof.

(l) Person. A natural person, corporation, partnership, trustee or other entity capable of holding title to real property.

(m) Property. All portions of the Real Estate and the Common Area.

(n) Real Estate. All the parcels of real estate described on **Exhibit A** hereto and such additional real estate (other than any portions of such additional real estate as are conveyed to the Association as Common Area pursuant to paragraph 13) which, pursuant to paragraph 13 hereof, become subject to this Declaration.

## 2. Architectural Control.

(a) (i) No Improvement shall be constructed or placed on any Parcel, nor shall any Alterations be made, without, in each case, the prior written approval of the Association. The Association may require as a condition for its approval compliance with such conditions as it may determine are appropriate to insure that the proposed Improvements or Alterations are compatible with the appearance and quality of the theretofore approved Improvements and Alterations. The Parcel Owner seeking approval from the Association shall submit plans and specifications for any proposed Improvement or Alteration showing, among other things, the location of the Improvement or Alteration within the Parcel. Architectural and engineering plans, landscape drawings, and such other information as the Association may require shall also be furnished and shall disclose, among other things, elevations of all Improvements, construction materials, rooftop screenings, aesthetic treatment of exterior surfaces, including exterior architectural design and décor, and other like pertinent data.

(ii) The Association will not approve any plans and specifications for a proposed Improvement or Alteration unless the Association, in its sole discretion, deems the proposed Improvement or Alterations to be consistent with other approved Improvements and Alterations or the Property and with high quality standards of design and construction.

(iii) All Parcels shall be landscaped only in accordance with a plan submitted to and approved by the Association pursuant to this Section 2(a). Such landscaping plan shall include information regarding the type of sodding, the type of seeding, types of trees, hedges and shrubs and information regarding other customary landscape treatment for the entire Parcel, including fences, walls and screening. Each Parcel Owner shall provide an appropriate amount of landscaped and sodded areas on his Parcel. All landscaped areas shall be maintained in a slightly and well-kept condition, and shall be planted with lawn, trees and shrubs so as to provide a park-like setting, in compliance with this Declaration. Each Parcel Owner shall be responsible for repairing or replacing any landscape materials on its Parcel that have deteriorated or been damaged. All landscaping shall be undertaken and completed in accordance with such approved plan and said plan may not be altered, amended or revised without submitting the revised landscaping plan for prior approval by the Association.

(iv) No parking shall be permitted on the Property at any other place other than on paved parking spaces to be constructed on each Parcel. The location of such construction upon each Parcel, the number and size of such paved parking spaces shall be subject to approval by the Association pursuant to this Section 2(a). The minimum standard shall be the total of the following, but in no case shall be less than that required by the City or any other applicable governing authority:

(a) Offices -- three (3) parking spaces per 1,000 square feet;  
and

(b) Industrial/Warehouse -- the greater of 0.25 parking spaces per 1,000 square feet or one (1) parking space per each employee on the largest shift.

All off-street parking areas and access driveways shall have a wearing surface of asphalt, concrete or other similar hard surfaced materials and shall be properly graded to assure proper drainage.

(v) All Improvements and Alterations located on the Property shall be constructed with one or more of the following materials:

(a) Face brick;

(b) Architectural pre-cast concrete panel;

(c) Painted structural pre-cast concrete panels; or

(d) Pre-finished curtain wall construction; provided that at minimum, the bottom one-third (1/3) of such Improvement or Alteration shall be covered with face brick.

(vi) All trash receptacles and storages areas, service yards, electrical cage enclosures, incinerators and similar equipment for the disposal of materials and storage tanks, shall, at the Associations' discretion and subject to applicable ordinances, be screened from view from access streets and adjacent Parcels by means of a fence, berm, wall or dense opaque landscaping materials or other means acceptable to the Association.

(vii) All curb cuts shall be designed so as to create a means of ingress and egress for each Parcel consistent with efficient traffic patterns and to not unnecessarily hinder traffic flow to or from other Parcels. All curb cuts shall be approved by the Association.

(viii) The Association's review of each submission made pursuant to this Section 2(a) may take into consideration the following criteria:

(a) Relationships of Improvements to Parcel.

(1) The Parcel shall be planned to accomplish a desirable transition with the streetscape, and to provide for adequate planning, safe pedestrian movement and parking areas.

(2) Site planning in which setbacks and yards are greater than those required by the zoning restrictions of the City is encouraged to provide an interesting relationship between Improvements.

(3) The location of parking areas and driveways shall be designed so as to largely screen parking areas from view from public ways.

(4) The height and scale of each Improvement or Alteration shall be compatible with its Parcel and existing (or anticipated) adjoining Improvements.

(b) Relationships of Improvements and Site to Adjoining Areas.

(1) Landscaping treatment, screens and materials shall be used to provide a harmonious transition between Improvements

within each Parcel and within adjacent Parcels which may vary in architectural style.

(c) Landscape and Parcel Treatment. Landscape elements included in this criteria consist of all forms of planting and vegetation, ground forms, rock groupings, water patterns, and all visible construction except Improvements and utilitarian structures.

(1) Where natural or existing topographic patterns contribute to beauty and utility of a Parcel, they shall be preserved and developed to the extent practicable.

(2) Grades of walks, parking spaces, terraces and other paved areas shall provide an inviting and stable appearance for walking.

(3) Plant material shall be selected for interest in its structure, texture and color and for its ultimate growth. Plants that are indigenous to the area and others that will be hardy, harmonious to the design and of good appearance shall be used.

(4) Plant materials will not be located where they will be susceptible to injury by pedestrian or motor traffic.

(5) Parking areas and traffic ways shall be enhanced with landscape spaces containing trees or tree groupings. Shrubs shall be used only where they will not obscure vision and will not require excessive maintenance.

(6) Where Improvement sites limit planting, the placement of trees in parkways or paved areas is encouraged.

(7) Screening of service yards, and other places which tend to be unsightly, shall be accomplished by use of walls, fencing, planting or combinations of these. Screening shall be equally effective in winter and summer.

(8) In areas where general planting will not prosper, other materials such as fences, walls and pavings of wood, brick, stone, gravel and cobbles, should be used. Carefully selected plants shall be combined with such materials where possible.

(9) Exterior lighting shall enhance the Improvement design and the adjoining landscape. Lighting standards and Improvement fixtures shall be of a design and size compatible with

the Improvements and adjacent Parcels. Lighting shall be restrained in design and excessive brightness avoided.

(d) Improvement design.

(1) Architectural style is not restricted. Evaluation of appearance of an Improvement or Alteration shall be based on quality of its design and relationships to surroundings.

(2) Improvements and Alterations shall have harmonious scale with permanent neighboring Improvements.

(3) Materials shall have good architectural character and shall be selected for harmony of Improvements within the Property. Materials shall be selected for suitability to the type of Improvement and the architectural design of the Improvement in which they are used.

(4) Building components -- such as windows, doors, eaves and parapets -- shall have good proportions and relationships to one another.

(5) Colors shall be harmonious with only compatible accents.

(6) Mechanical equipment or other utility hardware on the ground or in the Improvements and transformers shall be screened from public view with materials harmonious with the Improvements, or they shall be so located so as not to be visible from any public ways.

(7) Exterior lighting shall be part of the architectural concept. Fixtures, standards and all exposed accessories shall be harmonious with the Improvement's design.

(8) Refuse and waste removal areas, service yards, storage yards, and exterior work areas shall be screened by public ways, using materials as stated in criteria for equipment screening.

(e) Maintenance -- Planning and Design Factors.

(1) The choice of materials and their use, together with the types of finishes and other protective measures, must be conducive to maintenance and upkeep.

(2) Materials and finishes shall be selected for their durability and wear as well as for their beauty. Proper measures and devices shall be incorporated for protection against the elements, neglect, damage and abuse.

(3) Provision for washing and cleaning of Improvements and structures, and control of dirt and refuse, shall be included in the design. Configurations that tend to catch and accumulate debris, leaves, trash, dirt and rubbish shall be avoided.

(ix) The Association may disapprove plans and specifications submitted to it in the event the same are not in accordance with this Declaration or if the plans and specifications submitted are incomplete. The Association shall consider any request which is submitted in accordance with the terms hereof on the basis of its conformity and harmony with the criteria set forth herein. The Association shall, within forty-five (45) days after the submission of such complete plans and specifications approve or disapprove any request for approval in writing. In the event such plans and specifications are disapproved, the Association shall specify the reasons therefor. If the Association fails to so approve or disapprove such request within such forty-five (45) day period, such request shall be deemed denied. The decision of the Association shall be final, but the Association shall not arbitrarily or unreasonably withhold its approval or such plans and specifications. All costs incurred by the Association in reviewing the plans and specifications submitted, including at the Association's sole option a review fee in an amount not to exceed 1/10<sup>th</sup> of 1% of the construction costs for the proposed Improvement or Alteration, shall be paid by the Parcel Owner.

(x) No Parcel Owner shall apply for or obtain a building permit from any applicable governmental unit until such Parcel Owner's plans and specifications have been approved by the Association. Upon obtaining the approval of the Association, the Parcel Owner shall, as soon as practicable, proceed diligently with the commencement and completion of all approved Improvements or Alterations.

(xi) Neither the Owner, the Association, any Developer Related Person, nor any member, employee or agent thereof, shall be liable to any Parcel Owner, to anyone submitting plans for approval, or to any other Person, by reason of good faith exercise of judgment or mistake or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such plans and specifications or for any other action in connection with its or their duties hereunder. In any event, the Association shall indemnify and hold harmless the members of the Association ("Members") against all liabilities to others arising out of or in connection with their duties hereunder or otherwise with regard to the Property.



(b) (i) All Parcel Owners, except the Owner and any Developer Related Person, shall submit plans and specifications for Improvements to be constructed on their respective Parcels within six (6) months (or such longer period as the Association may specifically permit in writing) of obtaining title to a Parcel. Construction of such Improvements or any Alteration shall commence within six (6) months (or such longer period as the Association may specifically permit in writing) of the date the Association approves plans and specifications therefor. If, within nine (9) months (or such longer period as the Association may specifically permit in writing) from the date of such approval, work on the Improvements or Alterations shall not have been substantially commenced, or if commenced, construction shall not, in the Association's reasonable judgment, have been prosecuted with due diligence, then any prior approval of such work shall be deemed withdrawn, automatically, and without any further act by the Association or any other party. In that event, such Parcel Owner shall not commence or continue, as the case may be, construction of the Improvements or Alterations without further written approval shall, at the option of the Association, restore the Parcel to a condition similar to such Parcel's condition prior to such approval.

(ii) Construction of any Alteration or Improvement shall be completed within two (2) years after approval of the plans therefor (or such longer period as the Association may specifically permit in writing). In the event construction of any Improvement on a Parcel ceases for a period of six (6) months prior to the enclosure of such Improvement, the Parcel Owner, upon written demand of the Association, shall raze and remove such Improvement and landscape the Parcel in a sightly manner. In the event construction of any Improvement ceases for a period of six (6) months after the Improvement is enclosed, the Parcel Owner, upon written demand of the Association, shall landscape the Parcel in a sightly manner.

(iii) To the extent that commencement or completion of any Improvement or Alteration is rendered impossible due to strikes, casualty, shortage of material, national emergencies, or forces beyond the reasonable control of the Parcel Owner, the commencement or completion date, as the case may be, shall be extended by the Association for a period corresponding to the duration of such delay causing event.

(c) No signs, billboards, video display boards or advertising devices of any kind shall be placed or otherwise installed on any Parcel, Improvement or the Common Area, except:

(i) One (1) freestanding Parcel identification sign that shall contain the Parcel address and the occupant name(s). Any and all occupant signage mounted on any Improvement shall conform to the applicable City laws and ordinances and shall be subject to approval from the Association;

(ii) Vehicular directional and regulatory signs which conform to the applicable City laws and ordinances. All sign locations and appearance shall be approved by the Association, which approval is in its sole discretion. The Association shall promptly notify the affected Parcel Owner of any disapproval and such notice shall set forth in reasonable detail the reasons for such disapproval; and

(iii) Temporary identification signage for Improvements under construction shall be allowed subject to prior written approval by the Association. Such signage shall be allowed during the process of construction and until sixty (60) days after construction is completed.

Prior to installation, all signs and exterior lighting fixtures and standards must first be approved by the Association. In no event, however, shall there be erected on any location in the Property any neon sign, flashing sign, signs with moving lights, or signs which revolve, move or have moving parts.

(d) No telephone lines, cable television lines, or other data transmission lines shall be installed in the Common Area without the consent of the Association, which consent shall not be unreasonably withheld. The reasonable grounds for withholding consent shall be deemed to include without limitation, failure to comply with provisions of this Declaration or the restrictions in any deeds by or from a Developer Related Person.

(e) The Association, by the written consent of a majority of the members thereof, is hereby authorized and empowered to grant reasonable variances from the provisions of this Section 2 in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that said variances shall not materially injure any of the Property or Improvements within the Property, shall meet the spirit and intent of this Declaration and shall otherwise be subject to all applicable laws, ordinances, rules and regulations of any governmental agency or political subdivision having jurisdiction over the Property. Any waiver or variance by the Association in one or more instances of the provisions and requirements contained in this Section 2 shall not be deemed to be a waiver by the Association of its rights to enforce such provisions and requirements as applied to any other Person, Parcel Owner or Parcel thereafter, no matter how many waivers or variances may have been granted previously.

### 3. Maintenance of the Parcels.

(a) Each Parcel Owner shall maintain, or cause to be maintained, its Parcel, including the exterior of its Improvements, pedestrian walks, parking lots, landscaped areas and vacant areas, in a clean, sightly and safe condition, pursuant to all applicable laws and ordinances, and shall at all times cause the prompt removal of all debris, refuse, snow and ice and the sweeping of paved areas, when and as necessary as desirable.

(b) In the event of damage or destruction to any Improvements by reason of fire or other casualty, the Parcel Owner shall thereafter either restore such Improvements to the condition existing prior to such damage or destruction with such charges as the Association may approve pursuant to Paragraph 2 hereof, or in the alternative, raze and remove such Improvements and landscape the Parcel in a manner acceptable to the Association and in conformity with the adjoining Parcels. Such restoration or razing of the Improvements shall be commenced within two hundred seventy (270) days after a settlement is reached with the Parcel Owner's insurer, but in no event later than eighteen (18) months from the date of the fire or other casualty causing the damage, and shall proceed with diligence and continuity.

(c) Trailers, temporary buildings or structures of any kind shall not be permitted on the Property, except as necessary during approved construction, and if so used, shall be removed as promptly as practicable after completion of such construction and in any event within thirty (30) days after the issuance by the City of an occupancy permit for such Improvement or Alteration. During construction, the Parcel Owner shall provide off-street parking adequate to accommodate all parking needs of employees and construction workers.

(d) All equipment used in clearing, excavating or construction on a Parcel that is not rubber-tired shall be loaded or unloaded only within the boundary lines of the Parcel. During clearing, excavating or construction, the Parcel Owner of the Parcel on which the work is performed shall cause the roads bordering the Parcel and elsewhere on the Property to be kept clear of dirt and debris caused by such clearing, excavating or construction and shall be responsible for the repair of any and all damage to such roads.

(e) No person or entity shall drain or dump, or permit the drainage or dumping of, any refuse, sewage or other liquid or solid matter into any retention ponds, lakes, creek, floodway, or flood fringe on the Property, except that the draining of water from the Property into the retention ponds or lakes if such draining will not pollute, overflow, or otherwise adversely affect the ponds, in the Association's sole judgment, and provided all necessary governmental permits have been obtained. No Parcel Owner shall cause or allow any activity which shall cause air, water, soil or noise pollution which would violate any applicable laws, ordinances, rules or regulations of any governmental authority having jurisdiction over the Property.

4. Maintenance of the Common Area.

(a) The construction, landscaping, operation, maintenance and replacement of the Common Area shall be within the sole control, responsibility and discretion of the Association. The cost of all capital improvements (other than capital improvements contributed to the Association), including new construction and replacement of facilities and landscaping with the Common Area, as well as all expenses for maintenance and upkeep of the Common Area and all real estate taxes thereon, shall be paid from the Maintenance Fund. For purposes of this Section 4, all approved boulevard median strips, jogging paths, floodways and retention ponds located within the Property shall be deemed to be Common Areas regardless of whether such median strips, jogging paths and floodways are located in the Common Area or Parcels or are located in the dedicated public way.

(b) The Association shall maintain all approved retention or detention ponds located on the Property in compliance with applicable City laws and ordinances, and shall pay all real estate taxes and assessments levied or assessed against the Common Area in order to avoid a sale of the Common Area due to such nonpayment of such taxes and assessments.

5. Easements.

(a) The Owner or applicable Parcel Owner shall grant to the Association non-exclusive permanent easements for ingress and egress over and upon those portions of the Real Estate as reasonably required for the purpose of constructing and maintaining the Common Areas .

(b) The Association hereby grants to the Parcel Owners, their guests and invitees, but not the public generally, easements for ingress and egress from any portions of the Real Estate over, upon and across such driveways and private streets and paths, if any (for the purposes for which they were constructed), as from time to time shall be in or upon the Common Area, or portions thereof, and shall have the power to grant such easements or licenses for such other purposes as may be appropriate to such persons, and upon such terms and conditions, at such costs, if any, and for such duration as the Association deems appropriate.

(c) Each Parcel Owner shall maintain those portions of its Parcel which are subject to easements granted hereunder, except as otherwise provided herein, provided that the Association, in its sole discretion, shall have the authority to assume any such costs as it deems appropriate.

(d) All easements and rights described in this Declaration are easements appurtenant, running with the land, and shall inure to the benefit of, burden and be binding upon the undersigned, their successors and assigns, and upon any owner, purchaser, mortgagee, or other Person having an interest in the Property, or any part thereof, at any time.

6. Administration.

(a) The administration of the Common Area as set forth herein shall be vested in the Association.

(b) The Association shall have one class of membership and each member shall have voting rights as set forth in Section 2 of the By-laws. The foregoing notwithstanding, the sole vote of all the Parcel Owners in the Association shall vest in the Owner or any Developer Related Person succeeding to the rights of the Owner hereunder until such time as the first to occur of: (i) ninety (90) days after the sale and transfer by the Owner or such Developer Related Person of the last Parcel in the Property to a third party who is not a Developer Related Person; or (ii) Owner's or such Developer Related Person's relinquishment of the right to exercise the sole vote of the Association, which shall be delivered in writing to the Association.

(c) The duties and powers of the Association and its Board shall be those set forth in this Declaration, the By-laws, and its Articles of Incorporation, as such Articles may be amended from time to time upon recommendation of the board and affirmative votes of Members whose Percentage Interests aggregate at least sixty-six and two-thirds percent (66-2/3%).

(d) Notwithstanding anything contained in this Declaration or the By-laws to the contrary, the first Board and each subsequent Board shall consist of, and vacancies on the Board shall be filled by, such persons as the Owner or any Developer Related Person succeeding to the rights of Owner shall from time to time appoint, who may, but need not be members of the Association until the first to occur of: (i) ninety (90) days after the sale and transfer of title by the Owner or any Developer Related Person succeeding to the rights of Owner hereunder of the last Parcel on the Property to a third party who is not a Developer Related Person; or (ii) Owner's or any such Developer Related Person's relinquishment of its right to appoint all members of the Board, which shall be delivered in writing to the Association. Without the prior written consent of the Owner or any Developer Related Person succeeding to the rights of Owner, neither this Declaration, the Articles of Incorporation nor the By-laws shall be amended, modified or changed to in any way diminish the authority of the Board or the rights of Owner or any Developer Related Person succeeding to the rights of Owner while the Owner or such Developer Related Person has the right to appoint any members of the Board. The Owner or such Developer Related Person may, from time to time, by written notice to the Association, elect to relinquish its right to appoint any one or more members of the Board and continue to exercise its right to appoint the remaining members of the Board for the period hereinabove specified. All members of the Board not appointed by Owner or such Developer Related Person shall be elected as provided in the By-laws.

(e) All funds collected by the Association shall be held and expended for the purposes designated herein and in the Articles of Incorporation and the By-laws. All funds shall be deemed to be held for the benefit, use and account of the Parcel Owners in

accordance with the provisions of this Declaration, the Articles and the By-laws. Upon termination of the Association, any surplus shall be distributed as provided in the By-laws.

(f) The members of the Board and the officers and employees of the Association shall not be liable to the Parcel Owners for any mistake or judgment, or any acts or omissions, made in good faith as such members, officers or employees.

(g) The Board, on behalf of the Association, shall have the power, without the approval of the Parcel Owners or Members:

(i) To engage the services of a manager or managing agent, who may be any person, firm or corporation (including a Developer Related Person), upon such terms and compensation as the Board deems fit, and to remove such manager or managing agent at any time, in accordance with the terms of any management agreement executed from time to time by the Board;

(ii) To engage the services of any persons (including but not limited to accountants and attorneys) deemed necessary by the Board at such compensation as the Board deems reasonable, for the operation, repair, maintenance and management of the Common Area and to carry on the business of the Association, and to remove, at any time, any such personnel;

(iii) To establish and maintain one or more bank accounts or other depository arrangements for the deposit of any funds paid to, or received by, the Association;

(iv) To borrow funds to pay for capital improvements and the costs of operation or to meet its obligations, which debts may be secured by giving one or more mortgages or trust deeds against all or part of the Common Area or by giving a security interest in such other property owned by the Association as the Board deems appropriate;

(v) To enter into contracts and, generally to have all powers necessary or incidental to the operation and management of the Association and the Common Area, or as may be appropriate to carry out all functions authorized to the Association hereunder;

(vi) To protect the Common Area from loss or damage by suit or otherwise and to provide adequate reserves for replacement;

(vii) To adopt reasonable rules and regulations to effectuate the purpose and powers of the Association and for the operation and use of the Property and to such rules and regulations from time to time;

(viii) To purchase, own, lease, sell or otherwise deal in and with tangibles, intangibles, personality or real estate in furtherance of its duties and functions; and

(ix) To do all other acts to be done by the Association in furtherance of this Declaration and the By-laws except in such cases where approval of the Parcel Owner or Members is specifically required.

(h) The Association shall provide or cause to be provided, and paid for, in addition to the manager, managing agent or other personnel and/or services and materials above provided for the following:

(i) Such insurance as the Board is required or permitted to obtain pursuant to the terms of this Declaration as hereinafter set forth; and

(ii) Any other materials, supplies, equipment, furnishings, labor, services, maintenance, repairs and replacements, decorating cleaning, tuck pointing, structural alterations, landscaping, and snow and ice removal, that the Board deems proper for the maintenance and operation of the Common Area, including all work required by all applicable laws. All work shall be performed in accordance with all applicable law.

(i) Until such time as the Board is formed, the Owner may exercise any and all of the powers, rights, duties, and functions of the Association and the Board.

7. Assessments - Maintenance Fund.

(a) (i) Each year on or before February 1<sup>st</sup>, the Board shall estimate the annual budget of common expense including the total amount required for the cost of wages, materials, insurance, service and supplies that will be required during the then current calendar year for the rendering of all services by the Association as provided herein, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, if any, and shall also notify each Parcel Owner on or before February 1<sup>st</sup> of such calendar year in writing as to the amount of such estimate with a reasonable itemization thereof. Such common expenses shall be assessed to the Parcel Owners according to each such Parcel's Percentage Interest.

(ii) On or before the first day of March following the receipt of the budget, each Parcel Owner shall pay to the Association, or as the Association may direct, the assessment made pursuant to this subsection 7(a). After the end of each calendar year commencing March 1, 2011, the Board shall supply to all Parcel Owners an itemized accounting of the Association's expenses for the preceding year, whether paid or accrued, together with a tabulation of the amount collected, and showing the net income or deficit plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves as

provided herein shall be credited in the same proportion as the respective Percentage Interests of the Parcels against the next annual assessments due from Parcel Owners until such excess is exhausted. Any net shortage shall be based on each Parcel's Percentage Interest and shall be due within 30 days following the rendering of the accounting.

(iii) The Board may build up and maintain a reasonable reserve for contingencies and replacements of the facilities and Improvements, if any, located within the Common Area or within any easements granted to the Association herein. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged against such reserve. If the annual budget proves inadequate for any reason, including non-payment of any Parcel Owner's assessment, the Board may at any time prepare an adjusted budget and levy a further assessment based thereon, which shall be assessed to a Parcel Owners, based on each Parcel's Percentage Interest. The Board shall serve notice of such further assessment on all Parcel Owners, by a statement in writing giving the amount and all reasons therefore and such further assessment shall be due within (30) days after the deliver or mailing of such notice of further assessment.

(iv) The failure or delay of the Board in preparing or delivering the annual or adjusted budget to the Parcel Owners shall not constitute a waiver or release in any manner of the Parcel Owner's obligation to pay the assessments, as herein provided, whenever the same shall be determined, and in the absence of the preparation and delivery of any annual budget or adjusted budget, the Parcel Owners shall pay on or before the first day of March, the annual assessment charges at the then existing annual rate established for the previous year, subject to adjustment within 30 days following delivery of the new budget and notice of actual assessment.

(b) The Board shall keep full and correct books of account on such basis as the Board shall determine. Upon request of any Parcel Owner or mortgagee, such books of account may be inspected by such requesting persons or its representatives, duly authorized in writing, at such office and at such reasonable time or times during the Association's normal business hours, as the Board shall designate in writing.

(c) From and after the date of any assessment against any Parcel and until paid, the assessments provided for herein shall be a lien upon the Parcel owned by such Parcel Owner and after the recording of notice of the amount then due for which a lien claim is being asserted by the Association and the giving of at least thirty (30) days prior written notice to all other lienholders then of record, said lien may be foreclosed by the Association in the same manner as a mortgage of real property under the laws of the State of Illinois, and each Parcel Owner for itself and its successors and assigns, hereby waives any right of redemption from, or prior to, foreclosure sale as may exist under Illinois law. In addition, the obligation of each Parcel Owner to pay all of the assessments provided for herein shall be a personal obligation of each Parcel Owner at the time the obligation is



incurred and, except as provided herein to the contrary, shall be deemed to be assumed as a personal obligation by anyone who succeeds to such Parcel Owner's interest in the Parcel or in the case where the Parcel is owned by a land title holding trust, to the interest of the beneficiary under such trust; provided, however, that the obligation of any Parcel Owner or trust beneficiary to pay assessments may be satisfied only out of such Parcel and any Improvements thereon and not from the Parcel Owner's or trust beneficiary's other assets.

(d) Any lien under this Declaration shall be subordinate to any mortgage or trust deed made, owned or held by any lender recorded prior to the recording of a notice by the Association setting forth the amount due by a delinquent Parcel Owner, except that the Association's lien shall not be subordinate to the extent that the amount due is for services rendered after such lender (i) takes possession of the Parcel, or (ii) accepts a conveyance of the Parcel, or (iii) has a receiver appointed in a suit to foreclose the lien of such mortgage or trust deed.

(e) If a Parcel Owner is in default in the payment of any charges or assessments hereunder for fifteen (15) days, the unpaid balance of such charges and assessments shall bear interest at the lower of (i) the rate of two percent (2%) per month for each month or part thereof that such amount remains unpaid or (ii) the highest lawful rate that may be charged under the Illinois usury laws to borrowers such as the Parcel Owner. In addition, there shall be added to the amount due, the costs of any suit, including all attorneys' fees incurred by the Association as a result of such suit.

(f) No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Parcel.

#### 8. Insurance.

(a) The Board on behalf of the Association shall acquire and pay for out of the Maintenance Fund the following:

(i) If the Common Area contains improvements subject to loss by fire or other casualty, a policy of insurance with respect to the Common Area insuring against loss of damage by fire and such other hazards as the Board deems advisable, for the full insurable replacement cost of such improvements. Each such insurance policy shall be written in the name of, and the proceeds thereof shall be payable to, the Association;

(ii) Comprehensive public liability, directors' and officers' liability (if directors and officers' liability insurance is available at reasonable cost and the Board deems such insurance appropriate), and property damage insurance in such limits as the Board shall deem appropriate (provided the comprehensive public liability insurance shall in no event be an amount less than \$1,000,000 per occurrence), insuring the Association, the Board, the Members, the managing

agent, if any, and their respective directors, officers and agents, from any liability in connection with the Property;

(iii) Worker's compensation insurance as may be necessary to comply with applicable laws; and

(iv) Such other forms of insurance as the Board deems appropriate.

(b) Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Association, and the cost of any appraisals which the Board deems advisable in connection with any insurance, shall be an expense of the Association payable from the Maintenance Fund.

(c) The Association may obtain the insurance coverage required herein in connection with and as part of a master policy of insurance maintained by or for any Parcel Owner provided the cost of such coverage is no more than the estimated cost of providing the same coverage under a policy written directly for the Association.

9. Violation of Declaration. The violation or breach of any covenant, restriction or condition contained herein or rule or regulation adopted by the Association, shall give the Association the right, in addition to any other remedies provided for in this Declaration and under law, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of such breach, and the costs of said suit, including all attorneys' fees and all costs of litigation, shall be awarded to the Association. In addition, in the event any Parcel Owner is not performing any obligation or covenant or complying with any restriction contained herein, including without limitation those obligations, covenants and restrictions contained in Sections 2(b)(ii), 2(c), 3 and 5 hereof, or in the event any Alteration is accomplished or Improvement is constructed in violation of the provisions of this Declaration, then the Association shall, thirty (30) days after giving written notice to the Parcel Owner of the Parcel where such violation exists, have the right to enter upon such Parcel and perform any and all unperformed obligations of said Parcel Owner or to summarily abate or remove such Alteration or Improvement, all at the sole expense of such Parcel Owner, such expense shall be deemed an Assessment against such Parcel and Parcel Owner, payable upon demand by the Association and governed by the provisions of Section 7 hereof, and such entry and performance, abatement or removal shall not be deemed a trespass. The Association shall accept performance of any such unperformed obligations by any mortgagee of any such Parcel Owner and such performance shall be deemed performance by such Parcel Owner. Failure by the Association to enforce any covenant, restriction or lien herein contained or rule or regulation adopted by the Association shall in no event be deemed a waiver of the right to do so thereafter, no matter how many violations or breaches may occur.

10. Grantees. Each grantee of the Owner by the acceptance of a deed of conveyance, each purchaser under Articles of Agreement for Deed, and each mortgagee or trustee under trust deed, accepts the portions of the Property covered by such instrument subject to all rights, easements, covenants, restrictions, charges and liens, and the jurisdiction, rights, and powers created in or reserved by, this Declaration, as it may at any time be amended pursuant to Section

12 hereof, as though the provisions of this Declaration were recited in their entirety in each and every instrument of conveyance or Articles of Agreement for Deed; it being further agreed that at such times and to such extent as the holder of any mortgage or other security instrument in the nature of a mortgage upon any Parcel or any successor of such holder shall come into actual possession or ownership (other than as security for debt) of any Parcel or Parcels, the said holder or such successor (as may be the case) shall, except as set forth herein to the contrary, succeed to all the rights and obligations of the owner of such Parcel or Parcels in this Declaration expressed.

11. Notices. Notices required or permitted to be given to the Association, any Parcel Owner or Member may be delivered to any member of the Board, such Parcel Owner or Member, as the case may be, either personally or by certified or registered mail with proper postage prepaid, addressed to such party, at the last address of such party shown in the records of the Association, and shall be effective, in the case of personal delivery, upon such delivery, and in the case of mailing, as of the date of mailing. Any mortgagee that registers with the Association by giving written notice of its interest shall receive copies of all notices sent by the Association to the Owner of the encumbered Parcel. Notwithstanding anything contained herein to the contrary, any mortgagee that fails to register with the Association shall have no right to receive any notices whatsoever from the Association.

12. Amendments.

(a) Until the first to occur of: (i) ninety (90) days after the sale and transfer of title by the Owner or any Developer Related Person succeeding to the rights of Owner hereunder of the last Parcel on the Property to a third party who is not a Developer Related Person; or (ii) Owner's or such Developer Related Person's relinquishment of its right to exercise the sole vote of the Members and appoint all members of the Board this Declaration, any provision hereof, or any covenant, condition or restriction contained herein, may be extended, modified or amended as to the whole of the Property or any portion thereof by the declaration of the Owner provided that such change does not materially adversely affect the rights and obligations of the other Parcel Owners.

(b) After the occurrence of an event specified in Section 12(a)(i) or 12(d)(ii) above, (i) amendments to submit additional property to the Declaration as provided in Section 13 hereof and to divide or combine Parcels as provided in Section 14 hereof shall be approved in accordance with the terms of those respective sections, provided, however, all Parcel Owners shall receive notice of such proposed amendment at least five (5) days prior to approval thereof; and (ii) all other provisions of this Declaration may be amended by an instrument in writing setting forth such amendment; signed and acknowledged by the duly authorized officers of the Association and accompanied by a certificate signed by such officers stating that Parcel Owners whose Percentage Interests aggregate at least 66-2/3% have approved such amendment, provided, no amendment may be adopted which increases the Percentage Interest of any Parcel without the consent of the affected Parcel Owner and mortgagees who have liens of record against the affected Parcel. All amendments shall be effective upon recording in the office of the Recorder of Deeds of DuPage County, Illinois. Notwithstanding anything to the contrary contained herein, so long as Owner or any Developer Related Person succeeding to the

rights of Owner hereunder has any interest in any portion of the Property, no amendment which adversely affects the rights of Owner or such Developer Related Person hereunder shall be effective without Owner's or such Developer Related Person's express written consent.

13. Subjecting Additional Real Estate to the Terms of the Declaration.

(a) Any property which has at least one point of its boundary touching, or directly across a dedicated street from, the Property may be subjected to the covenants and restrictions contained in this Declaration thereby being included within the term Property, upon recommendation of the Board that it reasonably believes that the inclusion of such additional real estate will be in the interests of the Association and the then current Parcel Owners. The approval shall be subject to such conditions as the Board may, in its sole discretion, impose and to the written approval of Parcel Owners whose Percentage Interests aggregate in excess of 50%. The Association is hereby given the power to reallocate the Percentage Interests which in no event may exceed 100%, among the Parcels, including those Parcels being added pursuant to this section, on such basis as it deems equitable, provided that the Percentage Interest of an existing Parcel may not be increased. The inclusion of such property shall be evidenced by an Amendment to this Declaration which shall be signed by the duly authorized officers of the Association accompanied by a certificate signed by such officers stating that the required number of Parcel Owners have approved such inclusion and which shall, among other things, contain (i) an amended **Exhibit B**, if any portion of the property is to be conveyed to the Association and become part of the Common Area, (ii) an amended **Exhibit A** setting forth the legal description of any Parcels being added, and (iii) an amended **Exhibit C** evidencing the new Percentage Interest of each Parcel, if any Parcel is being added pursuant to this subparagraph (a). The Amendment shall be effective from and after the recording thereof with the Recorder of Deeds of DuPage County, Illinois.

(b) In furtherance of the foregoing, a power coupled with an interest is hereby granted by the Owner, on its behalf and on behalf of each Parcel Owner succeeding to its right, title and interest to any Parcel to the Association as attorney-in-fact, to shift and Percentage Interest of each Parcel in each such Amended Declaration recorded pursuant to this Section 13. Each deed, mortgage, or other instrument with respect to a Parcel and the acceptance thereof shall be deemed to reserve to the Association the power to reallocate the Percentage Interest of each Parcel upon the subjecting of additional property to this Declaration and each and all of the Parcel Owners, and their respective beneficiaries, mortgagees, grantees, heirs, administrators, executors, legal representatives, successors, and assigns by their acceptance of any deed or mortgage or other interest in or with respect to any of such Parcels shall be deemed to have expressly consented to such Amendment.

(c) The recording of an amended Declaration shall not alter or affect the amount of any liens due from any Parcel Owner prior to such recording, nor the amounts theretofore assessed against or due from any Parcel Owner.

14. Division or Combination of Parcels.

(a) Any Parcel Owner or Owners may, with the consent of the Association, divide or combine any Parcel or Parcels owned by it or them including, without limitation, combining or dividing Parcels in a manner which would result in additions to the Common Area. The Board on behalf of the Association, shall withhold its consent if it believes such division or combination not to be in the interest of the Association. The Percentage Interest of the Parcel or Parcels which have been created by such division or combination, as the case may be, shall be allocated by the Owner or Owners of such Parcels on such basis as it or they shall determine at its or their sole discretion. Any such division or combination shall be subject to such reasonable rules and regulations as the Association may adopt with respect thereto.

(b) The legal description of the Parcels, as divided or combined under subsection (a) of this Section 14 and their reallocated Percentage Interests shall be set forth in an amendment to this Declaration signed by such affected Parcel Owner or Owners and duly authorized officers of the Association, and which amendment shall amend **Exhibits A, B and C** to reflect the revised legal descriptions and Percentage Interest of the Parcels and Common Area. Said division or combination shall be effective upon the recording of such amendment to Declaration in the office of the Recorder of Deeds of DuPage County, Illinois.

15. Common Area. The Association shall have the right, from time to time, to convey, subject to any easements contained therein, for nominal consideration such portion or portions of the Common Area as it shall, from time to time, deem necessary and required for useful development of any Parcel contiguous to such portion of the Common Area being conveyed to the owner of such Parcel, for combination therewith pursuant to Section 14 hereof, provided such conveyance will not materially affect the operation of any storm water retention facilities located on the Property or the ability of the Association to perform all services provided for under this Declaration, and provided further that more than two acres may be conveyed for combination with any one Parcel without the written consent of Parcel Owners whose Percentage Interests aggregate at least 66-2/3% and all mortgagees having liens of record against the Parcels owned by such consenting Parcel Owners.

16. Severability. The invalidity of any restriction hereby imposed, or of any provision hereof, or of any part of such restriction or provision, shall not impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and all of the terms hereof are hereby declared to be severable.

17. Construction. The provisions of this Declaration shall be liberally construed to effect its purposes. The terms and provisions of this Declaration shall control in the event of any inconsistency between this Declaration, on the one hand, and the Articles of Incorporation and the By-law, on the other hand.

18. Trustees. In the event title to any Parcel should be conveyed to a land title holding trust under which all powers of management, operation and control of the premises

remain vested in the trust beneficiary or beneficiaries, then the Parcel held by such trust shall be liable for payment of any obligation, lien or indebtedness chargeable or created under this Declaration against such Parcel. No claims shall be made against any such title holding trustee personally or the beneficiary thereof (other than to the extent of the value of the Parcel) for payment of any such obligations, lien or indebtedness, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or obligation, but the amount thereof shall continue to be a charge or lien upon the Parcel, title to which is held by the trustee, notwithstanding any transfer of the beneficial interest or title to such Parcel.

19. Violation of Certain Rules. If any of the options, privileges, covenants or rights created by the Declaration should be unlawful or void for violation of (a) the rule against perpetuities or some other or analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of Barack Obama, the now incumbent President, and Joseph Biden, the now incumbent Vice President, of the United States.


20. Abrogation of the Declaration. This Declaration may be abrogated upon recommendation by the Board and approval of all Parcel Owners and all mortgagees with then existing recorded liens on the Property. Such abrogation shall be evidenced by an instrument setting forth such abrogation signed by the duly elected officers of the Association, all Parcel Owners and any such mortgagees, and shall be effective upon recording of the same in the office of the Recorder of Deeds of DuPage County, Illinois. All property then owned by the Association shall be disposed of as provided in the By-laws, and all obligations of the Association, including, but not limited to those obligations contained in subsection 4(b) hereof shall become the joint and several obligations of the individual Parcel Owners.

All easements created pursuant to paragraph 5 of this Declaration and in use as of the date of the recording of such instrument shall remain in full force and effect until vacated by all parties having an interest therein.


*[The remainder of this page intentionally left blank.]*

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed on the day and year first above written.

DUKE REALTY LIMITED PARTNERSHIP,  
an Indiana limited partnership

By:   
Steven W. Schnur  
Senior Vice President

BUTTERFIELD EAST OWNERS'  
ASSOCIATION

By:   
Steven W. Schnur  
President

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Lisa M. Starcevic a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Steven W. Schnur, the Senior Vice President of Duke Realty Corporation, an Indiana corporation, the general partner or Duke Realty Limited Partnership, an Indiana limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice President appeared before me this day in person and acknowledged that he/she signed and delivered the same instrument as his/her own free and voluntary act, and as the free and voluntary act of said limited partnership for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 10<sup>th</sup> day of March, 2010.

Lisa M Starcevic  
Notary Public

My commission expires:  
9/19/10



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Lisa M. Starcevic a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Steven W. Schnur, the President of Butterfield East Owners' Association, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said Association, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 10<sup>th</sup> day of March, 2010.

Lisa M Starcevic  
Notary Public

My commission expires:  
9/19/10

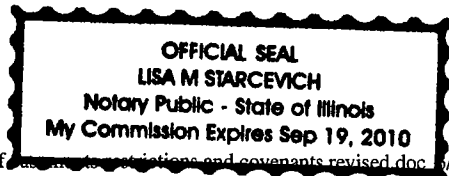




EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

PARCEL 1:

THAT PART OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 9 EAST, AND OF SECTIONS 4 AND 5, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF BARTLETT'S GREEN ACRES (DOCUMENT 454884); THENCE SOUTH 83 DEGREES 37 MINUTES 28 SECONDS EAST ALONG THE SOUTHERLY LINE OF SAID SUBDIVISION, 1,201.01 FEET TO AN ANGLE POINT; THENCE SOUTH 84 DEGREES 13 MINUTES 29 SECONDS EAST, ALONG SAID SOUTH LINE, 1291.57 FEET TO THE WESTERLY RIGHT OF WAY LINE OF STATE ROUTE 59; THENCE SOUTHERLY ALONG SAID WESTERLY RIGHT OF WAY LINE, BEING ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 2341.83 FEET FOR 541.72 FEET (CHORD 540.51 FEET BEARING SOUTH 07 DEGREES 34 MINUTES 40 SECONDS EAST ) TO A POINT OF TANGENCY; THENCE SOUTH 14 DEGREES 12 MINUTES 17 SECONDS EAST ALONG SAID WESTERLY RIGHT OF WAY LINE, 3.71 FEET TO THE SOUTHEAST CORNER OF LOT 1 OF ANTHONY PACELLI'S ASSESSMENT PLAT, RECORDED AS DOCUMENT 540223 IN DUPAGE COUNTY, ILLINOIS; THENCE NORTH 84 DEGREES 13 MINUTES 12 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 1 FOR 925.32 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE SOUTH 01 DEGREES 56 MINUTES 24 SECONDS WEST ALONG THE WEST LINE OF SAID ASSESSEMENT PLAT, AND SAID LINE EXTENDED SOUTHERLY, 1490.12 FEET TO THE NORTH LINE OF NEW FERRY ROAD, THENCE SOUTH 89 DEGREES 36 MINUTES 08 SECONDS WEST ALONG SAID NORTH LINE, 321.91 FEET TO THE EAST LINE OF PROPERTY OF THE STATE OF ILLINOIS DEPARTMENT OF CORRECTION; THENCE NORTH 02 DEGREES 06 MINUTES 25 SECONDS EAST ALONG SAID EAST LINE, 884.66 FEET TO THE SOUTH LINE OF LOT 1 OF CITY OF WARRENVILLE ASSESSMENT PLAT NUMBER 1 (DOCUMENT R75-71562); THENCE SOUTH 87 DEGREES 26 MINUTES 54 SECONDS EAST ALONG SAID SOUTH LINE, 119.78 FEET TO THE EAST LINE OF SAID LOT; THENCE NORTH 02 DEGREES 03 MINUTES 06 SECONDS EAST ALONG SAID EAST LINE, 183.77 FEET TO THE NORTH LINE OF SAID LOT; THENCE NORTH 89 DEGREES 52 MINUTES 05 SECONDS WEST ALONG SAID NORTH LINE, AND ALONG THE NORTH LINE OF SAID STATE OF ILLINOIS PROPERTY, 1266.23 FEET TO THE WEST LINE OF SAID STATE PROPERTY; THENCE SOUTH 02 DEGREES 19 MINUTES 08 SECONDS WEST ALONG SAID WEST LINE, 1074.16 FEET TO THE POINT OF INTERSECTION WITH A LINE CONSTRUCTED 60.00 FEET NORTHERLY, AND PARALLEL (OR CONCENTRIC) WITH, THE CENTERLINE OF NEW FERRY ROAD; THENCE SOUTH 89 DEGREES 36 MINUTES 08 SECONDS WEST ALONG SAID CONSTRUCTED LINE, 344.43 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG SAID CONSTRUCTED LINE, BEING ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 962.23 FEET FOR AN ARC DISTANCE OF 613.52 FEET TO A POINT OF TANGENCY; THENCE SOUTH 53

DEGREES 04 MINUTES 13 SECONDS WEST, ALONG SAID CONSTRUCTED LINE, 453.39 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG SAID CONSTRUCTED LINE, BEING ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 1416.38 FEET FOR AN ARC DISTANCE OF 671.19 FEET TO A POINT OF TANGENCY; THENCE SOUTH 80 DEGREES 13 MINUTES 18 SECONDS WEST ALONG SAID CONSTRUCTED LINE, 6.94 FEET TO THE WEST LINE OF MERIDIAN ROAD (PRAIRIE LANE); THENCE NORTH 01 DEGREES 36 MINUTES 21 SECONDS EAST ALONG SAID WEST LINE, 17.10 FEET TO THE NORTH LINE OF NEW FERRY ROAD; THENCE SOUTH 80 DEGREES 13 MINUTES 18 SECONDS WEST ALONG SAID NORTH LINE, 326.88 FEET; THENCE SOUTH 09 DEGREES 46 MINUTES 42 SECONDS EAST ALONG SAID NORTH LINE, 9.19 FEET; THENCE SOUTH 80 DEGREES 13 MINUTES 18 SECONDS WEST ALONG SAID NORTH LINE, 492.46 FEET; THENCE SOUTH 09 DEGREES 46 MINUTES 42 SECONDS EAST, 7.58 FEET; THENCE SOUTH 80 DEGREES 13 MINUTES 18 SECONDS WEST ALONG SAID NORTH LINE, 338.72 FEET; THENCE SOUTH 89 DEGREES 32 MINUTES 09 SECONDS WEST ALONG SAID NORTH LINE, 319.25 FEET; THENCE SOUTH 83 DEGREES 22 MINUTES 50 SECONDS WEST ALONG SAID NORTH LINE, 320.23 FEET; THENCE SOUTH 85 DEGREES 13 MINUTES 26 SECONDS WEST ALONG SAID NORTH LINE, 103.54 FEET TO THE EAST LINE OF LANDS CONVEYED TO COMMONWEALTH EDISON COMPANY BY DOCUMENT R64-5512; THENCE NORTH 21 DEGREES 02 MINUTES 47 SECONDS EAST ALONG SAID EASTERLY LINE, 526.94 FEET TO AN ANGLE POINT IN SAID LINE; THENCE NORTH 38 DEGREES 53 MINUTES 03 SECONDS EAST ALONG THE EAST LINE OF SAID COMMONWEALTH EDISON LANDS, 1082.73 FEET TO THE SOUTHERNMOST CORNER OF LANDS CONVEYED TO SAID COMPANY BY DOCUMENT R67-47931; THENCE NORTH 22 DEGREES 05 MINUTES 48 SECONDS EAST ALONG THE EASTERLY LINE OF SAID PROPERTY, 450.10 FEET (RECORD 450 FEET) TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE ELGIN, JOLIET AND EASTERN RAILROAD; THENCE NORTH 38 DEGREES 53 MINUTES 03 SECONDS EAST ALONG SAID RIGHT OF WAY LINE, 3589.41 FEET TO A POINT OF CURVATURE IN SAID RIGHT OF WAY LINE; THENCE NORTHERLY ALONG SAID RIGHT OF WAY LINE, BEING ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2907.93 FEET FOR 251.92 FEET TO THE FORMER CENTERLINE OF BUTTERFIELD ROAD; THENCE NORTH 88 DEGREES 59 MINUTES 23 SECONDS EAST ALONG SAID CENTERLINE, 387.00 FEET TO THE NORTHERLY EXTENSION OF THE WEST LINE OF SAID BARTLETT'S GREEN ACRES; THENCE SOUTH 05 DEGREES 50 MINUTES 53 SECONDS WEST ALONG SAID EXTENSION AND ALONG SAID WEST LINE, 1577.59 FEET TO THE POINT OF BEGINNING; IN DUPAGE COUNTY, ILLINOIS.

**PARCEL 2:**

LOT 3 IN ANTHONY PACELLI'S ASSESSMENT PLAT OF PART OF SECTIONS 33 AND 34, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DUPAGE COUNTY, ILLINOIS, AS PER PLAT RECORDED IN THE RECORDER'S OFFICE OF DUPAGE COUNTY, ILLINOIS, ON THE 27<sup>TH</sup> DAY OF FEBRUARY, 1948 AS DOCUMENT NUMBER 540223; IN DUPAGE COUNTY, ILLINOIS.

PARCEL 3:

LOT 1 IN ROSE TORTORIELLO'S DIVISION OF PART OF SECTIONS 33 AND 34, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND OF PART OF SECTIONS 3 AND 4, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN WINFIELD AND NAPERVILLE TOWNSHIPS, DUPAGE COUNTY, ILLINOIS, RECORDED IN THE RECORDER'S OFFICE OF DUPAGE COUNTY ON OCTOBER 28, 1952 AS DOCUMENT NUMBER 666086, ACCORDING TO THE PLAT THEREOF; IN DUPAGE COUNTY, ILLINOIS.

2805 Duke Parkway  
Aurora, IL 60504

04-33-102-001  
04-33-301-001; -003; 004  
04-33-400-001  
04-33-404-001; 007  
04-33-405-005; 011  
04-33-405-001; 022; 023; 026; 027; 028  
07-04-101-001; 011; 012; 013  
07-04-102-010; 012; 014  
07-04-200-005; 006  
07-05-202-002  
07-05-203-006

## EXHIBIT B

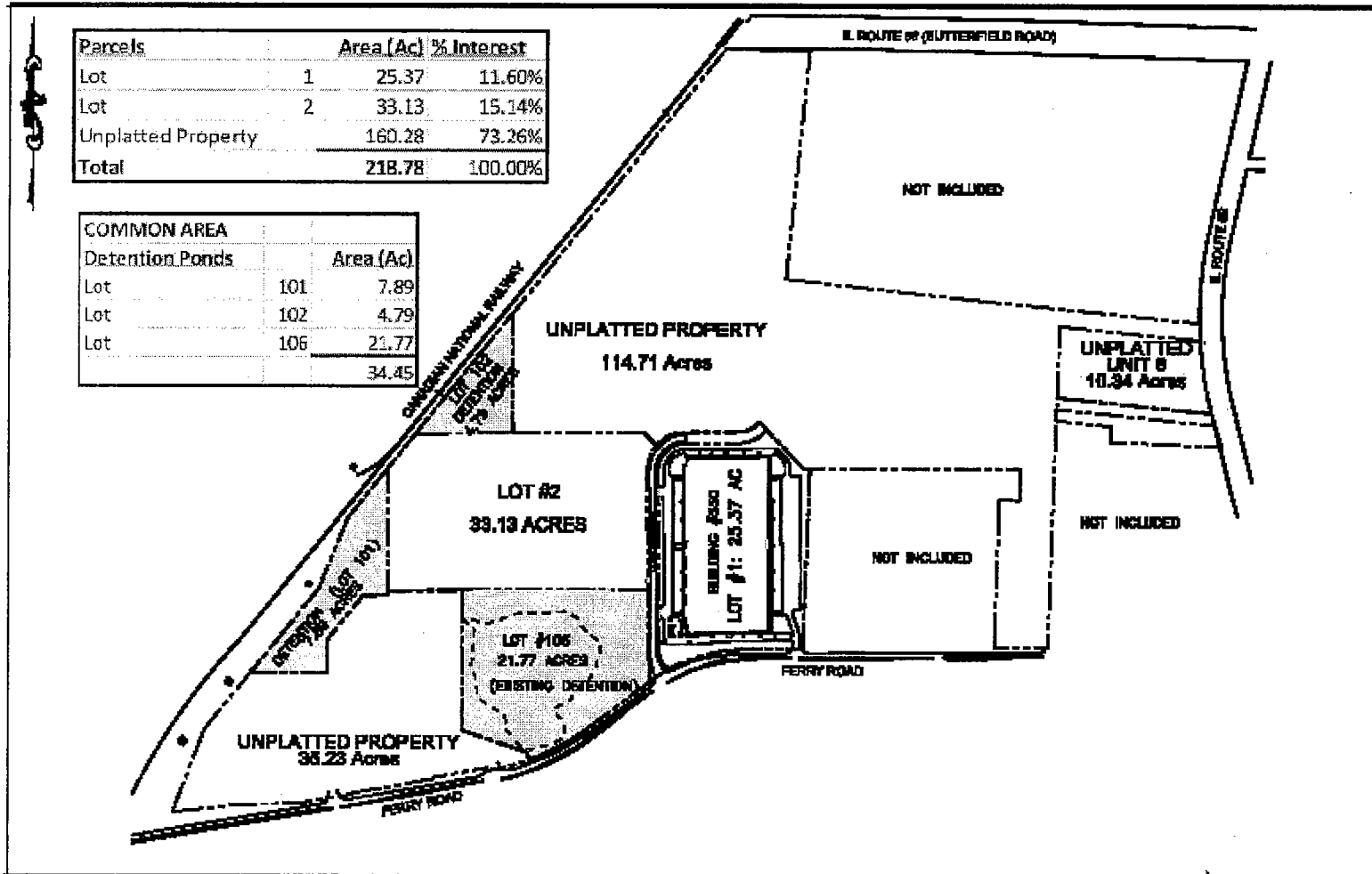


EXHIBIT B

COMMON AREAS

### BUTTERFIELD EAST - COMMON AREAS



**EXHIBIT C**

**PERCENTAGE INTEREST OF EACH PARCEL OWNER**

Duke Realty Limited Partnership	100%
---------------------------------	------



**FRED BUCHOLZ**  
 DUPAGE COUNTY RECORDER  
 JUN.25,2010 RHSP 2:43 PM  
 OTHER 04-33-301-007  
 007 PAGES R2010-081592

**FIRST AMENDMENT TO DECLARATION OF EASEMENTS, RESTRICTIONS,  
 AND COVENANTS FOR  
 BUTTERFIELD EAST OWNERS' ASSOCIATION**

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS, RESTRICTIONS, AND COVENANTS FOR BUTTERFIELD EAST OWNERS' ASSOCIATION (this "First Amendment") made and entered into this 24 day of JUNE 2010, by **DUKE REALTY LIMITED PARTNERSHIP**, an Indiana limited partnership (hereinafter referred to as the "Owner") and **BUTTERFIELD EAST OWNERS' ASSOCIATION**, an Illinois not-for-profit corporation (hereinafter the "Association").

**WHEREAS**, On March 17, 2010 a certain Declaration Of Easements, Restrictions, And Covenants For Butterfield East Owners' Association was recorded in the office of the DuPage County Recorder as instrument number R2010 - 035734 (the "Declaration"); and

**WHEREAS**, the Owner and the Association desire to amendment some of the provisions contained within the Declaration; and

**WHEREAS**, Pursuant to Article 6, Section 6 (b) of the Declaration, this First Amendment was approved by an affirmative vote of the Owner, who is the sole member of the Association.

NOW THEREFORE, for good and valuable consideration the Owner and Association hereby amend the Declaration as follows:

1. Amendment to Section 1-Definitions. Section 1 (k) Percentage Interest is hereby amended by deleting "The interest of each Parcel Owner as set forth on Exhibit C attached hereto and made a part hereof" and inserting in lieu thereof the following text:

"The percentage interest of each Parcel Owner shall be calculated based on the sum of a fraction of which the denominator is the total acreage of the Property, less the Common Area and less the public roadways, and a numerator which is the acreage owned by each Parcel Owner, as modified from time to time on Exhibit C attached hereto."

MGR

1st AMERICAN TITLE order # 432407  
183 Jr.

2. Amendment to Section 2- Architectural Control. Section 2 (ix) is hereby amended by deleting the last complete sentence of the paragraph and inserting in lieu thereof the following text:

“All costs incurred by the Association in reviewing the plans and specifications submitted, including at the Association’s sole option a review fee in an amount not to exceed the lesser of (x) 1/10<sup>th</sup> of 1% of the constructions costs for the proposed Improvement or Alteration and (y) the amount of \$10,000.00, shall be paid by the Parcel Owner.”

3. Amendment to Section 3- Maintenance of the Parcels. Section 3 is hereby amended as follows:

Section 3(e) is deleted in its entirety and the following inserted in lieu thereof:

“Each Parcel shall have the right to discharge onsite stormwater runoff into the existing detention or retention ponds located in the Common Areas of the Property, provided such Property’s associated Curve Number (“CN” as defined by the United States Department of Agriculture “SCS TR-55” methodology) is less than or equal to 93.5, and the City of Aurora has approved the onsite stormwater design. Notwithstanding the forgoing, no Person shall (i) drain or dump, or permit the drainage or dumping of, any refuse, sewage or other liquid or solid matter into any detention ponds, retention ponds, lakes, creek, floodway, or flood fringe on the Property in violation of any applicable laws, ordinances, rules or regulations, or (ii) pollute, overfill, or otherwise adversely affect the ponds, in the Association’s reasonable judgment. Further, no Parcel Owner shall cause or allow any activity which shall cause air, water, soil or noise pollution which would violate any applicable laws, ordinances, rules or regulations of any governmental authority having jurisdiction over the Property.”

The following text is added to the end of Section 3:

“(f) All Parcels and the Improvements thereon shall at all times be in compliance with the City of Aurora Use Standards then in effect.

(g) No Owners shall use a Parcel within the Prohibited Use Area (as hereinafter defined) primarily for the uses listed on the attached Exhibit D (“**Prohibited Uses**”) within a radius of seven hundred fifty feet (750’) of the Lot 2A boundary lines and as depicted on the attached Exhibit E as incorporated herein (“**Prohibited Use Area**”). ”

4. Amendment to Section 7-Assessments-Maintenance Fund. Section 7 (a) is hereby amended by inserting after Section 7 (a) (iv) the following text:

“(v) During the period of time that Owner controls the Board all budgets, common expenses and assessments shall be commercially reasonable.”

5. Incorporation. The terms of this First Amendment are incorporated into and made a part of the Declaration. All terms and provisions of the Declaration which are not expressly modified by this First Amendment shall remain in full force and effect.

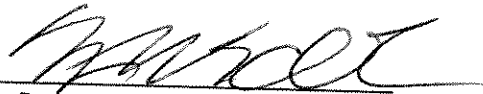
6. Defined Terms. All capitalized terms which are not defined herein shall have the meaning ascribed to them in the Declaration.

7. Jurisdiction. This instrument shall be construed under the laws of the State of Illinois.


IN WITNESS WHEREOF, the parties have caused this First amendment to be executed the day and year first above written.

DUKE REALTY LIMITED PARTNERSHIP,  
an Indiana limited partnership

By: Duke Realty Corporation, its general partner

By:   
Steven W. Schnur  
Senior Vice President

BUTTERFIELD EAST OWNERS' ASSOCIATION

By:   
Name: Steven W. Schnur  
Its: President



STATE OF ILLINOIS )

) SS.

COUNTY OF COOK )

I, Lisa M. Starcevic a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Steven W. Schnur, the Senior Vice President of Duke Realty Corporation, an Indiana corporation, the general partner of Duke Realty Limited Partnership, an Indiana limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Senior Vice President appeared before me this day in person and acknowledged that he/she signed and delivered the same instrument as his/her own free and voluntary act, and as the free and voluntary act of said limited partnership for the uses and purposes therein set forth.

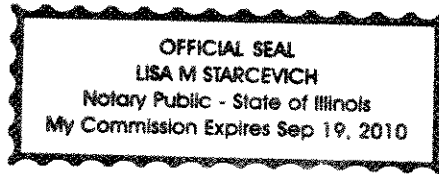
Given under my hand and Notarial Seal this 23<sup>rd</sup> day of June, 2010.

Lisa M Starcevic

Notary Public

My commission expires:

9/19/10



STATE OF ILLINOIS )

) SS.

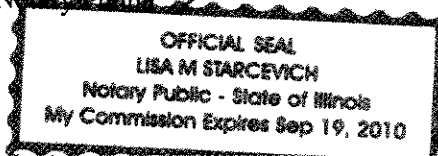
COUNTY OF COOK )

I, Lisa M. Starcevic a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Steven W. Schnur, the President of Butterfield East Owners' Association, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said Association, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 23<sup>rd</sup> day of June, 2010.

Lisa M Starcevic

Notary Public



My commission expires:

9/19/10

This instrument prepared by : Lisa M. Starcevic, Senior Corporate Attorney, Duke Realty Corporation, 6133 N. River Road, Suite 200, Rosemont, IL 60018.



## EXHIBIT D

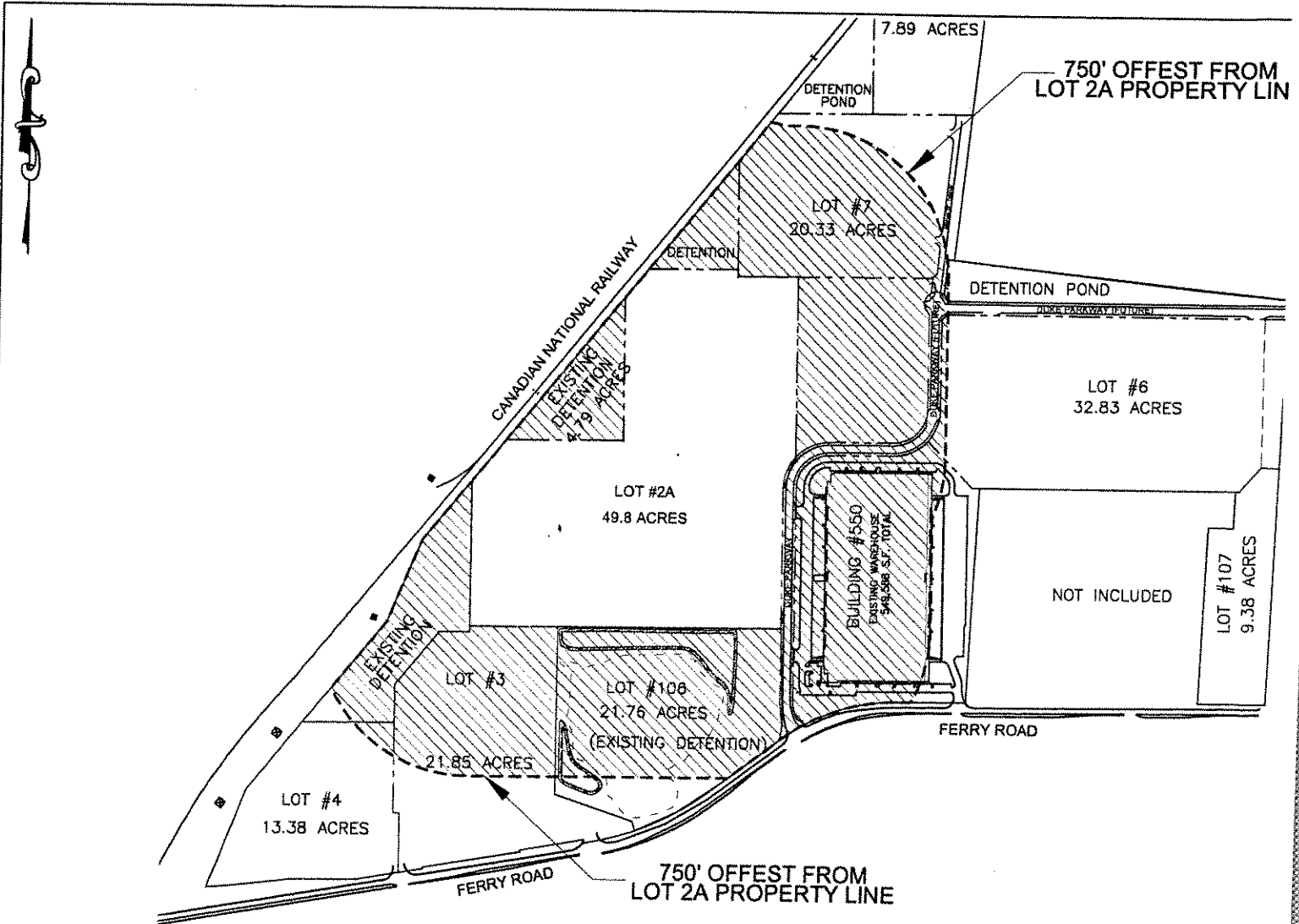
### USES PROHIBITED WITHIN 750' OF PROPERTY BORDER

- cement plants
- chemical production (including fertilizer) or processing
- petroleum refining or bulk storage (greater than 50,000 gal)
- aggregates storage or processing
- electrical production (using oil, coal or nuclear fuel) other than for use by the occupant on the site.
- smelting (or other processing of metals which produce noxious fumes)
- sewage treatment (except on-site pretreatment required by any sewer district)
- any use involving animal feeding, storage, or slaughter, except meat and food processing.
- salvage yard
- waste treatment or recycling, not including waste treatment or recycling by the occupant on the site.
- auto racing (custom, stock or miniature)
- processing of wood products or plant materials using resins or other noxious materials
- tannery
- any other use that would produce noxious, toxic, or other offensive fumes, discharges, smoke, pollutants, odors or dust.

[END OF EXHIBIT D]

EXHIBIT E

DEPICTION OF PROHIBITED AREA



SCALE: NOT TO SCALE  
06-14-2010

BUTTERFIELD EAST  
AURORA, ILLINOIS

**D**  
REALTY  
6133 N  
State St  
Room 200  
Chicago, IL 60630  
Tel: 773-309-1234  
Fax: 773-309-1235

Exhibit A  
Legal Description of Property

Lot 2A in Butterfield East Unit 1 Resubdivision of Lot 2, being a part of Section 33, Township 39 North, Range 9, East of the Third Principal Meridian and part of Sections 4 and 5, Township 38 North, Range 9, East of the Third Principal Meridian, in DuPage County, Illinois, according to the plat thereof recorded June 23, 2010 as document R2010-080281.

Vacant Duke Parkway  
Aurora IL 60501

PINs: 04-33-301-007; 04-33-301-009; 04-33-301-010; and 07-04-101-015