

FIRST AMENDMENT TO INDUSTRIAL BUILDING LEASE

WHEREAS, CHERRY HILL NINE LLC, as Lessor, and SMURFIT-STONE CONTAINER ENTERPRISES, INC., as Lessee, are parties to that certain Industrial Building Lease Agreement, made as of the 8th day of June, 2007, (the "Lease"), whereby Lessee has leased certain premises from Lessor, and Lessor has agreed to construct improvements and lease to the Lessee the Building and property located at 2251 Berens Drive, New Lenox, Illinois, for an original term of twelve (12) years and six (6) months, to commence on February 4, 2008, subject to completion of Lessor's covenants and the conditions expressly set forth below in this Amendment; and

WHEREAS, the parties have modified the Site Plan as of January 9, 2008 and attached hereto as Exhibit A (the "Revised Site Plan"); and

WHEREAS, the parties have agreed to certain modifications and revisions to the Lease; and

WHEREAS, Lessee and Lessor have agreed to an amendment of the Lease on the terms set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. DEFINED TERMS. Capitalized terms not otherwise defined in this First Amendment to Industrial Building Lease shall have the meaning set forth in the Lease.

2. REVISED SITE PLAN. The parties hereto agree and approve the Revised Site Plan.

3. REVISED POSSESSION AGREEMENT. The provisions of Section 6 of the Lease be and hereby are deleted and the following is inserted in lieu thereof:

6. POSSESSION. Lessee shall be given access to the Leased Premises for storage of certain personal property of Lessee per the completion schedule, attached hereto and made a part hereof as Exhibit B. The Lessor shall complete the concrete pour schedule, per the agreed upon pour schedule, attached hereto and made a part hereof as Exhibit C. The parties agree that the Lease Commencement Date shall be February 4, 2008, provided that Lessor completes performance of its covenants in this Section 6 below, and at that time Lessee shall commence payment of all assessments due under the CCR's ("Association Items"), real estate taxes, insurance premiums, operating expenses and utilities, as provided in the Lease. The parties agree that the final CCR's are attached hereto as Exhibit D. The Lessor covenants that it

LESSEE COPY

shall not take any action under the CCR's which impairs Lessee's rights under the Lease. The three (3) month Base Rent abatement period shall expire three months after the Lease Commencement Date, and as of that date, Monthly Base Rent shall be due and payable in accordance with the terms of the Lease. Lessor covenants that, as of February 4, 2008, the Lessor's required Building site work, shell building work and office improvements, per the Outline Specifications, will be substantially complete, subject to the punch list items shown on Exhibit E (the "Punch List Items"). Lessor covenants that, as of February 14, 2008, temporary electric service will be available in the Building sufficient to permit Lessee to commence installation of equipment and test operations and that the Leased Premises will be substantially complete, including permanent electrical service, on March 21, 2008, subject to the Punch List Items and completion of Lessee improvements. Notwithstanding the foregoing, however, if a certificate of occupancy for the full Leased Premises, or permission to occupy the full Leased Premises, is not issued to Lessee as of March 21, 2008, to signify Substantial Completion for any reason except the Punch List Items and Lessee Improvements and Lessee Delay (as defined below), the Lease Commencement Date shall be extended accordingly. There shall be no extension of the Substantial Completion Date, or the Lease Commencement Date, if the Lessor's work or the Lessee Improvements (or any part thereof) shall not have been Substantially Completed by the above date due to Lessee Delay, or if Lessee shall not have completed any Lessee Improvements on or before the Lease Commencement Date due to Lessee Delay. "Lessee Delay" shall include the following: (a) delays necessitated by changes made or requested by Lessee to the Work Plans or the final Outline Specifications, as applicable (except as permitted by the Lease, including Section 30.4 thereof); (b) delays necessitated by any design or specification in the Work Plans or Outline Specifications that is erroneous and such error was made by Lessee or at Lessee's direction; (c) the failure of Lessee or Lessee's consultant to act reasonably or to timely provide, respond to, or revise the Lessee Submissions; (d) the inability to release drawings for construction due to failure of Lessee to provide accurate or necessary information or Lessee's direction to delay work due to incomplete or inaccurate information; and (e) any other delay caused by or arising from acts or omissions of Lessee and/or Lessee's consultant, unless such acts are permitted under the terms of the Lease, as amended hereby. Any delays in the construction of the Lessor's Work or the Lessee Improvements due to Lessee Delay shall in no way extend or affect the Lease Commencement Date under the Lease, as amended. The foregoing shall not impair the

substance reasonably satisfactory to Lessee and Ground Lessor, which shall include substantially the following:

LaSalle Bank National Association, a national banking association ("Bank"), is the present holder of a mortgage and security agreement dated July 29, 2003 (as amended or modified, "Mortgage 1"), recorded August 4, 2003, as Document R2003-187683 in the Office of the Recorder of Deeds for the County of Will, State of Illinois (the "Recorder of Deeds"), executed by Ground Lessor for the benefit of Bank, relating to the Leased Premises, among other real property. Bank is also the present holder of a mortgage and security agreement dated April 15, 2004 (as amended or modified, "Mortgage 2"), and recorded May 6, 2004, as Document R2004-78464 in the Office of the Recorder of Deeds, executed by Ground Lessor for the benefit of Bank, relating to the Leased Premises, among other real property. Bank agrees that, so long as Lessee shall not be in default under the Lease (beyond the expiration of any applicable cure period), Lessee's right of possession and enjoyment of the Leased Premises shall be and remain undisturbed and unaffected by any foreclosure or other proceedings related to Mortgage 1 or Mortgage 2. The Bank acknowledges that so long as Lessee is not in default under the Lease (after the expiration of any cure period), Lessee's renewal options and right of first refusal pursuant to the Lease shall remain undisturbed by any foreclosure or other proceedings involving Mortgage 1 or Mortgage 2 and the purchaser of the Property at foreclosure of Mortgage 1 or Mortgage 2 ("Purchaser") shall have the obligations to the Lessee described in the Lease, including, but not limited to, Sections 42 and 44 thereof. All notices sent pursuant to the Ground Lease shall also be sent to Lessee. Lessee is granted ten (10) days following Lessee's receipt of written notice by Ground Lessor of a default by Lessor, as Ground Lessee, under the Ground Lease, to cure such default, during which period Ground Lessor shall not exercise any remedies available to it under the Ground Lease.

8. CONFLICT. In the event of any conflict between the provisions of this First Amendment and the Lease, the provisions of this First Amendment shall prevail.

9. RATIFICATION. Except as specifically amended hereby, the Lease remains in full force and effect.

IN WITNESS WHEREOF, Lessor and Lessee have caused this First Amendment to be executed and delivered as of the 29th day of February, 2008.

Lessor:

CHERRY HILL NINE LLC

By: 

Thomas D. Grusecki, Manager

Lessee:

SMURFIT-STONE CONTAINER
ENTERPRISES, INC.

By: 

Title: SR VP - Secretary

REVISED SITE PLAN



EXHIBIT B

AREA COMPLETION SCHEDULE

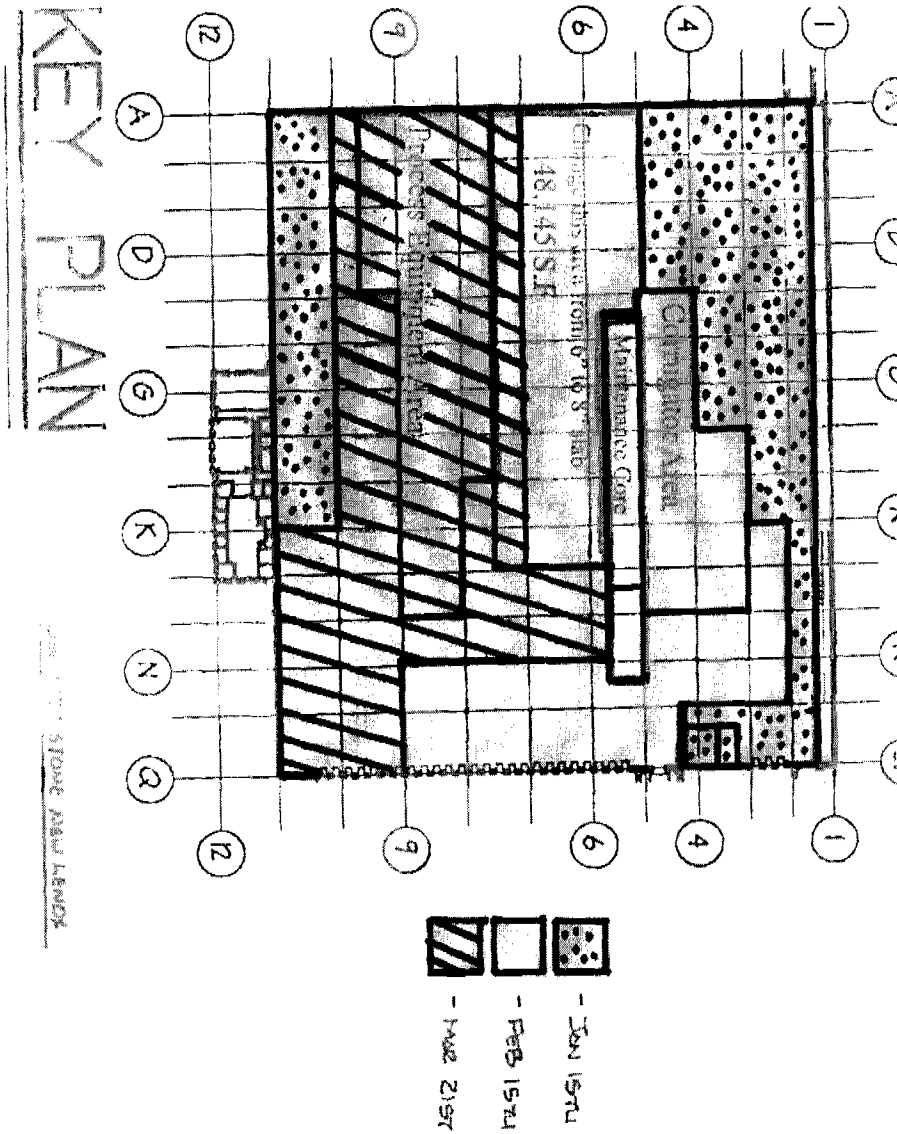


EXHIBIT C

CONCRETE POUR SCHEDULE

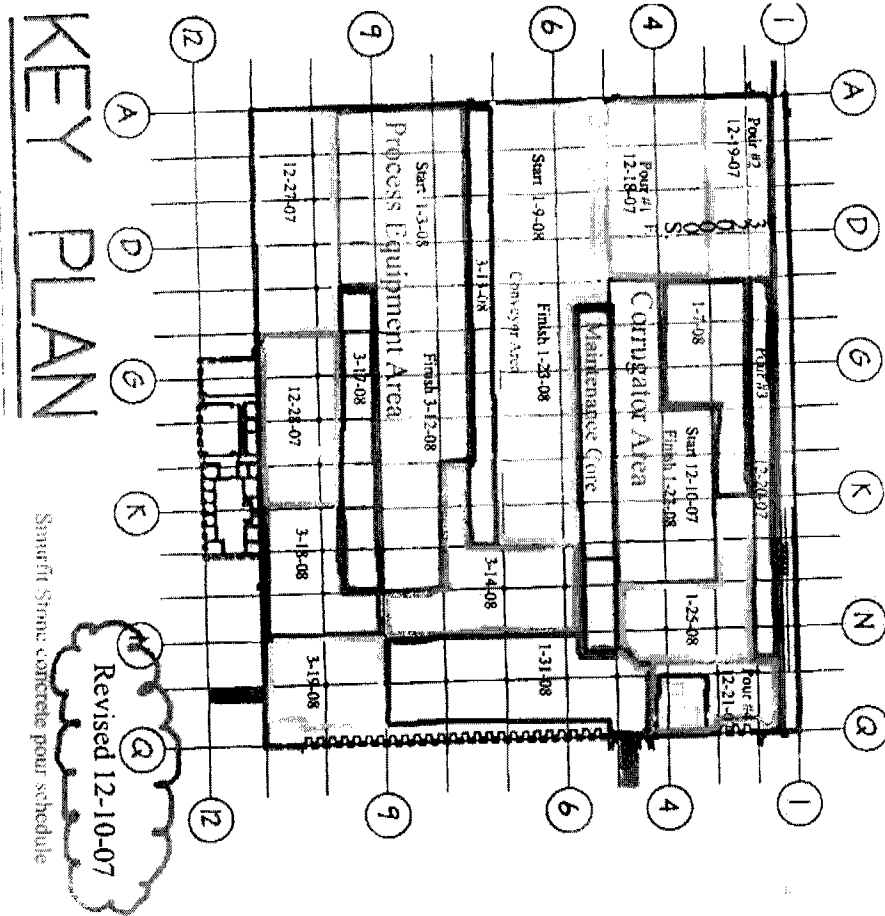


EXHIBIT D

FINAL CCR'S

[FOLLOW]

DRAFT 2/18/08

**DECLARATION OF PROTECTIVE
COVENANTS**

FOR CHERRY HILL RAIL PARK

NEW LENOX, ILLINOIS

This Declaration of Protective Covenants (hereinafter "Declaration") is made effective this ____ day of _____, 2008, by CHERRY HILL JB LLC, an Illinois Limited Liability Company, as Titleholder to Parcels One and Two on Exhibit A (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the legal title holder of certain real property located in The Village of New Lenox, Illinois, which property is commonly known as Cherry Hill Rail Park, and which property is more particularly described in Exhibit "A" of this Declaration ("Property");

WHEREAS, Cherry Hill Rail Park is being developed as a commercial park by Declarant, and Declarant desires to provide for the preservation of the values and amenities of the Cherry Hill Rail Park for the benefit of the Property, to create certain easements appurtenant to all or a part of the Property, and to provide for the use, maintenance, and repair thereof for any and all subsequent Parcel Owners (hereinafter defined), all of which shall inure to the benefit of and shall run with the ownership of the Property and shall apply to and bind successors in interest and any subsequent owner thereof; and

WHEREAS, certain additional property may be added to the Cherry Hill Rail Park as herein provided by the submission of such property to this Declaration of Protective Covenants for Cherry Hill Rail Park with the Consent of the Declarant.

NOW, THEREFORE, Declarant hereby declares that any interest in the Property is and shall be held, conveyed and occupied subject to the covenants, easements, charges, liens and restrictions hereinafter set forth and Owners hereby agree to the submission of the Property to such terms and to be bound by such terms and this Declaration ("Protective Covenants").

ARTICLE I
THE PROPERTY

The Property affected hereby and subject to this Declaration is commonly known as "Cherry Hill Rail Park", a commercial park development located within the corporate limits of the Village of New Lenox, Will County, State of Illinois, and is legally described in Exhibit "A", which Exhibit "A" is attached hereto and incorporated herein as if fully stated.

ARTICLE II

DEFINITIONS

The following words when used in this Declaration or any supplemental or amended Declaration (unless the context shall specifically provide otherwise) shall have the following meanings, interpretations and effect:

"Additional Property" shall mean the real estate situated in the County of Will adjacent to the Property on the date hereof and the Village of New Lenox which shall be added as Property subject to this Declaration by the Declarant from time to time as additions to Cherry Hill Rail Park.

"Association" shall mean an Illinois not-for-profit corporation known as Cherry Hill Rail Park Association (or by such other name selected by Declarant as may be available at the time of its incorporation) for such purposes as hereinafter may be set forth to effectuate the purposes of this Declaration. For purposes of this Declaration, references to the Association or its Board shall mean the Declarant until such time as the Association is established as provided in Article V.

"Board" shall mean the Board of Directors of the Association.

"By-Laws" shall mean the By-Laws of the Association attached hereto as Exhibit D.

"Class A Member" shall have the meaning set forth in Article V.F.1.

"Class B Member" shall have the meaning set forth in Article V.F.2.

"Corporate Authorities" shall mean the respective Mayor and the Board of Trustees of the Village of New Lenox.

"Common Area" shall mean the real estate and improvements used, including the Common Rail, used or designated to be used in common for the benefit of all Parcel Owners, and as shown on a depiction of the Property, showing the general location of the Common Areas, attached as Exhibit "B".

"Common Rail" shall mean the portion of the Rail and Rail Equipment serving the Park and designated Common Rail areas on Exhibit C, as identified as Segments "A" and "D".

"Cost Of Maintenance" shall have the meaning set forth in Article VI.A. and VI.B.

"Declaration" shall mean this Declaration of Protective Covenants, as same may be amended from time to time.

"Declarant" shall mean CHERRY HILL JB LLC, an Illinois Limited Liability Company, and any assignee of such original entity comprising Declarant on the effective date hereof to the extent permitted by Section IX(N)(4) above; provided further, however, that wherever in this Declaration the term "Declarant or Association, as the case may be" or similar terms are used, such term shall only include the Association upon assignment of all of the rights of Declarant as expressly provided in this Declaration.

“Deed” shall mean any deed of the Owner conveying a Parcel to a Parcel Owner or any long term Ground Lease for a term greater than thirty-five (35) years.

“Developable Property” shall mean the Property less the Common Area.

“Development Guidelines” shall mean the standards and guidelines more particularly described in Article IV.

“Governmental Authority” shall mean and include the Village, the County of Will, the State of Illinois, the United States government or any political subdivision thereof or any quasi-governmental agency or department related thereto, which has jurisdiction over any portion of the Property, or the development, use, and occupancy of any portion thereof.

“Governmental Regulations” shall mean and include the Village zoning or other ordinances, building and other codes and any other laws, ordinances, codes, rules, regulations or other similar requirements imposed on or adopted by a Governmental Authority, which has jurisdiction over any portion of the Property or the development, use and occupancy of any portion thereof.

“Improvement” or **“Improvements”** shall mean any and all exterior structures and appurtenances thereto of every type and kind, whether temporary or permanent, made to the Property or any Parcel, whether above or below grade, including, but not limited to buildings, equipment, utility installations, storage, detention facilities, loading and parking facilities, monument signs, walkways, wetlands, driveways, fences, landscaping, roads, signs, site lighting, rail, rail equipment, utility lift station, site grading and earth movement and any exterior additions, changes or alterations thereto, but excluding, in any event, repairs of such items and minor normal maintenance items.

“Maintenance” shall have the meaning set forth in Article VI.A. and VI.B.

“Member” shall mean either of Class A Member or a Class B Member in the Association.

“Occupant” shall mean any Party legally entitled to occupy and use any part or portion of a Parcel or its Improvements at any time, including, but not limited to lessees.

“Parcel” or **“Lot”** shall mean any part or portion of the Property, constituting a lot in compliance with the subdivision ordinances of the Village and the Illinois Plat Act, fee simple title to which is, from time to time, owned by a Parcel Owner, the size and dimensions of which shall be established by the legal description in the deed conveying such Parcel or Lot and which may, but need not, correspond to a numbered or lettered Lot of record established pursuant to a Plat of Subdivision.

“Parcel Owner” shall mean any record title holder or owner, whether one or more parties, of a fee simple interest in any Parcel, and shall include the Declarant with respect to Parcels owned or controlled by Declarant.

“Party” shall mean any individual, corporation, partnership, or other legal entity, public or private.

“Plans” shall have the meaning set forth in Article IV.C.I.

“Plat of Subdivision” shall mean any plat of subdivision of all or a portion of the Property recorded in the Office of the Recorder of Deeds of Will County, Illinois, as the same may hereinafter be amended, corrected, or otherwise modified.

“Proportionate Share” shall mean each Members’ share of the Association Costs, other than Rail Costs, determined with the provisions of Article V.G. and each Member’s share of the Rail Costs determined with the provisions of Article VI.B.

“Property” shall have the meaning provided in the Recitals on page 1 hereof.

“Rail Access and Use” shall refer to the access provided to any Parcel Owner from time to time for rail service to the Parcel as shown on the Site Plan.

“Rail Costs” shall mean the costs for the Rail Common Area Maintenance as set forth in the provisions of Article VI.A. and VI.B.

“Rail Equipment” shall include, but is not limited to, the rail track switches, lockable derail equipment, fencing and lock gates and other customary items.

“Rail On-Line” refers to Parcels with Rail Access and Use, which Parcels will be deemed “on-line” upon construction completion.

“Rail Provider” shall mean the rail line providing service to the Business Park which as of the date hereof is the EJ&E Railroad.

“Side Rail” shall mean the rail serving a specific Parcel Owner.

“Side Rail Easement Area” shall have the meaning provided for in Section VI(F)(2) below.

“Side Track Easement Parcel” shall mean the portion of the Business Park dedicated per a valid Plat of Survey as Side Track Easement Parcels.

“Site Plan” shall mean the drawing attached hereto as Exhibit B.

“Spur Track” shall mean those portions of Rail shown as “Spur Track” on Exhibit C hereto.

“Spur Track Easement Area” shall have the meaning provided for in Section VI(F)(2) below.

“Storm Water Facilities” shall mean the storm water system serving the Property, including any area so designated on the Plat of Subdivision or other recorded instrument, conduits, catch basins, inlets, inlet leads, catch basin leads, detention basins and retention ponds and the associated wetlands environment. There shall be excluded from Storm Water Facilities any storm water collecting facilities dedicated to or owned by any Governmental Authority.

“Village” shall mean the Village of New Lenox, an existing Illinois municipal corporation, and its successors.

ARTICLE III

PURPOSE

The purposes for which these Protective Covenants have been established are: to ensure the proper development and use of each Parcel contained within the Property as a part of a commercial park; to protect the Parcel Owner or Occupant, present or future, of each Parcel against the improper development and use of other Parcels in a manner that will depreciate or otherwise adversely affect the value of each such Parcel Owner's or Occupant's Parcel and provide for the proper maintenance of the Common Area and Common Rail and related rail equipment. In furtherance of the aforementioned purposes, Declarant or the Association, as the case may be, shall have the right to reasonably review the design, location, and materials to be used in all Improvements to the extent provided in Article IV below. These Protective Covenants are further intended to complement all applicable Governmental Regulations. Notwithstanding the foregoing, nothing contained in these Protective Covenants shall be construed in any way so as to restrict or affect the Village's or any other applicable Governmental Authority's power and authority to review the plans and specifications for all proposed improvements to insure compliance with all applicable Governmental Regulations regarding the issuance of building permits or any other applicable permits required in connection with the construction, occupancy, use, and alteration or reconstruction of such Improvements.

ARTICLE IV

GENERAL REQUIREMENTS

A. **Zoning.** The zoning classification of Cherry Hill Rail Park is I-1 Limited Industrial District and the development of the Property is governed by Ordinances Nos. 1483 and other existing zoning ordinances, including ordinances adopted after the effective date of these covenants adopted by the Village. Any application to the Village to change the zoning of any Parcel, or any portion thereof, or for a special use or variance with respect thereto, shall be subject to approval by the Declarant in accordance with the procedures and standards applicable to Plans as provided in Section IV(C) below.

B. **Architectural Design.** The design of any and all buildings in Cherry Hill Rail Park is governed by the Development Guidelines attached as Exhibit E hereto and incorporated herein as if fully stated.

C. **Approval of Plans.**

1. **Submission of Plans.** Before any Improvement shall be constructed, erected, placed, materially altered, or permitted to remain on the Property or any Parcel, plans and specifications, including, but not limited to, the site layout, site grading and engineering, all exterior elevations together with descriptions of the materials and colors to be used in connection therewith, parking spaces with each stall indicated, loading docks, and detailed landscaping plans, exterior lighting, mechanical equipment screening, and signage plans (collectively "Plans") shall be submitted to Declarant for review and approval in writing. All such Plans as submitted shall contain the signature of the Parcel Owner or the Parcel Owner's authorized agent. Plans submitted to Declarant or the Association, as the case may be, may be submitted prior to their submission to the Village in connection with any building permit application. It is understood that all approvals are subject to the Development Guidelines and Village Ordinance No. 1483 and existing zoning ordinances. Notwithstanding the foregoing, the Declarant (or the Association if the Declarant has transferred or assigned its rights hereunder) may, from time to time, amend the Development Guidelines pursuant to Section IX(F) below. In addition, the Development Guidelines shall have the same enforceability as the terms and conditions of this Declaration.

2. **Standards for Review and Approval.** Declarant or the Association, as the case may be, shall have the right to disapprove the Plans in the event the same are not in accordance with this Declaration or based upon the following: (a) any material nonconformity and or disharmony of location and proposed design with neighboring Improvements; (b) any material adverse effect of the location and use of the proposed Improvements on adjacent Parcels or Lots and the existing or proposed operations and uses thereof; (c) an evaluation of the proposed driveway locations in relationship to other driveways situated or to be situated on adjoining Parcels or Lots or to the location of corners and streets; or (d) the adequacy of screening, particularly with respect to mechanical, air conditioning, rooftop installations or other utility systems.

3. **Time Period for Review and Approval.** Declarant or the Association, as the case may be, shall not unreasonably withhold its approval of any Plans and shall approve or disapprove completed submittals not more than 30 days after receipt thereof, unless during the 30-day period it is determined by Declarant or the Association that, as a result of the nature of the submittal or issues raised thereby, additional information is reasonably required in order to complete the review and approval, in which event Declarant or the Association shall notify the affected Parcel Owner or the Party submitting the same within said 30-day period of the nature of the additional information required, in which case, the period for review shall be extended no more than an additional 30 days after receipt of the requested information.

4. **Subsequent Changes to Plans.** In the event substantial, material changes are made to any approved Plans with respect to matters affecting external appearance or the configuration, location, character or size of the Improvements, such changes shall be submitted to Declarant or the Association, as the case may be, for review within the same time periods provided in paragraph 3 above.

D. **Special Operations or Uses.** Approval by Declarant under Section IV(A) above as to any operations or uses by Occupants which are neither specifically prohibited nor specifically authorized by this Declaration may be considered in a specific case only upon the submission of complete, written Plans, together with copies of all relevant technical or legal information needed to make an informed judgment as to the merits of the requested action. Approval or disapproval of such operations or uses shall be at the sole discretion of Declarant or the Association, as the case may be, but, in all cases, the provisions of this Declaration shall remain applicable to such operations or uses. Declarant or the Association, as the case may be, shall not arbitrarily or unreasonably withhold its approval and a failure to give notice of disapproval of the proposed variance or special use within thirty (30) days after a request for approval shall be deemed an approval. Notwithstanding the foregoing, nothing contained herein shall be deemed to obviate the need to obtain all necessary approvals from the Village or any other Governmental Authority.

E. **Unpermitted Uses.** Each Parcel may be used for those uses and purposes set forth in the Development Guidelines and Village Ordinance No. 1483 and existing zoning ordinances, and ordinances adopted after the effective date of these covenants adopted by the Village. No noxious or offensive activity shall be carried in or upon any part of the Property nor shall anything be done thereon which constitutes a legal nuisance to the Property. Nothing shall be done or kept upon any part of the Property which might result in the cancellation or material increase in the cost of insurance required to be carried by the Association.

F. **Failure To Maintain.** Declarant (or the Association, in the event Declarant has transferred or assigned its rights hereunder to the Association) may, in its sole discretion, upon ten (10) days advance written notice, to the applicable Parcel Owner, enter any Parcel or Improvement for the purposes of performing such maintenance as may reasonably be necessary to remedy any violation of this Declaration without in any way being liable for trespass or any other damage to the Parcel or the Parcel Owner. All actual out-of-pocket expenses, including reasonable attorney fees, incurred by reason thereof, plus Twenty Percent (20%) as a charge for overhead and supervision, shall be due and payable upon demand, the unpaid portion of which shall accrue interest at a rate per annum equal to the then applicable prime rate of interest charged by the LaSalle National Bank plus Two Percent (2%) (compounded annually) and shall be a lien upon the Parcel enforceable in accordance with the provisions hereof.

ARTICLE V

ASSOCIATION MEMBERSHIP

A. **Incorporation.** At any time after the recording of this Declaration, but in no event later than the closing of sale of Fifty Percent (50%) of the area contained in the Developable Property to Parcel Owners other than Declarant or an assignee of Declarant's rights hereunder, Declarant shall incorporate an Illinois not-for-profit corporation to be known as "Cherry Hill Rail Park Association" (or by such other name selected by Declarant as may be available at the time of its incorporation).

B. **Purpose.** The purpose of the Association shall be to carry out the Purposes of this Declaration and to provide for the continuing administration of Cherry Hill Rail Park as a commercial, industrial and business park. The Association shall be the governing organization

for the levying and collection of assessments to provide funds as they may be required from time to time for such purposes and shall have and possess all such powers as shall be necessary or appropriate for the accomplishment of such duties and functions.

C. **By-Laws.** The By-Laws of the Association shall be as set forth in Exhibit D attached hereto and made part of this Declaration.

D. **Funds.** All funds collected by the Association shall be held and expended for the purposes designated herein and in the Association's Articles of Incorporation and its By-Laws. All such funds shall be deemed to be held for the benefit, use and account of each of the Members in the ratio that the number of square feet contained in such Member's owned Parcel bears to the total number of square feet contained in the Developable Property and shall not be commingled with the funds of Declarant or any other Party.

E. **Membership.**

1. **Commencement.** Upon the formation of the Association, each Party who is a Parcel Owner as of the date of the Association's incorporation shall be a Member of the Association and each purchaser of a Parcel or Parcels shall, by acceptance of the deed therefor, become a Member of the Association regardless of whether it shall be so provided in any such deed or other conveyance. Notwithstanding the foregoing, no Party who is a holder of any such interest merely as security for the performance of an obligation shall be a Member, the beneficiary of any land trust holding title to a Parcel shall exercise all rights as a Member, rather than the trustee, and any Parcel Owner may assign its rights but not its obligations hereunder to an Occupant.

2. **Termination.** Membership in the Association shall automatically terminate upon the sale, transfer or other disposition of a Member's interest in the Property as a Parcel Owner, at which time said Parcel Owner's successor in title shall automatically become a Member. No Member shall have any right or power to disclaim, terminate or withdraw from its membership in the Association or from any of its obligations as a Member, except as specifically provided herein.

F. **Voting Rights; Transfer of Declarant Control.** The Association shall have two (2) classes of voting Members:

1. **Class A.** "Class A Members" shall be all Parcel Owners other than Declarant. Each Class A Member shall be entitled to a vote which shall be equal to the ratio that the number of square feet contained in such Member's owned Parcel bears to the total number of square feet contained in the Developable Property. Where any Parcel Owner consists of more than one Party, the votes for such Parcel may be cast in whatever proportions said Parcel Owners may determine among themselves, but in the absence of an agreement among such Parties, in proportion to each such Party's respective ownership interest and in no event shall more than the total number of votes to which said Parcel is entitled be cast. Provided however, until the termination of Class B Membership, there shall be no Class A voting rights.

2. Class B. The "Class B Member" shall be the Declarant. The Class B Member shall be entitled to a single vote. The Declarant shall be entitled to assign its Class B vote to any person who is both (i) grantee of Declarant's interest in at least 51% of the land area of the Property, and (ii) assignee of all other rights of Declarant under this Declaration. Notwithstanding the foregoing, the Class B Membership shall terminate and Declarant's rights, if Declarant is also a Parcel Owner, shall be limited to the rights of a Parcel Owner on the first to occur of any of the following events:

- a. Ten (10) years from the date hereof; or
- b. Whenever Declarant shall so elect, which election shall be evidenced by the recording of a document to such effect; or
- c. Upon the sale by Declarant of the last Parcel owned by it.

G. Member's Proportionate Share of Costs of Common Area. All Members of the Association, subject to the provisions of Section VI.A and VI.B. below, agree to participate in their pro rata share of the costs and expenses incurred by the Association to the extent provided in Article VI.A., in accordance with the following formula:

$$\frac{\text{Square Footage of Owned Parcel}}{\text{Total No. of Square Feet in the Developable Property}} = \text{Member's Proportionate Share (expressed as a percentage)}$$

For example, if the total number of square feet in the Developable Property totals 1,000,000 and the square footage owned by the Parcel Owner is 300,000, then the Member's Proportionate Share is 30% (300,000/1,000,000)

H. Amendments. The Association shall have and it is hereby granted, the power to amend, modify and otherwise amend this Declaration at any time and from time to time, by action recommended by the Board of Directors and approved by the affirmative vote of Seventy-Five Percent (75%) the Members by voting interests as provided in Section V(F)(1) and the Class B Member of this Declaration, subject to the limitation that such action shall not cause the Property, or any part thereof, to be in non-compliance with any Governmental Regulation, including but not limited to the applicable Village zoning ordinances or building codes.

ARTICLE VI

MAINTENANCE, REPAIR AND REPLACEMENT OBLIGATIONS

A. Declarant's Common Area Maintenance Obligations. Until Declarant shall have assigned its rights under this Declaration to the Association and Declarant's obligations hereunder have been assumed in writing by the Association, it shall maintain, repair, replace and renew or cause to be maintained, repaired, replaced or renewed (in addition to such portions of the Property of which it is the Parcel Owner, as such), in a clean, sightly, safe and first-class condition (hereinafter called "Common Area Maintenance"). The costs and expenses of performing the Common Area Maintenance shall include, but not be limited to, all costs of material, labor, supplies and insurance (hereinafter collectively called the "Cost of Common Area

Maintenance”). The Declarant shall pay the Cost of Common Area Maintenance through assessments set forth in Article VI.C. below. Such Common Area Maintenance, to the extent not performed by the Village or other Governmental Authority or required pursuant to this Declaration to be performed by a Parcel Owner, shall include, but is not limited to, the following:

1. Landscaping. The mowing, watering, irrigation, weeding, maintenance, replanting and replacing of landscaping in the Common Area, along with fertilizing the landscaping in the Common Area; and

2. Storm Water Facilities. The operation, maintenance, repair, replacement and renewal of all Storm Water Facilities to standards no less than those required by Village ordinances; snow plowing; the spraying for insects, maintenance or aeration of water and water purifying equipment, if any; the maintenance of the banks and the landscaped table lands, the maintenance of the Storm Water Facilities in a neat and orderly manner so as to not cause standing water, conditions of excess sogginess, erosion, odor or other items determined by the Village to be detrimental to the area; and all other maintenance necessary to keep such Storm Water Facilities in proper operation and condition.

3. Entrance Way Monuments. The operation, maintenance, repair and replacement of all entrance way monuments.

4. Easements. Cause the appropriate public utility to maintain, repair and replace any utility easements located on the Common Areas.

5. Miscellaneous. Maintenance, repair, restoration, replacement and necessary improvement of the Common Areas, including payment of utility expense and expense of sanitary lift station, real estate taxes, protest of real estate taxes on Common Areas and association management, supervision and labor, and liability and hazard insurance.

B. Common Rail Maintenance, Repair and Replacement Obligations:

1. Proportionate Share. All Members with Rail Access and Use shall pay a proportionate share of all Common Rail Expenses. Common Rail Expenses shall include, but are not limited to the following:

Maintenance for all Common Rail and associated Rail Equipment including, but not limited to track, switches, lockable derail equipment, fencing, dual-lock gating and other usual and customary costs attributable to the Common Rail, replacement of any equipment that is beyond repair, snow and ice removal within six feet of tracks, brush and refuse removal within six feet of track, storm trench maintenance alongside of track, insurance specific to such Common Rail use, any Common Rail service fees or permits and Association management supervision and labor allocable to such Common Rail.

Member's Proportionate Share of Common Rail Expenses:

A Parcel Owner's proportional share of Common Rail expenses is calculated as follows:

$$\frac{\text{Acreage of Parcel Owner}}{\text{Total Parcel Acreage with Rail On-Line}} = \text{Pro Rata Share \%}$$

The "Total Lot Acreage with Rail On-Line" is the total acreage for all Parcels being serviced by a single segment track that may be shared by more than one Member (e.g. Spur Track A as shown in Exhibit C).

2. The attached Conceptual Rail Plan (Exhibit C) may change over time as the Cherry Hill Rail Park is developed.

3. Each Parcel Owner is solely responsible for all rail maintenance and repair to rail and rail equipment that is not common and exclusively serves such Parcel Owner.

4. It is recognized and understood that the Spur Track and Side Rail and all appurtenances thereto serve an important functional purpose and that their repair and maintenance is of vital concern to all Parcel Owners. In order to ensure that such facilities are maintained in complete and good working order, are sightly and well kept and comply with applicable Governmental Regulations and in accordance with the applicable industry standards in the Chicago suburban metropolitan area, the responsibility for the maintenance and repair of all landscaping of the Side Track Easement Parcel, whose cost is solely attributed to such Owner as shown on Exhibit C, including the cost thereof, shall be that of the Parcel Owner or Owners upon whose Parcel the Side Track Easement, if any, is located.

5. Maintenance of a Spur Track shall include standards no less than required by the applicable Village ordinances and industry standards, including the standards imposed by the Spur Track Agreement referenced in Section VI(B)(7) below, and, in any event, to keep such Spur Track in proper operation and condition. The cost and expense of performing such maintenance shall include, but not be limited to, all costs of material, labor, supplies and insurance.

6. With respect to the Spur Track and the Spur Track Easement area the Declarant or the Association, in the event Declarant has transferred or assigned its rights hereunder to the Association, and the Parcel Owners shall obtain comprehensive general liability insurance covering death, personal injury and property damage and casualty insurance against loss and damage by all risks of physical loss and damage in commercially reasonable and suitable amounts and from reputable insurance companies. All comprehensive general liability insurance policies obtained by any Parcel Owner as required by this Declaration shall name the Declarant and the Association as additional insureds.

7. Damage to Spur Track. No Parcel Owner or Occupant of all or any part of the Property, by either act or omission, shall do or refrain from doing any act the effect of which will damage or impair the function of the Spur Track or any appurtenances utilized in regard to

the repair or maintenance of the Spur Track. Where an extraordinary expense is incurred with regard to the repair or maintenance of the Spur Track as a result of the act or omission of a Parcel Owner or Occupant, their agents, licensees, invitees, contractors, sub-contractors or employees, such expense shall be due and payable by the party so charged upon demand, the unpaid portion of which shall accrue interest at a rate per annum equal to the then applicable prime rate of interest charged by the LaSalle Bank National Association plus two (2%) percent (compounded annually) and shall be a lien upon the Parcel owned by such Parcel Owner or occupied by such Occupant enforceable in accordance with the provisions thereof.

8. Standard Form Track Agreement. Any Spur Track Parcel Owner desiring to utilize the Spur Track shall agree to enter into the standard form of track agreement then in use by the EJ&E Railroad Company. Any Spur Track Parcel Owner failing to enter into such standard form track agreement may be prevented by the Declarant or the Association, in the event Declarant has transferred or assigned its rights hereunder to the Association, from utilizing the Spur Track.

C. Parcel Owner's Participation In Cost Of Maintenance Prior To Incorporation Of Association. Each Parcel Owner shall pay to Declarant the total Cost of Maintenance determined in accordance with the formula as set forth in Article V.G. and Article VI.A and VI.B. and the Declarant shall assess the Parcel Owners in the manner provided in Article VII below.

D. Easements for Maintenance. Perpetual non-exclusive easements for ingress and egress over, under, across, in and upon the Parcels (excluding buildings) are hereby declared, created and reserved by the Declarant for the benefit and use of itself, the Association or the Village, as the case may be, their respective successors or permitted assigns, agents and employees, to provide reasonable access to and to enter upon the Parcels for the sole purpose of performing Common Area Maintenance, provided however, that any party so entering on any Parcel shall be responsible for restoration thereof.

E. Association's Common Area Maintenance Obligations. Once formed, the Association shall perform such Maintenance as shall have been assigned to it by the Declarant and shall exercise the powers and rights of the Declarant with respect thereto. The Association shall perform all Maintenance from and after the assignment or termination of Declarant's obligations to perform Maintenance pursuant to the provisions of Article VI.A. and VI.B. and with respect to such performance, the Association shall have all the powers and rights of the Declarant as set forth herein.

F. Easements.

1. Drainage and Storm Water Management Easements. Easements for the retention, detention and drainage of water for the benefit of the Property and the individual Parcels may be established or declared over, under and upon the Property and each Parcel thereof, if any, any recorded Plat of Subdivision to the extent signed by the then owners of those portions of the Property within such Plat of Subdivision. It is understood that any such retention, detention and drainage areas may be altered in the future to meet required Governmental Regulations. Such alteration shall be evidenced by the execution and recordation by Declarant of

an amended or supplementary plat or easement indicating same; provided, however, that with respect to any portion of the Property which is no longer owned by Declarant, the approval of the owner thereof shall be required with respect thereto. Copies thereof shall be provided by Declarant to directly affected Parcel Owners, if any, and, when and if feasible, Declarant shall advise directly affected Parcel Owners of proposed changes in advance thereof.

2. Rail Easements. Easements (the "Spur Track Easement and Side Rail Easement") for the use, maintenance, repair, replacement and changing of the Spur Track for the benefit of the Parcels which have frontage along and are adjacent to the Spur Track Easement Area and Side Track Easement Area that are designated for such purpose on any recorded Plat of Subdivision. It is understood that any such easement areas may be reshaped, altered, or relocated in the future to meet required Governmental Regulations. Such reshaping, alteration or relocation shall be evidenced by the execution and recordation by Declarant of an amended or supplementary plat or easement indicating same, provided however that with respect to any portion of the Property which is no longer owned by Declarant, the approval of such Parcel Owner shall be required with respect thereto. Copies thereof shall be provided by Declarant to directly affected Parcel Owners, if any, and, when and if feasible, Declarant shall advise directly affected Parcel Owners of proposed changes in advance thereof to be for such Parcel on any recorded Plat of Subdivision designated on the Plat of Spur and/or Side Track Easement (the "Spur Track Easement Parcel or the Side Track Easement Parcel"), are hereby declared over, under and upon those portions of the Property.

3. Reservation of Easements. Non-exclusive easements over the Common Areas for the installation and maintenance of electrical, telephone, cable TV, water, gas and sanitary sewer lines, lift station, and drainage facilities are hereby reserved by Declarant, together with the right to grant and transfer the same as part of any permitted assignment and assumption of Declarant rights and obligations hereunder.

4. Access for Maintenance. Wherever sanitary sewer and/or water connections, electricity, gas, cable TV or telephone lines or drainage facilities are located within the easements reserved on any Parcel but serve another Parcel, the applicable entity shall have the right to enter upon the Parcels upon which said connections, lines or facilities lie, to the extent necessary to repair, replace and generally maintain said connections, lines or facilities.

G. Additional Powers. The Association shall perform such other duties and obligations of the Declarant under this Declaration as shall have been assigned to it by the Declarant or assumed by it, as the case may be, and to the extent the Board of Directors of the Association ("Board") deems appropriate for Association purposes, shall have the power to own real and personal property, to open bank accounts, to enforce this Declaration as herein provided, to obtain a policy or policies of insurance insuring the Association and its Members against such risks of loss or liability as the Board shall deem necessary or advisable, to contract for legal, accounting and management services, to borrow funds, to employ employees directly, and otherwise to do that which it believes necessary to protect or defend the Association and the Property from loss or damage by suit or otherwise pay the costs of the foregoing from assessments. All costs and expenses incurred by the Association pursuant to this Article VI.F. shall be deemed to be part of the Association costs and be reimbursable by the Members.

ARTICLE VII

ASSOCIATION ASSESSMENTS

A. **Purpose of Assessments.** The assessments shall be used exclusively to provide funds for the Association to carry out its duties and obligations hereunder. The assessments levied against the Parcels shall pay for the following costs: Common Area Maintenance (including expenses of the Common Rail Cost of Maintenance); Association administration, including but not limited to, professional, legal, managerial, insurance, and clerical fees, costs and expenses, and to property taxes levied against real or personal property owned by the Association and any other costs incurred to carry out its duties.

B. **Liability for Payment.** All assessments shall be used for Common Area Maintenance or for such other uses consistent with the duties and obligations for which the Association is formed as the Board shall direct, and shall be the obligation of each Parcel Owner, including the Declarant. In the event that record title to a Parcel is held in trust, then the beneficiary or beneficiaries shall also be liable for payment of the assessments.

C. **Property Lien.** All unpaid assessments and charges imposed on a Parcel Owner pursuant to this Declaration, together with interest thereon as provided in Article VII.E. and the costs of collection, if any (including reasonable attorneys fees), shall be charged as a continuing lien upon the Parcel of said Parcel Owner until paid.

D. **Amount of Assessment.** The initial annual assessment payable to the Association shall be fixed by the Declarant in its reasonable discretion, giving due consideration to the actual Cost of Common Area Maintenance and other direct costs of operation of the Association for the prior twelve (12) month period or, if no records exist for such a period, the reasonably estimated Cost of Common Area Maintenance for the next succeeding twelve (12) month period. If required, such initial annual assessment shall be prorated for the period commencing with the date the Association becomes obligated to perform Common Area Maintenance to the end of its then current fiscal year. Commencing with the next fiscal year and for each year thereafter, the Board shall estimate in writing its Cost of Common Area Maintenance and costs of operation for the coming year and same shall be assessed against each Parcel Owner in accordance with each such Parcel Owner's Proportionate Share and paid in advance by each Parcel Owner not more frequently than quarterly unless the Board shall otherwise direct. All assessments shall be due on the date set forth in the notice of assessment, which date shall be not less than ten (10) days after notice to the Parcel Owners. Such estimate shall take into consideration the cost of or reserves for any contemplated repair, replacement or renewal. If the assessment paid and collected proves inadequate for any reason (including non-payment of any Parcel Owner's assessment) or provides an amount in excess of the funds reasonably estimated to be required for the next succeeding twelve (12) month period, then the Association may increase or decrease the total assessments payable hereunder by giving written notice thereof (together with a revised estimate) to each Member not less than ten (10) days prior to the effective date of the revised assessment. At least once each year the Association shall deliver to each Member a statement of actual costs for the prior year along with a reconciliation of estimated assessments with actual costs and reserves. The Board shall have the power to levy additional assessments for costs of any construction, repair, or replacement of improvements in the Common Area, as provided in the By-Laws of the Association. Each Parcel Owner's Proportionate Share of the assessments shall

be computed in accordance with the formula set forth in Article V.G. and Article VI.B. Any Parcel Owner shall have the right to examine the Association's records relative to any assessment during normal business hours upon reasonable prior notice at the office of the Association; provided that said Parcel Owner bears all costs of said examination. All assessments shall be prorated as of the date title transfers to a new Parcel Owner.

E. **Non-Payment of Assessment.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after due date, the assessment or charge shall bear interest from the due date at a rate per annum equal to the prime rate of interest charged by LaSalle National Bank plus two (2%) percent (compounded annually), and the Association may, at its option, bring an action at law against the Parcel Owner personally obligated to pay the assessment, may foreclose the lien against the Parcel owned by such Parcel Owner or by such Parcel Owner's land trustee (in the event the Parcel Owner is a beneficiary of a land trust) or may exercise any other rights or remedies the Association may have at law or in equity, and the interest, together with all actual out-of-pocket costs and expenses (including reasonable attorneys fees) incurred by the Association in connection with any such action, shall be added to the amount of such assessment and to any judgment or decree therefor. The lien provided for under Article VII.C. shall secure the payment of the assessment or charge, interest thereon and the aforesaid costs, expenses and reasonable attorneys fees. No Parcel Owner may waive or otherwise avoid liability for an assessment or charges as provided for herein by non-use or abandonment of its Parcel.

F. **Subordination of Lien to Mortgage.** The lien for any assessment or charge provided in this Declaration shall be subordinated to the lien of any bona fide security device including a mortgage or trust deed recorded as security for any loan obtained by the Parcel Owner for the purposes of the improvement or acquisition thereof; provided, however, that such subordination shall apply only to the assessments and charges which have become due and payable prior to the date of a sale or transfer of such Parcel pursuant to or in lieu of foreclosure by the holder of such security interest. Such sale or transfer shall not relieve the Parcel from the lien for any assessments or charges thereafter becoming due nor from the lien of any subsequent assessments or charges.

ARTICLE VIII

ANNEXATION OF ADDITIONAL PROPERTIES

A. A power coupled with an interest is hereby reserved to the Declarant and its successors and assigns for the right and option, at any time and from time to time within twenty (20) years from the date of recording of this Declaration, to annex to the Property all or any portion of Additional Properties, although no provision hereof shall be construed as requiring the Declarant to do so.

B. In the event the Declarant or its successors or assigns elects from time to time to annex to the Property all or any portion of the Additional Properties, the portions of the Additional Properties annexed to the Property shall be made expressly subject to all provisions of this Declaration and the Declarant shall record a Supplementary Declaration which shall contain but not be limited to the following:

1. The legal description of the applicable additional Properties which is to become subject to this Declaration;

2. A legal description indicating that portion of the Property which is Common Area and which portion is a Parcel.

C. Upon compliance with this Article VIII, all Supplementary Declarations and the real estate covered therein shall be subject to the following terms and conditions:

1. The rights, easements, covenants, restrictions, burdens, uses and privileges set forth and described in this Declaration shall run with and bind the land of the Additional Properties and inure to the benefit of and be the personal obligation of the Parcel Owners thereof in the same manner, to the same extent and with the same force and effect that this Declaration applies to the Property;

2. Every person or entity who is or becomes Parcel Owner of any Parcel on the Additional Properties shall be a member of the Association on the same terms and subject to the same qualifications and limitations as those Members who are then Parcel Owners;

3. In all other respects, all of the provisions of this Declaration shall include and apply to the Additional Property included in any such Supplementary Declaration, including any Parcels and any additions to the Common Area situated therein, and the owners, mortgagees and lessees thereof, with equal meaning on a pro-rata basis and of like force and effect.

ARTICLE IX

MISCELLANEOUS PROVISIONS

A. **Vacant Parcel Maintenance.** In the event the Parcel Owner does not commence construction of Improvements within six (6) months of the date of the delivery of a Parcel deed to the Parcel Owner, the Parcel Owner shall landscape the Parcel with not less than an appropriate ground cover, such as field grass or sod, and thereafter shall maintain such ground cover in a clean, neat and safe condition keeping same mowed at a height not to exceed four (4) inches until the commencement of construction of such Improvements. The aforesaid six (6) month period may be extended with the written approval of the Declarant or the Association, as the case may be.

B. **Repair and Maintenance by Parcel Owner.** Each Parcel Owner shall maintain its Parcel and Improvements thereon in accordance with the terms of this Declaration; the Plans; Ordinance Nos. 1483 and existing zoning ordinances; Development Guidelines; and any rules and regulations adopted by the Board. If any Parcel Owner fails to so maintain its Lot and Improvements thereon, pursuant to the terms of this Declaration, the Association may, but shall not be obligated upon ten (10) days prior written demand, to such Parcel Owner and opportunity to cure, to perform such maintenance and bill 100% of said cost to Parcel Owner as may reasonably be necessary to prevent the above without in any way being liable for trespass or any other damage to the Parcel Owner.

of competent jurisdiction to be so, the remaining portion of the Declaration shall not be affected thereby and such remaining portions shall remain in full force and effect.

H. **Parties Entitled to Enforcement.** The conditions, covenants, restrictions, reservations and standards herein set forth shall operate as covenants running with the land regardless of whom may be the record title holder or holders of the Property, or any part thereof, and shall be enforceable by any Parcel Owner, Declarant or by the Village, by proper proceeding, either in equity or at law, and the persons entitled thereto shall have the right to sue for and obtain an injunction prohibitive or mandatory to prevent the breach of the enforcement or observance of the conditions, covenants, restrictions, reservations and standards herein set forth and the failure of the Declarant to enforce any provision hereof at any time shall in no event be deemed to be a waiver of the right of enforcement thereafter at any time. The violation of these conditions, covenants, restrictions, reservations and standards shall not defeat nor render invalid the lien of any mortgage or deed of trust made in good faith and for value. Declarant, the Association, and/or the Village shall have the further right, upon thirty (30) days prior written notice, except in cases of emergency, to enter upon the Property and cure any such default at the cost and expense of the Parcel Owner or Owners responsible therefor, including the right to lien such Parcel Owner or Owners' portion of the Property for the repayment of such costs and expenses including attorneys' fees.

I. **Proceedings for Enforcement.** Enforcement of these covenants and restrictions may be by any proceeding at law or in equity against any appropriate Party by means of: (a) an action to restrain said violation; (b) an action to recover damages against any Party personally liable pursuant to the provisions hereof; (c) the filing of notice of and an action to foreclose any assessment lien against the fee title interest of any Parcel Owner to which the Declarant of Association may be entitled under these Protective Covenants; (d) any other remedy available at law or equity. The failure by the Declarant, the Association, the Village or any Parcel Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The remedies given by the provisions hereof or by the By-Laws of the Association may be exercised cumulatively or independently.

J. **Certifications.** Within fifteen (15) days following the request from any Parcel Owner, Occupant, or holder of any encumbrances on the Property, Declarant or the Association, as the case may be, shall certify in writing whether any amounts are then due and owing pursuant to this Declaration with respect to the Parcel or any such Parcel Owner.

K. **Notices.** Any notice required or desired to be given under this Declaration shall be in writing and shall be deemed to have been properly served when personally delivered or upon deposit in the United States Mail, certified, return receipt requested, postage prepaid and properly addressed, if to a Parcel Owner, at its last mailing address registered with Association and if to the Association, at the address to which assessments are mailed. Prior to creation of the Association, notices to Declarant shall be deemed to have been made if delivered to Declarant, CHERRY HILL JB LLC, c/o Northern Builders, Inc., Attention: Matthew J. Grusecki, 5060 River Road, Schiller Park, Illinois 60176. Notices shall be sent to any holders of any encumbrances on the Property requesting same which have notified Declarant and/or the Association of their respective addresses.

L. **Village Indemnification.** The Declarant or Association, as the case may be, shall indemnify, hold harmless and defend the Village from any and all actions, proceedings or damages arising from this Declaration and the Village shall also be entitled to recover all of its damages, costs and attorneys' fees incurred as a result of being or being made a party to any action brought regarding this Declaration.

M. **Village Ordinances Prevail.** None of the covenants, conditions, restrictions or provisions of this Declaration are intended to supersede or prevail over the ordinances of the Village of New Lenox as they currently exist, or as they may be amended from time to time. In the event of any conflict, the applicable ordinances of the Village of New Lenox shall supersede and prevail over the covenants, conditions, restrictions or provisions of this Declaration, only in event the applicable Village ordinances are more restrictive than the covenants, conditions, restrictions and provisions of the Declaration.

N. **Miscellaneous.**

1. **Governing Law.** This Declaration shall be interpreted, applied and enforced in accordance with the laws of the State of Illinois.

2. **Captions.** The captions contained in this Declaration are for convenience of reference only and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions thereof.

3. **Grammatical Changes.** Wherever appropriate in this Declaration, the singular shall include the plural and the plural the singular.

4. **Successors and Assigns.** All covenants and agreement of Declarant hereunder shall be deemed and taken to be covenants running with the land and shall be binding upon Declarant and its successors and permitted assigns. Declarant shall have the right to transfer its rights and delegate its obligations hereunder to (a) a transferee of its Class B Membership pursuant to Section V(F)(2) above or (b) the Association for the benefit of the Parcel Owners for purposes which include performance of Declarant's obligations hereunder and levying assessments upon the Parcel Owners for the partial payment thereof. Upon such transfer, the rights and obligations of the named Declarant hereunder shall become the rights and obligations of such transferee.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the date first above written.

DECLARANT

CHERRY HILL JB LLC, an Illinois Limited
Liability Company

By: _____

Thomas D. Grusecki
Its Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a notary public in and for the County and State aforesaid, do hereby certify that Thomas D. Grusecki, personally known to me to be a Manager of Cherry Hill JB LLC, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act and deed of Cherry Hill JB LLC, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this ____ day of _____, 2008.

Notary Public

My Commission Expires: _____

MORTGAGEE'S CONSENT

LaSalle Bank National Association, as holder of that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing recorded on May 6, 2004, as Document No. R2004-78464, in Will County, Illinois, hereby consents to the foregoing instrument.

LASALLE BANK NATIONAL ASSOCIATION

ATTEST:

By: _____
Its _____

STATE OF _____)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ President of _____, and _____ personally known to me to be the _____ Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such _____ - President and _____ Secretary, they signed, sealed and delivered said instrument as _____ President and _____ Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority, given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, 2008.

My Commission Expires: _____

NOTARY PUBLIC

**This Document Prepared by
and after Recording Return to:**

Robert D. Tuerk
5060 River Road
Schiller Park, IL 60176

EXHIBIT A

THE NORTHEAST $\frac{1}{4}$ OF SECTION 30, TOWNSHIP 35 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THAT PART OF THE SAID NORTHEAST $\frac{1}{4}$ OF SAID SECTION 30, LYING NORTH OF AND PARALLEL TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID ELGIN, JOLIET AND EASTERN RAILROAD COMPANY, MEASURED AT RIGHT ANGLES THERETO, AND ALSO EXCEPTING THEREFROM THE EAST 75.00 FEET OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 30, TOWNSHIP 35 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE SOUTH LINE OF THE ELGIN, JOLIET & EASTERN RAILROAD, IN WILL COUNTY, ILLINOIS.

ALSO

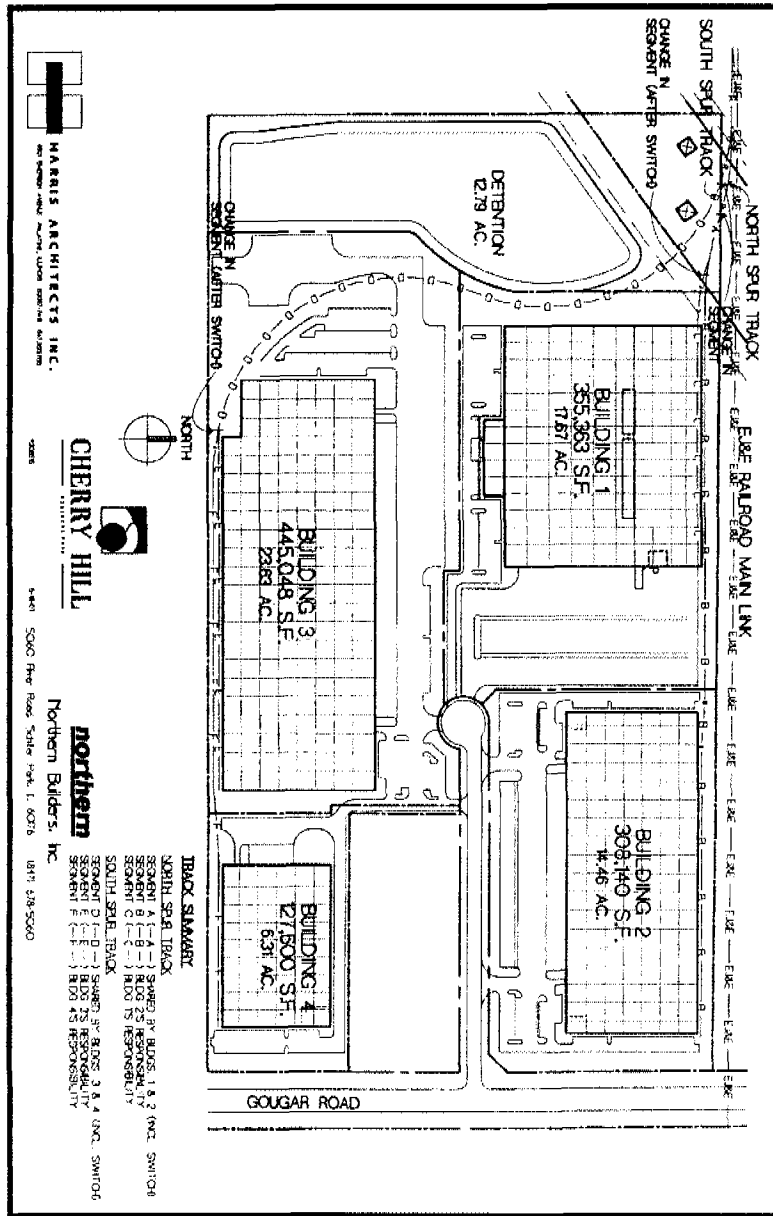
THE NORTH 680 FEET OF THE NORTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 30, TOWNSHIP 35 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPTING THEREFROM AN APPROXIMATE 5 ACRE PARCEL DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHEAST $\frac{1}{4}$, THENCE 300 FEET SOUTH ALONG THE EAST LINE OF SAID SOUTHEAST $\frac{1}{4}$ TO A POINT; THENCE WEST 776 FEET ALONG A LINE PARALLEL WITH THE NORTH LINE OF THE SOUTHEAST $\frac{1}{4}$ TO A POINT; THENCE NORTH APPROXIMATELY 300 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHEAST $\frac{1}{4}$; THENCE EAST ALONG THE NORTH LINE OF THE SOUTHEAST $\frac{1}{4}$ 776 FEET TO THE POINT OF BEGINNING), AND EXCEPTING THEREFROM THE EAST 75.00 FEET OF THE SOUTH 380.01 FEET OF THE NORTH 600 FEET OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 30, TOWNSHIP 35 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN) IN WILL COUNTY, ILLINOIS.

Property Address: Approximately 42 acres of vacant land at the Southwest corner of Gougar Road and the Elgin, Joliet and Eastern Railroad, New Lenox, Illinois

PIN: 08-30-200-007-0000

EXHIBIT B

Site Plan



Spur Track Responsibility Plan

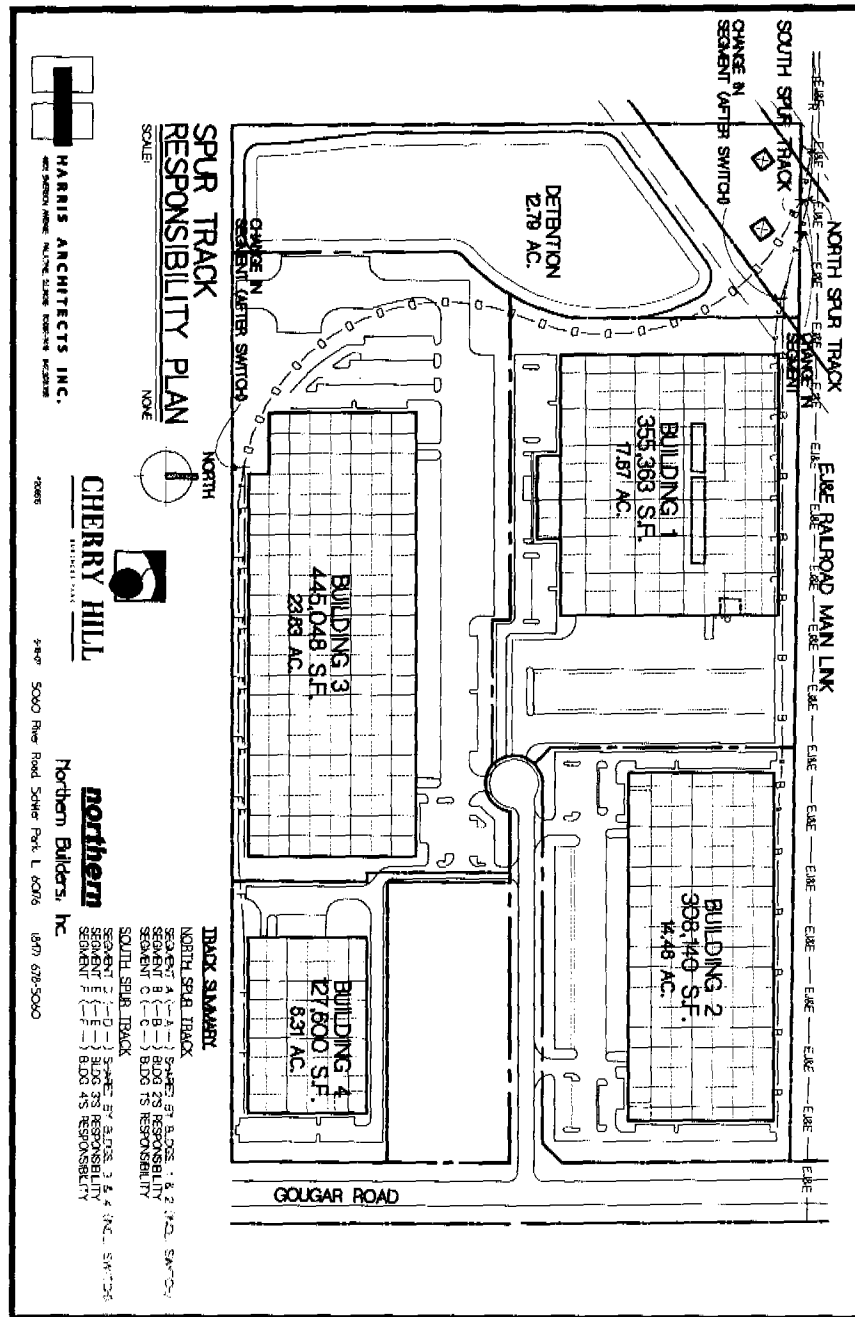


EXHIBIT D

BYLAWS

BY-LAWS
OF
CHERRY HILL RAIL PARK ASSOCIATION

ARTICLE I

Purposes of Power

1.01 General Powers of Association. The Cherry Hill Rail Park Association shall be responsible for the general management and supervision of the Common Area and shall be responsible to perform all of the obligations provided in the Declaration. Further, the Association shall have all powers now or hereafter granted by the General Not for Profit Act of the State of Illinois which shall be consistent with the purposes specified herein and in the Declaration.

1.02 Additional Powers of Association. The Association, to the extent the Board (as hereinafter defined) deems necessary and appropriate to fulfill its duties and obligations pursuant to the Declaration, shall have the power to own real and personal Common Area, to open bank accounts, to take such action, legal or otherwise, necessary to enforce the Declaration as therein provided, to obtain policies of insurance insuring the Association, its Members, the Board, the Common Area, to contract for legal, accounting and similar professional services, to borrow funds, to employ the services of a manager, to employ employees directly or through the manager, to otherwise do that which it believes necessary to improve, maintain, repair and restore the Common Area, to protect and defend the Association and the Common Area from loss or damage by suit or otherwise and to pay the costs of the foregoing from assessments levied against the Members.

ARTICLE II

Offices

2.01 Principal Office. The principal office of the Association shall initially be located at Northern Builders, Inc., 5060 River Road, Schiller Park, IL 60176.

ARTICLE III

Membership

3.01 Voting Members. The Association shall have two (2) classes of voting Members:

(a) Class A. "Class A Members" shall be Cherry Hill Nine LLC, an Illinois limited liability company; and all those who own Parcels or have long term Ground Leases in excess of a 30 year term within Cherry Hill Rail Park (except as otherwise provided in this Article 3.01). Each Class A Member shall be entitled to a vote which shall be equal to the ratio that the number of square feet contained in such Member's

owned Parcel bears to the total number of square feet contained in the Developable Property. Where any Member consists of more than one Party, the votes for such Parcel may be cast in whatever proportions said Members may determine among themselves, but in the absence of an agreement among such Parties, in proportion to each such Party's respective ownership interest and in no event shall more than the total number of votes to which said Parcel is entitled be cast. Provided, however, until the termination of Class B Membership, there shall be no Class A voting rights.

(b) Class B. The "Class B Members" shall be Cherry Hill JB LLC. The Class B Members shall be entitled to a single vote, which shall be exercised by the entities comprising Declarant. The Declarants shall be entitled to assign its Class B Membership vote. Notwithstanding the foregoing, the Class B Membership shall terminate and shall be converted to Class A Membership on the first to occur of any of the following dates or events (the "Turnover Date"):

- (i) Ten (10) years from the date hereof; or
- (ii) Whenever Declarant shall so elect, which election shall be evidenced by the recording of a document to such effect; or
- (iii) Upon the sale by the Declarant of the last Parcel owned by it.

Notwithstanding anything contained in this Section 3.01, on and after the Turnover Date, Declarant shall be entitled to cast votes as a Class A Member in accordance with the terms and conditions of these By-Laws and the Declaration.

3.02 Meetings.

(a) Quorum – Procedure. Meetings of the Members shall be held at the principal office of the Association or at such other place as may be designated in any notice of a meeting. The presence at any meeting, in person or by proxy, of 60% of the total votes determined pursuant to Section 3.01 above shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Members at which a quorum is present upon the affirmative vote of the Members having 60% of the total votes present at such meeting. Any Member, in writing, may waive notice of a meeting, or consent to any action of the Association without a meeting.

(b) Initial and Annual Meeting. The initial meeting of the Members shall be held at such time as may be designated upon not less than ten (10) days written notice given by the Declarant or its beneficiary, provided that such initial meeting shall be held no later than sixty (60) days after the Turnover Date. Thereafter, there shall be an annual meeting of the Members on the third Tuesday of November of each succeeding year, at 7:30 o'clock p.m. If the date for the annual meeting of Members is a legal holiday, the meeting will be held at the same hour on the first day next succeeding such date which is not a legal holiday.

(c) **Special Meetings.** Special meetings of the Members may be called at any time by written notice, authorized by a majority of the Board (as hereinafter defined) or by the Members having one-fourth (1/4) of the total outstanding votes, and delivered not less than five (5) days prior to the date fixed for such meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

3.03 **Notices of Meetings.** Notices of meetings required to be given herein may be delivered either personally or by mail to the persons entitled to vote, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the business address of the Member with respect to which such voting right appertains, if no address has been given to the Board.

3.04 **Proxies.** At any meeting of the Members, a Member entitled to vote may either vote in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy.

ARTICLE IV

Board of Directors

4.01 **Board of Directors.** The administration of the Common Area and the Approval of Plans, as set forth in Article IV.C., in accordance with the provisions of the Declaration shall be vested in the board of directors (the "Board"), consisting of at least three (3) persons (the "Directors") who shall be elected in the manner hereinafter provided, except that the first and subsequent Boards (until the Turnover Date) shall be appointed by Cherry Hill JB LLC (or its beneficiary or designee). The number of Directors and term of office by each of the Directors may be increased or decreased from time to time at any annual meeting by Members having collectively at least two-thirds (2/3) of the total votes, provided that such number of Directors at any given time shall not be less than three (3), and that the terms of at least one-third (1/3) of the Directors shall expire annually. Each Director, with the exception of the Directors initially appointed by Cherry Hill JB LLC (or its beneficiary or designee) shall be one of the Members (including the Declarant); provided, however, that in the event a Member is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director or officer of such corporation, partner or such partnership, individual trustee or beneficiary of such trust or agent or employee of a beneficiary of such trust, or manager of such legal entity, shall be eligible to serve as a Director. Notwithstanding the foregoing, the Board of Directors may assign its administration duties to any individual or committee to whom the Board shall delegate.

4.02 **Determination of Board to be Binding.** All matters of dispute or disagreement between Members or with respect to interpretation or application of the provisions of the Declaration or of these By-Laws shall be determined by the Board as hereinafter provided, which determination shall be final and binding on the Association and on all Members.

4.03 **Election of Board of Directors.** At the initial meeting of the Members and at all subsequent annual meetings of the Members there shall be an election held for the Directors of the Board. In all elections for Directors, each Member shall be entitled to vote on a cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Three (3) Directors shall be elected at the initial meeting following the Turnover Date. The person receiving the highest number of votes at the first annual meeting following the Turnover Date shall be elected to the Board for a term of three (3) years. The next person receiving the highest number of votes at the first annual meeting following the Turnover Date shall be elected to the Board for a term of two (2) years. The person receiving the third highest number of votes at the first annual meeting following the Turnover Date shall be elected to the Board for a term of one (1) year. In the event of a tie vote, the Directors of the Board shall determine which Director shall have the 3 year term, the 2 year term, or the 1 one year term. Upon the expiration of the terms of office of the Directors so elected at the first annual meeting following the Turnover Date and thereafter, successors shall be elected for a term of two (2) years each. Notwithstanding the aforesaid election procedure, the Declarant or its designee or beneficiary may appoint a Board prior to the Turnover Date which shall have the same powers and authority as given to the Board generally, as provided hereinafter, and such appointed Board shall function until such time as the initial meeting of the Members after the Turnover Date is held.

4.04. **Compensation.** The Directors of the Board shall receive no compensation for their services, however, any and all Directors may be reimbursed for reasonable expenses incurred in the performance of their duties.

4.05 **Vacancies in Board.** Vacancies in the Board, other than as a result of removal pursuant to Paragraph 4.07, including vacancies due to any increase in the number of persons on the Board, shall be filled by majority vote of the remaining Directors of the Board or of the Members present at the next annual meeting or at a special meeting of the Members called for such purpose.

4.06 **Election of Officers.** The Board shall elect from among its Directors a president ("President") who shall preside over both its meetings and those of the Members, and who shall be the chief executive officer of the Board and Association, a secretary ("Secretary") who will keep the minutes of all meetings of the Members and of the Board and who shall, in general, perform all the duties incident to the office of secretary, and a treasurer ("Treasurer") to keep the financial records and books of account, and such additional officers as the Board shall see fit to elect. All officers shall be elected at the annual meetings of the Board and shall hold office for terms established by the Board at such annual meetings.

4.07 **Removal of Board Directors.** Any Director may be removed from office by affirmative vote of the Members having at least two-thirds (2/3) of the total votes, at any special meeting called for the purpose in the manner aforesaid. A successor to fill the unexpired term of a Director that is removed may be elected by the Members at the same meeting or any subsequent meeting called for that purpose.

4.08 **Meeting of Board.** The initial meeting of the Board shall be held immediately after the initial meeting of the Members following the Turnover Date and at the same place. At such meeting the Board shall elect its officers to serve until the first annual meeting which shall be held immediately following the first annual meeting of the Members, and at the same place. All subsequent annual meetings of the Board shall be held without other notice than this By-Law, immediately after, and at the same place as, the annual meeting of Members. Special meetings of the Board shall be held upon call by the President or by a majority of the Board on not less than forty-eight (48) hours' prior notice, in writing, to each Director, delivered personally or by mail or telegram. Any Director may in writing waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action of the Board without a meeting. A majority of the number of Directors shall constitute a quorum for the transaction of business. Unless otherwise expressly provided herein, any action may be taken by the Board upon the majority vote of those present at its meetings when a quorum is present.

4.09 **Execution of Instruments.** All agreements, contracts, deeds, leases, vouchers for payment of expenditures, and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the President and countersigned by the Secretary.

ARTICLE V

Powers of the Board

5.01 **General Powers of the Board.** Without limiting the general powers which may be provided by law, the Declaration or these By-Laws, the Board shall have the following general powers:

- (a) To maintain the Landscaping and Common Rail, Storm Water Facility and Entrance Way Monuments or any portion thereof, and otherwise manage the Common Area in accordance with the terms and conditions of the Declaration;
- (b) To have the authority to employ a manager or to retain other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association;
- (c) To establish and maintain a working capital and contingency fund in an amount to be determined by the Board;
- (d) To provide for the enforcement of the provisions of the Declaration;
- (e) To provide such other services and facilities as may be authorized from time to time by the affirmative vote of sixty percent (60%) of the votes cast at a meeting duly called for such purpose;

(f) To maintain and promote the desired character of the Common Area as an office and industrial development;

(g) To adopt rules and regulations governing the administration of the Common Area, subject to the terms of the Declaration; and

(h) To exercise the powers of not for profit corporations pursuant to the General Not For Profit Corporation Act of Illinois.

5.02 **Special Assessments.** Special assessments levied by the Association may be made for the purpose of defraying, in whole or in part, costs of any construction, repair or replacement of improvements in the Common Area; provided that any such assessment in excess of \$5,000 shall require the affirmative vote of 60% of the votes cast at a meeting duly called for such purpose.

5.03 **Tax Relief.** In connection with the Common Area, the Board shall have the power to seek relief from or in connection with the assessment or levy of any real Common Area taxes, special assessments and any other special taxes or charges of the State of Illinois or any political subdivision thereof, or any other lawful taxing or assessing body, which are authorized by law to be assessed and levied on real Common Area and to charge all expenses incurred in connection therewith to the Cost of Maintenance.

5.04 **Rules and Regulations; Management.**

(a) **Rules.** The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Common Area, and for the health, comfort, safety and general welfare of the Members and occupants of the Common Area. Written notice of such rules and regulations shall be given to all Members and occupants, and the entire Common Area shall at all times be maintained subject to such rules and regulations.

(b) **Management.** The Declarant may engage an initial management organization under a contract expiring no later than ninety (90) days after the date the initial meeting of Members following the Turnover Date is held. Thereafter, the Board may engage the services of any agent to manage the Common Area to the extent deemed advisable by the Board.

(c) Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all of the Members or any number of them.

5.05 **Liability of the Board of Directors.** The Directors of the Board and officers of the Association shall not be personally liable to the Members or others for any mistake of judgement or for any acts or omissions made in good faith by such officers or Directors. The Members shall indemnify and hold harmless each of the Directors of the Board and each of the officers against all contractual liability arising out of contracts made by the Board or officers on

behalf of the Members unless any such contracts shall have been made in bad faith or contrary to the provisions of the Declaration. The liability of any Members arising out of any such contract made by the Board or officers or out of the aforesaid indemnity in favor of the Directors or officers, to the extent not covered by insurance, shall be limited to such Member's proportionate share of the total liability thereunder.

ARTICLE VI

Assessments – Maintenance Fund

6.01 **Preparation of Estimated Budget.** Each year on or before December 1, the Board will estimate the total amount necessary to pay the Cost of Maintenance, including, but not limited to, the cost of wages, materials, taxes, insurance, services and supplies which will be required during the ensuing fiscal year (January 1 – December 31) for the rendering of all services authorized by the Board, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall, on or before December 15, notify each Member in writing as to the amount of such estimate ("Estimate Assessment") with reasonable itemization thereof. The Estimated Assessment shall be assessed among all of the Members in accordance with each Member's Proportionate Share and shall be paid not more frequently than quarterly unless other periodic installments are established by the Board and as otherwise provided in the Declaration. Such annual budget shall also take into account any estimated net accruable cash income for the year from operation or use of the Common Area, if any. On or before January 1 of the ensuing fiscal year, each Member shall be obligated to pay to the Board, or as it may direct, the assessment made pursuant to this Section 6.01. On or before the date of the annual meeting of each calendar year, the Board shall supply to all Members an itemized accounting of the Maintenance expenses for the preceding fiscal year actually incurred and paid, together with a tabulation of the amounts collected from the Members pursuant to assessments made during such year and showing the net amount over or short of the actual expenditures, plus reserves. The Board shall upon written demand at any reasonable time furnish a certificate in writing signed by an officer or agent of the Association, setting forth whether the assessments on a specified Parcel have been paid. Such certificates shall be conclusive evidence of payment of any assessment thereon.

6.02 **Extraordinary Expenditures.** The Board shall establish and maintain reasonable reserves for contingencies and replacements as it shall deem necessary, and any extraordinary expenditures not included in the Estimated Assessment shall be first charged against such reserves in the year of expenditure. If such reserves are depleted or, in the opinion of the Board, significantly reduced, then any supplemental budget, or the next regular Estimated Assessment shall provide for the re-establishment of such reserves as the Board shall deem reasonably appropriate. The Board shall serve notice of further assessment on all Members by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective and fully payable ten (10) days after the delivery or mailing of such notice of further assessment. All such Members shall be obligated to pay the adjusted annual amount.

6.03 **Failure to Prepare Annual Budget.** In the event of the failure or delay of the Board to prepare or serve the annual or adjusted estimate of Member's obligation to pay the Maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and, in the absence of any annual estimate of adjusted estimate, then the Member shall continue to pay the Maintenance charge at the then existing annual rate established for the previous fiscal year, subject to adjustment at such time as the annual or adjusted estimate has been prepared and the Members have been notified thereof.

6.04 **Books and Records.** The Board shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the Common Area, specifying and itemizing the Maintenance and repair expenses of the Common Area and any other expenses incurred. Such records shall be available for inspection by any Members or first mortgagee or record, at such reasonable time or times during the normal business hours as may be requested by the Member or mortgagee. Upon ten (10) days notice to the Board, and payment of a reasonable fee, any Member shall be furnished a statement of his account, setting forth the amount of any unpaid assessments or other charges due and owing from such Member.

6.05 **Remedies for Failure to Pay Assessments.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the corporate base rate of interest announced by and from time to time in effect at LaSalle National Bank (and such rate of interest to change when and as the corporate base rate of interest changes) plus two percent (2%) per annum (compounded annually) or the rate allowed by law, whichever is less, and the Association may bring an action at law against the delinquent Member personally obligated to pay the same, and fees of any such action shall be added to the amount of such assessment. To the extent permitted by law, any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided, shall be and become a lien or charge against the Lot of the Member involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against real estate. Each Member, by such Member's acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Member personally for the collection of such charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens. Any court shall be authorized to restrain the defaulting Member from reacquiring his interest at such judicial sale.

ARTICLE VII

Amendments

7.01 Subject to the terms and conditions of the Declaration, including, but not limited to, the requirement that any such amendment or modification shall not cause the Common Area, or any part thereof, to be in non-compliance with any Governmental Regulation, including, but not limited to, the Village zoning ordinances or building code, these By-Laws may be amended or modified from time to time by action or approval of (a) the Lot Owners entitled to cast 60% of the total votes computed as provided in Section 3.01 hereof and (b) the Declarant, so long as

Declarant owns any Property. Such amendments shall be recorded in the Office of the Recorder of Deeds of Will County, Illinois.

ARTICLE VIII

Interpretation

8.01 In the case of any conflict between the Articles of Incorporation of the Association and these By-Laws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws the Declaration shall control.

ARTICLE X

Definition of Terms

9.01 The terms used in these By-Laws shall have the same definition as set forth in the Declaration of Protective Covenants for Cherry Hill Rail Park of New Lenox, Illinois as Document No. _____ to the extent such terms are defined therein.

ADOPTED this ____ day of February, 2008.

Matthew J. Grusecki, Director

Sean T. Spellman, Director

Robert D. Tuerk, Director

Being all of the Directors of Cherry Hill Rail Park
Association

EXHIBIT E

Development Guidelines

designers – contractors – developers

northern

Introduction

Project Description

Cherry Hill Rail Park, a master planned 200 acre Business Park, is suitable for newly constructed distribution facilities, light manufacturing facilities and corporate offices. Cherry Hill Rail Park is located in the Village of New Lenox within 1.5 miles of the full four way interchange at Route 30 and I80.

Location Map

Guideline Objectives

The purpose of the *Development Guidelines for Cherry Hill Rail Park* is to provide design standards to those developing or redeveloping property in Cherry Hill Rail Park. The guideline will help coordinate site access, sign graphics, lighting, signage and landscaping to insure that a first class business park appearance is maintained.

The *Development Guidelines* are intended to supplement the Declaration of Covenants, Conditions and Restrictions, Final Subdivision Plats and local Zoning Ordinances. In addition to these *Guidelines* a developer should obtain appropriate copies of the Final Plats of Subdivision, Annexation Agreement Ordinance No. 1483 and existing zoning ordinances, and any other applicable ordinances adopted by the Village after the effective date of these covenants. The site may be subject to other conditions as set by the Village of New Lenox. A developer of a lot should contact the Village to determine if the site is subject to additional conditions than those set forth in the above mentioned documents and these *Guidelines*.

The *Development Guidelines for Cherry Hill Rail Park* are the basis for design and development in Cherry Hill Rail Park. However, the design standards are also subject to the criteria established in the current federal, state or local regulations, whichever are more restrictive. The Architectural Review Board (ARB) will consider individual requests for variances from the *Guidelines*; however, it will be their sole judgement to determine if such variances do not detract from the design and development objectives of Cherry Hill Rail Park.

Land Uses

Permitted Uses

The design and development objectives for Cherry Hill Rail Park are intended to accommodate a variety of compatible land uses that fall under the provisions of the Limited Industrial District zoning in the Village of New Lenox. Some of the following uses permitted in the *Guidelines* are not allowed by the Village of New Lenox in the Limited Industrial District. A rezoning or Special Use Permit from the Village may need to be obtained for some uses. The following is a list of permitted uses in Cherry Hill Rail Park:

- Manufacturing facility involving the production, processing, cleaning, servicing, testing, repair of material, and goods or products.
- Warehousing or distribution facility, excluding motor freight terminals.
- Free standing office buildings.
- Retail uses which are accessory to the above uses.

Special Use

Other uses may be deemed compatible in special circumstances. The Architectural Review Board (ARB) will examine them on a case by case basis. The following are some of the special uses that may be considered by the ARB:

- Temporary Structure - including sales or construction trailers for a period not to exceed the duration of such construction.
- Hotels

Non-Permitted Uses

The following uses will not be permitted in Cherry Hill Rail Park:

- Adult bookstores
- Adult entertainment
- Adult mini-motion picture theaters
- Adult motion picture theaters
- Residential Dwelling Units
- Free Standing Communication Towers

Design Standards

The following section of design standards represents the criteria for buildings, circulation, grading & utilities, and landscaping & lighting. These standards will be used by the ARB in reviewing proposed developments.

Buildings

A. Architecture

Prior to the commencement of construction for any improvements, the developer of a lot upon which improvements are to be constructed shall submit to the ARB architectural elevations and site plans for all proposed structures for review and/or approval. It is not the intent of the ARB to dictate architectural design, but rather to promote and insure compatible architectural design consistent with a first class business park.

B. Size

Height - No structure or portion thereof, excluding a mechanical penthouse system, shall exceed a height of forty-five (45) feet. Please refer to the Village of New Lenox zoning ordinance for more information.

C. Setbacks

Street Property Lines

<i>Property Line</i>	<i>Building Setback</i>	<i>Parking Setback</i>
Gougar Road	50'	50'
Berens Drive	30'	30'

Other than Street Property Lines

<i>Property Line</i>	<i>Building Setback</i>	<i>Parking Setback</i>
Interior Rear Yard	15'	15'
Interior Side Yard	10'	10'
Transitional	50'	50'

* Building setbacks shown are for structures with a height under forty (40) feet. See the Annexation Agreement for additional information.

D. Exterior Material

Prior to the commencement or construction of any improvements, the developer shall submit to the ARB for approval, actual samples and/or descriptive information of materials such as brick, stone, siding and roofing, as well as exterior color schemes for the lot improvements. Construction may not commence until approval of the ARB has been obtained.

Quality Materials

All improvements within the property shall be constructed of high-quality permanent material and shall be durable and easily maintainable.

Walls

The design of the exterior walls must be approved by the ARB. All colors of the exterior walls shall be of white or gray tones or as approved by the ARB. Subject to a review on a case-by-case basis, the following specific materials are generally acceptable to the ARB:

- Face brick
- Stone
- Glass
- Exposed Aggregate Concrete Panels
- Architectural Concrete
- Panels - (Painted or Stained)
- Plaster - (Painted or Integrally Colored)
- Synthetic Plaster

Accent Features

Subject to a review on a case-by-case basis, the following materials are generally acceptable to the ARB for use in the construction of exterior accent features:

- Face brick
- Stone
- Glass
- Exposed Aggregate Concrete Panels

- Architectural Concrete Panels - (Painted or Stained)
- Plaster - (Painted or Integrally Colored)
- Synthetic Plaster
- Glass Block
- Painted Aluminum

Prohibited Materials

Unless otherwise expressly permitted to in writing by the ARB, the following materials are prohibited for use as exterior building materials:

- Metal Panels
- Concrete Double Tee Panels
- Concrete Block of Any Kind

E. Rooftop

Prior to the commencement of construction for any improvements on a building rooftop, the developer of a lot upon which improvements are to be constructed shall submit to the ARB information on any equipment, and vent and duct improvements to be located on a rooftop. Construction may not commence until approval of the ARB has been obtained.

Screening Requirements

All roof-mounted equipment must be screened.

F. Roofdrains

Roofdrain down spouts shall be located on the interior of the buildings and shall discharge directly into the storm sewer system and not discharge onto landscape or pavement areas.

G. Mechanical Systems

Exterior mechanical and electrical equipment, including, but not limited to, air conditioning equipment, air handling equipment, transformers, trans closures, pump houses, communication towers, microwave or communication satellite dishes, vents, or fans shall be located in places or screened so that the predominant design lines of the development that they serve, will continue without visual distraction or interruption. If any such equipment is not screened by an exterior wall, such equipment shall be separately screened from view of the street right-of-way and adjacent lots by:

- (i) Fences constructed of approved building materials
- (ii) Earthen berms

Location

Exterior Docks may face a right-of-way provided the following:

- The design is approved by the ARB
- Screened by berms, landscaping, or a wall or a combination of not less than 10' in height

E. Walks

All lots having frontage on a public right-of-way are required to construct public sidewalks as required by the Village of New Lenox and the ARB. All walks are to be made accessible to the physically handicapped by installing recessed ramps at curbs as appropriate. All sidewalk dimensions are to be a minimum width of 4.5 feet and are to be constructed of concrete.

Grading & Utilities

A. Lot Grading/Storm Water Management

The park has been designed in accordance with plans and reports prepared by SPACECO, Inc. and Christopher B. Burke Engineering Ltd. A developer of a lot should obtain copies of these reports for the development of the site. A development should conform to these documents and not be altered without approval of the Village, the ARB and the Federal Emergency Management Association when necessary.

Each lot has been provided storm water storage in a park retention facility. Any detention storage necessary for a lots development beyond what was provided in the retention ponds for the lot, shall be provided on the lot by the developer.

B. Utilities

A storm sewer system shall be provided for each developable lot to convey the low flow storm event to the retention ponds. The storm sewer shall be designed and installed in accordance with the Village requirements.

The sanitary and water main system must be designed and constructed to meet the Village standards.

All other utilities such as electricity and telephone to be provided must be installed underground.

Landscaping

A. Landscape Standards

Quality

All plant material shall comply with the provisions set forth in the latest edition of "American Standard for Nursery Stock." All plants should be in good health, free of disease, insects and defects. No "park grade" material shall be accepted.

Sizes

Trees need to be provided with a minimum caliper of 3" at the time of installation. Plant material used for screening shall be large enough to provide adequate screening immediately upon installation. In addition, all plants should meet sizes as stated on plan and required by Village Code.

Turf

All areas designated as lawn areas are to be sodded or seeded and irrigated with a nursery grown blend of improved Kentucky Bluegrass varieties.

All right-of-ways and the first 50' of every Front Yard shall be sodded. All areas designated as lawn areas to be sodded or seeded shall be irrigated, including the parkway.

B. Site Landscaping

Undeveloped Areas

Undeveloped area, held in reserve for future building or pavement development, need not be fully landscaped. However, these areas are, at a minimum, to be seeded with a blend of 50% Kentucky Bluegrass, 15% creeping red fescue and 35% perennial rye and maintained to hold down weed growth and to minimize wind and water erosion.

The undeveloped sites are to mowed at least once per month during the growing season.

Total Landscape Area

A minimum of 30% of the site shall be devoted to the landscape area. Landscape areas are those parts of the sites which are not covered by the buildings, parking area, walks, or other impermeable surfaces. The final landscaping will be reviewed by the Village of New Lenox and reviewed and approved by the ARB.

C. Lot Landscaping

Due to the unknown requirements of each site, specific guidelines cannot be determined. However, no landscaping installation shall be performed without the approval of the ARB. The following standards shall be adhered to:

Completion

All landscaping on any lot shall be completed and paid within sixty (60) days after substantial completion of construction of any buildings on a lot, unless due to delay caused by non-landscape season.

Maintenance

The landscaping on any lot shall be maintained in such a manner as to retain at a minimum the intended standard of the initial landscaping plan by watering, weeding, removal and replacement of dead material, mowing, trimming, fertilization, pest and disease control.

No owner shall allow rubbish, debris, objects or materials of any kind, which renders a lot unsanitary, unsightly, offensive or detrimental to any other lot. It shall remain the responsibility of each lot owner to regularly mow the turf on their lot and the right-of-way adjacent to the lot.

D. Roadway/Detention

A roadway and detention master landscape plan has been created for all roads within Cherry Hill Rail Park by Craig Dowden & Associates. The plan calls for construction of sidewalks, berms, turf areas, street trees, plantings and lake edge treatments. A lot should be developed in accordance with same intent and plant material of the Master Plan. A lot owner shall not alter it without approval from the ARB.

The following are approved trees to be used in these areas. Alterations from this list must be approved by the ARB.

Shade Trees:

Patmore Ash
Summit Ash
Autumn Purple Ash
Autumn Blaze Maple
Skyline Maple
Deborah Norway Maple
Greenspire Linden
Sherwood Glen Green Ash

Evergreen Trees:

Colorado Spruce
Austrian Pine

Ornamental Trees:

Non-fruit bearing varieties:
"Adams", "David", "Robinson", "Zumi", "Donald Wyman" and "Red Tower"

Serviceberry
River Birch
Shrubs, Ornamental Grass and Perennials to be approved by the ARB.

E. Irrigation

All turf areas, including parkways in the public right-of-way, shall be irrigated with a fully automatic underground irrigation system in compliance with the local building codes. All required backflow prevention devices are to be located or screened so that they are not visible from public view.

Lighting

A. Light Levels

A lot shall provide uniform parking lot and driveway illumination using High Pressure Sodium Shoe Box Fixtures as manufactured by Lithonia or equal as approved by the ARB. The lighting levels must be within the following levels:

Minimum: 0.5 foot-candles
Average: 1.5-3.5 foot-candles
Average to minimum ratio: 5

* See Village of New Lenox requirements for additional conditions.

B. Parking Lot Fixtures

Any fixture that is used to illuminate a parking area shall be a High Pressure Sodium Shoe Box Fixture as manufactured by Lithonia or equal as approved by the ARB. The fixture shall prevent glare or excessive light spillage onto adjacent sites.

Site Signage

A. Identification Signs

Entrance Monuments

Each lot is allowed one entrance monument sign. The sign base and sign shall be constructed of materials compatible with the building on site. The maximum size of the sign shall be 80 square feet and shall not be more than eight feet in height. If illuminated, the sign shall only be externally illuminated. The sign shall indicate the street address. The sign shall be purchased from the association and be approved by the ARB.

EXHIBIT E

PUNCH LIST ITEMS

[FOLLOW]

PUNCH LIST

Original Substantial Completion Walk Through Date: January 31, 2008

Item No.	Action By	Location	Room No.	Constraint	Completion Date	NBI Initials	SSCC Initials
Building Shell							
1	WE Carlson	East Elevation	Docks	Install (3) Standard Dock Restraints (far North doors)	HD Not available as anticipated		
2	ComEd	Building	All	Permanent Power Supply	Utility Company - Week End of 1/28/08		
3	NBI			Install Knox Boxes (3) per New Lenox	On Order - per NLFD		
4	Tempus	NE Corner Exterior		Install Door #9 - Pull Handle			
Exterior							
1	Spray Specialist	Entire Bldg Façade	NA	Paint Entire Exterior of Building - Includes Misc. Metals	Weather / Schedule for Spring		
2	Becmar Sprinkler	Lawn	NA	Irrigation System	Weather / Schedule for Spring		
3	Greenscape	Lawn	NA	Landscaping	Weather / Schedule for Spring		
4	Complete Electric	Exterior Building	NA	Box Lights (3) Replace Damaged or Burnt Out Light	On Order		
5	MJTJ			Pour Patio Concrete	Weather / Schedule for Spring		
6	Dawn			Repair Sink Holes in Parking List (2)	Weather / Schedule for Spring		
7	NBI			Install Building Address	On Order		
8	NBI	All		Install Plastic Bollard Covers	Install Before Building Turn Over		
9	NBI			Clean Sidewalks and Parking Lot of Debris	Weather / Schedule for Spring		
10	Sullivan			Roof Gravel Stop (Aluminum Coping)	Weather / Schedule for Spring		
11	Sullivan			Canopy Roofing System	Weather / Schedule for Spring		
12	NBI			Set Precast Monument Sign	Weather / Schedule for Spring		
13	CES / WE Carlson			Review Conduit to Dock Restraints - Secure	Weather / Schedule for Spring		
South Office Build Out							
1	NBI	General	Overall	Wax VCT Floors			
2	TEAM	General	Overall	Mechanical System Start Up / Training / T & B Reports	ComEd Power Scheduled for 2/01/08		
3	SSCC	General	Overall	SSCC - Install Fire Extinguishers	NA	NA	NA
4	NBI	General	Overall	Final Cleaning Throughout			
5	Complete Electric	General	Overall	Remove Plastic from Light Fixtures			
6	NBI	General	Overall	Remove Temp Heater and Hoses			
7	SSCC	General	Overall	Telecomm Trimout	NA	NA	NA
8	Tempus	General	Overall	Install All Door Silencers			
9	HH Decorating	General	Overall	Touch Up Wall Paint (around all window sills and work areas)	Alex to walk office w/ SSCC for sign off of each room after painter completes touch up work		
10	NBI	General	Overall	Review Double Doors for Egress - Aluminum			
11	Tempus / HH Dec.	General	Overall	Check all outlet covers / Patch wall & paint as needed			
12	All Trades	General	Overall	Install any missing ceiling tiles			
13	NBI	General	Overall	Resolve discoloring of stain on window sills			
14	NBI	General	Overall	Turn over keys for doors, toilet accessories, operable partition	At building turn over meeting		
15	NBI	General	Overall	Closeout Documents - Warranties, As-Builts, OM Manuals			
16							

PUNCH LIST

Original Substantial Completion Walk Through Date: January 31, 2008

Item No.	Action By	Location	Room No.	Constraint	Completion Date	NBI Initials	SSCC Initials
17							
1	ADT	Vestibule 300	Rm 300	Add Annunciator Panel per NLF	Pricing / Approval		
2	Vortex	Vestibule 300	Rm 300	Install Pediment Mat	Temporary Carpet Insert		
3	HH Decorating	Vestibule 300	Rm 300	Re-Paint entire vestibule			
1		Waiting Area	Rm 301				
1	Decalb	Reception	Rm 302	Install Pass Through Window	Monday		
2	SSCC	Reception	Rm 302	Trim Out Telecomm Room	NA	NA	NA
3		Reception	Rm 302	Touch-Up paint above pass through window			
1	Complete Electric	Conference Room 303	Rm 303	Relocate Floor Outlet			
2	HH Decorating	Conference Room 303	Rm 303	Touch-Up paint outside of frame	1/29/2008	RB	
1		Office 304	Rm 304				
1		Office 305	Rm 305				
1		Office 306	Rm 306				
1		Office 307	Rm 307				
1	Tempus / HH Dec.	Office 308	Rm 308	Patch & paint wall at East wall cover plate			
1		Conference Room 309	Rm 309				
1	SSCC	General Office 310	Rm 310	Install Office Furniture (Modular / Electric Chase)	SSCC to Provide (New For Final Occ)	NA	NA
2	Complete Electric	General Office 310	Rm 310	Floor Electric Trim Plates			
1	SSCC	Office 311	Rm 311	South wall missing telecomm trim work	NA	NA	NA
1	Tempus	Break Room 312	Rm 312	Repair Door From Closure Relocate			
2		Break Room 312	Rm 312	Repair North wall - Patch and paint around cover plate			
1		Storage 313	Rm 313				
1	NBI	Closet 314	Rm 314	Install door jamb stop			
1		Men's Toilet 315	Rm 315				
1	NBI	Janitor Closet 316	Rm 316	Install Wall Protection (Mop Basin)			
1		Women's Toilet 317	Rm 317				
1	HH Decorating	Storage 318	Rm 318	Paint around door frame			
1		Closet 319	Rm 319	Install door jamb stop			
1		Office 320	Rm 320				
1	SSCC	Telephone Equipment	Rm 321	Racking & Equipment Install	by Tenant	NA	NA
2	Laystrom	Telephone Equipment	Rm 321	Install missing door louver			
1	HH Decorating	Office 322	Rm 322	Touch Up Paint Window Frames			
2	Tempus	Office 322	Rm 322	Caulk window sill (interior window sill)			
3	Complete Electric	Office 322	Rm 322	Replace (1 lamp)			
4	Tempus	Office 322	Rm 322	Fix sprinkler head ceiling tile			
1		Corridor 323	Rm 323				
1	Tempus	Office 324	Rm 324	Patch Around Cover Plate (North Wall)			
2	HH Decorating	Office 324	Rm 324	Touch Up Window Frame			
3	Tempus	Office 324	Rm 324	Caulk window sill (interior window sill)			

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Original Substantial Completion Walk Through Date: January 31, 2008

Item No.	Action By	Location	Room No.	Constraint	Completion Date	NBI Initials	SSCC Initials
4	Complete Electric	Office 324	Rm 324	Missing date rough-in at West wall			
1	NBI	First Aid 325	Rm 325	Add ADA mirror and supply a paper towel dispenser			
2	Tempus	First Aid 325	Rm 325	Clean door closer cover plate			
3	Cryer & Olsen	First Aid 325	Rm 325	Re-Install water pipe insulation			
1	HH Decorating	Office 326	Rm 326	Touch Up Window Frame			
2	Tempus / HH Dec.	Office 326	Rm 326	Touch up outlet covers (North / East)			
3		Office 326	Rm 326	Caulk window sill (interior window sill)			
1	HH Decorating	Corridor 327	Rm 327	Re-Paint entire Corridor - Hand Print 6' AFF Throughout Entire Corridor			
1	NBI	Training Room	Rm 328	Operate Partition (Key)			
2	Complete Electric	Training Room	Rm 328	Verify lamps in lights (EM???)			
1	Vortex	Corridor 329	Rm 329	Install Missing VCT / Wall Base			
2	HH Decorating	Corridor 329	Rm 329	Repair damaged corner bead (Southwest)			
3	ComEd	Corridor 329	Rm 329	Run Drinking Fountains (Need Power)			
4	Laystrom	Corridor 329	Rm 329	Damaged closer covers - Replace			
1		Women's Toilet 330	Rm 330				
1	Industrial	Women's Locker Rm	Rm 332	Install Lockers & Benches			
1	Complete Electric	Janitor Closet 333	Rm 333	Change Out Light Fixture			
2	TEAM	Janitor Closet 333	Rm 333	Repair Insulation			
3	Arlington Steel	Janitor Closet 333	Rm 333	Ladder up - Order			
1		Men's Toilet 334	Rm 334				
1	Cryer & Olsen	Men's Locker Rm	Rm 335 / 337	Hand Wash Tubs (2)			
2	Industrial	Men's Locker Rm	Rm 335 / 337	Install Lockers & Benches			
3	Decalb	Men's Locker Rm	Rm 335 / 337	Add (2) mirrors			
4	NBI	Men's Locker Rm	Rm 335 / 337	Install FRP on entire wall next to hand wash tubs			
1	Vortex	Vestibule 338	Rm 338	Install Pediment Mat			
2	ADT	Vestibule 338	Rm 338	Trim Out Security			
3	HH Decorating	Vestibule 338	Rm 338	Repaint entrance jamb			
1	ADT	Break Room 339	Rm 339	Trim Out Security			
2	Ameriscan	Break Room 339	Rm 339	Missing / Incorrect Casework (trim out sink)			
3	Vortex	Break Room 339	Rm 339	Missing VCT and Wall Base			
4	ADT	Break Room 339	Rm 339	Install Card Reader at Exterior Door			
5	ADT	Break Room 339	Rm 339	Exterior Door contact / Trim out			
6	Vortex	Break Room 339	Rm 339	Repair wallbase (Near door)			
In Attendance of 1/31/08 Substantial Completion Walk Through: Don Scribner, Ken Harless, Dennis Kaiser, Rich Wherely, Joe DiBernardo, Alex Prouty							
	Warehouse			Future Walk Through			
	Warehouse Buildouts			Future			

northern
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Smurfit-Stone

Updated on: 3/3/2008

PUNCH LIST

Original Substantial Completion Walk Through Date: January 31, 2008

Item No.	Action By	Location	Room No.	Constraint	Completion Date	NBI Initials	SSCC Initials
	LH Work			1 1/2" Fiberglass Grates have been Provided as of 1/31/08 (Corrugator Area)	1/31/2008	RB	

17. The Declaration of Protective Covenants for Cherry Hill Rail Park New Lenox, Illinois recorded as Document – contains the right to submit additional property to the Cherry Hill Rail Park.

18. Unrecorded 60 foot mobile pipeline easement dated December 29, 1971 located over the Northwest corner of the Land as disclosed by the Plat of Survey made by Spaceco Inc., dated July 7, 2007, Order No. 3577-02. (Affects the Property to the extent shown on the Survey).

19. Rights of Way of railroad tracts, spurs, footings, etc. over and onto the North line of the Land.

20. Terms and provisions of the final subdivision plat, recorded on _____ as Document _____.

21. Assignment of Rents and Leases, recorded October 4, 2007, as document no. R2007-147903 made by Cherry Hill Nine to LaSalle Bank National Association.

22. Assignment of Rents and Leases recorded October 4, 2007, as document no. R2007-147905 made by Cherry Hill JB LLC to LaSalle Bank National Association.