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Cook County Recorder 99.50



**SECOND AMENDMENT TO
ANNEXATION AND DEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO ANNEXATION AND DEVELOPMENT AGREEMENT (this "Agreement"), made and entered into as of the 17th day of February, 1992 by and between the **VILLAGE OF HOFFMAN ESTATES**, an Illinois municipal corporation located in Cook and Kane Counties, Illinois ("Village"); **AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO**, not personally but solely as Trustee under a Trust Agreement dated June 6, 1989 and known as Trust No. 108506-00 ("Sears Trust"); **SEARS, ROEBUCK AND CO.**, a New York corporation ("Sears"); **COMMONWEALTH EDISON COMPANY**, an Illinois corporation ("Edison"), **ILLINOIS BELL TELEPHONE COMPANY**, an Illinois corporation ("Bell"), **THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY**, an instrumentality and administrative agency of the State of Illinois ("Tollway") and **THE BOARD OF REGENTS FOR REGENCY UNIVERSITIES** ("Board").

WITNESSETH:

WHEREAS, the Village, Sears and Sears Trust have previously entered into an Annexation and Development Agreement (the "Annexation and Development Agreement"), dated July 31, 1990 (a memorandum of which was recorded with the Cook County Recorder's Office on April 16, 1991 as Document No. 91173868) for the property now known as the Sears Business Park, which Annexation and Development Agreement was amended by that certain

First Amendment to Annexation and Development Agreement dated June 24, 1991 (the "First Amendment"; the Annexation and Development Agreement and the First Amendment are collectively referred to herein as the "Annexation Agreement"); and

WHEREAS, all parties hereto wish to replace those certain Landscape Requirements in Exhibit E to the Annexation Agreement with the Amended Landscape Requirements attached hereto as Exhibit E-1 and made a part hereof (the "Amended Landscape Requirements"); and

WHEREAS, all parties hereto are desirous of and have taken all actions necessary to amend the Annexation Agreement.

NOW, THEREFORE, in consideration of the mutual covenants of the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. The foregoing recitals are incorporated in this Agreement as though fully restated in this Paragraph 1.
2. Exhibit E, Landscape Requirements, of the Annexation Agreement is amended and replaced in its entirety with the Amended Landscape Requirements.

3. This Agreement and the Annexation Agreement shall, without limitation, apply to all land, whether publicly or privately owned, which is within the boundaries of the Sears Business Park Amended Plat of Subdivision of part of Sections 31, 32 and 33, Township 42 North, Range 9, East of the Third Principal Meridian and part of Sections 3 and 4, Township 41 North, Range 9, East of the Third Principal Meridian, according to the Plat thereof recorded August 5, 1991 as Document Number 9139443, in Cook County, Illinois (the "Property").

4. This Agreement may be executed in duplicate counterpart originals.

5. In the event any phrase, paragraph, article or portion of this Agreement is found to be invalid, illegal or unenforceable, in any manner or as to any portion of the Property, by any court of competent jurisdiction, such finding of invalidity, illegality or unenforceability as to that portion shall not affect the validity, legality or enforceability of such portion of the Agreement as to any other matter or portion of the Property or the validity, legality or enforceability of the remaining portions of this Agreement and the Annexation Agreement.

6. Except as expressly supplemented, modified and amended by this Agreement, all of the terms, conditions and provisions of the Annexation Agreement shall remain unmodified and in full force and effect.

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7. This Agreement is executed by American National Bank and Trust Company of Chicago, not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings, warranties and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings, warranties and agreements of said Trustee, are nevertheless made and intended not as personal representations, covenants, undertakings, warranties and agreements by the Trustee or for the purpose or with the intention of binding the Trustee personally but are made and intended for the purpose of binding only the Trust property, and this Agreement is executed and delivered by said Trustee not in its own right, but solely in the exercise of the power conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Trustee on account of this Agreement or on account of any representations, covenants, undertakings, warranties or agreements of said Trustee in this Agreement contained, either express or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officials duly authorized to execute the same as of the day and year first above written.

ATTEST:

Its: _____

ATTEST:

Its: _____

ATTEST:

Its: _____

ATTEST:

Its: _____

VILLAGE:

VILLAGE OF HOFFMAN ESTATES, an Illinois municipal corporation

By: _____
Its: _____

SEARS TRUST:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as Trustee under a Trust Agreement dated June 6, 1989 and known as Trust Number 108506-00

By: _____
Its: _____

SEARS:

SEARS, ROEBUCK AND CO., a New York corporation

By: _____
Its: _____

EDISON:

COMMONWEALTH EDISON COMPANY, an Illinois corporation

By: *N. J. Schilling*
Its: _____

N. J. Schilling
Land Management Administrator

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officials duly authorized to execute the same as of the day and year first above written.

ATTEST:

Its: _____

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee and undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

ATTEST:

Attestation not required by American National Bank and Trust Company of Chicago Bylaws

Its: _____

ATTEST:

Victoria S. Berghel
Its: Assistant Secretary

ATTEST:

Its: _____

VILLAGE:

VILLAGE OF HOFFMAN ESTATES, an Illinois municipal corporation

By: William D. Masland
Its: Acting Village President

SEARS TRUST:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as Trustee under a Trust Agreement dated June 6, 1989 and known as Trust Number 108506-00

By: [Signature]
Its: Authorized Officer

SEARS:

SEARS, ROEBUCK AND CO., a New York corporation

By: [Signature]
Its: Ronald F. Cross

EDISON:

Vice President
Real Estate

COMMONWEALTH EDISON COMPANY, an Illinois corporation

By: _____
Its: _____

R. E. DIRECTOR
[Signature]
LEGAL
[Signature]

BELL:

ILLINOIS BELL TELEPHONE COMPANY, an Illinois corporation

By: _____
Its: _____

ATTEST:

Its: _____

TOLLWAY:

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY, an instrumentality and administrative agency of the State of Illinois

By: _____
Its: _____

ATTEST:

Its: _____

BOARD:

THE BOARD OF REGENTS FOR REGENCY UNIVERSITIES, the governing body for Northern Illinois University

By: *D.J. Murphy by W. J. ...*
Its: CHAIRMAN

ATTEST:

Robert Jones
Its: Secretary

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ATTEST:

James A. Roland
Its: ENGINEER - RIGHT OF WAY

BELL:

ILLINOIS BELL TELEPHONE
COMPANY, an Illinois corporation

By: Don M. Smith
Its: FACILITY ENGINEER

TOLLWAY:

THE ILLINOIS STATE TOLL
HIGHWAY AUTHORITY, an
instrumentality and administrative agency of
the State of Illinois

By: _____
Its: _____

ATTEST:

Its: _____

BOARD:

THE BOARD OF REGENTS FOR
REGENCY UNIVERSITIES, the governing
body for Northern Illinois University

By: _____
Its: _____

ATTEST:

Its: _____

EXHIBIT E-1

TO THE ANNEXATION AND DEVELOPMENT AGREEMENT

AMENDED LANDSCAPE REQUIREMENTS

A. Definitions.

The following definitions shall apply only to the Landscape Requirements contained in this Exhibit.

1. **Building Lot Area:** The area of a Lot excluding parking lots (measured within the perimeter curb), driveways, setbacks and Special Yard Setbacks.
2. **Caliper:** The diameter of a Tree 6 inches above the root ball.
3. **Design Review Committee ("DRC"):** The Design Review Committee established by the Property Owners Association.
4. **Forb:** A flowering herbaceous plant or wildflower. A Forb may be annual, biennial or perennial.
5. **Landscaped Area:** That area within the boundaries of a given Lot which is devoted to and consists of plant material, including but not limited to grass, Trees, shrubs, flowers, Forbs, vines and other ground cover or native plant material.
6. **Lot:** A Lot is land consisting of one or more platted lots or a part of a platted lot being developed on a single parcel or on part of a phased parcel development. A Lot may also be called a building site or individual development.
7. **Mature Height:** The typical height at midsummer of Forbs and grasses used in Native Landscape areas.
8. **Native Landscape:** Utilization or application of a palette of grasses (for example, little Bluestem, Prairie Dropseed, Buffalo Grasses), Forbs (for example, Blackeyed Susans, Purple Coneflower, Blazingstar, trees and shrubs (for example, Bur Oak, Hawthorne, Red Dogwood, Fragrant Sumac) indigenous to, or exhibiting the general characteristics of those found, in the Midwest region. The plant groupings demonstrate ornamental qualities exhibited by seasonal changes of color, texture and height, as well as environmental benefits and functions.

9. Open Space: Open Space is area not covered by building structures, parking lots or automobile circulation. Open Space includes, but is not limited to, grass, Trees, shrubs, flowers, Forbs, vines and other ground cover, native plant materials, planters, pedestrian circulation areas such as walks and plazas, permanent water features, fountains and wetland easements; provided, however, that the use of paved areas or other inorganic materials shall not predominate over the use of organic plant material.

10. Park: The Subject Property.

11. Screening: Screening is the use of landscape material that will, (within 3 years after installation) at Mature Height, obscure, through filtering, views of a designated area. Berms or walls may be substituted for landscape material to accomplish such Screening. Screening may be temporarily reduced as a result of periodic burning or mowing of Native Landscape areas as part of a maintenance program.

12. Special Yard Setback: The yard setbacks identified in Section 15.8 of this Agreement. The Special Yard Setback may not be used in calculating the Open Space required by the provisions of this Agreement for a development.

13. Tree: A woody plant having a well-defined trunk and a definitely formed crown, and listed in Simon and Schuster's Guide to Trees. Permitted trees include Ginkgo, Norway Maples, Oaks, Lindens, Ashes, London Planes, Thornless Honey Locusts (seedless), Red Maples, Sugar Maples, and other types of trees with DRC approval. The following trees shall be prohibited: Poplar, Willow, (except in wetlands) Osage Orange, Silver Maple, Black Locust, and Box Elder. At planting, trees must have a minimum Caliper of 3 inches, a root ball size of at least 10 times the Caliper size, and a clear stem of at least 4 feet.

14. Tree, Evergreen: A Tree which continuously retains leaves or needles over four seasons of the year.

15. Tree, Ornamental: A deciduous Tree with an average mature height of less than 20 feet.

16. Tree, Shade: A deciduous Tree with an average mature height in excess of 20 feet.

17. Vision Clearance Triangle: The area at a street intersection enclosed by a visibility triangle, each leg of which is measured along each curb of the intersecting streets and from the point where the extension of the curb lines intersect. Vision clearance triangles on roads with a right of way width of 80 feet or less shall be free from landscaping 30 feet at intersections and 100 feet at intersections of roads with a right of way greater than 80 feet wide.

Shrubs under 30 inches in height may be used in this area and Shade Trees if trimmed a minimum of 6 feet from the ground.

B. **Special Yard Setbacks and Right of Way Improvements.**

1. **Special Yard Setbacks.** The design intent is to utilize a Native Landscape in Special Yard Setbacks reminiscent in character of the natural prairies in the Midwest region. The landscape in the right of way as well as the Special Yard Setbacks, contributes to the visual character of the Park. This style of landscape is typified by open expanses of natural grasses and Forbs along with a trees planted in irregularly spaced groupings. Lots adjacent to the Park's dedicated roads shall include the Special Yard Setbacks, but landscaping in Special Yard Setbacks will be installed by the Developer.

These criteria are intended to create overall continuity in this highly visible landscape treatment area. In addition to grass and earth berms, Shade Trees, Native Landscape and Ornamental Trees are to be placed in Special Yard Setbacks within the Lot according to these requirements.

(a) **Earth Berms.** Earth berms shall not exceed 3:1 slope (horizontal to vertical), with at least 2 feet flat on the top. The berms should be rolling and be set at varying distances from the curb. Earth berms shall not unreasonably inhibit the ability to maintain utilities running parallel to and underneath such berms.

(b) **Trees.** Consistent with the Native Landscape concept, one unifying landscape element of the Park's Special Yard Setbacks is the planting of trees in irregularly spaced groupings. At least one Shade Tree of at least 3 inches Caliper shall be planted for each 4,000 square feet, or fraction thereof, of Special Yard Setback when such Special Yard Setback is 88 feet or less. At least one Shade Tree of at least 3 inches Caliper shall be planted for each 6,000 square feet of Special Yard Setback when such Special Yard Setback is more than 88 feet. Trees will be grouped to maintain Vision Clearance Triangles at intersections.

(c) **Maintenance.** All maintenance of the Special Yard Setbacks will be the responsibility of the Property Owners Association.

2. **Right Of Way Improvements.** The landscaping in the right of way contributes to the visual character of the Park. The right of way improvements, including setbacks and medians, will be installed and maintained as specified above in Special Yard Setbacks.

The Landscaped Area in the right of way of publicly dedicated roads internal to the Property shall be landscaped according to the standards for Special Yard Setbacks.

3. **Native Landscape Replacement.** The Village shall not be responsible for re-establishing Native Landscape areas disturbed by any necessary excavations by the Village of public utilities. The Village's financial obligation, if any, for the costs of re-establishing the disturbed Landscaped Area shall be limited to the cost of re-establishing a traditional landscape in such disturbed area but shall not exceed the actual cost of such Native Landscape replacement.

C. **Drainage Easements.**

1. **General.** The Developer has prepared an overall drainage plan for the Park, which indicates proposed drainage easements. This design provides adequate capacity for transmitting storm water in drainage swales or pipes through the total site based on the ultimate development of the Park. However, the drainage easements do not make provision for the retention of storm water on any of the parcels.

These criteria are intended to create overall continuity in the treatment of these surface drainage easements, which are to be installed by the Developer or Owners and maintained by the Property Owners Association.

2. **Form.** The design of drainage swales will consider aesthetics and the requirement of continuing maintenance. Drainage swales will have 3:1 (horizontal to vertical) maximum side slopes except where site constraints necessitate steeper slopes to minimize site disturbance. Where steeper slopes are utilized, such slopes will be stabilized through the use of permanent structural supports of materials having a natural appearance approved by the D.R.C.

3. **Vegetation.** All exposed areas shall be restored with vegetation indigenous to, or exhibiting the general characteristics of those found in the Midwest region, except where engineering constraints necessitate other treatment.

D. **Central Wetlands Area and Conservation Buffer.**

1. **Central Wetlands Area.** The project contains a significant central wetland amenity that has been surveyed and will be expanded pursuant to a permit from the United States Army Corps of Engineers. The Developer will maintain existing surveyed wetlands and establish new wetland areas as required by the United States Army Corps of Engineers in order to create a large contiguous wetland area identified on the Concept Plan as the Central Wetlands Area.

2. **Conservation Buffer.** In order to protect the quality of the Central Wetlands Area, a 50 foot conservation buffer has been established. Native Landscaping will be installed in this area by the Developer to provide a smooth transition between the wetlands and adjacent development. This area will also serve as a natural buffer between landscaped lots and the wetlands to help filter out fertilizers, pesticides, and herbicides. In addition, a maintenance road

will be provided for utility access. The conservation buffer will be maintained by the Property Owners Association.

E. **Development Standards.**

1. **Open Space.** The Native Landscape concept established in the Special Yard Setbacks sets a strong identity for the Park. Individual developments are to enhance that identity through the use of landscape materials and Open Space and may utilize either Native Landscape or other types of landscape or a combination thereof. The following percentages of the Building Lot Area shall be required as Open Space within the Building Lot Area:

Office	15%
Business	10%
Office/Manufacturing	10%
Town Center (A.K.A. Park Center)	10%
Office/Business	15%

All Open Space and Landscaped Open Space requirements contained in Exhibit "O" are superseded by and hereby waived in favor of the Open Space requirements in this Exhibit "E-1".

2. **Tree Planting.** In areas other than Special Yard Setbacks, or right of ways, dedicated park lands and wetlands at least one Tree of at least 8 inches Caliper (either existing or planted) shall be included and replaced as necessary per the following ratios:

(a) In Open Space less than 10,000 square feet, one Tree for each 1,000 square feet, or fraction thereof, of Open Space area.

(b) In Open Space between 10,000 and 100,000 square feet, one Tree for each 1,000 square feet for the first 10,000 square feet plus one Tree for each 2,500 square feet, or fraction thereof, of Open Space area over 10,000 square feet.

(c) In Open Space over 100,000 square feet, one Tree for each 1,000 square feet for the first 10,000 square feet, one Tree for each 2,500 square feet for the next 90,000 square feet plus one Tree for each 5,000 square feet, or fraction thereof, of Open Space area over 100,000 square feet.

An existing or planted Tree which is at least 8 inches Caliper shall be considered as two Trees for purposes of satisfying this subsection. As part of the powers granted in Paragraph F, the Village may, in its sole discretion, permit reductions in the tree planting requirements of this Paragraph E as part of a site plan utilizing, in whole or in part, Native Landscape.

3. **Transition Zones.** Lots not utilizing Native Landscape may be required to have a landscaped transition zone when appropriate in the first 15 feet of Landscaped Area adjacent and contiguous to a Special Yard Setback of 80 feet or less along a single road when such Lot meets all of the following conditions: (a) it contains lineal frontage in excess of 750 feet parallel and contiguous to such Special Yard Setback and road; and (b) it includes continuous Landscaped Area in excess of 20 feet in depth parallel and contiguous to such Special Yard Setback and road for a majority of such lineal frontage. The above requirement for a transition zone can be satisfied by designing the Native Landscape within the transition zone such that it has a relatively curvilinear edge.

4. **Parking Lots.**

(a) **Design Criteria.** The primary landscaping materials used in parking lots shall be Shade Trees. Shrubbery, hedges, Native Landscape and other live planting material may be used to complement the landscaping with Trees but shall not be the sole contribution to the landscaping. Effective use of earth berms and existing topography is also encouraged as a component of landscape plan.

All landscaping which is adjacent to pavement shall be protected with concrete curbs.

(b) **Interior Coverage Requirements.** The number, size, and shape of islands and medians in parking lots shall be at the discretion of the property owner; however, at least 45 square feet of landscaped interior islands or medians shall be provided for each parking space. There shall be one Tree in an interior island or median for every 7 parking spaces.

Islands and medians required in the areas stated above, shall be evenly distributed throughout such parking area subject to adjustment to accommodate existing trees and other natural features so long as the total area requirements for landscaped islands, and medians for the respective parking areas above is satisfied. No tree trunk centerline shall be located closer than 4 feet from the face of a concrete curb.

Landscaped islands and medians in excess of 45 square feet per parking space shall count toward fulfilling the Open Space requirements in Paragraph E.1. above.

(c) **Peripheral Screening.** Parking lots and their parked vehicles shall have Screening from the public street view (excluding sidewalks) and adjoining properties. Public sidewalks running parallel to public streets and located in Special Yard Setbacks or public rights of way shall be either a minimum of twenty (20) feet from any parking lot or Screening shall be provided with a minimum Mature Height of 3 feet.

A landscape strip 10 feet in width shall be located between the parking lot and the adjoining property or Special Yard Setback where such sight lines cannot be obscured (within 2 years of installation) by berms, walls or other landscaping within the Special Yard Setback, right of way or other adjoining property. Such landscape strip shall include either Native Landscape with a Mature Height of 3 feet or one shrub for each 10 square feet of landscape strip. In addition, one Tree, shall be planted for each 400 square feet of landscape strip.

5. **Service Yards, Loading Docks, Refuse Containers and Other Areas.** The visual Screening of certain structures and facilities is an important factor in maintaining the character of the community. Service yards, loading docks, refuse containers and similar areas tend to be unsightly, and shall be Screened from the public street and adjoining properties using a solid wall or landscape material. Service yards, loading docks, refuse containers and similar areas shall not require Screening from similar uses on other properties. In addition, plantings shall be used to interrupt the view from the public street of large expanses of building walls and to conceal above-ground appurtenances. Refuse disposal areas satisfying the requirements of this paragraph shall be deemed to be exempt from the provisions of Condition Number 7 in Exhibit K to this Agreement.

6. **Irrigation.** All required Landscaped Areas which do not utilize Native Landscape shall be irrigated by an underground irrigation system.

7. **Maintenance/Burning.** The Owners shall be responsible for producing, protecting, and maintaining all landscape in healthy and growing conditions, replacing it when necessary, and keeping it free of refuse and debris. Native Landscape may be periodically burned as part of such maintenance. Prior to any such burn, all applicable Village codes, ordinances, rules and regulations shall be satisfied and any other appropriate governmental agency permits shall be obtained.

8. **Detention Basins.** In order to provide appropriate storm water management for the Park, each Lot will have to provide for on-site storm water detention/filtration facilities in accordance with Article 17 of this Agreement.

(a) **Form.** All detention ponds will have 3:1 maximum side slopes (horizontal to vertical). Where site constraints require steeper slopes to minimize site disturbance, these slopes will be stabilized by permanent structural means with materials having a natural appearance.

(b) **Vegetation.** The perimeter of detention ponds shall be restored with hardscape, landscape or a combination thereof.

9. **Building Foundation Planting.** All principal buildings shall have plantings around exposed foundations.

10. **Seeding of Public Rights of Way.** The areas within public rights of way located within portions of the Subject Property which have been developed may be seeded rather than sodded provided a suitable vegetative cover is established (unless the Village, in writing, authorizes another method requested by the Owners or unless the Illinois Department of Transportation or Illinois State Toll Highway Authority requires another method).

11. **Meadow Grasses.** Any portion of the areas surrounding the SMG Home Office Complex which utilizes Native Landscape is deemed exempt from the provisions of Condition Number 6 in Exhibit "O" to this Agreement which restricts meadow grasses in such areas "to a height not to exceed 18" ".

12. **Native Landscape Performance Criteria.** Each site plan submitted to the Village shall include specific performance criteria for Landscape Areas utilizing Native Landscape, which shall include but not be limited to, coverage ratios and inspection schedules.

F. **Deviations.**

As a part of its Site Plan approval process, the Village's Board of Trustees may approve deviations, at the request of the property owner, to any of the Landscape Requirements contained in this Exhibit E-1.