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PRE-ANNEXATION AGREEMENT

THIS PRE-ANNEXATION AGREEMENT (“Agreement”) is made and entered into this _____ day of December, 2009, by and between RP South, L.L.C., an Illinois limited liability company (“Developer” or “Owner”) and the CITY OF O’FALLON (the “City”) a municipal corporation organized and existing under and by virtue of the laws of the State of Illinois by and through its Mayor and City Council (collectively, “**Municipal Authorities**”). The Owner and the Municipal Authorities are sometimes collectively referred to as the “**Parties.**”

RECITALS

A. Owner is the owner of record of a certain parcel of real property situated in St. Clair County, Illinois, which is adjacent to the City and more particularly described in Exhibit “A” attached hereto and made a part hereof (the “Development Parcel”).

B. The Development Parcel consists of approximately 36.14 acres and adjoins, abuts, and is contiguous to the corporate limits of the City and is proposed for a development of property known as Regency Park Corporate Campus.

C. The Development Parcel has not been annexed to any municipality, is currently situated within unincorporated St. Clair County, Illinois.

D. The Development Parcel constitutes territory that is contiguous to and may be annexed to the City, as provided under Section 7-1-1, *et seq.*, of the Illinois Municipal Code, 65 ILCS 5/7-1-1, *et seq.*

E. Developer desires to have the Development Parcel annexed to the City, on the terms and conditions provided herein and to qualify for such benefits or services as such annexation may so entitle it.

F. The Municipal Authorities, after due and careful consideration, have concluded that the annexation of the Development Parcel to the City would further the orderly growth of the City, enable the City to control the development of the Development Parcel, and serve the best interests of the City.

G. Pursuant to the provisions of 65 ILCS 5/11-15.1-1, *et seq.*, a proposed Pre-

Annexation Agreement, in substance and form the same as this Agreement, was submitted to the Municipal Authorities and a public hearing was held thereon pursuant to notice, all as provided by statute and the ordinances of the City.

H. Any fire protection district, library district, and other entity or person entitled to notice prior to annexation of the Development Parcel to the City has been given notice thereof by the City as required by law.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, and in compliance with the ordinances, codes, and regulations of the City in effect as of the date of this Agreement, or as may hereinafter be enacted, subsequently, the parties hereto hereby agree as follows:

PROVISIONS

1. **Statutory Authority.** The parties hereto enter into this Agreement pursuant to and in accordance with the provisions of 65 ILCS 5/11-15.1-1, *et seq.*

2. **Annexation.**

(a) Concurrent with this Agreement, Developer has filed with the City Clerk a Petition for Annexation of the Development Parcel to the City, conditioned on the terms and provisions of this Agreement, which petition has been prepared, executed, and filed in accordance with 65 ILCS 5/7-1-8, and the ordinances and other requirements of the City. A copy of said Petition is attached hereto and made a part hereof as Exhibit "B" and shall be binding on and effective as to all successors and assigns to any portion of the Development Parcel. To the extent that the Parcel or any part thereof is not yet contiguous to the City, Owner agrees to execute a Petition for Annexation in the future as may be required by the City upon the Parcel becoming contiguous to the City boundary.

(b) Developer has filed with the City Clerk a Preliminary Plat of Annexation, which contains an accurate map of the Development Parcel and all of its phases, which is attached hereto and made a part hereof as Exhibit "C" ("Preliminary Plat").

(c) Subject to the terms of this Agreement, the Municipal Authorities shall hereinafter enact an ordinance annexing the Development Parcel to the City ("Annexation Ordinance"), which ordinance shall attach the Preliminary Plat.

3. **Rezoning.** Within a reasonable time after the Effective Date of the Annexation Ordinance as set forth herein, the following requirements shall be met:

(a) Subject to the review and approval process provided in the City's Zoning Ordinance, the City shall adopt an ordinance zoning and classifying the Development Parcel "O-1P" and "B-1P" Planned Unit Development authorizing the phase I office uses as shown on preliminary site plan dated September 29, 2008 on file with the City. The parties acknowledge that prior to the date and execution of this Agreement, such public hearings as are necessary to enable the City lawfully to

grant said zoning classification as to the Development Parcel will have been conducted upon proper notice. The Development may be developed in phases as may be provided in the zoning ordinance, shall be consistent with the City's regulations, ordinances and building and infrastructure design standards, provided further that any development of areas within the Property contrary to the plan or outside the initial phase shall require amendment of the PUD for approval of the specific development proposed.

- (b) Except as may be expressly provided herein, all changes in land use or other activity on the Development Parcel shall be subject to the applicable ordinances and laws authorizing or regulating such change or activity.

4. Developer Improvement Obligations; Dedication of Improvements.

(a) All improvements, except for the sanitary sewer, and right-of-way or fee simple dedication contemplated by this Agreement or as shown on the Final Plat for each phase shall be dedicated to the City or other appropriate utility entity in the form and as reasonably required by the City Attorney.

(b) Nothing contained in this Agreement shall affect the Developer's right to mortgage, encumber, or convey the Development Parcel as a whole or each phase separately to one or several third parties, subject to 65 ILCS 5/11-15.1-4.

(c) The Developer shall construct and dedicate to the City the roadways, easements, public improvements, water lines, and storm sewers as may be required consistent with law and accepted by the City in conjunction with development approvals, provided such requirements bear a rational relationship to development. To the full extent permitted by law, the Development Parcel shall be subject to the applicable laws of the City in effect prior to the annexation contemplated by this Agreement, including the zoning and subdivision laws; provided that prior to annexation, Developer shall be given prior notice and reasonable opportunity to cure any violation prior to enforcement by the City. Nothing herein shall require the City to accept such improvements for maintenance or liability that are not in satisfaction of the City's specifications or that have not been inspected by the City and found to be in acceptable condition.

(d) The Developer shall grant to the City nonexclusive utility easements ("Utility Easements") for maintenance and repair of the aforesaid utilities to be constructed on the Development Parcel and dedicated to the City as shown on the Preliminary Plat of Annexation and/or the Final Plat and as may be required by the City in final improvement plans.

5. **Water Supply.** The City agrees to supply fresh, potable water to the edge of Development Parcel in quantities and pressure sufficient to serve the proposed use of the Development Parcel as shown on the Preliminary Site Plan. So long as City water is available, Developer and Development Parcel shall be required to use water exclusively from City. The Development Parcel shall be subject to applicable service rates and tap fees and other charges of the City. Any change in the use of Development Parcel requested or initiated by the Developer shall be subject to and in compliance with the provisions of the City's ordinances and

regulations, whether prior to or after the effective date of the annexation. The obligations of the City hereunder shall be conditioned on continued material compliance by Developer with this Agreement.

6. Sewers, Drainage and Treatment Facilities.

(a) The Developer contemplates contracting with the Caseyville Sewer District for extension of sanitary sewer service.

(b) The Developer shall use and exercise all reasonable means and facilities to install storm sewer trunk lines, sanitary sewer trunk lines (“Storm Sewers” and “Sanitary Sewers,” respectively) and retention basins sufficient to serve the Development Parcel and the Development. Said lines and basins shall be constructed in conformity with the improvement plans approved by the City and in compliance with applicable City and Caseyville Township ordinances and standards.

7. Roadways/Sidewalks. The Developer shall use and exercise all reasonable means and facilities to construct the roadways, sidewalks, and other required facilities to be located on the Development Parcel all as shown on the Final Site plan and Final improvement plans. Said construction shall be completed in accordance with the City’s Subdivision Ordinance and shall include installation of curbs, gutters, streetlights, sidewalks, and other public improvements required under said Subdivision Ordinance (collectively, “Public Improvements”), except as expressly varied by the City Council.

8. TIF Redevelopment Area. The City agrees to hereinafter establish the Development Parcel as a redevelopment project area and to authorize tax increment allocation financing for the purpose of reimbursing Owner for certain eligible redevelopment project area costs necessary to address undermining impacts and risks on the Parcel subject to all applicable conditions, requirements and procedures of the Tax Increment Allocation and Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq. (“TIF Act”) and further subject to the mutual execution of a separate Development Agreement between the Parties relating to the Development Parcel and applying such conditions and requirements therein prior to eligibility for any reimbursement pursuant to the TIF Act and as a condition of any obligation of the City under this paragraph, including without limitation the adoption of tax increment allocation financing for the Redevelopment Project Area.

9. Annexation Fee. Notwithstanding any other City Ordinance to the contrary, Developer shall only be required to pay the City, a fee of TWO THOUSAND TWO HUNDRED FIFTY DOLLARS (\$2,250.00) per residential unit (“Annexation Fee”) constructed in the Development Parcel as payment to the City intended in part to defray the City’s costs relating to this annexation and in providing services to the Subdivision and services as may benefit the residents of the Subdivision. The Developer shall pay such Annexation Fee for each unit at the time of application for a building permit to build a residential dwelling unit in the Development Parcel. The parties acknowledge that the building permits will be issued County until the date of annexation and by the City thereafter. The payment obligation herein shall survive expiration (but not termination by the City) of the Agreement and shall be a Developer obligation that shall

be deemed to run with the land. Payment of this annexation fee shall be a fundamental condition of any building permit and shall be binding both prior to and after annexation.

10. Miscellaneous.

(a) Notwithstanding any other provision contained herein to the contrary, with respect to the Parcel, this Agreement shall be effective for a term of twenty (20) years from the date hereof, provided that any continuing obligations to the City shall survive any termination or expiration to the extent consistent with 65 ILCS 5/11-15.1-1.

(b) The Development Parcel shall be subject to all laws, codes, ordinances and regulations of the City, now existing or as may hereinafter be amended, enacted or enforced, and nothing herein shall be interpreted to limit the enforceability of such.

(c) This Agreement shall bind the heirs, successors, and assigns of the Developer, the City, the Municipal Authorities, and their successors in office. This Agreement shall inure to the benefit of the parties hereof, their successors, and assigns. This Agreement and the obligations of Developer hereunder shall be a covenant that shall run with the land, shall be a provision of any sale or other contract for transfer of interest in the Development Parcel, and may be recorded.

(d) Nothing herein shall in any way prevent the alienation, encumbrance, or sale of the Development Parcel or any portion thereof, provided that any new owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed. Developer represents that it has not and will not sell the Development Parcel or any portion thereof prior to the recording of this agreement.

(e) Within thirty (30) days after the execution hereof, the text of this Agreement (or a suitable memorandum hereof) shall be recorded at the sole cost and expense of the City in the Office of the Recorder of St. Clair County, Illinois.

(f) It is further agreed that any party to this Agreement, either in law or in equity, by suit, action, mandamus, or other proceeding may enforce or compel the performance of this Agreement, or have other such relief for the breach thereof as may be authorized by law or that by law or in equity is available to them, provided that nothing in this Agreement shall waive the City's sovereign immunity or permit or give rise to an action in damages against the City.

(g) Except for specific enforcement of this Agreement, all claims, loss, damage or other action against the City of any kind arising on or before the effective date of this Agreement are hereby released by execution of this Agreement. This provision shall survive as to all Parties upon the termination or expiration of this Agreement.

(h) It is understood by the Parties hereto that time is of the essence. It is further understood that upon the occurrence of a default of any of the provisions of this Agreement, which default continues for ten (10) days after a notice specifying such default is given the defaulting party, the injured party hereto may in law or in equity, by suit, action, mandamus, or

other proceeding, including specific performance, enforce or compel the performance of this Agreement by such defaulting party.

(i) The undersigned persons, whether signing individually, on behalf of a municipal corporation, or by an attorney-in-fact warrant themselves: (i) to be of lawful age, (ii) to be legally competent to execute this Agreement, (iii) to be fully authorized to execute this Agreement on behalf of themselves or the municipal corporation or other entity indicated below, and (iv) to have signed this Agreement on their own behalf or on behalf of such municipal corporation or other entity as their own free acts and deeds and/or the free acts and deeds of such municipal corporation or other entity after opportunity to consult with legal counsel.

(j) In the event any portion of this Agreement or part thereof shall be deemed invalid, such invalidity of said provision or part thereof shall not affect the validity of any other provision hereof. However, any invalidity of any material section of this Agreement shall, at the option of City, make this entire Agreement void and of no force or effect, whereupon the City may promptly de-annex the Development Parcel from the City and may terminate any City services. Notwithstanding the foregoing, the City shall not terminate water service if the invalidity results from action or challenge taken by a party other than the Developer (or its assignees or parties in privity) and the Developer (1) compensates the City for any damage or lost benefit resulting from the invalidity; (2) takes all action required by the City to retain the property within the City boundaries; and (3) pays for continued service; and (4) continues to materially comply with applicable City requirements. Additionally, the City may terminate this Agreement prior to effective date of the Annexation on written notice to the Owner and Developer if deemed by the City appropriate in the public interest. In such event, the obligations of all parties hereto shall terminate and the Annexation Ordinance shall not be effective.

(k) Unless otherwise stated herein, any notice required or permitted under this Agreement shall be in writing and shall be deemed given when mailed by registered or certified mail, return receipt requested, to the respective parties at their addresses listed below:

If to the City: City of O'Fallon, Illinois
255 S. Lincoln Avenue
O'Fallon, IL 62269
Attention: Planning Director

with a copy to: Mr. Dale Funk, Esq

If to the Owner/Owner: RP South, L.L.C.
1331 Park Plaza Dr., Suite #5
O'Fallon, IL 62269

with a copy to: Lynn T. Goessling
Herzog Crebs LP
515 N. 6th Street, Suite 2400
St. Louis, MO 63101

(1) Nothing in this Agreement shall waive the police powers of the City or preclude the City from enforcing its laws as to the Development Parcel regarding public health, welfare or safety irrespective of any claim of estoppel or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY:

CITY OF O'FALLON, a municipal corporation
County of St. Clair, State of Illinois

ATTEST:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

OWNER:

RP SOUTH, L.L.C., an Illinois limited liability
company

By: _____

Name: _____

Title: _____

LIST OF EXHIBITS

- A. Legal Description of Development Parcel
- B. Petition for Annexation
- C. Preliminary Plat of Annexation

EXHIBIT "A"

DEVELOPMENT PARCEL LEGAL DESCRIPTION

EXHIBIT "B"

PETITION FOR ANNEXATION

TO THE MAYOR AND CITY COUNCIL OF THE CITY OF O'FALLON, ST. CLAIR COUNTY, ILLINOIS

The undersigned hereby respectfully petition to annex to the City of O'Fallon, St. Clair County, Illinois, the territory described in Exhibit A of the Annexation Agreement, and states as follows:

1. The territory hereinbefore described is not within the corporate limits of any municipality.
2. The territory hereinbefore described is contiguous to the City of O'Fallon, St. Clair County, Illinois.
3. There are no electors residing on the territory hereinbefore described.
4. The undersigned is the owner of all land within the territory hereinbefore described, and they have also executed this Petition.
5. This Petition is conditioned on the provisions of a certain Pre-Annexation Agreement ("Agreement") between the City of O'Fallon by and through its Mayor and City Council and the undersigned Petitioner.

WHEREFORE, Petitioner respectfully request that the corporate authorities of the City of St. Clair County, Illinois, annex the territory hereinbefore described to said City in accordance with the provisions of this Petition and in accordance with the law in such case made and provided.

PETITIONER:

DATED: _____

By: _____
Name: _____
Title: _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20__.

Notary Public

My Commission expires:

EXHIBIT "C"

PRELIMINARY PLAT OF ANNEXATION