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**CITY OF BATAVIA
ORDINANCE NO. 02-18**

**AN ORDINANCE GRANTING A CONDITIONAL USE
ALLOWING AN OR & I OFFICE RESEARCH AND LIGHT INDUSTRY
PLANNED DEVELOPMENT
(Johnson Woods, L.L.C.)
(South side of East Wilson Street)**

WHEREAS, a Petition for a Conditional Use as a Planned Development for the real estate legally described as,

LOTS 78 AND 82 IN JOHNSON WOODS, BEING A SUBDIVISION OF SECTION 23, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 24, 2001 AS DOCUMENT 2001K098601, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS

(hereinafter referred to as "Property"), has been filed with the CITY of Batavia, an Illinois municipal corporation ("CITY") by Richard M. Guerard, Applicant for Johnson Woods, L.L.C., (DEVELOPER); and,

WHEREAS, the Batavia Plan Commission has held a public hearing on March 6th, 2002, regarding the said petition in accordance with law; and

WHEREAS, the City Council of the CITY has received the recommendation of the Batavia Plan Commission and has considered same;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS, as follows:

SECTION 1: APPROVAL OF CONDITIONAL USE FOR PLANNED DEVELOPMENT.

Conditional Use for an OR & I Office Research and Light Industry Planned Development is granted for the Property legally described above and shown on attached Exhibit A, subject to the variations, deviations, authorizations and restrictions provided herein.

SECTION 2: DEVELOPMENT OF THE PROPERTY.

It is contemplated that the Property will be developed by DEVELOPER. Regardless of whether Developer or a third party acquires or develops any specific portion of the Property, the development of the Property shall be carried out in general conformity with the development standards hereinafter set forth in this Ordinance and the Preliminary Plans, as hereafter defined.

A. APPROVED PRELIMINARY PLANS.

The following plans for the Property have been reviewed by the Batavia Plan Commission and/or the Community Development Committee of the CITY and are hereby approved by the CITY:

- (i) Site Plan dated 03/19/02 (Exhibit A);
- (ii) Landscape Plan dated 03/06/02 (Exhibit B);
- (iii) Architectural Elevations and Plans (Exhibit C)

The above exhibits hereinafter are sometimes referred to collectively as the "Preliminary Plans". The Plans are approved by the CITY in their entirety and any provision or requirement contained in any ordinance, regulation, directive or procedure of the CITY exclusive of this Ordinance, in conflict with any aspect or element of the Preliminary Plans, shall be deemed varied hereby so as to conform with and permit the development, use, maintenance and operation of the Property in substantial conformity with the Preliminary Plans.

B. SUBSEQUENT APPROVAL OF FINAL PLANS

The following final plans for the Property have not been submitted to or reviewed by the CITY and will be subject to subsequent final approval by the CITY in the manner outlined below:

- (i) Final Planned Development Plan;
- (ii) Preliminary and Final Engineering plans;
- (iii) Final Landscaping and Lighting Plans;
- (iv) Architectural Elevations for all building and structures;
- (v) Freestanding and flush mounted wall sign plans and elevations.

The above plans are sometimes referred to collectively as the "Final Plans Subject to Subsequent Approval". Notwithstanding the definition of a preliminary plan as set forth in the Batavia Municipal Code, as amended from time to time, DEVELOPERS shall be entitled to approval of its "Final Plans Subject to Subsequent Approval" for the Property so long as the same shall substantially conform to the Preliminary Plans for the Property, when approved, and this ordinance.

The CITY shall, when reviewing and approving any Preliminary or Final Plans, apply sound and accepted planning and engineering principles and requirements.

D. ZONING AND LAND USE.

Except as otherwise provided in this Conditional Use Ordinance, the development and use of the Property, as shown by the Preliminary Plan, shall comply with the standards established under the OR & I Office Research and Light Industry District zoning classification as set forth in Title 10 of the Batavia Municipal Code, as amended, and the Subdivision Control Ordinance as amended. If there is any conflict between the regulations of the Batavia Municipal Code, as amended from time to time, and this Conditional Use Ordinance, this Conditional Use Ordinance shall govern. In conjunction therewith, the CITY hereby approves the following standards to be applied to the Property under said zoning classifications.

(i) Uses. Those uses listed as "permitted" within the Batavia Municipal Code relating to OR & I shall constitute permitted uses on the Property, except that the following uses shall be prohibited:

- a) Low-nuisance industrial activities, including, but not limited to, electronic and scientific precision instruments and manufacture, cloth products manufacture, light machinery production and assembly, printing and publishing
- b) Warehouses, storage facilities and motor freight terminals.
- c) Radio, radar, telephone and TV stations and towers.

Further, Lot 82 of said Property shall be limited to use as a stormwater detention facility and open space.

(ii) Signage. DEVELOPER, its grantees, successors and assigns, shall be permitted to construct, operate and maintain temporary and permanent signs upon the various portions of the Property owned or controlled by it in conformity the Municipal Code and as approved with the "Final Plans Subject to Subsequent Approval". Use of neon on building exteriors, or to frame interior windows or portions thereof, shall not be permitted.

E. WALKWAY REQUIREMENTS AND STREET ACCESS

(1) Minimum walkway width shall be six feet (6') clear not including the two feet (2') added for car bumper overhangs, next to parking stalls.

(2) Continuous pedestrian walkways shall be provided between all the buildings' rear entrances.

(3) Pedestrian walkways shall connect the buildings' front entrances with the public sidewalk.

- OK (4) Vehicular access to Wilson Street shall be limited to one driveway per CITY Staff approval of the attached plans.

F. CONSTRUCTION OF BUILDINGS AND APPURTENANCES WITHING THE PROPERTY.

Provided the "Final Plans Subject to Subsequent Approval" have been approved by the CITY, the DEVELOPER and/or its successors and assigns, shall have the right to construct buildings, parking lots, driveways, utility lines and other appropriate improvements within such lot, provided that same comply with the Batavia Municipal Code, or as otherwise provided in this Ordinance. The party seeking to construct such improvements upon the Property, shall first obtain a building permit, and such other required permits therefore, from the CITY in compliance with the applicable provisions of the Batavia Municipal Code, as hereby amended. Any building or buildings constructed on any lot may be constructed in phases and a portion of the building may be occupied if it meets all applicable ordinances for occupancy.

(i) All building entrances shall be designed as prominent features of the facades, and be clearly visible and directly accessible from Wilson Street sidewalk.

(ii) All mechanical equipment, including that located on roofs, and utility meters and valves, is to be screened.

(iii) All Dumpsters are to be enclosed with minimum six feet (6') high opaque walls to match architectural character of surrounding buildings per submittal and approval of final plans.

G. LANDSCAPING.

(i) The Property shall be landscaped in substantial compliance with the Preliminary Landscape Development Plan attached hereto as Exhibit "B" and upon approval of Final Landscape Plan.

(ii) The landscaping for the Property shall be installed prior to the issuance of any occupancy permit for the first structure, weather permitting, or in the event of adverse weather conditions, within sixty (60) days following the commencement of the next successive planting season following issuance of such occupancy permit.

(iii) Parkway trees along Wilson Street shall consist of large shade trees per CITY recommendations regarding species, spaced at maximum intervals of forty-five feet (45'). DEVELOPER shall pay a Tree Planting Fee of \$8.00 per foot of lot frontage along street, or the then-current fee, as part of the costs due with Building Permit.

Trans Enclosure needs Bank?

Need Ample Amount of ELO.

H. EXTERIOR LIGHTING

All exterior pole mounted lighting constructed on the Property shall not exceed a height of twenty feet (20'), measured from the pavement. Said lighting shall be high pressure sodium, (downcast, cut-off type), not to exceed five (5) footcandles. Exterior lights on buildings shall also be high-pressure sodium (downcast, cut-off type) not to exceed five (5) footcandles, and be shielded.

SECTION 4: CHANGES TO THE PLANNED DEVELOPMENT.

The Property shall be developed in substantial compliance with the Preliminary Plans Subject to Subsequent Approval. Changes to the Planned Development hereby approved shall be evaluated and processed as follows:

A. DEFINITIONS.

(1) Major Changes. Major changes shall include any changes to the Planned Development which require an amendment of this Ordinance, or any other change for which a public hearing is required by law or by the Batavia Municipal Code, except as specifically provided herein.

(2) Minor Change. Minor change shall include any change not defined herein as a major change or a technical change.

(3) Technical Change. Technical changes shall include any change to the plans and specifications, which are determined by the Director of Community Development, City Engineer, Director of Public Works, Building Inspector, or Fire Chief, as the case may be, to be:

- (i) in substantial compliance with the Preliminary Plans as approved by the City Council;
- (ii) in compliance with the Batavia Municipal Code, as amended, except as specifically varied herein, and
- (iii) in compliance with good engineering, building or planning practice.

B. PROCEDURES.

(1) Major changes may be approved by the City Council after public hearing and recommendations by the Plan Commission pursuant to submittal and processing of a petition to amend the Conditional Use as a Planned Development and a petition for preliminary plan approval, as set forth in the Batavia Municipal Code.

(2) Minor changes may be approved by the City Council without Plan Commission review or public hearing.

(3) Technical changes may be approved by the Director of Community Development, City Engineer, Director of Public Works, Building Inspector or Fire Chief, as the case may be.

SECTION 5: VARIANCES.

To the extent that any element of the Preliminary Plans, the Final Plans Subject to Subsequent Approval, or this Ordinance, deviate from the standards of the Subdivision Regulations, Zoning Ordinance, or other ordinance of the CITY, of the Batavia Municipal Code, or any amendments thereto, or any other City of Batavia ordinances, appropriate variations to the applicable ordinance shall be deemed to be granted hereby.

SECTION 6: ON-SITE EASEMENTS AND IMPROVEMENTS.

A. EASEMENT REQUIREMENTS.

All landscape, public utility, drainage, and stormwater detention easements to be granted to the CITY upon, under and across portions of the Property shall be established through the recordation, by the then owner or owners of the land affected, of an as-built easement plat, plotting the location of each easement granted based upon the actual location of the utility line, structure or basin as constructed. All such easements required for the Property shall be established as aforesaid prior to the issuance of the first occupancy permit within the Property. Said easements shall substantially conform to the Engineering Plans and the standards for such easements as provided under applicable ordinances of the CITY, unless otherwise provided herein.

B. RESPONSIBILITY TO CONSTRUCT.

Simultaneously with the development of the Property, DEVELOPER shall, for its own interest, pay for the design engineering, construction engineering and installation of all on-site Public Improvements as defined herein and under the Batavia Municipal Code, in compliance with the Plans, unless otherwise provided in this Ordinance. All Public Improvements for each phase of development of the Property shall be included in the guarantee for completion required pursuant to Section 8 of this Ordinance.

SECTION 7: OFF-SITE EASEMENTS AND CONSTRUCTION.

The City will cooperate with Developer in obtaining any off-site easements necessary to develop the Property, including exercise of the City's power of eminent domain. Developer will reimburse the City on a regular basis for any of its costs incurred as a result of this provision; however, the Developer will be directly responsible for payment of any awards or settlements arising from eminent domain proceedings.

SECTION 8: GUARANTY FOR PUBLIC IMPROVEMENTS

After approval of the Final Plat of Planned Development and prior to signature by the Mayor, the DEVELOPER shall present an undertaking by DEVELOPER as secured by an irrevocable letter of credit herein sometimes referred to as the "guarantee for completion", naming the CITY as beneficiary or obligee, or an irrevocable commitment certifying that adequate funds are and will be available at a sound and reputable banking or financial institution authorized to do business in the State of Illinois, all in form and issue by entities acceptable to the CITY. For purposes of this Section 8 only, the term Public Improvements shall include public sewer and water, electric improvements, improvements related to the street rights-of-way, property perimeter sidewalks, and landscaping as contained within the Landscape Plan.

Such irrevocable letter of credit shall run in favor of the CITY, shall indicate there are sufficient funds available for one hundred ten (110%) percent of the estimated cost of the Public Improvements being presented to the CITY for approval, that such funds are held for such purposes only and for no other purposes, shall have a term of not less than one (1) year, and shall be renewed prior to each expiration date thereof in an amount equal to one hundred ten (110%) percent of the estimated cost of all then remaining Public Improvements. Such undertaking, irrevocable letter of credit, escrow account, performance bonds or irrevocable commitment shall be in a form to allow the CITY to procure the funds irrevocably committed to complete the aforescribed land improvements if construction of said Public Improvements is not completed in accordance with this Ordinance or the schedule approved by DEVELOPER and the CITY. The guarantee for completion shall provide that its amount will be reduced from time to time as payments for public improvements approved by the CITY Engineer are made.

Upon completion and acceptance by the City Council of the Public Improvements, the amount of the guarantee for completion shall be reduced by the original amount of the guaranty, so long as a maintenance bond or letter of credit in lieu of a maintenance bond in the amount of 25% of the improvement cost is posted with the City as a one-year guarantee for the performance of any such improvement.

All disbursements for Public Improvements shall be subject to approval of the City, which approval shall not be unreasonable withheld, and which may include the requirement of contractors' affidavits and lien waivers for all such work, or at DEVELOPER'S option, certified copies of contractors' affidavits and lien waivers for all such work certified to by DEVELOPER as true copies of the originals.

SECTION 9: BUILDING CODE.

Except as otherwise provided in Section 10 herein, DEVELOPER shall comply in all respects with the applicable provisions of the Batavia Municipal Code and other City ordinances pertaining to the construction of structures for human occupation in effect at

the time the responsible DEVELOPER, or its successors or assigns, makes application to the CITY for a building permit or permits in connection therewith.

SECTION 10: APPLICABLE ORDINANCES.

Except as otherwise provided in this Conditional Use Ordinance, including but not limited to Section 5, DEVELOPER shall comply in all respects with the applicable provisions of the Batavia Municipal Code, as amended from time to time, and other CITY ordinances pertaining to the development and use of the Property in effect at the time DEVELOPER makes application to the CITY for a building permit or permits in connection with the construction of buildings or structures on the Property, whether or not any of such ordinances are amended after the date hereof. There shall be no time limit to commence or complete construction on the Property from the effective date of this Ordinance, except as provided herein.

SECTION 11: BUILDING PERMITS.

No building permit shall be issued for construction of any structure on the Property until all approvals under Section 2 of this Ordinance are secured and a , except that the City Engineer may allow site grading operations to commence after approval of final engineering plans. Site grading may not commence until erosion controls are in place. Erosion control devices shall be maintained until final acceptance of the project by the City.

The City shall authorize the issuance of building permit prior to the completion of permanent driveways, provided that construction roads are passable for ingress and egress by emergency and inspection vehicles, and a live water hydrant is located within 400' of the structure to be constructed.

SECTION 12: OCCUPANCY PERMITS.

A. No occupancy permit shall be issued for any building on the Property, except construction office facilities, until the storm sewer, water system, electrical distribution system, landscaping, sidewalk, driveways and parking lots through binder course are operational or installed and a certificate of completion has been issued therefore, if applicable, for the phase of development in which such building is located. Occupancy permits may be issued for construction office facilities upon inspection and approval by the Building Inspector of the CITY. In the event weather conditions do not permit landscaping to be completed, the CITY shall accept a letter of credit or performance bond in the amount of the estimated cost of such landscaping in lieu of the completion thereof, and upon the posting of such security the CITY shall issue such occupancy permit.

B. The CITY shall not deny a temporary certificate of occupancy for any space within a building for the sole reason that other areas in the building are either incomplete or under construction.

SECTION 13: RESTORATION OF CITY PROPERTY.

The responsible Developer shall repair and replace, in accordance with the original sizes, standards and topography in a manner satisfactory to the City Engineer, all City property, including public improvements damaged or disturbed by reason of such DEVELOPER'S work in connection with the development of all or a portion of the Property.

SECTION 14: SOIL EROSION.

The responsible DEVELOPER shall adhere to measures for the prevention of soil erosion during the various phases of construction of the development pursuant to the ordinances and any other applicable rules and regulations of the CITY, the "Procedures and Standards for Urban Soil Erosion and Sedimentation Control in Illinois," published in October, 1981, as amended, and the recommended procedures of the Kane-DuPage Soil and Water Conservation District and any other applicable regulatory agency, whichever is more restrictive. Erosion control pertains also to wind borne material. Dust shall be watered as necessary. Construction routes shall be cleaned twice daily or as required.

SECTION 15: PUBLIC SANITARY SEWER REQUIRED.

Upon development, all of the Property shall be served by the CITY'S sanitary sewer system. The construction and maintenance of individual, private on-site sewage treatment systems, including, but not limited to, septic tanks, septic absorption fields, and aerobic digesters shall not be permitted.

SECTION 16: EXISTING WELLS.

Prior to City Council's acceptance of any water mains on the Property, DEVELOPER shall plug existing water wells, if any, on the Property in conformity with the regulations of the Illinois State Water Survey and shall provide documentation to the CITY that such plugging has been accomplished, all in form and substance acceptable to the City Council.

SECTION 17: COMPLIANCE WITH STATE STATUTES.

In the event that any one or more provisions of this Ordinance do not comply with any one or more provisions of the Illinois Compiled Statutes and the governing rules of the Water Pollution Control Board or the Federal or State Environmental Protection Agencies, then the CITY, OWNER, and DEVELOPER, and all of their respective successors and assigns, agree to cooperate to comply with said provisions which shall

include, but not be limited to, the passage of resolutions and ordinances to accomplish such compliance.

SECTION 18: PUBLIC IMPROVEMENTS

Upon approval of final engineering by the City Engineer for a phase of development, but prior to issuance of a construction permit by the Illinois Environmental Protection Agency, DEVELOPER may commence construction of underground public improvements provided no connection of such improvements shall be connected to active utility lines until all appropriate construction and connection permits have been duly issued by the Illinois Environmental Protection Agency for such phase of development.

SECTION 19: CONSTRUCTION TRAILERS.

The CITY agrees that from and after the effective date of this Ordinance, each DEVELOPER'S subcontractors' supply storage trailers may be placed upon such part or parts of the Property as required and approved by the City for development purposes. Said trailers may remain within any phase of development within the Property until all Public Improvements for such phase of development have been completed and accepted by the CITY.

SECTION 20: ACCEPTANCE OF PUBLIC IMPROVEMENTS

Upon satisfactory completion of all water main tests and television inspection of the sanitary sewers, and within fifteen (15) calendar days following the DEVELOPER'S request therefore, the Public Improvements shall be inspected by the CITY and certificates of completion issued therefore by the CITY upon a finding of compliance with the final engineering plans pertaining thereto. The DEVELOPER shall post, or cause the subcontractor constructing such Public Improvements to post, an irrevocable letter of credit or maintenance bond in the amount of twenty-five (25%) percent of the cost of constructing such Public Improvements, to guarantee the workmanship and materials of such Public Improvements for a period of twelve (12) months following the date of issuance of the aforesaid certificate of completion. Upon the expiration of said twelve (12) month guarantee period, the CITY shall make a final inspection of such Public Improvements, and upon the correction by DEVELOPER of such defects or damage as may then exist affecting the same, the CITY shall accept conveyance of such Public Improvements from such DEVELOPER by bill of sale or such other conveyance device as may be approved by the City Attorney. In the event a maintenance bond is posted as aforementioned and expires prior to the issuance of the certificate of acceptance for the applicable Public Improvements by the CITY, the DEVELOPER shall, upon request of the CITY, post an irrevocable letter of credit in the amount of such expired maintenance bond until such certificate of acceptance is thereafter issued.

SECTION 21: PERFORMANCE STANDARDS.

Notwithstanding anything in this Conditional Use Ordinance to the contrary, the only Performance Standards applicable to the Property shall be those standards contained in the Batavia Municipal Code in force and effect as of the date of this Conditional Use Ordinance, except as modified in this Ordinance.

SECTION 22: CONVEYANCES.

Nothing contained in this Ordinance shall be construed to restrict or limit the right of the OWNER and/or DEVELOPER to sell or convey all or any portion of the Property, whether improved or unimproved.

SECTION 23: CONFLICT IN REGULATIONS AND ORDINANCES.

The provisions of this Ordinance shall supersede the provisions of any ordinance, code, or regulation of the CITY which may be in conflict with the provisions of this Ordinance.

SECTION 24: BINDING EFFECT, SUCCESSION IN INTEREST.

This Ordinance shall constitute a covenant running with the land and be binding upon and inure to the benefit of the parties hereto, their successors in interest, assignees, lessees, and upon any successor municipal authorities of the CITY and successor municipalities. Except as otherwise expressly provided herein, upon the conveyance or assignment by OWNER and/or a DEVELOPER of its interest in the Property to any successor, assign, or nominee, OWNER and/or such DEVELOPER, as the case may be, shall be released from any and all further liability or responsibility under this Ordinance, and the CITY shall thereafter look only to the successor, assign, or nominee of OWNER and/or such DEVELOPER as the case may be, concerning the performance of such duties and obligations of OWNER and such DEVELOPER hereby undertaken.

SECTION 25: INCORPORATION OF EXHIBITS.

All exhibits attached to this Ordinance 02-18 are hereby incorporated herein and made a part of the substance hereof.

SECTION 26: This Ordinance 02-18 shall become effective from and after its passage and approval in accordance with law.

PRESENTED to the City Council of the City of Batavia, Kane County, Illinois
this 15th day of April, 2002.

PASSED by the City Council of the City of Batavia, Kane County, Illinois, this
15th day of April, 2002.

APPROVED by the Mayor of the City of Batavia, Kane County, Illinois, this 15th
day of April, 2002.



Mayor Pro Tem

ATTEST



City Clerk

AYES: 14
NAYS: 0
ABSENT: 0