

DEVELOPMENT AGREEMENT

This **DEVELOPMENT AGREEMENT** (the “Agreement”), is made and entered into this _____ day of _____, 2017, A.D., by and between the Village of Romeoville, an Illinois Home Rule Municipal Corporation (hereinafter sometimes referred to as “Village”) and DCT 5 Greenwood LLC, a Delaware limited liability company (hereinafter sometimes referred to as “Developer”). The Village and Developer may sometimes be referred to individually as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, the Developer is the owner or contract purchaser of certain property located in Romeoville, Illinois and legally described in Exhibit A hereto (the “Subject Property”); and

WHEREAS, the Subject Property includes an existing building which Developer intends to demolish and replace with a new industrial building substantially consistent with the concept plan attached as Exhibit B, a copy of which is incorporated herein by reference (the “Concept Plan”); and

WHEREAS, Developer is required to provide stormwater management facilities for the Subject Property as ultimately developed, in compliance with the applicable ordinances of the Village; and

WHEREAS, Developer has represented to the Village that the Subject Property, as contemplated to be developed in Exhibit B, lacks adequate space to permit both the contemplated development and the provision of compliant stormwater management facilities; and

WHEREAS, Village owns certain real property legally described in Exhibit C, a copy of which is attached hereto and incorporated herein by reference (the “Village Property”); and

WHEREAS, the Village is holding the Village Property for future development as and for a Village Public Works Department Facility (the “Future Facility”); and

WHEREAS, the Village Property also includes an existing stormwater management facility that provides stormwater management capacity to the Village Property (the “Existing Pond”), and for the benefit of certain offsite properties (the “Other Tributary Areas” or the

“OTA”), as depicted in Exhibit C-1, a copy of which is attached hereto and incorporated herein; and

WHEREAS, the Village Property, when developed with the Future Facility, will contain sufficient room for an expansion or augmentation of the Existing Pond to create stormwater management facilities having capacity to serve the Village Property and the OTA (the “Future Pond”), with additional available capacity to provide stormwater management for other properties, potentially including the Subject Property as ultimately developed; and

WHEREAS, the Future Pond to be constructed on the Village Property can be constructed in such a manner as to be able to serve the stormwater management needs of the Village Property and Future Facility, together with the stormwater management needs of the Subject Property as ultimately developed consistent with the Concept Plan and the applicable ordinances of the Village; and

WHEREAS, the Village is willing to allow Developer to use the Future Pond to be developed on the Village Property to serve the stormwater management needs of the Subject Property as ultimately developed consistent with the Concept Plan and the applicable ordinances of the Village, provided that Developer (a) constructs the Future Pond at its sole cost and expense, (b) designs and sizes the same to provide sufficient capacity to serve the needs of the future development of the Village Property with the Future Facility, as well as the existing development needs of the OTA, all in accordance with the specifications attached hereto and incorporated herein as Exhibit D (the “Future Pond Specifications” or the “FPS”), and (c) obligates itself and its successors and assigns to pay the proportionate share of all future maintenance costs of such stormwater management facilities allocable to the Subject Property as developed consistent with the Concept Plan and the applicable ordinances of the Village, and all upon such terms and conditions as are more fully hereinafter set forth; and

WHEREAS, the Developer desires to construct and use the Future Pond developed on the Village Property as set forth in the immediately preceding recital; and

WHEREAS, Developer has represented to Village that it is willing to enter into a development agreement containing the terms and conditions hereinabove proposed by Village and containing such other terms and conditions as are hereinafter set forth; and

WHEREAS, pursuant to Article VII, Section 10, of the Constitution of the State of Illinois, which permits Units of Local Government to contract with individuals, associations or

corporations in any manner not prohibited by law or by ordinance, the Village and Developer desire to enter into this Agreement in order to regulate certain matters pertaining to the development of the Subject Property in the manner and upon the terms and conditions contained in this Agreement; and

WHEREAS, the Village acknowledges that this executed Agreement will facilitate the further orderly growth, planning and development of the Village, will increase the tax base of the Village, and will promote and enhance the health, safety and welfare of the Village.

NOW THEREFORE, in consideration of the foregoing premises and in further consideration of the mutual covenants, conditions and agreements herein contained, Developer and Village hereby agree as follows:

SECTION ONE: **Incorporation of Preambles** - The recitals contained in the Preamble hereto are material and are hereby incorporated as a part of this Agreement. Developer and the Village shall fully cooperate with each other in carrying out the terms of this Agreement.

SECTION TWO: **Developer's Stormwater Management Facilities Construction Obligations** - Subject to the Village's review and approval of complete engineering design documents and other required submittals demonstrating compliance with all applicable Village ordinances, the FPS and Village staff recommendations (collectively, the "Design Requirements"), Developer shall, at its sole cost and expense, design and construct the Future Pond, generally consistent with the concept plan therefor included in the Future Pond Specifications attached hereto on Exhibit D (the "Future Pond Concept Plan"). Developer shall design and size the Future Pond so as to provide sufficient stormwater management capacity for the Village Property as developed with the Future Facility, the OTA as presently developed and the Subject Property, as ultimately developed, all in accordance with the Design Requirements. Prior to the commencement of construction of any portion of the Future Pond, the Developer shall obtain or shall require that any of its contractors obtain Worker's Compensation, comprehensive public liability and builder's risk insurance coverage in commercially reasonable amounts, and deliver evidence of such insurance to the Village. Upon completion of the construction of the Future Pond, Developer shall so notify the Village, and the Village shall thereafter inspect the Future Pond, and if then in compliance with the Design Requirements, and upon presentation of documentation from the Developer including but not necessarily limited to

lien waivers, completed pay applications, contractor's sworn statements and the like indicating that all work and materials for the construction of the Future Pond has been fully paid for, the Village shall thereafter approve and accept the Future Pond.

SECTION THREE: Village Obligations Regarding Construction – The Village agrees to employ reasonable and good faith efforts to cooperate with the Developer and to process and timely consider and respond to all applications for the governmental approvals as received, all in accordance with the Village Code and ordinances.

SECTION FOUR: Temporary Construction Easement – Developer may enter into or cause to be entered into one or more construction contracts to complete the Future Pond. Developer, and any person or company with which Developer has entered into construction contracts, shall be permitted to enter the Village Property for the purpose of construction of the Future Pond. This temporary easement shall begin at the time Developer commences construction of the Future Pond and shall expire at such time as the Village shall have accepted the Future Pond pursuant to Section 2 hereof (such date, the "Acceptance Date").

SECTION FIVE: Permanent Easements – On or before the Acceptance Date, the Developer shall prepare a plat depicting a stormwater management easement over that portion of the Village Property improved with the Future Pond for the use and benefit of the Subject Property, the form and substance of which shall be subject to the review and approval of the Village (the "Permanent Easement Area"). Contemporaneously with the acceptance of the Future Pond by the Village, Developer and the Village shall execute an easement for the benefit of the Subject Property with respect to the use of the Permanent Easement Area for stormwater management and drainage purposes by the Developer, its Authorized Users and Developer's successors and assigns (the "Permanent Easement"), which Permanent Easement shall be subject to the review and approval of the Village, and recorded against the Village Property, the Subject Property and the OTA in the offices of the Will County Recorder of Deeds. As used in this Agreement, "Authorized Users" refers to any tenants, members, partners, franchisees, subtenants, concessionaires, contractors and lenders of Developer (or its successors and assigns), and each of their respective agents, consultants, officers, patrons, customers, guests, employees and invitees. The plat depicting the Permanent Easement Area and the Permanent Easement

itself shall also acknowledge the existing use of the Existing Pond by the Village and the OTA, the easement rights of the OTA to the Future Pond based on the current as-developed condition of the OTA, and the rights of the Village to use the Future Pond for the stormwater management needs of the Future Facility.

SECTION SIX: Obligations for Costs of Maintaining Future Pond – From and after the third anniversary of the Acceptance Date, provided that that the Future Pond is then in compliance with the Design Requirements, the Village shall take such actions as may be required from time to time to cause the Future Pond to be maintained in accordance with the ordinances of the Village. Thereafter, on an annual basis, Village shall invoice the Developer or its successors and assigns for an amount equal to sixty percent (60%) of the costs incurred by the Village for maintaining the Future Pond during the preceding year, which invoice shall include reasonable documentation substantiating such costs. Developer shall remit the same to the Village within thirty (30) days of the date of such invoice. The Village shall be responsible for the balance of the annual maintenance costs of the Future Pond. The obligation set forth in this Section 6 shall be included within and be part of the Permanent Easement, and shall be an obligation running with the land and binding all future owners of the Subject Property. Developer acknowledges that under the Design Requirements, it is responsible for all costs of maintenance of the Future Pond prior to the third anniversary of the Acceptance Date, and until such time as the Future Pond has been brought into compliance with the Design Requirements; provided, however, Developer shall not be responsible for any maintenance, repair or replacement costs to the extent arising from (a) the misuse of the Future Pond by the Village or its employees, contractors and invitees or (b) the negligence or willful misconduct of the Village or its employees, contractors and invitees (collectively, “Village Repairs”), it being understood that the Village shall be responsible for either performing such Village Repairs or reimbursing Developer for same.

SECTION SEVEN: Tree Replacement Requirements; Developer’s Engineering and Grading Obligations for Future Village Animal Control Facility - Subject to the Village’s review and approval of complete engineering design documents and other required submittals demonstrating compliance with all applicable Village ordinances, Developer, at its sole cost and expense, shall prepare all engineering design documents and other required submittals necessary

for the (a) grading of a portion of the Village Property to serve as a site for the construction of a future Village animal control facility (“Future Village Animal Control Facility”), such portion of the Village Property being described and depicted in Exhibit E, a copy of which is attached hereto and incorporated herein by reference and (b) installation of all required utilities to serve the Future Village Animal Control Facility. Thereafter, Developer shall at its sole cost and expense perform all grading work as reflected in the aforementioned engineering design documents and other required submittals as the same are approved by the Village necessary to the Village’s future development of the Future Village Animal Control Facility, provided, however, that beyond the performance of such grading work, Developer shall have no other responsibilities or obligations relative to the construction and development of the Future Village Animal Control Facility, including but not limited to the installation of the utilities to serve the Future Village Animal Control Facility. Upon completion of the construction of the grading of the Future Village Animal Control Facility, Developer shall so notify the Village, and the Village shall thereafter inspect the grading of the Future Animal Control Facility, and if then in compliance with the Design Requirements, and upon presentation of documentation from the Developer including but not necessarily limited to lien waivers, completed pay applications, contractor’s sworn statements and the like indicating that all work and materials for the grading of the Future Village Animal Control Facility has been fully paid for, the Village shall thereafter approve and accept the Future Village Animal Control Facility, which acceptance shall serve as a waiver of the otherwise applicable tree replacements obligations of the Village Code of Ordinances applicable to Developer’s development of the Subject Property, whereupon Developer shall be released from its obligations under this Section 7. Developer’s insurance obligations under Section 2 of this Agreement shall likewise be applicable to Developer’s performance of the grading of the portion of the Village Property intended for the Future Village Animal Control Facility, and the temporary construction easement provided for in Section 4 of this Agreement shall likewise extend to Developer’s performance of the grading work for the site for the Future Village Animal Control Facility, and shall expire upon the later of the Acceptance Date and the Village’s acceptance of the grading work for the Future Village Animal Control Facility.

SECTION EIGHT: Acceptance of Future Pond and Grading of Future Village Animal Control Facility Site – Developer acknowledges that the Village’s acceptance of the

Future Pond pursuant to Section 2 of this Agreement and the Village's acceptance of the grading work for the Future Village Animal Control Facility shall be conditions to the Village's obligations to issue a certificate of occupancy for any building constructed by Developer on the Subject Property.

SECTION NINE: Village's Fees and Expenses - From and after the effective date of this Agreement, and upon demand by Village made by and through its President, Developer from time to time shall promptly reimburse Village for all reasonable expenses and costs incurred by Village in the administration of this Agreement, including engineering fees, attorneys' fees and out-of-pocket expenses involving various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents required hereunder, the negotiation and preparation of letters of credit as security for the completion of the Future Pond and other public improvements required hereunder or under the applicable ordinances of the Village, and the enforcement of this Agreement or any applicable ordinances of the Village by any administrative proceedings under the ordinances of the Village, or under any state statute or by any court action, including but not limited to prosecutions for violation of this Agreement or any such ordinances. The provision of this Section shall survive any termination or expiration of this Agreement or any provision thereof.

SECTION TEN: General Provisions

A. Interest in Subject Property: Developer represents and warrants to the Village that Developer is the owner of the Subject Property, and that it holds sole legal and/or sole equitable title to the Subject Property.

B. No Waiver or Relinquishment of Right to Enforce Agreement: The failure of any party to this Agreement to insist upon strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's rights, to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect. No waiver by the Village shall be valid or binding on the Village unless it is in writing signed by the Village and only to the extent therein set forth.

C. Remedies: Unless expressly provided otherwise herein, any rights and remedies of the parties to enforce this Agreement shall be cumulative and concurrent and shall include all rights and remedies available at law or in equity, which may be pursued singly, successively or together, at the sole and absolute discretion of either party and may be exercised at any time and as often as occasion therefor shall arise.

D. Other Ordinances, Codes, Rules, Regulations, Resolutions and Applicable Law: Nothing herein contained is intended to relieve Developer of its obligations under the ordinances, codes, rules, regulations, and/or resolutions of the Village of Romeoville, except as expressly set forth herein, and all such ordinances, codes, rules, regulations, and/or resolutions shall be deemed to apply to Developer and the Subject Property except as expressly modified by this Agreement. In addition, wherever this Agreement provides that a particular ordinance, code, rule, regulation or resolution is applicable, said provisions shall also automatically include any other applicable laws and any amendments thereto, except as expressly set forth in this Agreement.

E. Singular and Plural: Wherever appropriate in this Agreement, the singular shall include the plural, and the plural shall include the singular.

F. Section Headings and Subheadings: All section headings or other headings in this Agreement are for the general aid of the reader and shall not limit the plain meaning or applicability of any of the provisions thereunder whether covered by or relevant to such heading or not.

G. Recording: All ordinances, plats, and any other agreements and/or documents required or contemplated hereby shall be recorded by and at the sole cost and expense of the Developer.

H. Developer's Construction Activities: The Developer agrees to defend, indemnify and hold the Village harmless in accordance with Section 10.I hereof from any and all claims which may arise out of its construction activities on the Subject Property, the Village Property, or upon any easements or rights of way upon or adjacent thereto, except those which (i) are conducted by the Village or the Village's employees or agents or (ii) arise from

the negligence or willful misconduct of the Village or the Village's employees or agents, from which the Village agrees to defend and hold Developer harmless. The provisions of this Section 10.H. shall survive any expiration or termination of this Agreement or any provision thereof.

I. Indemnification: In the event that, as a result of this Agreement, or actions taken as required hereunder, the Village is made a party defendant in any litigation, arbitration or other proceeding other than (i) litigation, arbitration or any other proceeding between the Developer and the Village, (ii) litigation, arbitration or any other proceeding between the Village, Developer and another municipality or (iii) matters arising from the negligence or willful misconduct of the Village or its employees, contractors or invitees, Developer agrees to defend, indemnify and hold harmless the Village, its president, trustees, officers, and agents thereof, individually and collectively, from any suits and from any claims, demands, setoffs or other actions to the extent arising therefrom (and not arising from the negligence or willful misconduct of the Village or its employees, contractors or invitees). The obligation of the Developer hereunder shall include and extend to payment of reasonable attorneys' fees for the representation of the Village and its said officers and agents in such litigation and shall include expenses, court costs and fees; it being understood that the Village shall have the right to employ all such attorneys to represent the Village and its officers and agents in such litigation. Developer shall have the right under this Section 10.I. to request that the Village appeal to courts of appellate jurisdiction any judgment taken against the Village or its officers or agents in this respect, and the Village shall join in any such appeal taken by the Developer. The provisions of this Section 10.I. shall survive any expiration or termination of this Agreement or any provision thereof.

J. Public Improvements: Unless otherwise provided herein, the construction and installation of all public improvements shall conform to and be in compliance with the Village ordinances then in effect at the time of the construction and installation of the same.

K. Actions by Parties/Right to Cure: In the event of an alleged default on all or any part of this Agreement, prior to and as a condition of instituting legal proceedings, the non-defaulting party shall give the defaulting party specific written notice of such default, in the

manner provided herein. The alleged defaulting party shall have thirty (30) days to cure said default. If the defaulting party does not cure said default during the thirty (30) day period, the non-defaulting party may take any and all steps necessary to address such default, including, but not limited to, instituting any necessary legal action. Developer shall not have a right to recover a judgment for monetary damages against any elected or appointed official of the Village for any breach of any of the terms of this Agreement. The Village reserves the right to maintain an action to recover damages or any sums which Developer has agreed to pay pursuant to this Agreement and which have become due and remain unpaid. In the event the Village maintains such an action and judgment is entered in favor of the Village or the Village accepts a settlement, then the Village is entitled to repayment of its reasonable attorneys' fees for prosecuting said action.

L. No Personal Liability of Corporate Authorities: The parties acknowledge and agree that the individuals who are members of the group constituting the corporate authorities of the Village are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.

M. Notices: Notices or other writings which any party is required to or may wish to serve upon any other party in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Village:

Village of Romeoville
1050 W. Romeo Road
Romeoville, IL 60446
Attention: Village Manager

with a copy to:

Richard E. Vogel
2801 Black Road 2d Floor
Joliet, IL 60435

If to the Developer:

DCT 5 Greenwood LLC
c/o DCT Industrial Trust
555 17th Street, Suite 3700
Denver, CO 80202
Attn: Legal Department

with a copy to:

DCT 5 Greenwood LLC
c/o DCT Industrial Trust
2215 York Road, Suite 405
Oak Brook, Illinois 60523
Attn: J. Knigge

or to such other address as any party may from time to time designate in a written notice to the other party.

N. Amendments: This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Developer and the Village relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them. In the event such amendment applies only to a portion of the Subject Property, then only the owners of the portion of the Subject Property proposed to be affected by such amendment shall be required to consent to and execute such amendment.

O. Invalidity of any Provision: If any provision, clause, word or designation of this Agreement is held to be invalid by any court of competent jurisdiction, such provision, clause, word or designation shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any other provision, clause, word or designation contained herein.

T. Survival: The agreements contained herein shall survive the development of the Subject Property, and shall not be merged or expunged by the development of the Subject Property or any part thereof.

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

Village:

Attest:

VILLAGE OF ROMEOVILLE,

An Illinois Municipal Corporation

By: _____

Name: _____

By: _____

Its: Village Clerk

Name: _____

Its: Village President

Dated: _____

Dated: _____

Developer:

DCT 5 GREENWOOD LLC,

a Delaware limited liability company

By: DCT Industrial Operating Partnership
LP, a Delaware limited partnership, its
Sole Member

By: DCT Industrial Trust Inc., a Maryland
corporation, its General Partner

By: _____

Name: _____

Its: _____

Dated: _____

EXHIBIT A—LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

THAT PART OF BLOCK 5 IN HAMPTON PARK INDUSTRIAL DISTRICT, A SUBDIVISION OF A PORTION OF THE SOUTH HALF OF SECTION 27, AND A PORTION OF THE NORTH HALF OF SECTION 34, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF, RECORDED JUNE 28, 1960 AS DOCUMENT NO. 906784, IN PLAT BOOK 32, PAGE 68, ALL IN DUPAGE TOWNSHIP, WILL COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTHERLY LINE OF SAID BLOCK 5 THAT IS 200.03 FEET EASTERLY OF THE NORTHWEST CORNER THEREOF, SAID POINT ALSO BEING THE NORTHEASTERLY CORNER OF THE PROPERTY CONVEYED BY DEED RECORDED JUNE 21, 1965 AS DOCUMENT NO. R65-1489, THENCE NORTH 89 DEGREES 00 MINUTES 50 SECONDS EAST ALONG THE SAID NORTHERLY LINE OF BLOCK 5, 882.18 FEET TO THE NORTHEASTERLY CORNER THEREOF, THENCE SOUTH 0 DEGREES 19 MINUTES 15 SECONDS WEST ALONG THE EASTERLY LINE OF SAID BLOCK 5, 400.00 FEET TO THE SOUTHEASTERLY CORNER THEREOF, THENCE SOUTH 89 DEGREES 18 MINUTES 50 SECONDS WEST ALONG THE SOUTHERLY LINE OF SAID BLOCK 5, 886.39 FEET TO THE SOUTHEASTERLY CORNER OF THE PROPERTY CONVEYED BY DEED RECORDED DECEMBER 29, 1961 AS DOCUMENT NO. 946903, THENCE NORTH 0 DEGREES 56 MINUTES 40 SECONDS EAST ALONG THE EASTERLY LINE OF THE SAID PROPERTY CONVEYED BY DOCUMENT NO. 946903 AND R65-1489, 395.48 FEET TO THE POINT OF BEGINNING, ALL IN WILL COUNTY, ILLINOIS.

PINS: 12-02-34-111-007-0000; 12-02-34-111-006-0000

EXHIBIT B—CONCEPT PLAN

EXHIBIT C—LEGAL DESCRIPTION OF VILLAGE PROPERTY

LOTS 19, 22, AND 23 IN ROMEOVILLE COMMERCIAL PARK UNIT TWO, BEING A SUBDIVISION OF PART OF SECTION 34, IN TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED SEPTEMBER 18, 1997 AS DOCUMENT NUMBER R97-081160, IN WILL COUNTY, ILLINOIS.

**EXHIBIT C-1—OTHER TRIBUTARY AREAS”OTA” SERVED BY EXISTING
VILLAGE POND**

EXHIBIT D—FUTURE POND SPECIFICATIONS AND FUTURE POND CONCEPT
PLAN

**EXHIBIT E—DEPICTION/DESCRIPTION OF PORTION OF VILLAGE PROPERTY
TO BE GRADED FOR DEVELOPMENT OF FUTURE VILLAGE ANIMAL CONTROL
FACILITY**