

**RESOLUTION: 2023-R- 2
ORDINANCE: UDO - 83
AN ORDINANCE AMENDING THE
DEKALB COUNTY UNIFIED DEVELOPMENT ORDINANCE**

WHEREAS, The General Assembly of the State of Indiana granted powers to the counties to adopt unified development ordinances for their jurisdiction according to IC 36-7-4-600 series; and

WHEREAS, The County of DeKalb, Indiana adopted the DeKalb County Unified Development Ordinance which became effective on January 1, 2009, and has had subsequent amendments to the DeKalb County Unified Development Ordinance; and

WHEREAS, The General Assembly of the State of Indiana granted powers to counties to amend the text of an adopted unified development ordinance according to IC 36-7-4-602 (b), and Section 9.05 of the DeKalb County Unified Development Ordinance allows for the amendment of said Ordinance; and

WHEREAS, The DeKalb County Plan Commission held a public hearing on February 15, 2023, on the proposed textual amendments to the DeKalb County Unified Development Ordinance regarding revisions to the Commercial Solar Energy Systems (CSES) Overlay District, Article 3, Section 3.09-3.13 and all other related sections, if applicable;

WHEREAS, The DeKalb County Plan Commission did send an unfavorable recommendation for the text amendments to the DeKalb County Board of Commissioners; and

WHEREAS, The DeKalb County Board of Commissioners believes there is merit in amending the Ordinance, in order to promote the public health, safety, comfort, morals, convenience and general welfare of the community; now therefore, be it

ORDAINED by the DeKalb County Board of Commissioners of DeKalb County, Indiana, as follows:

SECTION 1: That the DeKalb County unified Development Ordinance be amended according to the amendments, as follows:

ORDINANCE SECTION: Article 3: Overlay Districts

PROPOSED LANGUAGE CHANGE:

Commercial Solar Energy Systems Overlay (CSESO) District

3.09 CSESO District Intent, Effect on Uses and Development Standards

District Intent: The Commercial Solar Energy Systems Overlay District is intended to establish standards for the safety and compatibility for the occupants of the land in the immediate vicinity of a Commercial Solar Energy System (Solar Farm) by setting development standards that supplement or supersede the underlying Zoning District. This overlay district does not regulate small scale, private solar panels on residential or agricultural land and/or structures that is not sold commercially to a utility but rather is used for personal energy consumption.



Effect on Uses: The permitted uses and special exception uses within the Commercial Solar Energy Systems Overlay District shall be those of the underlying zoning district with the addition of the following uses:

- Commercial Solar Energy System (CSES)

Development Standards: The development standards within the Commercial Solar Energy Systems Overlay (CSESO) District shall be those of the underlying zoning district in addition to the standards listed in Section 3.13: Additional Development Standards.

3.10 Applicability: The following requirements apply to all land within the Commercial Solar Energy Systems Overlay District, as defined in Section 3.12: Establishment of Commercial Solar Energy Systems Area. No applicant shall construct, operate, locate or enlarge a Commercial Solar Energy System within DeKalb County without first obtaining approval and must fully comply with the provisions of this ordinance.

3.11 Conflict with other Ordinances: Nothing in this Commercial Solar Energy Systems Overlay (CSESO) District shall preempt other applicable state and federal laws or regulations. This ordinance and the regulations contained within shall not interfere with, abrogate or annul any other ordinance, rule or regulation, statute or provision of law. In the event that any provision of the regulations contained within this ordinance impose restrictions different from other ordinances, rules or regulations, statutes or provisions of the law, then the provisions that are more restrictive and/or impose a higher standard shall govern Commercial Solar Energy Systems.

3.12 Establishment of the Commercial Solar Energy Systems Area: This Commercial Solar Energy Systems Overlay District provides for the implementation of commercial solar energy systems, which convert the power of the sun into the generation of electricity. Commercial Solar Energy Systems Overlay District shall be for areas in the County where solar power is converted into energy and sold for commercial purposes to a utility. These areas, once approved by the Plan Commission & adopted by the County Commissioners, will be mapped by the County's GIS division based off the maps and information provided by the applicant. The boundaries for the Commercial Solar Energy Systems Overlay (CSESO) District shall be shown on the official Zoning Map as a hatched, textured and/or colored pattern and noted on the map as CSESO. The total area in DeKalb County designated as a CSESO District shall not exceed 6,000 acres of owned or leased parcels.

3.13 Additional Development Standards

- A. Base Zoning: To qualify for the CSESO, the base zoning shall be any zoning district, with the exception of OP (Open Space and Parks).
- B. Approval Process (Each process below requires a Public Hearing but may be held during the same meeting):
 - a. Applicant files for Commercial Solar Energy Systems Overlay (CSESO) District
 - i. Plan Commission Public Hearing with Recommendation to County Commissioners (favorable, non-favorable, no recommendation)
 - ii. County Commissioners decision (adopt, reject or amend proposal)
 - ~~iii. Development Plan Approval~~
 - b. Applicant files for Development Plan
 - i. In addition to those requirements in Section 9.08, the following items shall be required, reviewed and approved by the County Technical Review Group and the Plan Commission and shall not receive waivers:
 - a. Economic Development Agreement
 - b. Road Usage & Repair Agreement
 - c. Traffic Management Plan
 - d. Decommissioning & Site Restoration Plan
 - e. Drainage Plan as approved by the Drainage Board
 - f. Storm Water & Erosion Control Plan as approved by the Soil Water Conservation District and Indiana Department of Environmental Management.

- g. Visual Buffer, Vegetation/Landscape Plan & Setback Plan
 - h. Site Plan
 - i. Panel Location Plan
 - j. Fire Protection Plan approved by the local Fire Department or Fire District
- c. If a Development Plan has not received approval after a period of 3 years from the date the properties were approved to be part of the Overlay District, the properties shall be removed from the Overlay District.
 - d. If after a period of 2 years from the Development Plan Approval the project has not begun construction, the property located within the overlay district shall be removed from the Overlay District. The Zoning Administrator shall approve an extension of 1 year, if requested by the CSES developer in writing.
- C. Findings of Fact for Overlay District:
- a. CSES Overlay District Request: The Plan Commission shall make written findings concerning the recommendation for the project area to be included in the Overlay District after a public hearing. The commission may send a recommendation to the County Commissioners upon paying reasonable regard to:
 - i. The Comprehensive Plan;
 - ii. Current conditions and character of structures and uses in the underlying zoning district;
 - iii. The most desirable use for which the land is adapted;
 - iv. The conservation of property values throughout the jurisdiction; and
 - v. Responsible development and growth.
 - b. Development Plan: The Plan Commission shall make written findings concerning each decision to approve or disapprove a Development Plan after a public hearing. The commission may approve a development plan upon finding that:
 - i. The development plan complies with applicable standards of the underlying district in which the project area is located.
 - ii. The development plan complies with applicable provisions of the Unified Development Ordinance.
 - iii. The development plan complies with all applicable provisions of the overlay district including other applicable overlay district(s) in which the project area is located.
 - iv. The proposed development is appropriate to the site and its surroundings.
 - v. The proposed development is consistent with the DeKalb County Comprehensive Plan.
- D. Submittal Requirement:
- a. All CSES will be required to submit a complete Development Plan (Section 9.08) for Plan Commission review no less than ninety (90) days prior to public hearing.
- E. Waivers:
- a. The Plan Commission shall hear the request for waivers of standards only within this section during the Development Plan public hearing.
- F. Decommissioning:
- a. A project operator may not install or locate a CSES project unless the project operator submits as part of the Development Plan the Decommissioning and Site Restoration Plan including the recycling of as much of the solar panels and other equipment as reasonably possible, posts a surety bond ~~or equivalent means of surety acceptable to the Zoning Administrator, Plan Commission, County Commissioners, and County Attorney, including a bond or irrevocable letter of credit~~ and also a liability insurance policy naming DeKalb County as an additional insured as set forth in 3.13 ~~F~~ F(d) below.
 - b. A Surety Bond ~~or irrevocable letter of credit~~ must be equal to ~~115%~~ 125% of the decommissioning costs included in the Development Plan as calculated by a third party licensed or registered engineer or professional with suitable experience in the decommissioning of CSES, as agreed upon by project operator, Zoning Administrator & County Commissioners.
 - c. Bond ~~or irrevocable letter of credit~~ must include allowing the County to recuperate from the bond the costs that incur to the extent the County takes part in the decommissioning of the CSES,

updated by the Project Operator every five (5) years and adjusted as necessary to ensure sufficient funds are available to decommission the project. Bond ~~or irrevocable letter of credit~~ adjustment must be submitted to the Zoning Administrator.

- d. At the time after the decommissioning provisions have been filed with the Zoning Administrator and for the entire life of the CSES facility, the project operator shall:
 - i. Keep standard liability insurance with coverages in an amount not less than \$2,000,000.00 per person and ~~\$500,000.00~~ \$1,000,000.00 per property damage occurrence, with \$5,000,00.00 in aggregate protection, naming DeKalb County, Indiana, a municipal body politic by and through its Board of County Commissioners as an additional insured, and
 - ii. Pay premiums on such insurance policies as they become due and provide the Zoning Administrator with written proof of such insurance coverage annually and as the Zoning Administrator may reasonably request, and
 - iii. Such policies of insurance shall be carried with a company or companies approved by the Zoning Administrator and legally authorized by the State of Indiana to engage in such business, and shall provide that the insurer may not cancel or materially change coverage without at least thirty (30) days prior written notice to the Zoning Administrator.
- e. The project operator or owner shall not enter into any settlement of any insurance claim covered under the foregoing insurance policy or policies without the written consent of the Zoning Administrator to ensure that DeKalb County is protected.
- f. Change in CSES Operator or Owner:
 - i. The new operator or owner shall agree to any and all provisions of any and all prior owner requirements, including the bond or irrevocable letter of credit, and shall furnish the Zoning Administrator with a copy of the transfer or new bond or irrevocable letter of credit satisfactory to the Zoning Administrator before commencing business.
 - ii. The prior operator or owner shall remain liable until being formally released by the Plan Commission.
 - iii. Release of liability by the prior operator or owner by the Plan Commission shall only be approved when the new operator or owner provides a new bond or irrevocable letter of credit satisfactory to the Plan Commission.
- g. Project operator must provide to the Zoning Administrator a written notice of the project operator's intent to decommission a CSES no later than sixty (60) days before discontinuation of the facility.
 - i. All solar panels, structures, foundations, roads, gravel areas, cables and all product, materials or other items associated with the CSES project shall be removed. A final inspection of the CSES property by the Zoning Administrator shall allow for any and all bonds to be released upon written approval of the full decommissioning.
 - ii. The ground shall be restored to a condition reasonably similar to its condition before the start of construction.
 - iii. Decommissioning must be complete within 1 year of the start date, with the allowance of no more than a 6-month extension by the Zoning Administrator. If necessary, the Zoning Administrator, Plan Commission, County Surveyor, County Commissioners, and/or other County agencies as needed may engage with qualified contractors to:
 - i. Enter the site
 - ii. Remove CSES project assets
 - iii. Sell assets removed
 - iv. Remediate the site
 - v. May include proceedings to recover assets.

G. Abandonment

- a. A CSES is considered abandoned three hundred and sixty-five (365) days after the date on which the CSES last generated electricity.

- b. In the event of a natural disaster, flood, tornado or any other natural disaster including an act of God, war, civil strife, a terrorist attack or similar unforeseen event under which the project operator has no control.
- c. CSES operator must submit a letter of intent for decommission in writing to the Plan Commission.
- d. Once a CSES is considered abandoned, decommissioning must follow 3.13 F(g) (i, ii, iii).

H. Setbacks:

- a. Shall be measured to the edge of the CSES project area.
- b. Participating Land Owners:
 - i. Setbacks from a participating property owner's lease line: Shall be at the UDO minimum Development Standards per the underlying Zoning District when a Primary Structure is present on the parcel.
 - ii. Setbacks on same ownership parcels: Shall be at the UDO minimum Development Standards per the underlying Zoning District but a Recorded Commitment to Combine Parcels may allow the development to cross a same ownership property line.
 - 1. A commitment shall be reviewed and approved at the public hearing for the Development Plan by the Plan Commission. Once approved, the Commitment shall be recorded in the Office of the DeKalb County Recorder and a copy must be given to the Zoning Administrator for the file.
 - 2. The Recorded Commitment to Combine Parcels can only be nullified when the CSES is no longer in use and has been fully decommissioned.
 - iii. Setbacks from neighboring, different ownership parcels or lease areas that are both participating land owners and are part of the CSES lease area shall be zero (0) feet.

~~e. Non-Participating Land Owners:~~

- ~~i. Setbacks from Non-Participating Land Owner for Single Family Residence: The CSES shall be at least 400 feet from the foundation of the primary structure of a non-participating, pre-existing residential dwelling, as measured at the foundation to the edge of the CSES, including across a roadway if applicable.~~
- ~~ii. Setbacks from Non-Participating Land Owner for a church, school or commercial business: The CSES shall be at least 200 feet from the foundation of the primary structure of a non-participating, pre-existing church, school or commercial business, as measured at the foundation to the edge of the CSES panel, including across a roadway if applicable.~~
- ~~iii. Setbacks may be reduced to 200 feet if a 30-foot wide landscape buffer that completely screens the solar panels from view of the non-participating property owner is utilized.~~

c. Non-Participating Land Owners:

- i. Setbacks from Adjacent, Non-Participating Land Owners with Pre-Existing Residential Dwelling and Schools and Churches:
 - a. If on one side of property: CSES solar panels shall be at least 400 feet with a 30-foot-wide landscape buffer from the foundation of the primary structure as measured at the foundation to the edge of the CSES solar panels. Anything less than 600 feet requires a buffer.
 - b. If on two sides of the property: the CSES solar panels shall be at least 600 feet from the foundation of the primary structure as measured at the foundation to the edge of the CSES solar panels. No landscape buffer required.
 - c. If on three sides of the property: the CSES solar panels shall be at least 800 feet from the foundation of the primary structure as measured at the foundation to the edge of the CSES solar panels. No landscape buffer required.
 - d. If on all sides of the property: the CSES solar panels shall be at least 1000 feet including across the road from the foundation of the primary structure as

- measured at the foundation to the edge of the CSES solar panels. No landscape buffer required.
- e. By written request from an adjacent, non-participating land owner with a pre-existing residential dwelling the setbacks may be reduced with a signed agreement between the CSES operator and non-participating land owner.
 - i. The CSES owner shall notify each adjacent, non-participating land owner with a pre-existing residential dwelling by certified mail of where to submit the written request and allow a minimum of 30 days from the date of certified mailing for written requests from adjacent, non-participating land owners to be received. Proof of the agreed upon request must be submitted to the Plan Commission as part of the Development Plan.
 - f. Setbacks from Adjacent, Non-Participating Land Owners of Commercial and Industrial Businesses: The CSES shall be at least 200 feet from the foundation of the primary structure of a non-participating, pre-existing commercial or industrial business, as measured at the foundation to the edge of the CSES panel, including across a roadway if applicable. No landscape buffer is required.
- d. CSES Owned or Leased Property:
 - i. All components of the CSES facility shall be at the UDO minimum Development Standards per the underlying Zoning District. If a setback mentioned in 3.13F is more than this standard, the greater of the 2 setbacks shall be used.
 - ii. Any equipment that create a potentially questionable sound level during normal operation shall meet the setback requirement of a non-participating, pre-existing residential dwelling, church, school or commercial business.
 - e. Exemptions to setback regulations for CSES Facility:
 - i. Driveways, access roads, internal drives, landscaping, poles, wires necessary to connect the facility to an electric utility or between properties.
 - f. Setback Plan:
 - i. A Setback Plan shall address the size of the setbacks from non-participating property owners, the size and placement of required landscape buffers, fence location and maintenance responsibility.
 - ii. These items shall be addressed for all setbacks between the CSES Development & all adjacent non-participating properties.
- I. Height Restrictions:
 - a. No part of a solar panel shall exceed ~~18~~ 12 feet in height when oriented at the maximum tilt height.
 - J. Visual Buffer & Landscaping:
 - a. Existing natural woods on a participating land owner property shall remain in its natural state if abutting a non-participating land owner, except as otherwise exempted by Indiana Code 36-7-4-1103.
 - b. Other landscape buffering may be required that may include berms and landscape material during Development Plan Approval by the Plan Commission.
 - c. Landscape buffers may include dirt berms, privacy fences and live plantings, unless otherwise required in this Ordinance. Berms shall be at a 6:1 ratio of berm height to landscape width to achieve a reasonable visual buffer. Berms shall also be planted to prevent soil erosion.
 - d. The landscape buffer will be considered in compliance when:
 - i. The buffer must run the length of the adjacent, non-participating property line contiguous to the CSES; and
 - e. The CSES owner has no responsibility to screen panels from view across property not owned by a non-participating property owner.

- f. All buffer screening requirements of 3.13 H(c) and 3.13 J(d) and as required by the Plan Commission must be met prior to issuance of Certificate of Occupancy.

K. Fences:

- a. Location: Fences are required around the perimeter of a CSES project area and are not subject to setback requirements except as noted below.
 - i. Fences shall not encroach on an existing right-of-way line along roadways. Any fence constructed forward of the proposed right-of-way line as noted in the Thoroughfare Plan shall be moved at the CSES Operator's expense if instructed to do so by the County Highway Superintendent.
 - ii. Fences shall only be placed in a drainage or utility easement with written permission from the DeKalb County Drainage Board or applicable easement holder.
- b. Height:
 - i. Opaque (privacy) fences shall not exceed six (6) feet in height.
 - ii. There is no height limit for transparent (chain link) fences.
- c. Prohibitions: Razor wire fences are not permitted. Barbed wire is permitted.
- d. Clearance:
 - i. Transparent fences are permitted in the corner vision clearance. All other fences shall meet all vision clearance standards in *Section 5.60: Vision Clearance; General*.
- e. No fence shall block vision of an existing driveway at the intersection of the road it exits onto. This shall follow the Vision Clearance Standards, Section 5.59.
- f. Wildlife corridors shall be utilized and may be determined during the County Technical Review process and Plan Commission. Fences shall not obstruct wildlife corridors.

L. Equipment:

- a. All components necessary: solar panels, inverters, DC/AC disconnect, meters, wiring, racking, mounting, charge controllers, batteries, or any such equipment necessary for the CSES shall be new, commercially available and must be included in the Development Plan.

M. Substation:

- a. Any structure or equipment necessary for the substation for the CSES project shall meet minimum setback requirements per the Zoning District.

N. Signage:

- a. A standard metal sign shall be posted on the fence gate at the entrance of the CSES Facility that includes the CSES Owner Name, Facility Name, Emergency Contract Phone Number and physical Site address.

O. Nuisance Prevention:

- a. Noise Generating Equipment Setback: All Equipment shall meet the minimum underlying Zoning District setbacks for primary structures. Equipment that could create objectionable sounds during normal operations shall be located as far as practically possible away from any non-participating existing dwelling. Unless otherwise allowed by IC 36-7-4-1109, a project owner may not install or locate a CSES unless the project owner demonstrates to the Zoning Administrator that the CSES will operate so the sound attributed with the CSES will not exceed an hourly average sound level of fifty (50) A-Weighted decibels, as modeled at the outer wall of an existing dwelling located on an adjacent nonparticipating property or no less than 150 feet from any non-participating property line that does not include a residence. The requirement set forth in this section may be waived with respect to any one (1) CSES, subject to written notarized consent of the owner(s) of each adjacent nonparticipating property.
- b. Illumination: A CSES shall comply with the current ordinance under Commercial Lighting Standards. However, no light shall cross the adjacent nonparticipating line.
- c. Laydown Area/Temporary Storage: The area used for the receipt, temporary storage, and sometimes for the assembly of construction of equipment and other supplies. Laydown area must be located no less than 400 feet from any nonparticipating existing dwelling, church, school or commercial business and approved by Development Plan. When necessary smaller laydown Staging areas may be approved by Development Plan.

- d. Employee parking and equipment trucks shall not park alongside county roads, parking shall be as far from any nonparticipating existing dwelling and approved by the Development Plan.
 - e. Office Site: Location and structure shall meet the minimum building requirements, current ordinance standards and approved by the Development Plan
 - f. Dust Control: The CSES developer will be responsible for wetting out to lessen the amount of created dust during construction. Calcium chloride or similar dust control product shall be applied to any gravel county road that will be used during construction and must be approved by the DeKalb County Highway Superintendent.
 - g. Glare: A CSES at no time shall create glare on any non-participating property line, structure or right-of-way. All CSES using a reflector to enhance solar production shall minimize glare from the reflector affecting adjacent or nearby properties, including any public right-of-way. If the CSES project area is within any Airport Compatibility Overlay District, Glint and Glare Evaluation report shall be submitted with the Development Plan and approval from the Airport Board is required prior to Development Plan approval.
 - h. Maximum Vibrations: Equipment which could create vibrations as part of a CSES shall be located centrally within the CSES to reduce potential impacts on nonparticipating properties.
 - i. Interference with Reception: A CSES shall be constructed and operated so it does not interfere with television, internet, telecommunications, microwave, GPS, military defense radar, navigational or radio reception to neighboring areas.
- P. Ground vegetation & landscaping:
- a. CSES project owner shall plant, establish and maintain for the life of the CSES native forbs and warm season grasses, mainly comprised of long-lived perennial species and shall be described in the Development Plan. The local Soil & Water Conservation District or wildlife biologist will review the selection for a final determination. A minimum score of 100, which meets the preliminary standards, on the "Indiana Solar Site Pollinator Habitat Planning Scorecard" is recommended.
 - b. Provide site preparation and maintenance practices designed to control invasive species and noxious weeds to be included in the Development Plan.
- Q. Maintenance, Repair and/or Replacement of CSES:
- a. CSES owner must maintain the facility in accord with the Site Plan, Permit and the ordinance. Maintenance shall include, but not limited to, painting, structural repairs and integrity of security measures including fencing. Any retrofit, replacement or refurbishment of equipment shall adhere to all local, state and federal requirements. No damaged, broken or non-working parts of the CSES operation shall be stored on site.
- R. Electric wires:
- a. Except otherwise allowed by Indiana Code 36-7-4-1109, cables located between inverter locations and project substations shall be located and maintained underground; buried at thirty-six (36) inches below grade or if necessitated by onsite conditions at a greater depth. The SES facility must conform to local, state and federal electrical code requirements. If located in a public right-of-way or county drainage easement the CSES would require written approval by DeKalb County Highway and DeKalb County Drainage Board.
- S. Damage:
- a. Any damage to waterways, public/regulated drains or ditches, private or mutual drains, county tiles or any other item to regulate drainage caused by the construction, installation, maintenance and/or decommissioning and restoration of a CSES must be completely repaired by the CSES owner to the near original condition so as to not impede the natural flow of water. All repairs must be compliant and approved by the DeKalb County Drainage Board.
 - b. Any damage to streets, county roads or highway infrastructure and/or public utilities caused by the construction, installation, maintenance and/or decommissioning and restoration must be completely repaired by the CSES owner to the near original condition. All repairs must be compliant and approved by the DeKalb County Highway Superintendent, Indiana Department of Transportation and/or County Commissioners.
- T. Economic Development Agreement:

- a. Prior to approval of the Development Plan, an Economic Development Agreement must be approved by the DeKalb County Commissioners and DeKalb County Council addressing real and personal property assessment, taxation, land use, drainage agreements, maintenance agreements and other agreements as required and negotiated by the DeKalb County Commissioners, DeKalb County Council, DeKalb County Plan Commission, DeKalb County Zoning Administrator, DeKalb County DeKalb County Economic Development Partnership Director and CSES Operator. The Economic Development Agreement must be accepted by the DeKalb County Plan Commission at the time the Development Plan is approved.

U. As-Built Drawings:

- a. The CSES owner shall submit as-built drawings upon completion of construction of all development on the site to the satisfaction of Zoning Administrator, Plan Commission and/or County Commissioners and must be approved by the County Commissioners.

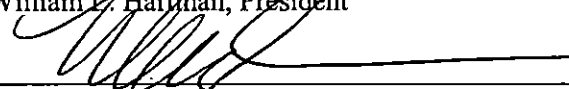
SECTION 2: That this amendment be in full force and effect upon its passage by the DeKalb County Board of Commissioners.

The DeKalb County Commissioners have voted to ✓ adopt (as certified) or reject the proposal.

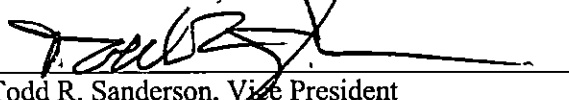
DULY PASSED AND RESOLVED this 21st day of February 2023.



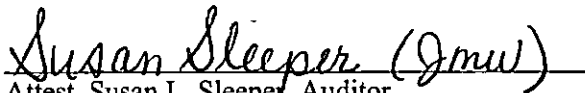
William L. Hartman, President



Michael V. Watson, Vice President



Todd R. Sanderson, Vice President



Attest, Susan L. Sleeper, Auditor

Prepared by: Chris Gaumer "I affirm under the penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law."

Chris Gaumer