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RE: *124-23602-14*

Reciprocal Easement Agreement

for

High Grove Plaza, Naperville, Illinois

by and between

W/H No. 27, L.L.C., an Illinois limited liability company

and

Key Wester Fish and Pasta House of Illinois, Inc., an Illinois corporation

Dated as of July 10, 1996

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Reciprocal Easement Agreement for High Grove Plaza, Naperville, Illinois

This Reciprocal Easement Agreement for High Grove Plaza, Naperville, Illinois ("REA") is made and entered into as of the 10th day of July, 1996, by and between W/H No. 27, L.L.C., an Illinois limited liability company (as of the date hereof, "In-Line Owner", "Outlot B Owner" or "Outlot C Owner"), and Key Wester Fish and Pasta House of Illinois, Inc., an Illinois corporation (as of the date hereof, "Outlot A Owner").

Recitals:

- A. The In-Line Owner is the fee owner of a certain tract of land containing approximately 10.693 acres (approximately 9.329 acres net of storm water detention areas), legally described in Exhibit A-1 attached hereto and made a part hereof ("In-Line Tract"). The Outlot A Owner is the fee owner of a certain tract of land containing approximately 3.256 acres (approximately 1.817 acres net of storm water detention areas), legally described in Exhibit A-2 attached hereto and made a part hereof ("Outlot A"). The Outlot B Owner is the fee owner of a certain tract of land containing approximately 1.868 acres (containing no storm water detention areas), legally described in Exhibit A-3 attached hereto and made a part hereof ("Outlot B"). The Outlot C Owner is the fee owner of a certain tract of land containing approximately 1.569 acres (containing no storm water detention areas), legally described in Exhibit A-4 attached hereto and made a part hereof ("Outlot C"). The In-Line Tract, Outlot A, Outlot B and Outlot C are respectively identified as such on the site plan attached hereto and made a part hereof as Exhibit B ("Site Plan").
- B. Outlot A, Outlot B and Outlot C are sometimes herein collectively referred to as the "Outlots", and are sometimes herein individually referred to as an "Outlot". The In-Line Tract and the Outlots are contiguous and adjacent to each other, as shown on the Site Plan, and together comprise the "Shopping Center". The entire Shopping Center (*i.e.*, the In-Line Tract and the Outlots together) is legally described in Exhibit A-5.
- C. The In-Line Owner intends to lease all or portions of the In-Line Tract to different retail users, who will operate retail stores on portions of the In-Line Tract, and also intends to participate in the cooperative development of the Shopping Center, in accordance with the terms, provisions and conditions of this REA. The Outlot A Owner intends to develop, construct, own or operate a Restaurant (as such term is defined in Section 1.31 hereof) on Outlot A, and to participate in the cooperative development of the Shopping Center, in accordance with the terms,

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provisions and conditions of this REA. Each of the Outlot B Owner and the Outlot C Owner intends to convey or lease all or portions of Outlot B and Outlot C, respectively, to other developers or to different retail users, which will in turn develop, construct, own or operate retail stores on such Outlots and which will also participate in the cooperative development of the Shopping Center, in accordance with the terms, provisions and conditions of this REA.

D. The signatories hereto for themselves, and for their respective successors in interest, assigns and grantees, intend to develop and operate their respective Tracts, as integral parts of a retail shopping complex, and in order to effectuate the common use and operation thereof, desire to enter into certain covenants and agreements as a part of a general plan, and to grant certain reciprocal easements in, to, over and across their respective Tracts.

Agreements

Now, therefore, in consideration of the foregoing premises and the mutual covenants and promises hereinafter set forth, the parties hereby agree as follows:

Article I -- Definitions

Section 1.1 Administration Fee. "Administration Fee" shall have the meaning set forth in Section 4.2(C) hereof.

..

Section 1.2 Approving Party. "Approving Party" shall mean each Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this REA. Initially, there shall be only one Approving Party, which shall be the fee owner of the In-Line Tract. Thus, the initial Approving Party shall be the In-Line Owner. If and when the In-Line Owner conveys all of the In-Line Tract, the grantee thereof (and thus the successor fee owner of the In-Line Tract) shall become the Approving Party.

Section 1.3 Budget. "Budget" shall have the meaning set forth in Section 4.2(D) hereof.

Section 1.4 Buildings. "Buildings" shall mean any improvements from time to time constructed in the Shopping Center (including, without limitation, structures, appurtenant canopies, supports, loading docks, truck ramps and docks, trash compactors and other outward extensions, pilasters, overhangs and footings projecting into the Common Area), other than parking and attendant improvements, which parking and attendant improvements are contemplated by the Site Plan to be constructed in the Common Area.

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Section 1.5 Building Area(s). “Building Area(s)” shall mean initially (prior to the construction of any Buildings) the limited areas of the Shopping Center within which Buildings may be constructed, placed or located. Such initial Building Areas on each Tract are depicted on the Site Plan. As Buildings are from time to time constructed, placed or located on a Tract in accordance with this REA, then until such Buildings are razed or removed, the Building Area on each such Tract shall become the limited area of such Tract within which such Buildings are in fact constructed, placed or located. Similarly, as Buildings are razed or removed, then until new or replacement Buildings are constructed, the area on each Tract within which such Buildings were previously constructed, placed or located, and which was previously included in the Building Area, shall become Common Area. After Buildings are razed or removed, and upon the construction of new or replacement Buildings, the Building Area shall revert to the initial Building Areas on each Tract as depicted on the Site Plan, subject to the foregoing provisions of this Section 1.5. No portion of the Building Area will be included, at any time, within the Common Area, and no portion of the Common Area will be included, at any time, within the Building Area.

Section 1.6 Building Plans. “Building Plans” shall have the meaning set forth in Section 3.3(B) hereof.

Section 1.7 Common Area. “Common Area” shall mean initially (prior to the construction of any Buildings) all areas within the exterior boundaries of the Shopping Center which are available for the common use and benefit of the Parties and any other Occupants, exclusive of Building Area. Such initial Common Areas are all areas of the Shopping Center which are not designated as Building Areas on the Site Plan. As Buildings are from time to time constructed, placed or located on a Tract in accordance with this REA, then until such Buildings are razed or removed, the Common Area on each such Tract shall also include, without limitation, the limited area, if any, of what was prior thereto Building Area on such Tract, within which Buildings have not been constructed, placed or located. Similarly, as Buildings are razed or removed, then until new or replacement Buildings are constructed, the area on each Tract within which such Buildings were previously constructed, placed or located, and which was previously included in Building Area, shall become Common Area. After Buildings are razed or removed, and upon the construction of new or replacement Buildings, the Common Area shall revert to the initial Common Area on each Tract, subject to the foregoing provisions of this Section 1.7. No portion of the Common Area will be included, at any time, within the Building Area, and no portion of the Building Area will be included, at any time, within the Common Area.

Section 1.8 Common Area Maintenance Costs. “Common Area Maintenance Costs” shall have the meaning set forth in Section 4.2(C) hereof.

Section 1.9 Common Utility Lines. “Common Utility Lines” shall have the meaning set forth in Section 1.37 hereof.

Section 1.10 Constant Dollars. “Constant Dollars” shall mean the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth calendar

year following the date of this REA, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the level of the Index for the month during which this REA is dated; the "Current Index Number" shall be the level of the Index for the month of September of the year preceding the adjustment year; the "Index" shall be the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U) for Chicago-Gary-Lake County, Illinois, Indiana, Wisconsin, All Items (Base Year 1982-84 = 100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Party shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

Section 1.11 Floor Area. "Floor Area" shall mean the actual number of square feet of space contained on all of the floors within a Building, including, without limitation, any mezzanine, vestibule, basement or similar space if any such space is directly used for the sale of goods or services, as measured from the exterior faces of the exterior walls or storefront and/or the centerline of any common walls; provided, however, that the following areas shall not be included in Floor Area: any mezzanine, vestibule, basement or similar space which is not directly used for the sale of goods or services, the upper levels of any multi-deck/platform areas used for storage of merchandise, loading docks, receiving areas, building canopies, pilasters, overhangs and unenclosed recessed openings. Within one hundred twenty (120) days after completion of any Building or thereafter within thirty (30) days of receipt of a request therefor, a Party or Occupant shall certify to the other Party(ies) or the requesting Party(ies) the amount of Floor Area in each Building on its Tract or in its Building. If any Party causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Party shall furnish a copy of such survey to each of the other Parties making a request therefor, for informational purposes only.

During any period of rebuilding, repairing, replacement or reconstruction of a Building, the Floor Area of such Building shall be deemed to be the same as existed immediately prior to that period. Upon completion of such rebuilding, repairing, replacement or reconstruction, the Party upon whose Tract such Building is located shall cause a new determination of Floor Area for such Building to be made in the manner described above, and such determination shall be sent to any Party requesting the same.

Section 1.12 Hazardous Materials. "Hazardous Materials" shall mean any hazardous substances or hazardous materials, including, without limitation, all substances, the presence of which on the Shopping Center, or any portion thereof, could subject any one or more Occupants of the Shopping Center to civil or criminal penalties or damages, or responsibility for clean-up of such substances or materials, including, without limitation, any substance or material which is:

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- (i) a "hazardous waste", a "toxic waste", a "hazardous substance", a "toxic substance", an "extremely hazardous waste", a "restricted hazardous waste", a "chemical substance", or a "hazardous chemical", as such terms are defined under any environmental laws, ordinances or regulations governing or controlling the Property, or any portion thereof;
- (ii) petroleum or petroleum waste, including, without limitation, crude oil or any petroleum derived substance or constituent of any such petroleum substance or waste;
- (iii) asbestos or asbestos containing materials;
- (iv) polychlorinated biphenyl;
- (v) radioactive material; or
- (vi) pesticides.

Section 1.13 In-Line Owner. "In-Line Owner" shall mean the Party which, from time to time, is the fee owner of the In-Line Tract. As of the date of this REA, the In-Line Owner is W/H No. 27, L.L.C., an Illinois limited liability company.

Section 1.14 In-Line Tract. "In-Line Tract" shall have the meaning set forth in Recital A hereof.

Section 1.15 Occupant. "Occupant" shall mean any Person from time to time entitled to the use and occupancy of any portion of a Building in the Shopping Center under an ownership right or any lease, sublease, license, concession or other similar agreement.

Section 1.16 Operator. "Operator" shall mean the Person designated from time to time by the Approving Party to maintain and operate the Common Area. The Person designated as Operator shall serve in such capacity until it resigns or is removed by the Approving Party. The Approving Party hereby designates Walsh, Higgins & Company, an Illinois corporation which is affiliated with the initial In-Line Owner, the initial Outlot B Owner and the initial Outlot C Owner through common ownership, as the initial Operator. Such appointment shall automatically become effective contemporaneously with the effectiveness of this REA. The Operator is hereby specifically made a third party beneficiary hereof, and shall have the lien rights set forth in Section 6.1(C) hereof if the Operator advances funds to pay for the cost of performing any of its obligations hereunder. The Operator shall also be authorized to act on behalf of the Parties in enforcing and prosecuting the Parties' lien rights under Section 6.1(C) hereof.

Section 1.17 Outlot A. "Outlot A" shall have the meaning set forth in Recital A hereof.

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Section 1.18 Outlot A Owner. "Outlot A Owner" shall mean the Party which, from time to time, is the fee owner of Outlot A. As of the date of this REA, the Outlot A Owner is Key Wester Fish and Pasta House of Illinois, Inc., an Illinois corporation.

Section 1.19 Outlot B. "Outlot B" shall have the meaning set forth in Recital A hereof.

Section 1.20 Outlot B Owner. "Outlot B Owner" shall mean the Party which, from time to time, is the fee owner of Outlot B. As of the date of this REA, the Outlot B Owner is W/H No. 27, L.L.C., an Illinois limited liability company.

Section 1.21 Outlot C. "Outlot C" shall have the meaning set forth in Recital A hereof.

Section 1.22 Outlot C Owner. "Outlot C Owner" shall mean the Party which, from time to time, is the fee owner of Outlot C. As of the date of this REA, the Outlot C Owner is W/H No. 27, L.L.C., an Illinois limited liability company.

Section 1.23 Outlots. "Outlots" shall have the meaning set forth in Recital B hereof.

Section 1.24 Party. "Party" shall mean each signatory hereto and, after compliance with the notice requirements set forth below, their respective successors and assigns who become owners of fee simple title to any portion of the Shopping Center. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Shopping Center so owned by it, which accrue during the period of such ownership. Such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Party's liability as set forth in Article IX hereof for such covenants, obligations and undertakings shall terminate. The transferee Party shall automatically become liable for all such obligations arising after compliance with the notice requirement. A Party transferring all or any portion of its interest in the Shopping Center shall give prompt notice to all other Parties and the Operator of such transfer and shall include therein at least the following information:

- (i) the name and address of the new Party; and
- (ii) a copy of the legal description of the portion of the Shopping Center conveyed.

If a Tract is owned by more than one Person, the Person or Persons holding more than fifty percent (50%) of the fee simple ownership interest shall designate one of their number to represent all owners of such Tract and such designated Person shall be deemed the Party for such Tract. Until the notice of transfer is given, the transferring Party shall (for purposes of this REA only) be the transferee's agent.

Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is placed upon the transferred portion of the Shopping Center prior to receipt of the foregoing notice.

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Section 1.25 Permittee. “Permittee” shall mean all Occupants, and all officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants and concessionaires of Occupants, insofar as their activities relate to the intended use of the Building Areas of the Shopping Center; provided, however, that, unless the Approving Party consents thereto, Persons engaging in the following activities on the Common Area will not be considered to be Permittees:

- (i) Distributing any circular, handbill, placard or booklet;
- (ii) Soliciting memberships, contributions or signatures;
- (iii) Parading, picketing or demonstrating; or
- (iv) Failing to follow rules and regulations relating to the use of the Shopping Center, which regulations will be applied equally and in a non-discriminatory manner to all Occupants of the Shopping Center and will not require payment of money to Developer by any Occupant.

Section 1.26 Perpetual Access Drives. “Perpetual Access Drives” shall have the meaning set forth in Section 2.1(B) hereof.

Section 1.27 Person. “Person” shall mean any individual, partnership, firm, association, corporation, trust or any other form of business or government entity.

Section 1.28 Plat of Subdivision. “Plat of Subdivision” shall mean, collectively, both (a) that certain plat of subdivision with respect to the Shopping Center, entitled “Plat of Glacier Park Subdivision” recorded in the Office of the Recorder of Deeds of DuPage County, Illinois on January 29, 1990 as Document No. R90-12326, and re-recorded in the Office of the Recorder of Deeds of DuPage County, Illinois on April 30, 1990 as Document No. R90-51012, with a certificate of correction thereto recorded in the Office of the Recorder of Deeds of DuPage County, Illinois on February 19, 1990 as Document No. R90-020823, and (b) that certain plat of resubdivision to be prepared and recorded with respect to the Shopping Center. Among other things, such plat of resubdivision will amend the existing plat of subdivision (which existing plat of subdivision is described in clause (a) above) by legally describing each of the Tracts, creating certain easements for utilities and water drainage, and relocating an existing stormwater management easement which currently affects the Shopping Center. Each of the Parties shall cooperate with one another in the preparation, execution and recordation of the aforesaid plat of resubdivision, so long as such plat of resubdivision (x) does not alter the size, shape or location of any such Party’s Tract, (y) does not materially alter any of the easement to which any such Party’s Tract is the dominant tenement, and (z) does not otherwise render any such Party’s Tract unsuitable for its intended purpose, in such Party’s reasonable judgment.

Section 1.29 Protected Period. “Protected Period” shall mean, in each calendar year, the time between November 1 and December 31, in each case inclusive.

Section 1.30 REA. “REA” shall mean this Reciprocal Easement Agreement for High Grove Plaza, Naperville, Illinois dated as of July ___, 1996 by and between the In-Line Owner (which, as of the date thereof, is also the Outlot B Owner and the Outlot C Owner) and the Outlot A Owner.

Section 1.31 Restaurant. “Restaurant” shall mean any operation or business which requires a governmental permit, license or authorization to prepare or serve food for either on-site or off-site consumption, excluding any such operation or business operated by any Occupant incidentally to its primary business purpose. For purposes of this REA, such “incidental operation” to an Occupant’s primary business purpose shall mean the occupancy of less than ten percent (10%) of the Occupant’s Floor Area and not having a separate customer entry/exit door to the outside of the Building.

Section 1.32 Separate Utility Lines. “Separate Utility Lines” shall have the meaning set forth in Section 1.37 hereof.

Section 1.33 Shopping Center. “Shopping Center” shall mean the In-Line Tract and the Outlots, together.

Section 1.34 Shopping Center Pylon Sign. “Shopping Center Pylon Sign” shall mean that certain pylon sign depicted in Exhibit C attached hereto and made a part hereof, and to be located generally as depicted on the Site Plan.

Section 1.35 Site Plan. “Site Plan” shall have the meaning set forth in Recital A hereof.

Section 1.36 Tract. “Tract” shall mean that portion of the Shopping Center owned by a Party. Initially, a Tract shall mean each of the In-Line Tract, Outlot A, Outlot B and Outlot C.

Section 1.37 Utility Lines. “Utility Lines” shall mean those facilities and systems for the transmission of utility services, including, without limitation, drainage and storage of surface water. Among other things, Utility Lines shall include any and all drainage conduits, pumps and other appurtenances to the storm water detention system from time to time servicing the Shopping Center, or any portion thereof, whether the same are located within the Shopping Center or outside of its boundaries. “Common Utility Lines” shall mean those facilities and systems which are installed to provide the applicable service to both the In-Line Tract and one or more of the Outlots. “Separate Utility Lines” shall mean those facilities and systems which are installed to provide the applicable service to either the In-Line Tract on the one hand, or one or more of the Outlots on the other hand. For the purpose of this REA, the portion of a Utility Line extending between a Common Utility Line and a Building shall be considered a Separate Utility Line.

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Article II -- Easements

Section 2.1 Ingress and Egress.

(A) During the term of this REA, but subject to Section 2.1(C) hereof, each Party hereby reserves, grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, a non-exclusive easement, appurtenant to each Party's Tract, for the passage and parking of passenger, service and delivery vehicles on, over and across those portions of the Common Area used for the parking and driveway areas of each Party's Tract, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians on, over and across the parking, driveway and sidewalk areas of each Party's Tract, as the same may from time to time be constructed and maintained for such use; provided, however, that this easement shall not permit the parking of any construction vehicles servicing one Party or one Party's Tract, on the Tract of another Party; and provided further, however, that no parking of semi-tractor trailers or large trucks shall be permitted in the Common Area, or any portions thereof, except when loading or unloading in properly designated loading areas.

(B) Each Party hereby grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, a perpetual, non-exclusive easement, appurtenant to each other Party's Tract, for vehicular and pedestrian ingress and egress on, over and across those driveway areas of each grantor's Tract identified on the Site Plan as "Perpetual Access Drives". The "Perpetual Access Drives" shall include, without limitation, the respective entrances from the Shopping Center onto High Grove Lane, Glacier Park Avenue and Illinois Route 59, as designated on the Site Plan.

(C) The easement rights granted by this Section 2.1 shall be subject to the following reservations, as well as any other applicable provisions contained in this REA:

- (i) Each Party reserves the right to close off that portion of the Common Area located on such Party's Tract for such reasonable periods of time as may be legally necessary, in the opinion of such Party's counsel, to prevent the acquisition of prescriptive rights by any Person; provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Party shall give at least thirty (30) days' prior written notice to each other Party of its intention to do so, and shall use commercially reasonable efforts to coordinate such closing with each other Party so that no unreasonable interference with the passage of pedestrians or vehicles shall occur.
- (ii) Each Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using the portion of the Common Area located on such Party's Tract.

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(iii) Among other things, after the expiration of the term of this REA, each Party reserves the right to relocate the driveway areas on its Tract; provided, however, that the respective entrances from the Shopping Center onto High Grove Lane, Glacier Park Avenue and Illinois Route 59, as identified on the Site Plan, and those other areas, if any, identified on the Site Plan as "Perpetual Access Drives" shall not be substantially relocated without the prior written consent of the Approving Party; and provided further, however, that (a) no driveway area shall be relocated more than one hundred feet (100') from the location identified on the Site Plan, (b) such relocation shall not cause an unreasonably adverse impact on the access from a Party's Tract to the respective access points from the Shopping Center onto High Grove Lane, Glacier Park Avenue and Illinois Route 59, and (c) the Party relocating the driveway areas on its Tract shall give at least ninety (90) days' prior written notice to the other Parties of the relocation and the new location of the relocated driveway areas.

Section 2.2 Utilities.

(A) Each Party hereby acknowledges and agrees that Common Utility Lines will be initially installed in the respective locations set forth on the Site Plan or the Plat of Subdivision. Each Party hereby reserves, grants and conveys to each other Party non-exclusive, perpetual easements in, to, on, over, under, along and across those portions of the Common Area located on the grantor's Tract reasonably necessary for the installation, operation, flow, passage, use; maintenance, connection, repair, relocation and removal of Utility Lines or systems for utilities serving the grantee's Tract, including, without limitation, sanitary sewers, storm drains, and water (fire and domestic), gas, electrical, telephone, cable television and communication lines; provided, however, that, as provided below in this Section 2.2(A), all repair, maintenance, replacement and other work on the Common Utility Lines shall be performed by the Operator as part of Common Area maintenance and the costs thereof included as Common Area Maintenance Costs. All Utility Lines shall be underground except:

- (i) ground mounted electrical transformers and temporary emergency generators;
- (ii) as may be necessary during periods of construction, reconstruction, repair or temporary service;
- (iii) as may be required by governmental agencies having jurisdiction over the Shopping Center;
- (iv) as may be required by the provider of such service;
- (v) fire hydrants; and

- (vi) electrical and telephone wires on the In-Line Tract permitting hookup to the individual Building or Buildings.

At least thirty (30) days prior to exercising the easement rights granted under this Section 2.2(A), the grantee shall provide the grantor with a written statement describing the need for such easement and identifying the proposed location of the Utility Line, and shall furnish to the grantor a certificate of insurance showing that the grantee's contractor has obtained the minimum insurance coverage required by Section 5.5 hereof. Any Party installing Separate Utility Lines pursuant to the provisions of this Section 2.2(A) shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith (including, without limitation, general clean-up and proper surface and/or subsurface restoration) to be completed as promptly as possible and in a manner so as to minimize interference with the use of existing utilities and the Common Area. If Separate Utility Lines are installed to service more than one of the Outlots, the Parties owning such Outlots shall be jointly and severally liable hereunder for all costs and expenses with respect to the installation thereof and all work in connection therewith, and shall divide such costs and expenses between themselves in an equitable manner. All repair, maintenance, replacement and other work on the Common Utility Lines shall be performed by the Operator as part of Common Area maintenance and the costs thereof included as Common Area Maintenance Costs.

(B) The initial location and width of any Utility Line, other than the Utility Lines to be installed initially in the respective locations set forth on the Site Plan or the Plat of Subdivision, shall be subject to the prior written approval of the Party whose Common Area is to be burdened thereby, which approval shall not be unreasonably withheld or delayed. The easement area shall be no wider than reasonably necessary to satisfy the requirements of a private or public utility, or fifteen (15) feet on each side of the centerline if the easement is to be granted to another Party. Within thirty (30) days after the determination of the location of each such easement area, the grantee Party, at its sole cost and expense, shall cause to be recorded a written declaration referring to this Section 2.2(B) and setting forth the legal description of such easement area. Upon request, and at the expense of the grantee Party, the grantee shall provide to the grantor a copy of an as-built survey showing the location of the subject Utility Line(s). The grantor shall have the right at any time to relocate a Utility Line upon thirty (30) days' prior written notice; provided, however, that such relocation:

- (i) shall not materially interfere with or diminish the utility service to the grantee(s);
- (ii) shall not unreasonably reduce or impair the usefulness or function of such Utility Line;
- (iii) shall be performed without cost or expense to the grantee(s);
- (iv) shall be completed (including, without limitation, surface or subsurface restoration) using materials and design standards which equal or exceed those originally used;

- (v) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental authorities having jurisdiction thereover;
- (vi) shall not materially adversely interfere with any proper use of the Common Area; and
- (vii) except for emergencies, shall not be undertaken or prosecuted during a Protected Period.

(C) Each Party hereby reserves, grants and conveys to each other Party for its use and the use of its Permittees, in common with others entitled to use the same, a non-exclusive, perpetual right and easement to discharge surface storm drainage and/or runoff from the grantee's Tract over, upon and across the Common Area of the grantor's Tract; provided, however, that no Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Tract, if such alteration would materially increase the flow of surface water onto any other Tract, either in the aggregate or by directing the flow of surface water to a limited area. The surface water collection, retention and distribution facilities shall be deemed a Common Utility Line.

(D) Anything in this REA to the contrary notwithstanding, no Utility Lines shall be located within any Building Area, without the prior written consent of the Party owning the Tract on which a Utility Line is to be located within a Building Area, which consent may be given or withheld in such Party's sole and absolute discretion.

Section 2.3 Shopping Center Pylon Sign; Other Occupant Signs.

(A) The Outlot B Owner hereby grants and conveys to the In-Line Owner, for its use and for the use of its Permittees, a perpetual, non-exclusive easement, appurtenant to the In-Line Tract, on and over that portion of Outlot B which is more particularly designated on the Site Plan as the location of the Shopping Center Pylon Sign, to permit the construction and maintenance of the Shopping Center Pylon Sign by the Operator under this REA. Anything in this REA to the contrary notwithstanding, seventy-five percent (75%) of all costs for the construction and maintenance of the Shopping Center Pylon Sign shall be borne by the In-Line Owner, and twenty-five percent (25%) of all costs for the construction and maintenance of the Shopping Center Pylon Sign shall be borne by the Outlot C Owner; provided, however, that all costs of any reconstruction or other improvements or changes to the Shopping Center Pylon Sign required in order to accommodate any signage of the Occupants of the In-Line Tract shall be borne solely by the In-Line Owner. The In-Line Owner, each of the Occupants of the In-Line Tract and the Outlot C Owner shall have the sole right to use the Shopping Center Pylon Sign in accordance with this Section 2.3(A); provided, however, that (i) the Outlot C Owner shall have the right to display only one name or other designation on the Shopping Center Pylon Sign, (ii) such name or other designation shall be in the position on the Shopping Center Pylon Sign as designated on Exhibit C attached hereto and made a part hereof, (iii) in no event shall such name or other

designation be displayed in letters or on sign panels which are larger than those used to display any of the names or other designations of the In-Line Owner or any of the Occupants of the In-Line Tract, and (iv) no reconstruction or other improvements or changes to the Shopping Center Pylon Sign shall be required in order to accommodate any signage to be displayed by the Outlot C Owner. The In-Line Owner shall designate the Occupants of the In-Line Tract whose individual signage shall be first, second and third, respectively, from the top of the Shopping Center Pylon Sign. Further, all Occupants of the In-Line Tract shall be permitted to display on the Shopping Center Pylon Sign their respective prototypical signage, so long as the same is in compliance with applicable governmental requirements. Other Parties or Occupants (i.e., other than the In-Line Owner, the Outlot C Owner and the Occupants of the In-Line Tract or of Outlot C) may be permitted, in the sole and absolute discretion of the In-Line Owner, to display signage on the Shopping Center Pylon Sign, as and to the extent and on such terms and conditions as, the In-Line Owner may permit; provided, however, that no reconstruction or other improvements or changes to the Shopping Center Pylon Sign shall be required in order to accommodate any signage other than that of the Occupants of the In-Line Tract.

(B) In addition to the Shopping Center Pylon Sign described in Section 2.3(A) hereof, one monument sign may be located on each of the Outlots, subject to the terms, provisions and conditions of this Section 2.3(B); provided, however, that no such monument sign may be located on an Outlot unless, under all applicable laws, rules, regulations, orders and ordinances, such monument sign is permitted in addition to the Shopping Center Pylon Sign. Any such monument sign may only display the names of each of the Occupants of such Outlot or of other Occupants of the Shopping Center. The Party owning the Outlot on which any such monument sign is located shall be solely responsible for the design, construction, operation and maintenance of such sign, all in a first-class manner. The Approving Party shall have the right to approve the design, size and location of all such monument signs. Among other things, no such monument sign shall be permitted if the design, size or location thereof unreasonably impairs the visibility from any Public Right-of-Way of any Buildings theretofore located on the In-Line Tract. Anything in this OEA to the contrary notwithstanding, no billboards shall be erected in the Shopping Center.

Section 2.4 Restriction. No Party shall grant any easement for the purposes set forth in this Article II for the benefit of any property not within the Shopping Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Tract to governmental or quasi-governmental authorities or to public utilities.

Article III -- Construction

Section 3.1 General Requirements.

(A) Each Party agrees that all construction activities performed by it within the Shopping Center shall be performed in compliance with this REA and all applicable laws, rules, regulations, orders and ordinances of the City of Naperville, Illinois, the County of DuPage, Illinois, the State of Illinois and the United States federal government, or any department or

agency of any one or more of the foregoing. Among other things, every Building shall be equipped with automatic sprinkler systems as required by applicable laws, rules, regulations, orders and ordinances.

- (B) Each Party further agrees that its construction activities shall not:
 - (i) unreasonably interfere with construction work being performed upon another Party's Tract or on any other part of the Shopping Center;
 - (ii) unreasonably interfere with the use, occupancy or enjoyment of another Party's Tract or of any part of the remainder of the Shopping Center, by any other Party or its Permittees; or
 - (iii) promote labor disharmony, provided, however, that no Party or Occupant shall necessarily be required to employ union labor.

(C) Subject to Section 5.5(D) hereof, each Party agrees to defend, indemnify and hold harmless each other Party from all liens, claims, losses, liabilities, actions, proceedings and costs (including, without limitation, reasonable attorneys' fees and costs), arising out of or in connection with any accident, injury, loss or damage whatsoever occurring to any Person or to the property of any Person which results from or in connection with any construction activities performed or authorized by such indemnifying Party; provided, however, that the foregoing shall not be applicable to events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its Permittees, or anyone claiming by, through or under any of them; and provided further, however, that the release set forth in Section 5.5(D) hereof shall be applicable to the extent therein provided.

(D) In connection with any construction, reconstruction, repair or maintenance on its Tract, each Party reserves the right to create a temporary staging and/or storage area in the Common Area on its Tract, at such location as will not unreasonably interfere with access between such Tract and the other areas of the Shopping Center. Prior to the commencement of any work which requires the establishment of a staging and/or storage area on its Tract, a Party shall give the Approving Party at least thirty (30) days' prior written notice of the proposed location of such staging and/or storage area. If substantial work is to be performed, the constructing Party shall, at the request of the Approving Party, fence off such staging and/or storage area. All storage of materials and the parking of construction vehicles (including, without limitation, vehicles of workers) shall occur only on the constructing Party's Tract. Upon completion of such work, the constructing Party shall restore the affected Common Area to a condition equal to or better than that existing prior to commencement of such work.

(E) Subject to Section 3.1(F) hereof, each Party hereby grants and conveys to each other Party, and to its respective Permittees, a temporary license for access and passage on, over and across the Common Area of the grantor's Tract as shall be reasonably necessary for the grantee to construct or maintain improvements upon the grantee's Tract; provided, however, that such license shall be in effect only during periods when actual construction or maintenance is

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being performed; and provided further, however, that the use of such license shall not unreasonably interfere with the use and operation of the Common Area by the grantor Party or its Permittees. At least five (5) days' prior to exercising the rights granted herein, the grantee shall provide the grantor with a written statement describing the need for such license, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 5.5(C) hereof. Any Party availing itself of such temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area and restore the affected portion of the Common Area to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Anything in this Section 3.1(E) or elsewhere in this OEA to the contrary notwithstanding, after the first date on which a retail store in the Shopping Center has opened for business with the public, each Party agrees that during any Protected Period, there shall be no exterior Building remodeling work of a substantial nature performed which would unreasonably disrupt pedestrian or vehicular traffic or vehicular parking; provided, however, that such work may proceed during such period if it is (i) the initial construction of a Building, or (ii) of an emergency nature.

(F) Anything in this REA to the contrary notwithstanding, each Party shall cause any and all construction traffic resulting from construction on such Party's Tract to enter and exit the Shopping Center only by way of High Grove Lane.

Section 3.2 Common Area. Unless the Approving Party otherwise agrees, the Common Area shall be initially constructed as shown on the Site Plan. Such work shall be done in a good and workmanlike manner and in accordance with good engineering standards, and each constructing Party shall comply with the following minimum general design standards:

(A) The lighting system shall be designed to produce a minimum lighting intensity measured at grade at all points in the Common Area of two (2.0) foot-candles; provided, however, that the extreme edge of the parking or driveway areas may have a minimum lighting intensity measured at grade of one (1.0) foot-candle; and provided further, however, that the driveway areas immediately in front of the entrance to any Building shall have a minimum lighting intensity measured at grade of five (5.0) foot-candles. The type and design of the Common Area light standards shall be as approved from time to time by the Approving Party. That portion of the Shopping Center's lighting system located on each Tract shall be metered separately from those respective portions of such lighting system on each of the other Tracts. Accordingly, each Party shall pay separately for the electricity, bulbs and lights used for the portion of such lighting system located on its Tract.

(B) Utility Lines which are placed underground shall be at depths designated by approved professional consultants. Design and working drawings may be prepared by the utility company providing the service.

(C) The parking on each Tract shall contain at least five (5) parking spaces for each one thousand (1,000) square feet of Floor Area constructed on such Tract; provided, however, that if the use of a particular Tract (e.g., a Restaurant use) requires, pursuant to any applicable

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governmental rule, ordinance or regulation, a higher parking ratio, the parking spaces contained on such Tract shall conform with such higher required ratio. The foregoing requirements shall be satisfied by each of the In-Line Tract, Outlot A, Outlot B and Outlot C (prior to conveyance of any respective portions thereof) without reliance by any of such Tracts on the parking spaces available on another of such Tracts. In the event of a condemnation of part of the In-Line Tract or any one or more of the Outlots, or a sale or transfer in lieu thereof, which, in any such case, reduces the number of usable parking spaces below that which is otherwise required herein, each Party whose Tract is so affected shall use its best efforts (including, without limitation, using proceeds from the condemnation award or settlement) to restore and/or substitute ground level parking spaces in order to comply with the parking requirements set forth above. If such compliance is not practicable, then such Party shall not be deemed in default hereunder; provided, however, that such Party shall not be permitted to expand the amount of Floor Area then located upon its Tract. If such Floor Area is thereafter reduced, then it may not subsequently be increased unless the foregoing parking requirement is satisfied. With respect to Outlot A only, for so long as a Restaurant is operated on Outlot A, all employees of such Restaurant operation shall be required to park only in the easternmost row of parking provided on Outlot A (i.e., the row which is farthest from the In-Line Tract).

(D) No Party shall make changes to the improved Common Area on its Tract without the approval of the Approving Party. Notwithstanding the preceding sentence, each Party hereby reserves the right, from time to time without obtaining the consent or approval of the Approving Party or any other Party, to make, at its own expense, any insignificant change, modification or alteration in its portion of the Common Area (including, without limitation, the repainting of parking spaces in existing locations, and the installation of convenience facilities such as mailboxes, public telephones and benches); provided, however, that each of the following conditions precedent must be satisfied:

- (i) The accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the remainder of the Shopping Center) shall not be unreasonably restricted or hindered, and all parking stalls and rows and vehicular traffic lanes shall remain generally as shown on the Site Plan.
- (ii) There shall be maintained at all times within such Common Area, a sufficient number of vehicular parking spaces to meet the parking requirements set forth in Section 3.2(C) hereof, but without reliance on parking spaces which may be available on another Tract. In no event shall any of the parking spaces depicted on the Site Plan for a Tract be eliminated without the prior written consent of the Approving Party, which consent shall not be unreasonably withheld or delayed.
- (iii) No governmental rule, ordinance or regulation shall be violated as a result of such action, and such action shall not result in any other Party being in violation of any governmental rule, ordinance or regulation.

- (iv) No change shall be made in the access points between the Common Area or any public streets; provided, however, that additional access points may be created with the approval of the Approving Party.
- (v) At least thirty (30) days prior to making any such change, modification or alteration, the Party desiring to do such work shall deliver to each other Party copies of the plans therefor.
- (vi) No such work shall be commenced or prosecuted during a Protected Period.

Section 3.3 Building Improvements.

(A) The Parties acknowledge and agree, for purposes of this REA, that no Party shall have an obligation to commence construction of any Building on its Tract. However, if any Building is to be constructed on a Party's Tract, then such Building shall be located only within the Building Area designated therefor on the Site Plan.

(B) The Approving Party has designated an architecturally compatible theme for the exterior of all buildings to be constructed, placed or located within the Shopping Center, such theme being shown on the drawings attached hereto and made a part hereof as Exhibit D. In order to insure compliance with such theme, each Party shall submit to the Approving Party detailed plans ("Building Plans"), as required by procedures from time to time reasonably adopted by the Approving Party, covering the initial construction of each Building and any additions, remodeling, reconstruction or other alteration which changes the exterior thereof for approval prior to the commencement of any such work. Upon the issuance of any disapproval or recommendation for change, the submitting Party and the Approving Party shall mutually consult in an attempt to establish approved Building Plans for the proposed work. The Approving Party shall not arbitrarily or unreasonably withhold approval of the Building Plans or recommend changes in the Building Plans which otherwise conform with the requirements hereof, nor shall it withhold approval of exterior remodeling or exterior reconstruction which does not either substantially enlarge an existing structure, or substantially change an existing structure. In no event shall the Approving Party require any other Party to utilize design standards superior to those utilized by the Approving Party in the construction of Buildings on its Tract. Any approval of Building Plans by the Approving Party shall not constitute its assumption of responsibility or liability for the accuracy, sufficiency or propriety thereof, nor shall any such approval constitute its representation or warranty that the Building Plans comply with applicable laws. No material deviation shall be made from the approved Building Plans. Anything in this Section 3.3(B) or elsewhere in this REA to the contrary notwithstanding, in approving or disapproving any Building Plans, the Approving Party shall (i) act reasonably, (ii) first consult with all of the Parties in regard thereto, and (iii) exercise good faith in attempting to incorporate or adhere to the comments of any of the other Parties with respect to the proposed Building Plans and any changes to be proposed thereto.

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(C) No Building or other structure on any of the Outlots shall be more than one (1) story (not more than twenty-five (25) feet) in height or contain more than twelve thousand (12,000) square feet of Floor Area; provided, however, that a Building on Outlot A may contain an additional one thousand six hundred (1,600) square feet of porch or patio area attached thereto (which porch or patio area may be open or enclosed with screening or glass, depending on the season) and also an additional two thousand five hundred (2,500) square feet of basement Floor Area; and provided further, however, that a Building on Outlot A may contain specialty architectural elements which are up to an additional five (5) feet in height, so long as such Building includes neither a flat roof nor solid parapets. The Occupants of any Tract shall have the right to install, maintain, repair, replace and remove communications equipment on the top of the Buildings on such Tract which may extend above the height limits established above. (As used herein, "communications equipment" shall mean such things as satellite and microwave dishes, antennas and laser heads, together with associated equipment and cable.)

(D) If a portion of any part of the Shopping Center which is initially a Building Area is at any time hereafter paved or landscaped and used as Common Area, such portion may subsequently be used as Building Area provided that there is compliance with all parking requirements and other provisions of this REA for such Tract. Likewise, if any portion of any Building Area is at any time occupied by a Building, such Building may be subsequently razed, and until replaced, such portion of the Building Area shall thereafter be paved or landscaped and maintained as though it were a part of the Common Area, but at the sole expense of the Party owning such Tract.

Article IV -- Maintenance and Repair

Section 4.1 Utility Lines.

(A) Each Party shall maintain and repair, or cause to be maintained and repaired, to the extent of such Party's lawful authority to do so, in a good state of repair and a safe, first-class condition, all Separate Utility Lines utilized by it, regardless of where located. Such maintenance and repair shall be performed in a manner so as not to give rise to any liens or claims for lien on another Party's Tract. Any maintenance and repair of nondedicated Separate Utility Lines located on another Party's Tract shall be performed after reasonable advance written notice to such other Party (except that, in an emergency, the work may be initiated with only as much notice as is practicable under the circumstances), after normal business hours whenever practicable and in such a manner so as to cause as little disturbance in the use of such other Party's Tract as is practicable under the circumstances. Any Party performing or causing to be performed maintenance or repair work shall pay all costs and expenses associated therewith promptly, to complete such work as quickly as possible, and shall clean the area and restore the affected portion of the Common Area promptly to a condition equal to or better than the condition which existed prior to the commencement of such work.

(B) Common Utility Lines shall be maintained and replaced as part of the Common Area maintenance pursuant to Section 4.2 hereof.

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Section 4.2 Common Area Maintenance; Common Area Maintenance Costs.

(A) Except for maintenance, repairs, restoration and the like which is required on a particular Party's Tract by reason of the act or neglect of such Party, or any Permittee of such Party, which maintenance, repair, restoration or the like shall be the sole responsibility of such Party, the Operator shall maintain, or cause to be maintained, the Common Area in a slightly, safe and attractive condition and state of repair, in accordance with the provisions of this REA and in compliance with all applicable governmental laws, rules, regulations, orders and ordinances. All Common Area improvements shall be repaired or replaced with materials of a quality which is at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole. The Operator's maintenance and repair obligations under this REA shall consist of the following:

- (i) Cleaning, sweeping, and snow and ice removal on the Common Areas;
- (ii) Draining and restriping of the parking areas, sidewalks, and service drives and driveways on the Common Areas;
- (iii) Trash removal from common receptacles on the Common Areas, but not from receptacles serving a particular Occupant or Occupants;
- (iv) Maintenance, repair and upkeep of the planted or landscaped areas of the Common Areas;
- (v) Maintenance, repair and replacement of the parking lot lighting standards in the Common Areas;
- (vi) Enforcement of easements and other rights pertaining to Common Areas under this REA; and
- (vii) Security for the Shopping Center, if and to the extent requested by the In-Line Owner.

Anything in this REA to the contrary notwithstanding, each Party shall maintain and repair, at its sole cost and expense, in a clean, slightly and safe condition, any exterior shipping/receiving dock area, any truck ramp or truck parking area, and any refuse, recycling, compactor or dumpster area on its Tract.

(B) Anything in this REA to the contrary notwithstanding, in the event that any of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this REA, other than damage caused by ordinary use or wear and tear, the Party upon whose Tract such Common Area is located shall repair or restore such Common Area, at its sole cost and expense and with all due diligence; provided, however, that no Party shall be required to expend more than \$250,000.00 in Constant Dollars in excess of insurance

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proceeds which may be available (or which would have been available except for elections relating to deductibles or self-insurance for which the Party shall be responsible to contribute) for such repair or restoration. Notwithstanding the limitation set forth in the preceding sentence, a Party may require another Party to do such restoration work if the requiring Party has agreed in writing to pay the costs in excess of \$250,000.00. Except to the extent limited by Section 5.5(D) hereof, in the event that such damage or destruction of Common Area is caused in whole or in part by another Party or by a third Person, the Party obligated to make such repair or restoration reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution or damages.

(C) The Operator may hire companies affiliated with it to perform the maintenance and operation of the Common Area, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the Naperville/Aurora, Illinois regional area. Each Party hereby grants to the Operator, and its agents and employees, a license to enter upon its Tract to discharge the duties to operate, maintain and repair the Common Area. The Operator shall expend only such funds as are reasonably necessary for the operation, maintenance and insurance of the Common Area of the Shopping Center and as are not inconsistent with costs incurred in the operation, maintenance and insurance of common areas in other similar retail shopping centers in the Naperville/Aurora, Illinois regional area, and shall promptly pay such costs ("Common Area Maintenance Costs") when incurred, provided funds are then available to the Operator from funds paid by the Parties pursuant to this Article IV. For purposes of this REA, the Common Area Maintenance Costs shall not include:

- (i) any late charges or fees, if the Operator is responsible for such late charges or fees being incurred;
- (ii) any charge for electricity to a Party which separately pays the electrical costs for lighting the Common Area on its Tract;
- (iii) any costs to clean up or repair the Common Area resulting from promotional activities (unless the Approving Party has approved such activities and the ensuing cost of clean-up as a Common Area Maintenance Cost) or from construction, maintenance or replacement of buildings, which costs shall be borne by the Party or Occupant responsible therefor;
- (iv) real property taxes and assessments (each Party being responsible of all property taxes and assessments with respect to its Tract, as provided in Section 5.6 hereof);
- (v) the Operator's profit, administrative and overhead costs (including, without limitation, office space, equipment and utilities, legal, accounting or administrative services, and the Operator's personnel who are not permanently located at the Shopping Center);

- (vi) any entertainment, transportation, meals or lodging expenses; and
- (vii) any costs of repairs or replacements due to the act or negligence of any Party, Occupant or Permittee, which costs shall be the sole responsibility of the subject Party responsible therefor.

In lieu of the Operator's profit, administrative and overhead costs, the Operator shall be permitted to charge an amount ("Administration Fee") computed by multiplying the Common Area Maintenance Costs by fifteen percent (15%). In the event the Operator contracts all or substantially all of the maintenance of the Common Area to a commercial property management company, the Operator shall not receive the Administration Fee. If any of the Operator's personnel at the Shopping Center performs services, functions or tasks in addition to Common Area duties, then the cost of such personnel shall be equitably allocated according to time spent performing such duties.

(D) At least thirty (30) days prior to the beginning of each calendar year, the Operator shall submit for approval to the Approving Party, in the manner required by this Section 4.2(D), an estimated budget ("Budget") for the projected Common Area Maintenance Costs and Administration Fee for operating and maintaining the Common Area (including, without limitation, the Common Utility Lines) for the ensuing calendar year. The Budget shall set forth cost estimates which are not inconsistent with costs reasonably anticipated in the operation, maintenance and insurance of common areas in other similar retail shopping centers in the Naperville/Aurora, Illinois regional area, and shall identify separate cost estimates for at least the categories specified under Section 4.2 (A) hereof, and also the following:

- (i) premiums for insurance covering the Common Area as required by Section 5.5(A) hereof;
- (ii) rental or purchase of equipment and supplies;
- (iii) depreciation or trade-in allowances applicable to items purchased for Common Area purposes; and
- (iv) the Administration Fee.

If an item of maintenance or replacement is to be accomplished in phases over a period of calendar years, such as resurfacing of the drive and/or parking areas, then the Budget shall separately identify the estimated cost attributable to such year (including, without limitation, the area of the Common Area affected) and shall note the anticipated cost and timing (indicating the area of the Common Area affected) of such phased work during succeeding calendar years. The cost of approved "phased" work shall be paid by the Parties, notwithstanding that when such work is performed a Party may not then be participating in the joint maintenance of the Shopping Center.

If the Approving Party disapproves the proposed Budget, it shall consult with the Operator in an attempt to establish a final approved Budget. If a Budget for any calendar year is not approved by December 1 of the preceding calendar year, then the Operator shall be allowed to increase the line items in dispute in the Budget for the new calendar year by ten percent (10%) from the prior calendar year's Budget, and then continue to operate and manage the Shopping Center until the Budget for the new calendar year has been approved.

The Operator shall use its reasonable commercial efforts to operate and maintain the Common Area in accordance with the Budget. Notwithstanding the foregoing, the Operator shall have the right to make emergency repairs to the Common Area to attempt to prevent injury or damage to person or property, it being understood that the Operator shall nevertheless advise each Party of such emergency condition as soon as reasonably practicable, including, without limitation, the corrective measures taken and the estimated cost thereof. If the cost of the emergency action exceeds the reserve amount available, then the Operator may submit a supplemental billing to each Party, together with evidence supporting such payment, and each Party shall pay its proportionate share thereof within thirty (30) days. If the cost of the emergency action does not exceed the reserve amount available, then such costs shall be included as part of the Common Area Maintenance Costs at the year end (as further described in Section 4.2(E) hereof).

(E) The Common Area Maintenance Costs and the Administration Fee shall be prorated among all of the Parties in accordance with the following:

(i)	In-Line Tract	62.86%
(ii)	Outlot A	13.11%
(iii)	Outlot B	13.06%
(iv)	Outlot C	10.97%

The foregoing percentages have been calculated on the basis of the relative square footage of each such Tract, exclusive of any storm water detention areas contained on any such Tract.

Each Party shall pay to the Operator, in equal monthly installments, in advance, its share, as set forth above in this Section 4.2(E), of the Common Area Maintenance Costs and the Administration Fee, based either upon the amount set forth in the approved Budget or, if a Budget has not been approved the amount determined in accordance with Section 4.2(D) hereof. The Operator shall reasonably estimate such costs for the partial year during which its maintenance obligations commence, and each Party shall make its first payment in the month following the Operator's undertaking of such maintenance and repair of the Common Area. Within ninety (90) days after the end of each calendar year, the Operator shall provide each Party with a certified statement, together with supporting invoices and other reasonable materials, setting forth the actual Common Area Maintenance Costs paid by it for the operation and maintenance of such Common Area and the Administration Fee, and such Party's share of the

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aggregate thereof. If the amount paid by a Party for such calendar year shall have exceeded its share, the Operator shall refund the excess to such Party at the time such certified statement is delivered, or if the amount paid by a Party for such calendar year shall be less than its share, such Party shall pay the balance of its share to the Operator within thirty (30) days after receipt of such certified statement.

Within twelve (12) months after the receipt of any such certified statement, each Party shall have the right to audit the Operator's books and records pertaining to the operation and maintenance of the Common Area for the calendar year covered by such statement. The Party shall notify the Operator of its intent to audit at least fifteen (15) days prior to the designated audit date. In the event that such audit shall disclose any error in the determination of the Common Area Maintenance Costs or the Administration Fee, or in the allocation thereof to a Tract, an appropriate adjustment shall be made forthwith. The cost of any such audit shall be paid by the auditing Party, unless such Party shall be entitled to a refund in excess of five percent (5%) of the amount originally calculated by the Operator as its share for the calendar year, in which case the Operator shall pay the cost of such audit.

(F) The Operator agrees to defend, indemnify and hold each Party harmless from and against any mechanic's, materialmen's or laborer's liens, and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and court costs, arising out of the maintenance and operation by the Operator of the Common Area, provided that the Party seeking such indemnification has paid the Operator all amounts due to the Operator as provided in this REA. In the event that any Tract shall become subject to any such lien, the Operator shall promptly cause (i) such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge, or (ii) a title insurance company reasonably acceptable to such Party to insure against loss or damage that may be occasioned by any such lien.

(G) As noted in Section 1.16 hereof, the Operator shall be a third party beneficiary of certain specific Sections of this OEA. Further, in the event that any Party at any time fails to make any payment to the Operator as and when due pursuant to the terms, provisions and conditions of this OEA (including, without limitation, any payments to be made pursuant to this Section 4.2 in connection with the Common Area Maintenance Costs or the Administration Fee), the Operator shall have any and all rights available to an Non-Defaulting Party under Section 6.1 hereof, including, without limitation, the lien rights set forth in Section 6.1(C) hereof.

Section 4.3 Building Improvements. After completion of construction, each Party covenants and agrees, at its sole expense, to maintain and keep the Buildings located on its Tract in a first-class condition and state of repair, in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, and in compliance with the provisions of this REA. Each Party further agrees to store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage.

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Article V -- Operation Of Shopping Center

Section 5.1 Prohibited Uses. No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first-class retail shopping center. Without limiting the generality of the foregoing and except as provided in Sections 5.8 and 5.9 hereof, the following uses shall not be permitted:

- (A) Auditorium;
- (B) Meeting hall;
- (C) School, including, without limitation, beauty school, barber college, reading room and training school or educational facility (except on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center), or business furnishing care for children without the supervision or involvement of a parent or guardian;
- (D) Church or other place of public assembly;
- (E) "Flea market", second-hand store, army, navy or governmental surplus store, bingo, lotto or off-track betting hall, "head shop", or tattoo parlor;
- (F) Gymnasium;
- (G) Dance hall or discotheque;
- (H) Massage parlor, pornographic adult theater, display or male or female dancers, or "strip tease" establishment;
- (I) Video game or other arcade (except video entertainment which is primarily for demonstration purposes and incidental to retail sales of merchandise);
- (J) Car wash;
- (K) Facility for the sale, leasing or repair of motor vehicles or boats (or similar enterprise);
- (L) Night club or liquor store;
- (M) Adult book or adult video tape store (being stores having an inventory of which at least twenty percent (20%) is not available for sale or rental to children under 15 years of age because such inventory explicitly deals with or depicts human sexuality);

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- (N) Industrial uses;
- (O) Sale, rental or exhibition of pornographic material (except the sale or rental of "adult" materials by a book or video store, if such sale or rental is (i) in compliance with applicable legal and governmental authority requirements, and (ii) is an incidental use, with no sign, advertisement or display thereof in a storefront window or other location visible from the outside);
- (P) Any bar, tavern or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business;
- (Q) Hotel, motor inn, sleeping apartment, lodging room, or living quarters;
- (R) Funeral parlor or mortuary;
- (S) Theater;
- (T) Health club, spa or exercise club (except the demonstration, sale or display of exercise equipment);
- (U) Billiard or pool hall;
- (V) Bowling alley;
- (W) Skating rink;
- (X) Gasoline or service station, lubrication stop or other similar facility, or any repair or service center or service use offering services to the general public or any similar use (except that up to 3,000 square feet of Floor Area may be used on that portion of the In-Line Tract designated on the Site Plan as "Computer City" for repair or service incidental to the permitted uses described in Section 5.8(A)(ii) hereof);
- (Y) Anywhere in the Common Areas, carnivals, circuses or tents, or special sales or promotions;
- (Z) Any office use (other than the office uses incidental to a business selling goods and/or services as permitted hereunder and other than office areas as may be reasonably needed in connection with the operation of the Shopping Center);

- (AA) Any business principally selling or displaying goods or merchandise not in stock at its premises;
- (BB) Any warehouse for storage of goods not intended to be sold on or from the premises, or any use not involving the sale of goods and/or services to the public at retail (other than storage areas as may be reasonably needed in connection with the operation of the Shopping Center or a business selling goods and/or services as permitted hereunder);
- (CC) Medical clinic or hospital, blood bank, animal or veterinary care clinic or hospital, or animal raising facility or pet shop;
- (DD) Bailbondsmen;
- (EE) Central laundry, dry cleaning plant or business, or laundromat;
- (FF) Lumberyard (other than incidental lumber sales by a home improvement business or use);
- (GG) Auction, liquidation, going-out-of-business, fire or bankruptcy sales;
- (HH) Facility for check cashing, if not incidental to a bank or savings and loan operation;
- (II) Mobile home park, trailer court, labor camp, junkyard or stockyard;
- (JJ) Any business or use which emits offensive odors, fumes dust or vapors, or which emits loud noise or sounds which are reasonably objectionable; and
- (KK) Using, storing or disposing of any Hazardous Materials, except in accordance with applicable law.

Further, all business operated in the Shopping Center shall be intended for operation on a full-time basis during at least normal business hours, Monday through Saturday. No business operated in the Shopping Center shall be intended for operation on a part-time basis (e.g., for only a portion of the week or month), and no such business shall be intended for seasonal operation (e.g., a Christmas or Halloween store open for only one month per year, or a tax preparation facility). However, the foregoing shall not require the continuous use or occupation of any portion of the Shopping Center, but is intended only to prohibit businesses in the Shopping Center which are intended to operate on a part-time basis for only a portion of the week or month, such as a discount store operation which is open only as it has stock available for sale.

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Section 5.2 No Charge for Use of Common Area. No Permittee shall be charged for the right to use the Common Area; provided, however, that Permittees may be charged for valet parking services which may be offered by an Occupant.

Section 5.3 No Obligation for Continuous Use. This REA is not intended to, and does not, create or impose any obligation on a Party to operate, continuously operate or cause to be operated, a business or any particular business at the Shopping Center or on any Tract.

Section 5.4 Lighting. After completion of the portion of the Common Area lighting system on its Tract (which portion will be separately metered to each such Tract), each Party hereby covenants and agrees to keep its Tract fully illuminated each day from dusk to at least thirty (30) minutes after the last business on its Tract has closed, unless the Approving Party otherwise consents. Each Party further agrees to keep any exterior Building security lights on its Tract illuminated from dusk until dawn. During the term of this REA, each Party grants an irrevocable license to each other Party for the purpose of permitting the lighting from its Tract to incidentally shine on the adjoining Tract.

Section 5.5 Insurance.

(A) During the period the Operator is maintaining the Common Area, the Operator shall maintain or cause to be maintained in full force and effect commercial general liability insurance, including personal injury liability and contractual liability, covering the Common Area with a combined single limit of liability of not less than Two Million Dollars (\$2,000,000.00) in Constant Dollars for bodily injury to or personal injury or death of any one person and consequential damages arising therefrom, a limit of liability of not less than Three Million Dollars (\$3,000,000.00) in Constant Dollars for bodily injury to or personal injury or death of more than one person arising out of any one occurrence and consequential damage arising therefrom, and a limit of liability of not less than One Million Dollars (\$1,000,000.00) in Constant Dollars for property damage arising out of any one occurrence. Such insurance shall include, without limitation, casualty insurance with extended coverage endorsement upon the Common Areas, and the site improvements located thereon, equal to the full replacement cost thereof and business interruption insurance (for an interruption not to exceed twelve (12) months). Each Party and the Operator, and such other Occupants as the Operator may determine, shall be a "named insured" under such policy. The insurance maintained by the Operator shall be primary insurance to the insurance maintained by the Parties pursuant to paragraph (B) below.

(B) Each Party (as to its Tract only) shall maintain or cause to be maintained in full force and effect commercial general liability insurance with a limit of liability of not less than Two Million Dollars (\$2,000,000.00) in Constant Dollars for bodily or personal injury or death to any one person, a limit of liability of Three Million Dollars (\$3,000,000.00) in Constant Dollars for bodily or personal injury or death to more than one person arising out of any one occurrence, and a limit of One Million Dollars (\$1,000,000.00) in Constant Dollars for property damage, arising out of any one occurrence; the other Parties shall be "additional insureds" under such policy.

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Each Party (“Indemnitor”) covenants and agrees to defend, protect, indemnify and hold harmless each other Party (“Indemnitee”) from and against all claims, including, without limitation, any actions or proceedings brought thereon, and all costs, losses, expenses and liability (including, without limitation, reasonable attorneys’ fees and costs) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person, which shall occur on the Tract owned by such Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitee, its Permittees, or the agents, servants or employees of any such Permittees.

(C) Prior to commencing any construction activities within the Shopping Center, each Party shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages in Constant Dollars set forth below:

- (i) Workers’ Compensation - statutory limits;
- (ii) Employers’ Liability - \$500,000; and
- (iii) Comprehensive General/Commercial General Liability as follows:
 - (a) Bodily Injury - \$3,000,000 per occurrence;
 - (b) Property Damage - \$3,000,000 per occurrence;
 - (c) Independent Contractors Liability (same coverage as set forth in subparagraphs (a) and (b) above);
 - (d) Products/Completed Operations Coverage which shall be kept in effect for at least two (2) years after completion of work;
 - (e) “XCU” Hazard Endorsement, if applicable;
 - (f) “Broad Form” Property Damage Endorsement;
 - (g) “Personal Injury” Endorsements; and
 - (h) “Blanket Contractual Liability” Endorsement.

All such insurance shall be primary insurance to the insurance maintained by the Operator and the Parties pursuant to paragraphs (A) and (B) above. If the construction activity involves the use of another Party’s Tract, then the owner of such Tract shall be an additional insured and such insurance shall provide that the same shall not be canceled or materially reduced without at least thirty (30) days’ prior written notice to the named insureds and each additional insured. If such insurance is canceled or expires, then the constructing Party shall immediately stop all work on

or use of the other Party's Tract, until either the required insurance is reinstated or replacement insurance obtained.

(D) Effective upon the commencement of construction of any Building on its Tract and so long as such Building exists, a Party shall carry, or cause to be carried, casualty insurance with "extended" or "all-risk" coverage, in the amount of one hundred percent (100%) of the full replacement cost thereof (excluding pavement, footings, foundations or excavations).

Each Party ("Releasing Party") hereby releases and waives for itself, and each Person claiming by, through or under it, each other Party ("Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Shopping Center, which loss or damage is of the type generally covered by the insurance required to be maintained under this Section 5.5, irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required to be carried or actually carried. Each Party agrees to use its best efforts to obtain, if needed, appropriate waiver of subrogation endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given. To the fullest extent permitted by law, each Party ("Indemnitor") covenants and agrees to indemnify, defend and hold harmless each other Party ("Indemnitee") from and against all claims asserted by or through any Permittees of the Indemnitor's Tract for any loss or damage to the property of such Permittee located upon the respective Indemnitor's Tract, which loss or damage is of the type generally covered by the insurance required to be maintained under this Section 5.5, irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

(E) All insurance required by this Section 5.5 shall be procured from companies licensed in the state where the Shopping Center is located and shall be rated by the then current Best's Insurance Reports not less than A-/X. No insurance to be provided hereunder shall have a deductible amount greater than Fifty Thousand and 00/100ths Dollars (\$50,000.00) in Constant Dollars.

(F) The insurance required pursuant to this Section 5.5 shall include the following provisions:

- (i) shall provide that the policy may not be canceled or materially reduced in amount or coverage without at least thirty (30) days' prior written notice by the insurer to each named insured and to each additional insured;
- (ii) shall provide for severability of interests;
- (iii) shall provide that an act or omission of one of the named insureds or additional insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the other named insureds;

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- (iv) shall provide for contractual liability coverage with respect to the indemnity obligations set forth herein; and
- (v) shall be written to provide coverage on an occurrence basis, if available.

Section 5.6 Taxes and Assessments.

(A) Each Party shall pay, or cause to be paid, prior to delinquency all taxes and assessments with respect to its Tract, the Buildings located thereon and any personal property owned or leased by such Party in the Shopping Center; provided, however, that if such taxes or assessments or any part thereof may be paid in installments, the Party responsible therefor may pay each such installment as and when the same becomes due and payable. Nothing contained in this Section 5.6 shall prevent any Party from contesting, at its sole cost and expense, any such taxes and assessments with respect to its Tract in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time as such contest is concluded (allowing for appeal to the highest appellate court), the contesting Party shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon. The easements granted in the REA shall survive the imposition of any tax lien on the individual Tracts and the Shopping Center. In order to accomplish the foregoing, from time to time, but not more than twice in any calendar year, any Party ("Requesting Party") may request in writing that another Party ("Taxpayer") furnish written evidence that all real property taxes and installments of assessments and special assessments upon the Taxpayer's Tract then due have been paid in full. Upon such request, the Taxpayer shall furnish such evidence to the Requesting Party.

(B) If a Party ("Defaulting Party") shall fail to pay any real property taxes or installments of assessments or special assessments ("Taxes") on its Tract before any penalties and statutory interest accrue, any of the other Parties ("Non-Defaulting Party") may pay the Taxes, penalties and statutory interest if such amounts are not paid by the Defaulting Party within thirty (30) days after written notice from the Non-Defaulting Party to the Defaulting Party demanding the payment of such amounts. In such event, the Defaulting Party shall reimburse the Non-Defaulting Party upon demand for all Taxes, penalties and statutory interest paid by the Non-Defaulting Party for the property in the Shopping Center owned by the Defaulting Party, plus interest at the rate set forth in Section 6.2 hereof. Upon payment of the Taxes by the Non-Defaulting Party, such Party shall have a lien on the Defaulting Party's Tract which shall attach and take effect upon recordation.

Section 5.7 Liens. In the event any mechanic's lien is filed against the Tract of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so filed shall cause such lien to be discharged prior to entry of final judgment (after all appeals) for the foreclosure of such lien, and agrees to indemnify, defend, and hold harmless the other Party and its Tract against liability, loss, damage, costs or expenses (including reasonable attorneys' fees and costs) on account of such claim of lien. Upon request of the Party whose Tract is subject to such lien, the Party permitting or causing such lien to be filed shall promptly cause such lien to be released and discharged of

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record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent a Party permitting or causing such lien from contesting the validity thereof in any manner such Party chooses, so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs or other charges necessary to release such lien.

Section 5.8 Specifically Permitted Uses. Anything in Section 5.1 hereof or anything else in this REA to the contrary notwithstanding, certain uses shall be specifically permitted on certain of the Tracts, as follows:

(A) At all times during the term of this REA, the following uses shall be permitted on the In-Line Tract:

- (i) A typical "Baby Superstore" or similar store shall be permitted, on that portion of the In-Line Tract designated as "Baby Superstore" on the Site Plan and on any expansion of such designated portion of the In-Line Tract, (a) to engage in the sale at retail of goods and services relating to the baby and children's market; and (b) to conduct annually four (4) sidewalk sales, to be conducted during each of the months of May, June, September and one other month designated by such store, each such sidewalk sale to be conducted for not more than four (4) days and to be held on the sidewalk immediately in front of and adjacent to such store, without unreasonably blocking pedestrian traffic and without being located in front of any other stores on the In-Line Tract.
- (ii) A typical "Computer City" store or similar store shall be permitted, on that portion of the In-Line Tract designated as "Computer City" on the Site Plan and on any expansion of such designated portion of the In-Line Tract, (a) to engage in the retail sale, lease, service or supply of (i) computers, computer software, computer tools, computer peripherals or components thereof, or (ii) any other products or devices which have an office, home-office or personal productivity use or application (including, without limitation, paper goods, ribbons, calculators, personal organizers, hand-held electronic devices, hand-held computers, copiers, facsimile machines, cellular telephones and office furniture); and (b) to conduct annually four (4) sidewalk sales, to be conducted during each of the months of May, June, September and one other month designated by such store, each such sidewalk sale to be conducted for not more than four (4) days and to be held on the sidewalk immediately in front of and

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adjacent to such store, without unreasonably blocking pedestrian traffic and without being located in front of any other stores on the In-Line Tract.

(iii) A typical "Zany Brainy" store or similar store shall be permitted, on that portion of the In-Line Tract designated as "Zany Brainy" on the Site Plan and on any expansion of such designated portion of the In-Line Tract, (a) to engage in the sale at retail of children's books, magazines, computer software, audio and video tapes, games and toys, arts and crafts, stationery, teachers' and parents' resources, other educational and multi-media children's items, other items for use by children, and technological evolutions of any of the foregoing; (b) to operate a snack and refreshments bar in an area not to exceed one thousand (1,000) square feet of Floor Area; and (c) to conduct annually four (4) sidewalk sales, to be conducted during each of the months of May, June, September and one other month designated by such store, each such sidewalk sale to be conducted for not more than four (4) days and to be held on the sidewalk immediately in front of and adjacent to such store, without unreasonably blocking pedestrian traffic and without being located in front of any other stores on the In-Line Tract.

(B) For so long as Key Wester Fish and Pasta House of Illinois, Inc., an Illinois corporation ("Key Wester"), or a Person affiliated with Key Wester (meaning a Person which controls, is controlled by or is under common control with, by virtue of the ownership of a majority voting interest or by similar means), is the fee owner of Outlot A, the use of Outlot A for a typical "Key Wester Fish and Pasta House" Restaurant, which includes, without limitation, a "Hemingway's Bar" area offering entertainment, shall be permitted on Outlot A. Such "Key Wester Fish and Pasta House" Restaurant shall be permitted to sell prepared food for sit-down and carry-out service and to provide beer, wine and liquor for sale to restaurant patrons for on-premises consumption only. Such "Hemingway's Bar" shall be permitted to sell prepared food for sit-down and carry-out service, to provide beer, wine and liquor for sale to restaurant and bar patrons for on-premises consumption only, and to provide musical entertainment for patrons within the premises; provided, however, that (i) no live musical entertainment will be permitted in the Common Areas or any portion thereof, and (ii) live musical entertainment will be permitted on any open or screened porch or patio if and only if (a) such entertainment is in conjunction with a particular wedding, banquet or similar party or event, and (b) the volume of sound emanating from such

entertainment does not unreasonably interfere with the business operations of any other Occupants of the Shopping Center.

Section 5.9 Exclusive Uses. Anything in this REA to the contrary notwithstanding, the following terms, provisions and conditions shall apply with respect to exclusive uses in the Shopping Center:

- (A) Subject to this Section 5.9(A), neither all nor any portion of any one or more of the Outlots may be sold or leased to, or occupied or used by, (i) any store which uses its premises principally for the retail sale of baby and children's furniture; (ii) any store which maintains a combination of departments generally specializing in the display and sale of products for children and babies; or (iii) any store with gross sales from the sale of baby furniture exceeding ten percent (10%) of such store's overall gross sales of all items. However, the restrictions set forth in the immediately preceding sentence shall not apply to Occupants who operate a maternity shop, sporting goods store or furniture store (the latter having incidental sales of juvenile furniture), bicycle shop, hobby shop, children's clothing store, children's book store or children's shoe store, and further shall not apply to or otherwise restrict any toy stores with a Floor Area equal to or less than three thousand two hundred (3,200) square feet. As used herein, the term "baby and children's furniture" shall mean toy or clothing chests, cribs (including mattresses and bedding), changing tables, gliders and rockers (including coordinating ottomans), high chairs, children's beds (including mattresses and bedding), lamps, walkers, play yards, car seats, booster seats, strollers, cradles, swings, or any other furniture or furnishings intended for use by babies or children similar to the foregoing enumerated items. The restrictions in this Section 5.9(A) shall apply only for so long as the In-Line Tract, or any portion thereof, is owned by or leased to Baby Superstore, Inc. (or an assignee or sublessee of Baby Superstore, Inc.), or is owned by or leased to any other Person operating a retail business on the In-Line Tract, or any portion thereof, dealing in the display and sale of products described in the first sentence of this Section 5.9(A).
- (B) Subject to this Section 5.9(B), neither all nor any portion of any one or more of the Outlots may be sold or leased to, or occupied or used by, any Person engaging, on any Outlot, or on any portion thereof, in the sale, lease, service or supply of computers, computer software, computer tools, computer peripherals or components thereof. The restrictions in this Section 5.9(B) shall apply only for so long as the In-Line Tract, or any portion thereof, is owned by or leased to Tandy Corporation (or an assignee or sublessee of Tandy Corporation), or is owned by or leased to any other Person operating a retail business on the In-Line Tract, or any

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portion thereof, dealing in the display and sale of products described in the first sentence of this Section 5.9(B).

- (C) Subject to this Section 5.9(C), neither all nor any portion of any one or more of the Outlots may be sold or leased to, or occupied or used by, any Person (i) whose primary use of such Outlot, or any portion thereof, is for the sale of children's books, children's audio and video tapes, arts and craft supplies, children's oriented games, toys and/or computer software, and any technological evolutions of the foregoing and/or educational items for use by children, or (ii) who uses more than one thousand (1,000) square feet of Floor Area in the aggregate on such Outlot, or on any portion thereof, for the incidental sale of any one or more of the items described in the foregoing clause (i). The restrictions in this Section 5.9(C) shall apply only for so long as the In-Line Tract, or any portion thereof, is owned by or leased to Children's Concept, Inc., d/b/a Zany Brainy (or an assignee or sublessee of Children's Concept, Inc., d/b/a Zany Brainy), or is owned by or leased to any other Person operating a retail business on the In-Line Tract, or any portion thereof, dealing in the display and sale of products described in the first sentence of this Section 5.9(C).
- (D) For so long as Key Wester (as such term is defined in Section 5.8(B) hereof), or a Person affiliated with Key Wester (meaning a Person which controls, is controlled by or is under common control with, by virtue of the ownership of a majority voting interest or by similar means), is the fee owner of Outlot A, neither all nor any portion of any one or more of the In-Line Tract, Outlot B or Outlot C may be sold or leased to, or occupied or used by, any Person operating a Restaurant thereon, which Restaurant generates forty percent (40%) or more of its gross sales from the sale of prepared seafood and pasta items to sit-down patrons.

Article VI -- Miscellaneous

Section 6.1 Default.

(A) The occurrence of any one or more of the following events shall constitute a material default and breach of this REA by the nonperforming Party (the "Defaulting Party"):

- (i) The failure to make any payment required to be made hereunder within five (5) business days after written notice that payment is due and remains unpaid; or
- (ii) The failure to observe or perform any of the covenants, conditions or obligations of this REA, other than as described in subparagraph (i) above,

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within thirty (30) days after the issuance of a notice by another Party (the "Non-Defaulting Party") specifying the nature of the default claimed; provided, however, that if such non-monetary failure cannot reasonably be cured within such thirty (30)-day period and the Defaulting Party is diligently proceeding to cure any such failure, then such thirty (30)-day cure period shall be extended for so long as the Defaulting Party is diligently proceeding to cure any such failure.

(B) With respect to any uncured default under paragraph (A) above, any Non-Defaulting Party shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event the default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Tract of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants. In the event that any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus interest as provided herein, within five (5) business days after receipt of demand, together with reasonable documentation supporting the expenditures made.

(C) Costs and expenses accruing and/or assessed pursuant to Section 6.1(B) hereof, and funds advanced by the Operator to pay for the cost of performing any of its obligations hereunder, shall constitute a lien against the Defaulting Party's Tract, or, in the case of the Operator's advance of funds, all of the Parties' respective Tracts. Such lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of Deeds of DuPage County, Illinois by the Party (or the Operator) making the claim. The claim of lien shall include the following:

- (i) The name of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a curing Party (or the Operator);
- (iii) An identification of the owner or reputed owner of the Tract or interest therein against which the lien is claimed;
- (iv) A description of the Tract against which the lien is claimed;
- (v) A description of the work performed or action taken which has given rise to the claim of lien and a statement itemizing the amount thereof; and

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(vi) A statement that the lien is claimed pursuant to the provisions of this REA, reciting the date of recordation and the recorded document number hereof.

The notice shall be duly verified and acknowledged and shall contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed, by personal service or by mailing pursuant to Section 6.4 hereof. Such lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any manner allowed by law, including, without limitation, a suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State of Illinois. Any lease which has commenced prior to the attachment of any such lien shall be subordinate to such lien; provided, however, that so long as the tenant under any such lease is not in default thereunder, such tenant's possession and quiet enjoyment of the premises which are the subject of such lease shall not be diminished or interfered with by such lien holder or any person or entity claiming by, through or under such lien holder; and provided further, however, that any such tenant attorns to such lien holder or any person or entity claiming by, through or under such lien holder.

(D) No waiver by any Party of any default under this REA shall be effective or binding on such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this REA shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this REA.

(E) Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party or any other Person violating or attempting to violate or defaulting upon any of the provisions contained in this REA, and to recover damages for any such violation or default. Such proceeding shall include, without limitation, the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants or conditions of this REA, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this REA or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

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Section 6.2 Interest. Any time a Party shall not pay any sum payable hereunder to another within five (5) days after the due date, such delinquent Party or Operator shall pay interest on such amount from the due date to and including the date such payment is received by the Person entitled thereto, at the lesser of:

- (i) The highest rate permitted by law to be paid on such type of obligation by the Person obligated to make such payment or the Person to whom such payment is due, whichever is less; or
- (ii) Three percent (3%) per annum in excess of the prime rate from time to time publicly announced by Harris Trust and Savings Bank, Chicago, Illinois, or its successor.

Section 6.3 Estoppel Certificate. Each Party agrees that upon the written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party or the Operator, such party will issue to such Person, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

- (i) whether it knows of any default under this REA by the requesting Person, and if there are known defaults, specifying the nature thereof;
- (ii) whether this REA has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;
- (iii) whether this REA is in full force and effect; and
- (iv) whether there are any sums due and owing by a Party to this REA.

Such statement shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. Anything in this REA to the contrary notwithstanding, the issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Person to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer either to request an audit of the Common Area Maintenance Costs for any year it is entitled to do so, or to challenge acts committed by other Parties for which approval by the Approving Party was required but not sought or obtained.

Section 6.4 Notices. All notices, demands and requests (collectively, "notice") required or permitted to be given under this REA must be in writing and shall be deemed to have been given as of the date such notice is (A) delivered to the Party intended, (B) delivered to the then current address of the Party intended, or (C) rejected at the then current address of the Party intended, provided such notice was sent prepaid. The initial addresses of the Parties shall be:

RG 1-961-22605

In-Line Owner: c/o Walsh, Higgins & Company
Suite 800
101 East Erie Street
Chicago, Illinois 60601
Attn.: Gerald A. Pientka and Donald J. Johnson

with a copy to: O'Brien, O'Rourke & Hogan
Suite 830
135 South LaSalle Street
Chicago, Illinois 60603
Attn.: W. Craig Fowler

Outlot A Owner: Key Wester Fish and Pasta House of Illinois, Inc.
c/o Richard J. Portillo
1425 West 22nd Street
Oak Brook, Illinois 60521

with a copy to: Gallagher & Joslyn
Suite 300
One Lincoln Centre
Oakbrook Terrace, Illinois 60181
Attn.: Susan B. Shelton

Outlot B Owner: c/o Walsh, Higgins & Company
Suite 800
101 East Erie Street
Chicago, Illinois 60601
Attn.: Gerald A. Pientka and Donald J. Johnson

with a copy to: O'Brien, O'Rourke & Hogan
Suite 830
135 South LaSalle Street
Chicago, Illinois 60603
Attn.: W. Craig Fowler

Outlot C Owner: c/o Walsh, Higgins & Company
Suite 800
101 East Erie Street
Chicago, Illinois 60601
Attn.: Gerald A. Pientka and Donald J. Johnson

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with a copy to:

O'Brien, O'Rourke & Hogan
Suite 830
135 South LaSalle Street
Chicago, Illinois 60603
Attn.: W. Craig Fowler

Upon at least ten (10) days' prior written notice, each Person shall have the right to change its address for notice purposes to any other address within the United States of America.

Section 6.5 Approval Rights. Unless otherwise herein specifically provided, whenever a consent or approval ("approval") is required, such approval shall not be unreasonably withheld or delayed. Unless provision is made for a specific time period, each response to a request for an approval shall be given by the Person to whom directed within thirty (30) days of receipt of such request. Any disapproval shall be in writing and the reasons therefor shall be clearly stated. If a response is not given within the required time period, the requested Party shall be deemed to have given its approval.

Section 6.6 Condemnation. In the event any portion of the Shopping Center shall be condemned, the award shall be paid to the Party owning the land or the improvement taken, except that (i) if the taking includes improvements belonging to more than one Party, such as Utility Lines or signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this REA, the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this REA which does not reduce or diminish the amount paid to the Party owning the land or the improvement taken, then the owner of such other property interest shall have the right to seek a separate award for the taking thereof.

Section 6.7 Binding Effect. The terms of this REA and all easements granted hereunder shall constitute covenants running with the land and shall inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns. This REA is not intended to supersede, modify, amend or otherwise change the provisions of any prior instrument affecting the land burdened hereby. If any Tract is hereafter divided into two (2) or more separate Tracts by separation of ownership, ground lease or otherwise, then all of the resulting Tracts shall enjoy and be subject to the benefits and burdens of the easements granted or reserved hereunder.

Section 6.8 Construction and Interpretation.

(A) This REA (including, without limitation, the Exhibits attached hereto and made a part hereof) contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements are superseded in total by this REA. This REA has been fully negotiated at arms' length between the signatories hereto, and after advice by counsel and other representatives

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chosen by such signatories, and such signatories are fully informed with respect thereto. No such signatory shall be deemed the scrivener of this REA; and, based on the foregoing, the provisions of this REA hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

(B) Whenever required by the context of this REA, (i) the singular shall include the plural and vice versa, and the masculine shall include the feminine and neuter genders and vice versa; and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, regardless of whether language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter.

(C) The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this REA. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this REA.

(D) Invalidation of any of the provisions contained in this REA, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

(E) This REA may be amended by, and only by, a written agreement signed by the then current Approving Party and shall be effective only when recorded in DuPage County, Illinois; provided, however, that no such amendment shall impose any materially greater obligation on, or materially impair any right of, a Party or its Tract without the consent of such Party. No consent to the amendment of this REA shall ever be required of any Occupant or Person other than the Parties, nor shall any Occupant or Person other than the Parties have any right to enforce any of the provisions hereof; provided, however, that the In-Line Owner shall be permitted to enter into agreements with one or more Occupants of the In-Line Tract whereby such Occupant(s) shall have the right to enforce the terms, provisions and conditions of this REA directly in the name or and on behalf of the In-Line Owner.

(F) This REA may be executed in several counterparts, each of which shall be deemed an original. The signatures to this REA may be executed and notarized on separate pages and when attached to this REA shall constitute one complete document.

Section 6.9 Negation of Partnership. None of the terms or provisions of this REA shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the

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right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

Section 6.10 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Tract or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

Section 6.11 Excusable Delays. Whenever performance is required of any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this section shall not operate to excuse any Person from the prompt payment of any monies required by this REA.

Section 6.12 Mitigation of Damages. In all situations arising out of this REA, all Parties shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party hereto shall take all reasonable measures to effectuate the provisions of this REA.

Section 6.13 REA Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this REA shall (A) entitle any Party to cancel, rescind or otherwise terminate this REA, or (B) defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as to any part of the Shopping Center. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

Section 6.14 Time is of Essence. Time is of the essence of this REA.

Section 6.15 No Waiver. The failure of any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

Section 6.16 Mortgages on Shopping Center. Any mortgage or similar instrument securing financing upon any Tract, or portion thereof, shall be subject and subordinate to the terms and conditions of this REA.

Section 6.17 No Merger. In the event that any owner of a Tract owns or hereafter acquires all or any portion of another Tract, no term, provision or condition hereof shall merge or

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be deemed to have merged into the title so acquired or the title then owned. It is the intent of the Parties that the Doctrine of Merger, or any other common law rule or codification analogous thereto, shall not operate to cause any of the terms, provisions or conditions of this REA to terminate because of the vesting of title to real estate in a Party.

Article VII -- Term

Section 7.1 Term of this REA. This REA shall be effective as of the date first above written and shall continue in full force and effect through December 31, 2045; provided, however, that the easements referred to in Article II hereof which are specified as being perpetual or as continuing beyond the term of this REA shall continue in full force and effect as provided therein, subject to a continuing right of relocation on the same terms provided herein. Upon termination of this REA, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this REA, except as the same relate to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this REA shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this REA prior to the date of such termination.

Article VIII -- Limited Liability

Section 8.1 Limited Liability of Parties. Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons, firms, corporations or entities who constitute a Party hereto, including, without limitation, officers, directors, employees or agents of a party hereto, with respect to any of the terms, covenants, conditions or provisions of this REA. In the event of default by a Defaulting Party hereunder, any Non-Defaulting Party who seeks recovery from a Defaulting Party hereto shall look solely to the interest of such Defaulting Party, its successors and assigns, in the Shopping Center for the satisfaction of each and every remedy of the Non-Defaulting Party; provided, however, that the foregoing shall not in any way impair, limit or prejudice the right of any Party to pursue equitable relief in connection with any term, covenants or condition of this REA, including, without limitation, a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance.

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In witness whereof, the Parties have caused this REA to be executed by their respective duly authorized representatives effective as of the day and year first above written.

In-Line Owner:

W/H No. 27, L.L.C., an Illinois limited
liability company

By:

Its: Vice President

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Outlot A Owner:

Key Wester Fish and Pasta House of Illinois,
Inc., an Illinois corporation

By: Dickie P. Mulls
Its: President

Outlot B Owner:

W/H No. 27, L.L.C., an Illinois limited
liability company

By: W.H. No. 27
Its: Vice - PRESIDENT

Outlot C Owner:

W/H No. 27 / L.L.C., an Illinois limited
liability company

By: W.H. No. 27
Its: Vice - PRESIDENT

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Acknowledgments

State of Illinois

SS.

County of Cook

I, Howard Goldblatt, a notary public in and for said County, in the State aforesaid, do hereby certify that George A. Pientka, personally known to me to be the Vice-President of W/H No. 27, L.L.C., an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Vice-President, HE signed and delivered the said instrument, pursuant to authority, given by the Managers of said limited liability company, as His free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal this 10th day of July, 1996.



State of Illinois

SS.

County of DuPage

I, SUSAN B. SHELTON, a notary public in and for said County, in the State aforesaid, do hereby certify that RICHARD J. PORTILLO, personally known to me to be the PRESIDENT of Key Wester Fish and Pasta House of Illinois, Inc., an Illinois corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such PRESIDENT, HE signed and delivered the said instrument, pursuant to authority, given by the Board of Directors of said corporation, as HIS free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 8 day of MAY, 1996.

A handwritten signature of Susan B. Shelton.

Notary Public



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Lender's Consent
to
Reciprocal Easement Agreement for High Grove Plaza, Naperville, Illinois

NBD Bank ("NBD") is the holder of a first mortgage lien on Outlot A. NBD hereby consents to the terms and conditions of this Recoprocral Easement Agreement for High Grove Plaza, Naperville, Illinois ("REA") and agrees that the lien of its mortgage on Outlot A is expressly subject and subordinate to the terms and conditions of the REA.

Dated: May 31, 1996.

NBD:

NBD Bank

By: Yvette N. Matteson
Its: Assistant Vice President

ATTEST:

By: Noreen M. Mailins
Its: Second Vice President

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Exhibit A-1 -- Legal Description of In-Line Tract

That part of Lot 6 in Glacier Park Subdivision being a subdivision of part of Section 15 and Section 22, Township 38 North, Range 9, East of the Third Principal Meridian, according to the Plat thereof recorded January 29, 1990 as Document No. R90-12326, re-recorded April 30, 1990 as Document No. R90-51012 and Certificate of Correction thereto recorded February 19, 1990 as Document No. R90-20823 described as follows:

Beginning at the most Northerly Northeast corner of said Lot 6; thence South 37 degrees 08 minutes 59 seconds East along the Easterly line of said Lot 6 a distance of 99.16 feet; thence Southerly along the arc of a curve concave to the East, being the said Easterly line of Lot 6, having a radius of 516.35 feet, having a chord bearing of South 39 degrees 36 minutes 03 seconds West, a distance of 238.81 feet to a point of compound curvature; thence Southerly along the arc of a curve being concave to the East, being the said Easterly line of Lot 6, having a radius of 1233.00 feet, having a chord bearing of South 11 degrees 07 minutes 36 seconds West a distance of 655.26 feet; thence South 89 degrees 55 minutes 43 seconds West 147.48 feet to a point of curvature; thence Westerly along the arc of a curve concave to the South, having a radius of 44.50 feet, having a chord bearing of South 69 degrees 51 minutes 08 seconds West a distance of 31.19 feet to a point of tangency; thence South 49 degrees 46 minutes 32 seconds West 21.57 feet to a point of curvature; thence Southerly along the arc of a curve concave to the East, having a radius of 44.50 feet, having a chord bearing of South 11 degrees 29 minutes 08 seconds West, a distance of 59.48 feet to a point of tangency; thence South 26 degrees 48 minutes 16 seconds East 87.80 feet to a point of curvature; thence Southerly along the arc of a curve concave to the West, having a radius of 225.50 feet, having a chord bearing of South 13 degrees 24 minutes 08 seconds East, a distance of 105.50 feet to a point of tangency; thence South 00 degrees 00 minutes 00 seconds East 106.46 feet; thence Westerly along the arc of a curve being concave to the North, being the Southerly line of said Lot 6, having a radius of 235.50 feet, having a chord bearing of North 74 degrees 20 minutes 54 seconds West, a distance of 30.09 feet to a point of tangency; thence North 70 degrees 41 minutes 17 seconds West along the Southerly line of said Lot 6 a distance of 35.11 feet; thence North 28 degrees 24 minutes 30 seconds East 23.31 feet; thence North 00 degrees 00 minutes 00 seconds 60.20 feet to a point of curvature; thence Northerly along the arc of a curve, being concave to the West, having a radius of 294.50 feet, having a chord bearing of North 11 degrees 22 minutes 27 seconds West, a distance of 116.93 feet to a point of tangency; thence North 22 degrees 44 minutes 55 seconds West 58.97 feet to a point of curvature; thence Northwesterly along the arc of a curve being concave to the Southwest, having a radius of 156.50 feet, having a chord bearing of North 47 degrees 03 minutes 19 seconds West a distance of 132.78 feet to a point compound curvature; thence Southwesterly along the arc of a curve being concave to the Southeast, having a radius of 15.00 feet, having a chord bearing of South 54 degrees 16 minutes 58 seconds West a distance of 28.46 feet to a point of tangency; thence South 00 degrees 04 minutes 21 seconds East 88.98 feet; thence South 89 degrees 55 minutes 39 seconds West 195.29 feet; thence North 01 degrees 07 minutes 55 seconds East along the West line of said Lot 6 a distance of 32.26 feet; thence North 04 degrees 30 minutes 33 seconds West 164.04 feet; thence North 00 degrees 00 minutes 26 seconds East 244.09 feet; thence South 89 degrees 53 minutes 27 seconds West 12.02 feet;

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thence North 00 degrees 31 minutes 04 seconds West along the West line of said Lot 6 a distance of 50.02 feet; thence North 00 degrees 38 minutes 00 West along the said West line of Lot 6 a distance of 240.54 feet; thence North 01 degrees 07 minutes 55 seconds East 76.62 feet; thence North 89 degrees 55 minutes 55 seconds East 39.35 feet; thence North 00 degrees 04 minutes 05 seconds West 17.01 feet; thence North 89 degrees 55 minutes 55 seconds East 234.50 feet; thence South 00 degrees 04 minutes 08 seconds East 169.00 feet; thence North 89 degrees 55 minutes 50 seconds East 249.50 feet; thence North 00 degrees 04 minutes 08 seconds West 357.95 feet; thence South 88 degrees 53 minutes 47 seconds East along the North line of said Lot 6 a distance of 238.73 feet to the place of beginning; containing 10.643 acres in the City of Naperville, DuPage County, Illinois

PIN 07-15-302-001

Vacant land at Rte 59 & Glacier Parkway Ave.
Naperville, IL

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Exhibit A-2 -- Legal Description of Outlot A

That part of Lot 6 in Glacier Park Subdivision being a subdivision of part of Section 15 and Section 22, Township 38 North, Range 9, East of the Third Principal Meridian, according to the Plat thereof recorded January 29, 1990 as Document No. R90-12326 and re-recorded April 30, 1990 as Document No. R90-51012 and the Certificate of Correction thereto recorded February 19, 1990 as Document No. R90-20823 described as follows:

Commencing at the most Northerly Northeast corner of said Lot 6; thence North 88 degrees 53 minutes 47 seconds West along the North line of said Lot 6 a distance of 238.73 feet for a place of beginning; thence South 00 degrees 04 minutes 08 seconds East 357.95 feet; thence South 89 degrees 55 minutes 50 seconds West 249.50 feet; thence North 00 degrees 04 minutes 08 seconds West 169.00 feet; thence South 89 degrees 55 minutes 55 seconds West 234.50 feet; thence South 00 degrees 04 minutes 05 seconds East 17.01 feet; thence South 89 degrees 55 minutes 55 seconds West 39.35 feet; thence North 01 degree 07 minutes 55 seconds East along the Easterly line of Illinois State Route 59 as heretofore dedicated per Document No. 312314 a distance of 183.30 feet; thence North 05 degrees 40 minutes 27 seconds East along said East line of Illinois State Route 59 a distance of 33.43 feet; thence South 88 degrees 53 minutes 47 seconds East along the North line of said Lot 6 a distance of 516.28 feet to the place of beginning; in the City of Naperville, DuPage County, Illinois

PIN 07-15-302-001
Vacant land at Rte 59 and Glacier Park Ave
Naperville, IL

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Exhibit A-3 -- Legal Description of Outlot B

That part of Lot 6 in Glacier Park Subdivision being a subdivision of part of Section 15 and Section 22, Township 38 North, Range 9, East of the Third Principal Meridian, according to the part thereof recorded January 29, 1990 as Document Number R90-12326, re-recorded April 30, 1990 as Document Number R90-51012 and Certificate of Correction thereto recorded February 19, 1990 as Document Number R90-20823 described as follows:

Commencing at the most Northerly Northeast corner of said Lot 6; thence South 37 degrees 08 minutes 59 seconds East along the Easterly line of said Lot 6 a distance of 99.16 feet; thence Southerly along the arc of a curve concave to the East, being the said Easterly line of Lot 6, having a radius of 516.35 feet, having a chord bearing of South 39 degrees 36 minutes 03 seconds West, a distance of 238.81 feet to a point of compound curvature; thence Southerly along the arc of a curve concave to the East, being the said Easterly line of Lot 6, having a radius of 1233.00 feet, having a chord bearing of South 08 degrees 53 minutes 37 seconds West a distance of 751.37 feet to a point of tangency; thence South 08 degrees 33 minutes 50 seconds East along said Easterly line of Lot 6 a distance of 50.00 feet to a point of curvature; thence Southerly along the arc of a curve concave to the West, being the said Easterly line of Lot 6, having a radius of 1817.00 feet, having a chord bearing of South 05 degrees 18 minutes 12 seconds East a distance of 206.81 feet to a point of compound curvature; thence Southwesterly along the arc of a curve concave to the Northwest, being the said Easterly line of Lot 6, having a radius of 20.50 feet, having a chord bearing of South 44 degrees 24 minutes 50 seconds West a distance of 33.24 feet to a point of tangency; thence North 89 degrees 07 minutes 46 seconds West along the South line of said Lot 6 a distance of 110.80 feet to a point of curvature; thence Westerly along the arc of a curve concave to the North, being the Southerly line of said Lot 6, having a radius of 235.50 feet, having a chord bearing of North 79 degrees 54 minutes 31 seconds West a distance of 75.80 feet to a point of tangency; thence North 70 degrees 41 minutes 17 seconds West along said Southerly line of Lot 6 a distance of 35.11 feet to the place of beginning; thence North 28 degrees 24 minutes 30 seconds East 23.31 feet; thence North 00 degrees 00 minutes 00 seconds East 60.20 feet to a point a curvature; thence Northerly along the arc of a curve concave to the West, having a radius of 294.50 feet, having a chord bearing of North 11 degrees 22 minutes 27 seconds West, a distance of 116.93 feet to a point of tangency; thence North 22 degrees 44 minutes 55 seconds West 58.97 feet to a point of curvature; thence Northwesterly along the arc of curve concave to the Southwest, having a radius of 156.50 feet, having a chord bearing of North 47 degrees 03 minutes 19 seconds West a distance of 132.78 feet to a point of compound curvature; thence Southwesterly along the arc of a curve concave to the Southeast, having a radius of 15.00 feet, having a chord bearing of South 54 degrees 16 minutes 58 seconds West a distance of 28.46 feet to a point of tangency; thence South 00 degrees 04 minutes 21 seconds East 88.98 feet; thence South 89 degrees 55 minutes 39 seconds West 195.29 feet; thence South 01 degrees 07 minutes 55 seconds West along the West line of said Lot 6 a distance of 176.02 feet to a point of curvature; thence Southeasterly along the arc of a curve concave to the Northeast, being the Southerly line of said Lot 6, having a radius of 40.00 feet, having a chord bearing of South 44 degrees 45 minutes 53 seconds East a distance of 64.08 feet to a point of compound curvature; thence Easterly along the arc of a curve concave to the North,

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being the said Southerly line of Lot 6, having a radius of 231.81 feet, having a chord bearing of North 84 degrees 34 minutes 05 seconds East a distance of 38.60 feet to a point of tangency; thence North 79 degrees 47 minutes 51 seconds East along the said Southerly line of Lot 6 a distance of 65.52 feet to a point of curvature; thence Easterly along the arc of a curve concave to the South being the Southerly line of Lot 6, having a radius of 289.00 feet, having a chord bearing of South 85 degrees 26 minutes 43 seconds East a distance of 148.87 feet to a point of tangency; thence South 70 degrees 41 minutes 17 seconds East along the said Southerly line of Lot 6 a distance of 60.71 feet to the place of beginning; containing 1.868 acres, in the City of Naperville, DuPage County, Illinois

Pin 07-15-302-001

Vacant land at Rte 59 and Glader Park Ave
Naperville, IL

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Exhibit A-4 -- Legal Description of Outlot C

That part of Lot 6 in Glacier Park Subdivision being a subdivision of part of Section 15 and Section 22, Township 38 North, Range 9, East of the Third Principal Meridian, according to the part thereof recorded January 29, 1990 as Document Number R90-12326, re-recorded April 30, 1990 as Document Number R90-51012 and Certificate of Correction thereto recorded February 19, 1990 as Document Number R90-20823 described as follows:

Commencing at the most Northerly Northeast corner of said Lot 6; thence South 37 degrees 08 minutes 59 seconds East along the Easterly line of said Lot 6 a distance of 99.16 feet; thence Southerly along the arc of a curve concave to the East, being the said Easterly line of Lot 6, having a radius of 516.35 feet, having a chord bearing of South 39 degrees 36 minutes 03 seconds West, a distance of 238.81 feet to a point of compound curvature; thence Southerly along the arc of a curve being concave to the East, being the said Easterly line of Lot 6, having a radius of 1233.00 feet, having a chord bearing of South 11 degrees 07 minutes 36 seconds West a distance of 655.26 feet to the place of beginning; thence continuing Southerly along the arc of said curve being concave to the East, being the Easterly line of said Lot 6, having a radius of 1233.00 feet, having a chord bearing of South 06 degrees 19 minutes 51 seconds East a distance of 96.11 feet to a point of tangency; thence South 08 degrees 33 minutes 50 seconds East along said Easterly line of Lot 6 a distance of 50.00 feet to a point of curvature; thence Southerly along the arc of a curve concave to the West, being the said Easterly line of Lot 6, having a radius of 1817.00 feet, having a chord bearing of South 05 degrees 18 minutes 12 seconds East a distance of 206.81 feet to a point of compound curvature; thence Southwesterly along the arc of a curve concave to the Northwest, being the said Easterly line of Lot 6, having a radius of 20.50 feet, having a chord bearing of South 44 degrees 24 minutes 50 seconds West a distance of 33.24 feet to a point of tangency; thence North 89 degrees 07 minutes 46 seconds West along the South line of said Lot 6 a distance of 110.80 feet to a point of curvature; thence Westerly along the arc of a curve concave to the North, being the Southerly line of said Lot 6, having a radius of 235.50 feet, having a chord bearing of North 83 degrees 34 minutes 09 seconds West a distance of 45.71 feet; thence North 00 degrees 00 minutes 00 seconds East 106.46 feet to a point of curvature; thence Northerly along the arc of a curve concave to the West, having a radius of 225.50 feet, having a chord bearing of North 13 degrees 24 minutes 08 seconds West a distance of 225.50 feet to a point of tangency; thence North 26 degrees 48 minutes 16 seconds West 87.80 feet to a point of curvature; thence Northerly along the arc of a curve concave to the East, having a radius of 44.50 feet, having a chord bearing of North 11 degrees 29 minutes 08 seconds East a distance of 59.48 feet to a point of tangency; thence North 49 degrees 46 minutes 32 seconds East 21.57 feet to a point of curvature; thence Easterly along the arc of a curve concave to the South, having a radius of 44.50 feet, having a chord bearing of North 69 degrees 51 minutes 08 seconds East, a distance of 31.19 feet to a point of tangency; thence North 89 degrees 55 minutes 43 seconds East 1.569 feet to the place of beginning; containing 1868 acres, in the City of Naperville, DuPage County, Illinois

PIN 07-15-302-001
Vacant land at Rte 59 and Glacier Park Ave
Naperville, IL

R96-122605

Exhibit A-5 -- Legal Description of Entire Shopping Center

Lot 6 in Glacier Park Subdivision being a subdivision of part of Section 15 and Section 22, Township 38 North, Range 9, East of the Third Principal Meridian, according to the Plat thereof recorded January 29, 1990 as Document Number R90-12326, re-recorded April 30, 1990 as Document Number R90-51012 and Certificate of Correction thereto recorded February 19, 1990 as Document Number R90-20823, in the City Of Naperville, DuPage County, Illinois.

BUT SPECIFICALLY EXCLUDING THEREFROM:

That part of Lot 6 in Glacier Park Subdivision being a subdivision of part of Section 15 and Section 22, Township 38 North, Range 9, East of the Third Principal Meridian, according to the Plat thereof recorded January 29, 1990 as Document No. R90-12326 and re-recorded April 30, 1990 as Document No. R90-51012 and the Certificate of Correction thereto recorded February 19, 1990 as Document No. R90-20823 described as follows:

Beginning at the most Northerly Northeast corner of said Lot 6; thence North 88 degrees 53 minutes 47 seconds West along the North line of said Lot 6 a distance of 238.73 feet for a place of beginning; thence South 00 degrees 04 minutes 08 seconds East 357.95 feet; thence South 89 degrees 55 minutes 50 seconds West 249.50 feet; thence North 00 degrees 04 minutes 08 seconds West 169.00 feet; thence South 89 degrees 55 minutes 55 seconds West 234.50 feet; thence South 00 degrees 04 minutes 05 seconds East 17.01 feet; thence South 89 degrees 55 minutes 55 seconds West 39.35 feet; thence North 01 degree 07 minutes 55 seconds East along the Easterly line of Illinois State Route 59 as heretofore dedicated per Document No. 312314 a distance of 183.30 feet; thence North 05 degrees 40 minutes 27 seconds East along said East line of Illinois State Route 59 a distance of 33.43 feet; thence South 88 degrees 53 minutes 47 seconds East along the North line of said Lot 6 a distance of 516.28 feet to the place of beginning; in the City of Naperville, DuPage County, Illinois

AND ALSO SPECIFICALLY EXCLUDING THEREFROM:

That part of Lot 6 in Glacier Park Subdivision being a subdivision of part of Section 15 and Section 22, Township 38 North, Range 9, East of the Third Principal Meridian, according to the plat thereof recorded January 29, 1990 as Document Number R90-12326, re-recorded April 30, 1990 as Document Number R90-51012 and Certificate of Correction thereto recorded February 19, 1990 as Document Number R90-20823, in the DuPage County, Illinois Recorder's Office described as follows: Commencing at the Northwest corner of said Lot 6; Thence South 05 degrees 40 minutes 27 seconds West along the West line of said Lot 6 a distance of 10.189 meters (recorded 33.43 feet); Thence South 01 degrees 07 minutes 55 seconds West along said West line 79.224 meters (recorded 259.92 feet); Thence South 00 degrees 38 minutes 00 seconds East along the West line of said Lot 6 a distance of 73.317 meters (recorded 240.54 feet); Thence South 00 degrees 31 minutes 04 seconds East along said West line of Lot 6 a distance of 15.246 meters (recorded 50.02 feet) for a Place of Beginning; Thence North 89 degrees 53 minutes 27

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seconds East 3.665 meters (12.02 feet); Thence South 00 degrees 00 minutes 26 seconds West 74.399 meters (244.09 feet); Thence South 04 degrees 30 minutes 33 seconds West 49.999 meters (164.04 feet) to a point on the West line of said Lot 6; Thence North 01 degrees 07 minutes 55 seconds East along the said West line of Lot 6 a distance of 17.538 meters (57.54 feet); Thence North 00 degrees 23 minutes 14 seconds East along said West line of Lot 6 a distance of 15.240 meters (recorded 50.00 feet); Thence North 00 degrees 06 minutes 33 seconds West along said West line of Lot 6 a distance of 91.461 meters (recorded 300.07 feet) to the Place of Beginning; containing 0.0861 acres, in the City of Naperville, DuPage County, Illinois.

Permanent Index Number: 07-15-302-001

Commonly known as: Vacant land at the intersection of Route 59 and Glacier
Parkway, Naperville, Illinois 60540
Ave

896 122605
009221

Exhibit B -- Site Plan

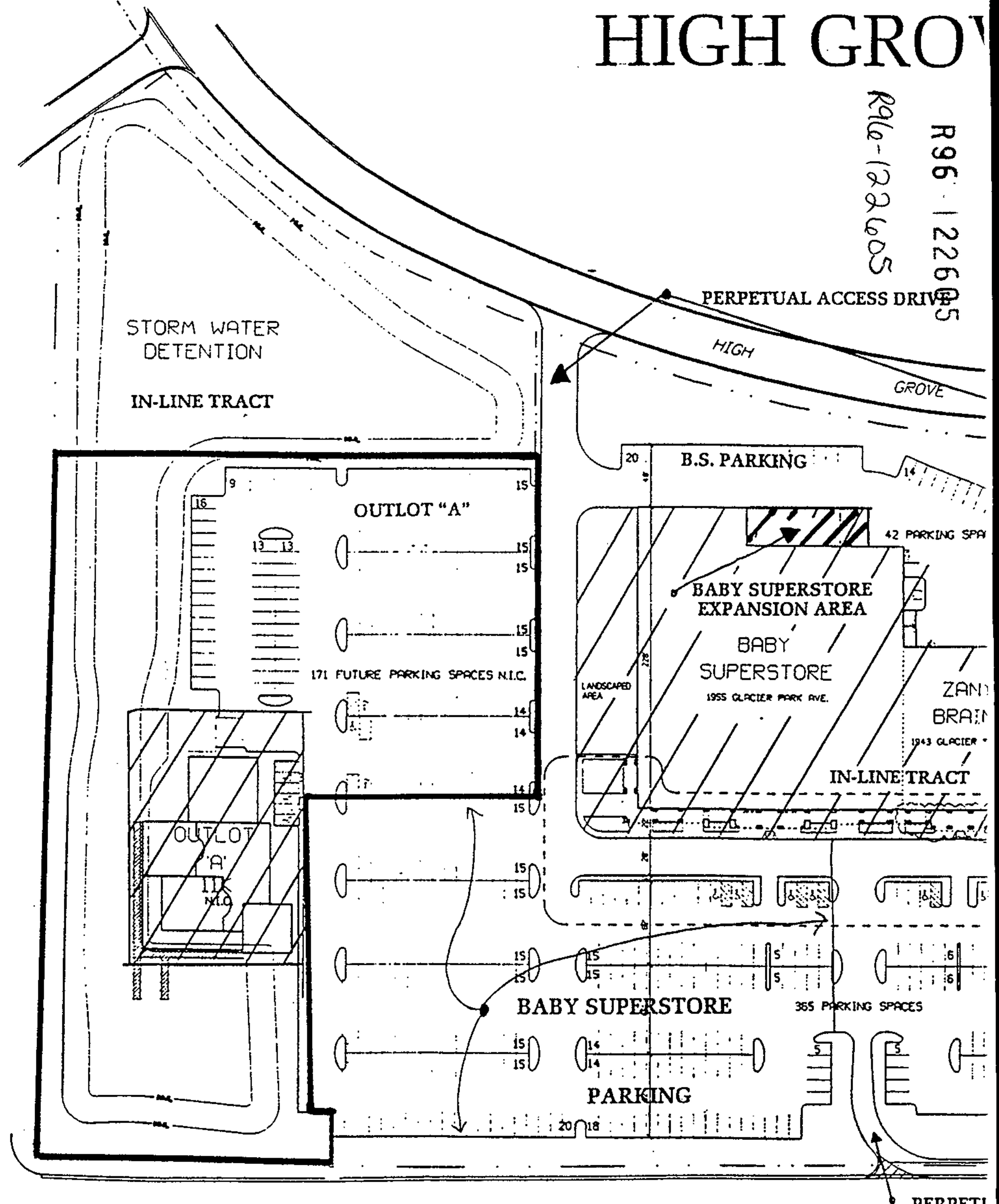
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HIGH GROVE

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'E PLAZA



BUILDING AREAS

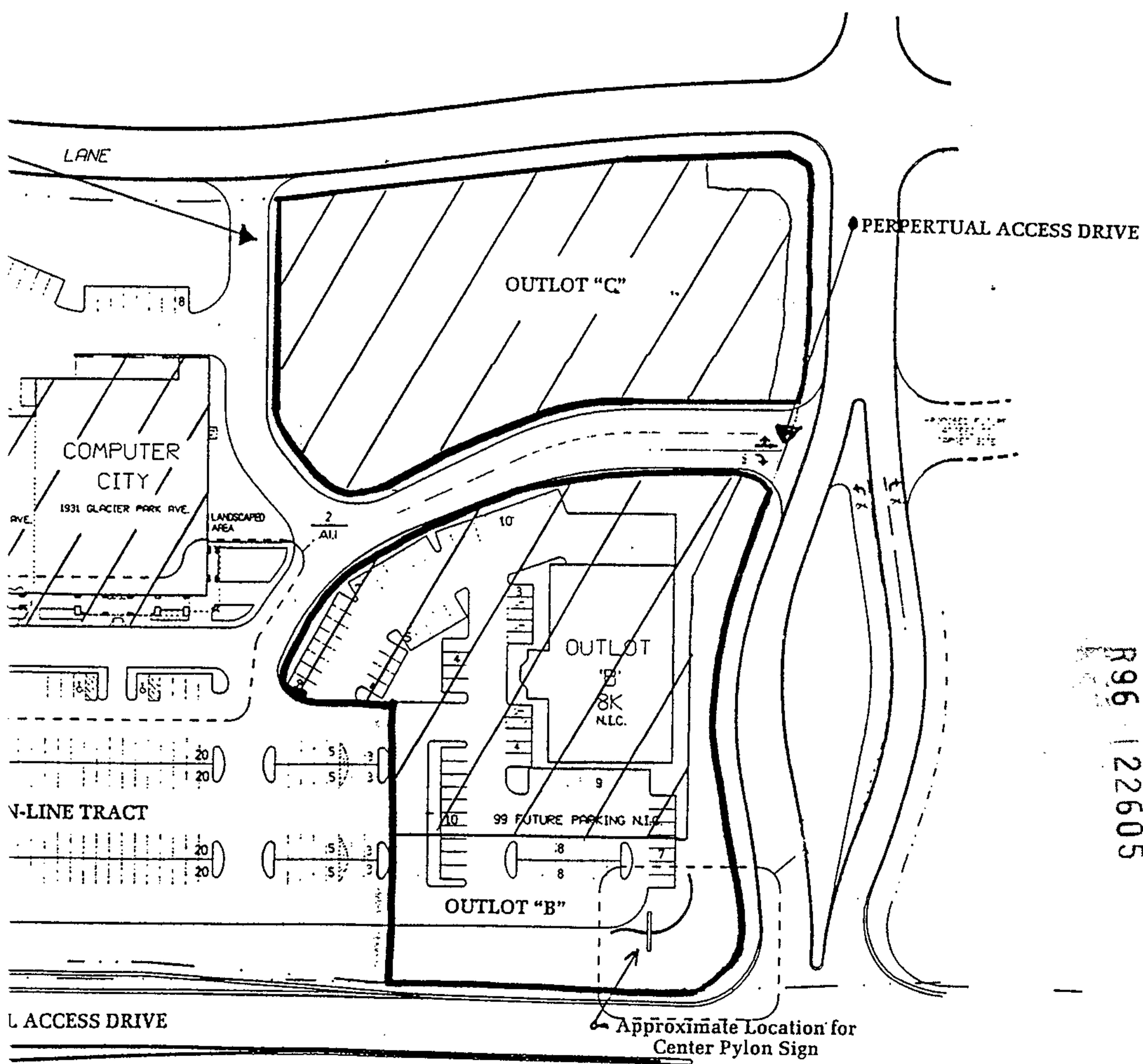


Exhibit C -- Depiction of Shopping Center Pylon Sign

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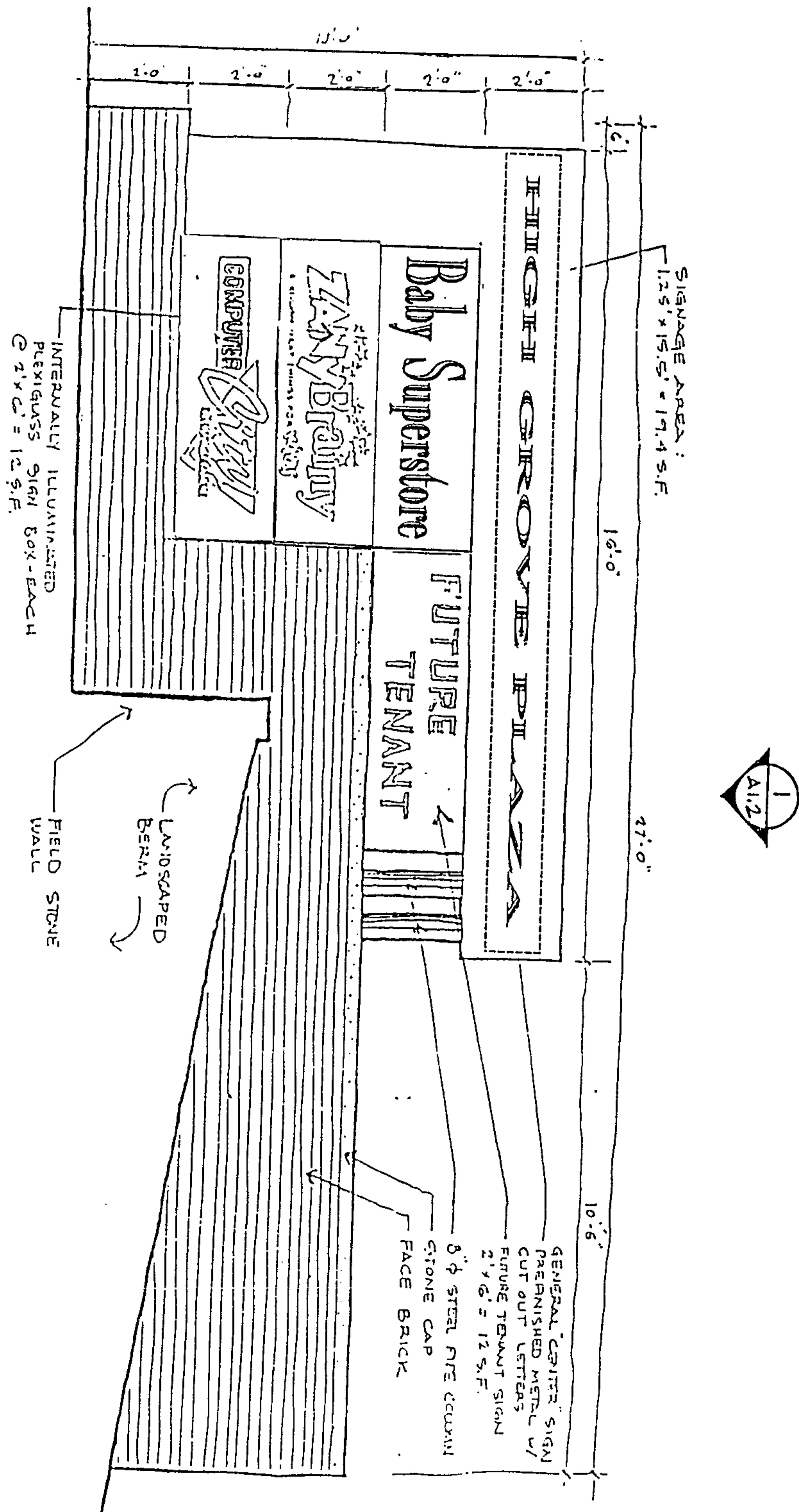


Exhibit D -- Architectural Theme for Shopping Center

ARCHITECTURAL THEME HIGH GROVE PLAZA

The architectural theme of High Grove Plaza is to maintain a first class retail center to secure and enhance the value for all tenants. All building and landscape plans shall be reviewed by the approving party to secure compliance with the architectural theme.

The following design guidelines shall be followed:

1. **Exterior Skin:** Precast, dryvit, masonry or brick building exterior are allowed. Metal panel or any lower quality material exterior is not allowed.
2. **Screening of Rooftop Mechanical Units:** All rooftop mechanical units, if used, must be screened for buildings under 30' in height.
3. **Exterior Lighting:** All exterior lighting must provide:
 - a. All exterior fixtures shall be "shoebox type" fixtures. Building-mounted flood lights shall not be allowed.
 - b. All parking lot light standards shall be metal halide and shall be the same fixture as used for the in-line tract.
4. **Landscaping:** Landscaping will be consistent with High Grove Plaza landscaping requirements and must follow "applicable" sections of the City of Naperville landscape ordinance.
5. **Signage:** Signage shall be consistent with other signage in High Grove Plaza. Outlot A & B shall be allowed one (1) monument sign along Route 59. Outlot C shall be allowed one (1) panel in the center pylon sign at Route 59 and Glacier Park Avenue.

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