

9535294

10-3-95
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ORDINANCE NO. 10-3-95

AN ORDINANCE TO AMEND THE ZONING ORDINANCE, A PART OF THE MASTER PLAN OF THE CITY OF NOBLESVILLE, HAMILTON COUNTY, INDIANA.

An Ordinance to amend the Zoning Ordinance of the City of Noblesville, Hamilton County, Indiana, enacted by the City of Noblesville under authority of Chapter 174 of the Acts of the Indiana General Assembly 1947, as amended.

WHEREAS, the Plan Commission of the City of Noblesville has conducted a public hearing as required by law in regard to the application for a change of zone district designation filed by Land Rush Development Services, Inc. for Epic Properties, Inc.; and,

WHEREAS, the Plan Commission has sent it recommendation to the Common Council in the following manner: favorable by a vote of nine (9) in favor, zero (0) opposed and one (1) abstention;

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Noblesville, Hamilton County, Indiana, meeting in regular session, that the Zoning Ordinance of said City and the Zone Map of the Zoning Ordinance are hereby amended as follows:

SECTION 1. That the common location of the subject real estate is as follows: approximately Sixty Three (63) acres located at the northeast corner of State Road 37 and State Road 32 in Noblesville Township; that said real estate, all of which is located in the zoning jurisdiction of the City of Noblesville, Hamilton County, Indiana, is hereby rezoned from a PB Classification to a PD Classification, as designated in said City of Noblesville Indiana Zoning Ordinance, and said real estate is more particularly described as follows:

Part of the Southwest Quarter of Section 32, Township 19 North, Range 5 East in Hamilton County, Indiana, more particularly described as follows:

Mary W. Davis
HAMILTON COUNTY RECORDER

95 MAY 15 PM 3:45

Beginning at the northeast corner of said Southwest Quarter; thence south 89 degrees 38 minutes 58 seconds west (assumed bearing) along the north line thereof a distance of 1060.21 feet to a curve having a radius of 7248.97 feet being on the east right-of-way line of State Road #37, the radius point of which bears north 72 degrees 56 minutes 09 seconds west; thence southerly along said curve and right-of-way line an arc distance of 171.27 feet to a point which bears south 17 degrees 34 minutes 56 seconds east from said radius point; thence south 18 degrees 25 minutes 04 seconds west on and along said east right-of-way line a distance of 1668.55 feet; thence south 19 degrees 09 minutes 34 seconds east a distance of 176.99 feet; thence south 01 degrees 07 minutes 03 seconds east a distance of 65.55 feet to the centerline of State Road #38; thence north 88 degrees 56 minutes 11 seconds east on and along aforesaid centerline a distance of 382.04 feet to a curve having a radius of 5729.58 feet, the radius point of which bears south 01 degrees 03 minutes 49 seconds east; thence easterly on and along said centerline and curve an arc distance of 516.67 feet to a point which bears north 04 degrees 06 minutes 11 seconds east from said radius point; thence south 85 degrees 53 minutes 49 seconds east on and along said centerline a distance of 678.83 feet to the east line of said southwest quarter; thence north 00 degrees 08 minutes 06 seconds east on and along the east line of said southwest quarter a distance of 2040.59 feet to the place of beginning, containing 63.005 acres, more or less.

SECTION 2. That this Ordinance shall be in full force and effect from and after its adoption in accordance with law.

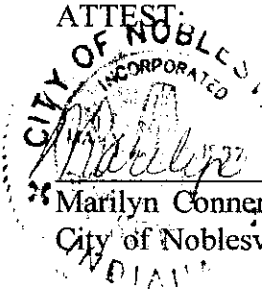
Adopted this 8th day of May, 1995, by the Common Council of the City of Noblesville, Hamilton County, Indiana.

COMMON COUNCIL, CITY OF NOBLESVILLE

| AYE | | NAY |
|-----------------------------|----------------------|-------|
| <u>Terry L. Busby</u> | Terry L. Busby | _____ |
| <u>Alan Hinds</u> | Alan Hinds | _____ |
| <u>Laurie Hurst</u> | Laurie Hurst | _____ |
| <u>Douglass W. McDonald</u> | Douglass W. McDonald | _____ |
| <u>Rick B. Moore</u> | Rick B. Moore | _____ |
| <u>Dale Snelling</u> | Dale Snelling | _____ |
| _____ | C. Murphy White | _____ |

APPROVED and signed by the Mayor of the City of Noblesville, Hamilton County, Indiana, this 8 day of MAY, 1995.

Mary Sue Rowland
Mary Sue Rowland, Mayor
City of Noblesville, Indiana

ATTEST

Marilyn Conner
Marilyn Conner, Clerk-Treasurer
City of Noblesville, Indiana

DECLARATION OF ZONING COMMITMENTS

THIS DECLARATION, made this 18th day of May, 1995, by Noblesville Commons, LLC, (hereinafter the "Developer") WITNESSETH:

WHEREAS, Noblesville Commons, LLC is the contract purchaser of all of the real estate which is described in Exhibit "A" (hereinafter the "Property"), attached hereto and made a part hereof; and

WHEREAS, the undersigned, Timothy J. Fleck, Rebecca J. Fleck, Albert James Fleck, Mary Ellen Fleck, Rebecca M. Fertig, Morris Paul Fertig, and Douglas Fertig (collectively, the "Owners"), who are the fee simple Owners of the Property, which Ownership is denoted on Exhibit "B" hereto and made a part hereof, by their execution hereof do hereby grant their consent to this Declaration; and

WHEREAS, the Developer is seeking the approval of a Preliminary Planned Development Plan (attached hereto as Exhibit "C") for the Property in order to achieve more flexibility in the development of the Property, and the Developer desires to voluntarily impose upon the Property certain conditions and restrictions (hereinafter the "Commitments") that will enhance the stability and value of local land uses and provide for the orderly and attractive future development of the Property, for the surrounding community and future owners thereof;

NOW, THEREFORE, the Developer and Owners hereby declare that all the Property as it is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, or occupied and improved, is subject to the following Commitments. All of the Commitments shall become part of the Planned Development zoning regulations on the Property, shall run with the land, and shall be binding upon the Developer and Owners, their heirs and assigns, and all parties having an interest in and to the real property or any part or parts thereof subject to such Commitments, and shall inure to the benefit of the Developer and Owners and every one of their successors in title to any real estate in the Property. The Developer and Owners confer upon the Noblesville Plan Commission the exclusive right or privilege of limiting or dissolving these Commitments.

COMMITMENTS

1. The development of the Property shall include a retail center as shown on the Preliminary Planned Development Plan. In addition to the retail shopping center on the Property, approximately 6 acres of the Property shall be available as outlots for the establishment of individual commercial/retail businesses, and approximately 10 acres shall be available for the establishment of multi-family housing. All land uses locating within the Property and their respective development characteristics shall be reviewed by the Noblesville Plan Commission for Detailed Development Plan approval.

2. The parking for the shopping center retail shall be based upon a ratio of one parking space/185 square feet of gross floor area.
3. All permitted land uses and development standards, except those specified herein, shall be determined by the PB district standards of the Noblesville Zoning Ordinance - 1988, as amended.
4. Parking spaces and vehicle circulation areas may be developed within the required front yard setback along S.R. 32 and S.R. 37, as long as a 25-foot wide landscaped area is installed and maintained along S.R. 32 and a 25-foot wide landscaped area is installed and maintained along S.R. 37.
5. A 25-foot wide landscaped area shall be required to be installed and maintained along the commercial property lines abutting residential land uses.
6. The building setback along the interior circulation roadway shown on the Preliminary Planned Development Plan as Ingress/egress Common Drive Easement, shall be 20 feet as measured from the edge of the easement. A 10-foot wide landscaped area shall be installed and maintained along each side of said Ingress/egress Common Drive Easement by each property Developer as the Property is developed.
7. Sidewalks shall be installed along S.R. 32 by each property owner to develop along S.R. 32 within the Property.

8. Landscaping:

The Property shall have a comprehensive landscape plan depicting perimeter landscape treatment approved as part of the preliminary planned development plan approval. Developer will request from the Indiana Department of Transportation permission to remove right-of-way fences along S.R. 32 and S.R. 37. Developer will request to landscaping in State right-of-way area at the corner of S.R. 32 and S.R. 37, subject to the approval of the Noblesville Plan Commission

9. Use Restrictions:

A veterinary hospital/clinic shall be allowed on the single outlot located on the southeast corner of site as depicted in Exhibit "C". The following land uses would be prohibited from locating within the Property:

- A. A nightclub, or discotheque, however, the foregoing shall not prohibit the operation of a restaurant and the sale of alcoholic beverages therein.

- B. A game room or arcade.
- C. An adult bookstore or other establishment exhibiting pornographic materials.
- D. A massage parlor.
- E. Any government surplus store, flea market, or auction house.

10. Easements:

A Reciprocal Easement Agreement (REA) shall be recorded for the Property that will contain cross-easements for parking and access, covenants, conditions, restrictions, and encumbrances affecting the shopping center. The REA shall also specify the obligation for the construction, reconstruction, inspection and maintenance of common facilities. The Owner of the single outlot located on the southeast corner of the site, as depicted in Exhibit "C", will not be a party to the REA, nor will said outlot be subject to any of the terms and conditions of the REA.

11. Access Points:

The access points into the shopping center shall generally be as shown on Exhibit "C" from S.R. 32 and from the future dedicated road. The Developer intends to dedicate to the city a road and right-of-way along the east side of the project.

12. Solid Waste:

All solid waste containers shall be completely gated and screened with an opaque screening material. Dumpsters for the outlots shall not be located along S.R. 37 on the western sides of the Outlots, but instead shall be located toward the interior of the Property.

13. Outlot Parking Screening:

All Outlot parking areas that extend into the front yard building setback of either S.R. 32 or S.R. 37 shall be completely screened from the adjoining roadway to a height of 3 ft. above the parking lot grade by a combination of a berm, evergreen and deciduous shrubs, and trees. The building pads of said Outlots shall be approximately the same as the grade of the adjoining roadway.

14. Fountain in Detention Pond:

The Developer shall install and maintain a fountain in the detention pond in the southwesterly corner of the site as depicted in the Preliminary Planned Development Plan.

IN WITNESS WHEREOF, Developer has executed this Instrument, on this 18th
day of May, 1995.

Developer
NOBLESVILLE COMMONS, LLC

By Richard W. Block
Richard W. Block, for
Epic Properties
Manager

STATE OF INDIANA)
)) SS:
COUNTY OF Marion)

SUBSCRIBED AND SWORN to me, a Notary Public in and for said
County and State, this 18th day of May, 1995.

Donna M. Broyles
Printed: DONNA M. BROYLES
Notary Public
Resident of Hamilton County

My Commission Expires:
5/3/98

IN WITNESS WHEREOF, Owners have given their consent to this Instrument, on this 24th day of May, 1995.

OWNER

OWNER

Albert J. Fleck
Albert James Fleck

Mary Ellen Fleck
Mary Ellen Fleck

STATE OF INDIANA)
COUNTY OF HAMILTON) SS:

SUBSCRIBED AND SWORN to me, a Notary Public in and for said County and State, this 24th day of May, 1995.



KELLY L. SHULK
MY COMMISSION EXPIRES: 10-24-95
MY COUNTY OF RESIDENCE IS: HAMILTON

Kelly L. Shulk
Printed: Kelly L. Shulk
Notary Public
Resident of Hamilton County

My Commission Expires:
October 24, 1995

IN WITNESS WHEREOF, Owners have given their consent to this Instrument, on this 24th day of May, 1995.

OWNER

OWNER

Timothy J. Fleck
Timothy J. Fleck

Rebecca J. Fleck
Rebecca J. Fleck

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

SUBSCRIBED AND SWORN to me, a Notary Public in and for said
County and State, this 24th day of May, 1995.



KELLY L. SHULK
MY COMMISSION EXPIRES: 10-24-95
MY COUNTY OF RESIDENCE IS: HAMILTON Kelly L. Shulk
Notary Public
Resident of Hamilton County

My Commission Expires:
October 24, 1995

IN WITNESS WHEREOF, Owners have given their consent to this Instrument, on
this 5th day of June, 1995.

OWNER

Rebecca M. Fertig
Rebecca M. Fertig

OWNER

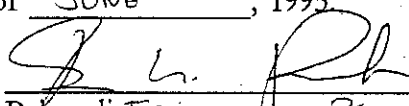
Morris Paul Fertig
Morris Paul Fertig

OWNER

Douglas Fertig
Douglas Fertig

STATE OF OHIO)
COUNTY OF FRANKLIN) SS:

SUBSCRIBED AND SWORN to me, a Notary Public in and for said
County and State, this 5th day of JUNE, 1995



Printed: ERIC W. REISCH
Notary Public
Resident of FRANKLIN County

My Commission Expires:
10-24-98



ERIC W. REISCH
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires 10-24-98

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Part of the Southwest Quarter of Section 32, Township 19 North, Range 5 East in Hamilton County, Indiana, more particularly described as follows:

Beginning at the northeast corner of said Southwest Quarter; thence south 89 degrees 38 minutes 58 seconds west (assumed bearing) along the north line thereof a distance of 1060.21 feet to a curve having a radius of 7248.97 feet being on the east right-of-way line of State Road #37, the radius point of which bears north 72 degrees 56 minutes 09 seconds west; thence southerly along said curve and right-of-way line an arc distance of 171.27 feet to a point which bears south 17 degrees 34 minutes 56 seconds east from said radius point; thence south 18 degrees 25 minutes 04 seconds west on and along said east right-of-way line a distance of 1668.55 feet; thence south 19 degrees 09 minutes 34 seconds east a distance of 176.99 feet; thence south 01 degrees 07 minutes 03 seconds east a distance of 65.55 feet to the centerline of State Road #38; thence north 88 degrees 56 minutes 11 seconds east on and along aforesaid centerline a distance of 382.04 feet to a curve having a radius of 5729.58 feet, the radius point of which bears south 01 degrees 03 minutes 49 seconds east; thence easterly on and along said centerline and curve an arc distance of 516.67 feet to a point which bears north 04 degrees 06 minutes 11 seconds east from said radius point; thence south 85 degrees 53 minutes 49 seconds east on and along said centerline a distance of 678.83 feet to the east line of said southwest quarter; thence north 00 degrees 08 minutes 06 seconds east on and along the east line of said southwest quarter a distance of 2040.59 feet to the place of beginning, containing 63.005 acres, more or less.

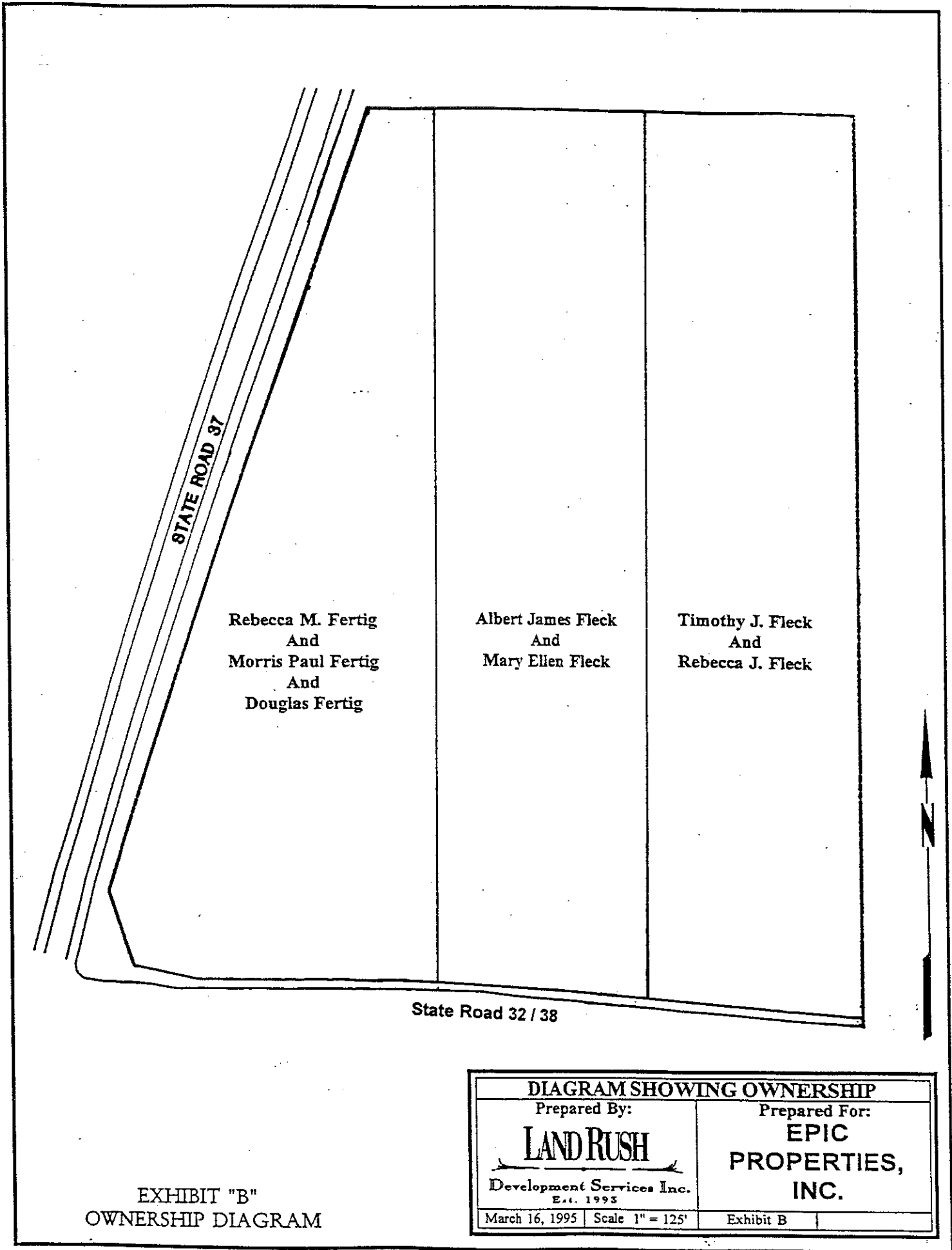


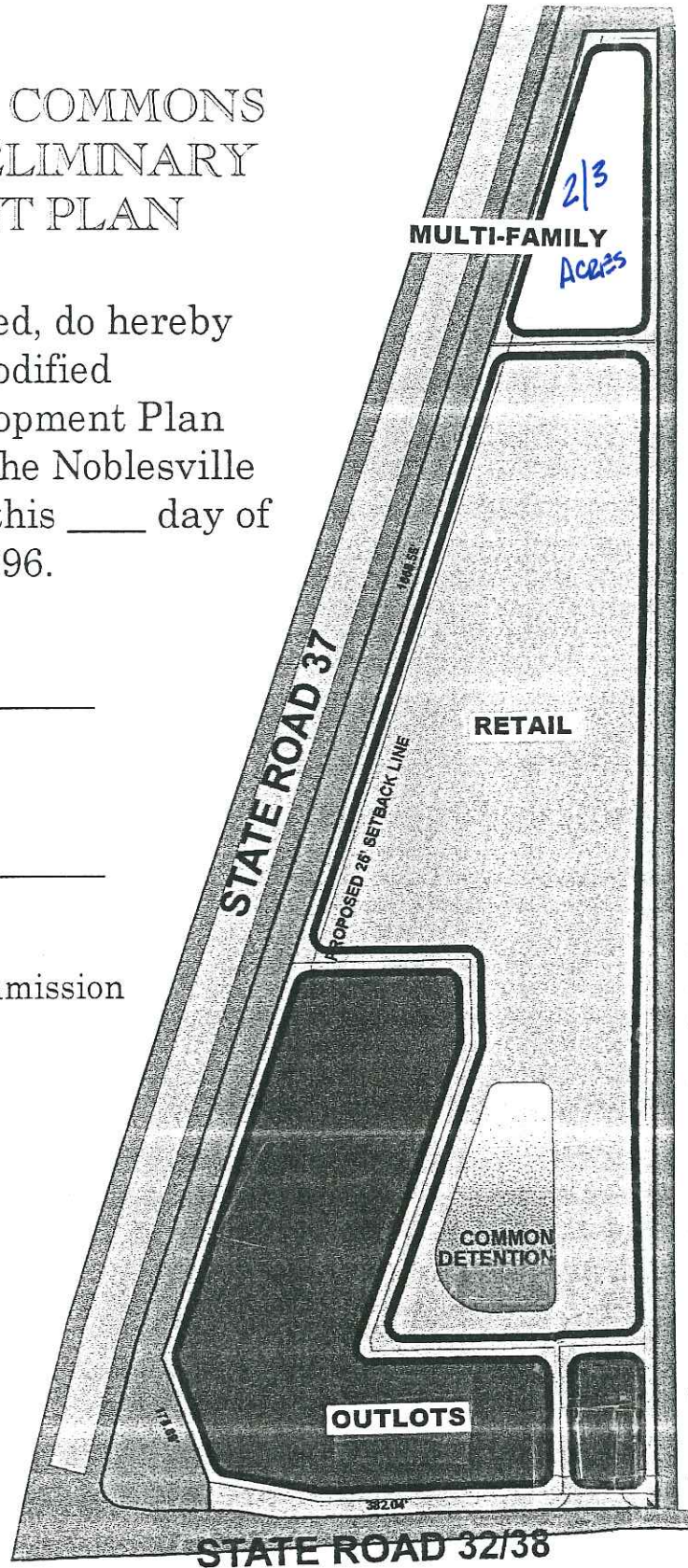
EXHIBIT "B"
OWNERSHIP DIAGRAM

NOBLESVILLE COMMONS
MODIFIED PRELIMINARY
DEVELOPMENT PLAN

We, the undersigned, do hereby
attest that this Modified
Preliminary Development Plan
was approved by the Noblesville
Plan Commission this ____ day of
_____, 1996.

David S. Womer,
President

Steven R. Huntley,
Secretary
Noblesville Plan Commission



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DECLARATION OF EASEMENTS, COVENANTS
AND RESTRICTIONS

9709730704
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 07-30-1997 At 08:10 am.
DEC COV RES 65.00

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (the "Declaration") is made as of the 23rd day of July, 1997, by Noblesville Commons, LLC, an Indiana limited liability company ("Declarant").

W I T N E S S E T H :

COPY

WHEREAS, Declarant is the owner of a certain tract of land being more particularly described by metes and bounds in Exhibit A attached hereto, and shown on the Plot Plan attached hereto as Exhibit "B" (the "Plot Plan") ("Shopping Center Tract"); and

WHEREAS, Declarant desires that the Shopping Center Tract be developed, operated and maintained pursuant to a general plan of improvement to form an integral retail development to be known as Noblesville Commons (the "Shopping Center"), which may be expanded from time to time by the addition of another parcel or parcels of real estate, and that the Shopping Center be subject to certain easements and operating covenants, and such other conditions and restrictions hereinafter set forth;

WHEREAS, Declarant may lease and/or sell in one or more transactions, all or a portion of the Shopping Center Tract, to third parties; and

NOW THEREFORE, in consideration of the foregoing, Declarant hereby declares that the Shopping Center Tract is and shall be held, transferred, sold, conveyed, and occupied subject to the easements, covenants, conditions, restrictions, and encumbrances contained herein, all of which shall be deemed to be covenants running with the Shopping Center Tract.

1. Definitions.

(a) "**Building**" shall mean all improvements to and upon the Shopping Center Tract, excluding utility lines and installations and the Common Areas.

(b) "**Common Areas**" shall mean those portions of the Shopping Center Tract which are intended for the general use, enjoyment, convenience and benefit of Owners and all Occupants (hereinafter defined) and their Permittees (hereinafter defined), including, but not limited to:

(i) All roadways to provide vehicular access and ingress and egress to and from the Shopping Center, including entrances and exits to and from the public roadways and streets and the roadway shown on Exhibit "C" and described in

Exhibit "D" attached hereto but excluding any roadways on an Owner's Parcel;

(ii) Landscaped and exterior planted areas in the Shopping Center;

(iii) All curbs, and lighting standards, traffic and directional signs abutting or adjacent to the roadways described in (i) above;

(iv) All storm water drainage facilities, constructed by or for Declarant and not to service only one Outlot.

The Common Areas are as shown on the Plot Plan, but shall exclude any portions of the Shopping Center which may, from time to time, be occupied by any duly dedicated public street or highway;

(c) "**Occupant**" shall mean any person or legal entity who is entitled to the exclusive use and occupancy of any Building or portion thereof in the Shopping Center under rights contained in any lease or similar agreement.

(d) "**Outlot**" shall mean those portions of the Shopping Center Tract intended to be developed with free standing Buildings and uses which are currently shown on the Plot Plan as Parcels A, B, C, D, E and F or any other parcel of real estate which may be developed in similar fashion, as determined by Declarant.

(e) "**Owner**" shall generally mean Declarant or any other Person who may own a Parcel in fee simple within the Shopping Center, including owners of Outlots, except in those cases where this Declaration specifically excludes, exempts, does not apply to or confers certain rights and responsibilities on Declarant.

(f) "**Permissible Building Areas**" as used herein shall mean those portions of the Shopping Center Tract which are approved by Declarant, such approval not to be unreasonably withheld, for construction of Buildings and which are consistent with the setback requirements in the Zoning Commitments (as hereafter defined) and shown on Exhibit "B". Canopies may encroach from the Permissible Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

(g) "**Permittee**" shall mean any Occupant, and any officer, director, employee, agent, contractor, customer, invitee, licensee, vendor, subtenant or concessionaire of any Occupant, Owner, or of Declarant.

(h) "**Person**" shall mean any individual, corporation, partnership, limited liability company or other similar entity.

(i) "Parcel" shall mean that portion of the Shopping Center Tract owned in fee simple by an Owner or any additional parcel of real estate which is later added and made a part of the Shopping Center Tract as provided in Section 28.

2. Term.

The term of this Declaration shall (unless sooner terminated under conditions contained herein) be for a period of ninety-nine (99) years, except to the extent that any easements survive pursuant to the terms of this Declaration.

3. Use.

(a) Shopping Center. Buildings on the Shopping Center Tract shall be used for commercial purposes of the type normally found in a retail shopping center including without limitation financial institutions, restaurants, service shops, offices, and retail stores, subject to all applicable zoning ordinances, laws, codes, regulations and restrictions. In addition, no Outlot shall be used or occupied for any of the purposes described in Exhibit "E" attached hereto and incorporated herein. The Shopping Center Tract is subject to certain commitments given by Declarant or its predecessor in connection with 95J-15-137, as amended by 96N-15-788 and Ordinance 62-1296, as amended, recorded as Instrument #97-2409 in the office of the Recorder of Hamilton County, Indiana (the "Zoning Commitments"). All Owners and Occupants shall own and use their Parcels and Buildings in strict accordance with the Zoning Commitments, and to the extent an Owner acquires a Parcel prior to the undertaking of an obligation required by any Zoning Commitment such Owner shall take such Parcel subject to undertaking such obligation.

(b) Integrity of Shopping Center. Declarant recognizes and agrees that the success of the Shopping Center is contingent upon, among other things, the proper mix and integration of Occupants and their respective uses within the Shopping Center. Declarant agrees to act in good faith in consideration thereof when leasing or selling its Parcel to future Occupants. It is explicitly understood that this Section 3(b) shall not be construed as providing any Owner or Occupant any approval rights.

(c) Restrictive Uses No part of the Shopping Center Tract (other than Outlot E) shall be used as a convenience food mart/grocery store of less than 10,000 square feet, gasoline/automobile service station or automatic car wash.

4. Buildings.

(a) Design and Construction. Any Buildings now or hereafter located by an Owner or Occupant on the Shopping Center Tract shall be designed, constructed, and maintained so that the exterior

elevation of all four sides shall be architecturally and aesthetically compatible with the other Buildings within the Shopping Center and so that building wall footings shall not encroach from one Parcel onto another Parcel, provided that the prototype of a national company shall satisfy this requirement. The design and construction of any new Buildings or improvements to existing Buildings shall be of first-class quality and in compliance with all applicable codes, ordinances and laws, and the Zoning Commitments. Prior to construction of any Buildings on the Shopping Center Tract the Owner or Occupant thereof shall submit for Declarant's written approval the site plans, landscaping plans and architectural plans for such Buildings.

(b) Location. Except as otherwise expressly provided herein, no building shall be constructed on the Shopping Center Tract except within the Permissible Building Areas.

(c) Utilities. Each Owner of a Parcel shall pay the costs of and be responsible for constructing, maintaining and providing the necessary facilities for water, gas, electrical, telephone, sewer services, both sanitary and storm water, and drainage on its Parcel. No Owner shall be responsible to another for any interruption in utility services or the inability to provide satisfactory service. Each Owner shall pay all regular charges for such utility services; provided, however, in the event an Owner uses such facilities located on another Owner's Parcel to provide such services to its Parcel, such Owner shall pay for all charges based upon actual use of such facilities. Such Owner shall also arrange and pay for a separate meter, if available.

(d) Mechanics' Liens. In the event any mechanics' liens are filed against the Parcel of any Owner who did not contract for the work, the Owner for whom the work was performed, or otherwise causing the lien to be filed, hereby covenants to indemnify and hold harmless all other Owners and Occupants from such liens and further covenants to either pay the same and have it discharged of record, within thirty (30) days of filing, or to take such action to cause it to be bonded and discharged of record from the Parcel of such other Owner, and in all events agrees to have such lien discharged prior to the foreclosure of such lien.

5. Improvements.

(a) No Owner or Occupant shall construct, or cause or permit to be constructed, any Building, facilities or improvements on the Shopping Center Tract, except upon those areas designated as Permissible Building Areas on the Plot Plan or as modified by the Declarant.

(b) An Owner or Occupant may expand its Building on its Parcel, provided that:

(i) Such Owner or Occupant provides Declarant with copies of its plans and specifications at least thirty (30) days prior to construction and receives Declarant's written approval of same prior to construction;

(ii) The expansion is architecturally harmonious with the other Buildings in the Shopping Center;

(iii) The expansion is in compliance with all applicable laws, statutes and ordinances, including all zoning requirements and the Zoning Commitments;

(c) No Building on a Parcel shall exceed thirty (30) feet or one (1) story in height, measured from finished grade and no Building on an Outlot shall exceed twenty-four (24) feet or one (1) story in height, measured from finished grade provided any Building may exceed the foregoing so long as it strictly complies with the national prototype of the particular franchisor. No use of any second floor, balcony or mezzanine space may be used for public seating, a public auditorium, community rooms or meeting rooms.

6. Easements.

(a) Nonexclusive Easements for Access, Ingress and Egress. Declarant hereby reserves for itself, and hereby grants to all Owners and Occupants, for their use, and for the use of their respective Permittees, in common with all others entitled to use the same, nonexclusive easements over those portions of the Common Areas of the Declarant Parcel described on Exhibit "A" attached hereto, including, without limitation, the roadway shown on Exhibit "C" and described in Exhibit "D" attached hereto, for vehicular and pedestrian access, ingress and egress, provided that Declarant shall not materially alter the location of the roadway shown on Exhibit "C" and described in Exhibit "D" without the consent of the Owners, such consent not to be unreasonably withheld. In no event shall these easements be construed so as to permit the parking of vehicles in areas which are not so designated for parking.

Notwithstanding the foregoing, Declarant and any Owner each hereby reserve the right to close off the Common Areas of their respective Parcels for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of such Common Areas, as herein provided, such Owner shall give written notice to all other Owners of its intention so to do, and shall coordinate such closing with the other Owners so that no unreasonable interference with the operation of the Shopping Center shall occur. Notwithstanding the reservation herein provided for, and the right to grant easements, it is expressly understood and agreed that such reservation and the right to grant easements is limited to nonexclusive use of the surface. Each Owner shall have the right to eject or cause the ejection from the Common Area of

its respective Parcel of any person or persons not authorized, empowered or privileged to use the Common Area of such Parcel.

(b) Utilities.

(i) General Utility Lines. Declarant hereby reserves for itself, and hereby grants to each Owner, for the use of their respective Parcels, and for the use of their respective Permittees, nonexclusive easements under and across the Common Areas of each Owner's respective Parcel for the installation, operation, flow and passage, use, maintenance, repair, relocation and removal of utility lines for sanitary sewers, storm drains, water and gas mains, electrical power lines, cable television, telephone lines and other utility lines for the sole purpose of providing such utility service to the Parcel of each Owner. All of such sewers, drains, mains and lines shall be underground and shall not be located so as to interfere with the use and enjoyment of any other Owner's Parcel, except for those sewers, drains, mains and lines currently in existence in, on, over or under the Shopping Center Tract.

(ii) Common Utility Lines. Declarant hereby reserves for itself, and hereby grants each other Owner, for the use of their respective Parcels, and for the use of their respective Permittees, nonexclusive easements under and across the Common Areas of such Owner's respective Parcel for the installation, operation, flow and passage, use, maintenance, repair, relocation and removal of sanitary sewers, storm drains, water and gas mains, electrical power lines, cable television, telephone lines and other utility lines for the service of Common Areas and for use in common with the other Owners. All of such sewers, drains, mains and lines shall be underground and shall not be located so as to interfere with the use and enjoyment of the other Owner's Parcel, except for those sewers, drains, mains and lines currently in existence on the date of this Declaration in, on, over or under the Shopping Center.

(iii) Future Utility Lines. Declarant hereby reserves for itself, and hereby grants to each other Owner, for the use of their respective Parcels and for the use of their respective Permittees, nonexclusive easements under and across the Common Areas of such Owner's respective Parcel for the purposes of installing therein in the future, other pipes, lines and mains, not part of the common utility lines as originally constructed, to provide gas, water, fire loops, and hydrants therefor, electric power, other forms of energy, cable television, signal, telephone, sanitary sewer and storm sewer services, or any of them, to or from any present or future facilities on the Shopping Center. All such pipes, sewers, drains, mains and lines shall be underground and shall

not be located so as to interfere with the use and enjoyment of any other Owner's Parcel.

(iv) Location of Easements. The location of all easements of the character described in this Section 6(b) shall be subject to the prior written approval of the Owner on whose Parcel the easement is to be located and shall not be located underneath any Building. Any Owner which exercises such easement shall, at said Owner's sole cost and expense, restore the other Owner's Parcel if affected by the construction or maintenance of such utility facilities to substantially the same condition as such Parcel was before the commencement of the construction, including, without limitation, the restoration of pavement.

(c) Construction Easements. Declarant hereby reserves for itself and the use and benefit of all other Owners nonexclusive easements for the temporary use of portions of the Common Area of each Parcel from time to time for the purpose of the development, construction and reconstruction, pursuant to the provisions of Sections 3, 4 and 5 of this Declaration; and for the purpose of the construction, reconstruction, erection and removal and maintenance on, to, over, under and across each such respective Parcel (whether located upon Common Area or otherwise) of (i) common Building components, (ii) columns, footings, foundations, supports and common walls and (iii) Building facade treatments, covered entrances and walkways, marquees, signs, lights, canopies, roof and building overhangs, and other similar appurtenances, as any of the foregoing are approved by the Declarant pursuant to this Declaration. Each Owner shall exercise such easements in a manner which shall not result in damage or injury to the Buildings or other improvements of any other Owner, and shall not interfere with the business operation conducted in the Shopping Center. The easements granted in this section shall also extend to minor encroachments of the improvements of one Owner onto the Parcel of another Owner which result from inadvertent errors in design, layout, or construction. The exercise of the rights referred to in this Section 6(c) shall be in conformity with the provisions of this Declaration.

The easements provided in this Section 6(c) shall terminate as to the Common Areas on the Parcel of each Owner upon the termination of this Declaration. The easements granted in this Section 6(c) shall only be exercised after reasonable prior notice by an Owner to the appropriate Owner(s), and the Owner exercising the easements granted by this Section 6(c) shall use reasonable efforts to exercise (or cause the exercise of) such rights in a manner designed to minimize interference with the Parcel of the Owner affected thereby and such Owner's business use thereof.

(d) Dominant and Servient Estates. Each easement granted pursuant to the provisions hereof is expressly for the benefit of

the Parcel of the grantee Owner, and the Parcel so benefitted shall be the dominant estate and the Parcel upon which such easement is located shall be the servient estate, but where only a portion thereof is bound and burdened, or benefitted by a particular easement, only that portion so bound and burdened, or benefitted, as the case may be, shall be deemed to be the servient or dominant tenement, as the case may be. Any easement granted pursuant to the provisions of this Section 6 may be abandoned or terminated by execution of an agreement so abandoning or terminating the same, by the Owners of the dominant and servient estates.

(e) Operating Easements. Declarant reserves for itself, easements in, upon, over and through the Common Areas of all Parcels for the purpose of managing, operating, maintaining, reconstructing and repairing Common Areas [excluding 1(b)(i)] pursuant to the applicable provisions of this Declaration. Any such entry shall be done by prior notice to the applicable Owner (to a representative at the Parcel) except in emergencies, when notice shall be given as soon as practicable and shall be performed to minimize any substantial interference with the operation of the business on the Parcel.

The easements provided in this Section 6(e) shall terminate as to the Common Areas upon the termination of this Declaration. Declarant shall use reasonable efforts to exercise (or cause the exercise of) such rights in a manner designed to minimize interference with the Parcel of the other Owners and the other Owners' business use thereon.

(f) Exercise of Easements. Except as provided in Section 6 (c), the exercise of the easements granted pursuant to Section 6 hereof shall be subject to the following provisions:

(i) The grantee of any of the utility easements shall be responsible, as between the grantor and the grantee thereof, for the installation, maintenance and repair of all sanitary sewers, storm drains, pipes and conduits, cables, mains and lines and related equipment installed by the grantee pursuant to such grant and easement. Any such maintenance and repair shall be performed only after two (2) weeks notice to the grantor of the grantee's intention to do such work, except in the case of emergency, and any such work shall be done without cost or expense to the grantor and in such manner as to cause as little disturbance in the use of the Common Areas as may be practicable under the circumstances. Upon the completion of such work, the grantee shall restore the Common Areas affected by such work to the same condition as it was before the commencement of the work. Installation of any utility lines pursuant to easements granted in Section 6(b) shall be subject to the prior approval of the grantor of such

easement as to the timing of such work, which approval (and the scheduling of such work) shall not be unreasonably withheld or delayed, it being the intention of the Parties to schedule such work in a manner that will minimize interference with the business of the grantor.

(ii) At any time, the grantor of any of the utility easements granted pursuant to Section 6 shall have the right to relocate on the Common Areas portions of the Parcel of the grantor any such sewers, drains, pipes and conduits, cable, mains and lines and related equipment (and the easements therefor) then located on the Parcel of the grantor provided that such relocation shall be performed only after thirty (30) days notice of the grantor's intention to so relocate shall be given to the grantee, and such relocation: (x) shall not interfere with or diminish the utility services to the grantee; (y) shall not reduce or unreasonably impair the usefulness or function of such utility; and (z) shall be performed without cost or expense to grantee. Notwithstanding such relocation, maintenance of the lines, mains and/or equipment located on the Parcel of the grantor shall be the obligation of the grantee.

(iii) Except as otherwise provided by this Section 6, the easements granted therein shall remain in effect as long as this Declaration remains in effect.

(iv) The liability of any grantee for interruption in service of any such easements shall be subject to Force Majeure as defined in Section 26.

(v) Any relocation of any easement shall be made at the expense of the Owner requesting such relocation.

(vi) Each Owner (as a grantee) agrees to use its reasonable best efforts in the exercise of the rights and easements granted in Section 6 hereof to avoid injury or damage to the Building(s) and improvements of the grantor, and will repair any damage to the Building(s) and improvements of the grantor resulting from the use of such easements. Each Owner (as a grantee) agrees to use its reasonable best efforts to exercise the rights and easements granted in Section 6 hereof in such a manner as to minimize interference with the grantor's use and enjoyment of its Parcel or Parcels.

(g) Survival of Easements. Except as otherwise expressly provided herein, the easements granted under Section 6(a) shall be perpetual until the termination of this Declaration, and the easements granted under Section 6(b) shall be perpetual and survive the termination of this Declaration and shall inure to the benefit of and be binding on the Owners of the Parcels where such utility

lines are located, their respective successors and assigns, and all easements shall run with the land constituting the Shopping Center Tract.

(h) Sewer Cost Reimbursement. Declarant has installed certain sanitary sewer mains and facilities to extend to and serve the Shopping Center Tract. The City of Noblesville has agreed to permit certain users of the sanitary sewers to reimburse Declarant for certain of the costs in lieu of making payment to the City of Noblesville. Each Owner of a Parcel agrees to pay Declarant its share of the total sewer costs still due Declarant of \$47,215.00 contemporaneous with the purchase of a Parcel. At such time as Declarant has been fully reimbursed by Owners of the Parcels, subsequent Owners will pay a fee to the City of Noblesville.

7. Use of Common Areas.

(a) Limitations.

(i) Customers. Each Owner and Occupant shall use reasonable efforts to ensure that Permittees do not park on the Common Areas.

(ii) Employees. Each Owner and Occupant shall use reasonable efforts to ensure that employees park on those portions of the parking areas on their respective Parcels, and not on any other Parcel.

(b) Lighting of Common Areas. All lighting standards and fixtures erected and installed upon the Common Areas of each Owner's Parcel shall be provided by a manufacturer acceptable to the local municipality and shall be connected to the meter of such Owner and the power used thereby charged to such Party. During all hours when the Shopping Center is open for business and Common Area lighting is necessary, and for thirty (30) minutes after such business hours, each Owner shall, at its own expense, keep all Common Areas on its respective Parcel lighted, but in no event shall Owner be obligated to light the fixtures (although such Owner may elect to light its Parcel during later hours) upon its Parcel later than thirty (30) minutes after business closings. Also, each Owner shall keep lighted upon their respective Parcels, and metered to their separate meters, all security lights upon their respective Parcels, which security lights shall be lighted during all hours of darkness, whether or not any tenants or occupants of the Shopping Center are open for business.

(c) Alterations to Common Area Arrangement. The location of and area allocated to streets, alleys, drives, entrances and routes of ingress and egress within the Common Areas shall not be materially revised, restricted or relocated by any Owner without the consent of the Declarant and the Owner whose Parcel abuts the Parcel of such Owner, but each Owner shall have the right to

restripe and redesign the parking fields on their respective Parcels.

(d) Parking and Loading Areas. All parking spaces, driveways, aisleways and loading areas shall meet all requirements set forth under applicable zoning and building codes, laws and ordinances, and in conformance with the requirements of the Zoning Commitments.

(e) Maintenance of Common Areas. Each Owner shall maintain the Common Areas on its Parcel in good condition and repair, ordinary wear and tear excepted. a) Expenses. Each Owner shall pay Declarant a prorata share of the Common Area maintenance expense incurred by Declarant, based on the proportion of the area in gross square feet of such Owner's Parcel to the gross area in square feet of the Shopping Center Tract designated by Declarant as being under development and no Owner shall be granted any waiver or reduction of the amount so owed to Declarant so as to cause an increase in the amounts owed by the other Owners. Each Owner shall be billed for its annual prorata share of said expenses in advance during January of each year, based upon estimates prepared by and as reasonably determined by Declarant. At the time of the next annual billing by Declarant, if actual expenses for the immediately preceding year shall differ from Declarant's estimates, the billing statement shall provide either a credit or an additional amount due. All Common Area expenses shall be paid to Declarant within thirty (30) days after issuance of the annualized billing statement.

For the purpose of this Section 7(f), Common Area maintenance expenses shall include all costs and expenses incurred in operating, managing, and maintaining the Shopping Center other than the following costs: debt service payments, leasing commissions and costs of constructing or improving premises in the Shopping Center to be leased to other tenants. Such Common Area maintenance expenses shall include but not be limited to management fees of not more than fifteen percent (15%) of all Common Area maintenance expenses, the cost of equipping, lighting, repairing, replacing and maintaining the Common Area and facilities at the Shopping Center, and further including, without limitation, painting, lighting, sanitary control, removal of snow, trash, rubbish, garbage and other refuse, repair and replacement of structures in the Common Areas, paving, landscaping, depreciation on or rentals of machinery and equipment used in such maintenance, the cost of personnel to direct parking, to act as security guards, and to police the Common Area, the cost and expense incurred in common lighting of the Shopping Center, and the cost and expense of structures or improvements required to comply with applicable laws. Expenses incurred by Declarant for depreciable equipment shall be amortized over the expected life of the equipment consistent with generally accepted accounting practices. All insurance proceeds received on account of loss of any items, the replacement or repair

of which is included in Common Area maintenance costs, shall be credited against such costs, thereby reducing the same for this purpose.

(f) By Agent. A third party may be appointed as an agent of the Declarant to maintain the Common Areas in the manner as above outlined and receive all or any part of the management fee included in the computation of Common Area maintenance expense.

8. Intentionally Omitted.

9. Signs.

(a) Declarant shall install and maintain or cause to be installed and maintained the pylon sign(s) abutting State Road 32/38 within the Shopping Center with the right (but not the obligation) to include the name of the Shopping Center thereon. Declarant shall be permitted to replace such pylon sign(s) or erect new pylon sign(s) within the Shopping Center with the name of the Shopping Center thereon. Each Owner shall be permitted to an identification panel on the pylon sign, provided such Owner pays a prorata portion of the design, construction and installation costs of the pylon sign(s) and for the actual cost of the construction and installation of the panel which may be memorialized in a separate agreement between Declarant and each Owner. Throughout the term of this Declaration, Declarant shall maintain the pylon sign(s) in good condition and repair ordinary wear and tear excepted. The costs of maintenance of the pylon sign(s) shall be reimbursed by each Owner to Declarant, on a prorata share based on the number of panels on the signs.

(b) Building Exterior. To the extent permitted by applicable governmental laws and regulations but subject to the approval of Declarant, each Owner may install standard exterior building signs on its Building, provided such signs are substantially the same as that found on a prototypical neighborhood shopping center in the Indianapolis area or of the prototype for national companies. All such signs shall be comprised of individual backlit channel letters. Each Owner shall maintain all such signs in good condition and repair throughout the term of this Declaration.

10. Indemnification/Insurance.

(a) Indemnification. Each Owner shall indemnify and save all of the other Owners harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Parcel, except if caused by the willful act or negligence of another Owner.

(b) Insurance.

(i) Each Owner shall procure and maintain in full force and effect throughout the term of this Declaration commercial general liability insurance, including personal injury and contractual liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its Parcel, in an amount of not less than One Million Dollars (\$1,000,000.00) for injury to or death of any one person; One Million Dollars (\$1,000,000.00) for injury to or death of more than one (1) person in the same accident or occurrence; and Two Hundred Fifty Thousand Dollars (\$250,000.00) for property damage arising out of any one accident or occurrence. Any Owner may carry policies with lesser stated limits, provided such Owner carries an "umbrella policy" in an amount equal to at least twice the approved limits required hereunder. At the end of every fifth year during the term hereof, the stated limits under such policies required hereunder may be adjusted to reflect reasonable stated limits under such similar policies of insurance required to be carried by owners and tenants of shopping centers similar in size and market value located in the metropolitan Indianapolis area, as reasonably determined by Declarant. Each Owner shall provide the Declarant with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the Owner which may cover other property in addition to the property covered by this Declaration, provided the policy specifically allocates to the properties and liabilities required to be insured hereunder in amounts not less than the minimum coverage requirements set forth herein. All insurance shall provide that the same may not be canceled or altered without thirty (30) days prior written notice to the Declarant.

(ii) At all times during the term of this Declaration, each Party shall keep improvements on its Parcel insured against loss or damage by fire and other perils and events as may be insured against under a special perils property policy, with such insurance to be not less than ninety percent (90%) of the full replacement cost of the insured improvements.

(iii) Policies of insurance provided for in this Section 10, except for subparagraph 10(b) (ii) hereinabove, shall name Declarant as additional insured, and each Owner shall provide to the Declarant, copies of certificates evidencing the fact that such insurance has been obtained.

(iv) Each Owner hereby releases and waives any claims against each of the other Owners from any liability for any loss or damage to any or all property, including any resulting

loss of rents or profits of each, and of any Occupant claiming its right of occupancy by or through it, located upon the Shopping Center Tract, which loss or damage is of the type covered by the insurance required to be maintained by it under this Section 10, regardless of any negligence on the part of the released person which may have contributed to or caused such loss or damage, and, on behalf of its insurance carrier, waives any right of subrogation that may arise therefrom. If the insurance policy does not allow a waiver of the rights of subrogation of the insurer, each Owner covenants that it will use reasonable efforts to obtain for the benefit of each such person a waiver of any right of subrogation which the insurer of such person may acquire against any such person by virtue of the payment of any such loss covered by such insurance.

If any Owner is by law, statute or governmental regulation or for any other reason (including insurance company requirements) unable to obtain or otherwise fails to obtain a waiver of the right of subrogation for the benefit of each other Party, then, during any period of time when such waiver is unobtainable, or has not been obtained for any reason, or during any period of time when the giving of such waiver would invalidate the insurance coverage of the waiving party, said Owner shall be deemed not to have waived any right of subrogation of its insurance carrier against the other Owner, and during the same period of time the other Party shall be deemed not to have waived the right of subrogation of its insurance carrier against such Owner who has been unable, or failed for any reason, to obtain such waiver from any claims their insurance carriers may assert which otherwise should have been waived pursuant to this Section 10(b) (iv).

(v) The insurance requirements of this Section 10(b) (i) and (ii) may be satisfied in whole or in part under any plan of self-insurance from time to time maintained by any Owner, provided the Owner so self-insuring (together with any entity executing and delivering to each Owner a guaranty in the form attached hereto and incorporated herein as Exhibit "F" (the "Guarantor") shall give a statement to all other Owners of such self-insuring, and has and maintains a minimum net worth of not less than Twenty Million dollars (\$20,000,000.00) and a minimum net current assets of Five Million Dollars (\$5,000,000.00), and that such Owner (and its Guarantor) shall furnish to all other Owners evidence of such Owner's net worth and net current assets at such time as it elects to self-insure and on or before April 30 of each year. The most recent financial statements certified by a partner, member or officer of such Owner or annual report audited by an independent certified public accountant reasonably acceptable to Declarant shall be sufficient evidence of its net worth and net current assets.

11. Eminent Domain.

(a) Owner's Right to Award. Nothing herein shall be construed to give an Owner any interest in any award or payment made to another Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Owner's Parcel or giving the public or any government any rights in said Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on any Parcel, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the Owner thereof, and no claim thereof shall be made by the Owners of any other portion of the Common Areas; provided, however, said other Owner shall have the right to seek an award for the loss of their easement rights to the extent such award does not impair any award to the Owner of the Parcel where the easements are located.

(b) Restoration of Parcels. The Owner of each portion of the Parcel so condemned shall promptly repair and restore the remaining portion of the Parcel so owned as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer.

(c) Taking of Buildings.

(i) In the event that all, or a substantial part [more than twenty percent (20%) of the total floor area] of an Owner's Building on its respective Parcel shall, during the term of this Declaration, be taken or damaged by eminent domain, so that it is not feasible to restore the same and use the Building for the permitted use which was operated in the Building immediately prior to such condemnation, such Owner may elect to be released from its obligations hereunder as of the date of such taking by providing notice to all other Owners within sixty (60) days of the filing of suit for the taking or the execution of a deed in lieu thereof, and in such event, such Party shall not be obligated to restore such Building; however, such Party shall demolish the remainder of the Building and restore its Parcel to a neat and orderly condition, free of debris.

(ii) In the event of a condemnation resulting in a partial taking [twenty percent (20%) or less of the total floor area] of an Owner's Building, during the term hereof, such Owner shall at its expense promptly and diligently restore and/or replace its Building.

12. Release from Liability.

Any Person acquiring fee or leasehold title to the Shopping Center Tract, or any portion thereof, shall be bound by this Declaration only as to the Parcel or portion of the Parcel acquired

by such Person. In addition, such Person shall be bound by this Declaration only during the period such Person is the fee or leasehold owner of such Parcel or portion of the Parcel, except as to obligations, liabilities or responsibilities that accrue during said period. Although Persons may be released under this paragraph, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said Parcels running with the land.

13. Assignment.

(a) Any Owner which assigns, transfers or conveys its right, title or interest in its Parcel shall provide that the transferee shall recognize the obligations of such Owner under this Declaration.

14. Damage or Destruction.

(a) If, during the first thirty (30) years of the term hereof (the "Restoration Period"), any Buildings or improvements on the Shopping Center Tract are damaged or destroyed by fire or other casualty, the Owner of such Parcel shall promptly proceed to repair and restore the same to the condition existing immediately prior to the occurrence of such casualty. If, following the Restoration Period, any Buildings or improvements on the Shopping Center Tract are damaged or destroyed and such Owner elects not to rebuild, then Owner will restore its Parcel to a neat and orderly condition free of debris, retain Common Areas as shown on the Plot Plan hereto and either landscape or pave and stripe its Permissible Building Areas. If an Owner fails to comply with the terms of this Section 14, any Owner shall have the right in accordance with and in addition to the provisions of Section 15 to raze any improvements so damaged or destroyed.

15. Default.

(a) Unless otherwise provided in this Declaration, no Owner or Occupant hereto shall be deemed to be in default under this Agreement until such Owner or Occupant shall have been given written notice describing the nature of the breach and within fifteen (15) days after the receipt of such notice, or such longer period of time as otherwise may be provided in this Declaration, shall have failed to cure such breach unless such a cure reasonably requires a longer period of time than fifteen (15) days, in which case such Owner or Occupant shall have commenced such cure within the fifteen (15) day period and is diligently proceeding to complete such cure.

(b) In the event an Owner shall institute any action or proceeding against any other Owner relating to a breach of this Declaration, the unsuccessful party in any action shall pay to the

prevailing party reasonable attorney's fees, which shall be deemed to have accrued on the date such action was filed.

(c) In the event any Owner shall be in default under this Declaration due to failure to cure nonperformance of any provision, covenant or condition of this Declaration as provided in Section 15(a) above, then in addition to any other remedy at law or in equity, then any non-defaulting Owner shall have the right, but not the obligation, to proceed ten (10) business days after expiration of the fifteen (15) day period provided in Section 15(a) above [or such additional time in the case of a default which by its nature cannot be cured within such fifteen (15) day period, so long as the curing Owner shall have taken action during said period and shall thereafter diligently prosecute the curing thereof] to take such action as reasonably necessary to cure such default in the name of and for the account of the defaulting Owner, and shall have access to the defaulting Owner's Parcel to accomplish the same; provided, however, that the non-defaulting Party shall minimize interference with or interruption of the business conducted on the defaulting Owner's Parcel.

(d) In the event an Owner delivers notice to all other Owners of its mortgagee and its address to which notices are to be sent, such mortgagee shall have the right to cure any default of such Owner during the period of time that the Owner has under this Section 15.

At the election of the non-defaulting Owner: (i) the defaulting Owner shall either reimburse the non-defaulting Owner for actual costs and expenses incurred in curing the default, together with any penalties and interest at ten percent (10%) per annum, or (ii) the non-defaulting Owner may withhold said amount from monies, if any, otherwise due and payable to the defaulting Owner under the terms of this Declaration. If a curing Owner believes in good faith that a default has created an emergency endangering life and property, then no notice shall be required to permit the curing Owner to take action reasonably necessary to cure said default, provided the curing Owner gives the defaulting Party such notice as is reasonable under the circumstances and, in any event, immediately upon commencing curative action.

16. Notices.

Each notice, demand, request, consent, approval or other communication (all of the foregoing herein referred to as a "notice") that an Owner is required to give to any other Owner shall be in writing and sent by either overnight delivery service, as long as delivery is made only upon a receipt signed by the addressee, or by certified mail, return receipt requested, postage prepaid. In the case of Declarant, notices shall be addressed to:

Noblesville Commons, LLC
c/o Paragon Development, Inc.
8383 Craig Street, Suite 325
Indianapolis, Indiana 46250
Attention: Richard W. Block

Each Owner shall provide Declarant with its notice address at the time it purchases its Parcel, and have the right to designate a different address by notice similarly given. A copy of each notice sent hereunder, shall also be sent to Declarant. Unless specifically stated to the contrary elsewhere in this Agreement, any notice shall be deemed to have been given, made or communicated, as the case may be, on the date the same is received by the addressee. Any Owner shall have the right to designate its mortgagee to be entitled to receive a notice under this Declaration by providing notice to all Owners of the mortgagee and its notice address. Such mortgagee shall not be entitled to receive notices under this Declaration if it releases its lien against the Owner's Parcel. Each Owner shall notify all other Owners when a mortgagee's lien has been so released.

17. Rights of Successors.

The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the Shopping Center Tract. This Declaration shall bind and inure to the benefit of each of the Owners, their respective heirs, representatives, lessees, successors and assigns, except as otherwise noted herein.

18. Singular and Plural.

The singular number includes the plural and the masculine gender includes the feminine and neuter gender, and vice versa.

19. Headings.

The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

20. No Partnership, Joint Venture or Principal-Agent Relationship.

Nothing contained in this Declaration shall be construed to make any of the Owner's principal and agent, or partners, or joint venturers, or to render any Owner liable for the debts or obligations of another Owner, except as provided in this Declaration, and no provisions of this Declaration are intended to create or constitute any person a third-party beneficiary hereof.

21. Severability.

If any provisions of this Declaration shall, to any extent, be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

22. Governing Law.

This Declaration shall be construed and governed in accordance with the laws of the State of Indiana.

23. Dedication.

Nothing herein contained shall be deemed to be a gift or dedication of any part of the Shopping Center Tract to the general public, or for the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed. Furthermore, except for any utility or roadway dedications, no Owner may dedicate any part of its Parcel for public purposes without the consent of the other Owners.

24. Non-Waiver.

The failure of any Owner to insist upon strict performance of any of the terms, covenants or conditions of this Declaration shall not be deemed a waiver of any rights or remedies which that Owner may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants, or conditions.

25. Estoppel Certificates.

Each Owner shall, from time to time [but not more frequently than once in any six (6) month period], upon not less than thirty (30) days' notice from any other Owner, execute and deliver to such other Owner, or such Owner's mortgagee or any other person or entity having or acquiring an interest in such Owner's Parcel, a certificate in recordable form stating that this Declaration is unmodified and in full force and effect or, if modified, stating the modifications; and stating whether or not, to the best of its knowledge, the other Owner is in default in any respect under this Declaration and, if in default, specifying such default.

26. Force Majeure.

The time within which any Owner hereto shall be required to perform any act under this Declaration, other than the payment of

money, shall be extended by a period of time equal to the number of days during which the performance of such act is unavoidably prevented or delayed, or hindered by acts of God, meteorological elements, labor strikes and disputes (but only in the event such strikes or disputes are not attributable to the acts or omissions of such Owner, its agents, representatives, contractors, subcontractors or employees), acts of war, or war defense conditions, acts of public enemies, orders of government, governmental requirements and restrictions, or other causes similar to the foregoing and not within the reasonable control of such Owner ("Force Majeure").

27. Hazardous Material.

As used in this Agreement, "Hazardous Material(s)" shall mean any hazardous, toxic or radioactive substance, material, matter or waste which is or becomes regulated by any federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, and shall include asbestos, petroleum products and the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Acts ("RCRA"), as amended, 42 U.S.C. Section 6901 et seq. and Indiana Environmental Protection Act, as amended, I.C. 13-7-1-1 to 20-34.

In no way limiting an Owner's duties and obligations as set forth in this Declaration, if the presence of any Hazardous Material(s) on the Shopping Center Tract caused or permitted by any Owner or its agents, employees, contractors, tenants or subtenants (collectively "Agents"), results in contamination of any portion of the Shopping Center Tract, any land other than the Shopping Center, the atmosphere, or any water or waterway (including groundwater, but only if caused by an Owner or its Agents), or if contamination of any one or all of the Parcels or of the Shopping Center by any Hazardous Material(s) otherwise occurs for which any Owner is otherwise legally liable for damages resulting therefrom (the "Polluting Owner"), said Polluting Owner shall indemnify, save harmless and defend all of the non-polluting Owners, their Agents, partners, officers and directors from any and all claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind of nature (including, without limitation, diminution in value of the non-polluting Owners' Parcels or the damages for the loss or restriction on use of the rentable or usable space or of any amenity of the non polluting Owners' Parcels or the Shopping Center, damages arising from any adverse impact on marketing space in the Shopping Center, and sums paid in settlement of claims and for attorneys' fees, consultant fees and expert fees which may arise during or after the term of the Declaration as a result of such contamination). This includes, without limitation, costs and

expenses incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of the presence of Hazardous Material(s) on or about a Parcel or the Shopping Center that was caused or permitted (excluding ground water) by a Polluting Owner or its Agents to be brought upon any Parcel. Without limiting the foregoing, if the presence of any Hazardous Material(s) on or about any Parcel or the Shopping Center caused or permitted (excluding ground water) by any Party hereto results in any contamination of any Parcel the Polluting Owner causing or permitting such contamination shall, at its sole expense, promptly take all actions and expense as are reasonably necessary, including all actions required by any governmental authority having appropriate jurisdiction, to return the Parcel(s) to the condition existing prior to the introduction of any such Hazardous Material(s) to the Parcel(s); provided, however, that Declarant's approval of such actions shall first be obtained in writing. The agreements, obligations and conditions set forth in this Section 28 shall survive termination of or expiration of the term of this Declaration. Nothing contained herein shall prohibit the storage and sale at retail of gasoline and petroleum products to the public for motor vehicles and trucks.

28. Amendment.


This Declaration may be amended by Declarant by recording properly executed written instrument at any time prior to fifty percent (50%) or more of the Shopping Center Tract being sold or transferred to a third party, and thereafter by recording a written instrument properly executed by the Owners of at least seventy-five percent (75%) of the gross square footage of the Shopping Center Tract, the effect of which shall be to bind all Owners and Occupants of the Shopping Center Tract. Notwithstanding the foregoing, Declarant may amend this Declaration at any time for the purpose of adding real estate adjacent to the Shopping Center Tract to this Declaration, by recording a properly executed written instrument describing such additional real estate to be added to the Shopping Center Tract, at which time this Declaration shall apply, benefit and burden all Owners of the Shopping Center Tract, as amended.

IN WITNESS WHEREOF, the Declarant have executed this Declaration as of the day and year first above written.

"DECLARANT"

NOBLESVILLE COMMONS, LLC, an
Indiana Limited Liability Company

By: RWB, Inc., an Indiana
corporation

By: 
Richard W. Block, President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Richard W. Block the President of RWB, Inc., an Indiana corporation, and Manager of NOBLESVILLE COMMONS, LLC, an Indiana limited liability company, who being first duly sworn, acknowledged the execution of the foregoing instrument, for and on behalf of said limited liability company.

Witness my hand and Notarial Seal this 23rd day of July, 1997.

My Commission Expires:

11-24-2000

Nancy S. Law
(Signature) NOTARY PUBLIC

My County of Residence:

HANCOCK

NANCY S. LAW
(Printed)

This Instrument Was Prepared by Jeffrey A. Abrams, Attorney, DANN PECAR NEWMAN & KLEIMAN, P.C., One American Square, Suite 2300, Box 82008, Indianapolis, Indiana 46282.

EXHIBIT "A"

Parcel I

Part of the west half of the southwest quarter of Section 32, Township 19 North, Range 5 East in Hamilton County, Indiana, more particularly described as follows:

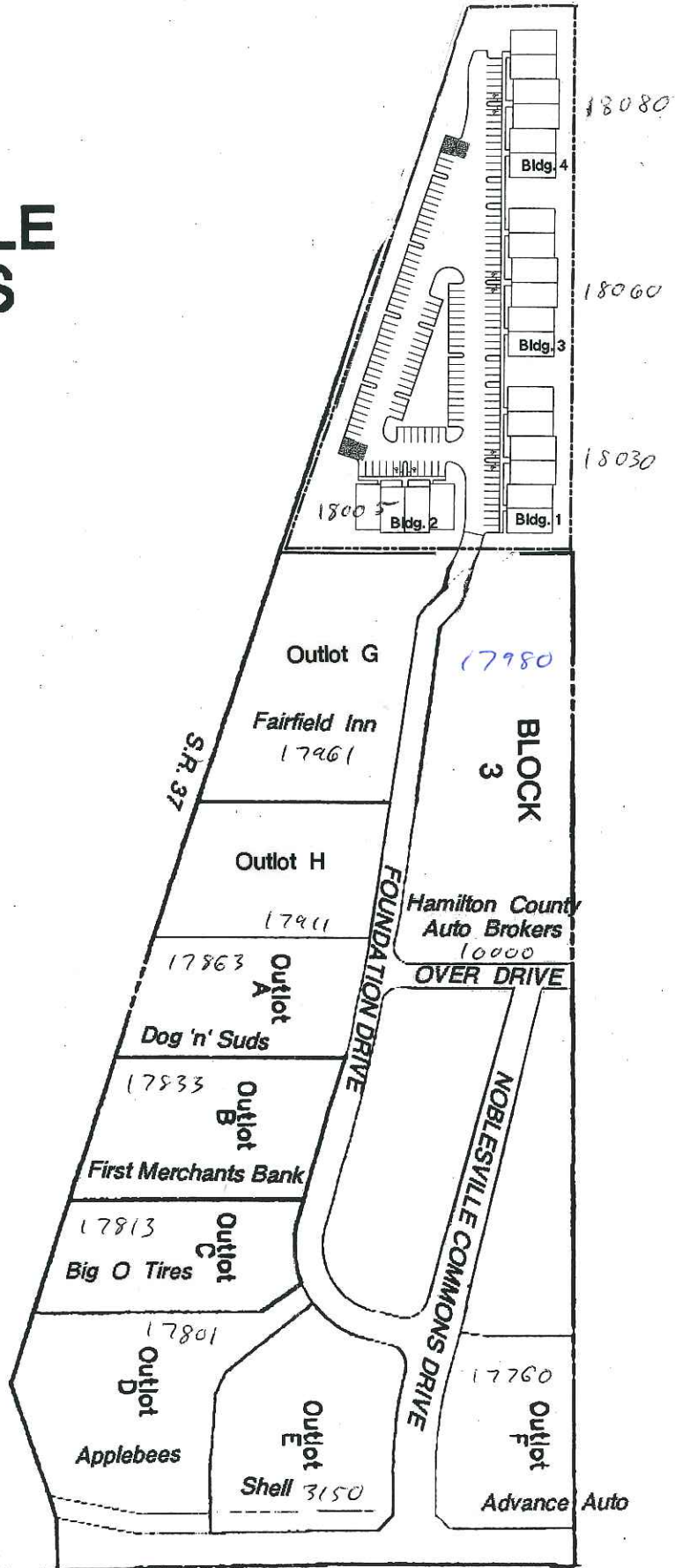
Beginning at a point on the north line of the west half of the southwest quarter, which is 1192.41 feet north 89 degrees 36 minutes 42 seconds east (assumed bearing) of the northwest corner of said west half, said point also being on the easterly right-of-way line of State Road #37; thence north 89 degrees 36 minutes 42 seconds east on and along the north line of said west half 141.88 feet to the east line thereof; thence south 00 degrees 01 minutes 49 seconds west on and along aforesaid east line 1973.56 feet to the center line of State Road #38, said point being on a curve to the left with a radius of 5729.578 feet, the radius point of which curve bears south 01 degrees 38 minutes 54 seconds west from said point; thence westerly on and along said center line on said curve 276.92 feet to a point of tangency, which point bears north 01 degrees 07 minutes 15 seconds west from the radius point of said curve; thence south 88 degrees 52 minutes 45 seconds west on and along said center line 223.95 feet; thence north 01 degrees 07 minutes 15 seconds west 195.00 feet; thence south 88 degrees 52 minutes 45 seconds west 202.36 feet to a point in the easterly right-of-way line of State Road #37; thence north 19 degrees 09 minutes 46 seconds west on and along said right-of-way line 40.27 feet; thence north 18 degrees 24 minutes 45 seconds east on and along said right-of-way line 1667.50 feet to the point of curvature of a curve to the left with a radius of 7248.97 feet; thence northeasterly on and along said right-of-way line on said curve to the left 172.73 feet to the place of beginning, containing 20.02 acres, more or less.

Parcel II

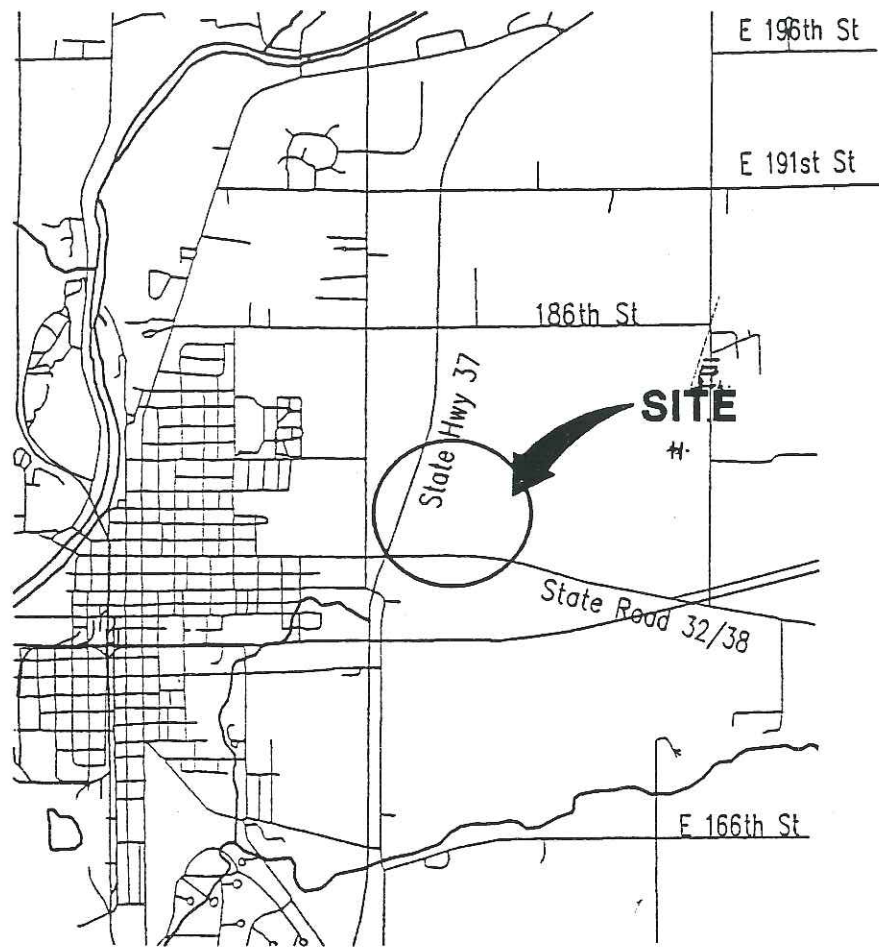
A part of the west half of the southwest quarter of Section 32, Township 19 North, Range 5 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the northwest corner of the west half of the southwest quarter of Section 32, Township 19 North, Range 5 East; thence north 89 degrees 36 minutes 42 seconds east on and along the north line of said west half 1334.29 feet to the east line of said west half; thence south 00 degrees 01 minutes 49 seconds west on and along aforesaid east line 1973.56 feet to the center line of State Road #38, said point being on a curve to the left with a radius of 5729.578 feet, the radius point of which curve bears south 01 degrees 38 minutes 54 seconds west from said point; thence westerly on and along said center line on said curve 276.92 feet to a point of tangency which point bears north 01 degrees 07 minutes 15 seconds west from the radius point of said curve; thence south 88 degrees 52 minutes 45 seconds west on and along said center line 223.95 feet to the place of beginning of this tract; thence north 01 degrees 07 minutes 15 seconds west 195.00 feet; thence south 88 degrees 52 minutes 45 seconds west 202.36 feet to a point on the easterly right-of-way line of State Road #37; thence south 19 degrees 09 minutes 46 seconds east on and along said easterly right-of-way 136.73 feet to the north right-of-way line of State Road #32; thence south 01 degrees 07 minutes 15 seconds east 65.00 feet to the center line of State Road #32; thence north 88 degrees 52 minutes 45 seconds east on and along said center line 160.00 feet to the place of beginning, containing 0.78 acre, more or less.

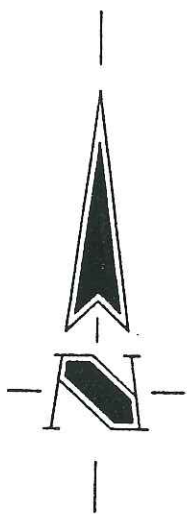
NOBLESVILLE COMMONS



CONNER STREET (S.R. 32/38)



NOBLESVILLE COMMONS
 DETAILED DEVELOPMENT
 PLAN - PHASE ONE



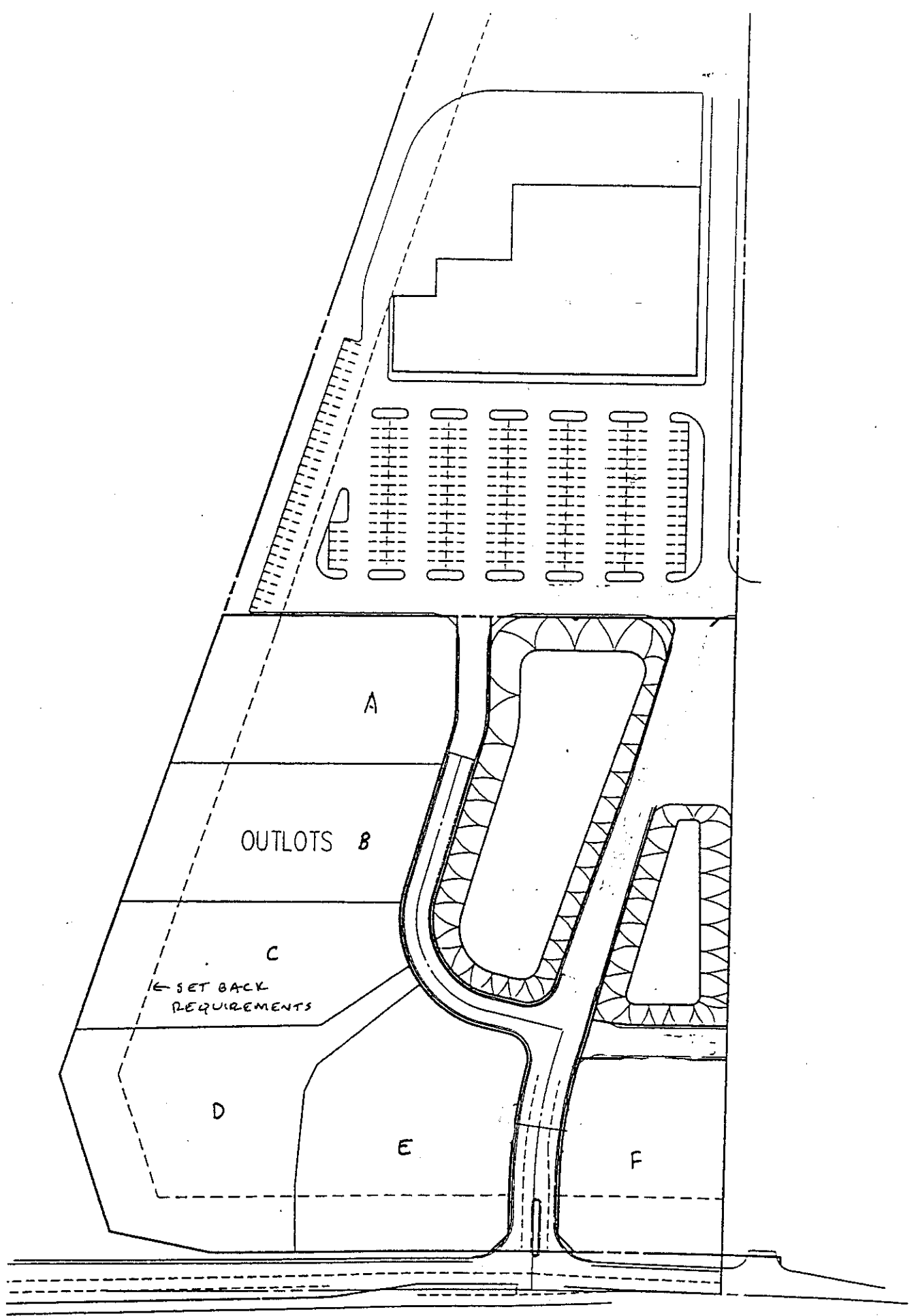


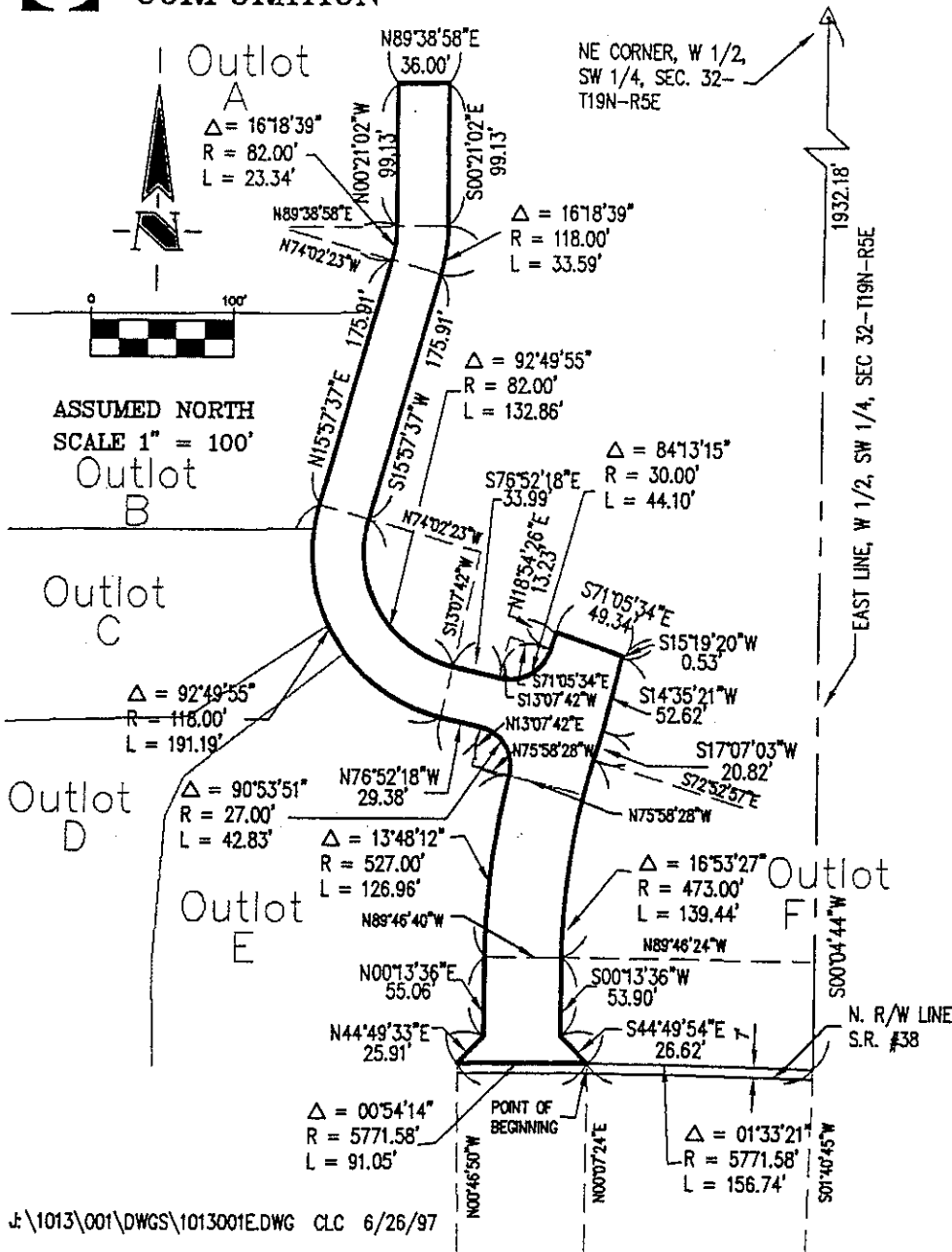
EXHIBIT "B"



**SCHNEIDER
ENGINEERING
CORPORATION**

3020 North Post Road
Indianapolis, Indiana
46226-0088
317-898-8282
317-899-8010 FAX

**Engineering
Surveying
GIS • LIS
Geology**



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EXHIBIT "C"



**SCHNEIDER
ENGINEERING
CORPORATION**

3020 North Post Road
Indianapolis, Indiana
46226-0068
317-898-8282
317-899-8010 FAX

Engineering
Surveying
GIS - LIS
Geology

Land Description

Part of the west half of the southwest quarter of Section 32, Township 19 North, Range 5 East in Hamilton County, Indiana, being described as follows:

Commencing at the northeast corner of the west half of said southwest quarter; thence South 00 degrees 04 minutes 44 seconds West (assumed bearing) along the east line thereof a distance of 1932.18 feet to a point 7.00 feet north, measured along said east line, from the north right-of-way line of State Road #38 per I.S.H.C. Plans for Project No. 251 (A) 1931, said point being on a curve, the radius point of which bears South 01 degrees 40 minutes 45 seconds West a distance of 5771.58 feet; thence the next 3 courses lying 7.00 north of and parallel with said right-of-way line; thence westerly along said curve an arc distance of 156.74 feet to the Point of Beginning which bears North 00 degrees 07 minutes 24 seconds East from said radius point, thence continuing westerly along said curve an arc distance of 91.05 feet to a point which bears North 00 degrees 46 minutes 50 seconds West from said radius point; thence North 44 degrees 49 minutes 33 seconds East a distance of 25.91 feet; thence North 00 degrees 13 minutes 36 seconds East a distance of 55.06 feet to the point of curvature of a curve, the radius point of which bears North 89 degrees 46 minutes 24 seconds West a distance of 527.00 feet; thence northerly along said curve an arc distance of 126.96 feet to the point of curvature of a reverse curve, the radius point of which bears North 75 degrees 58 minutes 28 seconds West a distance of 27.00 feet; thence northwesterly along said curve an arc distance of 42.83 feet to a point which bears North 13 degrees 07 minutes 42 seconds East from said radius point; thence North 76 degrees 52 minutes 18 seconds West a distance of 29.38 feet to the point of curvature of a curve, the radius point of which bears North 13 degrees 07 minutes 42 seconds East a distance of 118.00 feet; thence northwesterly along said curve an arc distance of 191.19 feet to a point which bears North 74 degrees 02 minutes 23 seconds West from said radius point; thence North 15 degrees 57 minutes 37 seconds East a distance of 175.91 feet to the point of curvature, the radius point of which bears North 74 degrees 02 minutes 23 seconds West a distance of 82.00 feet; thence northeasterly along said curve an arc distance of 23.34 feet to a point which bears North 89 degrees 38 minutes 58 seconds East from said radius point; thence North 00 degrees 21 minutes 02 seconds West a distance of 99.13 feet; thence North 89 degrees 38 minutes 58 seconds East a distance of 36.00 feet; thence South 00 degrees 21 minutes 02 seconds East a distance of 99.13 feet to the point of curvature of a curve, the radius point of which bears South 89 degrees 38 minutes 58 seconds East a distance of 118.00 feet; thence southwesterly along said curve an arc distance of 33.59 feet to a point which bears South 74 degrees 02 minutes 23 seconds East from said radius point; thence South 15 degrees 57 minutes 37 seconds West a distance of 175.91 feet to the point of curvature of a curve, the radius point of which bears South 74 degrees 02 minutes 23 seconds East a distance of 82.00 feet; thence southeasterly along said curve an arc distance of 132.86 feet to a point which bears South 13 degrees 07 minutes 42 seconds West from said radius point; thence South 76 degrees 52 minutes 18 seconds East a distance of 33.99 feet to a point on a curve, the radius point of which bears North 13 degrees 07 minutes 42 seconds East a distance of 30.00 feet; thence northeasterly along said curve and arc distance of 44.10 feet to a point which bears South 71 degrees 05 minutes 34 seconds East from said radius point; thence North 18 degrees 54 minutes 26 seconds East a distance of 13.23 feet; thence South 71 degrees 05 minutes 34 seconds East a distance of 49.34 feet; thence South 15 degrees 19 minutes 20 seconds West a distance of 0.53 feet; thence South 14 degrees 35 minutes 21 seconds West a distance of 52.62 feet; thence South 17 degrees 07 minutes 03 seconds West a distance of 20.82 feet to the point of curvature of a curve, the radius point of which bears South 72 degrees 52 minutes 57 seconds East a distance of 473.00 feet; thence southwesterly along said curve an arc distance of 139.44 feet to a point which bears North 89 degrees 46 minutes 24 seconds West from said radius point; thence South 00 degrees 13 minutes 36 seconds West a distance of 53.90 feet; thence South 44 degrees 49 minutes 54 seconds East a distance of 26.62 feet to the Point of Beginning. Containing 0.81 acres more or less.

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EXHIBIT "D"

EXHIBIT "E"

1. Any use which is a public or private nuisance.
2. Any use which produces noise or sound that is objectionable due to intermittence, high frequency, shrillness or loudness.
3. Any use which produces obnoxious odors, but a convenience center providing for the sale of gasoline products shall be permitted.
4. Any use which produces noxious, toxic, caustic or corrosive fuel or gas, but a convenience center providing for the sale of gasoline products shall be permitted.
5. Any use which produces dust, dirt or fly ash in excessive quantities.
6. Any use which produces fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks.
7. Any warehouse (but any area within a store or restaurant for the storage of goods intended to be sold at such store, restaurant or business on a Parcel shall not be deemed to be a warehouse).
8. Any assembling, manufacturing, industrial distilling, refining, smelting, agricultural or mining operation.
9. Any automobile body or fender repair work or for the long term exterior storage of any new or used motor vehicles, trailers, tractors, machinery or other similar equipment.
10. Any lounge, tavern, nightclub, disco, discotheque, dance hall or strip show affording live entertainment of any kind.
11. Living quarters, sleeping apartments or lodging rooms.
12. Any establishment selling or exhibiting pornographic materials.
13. Any mobile home or trailer court, labor camp, junkyard, stockyard, or animal raising.
14. Any mortuary, funeral home or crematorium.
15. Any drilling for and/or removal of subsurface substances.
16. Any dumping of garbage or refuse.

17. Video stores whose gross floor area is in excess of 5% or gross sales is in excess of 10% which are attributable to the display or sale of any x-rated or otherwise explicitly pornographic films or movies.
18. Any massage parlor or the business of "adult" materials, including, without limitation, magazines, books, movies, videos and photographs.
19. Any bingo parlor.
20. Pawn shops.
21. Any flea market.
22. Any carnival, amusement park or circus.
23. Any gymnasium.
24. Any facility for the sale of new or used motor vehicles, trailers or mobile homes.
25. Any banquet hall, auditorium or other place of public assembly.
26. Any governmental body, division or agency of a governmental body.
27. Bridge, chess or similar club.