

BILL NO. 454

ORDINANCE NO. 438

INTRODUCED BY: Trustees Slama, Fortune, Young, Graves and Whitmore

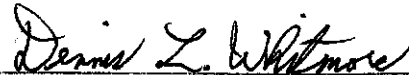
**AN ORDINANCE APPROVING AMENDMENT TO PROPERTY USE RESTRICTIONS
BY VILLAGE AS THIRD PARTY BENEFICIARY**

BE IT ORDAINED by the Board of Trustees of the Village of Twin Oaks, St. Louis County, Missouri, as follows:

Section 1. Contingent on receipt of a an executed Agreement between USR-Desco Twin Oaks, L.L.C and Twin Oaks-Manchester, LLC as more particularly described in attachment to Donation Agreement between the later and the Village dated August 20, 2014, the Chairman and Village Clerk are authorized to approve said First Amendment as Third Party beneficiary upon closing of said Donation Agreement.

Section 2. This Ordinance shall be in full force and effect from and after its passage as provided by law.

PASSED and APPROVED this 17 day of September, 2014.

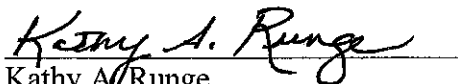


Dennis L. Whitmore, Chairman
Board of Trustees

ATTEST:

First Reading: 9-17-2014

Second Reading: 9-17-2014



Kathy A. Runge
Village Clerk/Controller

BP16295/2553



* 2005010500842 *

JANICE M. HAMMONDS, RECORDER OF DEEDS
ST. LOUIS COUNTY MISSOURI
41 SOUTH CENTRAL, CLAYTON, MO 63105

TYPE OF
INSTRUMENT
AGRMT

GRANTOR
S M PROPERTIES TWIN OAKS L L C
ETAL

TO

GRANTEE

PROPERTY
DESCRIPTION:

TWIN OAKS LOT 2 3&4 PB 352 PG 889

Lien Number

Notation

Locator

NOTE: I, the undersigned Recorder of Deeds, do hereby certify that the information shown on this Certification Sheet as to the TYPE OF INSTRUMENT, the NAMES of the GRANTOR and GRANTEE as well as the DESCRIPTION of the REAL PROPERTY affected is furnished merely as a convenience only, and in the case of any discrepancy of such information between this Certification Sheet and the attached Document, the ATTACHED DOCUMENT governs. Only the DOCUMENT NUMBER, the DATE and TIME of filing for record, and the BOOK and PAGE of the recorded Document is taken from this CERTIFICATION SHEET.

RECORDER OF DEEDS DOCUMENT CERTIFICATION

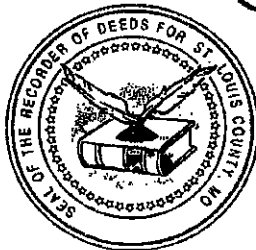
STATE OF MISSOURI)
 SS.
 COUNTY OF ST. LOUIS)

Document Number
842

I, the undersigned Recorder of Deeds for said County and State, do hereby certify that the following and annexed instrument of writing, which consists of 35 pages, (this page inclusive), was filed for record in my office on the 5 day of January 2005 at 11:04 AM and is truly recorded in the book and at the page shown at the top and/or bottom of this page.

In witness whereof I have hereunto set my hand and official seal the day, month and year aforesaid.

JoAnn Reber
 Deputy Recorder



Janice M. Hammonds
 Recorder of Deeds
 St. Louis County, Missouri

RECORDING FEE \$123.00
 (Paid at the time of Recording)

Mail to:

Destination code: 44

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B-16295 P-2553/2587

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BP1629 5/2554

FATCO 34540

RESTRICTION AND EASEMENT AGREEMENT

BY AND BETWEEN

SM PROPERTIES TWIN OAKS, L.L.C.

AND

BANK OF AMERICA, N.A.

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RESTRICTION AND EASEMENT AGREEMENT

THIS AGREEMENT ("Agreement"), is made and entered into as of the 30TH day of NOVEMBER, 2004, by and between SM PROPERTIES TWIN OAKS, L.L.C., a Missouri limited liability company ("Developer") and BANK OF AMERICA, N.A., a national banking association ("Purchaser").

WITNESSETH:

WHEREAS, Developer owns real property located in the County of St. Louis, City of Twin Oaks, Missouri, ("Shopping Center") and more particularly described in Exhibit A attached hereto, which real property is sometimes hereinafter referred to as the "Developer Parcel" (said Developer Parcel being hereafter subject to change as Developer sells and conveys Outlot(s)); and

WHEREAS, a preliminary site plan depicting the Shopping Center is attached hereto as Exhibit B and is hereinafter referred to as the "Shopping Center Plat"; and

WHEREAS, Developer may sell certain parcels of land located in the Shopping Center, which parcels are commonly known and referred to herein and on Exhibit B as "Outlots"; and

WHEREAS, Purchaser has purchased an Outlot located in the Shopping Center which Outlot is depicted on the Shopping Center Plat which Outlot is legally described in Exhibit C attached hereto, and such Outlot is hereinafter referred to as "Purchaser Parcel"; and

WHEREAS, in order to make integrated use of their respective Parcels as a shopping center; to provide for easements in, to, over, under and across their respective Parcels; to provide for the other agreements herein contained; and as part of the consideration of the sale of Purchaser Parcel to Purchaser, Developer and Purchaser desire to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I - DEFINITIONS

1.1 "Developer" means SM PROPERTIES TWIN OAKS, L.L.C., a Missouri limited liability company, and any successor, transferee and assignee who may hereafter acquire fee simple title to, and ownership of the Developer Parcel and to whom such interest of Developer has been specifically transferred in the deed or other instrument conveying such property to the transferee or assignee. Developer specifically does not include, however, any purchaser or subsequent owner of any Outlot including but not limited to Purchaser.

1.2 "Developer Parcel" means that real estate located within the Shopping Center which is owned from time to time by Developer. As of the date of this Agreement, the real estate comprising the Developer Parcel is described in Exhibit A hereto. The Developer Parcel may hereafter be reduced by the transfer of an Outlot or other portions of the Developer Parcel by Developer to another Person (other than a Person acquiring the rights of Developer) and the Developer Parcel may hereafter be

increased by declaring additional real estate as part of the Developer Parcel as provided in Section 12.8 hereof.

1.3 "Improvements" means all improvements constructed, or to be constructed, upon, over or under Shopping Center or Purchaser Parcel or Developer Parcel, including, without limitation, buildings, sidewalks, parking areas, roadways, driveways, landscaping, storm water drainage and retention systems, sewer systems, all other utility lines and systems, lighting systems and signage.

1.4 "Invitees" means all Tenants and their respective employees, agents, contractors, customers, visitors, patrons, licensees and concessionaires.

1.5 "Outlot" means any lot or parcel of land located upon the Shopping Center which Developer in its sole and absolute discretion elects to create or establish as an "Outlot" as shown on Exhibit B, and as may be changed from time to time.

1.6 "Parcel" or "Parcels" means the Shopping Center Parcel and Purchaser Parcel and Developer Parcel or any combination or portions thereof, as the context may require.

1.7 "Parking Areas" means all areas upon the respective Parcels which are designated for the parking of motor vehicles, and including, without limitation, all roadways, driveways, median strips, entrance ways, walkways, curbs and landscaping within or adjacent to such Parking Areas.

1.8 A "Party" means Developer or Purchaser and any successor Person or Persons acquiring fee simple interest in and to, and ownership of any portion of a Parcel. A mortgagee shall not be considered a Party unless such mortgagee acquires fee simple title.

1.9 "Person" or "Persons" means individuals, partnerships, limited partnerships, joint ventures, associations, corporations, and any other form of business organization or any one or more of them as the context may require.

1.10 "Purchaser" means the Person executing this Agreement as Purchaser, and any successors or assigns thereof, including, without limitation, any Person acquiring a fee simple interest in the Purchaser Parcel or any portion thereof.

1.11 "Purchaser Parcel" means the real estate described in Exhibit C, whether or not such real estate is further subdivided.

1.12 "Shopping Center" means that real estate described in Exhibit D and, from and after the addition of any other real estate, any other real estate which is hereafter added to the Shopping Center as provided in Section 12.8 hereof:

1.13 "Tenant" means Developer, Purchaser and any Person through and/or under Developer or Purchaser entitled by lease, license or ownership to use and occupy any of the Improvements constructed, or to be constructed, upon Purchaser Parcel, and/or Developer Parcel.

ARTICLE II - EASEMENTS

2.1 Limitation. Purchaser and their Invitees, including all construction personnel, shall have absolutely no rights, interests or easements in and to the Shopping Center, or any portion thereof, other than the Purchaser Parcel, except as specifically granted in this Agreement.

2.2 Access Easements.

(a) Developer does hereby grant, convey and set over to Purchaser, its successors and assigns, for the use and benefit of the owner and/or Tenant(s) of Purchaser Parcel and their Invitees, a perpetual non-exclusive easement for access, ingress and egress to Big Bend Boulevard and Meramec Station Road over, upon and across the areas hatch marked on Exhibit B - (Shopping Center Plat) attached hereto and labeled the "Cross Access Easement Area". The use of the Cross Access Easement Area by Purchaser and its Invitees, whether pedestrian, vehicular or otherwise, shall be subject to such reasonable rules and regulations as Developer may establish from time to time; provided, that, such rules or regulations shall not unreasonably restrict use of the Cross Access Easement Area by Purchaser, its Tenant(s) and its Invitees.

(b) Purchaser does hereby grant, convey and set over to Developer, its successors and assigns, for the use and benefit of the owner and/or Tenant(s) of the Developer Parcel and their Invitees, a perpetual non-exclusive easement for access, ingress and egress over, upon and across the areas hatch marked on Exhibit B-1, attached hereto and labeled "Purchaser Parcel Access Easement Area".

(c) Purchaser does hereby grant, convey and set over to Developer, its successors and assigns, for the use and benefit of the owner and/or Tenant(s) of the Developer Parcel and their Invitees, a perpetual non-exclusive easement for the construction of a sidewalk path and for pedestrian access, ingress and egress to and from the Developer Parcel and the Purchaser Parcel in, to, over, along and across that portion of the Purchaser Parcel designated on Exhibit B-1 and labeled "Sidewalk Easement Area".

2.3 Utilities, Sewer and Storm Water Drainage Easements and Reservations.

(a) Prior to commencing construction or installation of any utilities in the Shopping Center, Purchaser shall provide Developer with detailed plans and specifications ("Plans") for such work including proposed location and size of all lines and facilities, and any other information required by the utility to which such connection is to be made or as may be reasonably requested by Developer, together with a letter reciting Developer's timetable for approval as set forth herein. All of the foregoing must be delivered to Developer in accordance with the notice provisions of Article XI. Developer shall have thirty (30) days to review and approve or disapprove such Plans. If Developer rejects such Plans, Developer shall notify Purchaser of such changes and modifications that would make the Plans acceptable to Developer. Any material changes or modifications to the Plans shall require the approval of Developer as provided in this Section. If Developer does not give Purchaser written notice of Developer's approval or rejection of the Plans within thirty (30) days following the date upon which Purchaser has last delivered by certified mail, the Plans and all information requested of Purchaser by Developer, then such Plans shall be deemed to have been approved.

(b) Purchaser hereby grants and conveys to Developer a non-exclusive

perpetual easement in, to, over, under, along and across such portions of the Purchaser Parcel (exclusive of any portion located under any areas to which permanent buildings, including drive through structures, are to be constructed pursuant to the Plans and Specifications as defined in Section 5.4(b)) necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation and removal of facilities and systems for the transmission, distribution and transfer of utility services (including the drainage and storage of surface water) servicing and benefiting the Developer Parcel, including, but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone and communication lines. The location of such easement shall be subject to the prior written approval of Purchaser, not to be unreasonably withheld, conditioned or delayed. The easement area shall be no wider than five feet (5') on each side of the center line.

2.4 Repair of Damage. The exercise of rights and easements granted hereunder by any Party shall not result in damage or injury to the Improvements of any other Party and shall not unreasonably interfere with or interrupt the construction or business operations conducted by any other Party on its Parcel. Any Party performing any construction or work on another Party's Parcel, shall, at its expense, promptly repair, replace or restore any and all Improvements thereon and the surface of such Parcel which may be damaged or destroyed in the exercise of any easement rights granted hereunder to at least equal condition as the same existed immediately prior to such damage or destruction, and shall hold the other Party harmless from all loss, liability, cost or expense incurred in connection with the exercise of said easement rights unless occasioned by the negligence of such other Party, its agents, employees or contractors.

2.5 Easements Appurtenant. All easements granted hereunder shall be appurtenant to the Parcel benefited by such easement and shall constitute a covenant running with the land.

2.6 Plat. The Parties acknowledge and agree that the Shopping Center Plat attached hereto as Exhibit B is preliminary and prospective. Developer makes no representation, covenant or warranty to Purchaser or to any other Person that the Shopping Center or Developer Parcel will be fully improved and completed in accordance with Exhibit B. Developer reserves the right, in its sole discretion, to develop and improve Shopping Center and Developer Parcel as it deems appropriate, whether in complete or partial conformance with or deviation from Exhibit B; and to change from time to time and at any time, the location of any and all buildings, structures, drives, roadways, parking lots, sidewalks and other Improvements on the Shopping Center and Developer Parcel. Developer further reserves the right, in its sole discretion, to relocate, redesign and change the number, shape and nature of any and all Outlots other than the Purchaser Parcel; provided, however, no such changes shall materially adversely affect the Purchaser's easement rights granted herein.

2.7 Surface Water Drainage Easement. In addition to the easements otherwise granted herein, Purchaser does hereby grant, convey and set over to Developer for the benefit of the Developer Parcel and the Purchaser Parcel, a perpetual, non-exclusive easement for surface water drainage upon, under, over, above and across the that portion of the Purchaser Parcel shown on the attached site plan for the discharge, drainage, use, detention and retention of storm water runoff, and to install, maintain, repair and replace storm water collection, retention, detention and distribution lines, conduits, pipes and other apparatus under and across those portions of the Purchaser Parcel as shown on the Site Plan, provided that (i) the rights granted pursuant to such easements shall at all times be exercised in such a manner as to not interfere materially with the normal operation of the business then being operated on the Purchaser Parcel and (ii) except in an emergency, the right of any Developer to enter upon the Purchaser Parcel shall be conditioned upon reasonable prior advance written notice to the Purchaser as to the time and

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manner of entry. The storm water detention areas indicated on the Site Plan, and all lines, conduits, pipes and other apparatus for water drainage, and all storage systems necessary in connection therewith, shall be hereinafter called the "Water Detention and Drainage Facilities". The easement granted herein shall include the right of reasonable ingress and egress with respect to the Water Detention and Drainage Facilities as may be required to maintain and operate the same. The Water Detention and Drainage Facilities located on the Purchaser Parcel shall initially be constructed by Developer as set forth in Section 5.3(b) hereof. Once constructed by Developer, (i) the Water Detention and Drainage Facilities shall not be modified, altered, relocated or otherwise changed, without the prior written consent of Developer; and (ii) Developer shall cause the Water Detention and Drainage Facilities to be operated and maintained, in good order, condition and repair, and shall make any and all repairs and replacements that may from time to time be required with respect thereto.

2.8 Hold Harmless.

(a) Developer shall protect, indemnify and hold harmless Purchaser from and against any and all liabilities to third parties incurred by any omission, act or neglect of Developer or any of its agents, servants or employees, in, on or about the Cross Access Easement Area or the Water Detention and Drainage Facilities.

(b) Purchaser shall protect, indemnify and hold harmless Developer from and against any and all liabilities to third parties incurred by any omission, act or neglect of Purchaser or any of its agents, servants or employees, in, on or about the Cross Access Easement Area.

ARTICLE III - UNAUTHORIZED USE

Each Party hereby reserves the right to evict and remove from its respective Parcel any persons not authorized to use same. In addition, each Party reserves the right to close off those portions of its Parcel for such reasonable periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by any person(s) whomsoever; provided, however, that before closing off any part of a Party's Parcel, as provided above, such Party must give notice to the other Party of its intention to do so and must coordinate its closing with the activities of the other Party so that there shall be no unreasonable interference with the operation of the businesses of the other Party or its Invitees resulting therefrom.

ARTICLE IV - PARKING

4.1 Self-Contained Parking. Purchaser and Developer acknowledge that the businesses to be operated on each Party's Parcel are dependent in part on readily available parking within each Party's Parcel for Invitees of each Party's Parcel. As a result of such dependency, Purchaser shall at all times maintain on the Purchaser Parcel the greater of: (i) the minimum number of parking spaces required by applicable zoning ordinance or other law, rule, regulation or ordinance for use of the Purchaser Parcel by Purchaser, its successors, assigns, and Invitees or (ii) five (5) parking spaces for each 1,000 square feet of floor area of the building constructed on the Purchaser Parcel. Purchaser shall not utilize any of the parking areas or parking spaces on the remaining portion of the Shopping Center for the purpose of any permit or to meet any requirement of any governmental authority for the Purchaser Parcel.

ARTICLE V - BUILDING RESTRICTIONS, CONSTRUCTION, MAINTENANCE AND REPAIR

5.1 Construction. As used in this Agreement, the word "construction" includes original construction of any Improvements and except where otherwise specified, subsequent construction, alterations, repairs, reconstruction, additional Improvements and/or demolition performed on a Party's Parcel or as required or permitted under this Agreement.

5.2 Conduct of Construction.

(a) Purchaser and Developer shall perform all construction of Improvements to be situated upon its Parcel or on any other Party's Parcel so as not to unreasonably interfere with any other construction being performed on the Shopping Center or to unreasonably interfere with the operation of any business being conducted on the Shopping Center.

(b) Purchaser and Developer shall take all safety measures reasonably required to protect the other party and its Invitees, and the property of each, from injury or damage caused by or resulting from the performance of its construction on the Shopping Center.

(c) Purchaser and Developer shall defend, indemnify and hold each other harmless from any and all claims, costs, expenses and liabilities arising from the death of or accident, injury, loss or damage whatsoever caused to any natural persons or the property of any person as occurs in the process of or as a result of construction of any Improvements by said Party on the Shopping Center.

(d) Purchaser and Developer shall and do hereby release the other Party from and against any and all claims, demands, liabilities or obligations whatsoever for damage to the other's Parcel or property or loss of rents or profits of said Party resulting from or in any way connected with any fire or accident or other casualty, whether or not such fire, accident or other casualty shall have been caused by the negligence or the contributory negligence of said other Party, or by its Invitees.

(e) Purchaser and Developer shall defend, indemnify and hold each other harmless from and against all mechanics, materialmen's and laborers liens, and all costs, expenses and liabilities arising from their respective construction on the Shopping Center.

(f) Purchaser and Developer shall conduct their respective construction in a reasonable manner and keep the remainder of the Shopping Center as free from any dust, noise, loose dirt, debris, equipment and other effects of such work as is reasonable. The construction shall be conducted using appropriate methods of construction in order to reasonably control such conditions associated with construction as are customarily utilized in a populated or developed area.

(g) Purchaser and Developer shall each construct its Improvements on the Shopping Center in an expeditious, diligent, good and workmanlike manner with the use of first class materials, and in conformance with plans and specifications as required pursuant to this Agreement. Such construction shall be designed, started and completed in full compliance with all laws, rules, regulations and ordinances of all applicable governmental or quasi-governmental authorities.

5.3 Compatible Design.

(a) The Parties understand and agree that it is Developer's intent that all Improvements within the Shopping Center, Developer Parcel, Purchaser Parcel and each Outlot shall be visually unified, of compatible architectural design and shall use complimentary building materials and fixtures. Developer and Purchaser agree that Developer, in its review of the Site Plan and Plans and Specifications (as hereinafter defined), may in addition to the rights of review and approval of the Plans and Specifications, evaluate the design, construction standards and use of building materials and fixtures for all proposed Improvements to Purchaser Parcel and any exterior alterations, modifications, remodeling or reconstruction to such Improvements to insure that same are in conformance with the general objectives of the Shopping Center as herein stated.

(b) Seller shall within one hundred twenty (120) days after the date of this Agreement (subject to Force Majeure, as defined in Section 9.6 hereof) (all of the following items are hereinafter collectively referred to as "Seller Improvements"): (i) construct the Water Detention and Drainage Facilities as defined in Section 2.7 hereof; (ii) rough grade the Purchaser Parcel; (iii) construct access roads within the Shopping Center to allow Purchaser to access to the Purchaser Parcel, including, without limitation, the use of the Cross Access Easement Area; (iv) bring the following utilities to within five (5) feet of the boundary of the Purchaser Parcel: water, sewer, electricity and gas; and (v) construct the sidewalk on the Purchaser Parcel in the location shown on Exhibit B hereof.

5.4 Site Plan, Plans and Specifications.

(a) Purchaser Site Plan. The location of the Building (as hereinafter defined), other structures, landscaping, parking areas, entrance ways, driveways and roadways, drive-thru lanes (if any), curbs, curb cuts, sidewalks, walkways and all other Improvements to be constructed on Purchaser Parcel shall be substantially in conformance with a site plan ("Purchaser Site Plan") to be approved in writing by Developer prior to the commencement of construction of any Improvement to or on Purchaser Parcel. No material changes, additions, modifications or alterations shall be made to the Purchaser Site Plan as initially approved by Developer or any Improvements constructed or to be constructed in accordance therewith without the prior written consent of Developer, said consent not to be unreasonably withheld.

(b) Plans & Specifications. Subject to the obligations regarding construction of utilities as more fully described in Section 2.3 hereof, at least thirty (30) days prior to the construction of any Improvement upon Purchaser Parcel, Purchaser shall deliver to Developer, for written approval by Developer, the plans and specifications for all Improvements to be constructed on Purchaser Parcel ("Plans and Specifications"), including, without limitation:

- (i) the requirements of Section 5.3(a) hereof;
- (ii) the architectural design, materials, location and layout of the Building and any other structures, including elevations, dimensions and heights;
- (iii) the location, size and design of any Parking Areas;
- (iv) the layout of driveways and traffic flow patterns;
- (v) identification of means of ingress and egress and access to and from Purchaser Parcel;
- (vi) curbs and curb cuts;
- (vii) sidewalks and walkways;
- (viii) lighting systems;
- (ix) signage;

- (x) landscaping;
- (xi) finished grades and elevations; and

all other relevant specifications relating to all other Improvements. All Improvements constructed by or on behalf of Purchaser shall be constructed in substantial compliance with the Plans and Specifications. There shall be no material changes, additions, alterations or modifications to the Plans and Specifications without the prior written consent of Developer.

5.5 Building.

(a) There shall be only one (1) free-standing building ("Building") erected and maintained on Purchaser Parcel, such Building not to exceed five thousand (5,000) square feet in total area as measured from the exterior surfaces of the outer walls and including in the aggregate the square footage of all floors, mezzanine levels and basement levels, excluding any area under the drive through canopy. Purchaser may initially erect a building with less total area than three thousand two hundred (3,200) square feet and reserve the balance for future expansion, subject to the approval rights of Developer for any construction of Improvements on the Purchaser Parcel as set forth herein.

(b) The Building constructed on Purchaser Parcel shall not exceed the lesser of one story or twenty-two (22) feet in height as measured from finished grade elevations to the highest elevation of said Building, including any roof parapet or other architectural component thereof, and including any sign thereon. All mechanical or other systems or structures on the roof of the Building shall be screened from view by a roof parapet, wall or other construction in a style architecturally consistent with the design of the Building. The Building shall be compatible with and conform to the architecture, design, layout, materials and colors of the buildings and other Improvements located on Shopping Center. Any alterations and major repairs to the exterior of the Building and other Improvements must first be approved in writing by Developer and shall conform to and be harmonious and compatible with the architecture, design, layout, materials and colors of the buildings and other Improvements located upon Shopping Center.

5.6 Signs.

(a) The Parties acknowledge that the number and size of free-standing signs permitted on the Parcels may be limited by law, rule, regulation or ordinance. Except as otherwise explicitly permitted herein, Developer hereby reserves the right to approve the number, location, size and design of any pylon, monument or other free-standing sign, if any, to be erected on any Parcel, including but not limited to Purchaser Parcel, as well as any signs to be placed on the exterior of the Building, which approval shall not be unreasonably withheld.

(b) Purchaser may, at Purchaser's expense, install and maintain on the Purchaser Parcel only the following signs: (i) directional signs for traffic flow and parking within and upon Purchaser Parcel provided that such signs shall be of a design, materials and construction harmonious and compatible with the directional signage installed on the remainder of the Shopping Center; (ii) four (4) exterior signs mounted on the Building. Prior to the installation of any such sign(s) Purchaser shall submit to Developer Plans showing the size, design, location, content and type of signs permitted above for the prior written approval of Developer, which approval shall not be unreasonably withheld. In addition, the right to install any signage shall be subject to the Village of Twin Oak's Resolution #26, which provides that all signage (building and site) shall provide for lettering and backgrounds that at night (dusk until dawn)

shall display white letters on black background. Pursuant to said Resolution #26, Purchaser shall install a sign that shall be red and blue during the day, but will illuminate white and black at night.

(c) Neon or flashing light or animated or audible signs, except for audible drive-through signs and audible automated teller machine ("ATM") signs, shall not be permitted on Purchaser Parcel. Portable signs or signs mounted or printed on vehicles or trailers shall not be permitted on Purchaser Parcel.

5.7 Lighting. Purchaser shall install and maintain at its expense a lighting system about the exterior of the Building and other Improvements situated upon Purchaser Parcel, including entrance areas and Parking Areas. Such lighting system shall utilize light standards and fixtures harmonious and compatible with such standards and fixtures utilized on Shopping Center and shall not be erected without the prior written approval of Developer, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, Purchaser shall have the right to install, without Developer's consent, any lighting that may be required by applicable laws and regulations or to meet the Purchaser's security requirements. The lighting system shall be kept in operation on Purchaser Parcel during such time as the other lighting is kept in operation for the remainder of the Shopping Center, or during such other hours as may from time to time be designated by Developer, which hours shall apply uniformly to Shopping Center. Notwithstanding the foregoing, if Purchaser desires to use the lighting for its Parcel more than what Developer requires, it may do so without Developer's consent.

5.8 Maintenance and Repair. Purchaser and Developer shall, at their own cost and expense, maintain, or cause to be maintained, in good and tenantable repair, order and condition, their respective Parcels, including all Parking Areas, and the Improvements constructed thereon, including those Improvements in existence as of the date of this Agreement and any other Improvements constructed hereafter, and each Party shall make or cause to be made all repairs and replacements thereto as may be reasonably required to keep the same in the condition specified in this Agreement. Each Party's responsibilities for the their respective Parcels shall include, without limitation, the following, except for Subparagraph (e) as more particularly set forth therein:

(a) Keeping and maintaining all driveways, Parking Areas and sidewalks on their respective Parcels level, smooth and evenly surfaced with the type of surfacing material originally installed thereon, or such substitute therefore as shall be in all respects at least equal thereto in quality, appearance and durability.

(b) Keeping their respective Parcels reasonably clean and free from debris, filth and trash, and the Parking Areas, drives and sidewalks swept and striped where applicable.

(c) Keeping and maintaining all landscaped areas on their respective Parcels in a neat and trimmed condition, including removal of dead plants, weeds and foreign matter, pruning, fertilizing and such replanting and replacement as is reasonably necessary.

(d) Repairing and maintaining all driveways, entrances, sidewalks, lights and Parking Areas on their respective Parcels in a safe, sightly and serviceable condition, free from settling, chuckholes, standing water, fissures and cracks.

(e) Purchaser keeping and maintaining grade levels and elevations on the Purchaser Parcel substantially the same as approved by Developer in the Plans and Specifications and Developer keeping and maintaining the grade levels and elevations on the Walgreens Parcel (as defined in Section 5.10(d) hereof) substantially the same as approved by Developer pursuant to the Walgreens Lease (as defined in Section 5.10(d) hereof).

(f) Keeping and maintaining all exterior signs on their respective Parcels in good condition and repair.

(g) Promptly removing or disposing of all rubbish, trash, garbage and waste from their respective Parcels and not allowing any rubbish, garbage or waste to unduly collect thereon.

(h) Keeping the exterior of the Buildings on their respective Parcels in good condition and repair, ordinary wear and tear excepted, including painting exposed surfaces where applicable and replacement of broken glass.

(i) Keeping and maintaining in good condition and repair, ordinary wear and tear excepted, any underground detention facilities located upon their respective Parcels.

5.9 Trash Removal. Purchaser shall install and maintain upon Purchaser Parcel such trash-refuse dumpsters as shall be necessary to adequately dispose of the trash and refuse occasioned through the operation of Purchaser Parcel. The trash dumpsters shall be of a size, shape and design as first approved in writing by Developer and shall be located and encompassed within a fenced enclosure, as first approved in writing by Developer.

5.10 Permitted Use of Purchaser Parcel.

(a) Purchaser for itself and its successors and assigns, Tenants and Invitees, covenants, agrees and warrants that the Building and Improvements on Purchaser Parcel shall be used only for the following purposes and Purchaser Parcel is hereby restricted as follows:

(i) Purchaser shall initially commence construction of (being construction of footings, foundations and exterior walls) a bank no later December 31, 2005, and shall complete construction of and open for business to the general public a bank or other business as may be permitted pursuant to this Agreement no later than December 31st, 2006, subject to an extension of time for such periods as may be reasonably required due to Force Majeure. In the event that Purchaser does not commence construction of the bank or other business as may be permitted pursuant to this Agreement by December 31, 2005, Purchaser shall be required to pay the fee below to the Village of Twin Oaks, until such time as said construction is commenced, as liquidated damages and due to the potential negative impact on the Shopping Center and the Village (it being understood that actual damages would be difficult if not impossible to determine), an amount equal to Twelve Thousand Five Hundred Dollars (\$12,500.00) per year, prorated based upon the number of days during which said construction has not been commenced, said amount being due and payable on a monthly basis with the first such payment being due thirty (30) days after December 31, 2005. If Purchaser does not complete construction of and open for business to the general public a bank or other permitted business by December 31st, 2006 (subject to Force Majeure), Purchaser shall be required to pay the fee below to the Village of Twin Oaks, until such time as said construction is completed and the bank or other permitted business is open for business to the general

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public, as liquidated damages (it being understood that actual damages would be difficult if not impossible to determine), an amount equal to Twelve Thousand Five Hundred Dollars (\$12,500.00) per year, prorated based upon the number of days during which said construction has not been completed and the bank or other permitted business has not been open for business to the general public, said amount being due and payable on a monthly basis with the first said payment being due thirty (30) days following December 31st, 2006. For the purposes of this Section 5.10(a)(i) only and for no other purpose hereunder, the Village of Twin Oaks shall be a third party beneficiary to this Agreement, and may fully enforce the provisions of this Section 5.10(a)(i) as if the Village of Twin Oaks were a party hereto, even though the Village of Twin Oaks is not a signatory hereto.

(ii) Following initial opening as a bank or other business permitted pursuant to this Agreement, the Purchaser Parcel may thereafter only be used for any lawful purpose not otherwise restricted as set forth below; provided that such use must meet the local applicable parking regulations, ordinances and restrictions. Notwithstanding the specific permitted use contained in the previous sentence, the Purchaser Parcel shall not at any time be used for any of the following purposes or uses: (1) any automobile servicing or repair business or operation including but not limited to mechanical or transmission repair, body shop or painting service, gas station or car wash; (2) industrial or manufacturing uses; (3) noxious uses or nuisances, including, but not limited to a massage parlor, billiard parlor, flea market, a so-called "off-track betting" operation; a store specializing in the sale of drug paraphernalia or for the display or sale of pornographic materials; any uses involving the dumping, disposing, incineration or reduction of garbage (exclusive of dumpsters or garbage compactors located near the rear of any Building, and which are regularly emptied); a dry cleaning plant; an animal raising facility; a mortuary or funeral home; a tattoo parlor; a carnival, circus or amusement park; any uses directly related to the above; (4) any uses involving the sale of food or food-related products for consumption off the premises, including without limitation meat, dairy products, produce, bakery goods, canned goods or dry grocery foods; (5) any uses involving the sale of health and beauty aids; (6) any uses involving the sale of prescription and non-prescription drugs, medications or pharmaceutical items; (7) uses competitive to or in conflict with the products and services from time to time offered within the Shopping Center premises, including any department within any store therein, by tenants and other Outlot Users of the Shopping Center, including, but not limited to, any business engaged, whether primarily or incidentally, in the rental of pre-recorded video tapes or laser disks or similar replacement technology, provided, however, the Purchaser's Parcel may always be used for a bank; (8) any uses involving the sale of beer, wine, liquor or other alcoholic beverages for consumption on or off the premises; (9) any automobile sales or automobile parts, supplies or accessories; (10) any office use, except for use incidental to the operation of a bank facility or related purposes, classroom, meeting hall, health or exercise club, arcade, theater, bowling alley, bingo parlor, flea market, or any other use or operation which may cause high traffic volume; (11) a tavern, nightclub, disco, singles bar, or other establishment or business for the sale of beer, wine, or liquor for consumption on or off the premises; (12) any use prohibited pursuant to any restriction in any documents of record, which restrict the use of Purchaser Parcel as of the date of this Agreement. Anything to the contrary herein notwithstanding, the Purchaser Parcel may not be used for any purpose which requires more parking spaces (and stacking lane space) than contained upon the Purchaser Parcel on a so called "self-contained" basis, as reasonably determined by Developer.

(b) Anything to the contrary herein notwithstanding, there shall at no times be any display, sale or advertising activities conducted outside the Building on the Purchaser Parcel or on any sidewalks within Purchaser Parcel including but specifically not limited to the sale of Christmas trees,

pumpkins, carnivals, barbecues, fund raisers or radio or television promotions, except in connection with drive through facilities.

(c) Purchaser shall at all times comply with all applicable laws, ordinances, rules and regulations with respect to Purchaser Parcel, so long as such rules and regulations are applied uniformly to all Outlot users, and Purchaser covenants that it will not commit any nuisance or waste on the Purchaser Parcel.

(d) So long as Purchaser timely commences and completes construction of a bank building in accordance with Section 5.10(a)(i) hereunder, opens for business and continually operates a bank facility on the Purchaser Parcel, Purchaser shall have the exclusive right to operate a bank within the area of the Shopping Center described on Exhibit D hereof. For purposes of this Section 5.10(d), a bank means a financial institution that receives deposits or makes loans to the general public, whether done by a state bank, a national bank, a savings and loan institution, credit union, trust company or other entity whether by drive through facility, ATM or otherwise. In addition, continuous operation shall mean operating a bank during normal business hours on all normal banking days except weekends and recognized holidays; provided that Purchaser may temporarily suspend operations for a period not to exceed six (6) months without affecting the enforceability of this provision. Notwithstanding anything in this Subsection (d) to the contrary, the foregoing restriction shall not apply: (i) to the placement of an ATM within the building constructed upon the area designated as the "Walgreens Parcel" on Exhibit E, attached hereto and made a part hereof by this reference, which building shall be constructed pursuant to that certain Lease dated _____, 2004, by and between Developer and Walgreen Co., an Illinois corporation ("Walgreens Lease"), so long as the Walgreens Lease, as the same may be assigned, assumed, modified or extended, remains in effect or (ii) to the placement of an in-store bank within a portion of the Developer Parcel, also depicted on Exhibit E, during any period within which the Developer Parcel is primarily being used for the operation of a supermarket store by Developer, Schnuck Markets, Inc. or any entity controlled by, in common control with or in control of Developer or Schnuck Markets, Inc. (each a "Related Entity") or any successor or assign of Developer, Schnuck Markets, Inc. or a Related Entity thereof.

(e) After opening for one (1) day, the Purchase shall not be required to continuously operate, use or occupy the Purchaser's Parcel or the Improvements located thereon.

5.11 Boundary Obstructions. No fence, curb, parking bumpers, landscaping, structure or other obstruction of any kind shall be placed, kept, permitted or maintained by Purchaser upon the boundary lines between the remainder of the Shopping Center and Purchaser Parcel without written consent of Developer, which consent may be withheld in Developer's sole discretion.

ARTICLE VI - SHARED MAINTENANCE

6.1 Shared Improvements. Purchaser acknowledges that Purchaser, its Invitees and other Persons owning a portion of the Shopping Center, will be benefited by certain Improvements located or to be located on the Shopping Center and/or Developer Parcel, including, without limitation, the Cross Access Easement Area, landscaping, lighting, drainage systems and detention basins (including those components located on the Developer Parcel and those located outside of the Shopping Center), entrance areas, curbing and sidewalks, which Improvements are hereinafter sometimes referred to as "Shared Improvements".

6.2 Shared Improvement Maintenance Cost. Purchaser shall pay Developer, as reimbursement of Purchaser's share of the costs of maintenance and repair of the Shared Improvements, the

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sum of One Thousand Five Hundred Dollars (\$1,500.00) per year (subject to increase as hereinafter provided) which amount shall be payable in advance, without demand, deduction, off-set or recoupment, upon written notice from Seller that the Seller Improvements, defined in Section 5.3(b) hereof, are substantially completed, and on January 1st of each year thereafter. Any partial year shall be paid on a per diem basis. Commencing five (5) years following the date of execution hereof, and on each fifth (5th) year anniversary date thereafter, the amount paid by Purchaser to Developer as set forth in this Section shall be increased to an amount, computed by multiplying \$1,500.00 by the "CPI Adjustment," which shall be a fraction, the numerator of which shall be the "CPI" for the month closest and preceding each respective fifth (5th) year anniversary date and the denominator shall be the "CPI" for the month closest to and preceding the date of completion of the Shared Improvements. "CPI" shall mean the Consumer Price Index number published by the Bureau of Labor Statistics of the U.S. Department of Labor, All Items Indexed for All Urban Consumers, U.S. City Average, 1982-1984 = 100. If the base index year, 1982-84, for CPI is no longer published or is significantly altered, then the CPI Adjustment shall be computed based upon an alternative means of computation in use by the Bureau of Labor Statistics or upon a new formula which produces comparable results as may be determined by Developer.

ARTICLE VII - INSURANCE

7.1 Duty to Carry Property Insurance. Purchaser shall carry (or cause to be carried) an "all risk" policy of property insurance on all Improvements on the Purchaser Parcel as they exist from time to time. Such insurance shall be so carried commencing with the start of construction by Purchaser. Such policy shall meet the following requirements: (1) shall be carried with financially responsible insurance companies with a Rating Classification of at least "A-" and a Financial Size Category of at least Class XI in the most recent edition of Best's Insurance Rating Guide; (2) Shall be in an amount at least equal to 100% of the replacement cost (exclusive of cost of excavations, foundations and footings) of the Improvements being insured, but less any applicable deductible; (3) Shall insure against loss or damage from causes that are from time to time included as covered risks under standard insurance industry practices within the classification of an "All Risk" property policy including, without limitation, coverage specifically against the following perils: earthquake, flood, collapse, surface water, water drain back up, subsidence, fire, windstorm, hail, cyclone, tornado, malicious mischief, vandalism, aircraft, vehicle, smoke damage and sprinkler leakage; (4) Shall contain a provision that the same may not be canceled without at least thirty (30) days' prior written notice being given by the insurer to the Developer; (5) Shall include debris removal expense coverage; and (6) During the performance of any construction, repair, replacement, alteration or improvement, shall include broad form builder's "all risk" insurance in amounts not less than those required pursuant to (2) above.

7.2 Duty to Carry Liability Insurance. Purchaser shall carry (or cause to be carried), commercial general liability insurance on an occurrence basis covering its Parcel and all Improvements situated thereon. Such insurance shall have Each Occurrence and Personal and Advertising Injury limits of not less than Two Million Dollars (\$2,000,000) and a General Aggregate limit of not less than Five Million Dollars (\$5,000,000). The limits hereinabove required shall be increased or decreased, but not decreased below the dollar amounts stated above, from time to time such that they are at all times in accordance with the practices then prevailing in the insuring of similar shopping centers. Any disputes between the Parties respecting the appropriate limit, shall be resolved by arbitration. Such policy shall meet the following requirements: (1) Shall be carried with financially responsible insurance companies with a Rating Classification of at least "A-" and a Financial Size Category of at least Class XI in the most recent edition of Best's Insurance Rating Guide; (2) Shall insure against claims for personal injury or death and property

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damage occasioned by occurrences relating to the Shopping Center, and shall provide protection against the following hazards: premises and operations, personal and advertising injury, completed operations and broad form property damage; (3) Shall provide that the same may not be canceled or reduced in amount of coverage without at least thirty (30) days' prior written notice being given by the insurer to the other Party; (4) Shall name the Developer, as additional insured; and (5) Shall be "occurrence" policies.

7.3 Indemnification by Parties. Each Party (in this Section called the "Indemnitor") shall indemnify, hold harmless and, at the election of the other Party (with counsel reasonably acceptable to such Party) defend the other Party and its officers, directors, employees, agents and partners (in this Section collectively called the "Indemnitees") against all claims, demands, causes of action, damages, losses, costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees and litigation costs) and all other liabilities whatsoever (in this Article 7 collectively called "Claims") (except to the extent the same is the obligation of the other Party under any other provisions of this Agreement) arising out of or in connection with:

(1) The death of or any accident, occurrence, injury, loss, or damage whatsoever caused to any natural person or to the property of any Persons as shall relate to or occur in or on the Indemnitor's Parcel (except to the extent such Claims arise in whole or in part from any active negligence or from a willful act or omission of the Indemnitor and the liability of the Indemnitor is solely derivative and/or based on Indemnitor's passive negligence).

(2) Any act or omission (except to the extent covered in (1) above) whatsoever of negligence or willfulness on the part of Indemnitor, its agents, servants or employees, relating to or occurring in or on the Indemnitor's Parcel, except to the extent caused in whole or in part from any active negligence or from a willful act or omission of the Indemnitor (provided that if Indemnitor's liability is solely derivative and/or based on Indemnitor's passive negligence, such act or omission shall not be deemed caused by Indemnitor).

Indemnitor shall give Indemnitor notice of any suit or proceeding entitling Indemnitor to indemnification pursuant to subparagraphs (1) and (2), or pursuant to any other indemnities arising under this Agreement, and Indemnitor shall have the right (and the obligation, if Indemnitor so requires it) to defend Indemnitor in said suit or proceeding with counsel reasonably acceptable to Indemnitor.

The indemnities contained herein shall survive the expiration or earlier termination of this Agreement with respect to events occurring prior to such expiration or termination.

7.4 Certificate of Insurance. Purchaser shall, upon execution of this Agreement and thereafter, prior to the issuance and renewal or extension of a policy, furnish the Developer a certificate issued by the insurer evidencing the Purchaser's compliance with the insurance coverage requirements of this Article.

7.5 Release of Liability and Waiver of Subrogation -- Parties. Each Party on its behalf and on behalf of its insurers and of its successors and assigns hereby completely releases, and forever waives all rights of recovery and causes of action against the other Party, its officers, directors and employees, from all liability (including loss of rent or profit) for all losses and damages occasioned to the property (real and personal, tangible and intangible) located within or upon or constituting a part of the Shopping Center, which losses and damages arise from a risk of the type generally covered under the types of policies

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required by Section 7.1, to the extent that said loss or damage: (a) is actually reimbursed by an independent insurer, or (b) should have been reimbursed under the policies required by Section 7.1, whether in force or not; whichever is greater, even though such losses or damages might have been occasioned by the negligence or fault of such released Person. The policies required by Section 7.1 shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against the other Party, its officers, directors and employees, with respect to any losses to the extent such insured Party has released the other Party hereinabove.

7.6 Self-Insurance Notwithstanding anything to the contrary in Subsections 7.1 and 7.2 above, Purchaser shall have the right to self insure against all risks otherwise required by the aforementioned subsections of this Agreement so long as Purchaser maintains a minimum net worth of at least Fifty Million and 00/100 Dollars (\$50,000,000.00).

ARTICLE VIII - CONDEMNATION, DAMAGE OR DESTRUCTION

8.1 Condemnation.

(a) Condemnation means: (i) the taking of all or any part of any Parcel or the possession thereof (other than temporary possession of three years or less) under the power of eminent domain; or (ii) the voluntary sale (with the consent of the Parties then in possession and any other Persons having an interest therein) of all or any part of any Parcel to any Person having the power of eminent domain, provided that such Parcel is then under the threat of condemnation.

(b) If any part of the Improvements situated on either Parcel are taken by condemnation, then to the extent that any reconstruction shall be reasonable under the circumstances as determined by such Party, such Party shall reconstruct said Improvements as nearly as possible to the condition thereof as existed immediately prior to such taking in accordance with the requirements and subject to the terms and conditions of this Agreement. In the event Purchaser elects not to reconstruct, Purchaser shall, no later than six (6) months following the date of the condemnation, demolish all Improvements on the Purchaser Parcel and restore the cleared area to either a hard surface condition or a landscaped condition.

(c) If any Parcel or any portion thereof is taken by condemnation, each Party waives, in favor of the Party whose Parcel or any part thereof is taken by condemnation, any value of the condemnation award attributable to any easements the Party holds in the Parcel of such other Party; and no part of such awards shall be payable to the holder of the dominant tenement by virtue of such easement. However, waiver under this Section shall not preclude the holder of any interest in another Parcel from claiming and collecting the severance and consequential damages to its own Parcel resulting from the taking of the condemned portion of the other Parcel.

8.2 Damage or Destruction. In the event the damage or destruction of any building on either Parcel, the respective owner of such Parcel shall, subject to governmental regulations and/or insurance adjustment delays, immediately remove the debris resulting from such event and provide a barrier, and within a reasonable time thereafter, shall either (i) repair or restore the building so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this Agreement, or (ii) erect another building in such location, such construction to be performed in accordance with all provisions of this Agreement, or (iii) demolish the damaged portion and/or the balance of such

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building and restore the cleared area to either a hard surface condition or a landscaped condition. Any reconstruction or rebuilding on the Parcels shall be in accordance with all provisions of this Agreement.

ARTICLE IX - DEFAULT AND EXCUSES FOR NON-PERFORMANCE

9.1 Right to Cure Defaults. If Purchaser or Developer (the "Defaulting Party") shall fail to perform, fulfill or observe any agreement herein to be performed, fulfilled or observed by it, including, without limitation, any obligation to repair or maintain, then the other party (the "Non-Defaulting Party") may send notice to the Defaulting Party stating the nature of the alleged default. If such default remains uncured for a period of thirty (30) days after such notice, or if such default be of a type which cannot be cured within such period, and (i) the Defaulting Party has not commenced to cure the same within such period, or (ii) is not diligently proceeding to cure same, then the Non-Defaulting Party, may, at its election, cure such default for and on behalf of the Defaulting Party. If the Non-Defaulting Party elects to cure any default of the Defaulting Party, the Defaulting Party does hereby grant, convey and set over to the Non-Defaulting Party and its Invitees, the non-exclusive easement to go on, over, across and upon the Defaulting Party's Parcel for the purpose of doing any acts necessary to cure said default.

9.2 Interest. If under this Agreement, the Non-Defaulting Party is compelled or elects to pay any sum of money or do any acts that require the payment of money by reason of the Defaulting Party's failure or inability to perform any of the provisions of this Agreement to be performed by the Defaulting Party, including without limitation, any amounts expended to cure a default as provided in Section 9.1 and 9.2 hereof, the Defaulting Party, shall promptly upon demand reimburse the Non-Defaulting Party for such sums, and all sums shall bear interest from the date of expenditure until the date of such reimbursement at a rate the greater of fifteen percent (15%) per annum or the publicly announced base or prime rate set by Chase Manhattan Bank of New York and determined at the time of such expenditure.

9.3 Injunction and Damages.

(a) If the Non-Defaulting Party shall not elect to cure a default through its own efforts, as provided in Sections 9.1 and 9.2 hereof, or if the type and nature of a default is not susceptible of being cured through the effort of the Non-Defaulting Party, as otherwise provided in Sections 9.1 and 9.2 hereof, the Non-Defaulting Party, shall be entitled, in addition to any other remedy available under this Agreement or by law or in equity, to secure both a temporary and permanent injunction against the Defaulting Party such as shall serve to effect the compliance on the part of the Defaulting Party with the terms, conditions, reservations, restrictions and easements herein created.

(b) Nothing herein shall limit or prohibit the Non-Defaulting Party from bringing any action against the Defaulting Party for damages resulting from the Defaulting Party's defaults under this Agreement and all remedies specified herein are in addition to other remedies available and are not to limit any remedies available to Non-Defaulting Party by law or equity.

9.4 Attorneys' Fees. If Developer or Purchaser shall be obligated to secure the assistance and service of legal counsel in an effort to enforce (or defend against) any alleged default under this Agreement, the prevailing party, Developer or Purchaser, as the case may be, shall be entitled to recover against the other Party reasonable attorneys' fees including those before suit is filed and all costs and fees so incurred through all appellate proceedings, as may be required.

9.5 Waiver. One or more waivers of any covenant, term or condition of this Agreement by either Party shall not be construed as a waiver of a subsequent breach of the same or any other covenant, term or condition; nor shall any delay or omission by either Party to seek a remedy for any breach of this Agreement or to exercise a right accruing to such Party by reason of such breach be deemed a waiver by such Party of its remedies or rights with respect to such breach. The consent or approval by either Party to or of any act by the other Party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any similar or subsequent act.

9.6 Excuse for Non-Performance. Except as provided otherwise in this Agreement, each Party shall be excused from performing any obligation under this Agreement, and any delay in the performance of any obligation under this Agreement shall be excused, if and so long as the performance of the obligation is prevented, delayed or otherwise hindered by acts of God, fire, earthquake, floods, explosion, acts of the elements, war, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, laws or orders of governmental or military authorities or any other cause, whether similar or dissimilar to the foregoing, not within the control of such Party (other than lack of or inability to procure monies to fulfill its commitments and obligations under this Agreement). The foregoing are collectively referred to as "Force Majeure."

ARTICLE X - TRANSFER OF PARCEL

10.1 Transfer of Title

(a) In the event of the transfer of the fee simple title interest ("Transfer") of Purchaser Parcel or portion thereof, the Purchaser or the grantor thereof shall give written notice of such transfer to Developer setting forth the name and address for notice to such grantee and the grantee thereof shall assume all future liability of the Purchaser, and, with respect to those portions transferred, and, , the Purchaser or the grantor thereof shall have no liability for any acts of default under this Agreement which occurred subsequent to the date of the transfer. Provided, however, that any grantee acquiring an Outlot from Developer shall not assume or be responsible for any obligations of Developer hereunder unless such obligations are specifically assumed in the deed of conveyance or other instrument recorded simultaneous therewith.

(b) Purchaser may not further subdivide or partition Purchaser Parcel without the written consent of Developer.

10.2 Sums Payable. As to sums payable pursuant to this Agreement, each Party shall be responsible for sums that accrue while an owner of its respective Parcel. In the event of a transfer, the grantee shall also be responsible for any sums due under this Agreement that have not been paid by its grantor; provided, if a portion of a Parcel is transferred, the grantee shall only be responsible for that portion of such sums, if any, applicable to the land transferred.

10.3 Written Statement. Each Person to whom sums are payable ("Payee") shall upon request therefor, furnish a statement in recordable form regarding payment, including a statement as to any amounts due and unpaid ("Payment Statement"). A grantee of any Parcel shall have the right to rely upon such Payment Statement and such Payment Statement shall be binding upon the Payee giving the Payment Statement. If a Payee fails to give a Payment Statement as provided in this Section within a reasonable time

following request, then such Payee after thirty (30) days following receipt of notice of failure to give such Payment Statement, shall be deemed to have waived the right to collect any amounts due to such Payee from any grantee prior to the date of request for such Payment Statement and any grantee to whom the land is conveyed and grantor shall not be liable for payment thereof. Such requesting Party must include in its notice to the Payee a statement to the effect that if such Payment Statement is not provided within thirty (30) days, the Payee shall be deemed to have waived the right to collect any amounts due prior to the date of request for such Payment Statement. Such requesting Party's failure to include such a statement shall result in the Payee's right to collect amounts due not being waived after such thirty (30) day period.

ARTICLE XI - NOTICES AND DEMANDS

11.1 Giving of Notice. Each notice, demand, request, consent, approval, disapproval, designation or other communication (all of the foregoing are herein referred to as a "Notice") required or contemplated to be given hereunder shall be in writing and shall be conclusively deemed to be given or made or communicated if sent by United States registered or certified mail, postage prepaid, return receipt requested; deposited with a nationally recognized overnight delivery service, postage prepaid; or by facsimile transmission (with a confirmation copy to follow by any of the other means of delivery set forth above) and addressed,

- (a) In the case of Developer addressed to:

SM Properties Twin Oaks, L.L.C.
c/o The Desco Group
8040 Forsyth
Clayton, Missouri 63105
Attention: Mark J. Schnuck
Fax No.: (314) 994-4450

- (b) In the case of Purchaser addressed to:

Bank of America, N.A.
525 North Tryon, 3rd Floor
NC1 023 03 03
Charlotte, North Carolina 28255
Attn: Corporate Work Place
Fax No.: (704) 386-0547

with a copy to:

Trammell Crow Corporate Services, Inc.
100 N. Broadway, 22nd Floor
MO-2-100-22-01
St. Louis, Missouri 63102
Attn: Property Services
Fax No. 314-466-4100

subject to the right of a Party to designate a different address by notice similarly given at least ten (10) days in advance.

11.2 Date of Notice. 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 was deposited in the United States mail, as evidenced by the postmark thereon, if given by mail, certified or registered; the next business day, if notice is given by overnight courier; upon receipt of a facsimile transmission; or if notice is given in any other manner then such notice shall be deemed given when actually delivered to the Party to receive notice.

ARTICLE XII - MISCELLANEOUS

12.1 Superior to Mortgages. This Agreement shall be superior to any mortgage or deed of trust concerning any portion of Purchaser Parcel. If any mortgage or deed of trust covers a Purchaser's Parcel or any portion thereof at the time of recording this Agreement, such Purchaser shall obtain the necessary consents from any holder of such mortgage or deed of trust in order to subordinate such mortgage to this Agreement.

12.2 Exhibits. Each reference herein to an Exhibit hereto refers to the applicable Exhibit that is attached to this Agreement, which Exhibit may be amended only in writing signed by all signed Parties in accordance with the provisions of this Agreement. All such Exhibits constitute a part of this Agreement and by this Section are expressly made a part hereof.

12.3 No Rights to Third Parties. Except as set forth in Section 5.10(a)(i), the provisions of this Agreement are for the exclusive benefit of the Parties, their successors and assigns, and not for the benefit of any third party. This Agreement shall not be deemed to have conferred any rights upon any third person unless specifically set forth herein.

12.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of the Parties.

12.5 Invalid Provisions. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (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 Agreement, unless specifically conditioned upon such invalid or enforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

12.6 Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of Missouri.

12.7 Covenant Running with Land. It is intended that the covenants, easements, agreements, promises and duties of each Party, as set forth in this Agreement, shall be construed as covenants and not as conditions, and that, to the fullest extent legally possible, all such covenants shall run with the land or constitute equitable servitudes as between the Parcel of the respective covenantor, as the servient tenement, and the Parcel of the respective covenantee, as the dominant tenement.

12.8 Right to Add Property to Shopping Center. The Developer reserves the right, at any time and from time to time, to add land to the area of the Shopping Center and/or Developer Parcel by recording a declaration stating that the land described in such declaration is made a part of the Shopping Center and/or Developer Parcel. From and after the date of recording of any such declaration, the definition of Shopping Center and/or Developer Parcel as used in this Agreement shall be automatically amended to include the additional land described in such declaration and such additional land shall be benefited by all easements and rights set forth herein for the Shopping Center and/or Developer Parcel.

12.9 Relation of Parties. Neither anything in this Agreement nor any acts of the Parties shall be deemed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Parties, and no provisions of this Agreement are intended to create and constitute any person a third party beneficiary hereof.

12.10 Estoppel Statement.

(a) Each Party ("Responding Party") shall, without charge at any time and from time to time, within twenty (20) days after written request by the other Party ("Requesting Party"), certify by written instrument, duly executed, acknowledged and delivered:

(i) that this Agreement is unmodified and in full force and effect (or, if there has been modification, that the same is in full force and effect as modified and stating the modifications); and

(ii) whether or not there are then existing any set-offs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof upon the part of the Requesting Party or Responding Party to be performed or complied with (and, if so, specifying the same).

(iii) such other information dealing with the rights and obligations of the Parties under this Agreement as may be reasonably requested by the Requesting Party.

(b) If the Responding Party does not provide such written instrument within thirty (30) days following receipt of a written request therefore then the Requesting Party and any other Person for whom such statement may be required (except as to matters of which the Requesting Party has notice) may presume that this Agreement is not modified and is in full force and effect, and the Requesting Party is not in default under this Agreement and such presumption shall thereafter be binding upon the Responding Party.

12.11 Amendment. This Agreement may be modified, amended or terminated, in whole or in part, only by written agreement of Developer and Purchaser. Nothing contained in this Agreement shall convey or grant any rights to any Tenants, agents, employees, customers or Invitees of either Party hereto, and no consent or agreement of any such Tenant, agent, employee, customer or Invitee shall be required for the amendment or modification of this Agreement.

12.12 Liability.

(a) Neither Party shall be responsible or liable at any time to the other Party, its Tenants and Invitees, or those claiming by, through or under same, for any loss of life, bodily or personal

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injury or damage to property or business, or for business interruption that may be occasioned upon, in or about such Party's Parcel by and through the acts, omissions and negligence of such Party, its Tenants or Invitees, in their exercise of easement rights with respect to such Party's Parcel granted to the other Party. Each Party shall not be responsible or liable at any time to the other Party, its Tenants and Invitees, or those claiming by, through or under same, for any defects, latent or otherwise, in the Improvements on other Party's Parcel constructed by or for the benefit of the other Party, pursuant to easement rights granted by such Party; nor shall such Party be responsible or liable at any time for loss of life or injury or damage to any Person or to any property or business of the other Party, its Tenants and Invitees, or those claiming by, through or under same, caused by or resulting from malfunctioning utilities, acts of God or the elements, or resulting from any defect or negligence on the installation, construction, use, maintenance, repair, relocation or removal of any of the Improvements upon, in or about the other Party's Parcel constructed by or for the benefit of the other Party.

(b) Notwithstanding anything in this Agreement to the contrary, each Party agrees that each such Party shall look solely to the estate and property of the other Party in the other Party's Parcel for the collection of any judgment or other judicial process requiring the payment of money by such other Party in the event of any default or breach by the other party with respect to any of the terms, provisions or obligations contained in this Agreement to be observed and/or performed by the other Party, subject, however, to the rights of any lessee or holder of any mortgage or deed of trust then covering such Party's Parcel and no other assets of such other Party shall be subject to levy, execution or other judicial process for the satisfaction of each Party's claim.

(c) Any approvals or consents given by Developer under this Agreement shall not infer any liability upon Developer as to the design, construction or soundness of any item approved or consented to and Developer shall not have any liability resulting from any defect in any plans or specifications approved by Developer or any Improvements constructed in accordance therewith.

12.13 No Mechanic's Liens.

Neither Party shall have any right to subject any portion of the Other Party's Parcel, to any lien for goods, labor or materials supplied at the request of such Party, and no Person performing services, labor, materials or goods to or for such Party shall have any right of lien with respect to any other Party's Parcel.

12.14 Time Period for Vesting of Rights. Notwithstanding anything in this Agreement to the contrary, any and all rights granted to either Party hereunder shall necessarily vest no later than twenty years after the date of death of the last to die of former President of the United States of America George Herbert Walker Bush or any descendant of former President of the United States of America George Herbert Walker Bush who was alive on the effective date hereof.

Remainder of the page left intentionally blank.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

DEVELOPER:

SM PROPERTIES TWIN OAKS, L.L.C.
a Missouri limited liability company

By: Schnuck Markets, Inc.,
a Missouri corporation,
sole Member and Manager

By: Mark J. Schnuck
Mark J. Schnuck, Vice President

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

On this 13th day of December, 2004, before me appeared Mark J. Schnuck, to me personally known, who, being by me duly sworn, did say that he the Vice President of Schnuck Markets, Inc., a corporation of the State of Missouri, sole Member and Manager of SM PROPERTIES TWIN OAKS, L.L.C., a Missouri limited liability company, and that said instrument was signed in behalf of said corporation by authority of its board of directors and on behalf of SM Properties Twin Oaks, L.L.C., and said Mark J. Schnuck acknowledged said instrument to be the free act and deed of said corporation and company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Kathleen Wildhaber
Notary Public

My term expires:

Kathleen Wildhaber - Notary Public
Notary Seal for State of
Missouri - St. Louis County
My Commission Expires 12/7/2007

PURCHASER:

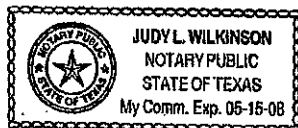
BANK OF AMERICA, N.A.,
A national banking association

By: Jay Taylor
Name: Jay Taylor
Title: Senior Vice President

STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

On this 30th day of November, 2004, before me appeared Jay Taylor to me personally known, who, being by me duly sworn, did say that he/she is the Senior Vice President of BANK OF AMERICA, N.A., a national banking association and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation; and that they acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



Judy L. Wilkinson
Notary Public

My term expires: May 15, 2008

EXHIBIT A - LEGAL DESCRIPTION - DEVELOPER PARCEL

Lots 2, 3, and 4 of the Twin Oaks Center Subdivision, as recorded in Plat Book 352, Page 889 of the St. Louis County, Missouri Recorder of Deeds Office.

EXHIBIT B - SITE PLAN

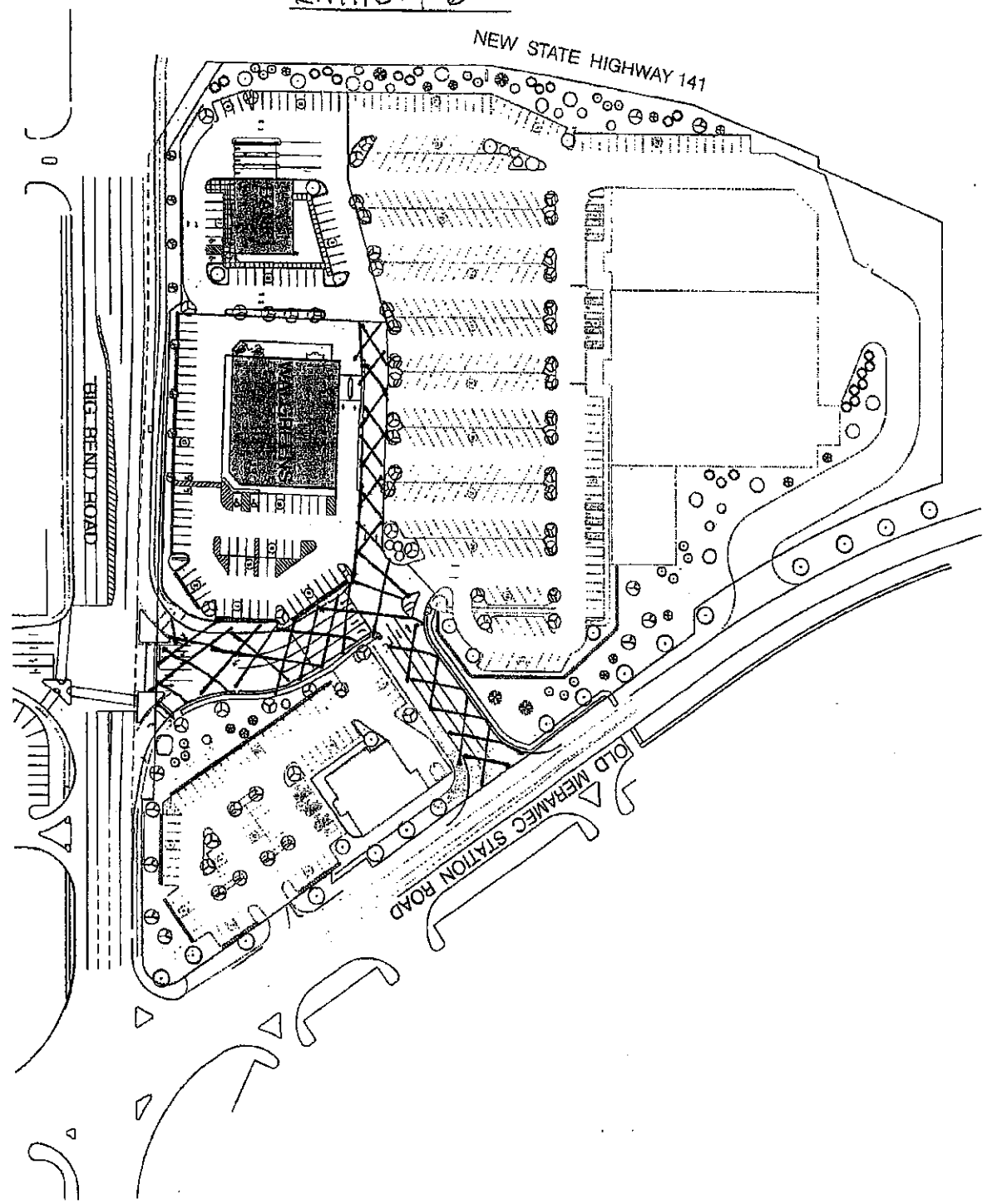
[see attached]

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EXHIBIT B

PHASE II
TWIN OAKS CENTER



SCALE: 1" = 40'

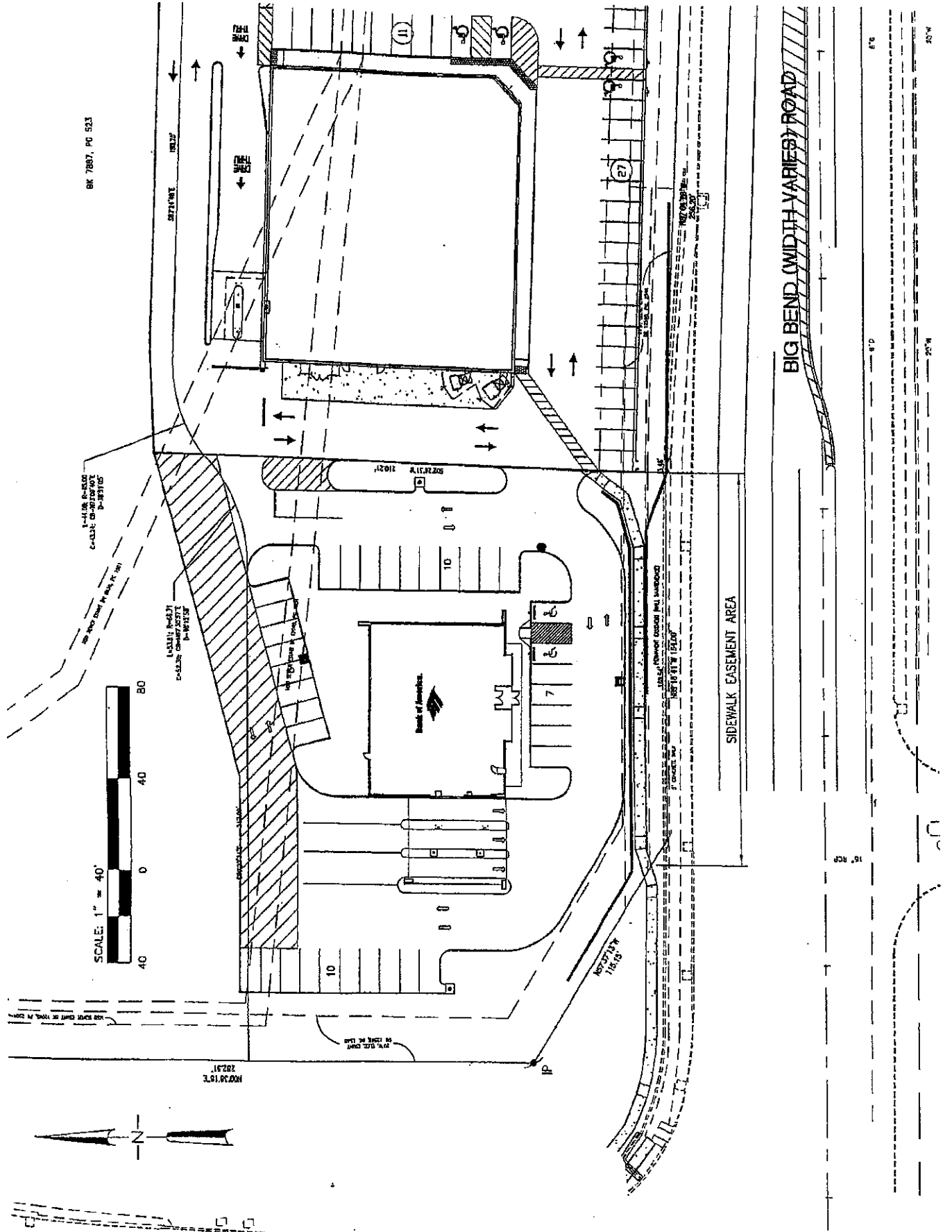
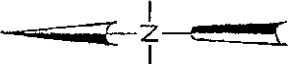




EXHIBIT C - PURCHASER PARCEL LEGAL DESCRIPTION

Lot 1 of the Twin Oaks Center Subdivision, as recorded in Plat Book 352, Page 889 of the St. Louis County, Missouri Recorder of Deeds Office.

EXHIBIT D – SHOPPING CENTER LEGAL DESCRIPTION

Lots 1, 2, 3, and 4 of the Twin Oaks Center Subdivision, as recorded in Plat Book 352, Page 889 of the St. Louis County, Missouri Recorder of Deeds Office.

EXHIBIT E—EXCEPTION TO BANK EXCLUSIVE

[see attached]

EXHIBIT E

BP1629512507

