



Knight Barry Title, Inc.  
400 Wisconsin Ave  
Racine, WI 53403  
262-633-2479  
Fax:262-633-4928

Refer Inquiries to: Mary K. Payne (mary@knightbarry.com)  
Completed on:1/22/20 3:23 pm  
Last Revised on:1/22/20 3:23 pm  
Printed on:1/22/20 3:23 pm

**Applicant Information**

Migdalia Dominguez  
WI Dept of Transportation  
141 NW Barstow St  
Waukesha, WI 53188

Sales Representative:Craig Haskins

**Property Information**

(Note: values below are from the tax roll)

Effective Date: 12/20/2019 at 8:00 am

Owner(s) of record:KLA Development Portfolio Owner LLC, a Delaware limited liability company

Property address:2433 S Green Bay Road, Racine, WI 53406 (Note: Please see included tax bill for mailing address.)

Legal description: Parcel 1 of Certified Survey Map No. 1528 as recorded in the office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991 in Volume 4 of Certified Survey Maps, at Page 699, as Document No. 1343824, being a re-division of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest ¼ of the Southwest ¼ of Section 24 and unplatted lands located in the Northwest ¼ of the Southwest ¼ of Section 24, Township 3 North, Range 22 East. Said land being in the City of Racine, County of Racine and State of Wisconsin.

Tax Key No: 23876042

**Mortgages / Leases / Land Contracts / UCC**

Rights of lessees under unrecorded leases, if any.

Memorandum of Lease and other matters contained in instrument recorded May 20, 2019, as Document No. 2520450.

Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing from KLA Development Portfolio Owner LLC to LoanCore Capital Credit Reit LLC in the amount of \$65,500,000.00 dated January 22, 2019 and recorded January 29, 2019, as Document No. 2512833.

Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing recorded March 12, 2019, as Document No. 2515637.

Assignment of Rents from KLA Development Portfolio Owner LLC to LoanCore Capital Credit Reit LLC recorded January 29, 2019 as Document No. 2512834.

Assignment of Assignment of Leases and Rents recorded March 12, 2019, as Document No. 2515638.

Security interest of LoanCore Capital Credit Reit LLC, c/o LoanCore Capital, 55 Railroad Avenue, Suite 100, Greenwich CT 06830, secured party, as disclosed by UCC Financing Statement recorded January 29, 2019 as Document No. 2512835 executed by KLA Development Portfolio Owner LLC, c/o Klaff Realty, LP, 35 E. Wacker Drive, Suite 2900, Chicago, IL 60601, debtor.

The UCC Financing Statement recorded as Document No. 2512835 has been amended by an Amendment recorded March 12, 2019 as Document No. 2515639.

Subordination, Non-Disturbance and Attornment Agreement and other matters contained in instrument recorded May 20, 2019, as Document No. 2520451.





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### Easements / Restrictions & Other Encumbrances

Public or private rights, if any, in such portion of the Land as may be presently used, laid out, or dedicated in any manner whatsoever, for street, highway and/or alley purposes.

Easements, restrictions and other matters shown on Certified Survey Map 1528 recorded July 2, 1991 as Document No. 1343824.

Easements, restrictions and other matters shown on Certified Survey Map 1395 recorded February 20, 1989 as Document No. 1276690. Along with Affidavit recorded March 2, 1989, in Volume 1952, Page 26, as Document No. 1277469.

Award of Damages and other matters contained in the instrument recorded November 4, 1971 in Volume 1110, Page 334 as Document No. 891777.

Wisconsin Electric Power Company Easement and other matters contained in the instrument recorded August 23, 1977 in Volume 1397, Page 123 as Document No. 1008628.

Wisconsin Electric Power Company Easement and other matters contained in the instrument recorded August 23, 1977 in Volume 1397, Page 123 as Document No. 1008628.

Slope Easement and other matters contained in the instrument recorded July 26, 1979 in Volume 1518, Page 586 as Document No. 1056790. Along with Amendment to Slope Easement and Landscape Agreement recorded April 18, 1990, in Volume 2009, Page 965, as Document No. 1308115.

Easement and other matters contained in the instrument recorded April 9, 1980 in Volume 1557, Page 345 as Document No. 1071196.

Wisconsin Electric Power Company Easement and other matters contained in the instrument recorded March 18, 1981 in Volume 1605, Page 212 as Document No. 1087781. Along with Assignment of Easement Rights recorded September 2, 2014, as Document No. 2388767.

Landscape Easement Agreement and other matters contained in the instrument recorded May 21, 1981 in Volume 1615, Page 210 as Document No. 1090987.

Landscape Easement Agreement and other matters contained in the instrument recorded May 21, 1981 in Volume 1615, Page 215 as Document No. 1090988.

Land Use Agreement and other matters contained in the instrument recorded December 30, 1987 in Volume 1896, Page 539 as Document No. 1247144.

Declaration of Easements and Restrictions and other matters contained in the instrument recorded September 7, 1988 in Volume 1929, Page 653 as Document No. 1265306. Along with Addendum to Declaration of Easements and Restrictions recorded April 19, 1990, in Volume 2010, Page 126, as Document No. 1308183. Also along with Amendment to Declaration of Easements and Restrictions recorded June 28, 1991, in Volume 2077, Page 748, as Document No. 1343367. Also along with First Amendment to Declaration of Easements and Restrictions recorded February 2, 2000 in Volume 3001, Page 100, as Document No. 1716543.

Reciprocal Easement and Operation Agreement and other matters contained in the instrument recorded July 2, 1991 in Volume 2078, Page 789 as Document No. 1343832. Along with First Amendment to Reciprocal Easement and Operation Agreement recorded October 19, 1992, in Volume 2194, Page 169, as Document No. 1393873.

Consent Agreement and other matters contained in the instrument recorded February 2, 2000 in Volume 3001, Page 91 as Document No. 1716541.

Waiver and other matters contained in the instrument recorded February 2, 2000 in Volume 3001, Page 96 as Document No. 1716542.





Integrity. Experience. Innovation.

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Access Road Agreement and other matters contained in the instrument recorded August 8, 2008 as Document No. 2184341.

### Judgments / Liens

None

### General Taxes

This report does not include a search for General Taxes for the year shown in the Effective Date and subsequent years, which are not yet due or payable. This report also does not include a search for special assessments, special taxes or special charges including sewer, water and other municipal charges.

Taxes for the Year 2018 in the amount of \$98,256.76, and all prior years are paid.

### Other Matters

None

### Footnotes

This report is intended for the purposes of causing the Property to become a public right of way for road purposes. Consult the Company before using for any other purposes.

Copies of All Deeds, and Documents listed on report are attached.

In accordance with applicant's request, we have made a search of the records in the various public offices of Racine County. This report is for informational purposes only. The liability of the Knight Barry Title Group (Knight Barry Title, Inc., Knight Barry Title Advantage LLC, Knight Barry Title Services LLC, Knight Barry Title United LLC, and Knight Barry Title Solutions Inc.) (the "Company") to the applicant in issuing this report is: (i) for reasonable care in searching in accordance with the applicant's request and, (ii) is limited to a maximum amount of \$1,000.00. This report is not an abstract of title, a title opinion, a title insurance policy or a commitment to issue a policy of title insurance and should not be relied upon in place of such. It is not the intention, express or implied, of the Company to provide any type of guaranty, warranty, or indemnity to any party with respect to the accuracy of the information contained in the report. In order to obtain information from the Company that will carry the full liability of a title insurance commitment/policy, the Company may issue, if requested, a commitment of title insurance and will charge a fee in compliance with rates filed with the office of the Wisconsin Commissioner of Insurance. Section headings within the report are for convenience only and do not modify the scope of the search.

Further, in accordance with the applicant's request, our search does not include a search through the Wisconsin Office of the Commissioner of Railroads for conveyances and mortgages affecting any portion of the Land which either is or was railroad property (Per Section 190.11, Wis. Stats., all conveyances and mortgages affecting railroad property must be filed with the Wisconsin Office of the Commissioner of Railroads and such record has the same effect as though made in the Office of the Register of Deeds of the County where the land is situated).



City of Racine Web Portal - Property  
Summary

Property: 23876042

| Tax Year                                                                                                                                                                                                                                                                                                                                          | Prop Type   | Parcel Number | Municipality         | Property Address    | Billing Address                                            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|---------------|----------------------|---------------------|------------------------------------------------------------|
| 2018 ▼                                                                                                                                                                                                                                                                                                                                            | Real Estate | 23876042      | 276 - CITY OF RACINE | 2433 S GREEN BAY RD | TRU TRUST 2016 LLC<br>401 S TRYON ST<br>CHARLOTTE NC 28202 |
| Tax Year Legend:  \$ = owes prior year taxes  = not assessed  = not taxed Delinquent Current |             |               |                      |                     |                                                            |

## Summary

## Property Summary

|                  |                     |
|------------------|---------------------|
| Parcel #:        | 23876042            |
| Alt. Parcel #:   |                     |
| Parcel Status:   | Current Description |
| Creation Date:   | 7/11/2017           |
| Historical Date: |                     |
| Acres:           | 0.000               |

## Property Addresses

| Primary ▲                           | Address                          |
|-------------------------------------|----------------------------------|
| <input checked="" type="checkbox"/> | 2433 S GREEN BAY RD RACINE 53406 |

## Owners

| Name               | Status        | Ownership Type | Interest |
|--------------------|---------------|----------------|----------|
| TRU TRUST 2016 LLC | CURRENT OWNER |                |          |

## Parent Parcels

|                              |
|------------------------------|
| No Parent Parcels were found |
|------------------------------|

## Child Parcels

|                             |
|-----------------------------|
| No Child Parcels were found |
|-----------------------------|

## Legal Description

|                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------|
| NW 1/4 SW 1/4 SECTION 24-3-22 PCL NO 1 CSM NO 1528 REC VOL 4 CSM PGS 699-700 BEING REDIV OF PT LOT 1 CSM NO 1395 REC VOL 4 CSM PG 351 4.804 AC M O L |
|------------------------------------------------------------------------------------------------------------------------------------------------------|

## Public Land Survey - Property Descriptions

|                                     |
|-------------------------------------|
| No Property Descriptions were found |
|-------------------------------------|

## District

| Code ▲ | Description                | Category          |
|--------|----------------------------|-------------------|
| 0600   | GATEWAY TECHINICAL COLLEGE | TECHNICAL COLLEGE |
| 276    | LOCAL                      | OTHER DISTRICT    |
|        | RACINE COUNTY              |                   |
|        | STATE OF WISCONSIN         |                   |
| 4620   | UNIFIED SCHOOL             | REGULAR SCHOOL    |

## Building Information

### Buildings

## Assessments

### Assessment Summary

Estimated Fair Market Value: **3423800**Assessment Ratio: **0.9830**Legal Acres: **0.000**

### 2018 valuations

| Class           | Acres | Land    | Improvements | Total   |
|-----------------|-------|---------|--------------|---------|
| G2 - COMMERCIAL | 0.000 | 1255600 | 2110000      | 3365600 |
| ALL CLASSES     | 0.000 | 1255600 | 2110000      | 3365600 |

### 2017 valuations

| Class           | Acres | Land    | Improvements | Total   |
|-----------------|-------|---------|--------------|---------|
| G2 - COMMERCIAL | 0.000 | 1255600 | 2110000      | 3365600 |
| ALL CLASSES     | 0.000 | 1255600 | 2110000      | 3365600 |

## Taxes

### Tax Summary

|               |                                   |
|---------------|-----------------------------------|
| Bill #: 26189 | Net Mill Rate: <b>0.029166790</b> |
|---------------|-----------------------------------|

### Lottery Credits

| Claims | Date | Amount |
|--------|------|--------|
| 0      |      | 0.00   |

### Installments

| Due Date ▲ | Amount   |
|------------|----------|
| 1/31/2019  | 24686.44 |
| 3/31/2019  | 24523.44 |
| 5/31/2019  | 24523.44 |
| 7/31/2019  | 24523.44 |

### Payments

| Status | Payment Date ▲ | Type | Amount   | Receipt # | Notes                       |
|--------|----------------|------|----------|-----------|-----------------------------|
| Posted | 1/11/2019      | T    | 24686.44 | 93707     | TRU TRUST 2016, LLC #001528 |
| Posted | 3/31/2019      | T    | 73570.32 | 108174    | SITUS #25744                |

|      |                                                                                                                               |
|------|-------------------------------------------------------------------------------------------------------------------------------|
| Key: | Property Type: RE - Real Estate, PP - Personal Property                                                                       |
|      | Payment Type: A - Adjustment, R - Redemption, T - Current Tax, Q - Quit Claim, D - Write Off Deeded, B - Write Off Bankruptcy |

### Details

| Description                                                                              | Amount    | Paid | Due |
|------------------------------------------------------------------------------------------|-----------|------|-----|
| Gross Tax                                                                                | 104307.91 | -    | -   |
| School Credit                                                                            | 6144.16   | -    | -   |
|  Total | 98163.75  | -    | -   |

| Description                                                                                       | Amount          | Paid            | Due         |
|---------------------------------------------------------------------------------------------------|-----------------|-----------------|-------------|
| GATEWAY TECHINICAL COLLEGE                                                                        | 2754.40         |                 |             |
| LOCAL                                                                                             | 55655.39        |                 |             |
| RACINE COUNTY                                                                                     | 11658.48        |                 |             |
| STATE OF WISCONSIN                                                                                | 0.00            |                 |             |
| UNIFIED SCHOOL                                                                                    | 28095.48        |                 |             |
| First Dollar Credit                                                                               | 69.99           | -               | -           |
| Lottery Credit                                                                                    | 0.00            | -               | -           |
| Net Tax                                                                                           | 98093.76        | 98093.76        | 0.00        |
| Special Assessments                                                                               | 0.00            | 0.00            | 0.00        |
|  Special Charges | 163.00          | 163.00          | 0.00        |
| Fire Inspection                                                                                   | 100.00          |                 |             |
| SANITARY SEWER MAINTENANCE                                                                        | 63.00           |                 |             |
| Delinquent Utility                                                                                | 0.00            | 0.00            | 0.00        |
| PrivateForest Crop                                                                                | 0.00            | 0.00            | 0.00        |
| Woodland Tax Law                                                                                  | 0.00            | 0.00            | 0.00        |
| Managed Forest Land                                                                               | 0.00            | 0.00            | 0.00        |
| Other Charges                                                                                     | 0.00            | 0.00            | 0.00        |
| Interest                                                                                          | -               | 0.00            | 0.00        |
| Penalty                                                                                           | -               | 0.00            | 0.00        |
| <b>TOTAL</b>                                                                                      | <b>98256.76</b> | <b>98256.76</b> | <b>0.00</b> |

## Tax History

Interest/Penalty Date 11/12/2019

| Year         | Amount           | Interest Paid | Penalties Paid | Paid             | Last Paid | Amount Due  | Status |
|--------------|------------------|---------------|----------------|------------------|-----------|-------------|--------|
| 2018         | 98256.76         | 0.00          | 0.00           | 98256.76         | 3/31/2019 | 0.00        | Paid   |
| 2017         | 105913.02        | 0.00          | 0.00           | 105913.02        | 1/29/2018 | 0.00        | Paid   |
| 2016         | 136532.28        | 0.00          | 0.00           | 136532.28        | 1/18/2017 | 0.00        | Paid   |
| 2015         | 137768.21        | 0.00          | 0.00           | 137768.21        | 1/19/2016 | 0.00        | Paid   |
| 2014         | 163167.73        | 0.00          | 0.00           | 163167.73        | 1/31/2015 | 0.00        | Paid   |
| 2013         | 162652.11        | 0.00          | 0.00           | 162652.11        | 1/27/2014 | 0.00        | Paid   |
| <b>TOTAL</b> | <b>804290.11</b> | <b>0.00</b>   | <b>0.00</b>    | <b>804290.11</b> | -         | <b>0.00</b> | -      |

\* The totals shown here represent only the items in the grid. For more detailed information see 'Tax Balance Report'.

## Document History

No matching document history was found

*44*

TYSON FETTES  
RACINE COUNTY  
REGISTER OF DEEDS  
Fee Amount: \$30.00  
Transfer Fee: \$4200.00

\*\*The above recording information verifies  
this document has been electronically recorded\*\*  
Returned to Chicago Title Waukesha - Escrow  
Pages: 4

**SPECIAL WARRANTY DEED**

TRU TRUST 2016, LLC, a Delaware limited liability company ("**Grantor**"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to it in hand paid by KLA DEVELOPMENT PORTFOLIO OWNER LLC, a Delaware limited liability company ("**Grantee**") whose address is c/o Klaff Realty, LP, 35 E. Wacker Drive, Suite 2900, Chicago, Illinois 60601, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto Grantee those certain tracts of land described in **Exhibit A** attached hereto (the "**Land**"), together with (i) all improvements located thereon ("**Improvements**") and (ii) all of Grantor's right, title and interest, if any, in and to all and singular the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in anywise appertaining thereto including any right, title, and interest of Grantor in and to adjacent streets, alleys, strips, gores and rights-of-way (collectively, the "**Real Property**").

This conveyance is made and accepted subject to those encumbrances and exceptions set forth on the attached **Exhibit B** to the extent in existence, valid and affecting the Real Property (collectively, the "**Permitted Exceptions**").

TO HAVE AND TO HOLD the Real Property, unto Grantee, its successors, legal representatives and assigns forever, and Grantor does hereby bind itself and its successors, legal representatives and assigns to WARRANT AND FOREVER DEFEND all and singular the Real Property unto Grantee and its successors, legal representatives and assigns against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through or under Grantor, but not otherwise, subject to the Permitted Exceptions.

The Real Property is not homestead property.

This Special Warranty Deed is dated and made effective for all purposes as of January 22, 2019 (the "**Effective Date**").

[SIGNATURES ON FOLLOWING PAGES]

Recording Area

Name and Return Address

CT  
711 Third Ave 5<sup>th</sup> FL  
New York, NY 10017

See Exhibit A attached hereto.

Parcel Identification Number

Computer Identification Number

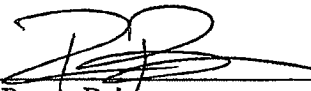
CT  
Lt-207153

IN WITNESS WHEREOF, Grantor has hereunto set its hand and seal as of the day and year first above written.

TRU TRUST 2016, LLC, a Delaware limited liability company

By: Wilmington Trust, National Association, as Trustee for the certificateholders of the TRU Trust 2016-TOYS, Commercial Mortgage Pass-Through Certificates, Series 2016-TOYS, the Sole Member

By: Wells Fargo Bank, National Association, as Special Servicer

By:   
Name: Roger Briggs  
Title: Director

THIS INSTRUMENT DRAFTED BY:

Alston & Bird LLP  
101 South Tryon St., Suite 4000  
Charlotte, NC 28280-4000  
Attn: Robert J. Sullivan, Esq.

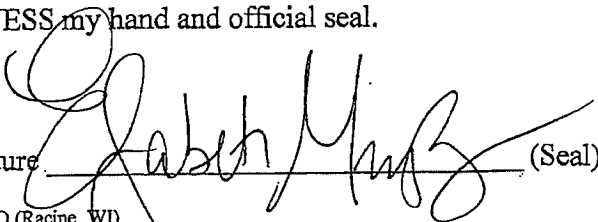
ACKNOWLEDGMENT

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

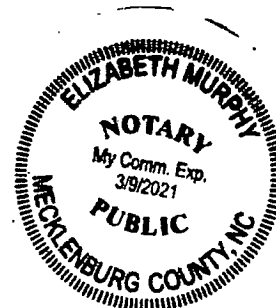
On January 17, 2019 before me, Elizabeth Murphy, notary public, personally appeared Roger Briggs, a Director of Wells Fargo Bank, National Association, solely in its capacity as special servicer as authorized under the Trust and Servicing Agreement dated November 3, 2016 on behalf of Wilmington Trust, National Association, as trustee for the benefit of the certificateholders of TRU Trust 2016-TOYS, Commercial Mortgage Pass-Through Certificates, Series 2016-TOYS, as sole member of TRU Trust 2016, LLC, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature

 (Seal)

Toys REO (Racine, WI)  
Signature Page to Special Warranty Deed



## **EXHIBIT A**

### Legal Description

**Parcel A:**

Parcel 1 of Certified Survey Map No. 1528, recorded in the Office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in volume 4 of Certified Survey Maps, Page 699-700 as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine and State of Wisconsin.

**Parcel B:**

A non-exclusive perpetual easement and right of use appurtenant to and for the benefit of Parcel 1 to and from adjacent public roads in and over that portion of the Common Areas located on parcel of land designated "K-Mart Parcel" as designated and as further described in Reciprocal Easement and Operation Agreement dated July 2, 1991 and recorded July 2, 1991 in the Office of the Register of Deeds for Racine County in Volume 2078 of Records, Page 789, as Document No. 1343832, as amended by that First Amendment to Reciprocal Easement and Operation Agreement dated June 25, 1992 and recorded October 19, 1992 in Volume 2194, page 169, as Document No. 1393873, as affected by that Consent Agreement dated January 7, 2000, and recorded February 2, 2000 in Volume 3001, page 91, as Document No. 1716541.

**Parcel C:**

Non-exclusive easement for the benefit of Parcel A created by an Access Road Agreement recorded August 8, 2008 as Document No. 2184341 for ingress and egress as provided for therein.

Tax Key No.: 23876-042

Property Address: 2433 S.Green Bay Road

## EXHIBIT B

### Permitted Exceptions

1. General taxes for the year 2018, not yet due and payable.
2. Slope Easement recorded July 26, 1979, as Document No. 1056790 and amended by Amendment to Slope Easement and Landscape Agreement recorded April 18, 1990, as Document No. 1308115, and referenced on the survey dated July 9, 2016, and last revised August 26, 2016, prepared by Michael Stang, License No. S-3058-8, on behalf of Bock & Clark Corporation, as Network Project No. 201602266, 124.
3. Easement(s) for the purpose(s) and rights incidental thereto, as granted in a document, granted to Wisconsin Electric Power Company, for utility purposes, recorded on March 18, 1981, as Document No. 1087781, and assigned by Assignment of Easement Rights recorded September 2, 2014, as Document No. 2388767, and referenced on the survey dated July 9, 2016, and last revised August 26, 2016, prepared by Michael Stang, License No. S-3058-8, on behalf of Bock & Clark Corporation, as Network Project No. 201602266, 124.
4. Easement(s) for the purpose(s) and rights incidental thereto, as granted in a document, granted to Wisconsin Electric Power Company, for utility purposes, recorded on August 23, 1977, as Document No. 1008628, and referenced on the survey dated July 9, 2016, and last revised August 26, 2016, prepared by Michael Stang, License No. S-3058-8, on behalf of Bock & Clark Corporation, as Network Project No. 201602266, 124.
5. Declaration of Easements and Restrictions recorded September 7, 1988, as Document No. 1265306 and along with an Addendum to Declaration of Easements and Restrictions recorded April 19, 1990, as Document No. 1308183.
6. Declaration of Easements and Restrictions recorded June 28, 1991, as Document No. 1343367.
7. Reciprocal Easement and Operation Agreement recorded July 2, 1991, as Document No. 1343832, and amended by First Amendment to Reciprocal Easement and Operation Agreement recorded October 19, 1992, as Document No. 1393873.
8. Terms, conditions and provisions relating to the use and maintenance of the easements described as Parcels B and C of the subject premises.
9. Rights of tenants in possession including any rights to tenants fixtures owned by such tenants located on the demised premises and any liens on such tenants fixtures, and all parties having a lien on or claiming by, through or under the lessee, which parties and liens are not separately shown herein.
10. Terms, conditions and provisions relating to the use and maintenance of the easements described as Parcels B and C of the subject premises.
11. Rights of utilities to maintain their facilities as now located on the subject land and referenced on the survey dated July 9, 2016, and last revised August 26, 2016, prepared by Michael Stang, License No. S-3058-8, on behalf of Bock & Clark Corporation, as Network Project No. 201602266, 124.
12. Apparent storm sewer easement as now located on the subject land and referenced on the survey dated July 9, 2016, and last revised August 26, 2016, prepared by Michael Stang, License No. S-3058-8, on behalf of Bock & Clark Corporation, as Network Project No. 201602266, 124.
13. Consequences if any, due to the location of landscaping and concrete curbs over the Northeast, West and South lot lines and referenced on the survey dated July 9, 2016, and last revised August 26, 2016, prepared by Michael Stang, License No. S-3058-8, on behalf of Bock & Clark Corporation, as Network Project No. 201602266, 124.

1343824

PAGE 1 OF 2

All bearing are referenced to Grid North of Wisconsin State Plane Coordinate System, Southern Zone.



WEST 1/4  
SEC. 24-3-22

CENTER OF  
SEC. 24-3-22

5 89° 08' 05" E 2652.02'

2325

UNPLATTED LAND

PARCEL NO. 1  
209,272 S.F. (4.804 AC.)

DETAIL  
SLOPE ESMT.  
(NO SCALE)

SCOPE ESMT.(SEE DETAIL)

GRAPHIC SCALE: 1" = 100'

Vol 4 . Page 699



Stock No. 26273

1343824

CERTIFIED SURVEY MAP NO. 1528

PAGE 2 OF 2

BEING A REDIVISION OF A PORTION OF LOT 1 OF CERTIFIED SURVEY MAP NO. 1395,  
IN THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 24 AND UNPLATTED LANDS  
LOCATED IN THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 24, TOWN 3 NORTH,  
RANGE 22 EAST, IN THE CITY OF RACINE, COUNTY OF RACINE, STATE OF WISCONSIN.

SURVEYOR'S CERTIFICATE:

I, PETE L. BAILEY, Registered Land Surveyor, do hereby certify:

THAT I have surveyed, divided and mapped a tract of land being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine, State of Wisconsin. Commence at the Center 1/4 corner of said Section; thence N 89°08'05" W, along the north line of said 1/4 section, 326.13 feet to a point; thence S 00°08'19" E, 733.22 feet to a point; thence S 89°51'41" W, 200.00 feet to a point; thence S 00°08'19" E, 400.00 feet to a point; thence S 89°51'41" W, 901.18 feet to the point of beginning; thence continuing S 89°51'41" W, along the south line of said Lot 1 of CSM NO. 1395, 459.82 feet to a point being the SW corner of said CSM; thence N 11°49'57" E, along the East line of S.T.H. "31" (South Green Bay Road) and the west line and west line extended of said CSM, 536.63 feet to a point; thence N 89°51'41" E, 341.66 feet to a point; thence S 00°08'19" E, 422.94 feet to a point; thence N 89°51'41" E, 6.85 feet to a point; thence S 00°08'19" E, 102.02 feet to the point of beginning.

THAT such map is a correct representation of the exterior boundaries of the land surveyed and the land division thereof made.

THAT I have fully complied with the provision of Chapter 236 of the Wisconsin Statutes and the requirements of the City of Racine in surveying, dividing and mapping the same.

*Pete L. Bailey*  
AMERICAN SURVEYING COMPANY, INC.

PETE L. BAILEY, RLS No. 1398

Dated this 20th day of June, 1991.

PLANNING COMMISSION APPROVAL:

APPROVED by the Planning Commission of the City of Racine this 26<sup>th</sup> day of JUNE, 1991.

*Thomas N. Wright*  
THOMAS N. WRIGHT, SECRETARY

THIS INSTRUMENT WAS DRAFTED BY PETE L. BAILEY.



From Part of Tax Key No's 23876-17 & 23876-40

Parcel 1 23876-042

Register's Office }  
Racine County, Wis. } SS  
received for Record 2nd day of July  
A.D. 1991 at 2:03  
o'clock P. M. and recorded in Volume H  
CSM on page 699-700

*Heleen M. Schuttler*  
Register of Deeds

12.50

VOL 4 Page 700

1276690

Register's Office  
Racine County, Wis.

Received for Record 20th day of February A.D. 1989 at 4:43 o'clock P. M. and recorded in Volume 351-352 of 5m on page 351-352

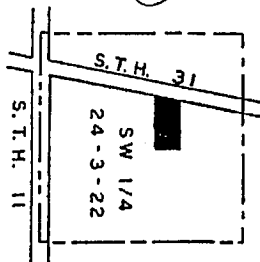
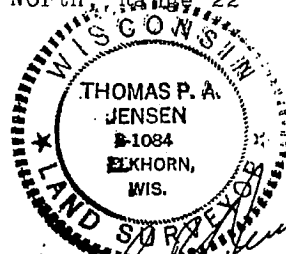
*Helen M. Schuttner*  
Register of Deeds

6-fill

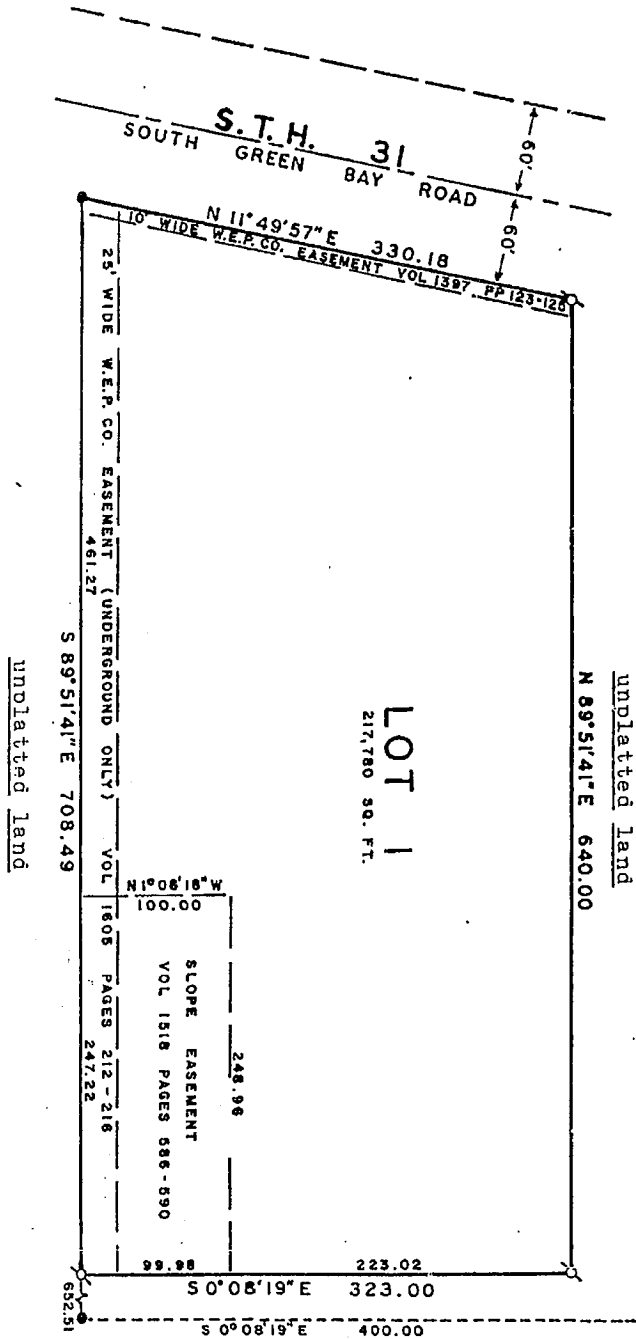
CERTIFIED SURVEY MAP NO. 1395

Located in the N $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Section 24, Town 3 North, Range 22 East, City of Racine, Racine County, Wisconsin

Jensen Surveying & Mapping S.C.  
45 S. Wisconsin St. P.O. Box 322  
Elkhorn, Wisconsin. 53121  
(414) 723-3434



LOCATION SKETCH  
NOT TO SCALE



Bearings  
referenced to the  
Wisconsin State  
Plane Coordinate  
System, South  
Zone

- LEGEND**
- Brass-capped cast iron monument - Center  $\frac{1}{4}$  of Sec. 24-3-22
  - Found iron pipe
  - Found iron rod
  - ⌢ Set iron rod, 1" diameter, 30" long, weighing at least 1.13 lbs. per lineal ft.

3881 02 20

600.1

CERTIFIED SURVEY MAP NO. 1395

Located in the N 1/2 of the SW 1/4 of Section 24, Town 3 North, Range 22 East, City of Racine, Racine County, Wisconsin

OWNER: First National Realty and Development  
415 N. LaSalle - Suite 700  
Chicago, IL 60610

SURVEYOR'S CERTIFICATE

I, Thomas P. A. Jensen, Wisconsin Registered Land Surveyor, hereby certify that I have prepared this Certified Survey Map, the exterior boundaries of which are described as:

That part of the Southwest 1/4 of Section 24, T 3 N, R 22 E, City of Racine, Racine County, Wisconsin described as follows: Commence at a point on the East-West 1/4 line of said Section 24 located N89°08'05"W 326.13 feet from a cast iron monument with a brass cap marking the center of said Section 24; thence S0°08'19"E 733.22 feet; thence S89°51'41"W 200.00 feet; thence S0°08'19"E 400.00 feet; thence S89°51'41"W 652.51 feet to the point of beginning; thence continue S89°51'41"W 708.49 feet to the easterly right of way of S.T.H. 31; thence N11°49'57"E, along said right of way, 350.18 feet; thence N89°51'41"E 640.00 feet; thence S0°08'19"E 323.00 feet to the point of beginning. Parcel contains 217,780 square feet or 4.9995 acres.

I further certify that I have fully complied with the requirements of Chapter 236.34 of the Wisconsin Statutes and the provisions of the City of Racine ordinances in making such survey and Certified Survey Map.

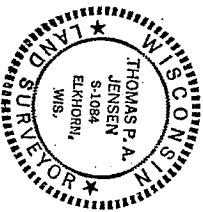
Date: Feb. 9, 1989

*Thomas P. A. Jensen*  
Thomas P. A. Jensen, RLS-1084

CERTIFICATE OF APPROVAL OF THE CITY PLAN COMMISSION

Approved as a CERTIFIED SURVEY MAP this 15<sup>th</sup> day of February, 1989.

*Thomas N. Wright*  
Thomas N. Wright, Secretary



Page 2 of 2 pages  
Tentative New Tax Key No.  
23876-40  
From Part of  
23876-17

VOLUME 4  
PAGE 353

## AFFIDAVIT

STATE OF WISCONSIN)  
COUNTY OF RACINE)

Register's Office  
Racine County, Wis. } SS

Received for Record 2<sup>nd</sup> day of  
March A.D. 1989 at 11:41  
o'clock A. M. and recorded in Volume 1952  
of Records on page 25

*John M. Schuttler*  
Register of Deeds

I, Thomas P. A. Jensen, being duly sworn on oath, depose and say that I am a Registered Professional Land Surveyor of Elkhorn, Wisconsin

and that I recorded on February 20, 1989, in Volume 4 of Certified Surveys, pages 351 & 352 as Document No. 1276690 in the Office of the Register of Deeds for Racine County, a Certified Survey Map numbered 1395 containing the following bearing on the south line of said Certified Survey Map:

S 89°51'41" E

and that the bearing on said south line should be as follows:

S 89°51'41"W

and that this affidavit is recorded for the purpose of correcting the bearing on the south line of said Certified Survey Map No. 1395.

In the presence of:

*Thomas P. A. Jensen*  
Thomas P. A. Jensen

T.S.# 23876-40

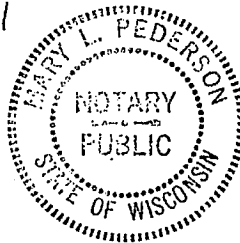
Subscribed and sworn to before me  
this 2nd day of March, 1989

*Mary L. Pederson*

Notary Public, Racine County, Wisconsin

My Commission Expires 1-27-91

Drafted by Thomas P. A. Jensen



4911 03 2

4000.1

1243013

AN ORDINANCE

Register's Office  
Racine County, Wis.

Received for Record *2 pm* day of *October* A.D. 19*87* at *3:36* o'clock *P.* M. and recorded in Volume *1886* of *Records* on page *143-149A*

*Helmy M. Schuttner*  
16-00 *Helmy M. Schuttner*  
Register of Deeds

An ordinance to provide for the annexation of certain territory contiguous to the City of Racine.

The Common Council of the City of Racine do ordain as follows:

Part 1.

Section 1

TERRITORY ANNEXED

That in accordance with Section 66.021, Wis. Stats., and the Petition for Annexation filed with the City Clerk on the 5th Day of October, 1987, signed by the majority of the owners of one-half or more of the land in area within the territory to be annexed and by all of the electors residing in such territory, the territory described on Exhibit A attached hereto lying in the Town of Mt. Pleasant, Racine County, Wisconsin, and contiguous to the City of Racine be and the same is hereby annexed to the City of Racine, Wisconsin.

Section 2

EFFECT OF ANNEXATION

From and after the date of this ordinance, the corporate limits of the City of Racine are hereby extended so as to include said territory for any and all purposes provided by law, and all persons coming or residing within such territory shall be subject to all ordinances, rules and regulations governing the City of Racine.

Section 3

DISTRICT DESIGNATION

The limits of the Fourteenth Aldermanic District are hereby extended in such a manner as to include said territory.

File

3799 10 27

1600

1

Section 4

SEVERABILITY

If any provision of this ordinance or if the application of this ordinance to any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid or unconstitutional provision or application.

Part 2.

This ordinance shall take effect upon passage.

Passed by the Common Council

10-13-87

Approved

10-14-87

M. Owen Davies  
Mayor

Attest:

Anthony J. Schlaffer  
City Clerk

PETITION FOR DIRECT ANNEXATION TO THE  
CITY OF RACINE, WISCONSIN

AN ORDINANCE  
10-6-87  
Page -3-

ANNEXATION EXHIBIT "A"

Legal Description of Territory  
Proposed to be Annexed.

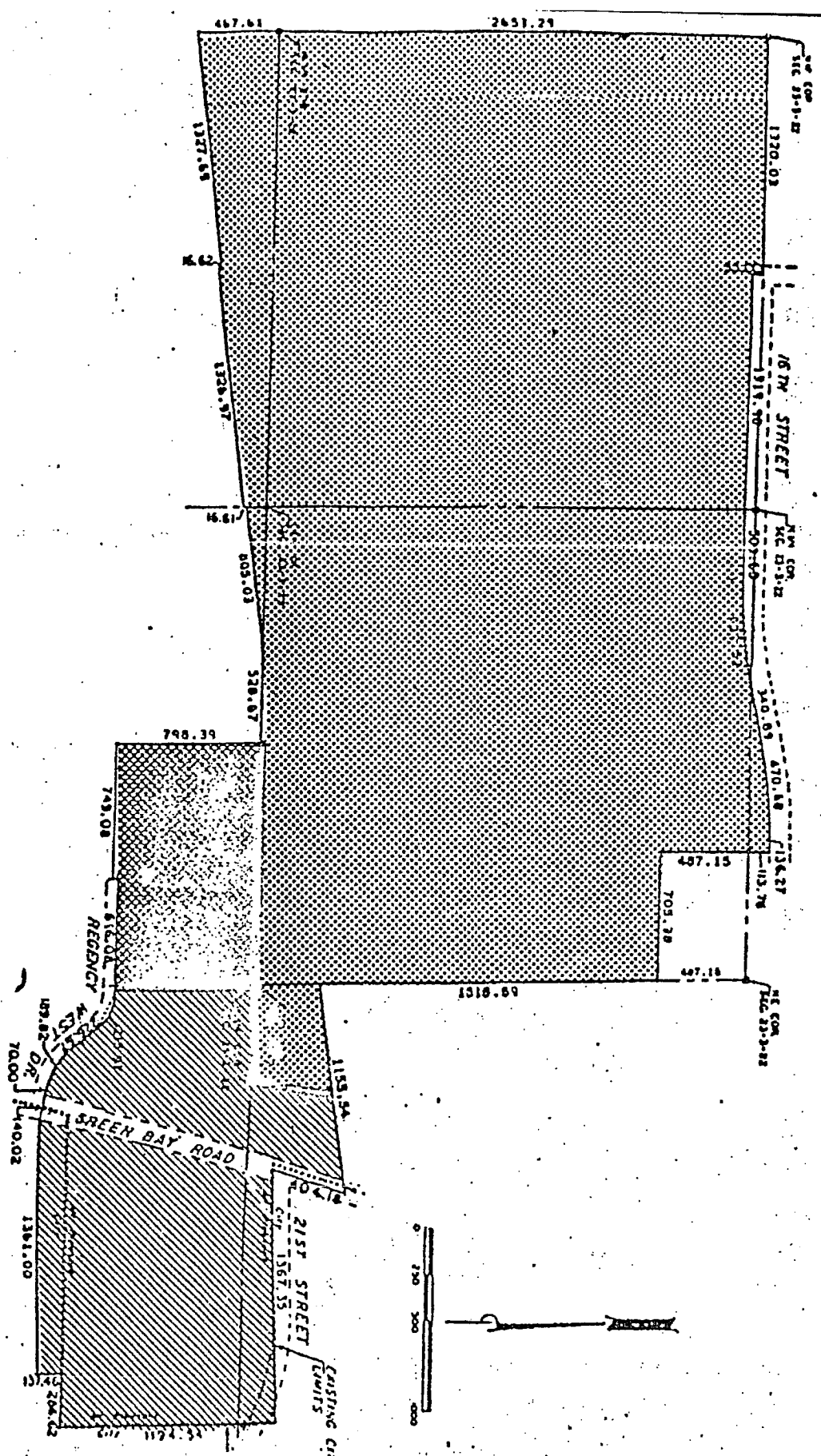
That part of the Southeast  $\frac{1}{4}$  of Section 14, the Northwest  $\frac{1}{4}$ , Northeast  $\frac{1}{4}$ , Southwest  $\frac{1}{4}$  and Southeast  $\frac{1}{4}$  of Section 23, and the Southwest  $\frac{1}{4}$  of Section 24, all in Township 3 North, Range 22 East, in the Town of Mt. Pleasant, Racine County, Wisconsin, bounded as follows: Begin at a standard Racine County monument marking the Northwest corner of the Northwest  $\frac{1}{4}$  of said Section 23; run thence N89°36'28"E 1320.03 feet along the North line of said Section 23; thence S01°36'45"E 55.00 feet to the South line of 16th Street; thence N89°36'25"E 1319.98 feet along said South line of 16th Street; thence N89°08'28"E 508.68 feet along said South line of 16th Street to a point on a curve of Southerly convexity whose radius is 2409.19 feet and whose chord bears N83°19'12"E 488.68 feet; thence Easterly on the arc of said curve and the South line of 16th Street 489.52 feet; thence N77°29'57"E 340.89 feet along the South line of 16th Street to a point on a curve of Northerly convexity whose radius is 2242.05 feet and whose chord bears N83°24'52"E 469.82 feet; thence Easterly 470.68 feet on the arc of said curve and the South line of 16th Street to a point on a curve of Southerly convexity whose radius is 2219.00 feet and whose chord bears N87°40'10"E 136.25 feet; thence Easterly on the arc of said curve and the South line of 16th Street 136.27 feet; thence S01°50'10"E 113.76 feet to the North line of said Section 23; thence S01°45'43"E 187.15 feet; thence N89°08'29"E 705.38 feet to the West line of said Section 24; thence S01°45'43"E 1818.59 feet along the West line of said Section 24 to the Northerly line of the former Chicago, Milwaukee, St. Paul & Pacific Railroad right of way; thence N81°38'51"E 1155.54 feet along said right of way to the centerline of Green Bay Road and a point on a curve of Westerly convexity whose radius is 16370.22 feet and whose chord bears S16°54'01"W 404.18 feet; thence Southerly on the arc of said curve and said centerline 404.18 feet to the projected South line of Twenty-first Street; thence N88°27'33"E 1367.35 feet along the projected South line and actual South line of Twenty-first Street; thence S01°33'25"E 1194.54 feet parallel to the North-South  $\frac{1}{4}$  line of said Section 24; thence N89°08'05"W 286.62 feet parallel to the East-West  $\frac{1}{4}$  line of said Section 24; thence S00°08'19"E 137.46 feet; thence S89°51'41"W 1361.00 feet to the East line of Green

Bay Road; thence N79°01'46"W 140.02 feet to the West line of Green Bay Road and the North line of Regency West Drive; thence N78°10'03"W 70.00 feet along the North line of Regency West Drive to a point on a curve of Southwesterly convexity whose radius is 284.98 feet and whose chord bears N59°05'06"W 186.33 feet; thence Northwesterly on the arc of said curve and the Northerly line of Regency West Drive 189.82 feet; thence N40°00'10"W 226.67 feet on the Northerly line of Regency West Drive to a point on a curve of Northeasterly convexity whose radius is 245.04 feet and whose chord bears N65°15'07"W 209.04 feet; thence Northwesterly on the arc of said curve and the Northerly line of Regency West Drive 215.97 feet; thence S89°29'55"W 616.08 feet along the North line of Regency West Drive; thence S01°45'14"E 33.01 feet; thence S89°29'55"W 749.08 feet; thence N01°38'03"W 798.39 feet to the East-West  $\frac{1}{2}$  line of said Section 23; thence S89°05'04"W 528.67 feet to the Southerly line of the former Chicago, Milwaukee, St. Paul & Pacific Railroad right of way; thence S81°38'51"W 805.03 feet along said right of way to the North-South  $\frac{1}{2}$  line of said Section 23; thence S01°45'01"E 16.61 feet along said North-South  $\frac{1}{2}$  line to the Southerly line of said Railroad right of way; thence S81°38'51"W 1326.97 feet along said right of way; thence N01°36'45"W 16.62 feet along said right of way; thence S81°38'51"W 1327.69 feet along said right of way to the West line of said Section 23; run thence N01°29'21"W 467.61 feet along said West line of said Section 23 to the West  $\frac{1}{2}$  corner of said Section 23; thence N01°39'38"W 2653.29 feet to the point of beginning. Containing 429.677 acres including the land within Green Bay Road and Twenty-first Street.

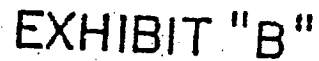
# LAND USE PLAN

-  HEAVY INDUSTRY
-  COMMUNITY BUSINESS
-  GENERAL BUSINESS

## EXHIBIT "A"



|                                                                                     |                          |
|-------------------------------------------------------------------------------------|--------------------------|
|  | I-2 GENERAL INDUSTRIAL   |
|  | B-2 COMMUNITY SHOPPING   |
|  | B-3 GENERAL COMMERCIAL   |
|  | O/I OFFICE INSTITUTIONAL |



city of **RACINE**...racine, wisconsin



CITY CLERK'S OFFICE

Anthony J. Schlaffer  
City Clerk



STATE OF WISCONSIN )  
COUNTY OF RACINE )

I, Anthony J. Schlaffer, City Clerk for the City of Racine, County of Racine, State of Wisconsin, DO HEREBY CERTIFY that the foregoing is a true and correct copy of An ordinance, which was adopted under Items 2(3) and 3(2) of the meeting that was held on October 13, 1987.

Dated this 16th day of October, 1987.

*Anthony J. Schlaffer*

SEAL

| Mt. Pleasant<br>Parcel #'s | County Computer #'s  | New City Parcel #'s |
|----------------------------|----------------------|---------------------|
| M2-24-11                   | 008-03-22-24-018-000 | 276-0000-23901-000. |
| M2 24-11-6                 | 008-03-22-24-018-002 | 276-0000-23901-000. |
| M2-24-11100                | 008-03-22-24-018-100 | 276-0000-23900-000. |
| M2-24-11110                | 008-03-22-24-018-110 | 276-0000-23902-000. |
| M2-23-9-14                 | 008-03-22-23-031-014 | 276-0000-23903-000. |
| M2-24-11120                | 008-03-22-24-018-120 | 276-0000-23904-000. |
| M2-24-10                   | 008-03-22-24-016-000 | 276-0000-23905-000. |
| M2 24-14-1                 | 008-03-22-24-024-100 | 276-0000-23906-000. |
| M2-23-3-4                  | 008-03-22-23-021-000 | 276-0000-23907-000. |
| M2-23-8                    | 008-03-22-23-030-000 | 276-0000-23908-000. |
| M2-23-71 (Pt)              | 008-03-22-23-092-000 | 276-0000-23908-000. |
| M2-23-3-2                  | 008-03-22-23-019-000 | 276-0000-23909-000. |
| M2-23-3-6                  | 008-03-22-23-023-000 | 276-0000-23910-000. |
| M2-23-3-1                  | 008-03-22-23-018-000 | 276-0000-23911-000. |
| M2-23-3-3                  | 008-03-22-23-020-000 | 276-0000-23912-000. |
| M2-23-3-C                  | 008-03-22-23-017-030 | 276-0000-23913-000. |
| M2-23-3-B                  | 008-03-22-23-017-020 | 276-0000-23914-000. |
| M2-23-3                    | 008-03-22-23-017-000 | 276-0000-23915-000. |
| M2-23-3-A                  | 008-03-22-23-017-010 | 276-0000-23916-000. |
| M2-23-200                  | 008-03-22-23-200-000 | 276-0000-23917-000. |
| M2-23-3-5                  | 008-03-22-23-022-000 | 276-0000-23918-000. |
| M2-23-2                    | 008-03-22-23-016-000 | 276-0000-23919-000. |
| Pt M2 14-28-1-1            | 008-03-22-14-096-000 | 276-0000-23920-000. |
| Pt M2-14-28                | 008-03-22-14-094-000 | 276-0000-23921-000. |
| Pt M2-23-1                 | 008-03-22-23-001-001 | 276-0000-23922-000. |
| M2-23-12                   | 008-03-22-23-033-000 | 276-0000-23923-000. |
| Pt M2-14-27                | 008-03-22-14-086-000 | 276-0000-23924-000. |
| M2-23-2-1                  | 008-03-22-23-016-001 | 276-0000-23925-000. |
| M2-24-14                   | 008-03-22-24-024-000 | 276-0000-23926-000. |
| M2-24-200                  | 008-03-22-24-200-000 | 276-0000-23927-000. |
| M2-24-15-5-1               | 008-03-22-24-026-000 | 276-0000-23876-038. |
| M2-24-15                   | 008-03-22-24-025-000 | 276-0000-23876-017. |
| M2-24-15-1                 | 008-03-22-24-025-001 | 276-0000-23876-018. |
| M2-24-15-2                 | 008-03-22-24-025-002 | 276-0000-23876-016. |

VOL 1110 CASE 334

DOCUMENT NO.

EXC

AWARD OF DAMAGES  
BY STATE OF WISCONSIN  
Section 84.09(2)

891777

This award of damages is made pursuant to a relocation order of the State of Wisconsin Department of Transportation, Division of Highways, dated July 6, 1971, and filed in the office of the County Clerk of Racine County, for the improvement of S. T. Highway 11, in Racine County.

The State of Wisconsin has determined it necessary to acquire, for the purpose set forth in and in accordance with said relocation order, a parcel of real estate and/or rights therein as hereinafter set forth, in and to which the following persons have an interest: Racine County, a  
Quasi-Municiple Corporation

1110-334

The interest acquired by this award is for

See Page 2

891777

Register's Office  
Racine County, Wis. } SS.

Received for Record 4 day of  
November A.D., 1971 at 10:53  
o'clock A M. and recorded in Volume 1110  
of Records on page 334-336

Stanley F. Bialecki  
Register of Deeds

1110-334

Said parcel of real estate and/or interests therein will be occupied by the State of Wisconsin or its agents on See attached, ~~RECORD~~  
Description

The State of Wisconsin, having complied with all jurisdictional requirements pursuant to law, hereby makes this award of damages to the above-named persons having an interest in said parcel of real estate, in the sum of  
Twenty Nine Thousand One Hundred and no/100

Dollars (\$ 29,100.00), for the acquisition of said parcel of real estate and/or interests therein as hereinbefore set forth.

RECEIVED FOR RECORD

DAY OF \_\_\_\_\_  
A.D., 19\_\_\_\_ AT \_\_\_\_\_  
O'CLOCK \_\_\_\_\_ M. AND RECORDED IN VOL. \_\_\_\_\_  
OF \_\_\_\_\_ PAGE \_\_\_\_\_

REGISTER OF DEEDS

COUNTY \_\_\_\_\_

STATE OF WISCONSIN/DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS.

By [Signature]  
Highway Commission Secretary

Pursuant to authority granted by motion duly made,  
seconded, and adopted on OCT 25 1971  
Date

This instrument was drafted by the State of Wisconsin,  
Department of Transportation, Division of Highways.

Parcel No. 67

Project I.D. 1322-1-21/T014-3(34)

Fee Title in and to the following tract of land in Racine County, State of Wisconsin, described as:

That part of the northwest one-quarter, of the southwest one-quarter and the southeast one-quarter of Section 24, Township 3 North, Range 22 East, described as follows:

Begin in the south line of Section 24 at a point 310.54 feet South 89° 02' 04" East of the southwest corner of said section; thence North 11° 30' 26" East 990.35 feet along the centerline of S.T.H. 31; thence North 11° 49' 05" East 1126.24 feet along said centerline; thence North 12° 20' 07" East 643.12 feet along said centerline; thence North 19° 38' 40" East 75.73 feet along said centerline; thence North 88° 27' 58" East along the owners north property line to a point 70 feet South 70° 21' 20" East of said centerline; thence southwesterly parallel with said centerline to a point which is 135 feet North 11° 30' 26" East and 70 feet South 78° 29' 34" East of the point of beginning; thence South 77° 47' 01" East 116.17 feet to a point which is 207.45 feet South 89° 02' 04" East and 97.25 feet North 0° 57' 56" East of the point of beginning; thence South 89° 02' 04" East 1902.82 feet to a point which is 222.19 feet North 89° 02' 04" West and 97.25 feet North 0° 57' 56" East of the south one-quarter corner of Section 24; thence easterly and parallel with the reference line of S.T.H. 11 to a point which is 1602.08 feet North 89° 28' 36" West and 61 feet North 0° 31' 24" East of the southeast corner of said section (as measured along and from the south line of said southeast one-quarter).

The reference line begins at a point of curve which is 222.19 feet North 89° 02' 04" West and 36.25 feet North 0° 57' 56" East of the south one-quarter corner of Section 24; (the radius of said curve bears South 0° 57' 56" West 11,459.16 feet); thence easterly and to the right along a 0° 30' curve 444.33 feet; thence South 86° 48' 46" East 291.28 feet to a point of curve; thence easterly and to the left along a 0° 30' curve 532.79 feet to a point in the south line of said section; thence South 89° 28' 36" East 1602.08 feet to the southeast corner of Section 24. Thence easterly to a point which is 1468.33 feet North 89° 28' 36" West and 54 feet North 0° 31' 24" East of the southeast corner of said section; thence South 89° 28' 36" East to a point in the west line of Ohio Street; thence South 1° 50' 42" East along the west line of said street to the south line of Section 24; thence North 89° 28' 36" West to the south one-quarter corner of Section 24; thence North 89° 02' 04" West to the point of beginning of this description.

Also, that part of the west 20 acres of the northwest one-quarter of the northeast one-quarter of Section 25, Township 3 North, Range 22 East, lying between the above described reference line of S.T.H. 11 and a line 61 feet southerly of, as measured normal to, said reference line.

This parcel contains 8.61 acres, more or less, exclusive of lands previously conveyed or dedicated for highway purposes.

A limited highway easement for the right to construct cut and/or fill slopes, including for such purpose the right to operate necessary equipment thereon and the right of ingress and egress as long as required for such public purpose, including the right to preserve, protect, remove, or plant thereon, any vegetation that the highway authorities may deem necessary or desirable. This easement is to terminate upon the completion of this project or on the day the highway is open to the traveling public, whichever is later. In and to the following tract of land in Racine County, Wisconsin, described as:

A 10 foot strip of land lying adjacent and northerly of the above described right of way from a point 920.68 feet South 89° 02' 04" East of the southwest corner of Section 24 to a point 1602.08 feet North 89° 28' 36" West of the southeast corner of Section 24.

Also, the south 69 feet of the east 868.33 feet of the southeast one-quarter of said Section 24.

Also a 20 foot strip of land lying adjacent and southerly of the above described right of way in the west 20 acres of the northwest one-quarter of the northeast one-quarter of said Section 25.

Also, all existing, future or potential common law or statutory easements or rights of access between the right of way of the highway, currently designated as S.T.H. 11, and all of the abutting remaining real property of the owner, whether acquired by separate conveyance or otherwise, where the following described real estate abuts on the said highway.

The east 610.14 feet of the west 920.68 feet of the southwest one-quarter of the southwest one-quarter of said Section 24.

Also, all existing, future or potential common law or statutory easements or rights of access between the right of way of the highway, currently designated as S.T.H. 31, and all of the abutting remaining real property of the owner,

VOL 1110 PAGE 335

whether acquired by separate conveyance or otherwise, where the following described real estate abuts on the said highway: The southerly 400 feet of the southwest one-quarter of the southwest one-quarter of said Section 24, as measured along the centerline of S.T.H. 31.

Said parcel of real estate and/or interests therein will be occupied by the State of Wisconsin or its agents on December 17, 1971. However, at the sole discretion of the State of Wisconsin, said parcel and/or interests therein may be reasonably occupied after the date of acquisition by utility companies for the purpose of adjusting their facilities to accommodate the proposed highway construction.

This Indenture, Made by Racine County, a quasi-municipal corporation  
\_\_\_\_\_, a Corporation duly organized and existing under and  
by virtue of the laws of the State of Wisconsin, grantor, of Racine County,  
Wisconsin, hereby conveys and warrants to The State of Wisconsin,  
Department of Transportation, Division of Highways  
\_\_\_\_\_, grantee, of \_\_\_\_\_, Wisconsin, for the  
sum of \_\_\_\_\_ Good and Valuable Consideration

See Attached Page 2

Register's Office }  
Racine County, Wjs. } SS.

891365

Received for Record 27 day of  
October A.D., 19 71 at 10:35  
o'clock A. M. and recorded in Volume 1109  
of Records on page 341-342

Stanley F. Bialecki  
Register of Deeds

3.00

The consideration stated herein is payment in full for the property described herein and includes full compensation for items of damage set forth in sec. 32.05, Wisconsin Statutes, assuming the completion of the improvements contemplated by the relocation order of orders upon which this instrument is based.  
Compensation for additional items of damage listed in sec. 32.13, Wisconsin Statutes, has not been included. If any such items are shown to exist, the owner may file claims as provided in sec. 32.10, Wisconsin Statutes.

IN WITNESS WHEREOF, the said grantor has caused these presents to be signed by \_\_\_\_\_

its President, and countersigned by \_\_\_\_\_, its Secretary, at \_\_\_\_\_, Wisconsin,  
and its corporate seal to be hereunto affixed, this 18th day of October A.D. 19 71

Signed and Sealed in Presence of

Cecil F. Mehring, Jr.

Cecil F. Mehring, Jr.

Donald E. Zenz

Donald E. Zenz

STATE OF WISCONSIN

Racine County } ss.

RECEIVED FOR RECORD

DAY OF \_\_\_\_\_

A.D., 19 \_\_\_\_ AT \_\_\_\_\_

O'CLOCK \_\_\_\_ M. AND RECORDED IN VOL. \_\_\_\_\_

OF \_\_\_\_\_ PAGE \_\_\_\_\_

COUNTY \_\_\_\_\_

Racine County, Wisconsin

Richard E. La Fave  
County Board Chairman, Richard E. La Fave

Countersigned:

James A. Foy

County Clerk, James A. Foy

Personally came before me, this 18th day of

October, A.D., 19 71,

Richard E. La Fave Chairman

Waverly J. Hoppa Deputy County Clerk

Secretary of the above-named Corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be

such Chairman Richard E. La Fave and

Deputy County Clerk Waverly J. Hoppa of said Corporation, and acknowledge that they executed the foregoing instrument as such officers as the deed of said Corporation, by its authority.

James W. Lavin

James W. Lavin

(SEAL) Notary Public, Racine County, Wisconsin

My Commission expires Aug. 27, A.D., 19 72

Negotiated by \_\_\_\_\_

THIS INSTRUMENT WAS DRAFTED BY THE STATE OF WISCONSIN  
DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS

Project I.D. 1322-1-21/T014-3(34)

Parcel No. 57

VOL 1109 PAGE 341

891365  
1109-341  
Oct. 27, 1971

Fee Title in and to the following tract of land in Racine County, State of Wisconsin, described as:

That part of the southeast one-quarter of the southeast one-quarter of Section 23 and the west one-half of the southwest one-quarter of Section 24, Township 3 North, Range 22 East, described as follows:

The south 69 feet of the west 848.11 feet of the east 1323.96 feet of said southeast one-quarter.

Also, commence at the southwest corner of said southwest one-quarter; thence South 89° 02' 04" East 310.54 feet along the south line of said southwest one-quarter; thence North 11° 30' 26" East, along the centerline of S.T.R. 31, 788 feet to a south property line of the owner and the point of beginning of this description; thence North 11° 30' 26" East 202.35 feet along said centerline; thence North 11° 49' 05" East along said centerline 899.74 feet to the owners north property line; thence westerly along said property line to a point which is 70 feet North 78° 10' 55" West of said centerline; thence southwesterly, parallel with and 70 feet northwesterly of said centerline, to the owners south property line; thence easterly along the owners property line to the point of beginning of this description.

This parcel contains 1.79 acres, more or less, exclusive of lands previously conveyed or dedicated for highway purposes.

Said parcel of real estate and/or interests therein will be occupied by the State of Wisconsin or its agents on December 17, 1971. However, at the sole discretion of the State of Wisconsin, said parcel and/or interests therein may be reasonably occupied after the date of acquisition by utility companies for the purpose of adjusting their facilities to accommodate the proposed highway construction.

Fee Exempt 77.25 #2

FOR AND IN CONSIDERATION of the sum of One Dollar (\$1.00) to it paid, the receipt whereof is hereby acknowledged, RACINE COUNTY, a municipal body corporate of the State of Wisconsin, grantor, does hereby give and grant to

WISCONSIN ELECTRIC POWER COMPANY, *WECO*  
grantee; its successors and assigns, the right, permission and authority to construct, install, operate, maintain and replace conduit and cables underground for the purpose of transmitting electrical energy for light, heat, power and signals, or for such other purpose as electric current is now or may hereafter be used, upon, in and under a strip of land lying in the West one-half ( $W\frac{1}{2}$ ) of Section 24, Township 3 North, Range 22 East, Town of Mt. Pleasant, Racine County, Wisconsin. Said strip of land 10 feet in width and running parallel to the easterly right of way line of relocated STH-31 as shown on the "Plat of Right of Way Required" filed in accordance with Sections 84.02, (3) and 84.09 of Wisconsin Statutes with the Clerk for Racine County and shall be as shown on the drawing annexed hereto, marked Exhibit "A" and made a part hereof.

The right, permission and authority is also granted said grantee to enter upon said premises of the grantor for the purpose of exercising the rights herein acquired, but the grantee agrees to restore the premises of the grantor, as nearly as is reasonably possible, to the condition existing prior to such entry.

IN WITNESS WHEREOF, the said RACINE COUNTY, by appropriate action of its Board of Supervisors, has caused these presents to be signed by its Chairman and attested to by its County Clerk, and its corporate seal hereunto affixed this 25th day of March, 1975.

In Presence of:

RACINE COUNTY

*John Margis, Jr.* By *John Margis, Jr.*  
John Margis, Jr. Chairman

ATTEST:

*Dennis J. Flynn* By *James A. Fay*  
Dennis J. Flynn James A. Fay County Clerk

VOL 1397 PAGE 123

1006628

1397-123

Aug. 23, 1977

STATE OF WISCONSIN )  
                          )SS:  
Racine COUNTY )

VOL 1397 PAGE 124

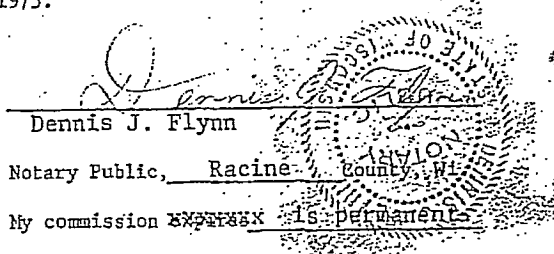
Personally came before me this 25th day of March,  
1975, John Margis, Jr., Chairman; and  
James A. Fay, County Clerk, of the above named  
municipal corporation, to me known to be the persons who executed the  
foregoing instrument and to me known to be such Chairman and County  
Clerk of said municipal corporation, and acknowledged that they executed  
the foregoing instrument as such officers, as the deed of said municipal  
corporation, by its authority, and pursuant to Resolution No. \_\_\_\_\_  
adopted by its Board of Supervisors on the 25th day of  
March, 1975.

I.D.O. R-665

420-WO 01-4049

RGS 3-10-75

RCJ 3-10-75

  
Dennis J. Flynn

Notary Public, Racine, County, WI

My commission ~~expires~~ is permanent.

This Instrument Was Drafted By

Robert C. Just

On Behalf of Wisconsin Electric Power Company

Revised 3-20-75 By

Cecil F. Mehring, Jr. - County Highway Engr.

On Behalf of Racine County

EAST R/W LINE  
STH-31

1008628

PI = 107+21.40  
TAN DELTA = 10.00  
T = 100.00  
L = 100.00  
D = 100.00  
E = 100.00  
R = 100.00  
PC = 100.00  
PT = 100.00

Aspln's Office  
Rising County, Wis.  
Received for Record  
August 10, 1917  
at 3:04  
Dated and recorded in Volume  
1397  
at 1397  
on page 125  
Hartley E. Bielecki  
4.00

W.E.R.C.D. EASEMENT

EXHIBIT - A

|                               |           |
|-------------------------------|-----------|
| SECTION                       | 2390+1-21 |
| PLAT OF RIGHT OF WAY REQUIRED | 4.4       |
| STH 31                        |           |
| MAJOR CC                      |           |

vs 1397 125

Ret:  
Dy #49

1056790

SLOPE EASEMENT

THIS AGREEMENT, made and entered into this 24<sup>th</sup> day of July, 1979, by and between RACINE COUNTY, a Wisconsin quasi-municipal corporation, hereinafter called "Grantor" and RACINE JOINT VENTURE, a partnership having its principal office at 25425 Center Ridge Road, Cleveland, Ohio 44145 and consisting of Richard E. Jacobs, Dominic A. Visconti, David H. Jacobs, R. F. Coffin, Edward H. Crane and Anthony W. Weigand, all of Cleveland, Ohio, hereinafter called "Grantee";

W I T N E S S E T H:

WHEREAS, Grantor is the owner of certain premises described as follows:

That part of the SE 1/4 and the SW 1/4 of Section 24, Town 3 North, Range 22 East, City of Racine, Racine County, Wisconsin, more fully described as follows:

Commencing at the SE corner of the SW 1/4 of said Section 24; thence S89°28'36"E, 992.09 feet on the south line of said SE 1/4; thence N1°33'26"W, 61.18 feet to a point on the northerly right-of-way of State Trunk Highway 11; thence N1°33'26"W, 1,188.82 feet; thence along a 779.41 foot radius curve concave to the east whose chord bears N5°18'08"E, 186.17 feet; thence S89°51'41"W, 1,068.68 feet; thence N1°08'19"W, 100.00 feet; thence S89°51'41"W, 200.00 feet to the point of beginning of this description; thence S89°51'41"W, 1,200.00 feet; thence N01°08'18"W, 100.00 feet; thence N89°51'41"E, 1,200.00 feet; thence S01°08'18"E, 100.00 feet to the point of beginning and the end of the Section being described. Section contains 2.754 acres.

WHEREAS, Grantee is the owner of lands immediately adjacent and to the south thereof, which lands are described as follows:

That part of the SE 1/4 and SW 1/4 of Section 24, Town 3 North, Range 22 East, City of Racine, Racine County, Wisconsin, bounded and described as follows:

Commencing at the SE corner of the SW 1/4 of said Section 24; thence S89°28'36"E, 992.09 feet on the south line of said SE 1/4; thence N01°33'26"W, 61.18 feet to a point on the northerly right-of-way of State Trunk Highway 11 and the point of beginning

1518-586

July 26, 1979

of this description; thence along a 11,398.29 foot radius curve concave to the north whose chord bears N88°00'16"W, for a distance of 474.11 feet; thence N86°48'46"W, 291.28 feet; thence along a 11,520.16 foot radius curve concave to the south whose chord bears N87°55'25"W for a distance of 446.66 feet; thence N89°02'04"W, 1,902.81 feet; thence N77°46'59"W, 116.17 feet; thence N11°30'26"E, 855.16 feet; thence N11°49'06"E, 534.47 feet; thence N89°51'41"E, 1,861.27 feet; thence S01°08'19"E, 100.00 feet; thence N89°51'51"E, 1,068.68 feet; thence along a 779.41 foot radius curve concave to the east whose chord bears S05°18'08"W, for a distance of 186.17 feet; thence S01°33'25"E, 1,188.82 feet to the point of beginning of this description. Parcel contains 97.754 acres, and

WHEREAS, Grantee has requested from Grantor the right to grade and slope the premises first above-described in connection with a proposed regional shopping center planned by Grantee on the lands last above-described, and

WHEREAS, Grantor on March 12, 1974, has by duly authorized action, adopted Report 131 of its Business Administration Committee, attached as Exhibit "A", recommending the granting of this Easement.

NOW, THEREFORE, it is agreed as follows:

FIRST: Grantor does hereby grant to the Grantee, its successors and assigns, a temporary easement upon the land first above-described for the following purpose and none other: Grantee, at its expense, may come upon said land and slope and grade same in such fashion as it sees fit so as to accomplish approximately a 6 to 1 grade, and thereafter Grantor does further agree not to cause any changes whatsoever in the grade thus established without the written consent of Grantee or its successors and assigns. In addition, Grantee agrees to fill in a depressed area included within the slope easement immediately to the east of the area where graded and to restore the disturbed area with four inches of topsoil and to seed said area to re-establish grass growth thereon. The term of this temporary easement shall be three (3) years from the date hereof.

Thereafter, this Slope Easement shall be permanent providing Grantee has sloped and graded as above set forth. Grantor does further grant to the Grantee, its successors and assigns, a temporary easement over adjacent land together with a right-of-way as may be required during the period of grading.

SECOND: Grantee estimates that there will be available through the usual grading and site work to be done at the proposed regional shopping center a total of 118,000 cubic yards of topsoil. In consideration of the foregoing grant of easement, Grantee agrees that at no cost to Grantor, it will deposit all of such topsoil at the stock pile site (together with access road) all as designated on Exhibit "B" attached hereto, providing, however, that Grantee hereby reserves the right to thereafter remove up to 30,000 cubic yards of such topsoil for its own use in landscaping, etc.

THIRD: If, for any reason, Grantee fails to avail itself of the easement rights herein granted by Grantor, this Agreement shall be null and void.

FOURTH: This Easement shall be construed as a covenant running with the land and shall not be deemed personal to the parties hereto and may be terminated only upon the mutual written agreement of Grantor and Grantee and the latter's successors and assigns.

IN WITNESS WHEREOF, the undersigned, representing that they are duly and properly authorized to execute this Slope Easement, have caused this instrument to be executed by their respective officers and partners as of the day and year first above written.

ATTEST: Dennis Kornum County Clerk Edmund E. Koepfner RACINE COUNTY BOARD

Date 7/18/79  
 Certified to be correct as to form  
 By William Beck  
 Racine County Corporation Counsel

RACINE COUNTY  
 RACINE JOINT VENTURE, A Partnership  
 By RE Jack Partner

STATE OF WISCONSIN

RACINE COUNTY

) SS:

Personally came before me this 24<sup>th</sup> day of July, 1979, the above-named Edward Hoopner, Racine County Board, and Dennis Kowalski, County Clerk of Racine County, to be known to be such officers who executed the foregoing instrument and acknowledged the same.

Kathleen A. Gorman  
Notary Public, Racine County, Wisconsin  
My commission is/expires: 9/19/82

STATE OF OHIO

CUYAHOGA COUNTY

) SS:

Personally came before me this 14<sup>th</sup> day of May, 1979, the above-named R.E. Jacobs, a partner of Racine Joint Venture, a partnership, to me known to be such partner, who executed the foregoing instrument and acknowledged the same.

David W. Hancock  
Notary Public, Cuyahoga County, Ohio  
My commission is/expires: permanently

DAVID W. HANCOCK, Attorney At Law  
Notary Public - State of Ohio  
My commission has no expiration date.  
Section 147.03 R.C.

March 12, 1974

REPORT NO. 131

REPORT BY BUSINESS ADMINISTRATION COMMITTEE  
CONCERNING SLOPE EASEMENT REQUEST ON COUNTY PROPERTY

To The Honorable Members Of The  
Racine County Board Of Supervisors:

The Business Administration Committee met recently to consider a slope easement request from Stone and Associates, Inc., consulting engineers who have been retained by the developers of the Federated complex to prepare plans for grading the property recently sold by Racine County to Federated Department Stores, Inc. The request involves grading of a knoll on county property immediately north of the north property line of the shopping center property.

After consultation with Highway Engineer Don Zenz, the committee recommends that the easement be granted subject to certain recommendations made by Mr. Zenz. Among other considerations, these recommendations involve a more gradual slope of the county property in question and the filling in and seeding of a swale on county property approximately 500 feet east of the area in question.

It is further recommended that the committee be authorized to make the necessary engineering and other decisions during the development of the shopping center with the advice and counsel of appropriate county personnel.

Respectfully submitted,

BUSINESS ADMINISTRATION COMMITTEE

Constance Barrington, Chairman

Norman Bauernfeind

Elwood Hoepfner

David Retzinger

Ruth Gedwardt

1056790

Register's Office } ss.  
Racine County, Wis. }  
Received for Record 26 day of  
July A.D. 1974 at 2:10  
o'clock P.M. and recorded in Volume 1518  
of Records on page 586-590  
Stanley F. Bialecki  
Register of Deeds

6.00

EXHIBIT "A"

1518 PAGE 586

Ret:  
Dy #99

1056790

SLOPE EASEMENT

THIS AGREEMENT, made and entered into this 24<sup>th</sup> day of July, 1979, by and between RACINE COUNTY, a Wisconsin quasi-municipal corporation, hereinafter called "Grantor" and RACINE JOINT VENTURE, a partnership having its principal office at 25425 Center Ridge Road, Cleveland, Ohio 44145 and consisting of Richard E. Jacobs, Dominic A. Visconti, David H. Jacobs, R. F. Coffin, Edward H. Crane and Anthony W. Weigand, all of Cleveland, Ohio, hereinafter called "Grantee",

W I T N E S S E T H:

WHEREAS, Grantor is the owner of certain premises described as follows:

That part of the SE 1/4 and the SW 1/4 of Section 24, Town 3 North, Range 22 East, City of Racine, Racine County, Wisconsin, more fully described as follows:

Commencing at the SE corner of the SW 1/4 of said Section 24; thence S89°28'36"E, 992.09 feet on the south line of said SE 1/4; thence N1°33'26"W, 61.18 feet to a point on the northerly right-of-way of State Trunk Highway 11; thence N1°33'26"W, 1,188.82 feet; thence along a 779.41 foot radius curve concave to the east whose chord bears N5°18'08"E, 186.17 feet; thence S89°51'41"W, 1,068.68 feet; thence N1°08'19"W, 100.00 feet; thence S89°51'41"W, 200.00 feet to the point of beginning of this description; thence S89°51'41"W, 1,200.00 feet; thence N01°08'18"W, 100.00 feet; thence N89°51'41"E, 1,200.00 feet; thence S01°08'18"E, 100.00 feet to the point of beginning and the end of the Section being described. Section contains 2.754 acres.

WHEREAS, Grantee is the owner of lands immediately adjacent and to the south thereof, which lands are described as follows:

That part of the SE 1/4 and SW 1/4 of Section 24, Town 3 North, Range 22 East, City of Racine, Racine County, Wisconsin, bounded and described as follows:

Commencing at the SE corner of the SW 1/4 of said Section 24; thence S89°28'36"E, 992.09 feet on the south line of said SE 1/4; thence N01°33'26"W, 61.18 feet to a point on the northerly right-of-way of State Trunk Highway 11 and the point of beginning

1518-586

July 26, 1979

of this description; thence along a 11,398.29 foot radius curve concave to the north whose chord bears N88°00'16"W, for a distance of 474.11 feet; thence N86°48'46"W, 291.28 feet; thence along a 11,520.16 foot radius curve concave to the south whose chord bears N87°55'25"W for a distance of 446.66 feet; thence N89°02'04"W, 1,902.81 feet; thence N77°46'59"W, 116.17 feet; thence N11°30'26"E, 855.16 feet; thence N11°49'06"E, 534.47 feet; thence N89°51'41"E, 1,861.27 feet; thence S01°08'19"E, 100.00 feet; thence N89°51'51"E, 1,068.68 feet; thence along a 779.41 foot radius curve concave to the east whose chord bears S05°18'08"W, for a distance of 186.17 feet; thence S01°33'26"E, 1,188.82 feet to the point of beginning of this description. Parcel contains 97.754 acres, and

WHEREAS, Grantee has requested from Grantor the right to grade and slope the premises first above-described in connection with a proposed regional shopping center planned by Grantee on the lands last above-described, and

WHEREAS, Grantor on March 12, 1974, has by duly authorized action, adopted Report 131 of its Business Administration Committee, attached as Exhibit "A", recommending the granting of this Easement.

NOW, THEREFORE, it is agreed as follows:

FIRST: Grantor does hereby grant to the Grantee, its successors and assigns, a temporary easement upon the land first above-described for the following purpose and none other: Grantee, at its expense, may come upon said land and slope and grade same in such fashion as it sees fit so as to accomplish approximately a 6 to 1 grade, and thereafter Grantor does further agree not to cause any changes whatsoever in the grade thus established without the written consent of Grantee or its successors and assigns. In addition, Grantee agrees to fill in a depressed area included within the slope easement immediately to the east of the area where graded and to restore the disturbed area with four inches of topsoil and to seed said area to re-establish grass growth thereon. The term of this temporary easement shall be three (3) years from the date hereof.

Thereafter, this Slope Easement shall be permanent providing Grantee has sloped and graded as above set forth. Grantor does further grant to the Grantee, its successors and assigns, a temporary easement over adjacent land together with a right-of-way as may be required during the period of grading.

SECOND: Grantee estimates that there will be available through the usual grading and site work to be done at the proposed regional shopping center a total of 118,000 cubic yards of topsoil. In consideration of the foregoing grant of easement, Grantee agrees that at no cost to Grantor, it will deposit all of such topsoil at the stock pile site (together with access road) all as designated on Exhibit "B" attached hereto, providing, however, that Grantee hereby reserves the right to thereafter remove up to 30,000 cubic yards of such topsoil for its own use in landscaping, etc.

THIRD: If, for any reason, Grantee fails to avail itself of the easement rights herein granted by Grantor, this Agreement shall be null and void.

FOURTH: This Easement shall be construed as a covenant running with the land and shall not be deemed personal to the parties hereto and may be terminated only upon the mutual written agreement of Grantor and Grantee and the latter's successors and assigns.

IN WITNESS WHEREOF, the undersigned, representing that they are duly and properly authorized to execute this Slope Easement, have caused this instrument to be executed by their respective officers and partners as of the day and year first above written.

ATTEST: Dennis K. Krumpholtz RACINE COUNTY  
County Clerk By: Edward E. Kappeler  
RACINE COUNTY BOARD

Date 7/18/79  
Certified to be correct as to form,  
By William Bock  
Racine County Corporation Counsel

RACINE JOINT VENTURE, A Partnership  
By RE Jack  
Partner

STATE OF WISCONSIN

RACINE COUNTY

) SS:  
)

Personally came before me this 24<sup>th</sup> day of July, 1979, the above-named Edward Hoopner, Racine County Board, and Dennis Bernwolf, County Clerk of Racine County, to be known to be such officers who executed the foregoing instrument and acknowledged the same.

Kathleen A. Krueger  
Notary Public, Racine County, Wisconsin  
My commission is/expires: 9/19/82

STATE OF OHIO

CUYAHOGA COUNTY

) SS:  
)

Personally came before me this 14<sup>th</sup> day of May, 1979, the above-named R.E. Jacobs, a partner of Racine Joint Venture, a partnership, to me known to be such partner, who executed the foregoing instrument and acknowledged the same.

David W. Hancock  
Notary Public, Cuyahoga County, Ohio  
My commission is/expires: permanent

DAVID W. HANCOCK, Attorney At Law  
Notary Public - State of Ohio  
My commission has no expiration date  
Section 147.03 R.C.

March 12, 1974

REPORT NO. 131

REPORT BY BUSINESS ADMINISTRATION COMMITTEE  
CONCERNING SLOPE EASEMENT REQUEST ON COUNTY PROPERTY

To The Honorable Members Of The  
Racine County Board Of Supervisors:

The Business Administration Committee met recently to consider a slope easement request from Stone and Associates, Inc., consulting engineers who have been retained by the developers of the Federated complex to prepare plans for grading the property recently sold by Racine County to Federated Department Stores, Inc. The request involves grading of a knoll on county property immediately north of the north property line of the shopping center property.

After consultation with Highway Engineer Don Zenz, the committee recommends that the easement be granted subject to certain recommendations made by Mr. Zenz. Among other considerations, these recommendations involve a more gradual slope of the county property in question and the filling in and seeding of a swale on county property approximately 500 feet east of the area in question.

It is further recommended that the committee be authorized to make the necessary engineering and other decisions during the development of the shopping center with the advice and counsel of appropriate county personnel.

Respectfully submitted,

BUSINESS ADMINISTRATION COMMITTEE

Constance Barrington, Chairman

Norman Bauernfeind

Elwood Hoepfner

David Retzinger

Ruth Gedwardt

1056790

Register's Office } ss.  
Racine County, Wis. }  
Received for Record 26<sup>th</sup> day of July  
A.D. 1974 at 2:40  
o'clock P.M. and recorded in Volume 1518  
of Records on page 586-590  
*Stanley F. Bialecki*  
Register of Deeds

6.00

EXHIBIT "A"

1308115

AMENDMENT TO SLOPE EASEMENT AND  
LANDSCAPE AGREEMENT

Register's Office  
Racine County, Wis. } SS  
Received for Record 18<sup>th</sup> day of  
April A.D. 19 90 at 2:47  
o'clock M. and recorded in Volume 2009  
of Records on page 965  
Helen M. Schuttler 977  
Register of Deeds

WHEREAS, Demetrios Dellaportas ("Dellaportas") is presently the owner of certain real property presently under development, which is more particularly described in Exhibit 1 and attached hereto and incorporated by reference (the "Property").

WHEREAS, Racine Joint Venture (the "Joint Venture"), a Partnership comprised of Richard E. Jacobs, David H. Jacobs, Dominic A. Visconsi, R. F. Coffin, Edward H. Crane, Anthony W. Weigand, and Richard E. Jacobs, Trustee, is presently the owner of real property more particularly described in Exhibit 2 attached hereto and incorporated by reference, which real property owned by Joint Venture is immediately to the south of the Property.

WHEREAS, the Property is subject to certain Easements granted by the County of Racine and City of Racine, the predecessors in interest to Dellaportas. These Easements are identified as follows: Slope Easement of July 24, 1979, executed by the County of Racine, State of Wisconsin, and recorded in the Register of Deeds' office for the County of Racine on July 26, 1979, at Records, Volume 1518, pages 586-590 (the "Slope Easement"), and Landscape Easement Agreement of April 10, 1981, executed by the City

7/2/89  
of Racine, State of Wisconsin, and recorded in the Racine County Register of Deeds' office on May 21, 1981, at Records, Volume, 1615, pages 215-219 (the "Landscape Agreement").

WHEREAS, Dellaportas desires to build a shopping center complex on the Property, but portions of the proposed shopping center and service drive will encroach in the area of the Slope Easement.

WHEREAS, a dispute has arisen between Dellaportas and Joint Venture regarding their respective rights in the Slope Easement and the Landscape Easement. Joint Venture has filed a civil action in Racine County Circuit Court seeking a declaratory judgment regarding such rights, entitled Racine Joint Venture v. Demetrios Dellaportas, et al, Racine County Case No. 89-CV-1664, (the "Lawsuit").

WHEREAS, Dellaportas and Joint Venture are willing to compromise their respective claims in the Lawsuit, wherein Dellaportas will be permitted to construct certain improvements within the area of the Slope Easement and the Landscape Easement, and wherein Dellaportas agrees that he and his successors in interest will construct and maintain a permanent landscape buffer between a service drive to be constructed and the northern border of Joint Venture's property.

WHEREAS, Dellaportas and Joint Venture, each on

behalf of their respective heirs, successors and assigns, and mutual consideration of the dismissal of the Lawsuit and the respective claims and affirmative defenses which were or could have been raised in that action, hereby agree as follows:

1. Dellaportas and his heirs, successors and assigns are permitted to construct improvements consisting of portions of a shopping center service drive as shown on the drawing attached hereto as Exhibit 3 within that area described as the Slope Easement provided that, however, in the area of the described Slope Easement Dellaportas shall maintain a minimum 50 foot landscape buffer between the proposed shopping center service drive and the property line of Joint Venture. It is agreed and expressly understood that Dellaportas and his successors and assigns will not construct any buildings within the area of the Slope Easement or the Landscape Easement, but that the location of the buildings on the drawing attached as Exhibit 3 shall in no way be construed as either a requirement that buildings be located in the areas depicted as buildings on Exhibit 3, nor shall Exhibit 3 be construed as a limitation on where buildings may be constructed on the Property outside the areas of the Landscape Easement and Slope Easement.

2. Dellaportas shall, at his sole expense,

landscape, screen and berm that portion of the Slope Easement which lies between the proposed service drive on the north and Joint Venture's property line on the south. The landscaping, screening and berming shall extend to those areas, utilize those materials and be finished in accordance with Exhibit 3, including the written portions thereof.

3. Dellaportas, his heirs, successors and assigns, will maintain in good condition all existing landscape plantings which presently exist between the Property and the the real property of Joint Venture, and shall maintain those landscape improvements to be so made in accordance with the general notes of Exhibit 3 in perpetuity, and all areas disturbed shall be seeded and restored.

4. The agreements contained herein are and shall be deemed to be covenants running with the Property and the real property owned by Joint Venture and except as amended above, all of the other terms and conditions of the Slope Easement and Landscape Easement shall remain the same.

5. The parties to this Agreement hereby expressly agree that nothing agreed upon within this Agreement shall be construed to be in derogation of any rights of Wisconsin Electric Power Company and this Amendment is subject to any easement or encumbrance of record Wisconsin Electric Power Company may have regarding the subject areas.

Date: 4-2-90

Demetrios Dellaportas

STATE OF ILLINOIS )  
                              ) SS.  
COOK COUNTY )

Personally came before me this 2nd day of APRIL, 1990, the above named Demetrios Dellaportas, to me known to be such person who executed the foregoing instrument and acknowledged the same.

Subscribed and sworn to before me this 2nd day of APRIL, 1990.

Colleen A. Hanrahan  
Notary Public, State of Illinois  
My Commission Expires 9-23-92

" OFFICIAL SEAL "  
COLLEEN A. HANRAHAN  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 9/23/92

RACINE JOINT VENTURE,  
a partnership

Date: 4-10-90

STATE OF OHIO )  
                              ) SS.  
CAYAHOGA COUNTY )

Personally came before me this 10th day of April, 1990, the above named Edward H. Crane, to me known to be such person who executed the foregoing instrument and acknowledged the same.

Subscribed and sworn to before me this 10th day of April, 1990.

Richard D. Tomsick  
Notary Public, State of Ohio  
My Commission Expires \_\_\_\_\_

RICHARD D. TOMSICK, Attorney  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.

5

Description of Premises: That part of the West 1/2 of Section 24, Township 3 North, Range 22 East, bounded as follows: Begin at a point on the East-West 1/4 line of said Section 24 located North 89° 08' 05" West 326.13 feet from a cast iron monument with a brass cap marking the center of said Section 24; run thence South 00° 08' 19" East 733.22 feet to a 1 inch diameter iron pipe stake; thence South 89° 51' 41" West 200.00 feet to a 1 inch diameter iron pipe stake; thence South 00° 08' 19" East 400.00 feet; thence South 89° 51' 41" West 1361.00 feet to the Easterly lin of S.T.H. # 31; thence North 11° 49' 57" East 591.07 feet on the Easterly line of said highway to a 1 inch diameter iron pipe stake; thence North 12° 21' 20" East 70.57 feet on the Easterly line of said highway to a 1 inch diameter iron pipe stake marking the point of curvature of a curve of Northwesterly convexity whose radius is 16310.22 feet and whose chord bears North 15° 04' 53" East 671.12 feet; thence Northeasterly 671.17 feet on the arc of said curve and the Easterly line of Highway "31" to a 1 inch diameter iron pipe stake on the South line of 21st Street; thence North 88° 27' 33" East 694.81 feet on the South line of 21st Street to a 1 inch diameter iron pipe stake marking the point of curvature of a curve of Northwesterly convexity whose radius is 1333.69 feet and whose chord bears South 79° 22' 21" East 562.24 feet; thence Southeasterly 566.49 feet on the arc of said curve and the South line of 21st Street to a 1 inch diameter iron pipe stake; thence South 00° 08' 19" East 73.45 feet to the point of beginning. EXCEPTING THEREFROM Certified Survey Map Nos. 1169 and 1276. Said land being in the City of Racine, County of Racine, State of Wisconsin.

Tax Key No.: 23876-17

Owner(s) of record: Demetrios Dellaportas

EXHIBIT 1

# S U R V E Y O R ' S   C E R T I F I C A T E

I, Walter R. Madsen, Registered Land Surveyor, hereby certify that I have surveyed, divided and mapped the plat of REGENCY MALL located in that part of the Southwest 1/4, Southeast 1/4, Northwest 1/4 and Northeast 1/4 of the Southwest 1/4, and the Northwest 1/4 and Southwest 1/4 of the Southeast 1/4 of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin bounded as follows: Block 1: Commence at the Southeast corner of the Southwest 1/4 of said Section 24; run thence S89°28'36"E along the South line of the Southeast 1/4 of said Section 24, 992.09 feet; thence N01°33'26"W 61.18 feet to a point on the Northerly right-of-way line of S.T.H. #11; thence N88°00'16"W 474.11 feet; thence N86°48'46"W 291.28 feet; thence N87°55'25"W 446.67 feet; thence N89°02'04"W along the Northerly line of right-of-way of S.T.H. #11, 1902.81 feet; thence N77°46'59"W 116.17 feet to a point on the Easterly line of right-of-way of S.T.H. #31 and the point of beginning of this description; run thence N11°30'26"E along the Easterly right-of-way line of S.T.H. #31 475.51 feet; thence along the arc of a 167.50 foot radius curve, concave to the South, having a chord length of 59.61 feet bearing S68°14'34"E to a point of reverse curve; thence along the arc of a 192.50 foot radius curve, concave to the North, having a chord length of 128.47 feet bearing S77°29'07"E to a point of reverse curve; thence along the arc of a 30.00 foot radius curve, concave to the South, having a chord length of 36.73 feet bearing S59°14'03"E to a point of reverse curve; thence along the arc of a 445.00 foot radius curve, concave to the East, having a chord length of 291.41 feet bearing S40°36'11"E; thence N76°05'21"E 67.30 feet; thence N00°57'56"E 213.13 feet; thence S89°02'04"E 349.39 feet; thence

N00°57'56"E 474.58 feet; thence  
 S89°02'04"E 53.00 feet; thence  
 N00°57'56"E 164.31 feet; thence  
 N89°02'04"W 369.18 feet; thence  
 N00°57'56"E 277.61 feet; thence  
 N89°02'04"W 341.56 feet to a point on the  
 Easterly right-of-way line of S.T.M. #31;  
 thence N11°49'06"E 35.00 feet; thence  
 N89°51'41"E 886.27 feet; thence  
 S00°57'56"W 411.88 feet; thence  
 S89°02'04"E 200.05 feet; thence  
 S00°57'56"W 67.00 feet; thence  
 S89°02'04"E 342.00 feet; thence  
 N00°57'56"E 28.00 feet; thence  
 S89°02'04"E 26.25 feet; thence  
 N00°57'56"E 14.50 feet; thence  
 S89°02'04"E 41.75 feet; thence  
 N45°57'56"E 52.33 feet; thence  
 S89°02'04"E 150.94 feet; thence  
 N00°57'56"E 414.76 feet; thence  
 N89°51'41"E 176.86 feet; thence  
 S01°08'19"E 100.00 feet; thence  
 N89°51'41"E 1068.68 feet to a point on  
 the Westerly line of Roosevelt Avenue;  
 thence Southerly along the Westerly  
 right-of-way line of Roosevelt Avenue on  
 the arc of a 779.4 foot radius curve,  
 concave to the East, having a chord  
 length of 186.17 feet bearing  
 S05°18'08"W; thence S01°33'26"E 440.02  
 feet along said right-of-way; thence  
 along the arc of a 30.00 foot radius  
 curve, concave to the South, having a  
 chord length of 40.00 feet bearing  
 N43°22'03"W to a point of reverse curve;  
 thence along the arc of a 240.00 foot  
 radius curve, concave to the Northeast,  
 having a chord length of 77.66 feet  
 bearing N75°52'03"W; thence N66°33'26"W  
 282.82 feet to a point; thence along the  
 arc of a 300.00 foot radius curve,  
 concave to the South, having a chord  
 length of 103.73 feet bearing N76°30'47"W  
 to a point of reverse curve; thence along  
 the arc of a 30.00 foot radius curve  
 concave to the East, having a chord  
 length of 43.58 feet bearing S46°57'04"W  
 to a point of reverse curve; thence along  
 the arc of a 360.00 foot radius curve  
 concave to the West having a chord length  
 of 128.70 feet bearing S10°40'06"W;

thence S20°57'56"W 315.61 feet; thence  
 along the arc of a 445.00 foot radius  
 curve concave to the West having a chord  
 length of 294.39 feet bearing  
 S40°16'53"W; thence along the arc of a  
 30.00 foot radius curve concave to the  
 South having a chord length of 37.09 feet  
 bearing S82°13'07"E; thence S44°02'04"E  
 165.36 feet; thence along the arc of a  
 175.00 foot radius curve concave to the  
 Northeast having a chord length of 127.65  
 feet bearing S65°25'26"E; thence  
 S03°11'14"W 58.55 feet to a point on the  
 Northerly right-of-way line of S.T.H.  
 #11; thence on said Northerly right-of-  
 way N86°48'46"W 187.06 feet; thence along  
 the arc of a 11,520.16 foot radius curve  
 concave to the South with a chord length  
 of 183.30 feet bearing N87°16'07"W;  
 thence N00°57'56"E 195.48 feet thence  
 along the arc of a 423.00 foot radius  
 curve concave to the North having a chord  
 length of 371.56 feet bearing  
 N47°01'06"E; thence N20°57'56"E 315.61  
 feet to a point of curve; thence along  
 the arc of a 338.00 foot radius curve,  
 concave to the West, having a chord  
 length of 294.80 feet bearing  
 N04°53'22"W; thence N89°02'04"W 607.27  
 feet; thence S00°57'56"W 331.16 feet;  
 thence S89°02'04"E 32.00 feet; thence  
 S00°57'56"W 213.00 feet; thence  
 S21°53'51"W 42.83 feet; thence  
 S00°57'56"W 306.00 feet; thence  
 S89°02'04"E 115.21 feet to a point of  
 curve; thence along the arc of a 445.00  
 foot radius curve, concave to the North,  
 having a chord length of 32.79 feet  
 bearing N88°51'16"E to a point of reverse  
 curve; thence along the arc of a 30.00  
 foot radius curve, concave to the South,  
 having a chord length of 43.96 feet  
 bearing S46°08'44"E; thence S00°57'56"W  
 123.00 feet to a point on the Northerly  
 right-of-way line of S.T.H. #11; thence  
 along the arc of an 11,520.16 foot radius  
 curve concave to the South, having a  
 chord length of 198.38 feet bearing  
 N88°32'28"W; thence N89°02'04"W along the  
 northerly right-of-way line of S.T.H. #11  
 667.63 feet; thence N00°57'56"E 120.00

feet; thence along the arc of a 30.00  
 foot radius curve concave to the East  
 having a chord length of 42.43 feet  
 bearing N45°57'56"E; thence S89°02'04"E  
 491.81 feet; thence N00°57'56"E 367.00  
 feet; thence N89°02'04"W 159.69 feet;  
 thence N44°02'04"W 113.14 feet; thence  
 N89°02'04"W 40.00 feet; thence  
 N00°57'56"E 50.00 feet; thence  
 N89°02'04"W 262.00 feet; thence  
 S00°57'56"W 35.50 feet; thence  
 S45°57'56"W 50.91 feet; thence  
 S00°57'56"W 58.50 feet; thence  
 N89°02'04"W 160.36 feet; thence  
 S00°57'56"W 367.00 feet; thence  
 S89°02'04"E 121.24 feet; thence along the  
 arc of a 30.00 foot radius curve having a  
 chord length of 42.43 feet bearing  
 S44°02'04"E; thence S00°57'56"W 120.00  
 feet to a point on the Northerly right-  
 of-way line of S.T.H. #11; thence  
 N89°02'04"W 1170.18 feet; thence  
 N77°46'59"W 116.17 feet to the point of  
 beginning. Containing 43.857 acres.  
 ALSO Block 2: Commence at the Southwest  
 corner of the Southeast 1/4 of said  
 Section 24; run thence S89°28'36"E along  
 the South line of the Southeast 1/4 of  
 said Section 24, 992.09 feet; thence  
 N01°33'26"W 61.18 feet to a point on the  
 Northerly right-of-way line of S.T.H.  
 #11; thence N88°26'22"W 301.05 feet to  
 the point of beginning of this  
 description; thence along the arc of a  
 150.00 foot radius curve concave to the  
 West, having a chord length of 115.00  
 feet bearing N19°50'45"W; thence  
 N47°36'50"E 11.49 feet; thence  
 N22°02'24"E 309.41 feet; thence along the  
 arc of a 300.00 foot radius curve concave  
 to the North, having a chord length of  
 142.20 feet bearing S77°50'50"E; thence  
 N88°26'34"E 66.00 feet; thence  
 S01°33'26"E 382.91 feet to a point on the  
 Northerly right-of-way line of S.T.H.  
 #11; thence along the arc of an 11,398.29  
 foot radius curve, concave to the North,  
 having a chord length of 301.05 feet  
 bearing N88°26'22"W to the point of  
 beginning of this description.  
 Containing 2.505 acres.

ALSO Block 3: Commence at the Southeast corner of the Southwest 1/4 of said Section 24; run thence S89°28'36"E along the South line of the Southeast 1/4 of said Section 24, 992.09 feet; thence N01°33'26"W 61.18 feet to a point on the Northerly right-of-way line of S.T.H. #11; thence N88°00'16"W 474.11 feet; thence N86°40'46"W 291.28 feet; thence N87°55'25"W 446.67 feet; thence N89°02'04"W along the Northerly right-of-way line of S.T.H. #11, 1902.81 feet; thence N77°46'59"W 116.17 feet to a point on the Easterly right-of-way line of S.T.H. #31; thence N11°30'26"E along the Easterly right-of-way line of S.T.H. #31 540.51 feet to the point of beginning of this description; run thence N11°30'26"E along the Easterly right-of-way line of S.T.H. #31 314.65 feet; thence N11°49'06"E on the Easterly right-of-way line of S.T.H. #31, 466.97 feet; thence along the arc of a 165.00 foot radius curve concave to the North, having a chord length of 34.37 feet bearing S84°09'52"E; thence N89°51'41"E 65.00 feet to a point of curve; thence along the arc of a 117.50 foot radius curve concave to the South, having a chord length of 54.80 feet bearing S76°39'16"E; thence along the arc of a 30.00 foot radius curve concave to the West, having a chord length of 45.37 feet bearing S14°02'53"E to a point of reverse curve; thence along the arc of a 275.00 foot radius curve, concave to the South having a chord length of 110.85 feet bearing S23°26'47"W; thence S11°49'06"W 332.74 feet; thence S11°30'26"W 161.86 feet to a point of curve; thence along the arc of a 445.00 foot radius curve concave to the East having a chord length of 136.35 feet bearing S02°41'42"W to a point of reverse curve; thence along the arc of a 30.00 foot radius curve concave to the West, having a chord length of 45.30 feet bearing S42°54'33"W; thence along the arc of a 127.50 foot radius curve concave to the North, having a chord length of 66.15 feet bearing N73°01'46"W to a point of reverse curve; thence along the arc of a

232.50 foot radius curve concave to the  
South having a chord length of 82.73 feet  
bearing N68°14'34"W to the point of  
beginning. Containing 2.845 acres.



1071196

1557-345

April 9, 1980

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |                                                                                               |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------|--|
| DOCUMENT NO.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  | STATE BAR OF WISCONSIN - FORM 2<br>WARRANTY DEED<br>THIS SPACE RESERVED FOR RECORDING DATA    |  |
| Racine County                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |                                                                                               |  |
| conveys and warrants to                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                               |  |
| City of Racine, a municipal corp.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |                                                                                               |  |
| the following described real estate in Racine County, State of Wisconsin:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  | RETURN TO<br>Daniel Wright<br>City Attorney's Office<br>City Hall<br>Racine, WI 53403         |  |
| Plat of a survey for RACINE WATER & WASTEWATER UTILITY of that part of the Southwest 1/4 of Section 24, Township 3 North, Range 22 East, Town of Mt. Pleasant, Racine County, Wisconsin, bounded as follows: Commence at a 3/4" diameter iron pipe stake on the South line of Section 24 located S89°28'36"E 992.09 feet from a Racine County monument with a brass cap marking the South 1/4 corner of said Section; run thence N1°33'26"W 1250.00 feet to a 3/4" diameter iron pipe stake and a point on a curve of Westerly convexity whose radius is 779.41 feet and whose chord bears N05°18'08"E 186.17 feet; thence Northerly along the arc of said curve 186.62 feet to a 3/4" diameter iron pipe stake; thence S89°51'41"W 1068.68 feet to a 3/4" diameter iron pipe stake; thence N1°08'19"W 100.00 feet to a 3/4" diameter iron pipe stake; thence S89°51'41"W 300.00 feet to a 3/4" diameter iron pipe stake and the point of beginning of this description; run thence S89°51'41"W 200.00 feet to a 3/4" diameter iron pipe stake; thence N00°08'19"W 400.00 feet to a 3/4" diameter iron pipe stake; thence N89°51'41"E 200.00 feet to a 3/4" diameter iron pipe stake; thence S00°08'19"E 400.00 feet to the point of beginning. Containing 1.837 acres. |  | Tax Key No.                                                                                   |  |
| This is not homestead property.<br>(is) (is not)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  | Est. Exempt 22-22 #2                                                                          |  |
| Exception to warranties:<br>(see reverse side)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |                                                                                               |  |
| Dated this 7th day of April, 1980                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |                                                                                               |  |
| (SEAL)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  | (SEAL)                                                                                        |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  | Elwood Hoepfner, Chairman Rac. Cty. Board Supv.                                               |  |
| (SEAL)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  | (SEAL)                                                                                        |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  | Dennis Kornwolf, Clerk, Racine Cty.                                                           |  |
| AUTHENTICATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  | ACKNOWLEDGMENT                                                                                |  |
| Signatures authenticated this 7th day of April, 1980                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | STATE OF WISCONSIN } ss.                                                                      |  |
| James T. McMahon                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  | County }                                                                                      |  |
| TITLE: MEMBER STATE BAR OF WISCONSIN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | Personally came before me, this day of                                                        |  |
| (If not, authorized by § 706.06, Wis. Stats.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  | the above named                                                                               |  |
| This instrument was drafted by                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |                                                                                               |  |
| James T. McMahon                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |                                                                                               |  |
| (Signatures may be authenticated or acknowledged. Both are not necessary.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  | to me known to be the person who executed the foregoing instrument and acknowledged the same. |  |
| VOL 1557 PAGE 345                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  | Notary Public, County, Wis.                                                                   |  |
| Value: \$15,000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  | My Commission is permanent. (If not, state expiration date: 19 )                              |  |
| WARRANTY DEED-STATE BAR OF WISCONSIN, FORM NO. 2-1977                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  | US Marshaling District                                                                        |  |

This conveyance is subject to the following restrictions in paragraph number 1 and agreement in paragraph number 2.

- (1) Prior to the construction of the proposed water tower on the land conveyed the grantee shall obtain site plan approval from the Racine County Land Use Committee in accordance with the zoning ordinances of the County of Racine, Wisconsin. Failure on the part of the grantee to obtain an approval of the site plan by the Racine County Land Use Committee shall cause the described premises to revert to the grantor without further proceedings.
- (2) As further consideration by the grantor in addition to the premises conveyed the grantor agrees to provide access to the property to the grantee across either presently existing roadways and parking lots or any future proposed driveways and parking lots at the present High Ridge Hospital site. In the event that the Grantor sells the High Ridge Hospital site or any portion thereof, resulting in impairment of ingress and egress to the property described herein, then the Grantor agrees to reserve and provide an easement to the Grantee for ingress and egress across any such property.

1071196

Register's Office } ss.  
 Racine County, Wis. }  
 Received for Record 9<sup>th</sup> day of  
April A.D. 1980 at 2:13  
 o'clock P. M. and recorded in Volume 1557  
 of Records on page 345-346

*Stanley F. Bialecki*  
 Register of Deeds

3-00

FOR AND IN CONSIDERATION of the sum of One Dollar (\$1.00) and other good and valuable consideration to it paid, the receipt whereof is hereby acknowledged, RACINE COUNTY, grantor, does hereby give and grant to

WISCONSIN ELECTRIC POWER COMPANY,  
grantee, its successors and assigns, the right, permission and authority to construct, install, operate, repair, maintain and replace a line of poles, together with the necessary crossarms, transformer, anchors, guy wires and other appliances necessary and usual in the conduct of its business, and to string, operate, maintain and replace wires thereon, and to construct, install, operate, maintain and replace conduit and cables underground, together with riser equipment, pedestals, terminals, markers, manholes and other appurtenant equipment; also the right to construct, install, operate, maintain and replace electric pad-mounted transformers, electric pad-mounted switch-fuse units, together with concrete slabs, secondary power pedestals and other necessary and usual appurtenant equipment above ground, all for the purpose of transmitting electric energy for light, heat, power and signals, or for such other purpose as electric current is now or may hereafter be used, upon, along, over, across, within and beneath

strips of land of various widths being part of its premises in the South One-half (S $\frac{1}{2}$ ) of Section Twenty-four (24), Township Three (3) North, Range Twenty-two (22) East, City of Racine, Racine County, Wisconsin.

The location of the easement strips of the easement hereinbefore granted with respect to the premises of the grantor is as shown on the drawing attached hereto, marked Exhibit "A" and made a part hereof.

The right, permission and authority is also granted said grantee to enter upon said premises of the grantor for the purpose of exercising the rights herein acquired, but the grantee agrees to restore the premises of the grantor, as nearly as is reasonably possible, to the condition existing prior to such entry.

1605-212

1067781

1605-212

March 18, 1931

The right, permission and authority is also granted said grantee, its successors and assigns, to trim and keep trimmed all trees now or hereafter existing along said lines so that they will clear wires strung not less than 18 feet above the presently existing ground level, by as much as five (5) feet, and so that the trees will not be liable to interfere with the transmission of electricity over said lines; also the right to cut down certain trees and/or brush where it is found impractical to maintain clearance by trimming, or where said trees and/or brush interfere with the installation or maintenance of underground facilities or represent a hazard to such facilities.

The grantor, its heirs, successors and assigns, covenants and agrees that no building or structure will be erected over and/or under or placed in such close proximity to said underground and/or above ground electric facilities as to create a violation of the Wisconsin State Electrical Code or any amendments thereto.

The grantor, its heirs, successors and assigns, further covenants and agrees that the elevation of the existing ground surface within the easement areas will not be altered by more than four (4) inches without the written consent of grantee.

This grant of easement shall be binding upon and inure to the benefit of the heirs, successors and assigns of all parties hereto.

In consideration of the foregoing grant, it is understood that during the time said underground and overhead electrical facilities are located on the premises of the grantor pursuant to this grant, Wisconsin Electric Power Company will indemnify and save the grantor, its successors and assigns harmless from any and all claims for injury or death to any person or for damage to property of any person arising out of the installation and the maintenance of the aforesaid facilities; excepting however, any claims or actions arising out the negligence or willful acts on the part of grantor, its successors and assigns, employees, agents and invitees.



IN WITNESS WHEREOF, the said RACINE COUNTY, by appropriate action of its Board of Supervisors, has caused these presents to be signed by its Chairman and attested to by its County Clerk, and its corporate seal hereunto affixed this 18th day of February, 19 81.

IN PRESENCE OF:

RACINE COUNTY

Elwood E. Hoeppner  
Elwood E. Hoeppner Chairman

ATTEST:

Dennis Kornwolf  
Dennis Kornwolf County Clerk

STATE OF WISCONSIN)  
:SS  
Racine COUNTY)

Personally came before me this 18th day of February, 19 81, Elwood E. Hoeppner, Chairman and Dennis Kornwolf, County Clerk, of the above named municipal corporation, to me known to be the persons who executed the foregoing instrument and to me known to be such Chairman and County Clerk of said municipal corporation, and acknowledged that they executed the foregoing instrument as such officers, as the deed of said municipal corporation, by its authority, and pursuant to Resolution No. 80-214, adopted by its Board of Supervisors on the 9th day of December, 19 80.

Linda P. Callender  
Linda P. Callender

Notary Public

My commission expires 10/9/83

|                      |
|----------------------|
| APPROVED:            |
| BY: <u>W.F. Boch</u> |
| DATE: <u>2/17/81</u> |
|                      |
|                      |

590533-28

Date 2/17/81  
Certified to be correct as to form.  
By William F. Boch  
Racine County Corporation Counsel  
William F. Boch

This instrument was drafted by Robert C. Just on behalf of Wisconsin Electric Power Company.

3

Register's Office  
Racine County, Wis. } SS  
Received for Record 18th day of March A.D. 19 81 at 1:40 o'clock P.M. and recorded in Volume 1605 of Records on page 215  
John M. Schuttler  
Register of Deeds

1087781

VOL 1605 PAGE 215-

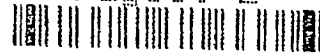
5.00

Document Number

ASSIGNMENT  
OF EASEMENT RIGHTS

KNOW ALL PERSONS BY THESE PRESENTS that **WISCONSIN ELECTRIC POWER COMPANY**, doing business as **We Energies**, a Wisconsin corporation hereinafter referred to as Assignor, for good and valuable consideration, receipt of which is hereby acknowledged, does hereby assign unto **WISCONSIN BELL INC. d/b/a AT&T WISCONSIN**, a Wisconsin corporation, hereinafter referred to as Assignee, assign joint interests in Assignor's certain easement granted to the Assignor to enable Assignee to place underground communication cables and appurtenant facilities in the designated easement based upon permission granted by **RACINE COUNTY**. It is expressly understood and agreed that all easement rights as set forth in the below mentioned document shall remain in full force and effect and that the Assignor's rights thereunder shall be paramount to any assigned to **WISCONSIN BELL INC. d/b/a AT&T WISCONSIN**, a Wisconsin corporation. This assignment grants the Assignee joint possession of those rights as set forth in that part of the easement area as described below and granted by **RACINE COUNTY**, to **WISCONSIN ELECTRIC POWER COMPANY**, recorded in the Office of the Register of Deeds in and for Racine County, on the 18<sup>th</sup> day of March, 1981, in Volume 1605 of Records, on Pages 212-215, inclusive, as **Document No. 1087781**;

TYSON FETTES  
RACINE COUNTY  
REGISTER OF DEEDS  
Fee Amount: \$30.00  
Pages: 2



RETURN TO:  
Wisconsin Electric Power Company  
Attn: Esther Casey - Room A252  
333 W. Everett Street  
Milwaukee, WI 53203

30-2

Strips of land of various widths being part of its premises in the South ½ of Section 24, Township 3 North, Range 22 East, City of Racine, Racine County Wisconsin.

(Parcel Identification Number)

276 000023876042

276 000023876017

276 000023876016

This assignment of easement rights is granted subject to the following conditions:

1. Assignor makes no guarantee that the rights being assigned hereunder are suitable for the purposes of Assignee.
2. Assignee shall protect, indemnify, save and hold harmless the Assignor and its affiliated corporations and their directors, officers, agents and employees from any and all claims, demands, actions, and all liability, costs, and expenses (including attorney's fees) in connection therewith, which may be made or brought against or incurred by the Assignor and its affiliated corporations or their directors, officers, agents or employees as a result of the actions of Assignee, or its agents and/or subcontractors of their employees while on the property included under the assignment herein given.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns.

IN WITNESS WHEREOF, said **WISCONSIN ELECTRIC POWER COMPANY** has caused these presents to be executed on its behalf by its duly authorized officers and its corporate seal hereunto affixed this 14<sup>th</sup> day of July, 2014. IN WITNESS WHEREOF, said **WISCONSIN BELL, INC., d/b/a/ AT&T WISCONSIN**, a Wisconsin Corporation has caused these presents to be executed on its behalf by its duly authorized officers and its corporate seal hereunto affixed this 24<sup>th</sup> day of JULY, 2014.

WISCONSIN ELECTRIC POWER COMPANY

By James T. Raabe  
James T. Raabe, Manager of Property Management

WISCONSIN BELL, INC., d/b/a AT&T WISCONSIN,  
a Wisconsin Corporation

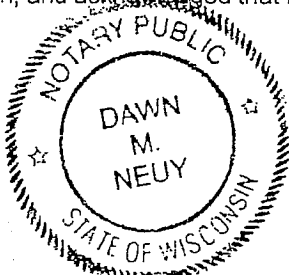
Signature Matthew D. Grimm

Print Matthew D. Grimm

Title Row Manager

STATE OF WISCONSIN)  
: SS  
MILWAUKEE COUNTY)

Personally came before me this 14th day of July, 2014, James T. Raabe, Manager of Property Management, of the above-named corporation, **WISCONSIN ELECTRIC POWER COMPANY**, known to me to be the persons who executed the foregoing instrument and to me known to be such Manager of Property Management of said corporation, and acknowledged that he executed the foregoing instrument as the deed of said corporation, by its authority.



Dawn M. Neuy  
Dawn M. Neuy

Notary Public State of Wisconsin

My commission expires June 15, 2018

STATE OF WISCONSIN)  
: SS  
WAUKESHA COUNTY)

Personally came before me this 24th day of July, 2014, (name/title) Matthew D. Grimm, Row manager of the above-named corporation, **WISCONSIN BELL, INC., d/b/a AT&T WISCONSIN, a Wisconsin Corporation**, known to me to be the persons who executed the foregoing instrument and to me known to be such (title) Row manager of said corporation, and acknowledged that he executed the foregoing instrument as the deed of said corporation, by its authority.

Nancy H. Balenz  
Signature

Nancy H. Balenz  
Printed Name

Notary Public State of Wisconsin

My commission expires 8-13-17

1090987

1615-210

May 21, 1981

LANDSCAPE EASEMENT AGREEMENT

THIS LANDSCAPE EASEMENT AGREEMENT, made and entered into as of this 10<sup>th</sup> day of April, 1981, by and between RACINE COUNTY, a Wisconsin quasi-municipal corporation, hereinafter called "Grantor" and RACINE JOINT VENTURE, a partnership having its principal office at 25425 Center Ridge Road, Cleveland, Ohio 44145, hereinafter called "Grantee".

WITNESSETH:

WHEREAS, Grantor is the owner of certain premises described as follows:

Being known as that part of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, City of Racine, Racine County, Wisconsin more particularly bounded and described as follows:

Commencing at the southeast corner of the southwest 1/4 of said Section 24; thence, S89°28'36"E, along the south line of the southwest 1/4 of said Section 24, 992.09 feet to a point; thence, N01°33'26"W, 61.18 feet to a point on the northerly line of State Trunk 11; thence, N88°00'16"W, 474.11 feet; thence, N86°48'46"W, 291.28 feet; thence, N87°55'25"W, 446.66 feet; thence, N89°02'04"W, 1,902.81 feet; thence, N77°46'59"W, 116.17 feet to a point on the easterly right-of-way line of State Trunk Highway 31; thence, N11°30'26"E, along the easterly right-of-way line of State Trunk Highway 31, 855.16 feet; thence, N11°49'06"E, continuing along the easterly right-of-way line of State Trunk Highway 31, 534.47 feet, TO THE POINT OF BEGINNING OF THIS DESCRIPTION; thence, N89°51'41"E, 1,361.27 feet; thence, N00°08'19"W, 10.00 feet; thence, S89°51'41"W, 1,359.15 feet to a point on the easterly right-of-way line of State Trunk Highway 31; thence, S11°49'06"W, along the easterly right-of-way line of State Trunk Highway 31, a distance of 10.22 feet to the point of beginning; containing within said bounds 0.312 acres and referred to herein as the "Easement Parcel".

WHEREAS, Grantee is the owner of certain premises immediately adjacent to the south of the Easement Parcel, which premises are described as follows:

Being known as that part of the Southeast 1/4 and the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, City of Racine, Racine County, Wisconsin, more particularly bounded and described as follows:

Commencing at the Southeast corner of the Southwest 1/4 of said Section 24; thence, S89°28'36"E, along the south line of the southeast 1/4 of said Section 24, 992.09 feet to a point; thence,

N01°33'26"W, 61.18 feet to a point on the northerly right-of-way line of State Trunk Highway 11; thence, N88°00'16"W, 474.11 feet; thence, N86°48'46"W, 291.28 feet; thence, N87°55'25"W, 446.66 feet; thence, N89°02'04"W, 1,507.63 feet TO THE POINT OF BEGINNING OF THIS DESCRIPTION; thence, N00°57'56"E, 180.85 feet to a point of curve; thence along the arc of a 30.00 foot radius curve, concave to the west, having a chord length of 30.31 feet bearing N29°22'28"W; thence, N76°05'21"E, 67.30 feet; thence, N00°57'56"E, 213.13 feet; thence, S89°02'04"E, 349.39 feet; thence, N00°57'56"E, 474.58 feet; thence, S89°02'04"E, 53.00 feet; thence, N00°57'56"E, 164.31 feet; thence, N89°02'04"W, 369.18 feet; thence, N00°57'56"E, 277.61 feet; thence, N89°02'04"W, 341.56 feet to a point on the easterly right-of-way line of State Trunk Highway 31; thence, N11°49'06"E, 35.00 feet; thence, N89°51'41"E, 1,861.27 feet; thence, S01°08'19"E, 201.80 feet; thence, S89°02'04"E, 212.55 feet; thence along the arc of a 360.00 foot radius curve, concave to the south, having a chord length of 435.74 feet bearing S51°47'28"E, to a point of reverse curve; thence along the arc of a 30.00 foot radius curve, concave to the north, having a chord length of 36.45 feet bearing S51°57'12"E, to a point of reverse curve; thence along the arc of a 340.00 foot radius curve, concave to the south, having a chord length of 134.42 feet bearing S77°57'29"E; thence, S66°33'26"E, 282.82 feet to a point of curve; thence along the arc of a 200.00 foot radius curve, concave to the north, having a chord length of 51.64 feet bearing S73°58'32"E; thence along the arc of a 30.00 foot radius curve, concave to the north, having a chord length of 46.02 feet bearing N48°31'10"E; thence, S01°33'26"E, 101.00 feet; thence along the arc of a 30.00 foot radius curve, concave to the south, having a chord length of 40.00 feet bearing N43°22'19"W to a point of reverse curve; thence along the arc of a 240.00 foot radius curve, concave to the north, having a chord length of 77.66 feet, bearing N75°52'01"W; thence, N66°33'26"W, 282.82 feet to a point of curve; thence along the arc of a 300.00 foot radius curve, concave to the south, having a chord length of 103.73 feet bearing N76°30'43"W, thence along the arc of a 30.00 foot radius curve, concave to the south, having a chord length of 43.58 feet, bearing S46°57'04"W, to a point of reverse curve; thence along the arc of a 360.00 foot radius curve, concave to the west, having a chord length of 128.71 feet bearing S10°40'06"W; thence, S20°57'56"W, 315.61 feet to a point of curve; thence along the arc of a 445.00 foot radius curve, concave to the north, having a chord length of 378.38 feet bearing S46°07'30"W, to a point of reverse curve; thence along the arc of a 30.00 foot radius curve, concave to the south, having a chord length of 34.55 feet bearing S36°07'34"W; thence, N00°57'56"E, 44.71 feet; thence along the arc of a 423.00 foot radius curve, concave to the north, having a chord length of 371.56 feet bearing N47°01'06"E; thence, N20°57'56"E, 315.61 feet to a point of curve; thence along the arc of a 338.00 foot radius curve, concave to the west, having a chord length of 294.80 feet bearing N04°53'22"W; thence, N89°02'04"W, 607.27 feet; thence, S00°57'56"W, 331.16 feet; thence, S89°02'04"E, 32.00 feet; thence, S00°57'56"W, 213.00 feet; thence, S21°53'51"W, 42.83 feet; thence, S00°57'56"W, 306.00 feet; thence, N89°02'04"W, 164.01 feet; thence, N00°57'56"E, 367.00 feet; thence, N89°02'04"W, 159.69 feet; thence, N44°02'04"W, 113.14 feet; thence, N89°02'04"W, 40.00 feet; thence, N00°57'56"E, 50.00 feet; thence, N89°02'04"W, 262.00 feet; thence, S00°57'56"W, 35.50 feet; thence, S45°57'56"W, 50.91 feet; thence, S00°57'56"W, 58.50 feet; thence, N89°02'04"W, 160.36 feet; thence, S00°57'56"W, 367.00 feet; thence, N89°02'04"W, 421.16 feet to a point of curve; thence along the arc of a 445.00 foot radius curve, concave to the north, having a chord length of 101.47 feet bearing N82°29'17"W, to a point of reverse curve; thence along the arc of a

30.00 foot radius curve, concave to the south, having a chord length of 46.99 feet bearing S52°30'44"W; thence, S00°57'56"W, 132.35 feet to a point on the northerly right-of-way line of State Trunk Highway 11; thence, N89°02'04"W, 65.00 feet TO THE POINT OF BEGINNING OF THIS DESCRIPTION. Parcel contains 34.015 acres, to be the same more or less and referred to herein as the "Benefitted Parcel".

WHEREAS, Grantee has requested from Grantor the right to grade and maintain certain landscaping upon the Easement Parcel in connection with the development of a regional shopping center on lands which include the Benefitted Parcel in order to comply with certain requirements of the Plan Commission of the City of Racine: and,

WHEREAS, Grantor has, by duly authorized action, approved the granting of this Easement.

NOW, THEREFORE, it is agreed as follows:

1. Grantor does hereby grant to Grantee, its successors and assigns, an easement in, under, upon and over the Easement Parcel for the purpose of grading, installing and thereafter maintaining landscaping, including trees, upon and subject to the following terms and conditions:

a. Grantee, at its sole cost and expense, shall install and thereafter maintain in a sightly condition all such landscaping as may be installed within the Easement Parcel; and

b. Grantee shall have the right to enter upon lands of the Grantor which are immediately adjacent to the Easement Parcel for the purpose of performing said grading, installation and maintenance, provided that Grantee shall not change the grade of any lands adjacent to the Easement Parcel without the prior approval of Grantor and Grantee shall be and remain responsible for the repair of any surface improvements damaged by reason of such entry.

2. This Easement shall continue for so long as Grantee, its successors and assigns, shall operate a regional

shopping center or other commercial business upon the Benefitted Parcel.

3. This Easement shall be appurtenant to the Benefitted Parcel and shall inure to the benefit of and be binding upon Grantor and Grantee and their respective successors and assigns.

4. It is acknowledged that the Easement granted hereby is not exclusive, Grantor having heretofore granted easement rights in the Easement Parcel to Wisconsin Electric Power Company.

IN WITNESS WHEREOF, the undersigned, representing that they are duly and properly authorized to execute this Landscape Easement Agreement, have caused this instrument to be executed by the respective officers and partners as of the day and year first above written.

In the Presence of:

RACINE COUNTY

James T. McMahon  
James T. McMahon

By Elwood Hoepfner  
Elwood Hoepfner

Linda P. Callender  
Linda P. Callender

Attest Dennis Kornwolf  
Dennis Kornwolf

RACINE JOINT VENTURE

Brenda S. Olbrys  
Brenda S. Olbrys

By R. E. JACOBS  
R. E. JACOBS

Margaret Kethen  
Margaret Kethen

And DAVID A. JACOBS  
DAVID A. JACOBS

STATE OF WISCONSIN )  
 ) SS:  
RACINE COUNTY )

Personally came before me this 30th day of April, 1981, the above-named Elwood Hoeppner, Chairmain, Racine County Board, and Dennis Kornwolf, County Clerk of Racine County, to me known to be such officers who executed the foregoing instrument and acknowledged the same.

James T. Kelly  
Notary Public  
Racine County, Wisconsin  
My commission is ~~expiring~~ permanent.

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named R. E. Jacobs and David H. Jacobs, to me known to be the persons who executed the within and foregoing instrument, who acknowledged that they were duly authorized to execute such instrument on behalf of RACINE JOINT VENTURE, that they did execute said instrument on behalf of said partnership and that the same is their free and voluntary act and deed as partners of said partnership and is the free and voluntary act and deed of said partnership for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this 10th day of April, 1981.

David W. Hancock  
Notary Public  
DAVID W. HANCOCK, Attorney At Law  
Notary Public - State of Ohio  
My commission has no expiration date.  
Section 147.03 R.C.

1090987

Register's Office )  
 ) SS:  
Racine County, Wis. )  
Received for Record 2/24 day of May A.D. 19 81 at 2:11 o'clock P. M. and recorded in Volume 1615 of Records on page 210  
Therese M. Schuttler  
Register of Deeds

6.00

LANDSCAPE EASEMENT AGREEMENT

THIS LANDSCAPE EASEMENT AGREEMENT, made and entered into as of this 10<sup>th</sup> day of April, 1981, by and between the CITY OF RACINE, a Wisconsin municipal corporation, hereinafter called "Grantor" and RACINE JOINT VENTURE, a partnership having its principal office at 25425 Center Ridge Road, Cleveland, Ohio 44145, hereinafter called "Grantee".

W I T N E S S E T H:

WHEREAS, Grantor is the owner of certain premises described as follows:

Being known as that part of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, City of Racine, Racine County, Wisconsin more particularly bounded and described as follows:

Commencing at the southeast corner of the southwest 1/4 of said Section 24; thence, S89°28'36"E, along the south line of the southwest 1/4 of said Section 24, 992.09 feet to a point; thence, N01°33'26"W, 61.18 feet to a point on the northerly line of State Trunk Highway 11; thence, N88°00'16"W, 474.11 feet; thence, N86°48'46"W, 291.28 feet; thence, N87°55'25"W, 446.66 feet; thence, N89°02'04"W, 1,902.71 feet; thence, N77°46'59"W, 116.17 feet to a point on the easterly right-of-way line of State Trunk Highway 31; thence, N11°30'26"E, along the easterly right-of-way line of State Trunk Highway 31, 855.16 feet; thence, N11°49'06"W, continuing along the easterly right-of-way line of State Trunk Highway 31, 534.47 feet; thence, N89°51'41"E, 1,361.27 feet, TO THE POINT OF BEGINNING OF THIS DESCRIPTION; thence, N89°51'41"E, 200.00 feet; thence, N00°08'19"W, 10.00 feet; thence, S89°51'41"W, 200.00 feet; thence, S00°08'19"E, 10.00 feet to the point of beginning; containing within said bounds 0.046 acres and referred to herein as the "Easement Parcel".

WHEREAS, Grantee is the owner of certain premises immediately adjacent to the south of the Easement Parcel, which premises are described as follows:

Being known as that part of the Southeast 1/4 and the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, City of Racine, Racine County, Wisconsin, more particularly bounded and described as follows:

Commencing at the Southeast corner of the Southwest 1/4 of said Section 24; thence, S89°28'36"E, along the south line of the southeast 1/4 of said Section 24, 992.09 feet to a point; thence,

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1615-215

May 21, 1981

N01°33'26"W, 61.18 feet to a point on the northerly right-of-way line of State Trunk Highway 11; thence, N88°00'16"W, 474.11 feet; thence, N86°48'46"W, 291.28 feet; thence, N87°55'25"W, 446.66 feet; thence, N89°02'04"W, 1,507.63 feet TO THE POINT OF BEGINNING OF THIS DESCRIPTION; thence, N00°57'56"E, 180.85 feet to a point of curve; thence along the arc of a 30.00 foot radius curve, concave to the west, having a chord length of 30.31 feet bearing N29°22'28"W; thence, N76°05'21"E, 67.30 feet; thence, N00°57'56"E, 213.13 feet; thence, S89°02'04"E, 349.39 feet; thence, N00°57'56"E, 474.58 feet; thence, S89°02'04"E, 53.00 feet; thence, N00°57'56"E, 164.31 feet; thence, N89°02'04"W, 369.18 feet; thence, N00°57'56"E, 277.61 feet; thence, N89°02'04"W, 341.56 feet to a point on the easterly right-of-way line of State Trunk Highway 31; thence, N11°49'06"E, 35.00 feet; thence, N89°51'41"E, 1,861.27 feet; thence, S01°08'19"E, 201.80 feet; thence, S89°02'04"E, 212.55 feet; thence along the arc of a 360.00 foot radius curve, concave to the south, having a chord length of 435.74 feet bearing S51°47'28"E, to a point of reverse curve; thence along the arc of a 30.00 foot radius curve, concave to the north, having a chord length of 36.45 feet bearing S51°57'12"E, to a point of reverse curve; thence along the arc of a 340.00 foot radius curve, concave to the south, having a chord length of 134.42 feet bearing S77°57'29"E; thence, S66°33'26"E, 282.82 feet to a point of curve; thence along the arc of a 200.00 foot radius curve, concave to the north, having a chord length of 51.64 feet bearing S73°58'32"E; thence along the arc of a 30.00 foot radius curve, concave to the north, having a chord length of 46.02 feet bearing N48°31'10"E; thence, S01°33'26"E, 101.00 feet; thence along the arc of a 30.00 foot radius curve, concave to the south, having a chord length of 40.00 feet bearing N43°22'19"W to a point of reverse curve; thence along the arc of a 240.00 foot radius curve, concave to the north, having a chord length of 77.66 feet, bearing N75°52'01"W; thence, N66°33'26"W, 282.82 feet to a point of curve; thence along the arc of a 300.00 foot radius curve, concave to the south, having a chord length of 103.73 feet bearing N76°30'43"W, thence along the arc of a 30.00 foot radius curve, concave to the south, having a chord length of 43.58 feet, bearing S46°57'04"W, to a point of reverse curve; thence along the arc of a 360.00 foot radius curve, concave to the west, having a chord length of 128.71 feet bearing S10°40'06"W; thence, S20°57'56"W, 315.61 feet to a point of curve; thence along the arc of a 445.00 foot radius curve, concave to the north, having a chord length of 378.38 feet bearing S46°07'30"W, to a point of reverse curve; thence along the arc of a 30.00 foot radius curve, concave to the south, having a chord length of 34.55 feet bearing S36°07'34"W; thence, N00°57'56"E, 44.71 feet; thence along the arc of a 423.00 foot radius curve, concave to the north, having a chord length of 371.56 feet bearing N47°01'06"E; thence, N20°57'56"E, 315.61 feet to a point of curve; thence along the arc of a 338.00 foot radius curve, concave to the west, having a chord length of 294.80 feet bearing N04°53'22"W; thence, N89°02'04"W, 607.27 feet; thence, S00°57'56"W, 331.16 feet; thence, S89°02'04"E, 32.00 feet; thence, S00°57'56"W, 213.00 feet; thence, S21°53'51"W, 42.83 feet; thence, S00°57'56"W, 306.00 feet; thence, N89°02'04"W, 164.01 feet; thence, N00°57'56"E, 367.00 feet; thence, N89°02'04"W, 159.69 feet; thence, N44°02'04"W, 113.14 feet; thence, N89°02'04"W, 40.00 feet; thence, N00°57'56"E, 50.00 feet; thence, N89°02'04"W, 262.00 feet; thence, S00°57'56"W, 35.50 feet; thence, S45°57'56"W, 50.91 feet; thence, S00°57'56"W, 58.50 feet; thence, N89°02'04"W, 160.36 feet; thence, S00°57'56"W, 367.00 feet; thence, N89°02'04"W, 421.16 feet to a point of curve; thence along the arc of a 445.00 foot radius curve, concave to the north, having a chord length of 101.47 feet bearing N82°29'17"W, to a point of reverse curve; thence along the arc of a

30.00 foot radius curve, concave to the south, having a chord length of 46.99 feet bearing S52°30'44"W; thence, S00°57'56"W, 132.35 feet to a point on the northerly right-of-way line of State Trunk Highway 11; thence, N89°02'04"W, 65.00 feet TO THE POINT OF BEGINNING OF THIS DESCRIPTION. Parcel contains 34.015 acres, to be the same more or less and referred to herein as the "Benefitted Parcel".

WHEREAS, Grantee has requested from Grantor the right to grade and maintain certain landscaping upon the Easement Parcel in connection with the development of a regional shopping center on lands which include the Benefitted Parcel in order to comply with certain requirements of the Plan Commission of the City of Racine: and,

WHEREAS, Grantor has, by duly authorized action, approved the granting of this Easement.

NOW, THEREFORE, it is agreed as follows:

1. Grantor does hereby grant to Grantee, its successors and assigns, an easement in, under, upon and over the Easement Parcel for the purpose of grading, installing and thereafter maintaining landscaping, including trees, upon and subject to the following terms and conditions:

a. Grantee, at its sole cost and expense, shall install and thereafter maintain in a sightly condition all such landscaping as may be installed within the Easement Parcel; and

b. Grantee shall have the right to enter upon lands of the Grantor which are immediately adjacent to the Easement Parcel for the purpose of performing said grading, installation and maintenance, provided that Grantee shall not change the grade of any lands adjacent to the Easement Parcel without the prior approval of Grantor and Grantee shall be and remain responsible for the repair of any surface improvements damaged by reason of such entry.

2. This Easement shall continue for so long as Grantee, its successors and assigns, shall operate a regional

shopping center or other commercial business upon the Benefitted Parcel.

3. This Easement shall be appurtenant to the Benefitted Parcel and shall inure to the benefit of and be binding upon Grantor and Grantee and their respective successors and assigns.

4. It is acknowledged that the Easement granted hereby is not exclusive and that Grantor or its predecessors have heretofore granted easement rights in the Easement Parcel to Wisconsin Electric Power Company.

IN WITNESS WHEREOF, the undersigned, representing that they are duly and properly authorized to execute this Landscape Easement Agreement, have caused this instrument to be executed by the respective officers and partners as of the day and year first above written.

In the Presence of:

CITY OF RACINE

Grace P. DeMuir

By Stephen F. Olsen  
Stephen F. Olsen, Mayor

Louise A. Williams attest

Anthony J. Schlaffer  
Anthony J. Schlaffer, City Clerk

RACINE JOINT VENTURE

Branda B. Olbrys  
Branda B. Olbrys

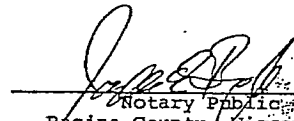
By R. E. Jacobs  
R. E. Jacobs

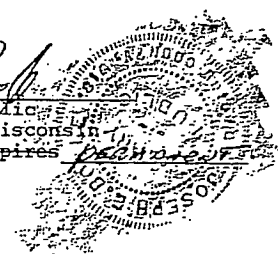
Margaret Kothren  
Margaret Kothren

And David H. Jacobs  
DAVID H. JACOBS

STATE OF WISCONSIN )  
 ) SS:  
RACINE COUNTY )

Personally came before me this 5th day of May,  
1981, the above-named Stephen F. Olsen, Mayor and  
Anthony J. Schlaffer, to me known to be such officers  
who executed the foregoing instrument and acknowledged the  
same.

  
Notary Public  
Racine County, Wisconsin  
My commission is/expires permanently



STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

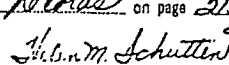
BEFORE ME, a Notary Public in and for said County  
and State, personally appeared the above named R. E. Jacobs  
and David H. Jacobs, to me known to be the persons who  
executed the within and foregoing instrument, who acknowledged  
that they were duly authorized to execute such instrument on  
behalf of RACINE JOINT VENTURE, that they did execute said  
instrument on behalf of said partnership and that the same  
is their free and voluntary act and deed as partners of said  
partnership and is the free and voluntary act and deed of  
said partnership for the uses and purposes therein set  
forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand  
and official seal at Cleveland, Ohio, this 10th day of  
April, 1981.

  
Notary Public  
DAVID W. PANGCAST, Attorney At Law  
Notary Public - State of Ohio  
My commission has no expiration date  
Section 147.03 R.C.



1090988

Recorder's Office }  
June County, Wis. } SS  
Received for Record 21st day of  
May A.D. 19 81 at 2:13  
o'clock P. M. and recorded in Volume 1615  
of Records on page 219  
  
Register of Deeds

6.00

Vol. 1615 PAGE 219

1247144

LAND USE AGREEMENT

This Agreement made and entered into as of November 12th, 1987, by and between LAND RECLAMATION, LTD., a Wisconsin Corporation and SEKAO, INC., a Wisconsin Corporation, both of Racine, Wisconsin, hereinafter collectively referred to as "Owners", and the CITY OF RACINE, WISCONSIN, A Municipal Corporation, hereinafter referred to as "City".

## WITNESSETH:

WHEREAS, the parties hereto are desirous of establishing standards for industrial development on the parcel of real estate made the subject of this agreement for the purpose of providing a transition between the industrial development and adjacent non-industrial properties. It is the intent that the development standards in this agreement shall address set-back areas and vehicular access.

Real Estate Subject to Agreement. The real estate subject to this agreement ("the real estate") is part of the parcel of land legally described on Exhibit "A", and depicted on the plat identified as Exhibit "B". Exhibits "A" and "B" are attached hereto and incorporated as a part of this agreement by reference.

For and in consideration of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1.00 SET-BACK. The Owners shall establish a set-back area of 100 feet ("Set-Back Area") running along the boundary of the real estate, easterly from the intersection of Oakes Road and Sixteenth Street and continuing on that boundary to a point which lies approximately 1,450 feet south of the centerline of Sixteenth Street along a line identical to the centerline of Emmertsen Road extended to the south. It is understood that the 100 foot set-back area along Owners' boundary shall in the future be adjusted to include additional property that may be acquired by Owners so that the set-back area on Owners' property shall not exceed 100 feet at any given boundary point.

1.01 The 100 foot set-back area shall be restricted by designating the area to be devoted to spatial separation and visually screening of the industrial development from the non-industrial area to the north and east. The set-back area will be dedicated to the installation and maintenance of earth berms, fencing, surface water drainage swales, landscaped green space, including trees and shrubs, and other compatible developments, which shall be in accordance with plans to be submitted by the Owners to the City, in care of the City Department of City Development, and subject to the approval by the City Plan Commission. Such plans or modification to plans shall be submitted by the Owners to the City upon written request directed to the Owners by the City.

1.02 Upon submission of plans or modifications to plans and before approval is granted by the City, the Owner shall furnish

23876-16, 23876-17, 23876-18, 23876-38, 23876-39

TS. # 23900 thru 23927

VOL 1896 PAGE 539

20894

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to the City a Performance Bond executed by it as surety, in an amount equal to the estimated cost of implementing the plan(s).

1.03 If the Owners fail to submit plans within six calendar months after request by the City as provided herein, the City shall at its option, be empowered to prepare plans which it shall submit to the Owners for implementation. If the Owners shall fail to implement the City's plans within four planting seasons (two calendar years), the City may implement the plans at Owners' expense. The Owners shall thereupon be liable under this agreement for the reasonable and necessary costs of implementing the City's plans, including the costs incurred by the City in plan preparation.

2.00 ACCESS. The parties further agree that vehicular access to the real estate from Sixteenth Street, Meadowlane Road, Sunset Street or Greenleaf Street shall be limited to automobile and small truck traffic, excepting, that in addition, Owners shall be permitted vehicular access to the real estate from said streets by all other types of vehicles which may from time to time be permitted by law or ordinance to travel on those streets. It is the intent of this provision that unless so permitted by law or ordinance, exterior access to the real estate for all heavy trucks or heavy equipment shall be restricted to points on Oakes Road and Twenty-First Street and Owners shall provide an internal roadway system for such heavy trucks and equipment within the real estate to serve its industrial users.

Notices under this agreement shall be sent to the following persons at the following addresses by United States mail, postage prepaid.

Owner: Land Reclamation, Ltd.  
1777 Oakes Road  
Racine, Wisconsin 53406

City: Director of City Development  
730 Washington Avenue  
Racine, Wisconsin 53403

All provisions of the City zoning ordinance, subdivision ordinance and other City ordinances not in conflict with this agreement shall be applicable to the development of said real estate.

This agreement shall be binding upon the parties hereto, together with their heirs, executors, successors, and assigns, and shall be considered to be a covenant running with the land.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names, and their respective corporate seals to be hereonto affixed, attested to by their duly authorized officers, all as of the date first above written.

(Testimonium Page Follows)

ATTST:

As to the signature of  
Richard F. Meissner

Joseph J. Muratore Sr.  
Joseph J. Muratore, Sr.  
As to the signature of  
Glenn Oakes

Joseph J. Muratore Sr.  
Joseph J. Muratore, Sr.

ATTST:

As to the signature of  
Richard F. Meissner

Joseph J. Muratore Sr.  
Joseph J. Muratore, Sr.

As to the signature of  
Glenn Oakes

Joseph J. Muratore Sr.  
Joseph J. Muratore, Sr.

ATTST:

As to the signature of  
N. Owen Davies

Joseph E. Boyle  
Joseph E. Boyle

As to the signature of  
Anthony J. Schlaffer

Diane I. Schacht  
Diane I. Schacht

OWNERS:

LAND RECLAMATION, LTD.

By Richard F. Meissner  
Official Capacity  
Richard F. Meissner, Executive Vice-  
Countersigned: Pres.

By Glenn Oakes  
Glenn Oakes, President

(SEAL)

SEKAO, INC.,

By Richard F. Meissner  
Official Capacity  
Richard F. Meissner, Treasurer

Countersigned:

By Glenn Oakes  
Glenn Oakes, President

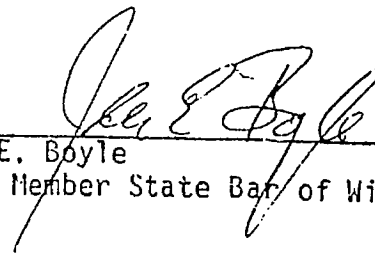
CITY OF RACINE

By N. Owen Davies  
N. Owen Davies, Mayor

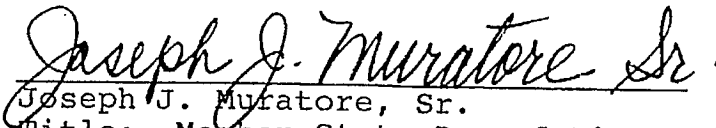
By Anthony J. Schlaffer  
Anthony J. Schlaffer,  
City Clerk

(Seal)

Signatures of N. OWEN DAVIES, Mayor, and ANTHONY J. SCHLAFFER, City Clerk,  
authenticated this 12th day of November, 1987.

  
\_\_\_\_\_  
Joseph E. Boyle  
Title: Member State Bar of Wisconsin

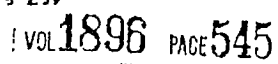
Signatures of GLENN OAKES and RICHARD F. MEISSNER, authenticated  
this 19th day of November, A.D., 1987.

  
\_\_\_\_\_  
Joseph J. Muratore, Sr.  
Title: Member State Bar of Wisconsin

Nov. 12, 1987  
LAND USE AGREEMENT  
Exhibit "A"

That part of the Southeast  $\frac{1}{4}$  of Section 14, the Northwest  $\frac{1}{4}$ , Northeast  $\frac{1}{4}$ , Southwest  $\frac{1}{4}$  and Southeast  $\frac{1}{4}$  of Section 23, and the Southwest  $\frac{1}{4}$  of Section 24, all in Township 3 North, Range 22 East, in the Town of Mt. Pleasant, Racine County, Wisconsin, bounded as follows: Begin at a standard Racine County monument marking the Northwest corner of the Northwest  $\frac{1}{4}$  of said Section 23; run thence N89°36'28"E 1320.03 feet along the North line of said Section 23; thence S01°36'45"E 55.00 feet to the South line of 16th Street; thence N89°36'28"E 1319.98 feet along said South line of 16th Street; thence N89°08'28"E 508.68 feet along said South line of 16th Street to a point on a curve of Southerly convexity whose radius is 2409.19 feet and whose chord bears N83°19'12"E 488.68 feet; thence Easterly on the arc of said curve and the South line of 16th Street 489.52 feet; thence N77°29'57"E 340.89 feet along the South line of 16th Street to a point on a curve of Northerly convexity whose radius is 2242.05 feet and whose chord bears N83°24'52"E 469.82 feet; thence Easterly 470.68 feet on the arc of said curve and the South line of 16th Street to a point on a curve of Southerly convexity whose radius is 2219.00 feet and whose chord bears N87°40'10"E 136.25 feet; thence Easterly on the arc of said curve and the South line of 16th Street 136.27 feet; thence S01°50'10"E 113.76 feet to the North line of said Section 23; thence S01°45'43"E 487.15 feet; thence N89°08'29"E 705.38 feet to the West line of said Section 24; thence S01°45'43"E 1818.59 feet along the West line of said Section 24 to the Northerly line of the former Chicago, Milwaukee, St. Paul & Pacific Railroad right of way; thence N81°38'51"E 1155.54 feet along said right of way to the centerline of Green Bay Road and a point on a curve of Westerly convexity whose radius is 16370.22 feet and whose chord bears S16°54'01"W 404.18 feet; thence Southerly on the arc of said curve and said centerline 404.18 feet to the projected South line of Twenty-first Street; thence N88°27'33"E 1367.35 feet along the projected South line and actual South line of Twenty-first Street; thence S01°33'25"E 1194.54 feet parallel to the North-South  $\frac{1}{4}$  line of said Section 24; thence N89°08'05"W 286.62 feet parallel to the East-West  $\frac{1}{4}$  line of said Section 24; thence S00°08'19"E 137.46 feet; thence S89°51'41"W 1361.00 feet to the East line of Green

Bay Road; thence N79°01'46"W 140.02 feet to the West line of Green Bay Road and the North line of Regency West Drive; thence N78°10'03"W 70.00 feet along the North line of Regency West Drive to a point on a curve of Southwesterly convexity whose radius is 284.98 feet and whose chord bears N59°05'06"W 186.33 feet; thence Northwesterly on the arc of said curve and the Northerly line of Regency West Drive 189.82 feet; thence N40°00'10"W 226.67 feet on the Northerly line of Regency West Drive to a point on a curve of Northeasterly convexity whose radius is 245.04 feet and whose chord bears N65°15'07"W 209.04 feet; thence Northwesterly on the arc of said curve and the Northerly line of Regency West Drive 215.97 feet; thence S89°29'55"W 616.08 feet along the North line of Regency West Drive; thence S01°45'14"E 33.01 feet; thence S89°29'55"W 749.08 feet; thence N01°38'03"W 798.39 feet to the East-West  $\frac{1}{4}$  line of said Section 23; thence S89°05'04"W 528.67 feet to the Southerly line of the former Chicago, Milwaukee, St. Paul & Pacific Railroad right of way; thence S81°38'51"W 805.03 feet along said right of way to the North-South  $\frac{1}{4}$  line of said Section 23; thence S01°45'01"E 16.61 feet along said North-South  $\frac{1}{4}$  line to the Southerly line of said Railroad right of way; thence S81°38'51"W 1326.97 feet along said right of way; thence NO1°36'45"W 16.62 feet along said right of way; thence S81°38'51"W 1327.69 feet along said right of way to the West line of said Section 23; run thence NO1°29'21"W 467.61 feet along said West line of said Section 23 to the West  $\frac{1}{4}$  corner of said Section 23; thence NO1°39'38"W 2653.29 feet to the point of beginning. Containing 429.677 acres including the land within Green Bay Road and Twenty-first Street.



CONSENT OF SOLE DIRECTOR OF LAND RECLAMATION, LTD.  
IN LIEU OF MEETING

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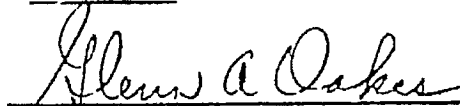
The undersigned, being the sole director of the above captioned Wisconsin Corporation, hereinafter also referred to as the Corporation, acting pursuant to the provisions of Section 180.91 of the Business Corporations' Act of the State of Wisconsin, does hereby consent in lieu of meeting to the adoption of the following resolutions:

RESOLVED, that the Land Use Agreement, a copy of which is attached hereto, incorporated as a part hereof, shall be and the same is hereby approved for execution by the Corporation,

RESOLVED FURTHER, that the officers of the Corporation are directed and authorized to execute said Land Use Agreement on behalf of the Corporation and to take all necessary and appropriate action to consummate the terms of the agreement.

RESOLVED FURTHER, that all prior actions of the officers of the Corporation taken pursuant to the said Land Use Agreement shall be and the same are hereby approved in all respects, and ratified as authorized acts of the Corporation.

Dated November 12th, A.D., 1987.



Glenn A. Oakes, Sole Director of  
Land Reclamation, Ltd.

CONSENT OF SOLE DIRECTOR OF SEKAO, INC.,  
IN LIEU OF MEETING

\*\*\*\*\*

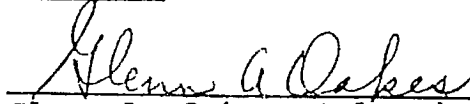
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RESOLVED FURTHER, that the officers of the Corporation are directed and authorized to execute said Land Use Agreement on behalf of the Corporation and to take all necessary and appropriate action to consummate the terms of the agreement.

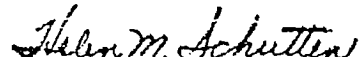
RESOLVED FURTHER, that all prior actions of the officers of the Corporation taken pursuant to the said Land Use Agreement shall be and the same are hereby approved in all respects, and ratified as authorized acts of the Corporation.

Dated November 12th, A.D., 1987.



Glenn A. Oakes, Sole Director of  
Sekao, Inc.

Register's Office  
Racine County, Wis. } SS yh  
Received for Record 30 day of  
December A.D. 1987 at 11:07  
o'clock AM and recorded in Volume 1896  
of Records on page 539-547

  
Register of Deeds

1265306

Register's Office  
Racine County, Wis.Received for Record ..... day of  
September A.D. 1988 at 12:53  
o'clock P.M. and recorded in Volume 1929  
if Records on page 653-664Helen M. Schuttler  
26. Register of DeedsJKK  
9/1/88DECLARATION OF EASEMENTS AND RESTRICTIONS

This Declaration of Easements and Restrictions hereinafter referred to as the "Declaration") is made the 1st day of September, 1988, by Demetrios Dellaportas (hereinafter referred to as "Owner") and Bank One, Racine, N.A. (hereinafter referred to as "Bank One").

RECITALS

1. Owner is the owner in fee simple of certain real estate situated in the City of Racine, County of Racine, State of Wisconsin, more particularly described in Exhibit "A" attached hereto (hereinafter referred to as the "Owner's Site").
2. Bank One is the owner in fee simple of certain real estate situated in the City of Racine, County of Racine, State of Wisconsin, more particularly described in Exhibit "B" attached hereto (hereinafter referred to as the "Bank Site") which adjoins the Owner's Site.
3. Owner intends to develop a shopping center on a portion of the Owner's Site, and to develop an office park on the remaining portion of the Owner's Site.
4. The Bank Site is improved with a banking facility, and a vacant lot to the South.
5. Owner and Bank One desire to create certain rights, privileges and easements and to impose certain restrictions and covenants upon the Owner's Site.

NOW, THEREFORE, for good and valuable consideration, including the promises, covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1DEFINITIONS

As used in this Declaration, the following terms have the following meanings:

Section 1.1 Building(s)

"Building(s)" means the buildings which will or may be constructed by or for Owner within Owner's Permissible Building Areas, which areas are designated as such on Exhibit "C" hereto and the Truck Facilities and other facilities within Owner's Permissible Building Areas which are permitted under this Declaration, but such term does not include Common Area Improvements.

Section 1.2 Common Area

"Common Area" means all areas within the boundaries of the Owner's Site created for the non-exclusive use of all Permittees, including, but not limited to: (a) the Parking Area; (b) sidewalks and walkways located outside all Buildings, and including sidewalks and walkways providing pedestrian access to and ingress and egress to and from the Parking Area on the Owner's Site; (c) landscaped and planted areas located on the Owner's Site; (d) roadways to provide vehicular access to an from and ingress and egress to and from and in and out of the Parking Area and to streets and highways adjacent to or near the Owner's Site, including entrances and exits and service drives; and (e) all

curbs and lighting standards, traffic and directional signs and traffic striping and markings.

### Section 1.3 Common Area Improvements

"Common Area Improvements" means all improvements hereinafter constructed and existing from time to time on the Owner's Site to be used in common by all Permittees, and shall include sign pylons and sign monuments (whether or not used in common by all Permittees).

### Section 1.4 Financial Services Institution

"Financial Services Institution" means a bank, savings and loan, loan company, credit company, credit union, automated teller machines, or check cashing facility, and also an insurance office or stock brokerage in the event the successor to Bank One is an insurance company or stock broker and utilizes the Bank Site directly in connection with its principal business.

### Section 1.5 Floor Area

"Floor Area" means the floor space whether or not actually occupied, from time to time, in any Building located on the Owner's Site.

### Section 1.6 Natural Area

"Natural Area" means that portion of the Owner's Site shown by shading on Exhibit C.

### Section 1.7 Occupant

"Occupant" or "Occupants" mean any Person entitled by Lease, deed or other instrument or arrangement to use and occupy Floor Area, or one or more of them, as the context may require.

### Section 1.8 Parking Area

"Parking Area" means all areas on the Owner's Site which are from time to time set apart to be used for the parking of motor vehicles and all interior roadways, walkways, curbs and landscaping within or adjacent to such areas. Parking Area does not include the Truck Facilities.

### Section 1.9 Permissible Building Area

"Permissible Building Area" means an area designated as such on Exhibit "C" within which a Building will or may be constructed.

### Section 1.10 Permittees

"Permittees" means the Owner, Bank One, and all Occupants, and their respective officers, directors, employees, agents, partners, contractors, customers, visitors, invitees, licensees and concessionaires of Owner, Bank One, and all Occupants having business purposes within the Buildings or on the Bank Site.

### Section 1.11 Person

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

### Section 1.12 Shopping Center

"Shopping Center" means the Owner's Site, excepting therefrom the Natural Area.

### Section 1.13 Truck Facilities

"Truck Facilities" means the following:

- (a) truck docks, open or enclosed, and ramps and approaches thereto; and
- (b) areas constructed for truck loading, unloading, parking or turn-arounds.

## ARTICLE 2

### EASEMENTS

#### Section 2.1 Easements for Use and Access to Common Area

An easement is hereby declared and granted in the Common Area in favor of Permittees for:

(a) ingress to and egress from streets and highways adjacent to or near the Owner's Site, including entrances and exits for vehicular and pedestrian access, over and upon the roadways to be constructed on the Owner's Site;

(b) the passage and the parking of vehicles authorized under this Declaration over and upon said roadways and the Parking Area; and

(c) the passage and accommodation of pedestrians.

Owner hereby reserves the right to eject from the Common Area any Persons who are not Permittees. In addition, Owner reserves the right to close off the Common Area for such reasonable periods of time as may be minimally legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that no unreasonable interference with the operation of or access to the Owner's Site or the Bank Site occurs as a result thereof; and provided further that, if possible, any required closing occur on a non-business day.

(d) The access way area and the termini at 21st Street and the North-South internal access way of the center shown as cross hatched on Exhibit C immediately to the East of Bank One's East way boundary line shall be maintained in said location.

#### Section 2.2 Easement for Bank One Sign

An easement is hereby granted in a portion of the Parking Area located in the Natural Area at an exact location to be agreed upon by Owner and Bank for Bank One to maintain, at its sole cost and expense, a directional sign (of a size to be agreed upon by Owner and Bank) to direct Permittees to the Bank Site.

## ARTICLE 3

### GENERAL COVENANTS

#### Section 3.1 Location of Buildings

No Building shall be erected or expanded except within the Permissible Building Areas shown on Exhibit "C".

#### Section 3.2 Building Elevations and appearance

The elevations/ of the Buildings to be constructed on the Shopping Center shall conform generally to the rendering dated April 11, 1988 prepared by Architectural Associates Ltd. of Wisconsin. Buildings not shown on the renderings and Buildings occupied by national tenants shall be harmonious with those shown on said renderings.

#### Section 3.3 Parking Ratio

Owner shall at all times maintain on the Natural Area and Shopping

Center parking spaces for not less than four (4) full sized American-made cars per one thousand square feet of Floor Area existing on the Natural Area and Shopping Center.

#### Section 3.4 Permitted Uses

(a) The Natural Area shall be used only for offices and upscale restaurants.

(b) The Shopping Center shall be used only for retail sales of goods and services. Bank One hereby releases any other restrictions on the Shopping Center created for its benefit by Agreement dated October 1, 1986 and recorded with the Registrar of Deeds of Racine County as Document No. 1245092.

#### Section 3.5 Limitation on Detrimental Characteristics for Bank Site and for the Owner's Site

No use or operation will be made, conducted or permitted on any part of the Owner's Site which is expressly prohibited pursuant to the terms of this Declaration. Included among the uses or operations which are prohibited because they are so objectionable and would have a detrimental effect upon the general appearance of the Owner's Site are uses or operation which produce or are accompanied by the following characteristics:

(a) Any use or operation which shall present a danger or hazard to the Bank Site or the Owner's Site, or any portion thereof, the Owner, Bank One or Permittees.

(b) Any trade, service, activity or purpose which is excessively noxious or offensive, or may be or become any annoyance or nuisance to the Bank Site or the Owner's Site or any portion thereof by reason of unsightliness or excessive emission of odors, dust, fumes, smoke, liquid waste, noise, glare, vibration or radiation.

#### Section 3.6 General Use Restrictions

(a) No portion of the Owner's Site may be used or occupied for any of the following uses:

- (i) adult entertainment center or book store (which is defined as a center or bookstore a substantial portion of the activities or inventory of which is not available for use by or sale to children under eighteen (18) years of age because it explicitly deals with or depicts human sexuality);
- (ii) undertaking establishment or funeral parlor;
- (iii) massage parlor;
- (iv) theater;
- (v) bowling alley;
- (vi) game room;
- (vii) warehouse (defined for purposes hereof as a facility used for the storage of goods or materials which are sold at a different location or facility);
- (viii) skating rink;
- (ix) nightclub, dance hall, discotheque, bar, tavern, cocktail lounge, or billiard hall;
- (x) fast food restaurant with drive-through facilities;
- (xi) video arcade or amusement gallery;

(xii) off track betting facility; provided, however, that State of Wisconsin lottery sales shall be permitted on the Owners Site.

(xiii) bank, savings and loan, loan company, credit company, credit union, automated teller machines, or check cashing facility; provided, however, that check cashing by Occupants for the convenience of customers only and point of sale terminals shall be permitted on the Owner's Site.

(xiv) automobile or truck service station;

(xv) quick change oil facility;

(xvi) car wash;

(xvii) auction room;

(xviii) wholesale bakery;

(xix) boat showroom, or boat sales or repairs;

(xx) construction material supply house; provided, however, that home improvement centers shall be permitted on the Shopping Center.

(xxi) exterminating shop;

(xxii) farm implement store;

(xxiii) heating and air conditioning showroom;

(xxiv) machinery sales;

(xxv) mobile home sales;

(xxvi) automobile sales (new and used);

(xxvii) pawn shop;

(xxviii) taxidermist;

(xxix) trailer and camper trailer sale;

(xxx) sports facility; provided, however, that dance studios or health clubs shall be permitted in the Shopping Center.

(xxxi) amusement park, miniature golf, pitch and put, or driving range;

(xxxii) commercial recreational facilities such as an archery range, or shooting gallery;

(xxxiii) animal hospital or kennel;

(xxxiv) contractor or construction office or shop;

(xxxv) model home or garage display;

(xxxvi) riding academy or commercial stable;

(xxxvii) drive-in theatre;

(xxxviii) flea market;

(xxxxix) machinery repair, store; provided, however, that repairs ancillary to sale of goods shall be permitted on the Shopping Center.

- (xxxx) rental storage space operation;
- (xxxxi) dwelling units or rooming units;
- (xxxxii) furniture upholstery, refinishing or repair;
- (xxxxiii) commercial laundry, launderette (including dry cleaning machines), or hand laundry;
- (xxxxiv) public utility service uses;
- (xxxxv) radio or tv station and tower;
- (xxxxvi) day care center;
- (xxxxvii) meeting hall;
- (xxxxviii) theatre;
- (ii) bus station or terminal;
- (i) hotel or motel.

(b) No portion of the Natural Area and no portion of the Shopping Center located north of the main access road leading from Highway 31 (as shown on Exhibit C) may be used or occupied for a convenience food store.

(c) No portion of the outlots of the Shopping Center and no portion of the Natural Area may be used or occupied for a tire store. No portion of the shopping center shall be used except for the servicing or repair of motor vehicles as is incidental to the sale of retail goods or services.

(d) No portion of the Natural Area shall be used or operated for the retail or wholesale sale of goods or services.

(e) No promotional activities shall be permitted in the Parking Area between the hours of 9:00 a.m. and 6:00 p.m. Promotional activities includes but is not limited to the use of spot lights, search lights, helium balloons, banners and flags.

(f) There shall be no selling activities conducted outside any building on the Owner's Site except in the areas immediately north of Building N and west of Building A on Exhibit C.

### Section 3.7 Development of Existing Natural Area

Owner agrees to maintain the Natural Area as a park-like setting, except as follows:

(a) Owner shall be permitted to construct Buildings and other improvements in the natural Area substantially as shown on Exhibit "C";

(b) Owner shall be permitted to enlarge the existing pond; and

(c) (i) Owner shall only conduct such construction work and activities in the Natural Area as is necessary for the completion of the Shopping Center. Such work may include construction thereon and the removal of trees if necessary. All such work and activities shall be conducted so as to minimize disturbance, dust, and/or effect on the Natural Area and Bank Site.

(ii) Owner shall not interfere with the business operations of Bank One nor interrupt or adversely effect Bank One's access to its premises.

### Section 3.8 Area West and North of Pond

No improvements shall be constructed or installed in the area north

and west of the pond shown on Exhibit C, which area is denoted on the exhibit by a dotted area.

#### ARTICLE 4

##### OPERATION, MAINTENANCE AND REPAIR - COMMON AREA

###### Section 4.1 Maintenance of Common Area

So long as any Occupant of the Owner's Site is open for business to the public, Owner shall operate, maintain, repair, insure and keep those portions of the Common Area and common Area Improvements which are adequate to serve the portion(s) of the Owner's Site which are open for business in good order, condition and repair to the extent the same are not operated, maintained, repaired and kept in good order by public bodies, authorities or utility providers. Anything herein to the contrary notwithstanding, Owner shall have the perpetual obligation to operate and maintain in good order, condition and repair that portion of the Common Area shown by cross hatching on Exhibit C.

###### Section 4.2 Illumination of Common Area

So long as any Occupant of the Owner's Site or the Bank Site is open for business, during all hours of darkness until 10:45 p.m., Owner shall keep lighted those portions of the Common Area which are reasonably used by Occupants who are then open for business.

If at any time or from time to time the Occupant of a business on the Owner's Site or if Bank One desires to have any portion of the Common Area lighted during hours when it is not otherwise lighted pursuant to the terms of this Declaration, that Occupant or Bank One shall so notify the Owner and the Owner shall comply with the request of the Occupant or Bank One desiring such lighting, provided that all costs of such lighting shall be borne solely by the party requesting it or, if more than one party requests such lighting at the same time, the cost thereof, shall be equitably apportioned between the parties so requesting such lighting.

#### ARTICLE 5

##### AMENDMENT

This Declaration may be amended or otherwise modified by a writing signed and acknowledged by the Owner acting on its own behalf and on behalf of all Occupants of the Owner's Site and by Bank One.

In furtherance of Owner's right to act on behalf of all Occupants of the Owner's Site, a power coupled with an interest is hereby reserved and granted to the Owner to consent to any amendment to or modification of this Declaration on behalf of each Occupant of the Owner's Site as proxy or attorney in fact. Each deed or lease affecting Floor Area on the Owner's Site, and the acceptance thereof, shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Owner to make, execute and record amendments to or modifications of this Declaration.

#### ARTICLE 6

##### EXPIRATION DATE

Except as otherwise provided in this Declaration, so long as the Bank Site is operated as a Financial Services Institution, this Declaration shall continue in force and effect; provided if an earlier date for expiration is required in order that this Declaration will not be invalidated or be subject to invalidation by reason of a limitation imposed by law on the duration hereof, this Declaration shall terminate on that earlier date. The easements described in Article 2.1 shall

survive any termination however, and are agreed to be for the duration of the time period the Owner's Site is utilized for retail or business purposes. Notwithstanding all of the foregoing, the easement area shown and denoted on Exhibit C as "Perpetual Easement Area" is agreed to be perpetual in duration.

## ARTICLE 7

### MISCELLANEOUS

#### Section 7.1 Exhibits

Each reference herein to an Exhibit refers to the applicable Exhibit that is attached to this Declaration. All such Exhibits constitute a part of this Declaration and by this Section are expressly made a part hereof.

#### Section 7.2 Captions

The captions of this Declaration are inserted only as a matter of convenience and for reference. They do not define, limit or describe the scope or intent of this Declaration and they shall not affect the interpretation hereof.

#### Section 7.3 Locative Adverbs

The locative adverbs "herein", "hereunder", "hereto", "hereby", "hereinafter", etc., and like words, whenever the same appear herein, mean and refer to this Declaration in its entirety and not to any specific Article, Section or Subsection hereof unless the context expressly provides otherwise.

#### Section 7.4 Governing Law

This Declaration shall be construed and governed in accordance with the laws of Wisconsin, where the Shopping Center Site is located.

#### Section 7.5 Covenants Run With the Land

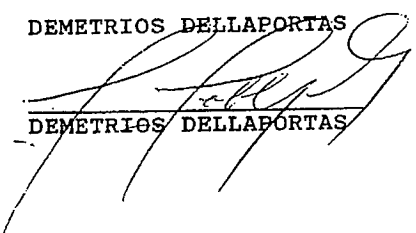
It is intended that the covenants, easements, agreements, promises and duties of each Occupant set forth in this Declaration shall be construed as covenants and not as conditions and that, to the fullest extent legally possible, all such covenants shall run with the land.

#### Section 7.6 Binding Effect of Declaration

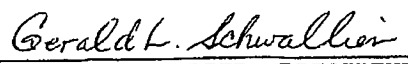
This Declaration shall inure to the benefit of and shall be binding upon the parties hereto, their successors and assigns. In the event either party hereto shall sell, convey, transfer or otherwise dispose of (hereinafter "transfer") all or any part of its interest in its respective site (other than by way of mortgage, trust deed or other instrument for financing purposes) and the party to whom the interest is sold, conveyed or transferred shall assume the transferor's obligations under this Declaration, then the transferring party shall be released of any liability for any of its obligations under this Declaration to the extent of the interest transferred from and after the date of the transfer.

IN WITNESS WHEREOF, each of the parties hereto has caused its duly authorized officers to sign and seal this Declaration as of the date first above written.

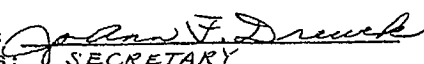
DEMETRIOS DELLAPORTAS

  
DEMETRIOS DELLAPORTAS

BANK ONE, RACINE, N.A.

  
GERALD SCHWALLIER, PRESIDENT  
BANK ONE, RACINE, N.A.

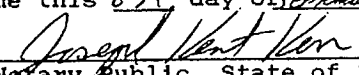
ATTEST:

By:   
Its: SECRETARY

STATE OF ILLINOIS     )  
                                  )SS  
COUNTY OF COOK        )

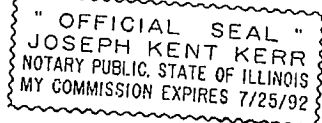
This instrument was acknowledged  
before me on September 6, 1988 by  
Demetrios Dellaportas.

Subscribed and sworn to before  
me this 6<sup>th</sup> day of Sept, 1988.

  
Notary Public, State of ILLINOIS  
My commission expires: 7/25/92

This instrument prepared by:

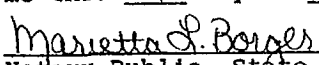
J. Kent Kerr  
Attorney at Law  
415 N. LaSalle Street  
Suite 700  
Chicago, Illinois 60610



STATE OF Wisconsin     )  
                                  )SS  
COUNTY OF Racine        )

This instrument was acknowledged  
before me on September 7, 1988 by  
Gerald Schwallier as President  
of Bank One, Racine, N.A.

Subscribed and sworn to before  
me this 7 day of Sept, 1988.

  
Notary Public, State of Wisconsin  
My commission expires: 07-08-90

B8K72

That part of the West 1/2 of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin bounded as follows: Begin at a point on the East-West 1/4 line of said Section 24 located N 89°08'05" W 326.13 feet from a cast iron monument with a brass cap marking the center of said Section 24; run thence S 00°08'19" E 733.22 feet to a 1" diameter iron pipe stake; thence S 89°51'41" W 200.00 feet to a 1" diameter iron pipe stake; thence S 00°08'19" E 400.00 feet; thence S 89°51'41" W 1361.00 feet to the Easterly line of S.T.H. # "31"; thence N 11°49'57" E 591.07 feet on the Easterly line of said highway to a 1" diameter iron pipe stake; thence N 12°21'20" E 70.57 feet on the Easterly line of said highway to a 1" diameter iron pipe stake marking the point of curvature of a curve of Northwesterly convexity whose radius is 16310.22 feet and whose chord bears N 15°04'53" E 671.12 feet; thence Northeasterly 671.17 feet on the arc of said curve and the Easterly line of Highway "31" to a 1" diameter iron pipe stake on the South line of 21st Street; thence N 88°27'33" E 694.81 feet on the South line of 21st Street to a 1" diameter iron pipe stake marking the point of curvature of a curve of Northwesterly convexity whose radius is 1333.69 feet and whose chord bears S 79°22'21" E 562.24 feet; thence Southeasterly 566.49 feet on the arc of said curve and the South line of 21st Street to a 1" diameter iron pipe stake; thence S 00°08'19" E 73.45 feet to the point of beginning. EXCEPTING THEREFROM Certified Survey Maps Nos. 1169 and 1276.

## ALSO:

A 17.5 foot wide strip of land located in the Northwest 1/4 and the Southwest 1/4 of Section 24, Township 3 North, Range 22 East, Racine County, Wisconsin and described as follows: Begin at the Northeast corner of Certified Survey Map No. 1169; thence S 1°32'27" E, along the East line of said C.S.M. No. 1169, 230.00 feet to an iron pipe and the North line of Certified Survey Map No. 1276; thence along the boundary of said C.S.M. No. 1276, along the arc of a curve to the left, radius 30.00 feet, whose chord bears S 46°32'27" E 42.43 feet, 47.12 feet to an iron pipe; thence N 88°27'33" E, along said boundary, 10.00 feet to an iron pipe; thence S 18°07'00" W, along said boundary, 18.58 feet; thence S 88°27'33" W 3.75 feet; thence along the arc of a curve to the left, radius 47.50 feet, whose chord bears N 46°32'27" W 67.18 feet, 74.61 feet to the South line of Certified Survey Map No. 1169; thence N 1°32'27" W 230.00 feet to the North line of said C.S.M. No. 1169, which is also the South line of 21st Street; thence N 88°27'33" E 17.50 feet to the point of beginning.

Tax Parcel No. 23876-17

Pt 23876-038

Pt 23876-039

EXHIBIT "B"

Lot 1 of Certified Survey Map No. 1276, recorded in the office of the Register of Deeds for Racine County, Wisconsin on November 9, 1987 in Volume 4 of Certified Survey Maps, page 36, as Document No. 1243887, being part of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East. Said land being in the City of Racine, Racine County, Wisconsin.

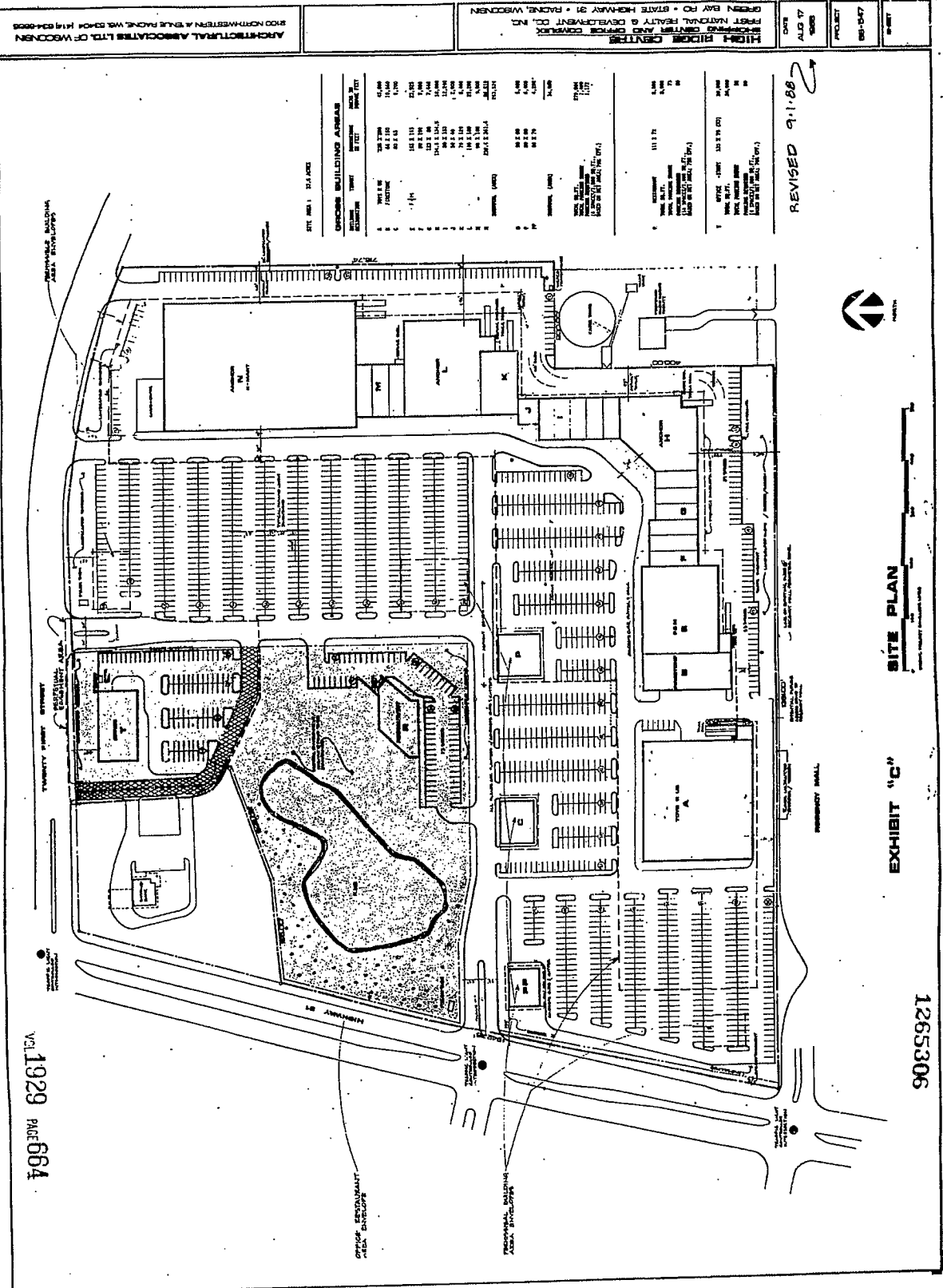
AND

Lot 1 of Certified Survey Map No. 1169, recorded in the office of the Register of Deeds for Racine County, Wisconsin on September 30, 1986 in Volume 3 of Certified Survey Maps, pages 426-428, as Document No. 1207187, being part of the Southwest 1/4 and the Northwest 1/4 of Section 24, Town 3 North, Range 22 East. Said land being in the City of Racine, Racine County, Wisconsin.

EXCEPTING THEREFROM THE FOLLOWING:

A 17.5 foot wide strip of land located in the Northwest 1/4 and the Southwest 1/4 of Section 24, Township 3 North, Range 22 East, Racine County, Wisconsin and described as follows: Begin at the Northeast corner of Certified Survey Map No. 1169; thence S 1°32'27" E, along the East line of said C.S.M. No. 1169, 230.00 feet to an iron pipe and the North line of Certified Survey Map No. 1276; thence along the boundary of said C.S.M. No. 1276, along the arc of a curve to the left, radius 30.00 feet, whose chord bears S 46°32'27" E 42.43 feet, 47.12 feet to an iron pipe; thence N 88°27'33" E, along said boundary, 10.00 feet to an iron pipe; thence S 18°07'00" W, along said boundary, 18.58 feet; thence S 88°27'33" W 3.75 feet; thence along the arc of a curve to the left, radius 47.50 feet, whose chord bears N 46°32'27" W 67.18 feet, 74.61 feet to the South line of Certified Survey Map No. 1169; thence N 1°32'27" W 230.00 feet to the North line of said C.S.M. No. 1169, which is also the South line of 21st Street; thence N 88°27'33" E 17.50 feet to the point of beginning.

Key No. 23876-38 and 23876-39



1308183

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ADDENDUM TO DECLARATION OF EASEMENTS  
AND RESTRICTIONS

*Helen M. Schuttler*  
REGISTER OF DEEDS  
Racine County, Wisconsin

WHEREAS, Demetrios Dellaportas is the owner of certain real estate situated in the City of Racine, County of Racine, State of Wisconsin, more particularly described in Exhibit 1 attached hereto.

WHEREAS, Bank One, Racine, N.A., is the owner of certain real estate situated in the City of Racine, County of Racine, State of Wisconsin, more particularly described in Exhibit 2 attached hereto.

WHEREAS, Demetrios Dellaportas and Bank One, Racine, N.A., entered into a Declaration of Easements and Restrictions regarding their respective properties on September 6, 1988. That Declaration of Easements and Restrictions has been recorded in the Racine County Register of Deeds' office in Records, Volume 1929, pages 653-664, Document number 1265306.

WHEREAS, Demetrios Dellaportas as "Owner" under the Declaration of Easements and Restrictions of September 6, 1988, wishes to construct a Toys-R-Us retail store in the southwest portion of Owner's Site, but that a portion of the building will fall outside the "permissible building

Register's Office  
Racine County, Wis. } SS

Received for Record 19th day of  
April A.D. 19 90 at 2:11  
o'clock P.M. and recorded in Volume 2510  
of Records on page 126-132

*Ret: Capwell, Benthall*

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MAY 2010 PAGE 126

*Helen M. Schuttler*  
Register of Deeds

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area" as defined in Section 1.9 and Exhibit "C" of the Declaration of Easements and Restrictions. The revised location of the Toys-R-Us store is shown on a site plan prepared by Jensen & Fore, Architects, dated October 26, 1989, which is attached to this Addendum as Exhibit 3.

WHEREAS, Bank One, Racine, N.A., wishes to provide its consent to Demetrios Dellaportas, as owner, to construct the Toys-R-Us retail store as shown on Exhibit 3, but does not wish to waive any other rights it has in the Declaration of Easements and Restrictions of September 6, 1988.

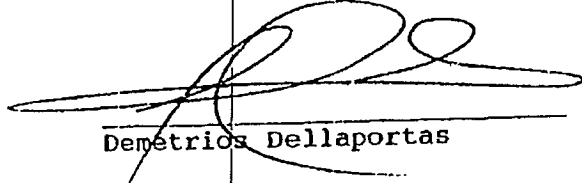
NOW, THEREFORE, IT IS MUTUALLY AGREED:

1. Bank One, Racine, N.A., on behalf of itself, and on behalf of its successor and assigns, hereby consents to the construction of Toys-R-Us retail store as shown on Exhibit 3, and to the extent that the location as shown on Exhibit 3 falls outside the "permissible building area" as defined in Section 1.9 and Exhibit "C" of the Declaration of Easements and Restrictions of September 6, 1988, and to the extent that the location of the Toys-R-Us retail store as shown on Exhibit 1 is contrary to Section 3.1 of the Declaration of Easements and Restrictions, Bank One, Racine, N.A., on behalf of itself and its successors and assigns, waives any rights it may have to the location of the Toys-R-Us retail store.

2. Bank One, Racine, N.A., hereby reserves all other rights it has under the Declaration of Easements and

Restrictions of September 6, 1988, and to the extent that paragraph 1 of this Addendum constitutes a waiver of rights, it is expressly agreed and understood by the parties to this Addendum that such waiver is made on a one time only basis, and is limited solely to the extent set forth in paragraph 1 of this Addendum, and this waiver shall not in any way be construed as conveying to owner or the successors and assigns of owner any right to similar waivers in the future.

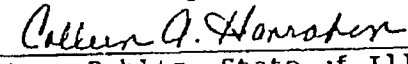
IN WITNESS WHEREOF, each of the parties hereto has caused its duly authorized officers to sign and seal this Addendum as of APRIL 2, 1990.

  
Demetrios Dellaportas

STATE OF ILLINOIS )  
                          ) SS.  
COOK COUNTY         )

Personally came before me this 2ND day of APRIL, 1990, the above named Demetrios Dellaportas, to me known to be such person who executed the foregoing instrument and acknowledged the same.

Subscribed and sworn to before  
me this 2ND day of APRIL, 1990.

  
Notary Public, State of Illinois  
My Commission Expires 9-23-92

" OFFICIAL SEAL "  
COLLEEN A. HANRAHAN  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 9/23/92



That part of the West 1/2 of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin bounded as follows: Begin at a point on the East-West 1/4 line of said Section 24 located N 89°08'05" W 326.13 feet from a cast iron monument with a brass cap marking the center of said Section 24; run thence S 00°03'19" E 733.22 feet to a 1" diameter iron pipe stake; thence S 89°51'41" W 200.00 feet to a 1" diameter iron pipe stake; thence S 00°08'19" E 400.00 feet; thence S 89°51'41" W 1361.00 feet to the Easterly line of S.T.H. # "31"; thence N 11°49'57" E 591.07 feet on the Easterly line of said highway to a 1" diameter iron pipe stake; thence N 12°21'20" E 70.57 feet on the Easterly line of said highway to a 1" diameter iron pipe stake marking the point of curvature of a curve of Northwesterly convexity whose radius is 16310.22 feet and whose chord bears N 15°04'53" E 671.12 feet; thence Northeasterly 671.17 feet on the arc of said curve and the Easterly line of Highway "31" to a 1" diameter iron pipe stake on the South line of 21st Street; thence N 88°27'33" E 694.81 feet on the South line of 21st Street to a 1" diameter iron pipe stake marking the point of curvature of a curve of Northwesterly convexity whose radius is 1333.59 feet and whose chord bears S 79°22'21" E 562.24 feet; thence Southeasterly 566.49 feet on the arc of said curve and the South line of 21st Street to a 1" diameter iron pipe stake; thence S 00°08'19" E 73.45 feet to the point of beginning. EXCEPTING THEREFROM Certified Survey Maps Nos. 1169 and 1276.

ALSO:

A 17.5 foot wide strip of land located in the Northwest 1/4 and the Southwest 1/4 of Section 24, Township 3 North, Range 22 East, Racine County, Wisconsin and described as follows: Begin at the Northeast corner of Certified Survey Map No. 1169; thence S 1°32'27" E, along the East line of said C.S.M. No. 1169, 230.00 feet to an iron pipe and the North line of Certified Survey Map No. 1276; thence along the boundary of said C.S.M. No. 1276, along the arc of a curve to the left, radius 30.00 feet, whose chord bears S 46°32'27" E 42.43 feet, 47.12 feet to an iron pipe; thence N 88°27'33" E, along said boundary, 10.00 feet to an iron pipe; thence S 16°07'00" W, along said boundary, 18.56 feet; thence S 88°27'33" W 3.75 feet; thence along the arc of a curve to the left, radius 47.50 feet, whose chord bears N 46°32'27" W 67.18 feet, 74.61 feet to the South line of Certified Survey Map No. 1169; thence N 1°32'27" E 230.00 feet to the North line of said C.S.M. No. 1169, which is also the South line of 21st Street; thence N 88°27'33" E 17.50 feet to the point of beginning.

Tax Parcel No. 23876-17

EXHIBIT 1

REV 2010 PAGE 130

Lot 1 of Certified Survey Map No. 1276, recorded in the office of the Register of Deeds for Racine County, Wisconsin on November 9, 1967 in Volume 4 of Certified Survey Maps, page 35, as Document No. 1243867, being part of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East. Said land being in the City of Racine, Racine County, Wisconsin.

AND

Lot 1 of Certified Survey Map No. 1169, recorded in the office of the Register of Deeds for Racine County, Wisconsin on September 30, 1986 in Volume 3 of Certified Survey Maps, pages 426-429, as Document No. 1207167, being part of the Southwest 1/4 and the Northwest 1/4 of Section 24, Town 3 North, Range 22 East. Said land being in the City of Racine, Racine County, Wisconsin.

EXCEPTING THEREFROM THE FOLLOWING:

A 17.5 foot wide strip of land located in the Northwest 1/4 and the Southwest 1/4 of Section 24, Township 3 North, Range 22 East, Racine County, Wisconsin and described as follows: Begin at the Northeast corner of Certified Survey Map No. 1169; thence S 1°32'27" E, along the East line of said C.S.M. No. 1169, 230.00 feet to an iron pipe and the North line of Certified Survey Map No. 1276; thence along the boundary of said C.S.M. No. 1276, along the arc of a curve to the left, radius 30.00 feet, whose chord bears S 46°32'27" E 42.43 feet, 47.12 feet to an iron pipe; thence N 88°27'33" E, along said boundary, 10.00 feet to an iron pipe; thence S 18°07'00" W, along said boundary, 18.58 feet; thence S 88°27'33" W 3.75 feet; thence along the arc of a curve to the left, radius 47.50 feet, whose chord bears N 46°32'27" W 67.18 feet, 74.61 feet to the South line of Certified Survey Map No. 1169; thence N 1°32'27" W 230.00 feet to the North line of said C.S.M. No. 1169, which is also the South line of 21st Street; thence N 88°27'33" E 17.50 feet to the point of beginning.

Key No. 23676-38 and 23676-39

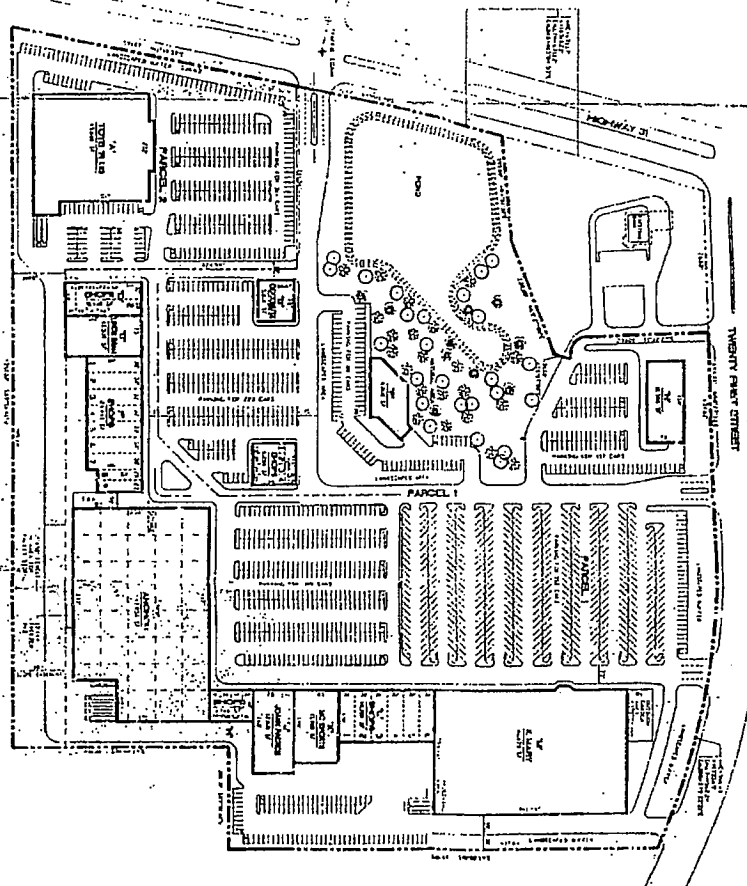
VOL 2010 PAGE 131

EXHIBIT 2



# SITE PLAN

SCALE: 1" = 100'-0"



## SITE ANALYSIS:

|                    |            |
|--------------------|------------|
| <b>SITE</b>        |            |
| PARCEL 1 (ACRES)   | 1.25       |
| PARCEL 2 (ACRES)   | 1.25       |
| TOTAL (ACRES)      | 2.50       |
| <b>BUILDING</b>    |            |
| PARCEL 1           | 10,000 SF  |
| PARCEL 2           | 10,000 SF  |
| TOTAL              | 20,000 SF  |
| <b>PARKING</b>     |            |
| PARCEL 1           | 100 SPACES |
| PARCEL 2           | 100 SPACES |
| TOTAL              | 200 SPACES |
| <b>LANDSCAPING</b> |            |
| PARCEL 1           | 10,000 SF  |
| PARCEL 2           | 10,000 SF  |
| TOTAL              | 20,000 SF  |
| <b>WALKWAYS</b>    |            |
| PARCEL 1           | 100 LF     |
| PARCEL 2           | 100 LF     |
| TOTAL              | 200 LF     |
| <b>DRIVEWAYS</b>   |            |
| PARCEL 1           | 100 LF     |
| PARCEL 2           | 100 LF     |
| TOTAL              | 200 LF     |

11/20/2012

1343367

AMENDMENT TO DECLARATION  
OF EASEMENTS AND RESTRICTIONS

This is an Amendment to the Declaration of Easements and Restriction entered into on September 6, 1988, between Demetrios Dellaportas (hereinafter referred to as "Owner") and Bank One, Racine, N.A. (hereinafter referred to as "Bank One"), and recorded on September 7, 1988 in Volume 1929 of Records, Racine County Register of Deeds, as Document No. 1265306, Pages 653-664.

Article 3, Section 3.6, General Use Restrictions (c), is hereby amended to read as follows:

No portion of the outlots of the Shopping Center and no portion of the Natural Area may be used or occupied for a tire store. No portion of the Shopping Center shall be used for the servicing or repair of motor vehicles except as is incidental to the sale of retail goods or services.

As amended, the Declaration of Easements and Restrictions shall continue in full force and effect and shall remain binding upon the parties hereto, their successors and assigns.

Register's Office  
Racine County, Wis } SS  
Received for Record 20th day of  
June A.D. 19 91 at 8:29  
o'clock A.M. and recorded in Volume 2077  
of Records on page 748-752

*Helen M. Schuttin*  
Register of Deeds

- 1 -

VOL 2077 PAGE 748

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6.25 16.80

4264 06 26

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IN WITNESS WHEREOF, each party hereto has caused its duly authorized officers to sign and seal this Amendment to Declaration of Easements and Restrictions on this 18 day of June, 1991.

BANK ONE, RACINE, N.A.

By Gerald L. Schwallier  
Gerald Schwallier, President,  
Bank One, Racine, N.A.

ATTEST:

By [Signature]  
Its: Senior Vice President

STATE OF WISCONSIN    )  
                              ) SS  
COUNTY OF RACINE    )

This instrument was acknowledged before me on 18 June 1991 by Gerald Schwallier, as president of Bank One, Racine, N.A.

Subscribed and sworn to before me on this 18 day of June, 1991.

[Signature]  
Notary Public,  
State of Wisconsin  
My Commission expires: 4-9-95

Security Bank of Kansas City

By H.R. Hook

\*\* W. R. Hook

Its: Chairman and Chief Executive Officer

ATTEST:

By Carol L. Sprague

\*\* Carol L. Sprague

Its: Corporate Secretary

STATE OF Kansas )  
 ) SS  
COUNTY OF Wyandotte )

This Instrument was acknowledged before me on June 25, 1991 by  
W. R. Hook and Carol L. Sprague.

Subscribed and sworn to before  
me on this 25 day of June, 1991.

Susan M. Egnatic  
Notary Public, Susan M. Egnatic  
State of Kansas  
My Commission expires: 7-17-91



This Instrument drafted by:  
Carol L. Sprague  
Capwell and Berthelsen  
601 Lake Avenue  
Racine, WI 53403  
(414) 637-1266

Parcel 1:

That part of the West 1/2 of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin, including part of Certified Survey Map No. 1169 and part of Certified Survey Map No. 1276, bounded as follows: Begin at a point on the East-West 1/4 line of said Section 24 located N 89° 08' 05" W 326.13 feet from a brass-capped iron monument marking the center of said Section 24; run thence S 0° 08' 19" E 733.22 feet to an iron pipe; thence S 89° 51' 41" W 200.00 feet to an iron pipe; thence S 0° 08' 19" E 400.00 feet; thence S 89° 51' 41" W 652.51 feet to an iron rod marking the southeast corner of Certified Survey Map No. 1395; thence N 0° 08' 19" W, along the easterly boundary of said C.S.M. No. 1395, 323.00 feet to an iron rod; thence S 89° 51' 41" W, along the northerly boundary of said C.S.M. No. 1395, 640.00 feet to an iron rod on the easterly line of S.T.H. "31"; thence N 11° 49' 57" E, along the easterly line of said highway, 260.89 feet to an iron pipe; thence N 12° 21' 20" E, along the easterly line of said highway, 70.57 feet to an iron pipe; thence continue along the easterly line of said highway 280.15 feet along the arc of a curve concave easterly whose radius is 16310.22 feet and whose chord bears N 14° 23' 41" E 280.15 feet to an iron pipe marking the southwesterly corner of Certified Survey Map No. 1276; thence N 84° 51' 00" E, along the southerly boundary of said C.S.M. No. 1276, 195.00 feet to an iron pipe; thence N 69° 29' 00" E, along the southerly boundary of said C.S.M. No. 1276, 222.08 feet to an iron pipe; thence N 18° 07' 00" E, along the easterly boundary of said C.S.M. No. 1276, 12.42 feet; thence S 88° 27' 33" W 3.75 feet; thence 74.61 feet along the arc of a curve concave northeasterly whose radius is 47.50 feet and whose chord bears N 46° 32' 27" W 67.18 feet to the north line of said C.S.M. No. 1276, which is also the south line of Certified Survey Map No. 1169; thence N 1° 32' 27" W 230.00 feet to the north line of said C.S.M. No. 1169, which is also the south line of 21st Street; thence N 88° 27' 33" E, along the south line of 21st Street, 452.31 feet to an iron pipe; thence continue along the south line of 21st Street 566.49 feet along the arc of a curve concave southerly whose radius is 1333.69 feet and whose chord bears S 79° 22' 21" E 562.24 feet to an iron pipe; thence S 0° 08' 19" E 73.45 feet to the point of beginning.

Parcel 2:

Lot 1, Certified Survey Map No. 1395, recorded in the office of the Register of Deeds for Racine County, Wisconsin on February 20, 1989 in Volume 4 of Certified Survey Maps on pages 351-352 as Document No. 1276690, located in the North 1/2 of the Southwest 1/4 of Section 24, Township 3 North, Range 22 East. Said land being in the City of Racine, Racine County, Wisconsin.

Tax Parcel No. 23876-17 & 23876-40

Lot 1 of Certified Survey Map No. 1276, recorded in the office of the Register of Deeds for Racine County, Wisconsin on November 4, 1987 in Volume 4 of Certified Survey Maps, page 36, as Document No. 1243887, being part of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East. Said land being in the City of Racine, Racine County, Wisconsin.

AND

Lot 1 of Certified Survey Map No. 1169, recorded in the office of the Register of Deeds for Racine County, Wisconsin on September 30, 1986 in Volume 3 of Certified Survey Maps, pages 426-428, as Document No. 1207187, being part of the Southwest 1/4 and the Northwest 1/4 of Section 24, Town 3 North, Range 22 East. Said land being in the City of Racine, Racine County, Wisconsin.

EXCEPTING THEREFROM THE FOLLOWING:

A 17.5 foot wide strip of land located in the Northwest 1/4 and the Southwest 1/4 of Section 24, Township 3 North, Range 22 East, Racine County, Wisconsin and described as follows: Begin at the Northeast corner of Certified Survey Map No. 1169; thence S 1°32'27" E, along the East line of said C.S.M. No. 1169, 230.00 feet to an iron pipe and the North line of Certified Survey Map No. 1276; thence along the boundary of said C.S.M. No. 1276, along the arc of a curve to the left, radius 30.00 feet, whose chord bears S 46°32'27" E 42.43 feet, 47.12 feet to an iron pipe; thence N 88°27'33" E, along said boundary, 10.00 feet to an iron pipe; thence S 18°07'00" W, along said boundary, 18.58 feet; thence S 88°27'33" W 3.75 feet; thence along the arc of a curve to the left, radius 47.50 feet, whose chord bears N 46°32'27" W 67.18 feet, 74.61 feet to the South line of Certified Survey Map No. 1169; thence N 1°32'27" W 230.00 feet to the North line of said C.S.M. No. 1169, which is also the South line of 21st Street; thence N 88°27'33" E 17.50 feet to the point of beginning.

Key No. 23876-38 and ~~23876-39~~

This instrument was prepared  
by and after recording should  
be returned to:

Andrew J. Annes, Esquire  
Schenk, Annes, Brookman & Tepper, Ltd.  
311 South Wacker Drive, Suite 5125  
Chicago, IL 60606-6622

RECORDED \_\_\_\_\_

2000 FEB -2 PM 4:42

MARK A. LADD  
REGISTER OF DEEDSVUL  
PAGE  
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28'

# 23876-44

### FIRST AMENDMENT TO DECLARATION OF EASEMENTS AND RESTRICTIONS

THIS FIRST AMENDMENT TO THE DECLARATION OF EASEMENTS AND RESTRICTIONS ("Amendment") is made and entered into as of the 3 day of December, 1999, between the California State Teachers' Retirement System, a public entity, ("Owner"), Bank One, Racine, N.A. ("Bank One") and Triple H LLP, a Wisconsin limited liability partnership ("Triple H").

#### Recitals

A. Owner is the owner in fee simple of certain real estate situated in the City of Racine, County of Racine, State of Wisconsin, more particularly described in Exhibit "A" attached hereto (hereinafter referred to as the "Owner's Site").

B. Bank One is the owner in fee simple of certain real estate situated in the City of Racine, County of Racine, State of Wisconsin, more particularly described in Exhibit "B" attached hereto (hereinafter referred to as the "Bank Site") which adjoins the Owner's Site.

C. A shopping center has been developed on a portion of the Owner's Site.

D. The Bank Site is improved with a banking facility, and a vacant lot to the South.

E. To facilitate the development of their respective sites and to create certain rights, privileges and easements, and to impose certain restrictions and covenants, Owner (by its predecessor in interest, Demetrios Dellaportas and Bank One have entered into a Declaration of Easements and Restrictions dated September 7, 1988 (the "Declaration").

F. Owner intends to sell to Triple H certain real estate situated in the City of Racine, County of Racine, State of Wisconsin more particularly described in Exhibit "C" attached hereto (hereinafter referred to as the "Outparcel") which Outparcel is a part of the Owner's Site.

G. Owner, Bank One and Triple H have now agreed to modify said Declaration and allow Triple H to become a party to the Declaration as hereinafter provided.

NOW, THEREFORE, in consideration of the premises, the covenants and agreements hereinafter set forth and in furtherance of the Parties' understanding, it is agreed as follows:

1. As of the effective date of this Amendment, Triple H shall be a party to the Declaration. As of the effective date of this Amendment, any and all references to the "Owner's Site" shall be deemed to include, in the aggregate the Owner's Site exclusive of the Outparcel. As to the Outparcel, and in addition to any other obligation of Triple H as set forth in this Amendment, Triple H, for its successors and assigns, hereby assumes all obligations and burdens of the Owner with respect to the Owner's Site as set forth in the Declaration and, as of the effective date of this Amendment all obligations and burdens of Owner as to the Owner's Site shall be deemed to relate to the Owner's Site exclusive of the Outparcel.

2. Section 3.2 shall be, and the same hereby is, amended by adding the following additional language:

"Improvements to the Outparcel. The Parties acknowledge that there exists an architecturally compatible theme for the exterior of all Buildings to be constructed, placed or located the Owner's Site, the Bank One Site and the Outparcel and a parking and access scheme that meets governmental and contractual obligations of the parties. In order to insure compliance with such theme and compliance with existing obligations, Triple H shall submit to Owner detailed plans ("Plans") covering any additions, remodeling, reconstruction or other alteration which change the exterior thereof of any Building or improvements hereafter erected on the Outparcel; or which change the configuration, parking, ingress, egress or traffic flow on, onto, or over the common areas of the Outparcel for approval prior to the commencement of any such work. Upon the issuance of any disapproval or recommendation for change, Triple H and Owner shall mutually consult to establish approved Plans for the proposed work. Owner shall not arbitrarily or unreasonably withhold approval of the Plans or recommend changes in the Plans which otherwise conform with the requirements hereof, nor shall they withhold approval of exterior remodeling or exterior reconstruction which does not either substantially enlarge an existing structure, or substantially change an existing structure or common areas of the Outparcel. Approval of Plans by Owner shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with applicable laws. No material deviation shall be made from the approved Plans. In addition, the following restrictions shall apply to the Outparcel:

- (a) any and all building restrictions contained in the Declaration shall apply;
- (b) promptly after the effective date of this Amendment, Triple H shall complete the construction of a new building on the Outparcel, containing no more than \_\_\_\_\_ square feet and substantially in conformity with

plans and specifications of Daniel R. Ferraro, dated 9/23/1999. All construction and improvements shall be completed in a good and workmanlike manner and in compliance with all applicable governmental rules, regulations and ordinances;

- (c) no storage of merchandise or other personality shall be permitted outside of the building on the Outparcel except for trash storage and/or removal facilities and equipment in areas approved by Owner;
- (d) no signs or banner of any type shall be permitted in the Outparcel unless approved by Owner separately or as part of the plans and specifications mentioned above. Approval of signs shall not be unreasonably withheld;
- (e) all heating and air conditioning equipment shall be screened from ground view;
- (f) no parking or storage of automobiles, trailers or similar equipment shall be permitted on the Outparcel for a period in excess of twenty-four (24) hours;
- (g) Triple H will erect and maintain proper barricades to prevent unauthorized vehicular and pedestrian traffic from entering its construction site;
- (h) all construction materials must be contained on the Outparcel;
- (i) no structure (including signs) shall exceed thirty (30) feet in height above adjacent grade (excluding roof mounted HVAC units and related screening, which shall not exceed five (5) feet in height); and
- (j) all construction on the Outparcel shall be compatible with the construction on the Owner's Site.
- (k) At no time during construction of the restaurant shall construction equipment and materials, construction vehicles, and the personal vehicles used by workers engaged in construction, block or interfere with access to and from the Owner's Site or adjacent sites.
- (l) There shall be space for stacking of not less than three (3) automobiles for each drive-up unit.

In the event of any damage or destruction to the improvements located on the Outparcel, Triple H shall either promptly repair or restore the improvements to the condition which existed prior to the damage or destruction or in the alternative raze and remove such improvements and landscape the Outparcel in a first-class manner."

3. Section 3.4 shall be, and the same hereby is, amended by adding the following additional language:

"(b) In addition to any other use permitted hereunder, and notwithstanding any other provision in the Declaration to the contrary, Triple H, and its successors and assigns, may use the Outparcel for an upscale, first class restaurant, or a restaurant substantially similar in format and style to restaurants as operated, as of the effective date of the Amendment, as *Culvers* restaurants ("Culvers' Style Restaurants"). In addition, and only in the event the Outparcel is utilized for either a Culvers' Style Restaurants or a first class, upscale restaurant, such use may include a single drive through window and lane."

4. Bank One and Owner, for themselves and their respective successors and assigns, subject to the provisions of paragraph 3 hereof, hereby waive and release for Triple H and its successors and assigns, the restrictions contained in section 3.6 (a)(x) of the Declaration.

5. In addition to the provisions of the Declaration, the following additional provisions shall apply to the Outparcel:

- (a) Operation Expenses. For and in consideration of the agreements contained herein, the grant of easements, and the obligations undertaken by Owner, Triple H shall pay to Owner in equal monthly installments on or before the first day of each month, without demand, deduction, or set off, an annual fee equal to \$2,000.00, subject to adjustment as herein provided. Commencing with the first full month after the first anniversary of this Amendment, and each anniversary thereafter for the term of this Amendment, the annual fee shall be increased by the lesser of 5% of the annual fee for the immediate proceeding year or the percentage change in the Price Index during the immediately preceding year. The Price Index shall be defined as the U.S. City Average Consumer Price Index for All Urban Consumers (CPI-U) issued by the Bureau of Labor Statistics of the United States Department of Labor. If at any time said Consumer Price Index is no longer issued then the term "Price Index" shall mean an index selected by comparable to said Consumer Price Index.
- (b) Signage. Owner may erect and maintain upon the Owner's Site such suitable signs as, in its sole discretion, it may deem appropriate to advertise the Shopping Center. In addition, Owner shall have the right, permission and license to install at its sole cost and expense one pylon sign on the Outparcel in accordance with applicable zoning ordinance and such design and specifications as Owner, in its sole discretion, deems appropriate, provided such signage does not materially or adversely affect Triple H's use of the Outparcel or visibility of its signage on the Outparcel. Provided such signage does not prevent governmental approval of the Owner proposed pylon sign, during the term of the Declaration, Triple H shall have the right, permission and license to install at its sole cost and expense on the Outparcel such pylon signs as may be permitted by applicable zoning ordinance. It is further agreed that Owner and Triple H shall each bear the total cost of the installation and maintenance of its signage identified in this paragraph, and each hereby further agrees to maintain its sign(s) during the term of the

Declaration in the same or better condition as of the date such sign(s) are originally installed. It is further agreed that Owner and Triple H shall each pay the additional costs or charges to landscape or for landscape changes resulting from the installation of its sign(s) and to pay any other charges for changes to the property resulting from signage installation. Owner and Triple H shall each pay their proportionate share of charges for utilities used for such signs as reasonably determined by Owner if, and in the event such services are shared. Triple H may not erect any such signs anywhere on the Owner's Site or on the Outparcel except as hereinbelow provided. Triple H further agrees to keep insured and to maintain any such signs, in good condition, operating order and repair at all times. If any damage is done to Triple H's signs, Triple H shall commence to repair same within five (5) days or Owner may at its option repair same at Triple H's expense. All signs of Triple H visible from the common areas of the Shopping Center shall be in good taste and shall conform to the standards, motif, and decor from time to time established by Owner for the Shopping Center and approval of any signage by Owner shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Owner hereby approves the usual and customary signage as generally utilized by "Culvers" style restaurants as of the effective date of this Amendment.

(c) Hazardous Materials.

(1) Triple H hereby agrees that all operations or activities upon, or any use or occupancy of the Outparcel, or any portion thereof, by Triple H, its assignees, and their respective agents, servants, employees, representatives and contractors (collectively, "Triple H Affiliates"), throughout the term of the Declaration, shall be in all respects in compliance with all laws then governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use transportation, release, spillage, leakage, dumping, discharge or disposal of any Hazardous Material.

(2) Triple H agrees to indemnify, defend and hold Owner harmless from any and all claims, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses, including reasonable attorneys' fees and expenses, consultant fees, and expert fees, together with all other costs and expenses of any kind or nature that arise during or after the term of the Declaration, directly or indirectly, from or in connection with the presence, suspected presence, release or suspected release of any Hazardous Material in or into the air, soil, surface water or groundwater at, on, about, under or within the Outparcel or the Owner's Site, or any portion of either thereof caused by Triple H or Triple H Affiliates.

(3) In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the "Remedial Work") is required under any applicable law, by any judicial order, or by any governmental entity as the result of operations or activities upon, or any use or occupancy of any portion of the Outparcel by Triple H or Triple H Affiliates, Triple H shall perform or cause to be performed the Remedial Work in compliance with such law. All Remedial Work performed by Triple H shall be performed by one or more

contractors, selected by Triple H and licensed in the State of Illinois, and under the supervision of a consulting engineer selected by Triple H and approved in advance in writing by Owner. All costs and expenses of such Remedial Work shall be paid by Triple H.

(4) As used herein "Hazardous Material" shall mean any hazardous toxic waste, substance or petroleum product as defined for purposes of the Comprehensive Environmental Response, Compensation and Liability Act of 40 U.S.C. §1801 et seq. and all amendments thereto.

(d) Maintenance.

(1) Maintenance by Triple H. Triple H agrees that it shall, without any expense to Owner, maintain or cause to be maintained all improvements on the Outparcel in good order and condition and state of repair to the standards of a first-class shopping center. Triple H further agrees that during the term of this Agreement it shall at its sole cost and expense operate, maintain, repair, replace, light and keep free of snow and ice all parking areas, sidewalks, walkways and roadways as exist from time to time on the Outparcel. Costs and expenses of operating, maintaining and repairing common areas on the Outparcel may include, without limitation, general liability and property damage insurance, lighting, striping, resealing, cleaning, sweeping, cost and expenses of planting, replanting and replacing flowers and landscaping, water and sewerage charges, electrical charges, charges for other utilities, security and reasonable professional management fees. Owner, after giving Triple H sixty (60) days, written notice, shall have the right but not the obligation to effectuate the needed maintenance or repairs, as the case may be, at the expense of Triple H.

(2) Maintenance by Owner. Owner agrees that it shall, without any expense to Triple H, maintain, or cause to be maintained all improvements on the Owner's Site in good order and condition and state of repair to the standards of a first-class shopping center. Owner agrees that during term of this Agreement it shall operate, maintain, repair, replace, light and keep free of snow and ice all parking areas, sidewalks, walkways and roadways as exist from time to time on the Shopping Center (excluding the Outparcel). Costs and expenses of operating, maintaining and repairing common areas on the Shopping Center may include without limitation, general liability and property damage insurance, lighting, striping, resealing, cleaning, sweeping, cost and expenses of planting, replanting and replacing flowers and landscaping, water and sewerage charges, electrical charges, charges for other utilities, security and reasonable professional management fees.

(e) Easements for Utilities. Triple H and Owner each hereby grant to the other, its successors and assigns:

(1) The nonexclusive, mutual, and reciprocal right and easement over and across non-improved portions of the respective Sites to tie into, connect with, and use water, sanitary and storm sewer, telephone, and electric lines, conduits, transmission

and metering devices, and other similar utility facilities situated in its respective Site (exclusive of any portion located within or under a Building or improved area), for the purpose of servicing the buildings developed or to be developed on the other's Site or installing, servicing or maintaining any sign or signs erected on the other's Site, provided (i) the tie-in is completed at the sole cost and expense of the party exercising such right, including the repair of all damage so occasioned by the same; (ii) the party exercising such right pays for all utility services consumed on the benefited parcel, whether measured by a separate metering device or apportioned on a pro rata basis by all Parcels consuming such utility service. Such pro rata determination, if necessary, shall be made on the basis of the aggregate number of square feet of buildings on the Sites concerned.

(2) Triple H hereby grants to Owner the nonexclusive right and easement over and across non-improved portions of the Outparcel to construct, reconstruct, install, repair, replace, and maintain water, storm and sanitary sewer, telephone, and electric lines, conduits, transmission and metering devices, and other utility facilities within the Outparcel (hereinafter collectively referred to as "Utilities") provided (i) such work is done at the sole cost and expense of Owner (subject to pro rata contribution from Triple H on the basis of the aggregate number of square feet of buildings on the Outparcel benefited by such work) and (ii) the foregoing right and easement is exercised at reasonable times.

(f) Easements for Use of Common Areas. Triple H and Owner each hereby grant to the other, its successors and assigns, the right, privilege and easement to use each portion of the parking areas (except to the extent that such grant of parking rights would cause the grantor thereof to be in violation of applicable governmental parking standards or requirements), sidewalks, walkways and roadways (the "Common Areas") constructed on its respective Sites as such areas may exist from time to time for its respective intended purposes; such easements to be for the non-exclusive use of the grantee thereof and its licensees and invitees, in common with grantor, its licensees and invitees, for the following purposes:

(1) easements to use the respective parking facilities for the parking of passenger motor vehicles and passage by pedestrians;

(2) easements to use the various roadways to provide ingress and egress and passage by motor vehicles and pedestrians between both Sites and the adjoining public highways or private roads and to provide passage between the various portions of both Sites; and

(3) easements to use the various sidewalks and walkways to provide passage by pedestrians between the various portions of both Sites.

(4) The easements provided in this Section are subject to the rights of each grantor to change and relocate portions or all of said areas. Neither party shall cause an obstruction in a manner which would prevent access, ingress or egress to the Common

Areas on its respective Site either from the public or private roads abutting said areas or from the other party's Site. Except as herein provided neither party shall impose any charge for parking on its Site, except by mutual agreement.

- (g) Right of First Refusal. If at any time during the term of the Declaration, Triple H, or its successors and assigns, shall receive a bona fide offer to purchase the Outparcel, then the Owner, and its successors and assigns, shall, in each instance, have the first right and option to purchase the Outparcel. Owner may exercise the purchase option by giving Triple H (or its successors or assigns) written notice of exercise within thirty (30) days of the receipt by Owner of notice of the proposed offer. Upon exercise, this option shall become a binding contract of sale, and not later than ninety (90) days after Owner's notice, Triple H shall convey title to the Outparcel to Owner or its nominee by a recordable special warranty deed. Closing shall take place at the office of Chicago Title Insurance Company, Racine, Wisconsin, or such other title company as shall be approved by Owner (the "Title Company"), in escrow. The sale shall be closed through escrow in accordance with the general provisions of the usual form of Deed and Money Escrow Agreement then in use by the Title Company with such special provisions inserted in the escrow agreement as may be required to conform with this Amendment. Upon creation of said escrow, payment of purchase price and delivery of deed shall be made through escrow. The escrow costs shall be divided equally between the parties. Triple H shall pay state and county transfer taxes. Local taxes should be paid according to custom. Triple H shall provide title insurance in form reasonably acceptable to Owner. Closing shall be contingent upon Owner completing within thirty (30) days, its due diligence to determine the condition of the Outparcel and if for any reason Owner determines that it will not complete the purchase, it shall notify Triple H within such thirty (30) day period and Owner's obligation to purchase shall be null and void. Triple H shall cooperate and provide Owner with access to the Outparcel during such thirty (30) day period to complete its investigation and due diligence.
- (h) Successors. The provisions of section 5 of this Amendment shall be binding upon, and insure to the benefit of, Owner and Triple H, and each said party's respective successors or assigns. The provisions of this section 5 of this Amendment may be amended by the agreement of Owner and Triple H or each such party's respective successor or assign.
- 6. Definition of Terms. As used herein, all terms not specifically defined herein shall have the same meaning as set forth in the Declaration.
- 7. Agreement in full force and effect. Except as specifically modified hereby, the Declaration shall remain in full force and effect and unmodified.
- 8. Effective Date. This First Amendment to the Declaration shall become effective upon recordation.
- 9. Indemnifications. Each of the parties shall indemnify and hold the other party harmless of and from any and all loss, cost, liability, damage, injury or expense, including reasonable attorney's fees, which may arise by reason of any violation of law, ordinance or regulation or by reason of injury

to or death of a person(s), damage to property, or claims of lien for work performed and/or materials or supplies furnished, or arising out of or in connection with the use of the parking area on the indemnifying party's parcel, or arising from or in connection with the willful or negligent acts or omissions of the indemnifying party or its agents, servants, contractors, employees or successors in interest.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to Declaration of Easements and Restrictions to be executed by their duly authorized representatives effective as of the day and year first above written.

Bank One, Racine, N.A., a \_\_\_\_\_  
corporation

By: [Signature]  
Name: WILLIAM STEELE JR  
Title: VICE PRESIDENT

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Triple H LLP, a Wisconsin limited liability  
partnership

By: [Signature]  
Name: PETER M. HAMAN  
Title: PARTNER

Attest:

By: [Signature]  
Name: Timothy C. Haman  
Title: Partner

CALIFORNIA STATE TEACHERS'  
RETIREMENT SYSTEM, a public entity

By: [Signature]  
Name: PATRICK MITCHELL  
Title: Chief Investment Officer

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A

## OWNER'S SITE

## Parcel 1:

That part of the west 1/2 of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin, including part of Certified Survey Map No. 1169 and part of Certified Survey Map No. 1276, bounded as follows: Begin at a point on the East-West 1/4 line of said Section 24 located N 89° 08' 05" W 326.13 feet from a brass-capped iron monument marking the center of said Section 24; run thence S 0° 08' 19" E 733.22 feet to an iron pipe; thence S 89° 51' 41" W 200.00 feet to an iron pipe; thence S 0° 08' 19" E 400.00 feet; thence S 89° 51' 41" W 652.51 feet to an iron rod marking the southeast corner of Certified Survey Map No. 1395; thence N 0° 08' 19" W, along the easterly boundary of said C.S.M. No. 1395, 323.00 feet to an iron rod; thence S 89° 51' 41" W, along the northerly boundary of said C.S.M. No. 1395, 640.00 feet to an iron rod on the easterly line of S.T.H. #31; thence N 11° 49' 57" E, along the easterly line of said highway, 260.89 feet to an iron pipe; thence N 12° 21' 20" E, along the easterly line of said highway, 70.57 feet to an iron pipe; thence continue along the easterly line of said highway 280.15 feet along the arc of a curve concave easterly whose radius is 16310.22 feet and whose chord bears N 14° 23' 41" E 280.15 feet to an iron pipe marking the southwesterly corner of Certified Survey Map No. 1276; thence N 84° 51' 00" E, along the southerly boundary of said C.S.M. No. 1276, 195.00 feet to an iron pipe; thence N 69° 29' 00" E, along the southerly boundary of said C.S.M. No. 1276, 222.08 feet to an iron pipe; thence N 18° 07' 00" E, along the easterly boundary of said C.S.M. No. 1276, 12.42 feet; thence S 88° 27' 33" W 3.75 feet; thence 74.61 feet along the arc of a curve concave northeasterly whose radius is 47.50 feet and whose chord bears N 46° 32' 27" W 67.18 feet to the north line of said C.S.M. No. 1276, which is also the south line of Certified Survey Map No. 1169; thence N 1° 32' 27" W 230.00 feet to the north line of said C.S.M. No. 1169, which is also the south line of 21st Street; thence N 88° 27' 33" E, along the south line of 21st Street, 452.31 feet to an iron pipe; thence continue along the south line of 21st Street 566.49 feet along the arc of a curve concave southerly whose radius is 1333.69 feet and whose chord bears S 79° 22' 21" E 562.24 feet to an iron pipe; thence S 0° 08' 19" E 73.45 feet to the point of beginning.

## Parcel 2:

Lot 1, Certified Survey Map No. 1395, recorded in the office of the Register of Deeds for Racine County, Wisconsin on February 20, 1989 in Volume 4 of Certified Survey Maps on pages 351-352 as Document No. 1276690, located in the North 1/2 of the Southwest 1/4 of Section 24, Township 3 North, Range 22 East. Said land being in the City of Racine, Racine County, Wisconsin.

Tax Parcel No. 23876-17 and 23876-40.

Excepting therefrom:

Parcel No. 1, Certified Survey Map No. 1528, recorded in the office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in Volume 4, of Certified Survey Maps on page 699-700, as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine, State of Wisconsin.

EXHIBIT B

## BANK SITE

Lot 1 of Certified Survey Map No. 1276, recorded in the office of the Register of Deeds for Racine County, Wisconsin on November 9, 1987 in Volume 4 of Certified Survey Maps, page 36, as Document No. 1243887, being part of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East. Said land being in the City of Racine, Racine County, Wisconsin.

AND

Lot 1 of Certified Survey Map No. 1169, recorded in the office of the Register of Deeds for Racine County, Wisconsin on September 30, 1986 in Volume 3 of Certified Survey Maps, pages 426-428, as Document No. 1207187, being part of the Southwest 1/4 and the Northwest 1/4 of Section 24, Town 3 North, Range 22 East. Said land being in the City of Racine, Racine County, Wisconsin.

## EXCEPTING THEREFROM THE FOLLOWING:

A 17.5 foot wide strip of land located in the Northwest 1/4 and the Southwest 1/4 of Section 24, Township 3 North, Range 22 East, Racine County, Wisconsin and described as follows: Begin at the Northeast corner of Certified Survey Map No. 1169; thence S 1°32'27" E, along the East line of said C.S.M. No. 1169, 230.00 feet to an iron pipe and the North line of Certified Survey Map No. 1276; thence along the boundary of said C.S.M. No. 1276, along the arc of a curve to the left, radius 30.00 feet, whose chord bears S 46°32'27" E 42.43 feet, 47.12 feet to an iron pipe; thence N 88°27'33" E, along said boundary, 10.00 feet to an iron pipe; thence S 18°07'00" W, along said boundary, 18.58 feet; thence S 88°27'33" W 3.75 feet; thence along the arc of a curve to the left, radius 47.50 feet, whose chord bears N 46°32'27" W 67.18 feet, 74.61 feet to the South line of Certified Survey Map No. 1169; thence N 1°32'27" W 230.00 feet to the North line of said C.S.M. No. 1169, which is also the South line of 21st Street; thence N 88°27'33" E 17.50 feet to the point of beginning.

Key No. 23876-38 and ~~23876-39~~

EXHIBIT C

## OUTPARCEL

LOT 1 OF CERTIFIED SURVEY MAP NO. 1986, BEING A PART OF THE SOUTHEAST  $\frac{1}{4}$  OF THE NORTHWEST  $\frac{1}{4}$  AND THE NORTHEAST  $\frac{1}{4}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 24, TOWNSHIP 3 NORTH, RANGE 22 EAST, AS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR RACINE COUNTY, ON SEPTEMBER 5, 1997 IN VOLUME 6 OF CERTIFIED SURVEY MAPS, AT PAGE 70, AS DOCUMENT NO. 1593585. EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PORTION: BEGIN AT THE NORTHWEST CORNER OF SAID LOT 1; RUN THENCE N  $88^{\circ} 27' 33''$  EAST 17.70 FEET; THENCE SOUTH  $01^{\circ} 32' 27''$  EAST 213.00 FEET; THENCE SOUTH  $45^{\circ} 48' 16''$  EAST 41.20 FEET, THENCE SOUTH  $18^{\circ} 07' 00''$  WEST 18.58 FEET; THENCE SOUTH  $88^{\circ} 27' 33''$  WEST 10.00 FEET TO THE POINT OF CURVATURE OF A CURVE OF SOUTHWESTERLY CONVEXITY WHOSE RADIUS IS 30.00 FEET AND WHOSE CHORD BEARS NORTH  $46^{\circ} 32' 27''$  WEST 42.43 FEET; THENCE NORTHWESTERLY 47.12 FEET ALONG THE ARC OF SAID CURVE; THENCE NORTH  $01^{\circ} 32' 27''$  WEST 230 FEET; THENCE NORTHWESTERLY 47.12 FEET ALONG THE ARC OF SAID CURVE; THENCE NORTH  $01^{\circ} 32' 27''$  WEST 230.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF 21ST STREET AND THE POINT OF BEGINNING. SAID LAND BEING IN THE CITY OF RACINE, COUNTY OF RACINE, STATE OF WISCONSIN.

STATE  
~~STATE~~ OF WISCONSIN )  
COUNTY OF MILWAUKEE )

SS.

I, Maxine E. Haas, a Notary Public in and for said County, in the State aforesaid,  
DO HEREBY CERTIFY that William Steele, Jr., a Vice President of Bank One Racine,  
NA, a \_\_\_\_\_ corporation, is personally known to me to be the same person whose name is  
subscribed to the foregoing instrument as such Vice President appeared before me this day in  
person and acknowledged that he/~~she~~ signed and delivered said instrument as his/~~her~~ own free and  
voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set  
forth.

GIVEN under my hand and Notarial Seal, this 3rd day of December,  
1999.

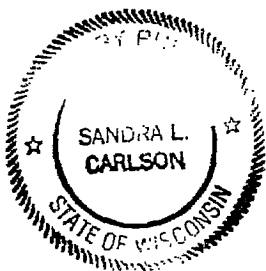
Maxine E. Haas  
Notary Public Maxine E. Haas

My Commission expires: June 25, 2000

STATE OF ILLINOIS     )  
                                  )  
COUNTY OF COOK        )     SS.

I, Sandra L. Carlson, a Notary Public in and for said County, in the State aforesaid,  
DO HEREBY CERTIFY that Peter M. Hamon & Timothy C. Hamon Partners of Triple H  
LLC, a Wisconsin limited liability partnership, ~~is~~ are personally known to me to be the same person(s)  
whose name(s) is/are subscribed to the foregoing instrument as the Partners and  
That ~~of said Village~~, appeared before me this day in person and acknowledged that  
~~he/she~~ they signed and delivered said instrument as ~~his/her~~ their own free and voluntary act and as the  
free and voluntary act of said partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 21<sup>st</sup> day of JANUARY 2000  
1999.



Sandra L. Carlson  
Notary Public

My Commission expires: 5-4-03

STATE OF California  
COUNTY OF Sacramento ) SS.

I, Mary Ann Avansino, a Notary Public in and for said County, in the State aforesaid,  
DO HEREBY CERTIFY that Patrick Mitchell, a CIO of California  
State Teachers' Retirement System, is/~~are~~ personally known to me to be the same person(s) whose  
name(s) is/~~are~~ subscribed to the foregoing instrument as the CIO and             
           of said public entity, appeared before me this day in person and acknowledged  
that he/~~she~~/they signed and delivered said instrument as his/~~her~~/their own free and voluntary act and as  
the free and voluntary act of said public entity, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 25<sup>th</sup> day of January,  
1999.  
2000



Mary Ann Avansino  
Notary Public

My Commission expires: 12-26-03

Register's Office  
Racine County, Wis.

SS

1343832

Received for Record 2nd day of  
July, A.D. 1991 at 2:19  
o'clock P.M. and recorded in Volume 2078  
of Plat on page 789-81

RECIPROCAL EASEMENT AND OPERATION AGREEMENT

*Helene M. Schuttens*

Register of Deeds

AGREEMENT, made as of this 2nd day of July, 1991, between KMART CORPORATION, a Michigan corporation ("Kmart"), having an office at 3100 West Big Beaver Road, Troy, Michigan 48034 and TOYS "R" US, INC., a Delaware corporation ("Toys") having an office at 461 From Road, Paramus, New Jersey 07652.

Preliminary Statement

Kmart is the owner of certain real property located in the City of Racine, Racine County, Wisconsin, consisting of approximately 32.6 acres more particularly described in Exhibit A annexed hereto (which together with any other property contiguous or adjacent to said property which is now or hereafter owned by Kmart shall be hereinafter called the "Kmart Parcel"). Toys has acquired certain real property consisting of approximately 5.0 acres located adjacent to the Kmart Parcel, more particularly described in Exhibit B (the "Toys' Parcel") upon which Toys intends to construct a store unit containing approximately 45,000 square feet of floor space (the "Store"). The parties recognize that for the most favorable development of the Kmart Parcel and the Toys' Parcel (collectively, the "Shopping Center") as a unified and coordinated retail sales area, it is necessary that they agree and cooperate with respect to the operation and maintenance of their respective parcels and the common areas and facilities to be erected thereon (the "Common Area") as indicated on the site plan annexed hereto as Exhibit C (the "Site Plan"), including without limitation all curb cuts, roadways, aisles, parking areas, loading areas, sidewalks and common lighting and drainage facilities. Kmart may construct buildings in accordance with present zoning regulations ("Buildings") on the Kmart Parcel providing for general use as a retail shopping center.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, Kmart and Toys hereby agree as follows:

ARTICLE I. EASEMENTS

Section 1.01. (a) (i) Kmart hereby grants and conveys to Toys, its successors and assigns, a non-exclusive perpetual easement, and right of use appurtenant to and for the benefit of the Toys' Parcel, to and from adjacent public roads in and over that portion of the Common Areas located on the Kmart Parcel for the purpose of pedestrian and vehicular ingress, egress, passage, delivery, parking and installation, construction, repair and maintenance of utilities servicing the Toys Parcel, if any. Kmart shall not materially alter the location of the curb cuts or roadways in the Common Area nor materially alter the quality or quantity of parking, on the Kmart Parcel without the consent of Toys, which shall not be unreasonably withheld.

(ii) The easement granted hereby shall be for the benefit of, but not restricted solely to, Toys and Toys may grant the benefit of such easement

REA  
Racine, WI  
6/07/91

Return: Ambassador

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to its tenants or other occupants of the Toys' Parcel for the duration of such occupancy and to the agents, licensees, concessionaires, customers, employees and business invitees of Toys, its tenants or other occupants; but same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public.

(b) (i) Toys hereby grants and conveys to Kmart, its successors and assigns a non-exclusive perpetual easement, and right of use appurtenant to and for the benefit of the Kmart Parcel, to and from adjacent public roads in and over that portion of the Common Areas located on the Toy's Parcel, for the purpose of pedestrian and vehicular (including municipal bus routes), ingress, egress, passage, delivery, parking and maintenance of utilities servicing the Kmart Parcel, if any. Toys will not alter the location of the curb cuts or roadways in the Common Areas nor materially alter the quality or quantity of parking on Toys' Parcel without the consent of Kmart, which consent shall not be unreasonably withheld.

(ii) The easements granted hereby shall be for the benefit of, but not restricted solely to, Kmart and Kmart may grant the benefit of such easements to its tenants or other occupants of the Kmart Parcel and to the agents, licensees, concessionaires, customers, employees and business invitees of Kmart, its tenants or other occupants for the duration of such occupancy; but same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public.

Section 1.02. Utility Easements. (a) Each Party hereby grants to the other Party, its successors and assigns, a perpetual non-exclusive easement and right of use appurtenant to and for the benefit of the grantee's Parcel in, to, over, under and across the Common Areas of the grantor's Parcel for the installation, operation, maintenance, repair, relocation and removal of sewers, water and gas mains, electric power lines, telephone lines, and other utility lines ("Utility Lines") to serve the grantee's Parcel, including without limitation the right to install and maintain manholes, meters, pipelines, valves, hydrants, sprinkler controls, conduits, sewage facilities and all related facilities in a manner which does not interfere with any Common Area or building use or operation. After the initial installation of all utilities, all easements for the Utility Lines shall be subject, as to location, to the prior written approval of the Party whose Common Area is to be burdened thereby, which approval shall not be unreasonably withheld or delayed. The grantee shall repair and maintain the Utility Lines, but such repair and maintenance shall be performed except in the case of emergency only after (i) ten (10) days' written notice to the grantor and (ii) shall not be performed during the period from October 1 through December 31 of any year; the grantee shall, at its cost and expense, repair any damage to any improvements on the grantor's Parcel caused by such repair and maintenance. The grantor may, at its expense, relocate any Utility Lines after 30 days' written notice to the grantee, provided such relocation shall not be performed during the period from October 1 through December 31 of any year and shall not interrupt or diminish the utility service to the grantee's Parcel and, except in the case of emergency, shall not reduce or impair the usefulness or function of such utility.

(b) Except with respect to ground mounted transformers and emergency generators at the rear of a building or as may be necessary during periods of construction, repair or temporary service, all utilities shall be underground unless required to be above ground by the utility providing such service, or the Parties agree otherwise.

(c) If the Parties elect to install common utilities, all costs and expenses thereof may be set forth in a separate agreement between the cooperating Parties.

Section 1.03. No signs, fences, hedges, curbing, barriers, walls or other structures which would prohibit the free flow of pedestrian or automotive traffic as intended by this Agreement, shall be erected by either Kmart or Toys on the portions of their respective parcels which by the terms of this Agreement must remain Common Areas, except as indicated on the Site Plan.

Section 1.04. In connection with any construction work to be performed in the development of the Shopping Center each Party hereby grants to the other temporary easements for incidental encroachments upon the other party's parcel which may occur as a result of the use of ladders, scaffolding, store front barricades and similar facilities resulting in temporary obstructions of portions of the Common Areas, so long as their use is kept within the reasonable requirements of the construction work expeditiously pursued.

Section 1.05. Neither party shall grant an easement or easements of any type set forth in this Agreement or otherwise to any person for the benefit of property not within the Shopping Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of utility easements by Kmart on its Parcel for the benefit of adjoining property owned by Kmart provided that such easement shall not diminish any Utility Line at the Shopping Center. The foregoing notwithstanding, each Party shall be permitted to grant or dedicate utility easements on its Parcel to governmental or quasi-governmental authorities or to public utilities.

Section 1.06. Each of the parties hereto hereby agrees for itself and its successors and assigns that it will execute such documents in recordable form as may be necessary to effectuate the provisions of this Article I, including, but without limiting the generality of the foregoing, any documents granting easements, licenses, and similar rights to utility companies and governmental bodies or agencies thereof.

Section 1.07. Each Party grants to the other an easement for the term of this Agreement under, over and upon an area directly adjoining the property line between the Kmart Parcel and Toys Parcel for incidental encroachments for, among other things, overhangs for roof projections, signs or similar projections provided that no such encroachment shall, at the time such encroachment shall first occur, interfere in any way with the actual use of either party's parcel or either party's prior use of the easement granted pursuant to this paragraph, and the encroachment shall not exceed six (6) inches.

## ARTICLE II. MAINTENANCE AND OPERATION

Section 2.01. (a) Kmart and Toys shall (or cause to be) at their own expense supervise(d), operate(d), manage(d), repair(ed), replace(d) and maintain(ed) all improved portions of the Common Areas located on their respective Parcels together with any enlargements thereof and including without limitation the parking areas, interior drives and lanes, curb cuts, entrances, exists, sidewalks, landscaped areas, lighting facilities, drainage facilities, and any other areas, facilities and equipment intended for and available for the common use of all of the owners of land within the Shopping Center, their tenants, customers, and business invitees, in good repair and in a safe, sound and functional condition; free from refuse, rubbish and dirt and in conformity with all governmental regulations. If any portions of the Common Areas have not been improved such areas shall be maintained in a safe and sightly condition, free of trash and regularly mowed and tended to. Operation and maintenance shall include, but not be limited to, the furnishing of or and/or payment of or for electricity, water, gas, sewer use fees, if any, labor, promptly remove all snow and ice or treating the same, cleaning, policing, maintenance equipment and tools and any personal property taxes assessed to such maintenance equipment and tools, insurance and anything else necessary for the everyday maintenance of the Common Areas and related facilities in the manner and to the standards mentioned in the prior sentences. Each owner shall re-pave, restripe and replace markings on the surface of the parking areas and driveway from time to time so as to provide for the orderly parking of automobiles and shall place or replace adequate exit and entrance and other traffic control signs to direct traffic in and out of said parking areas.

(b) (i) The Shopping Center lighting facilities and fixtures are to be designed and installed so that there is one uniform lighting system for the Common Areas with separate metering device to measure the electricity consumed by the Parties on their respective Parcels. The meters or measuring devices and lighting control switches shall be located in a control box located in an exterior, accessible location on a mutually agreeable place on each Parcel. Each party shall be provided unlimited access to the control box wherever located in order to respond to emergency situations and to operate the exterior lighting as provided herein. The lighting specifications of the Shopping Center are set forth in the plans and specifications referenced on Exhibit D.

(ii) Kmart and Toys shall keep the Common Areas of their respective Parcels and any ring roads lighted and open to the customers of the Shopping Center seven days a week at all times during normal shopping hours which shall include the hours until 11 p.m. Monday through Friday, 10 p.m. on Saturday and 7 p.m. Sunday from January 1 through September 30 of each year and until 1 a.m. every day from October 1 through December 31 of each year ("Normal Hours"). Upon request of Toys, Kmart shall keep the Common Areas of the Kmart Parcel lighted and open for as long as Toys shall request, provided Toys shall pay for a share of the cost of said requested lighting (meaning only the cost of lighting after Normal Hours), which share shall be determined on a pro rata basis with respect to any other tenants of the Shopping Center open later than Normal Hours. Upon request of Kmart, Toys shall keep the Common Areas of the Toys' Parcel lighted and open for as long as Kmart shall request, provided Kmart shall pay for the cost of said requested lighting (meaning only the cost of lighting after Normal Hours), except if Toys remains open later than Normal Hours, Toys shall pay a

share of such cost, which share shall be determined on a pro rata basis with respect to any other tenants or occupants of the Shopping Center open later than Normal Hours.

Section 2.02. Kmart and Toys shall, during the term of this Agreement, maintain, or cause to be maintained, their respective buildings in a safe, clean, tenantable, and sightly condition and in good order and repair.

Section 2.03. The Parties shall require all occupants, tenants and subtenants to comply with the reasonable requirements of this Agreement with reference to sanitation, handling of trash and debris, loading and unloading of trucks and other vehicles, safety and security against fire and theft, vandalism, personal injury and other hazards, including a prohibition against unsightly window advertising, unsightly or unsanitary accumulation of trash or other similar misuse of walkways, landscaping and loading areas.

Section 2.04. Each Party agrees to: (a) Prohibit individual merchants displaying and/or selling merchandise in the Common Areas on its Parcel except for sidewalk sales in connection with Shopping Center wide promotional sales immediately in front of the stores conducting such sales provided (i) such sales are not held more than four (4) times in any calendar year and for no more than three (3) days at any one time; (ii) the Common Areas still be used for their intended purpose, and (iii) no such sales can be held during October, November or December of any year. The parties acknowledge and agree that nothing contained in this Agreement shall be construed so as to prohibit the sale of merchandise from the Kmart Garden Area, as depicted on Exhibit C.

(b) Prohibit other activities in the Common Areas on its Parcel, other than providing ingress and egress, parking and the like for customers, invitees and business visitors of the Shopping Center insofar as their activities relate to the intended use of the Building Area of the Shopping Center, unless prior written consent of the other Party is obtained. Notwithstanding anything contained herein, no Party shall permit or extend the benefits of this REA to any person or individual engaging in the following activities on the Common Area:

- (i) Exhibiting any placard, sign, or notice;
- (ii) Distributing any circular, handbill, placed, or booklet;
- (iii) Soliciting memberships or contributions (excluding such charitable organizations as the Parties may agree);
- (iv) Parading, picketing, or demonstrating; and
- (v) Failing to follow regulations relating to the use of the Shopping Center which regulations will be applied equally and in a non-discriminatory manner to all tenants of the Shopping Center and will not require payments of money to Kmart by any tenant.

(c) Not use its Parcel for other than retail sales and services (provided any services located on the Shopping Center shall be of the type defined below and shall in no event be located in more than fifteen (15%) of the total Floor

Area on any Parcel). Services shall mean only those services such as retail financial institutions, real estate and stock brokerage offices, travel agencies and other uses providing services directly to the public for fees which are commonly found within first-class retail shopping centers in the Racine/Milwaukee Metropolitan Area. Notwithstanding the foregoing, no use or service shall be permitted in the Shopping Center which is inconsistent with the operation of a first-class retail shopping center.

Section 2.05. (a) Toys shall indemnify and hold Kmart harmless (except for loss or damage resulting from the tortious acts of Kmart, its agents or employees) from and against any and all claims, actions, suits, judgments, damages, liability and expense, including reasonable attorneys' fees, in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the Toys' Parcel, or occasioned wholly or in part by any act or omission of Toys, its agents, contractors, employees, servants or licensees.

(b) Kmart shall indemnify and hold Toys harmless (except for loss or damage resulting from the tortious acts of Toys, its agents or employees) from and against any and all claims, actions, suits, judgments, damages, liability and expense, including reasonable attorneys' fees, in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the Kmart Parcel, or occasioned wholly or in part by any act or omission of Kmart, its agents, contractors, employees, servants or licensees.

(c) Each Party shall obtain and maintain at all times public liability insurance insuring against claims on account of death, bodily injury or property damage that may arise from or be occasioned by the condition, use or occupancy of all Common Areas in the Shopping Center by customers, invitees, licensees and employees of Kmart, Toys and Kmart's tenants in the Shopping Center. Said insurance shall be obtained and maintained in a reputable insurance company or companies qualified to do business in the State of Wisconsin and having limits for bodily injury or death in the amounts of not less than \$5,000,000 for injury to or death of one person, \$5,000,000 for injury to or death of more than one person in one accident and property damage insurance in an amount not less than \$100,000. Such insurance shall with respect to the Common Areas of each parcel name all of the parties hereto or their successors as additional insureds thereunder. Such insurance shall provide that the insurance may not be cancelled without at least ten (10) days' prior written notice being given by the insurer to each party named as an additional insured. Each party shall pay or cause to be paid, the cost of such insurance for its respective parcel. Either Party may self-insure as to any liability for which insurance is required hereunder provided such party taken together with any parent, subsidiary, affiliate, controlled or controlling entities have a net worth, computed in accordance with generally accepted accounting principals consistently applied, of at least \$50,000,000.

Section 2.06. (a) Kmart and Toys each covenant to pay with respect to its Parcel, all real estate taxes and assessments thereon, all water and sewer rents, and also all charges for utility services applicable to each party's improvements and all assessments hereafter made by governmental authorities for improvements hereafter commenced.

(b) Upon the separate assessment of each Parcel for real estate tax purposes by the Racine County Assessor, then either Kmart or Toys may defer payment of any such taxes, assessments or rents payable by either such Party with respect to its Parcel, while contesting or appealing the validity and/or amount thereof, provided such contest shall be in good faith pursuant to law and that the contesting party shall, upon receipt of a final adverse ruling or decision pay any such taxes, assessments or rents payable and take such steps as may be necessary to insure the foreclosure will not occur.

### ARTICLE III. RESTRICTIONS

Section 3.01. Neither Toys nor Kmart shall construct or permit to be constructed any buildings or structures of any kind in the Shopping Center except in the areas designated as "Building Areas" or "Toy Store" on the Site Plan. No Building or structure shall exceed one (1) story in height. In no event shall any building or structure on the Shopping Center exceed the maximum gross floor area indicated on the Site Plan or a maximum height (including the height of any parapet wall, mansard or other architectural treatment, whether structural or non-structural, or any rooftop HVAC equipment, as measured from the lowest surrounding ground elevation to the highest point on such building or structure) as follows:

| <u>PARCEL</u>      | <u>BUILDING HEIGHT RESTRICTION</u> |
|--------------------|------------------------------------|
| (i) Kmart's Parcel | 35'                                |
| (ii) Outparcel C   | 30'                                |
| (iii) Outparcel R  | 30'                                |
| (iv) Outparcel T   | 30'                                |
| (v) Toys Parcel    | 35'                                |

Except for initial construction, emergency situations, and work completed to the Kmart Store, no exterior construction shall be permitted during the period from October 1 through December 31 of any year without the prior written consent of Toys, which consent may be withheld in Toys' sole discretion.

Section 3.02. (a) Kmart shall operate its portion of the Common Areas so as to maintain at least 5 parking spaces for every 1000 square feet of retail space constructed on the Kmart Parcel. Such parking spaces shall be at least 9 feet in width by 18 feet in length with 20 feet between parking aisles (56 foot center line base), suitably marked by painted stripes, are at all times available, together with driveways, entrances, exits and sidewalks. Kmart and Toys agree that no metered or other parking charge shall be made by either party on any part of their respective parcels (except a Common Area operation and maintenance charge paid by owners or tenants), it being the intention of the parties hereto that the right to park in the Common Areas shall be free of any charge whatsoever except as above indicated.

(b) With respect to any outparcel shown on the Site Plan, if a business use contains a drive-up unit (such as remote banking facility or food ordering/dispensing facility), there shall also be created space for stacking of not less than three (3) automobiles for each drive-up unit.

Section 3.03. (a) Kmart and Toys hereby covenant and agree that no part of either the Kmart Parcel or Toys Parcel may be used for any purpose other than a retail shopping center operation oriented to the retail sale of consumer goods or services as provided in this Agreement. All uses made, conducted or permitted on or with respect to all or any part of the Shopping Center shall be compatible with the development or operation of a shopping center.

(b) Neither Toys nor Kmart will lease or sublease or permit the use of any portion of the Shopping Center, or any future expansion thereof to any tenant whose business creates strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates unusual fire, explosive or other hazards or is used, in whole or in part, as or for warehousing, the dumping or disposing of garbage or refuse, catering halls, theatres, movie theatres, off-track betting parlors, bars, night clubs, discotheques, bowling alleys, so-called "head shops", car washes, auto body shops, unsupervised amusement arcades or game rooms, amusement centers, billiard parlors, funeral parlors, automobile (used or new) dealerships, skating rinks, health spas, or massage parlors. Kmart shall not permit Building C, as depicted on Exhibit C, to be used or occupied as a full service restaurant containing a bar.

(c) Neither Toys nor Kmart shall lease, rent or permit any other premises in the Shopping Center to be used or occupied as an adult book store or a store selling or exhibiting pornographic materials. As used herein, "an adult book store or store selling or exhibiting pornographic materials" shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational (collectively "Sex Magazines"), or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated "X" by the Motion Picture Rating Association, or any successor thereto ("X-Rated Videos"). Notwithstanding the foregoing, the following shall be permitted in the Shopping Center, (i) the sale of such adult magazines as may be carried by a convenience, drug, record or full-line book store (provided same do not exceed 10% of its stock and are contained in paper sleeves), and (ii) a full line video store with no more than 10% of its stock consisting of X-Rated Videos (provided such X-Rated videos are kept behind the counter and not on display).

Section 3.04. Subject to existing leases, Kmart shall not operate or lease or permit to be leased or operated any other adjacent property owned by it, for the principal use or purposes of the sale of (i) toys, juvenile furniture, wheel goods, family and adult games, electronic games, computers, or other items as are customarily carried by a modern toy store or (ii) infants, juvenile and children's clothing, shoes, accessories, furnishings or apparel. For purposes hereof, the incidental sale (as measured by the size of sales area or sales volume) of such items in connection with the overall business of another operator or tenant shall not be deemed a violation thereof. This Section shall not apply to: (a) the operation of a general merchandise department store by Kmart or a

wholly owned subsidiary of Kmart on the Kmart Parcel, or (b) the incidental sale of such items in an area not greater than 2,500 square feet in the aggregate.

Section 3.05. Toys and Kmart agree that the plans and specifications of each sign to be erected on their respective parcels shall be approved by Kmart and Toys prior to their installation. Such approval not to be unreasonably withheld or delayed. "Signs" is defined to include but not be limited to, projecting store signs and (painted) wall signs. Kmart and Toys shall have the right to request that the City of Racine permit the construction of a pylon sign on their respective Parcels. Kmart has approved the plans and specifications of the Toys pylon sign as set forth on Exhibit F. If the City of Racine permits the erection of only one (1) pylon sign and store identification signs thereon for the Shopping Center, then: (a) Kmart shall construct the sign, (b) Toys shall be permitted to place its identification sign in the second position immediately below Kmart, (c) Toys shall pay a share of the cost of construction of the pylon sign (excluding store identification signs) equal to Toys share of the area of the sign, and (d) Toys shall pay a share of the cost of the maintenance and operation expenses of the pylon sign equal to Toys share of the area of the sign. The location of the sign shall be as designated on the Site Plan.

Section 3.06. Prior to the termination date of this Agreement, and except as permitted in Section 5.01(a), none of the Buildings constructed in the Shopping Center shall be razed or removed from their respective Building Areas, as shown on the Site Plan except as may be necessary prior to rebuilding following destruction or damage or condemnation and except in contemplation of rebuilding such building subject to the provisions of the Agreement. In the event of such rebuilding, following destruction, damage, condemnation, or razing in contemplation of rebuilding, any such new building constructed by any party hereto or repair or reconstruction of an existing building, shall be of the same height and substantially the same specifications as the previous building or the partially destroyed building (as applicable) and shall be constructed within the "Project Envelope Lines" shown on the Site Plan.

#### ARTICLE IV. CONSTRUCTION

Section 4.01. It is the present intention of Toys and Kmart that pursuant to the terms of a certain Development Agreement between Toys and Kmart, that the parties hereto be responsible for construction of the Common Areas in their respective parcels.

Section 4.02. Standards of Construction. Any construction (which word, as used in this Article, includes, without limitation, initial construction and, except where otherwise specified, alterations, restoration, repair, rebuilding, modernization, expansion, demolition, razing and new construction) which shall or may be performed by the Parties, shall be subject to and in accordance with the following requirements and standards:

(a) All initial improvements constructed on the Toys Parcel shall be completed in accordance with the exterior plans and specifications thereof approved by Kmart.

(b) Upon commencement of any construction in the Shopping Center, each Party shall diligently prosecute said construction to completion in accordance with the terms of this Agreement;

(c) All construction shall be performed in a good and workmanlike manner using first-class materials and in accordance with all applicable laws, ordinances, rules and regulations and the exteriors of all Buildings shall be in general architectural harmony with the exteriors of the other Buildings in the Shopping Center;

(d) Each Party shall perform its construction so as not to:

(i) cause any unreasonable increase in the cost of construction of the other,

(ii) unreasonably interfere with the construction of the other and/or any other construction being performed on the Shopping Center or any part thereof, and

(iii) unreasonably impair the use, occupancy or enjoyment of the Shopping Center or any part thereof by any occupant or tenant.

(e) Each Party shall use its best efforts to cause its architects, contractors and subcontractors to cooperate and coordinate its construction with the architects, contractors and subcontractors of the other to the extent reasonably practicable to achieve the objectives set forth in the preceding Section 4.02(c);

(f) In the event any Party's building or buildings shall be under construction and shall not have been substantially completed, and at such time other buildings in the Shopping Center shall have opened for business (to the extent that the remaining construction work to be performed could reasonably be deemed to constitute a hazardous condition for the use of the Common Area or other buildings, or detract from the attractiveness, which would otherwise exist, of the improvements on the Shopping Center or in the event that any Party's later alteration, restoration, repair, rebuilding or modernization or new construction could reasonably be deemed to constitute such a hazardous condition or to detract from the attractiveness of the Buildings in the Shopping Center, as the case may be, which shall have opened for business, such Party will, as promptly as reasonably possible, erect an adequate and attractive appearing construction barricade, or other protective device, at or substantially near (but not more than 5 feet from) the building line (and around any work area, construction shack area or storage).

#### ARTICLE V. CASUALTY AND EMINENT DOMAIN

Section 5.01. (a) If any of the buildings located on the Toys' Parcel or the Kmart Parcel are damaged or destroyed by fire or any other cause, the owner of any such building or buildings shall promptly cause the repair, restoration, or rebuilding of the building so damaged or destroyed, (or if the owner of such building does not so restore, then the owner of such portion of the

Shopping Center shall cause the razing of any damaged buildings, the filling of any excavations, paving for temporary parking use, and the performance of any other work necessary to put such portion of the Shopping Center in a clean, sightly, and safe condition for use for parking purposes). If any such damage or destruction occurs during the period from October 1 to December 31 of any year, no repairs, restoration or rebuilding shall commence during said period which would interfere with the continued operation of the Store until the conclusion of said period, during which time the damaged or destroyed portion of the building will be boarded up in a clean and sightly condition and in such fashion as to make the balance of the Shopping Center safe for pedestrian and vehicular ingress and egress. If any such building, or the land underlying same, is to be leased to a third party, the owner of such building and/or the lease underlying same shall remain responsible for such restoration or razing if not performed by the tenant, notwithstanding the terms of any such lease.

(b) In the event any Common Area improvements of the Shopping Center are damaged or destroyed, the owner of the parcel to which such damage has occurred shall promptly cause the repair, restoration or rebuilding of the improvements so damaged or destroyed so that the restored portions of the Common Areas shall comply with the applicable requirements of this Agreement.

Section 5.02. In order to assure performance of their respective obligations under Section 5.01 of this Agreement, it is agreed that the owners of the respective parcels in the Shopping Center shall cause to be carried fire and extended coverage insurance on all buildings on their respective parcels in an amount not less than ninety (90%) of the reconstruction cost of such improvements, exclusive of footings and foundations, except if the owner of said parcel, or party responsible for such restoration cost, has a net worth in excess of \$50,000,000, computed in accordance with generally accepted accounting principles, said risk may be self-insured. Said insurance may be carried under a "blanket" policy or policies covering other properties of the party and its subsidiaries, controlling or affiliated corporations; or partly under such plan of self-insurance and partly under such "blanket" policies; and if the owner or other party responsible for such restoration cost has a net worth in excess of \$50,000,000, computed in accordance with generally accepted accounting principles, its policy may contain a deductible provision of up to \$250,000. Each owner shall, upon written request from the other Party, furnish to the Party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section or evidence of self-insurance capacity as hereinabove provided, as the case may be. The annual report of the parties hereto shall be sufficient evidence of their respective net worth.

Section 5.03 In the event the whole or any part of the Shopping Center shall be taken by right of eminent domain or any similar authority of law, the entire award for the value of the land and improvements so taken shall belong to the owner of the property so taken or to its tenants, as their interest may appear, and no other owner of land in the Shopping Center shall claim any portion of such award by virtue of any interest created by this Agreement provided, however, any such other owner may file a collateral claim with the condemning authority over and above the value of the land being so taken to the extent of any damage suffered by such owner resulting from the severance of the area so

taken. In the event of a partial taking, the owner of the portion of the Shopping Center so condemned shall restore the remaining portion of the Shopping Center owned by such owner as nearly as possible to the condition existing just prior to such condemnation, without contribution from the owner of the area not so taken and any condemnation accrual necessary therefore shall be held in trust and applied for such purpose provided, however, if any mortgagee of any property in the Shopping Center makes the requirement pursuant to a provision in a mortgage or other security instrument that the portion of the award representing compensation for property actually taken, as distinguished from compensation for severance damage to property not taken, be paid to the mortgagee, then the party required to make such payment to such mortgagee shall not be obligated to apply such portion of the award to restoration except to the extent necessary to clear and pave for parking and restore Common Area facilities.

#### ARTICLES VI. REMEDIES

Section 6.01. (a) If either Party to this Agreement shall default in the performance by such Party, then the other Party shall, in addition to all other remedies it may have at law or in equity, after thirty (30) days prior written notice (except in the event of an emergency), have the right to perform such obligation on behalf of such defaulting Party and be reimbursed by such defaulting Party for the cost thereof, together with interest thereon at the rate of two (2%) percent in excess of the prime or base lending rate charged by Citibank, N.A. for commercial loans to its most preferred commercial customers, plus reasonable collection fees. Any such claim for reimbursement, together with interest as aforesaid, shall be secured by a lien therefor and shall attach to the portion of the Shopping Center, and improvements thereon, owned by the defaulting Party effective upon recording of a notice thereof in the Office of the Recorder of Deeds for Racine County, Wisconsin. Such lien shall be subordinate to any first mortgage or deed of trust now or hereafter affecting any portion of the Shopping Center and/or improvements thereon and to any purchaser who has purchased any portion of the Shopping Center and leased it back to the preceding owner or its subsidiary on a net lease basis with the tenant assuming all obligations thereunder in what is commonly referred to as a "sale leaseback" transaction; and any purchase at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any such first mortgage or deed of trust shall take title free and clear of any such then existing lien but otherwise subject to the provisions of this Agreement.

(b) In the event of a breach, or attempted or threatened breach, of any obligation of this Agreement, the other owners of portions of the Shopping Center shall be entitled forthwith to obtain injunction relief; and/or relief by all other available legal and equitable remedies from the consequences of such breach. All costs and expenses of any such proceeding shall be assessed against the land, and improvements thereon, or the interests therein, until paid in the manner provided in Section 6.01(a).

(c) No delay or omission of any party in the exercise of any right accruing upon any default of any other party shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Party of a breach

of, or a default in, any of the terms and conditions of this Agreement by any other Party shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive but each shall be cumulative with all other remedies provided in this Agreement and at law or in equity.

(d) It is expressly agreed that no breach of the provisions of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement; but such limitation shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Agreement. No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value covering any part of the Shopping Center, and any improvements thereon. The provisions of this Agreement shall be binding upon and effective against any owner of the Shopping Center, or any portion thereof, whose title is acquired by foreclosure or trustee's sale or any grantee by deed in lieu of foreclosure or trustee's sale.

(e) In the event any Party shall be delayed or hindered in or prevented from the performance of any act required to be performed by such Party by reason of Acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of the other party, adverse weather conditions preventing the performance of work as certified to by an architect, war, or other reason beyond such Party's control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of funds or financial inability to perform shall not be deemed to be a cause beyond the control of such Party.

#### ARTICLE VII. TERM

Section 7.01. The term of this Agreement shall be for ninety-nine (99) years commencing on the date this Agreement is executed by the parties hereto, except the ingress and egress and utility easements or other easements granted herein, which shall survive the termination of this Agreement and continue in perpetuity.

#### ARTICLE VIII. EFFECT ON OTHER INSTRUMENTS

Section 8.01. Kmart shall, within thirty (30) days of the date hereof, obtain, in recordable form, an agreement from every present mortgagee, trustee under any deed of trust or other party with an interest in the Shopping Center setting forth that the rights of such mortgagee, trustee or other party are subordinate and subject to this Agreement. Any mortgage or deed of trust or other instrument which shall be executed after the date hereof affecting any portion of the Shopping Center shall at all times be subject and subordinate to the terms of this Agreement, unless otherwise provided herein and the parties shall upon request of the other party hereto obtain a written confirmation of such subordination, in recordable form, from any such mortgagee, trustee or other party obtaining an interest in any portion of the Shopping Center; and any party

foreclosing any mortgage or deed of trust affecting any portion of the Shopping Center or acquiring title thereto by deed in lieu of foreclosure or trustee's sale shall acquire title to such premises subject to all of the terms of this Agreement. In any event, the parties hereto shall, at all times, comply with the terms and conditions of every mortgage, deed of trust or other agreement affecting its Parcel whether superior or subordinate to this Agreement, and in the event either party has any notice that it is in default of any such mortgage, deed of trust or other document, such party shall immediately notify, in writing, the other party hereto that it has received such a notice.

Section 8.02. Each and every agreement, covenant, undertaking, condition, easement, right, privilege, option and restriction made, granted or assumed, as the case may be, by either party to this Agreement is made by such party not only personally for the benefit of the other party hereto but also as owner of a portion of the Shopping Center and shall constitute equitable servitude on the portion of the Shopping Center owned by such party appurtenant to and for the benefit of any part of the Shopping Center. Any transferee of any part of the Shopping Center shall automatically be deemed, by acceptance of the title to any portion of the Shopping Center, to have assumed all obligations of this Agreement relating thereto and to have agreed with the then owner or owners of all other portions of the Shopping Center to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Agreement. If any transferor shall expressly condition the transfer of its interest in such portion of the Shopping Center on the assumption by its transferee of the obligations imposed on such transferor, such transferor shall upon the completion of such transfer be relieved of all further liability under this Agreement except such liability as may have arisen during its period of ownership of the portion of the Shopping Center so conveyed and which remains unsatisfied.

Section 8.03. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns and that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

#### ARTICLE IX. NOTICES

Section 9.01. Any notice, report or demand required, permitted or desired to be given under this agreement ("Notice"), shall be in writing and shall be deemed to have been sufficiently given or served for all purposes on the date of delivery (or refusal) by registered or certified mail, return receipt requested, or by nationally recognized overnight delivery service, to the respective parties and their mortgagees of which the party giving notice has actual knowledge, addressed as follows, or to such other addresses as the parties may from time to time designate by notice:

If to Kmart:                      KMART DEVELOPMENT  
                                         KMART CORPORATION  
                                         3100 West Big Beaver Road

Troy, Michigan 48084  
Attn: Michael E. Dowdle, Esq.

with a copy to:

Erik J. Stone, Esq.  
Dickinson, Wright, Moon,  
Van Dusen & Freeman  
525 N. Woodward Ave.  
Bloomfield Hills, MI 48304

If to Toys:

TOYS "R" US, INC.  
461 From Road  
Paramus, New Jersey 07652  
Attention: Sr. Vice President - Real Estate

with a copy to:

Vice President - Real Estate Counsel

#### ARTICLE X. MISCELLANEOUS

Section 10.01. Each party, without cost or expense to the other party, shall promptly comply or cause compliance with all laws, ordinances, rules and regulations of any governmental authority having jurisdiction which may at any time be applicable to buildings and improvements contained within the Building Area on its parcel; provided, however, that each party shall have the right to contest, by appropriate legal or administrative proceedings diligently conducted in good faith, the validity of application of any such law, ordinance, rule or regulation and may delay compliance until a final decision has been rendered in such proceedings and appeal is no longer possible, unless such delay would render the Shopping Center, or any portion thereof, liable to forfeiture, involuntary sale or loss, or result in involuntary closing of any business conducted thereon, or subject the other party to civil or criminal liability in which case the affected party shall immediately take such steps as may be necessary to prevent any of the foregoing, including posting bonds or security or complying with such law, ordinance, rule or regulation. If compliance with any such law, ordinance, rule or regulation would prevent the party to whose parcel such law applies from performing any of its obligations under this Agreement, and such party does not contest the applicability or validity of such law, ordinance, rule or regulation, the other party may contest same at such party's expense in accordance with the procedures and subject to the limitations hereinabove set forth, and during the pendency of such contest, the party whose parcel is affected shall delay compliance in accordance with the provisions contained hereinabove. Each non-contesting party shall cooperate to the fullest extent necessary with any contesting party in any proceeding undertaken pursuant to this provision, including execution of necessary documents or consents to such contest, provided all costs and expenses incurred with respect to such cooperation shall be paid by the contesting party and provided, further, that a party or its parcel shall not thereby incur any civil or criminal liability.

Section 10.02.(a) If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative, or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or

circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) This Agreement shall be construed in accordance with the laws of the State of Wisconsin.

(c) The Article headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof.

(d) Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render either of said parties liable for the debts or obligations of the other.

(e) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

(f) Any party may, at any time and from time to time, in connection with the sale or transfer of its parcel, or in connection with the financing or refinancing of said parcel by bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver a written notice to the other party requesting such party to execute a certificate certifying that the party making such request is not in default in the performance of its obligations under this Agreement, or, if in default, describing therein the nature and amount of any default. A party shall execute and return such certificate within thirty (30) days following its receipt therefor. Failure by a party to so execute and return such certificate within the specified period shall be deemed an admission on such party's part that the party requesting the certificate is current and not in default in the performance of such party's obligations under this Agreement. The parties acknowledge that such certificate may be relied upon by transferees, mortgagees, deed of trust beneficiaries and leaseback-lessors.

(g) Nothing contained in this Agreement shall be deemed to impose, either explicitly, implicitly or constructively upon any party an obligation to remain open and operating for any period or in accordance with any operating schedules.

(h) Each and all of the covenants of Kmart and Toys contained in this Agreement which meet the criteria as covenants running with the land in the state in which the Shopping Center is located, shall run with the land and are intended to and bind each and every person having any fee, leasehold or other interest in any part of the Kmart or Toys, Parcel, as the case may be, at any time and from time to time.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

KMART:

KMART CORPORATION, a Michigan corporation

By:

M. L. Skiles  
M. L. Skiles, Vice President

TOYS:

TOYS "R" US, INC., a Delaware corporation

By:

Michael Paul Miller  
Sr. Vice President - Real Estate

THIS AGREEMENT PREPARED BY  
AND WHEN RECORDED RETURNED TO:

Sean D. Major, Esq.  
Dickinson, Wright, Moon,  
Van Dusen & Freeman  
175 North Franklin Street  
Chicago, Illinois 60606-1826

STATE OF MICHIGAN )  
                          ) SS.  
COUNTY OF OAKLAND )

On this the 27 day of June, 1991, before me, the undersigned notary, personally appeared M.L. Skiles, who acknowledged himself to be a Vice President of Kmart Corporation, a Michigan corporation, and that he, as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of said corporation by himself as Vice President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Janine K. Schumacher  
Notary Public  
My commission expires: 9-30-92

JANINE K. SCHUMACHER  
Notary Public, Oakland County, Mich.  
My Commission Expires September 30, 1992

-17-A

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

KMART:

KMART CORPORATION, a Michigan corporation

By:

M. L. Skiles, Vice President

TOYS:

TOYS "R" US, INC., a Delaware corporation

By:

Michael Paul Miller  
Sr. Vice President - Real Estate

THIS AGREEMENT PREPARED BY  
AND WHEN RECORDED RETURNED TO:

*M. Skiles 6/25/91*

Sean D. Major, Esq.  
Dickinson, Wright, Moon,  
Van Dusen & Freeman  
175 North Franklin Street  
Chicago, Illinois 60606-1826

STATE OF MICHIGAN )  
                          ) SS.  
COUNTY OF OAKLAND )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 1991, before me, the undersigned notary, personally appeared M.L. Skiles, who acknowledged himself to be a Vice President of Kmart Corporation, a Michigan corporation, and that he, as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of said corporation by himself as Vice President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
My commission expires:

-17-B

Vol. 2078 PAGE 806

STATE OF New Jersey  
COUNTY OF Bergen ) ss.

On this the 25<sup>th</sup> day of June, 1991, before me, the undersigned notary, personally appeared Michael Paul Miller, who acknowledged himself to be a Vice President of Toys "R" Us, Inc., a Delaware corporation, and that he, as such Vice President being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of said corporation by himself as Vice President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Christine Hagemann  
Notary Public  
My commission expires:

CHRISTINE HAGEMANN  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Aug. 8, 1994

EXHIBIT A  
Legal Descriptions of  
the Kmart Parcel

Parcel 1:

That part of the West 1/2 of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin, including part of Certified Survey Map No. 1169 and part of Certified Survey Map No. 1276, bounded as follows: Begin at a point on the East-West 1/4 line of said Section 24 located N 89° 08' 05" W 326.13 feet from a brass-capped iron monument marking the center of said Section 24; run thence S 0° 08' 19" E 733.22 feet to an iron pipe; thence S 89° 51' 41" W 200.00 feet to an iron pipe; thence S 0° 08' 19" E 400.00 feet; thence S 89° 51' 41" W 652.51 feet to an iron rod marking the southeast corner of Certified Survey Map No. 1395; thence N 0° 08' 19" W, along the easterly boundary of said C.S.M. No. 1395, 323.00 feet to an iron rod; thence S 89° 51' 41" W, along the northerly boundary of said C.S.M. No. 1395, 640.00 feet to an iron rod on the easterly line of S.T.H. "31"; thence N 11° 49' 57" E, along the easterly line of said highway, 260.89 feet to an iron pipe; thence N 12° 21' 20" E, along the easterly line of said highway, 70.57 feet to an iron pipe; thence continue along the easterly line of said highway 280.15 feet along the arc of a curve concave easterly whose radius is 16310.22 feet and whose chord bears N 14° 23' 41" E 280.15 feet to an iron pipe marking the southwesterly corner of Certified Survey Map No. 1276; thence N 84° 51' 00" E, along the southerly boundary of said C.S.M. No. 1276, 195.00 feet to an iron pipe; thence N 69° 29' 00" E, along the southerly boundary of said C.S.M. No. 1276, 222.08 feet to an iron pipe; thence N 18° 07' 00" E, along the easterly boundary of said C.S.M. No. 1276, 12.42 feet; thence S 88° 27' 33" W 3.75 feet; thence 74.61 feet along the arc of a curve concave northeasterly whose radius is 47.50 feet and whose chord bears N 46° 32' 27" W 67.18 feet to the north line of said C.S.M. No. 1276, which is also the south line of Certified Survey Map No. 1169; thence N 1° 32' 27" W 230.00 feet to the north line of said C.S.M. No. 1169, which is also the south line of 21st Street; thence N 88° 27' 33" E, along the south line of 21st Street, 452.31 feet to an iron pipe; thence continue along the south line of 21st Street 566.49 feet along the arc of a curve concave southerly whose radius is 1333.69 feet and whose chord bears S 79° 22' 21" E 562.24 feet to an iron pipe; thence S 0° 08' 19" E 73.45 feet to the point of beginning.

Parcel 2:

Lot 1, Certified Survey Map No. 1395, recorded in the office of the Register of Deeds for Racine County, Wisconsin on February 20, 1989 in Volume 4 of Certified Survey Maps on pages 351-352 as Document No. 1276690, located in the North 1/2 of the Southwest 1/4 of Section 24, Township 3 North, Range 22 East. Said land being in the City of Racine, Racine County, Wisconsin.

Tax Parcel No. 23876-17 and 23876-40.

EX-107 VOL 2078 PAGE 808

Excepting therefrom:

Parcel No. 1, Certified Survey Map No. 1528, recorded in the office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in Volume 4, of Certified Survey Maps on page 699-700, as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine, State of Wisconsin.

EXHIBIT B

Legal Description of the Toys Parcel

Parcel No. 1, Certified Survey Map No. 1528, recorded in the office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in Volume 4, of Certified Survey Maps on page 699-700, as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine, State of Wisconsin.

23876-042

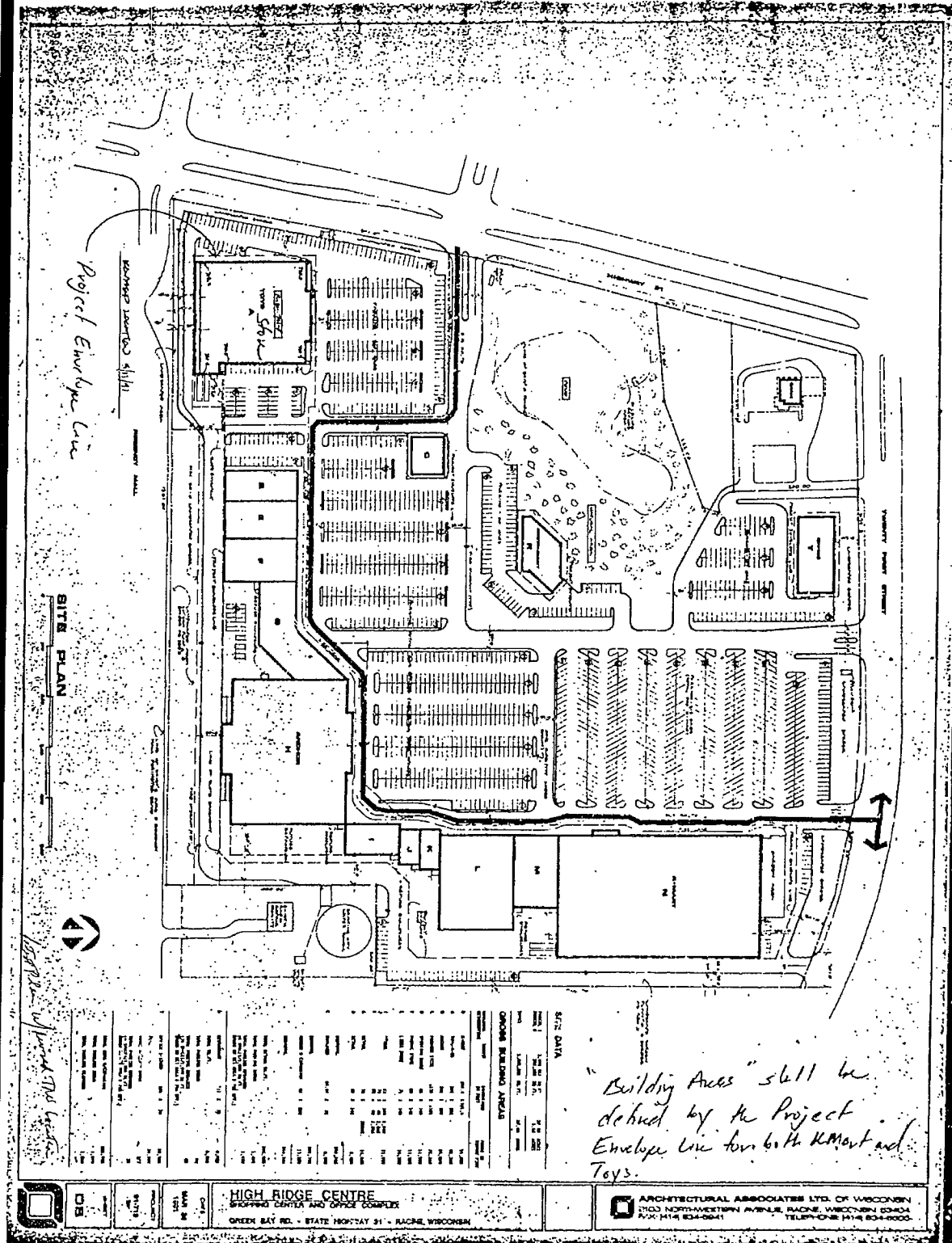


EXHIBIT C

EXHIBIT D

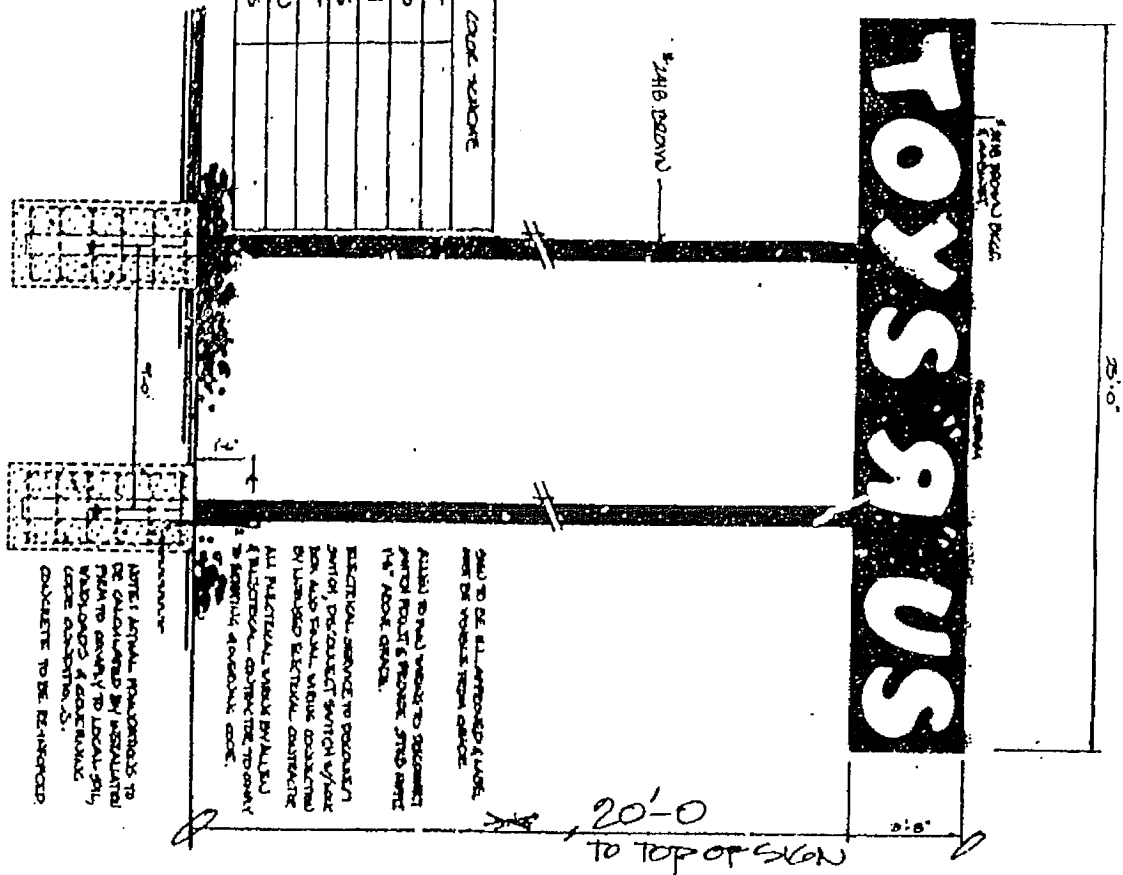
Lighting Specifications

The Lighting Specifications for the Shopping Center are set forth on Architectural Associates, Project No. 91-715C, drawings, dated June 7, 1991, referenced as SE-1 and SE-2, and as set forth in WBDC Group, Project No. 16191, Project Manual dated June 4, 1991.

|             |                  |
|-------------|------------------|
| DATE        | 7/27/85          |
| DESIGNED BY | H. D. D. / J. A. |
| CHECKED BY  | H. D. D. / J. A. |
| SCALE       | 1/2" = 1'-0"     |

SHED ELEVATION/ALTS

| CODE | REMARKS |
|------|---------|
| 1    |         |
| 2    |         |
| 3    |         |
| 4    |         |
| 5    |         |
| 6    |         |
| 7    |         |
| 8    |         |
| 9    |         |
| 10   |         |

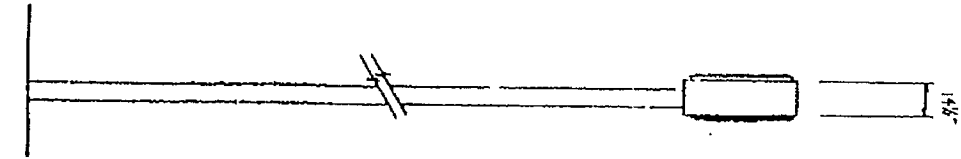


SHED TO BE ILLUMINATED & LIGHTED BY VARIOUS FROM OFFICE. ALL TO BE WIRING TO SIGNIFICANT POINT & POWER. SHED LIGHT 14" ABOVE SIGN.

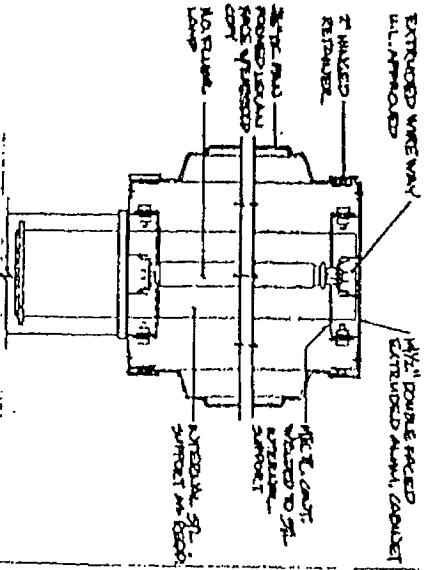
ELECTRICAL SERVICE TO POWER SIGN. THE COLLECT SWITCH W/BOX AND ALSO LIGHT. WIRING COLLECTED BY LISTED ELECTRICAL CONTRACTOR. ALL ELECTRICAL WIRING BY ALIAS & ELECTRICAL CONTRACTOR TO BE IN ACCORDANCE WITH CODE.

SHED: APPROX. DIMENSIONS TO BE DETERMINED BY MEASUREMENT FROM TO BE WIRING TO LOCAL CITY, W/BOX & ELECTRICAL CONTRACTOR TO BE IN ACCORDANCE WITH CODE.

SHED VIEW/ALTS



DESCRIPTION: THE DPT SIGN CABINET TO BE MANUFACTURED FROM ALUM. EXTRUSION. FACES TO BE 1/2" THK. PAD POWER LEDS W/EMBEDDED COY & COLORED APPLIED TO SECOND SURFACE AS NOTED. INTERIOR ILLUMINATION IS BY H.O. FLUOR. LIGHTS POWERED BY REDUC. SILENT BALLASTS. SIGNS TO BE MOUNTED TO STP. STL. SUPPORTS. EMBEDDED IN RE-INFORCED CONC. FOUNDATIONS.



SECTION DETAIL FOR SHED/ALTS

PACIFIC, 10/10  
Tee

Power Repts: 120V 3.8 MAX Amp  
light type - FL

FIRST AMENDMENT TO RECIPROCAL EASEMENT AND OPERATION AGREEMENT

This First Amendment to Reciprocal Easement and Operation Agreement (the "Amendment") made as of this 22<sup>nd</sup> day of June, 1992, by and between Kmart Corporation, a Michigan corporation ("Kmart") having a office at 3100 West Big Beaver Road, Troy, Michigan 48084 and Toys "R" Us, Inc., a Delaware corporation ("Toys") having an office at 461 From Road, Paramus, New Jersey 07652.

## WITNESSETH:

WHEREAS, Kmart is the owner of certain real estate situated in the City of Racine, County of Racine, State of Wisconsin, more particularly described on Exhibit A attached hereto (the "Kmart Parcel");

WHEREAS, Toys is the owner of certain real estate situated in the City of Racine, County of Racine, State of Wisconsin, more particularly described on Exhibit B attached hereto (the "Toys Parcel");

WHEREAS, Kmart and Toys entered into that certain Reciprocal Easement and Operation Agreement (the "REA"), dated July 2, 1991 and recorded on July 3, 1991, in Volume 278 of the Racine County Register's Office Records, at page 748, as document no. 1343832;

WHEREAS, Toys and Kmart desire to amend the REA as set forth herein;  
and

NOW, THEREFORE, in consideration of the covenants and agreements contained hereinbelow, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Kmart and Toys agree as follows:

1. Terms used and not defined herein shall have the meaning set forth in the REA.
2. The REA is hereby amended to substitute the site plan attached hereto as Exhibit C for the site plan attached to the REA as Exhibit C.
3. Section 2.04(a) of the REA is hereby amended by deleting the last sentence thereof and substituting therefor the following:

The parties acknowledge and agree that nothing contained in this Agreement shall be construed so as to prohibit the sale of merchandise from those portions of the Shopping Center designated as the Garden Shop or the Garden Center, as depicted on Exhibit C. In addition, Rogan Shoes shall be permitted to hold one tent sale each year during the month of June for a maximum duration of ten (10) days and for one tent

sale each year during the month of August for a maximum duration of ten (10) days in the area crosshatched in red on the site plan attached hereto as Exhibit "C", such area to be used for the tent sales shall not to exceed forty feet (40') in width by eighty feet (80') in length, provided, that such tent sales do not adversely affect the availability of parking in the Common Area, the movement of pedestrian or vehicular traffic in the Common Area, or the general cleanliness of the Common Area. Any failure to comply with the terms and provisions set forth in the preceding sentence shall be promptly cured upon Kmart's receipt of written notice thereof from Toys (a "Notice"). If Kmart fails to cure such default within twenty-four (24) hours of its receipt of a Notice, Toys shall be permitted to either (i) cure the default, in which event such party shall be promptly reimbursed by Kmart for the costs thereof; or (ii) provide written notice to Kmart directing Kmart to, within twenty-four (24) hours, take all steps necessary to ensure that the activities associated with the current tent sale are terminated and that all improvements associated with the same are removed from the Common Area. If a Notice is given during two tent sales, the right granted herein to maintain and operate such tent sales shall terminate.

4. Except as expressly amended by this Amendment, the REA shall remain in full and force effect and is hereby ratified by the parties.

5. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one in the same instrument, and any of the parties hereto may execute this Amendment by signing any such counterpart.

6. If any part of this Amendment shall be found to be invalid or unenforceable, the remainder of the Amendment shall be enforceable in accordance with its terms, deleting such unenforceable or invalid provisions.

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IN WITNESS WHEREOF, Kmart and Toys have executed this First Amendment to Reciprocal Easement and Operation Agreement the day and year first above written.

KMART:

KMART CORPORATION, a Michigan corporation

By: M. L. Skiles  
M. L. Skiles, Vice President

TOYS:

TOYS "R" US, Inc., a Delaware Corporation

By: Michael Paul Miller  
Michael Paul Miller  
Sr. Vice President - Real Estate  
M. Keschl 5/26/92

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STATE OF NEW JERSEY     )  
                                      )SS.  
COUNTY OF BERGEN     )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify that Michael Paul Miller, personally known to me to be a <sup>SR</sup>Vice President of Toys "R" Us, Inc., a Delaware corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such <sup>SR</sup>Vice President, he signed and delivered the said instrument as the <sup>SR</sup>Vice President of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation or pursuant to the By-laws of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 27<sup>TH</sup> day of may, 1992.

Jane Anzotti  
Notary Public,  
State of ~~Michigan~~ N.J.  
My commission expires:

f:\home\sdm\11335\toys.amd

JANE ANZOTTI  
NOTARY PUBLIC - NEW JERSEY  
My Commission Expires Oct. 21, 1992

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STATE OF MICHIGAN     )  
                                  )SS.  
COUNTY OF OAKLAND    )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify that M. L. Skiles, personally known to me to be a Vice President of Kmart Corporation, a Michigan corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Vice President, he signed and delivered the said instrument as the Vice President of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation or pursuant to the By-laws of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 25<sup>th</sup> day of June, 1992.

Janine K. Schumacher  
Notary Public,  
State of Michigan  
My commission expires: 9-30-92

JANINE K. SCHUMACHER  
Notary Public, Oakland County, Mich.  
My Commission Expires September 30, 1992

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DRAFTED BY:  
Sean D. Major, Esq.  
Dickinson, Wright, Moon,  
Van Dusen & Freeman  
225 W. Washington St., Ste. 400  
Chicago, IL 60606-3418

WHEN RECORDED RETURN TO:  
Carole Crosby, Esq.  
Jacob & Weingarten, P.C.  
2301 W. Big Beaver Rd., Ste. 77  
Troy, MI 48084

# EXHIBIT A

## Parcel 1

That part of the West 1/2 of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin, including part of Certified Survey Map No. 1169 and part of Certified Survey Map No. 1276, bounded as follows: Begin at a point on the East-West 1/4 line of said Section 24 located N 89° 08' 05" W 326.13 feet from a brass-capped Iron monument marking the center of said Section 24; run thence S 0° 08' 19" E 733.22 feet to an Iron pipe; thence S 89° 51' 41" W 200.00 feet to an Iron pipe; thence S 0° 08' 19" E 400.00 feet; thence S 89° 51' 41" W 652.51 feet to an Iron rod marking the southeast corner of Certified Survey Map No. 1395; thence N 0° 08' 19" W, along the easterly boundary of said C.S.M. No. 1395, 323.00 feet to an Iron rod; thence S 89° 51' 41" W, along the northerly boundary of said C.S.M. No. 1395, 640.00 feet to an Iron rod on the easterly line of S.T.H. #31; thence N 11° 49' 57" E, along the easterly line of said highway, 260.89 feet to an Iron pipe; thence N 12° 21' 20" E, along the easterly line of said highway, 70.57 feet to an Iron pipe; thence continue along the easterly line of said highway 280.15 feet along the arc of a curve concave easterly whose radius is 16310.22 feet and whose chord bears N 14° 23' 41" E 280.15 feet to an Iron pipe marking the southwesterly corner of Certified Survey Map No. 1276; thence N 84° 51' 00" E, along the southerly boundary of said C.S.M. No. 1276, 195.00 feet to an Iron pipe; thence N 69° 29' 00" E, along the southerly boundary of said C.S.M. No. 1276, 222.08 feet to an Iron pipe; thence N 18° 07' 00" E, along the easterly boundary of said C.S.M. No. 1276, 12.42 feet; thence S 88° 27' 33" W 3.75 feet; thence 74.61 feet along the arc of a curve concave northeasterly whose radius is 47.50 feet and whose chord bears N 46° 32' 27" W 67.18 feet to the north line of said C.S.M. No. 1276, which is also the south line of Certified Survey Map No. 1169; thence N 1° 32' 27" W 230.00 feet to the north line of said C.S.M. No. 1169, which is also the south line of 21st Street; thence N 88° 27' 33" E, along the south line of 21st Street, 452.31 feet to an Iron pipe; thence continue along the south line of 21st Street 566.49 feet along the arc of a curve concave southerly whose radius is 1333.69 feet and whose chord bears S 79° 22' 21" E 562.24 feet to an Iron pipe; thence S 0° 08' 19" E 73.45 feet to the point of beginning.

## Parcel 2

Lot 1, Certified Survey Map No. 1395, recorded in the office of the Register of Deeds for Racine County, Wisconsin on February 20, 1989 in Volume 4 of Certified Survey Maps on pages 351-352 as Document No. 1276690, located in the North 1/2 of the Southwest 1/4 of Section 24, Township 3 North, Range 22 East. Said land being in the City of Racine, Racine County, Wisconsin.

Excepting therefrom the following described property:

Parcel No. 1, Certified Survey Map No. 1528, recorded in the office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in Volume 4, of Certified Survey Maps on page 699-700, as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine, State of Wisconsin.

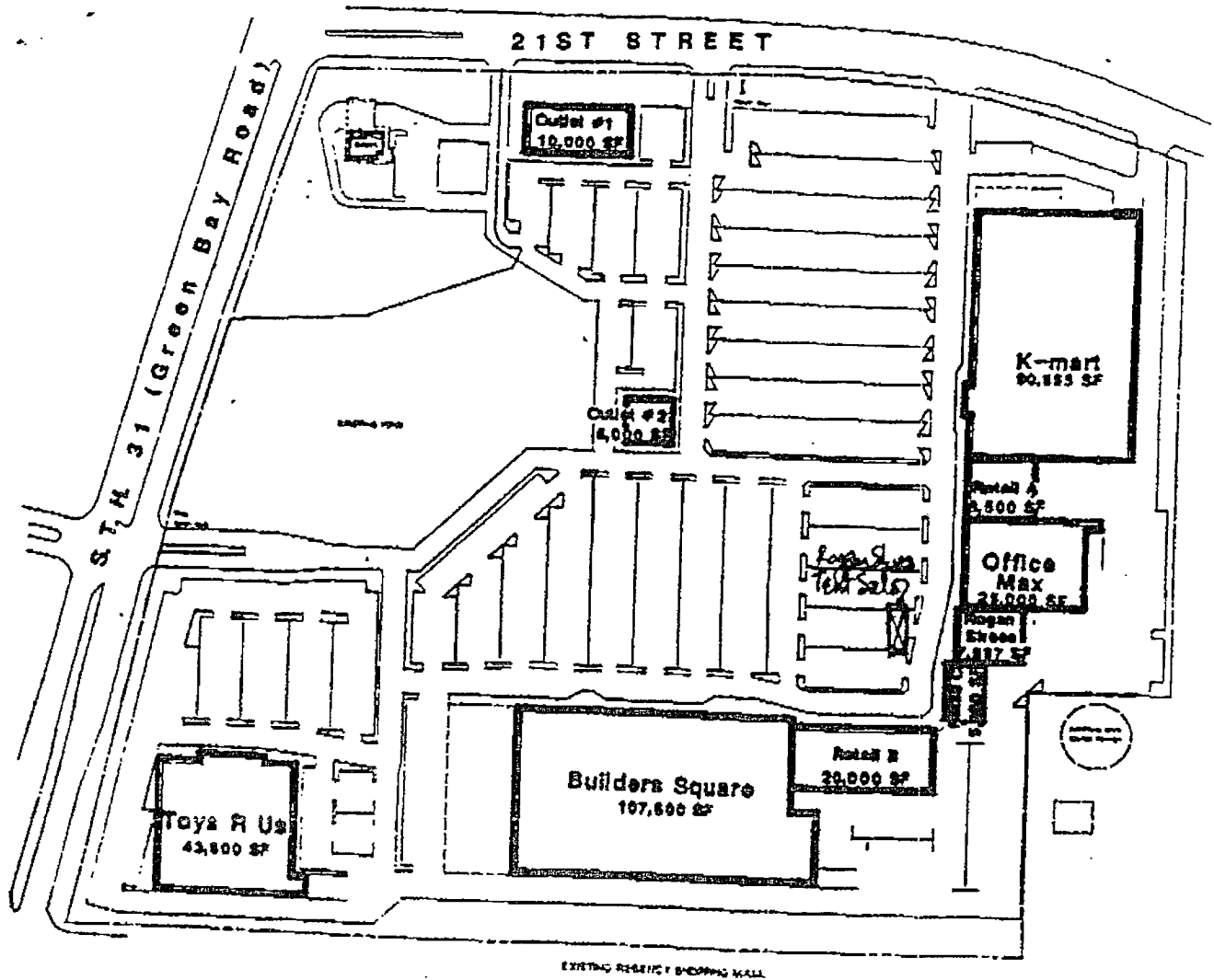
EXHIBIT B

Parcel No. 1, Certified Survey Map No. 1528, recorded in the office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in Volume 4, of Certified Survey Maps on page 699-700, as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine, State of Wisconsin.

Tax Parcel No. 23876-17 and 23876-40

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skt 1 of 2



Register's Office  
Racine County, Wis. } SS

Received for Record 19th day of October A.D. 1992 at 8:30 o'clock A. M. and recorded in Volume 2194 of Records on page 176

*Hein M. Schutten*

Register of Deeds

24-

EXHIBIT C  
VOL **2194** PAGE **176**

#### SITE DEVELOPMENT DATA:

##### Building Area

|                   |            |
|-------------------|------------|
| K-mart            | 90,855 SF  |
| Office Max        | 25,000 SF  |
| Builders Square   | 107,600 SF |
| Toys R Us         | 43,600 SF  |
| Hogan Shoes       | 7,887 SF   |
| Retail A          | 3,500 SF   |
| Retail B          | 20,000 SF  |
| Retail C          | 3,100 SF   |
| Subtotal          | 308,542 SF |
| Outlet #1         | 10,000 SF  |
| Outlet #2         | 4,000 SF   |
| Total Development | 323,542 SF |
| Spaces Provided   | 1750       |

MAY 92

**RACINE, WI  
HIGH RIDGE PLAZA**



Northwestern Hwy., Suite 100  
Farmington Hills, Michigan 48334  
Phone : (313) 851-9881 Telex : (313) 851-8380

NEW CENTER COMPANY INC

DOCUMENT #

1716541

Consent agreement

Document Number

Title of Document

SEE ATTACHED LEGAL

REGISTER'S OFFICE  
RACINE COUNTY, WI

RECORDED

2000 FEB -2 PM 4:41

MARK A. LADD  
REGISTER OF DEEDS

VOL 3001  
PAGE 091-095

18

Record this document with the Register of Deeds

Name and Return Address:

Atty Andrew Annes

Schenk, Annes, Brookman & Tepper, Ltd

311 S. Wacker Dr. Ste 5125

Chicago, IL 60606-6622

23876-44

(Parcel Identification Number)



GEOFFREY

# TOYS "R" US®

www.toysrus.com

NATIONAL OFFICES: 461 FROM ROAD, PARAMUS, NJ 07652-3524

3001 092  
VUL PAGE

January 7, 2000

California State Teachers'  
Retirement System  
c/o William J. Horvath  
Lend Lease Real Estate Investments, Inc.  
455 North Cityfront Plaza Drive  
Suite 3200  
Chicago, IL 60611

RE: Racine, Wisconsin  
TRU#6051

## Consent

Reference is hereby made to that certain Reciprocal Easement and Operation Agreement dated July 2, 1991 ("REA") between TRU Properties, Inc. ("Toys") (successor in interest to Toys "R" Us, Inc.) and California State Teachers Retirement Systems ("CSTRS") (successor in interest to Kmart Corporation) as amended from time to time and that certain Declaration of Easements and Restrictions dated September 6, 1988 ("Declaration") between CSTRS (successor in interest to Racine Joint Venture who was successor in interest to Demetrios Dellaportas), Bank One, Racine, N.A. ("Bank One") and Toys as amended from time to time. All capitalized terms used herein shall have the same respective meanings as in the REA and Declaration unless otherwise indicated.

CSTRS is the owner of the property ("Shopping Center") legally described in Exhibit A, which property includes an outparcel ("Outparcel") which CSTRS intends to sell to Triple H LLP for the purpose of the development by Triple H LLP of a Culver's Restaurant.

CSTRS has requested Toys' waiver of Section 3.6 (x) of the Declaration which prohibits a fast food restaurant with drive-through facilities ("Restriction"), in order that Triple H LLP may locate a Culver's Restaurant at the Shopping Center.

Toys hereby waives the Restriction (and to the extent applicable, any other restrictions of the REA or Declaration which would restrict the use of the Outparcel as herein described) and consents to a fast food restaurant with drive-through facilities for

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3001  
093

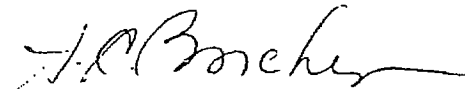
Triple H LLP to locate and operate a Culver's Restaurant, subject to and conditioned upon each of the following:

1. The Culver's Restaurant shall be located in the outlot indicated on Exhibit B attached and made part hereof.
2. The building shall not exceed 30' (thirty) feet in height.
3. At no time shall construction, construction equipment and materials, construction vehicles, and the personal vehicles used by workers engaged in construction, block or interfere with access to and from the Toys Parcel or the Shopping Center entrances and exits, including delivery, loading, and unloading access to the Toys Parcel or the Shopping Center.
4. Toys' consent is limited to Triple H LLP and its successors and/or assigns, provided that the use remains a Culver's Restaurant or a family style restaurant, materially the same as Culver's, and no alcohol is served on premises or sold for take out.
5. There shall be space for stacking of not less than three (3) automobiles for each drive-up unit.

Nothing herein contained shall be deemed to create any new or additional restrictions on the Outparcel other than as existed pursuant to the REA and Declaration. Except to the extent of the consents herein granted, all other limitations, prohibitions and exclusivity provisions of the REA and the Declaration shall remain in full force and effect. Nothing herein shall be deemed a waiver of any of the restrictions set forth in the REA or the Declaration with respect to any other party or parties, nor a waiver of any other or additional terms, covenants or restrictions set forth in the REA or the Declaration nor a creation of any new or additional restrictions.

Very truly yours,

TRU PROPERTIES, INC.



A. C. Boschen  
Director - Asset Management

SUBSCRIBED and SWORN to before me  
this 17<sup>th</sup>  
day of January, 2000.



Notary Public

**DEBORAH SALOMON**

A Notary Public of New Jersey

My Commission Expires 12/03/2001

EXHIBIT A  
LEGAL DESCRIPTION  
OWNER'S SITE

Parcel 1:

That part of the west 1/2 of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin, including part of Certified Survey Map No. 1169 and part of Certified Survey Map No. 1276, bounded as follows: Begin at a point on the East-West 1/4 line of said Section 24 located N 89° 08' 05" W 326.13 feet from a brass-capped iron monument marking the center of said Section 24; run thence S 0° 08' 19" E 733.22 feet to an iron pipe; thence S 89° 51' 41" W 200.00 feet to an iron pipe; thence S 0° 08' 19" E 400.00 feet; thence S 89° 51' 41" W 652.51 feet to an iron rod marking the southeast corner of Certified Survey Map No. 1395; thence N 0° 08' 19" W, along the easterly boundary of said C.S.M. No. 1395, 323.00 feet to an iron rod; thence S 89° 51' 41" W, along the northerly boundary of said C.S.M. No. 1395, 640.00 feet to an iron rod on the easterly line of S.T.H. #31; thence N 11° 43' 57" E, along the easterly line of said highway, 260.89 feet to an iron pipe; thence N 12° 21' 20" E, along the easterly line of said highway, 70.57 feet to an iron pipe; thence continue along the easterly line of said highway 280.15 feet along the arc of a curve concave easterly whose radius is 16310.22 feet and whose chord bears N 14° 23' 41" E 280.15 feet to an iron pipe marking the southwesterly corner of Certified Survey Map No. 1276; thence N 84° 51' 00" E, along the southerly boundary of said C.S.M. No. 1276, 195.00 feet to an iron pipe; thence N 69° 29' 00" E, along the southerly boundary of said C.S.M. No. 1276, 222.08 feet to an iron pipe; thence N 18° 07' 00" E, along the easterly boundary of said C.S.M. No. 1276, 12.42 feet; thence S 88° 27' 33" W 3.75 feet; thence 74.61 feet along the arc of a curve concave northeasterly whose radius is 47.50 feet and whose chord bears N 46° 32' 27" W 67.18 feet to the north line of said C.S.M. No. 1276, which is also the south line of Certified Survey Map No. 1169; thence N 1° 32' 27" W 230.00 feet to the north line of said C.S.M. No. 1169, which is also the south line of 21st Street; thence N 88° 27' 33" E, along the south line of 21st Street, 452.31 feet to an iron pipe; thence continue along the south line of 21st Street 566.49 feet along the arc of a curve concave southerly whose radius is 1333.69 feet and whose chord bears S 79° 22' 21" E 562.24 feet to an iron pipe; thence S 0° 08' 19" E 73.45 feet to the point of beginning.

Parcel 2:

Lot 1, Certified Survey Map No. 1395, recorded in the office of the Register of Deeds for Racine County, Wisconsin on February 20, 1989 in Volume 4 of Certified Survey Maps on pages 351-352 as Document No. 1276690, located in the North 1/2 of the Southwest 1/4 of Section 24, Township 3 North, Range 22 East. Said land being in the City of Racine, Racine County, Wisconsin.

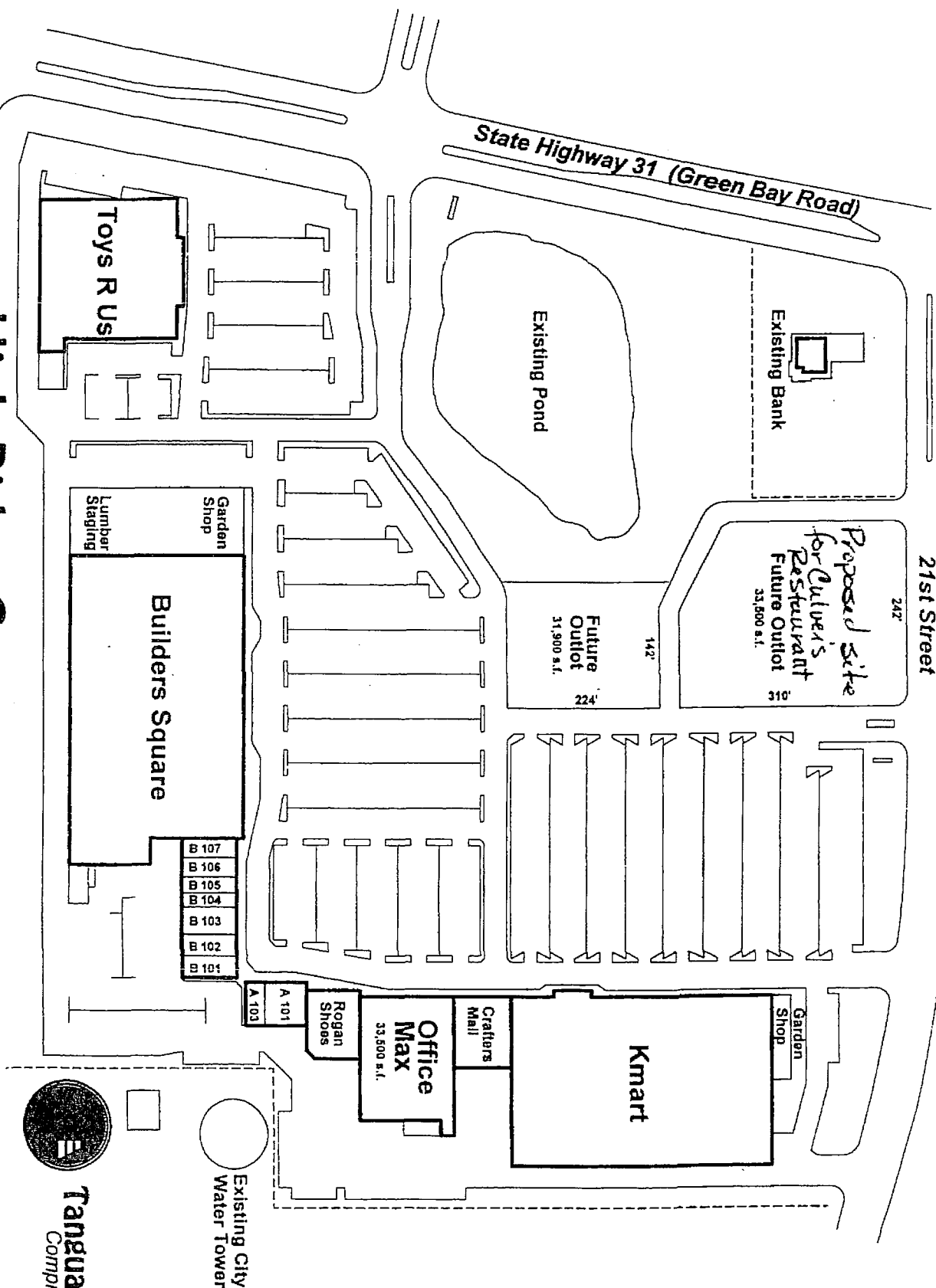
Tax Parcel No. 23876-17 and 23876-40.

Excepting therefrom:

Parcel No. 1, Certified Survey Map No. 1528, recorded in the office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in Volume 4, of Certified Survey Maps on page 699-700, as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine, State of Wisconsin.

# High Ridge Centre

Exhibit B



1716542

REGISTER'S OFFICE  
RACINE COUNTY, WI

This instrument was prepared  
by and after recording should  
be returned to:

Andrew J. Annes, Esquire  
Schenk, Annes, Brookman & Tepper, Ltd.  
311 South Wacker Drive, Suite 5125  
Chicago, IL 60606-6622

RECORDED \_\_\_\_\_

2000 FEB -2 PM 4:42

MARK A. LADD  
REGISTER OF DEEDS

3001 096-099

16-

23876-44

**WAIVER**

This Waiver is made effective as of this 4th day of November, 1999 by  
Kmart Corporation.

**Recitals**

A. California State Teachers' Retirement System ("Owner") is the owner in fee simple of certain real estate situated in the City of Racine, County of Racine, State of Wisconsin, more particularly described in Exhibit "A" attached hereto (hereinafter referred to as the "Owner's Site").

B. Kmart Corporation ("Kmart") is a tenant under a certain lease ("Lease") with Owner covering a portion of the Owner's Site.

C. Owner, by its predecessor in interest, Demetrios Dellaportas ("Dellaportas") and Bank One, Racine NA ("Bank One") entered into a certain Declaration of Easements and Restrictions dated September 7, 1988 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on September 7, 1988 in Volume 1929 of Records, at page 653, as Document No. 1265306 and a certain Addendum to Declaration of Easements and Restrictions dated April 13, 1990 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on April 19, 1990 in Volume 2010 of Records, at page 126, as Document No. 1308183 and a certain Amendment to Declaration of Easements and Restrictions dated June 18, 1991 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on September 7, 1988 in Volume 2077 of Records, at page 748, as Document No. 1343367 (hereinafter collectively referred to as the "Declaration").

D. Owner, by its predecessor in interest, Kmart and TRU, by its predecessor in interest, Toys "R" Us, Inc. ("Toys") entered into a certain Reciprocal Easement and Operation Agreement dated July 2, 1991 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991 in Volume 2078 of Records, at page 789, as Document No. 1343832, and a certain First Amendment to Reciprocal Easement and Operation Agreement dated June 25, 1992 and recorded in the office of the Register of Deeds for Racine County, Wisconsin on October 19, 1992 in

Volume 2194 of Records, at page 169, as Document No. 1393873 (hereinafter collectively referred to as the "REA").

E. Owner intends to sell a portion of the Owner's Site ("Outparcel"), legally described on Exhibit B attached hereto, to Triple H LLP ("Triple H") for the purpose of the development of a restaurant with a drive-through window.

F. Pursuant to the Lease, Kmart may be entitled to benefits of the provisions of the REA and desires to waive any objection Kmart may have to the sale of a portion of the Owner's Site for the development of a restaurant.

For and in consideration of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which the undersigned hereby acknowledges, the undersigned agrees as follows:

1. Subject to the terms and provisions herein contained, the undersigned hereby waives, to the extent applicable, any restrictions contained with the Declaration and/or REA to the sale and use of the Outparcel for the purpose of the use of the Outparcel by Triple H, and/or its successors and assigns, for an upscale, first class restaurant (with a bar), or a restaurant (with a bar) substantially similar in format and style to restaurants as operated, as of the effective date of this Waiver, as *Culvers* restaurants ("Culvers' Style Restaurants"). In addition, and only in the event the Outparcel is utilized for either a Culvers' Style Restaurant or a first class, upscale restaurant, such use may include a single drive-through window and bar.

2. The restaurant herein described shall be located on the Outparcel.

3. The building shall not exceed 30' (thirty ) feet in height above adjacent grade (excluding roof mounted HVAC units and related screening, which shall not exceed five (5) feet in height).

4. At no time during construction of the restaurant shall construction equipment and materials, construction vehicles, and the personal vehicles used by workers engaged in construction, block or interfere with access to and from the Owner's Site or adjacent properties.

5. There shall be space for stacking of not less than three (3) automobiles for each drive-up unit.

6. In the event of a violation by any owner of the Outparcel of any applicable terms and provisions of the REA or Declaration, the undersigned for its successors and assigns, agrees that enforcement shall only be against the owner of the Outparcel and not the owner of the Owner's Site.

7. All other limitations, prohibitions and exclusivity provisions of the REA and the Declaration shall remain in full force and effect. Nothing herein shall be deemed a waiver of any of the restrictions set forth in the REA or the Declaration with respect to any other party or parties, nor a waiver of any other or additional terms, covenants or restrictions set forth in the REA or the Declaration.

Kmart Corporation

By: *Lawrence T. Kellar*

Its: LORRENCE T. KELLAR  
V.P. REAL ESTATE

SUBSCRIBED and SWORN to before me  
this 4th  
day of November, 1999.

*Romy M. Alexander*  
Notary Public

ROMY M. ALEXANDER  
Notary Public, Oakland County, MI  
Commission Expires: Sept. 22, 2003

EXHIBIT A  
LEGAL DESCRIPTION  
OWNER'S SITE

Parcel 1:

That part of the west 1/2 of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin, including part of Certified Survey Map No. 1169 and part of Certified Survey Map No. 1276, bounded as follows: Begin at a point on the East-West 1/4 line of said Section 24 located N 89° 08' 05" W 326.13 feet from a brass-capped iron monument marking the center of said Section 24; run thence S 0° 08' 19" E 733.22 feet to an iron pipe; thence S 89° 51' 41" W 200.00 feet to an iron pipe; thence S 0° 08' 19" E 400.00 feet; thence S 89° 51' 41" W 652.51 feet to an iron rod marking the southeast corner of Certified Survey Map No. 1395; thence N 0° 08' 19" W, along the easterly boundary of said C.S.M. No. 1395, 323.00 feet to an iron rod; thence S 89° 51' 41" W, along the northerly boundary of said C.S.M. No. 1395, 640.00 feet to an iron rod on the easterly line of S.T.H. "31"; thence N 11° 43' 57" E, along the easterly line of said highway, 260.89 feet to an iron pipe; thence N 12° 21' 20" E, along the easterly line of said highway, 70.57 feet to an iron pipe; thence continue along the easterly line of said highway 280.15 feet along the arc of a curve concave easterly whose radius is 16310.22 feet and whose chord bears N 14° 23' 41" E 280.15 feet to an iron pipe marking the southwesterly corner of Certified Survey Map No. 1276; thence N 84° 51' 00" E, along the southerly boundary of said C.S.M. No. 1276, 195.00 feet to an iron pipe; thence N 69° 29' 00" E, along the southerly boundary of said C.S.M. No. 1276, 222.08 feet to an iron pipe; thence N 18° 07' 00" E, along the easterly boundary of said C.S.M. No. 1276, 12.42 feet; thence S 88° 27' 33" W 3.75 feet; thence 74.61 feet along the arc of a curve concave northeasterly whose radius is 47.50 feet and whose chord bears N 46° 32' 27" W 67.18 feet to the north line of said C.S.M. No. 1276, which is also the south line of Certified Survey Map No. 1169; thence N 1° 32' 27" W 230.00 feet to the north line of said C.S.M. No. 1169, which is also the south line of 21st Street; thence N 88° 27' 33" E, along the south line of 21st Street, 452.31 feet to an iron pipe; thence continue along the south line of 21st Street 566.49 feet along the arc of a curve concave southerly whose radius is 1333.69 feet and whose chord bears S 79° 22' 21" E 562.24 feet to an iron pipe; thence S 0° 08' 19" E 73.45 feet to the point of beginning.

Parcel 2:

Lot 1, Certified Survey Map No. 1395, recorded in the office of the Register of Deeds for Racine County, Wisconsin on February 20, 1989 in Volume 4 of Certified Survey Maps on pages 351-352 as Document No. 1276690, located in the North 1/2 of the Southwest 1/4 of Section 24, Township 3 North, Range 22 East. Said land being in the City of Racine, Racine County, Wisconsin.

Tax Parcel No. 23876-17 and 23876-40.

Excepting therefrom:

Parcel No. 1, Certified Survey Map No. 1528, recorded in the office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in Volume 4, of Certified Survey Maps on page 699-700, as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine, State of Wisconsin.

## ACCESS ROAD AGREEMENT

This Access Road Agreement ("Agreement") is made as of the 10<sup>th</sup> day of July, 2008, by, between, and among Racine Joint Venture II LLC, a Wisconsin limited liability partnership, (hereafter "Regency"), Giraffe Properties, LLC, a Delaware limited liability company (hereafter "Toys"), and High Ridge Improvements, LLC, a Delaware limited liability company (hereafter "High Ridge");

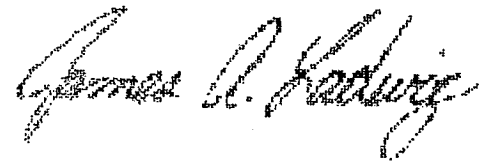
**WHEREAS**, Regency is currently the owner of a parcel described as Lot 1, Block 1, Regency Mall, a recorded subdivision in the Southwest 1/4 of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin (hereafter the "Regency Lot"); and

**WHEREAS**, Toys is currently the owner of a parcel described as Parcel No. 1 of Certified Survey Map number 1528 as recorded in Volume 4 of Certified Survey Maps on Pages 699 and 700 as Document No. 1343824 in the Office of the Register of Deeds for Racine County and being in the Southwest 1/4 of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin (hereafter the "Toys Lot"); and

**WHEREAS**, High Ridge is currently the owner of a parcel described as Lot 1 of Certified Survey Map number 1395 as recorded in Volume 4 of Certified Survey Maps on pages 351 and 352 as Document No. 1276690 in the Office of the Register for Deeds of Racine County and being in the Southwest 1/4 of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin, (hereafter the "High Ridge Lot"); and

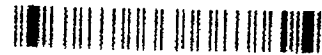
**WHEREAS**, the "Owners" (hereinafter defined) desire to create a joint easement for the purpose of creating an access road between their respective "Lots" (hereinafter defined) and to impose certain restrictions, obligations, and covenants on the property described on Exhibit 1 attached hereto, for the benefit of the Owners and their respective successors and assigns;

**NOW, THEREFORE**, in consideration of the mutual promises of the Owners contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners hereby agree as follows:



JAMES A LADWIG  
RACINE COUNTY  
REGISTER OF DEEDS

Fee Amount: \$31.00



**Return to:**

Attorney Kenneth B. Axe  
Lathrop & Clark LLP  
740 Regent Street, Suite 400  
Madison, WI 53715

31

23876-008, [Regency]  
23876-042 [Toys] and  
23876-040 [High Ridge]  
**Parcel Identification Numbers**

1. **Definitions.**

(a). Owners means collectively the fee owners of the Regency Lot, the Toys Lot and the High Ridge Lot (collectively "the Lots"). The fee owner of the Regency Lot, the fee owner of the Toys Lot, and the fee owner of the High Ridge Lot, are each individually, an "Owner."

(b). Occupants means collectively, each Owner and any person entitled from time-to-time to use or occupy any portion of the Lots or any improvements located thereon under a lease, sub-lease, license, concession agreement or any other instrument or arrangement under which such rights are acquired.

(c). Permittees means collectively, all customers, employees, licensees, contractors, agents or other invitees of the Occupants.

(d). Access Road Easement Area means, generally, the property described and depicted on Exhibits 1 and 2 attached hereto and made a part of this Agreement, and more specifically, the Access Road to be constructed on the Lots.

2. **Grant of Cross-Access Easement.** The Owners hereby grant a perpetual, non-exclusive easement over the Access Road Easement Area for the benefit of the Regency Lot, the Toys Lot and the High Ridge Lot for the purpose of providing the Owners, Occupants and Permittees with vehicular and pedestrian access, ingress, egress, passage and travel over and across the Access Road Easement Area (together with all other easements granted under this Agreement, hereafter "the Access Road Easements").

3. **Continuing Easement for Reconstruction and Maintenance.** The Owners hereby grant non-exclusive easements for the purpose of constructing and reconstructing, maintaining, repairing and replacing the Access Road located on the Access Road Easement Area. All construction, maintenance, repair and replacements will be diligently prosecuted in accordance with sound construction practices and performed in a manner which will not unreasonably interfere with use of the Lots and the improvements thereon. Any person performing any construction work or making any installations, repairs or replacements on the Access Road Easement Area shall repair any damage to adjacent property and shall return the same to the condition that existed prior to such construction, installation, repair or replacement.

4. **Regency to Install Access Road.** Regency agrees to place and install a blacktop road on the Access Road Easement Area as shown on Exhibit 2 hereto on or before November 1, 2008 (the "Work"), initially at Regency's cost, subject to reimbursement as follows: Regency has incurred engineering costs estimated at Ten Thousand Dollars (\$10,000.00), and shall not seek reimbursement from any other Owner for such costs. With respect to the remaining costs of constructing the Access Road, Toys shall reimburse Regency 33.3% of the total cost, and High Ridge shall reimburse Regency 25.7% of the total cost, but in no event shall Toys' share of such costs exceed Thirty Three Thousand Three-Hundred Thirty Three and no/100 Dollars (\$33,333.00) or High Ridge's share exceed Thirty Thousand and no/100 Dollars (\$30,000.00).

Such payments shall each be made by Toys and High Ridge to Regency within 30 days of receipt of an invoice and supporting documentation from Regency. Prior to the commencement of any work by Regency, Regency shall submit to Toys and High Ridge plans for the Work, along with bids for the Work, for Toys' and High Ridge's approval, which approval shall not be unreasonably withheld or delayed. Toys and High Ridge shall submit any comments on such plans and/or bids to Regency within fifteen (15) days of their receipt of such plans and bids. Regency shall resubmit the revised plans and bids to Toys and High Ridge within fifteen (15) days of Regency's receipt of comments from the second of Toys and High Ridge. Such process shall be repeated until all parties have agreed upon the plans and bids.

5. **Maintenance of Access Road.** Regency shall be responsible for ensuring that all necessary repairs, replacements and maintenance of the Access Road shall be timely performed, subject to reimbursement as follows: Regency estimates that the annual cost of routine maintenance or repairs shall be \$1,000.00 ("the Initial Amount"). Toys and High Ridge shall each pay their share of the Initial Amount in the same percentage as that applicable to the cost of initial construction set forth in par. 4 above, in advance, to be received by Regency no later than the 4th day of each January, commencing January, 2009 and continuing so long as the Access Road shall exist. Payments to Regency for the balance of the year 2008 shall be a prorated share of the 2009 payment for the period commencing on the date that the Access Road is completed, due within 30 days of the date of completion. This annual charge (the Initial Amount) shall be subject to annual increases of 5% commencing with calendar year 2010. Any charges for non-routine maintenance, repairs and snow removal for the Access Road (e.g., for resurfacing or extensive patching) will be separately billed to Toys and High Ridge. High Ridge shall be responsible for payment to Regency of 25.7% of the total amount of such charges, and Toys shall be responsible for payment of 33.3% of the total amount of such charges. Payment to Regency shall be due within 30 days of receipt from Regency of such invoices with supporting documentation.

6. **Nature of Easements and Rights Created.** Each and all of the easements and rights granted or otherwise created herein are easements for the benefit of, and appurtenant to the Lots, and none of the easements or rights may be transferred, assigned, or encumbered, except as an appurtenance to the Lots or a portion thereof. For the purposes of such easements and rights as are created herein, the Lots shall constitute the dominant estate, and the portions of the Lots which are a part of the Access Road Easement Area shall constitute the servient estate. Each and all of the easements created herein shall constitute covenants running with the land, and shall be binding upon every person or entity having any fee, leasehold or other interest in any portion of the Access Road Easement Area at any time or from time-to-time.

7. **Use of Access Road Easements.** No barricade or other impediment will be constructed on the Access Road Easement Area, nor will any Owner do anything which would prohibit or discourage the free and uninterrupted flow of vehicular traffic on the Access Road Easement Area, except as may be required to control the speed and flow of traffic and except as may be required in order to prevent the acquisition of any interest in the Easement Area by the public or any third party. No Owner shall grant any additional easement rights over and across the Access Road Easement Area which would unduly burden the use of the easements by the

other Owners. The surface and sub-surface of the Access Road Easement Area shall be repaired and replaced from time-to-time, and shall be maintained free of papers, debris, ice, snow, refuse, and other hazards. The property may be painted and repainted from time-to-time as may be necessary to identify lanes or traffic flow directions. Each Owner shall ensure that its respective Occupants or Permittees shall park in or use only that Owner's Lot, and no right to park in or use the other Owners' Lots is granted herein.

8. **Compliance with Laws.** The Owners and all of their successors and assigns shall at all times use and operate the Access Road Easement Area in compliance with all laws, rules and regulations established by any governmental authority with jurisdiction over the Access Road Easement Area.

9. **Non-Use; Public Use.** Non-use or limited use of the easement rights granted in this Agreement will not prevent the Owners, Occupants and Permittees from later using the easement rights hereunder to the fullest extent authorized in this Agreement. Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the Access Road Easement Area or Lots to the general public or for any public purpose whatsoever.

10. **Governing Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

11. **Real Estate Taxes.** Each Owner shall pay the general real estate taxes levied and assessed against the portion of the Access Road Easement Area which such Owner owns.

12. **Duration, Termination and Amendment.** The term of the easements and restrictions and other provisions of this Agreement shall be of perpetual duration, subject to the following: Any provision of this Agreement may be terminated or amended by the recording of an appropriate document in the Office of the Register of Deeds of Racine County, Wisconsin, which document has been executed by all of the then Owners as of the date of such document.

13. **Covenants Run With Land.** All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the Owners and their respective successors and assigns. The Access Road Easements granted in this Agreement are easements appurtenant to the Lots and may not be transferred separately from, or severed from the title to the Lots. The benefits of the easements granted under this Agreement shall not be extended to any properties other than the Lots without the consent of all of the Owners. After an Owner has transferred all of its fee interest in its Lot, as applicable, that Owner will have no further liability under this Agreement.

14. **Insurance and Indemnification.** Each Owner shall carry commercial general liability insurance with limits of coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate, naming the other Owners as additional insureds under such policy. Each Owner (the "Indemnifying Owner") shall hold harmless, indemnify and defend the other Owners from and against any and all claims, demands, actions, causes of action, proceedings, judgments, damages, losses, liabilities, fines, penalties,

35544-235544-1

costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) (collectively, "Liabilities") arising from or relating to any entry onto the Lots (or actions thereon) by the Indemnifying Owner, its employees, agents, and contractors for the purposes set forth herein, including, without limitation, Liabilities relating to personal injury, property damage and mechanic's liens.

15. **No Partnership.** Nothing contained in this Agreement shall be construed to make the parties hereto or their successors and assigns, partners or joint venturers, or to render any of said parties liable for the debts or obligations of another.

16. **Headings.** The paragraph headings are for convenience only and shall not define or limit the scope or content of the Agreement, nor shall they be considered in any construction or interpretation of the Agreement or any part hereof.

17. **Invalidity.** Should any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition of this Agreement will be valid and enforceable to the fullest extent of the law.

18. **Waiver.** No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement will be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party will not be construed to be a waiver of any breach of any other term or condition of this Agreement.

19. **Enforcement.** Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition of this Agreement, either to restrain or prevent the violation or to obtain any other relief. Should a suit be brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney's fees, from the non-prevailing party.

20. **Notices.** All notices to any Owner shall be delivered in person or sent by certified mail or courier, postage prepaid, return receipt requested, to such owner, at the following address:

IF TO REGENCY:

Regency Mall  
CBL & Associates Management, Inc.,  
Attn: General Manager  
5538 Durand Ave.  
Racine, WI 53406

WITH COPY TO: General Counsel,  
CBL & Associates Management, Inc.  
CBL Center, Suite 500  
2030 Hamilton Place Blvd.  
Chattanooga, TN 37421-6000

IF TO TOYS: Giraffe Properties, LLC  
One Geoffrey Way  
Wayne, New Jersey 07470  
Attn: Vice President – Real Estate, Design &  
Construction

IF TO HIGH RIDGE: High Ridge Improvements, LLC  
c/o DLC Management Corp.  
580 White Plains Road  
Tarrytown, NY 10591  
Attn: General Counsel

Any Owner may change its address for notice by providing written notice to the other Owners.

21. **Modification.** This Agreement may only be terminated, modified or amended by the execution and recording of an instrument signed by all of the then Owners of all Lots. No other signature shall be required to effect such termination, modification or amendment.

22. **Authority.** By executing this Document, each Owner warrants and represents that it has authority to enter into the Agreement and to perform all duties thereunder, and that it has received any and all necessary authorizations from any other party.

23. **No Construction Against Drafting Party.** This Agreement shall not be construed to have a meaning contrary to the interest of any party by virtue of the fact that such party may have been responsible for the preparation of this Agreement.

24. **Transfer Fee.** This is not a conveyance under § 77.21(1) of the Wisconsin Statutes, and is not subject to a transfer return or transfer fee under Tax 15.01 of the Wisconsin Administrative Code.

25. **Signature in Counterparts.** This Agreement may be signed in separate counterparts by each Owner.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the date first set forth above.

**RACINE JOINT VENTURE II, LLC**  
a Delaware limited liability company

By: Racine Joint Venture,  
Its Chief Manager

By: CBL/Regency I, LLC  
Its Managing General Partner

By: CBJ/J II, LLC  
Its Sole Member and Chief Manager

By: CBL & Associates Limited  
Partnership,  
Its Chief Manager

By: CBL Holdings I, Inc.  
Its Sole General Partner

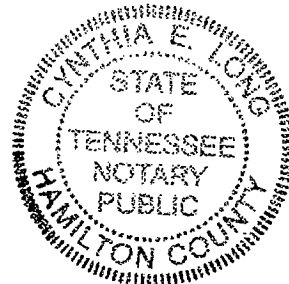
By: Victoria S. Berghe  
Its: Senior Vice President and General Counsel



STATE OF Tennessee )  
 ) ss.  
COUNTY OF Hamilton )

Personally came before me this 15<sup>th</sup> day of July, 2008, the above-named VICTORIA S. BERGHE known to me to be the person who executed the foregoing instrument and acknowledge the same in the capacity as Senior Vice President of CBL Holdings I, Inc.

Cynthia E. Long  
Notary Public, State of Tennessee  
My Commission expires: 4/10/2010



*JW* GIRAFFE PROPERTIES, LLC

By:

Title:

DAVID P. PICOT

VICE PRESIDENT - REAL ESTATE  
DESIGN & CONSTRUCTION

STATE OF NEW JERSEY )

) ss.

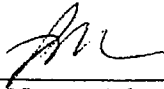
COUNTY OF PASSAIC )

Personally came before me this 10<sup>th</sup> day of July, 2008, the above-named DAVID P. PZCOT known to me to be the person who executed the foregoing instrument and acknowledge the same in the capacity as VICE PRESIDENT of R/E, Design & Const.

Nadine Dickson,  
Notary Public, State of                      **NADINE DICKSON**

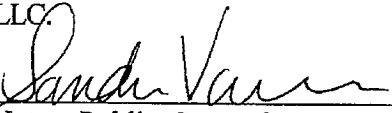
My Commission expires: NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires October 4, 2011

High Ridge Improvements, LLC  
a Delaware limited liability company

By:   
Name: Adam Ifshin  
Title: Manager

STATE OF New York )  
 ) ss.  
COUNTY OF Westchester

Personally came before me this 28 day of July, 2008, the above-named  
Adam Ifshin known to me to be the person who executed the foregoing instrument and  
acknowledge the same in the capacity as Manager of High Ridge Improvements,  
LLC.

  
Notary Public, State of \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

SANDRA A VARRONE  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01VA6188697  
Qualified in Putnam County  
My Commission Expires June 09, 2012

This instrument was drafted by Kenneth B. Axe, Lathrop & Clark LLP, 740 Regent Street, Suite 400, Madison, Wisconsin 53715.

I:\clients\cbl\46\cross easement agreement revision five red 070208kba.doc

#### REGENCY MALL DESCRIPTION

That part of Lot 1, Block 1, Regency Mall, a recorded subdivision in the Southwest ¼ of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin, described as follows: Begin at a point on the North line of said Lot 1 located N89°51'41"E 427.14 feet from the Northwest corner of said Lot 1; run thence N89°51'41"E 48.02 feet along said North line to the point of curvature of a curve of Southwesterly convexity whose radius is 19.50 feet and whose chord bears S70°19'13"E 13.15 feet; thence Southeasterly 13.41 feet along the arc of said curve; thence S89°45'27"W 72.54 feet to the point of curvature of a curve of Southeasterly convexity whose radius is 19.50 feet and whose chord bears N69°10'39"E 12.99 feet; thence Northeasterly 13.25 feet along the arc of said curve to the point of beginning. Containing 250 square feet.

#### HOME DEPOT DESCRIPTION

That part of Lot 1 of Certified Survey Map No. 1395 as recorded in Volume 4 of Certified Survey Maps on pages 351 and 352 as Document No. 1276690 in the Office of the Register of Deeds for Racine County and being in the Southwest ¼ of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin, described as follows: Begin at a point on the South line of said Lot 1 located N89°51'41"E 459.82 feet from the Southwest corner of said Lot 1; run thence N00°08'19"W 47.73 feet to the South side of an existing curb; thence N52°48'25"E 12.45 feet along said curb to a point on a curve of Northerly convexity whose radius is 43.64 feet and whose chord bears N74°51'53"E 16.59 feet; thence Easterly along the arc of said curve 16.70 feet to a point on a curve of reverse curvature whose radius is 19.50 feet and whose chord bears S42°14'12"W 26.29 feet; thence Southwesterly 28.84 feet along the arc of said curve; thence S00°08'19"E 25.06 feet to the point of curvature of a curve of Southwesterly convexity whose radius is 19.50 feet and whose chord bears S25°22'42"E 16.63 feet; thence Southeasterly 17.18 feet along the arc of said curve to the South line of Lot 1 of said Certified Survey Map; thence S89°51'41"W 15.34 feet along said South line to the point of beginning. Containing 498 square feet.

#### TOYS-R-US DESCRIPTION

That part of Parcel No. 1 of Certified Survey Map No. 1528 as recorded in Volume 4 of Certified Survey Maps on pages 699 and 700 as Document No. 1343824 in the Office of the Register of Deeds for Racine County and being in the Southwest ¼ of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin, described as follows: Begin at the Southeast corner of said Parcel 1; run thence S89°51'41"W 32.68 feet along the South line of said Parcel to a point on a curve of Southeasterly convexity whose radius is 19.50 feet and whose chord bears N24°47'20"E 16.44 feet; thence Northerly 16.97 feet along the arc of said curve; thence N00°08'19"W 0.30 feet to the point of curvature of a curve of Northeasterly convexity whose radius is 4.50 feet and whose chord bears N45°11'18"W 6.37 feet; thence Northwesterly 7.08 feet along the arc of said curve; thence S89°45'42"W 10.93 feet to the South line of an existing curb line; thence N66°39'33"E 8.73 feet along said curb; thence N57°15'40"E 14.94 feet along said curb; thence N50°04'32"E 17.02 feet along said curb; thence N52°48'25"E 9.40 feet along said curb to the East line of said Parcel 1; thence S00°08'19"E 47.73 feet along said East line to the point of beginning. Containing 1,061 square feet.

FIELD WORK 1-19-07 BY FTH JRN  
DRAWN 4-24-08 BY JER  
SCALE 1" = 20'  
JOB NO. 2007.018  
SHEET 2 OF 2 SHEETS

BEARING BASE: GRID NORTH, WISCONSIN  
COORDINATE SYSTEM, SOUTH ZONE.

**NM  
& B**

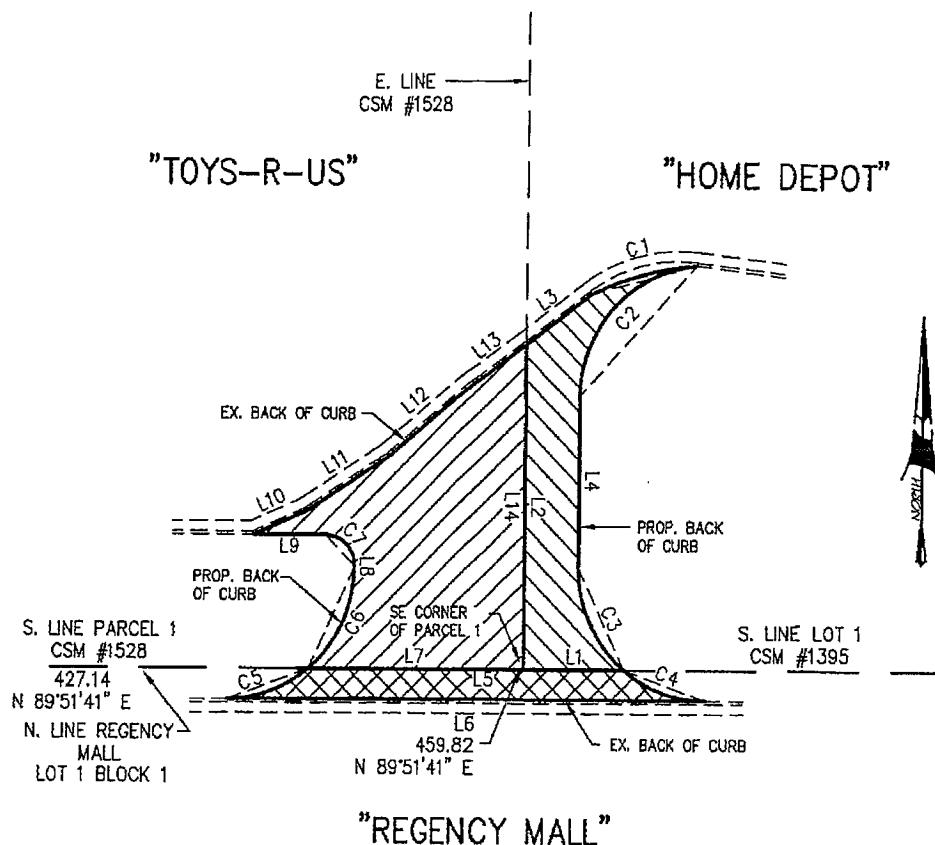
**Nielsen Madsen & Barber, S.C.**  
1339 Washington Avenue Racine, Wisconsin 53403  
Phone (262) 634-5588 Website [www.nmbasc.net](http://www.nmbasc.net)  
Facsimile (262) 634-5024 E-mail [nmb@nmbasc.net](mailto:nmb@nmbasc.net)

**EXHIBIT**

**1**

tabbies

A drawing and descriptions for RACINE JOINT VENTURE II, LLC, (See Sheet 2 of 2)



### LINE TABLE

| NUMBER | DIRECTION     | DISTANCE |
|--------|---------------|----------|
| L1     | S 89°51'41" W | 15.34    |
| L2     | N 00°08'19" W | 47.73    |
| L3     | N 52°48'25" E | 12.45    |
| L4     | S 00°08'19" E | 25.08    |
| L5     | N 89°51'41" E | 48.02    |
| L6     | S 89°45'27" W | 72.54    |
| L7     | S 89°51'41" W | 32.68    |
| L8     | N 00°08'19" W | 0.30     |
| L9     | S 89°45'42" W | 10.93    |
| L10    | N 66°39'33" E | 8.73     |
| L11    | N 57°15'40" E | 14.94    |
| L12    | N 50°04'32" E | 17.02    |
| L13    | N 52°48'25" E | 9.40     |
| L14    | S 00°08'19" E | 47.73    |

### CURVE TABLE

| NUMBER | DELTA     | RADIUS | ARC   | TANGENT | CHORD BEARING | CHORD |
|--------|-----------|--------|-------|---------|---------------|-------|
| C1     | 21°55'16" | 43.64  | 16.70 | 8.45    | N 74°51'53" E | 16.59 |
| C2     | 84°45'03" | 19.50  | 28.84 | 17.79   | S 42°14'12" W | 26.29 |
| C3     | 50°28'46" | 19.50  | 17.18 | 9.19    | S 25°22'42" E | 16.63 |
| C4     | 39°24'18" | 19.50  | 13.41 | 8.98    | S 70°19'13" E | 13.15 |
| C5     | 38°55'20" | 19.50  | 13.25 | 8.89    | N 69°10'39" E | 12.99 |
| C6     | 49°51'18" | 19.50  | 16.97 | 9.06    | N 24°47'20" E | 16.44 |
| C7     | 90°05'59" | 4.50   | 7.08  | 4.51    | N 45°11'18" W | 6.37  |

BEARING BASE: GRID NORTH, WISCONSIN  
COORDINATE SYSTEM, SOUTH ZONE.

FIELD WORK 1-19-07 BY FTH/JRN  
DRAWN 4-24-08 BY JER  
SCALE 1" = 20'  
JOB NO. 2007.018  
SHEET 1 OF 2 SHEETS

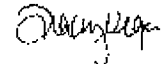
**NM  
& B**

**Nielsen Madsen & Barber, S.C.**

1339 Washington Avenue Racine, Wisconsin 53403  
Phone (262) 634-5588 Website [www.nmbasc.net](http://www.nmbasc.net)  
Facsimile (262) 634-5024 E-mail [nmb@nmbasc.net](mailto:nmb@nmbasc.net)

**EXHIBIT**

**2**



TRACEY VEGA  
RACINE COUNTY  
REGISTER OF DEEDS  
Fee Amount: \$30.00

\*\*The above recording information verifies  
this document has been electronically recorded\*\*  
Returned to Burlington Stores, Inc.  
Pages: 10

Prepared by, and when recorded, return to:

Burlington Coat Factory Warehouse Corporation  
1830 Route 130 North  
Burlington, NJ 08016  
Attn: Legal Department

### MEMORANDUM OF LEASE

April **THIS MEMORANDUM OF LEASE** ("Memorandum") is made this 5<sup>th</sup> day of April, 2019 by and between **KLA DEVELOPMENT PORTFOLIO OWNER LLC**, a Delaware limited liability company ("Landlord"), having an address at c/o Klaff Realty, LP, 35 E. Wacker Drive, Suite 2900, Chicago, Illinois 60601 ("Landlord") and **BURLINGTON COAT FACTORY WAREHOUSE CORPORATION**, a Florida corporation, having an address at 1830 Route 130 North, Burlington, New Jersey 08016 ("Tenant.")

### WITNESSETH:

1. Demised Premises and Shopping Center. Landlord has leased to Tenant and Tenant has leased from Landlord, pursuant to certain Lease ("Lease"), dated April 5, 2019 that certain building of approximately forty-five thousand three hundred two (45,302) square feet of ground floor space, located in the Building, as defined in Article 27 of the Lease, with a street address of 2433 S. Green Bay Road, Racine, Wisconsin 53406, which premises are shown on Exhibit "A" hereof ("Demised Premises"), together with the exclusive right to the use of the loading dock adjoining the Demised Premises and the non-exclusive right to the use of all alley rights, if any, easements, and rights, privileges and appurtenances in connection therewith or thereunto belonging or herein granted. "Shopping Center" means the Landlord's parcel which is part of a larger project known as the High Ridge Centre (the "Project") located in the City of Racine, County of Racine and State of Wisconsin, as such Shopping Center and Project are depicted on Exhibit "A." which Shopping Center is located on the land more particularly described in Exhibit "A-1" hereof.

2. Term. The "Initial Term" of the Lease is that period commencing on the Commencement Date (as defined in the Lease) and ending at the very end of the day on February 28th (or February 29th during a leap year) next following the tenth (10th) anniversary of the Rent Commencement Date (as defined in the Lease).

3. Options for Renewal. Tenant, at Tenant's option, may extend the Initial Term of the Lease for four (4) successive options of five (5) years on each.

4. Inquiries. Inquiries concerning the precise terms of the Lease may be made to:

"Landlord's Notice Address":

KLA DEVELOPMENT PORTFOLIO OWNER LLC  
c/o Schottenstein Property Group  
4300 East Fifth Avenue  
Columbus, OH 43219  
Attention: Executive Vice President, Leasing

with a copy to:

KLA DEVELOPMENT PORTFOLIO OWNER LLC  
c/o Schottenstein Property Group  
4300 East Fifth Avenue  
Columbus, OH 43219  
Attention: Executive Vice President and General Counsel

"Tenant's Notice Address: means:

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION  
1830 Route 130 North  
Burlington, NJ 08016  
Attention: Lease Administration

With a copy to:

BURLINGTON COAT FACTORY WAREHOUSE CORPORATION  
1830 Route 130 North  
Burlington, NJ 08016  
Attention: Legal Department

5. Condemnation. In no event shall Landlord voluntarily surrender the Demised Premises or Shopping Center by way of deed in lieu of condemnation, settlement or compromise without Tenant's consent, which may be withheld in its sole discretion. Tenant shall have the right to participate in any condemnation proceedings, negotiations or discussion concerning the threatened, potential or actual condemnation of the Demised Premises. In the event the Lease

terminates by way of condemnation or deed in lieu of condemnation and within two (2) years following such termination of the Lease, Landlord or a Landlord affiliate or a Landlord successor: (m) restores the Shopping Center or the Building or erects any replacement thereof; (n) commences to rebuild; (o) files plans to rebuild or rebuilds on any portion of the land forming part of the former Shopping Center, in whole or in part for retail uses, mixed use consisting partially of retail, Landlord or such Landlord Affiliate or such Landlord Successor, as the case may be, shall grant, and hereby does grant to Tenant, and Tenant hereby reserves the right to lease the Demised Premises or comparable premises at the Shopping Center for the balance of what would have been the remaining Term plus: (x) any unexercised extension rights set forth in the Lease; and (y) one (1) additional, optional extension term of five (5) years, on the same terms and conditions as set forth in the Lease, including without limitation, the square foot annual rental payable under the Lease (with an increase in Annual Minimum Rent per square foot in the additional extension term equal to the per square foot increase for the immediately preceding extension term). This Article shall survive the termination of the Lease.

6. Restrictive Covenants. So long as the Lease is in effect: (a) no covenant or agreement made by Landlord or any predecessor in title with any other person or entity restricting the use or occupancy of all or part of the Project shall be of any force or effect against Tenant except as set forth in Exhibit "B" of the Lease; (b) Landlord shall not make any changes in the Shopping Center and (c) Pursuant to Article 6, Landlord shall not modify or consent to any modification to the Common Facilities without Tenant's consent, which consent Tenant may grant or withhold in its sole and absolute discretion.

7. Lease Controls. This Memorandum is for informational purposes only and nothing contained herein shall be deemed to in any way modify or otherwise affect any of the terms and conditions of the Lease, the terms of which are incorporated herein by reference. Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall prevail.

8. Successors and Assigns. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

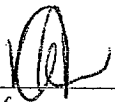
SIGNATURE PAGE TO MEMORANDUM OF LEASE FOLLOWS

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

WITNESS:

  
\_\_\_\_\_

WITNESS:

  
\_\_\_\_\_  
Vanessa Baymin-Wilson

**LANDLORD:**

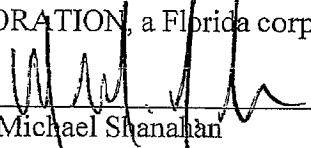
KLA DEVELOPMENT PORTFOLIO OWNER LLC,  
a Delaware limited liability company

By: KLA Toys LLC,  
a Delaware limited liability company  
its member

By:   
Print Name: RYAN LEVY  
Title: AUTHORIZED SIGNER

**TENANT:**

BURLINGTON COAT FACTORY WAREHOUSE  
CORPORATION, a Florida corporation

By:   
Name: Michael Shanahan  
Title: Senior Vice President – Real Estate

ACKNOWLEDGEMENT TO MEMORANDUM OF LEASE

STATE OF Illinois )  
COUNTY OF Cook ) ss.:

5th Before me, the undersigned Notary Public in and for said State and County, on this day of April, 2019, personally appeared Ryan Leary to be known to be the Authorized Signer of RCR TMS LLC, and known to be the identical person who signed and severally acknowledged that he/she signed the foregoing instrument as such officer of said (corporation/partnership) for and in behalf of said (corporation/partnership), and that he/she executed the same as his/her free and voluntary act and deed and as the free and voluntary act and deed of said (corporation/partnership), for the uses and purposes therein mentioned.

Sandra L. Hooper  
Notary Public



STATE OF NEW JERSEY )  
COUNTY OF BURLINGTON ) ss.:

25th Before me, the undersigned Notary Public in and for said State and County, on this day of March, 2019, personally appeared Michael Shanahan to me known to be the Senior Vice President – Real Estate, and severally acknowledged that he signed the foregoing instrument as such officer of said corporation for and in behalf of said corporation, and that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned.

Denise M. Sweeney  
Notary Public

Denise M. Sweeney  
Notary Public State of New Jersey  
My Commission Expires June 5, 2022

**EXHIBIT A**

Site Plan of Shopping Center with Demised Premises and Project

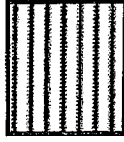
[See attached 3 pages]

# EXHIBIT 'A'

## RACINE, WI

### The "Project"

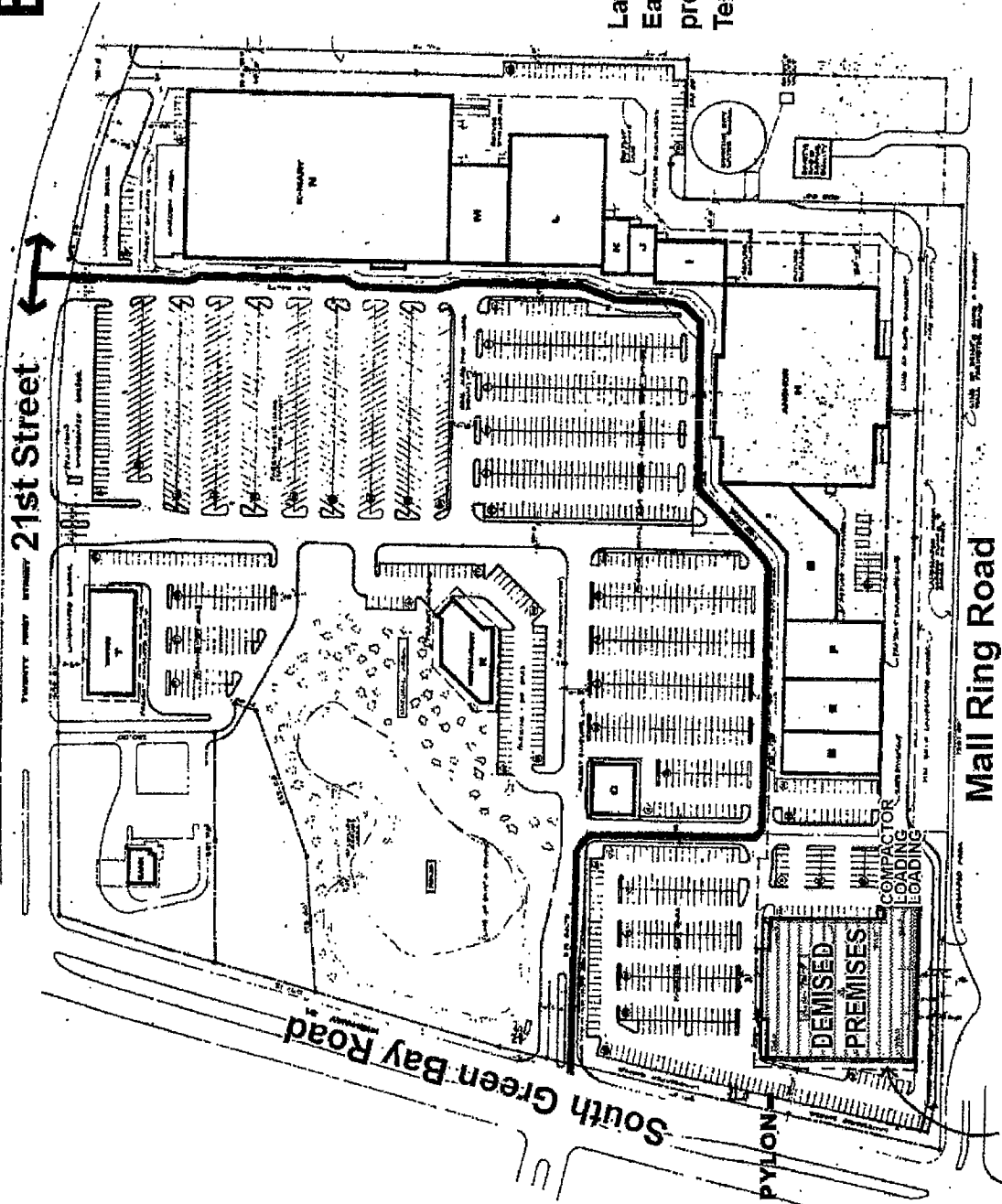
DEMISED  
PREMISES



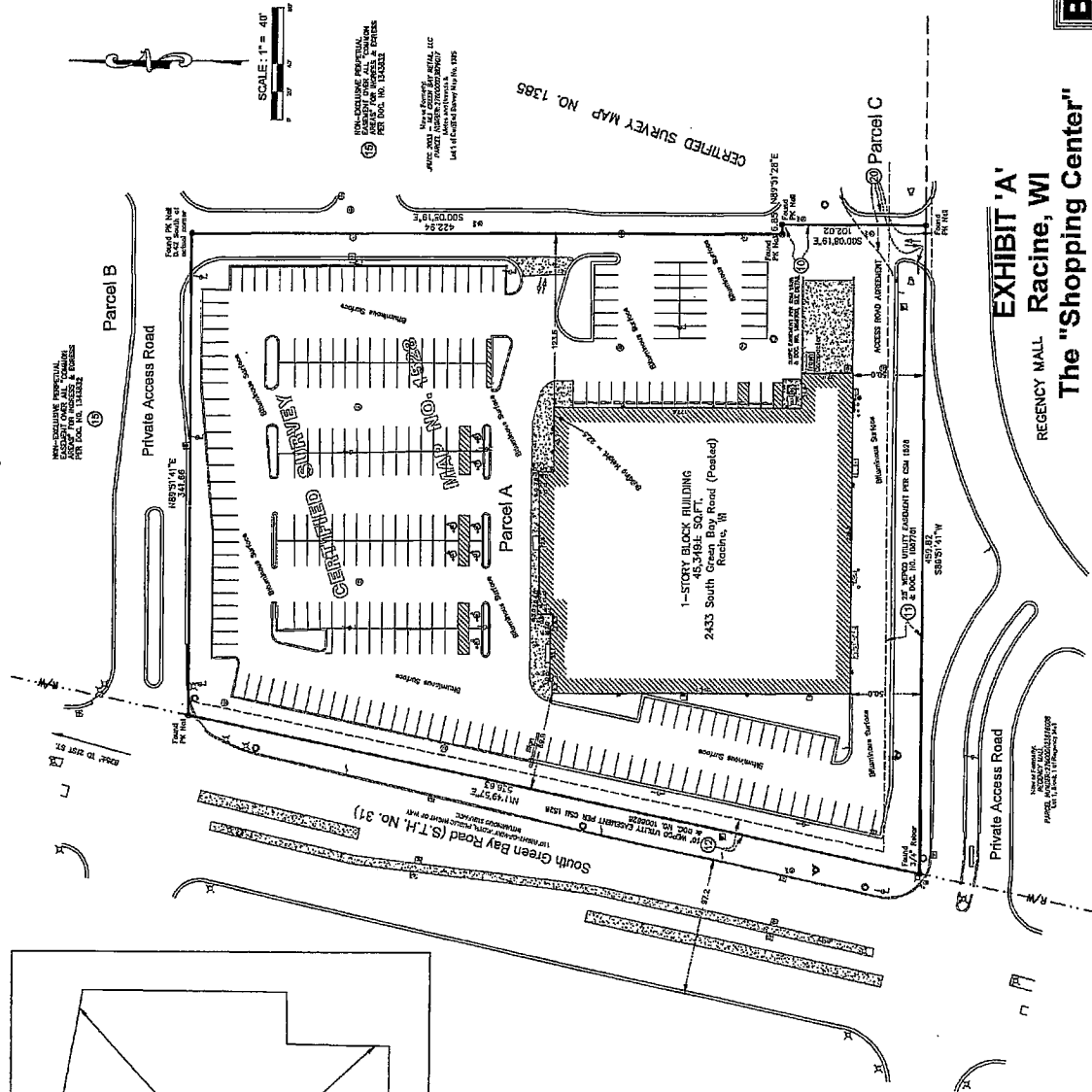
Landlord shall not modify any REA or Easement Agreement affecting the property without Tenant's consent, in Tenant's sole discretion.

01-31-2019

Page 1 of 3







Size as Formed:  
 SURF. 2013 -- MJ GREEN BAY RETAIL, LLC  
 PAVEMENT: 2760007387617  
 MATTS 2013 (Wetlands &  
 Lot 1 of Certified Survey Map No. 1385

## LEGEND OF SYMBOLS & ABBREVIATIONS

- [illegible]

E

INDICATES BOUNDARY  
INDICATES EASEMENTS  
INDICATES RIGHT OF WAY  
ADJACENT PROPERTY

**EXHIBIT 'A'**  
REGENCY MALL Racine, WI  
The "Shopping Center"

PAGE 3 of 3

**Bock**  
**& Clark**

SURVEY 200006  
ENVIRONMENTAL SERVICES INC.

ALTA/NPS LAND TITLE SURVEY

PERMITS FOR  
Toys R US Update  
DATE OF FIELD SURVEY: DECEMBER 15, 2010  
NORTHINGTON PROJECT # UAB016 20102006 0012  
1-(800)-SURVEYS (787-8397)  
info@jps-gis.com www.jps-gis.com

## EXHIBIT A-1

### Legal Description of the Shopping Center

#### Parcel A:

Parcel 1 of Certified Survey Map No. 1528, recorded in the Office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in Volume 4 of Certified Survey Maps, Page 699-700 as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine and State of Wisconsin.

#### Parcel B:

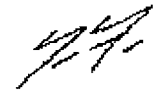
A non-exclusive perpetual easement and right of use appurtenant to and for the benefit of Parcel 1 to and from adjacent public roads in and over that portion of the Common Areas located on parcel of land designated "K-Mart Parcel" as designated and as further described in Reciprocal Easement and Operation Agreement dated July 2, 1991 and recorded July 2, 1991 in the Office of the Register of Deeds for Racine County in Volume 2078 of Records, Page 789, as Document No. 1343832, as amended by that First Amendment to Reciprocal Easement and Operation Agreement dated June 25, 1992 and recorded October 19, 1992 in Volume 2194, page 169, as Document No. 1393873, as affected by that Consent Agreement dated January 7, 2000, and recorded February 2, 2000 in Volume 3001, page 91, as Document No. 1716541.

#### Parcel C:

Non-exclusive easement for the benefit of Parcel A created by an Access Road Agreement recorded August 8, 2008 as Document No. 2184341 for ingress and egress as provided for therein.

Tax Key No.: 23876-042

Property Address: 2433 S. Green Bay Road



TYSON FETTES  
RACINE COUNTY  
REGISTER OF DEEDS  
Fee Amount: \$30.00

\*\*The above recording information verifies  
this document has been electronically recorded\*\*  
Returned to Chicago Title Waukesha - Escrow  
Pages: 20

| Document Number | Document Title                                                                              |
|-----------------|---------------------------------------------------------------------------------------------|
|                 | MORTGAGE,<br>ASSIGNMENT OF<br>LEASES AND RENTS,<br>SECURITY AGREEMENT<br>AND FIXTURE FILING |

Recording Area

Drafted by and Return to:  
Arnold & Porter  
250 West 55<sup>th</sup> Street  
New York, New York 10019-9710  
Attention: Stephen Gliatta, Esq.

23876-042  
Parcel Identification Number (PIN)

**This Is Not Homestead Property.**

**THIS MORTGAGE, ASSIGNMENT OF  
LEASES AND RENTS, SECURITY AGREEMENT AND  
FIXTURE FILING IS A FIXTURE FILING TO BE  
FILED IN THE REAL ESTATE RECORDS OF RACINE  
COUNTY, WISCONSIN.**

**This Instrument Relates to Premises in:**

**Racine County, Wisconsin**

LT  
LT-201253

---

**KLA DEVELOPMENT PORTFOLIO OWNER LLC**  
(Mortgagor)

to

**LOANCORE CAPITAL CREDIT REIT LLC**  
(Mortgagee)

---

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING**

---

Dated: As of January 22, 2019

Property Location: 2433 S. Green Bay Road, Racine, Wisconsin 53406

DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:

Arnold & Porter Kaye Scholer LLP  
250 West 55<sup>th</sup> Street  
New York, New York 10019-9710  
Attention: Stephen Gliatta, Esq.

---

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "**Mortgage**"), made as of January 22, 2019, by **KLA DEVELOPMENT PORTFOLIO OWNER LLC**, a Delaware limited liability company, having an office c/o Klaff Realty, LP, 35 E. Wacker Drive, Suite 2900, Chicago, Illinois 60601 ("**Mortgagor**"), to **LOANCORE CAPITAL CREDIT REIT LLC**, a Delaware limited liability company (together with its successors and assigns, hereinafter referred to as "**Mortgagee**"), having an address c/o LoanCore Capital, 55 Railroad Avenue, Suite 100, Greenwich, Connecticut 06830.

Mortgagor and KLA South Arlington Owner LLC and KLA BPL Portfolio Owner LLC (collectively, "**Borrower**") and Mortgagee have entered into a Loan Agreement dated as of the date hereof (as amended, modified, restated, consolidated or supplemented from time to time, the "**Loan Agreement**") pursuant to which Mortgagee is making a secured loan to Borrower in the aggregate principal amount of up to \$65,500,000 (the "**Loan**"). Capitalized terms used herein without definition are used as defined in the Loan Agreement. The Loan is evidenced by that certain Promissory Note dated the date hereof made by Borrower to Mortgagee in such maximum principal amount (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, the "**Note**").

To secure the payment of the Note and all sums which may or shall become due thereunder or under any of the other documents evidencing, securing or executed in connection with the Loan (the Note, this Mortgage, the Loan Agreement and such other documents, as any of the same may, from time to time, be modified, amended or supplemented, being hereinafter collectively referred to as the "**Loan Documents**"), including (i) the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy (whether or not a claim is allowed against Mortgagor for such interest or other amounts in any such bankruptcy proceeding) or the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code (the "**Bankruptcy Code**"), and (ii) the costs and expenses of enforcing any provision of any Loan Document (all such sums being hereinafter collectively referred to as the "**Debt**"), Mortgagor hereby irrevocably mortgages, grants, bargains, sells, conveys, transfers, pledges, sets over and assigns, and grants a security interest, to and in favor of Mortgagee, **WITH POWER OF SALE** (to the extent permitted by applicable law), all of Mortgagor's right, title and interest in and to land described in Exhibit A (the "**Premises**"), and the buildings, structures, fixtures and other improvements now or hereafter located thereon (the "**Improvements**");

**TOGETHER WITH:** all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the "**Mortgaged Property**");

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements; and the reversion and reversions, remainder and remainders, and all land lying in

the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof; and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), inventory, materials, supplies and other articles of personal property and accessions thereof, renewals and replacements thereof and substitutions therefor, and other property of every kind and nature, tangible or intangible, owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises or the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the "**Equipment**"), including any leases of, deposits in connection with, and proceeds of any sale or transfer of any of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interest" as defined in the Uniform Commercial Code, as in effect in the State where the Mortgaged Property is located (the "**UCC**"), superior in lien to the lien of this Mortgage. Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under Leases except to the extent Mortgagor shall have any right or interest therein;

(c) subject to the terms of the Loan Agreement, all awards or payments, including interest thereon, that may heretofore or hereafter be made with respect to the Premises or the Improvements, whether from the exercise of the right of eminent domain or condemnation (including any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Premises or Improvements;

(d) subject to the terms of the Loan Agreement, all leases, subleases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises or the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter collectively referred to as the "**Leases**") and all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding or in lieu of rent or rent equivalents), royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Premises or the Improvements, or rendering of services by Mortgagor or any of its agents or employees, and proceeds, if any, from business interruption or other loss of income insurance (hereinafter collectively referred to as the "**Rents**"), together with all proceeds from the sale or

other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) subject to the terms of the Loan Agreement, all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(f) subject to the terms of this Mortgage or the other Loan Documents, the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property;

(g) any interest rate protection arrangement to which Mortgagor is a party and all agreements, instruments, documents and contracts now or hereafter entered into by Mortgagor with respect to any such interest rate protection arrangement;

(h) subject to the terms of the Loan Agreement or the other Loan Documents, all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, surveys, title insurance policies, permits, certificates of use and occupancy (or their equivalent), consents, licenses, management agreements, leasing agreements, contract rights (including any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair or other work upon the Mortgaged Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Mortgaged Property) and causes of action that now or hereafter relate to, are derived from or are used in connection with the Mortgaged Property, or the construction, use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "*Intangibles*");

(i) all reciprocal easement or operating agreements, declarations, development agreements, developer's or utility agreements, and any similar such agreements or declarations now or hereafter affecting the Mortgaged Property or any part thereof; and

(j) all proceeds, products, offspring, rents and profits from any of the foregoing, including those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

Without limiting the generality of any of the foregoing, in the event that a case under the Bankruptcy Code is commenced by or against Mortgagor, pursuant to Section 552(b)(2) of the Bankruptcy Code, the security interest granted by this Mortgage shall automatically extend to all Rents acquired by the Mortgagor after the commencement of the case and shall constitute cash collateral under Section 363(a) of the Bankruptcy Code.

**TO HAVE AND TO HOLD** the Mortgaged Property unto Mortgagee and its successors and assigns, forever;

**PROVIDED, HOWEVER,** these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void;

**AND** Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

## **PART I - GENERAL PROVISIONS**

**1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements.** Mortgagor shall pay the Debt at the time and in the manner provided in the Loan Documents. All the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Mortgagor (i) agrees to insure, repair, maintain and restore damage to the Mortgaged Property, pay Taxes and Other Charges, and comply with Legal Requirements, in accordance with the Loan Agreement, and (ii) agrees that the Proceeds of Insurance and Awards for Condemnation shall be settled, held and applied in accordance with the Loan Agreement.

**2. Leases and Rents.**

(a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee all of Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment, and not an assignment for additional security only. Such assignment shall not be construed to bind Mortgagee to the performance of any of the covenants or provisions contained in any Lease or otherwise impose any obligation upon Mortgagee. Nevertheless, subject to the terms of the Assignment of Leases and Rents, the Clearing Account Agreement and this paragraph, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents subject to the requirements of the Loan Agreement (including the deposit of Rents into the Clearing Account). Upon the occurrence and during the continuance of an Event of Default, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Rents in the Clearing Account, the Cash Management Account (including all Subaccounts thereof) and all Rents collected thereafter (including Rents past due and unpaid), whether or not Mortgagee enters upon or takes control of the Mortgaged Property. Mortgagor hereby grants and assigns to Mortgagee the right, at its option, upon and during the revocation of the license granted herein, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after and during the revocation of such license may be applied toward payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper.

(b) Mortgagor shall not enter into, modify, amend, cancel, terminate or renew any Lease except as provided in Section 5.10 of the Loan Agreement.

3. **Use of Mortgaged Property.** Mortgagor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property. If under applicable zoning provisions the use of the Mortgaged Property is or shall become a nonconforming use, Mortgagor shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Mortgagee. Except to the extent permitted by the Loan Agreement, Mortgagor shall not (i) change the use of the Mortgaged Property, (ii) permit or suffer to occur any intentional waste on or to the Mortgaged Property or (iii) take any steps to convert the Mortgaged Property to a condominium or cooperative form of ownership.

4. **Transfer or Encumbrance of the Mortgaged Property.**

(a) Mortgagor acknowledges that (i) Mortgagee has examined and relied on the creditworthiness and experience of the principals of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan, (ii) Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for the Debt, and (iii) Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property. Mortgagor shall not sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or suffer or permit any Transfer to occur, other than a Permitted Transfer or Permitted Encumbrance.

(b) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Transfer in violation of this Paragraph 4. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property (and every other Transfer) regardless of whether voluntary or not, other than in each such case, any Permitted Transfer or Permitted Encumbrance. Any Transfer made in contravention of this Paragraph 4 shall be null and void and of no force and effect. Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any Permitted Transfer.

5. **Changes in Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. If Mortgagee is advised by its counsel that the payment of such tax or interest and penalties by Mortgagor would be unlawful, taxable to Mortgagee or unenforceable, or would provide the basis for a defense of usury, then Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable; provided, however, no Spread Maintenance Premium, prepayment fee, or any other premium, fee or penalty shall be due in connection with such repayment.

6. **No Credits on Account of the Debt.** Mortgagor shall not claim or demand or be entitled to any credit on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable; provided, however, no Spread Maintenance Premium, prepayment fee, or any other premium, fee or penalty shall be due in connection with such repayment.

7. **Further Acts, Etc.** Mortgagor shall, at its sole cost, perform, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall, from time to time, require in its good faith discretion, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage or for facilitating the sale and transfer of the Loan (or any portion thereof) and the Loan Documents in connection with a "Secondary Market Transaction" as described in Section 9.1 of the Loan Agreement, and subject to the terms of the Loan Agreement, it being understood and agreed, however, that no such additional documents shall materially increase Mortgagor's obligations, or materially decrease Mortgagor's rights, under the Loan Documents. Upon foreclosure, the appointment of a receiver or any other relevant action upon and during the continuance of an Event of Default, Mortgagor shall, at its sole cost, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including such rights and remedies available to Mortgagee pursuant to this paragraph. Notwithstanding anything to the contrary in the immediately preceding sentence, Mortgagee shall not execute any document as attorney-in-fact of Mortgagor unless (x) an Event of Default exists, (y) Mortgagor shall have failed or refused to execute the same within five (5) Business Days after Mortgagee's request therefor, and (z) in Mortgagee's good faith determination it would be materially prejudiced by the delay involved in making such a request. Mortgagee shall give prompt notice to Mortgagor of any exercise of the power of attorney as provided for in this Paragraph 7, along with copies of all documents executed in connection therewith.

8. **Recording of Mortgage, Etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, shall cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor shall pay all filing, registration or recording fees, all expenses incident to the preparation, execution and acknowledgment of and all federal,

state, county and municipal, taxes, duties, imposts, documentary stamps, assessments and charges arising out of or in connection with the execution and delivery of, this Mortgage, any Mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making or recording of this Mortgage.

**9. Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, perform any obligations of Mortgagor that have given rise to such Event of Default in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

**10. Remedies.**

(a) Upon the occurrence and during the continuance of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, by Mortgagee itself or otherwise, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute a proceeding or proceedings, judicial or nonjudicial, to the extent permitted by law, by advertisement or otherwise, for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;
- (iv) sell for cash or upon credit the Mortgaged Property and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale, to the extent permitted by law, or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any other Loan Document;

(vi) recover judgment on the Note either before, during or after any proceeding for the enforcement of this Mortgage;

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Mortgagor or of any person, firm or other entity liable for the payment of the Debt;

(viii) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and employees therefrom, and thereupon Mortgagee may, subject to the rights of tenants under the Leases, (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive Rents; and (E) apply the receipts from the Mortgaged Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, and its counsel, agents and employees;

(ix) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Mortgaged Property occupied by Mortgagor, and require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver, and, in default thereof, evict Mortgagor by summary proceedings or otherwise; or

(x) pursue such other rights and remedies as may be available at law or in equity or under the UCC, including the right to receive and/or establish a lock box for all Rents and proceeds from the Intangibles and any other receivables or rights to payments of Mortgagor relating to the Mortgaged Property.

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) The proceeds of any sale made under or by virtue of this Paragraph 10, together with any other sums which then may be held by Mortgagee under this Mortgage,

whether under the provisions of this Paragraph 10 or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, in its name and stead, which power of attorney shall be exercisable only during the continuance of an Event of Default, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of this Paragraph 10, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this Paragraph 10, whether made under a power of sale (to the extent permitted by law) or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage or any other Loan Document.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Paragraph 10 at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(h) Mortgagee may resort to any remedies and the security given by this Mortgage or in any other Loan Document in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by any Loan Document. The failure of Mortgagee to exercise any right, remedy or option provided in any Loan Document shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by any Loan Document. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or the liability of Mortgagor to pay the Debt. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Mortgagee in exercising its rights and remedies under this Paragraph 10 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee, and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Mortgage.

(i) The interests and rights of Mortgagee under the Loan Documents shall not be impaired by any indulgence, including (x) any renewal, extension or modification which Mortgagee may grant with respect to any of the Debt, (y) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof or (z) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Debt.

**11. Right of Entry.** In addition to any other rights or remedies granted under this Mortgage, subject to the rights of tenants under the Leases, Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at any reasonable time during the term of this Mortgage upon reasonable advance notice of not less than twenty-four (24) hours (other than in the event of an emergency, in which case, upon such notice as shall be reasonably practicable under the circumstances); provided, however, so long as no Event of Default shall then be continuing, Mortgagor shall have the right to have representatives present during such inspection. The cost of such inspections or audits shall be borne by Mortgagor should Mortgagee determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Mortgagee. The cost of such inspections, if not paid for by Mortgagor (to the extent required pursuant to the preceding sentence) following demand, may be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate.

**12. Security Agreement.** This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the UCC. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security

interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the UCC (such portion of the Mortgaged Property so subject to the UCC being called in this paragraph the "**Collateral**"). The foregoing sentence is intended to grant in favor of Mortgagee a first priority continuing lien and security interest in all of Mortgagor's assets. Mortgagor authorizes Mortgagee and its counsel to file UCC financing statements in form and substance satisfactory to Mortgagee, describing the collateral as "all assets of Mortgagor, whether now owned or existing or hereafter acquired or arising and wheresoever located, and all proceeds and products thereof, including, without limitation, all fixtures on the Premises" or words to that effect, and any limitations on such collateral description, notwithstanding that such collateral description may be broader in scope than the Collateral described in this Mortgage. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Mortgage. If an Event of Default shall occur and be continuing, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon written request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place reasonably acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral, sent to Mortgagor in accordance with the provisions hereof at least ten days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper. In the event of any change in name, identity or structure as a limited liability company of Mortgagor, Mortgagor shall notify Mortgagee thereof and promptly after request shall execute, file and record such UCC forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional UCC forms or continuation statements, Mortgagor shall, promptly after request, execute, file and record such UCC forms or continuation statements as Mortgagee shall deem necessary in its good faith discretion, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations under the Loan Documents.

**13. Actions and Proceedings.** Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its sole but good faith discretion, decides should be brought to protect its or their interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

14. **Marshalling and Other Matters.** Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law. The lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (i) any acceptance by Mortgagee of any other security for any portion of the Debt, (ii) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any portion of the Debt or any collateral security therefor or (iii) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any portion of the Debt or of any of the collateral security therefor; and Mortgagee may foreclose, or exercise any other remedy available to Mortgagee under other Loan Documents without first exercising or enforcing any of its remedies under this Mortgage, and any exercise of the rights and remedies of Mortgagee hereunder shall not in any manner impair the Debt or the liens of any other Loan Document or any of Mortgagee's rights and remedies thereunder.

15. **Notices.** All notices, consents, approvals and requests required or permitted hereunder shall be in writing, and shall be sent, and shall be deemed effective, as provided in the Loan Agreement.

16. **Inapplicable Provisions.** If any term, covenant or condition of this Mortgage is held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

17. **Headings.** The paragraph headings in this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

18. **Duplicate Originals.** This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

19. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form; and the word "***Mortgagor***" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof," the word "***Mortgagee***" shall mean "Mortgagee and any subsequent holder of the Note," the words "***Mortgaged Property***" shall include any portion of the Mortgaged Property and any interest therein, the word "***including***" means "including but not limited to" and the words "***attorneys' fees***" shall include any and all outside counsels' fees, paralegal and law clerk fees, including fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property and Collateral and enforcing its rights hereunder.

20. **Homestead.** Mortgagor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Debt, or any part thereof.

21. **Assignments.** Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

22. **Waiver of Jury Trial.** MORTGAGOR, AND BY ITS ACCEPTANCE HEREOF, MORTGAGEE HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR AND MORTGAGEE, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE WITH REGARD TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT. MORTGAGEE AND MORTGAGOR ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR AND MORTGAGEE.

23. **Consents.** Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a subsequent date, and the failure of Mortgagee to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Mortgagee a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party. If Mortgagee deems it to be in its best interest to retain assistance of persons, firms or corporations (including attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Mortgagor shall reimburse Mortgagee for all costs reasonably incurred in connection with the employment of such persons, firms or corporations, provided Mortgagee provided prior written notice to Mortgagor of any such employment.

24. **Loan Repayment.** Provided no Event of Default exists, this Mortgage will be satisfied and discharged of record by Mortgagee prior to the Maturity Date only in accordance with the terms and provisions set forth in the Loan Agreement.

25. **Other Mortgages; No Election of Remedies.**

(a) The Debt is now or may hereafter be secured by one or more other mortgages, deeds of trust and other security agreements (collectively, as the same may be amended and in effect from time to time, are herein collectively called the "Other Mortgages"), which cover or will hereafter cover other properties that are or may be located in various states (the "*Other Collateral*"). The Other Mortgages will secure the Debt and the performance of the other covenants and agreements of Mortgagor set forth in the Loan Documents. Upon the occurrence of an Event of Default, Mortgagee may proceed under this Mortgage and/or any or all the Other Mortgages against either the Mortgaged Property and/or any or all the Other Collateral in one or more parcels and in such manner and order as Mortgagee shall elect. Mortgagor hereby irrevocably waives and releases, to the extent permitted by law, and whether now or hereafter in force, any right to have the Mortgaged Property and/or the Other Collateral marshaled upon any foreclosure of this Mortgage or any Other Mortgage.

(b) Without limiting the generality of the foregoing, and without limitation as to any other right or remedy provided to Mortgagee in this Mortgage or the other Loan Documents, in the case of an Event of Default (i) Mortgagee shall have the right to pursue all of its rights and remedies under this Mortgage and the Loan Documents, at law and/or in equity, in one proceeding, or separately and independently in separate proceedings from time to time, as Mortgagee, in its sole and absolute discretion, shall determine from time to time, (ii) Mortgagee shall not be required to either marshal assets, sell the Mortgaged Property and/or any Other Collateral in any particular order of alienation (and may sell the same simultaneously and together or separately), or be subject to any "one action" or "election of remedies" law or rule with respect to the Mortgaged Property and/or any Other Collateral, (iii) the exercise by Mortgagee of any remedies against any one item of Mortgaged Property and/or any Other Collateral will not impede Mortgagee from subsequently or simultaneously exercising remedies against any other item of Mortgaged Property and/or Other Collateral, (iv) all liens and other rights, remedies or privileges provided to Mortgagee herein shall remain in full force and effect until Mortgagee has exhausted all of its remedies against the Mortgaged Property and all Mortgaged Property has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt, and (v) Mortgagee may resort for the payment of the Debt to any security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect and Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage.

(c) Without notice to or consent of Mortgagor and without impairment of the lien and rights created by this Mortgage, Mortgagee may, at any time (in its sole and absolute discretion, but Mortgagee shall have no obligation to), execute and deliver to Mortgagor a written instrument releasing all or a portion of the lien of this Mortgage as security for any or all of the obligations of Mortgagor now existing or hereafter arising under or in respect of the Note, the Loan Agreement and each of the other Loan Documents, whereupon following the execution and delivery by Mortgagee to Mortgagor of any such written instrument of release, this Mortgage shall no longer secure such obligations of Mortgagor so released.

**26. Governing Law. WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THIS MORTGAGE, THIS MORTGAGE SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN**

WHICH THE MORTGAGED PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES SHALL GOVERN ALL MATTERS RELATING TO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT.

27. **Exculpation.** The liability of Mortgagor hereunder is limited pursuant to Section 10.1 of the Loan Agreement.

28. **Variable Interest Rate.** The Loan secured by this Mortgage is a variable interest rate loan, as more particularly set forth in the Loan Agreement.

## PART II

### STATE-SPECIFIC PROVISIONS

29. **Conflicts With Part I.** In the event of any conflict between the provisions of this Part II and any provision of Part I, then the provisions of this Part II shall control.

30. **Additional Remedies.** The text of Section 10(a)(viii) of this Mortgage is hereby deleted in its entirety and replaced with the following text:

“have a receiver appointed of all or any part of the Property and of the earnings, income, rents, issues, and profits thereof, for such period or periods of time, including any foreclosure proceedings, before and after any judgment of foreclosure, and during the full statutory period of redemption, if any, and with such powers as the court making such appointment shall confer, including application of such earnings, income, rents, issues, and profits to the indebtedness secured hereby and all powers and duties of receivers under Section 813.16 et. al. of the Wisconsin Statutes; and any receiver so appointed shall not be required to post bond;”.

31. **Marshalling.** The text of Section 14 of this Mortgage is hereby deleted in its entirety and replaced with the following text:

“Notwithstanding the existence of any other security interest in the Property or other property of Mortgagor held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Property and such other property of Mortgagor shall be subjected to the remedies provided herein or any other remedies Mortgagee may have. Mortgagee shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies herein or any other remedies which

Mortgagee may exercise. Mortgagor, any party who consents to this instrument, and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof, hereby waive any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein. The lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (i) any acceptance by Mortgagee of any other security for any portion of the Debt, (ii) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any portion of the Debt or any collateral security therefor or (iii) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any portion of the Debt or of any of the collateral security therefor; and Mortgagee may foreclose, or exercise any other remedy available to Mortgagee under other Loan Documents without first exercising or enforcing any of its remedies under this Mortgage, and any exercise of the rights and remedies of Mortgagee hereunder shall not in any manner impair the Debt or the liens of any other Loan Document or any of Mortgagee's rights and remedies thereunder."

**32. Special Foreclosure.** Mortgagor agrees that, to the extent permitted by law, this Mortgage may be foreclosed by Mortgagee under a reduced period of redemption between foreclosure judgment and sale upon Mortgagee, at its option, waiving the right to judgment for deficiency and consenting to Mortgagor remaining in possession of the Property and collecting all rents, issues, income and profits therefrom up until the court's confirmation of the foreclosure sale, pursuant to the provisions of Section 846.101 or Section 846.103(2) of the Wisconsin Statutes, as the same may be amended or renumbered from time to time.

**33. Pre and Post Judgment Costs and Expenses.** This Mortgage shall secure, and the obligations of Mortgagor shall include, all costs, fees, expenses and the like (including reasonable attorneys' fees and expenses) incurred by Mortgagee, whether before or after judgment.

**34. Assignment of Rents.** The assignment of rents set forth herein shall constitute an assignment of rents as set forth in Section 708.11 of the Wisconsin Statutes, as the same may be amended or renumbered from time to time, and, as provided therein, will create a security interest in the rents that will be perfected upon the recording of this Mortgage.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Mortgagor has executed this instrument as of the day and year first above written.

**MORTGAGOR:**

KLA DEVELOPMENT PORTFOLIO OWNER LLC,  
a Delaware limited liability company

By: KLA Toys LLC,  
a Delaware limited liability company,  
its sole member

By: [Signature]  
Name: Ryan Levy  
Title: Authorized Signatory

State Of Illinois )  
County Of Adel )

I, Sandra L Hooper, a Notary Public in and for said County and State, do hereby certify that Ryan Levy personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she/they signed and delivered the said instrument as his/her/their free and voluntary act, for the purposes and therein set forth.

Given under my hand and official seal, this 2nd day of January.

My commission expires: 12/7/2020

[Signature]  
Notary Public



## EXHIBIT A

### Legal Description

**Parcel A:**

Parcel 1 of Certified Survey Map No. 1528, recorded in the Office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in volume 4 of Certified Survey Maps, Page 699-700 as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine and State of Wisconsin.

**Parcel B:**

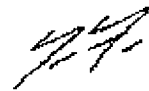
A non-exclusive perpetual easement and right of use appurtenant to and for the benefit of Parcel 1 to and from adjacent public roads in and over that portion of the Common Areas located on parcel of land designated "K-Mart Parcel" as designated and as further described in Reciprocal Easement and Operation Agreement dated July 2, 1991 and recorded July 2, 1991 in the Office of the Register of Deeds for Racine County in Volume 2078 of Records, Page 789, as Document No. 1343832, as amended by that First Amendment to Reciprocal Easement and Operation Agreement dated June 25, 1992 and recorded October 19, 1992 in Volume 2194, page 169, as Document No. 1393873, as affected by that Consent Agreement dated January 7, 2000, and recorded February 2, 2000 in Volume 3001, page 91, as Document No. 1716541.

**Parcel C:**

Non-exclusive easement for the benefit of Parcel A created by an Access Road Agreement recorded August 8, 2008 as Document No. 2184341 for ingress and egress as provided for therein.

Tax Key No.: 23876-042

Property Address: 2433 S.Green Bay Road



TYSON FETTES  
RACINE COUNTY  
REGISTER OF DEEDS  
Fee Amount: \$30.00

Pages: 5

Document Number

ASSIGNMENT OF  
MORTGAGE,  
ASSIGNMENT OF  
LEASES AND RENTS,  
SECURITY AGREEMENT  
AND FIXTURE FILING

Document Title

Recording Area

Drafted by and Return to:

Arnold & Porter

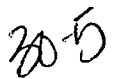
250 West 55<sup>th</sup> Street

New York, New York 10019-9710

Attention: Stephen Gliatta, Esq.

23876-042

Parcel Identification Number (PIN)



This Is Not Homestead Property.

**THIS ASSIGNMENT OF MORTGAGE, ASSIGNMENT  
OF LEASES AND RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING IS A FIXTURE FILING TO BE  
FILED IN THE REAL ESTATE RECORDS OF RACINE  
COUNTY, WISCONSIN.**

This Instrument Relates to Premises in:

Racine County, Wisconsin

**ASSIGNMENT OF MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**LOANCORE CAPITAL CREDIT REIT LLC**

(Assignor)

to

**LCC WAREHOUSE II LLC**, a Delaware limited liability company  
(Assignee)

Dated: As of February 28, 2019.

Property Location: 2433 S Green Bay Road  
Racine, Wisconsin 53406

DOCUMENT PREPARED BY AND  
WHEN RECORDED, RETURN TO:

Stephen Gliatta, Esq.  
Arnold & Porter Kaye Scholer LLP  
250 West 55<sup>th</sup> Street  
New York, New York 10019

**ASSIGNMENT OF MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

LOANCORE CAPITAL CREDIT REIT LLC, whose address is c/o LoanCore Capital, 55 Railroad Avenue, Suite 100, Greenwich, Connecticut 06830 ("**Assignor**"), as the holder of the instrument hereinafter described and for valuable consideration hereby endorses, assigns, sells, transfers and delivers to **LCC WAREHOUSE II LLC**, a Delaware limited liability company, having an address at c/o LoanCore Capital, LLC, 55 Railroad Avenue, Suite 100, Greenwich, Connecticut 06830, its successors, participants and assigns (collectively "**Assignee**"), all right, title and interest of Assignor in and to that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, by **KLA DEVELOPMENT PORTFOLIO OWNER LLC**, a Delaware limited liability company ("**Borrower**"), in favor of Assignor dated January 22, 2019, and recorded in the Racine County Register of Deeds, as Document Number 2512833, on January 29, 2019 (as the same have heretofore been amended, modified, restated, supplemented, assigned, renewed or extended), and creating a first lien on the property described in Exhibit A attached hereto and by this reference made a part hereof.

Together with any and all notes and obligations therein described, the debt and claims secured thereby and all sums of money due and to become due thereon, with interest provided for therein, and hereby irrevocably appoints Assignee hereunder its attorney to collect and receive such debt, and to foreclose, enforce and satisfy the foregoing the same as it might or could have done were these presents not executed, but at the cost and expense of Assignee.

Together with any and all other liens, privileges, security interests, rights, entitlements, equities, claims and demands as to which Assignor hereunder possesses or to which Assignor is otherwise entitled as additional security for the payment of the notes and other obligations described herein.

TO HAVE AND TO HOLD the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing unto Assignee and to the successors and assigns of Assignee forever.

**[SIGNATURE ON THE FOLLOWING PAGE]**



## EXHIBIT A

### Légál Description

#### Parcel A:

Parcel 1 of Certified Survey Map No. 1528, recorded in the Office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in volume 4 of Certified Survey Maps, Page 699-700 as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine and State of Wisconsin.

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A non-exclusive perpetual easement and right of use appurtenant to and for the benefit of Parcel 1 to and from adjacent public roads in and over that portion of the Common Areas located on parcel of land designated "K-Mart Parcel" as designated and as further described in Reciprocal Easement and Operation Agreement dated July 2, 1991 and recorded July 2, 1991 in the Office of the Register of Deeds for Racine County in Volume 2078 of Records, Page 789, as Document No. 1343832, as amended by that First Amendment to Reciprocal Easement and Operation Agreement dated June 25, 1992 and recorded October 19, 1992 in Volume 2194, page 169, as Document No. 1393873, as affected by that Consent Agreement dated January 7, 2000, and recorded February 2, 2000 in Volume 3001, page 91, as Document No. 1716541.

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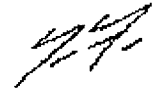
Tax Key No.: 23876-042

Property Address: 2433 S.Green Bay Road

Document Number

**ASSIGNMENT OF LEASES AND  
RENTS**  
Title of Document

Document # **2512834**  
RACINE COUNTY REGISTER OF DEEDS  
January 29, 2019 09:06 AM



TYSON FETTES  
RACINE COUNTY  
REGISTER OF DEEDS  
Fee Amount: \$30.00

\*\*The above recording information verifies  
this document has been electronically recorded\*\*  
Returned to Chicago Title Waukesha - Escrow  
Pages: 10

Recording Area

Name and Return Address  
**Arnold & Porter**  
**250 West 55<sup>th</sup> Street**  
**New York, New York 10019-9710**  
**Attn: Stephen Gliatta, Esq.**

**23876-042**  
Parcel Identification Number (PIN)

Drafted By:

Arnold & Porter  
250 West 55th Street  
New York, New York 10019-9710  
Attn: Stephen Gliatta, Esq.

64  
LX-207753

THIS DOCUMENT PREPARED BY AND  
RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:

Arnold & Porter Kaye Scholer LLP  
250 West 55<sup>th</sup> Street  
New York, New York 10019-9710  
Attention: Stephen Gliatta, Esq.

---

**ASSIGNMENT OF LEASES AND RENTS**

Dated and effective as of January 22, 2019

between

**KLA DEVELOPMENT PORTFOLIO OWNER LLC**  
as Assignor

and

**LOANCORE CAPITAL CREDIT REIT LLC**  
as Assignee

---

This **ASSIGNMENT OF LEASES AND RENTS** (this "**Assignment**") dated and effective as of the 22<sup>nd</sup> day of January, 2019 made by **KLA DEVELOPMENT PORTFOLIO OWNER LLC**, a Delaware limited liability company, having an office c/o Klaff Realty, LP, 35 E. Wacker Drive, Suite 2900, Chicago, Illinois 60601 ("**Assignor**"), to **LOANCORE CAPITAL CREDIT REIT LLC**, a Delaware limited liability company (together with its successors and assigns, hereinafter referred to as "**Assignee**") having an address c/o LoanCore Capital, 55 Railroad Avenue, Suite 100, Greenwich, Connecticut 06830.

**WITNESSETH:**

WHEREAS, Assignor is the owner of a fee simple title to that certain parcel of real property (the "**Premises**") described in Exhibit A attached hereto, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and other improvements now or hereafter located thereon (collectively, the "**Property**");

WHEREAS, Assignor, KLA South Arlington Owner LLC and KLA BPL Portfolio Owner LLC (collectively, "**Borrower**") and Assignee have entered into a certain Loan Agreement dated as of the date hereof (as amended, modified, restated, consolidated or supplemented from time to time, the "**Loan Agreement**") pursuant to which Assignee has agreed to make a secured loan to Borrower in the maximum principal amount of \$65,500,000 (the "**Loan**");

WHEREAS, Borrower has executed a note in such principal amount (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, the "**Note**"), which is secured by, *inter alia*, that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (as the same may be amended, modified, consolidated, split, supplemented, replaced or otherwise modified from time to time, the "**Mortgage**") on the Property;

WHEREAS, it is a condition to the obligation of Assignee to make the Loan to Assignor pursuant to the Loan Agreement that Assignor execute and deliver this Assignment;

WHEREAS, this Assignment is being given as additional security for the Loan;  
and

WHEREAS, capitalized terms used in this Assignment without definition have the respective meanings assigned to such terms in the Loan Agreement or the Mortgage, as the case may be, the terms of each of which are specifically incorporated by reference herein.

NOW, THEREFORE, for good and valuable consideration, receipt of which by the parties hereto is hereby acknowledged, and for the purpose of additionally securing the Debt, Assignor hereby assigns, transfers, conveys and sets over unto Assignee, all right, title and interest of Assignor in and to all Leases and all Rents;

TO HAVE AND TO HOLD the same unto Assignee, and its successors and assigns forever, upon the terms and conditions and for the uses hereinafter set forth.

And Assignor hereby further agrees as follows:

1. Certain Representations, Warranties and Covenants. Assignor represents, warrants and covenants to Assignee that:

(a) The payment of the Rents to accrue under any Lease will not be waived, released, reduced, discounted or otherwise discharged or compromised by Assignor except as expressly permitted pursuant to the terms of the Loan Agreement;

(b) Assignor has not performed, and will not perform, any acts, and has not executed, and will not execute, any instrument that would prevent Assignee from exercising its rights under this Assignment; and

(c) Assignor hereby authorizes and directs any tenant under any of the Leases and any successor to all or any part of the interests of any such tenant to pay directly to the Clearing Account, in accordance with the terms of the Loan Agreement, the Rents due and to become due under such tenant's Lease, and such authorization and direction shall be sufficient warrant to the tenant to make future payments of Rents directly to the Clearing Account in accordance with the terms of the Loan Agreement until such tenant is notified otherwise by Assignee that Assignee is then the holder of this Assignment and that an Event of Default has occurred and is continuing, without the necessity for further consent by Assignor.

2. Assignment; Deferred Exercise of Rights.

(a) As part of the consideration for the Debt, Assignor does hereby absolutely and unconditionally assign to Assignee all right, title and interest of Assignor in and to all present and future Leases and Rents, and this Assignment constitutes a present and absolute assignment and is intended to be unconditional and not as an assignment for additional security only. It is further intended that it not be necessary for Assignee to institute legal proceedings, absent any requirements of law or regulation to the contrary, to enforce the provisions hereof. Assignor hereby authorizes Assignee or its agents to collect the Rents; *provided, however*, that so long as no Event of Default has occurred and is continuing, and subject at all times to the requirement that payments and deposits of Rents be made directly to the Clearing Account in accordance with the terms of the Loan Agreement, Assignor shall have a revocable license, but limited as provided in this Assignment and in any of the other Loan Documents, to otherwise deal with, and enjoy the rights of the lessor under, the Leases. Upon the acceptance by Assignee of a cure, and/or waiver by Assignee, in each case, in writing, of an Event of Default, the license granted to Assignor shall be automatically reinstated without further action by either Assignor or Assignee.

(b) Upon the occurrence and during the continuance of an Event of Default, and without the necessity of Assignee entering upon and taking and maintaining full control of the Property in person, by agent or by court-appointed receiver, the license referred to in Paragraph (a) above shall immediately be revoked and Assignee shall have the right at its option, to exercise all rights and remedies contained in the Loan Documents, or otherwise available at law or in equity.

3. Rents Held in Trust by Assignor. Rents held or received by Assignor shall be held or received by Assignor as trustee for the benefit of Assignee only and shall be timely deposited directly to the Clearing Account in accordance with the terms of the Loan Agreement.

4. Effect on Rights Under Other Documents. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under any of the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms of the other Loan Documents. The rights of Assignee under the other Loan Documents may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents or grant of a security interest contained in any of the other Loan Documents.

5. Event of Default. Upon or at any time after the occurrence and during the continuance of an Event of Default, then in addition to and without limiting any of Assignee's rights and remedies hereunder and under the other Loan Documents and as otherwise available at law or in equity:

(a) Assignee may, at its option, without waiving such Event of Default and without regard to the adequacy of the security for the Debt, either in person or by agent, without bringing any action or proceeding, or by a receiver appointed by a court, without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents, including those past-due and unpaid, for application to the payment of the Debt in accordance with the terms of the Loan Documents, and Assignee may enter into, and to the extent that Assignor would have the right to do so, cancel, enforce or modify any Lease. The exercise by Assignee of the option granted it in this Section 5 and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any Event of Default.

(b) Assignor hereby acknowledges and agrees that payment of any item of Rent by a Person to Assignee as hereinabove provided shall constitute payment in full of such item of Rent by such Person, as fully and with the same effect as if it had been paid to Assignor.

(c) Assignee in respect of the Leases and Rents shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as in effect in the State in which such rights and remedies are asserted as described in Section 12(b) to the extent of such rights thereunder and additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where any rights and remedies hereunder may be asserted.

6. Application of Rents and Proceeds. After the occurrence and during the continuance of an Event of Default, Rents received or held by Assignor or Assignee shall be applied in accordance with the terms of the Loan Documents.

7. Attorney-in-Fact. Assignor hereby appoints Assignee the attorney-in-fact of Assignor to, upon the occurrence and during the continuance of an Event of Default, take any action and execute any instruments that Assignor is obligated, or has covenanted and agreed under the Loan Agreement or the other Loan Documents to take or execute, which appointment as attorney-in-fact is irrevocable and coupled with an interest. Without limiting the generality of the foregoing provisions of this Section 7, Assignor does hereby irrevocably appoint Assignee as its attorney-in-fact, upon the occurrence and during the continuance of an Event of Default, with full power, in the name and stead of Assignor to demand, collect, receive and give complete acquittance for any and all of the Rents now due or that may hereafter become due, and at Assignee's discretion, to file any claim, to take any other action, to institute any proceeding or to make any settlement of any claim, either in its own name or in the name of Assignor or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of Rents.

8. Termination. Assignee, by the acceptance of this Assignment, agrees that when all of the Debt shall have been paid in full, this Assignment shall terminate, and Assignee shall execute and deliver to Assignor, upon such termination such instruments of termination or re-assignment and Uniform Commercial Code termination statements, all without recourse and without any representation or warranty whatsoever, as shall be reasonably requested by Assignor.

9. Expenses. Assignor agrees to pay to Assignee all out-of-pocket expenses (including expenses for reasonable attorneys' fees and costs of every kind) of, or incident to, the enforcement of any of the provisions of this Assignment or performance by Assignee of any obligation of Assignor hereunder which Assignor has failed or refused to perform after the expiration of any applicable notice and/or cure period set forth in this Assignment or any other Loan Document.

10. Further Assurances. Assignor agrees that, from time to time upon the written request of Assignee, it will give, execute, deliver, file and/or record any financing statements, notice, instrument, document, agreement or other papers and do such other acts and things that may be necessary to create, preserve, perfect or validate this Assignment, to enable Assignee to exercise and enforce its rights hereunder with respect to this Assignment or to otherwise carry out the purposes and intent of this Assignment, provided that such instruments and/or actions do not materially increase Assignor's obligations or materially impair Assignor's rights under this Assignment and/or the other Loan Documents.

11. No Obligation by Assignee. By virtue of this Assignment, Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any of the Leases. This Assignment shall not operate to constitute Assignee as a lender in possession of the Property or to place responsibility for the control, care, management or repair of the Property upon Assignee, nor shall it operate to make Assignee responsible or liable for any waste committed on the Property by any tenant or other party in possession or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control thereof, except, in any such case, (i) resulting from Assignee's bad faith, fraud, gross negligence, willful misconduct and/or illegal acts and/or (ii) first occurring after Assignee's or its nominee's acquisition of Assignor's interest

in the Property or any mezzanine lender's exercise of remedies in connection with any mezzanine loan created under the Loan Documents.

12. Miscellaneous.

(a) No failure on the part of Assignee or any of its agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by Assignee or any of its agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. Subject to Section 16 hereof, the remedies herein are cumulative and are not exclusive of any remedies provided by law.

(b) WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THIS ASSIGNMENT, THIS ASSIGNMENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES SHALL GOVERN ALL MATTERS RELATING TO THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT.

(c) Subject to Section 16 hereof, all rights and remedies set forth in this Assignment are cumulative, and Assignee may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby; and no such right or remedy set forth in this Assignment shall be deemed exclusive of any of the remedies or rights granted to Assignee in any of the Loan Documents. Nothing contained in this Assignment shall be deemed to limit or restrict the rights and remedies of Assignee under the Loan Agreement or any of the other Loan Documents.

(d) Until the indebtedness and all other obligations secured by the Loan Documents is paid in full, Assignor will, upon request, deliver from time to time to Assignee photocopies certified by Assignor as true, correct and complete, of executed originals, of any and all existing Leases to which Assignor is a party, and photocopies of executed originals, so certified by Assignor, of all other and future Leases to which Assignor is a party, and upon request of Assignee, will specifically transfer and assign to Assignee such other and future Leases upon the same terms and conditions as herein contained.

(e) Assignor represents that it: (i) has been advised that Assignee engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Assignor or its affiliates; (ii) is represented by competent counsel and has consulted counsel before executing this Assignment; and (iii) has relied solely on its own judgment and on its counsel and advisors in entering into the transaction(s) contemplated hereby without relying in any manner on any statements, representations or recommendations of Assignee or any parent, subsidiary or affiliate of Assignee.

13. No Oral Change. This Assignment may not be amended except by an instrument in writing signed by Assignor and Assignee.

14. Successors and Assigns. Assignor may not assign its rights under this Assignment except as permitted under the Loan Agreement. Subject to the foregoing, this Assignment shall be binding upon, and shall inure to the benefit of, Assignor and Assignee and their respective successors and assigns.

15. Notices. All notices, requests and other communications provided for herein shall be given or made in writing in the manner specified in the Loan Agreement.

16. Exculpation. It is expressly agreed that recourse against Assignor for failure to perform and observe its obligations contained in this Assignment shall be limited as and to the extent provided in Section 10.1 of the Loan Agreement.

17. Waiver of Jury Trial. ASSIGNOR, AND BY ITS ACCEPTANCE HEREOF, ASSIGNEE HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS ASSIGNMENT OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY ASSIGNOR AND ASSIGNEE, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE WITH REGARD TO THIS ASSIGNMENT OR ANY OTHER LOAN DOCUMENT. ASSIGNOR AND ASSIGNEE ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY ASSIGNOR AND ASSIGNEE, AS THE CASE MAY BE.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Assignment has been duly executed by Assignor as of the day and year first above written.

**ASSIGNOR:**

KLA DEVELOPMENT PORTFOLIO OWNER LLC,  
a Delaware limited liability company

By: KLA Toys LLC,  
a Delaware limited liability company,  
its sole member

By: [Signature]  
Name: Ryan Levy  
Title: Authorized Signatory

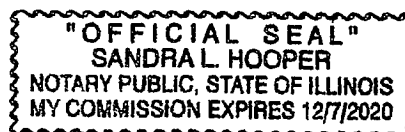
State Of Illinois )  
County Of Cook )

I, Sandra L Hooper, a Notary Public in and for said County and State, do hereby certify that Ryan Levy personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she/they signed and delivered the said instrument as his/her/their free and voluntary act, for the purposes and therein set forth.

Given under my hand and official seal, this 22nd day of January.

My commission expires: 12/7/2020

[Signature]  
Notary Public



## EXHIBIT A

### Description of Property

#### Parcel A:

Parcel 1 of Certified Survey Map No. 1528, recorded in the Office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in volume 4 of Certified Survey Maps, Page 699-700 as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine and State of Wisconsin.

#### Parcel B:

A non-exclusive perpetual easement and right of use appurtenant to and for the benefit of Parcel 1 to and from adjacent public roads in and over that portion of the Common Areas located on parcel of land designated "K-Mart Parcel" as designated and as further described in Reciprocal Easement and Operation Agreement dated July 2, 1991 and recorded July 2, 1991 in the Office of the Register of Deeds for Racine County in Volume 2078 of Records, Page 789, as Document No. 1343832, as amended by that First Amendment to Reciprocal Easement and Operation Agreement dated June 25, 1992 and recorded October 19, 1992 in Volume 2194, page 169, as Document No. 1393873, as affected by that Consent Agreement dated January 7, 2000, and recorded February 2, 2000 in Volume 3001, page 91, as Document No. 1716541.

#### Parcel C:

Non-exclusive easement for the benefit of Parcel A created by an Access Road Agreement recorded August 8, 2008 as Document No. 2184341 for ingress and egress as provided for therein.

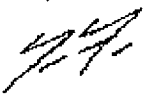
Tax Key No.: 23876-042

Property Address: 2433 S.Green Bay Road

Document Number

**ASSIGNMENT OF ASSIGNMENT OF  
LEASES AND RENTS**  
Title of Document

Document # **2515638**  
RACINE COUNTY REGISTER OF DEEDS  
March 12, 2019 10:46 AM

  
TYSON FETTES  
RACINE COUNTY  
REGISTER OF DEEDS  
Fee Amount: \$30.00

Pages: 5

Recording Area

Name and Return Address  
Arnold & Porter  
250 West 55<sup>th</sup> Street  
New York, New York 10019-9710  
Attention: Stephen Gliatta, Esq.

20-5

23876-042  
Parcel Identification Number (PIN)

Drafted b:

Arnold & Porter  
250 West 55th Street  
New York, New York 10019-9710  
Attention: Stephen Gliatta, Esq.

**ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS**

**LOANCORE CAPITAL CREDIT REIT LLC**, a Delaware limited liability company  
(Assignor)  
to

**LCC WAREHOUSE II LLC**, a Delaware limited liability company  
(Assignee)

Dated: As of February 28, 2019.

Property Location: 2433 S Green Bay Road  
Racine, Wisconsin 53406

DOCUMENT PREPARED BY AND  
WHEN RECORDED, RETURN TO:

Stephen Gliatta, Esq.  
Arnold & Porter Kaye Scholer LLP  
250 West 55<sup>th</sup> Street  
New York, New York 10019

## ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS

**LOANCORE CAPITAL CREDIT REIT LLC**, whose address is c/o LoanCore Capital, 55 Railroad Avenue, Suite 100, Greenwich, Connecticut 06830 ("**Assignor**"), as the holder of the instrument hereinafter described and for valuable consideration hereby endorses, assigns, sells, transfers and delivers to **LCC WAREHOUSE II LLC**, a Delaware limited liability company, having an address at c/o LoanCore Capital, LLC, 55 Railroad Avenue, Suite 100, Greenwich, Connecticut 06830, their successors, participants and assigns (collectively "**Assignee**"), all right, title and interest of Assignor in and to that certain Assignment of Leases and Rents, by **KLA DEVELOPMENT PORTFOLIO OWNER LLC**, a Delaware limited liability company ("**Borrower**"), in favor of Assignor dated January 22, 2019, and recorded in the Racine County Register of Deeds, as Document Number 2512834, on January 29, 2019 (as the same have heretofore been amended, modified, restated, supplemented, assigned, renewed or extended), and creating a first lien on the property described in Exhibit A attached hereto and by this reference made a part hereof.

Together with any and all notes and obligations therein described, the debt and claims secured thereby and all sums of money due and to become due thereon, with interest provided for therein, and hereby irrevocably appoints Assignee hereunder its attorney to collect and receive such debt, and to foreclose, enforce and satisfy the foregoing the same as it might or could have done were these presents not executed, but at the cost and expense of Assignee.

Together with any and all other liens, privileges, security interests, rights, entitlements, equities, claims and demands as to which Assignor hereunder possesses or to which Assignor is otherwise entitled as additional security for the payment of the notes and other obligations described herein.

TO HAVE AND TO HOLD the Assignment of Leases and Rents unto Assignee and to the successors and assigns of Assignee forever.

[SIGNATURE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Assignor has caused this instrument to be executed by its duly authorized officer on the day and year first above written.

**ASSIGNOR:**

**LOANCORE CAPITAL CREDIT REIT LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Tyler Shea

Title: Authorized Signatory

**ACKNOWLEDGEMENT**

STATE OF CONNECTICUT                     )  
                                                           )  
COUNTY OF FAIRFIELD                     )

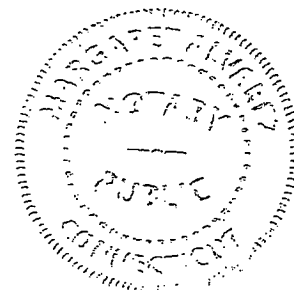
I, Margaret Alvarez, a Notary Public in and for said County and State, do hereby certify that Tyler Shea personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, for the purposes and therein set forth.

Given under my hand and official seal, this 27<sup>th</sup> day of February, 2019.

My commission expires:

Margaret Alvarez  
Notary Public

MARGARET ALVAREZ  
NOTARY PUBLIC OF CONNECTICUT  
My Commission Expires 7/31/2023



## EXHIBIT A

### Legal Description

Parcel A:

Parcel 1 of Certified Survey Map No. 1528, recorded in the Office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in volume 4 of Certified Survey Maps, Page 699-700 as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine and State of Wisconsin.

Parcel B:

A non-exclusive perpetual easement and right of use appurtenant to and for the benefit of Parcel 1 to and from adjacent public roads in and over that portion of the Common Areas located on parcel of land designated "K-Mart Parcel" as designated and as further described in Reciprocal Easement and Operation Agreement dated July 2, 1991 and recorded July 2, 1991 in the Office of the Register of Deeds for Racine County in Volume 2078 of Records, Page 789, as Document No. 1343832, as amended by that First Amendment to Reciprocal Easement and Operation Agreement dated June 25, 1992 and recorded October 19, 1992 in Volume 2194, page 169, as Document No. 1393873, as affected by that Consent Agreement dated January 7, 2000, and recorded February 2, 2000 in Volume 3001, page 91, as Document No. 1716541.

Parcel C:

Non-exclusive easement for the benefit of Parcel A created by an Access Road Agreement recorded August 8, 2008 as Document No. 2184341 for ingress and egress as provided for therein.

Tax Key No.: 23876-042

Property Address: 2433 S.Green Bay Road

TYSON FETTES  
RACINE COUNTY  
REGISTER OF DEEDS  
Fee Amount: \$30.00

\*\*The above recording information verifies  
this document has been electronically recorded\*\*  
Returned to Chicago Title Waukesha - Escrow  
Pages: 3

## UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

|                                                                                                                                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A. NAME & PHONE OF CONTACT AT FILER (optional)                                                                                                                       |
| B. E-MAIL CONTACT AT FILER (optional)                                                                                                                                |
| C. SEND ACKNOWLEDGMENT TO: (Name and Address)                                                                                                                        |
| <div>Arnold &amp; Porter Kaye Scholer LLP</div> <div>250 West 55th Street</div> <div>New York, New York 10019-9710</div> <div>Attention: Stephen Gliatta, Esq.</div> |

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

|                                                                                    |                          |                        |                               |                             |
|------------------------------------------------------------------------------------|--------------------------|------------------------|-------------------------------|-----------------------------|
| 1a. ORGANIZATION'S NAME<br><b>KLA DEVELOPMENT PORTFOLIO OWNER LLC</b>              |                          |                        |                               |                             |
| OR                                                                                 | 1b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME    | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX                      |
| 1c. MAILING ADDRESS<br><b>c/o Klaff Realty, LP, 35 E. Wacker Drive, Suite 2900</b> |                          | CITY<br><b>Chicago</b> | STATE<br><b>IL</b>            | POSTAL CODE<br><b>60601</b> |
|                                                                                    |                          |                        |                               | COUNTRY<br><b>USA</b>       |

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

|                         |                          |                     |                               |             |
|-------------------------|--------------------------|---------------------|-------------------------------|-------------|
| 2a. ORGANIZATION'S NAME |                          |                     |                               |             |
| OR                      | 2b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX      |
| 2c. MAILING ADDRESS     |                          | CITY                | STATE                         | POSTAL CODE |
|                         |                          |                     |                               | COUNTRY     |

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

|                                                                                   |                          |                          |                               |                             |
|-----------------------------------------------------------------------------------|--------------------------|--------------------------|-------------------------------|-----------------------------|
| 3a. ORGANIZATION'S NAME<br><b>LOANCORE CAPITAL CREDIT REIT LLC</b>                |                          |                          |                               |                             |
| OR                                                                                | 3b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME      | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX                      |
| 3c. MAILING ADDRESS<br><b>c/o LoanCore Capital, 55 Railroad Avenue, Suite 100</b> |                          | CITY<br><b>Greenwich</b> | STATE<br><b>CT</b>            | POSTAL CODE<br><b>06830</b> |
|                                                                                   |                          |                          |                               | COUNTRY<br><b>USA</b>       |

4. COLLATERAL: This financing statement covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired, including without limitation goods that are or are to become fixtures on the real property legally described on Exhibit A attached hereto, as more particularly described in that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated January 22, 2019 between Debtor, as Mortgagor, and Secured Party, as Mortgagee, filed against the real property legally described on Exhibit A attached hereto.

|                                                                                                                                                                                                                                                         |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, item 17 and Instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative     |  |
| 6a. Check <u>only</u> if applicable and check <u>only</u> one box:<br><input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility            |  |
| 6b. Check <u>only</u> if applicable and check <u>only</u> one box:<br><input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing                                                                                                |  |
| 7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licensor |  |
| 8. OPTIONAL FILER REFERENCE DATA:<br><b>Filed with Racine, WI LCC/Toys R Us (1038460-0061)</b>                                                                                                                                                          |  |

## UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME

**KLA DEVELOPMENT PORTFOLIO OWNER LLC**

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

10c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

11c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. ☒ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:

☐ covers timber to be cut

☐ covers as-extracted collateral

☒ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

**See Exhibit A**

17. MISCELLANEOUS:

**Filed with Racine, WI**

**LCC/Toys R Us (1038460-0061)**

## EXHIBIT A

### Legal Description

#### Parcel A:

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Tax Key No.: 23876-042

Property Address: 2433 S.Green Bay Road

TYSON FETTES  
RACINE COUNTY  
REGISTER OF DEEDS  
Fee Amount: \$30.00

Pages: 3

## UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

|                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------|
| A. NAME & PHONE OF CONTACT AT FILER (optional)                                                                                |
| B. E-MAIL CONTACT AT FILER (optional)                                                                                         |
| C. SEND ACKNOWLEDGMENT TO: (Name and Address)                                                                                 |
| Arnold & Porter Kaye Scholer LLP<br>250 West 55th Street<br>New York, New York 10019-9710<br>Attention: Stephen Gliatta, Esq. |

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER  
Document No. 2512835, Filed 01/29/2019

1b. ☒ This FINANCING STATEMENT AMENDMENT is to be filed (for record)  
(or recorded) in the REAL ESTATE RECORDS  
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ☒ ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9  
For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. ☐ PARTY INFORMATION CHANGE:

Check one of these two boxes:

AND Check one of these three boxes to:

This Change affects ☐ Debtor or ☐ Secured Party of record

☐ CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c

☐ ADD name: Complete item 7a or 7b, and item 7c

☐ DELETE name: Give record name to be deleted in item 6a or 6b

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME

OR 6b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME

LCC WAREHOUSE II LLC

OR 7b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

7c. MAILING ADDRESS

c/o LoanCore Capital, LLC, 55 Railroad Ave, Ste 100

CITY

Greenwich

STATE

CT

POSTAL CODE

06830

COUNTRY

USA

8. ☐ COLLATERAL CHANGE: Also check one of these four boxes: ☐ ADD collateral ☐ DELETE collateral ☐ RESTATE covered collateral ☐ ASSIGN collateral  
Indicate collateral:

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)  
If this is an Amendment authorized by a DEBTOR, check here ☐ and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

LOANCORE CAPITAL CREDIT REIT LLC

OR 9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

10. OPTIONAL FILER REFERENCE DATA:

Filed with Racine, WI

LCC/Toys R Us (1038460-0061)

164442594.PDF

FILING OFFICE COPY — UCC FINANCING STATEMENT AMENDMENT (Form UCC3) (Rev. 04/20/11)

# UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form

**Document No. 2512835, Filed 01/29/2019**

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form

12a. ORGANIZATION'S NAME

**LOANCORE CAPITAL CREDIT REIT LLC**

OR

12b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit

13a. ORGANIZATION'S NAME

**KLA DEVELOPMENT PORTFOLIO OWNER LLC**

OR

13b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral):

15. This FINANCING STATEMENT AMENDMENT:

☐ covers timber to be cut ☐ covers as-extracted collateral ☒ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17  
(if Debtor does not have a record interest):

17. Description of real estate:

**See Exhibit A attached hereto.**

18. MISCELLANEOUS:

## EXHIBIT A

### Legal Description

#### Parcel A:

Parcel 1 of Certified Survey Map No. 1528, recorded in the Office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in volume 4 of Certified Survey Maps, Page 699-700 as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine and State of Wisconsin.

#### Parcel B:

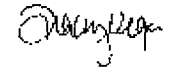
A non-exclusive perpetual easement and right of use appurtenant to and for the benefit of Parcel 1 to and from adjacent public roads in and over that portion of the Common Areas located on parcel of land designated "K-Mart Parcel" as designated and as further described in Reciprocal Easement and Operation Agreement dated July 2, 1991 and recorded July 2, 1991 in the Office of the Register of Deeds for Racine County in Volume 2078 of Records, Page 789, as Document No. 1343832, as amended by that First Amendment to Reciprocal Easement and Operation Agreement dated June 25, 1992 and recorded October 19, 1992 in Volume 2194, page 169, as Document No. 1393873, as affected by that Consent Agreement dated January 7, 2000, and recorded February 2, 2000 in Volume 3001, page 91, as Document No. 1716541.

#### Parcel C:

Non-exclusive easement for the benefit of Parcel A created by an Access Road Agreement recorded August 8, 2008 as Document No. 2184341 for ingress and egress as provided for therein.

Tax Key No.: 23876-042

Property Address: 2433 S.Green Bay Road

  
TRACEY VEGA  
RACINE COUNTY  
REGISTER OF DEEDS  
Fee Amount: \$30.00

\*\*The above recording information verifies  
this document has been electronically recorded\*\*  
Returned to Burlington Stores, Inc.  
Pages: 10

Record and return to:  
Burlington Coat Factory  
1830 Route 130 North  
Burlington, NJ 08016  
Attn: Legal Department

### SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENMENT AGREEMENT** (the "**Agreement**") is dated as of April 18, 2019 and is by and among **LCC WAREHOUSE II LLC**, a Delaware limited liability company, as assignee of LoanCore Capital Credit REIT LLC, having an address c/o LoanCore Capital, 55 Railroad Avenue, Suite 100, Greenwich, Connecticut 06830 ("**Lender**"), **KLA DEVELOPMENT PORTFOLIO OWNER LLC**, a Delaware limited liability company, having an address c/o Klaff Realty, LP, 35 E. Wacker Drive, Suite 2900, Chicago, Illinois 60601 ("**Landlord**"), and **BURLINGTON COAT FACTORY WAREHOUSE CORPORATION**, a Florida corporation, having an office at 1830 Route 130 North, Burlington, NJ 08016 ("**Tenant**").

Lender has made or intends to make a loan to Landlord (the "**Loan**"), which Loan shall be or is secured by, among other things, a Mortgage or Deed of Trust, Assignment of Leases and Rents and Security Agreement (as the same may be amended, restated, severed, split, supplemented or otherwise modified from time to time, the "**Mortgage**") encumbering the real property located at 2433 S. Green Bay Road, Racine, Wisconsin 53406, which is more particularly described on Exhibit A annexed hereto and made a part hereof (the "**Property**").

By a Lease Agreement (the "**Lease**") dated as of April 15, 2019, as amended, Landlord leased to Tenant a portion of the Property, as said portion is more particularly described in the Lease (such portion of the Property hereinafter referred to as the "**Premises**").

Lender and Tenant desire to evidence their understanding with respect to the Mortgage and the Lease as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the parties hereto hereby agree as follows:

1. **SUBORDINATION.** The Mortgage and any modifications, renewals or extensions thereof (including any increases in the amount secured thereby), shall remain a lien on the Property prior and superior to the lien of the Lease with the same force and effect as if the Mortgage had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. **NON-DISTURBANCE.** Lender agrees that if Lender exercises any of its rights under the Mortgage, including entry or foreclosure of the Mortgage or exercise of a power of sale under the Mortgage or deed in lieu thereof, Lender will not disturb Tenant's right to use, occupy and possess the Premises under the terms of the Lease so long as Tenant is not in default beyond any applicable grace period under any term, covenant or condition of the Lease, which default would permit Landlord to terminate the Lease.

3. **ATTORNMEN**. If, at any time Lender (or its successors or assigns, who acquires the interest of Landlord under the Lease through foreclosure of the Mortgage or otherwise) shall succeed to the rights of Landlord under the Lease as a result of a default or event of default under the Mortgage, Tenant shall attorn to and recognize such person so succeeding to the rights of Landlord under the Lease (herein sometimes called "***Successor Landlord***") as Tenant's landlord under the Lease, said attornment to be effective and self-operative without the execution of any further instruments.

4. **LENDER'S PAYMENT DEMAND.** Landlord authorizes and directs Tenant following twenty (20) days written notice from Lender to honor any written demand or notice from Lender instructing Tenant to pay rent or other sums to Lender rather than Landlord (a "***Payment Demand***"), regardless of any other or contrary notice or instruction which Tenant may receive from Landlord before or after Tenant's receipt of such Payment Demand. Tenant may rely upon any notice or instruction for Payment Demand signed by Lender (or a servicer on its behalf) and Tenant shall have no duty to Landlord to investigate the same or the circumstances under which the same was given. Any payment made by Tenant to Lender or in response to a Payment Demand shall be deemed proper payment by Tenant of such sum pursuant to the Lease.

5. **LENDER'S/SUCCESSOR LANDLORD'S LIMITED LIABILITY.** If Lender shall become the owner of the Property or the Property shall be sold by reason of foreclosure or other proceedings brought to enforce the Mortgage or if the Property shall be transferred by deed in lieu of foreclosure, Lender or any Successor Landlord shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord) or bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any prior landlord (including Landlord), except to the extent the Lender was furnished notice and opportunity to cure said Landlord act or omission in accordance with the provisions of this Agreement; or

(b) obligated to cure any defaults of any prior landlord (including Landlord) which occurred, or to make any payment to Tenant which was required to be paid by any prior landlord (including Landlord), prior to the time that Lender or any Successor Landlord succeeded to the interest of such landlord under the Lease; or

(c) liable for any defects (latent, patent or otherwise) in the design, workmanship, materials, construction or otherwise with respect to improvements and buildings constructed on the Property prior to the date Successor Landlord takes title to the Property (but nothing herein shall relieve Landlord of its ongoing repair or maintenance obligations under the Lease); or

(d) excluding any offsets arising from Tenant exercising its self-help rights in the event of imminent harm to persons or property, subject to any offsets or defenses which Tenant might have against any prior landlord (including the Landlord); except to the extent the Lender was furnished notice and opportunity to cure the Landlord default giving rise to such offset or defense in accordance with the provisions of this Agreement; or

(e) bound by any payment of rent or additional rent by Tenant to any prior landlord (including Landlord) for more than one (1) month in advance of its due date (other than estimated additional rent amounts on account for operating expenses, taxes and other escalations or pass-throughs), unless the Lender actually receives such rent or additional rent; or

(f) bound by any amendment, or modification of the Lease made without the written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed, which (i) reduces the minimum rent payable under the Lease; (ii) changes the date upon which the term of the Lease would otherwise end to an earlier date; or (iii) more than insignificantly increases Landlord's obligations under the Lease; or

(g) liable or responsible for return to Tenant of any security deposit paid to any prior landlord (including Landlord) unless Lender or any Successor Landlord has actually received said deposit; or

(h) bound by any right of first offer or right of first refusal in favor of Tenant as contained in the Lease.

6. **LENDER'S RIGHT TO CURE.** Tenant hereby agrees to deliver to Lender a duplicate of each notice of default delivered by Tenant to Landlord at the same time as such notice is given to Landlord. Notwithstanding the aforementioned, Tenant's failure to provide such notice to Lender shall not be deemed a default by Tenant under this Agreement or the Lease but shall be deemed ineffective as to Lender until given. Subject to Tenant's self-help rights under the Lease, Lender shall have the right (but shall not be obligated) to cure such default within the same time period afforded to Landlord under the Lease. Tenant shall accept

performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. Lender shall have such longer time as may be necessary to cure such default not to exceed an additional twenty (20) days; provided that Lender commences the cure within such period and diligently pursues the cure thereafter).

7. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State in which the Premises is located (excluding the choice of law rules thereof).

8. **SUCCESSORS AND ASSIGNS.** This Agreement and each provision hereof shall be binding upon and shall inure to the benefit of Landlord, Lender, Tenant and their successors and assigns.

9. **CONDEMNATION AND INSURANCE AWARDS.** The parties hereto hereby agree that notwithstanding anything in this Agreement, the Mortgage, the Loan Documents or any related documents to the contrary, that Lender will apply the proceeds of any insurance or condemnation for the repair and/or rebuilding of the Property and the Premises as required under the Lease.

10. **NOTICES.** All notices to be given under this Agreement shall be in writing and shall be deemed served upon receipt by the addressee if served personally or, if mailed, upon the first to occur of receipt or the refusal of delivery as shown on a return receipt, after deposit in the United States Postal Service certified mail, postage prepaid, or recognized overnight service which obtains a signature upon receipt addressed to the address of Landlord, Tenant or Lender appearing below. Such addresses may be changed by notice given in the same manner. If any party consists of multiple individuals or entities, then notice to any one of same shall be deemed notice to such party.

Lender's Address:

LCC WAREHOUSE II LLC  
c/o LoanCore Capital  
55 Railroad Avenue, Suite 100  
Greenwich, Connecticut 06830  
Attention: Brett Kaplan  
Facsimile No.: (203) 861-6006  
E-mail: BKaplan@LoanCoreCapital.com

with a copy to:

LCC WAREHOUSE II LLC  
c/o LoanCore Capital  
55 Railroad Avenue, Suite 100  
Greenwich, Connecticut 06830  
Attention: Notices  
E-mail: notices@loancorecapital.com

with a copy to: Arnold & Porter  
250 West 55th Street  
New York, New York 10019-9710  
Attention: Stephen Gliatta, Esq.  
Facsimile No.: (212) 836-8689  
Email: steve.gliatta@arnoldporter.com

Tenant's Address: Burlington Coat Factory Warehouse Corporation  
1830 Rt. 130 North  
Burlington, NJ 08016  
Attn: Lease Administration

---

With a copy to: Burlington Coat Factory Warehouse Corporation  
1830 Rt. 130 North  
Burlington, NJ 08016  
Attn: Legal Department

Landlord's Address: c/o Klaff Realty, LP  
35 E. Wacker Drive, Suite 2900  
Chicago, Illinois 60601  
Attention: Ryan Levy, Laurie Levin and Hersch M. Klaff  
Facsimile No.: (312) 360-0606

with a copy to: Lubert-Adler Partners, L.P.  
2929 Arch Street, Cira Centre  
Philadelphia, Pennsylvania 19104-2868  
Attention: Gerald A. Ronan  
Facsimile No.: (215) 864-2127

with a copy to: Klehr Harrison Harvey Branzburg LLP  
1835 Market Street, 14th Floor  
Philadelphia, Pennsylvania 19103  
Attention: Bradley A. Krouse, Esq.  
Email: bkrouse@klehr.com

with a copy to: Klehr Harrison Harvey Branzburg LLP  
1835 Market Street, 14th Floor  
Philadelphia, Pennsylvania 19103  
Attention: Jon S. Robins, Esq.  
Email: jrobins@klehr.com

11. **MISCELLANEOUS.** In the event Lender shall acquire Landlord's interest in the Premises, Tenant shall look only to the estate and interest, if any, of Lender in the Property,

including the rents and proceeds of sale, financing, refinancing, insurance and condemnation for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender as a Successor Landlord under the Lease or under this Agreement, and no other property or assets of Lender shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease.

12. **SEVERABILITY.** If any provision(s) or portion thereof of this Agreement is held to be void or unenforceable by a court of competent jurisdiction, the remaining provisions hereof (and the remaining portion(s) of any provision held void or unenforceable in part) shall remain in full force and effect, and, in such case, the provisions hereof shall be interpreted or reformed by the court so as to nearly as possible effectuate the intent of the parties

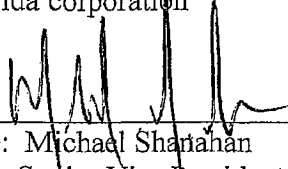
13. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A facsimile or scan of a signature and notary thereof will have the same legal effect as an originally drawn signature and notary.

14. **EFFECTIVENESS.** This Agreement shall not be effective unless executed by all of the parties hereto and shall not be binding on Tenant unless Tenant has received a fully-executed duplicate original of this Agreement. A copy of the fully-executed copy of this agreement shall be returned to Tenant within thirty (30) days from the date of execution by the Tenant.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

**BURLINGTON COAT FACTORY WAREHOUSE CORPORATION,**  
a Florida corporation

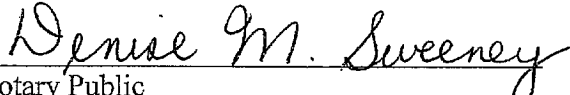
By:   
Name: Michael Shanahan  
Title: Senior Vice President – Real Estate

STATE OF NEW JERSEY §

COUNTY OF BURLINGTON §

On the 25<sup>th</sup> day of March in the year 2019, before me, Denise M. Sweeney, Notary Public, personally appeared Michael Shanahan personally known to me - OR - proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

[S E A L]

  
Notary Public

My Commission Expires:

Print Name:

Denise M. Sweeney

Denise M. Sweeney  
Notary Public State of New Jersey  
My Commission Expires June 5, 2022

LANDLORD:

**KLA DEVELOPMENT PORTFOLIO OWNER LLC,**  
a Delaware limited liability company

By: KLA Toys LLC,  
a Delaware limited liability company,  
its member

By: [Signature]

Name: Ryan Levy  
Title: Authorized Signatory

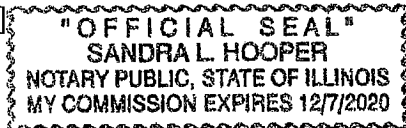
STATE OF Illinois

COUNTY OF Cook

Before me, April 6, 2019, on this day personally appeared Ryan Levy, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the Authorized Signer of KLA Toys LLC, a Delaware LLC, and acknowledged to me that he/she executed said instrument for the purposes of consideration therein expressed and as the act of said limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 5th day of April, 2019.

[SEAL]



[Signature]  
Notary Public in and for

Cook County, Illinois

**LENDER:**

**LCC WAREHOUSE II LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

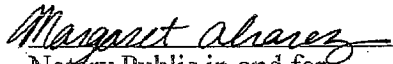
  
Tyler Shea  
Authorized Signatory

STATE OF Connecticut )  
 )  
COUNTY OF Fairfield )

Before me, Margaret Alvarez, on this day personally appeared Tyler Shea, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the Authorized Signatory of LCC Warehouse II LLC, a Delaware LLC, and acknowledged to me that he/she executed said instrument for the purposes of consideration therein expressed and as the act of said limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 18 day of April, 2019.

[SEAL]

  
Notary Public in and for  
Fairfield County, CT

MARGARET ALVAREZ  
NOTARY PUBLIC OF CONNECTICUT  
My Commission Expires 7/31/2023

## Exhibit A

### Legal Description of Property

#### Parcel A:

Parcel 1 of Certified Survey Map No. 1528, recorded in the Office of the Register of Deeds for Racine County, Wisconsin on July 2, 1991, in Volume 4 of Certified Survey Maps, Page 699-700 as Document No. 1343824, being a redivision of a portion of Lot 1 of Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Town 3 North, Range 22 East, in the City of Racine, County of Racine and State of Wisconsin.

#### Parcel B:

---

A non-exclusive perpetual easement and right of use appurtenant to and for the benefit of Parcel 1 to and from adjacent public roads in and over that portion of the Common Areas located on parcel of land designated "K-Mart Parcel" as designated and as further described in Reciprocal Easement and Operation Agreement dated July 2, 1991 and recorded July 2, 1991 in the Office of the Register of Deeds for Racine County in Volume 2078 of Records, Page 789, as Document No. 1343832, as amended by that First Amendment to Reciprocal Easement and Operation Agreement dated June 25, 1992 and recorded October 19, 1992 in Volume 2194, page 169, as Document No. 1393873, as affected by that Consent Agreement dated January 7, 2000, and recorded February 2, 2000 in Volume 3001, page 91, as Document No. 1716541.

#### Parcel C:

Non-exclusive easement for the benefit of Parcel A created by an Access Road Agreement recorded August 8, 2008 as Document No. 2184341 for ingress and egress as provided for therein.

Tax Key No.: 23876-042

Property Address: 2433 S.Green Bay Road

Register's Office  
 Racine County, Wis.  
 Received for Record 30th  
 September A.D. 1986 at 11:11  
 o'clock A.M. and recorded in Volume 3  
 of C.S.M. on page 426-428

Ref

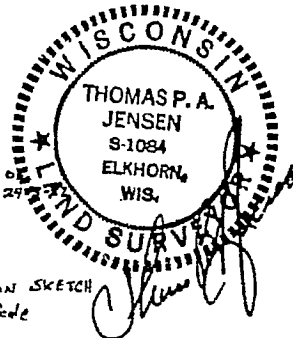
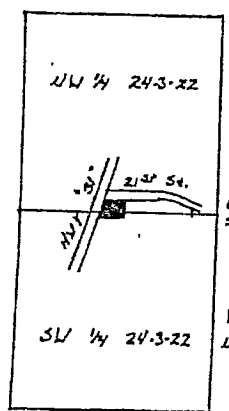
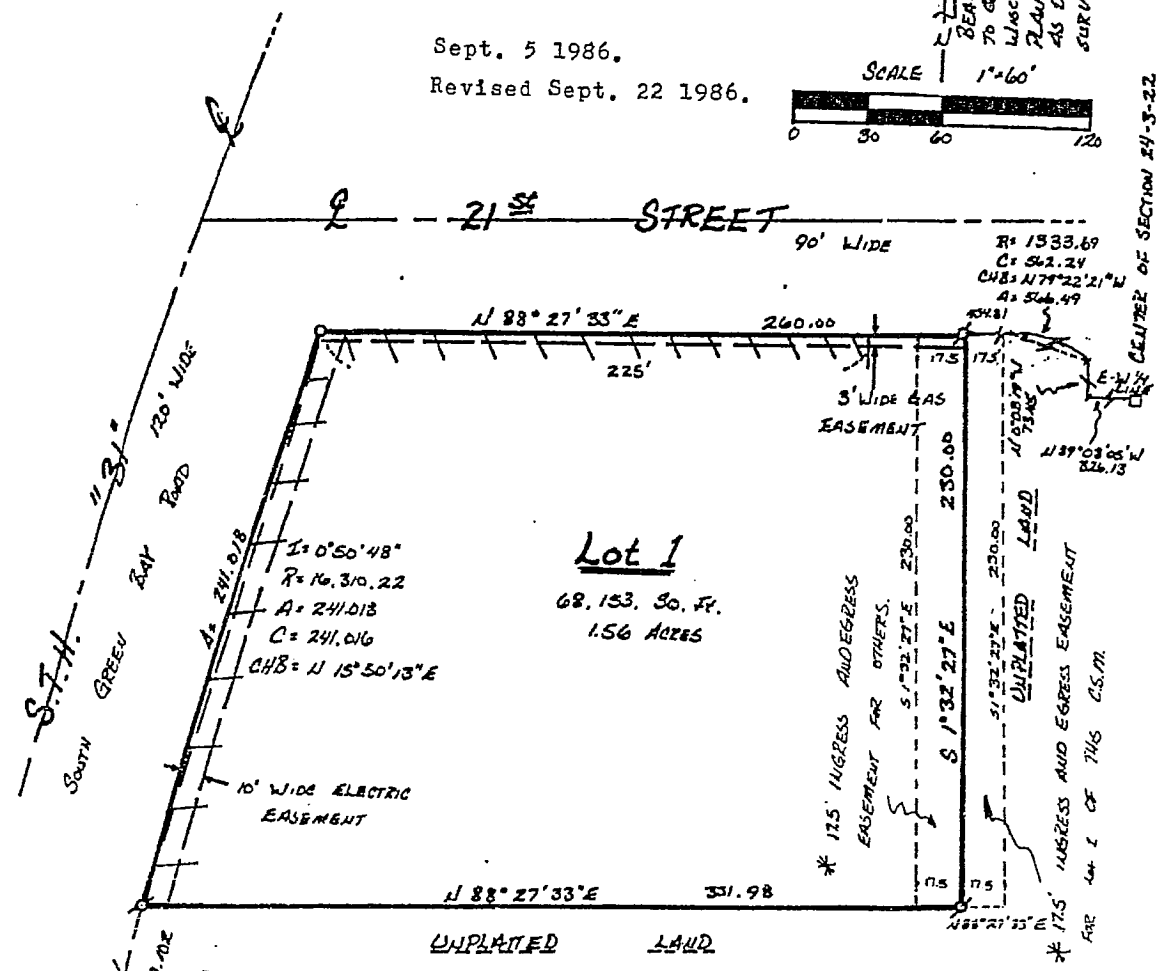
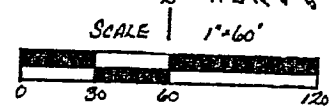
008-03-22-24-026-000  
 from: 008-03-22-24-025-000

Thelen M. Schuttler  
 Registrar of Deeds

1207187

CERTIFIED SURVEY MAP No. 1169  
 Located in the N.W.  $\frac{1}{4}$  and the S.W.  $\frac{1}{4}$  of Section 24,  
 Town 3 North, Range 22 East, Racine County, Wisconsin.  
 Owner: Racine County  
 Jensen Surveying & Mapping S.C.  
 45 S. Wisconsin St. P.O. Box 322  
 Elkhorn, Wisconsin. 53121  
 (414) 723-3434

Sept. 5 1986.  
 Revised Sept. 22 1986.



**LEGEND**  
 O ~ 170W PIPE FOUND  
 S ~ SET 1.5" DIA. 120W PIPE,  
 17" LONG NEIGHING AT  
 LEAST 1/13 166/LIN FT.  
 □ ~ COUNTY SECTION CORNER  
 MONUMENT  
 ~ NO VEHICULAR ACCESS.  
 SEE PAGE 3.

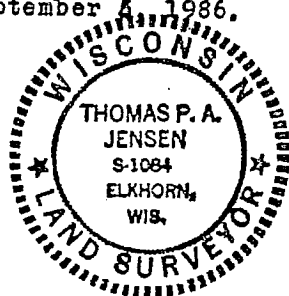
CERTIFIED SURVEY MAP No. 1169  
Located in the Northwest  $\frac{1}{4}$  and the Southwest  $\frac{1}{4}$  of Section 24,  
Town 3 North, Range 22 East, Racine County, Wisconsin.

SURVEYOR'S CERTIFICATE & LEGAL DESCRIPTION:

I, Thomas P.A. Jensen, Wisconsin Registered Land Surveyor, hereby certify that I have prepared this Certified Survey Map, the exterior boundaries of which are described as: Part of the Northwest  $\frac{1}{4}$  and the Southwest  $\frac{1}{4}$  of Section 24, Town 3 North, Range 22 East, Town of Mount Pleasant, Racine County, Wisconsin, more particularly described as follows: Commence at the Center  $\frac{1}{4}$  corner of Said Section 24; thence N 89°08'05" W, along the East- West  $\frac{1}{4}$  line of said Section 24, 326.13 feet; thence N 0°08'19" W 73.45 feet to the South line of 21st Street; thence Northwesterly, along said South line and the arc of a curve of Northwesterly convexity ( whose radius = 1333.69 feet and whose chord bears N 79°22'21" W 562.24 feet) 566.49 feet; thence S 88°27'33" W, along said South line, 434.81 feet to the Point of Beginning; thence S 1°32'27" E 230.00 feet; thence S 88°27'33" W 331.98 feet to the East line of State Trunk Highway 31; thence Northeasterly along said East line and the arc of Northwesterly convexity ( whose radius is 16,310.22, whose central angle is 0°50'48", and whose chord bears N 15°50'13" E 241.016) 241.018 feet to the South line of said 21st Street; thence N 88°27'33" E, along said South line, 260.00 feet to the Point of Beginning. Parcel contains 68,153. sq. ft. of land, more or less.

I further certify that I have fully complied with the requirements of Chapter 236.34 of the Wisconsin Statutes and the provisions of the Mt. Pleasant ordinances and the Racine County Land Division Control Ordinance in making such survey and Certified Survey Map.

September 6, 1986.



*Thomas P.A. Jensen*  
Thomas P.A. Jensen R.L.S. 1084  
Revised Sept. 22 1986.

CITY'S CERTIFICATE:

Approved by the Common Council of the City of Racine this \_\_\_\_\_ day of \_\_\_\_\_, 1986 by resolution.

\_\_\_\_\_  
Anthony J. Schlaffer  
Clerk, City of Racine.

COUNTY'S CERTIFICATE:

Approved as a CERTIFIED SURVEY MAP this 24<sup>th</sup> day of SEPTEMBER, 1986.

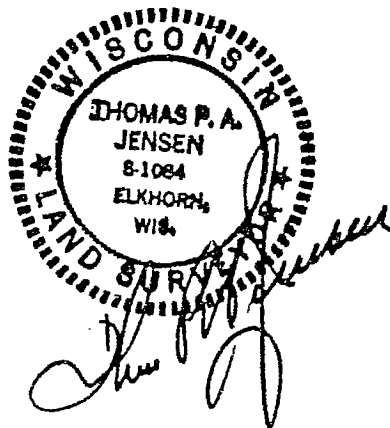
*Arnold L. Clement*  
Arnold L. Clement, Director  
of Planning & Development  
Racine County.

CERTIFIED SURVEY MAP No. 1169  
Located in the Northwest  $\frac{1}{4}$  and the Southwest  $\frac{1}{4}$  of  
Section 24, Town 3 North, Range 22 East, Racine  
County, Wisconsin.

TOWN BOARD APPROVAL:

Approved as a Certified Survey Map this 5th day  
of September, 1986.

Carol Jensen  
Carol Jensen, Clerk  
Town of Mt Pleasant



Sept. 5, 1986.  
Revised Sept. 22 1986.

ACCESS RESTRICTION:

As owner, I hereby restrict Lot 1, in that no owner, possessor, user, nor licensee, nor other person shall have any right of direct vehicular ingress or egress with State Trunk Highway "31" ( S. Green Bay Road) or the Westerly 225.00 feet of 21st Street as shown on page 1 of this Certified Survey Map; it being expressly intended that this restriction shall constitute a restriction for the benefit of the public, and shall be enforceable by the Wisconsin Department of Transportation.

Pg. 3 of 3 Pgs.



CERTIFIED SURVEY MAP No. 1276  
Located in the Southwest  $\frac{1}{4}$  of Section 24, Town 3 North,  
Range 22 East, Racine County, Wisconsin.

SURVEYOR'S CERTIFICATE & LEGAL DESCRIPTION

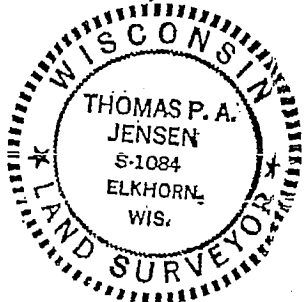
I, Thomas P.A. Jensen, Wisconsin Registered Land Surveyor, hereby certify that I have prepared this Certified Survey Map, the exterior boundaries of which are described as: Part of the Southwest  $\frac{1}{4}$  of Section 24, Town 3 North, Range 22 East, Racine County, Wisconsin, more particularly described as follows: Commence at the Center  $\frac{1}{4}$  Corner of said Section 24; thence N 89°08'05" W, along the East-West  $\frac{1}{4}$  line of said Section 24, 326.13 feet; thence N 0°08'19" W 73.45 feet to the South line of 21st Street; thence Northwesterly, along said South line and the arc of a curve of Northwest-erly convexity (whose radius=1333.69 feet and whose chord bears N 79°22'21" W 562.24 feet) 566.49 feet; thence S 88°27'33" W, along said South line, 434.81 feet; thence S 1°32'27" E, along the east line of Certified Survey Map No. 1169, 230.00 feet to the Point of Beginning; thence S 88°27'33" W, along the south line of said Certified Survey Map, 331.98 feet to the easterly right-of-way line of State Trunk Highway 31; thence Southwest-erly along said right-of-way line and the arc of a curve to the left (central angle=0°31'37", radius=16,310.22, whose chord bears S 15°09'00" W 150.00 feet) 150.00 feet; thence N 84°51'00" E 195.00 feet; thence N 69°29'00" E 222.68 feet; thence N 18°07'00" E 31.00 feet; thence S 88°27'33" W 10.00 feet; thence Northwesterly along the arc of a curve to the right (central angle=90°00'00", radius=30.00, whose chord bears N 46°32'27" W 42.43 feet) 47.12 feet to the Point of Beginning.

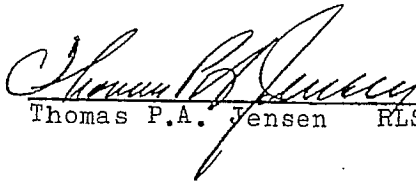
Parcel contains 43,163 sq. ft. (0.991 acres) of land, more or less.

Parcel is subject to easements as shown on page 1.

I further certify that I have fully complied with the requirements of Chapter 236.34 of the Wisconsin Statutes and the provisions of the Mt. Pleasant ordinances and the Racine County Land Division Control Ordinance in making such survey and Certified Survey Map.

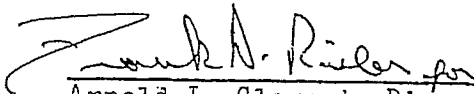
October 6, 1987.



  
Thomas P.A. Jensen RLS-1084

COUNTY'S CERTIFICATE

Approved as a CERTIFIED SURVEY MAP this 19<sup>TH</sup> day of  
OCTOBER, 1987, as non-objectable.

  
Arnold L. Clement, Director of  
Planning and Development,  
Racine County.

Sheet 2 of 3 sheets

CERTIFIED SURVEY MAP No. 1276  
Located in the Southwest  $\frac{1}{4}$  of Section 24, Town 3 North,  
Range 22 East, Racine County, Wisconsin.

COMMON COUNCIL APPROVAL:

Approved by the Common Council of the City of Racine this  
3<sup>rd</sup> day of NOVEMBER, 1987 by resolution.

Karen M. Norton

Karen M. Norton  
Deputy City Clerk  
City of Racine

PLAN COMMISSION APPROVAL:

Approved as a CERTIFIED SURVEY MAP by the Plan Commission  
of the City of Racine this 28<sup>th</sup> day of  
OCTOBER, 1987.

Thomas N. Wright

Thomas N. Wright, Secretary

ACCESS RESTRICTION

As owner, I hereby restrict Lot 1, in that no owner, possessor, user, nor licensee, nor other person shall have any right of direct vehicular ingress or egress with State Trunk Highway "31" ( South Green Bay Road) as shown on page 1 of this CERTIFIED SURVEY MAP; it being expressly intended that this restriction shall constitute a restriction for the benefit of the public, and shall be enforceable by the Wisconsin Department of Transportation.

Sheet 3 of 3 sheets

97 SEP -5. PM 4:27

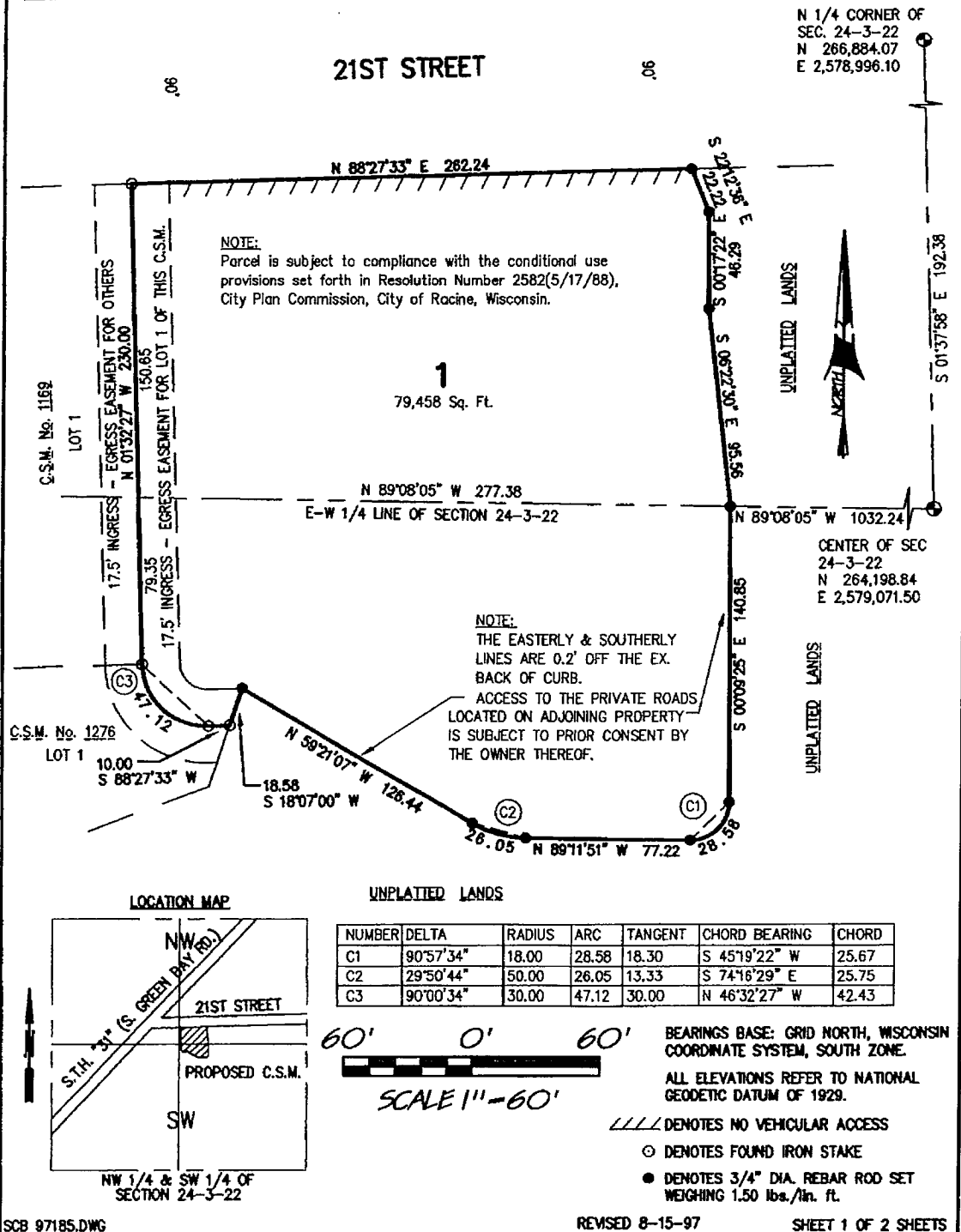
V-6 P-70

MARK A. LADD

REGISTER OF DEEDS  
MAP NO.

CERTIFIED SURVEY MAP NO. REGISTER OF DEEDS 1986

PART OF THE SE 1/4 OF THE NW 1/4 AND NE 1/4 OF THE SW 1/4  
OF SECTION 24, TOWNSHIP 3 NORTH, RANGE 22 EAST, IN THE CITY OF  
RACINE, RACINE COUNTY, WISCONSIN.



V-6 P-71  
CERTIFIED SURVEY MAP NO. 1986

PART OF THE SE 1/4 OF THE NW 1/4 AND NE 1/4 OF THE SW 1/4  
OF SECTION 24, TOWNSHIP 3 NORTH, RANGE 22 EAST, IN THE CITY OF  
RACINE, RACINE COUNTY, WISCONSIN.

SURVEYOR'S CERTIFICATE

I, JAMES E. ROBINSON, hereby certify that I have prepared this Certified Survey Map, the exterior boundaries of which are described as That part of the Southeast 1/4 of the Northwest 1/4 and the Northeast 1/4 of the Southwest 1/4 of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin, described as follows: Begin at a point on the East-West 1/4 line of said Section 24 located N89°08'05"W 1032.24 feet from the center of said Section; run thence S00°09'25"E 140.85 feet to the point of curvature of a curve of Southeasterly convexity whose radius is 18.00 feet and whose chord bears S45°19'22"W 25.67 feet; thence Southwesterly 28.58 feet along the arc of said curve; thence N89°11'51"W 77.22 feet to the point of curvature of a curve of Southerly convexity, whose radius is 50.00 feet and whose chord bears N74°16'29"W 25.75 feet; thence Northwesterly 26.05 feet along the arc of said curve; thence N59°21'07"W 126.44 feet; thence S18°07'00"W 18.58 feet; thence S88°27'33"W 10.00 feet to the point of curvature of a curve of Southwesterly convexity whose radius is 30.00 feet and whose chord bears N46°32'27"W 42.43 feet; thence Northwesterly 47.12 feet along the arc of said curve; thence N01°32'27"W 230.00 feet to the South right-of-way line of 21<sup>st</sup> Street; thence N88°27'33"E 262.24 feet along said South line; thence S22°12'36"E 22.22 feet; thence S00°17'22"E 46.29 feet; thence S06°22'30"E 95.56 feet to the point of beginning. Containing 1.83 acres/79,458 square feet. THAT I have complied with Chapter 236.34 of the Wisconsin Statutes and the subdivision regulations of the City of Racine. That this map was prepared at the direction of California State Teachers' Retirement System, C/O Equitable Real Estate Investment Management, Inc.

July 2, 1997  
REVISED 8/15/97

*James E. Robinson*  
James E. Robinson, R.L.S.  
Nielsen Madsen & Barber, S.C.  
1339 Washington Avenue  
Racine, WI 53403  
(414) 634-5588



OWNER:  
California State Teachers'  
Retirement System  
C/O Equitable Real Estate  
Investment Management, Inc.  
455 N. City-front Plaza Drive  
Suite 3200  
Chicago, IL 60611

Pt of # 23876-017

# 23876-044

CITY CERTIFICATE

APPROVED as a Certified Survey Map this 3<sup>RD</sup> day of SEPTEMBER, 1997.

CITY OF RACINE

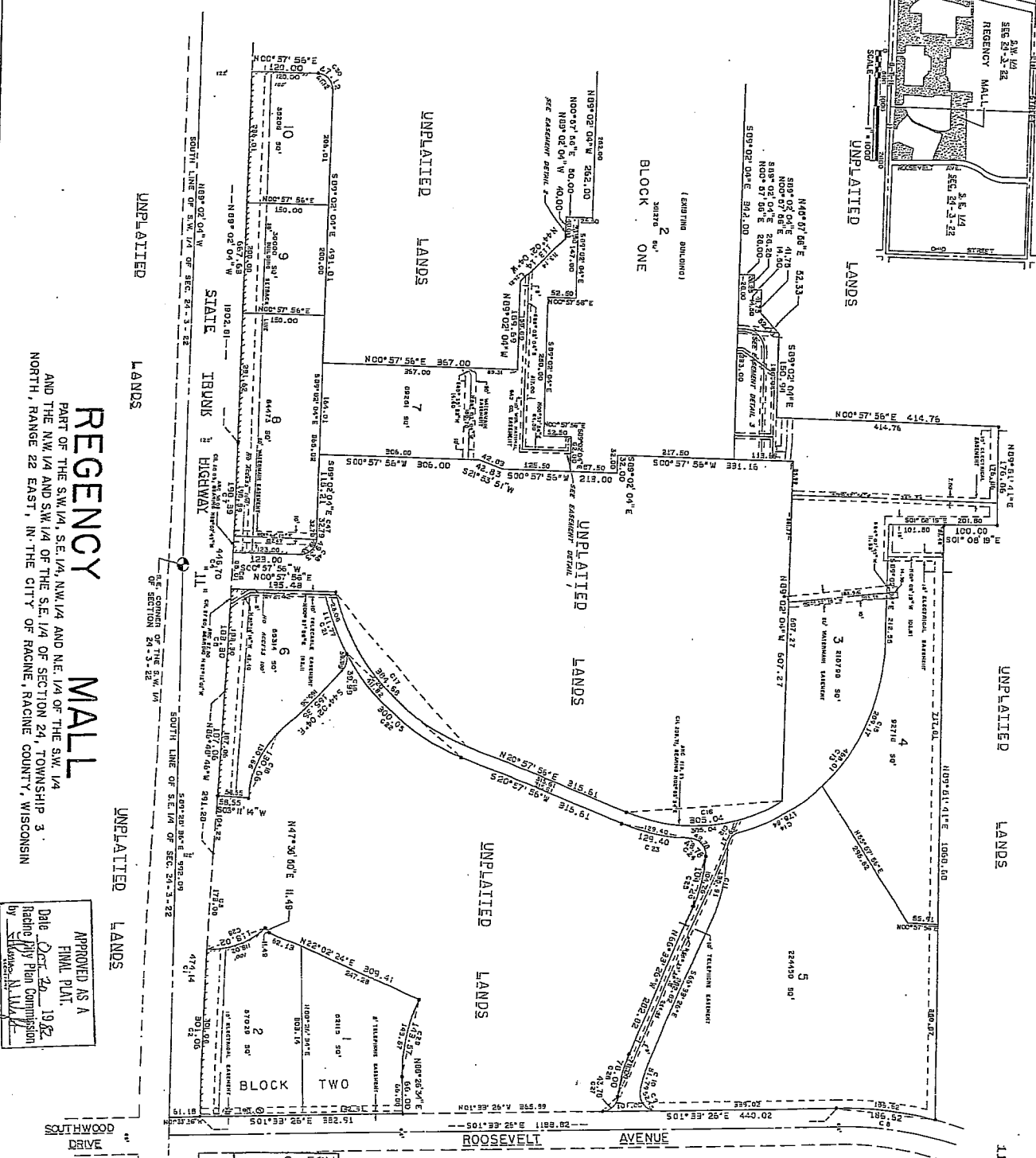
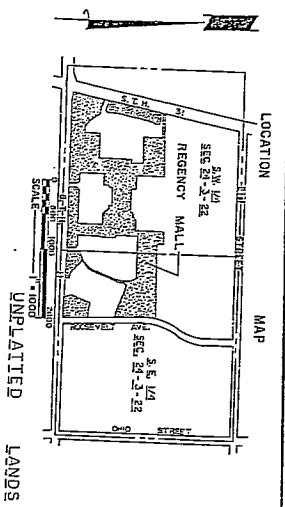
*Thomas N. Wright*  
Thomas N. Wright  
Director of City Development

1113796

Oct 20, 1982

Ref

SEE SHEET 2



**REGENCY MALL**  
PART OF THE S.W. 1/4, S.E. 1/4, N.W. 1/4 AND N.E. 1/4 OF THE S.W. 1/4  
AND THE N.W. 1/4 AND S.W. 1/4 OF THE S.E. 1/4 OF SECTION 24, TOWNSHIP 3  
NORTH, RANGE 22 EAST, IN THE CITY OF RACINE, RACINE COUNTY, WISCONSIN

APPROVED AS A  
FINAL PLAT  
Date Oct 20, 1982  
Racine City Plan Commission  
by William N. Miller



UNPLATTED LANDS

UNPLATTED LANDS

**LEGEND AND NOTES**  
THE MEANINGS BASE FOR THIS PLAT  
STATION, NORTH, WISCONSIN COORDINATE  
SYSTEM.  
ALL DISTANCES MEASURED TO THE CENTER  
OF THE LINES UNLESS OTHERWISE NOTED.  
THE BOUNDARY LINES ARE TO BE SET  
BY THE SURVEYOR AND SHALL BE  
SET AT RIGHT ANGLES TO THE CENTER  
LINE UNLESS OTHERWISE NOTED.  
ALL OTHER LINES, CORNERS, LINES, ETC.,  
SHALL BE SET BY THE SURVEYOR AND  
SHALL BE SET AT RIGHT ANGLES TO THE  
CENTER LINE UNLESS OTHERWISE NOTED.  
THE SURVEYOR SHALL BE RESPONSIBLE  
FOR THE ACCURACY OF THE PLAT.  
NO HIGHWAY ACCESS

There are no objections to this plat with respect to Section 24, T3N, R22E, S34W, 1/4, S.E. 1/4, N.W. 1/4 and N.E. 1/4 of the S.W. 1/4, and the N.W. 1/4 and S.W. 1/4 of the S.E. 1/4 of Section 24, Township 3 North, Range 22 East, in the City of Racine, Racine County, Wisconsin, as shown on this plat, as filed by the County Planning Agency.

*James A. Smith*  
Department of Development

Filed this 3rd day of September, 1982.

There are no objections to this and with respect to Secs. 236.15, 236.18, 236.20 and 236.21, Wb. Stat., Chap. 23 of the Wb. Admin. Code in proposed by Sec. 236.12 (b), Wb. Stat., or by the County Planning Agency.

Carried 11th 3rd September..... 1937.

Charles A Stearn  
Department of Development

APPROVED AS A  
FINAL PLAT.  
Date Oct. 20 1982  
Racing Gilly Plan Commission  
by Thomas N. Laffey  
CLERK

July 6, 1982





[illegible]

As Owner, we hereby certify that we have caused the land described on this plat to be surveyed, divided, mapped and located as represented on this plat. We also certify that this plat is required by s.136.10 or s.136.12 to be submitted to the following for approval or objection: City of Racine, Racine County, Department of Transportation, Division of Highways and Transportation Facilities, and Department of Development.

RACINE JONES 7-21-68

NY: R. E. Jambly

Personally came before me this 21<sup>st</sup> day of September, 1962, the above-named R. E. Jacobs, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Signed: David H. Kneecast  
NOTARY PUBLIC

As Owner, we hereby restrict all lots and blocks in that no owner, possessor, user, nor licensee, nor other person shall have any right of direct vehicular ingress or egress with S. T. H. & S. J., as shown on the plat; if being expressly limited that restriction shall constitute a restriction for the benefit of the public according to sections 256.293, Wisconsin Statutes, and shall be enforceable by the Department of Transportation. This restriction amends and supercedes that in Volume 1263 registered as recorded in the Racine County Register of Deeds Office on May 8, 1975, in Public Access, Pages 159 Thru 152 as Document No. 142201 & C.

RACINE JOINT VENTURE  
ed: R.E. Jacobs  
R.E. Jacobs

CITIZENS, N.A., a corporation duly organized and existing under and by virtue of the laws of the United States, the mortgage of the land described on this plat, does hereby consent to the surveying, dividing, mapping and dedication of the land described on this plat, and does hereby consent to the confirmation of said land by the State of New York, in witness whereof, its Vice President, W. H. Miller, has caused these presents to be signed by Michael J. Vitale, its Attorney in Fact, and Ellen Vitale, its Secretary, on this 20th day of Nov 1982, at New York, New York, and for corporate seal to be fixed hereto this 20th day of Nov 1982.

CITIZEN, N. A.  
Michael V.

Ellen

Personally came before me this 24th day of September, 1922, the above named Michael J. Vitale, and William M. RUAD of the above corporation, to me known to be the persons who executed the foregoing instrument, and to me appeared to such John M. Hines and James Henry Atkins as corporation, and acknowledged that they executed the foregoing instrument as such officers as the deed of said corporation, by its authority.

COMMON COUNCIL RESOLUTION

"Resolved that the final plan of REGENCY MALL, located in the City of Racine, Wisconsin, be approved by the Common Council of the City of Racine."

Signed: Anthony J. DiBlasio  
Anthony J. DiBlasio, Mayor

I, Jerome J. Maller, being the duly appointed, qualified and acting Finance Director for the City of Racine, hereby certify that the records of my office show no unpaid taxes or unpaid special assessments on any of the lands included in the plat of REGENCY HALL.

COUNTY TREASURER'S CERTIFICATE

Wick D. DeMark, being the duly elected, qualified and acting Treasurer for the County of Madison, hereby certify that the records of my office show no unpaid taxes or unpaid special assessments on any of the lands included in the plat of AGENCY, ILL.

Date: 10/3/87  
Signed: Nick R. DeMark  
Nick R. DeMark, County Treasurer

Arnold L. Clement, being the duly appointed, qualified and acting Planning Director and Planning Administrator for the County of Racine, hereby certifies that this final plat is non-objectable.

cc: 10/6/82  
Signed: Arnold L. Clemens  
Arnold L. Clemens, Planning Director  
Zoning Administration

1113748

Register's Office  
Rocky County, W. Va.  
Received for record  
On October 18 1924 at 10:55  
o'clock P.M. and recorded on Volume 23  
of Page 65-73  
11. - 11.11.11

APPROVED AS A  
FINAL PLAN.  
Date Oct. 20 1982  
Racine City Plan Commission  
by Thomas N. Wirth  
SECRETARY

There are no objections to this plan with respect to Secs. 236.15, 236.16, 236.20 and 236.21 (1) and (2), Wis. Stats., Hy 32 of the Wis. Admin. Code as provided by Sec. 236.12 (5), Wis. Stats., or by the County Planning Agency.

Certified that 3rd day of September 1982  
Joanne A. Stein  
Department of Development

Register's Office  
Racine County, Wis. } SS

Received for Record 15th day of  
March A.D. 1989 at 8:30  
o'clock A.M. and recorded in Volume 1953  
of Records on page 450-458

1278282

Ref

22 - John M. Schuttler

Parties

THIS MEMORANDUM OF LEASE dated this 1st day of February, 1989, between FIRST NATIONAL REALTY AND DEVELOPMENT COMPANY, INC., an Illinois corporation, having its principal office at 415 North LaSalle, Suite 700, Chicago, Illinois 60610 (herein referred to as "Landlord"), and K MART CORPORATION, a Michigan corporation having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48084 (herein referred to as "Tenant"),

WITNESSETH: That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations and the further consideration of the rents reserved and the covenants and conditions more particularly set forth in a certain lease between Landlord and Tenant and bearing even date herewith, Landlord and Tenant do hereby covenant, promise and agree as follows:

Demised  
Premises

1. Landlord does demise unto Tenant and Tenant does take from Landlord for the term hereinafter provided, and any extension thereof, the following property: Tenant's completed building or buildings (designated K mart), together with site improvements to be constructed as specified in said lease by Landlord at its expense on the land described in Parcel A of Exhibit "A" and depicted on Exhibit "B" attached hereto and made a part hereof, and situated in the City of Racine, County of Racine, State of Wisconsin; said building or buildings to be in the locations and of the dimensions depicted on said Exhibit "B".

Landlord hereby gives and grants unto Tenant, in common with others entitled thereto, including Tenant's agents, employees, customers, licensees and invitees the following licenses, rights, privileges and easements: the use of parking areas, common areas (including rest rooms and other facilities, if any), roadways, sidewalks and accessways to public streets and highways indicated on said Exhibit "B", together with the use of any delivery or servicing areas adjoining Tenant's said buildings or designated as such on Exhibit "B", which areas shall be adequate for the passage, unloading and, if necessary, turning around of trailer trucks and other commercial vehicles.

Said land, completed buildings and site improvements, together with the licenses, rights, privileges and easements herein set forth, shall be hereinafter collectively referred to as the "demised premises".

Term

2. The lease term shall commence upon the date of occupancy by Tenant of said buildings, and shall terminate upon such date as shall be twenty five (25) years from the last day of the month in which said date of occupancy by Tenant shall occur; provided, however, Tenant shall have the option to extend the lease term for ten (10) successive periods of five (5) additional years each; provided further that regardless of the exercise or nonexercise by Tenant of any or all of the foregoing options, Tenant shall have, unless the last day of the lease term shall be January 31 of any year, the option to extend (or further extend, as the case may be) the term of this lease for such period of time as shall cause the last day of the term of this lease to be the January 31 next succeeding the date upon which the term of this lease would expire but for the exercise of this option.

Building  
Areas

3. Landlord covenants, during the period commencing with the date of execution of the aforesaid lease and ending upon the last day of the lease term and any extension or renewal thereof, that it will not erect or construct any buildings or other structures upon land described in Exhibit "A", except as shown on Exhibit "B"; provided, however, in the event that the date of occupancy by Tenant of the demised premises shall not occur prior to such date as shall be seven (7) years from the date of the aforesaid lease, then the restriction imposed by this Article shall cease and determine and shall be of no further force or effect.

Ret: First National Realty + Development Co Inc  
415 N LaSalle Suite 700  
Chicago IL 60610 ATTN: John Comet

VOL 1953 PAGE 450

T.S. # 23876-017

First  
Refusal to  
Purchase  
Option

4. Anything in this lease contained to the contrary notwithstanding, and without in any manner affecting or limiting any of the rights, privileges, options or estates granted to Tenant under this lease, if the Landlord at any time during the term of this lease (excepting the first lease year) receives one or more bona fide offers from third parties to purchase the demised premises or property of which the demised premises are a part, and if any such offer is acceptable to the Landlord, then Landlord agrees to notify Tenant in writing, giving the name and address of the offeror, and the price, terms and conditions of such offer, and Tenant shall have thirty (30) days from and after the receipt of such notice from Landlord in which to elect to purchase the property for the consideration contained in the bona fide offer. If Tenant does not elect to purchase said property and Landlord thereafter sells the property, the purchaser shall take the property, subject to and burdened with all the terms, provisions and conditions of this lease, including this Article and the rights of the Tenant under this lease as against the new owner shall not be lessened or diminished by reason of the change of ownership. Tenant's failure at any time to exercise its option under this Article shall not affect this lease or the continuance of Tenant's rights and options under this Article or any other article.

Additional  
Construction

5. Tenant may, at its own expense, at any time, expand its building or erect or construct additional buildings or structures on any portion of the demised premises.

Signs

6. The demised premises shall be referred to by only such designation as Tenant may indicate. Landlord expressly recognizes that the service mark and trademark "K mart" is the valid and exclusive property of Tenant, and Landlord agrees that it shall not either during the term of this lease or thereafter directly or indirectly contest the validity of said mark "K mart", or any of Tenant's registrations pertaining thereto in the United States or elsewhere, nor adopt or use said mark or any term, word, mark or designation which is in any aspect similar to the mark of Tenant. Landlord further agrees that it will not at any time do or cause to be done any act or thing directly or indirectly, contesting or in any way impairing or tending to impair any part of the Tenant's right, title and interest in the aforesaid mark, and Landlord shall not in any manner represent that it has ownership interest in the aforesaid mark or registrations therefor, and specifically acknowledges that any use thereof pursuant to this lease shall not create in Landlord any right, title or interest in the aforesaid mark.

Tenant shall have the option to erect at its sole cost and expense upon any portion of the demised premises signs of such height and other dimensions as Tenant shall determine, bearing such legend or inscription as Tenant shall determine. Tenant shall have the option to utilize the lighting standards in the parking lot for advertising purposes by attaching, or causing to be attached, signs advertising any and all products and services as Tenant shall elect.

Landlord shall not permit any other signs, billboards or posters to be displayed on any portion of the demised premises.

Prior to the date of occupancy by Tenant as defined in Article 11 hereof, Landlord shall, subject to Tenant's approval and applicable governmental laws, statutes and ordinances, at Landlord's sole cost and expense, install one (1) shopping center pylon sign at each of the two locations designated as "Shopping Center Pylon" on Exhibit B, attached hereto. Such pylon signs shall be designed to permit the installation of other identification signs on same and Tenant shall have the right to install or have installed its identification sign on either or both of such pylons. Landlord agrees that it will not allow the placement of other identification signs (other than the shopping center identification sign) on the shopping center pylons that shall be larger than the identification sign permitted to be placed on the shopping center pylons by Tenant and that Tenant's identification sign shall not be

subordinate to the identification sign or signs of any of Landlord's other tenants permitted to install identification signs on said pylons. Landlord further agrees that, except for the shopping center identification sign, no identification sign other than that of a shopping center tenant shall be placed on either of said shopping center pylons and that no tenant occupying a building of less than 10,000 square feet shall be permitted to place an identification sign on either of said shopping center pylons.

The tenant of the building depicted on Exhibit "B" as 45,600 square feet may install one (1) pylon sign in the location identified on Exhibit "B" as "tenant pylon", subject to the following limitations: 1) said tenant pylon shall be smaller in height and width than either of the shopping center pylons, 2) said tenant pylon shall not impair the visibility of either of the shopping center pylons or the K mart building, 3) said tenant pylon shall not result in a reduction in the size of either of the shopping center pylons or the K mart identification signs to be installed on said shopping center pylons due to governmental restrictions, 4) no more than one identification sign may be installed on the tenant pylon and said identification sign shall solely identify the then tenant of said 45,600 square foot building, 5) the identification sign installed on said tenant pylon shall be no larger in height or width than any of the K mart identification signs to be installed on the shopping center pylons, and 6) in the event said tenant pylon is installed, the tenant of the 45,600 square foot building shall not be permitted to place an identification sign on either of the shopping center pylons.

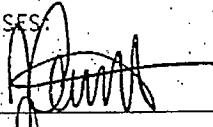
Landlord warrants that, except for the two (2) said shopping center pylons and the one (1) said tenant pylon, no additional pylon type signs shall be permitted on any portion of the shopping center premises located within the land described in Exhibit "A".

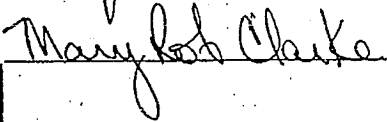
The sole purpose of this instrument is to give notice of said lease and all its terms, covenants and conditions to the same extent as if said lease were fully set forth herein.

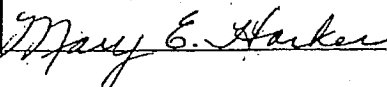
The conditions, covenants and agreements contained in this instrument shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns. All covenants and agreements of this instrument and said lease shall run with the land.

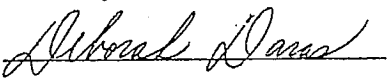
IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate as of the day and year first above written.

WITNESSES:

  
\_\_\_\_\_  
Mary Bob Clarke

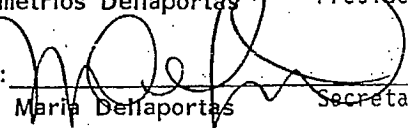
  
\_\_\_\_\_  
Mary E. Harker

  
\_\_\_\_\_  
Deborah Davis

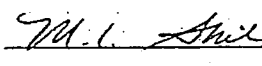
  
\_\_\_\_\_  
Deborah Davis

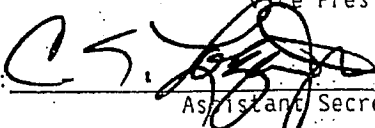
COMPANY  
FIRST NATIONAL REALTY AND DEVELOPMENT, INC.

By:   
Demetrios Dellaportas President

Attest:   
Maria Dellaportas Secretary

K MART CORPORATION

By:   
M. L. Smith Vice President

Attest:   
Assistant Secretary

APPROVED

  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7416q

VOL 1953 PAGE 452

ACKNOWLEDGMENTS

STATE OF ILL. )  
COUNTY OF COOK ) ss:

I do hereby certify that on this 24<sup>th</sup> day of JAN., 1989, before me, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared Demetrios Dellaportas and MARIA DELLAPORTAS, known to me to be the President and Secretary of FIRST NAT. REALTY AND DEVELOPMENT CO. INC. who, being by me duly sworn, did depose and say that they reside in

respectively; that they are the President and Secretary respectively of FIRST NATIONAL REALTY AND DEVELOPMENT CO. INC. the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My commission expires:

Kim J. Granitz

Notary Public



STATE OF MICHIGAN )  
COUNTY OF OAKLAND ) ss:

I do hereby certify that on this 1st day of February, 1989, before me, Patricia A. Hewelt, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared M. L. Skiles and C. E. Latman, Jr., known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn, did depose and say that they reside in Rochester and Birmingham, Mt

respectively; that they are the Vice President and Assistant Secretary respectively of K mart Corporation, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My commission expires:

PATRICIA A. HEWELT

Notary Public, Macomb County, Mich

My Commission Expires July, 26 1992

Acting in Oakland County

Patricia A. Hewelt  
Notary Public

# Jensen Surveying & Mapping

P.O. Box 322

ELKHORN, WISCONSIN 53121

414/723-3434

## PARCEL A

That part of the West 1/2 of Section 24, T 3 N, R 22 E, City of Racine, Racine County, Wisconsin described as follows: Begin at a point on the East-West 1/4 line of said Section 24 located N89°08'03"W 326.13 feet from a cast iron monument with a brass cap marking the center of said Section 24; thence S0°08'19"E 478.22 feet; thence S89°51'41"W 96.00 feet; thence N0°08'19"W 20.00 feet; thence S89°51'41"W 64.00 feet; thence N0°08'19"W 90.00 feet; thence S89°51'41"W 544.40 feet; thence N0°08'19"W 542.97 feet to the south line of 21st Street; thence N88°27'33"E, along said south line, 152.10 feet; thence 366.49 feet along the arc of a curve to the right, radius 1333.69, whose chord bears S79°22'21"E 562.24 feet; thence S0°08'19"E 73.45 feet to the point of beginning. Parcel contains 383,378 square feet.

Original is a poor copy

*Helene M. Schuttler*  
REGISTER OF DEEDS  
Racine County, Wisconsin

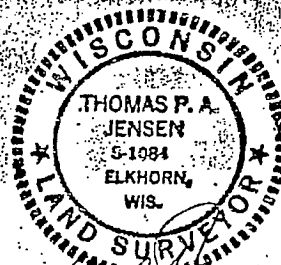


EXHIBIT A

*Thomas P. A. Jensen*  
July 4, 1984

# Jensen Surveying & Mapping

P.O. Box 322

ELKHORN, WISCONSIN 53121

414/723-3434

## PARCEL B

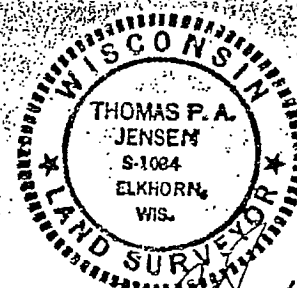
That part of the Southwest 1/4 of Section 24, T 3 N, R 22 E, City of Racine, Racine County, Wisconsin described as follows: Commence at a point on the East-West 1/4 line of said Section 24 located N89°08'05"W 326.13 feet from a cast iron monument with a brass cap marking the center of said Section 24; thence S0°08'19"E 478.22 feet to the point of beginning; thence continue S0°08'19"E 255.00 feet; thence S89°51'41"W 200.00 feet; thence S0°08'19"E 400.00 feet; thence S89°51'41"W 1361.00 feet to the easterly line of S.T.H. 31; thence N11°49'37"E, along said easterly line, 591.07 feet; thence N12°21'20"E, along said easterly line, 70.57 feet; thence, along said easterly line 280.15 feet, along the arc of a curve to the right, radius 16,310.22 feet, whose chord bears N14°23'41"E 280.14 feet; thence N84°51'E 195.00 feet; thence N69°29'E 222.08 feet; thence N18°07'E 12.42 feet; thence S63°13'21"E 151.47 feet; thence N89°51'41"E 107.00 feet; thence S0°08'19"E 86.82 feet; thence S89°51'41"W 100.00 feet; thence S0°08'19"E 114.00 feet; thence S44°51'41"W 13.58 feet; thence S89°51'41"W 70.50 feet; thence S74°51'41"W 84.00 feet; thence S0°08'19"E 22.00 feet; thence S89°51'41"W 120.50 feet; thence S0°08'19"E 105.00 feet; thence N89°51'41"E 360.00 feet; thence N0°08'19"W 205.85 feet; thence N89°51'41"E 544.40 feet; thence S0°08'19"E 90.00 feet; thence N89°51'41"E 64.00 feet; thence S0°08'19"E 20.00 feet; thence N89°51'41"E 96.00 feet to the point of beginning. Parcel contains 1,097,373 square feet.

Original is a poor copy

*Heleen M. Schuttler*

REGISTER OF DEEDS  
Racine County, Wisconsin

**EXHIBIT A**



# Jensen Surveying & Mapping

P.O. Box 322

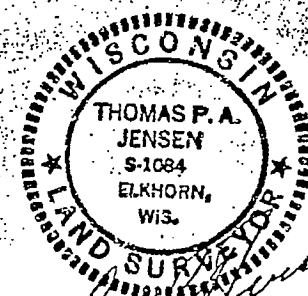
ELKHORN, WISCONSIN 53121

414/723-3434

## PARCEL C

That part of the West 1/2 of Section 24, T. 3 N., R. 22 E., City of Racine, Racine County, Wisconsin described as follows: Commence at a point on the East-West 1/4 line of said Section 24 located N89°09'05"W 326.13 feet from a cast iron monument with a brass cap marking the center of said Section 24; thence N0°08'19"W 73.45 feet to the south line of 21st Street; thence 566.49 feet along said south line, along the arc of a curve concave southerly, radius 1333.69 feet, whose chord bears N79°22'21"W 564.24 feet; thence S88°27'33"W, along said south line 152.09 feet to the point of beginning; thence continue S88°27'33"W, along said south line, 300.21 feet; thence S1°32'27"E 230.00 feet; thence 74.61 feet along the arc of a curve to the left, radius 47.50 feet, whose chord bears S46°32'27"E 67.18 feet; thence N88°27'33"E 3.75 feet; thence S63°15'21"E 151.47 feet; thence N89°51'41"E 107.00 feet; thence N0°08'19"W 352 feet to the point of beginning. Parcel contains 94,558 square feet.

This is a



*Jensen*  
REG  
Racine

EXHIBIT A

# Jensen Surveying & Mapping

P.O. Box 322

ELKHORN, WISCONSIN 53121

414/723-3434

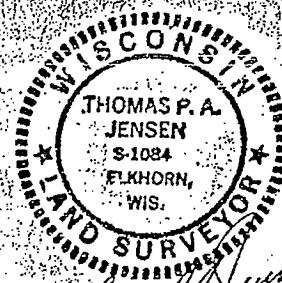
## PARCEL D

That part of the Southwest 1/4 of Section 24, T 3 N, R 22 E, City of Racine, Racine County, Wisconsin described as follows: Commence at a point on the East-West 1/4 line of said Section 24 located N89°08'05"W 326.13 feet from a cast iron monument with a brass cap marking the center of said Section 24; thence N0°08'19"W 73.45 feet to the south line of 21st St; thence S66°49' feet along said south line, along the arc of a curve concave southerly, radius 1333.69 feet, whose chord bears N79°22'21"W 564.24 feet; thence S88°27'33"W, along said south line 152.09 feet; thence S0°03'19"E 438.82 feet to the point of beginning; thence continue S0°08'19"E 310.00 feet; thence S89°51'41"W 360.00 feet; thence N0°08'19"W 105.00 feet; thence N89°51'41"E 120.50 feet; thence N0°08'19"W 22.00 feet; thence N44°51'41"E 84.00 feet; thence N89°51'41"E 70.50 feet; thence N44°51'41"E 13.58 feet; thence N0°08'19"W 114.00 feet; thence N37°51'41"E 100.00 feet to the point of beginning. Parcel contains 67,937 square feet.

had copy of the  
original

*J. Schuttler*  
RECORDER OF DEEDS  
COUNTY OF WISCONSIN

EXHIBIT A



*Thomas P.A. Jensen*  
Jan 4, 1989

STORE NO. 3774  
S.E. CORNER HWY. #31 AND 21ST STREET  
RACINE, WISCONSIN

DATE:  
DEC. 22, 1983

SCALE:  
100 FT. TO 1 INCH



va1953 na458

DOCUMENT #

1709213

DECLARATION OR NOTICE OF LEASE

REGISTERS OFFICE  
RACINE COUNTY, WI

Pub.

VOL 2981  
PAGE 683-689

Document Number

Document Title

RECORDED

1999 NOV 22 AM 9:26

MARK A. LADD  
REGISTER OF DEEDS

22-

Recording Area

Name and Return Address

FIRST AMERICAN TITLE INSURANCE CO.  
228 EAST 45TH STREET  
NEW YORK, NEW YORK 10017-3303  
ATTN: JACKIE MOHRMAN EBERHARD

Parcel Identification Number (PIN)

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clauses, legal description, etc. may be placed on this first page of the documents or may be placed on additional pages of the documents. Note: Use of this cover page adds one page to your documents and \$2.00 to the recording fee. Wisconsin Statutes, 59.517. WRDA 2/96

DECLARATION OR NOTICE OF LEASE

THIS INDENTURE, made the 31<sup>st</sup> day of November, 1999, by BSQ TRANSFEREE CORP. ("BSQ"), a Delaware corporation, with an office at 1801 McCormick Drive, Largo, Maryland 20774, as lessee, and Racine Joint Venture, with an office at 9725 North Michigan Avenue, Chicago, Illinois 60611, (hereinafter "Lessor").

WHEREAS, Lessor owns the premises described on Exhibit "A" annexed hereto in fee; and

WHEREAS, by Lease dated as of March 10, 1994, as amended ("the Lease"), Lessor leased the premises as described in the Lease (the "Premises") to Builders Square, Inc. ("BSI"), BSQ's predecessor in interest; and

WHEREAS, it is the intention of BSQ by means of this Indenture to give notice to all persons of the existence of the leasehold estate created by the aforementioned Lease;

NOW, THEREFORE, it is declared that:

1. BSQ is the holder of the tenant's interest in the Premises under the aforementioned Lease;
2. the Lease has a commencement date of March 10, 1994 and an initial expiration date of April 30, 2018. Said Lease also contains provisions by which tenant may renew the Lease until a final expiration date of January 31, 2069 provided certain conditions are met; and
3. the full Lease is to be on file at the offices of HOME DEPOT U.S.A., INC., with an address at 2455 Paces Ferry Road, Building C, 20th Floor, Legal Department-Senior Real Estate Counsel, Atlanta, Georgia 30339.

IN WITNESS WHEREOF, BSQ has executed this  
indenture on the date and year above written.

BSQ TRANSFEREE CORP., a  
Delaware company, Debtor  
and Debtor In Possession

By: Richard J. Lytle Jr.  
Name: Richard J. Lytle Jr.  
Title: CEO

STATE OF MarylandCOUNTY OF Prince George's

SS.:

On the 3 day of November, 1999, before me personally came Richard Lynch Jr., to me known, who, being by me duly sworn, did depose and say that he resides at Parag, MD he is the CEO of BSA Transference Corp., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporation seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Nancy M. Mueller  
Notary Public

My Comm. Expires: 10-15-2001

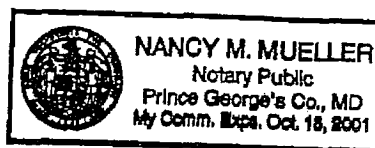


EXHIBIT A  
Legal Description of Leased Premises

See Attached

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## Legal Description

## PARCEL I:

That part of the West One-half (1/2) of Section Twenty-four (24), in Township Three (3) North, Range Twenty-two (22) East, in the City of Racine, County of Racine, State of Wisconsin, including part of CERTIFIED SURVEY MAP NO. 1169 and part of CERTIFIED SURVEY MAP NO. 1276, bounded as follows: Begin at a point on the East-West 1/4 line of said Section 24 located North 89°08'05" West 326.13 feet from a brass-capped iron monument marking the center of said Section 24; run thence South 00°08'19" East 733.22 feet to an iron pipe; thence South 89°51'41" West 200.0 feet to an iron pipe; thence South 00°08'19" East 400.0 feet; thence South 89°51'41" West 652.51 feet to an iron rod marking the Southeast corner of Certified Survey Map No. 1395; thence North 00°08'19" West, along the Easterly boundary of said Certified Survey Map No. 1395, 323.0 feet to an iron rod; thence South 89°51'41" West, along the Northerly boundary of said certified survey Map No. 1395, 640.0 feet to an iron rod on the Easterly line of State Trunk Highway "31"; thence North 11°49'57" East, along the Easterly line of said highway, 260.89 feet to an iron pipe; thence North 12°21'20" East, along the Easterly line of said highway, 70.57 feet to an iron pipe; thence continue along the Easterly line of said highway 280.15 feet along the arc of a curve concave Easterly whose radius is 16,310.22 feet and whose chord bears North 14°23'41" East, 280.15 feet to an iron pipe marking the Southwesterly corner of Certified Survey Map No. 1276; thence North 84°51'00" East, along the Southerly boundary of said Certified Survey Map No. 1276, 195.0 feet to an iron pipe; thence North 69°29'00" East, along the Southerly boundary of said Certified Survey Map No. 1276, 222.08 feet to an iron pipe; thence North 18°07'00" East, along the Easterly boundary of said Certified Survey Map No. 1276, 12.42 feet; thence South 88°27'33" West, 3.75 feet; thence 74.61 feet along the arc of a curve concave Northeasterly whose radius is 47.5 feet and whose chord bears North 46°32'27" West, 67.18 feet to the North line of said Certified Survey Map No. 1276, which is also the South line of Certified Survey Map No. 1169; thence North 01°32'27" West 230.0 feet to the north line of said Certified Survey Map No. 1169, which is also the South line of 21st Street; thence North 88°27'33" East, along the South line of 21st Street, 452.31 feet to an iron pipe; thence continue along the South line of 21st Street 566.49 feet along the arc of a curve concave Southerly whose radius is 1333.69 feet and whose chord bears South 79°22'21" East, 562.24 feet to an iron pipe; thence South 00°08'19" East, 73.45 feet to the point of beginning. EXCEPTING therefrom Certified Survey Map No. 1528, being a redivision of a portion of Lot 1, Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Township 3 North, Range 22 East, in the City of Racine, County of Racine, State of Wisconsin.

Excepting therefrom Certified Survey Map No. 1986 recorded on September 5, 1997 in Volume 6 of Certified Survey Map at page 70, as Document No. 1593585.

## PARCEL II:

(continued)

Lot One (1) of CERTIFIED SURVEY MAP NO. 1395, located in the North One-half (1/2) of the Southwest One-quarter (1/4) of Section Twenty-four (24), in Township Three (3) North, Range Twenty-two (22) East, in the City of Racine, County of Racine, State of Wisconsin, recorded in the Office of the Register of Deeds for Racine County on February 20, 1989 in Volume 4 of Certified Survey Maps at Pages 351 and 352, as Document No. 1276690, EXCEPTING therefrom Certified Survey Map No. 1528, being a Redivision of a portion of Lot One (1), Certified Survey Map No. 1395, in the Northwest One-quarter (1/4) of the Southwest One-quarter (1/4) of Section Twenty-four (24) and unplatted lands located in the Northwest One-quarter (1/4) of the Southwest One-quarter (1/4) of Section Twenty-four (24), in Township Three (3) North, Range Twenty-two (22) East, in the City of Racine, County of Racine, State of Wisconsin.

PARCEL III:

Non-exclusive easements as granted by Toys "R" Us, Inc., to Kmart Corporation by the Reciprocal Easement and Operation Agreement dated July 2, 1991, recorded July 2, 1991 in Volume 2078 of Records, Pages 789 through 812, as Document No. 1343832.

Tax Key Nos. 276-000023876017 and  
276-000023876040

dp/mc

DOCUMENT #

1709214

ASSIGNMENT OF LEASE

Document Number

Document Title

REGISTER'S OFFICE  
RACINE COUNTY, WI

RECORDED

1999 NOV 22 AM 9:26

MARK A. LADD  
REGISTER OF DEEDS

20-  
Recording Area

Name and Return Address

DICK V. PETERSON, ESQ.  
DICKSON, WRIGHT, MOON, VANDUSEN &  
FREEMAN  
525 N. WOODWARD, SUITE 2000  
BLOOMFIELD HILLS, MI 48304

276-000023876017

Parcel Identification Number (PIN)

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clauses, legal description, etc. may be placed on this first page of the document or may be placed on additional pages of the document. Note: Use of this cover page adds one page to your document and \$2.00 to the recording fee, Wisconsin Statutes, §9.517. WRDA 2/96

**ASSIGNMENT OF LEASE**

**BUILDERS SQUARE, INC.**, a Delaware corporation, with offices at 9725 Datapoint Drive, San Antonio, Texas 78229 ("**Assignor**") for and in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration, to it paid by **KMART CORPORATION**, a Michigan corporation with offices at 3100 West Big Beaver Road, Troy, MI 48084 ("**Assignee**"), receipt of which is hereby acknowledged, effective the date hereof, does hereby assign, transfer and set over unto Assignee all of Assignor's right, title and interest in and to the lease, amendments and agreements, if any, described on **Schedule I** which is annexed hereto and made a part hereof (the "**Lease**"), together with all rights and interest of Assignor in and to the premises demised by the Lease and all easements, covenants, restrictions and other hereditaments and appurtenances relating thereto (collectively the "**Premises**") which Premises includes the land described on **Exhibit A** which is annexed hereto and made a part hereof.

**TO HAVE AND TO HOLD** the same unto Assignee, its successor and assigns, forever.

Assignee hereby accepts this Assignment as of the date hereof.

This Assignment of Lease shall inure to the benefit of and shall be binding upon the parties hereto, their successors, transferees and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment of Lease to be duly executed this 14<sup>th</sup> day of February, 1997.

WITNESSED:

ASSIGNEE:

KMART CORPORATION

Bernice E. Komrak  
Bernice E. Komrak  
Christine Kowalik  
Christine Kowalik

By: [Signature]  
Its: LARRY E. CARLSON  
VICE PRESIDENT

ASSIGNOR:

BUILDERS SQUARE, INC.

Bernice E. Komrak  
Bernice E. Komrak  
Christine Kowalik  
Christine Kowalik

By: [Signature]  
Its: M.J. VIOLA  
VICE PRESIDENT

Drafted by:

Robert V. Peterson, Esq.  
Dickinson, Wright, Moon,  
Van Dusen & Freeman  
525 North Woodward, Suite 2000  
Bloomfield Hills, MI 48304

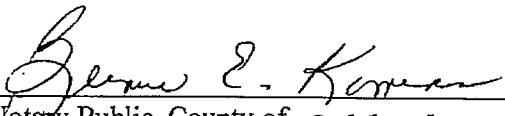
Wisconsin

ACKNOWLEDGMENTS

STATE OF MICHIGAN     )  
                                  ) SS.  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me this 14th day of February, 1997  
by Larry E. Carlson, the Vice President of KMART  
CORPORATION.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public, County of Oakland  
State of Michigan

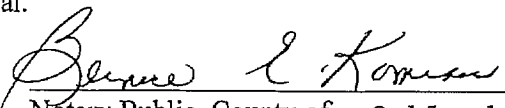
My Commission Expires: \_\_\_\_\_

STATE OF MICHIGAN     )  
                                  ) SS.  
COUNTY OF OAKLAND    )

BERNICE E. KOMRAUS  
Notary Public, Oakland County MI  
My Commission Expires May 4 1997

The foregoing instrument was acknowledged before me this 4th day of February, 1997  
by M.J. Viola, the Vice President of  
BUILDERS SQUARE, INC.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public, County of Oakland  
State of Michigan  
My Commission Expires: \_\_\_\_\_

BERNICE E. KOMRAUS  
Notary Public, Oakland County MI  
My Commission Expires May 4 1997

Wisconsin

SCHEDULE I

1. Master Lease:

a. Lease dated March 10, 1994, between RACINE JOINT VENTURE, as landlord, and Builders Square, Inc., as tenant.

b. Memorandum of Lease dated March 10, 1994 between RACINE JOINT VENTURE as landlord and Builders Square, Inc., as tenant.

AA00B63A0D BL01 145234-1

## EXHIBIT "A"

## Builders Square

That part of the West 1/2 of Section 24, Town 3 North, Range 22 East, City of Racine, Racine County, Wisconsin, described as follows: Commence at a point on the East-West 1/4 line of said Section 24 located N 89 08'05" W 326.13 feet from a brass capped iron monument marking the Center of said Section 24; thence S 0 08'19" E 733.22 feet; thence S 89 51'41" W 200.00 feet; thence S 0 08'19" E 138.00 feet; thence S 89 51'41" W 287.44 feet to a corner of the Builders Square building and the Point of Beginning; thence S 0 08'19" E, along the East line of said Builders Square building, 117.00 feet to the Southeast Corner of said building; thence S 89 51'41" W, along the South line of said building, 441.00 feet to the Southwest corner of said Builders Square building; thence continue S 89 51'41" W, along the extension of said South line, 160.00 feet; thence N 0 08'19" W 417.00 feet; thence N 46 52'00" E 124.66 feet; thence N 54 57'00" E 185.18 feet; thence N 89 51'41" E 317.00 feet to a point on the extension of an East line of the Builders Square building; thence S 0 08'19" E, along said extension, 351.00 feet to a northeasterly corner of said building; thence continue S 0 08'19" E, along said East line, 140.00 feet to a building corner; thence N 89 51'41" E, along said building, 41.00 feet to the Point of Beginning.

Said parcel contains 7.431 acres (323,704 sq.ft.) of land, more or less.

Racine WI  
#1362

RECORDED \_\_\_\_\_

1998 NOV 22 AM 9:27

MARK A. LADD  
REGISTER OF DEEDS

Prepared by and after  
recording return to:  
Nancy M. Olson, Esq.  
Skadden, Arps, Slate, Meagher  
& Flom (Illinois)  
333 West Wacker Drive  
Suite 2100  
Chicago, Illinois 60606

46-

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made and entered into as of the 10<sup>th</sup> day of November, 1997 (the "Effective Date"), by and between Kmart Corporation, a Michigan corporation, having an office at 3100 West Big Beaver Road, Troy, Michigan 48084 ("Assignor"), and Home Depot, U.S.A., Inc., a Delaware corporation, having an office at 2455 Paces Ferry Road, NW, Atlanta, Georgia 30339 ("Assignee").

WITNESSETH:

WHEREAS, pursuant to that certain lease, dated as of March 10, 1994 (the "Lease"), Builders Square, Inc. ("BSI") leases from Racine Joint Venture ("Master Landlord") certain nonresidential real property located in Racine, Wisconsin (the "Premises"), all as more fully described in the Lease;

WHEREAS, BSI assigned its interest as tenant under the Lease to Assignor by Assignment of Lease, dated February 14, 1997, attached hereto and incorporated herein as Exhibit A;

WHEREAS, pursuant to that certain sublease, dated as of February 14, 1997 (the "Sublease"), Assignor subleases the Premises to BSI, which assigned its interest as subtenant to BSQ Transferee Corp. ("BSQ") by Assignment of Sublease dated September 24, 1997;

WHEREAS, pursuant to that certain sublease, dated September 26, 1997 (the "Sub-sublease"), BSQ Transferee Corp. ("BSQ") sub-subleases the Premises to Hechinger Investment Company of Delaware, Inc. ("Hechinger");

WHEREAS, on June 11, 1999, Hechinger and related and affiliated entities filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and has since continued in the operation of its business and management of its property pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") has, pursuant to an order dated October 1, 1999 (such order, the "Order"), authorized the implementation of the following items with respect to certain assets of the Seller: (i) Notice of Sale and (ii) Bidding Procedures;

WHEREAS, on \_\_\_\_\_, 1999, pursuant to the Order, Hechinger and Kimco Realty Corporation, a Maryland corporation ("Kimco") entered into that certain Asset Purchase Agreement (the "Asset Purchase Agreement");

WHEREAS, Kimco has designated that Assignor assign the Lease to Assignee as allowed by the Asset Purchase Agreement;

WHEREAS, pursuant to the Asset Purchase Agreement, Hechinger, Assignor and Assignee agreed (i) that the Sublease and the Sub-sublease shall be terminated and (ii) Assignor shall sell and assign the Lease to Assignee and Assignee shall accept and assume the Lease;

WHEREAS, on November 1, 1999, the Bankruptcy Court approved the Order and the transactions described therein (the "Assignment Order"); and

WHEREAS, Assignor desires to assign and transfer all of its right, title and interest in the Lease and the estate created thereby to Assignee and Assignee, subject to the terms of this Agreement, desires to purchase and accept such assignment and assume all rights, duties and obligations of the Assignor under the Lease arising on and after the date hereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth hereinafter, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. ASSUMPTION, ASSIGNMENT AND SALE OF THE LEASE.

1.1 Upon the terms and conditions hereinafter set forth, Assignor hereby assigns and sells all of its right, title and interest in, under and to the Lease to Assignee, subject to the covenants and conditions contained herein and therein. Except as otherwise set forth in the Assignment Order, such sale shall be subject to any exceptions to title and any other matters which would be disclosed by an accurate survey which may affect the Lease and/or the Premises as of the date of this Agreement and to any exceptions to title and any other matters which would be disclosed by an accurate survey and which may affect the Lease and/or the Premises and which arise after the date of this Agreement other than as a result of the intentional acts or omissions of Assignor after the date hereof.

1.2 Subject to Section 1.4 hereof, from and after the Effective Date, (a) Assignor shall have no further responsibilities, obligations, or responsibilities in respect of any claims arising from or relating to the Lease attributable to periods from and after the Effective Date and (b) Assignee (i) accepts the sale and assignment of Assignor's right, title and interest in, under and to the Lease, (ii) agrees to be bound by and subject to all of the terms, covenants and conditions of the Lease as now in effect and as amended from time to time from and after the date hereof, (iii) assumes and agrees to perform all of the obligations of the tenant under the Lease arising and accruing from and after the date hereof, (iv) shall be solely responsible for any and all covenants, obligations and responsibilities arising under, or out of, or relating to the Lease with respect to the period from and after the date hereof, and (v) agrees to indemnify, defend and hold harmless Assignor and its subsidiaries and affiliates and any of its or their directors, officers or employees from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses including, without limitation, interest and penalties (collectively, "Losses") incurred by Assignor or its subsidiaries or affiliates or any of its or their officers, directors or employees by reason of (a) any failure to pay and perform any of the obligations of the tenant under the Lease accruing from and after the date hereof or as otherwise required hereunder, (b) any and all payments or performance required of Assignor under that certain Guaranty by Assignor in favor of Master Landlord (the "Guaranty") arising from Assignee's failure to pay or perform any of the obligations of the tenant under the Lease from and after the Effective Date or (iii) the incurrence by Assignor of reasonable out-of-pocket costs of enforcement (excluding any internal administrative costs of Assignor) of any terms, covenants or agreements contained in this Agreement. Assignor shall be responsible for all Lease obligations arising or accruing prior to the Effective Date, except as provided in Section 1.4(b).

1.3 Without limiting anything in Section 1.2 hereof, the obligations hereby assumed by Assignee shall include the obligations (to the extent the same are obligations under the Lease) to pay percentage rent, real estate taxes and common area maintenance to the extent such amounts accrue and become due after the date hereof.

1.4 Except as otherwise agreed to in writing by Assignor and Assignee, Assignee shall not be liable for the payment of any monies due under the Lease and attributable to periods prior to the Effective Date including, but not limited to, base rent and additional rent (excluding renovations or repairs required under the Lease if denominated as "additional rent"), taxes, assessments, common area maintenance fees and other charges related to the Lease and/or Premises; provided, however, that Assignee shall (a) be solely responsible for any and all base rent, additional rent, percentage rent, taxes of any kind or nature, assessments, common area maintenance fees, insurance and any other charges arising under the Lease from and after the Effective Date and (b) be solely responsible for the performance of any repairs or maintenance required under the Lease from and after the date hereof (regardless of whether the need for such repairs or maintenance arose prior to the date hereof). Assignor shall be responsible for all Lease obligations arising or accruing prior to the Effective Date, except as provided in Section 1.4(b).

1.5 All taxes or special assessments (based upon the most recent ascertainable taxes if current tax information is not available) relating to the Premises or the Lease and all other costs of operation, maintenance, or repair (except as otherwise provided in Section 1.4(b)) which are customarily apportioned on the transfer of similar types of property (including, without limitation, common area maintenance costs, insurance premiums payable to landlords and the like) relating to the Premises or the Lease which are due and payable before Closing (as hereinafter defined) or after the Closing (which relate to periods prior to the Closing) shall be the responsibility of Assignor and shall be prorated as of the date the Order is entered by the Bankruptcy Court.

1.6 All rent (including additional rent) due and payable under the Lease shall be prorated as of the date of the Closing and any special assessments relating to the Premises for any post-Closing period shall be paid by Assignee.

1.7 All percentage rent based on sales, if any, payable under the Lease for the fiscal period in which the Closing occurs shall be prorated based upon the ratio by which sales made at the Premises bears to the aggregate sales made for

the relevant lease period for which percentage rents are computed. (Assignor and Assignee hereby acknowledge that percentage rent shall not be apportioned pursuant to this Agreement unless Assignee opens for business in the Premises during the applicable fiscal period for which percentage rent is calculated).

1.8 Assignor and Assignee agree to adjust between themselves after Closing any errors or omissions in the prorations or adjustments set forth in the closing statement and any other prorations or adjustments made pursuant to this Agreement. Notwithstanding anything contained herein to the contrary, such apportionments shall be deemed final and not subject to further post-Closing adjustments if no such adjustments have been requested upon the earlier to occur of (a) thirty (30) days after such time as all necessary information is available to make a complete and accurate determination of such apportionments or (b) four (4) months after the date of the Closing.

1.9 Except as otherwise agreed to in writing by Assignor and Assignee, the closing of the transactions contemplated hereby (the "Closing") shall be deemed to have occurred on the date on which Assignee shall have delivered to Assignor (or Kimco, as applicable) all closing documents and monies pursuant to the terms hereof.

1.10 Unless otherwise set forth herein or agreed to in writing by Assignor and Assignee, sale of the Lease shall not include personal property, inventory, trade fixtures, or other furnishings located in the Premises. Assignor reserves the right either to sell such personal property to Assignee or any other party, to abandon any or all of the personal property, inventory, trade fixtures, or other furnishings located in the Premises, or to make such other arrangements as may be appropriate. In the event of abandonment, of any such personal property, inventory, trade fixtures, or other furnishings, Assignee shall be responsible for the removal thereof.

1.11 The sale of the Lease is "AS IS, WHERE IS AND WITH ALL FAULTS", provided Assignee shall have no liability with regard to the payment of rent, additional rent, taxes, common area maintenance fees or other charges under the Lease attributable to periods prior to the date hereof. Assignor, Hechinger, Kimco and their respective subsidiaries and affiliates, and, except as provided herein, each of such parties' respective officers, directors, employees, agents, contractors, attorneys and real estate consultants are not making nor will they make and expressly disclaim making, and Assignee acknowledges that none of them have made, any written or oral statements, representations, warranties, promises or guarantees,

whether express, implied or by operation of law or otherwise, with respect to the Lease, the Premises or the accuracy or completeness of any information provided.

1.12 No right to use Assignor's corporate name or trade names or its signage is being conveyed to Assignee hereunder.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF ASSIGNEE.

Assignee represents and warrants or covenants as follows:

2.1 Assignee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is authorized to transact business as a foreign corporation in the State of Wisconsin. Assignee has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder and has taken all necessary action to authorize the execution and performance of this Agreement and the consummation of the transactions contemplated herein.

2.2 If Assignee operates as part of a group of affiliates (the "Affiliated Group"), Assignee owns substantially all of the assets of, and is the primary operating entity of, the Affiliated Group. Notwithstanding anything herein to the contrary, Assignee shall not, in any manner, transfer assets to any member of the Affiliated Group such that Assignee no longer owns substantially all of the assets of Affiliated Group unless the Lease is assigned to such member of the Affiliated Group in accordance with Section 4.4 hereto.

2.3 This Agreement constitutes a valid and binding obligation of Assignee, enforceable against Assignee in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditor's rights generally from time to time in effect and to general equitable principles. Neither the execution and delivery of this Agreement and all documents contemplated hereunder to be executed by Assignee, nor the performance of the obligations of Assignee hereunder or thereunder will result in the violation of any law or any provision of the organizational documents of Assignee or will conflict with any order or decree of any court or governmental instrumentality of any nature by which Assignee is bound.

2.4 In performing under the terms of the Lease, Assignee shall comply in all material respects with the terms and conditions of the Lease, and all

applicable federal, state and local laws, ordinances, rules and regulations in respect of the Lease.

2.5 No actions or proceedings have been instituted against Assignee or, to its knowledge, have been threatened against Assignee, that will affect the consummation of this Agreement or the transactions contemplated hereunder.

2.6 As of the date hereof, Assignee has the financial resources and funds available to satisfy all of its obligations (i) under the Lease and (ii) in this Agreement, at the time and in the manner set forth in this Agreement.

2.7 Assignee acknowledges that (i) it has been provided with access to the preliminary commitment to provide title insurance prepared by the First American Title Insurance Company (the "Title Insurer") with respect to the Lease, and that Assignee may obtain title insurance with respect to the Lease at its own discretion and its sole cost and expense and (ii) Assignor and its officers, directors, employees, agents and contractors, its attorneys, Skadden, Arps, Slate, Meagher & Flom (Illinois), and its real estate consultants are not making nor will they make and expressly disclaim making any representations or warranties with respect to the accuracy of any such commitment.

2.8 Assignee acknowledges that no representations, promises or inducements of any kind, except as expressly set forth herein, have been made to Assignee by Assignor or anyone else to induce Assignee to sign this Agreement.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF ASSIGNOR.

Assignee represents and warrants or covenants as follows:

3.1 Assignor is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan and is authorized to transact business as a foreign corporation in the State of Wisconsin. Assignor has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder and has taken all necessary action to authorize the execution and performance of this Agreement and the consummation of the transactions contemplated herein.

3.2 This Agreement constitutes a valid and binding obligation of Assignor, enforceable against Assignor in accordance with its terms, subject to

applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditor's rights generally from time to time in effect and to general equitable principles. Neither the execution and delivery of this Agreement and all documents contemplated hereunder to be executed by Assignor, nor the performance of the obligations of Assignor hereunder or thereunder will result in the violation of any law or any provision of the organizational documents of Assignor or will conflict with any order or decree of any court or governmental instrumentality of any nature by which Assignor is bound.

#### 4. GENERAL PROVISIONS; MISCELLANEOUS.

4.1 Risk of Loss. On and after the date hereof, risk of casualty loss shall pass to Assignee and Assignee shall be solely responsible for providing insurance to cover any risk of such loss or damage to the Premises under the Lease.

4.2 Defaults by Assignee as Tenant Under Lease. Within five (5) days after receiving any notice from Master Landlord relating to any default or failure in the performance of the obligations of the tenant under the Lease or the termination of the Lease as a result thereof, Assignee shall forward a copy of such notice to Assignor. If Assignee is in default under the provisions of the Lease or this Assignment, and if Assignee fails to cure such default or such other action as is necessary to prevent the exercise by Master Landlord of any rights or remedies under the Lease within five (5) days less than the cure period set forth in the Lease for the curing of such a default following receipt of notice from Master Landlord or Assignor specifying the nature of such default, then Assignor may reenter the Premises, with or without process of law, and cure such default, in which event Assignee shall promptly reimburse Assignor for all costs and expenses including, but not limited to, reasonable attorney's fees, with regard thereto. In the event Assignee receives notice from Master Landlord of the intention of Master Landlord to terminate the Lease as a result of any default or failure in the performance of the obligations of the tenant under the Lease, at Assignor's option, Assignor may repossess and enjoy the Premises as of Assignor's first and former estate and either declare this Agreement to be terminated and of no further force and effect or, without terminating the same, Assignor may reassign the Lease to itself or others or sublet the Premises to itself or others, in whole or in part, for the account of Assignee, in which event Assignee shall promptly reimburse Assignor for any rent deficiencies and other charges, costs, reasonable attorneys fees or expenses so incurred by Assignor with respect thereto. Notwithstanding the foregoing, in the event the Guaranty is terminated and Assignor is released from all of its obligations under the Guaranty and the Lease, this Section 4.2 shall have no further force or effect.

4.3 Bankruptcy. If (a) Assignee or any successor assignee files a voluntary petition in bankruptcy or a petition or answer or other proceeding seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Code, (b) an involuntary position petition in bankruptcy against Assignee or any successor assignee or petition or answer made by a person other than Assignee seeking a reorganization, arrangement, composition, readjustment, liquidation, or other relief against Assignee or any successor assignee of the same or different kind under any other provision of the Bankruptcy Code, be filed, or if a receiver be appointed having jurisdiction of the business, property or assets of Assignee or any successor assignee on the Premises, and, in any such events, if Assignee or any successor assignee shall not promptly commence and expeditiously pursue an action to dismiss any such involuntary petition or answer or to vacate such receivership and if, after diligently exhausting its remedies, such petition is not dismissed or the receivership is not vacated or (c) Assignee or any successor assignee makes an assignment for the benefit of a creditor (collectively, a "Bankruptcy Proceeding"); and if the Premises are involved in a Bankruptcy Proceeding pursuant to which Assignee or any successor assignee (collectively, "Debtor") would have a right to reject the Lease as an executory contract under the Bankruptcy Code, or to otherwise terminate the Lease, then at least thirty (30) days prior to filing any motion to reject the Lease under the Bankruptcy Code, or otherwise terminating the Lease, the Debtor shall notify Assignor of its intent to reject or terminate the Lease and the Debtor shall offer to reassign the Lease to Assignor, without prejudice to Assignor's rights to file proof of claim and recover damages on account of such reassignment as if and to the extent Assignor were in the place and stead of Master Landlord and such reassignment were actually a rejection or other termination of the Lease. If Assignor, at its sole option, accepts a reassignment of the Lease from the Debtor and if Assignor suffers any loss or damage including, but not limited to, any rent deficiency upon a subsequent assignment or subletting of all or any portion of the Premises, the Debtor shall reimburse Assignor for all such loss or damage including, but not limited to, reasonable attorneys fees, in connection with the reassignment of the Lease to Assignor and the subsequent assignment to another or a subletting of all or any portion of the Premises. Notwithstanding the foregoing, in the event the Guaranty is terminated and Assignor is released from all of its obligations under the Guaranty and the Lease, this Section 4.3 shall have no further force or effect.

4.4 Assignment. Assignee may assign the Lease without the prior written consent of Assignor; provided, however, Assignee shall not assign the Lease to any entity which would operate the Premises as a Walmart or Target without the

prior written consent of Assignor, which consent may be withheld in Assignor's sole discretion. Notwithstanding any further assignment of the Lease by Assignee as provided herein or any release by the Master Landlord of any obligations of Assignee under the Lease, Assignee hereby agrees and acknowledges that Assignee shall remain fully liable to Assignor under this Assignment and shall not in any way whatsoever be released from any of the obligations or liabilities of Assignee set forth herein. Notwithstanding the foregoing, in the event the Guaranty is terminated and Assignor is released from any and all of its obligations under the Guaranty and the Lease, the prohibition on Assignee's right to assign the Lease set forth in this Section 4.4 shall have no further force and effect.

4.5 Brokers. Assignor and Assignee each represents to the other that it has not dealt with any party acting as a broker or sales agent in connection with the transactions described in this Agreement. Each party agrees to indemnify and hold harmless the other party from and against any and all claims, expenses, fees or costs, including reasonable attorney's fees and disbursements, as a result of claims made by any person for brokerage commissions, or other fees, with respect to the transactions described in this Agreement, as a result of the untruth of the representations of the indemnifying party under this Section 4.5.

4.6 Entire Agreement; Additional Terms and Conditions. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof as of the time this Agreement is executed and merges and supersedes all prior discussions, agreements and understandings of every and any nature between them and no warranty or representation shall be implied other than as expressly set forth or provided for in this Agreement.

4.7 Force Majeure. Neither party shall be liable to the other for failure or delay in performance of any of its obligations under this Agreement caused by floods, earthquakes, other Acts of God, fires, wars, riots, strikes and similar hostilities, government regulations or actions, or other causes beyond such party's control or, without limitation, for any consequential or incidental damages arising from any of the foregoing.

4.8 Notices. Any notice, demand, request or other communication required to be given pursuant to the terms hereunder shall be in writing and either (i) sent by certified mail, return receipt requested, (ii) hand-delivered, with receipt acknowledged, (iii) sent by overnight courier, with receipt acknowledged or (iv) sent by facsimile with follow up by (i), (ii) or (iii) above and addressed to the party to receive the notice at the following addresses:

If to Assignor: Kmart Corporation  
3100 West Big Beaver Road  
Troy, Michigan 48084  
Attention: Vice President, Real Estate  
Telephone: \_\_\_\_\_  
Facsimile: (248) 643-2689

with a copy to: Skadden, Arps, Slate, Meagher & Flom (Illinois)  
333 West Wacker Drive  
Suite 2100  
Chicago, Illinois 60606  
Attention: Marian P. Wexler, Esq.  
Telephone: (312) 407-0620  
Facsimile: (312) 407-0411

If to Assignee: Home Depot U.S.A., Inc.  
2455 Paces Ferry Road NW  
Building C, 20<sup>th</sup> Floor  
Atlanta, Georgia 30339  
Attention: Legal – Senior Real Estate Counsel  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

with a copy to: Home Depot U.S.A., Inc.  
2455 Paces Ferry Road NW  
Building C, 19<sup>th</sup> Floor  
Atlanta, Georgia 30339  
Attention: Real Estate Department  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

with a copy to: Altman Kritzer & Levick, P.C.  
6400 Powers Ferry Road NW, Suite 224  
Atlanta, Georgia 30339  
Attention: Charles L. Wood, Esq.  
Telephone: (770) 951-6598  
Facsimile: (770) 303-1136

Either party may change its address for notices by giving written notice to the other party, as aforesaid. Any notice shall be deemed received on the day received or receipt is refused. Inability to deliver because of changed address of which no notice was given shall be deemed a receipt of such notice.

4.9 Successors and Assigns. The terms, conditions and covenants of this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective nominees, successors, beneficiaries and permitted assignees. Assignee may not transfer, assign or encumber this Agreement or any interest herein, by operation of law or otherwise.

4.10 Parties' Expenses. Except as otherwise provided in this Agreement, each party hereto shall pay its own expenses, including attorneys' and accountants, fees, in connection with this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby. Notwithstanding the foregoing, if any action is brought by either party against the other party, the prevailing party shall be entitled to recover court costs incurred and reasonable attorneys' fees and costs.

4.11 Construction; Headings. When used herein, the term "including" shall mean "including without limitation" unless otherwise specifically provided; all other language in this Agreement shall be construed simply according to its fair meaning, and not strictly for or against any of the parties hereto. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or persons may require. The headings in this Agreement are for convenience only, and are not to be utilized in construing the content or meanings of any of the provisions hereof and shall not be deemed to constitute a part of this Agreement.

4.12 Amendments. This Agreement may not be modified, amended, discharged or terminated nor may any of the obligations of the parties hereunder be waived, except by a written instrument executed by the parties hereto.

4.13 Severability. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or enforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of any other provision of this Agreement.

4.14 Governing Law. This Agreement shall be construed, interpreted and governed by the laws of the State in which the Premises is located.

4.15 Not a Joint Venture. Assignor and Assignee each acknowledge and agree that the relationship between them is that of seller/assignor and buyer/assignee and this Agreement does not constitute a partnership, joint venture or any other association between them.

4.16 Submission of Agreement. The submission of this Agreement to Assignee or Assignee's broker, agent or attorney for review or signature does not constitute an offer to sell the Lease, nor does it grant an option or other right to purchase the Lease. This writing shall have no binding force or effect until executed and delivered by Assignee and Assignor.

4.17 Counterparts. This Agreement may be executed simultaneously or in two (2) or more counterparts, each of which shall be deemed an original but each of which together shall constitute one and the same instrument.

4.18 Conflicts with the Bidding Procedures or Assumption and Assignment Order. In the event of any conflict or inconsistency between the provisions of this Agreement and the Asset Purchase Agreement or the Assignment Order, the provisions of this Agreement shall govern and control.

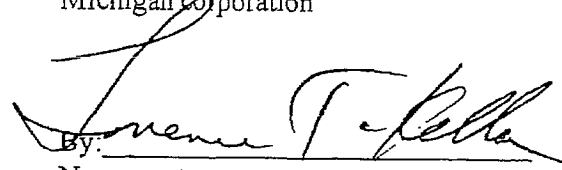
IN WITNESS WHEREOF, the parties hereto, by and through their  
duly authorized officers and agents, have caused this Agreement to be duly executed  
as of the day and year first above written.

**ASSIGNOR:**

Federal Identification No.

380729500

KMART CORPORATION, a  
Michigan corporation

By: 

Name: LORRENCE T. KELLAR

Title: V.P. REAL ESTATE

**ASSIGNEE:**

Federal Identification No.

\_\_\_\_\_

HOME DEPOT U.S.A., INC., a  
Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto, by and through their  
duly authorized officers and agents, have caused this Agreement to be duly executed  
as of the day and year first above written.

**ASSIGNOR:**

Federal Identification No.  
\_\_\_\_\_

KMART CORPORATION, a  
Michigan corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

Federal Identification No.  
\_\_\_\_\_

HOME DEPOT U.S.A., INC., a  
Delaware corporation

By: By [Signature]  
Name: Bryan J. Fields  
Title: Sr. VP-Real Estate

[Signature]

ACKNOWLEDGMENT

State of Michigan  
County of Oakland ) S.S.

I, Zina Kiryakos, a notary public in and for  
said County, in the State aforesaid, DO HEREBY CERTIFY that  
Lorraine T. Kellar, personally known to me to be the  
VP of Real Estate of Kmart Corporation, and personally known or proven to  
me to be the same person whose name is subscribed to the foregoing instrument,  
appeared before me this day in person and acknowledged that as such  
vice president, he/she signed and delivered the said instrument pursuant  
to authority given by the Board of Directors of said corporation as his/her free and  
voluntary act and the free and voluntary act and deed of said corporation, for the uses  
and purposes therein set forth.

GIVEN under my hand this 4th day of November, 1999.

Zina Kiryakos  
Notary Public

Name: Zina Kiryakos  
My Commission Expires: December 13, 2001

[STAMP]

ZINA KIRYAKOS  
Notary Public, Oakland County, MI  
My Commission Expires Dec. 13, 2001

ACKNOWLEDGMENT

State of Georgia )  
County of Fulton ) S.S.

I, Angela K King, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Bryan Fields, personally known to me to be the Vice President of Home Depot U.S.A., Inc. and personally known or proven to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Vice President, he/she signed and delivered the said instrument pursuant to authority given by the Board of Directors of said corporation as his/her free and voluntary act and the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand this 4<sup>th</sup> day of November, 1999.

Angela K King

Notary Public

Name: Angela K King

My Commission Expires: 1-14-03

[STAMP]

## Legal Description

## PARCEL I:

That part of the West One-half (1/2) of Section Twenty-four (24), in Township Three (3) North, Range Twenty-two (22) East, in the City of Racine, County of Racine, State of Wisconsin, including part of CERTIFIED SURVEY MAP NO. 1169 and part of CERTIFIED SURVEY MAP NO. 1276, bounded as follows: Begin at a point on the East-West 1/4 line of said Section 24 located North 89°08'05" West 326.13 feet from a brass-capped iron monument marking the center of said Section 24; run thence South 00°08'19" East 733.22 feet to an iron pipe; thence South 89°51'41" West 200.0 feet to an iron pipe; thence South 00°08'19" East 400.0 feet; thence South 89°51'41" West 652.51 feet to an iron rod marking the Southeast corner of Certified Survey Map No. 1395; thence North 00°08'19" West, along the Easterly boundary of said Certified Survey Map No. 1395, 323.0 feet to an iron rod; thence South 89°51'41" West, along the Northerly boundary of said Certified Survey Map No. 1395, 640.0 feet to an iron rod on the Easterly line of State Trunk Highway "31"; thence North 11°49'57" East, along the Easterly line of said highway, 260.89 feet to an iron pipe; thence North 12°21'20" East, along the Easterly line of said highway, 70.57 feet to an iron pipe; thence continue along the Easterly line of said highway 280.15 feet along the arc of a curve concave Easterly whose radius is 16,310.22 feet and whose chord bears North 14°23'41" East, 280.15 feet to an iron pipe marking the Southwesterly corner of Certified Survey Map No. 1276; thence North 84°51'00" East, along the Southerly boundary of said Certified Survey Map No. 1276, 195.0 feet to an iron pipe; thence North 69°29'00" East, along the Southerly boundary of said Certified Survey Map No. 1276, 222.08 feet to an iron pipe; thence North 18°07'00" East, along the Easterly boundary of said Certified Survey Map No. 1276, 12.42 feet; thence South 88°27'33" West, 3.75 feet; thence 74.61 feet along the arc of a curve concave Northeasterly whose radius is 47.5 feet and whose chord bears North 46°32'27" West, 67.18 feet to the North line of said Certified Survey Map No. 1276, which is also the South line of Certified Survey Map No. 1169; thence North 01°32'27" West 230.0 feet to the north line of said Certified Survey Map No. 1169, which is also the South line of 21st Street; thence North 88°27'33" East, along the South line of 21st Street, 452.31 feet to an iron pipe; thence continue along the South line of 21st Street 566.49 feet along the arc of a curve concave Southerly whose radius is 1333.69 feet and whose chord bears South 79°22'21" East, 562.24 feet to an iron pipe; thence South 00°08'19" East, 73.45 feet to the point of beginning. EXCEPTING therefrom Certified Survey Map No. 1528, being a redivision of a portion of Lot 1, Certified Survey Map No. 1395, in the Northwest 1/4 of the Southwest 1/4 of Section 24 and unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 24, Township 3 North, Range 22 East, in the City of Racine, County of Racine, State of Wisconsin.

Excepting therefrom Certified Survey Map No. 1986 recorded on September 5, 1997 in Volume 6 of Certified Survey Map at page 70, as Document No. 1593585.

## PARCEL II:

(continued)

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Lot One (1) of CERTIFIED SURVEY MAP NO. 1395, located in the North One-half (1/2) of the Southwest One-quarter (1/4) of Section Twenty-four (24), in Township Three (3) North, Range Twenty-two (22) East, in the City of Racine, County of Racine, State of Wisconsin, recorded in the Office of the Register of Deeds for Racine County on February 20, 1989 in Volume 4 of Certified Survey Maps at Pages 351 and 352, as Document No. 1276690, EXCEPTING therefrom Certified Survey Map No. 1528, being a Redivision of a portion of Lot One (1), Certified Survey Map No. 1395, in the Northwest One-quarter (1/4) of the Southwest One-quarter (1/4) of Section Twenty-four (24) and unplatted lands located in the Northwest One-quarter (1/4) of the Southwest One-quarter (1/4) of Section Twenty-four (24), in Township Three (3) North, Range Twenty-two (22) East, in the City of Racine, County of Racine, State of Wisconsin.

PARCEL III:

Non-exclusive easements as granted by Toys "R" Us, Inc., to Kmart Corporation by the Reciprocal Easement and Operation Agreement dated July 2, 1991, recorded July 2, 1991 in Volume 2078 of Records, Pages 789 through 812, as Document No. 1343832.

Tax Key Nos. 276-000023876017 and  
276-000023876040

dp/MC

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