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Cook County Recorder

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This document prepared by and after recording return to:
Elizabeth T. Young, Esq.
Bose McKinney & Evans LLP
135 North Pennsylvania, Suite 2700
Indianapolis, IN 46204

COVENANTS, CONDITIONS AND RESTRICTIONS AGREEMENT

RED LOBSTER OUTLOT
OLIVE GARDEN OUTLOT
LINCOLNWOOD TOWN CENTER

Handwritten initials

This Covenants, Conditions, and Restrictions Agreement (hereinafter sometimes referred to as the "Agreement") made and entered into as of this 29th day of December, 2000, by and between SIMON PROPERTY GROUP (ILLINOIS), L.P., an Illinois limited partnership (hereinafter referred to as "Developer"), and RED GARDEN, LLC, a New Jersey limited liability company (hereinafter referred to as "Owner").

WITNESSETH:

WHEREAS, Developer is the owner of certain real property described in Exhibit A attached hereto and made a part hereof (the "Developer's Property"); and

WHEREAS, Owner is the owner of two (2) parcels of real property located adjacent to Developer's Property which it purchased from Developer on December 29, 2000 (hereinafter the "Closing Date"), which property identified as the Red Lobster and Olive Garden Parcels, more particularly described in Exhibits B-1 and B-2 attached hereto and made a part hereof (the "Parcels"), and are shown for information purposes as of the date hereof on the site plan attached hereto as Exhibit C and made a part hereof; and

WHEREAS, Owner is the landlord under certain Leases of the Parcels which were assigned to it and which it assumed on the Closing Date, and more particularly described as follows:

BOX 333-CTI

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~~7893738 (message)~~
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a. Lease dated January 8, 1990, by and between GENERAL MILLS RESTAURANTS, INC., a Florida corporation, as Tenant, and LINCOLNWOOD ASSOCIATES, an Illinois general partnership, predecessor-in-interest to SIMON PROPERTY GROUP (ILLINOIS), L.P., an Illinois limited partnership, as Landlord, as amended or changed by the following documents: (1) Memorandum of Lease dated June 5, 1991; (2) Amendment to Lease dated October 23, 1990; (3) Second Amendment to Lease dated January 15, 1991; (4) Lease Amendment No. 3 dated April 1, 1991; and (5) Lease Amendment No. 4 dated April 13, 1992 for the premises known as LL/01, Lincolnwood Town Center Subdivision, Cook County, Illinois, consisting of approximately 1.05 acres of land upon which the Tenant operates a Red Lobster restaurant; and

b. Lease dated January 8, 1990, by and between GENERAL MILLS RESTAURANTS, INC., a Florida corporation, as Tenant, and LINCOLNWOOD ASSOCIATES, an Illinois general partnership, predecessor-in-interest to SIMON PROPERTY GROUP (ILLINOIS), L.P., an Illinois limited partnership, as Landlord, as amended or changed by the following documents: (1) Memorandum of Lease dated June 5, 1991; (2) Amendment to Lease dated October 23, 1990; (3) Second Amendment to Lease dated January 15, 1991; (4) Lease Amendment No. 3 dated April 1, 1991; and (5) Lease Amendment No. 4 dated April 13, 1992 for the premises known as LL/02, Lincolnwood Town Center Subdivision, Cook County, Illinois, consisting of approximately 0.92 acres of land upon which the Tenant operates an Olive Garden restaurant.

(collectively, hereinafter referred to as the "Leases")

WHEREAS, Owner may hereafter elect to convey, lease or otherwise transfer, subject to the terms and conditions hereinafter set forth, the Parcels to other persons or entities; and

WHEREAS, by reason of the proximity of the Parcels to Developer's Property, which is part of the shopping center site commonly known as Lincolnwood Town Center Shopping Center (the "Center"), Developer and other owners of the property adjacent to, or in close proximity to, the Center have a substantial interest in the development of the Parcels; and

WHEREAS, as a condition to Developer's agreement to sell the Parcels to Owner, the parties have agreed to subject the Parcels to the terms, conditions and provisions of this Agreement in the manner hereinafter set forth.

NOW, THEREFORE, for and in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants hereinafter set forth, the parties, intending to be legally bound, do hereby agree as follows:

1. IMPROVEMENTS TO THE PARCELS

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a. Improvements Subject to Developer Approval. Developer and Owner acknowledge and agree that Developer has an interest in the manner in which all property adjacent to or in close proximity to the Center is developed, including the Parcels. Accordingly, Developer shall have the right to review and approve any and all plans for the reconstruction, replacement, remodeling, alteration, addition, installation or modification in which the exterior shall be changed from the original construction (collectively "Reconstruction") of any building or other structures located on the Parcels, exterior signage, lighting, landscaping, access drives, parking areas, utility lines or other improvements (collectively "Improvements") to ascertain that such Improvements are compatible with and will not adversely affect other portions of the Center with respect to, without limitation, matters of signage, utilities, traffic circulation, parking, safety and health hazards, emergency access, landscaping, building height, visibility, curb cuts (including but not limited to, curb cuts onto adjacent public roads), quality of workmanship and materials, type, grade, color and texture of exterior materials, compatibility of architectural and landscape design with other Improvements in the Center and other similar matters that could have a material and detrimental impact on other portions of the Center; provided, however, such approval by Developer shall not be deemed to be an assumption of the responsibility by Developer for the accuracy, sufficiency or propriety of the Plans and Specifications (as such term is hereinafter defined) or a representation that the Plans and Specifications provide for the Reconstruction of Improvements that comply with applicable laws, rules, ordinances, regulations, covenants or restrictions.

b. Submission of Plans. No later than thirty (30) days prior to the commencement of any Reconstruction of Improvements on the Parcels or any portion thereof, and prior to any submission to any federal, state, county or municipal agency, board, department or other governmental or quasi-governmental body (a "Local Authority"), Owner shall deliver to Developer one (1) reproducible set (sepia) and four (4) copies of its schematic site plan or plans showing the following: (i) location of any new buildings or replacement of existing buildings; (ii) the facilities and areas, and related improvements (including ingress and egress, curb cuts, traffic flow, signage, parking ratio, utility lines and facilities, and lighting); (iii) the location and nature of decorative features, including landscaping, planters, directories and benches; (iv) setback lines; (v) building height and building area; (vi) schematic architectural and engineering plans; (vii) grading and drainage plans; and (viii) outline floor plans of the building shell of any and all buildings to be constructed on the Parcels, showing principal exterior dimensions, exterior design concept, the type, grade, color and texture of exterior materials and the basic exterior painting design, canopies, truck court and trash/service area shielding, rooftop screening, and any and all exterior building signs or other signs contemplated for location on the Parcels. All of the above-mentioned plans are hereinafter referred to as the "Plans and Specifications" and that work conducted by Owner or Owner's agents, contractors or subcontractors as specified or depicted in the Plans and Specifications shall be referred to in this Agreement as "Owner's Work".

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c. Developer Objections. Within ten (10) calendar days after Developer's receipt of the last to be delivered of the Plans and Specifications as hereinabove and as hereinafter provided, Developer shall review such Plans and Specifications to determine that the proposed Improvements are compatible with and will not cause an adverse affect or will not have an adverse impact on any other portion of the Center with respect to those matters set forth in Section 1.a. above. Developer shall at all times act reasonably and in good faith in approving or disapproving Owner's Plans and Specifications, it being expressly acknowledged by Owner that other owners and occupants of portions of the Center may also have a right to review the Plans and Specifications and that Developer's disapproval thereof as a result of objections by such other owners or occupants shall, in any event, be deemed to be reasonable and in good faith. Developer's approval of the Plans and Specifications shall be evidenced by its initialing one (1) copy thereof and returning the same to Owner.

Should Developer fail to deliver to Owner its approval or disapproval of Owner's Plans and Specifications in writing (i) within ten (10) calendar days after receipt of the Plans and Specifications, and (ii) within ten (10) days after written notice is delivered by Owner to Developer, after expiration of the initial ten (10) day period (which notice shall advise Developer that failure to respond within ten (10) days will result in the Plans and Specifications being conclusively presumed to be approved), then Developer shall be conclusively presumed to have approved the Plans and Specifications. In the event of disapproval, Owner shall revise the Plans and Specifications to incorporate any and all changes as may be reasonably requested to secure Developer's approval and shall deliver to Developer one (1) reproducible set (separat) and four (4) copies of the revised Plans and Specifications. Within ten (10) calendar days after Developer's receipt of the revised Plans and Specifications Developer shall review such revised Plans and Specifications in accordance with all the provisions of this Section 1. Should Developer fail to deliver to Owner its approval or disapproval of the revised Plans and Specifications in writing within (i) ten (10) calendar days after receipt of the revised Plans and Specifications and (ii) within ten (10) days after written notice is delivered by Owner to Developer, after expiration of the initial ten (10) day period (which notice shall advise Developer that failure to respond within ten (10) days will result in the revised Plans and Specifications being conclusively presumed to be approved), then Developer shall be conclusively presumed to have approved the revised Plans and Specifications. In the event of disapproval of the revised Plans and Specifications Owner shall further revise the Plans and Specifications and deliver the same to Developer for review in accordance with the provisions of this paragraph.

d. Continuing Right of Approval. Without limitation of any other provision hereof, but subject to the terms of Section 14(j) below, it is further understood that Owner shall use its best efforts to develop the Parcels using similar building materials and compatible architectural concepts as are used in other buildings in the Center and that Developer shall retain architectural approval over the entire development of the Parcels. The

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Transfer (as such term is defined in Section 8 hereof) of the Parcels, or any part thereof, or the review and approval of Plans and Specifications by Local Authorities in connection with the granting of a permit, license or other governmental approvals, shall in no way be deemed to preclude Developer from exercising its approval rights of Plans and Specifications prior to the commencement of any and all Reconstruction on the Parcels.

e. Shopping Center REA. Owner acknowledges the receipt of a copy of that certain Memorandum of Lease by and between CPS Realty Partnership and Seller dated June 5, 1989 and recorded February 21, 1990 as Instrument No. 90084005 in the office of the Recorder of Cook County, Illinois, the Memorandum of Lease by and between J.C. Penney Company and Seller dated June 1, 1991 and recorded December 16, 1991 as Instrument No. 91659042 in the office of the Recorder of Cook County, Illinois, Declaration of Covenants, Conditions, Restrictions, Rights and Easements dated March 22, 1989 and recorded May 30, 1989 as Instrument No. 89242443 in the office of the Recorder of Cook County, Illinois and Covenants, Conditions and Restrictions Agreement dated September 27, 1994 and recorded September 28, 1994 as Instrument No. 94843441 in the office of the Recorder of Cook County, Illinois (said memoranda of leases and agreement, as the same may be amended from time to time, and all agreements executed in substitution thereof or in restatement thereof, so long as such future amendments, substitutions or restatements do not materially affect Owner's operation and use of the Parcels, being herein collectively called the "REA"). Owner acknowledges and agrees that Owner has purchased the Parcels subject and subordinate to the REA including, but not limited to, any and all provisions contained in the REA restricting development on and/or use of the Parcels. Owner further agrees, after written notice from Developer, to defend and indemnify Developer against any claims, damages, lawsuits or other actions arising from the failure of Owner to comply with the terms and provisions of the REA on the Parcels, including, but not limited to, provisions concerning the maintenance, redevelopment and use of the Parcels.

f. Signage and Height Conditions. Subject to the prior approval rights of Developer set forth in this Agreement, and without limitation of any other provision of this Agreement, the REA, applicable Laws (as hereinafter defined) or the approved Plans and Specifications (the most stringent of which shall apply), the following conditions are agreed to by Owner:

- i. Owner, at its sole cost and expense, may operate, maintain, repair and replace the existing signs identifying the businesses operated on the Parcels provided that any modification or replacement of such signage shall be subject to the following conditions:

Pylon Sign: If the existing signs are pylon signs, 1) the height of any such pylon sign does not exceed the lesser of (a) the height of Owner's building on the Parcel upon which the pylon sign is located or (b) eighteen (18) feet; 2) the area of each sign panel does not exceed

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one hundred (100) square feet per panel with a maximum of two (2) panels per sign; 3) each such pylon sign is erected in the area located directly in front of the Owner's building on the Parcel upon which the pylon sign is located or in any area agreed to by the parties hereto; 4) each such sign does not materially obstruct the visibility of the Center or any other signs identifying the Center or other occupants; 5) Developer obtains all necessary approvals from other occupants in the Center; and 6) Owner receives all necessary permits for such signs;

Monument Sign. If the existing signs are monument signs, 1) the height of any such monument sign does not exceed seven (7) feet; 2) the area of each sign panel does not exceed thirty six (36) square feet per panel with a maximum of two (2) panels per sign; 3) each such monument sign is erected in the area located directly in front of the Owner's building on the Parcel upon which the sign is located or in any other area agreed to by the parties hereto; 4) each such sign does not materially obstruct the visibility of the Center or any other signs identifying the Center or other occupants of the Center; 5) Developer obtains all necessary approvals from other occupants of the Center; and 6) Owner receives all necessary permits for such signs;

- ii. Owner, at its sole cost and expense, shall not install or maintain on the Parcels any sign on the roof of any buildings located thereon, and may maintain one (1) fascia sign on the front fascia of each of such buildings, the length of such fascia signs not to exceed fifty percent (50%) of the length of the fascia on which it is installed and its letters being box-backed or internally and individually lit and not exceeding thirty (30) inches in height;
- iii. Except to the extent expressly permitted herein, no sign shall be permitted upon the Parcels unless such sign has been first approved by Developer as part of approved Plans and Specifications, or otherwise approved by Developer, such approval not to be unreasonably withheld or delayed; provided that Developer's approval shall not be required for temporary signs professionally prepared and used in conjunction with a tenant's regional or national advertising campaign. All signs shall be professionally prepared, in keeping with the operation of a first class shopping center, and in compliance with all applicable laws, codes, ordinances, rules, regulations, covenants and restrictions ("Laws");
- iv. No temporary sign (except for (i) development information signs during the period prior to the completion of Reconstruction of Owner's Work and

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(ii) signs professionally prepared and used in conjunction with a tenant's regional or national advertising campaign), paper sign, flag, banner or streamer shall be permitted upon any portion of the Parcels at any time; and

v. The height of any Improvements on the Parcels shall not exceed the lesser of one (1) story or eighteen (18) feet in height.

g. Restrictions on Actions. Owner acknowledges that the Parcels are a part of an integrated development comprising a variety of uses in which certain actions of Owner may have an adverse effect on the Center. Therefore, without limitation of the provisions of this Section 1 or any other provisions of this Agreement, Owner agrees not to take any of the following actions without Developer's prior written consent, which consent shall not be unreasonably withheld or delayed:

- i. make any request or application to any governing body having jurisdiction over public roads and highways adjacent to the Parcels, including, but not limited to, any state, county or local highway department of transportation, for any curb cuts or other access points providing access from such public roads to the Parcels, even if and notwithstanding the fact that such curb cut is located entirely on the Parcels and not on Developer's Property;
- ii. make any request or application to any Local Authority for any monument, pylon, or exterior building signage other than that permitted in subsection f. above;
- iii. make any request or application to any Local Authority for any variance or rezoning of or other exception to the currently applicable requirements relating to use of the Parcels, any building setback lines, parking requirements, building height requirements, building to land coverage ratios, screening access, or other zoning or building code requirements; nor
- iv. submit the Plans and Specifications to a Local Authority in connection with any change or modification in zoning, the issuance of a building permit or other permits, licenses or approvals, or for any other reason, unless such Plans and Specifications have been reviewed and approved in advance by Developer in accordance with this Section 1.

If any changes are requested or required by a Local Authority to approved Plans and Specifications, such changes shall be subject to Developer's review and approval or disapproval in accordance with Section 1 hereof. Owner shall deliver to Developer for its review written notice of the requested or required changes. Should Developer fail to deliver to Owner its approval or disapproval of the changes in writing within fifteen (15)

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days after receipt of Owner's written notice, then Developer shall be conclusively presumed to have disapproved the changes.

h. No Barrier. No barricades, fences or other material obstructions shall be erected, installed or maintained by Owner which would in any manner impede vehicular or pedestrian traffic on, across, over or between the common areas on the Parcels and the Center (other than reasonable directional markers and traffic control devices).

2. MAINTENANCE OF THE PARCELS BY OWNER

a. Standard of Maintenance. Owner shall maintain or cause to be maintained the Parcels and all Improvements located thereon, including the exterior of any building or buildings, pedestrian walks, landscaped areas, exterior lighting and signage and other Improvements, in a good, sightly and safe condition, appearance and repair consistent with and similar to the Center, and further shall at all times, and from time to time, cause the prompt removal of all paper, debris, refuse, snow and ice and the sweeping of paved areas (if any) when and as required in order that the Parcels be maintained as above provided, and will maintain the unimproved portions of the Parcels in a similar good, sightly and safe condition.

b. Fire and Casualty; Condemnation. In the event of damage or destruction to any Improvements on the Parcels by reason of fire or other casualty or the loss of any part of the Parcels or Improvements thereon by reason of condemnation, Owner shall perform or cause to be performed either: (i) prompt restoration of such Improvements to the condition existing prior to such damage, destruction or condemnation; or (ii) razing and removal of any such Improvements, in which event Owner shall replace such Improvement with either (A) paved parking or other Improvements or uses consistent with this Agreement and approved by Developer prior to their construction or (B) landscaping in a manner acceptable to and approved by Developer, which approval in either event shall not be unreasonably withheld or delayed.

c. Action by Developer. In the event that Owner shall fail or refuse to maintain the Parcels as above provided, then Developer shall have the right, upon thirty (30) days' prior written notice to Owner specifying the manner in which Owner has failed to maintain the Parcels (unless within such thirty (30) day period Owner shall complete the required maintenance, or in the case of maintenance which by its nature cannot be completed within such thirty (30) day period, Owner shall take such action as is reasonably calculated to commence the required maintenance within ten (10) days after notice to Owner and thereafter shall diligently prosecute the maintenance to completion), to enter upon the Parcels and perform the maintenance set forth in said notice, all in the name of and for the account of Owner but subject to the terms of Section 14(j) below. Developer shall have the absolute right of entry upon the Parcels after reasonable notice and at reasonable times to perform such maintenance but subject to the terms of Section 14(j) below, and shall in no event be held to be a trespasser upon

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the Parcels, but no entry in any buildings is authorized. Developer, by reason of its doing so, shall not be liable or responsible to Owner or any other person or entity for any losses or damages thereby sustained by Owner or any occupants of the Parcels or of anyone claiming by or under either an occupant or Owner, unless such loss or damage arose from the gross negligence or willful misconduct of Developer, its agents, contractors or employees in performing any such maintenance. The reasonable and necessary cost of such maintenance, plus a fifteen percent (15%) management fee, shall be paid by Owner to Developer within ten (10) days after the date of receiving a statement therefor, which statement shall specify the details of the maintenance performed and the cost thereof. In the event that Owner shall fail to pay Developer any such amount when due, Developer shall have all of the rights and remedies provided for in Section 11 hereof.

3. MAINTENANCE AND MANAGEMENT OF PARKING AREA BY OWNER

a. Standard of Maintenance. Notwithstanding any provision in Section 2 to the contrary, Owner shall operate and maintain, or cause to be operated and maintained, that portion of the Parcels designed or designated from time to time to be used as access drives and parking areas for motor vehicles, including appurtenant landscaped areas, exterior lighting and signage (hereinafter referred to as "Parking Area") in good and sightly order, condition and repair. Without limiting the generality of the foregoing, Owner, in the operation and maintenance of the Parking Area, shall observe the following standards:

- i. Maintain the surface of the Parking Area in a level, smooth and evenly covered manner with the type of surfacing material originally installed thereon, or such substitute thereof as shall be in all respect equal thereto in quality, appearance and durability;
- ii. Remove all paper, snow and ice, debris, filth and refuse from the Parking Area and wash or thoroughly sweep paved areas as reasonably required;
- iii. Maintain such appropriate parking lot entrance, exit and directional signs and markers in the Parking Area as shall be reasonably required and in accordance with the practices prevailing in the operation of first class regional shopping centers in the metropolitan area in which the Center is located. Lighting shall be maintained in the Parking Area on the Parcels during the business hours of Owner, when such lighting is reasonably required but at a minimum during the hours required under the REA;
- iv. Clean lighting fixtures in the Parking Area and relamp as reasonably required;
- v. Repaint striping, markers, directional signs, etc. in the Parking Area as reasonably required;

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- vi. Maintain and replace landscaping outside of Owner's building curb as reasonably required, including mowing of grass, and removal and replacement of dead shrubbery; and
- vii. Prevent the erection of any barricades, fences or other barriers which would in any manner impede vehicular or pedestrian traffic on, across, over or between the common areas on the Parcels and the Center.
- viii. Maintain a sufficient number of 9 foot wide parking spaces on the Parcels to permit the parking of 5.5 automobiles for every 1,000 square feet of space in the buildings on the Parcels as required under Section 7 below

b. Act or by Developer. In the event that Owner shall fail or refuse to maintain the Parking Area as above provided, then Developer shall have the right, upon thirty (30) days' prior written notice to Owner specifying the manner in which Owner has failed to maintain the Parking Area (unless within such thirty (30) day period Owner shall complete the required maintenance, or in the case of maintenance which by its nature cannot be completed within such thirty (30) day period, Owner shall take such action as is reasonably calculated to commence the required maintenance within ten (10) days after notice to Owner and thereafter shall diligently prosecute the maintenance to completion), to enter upon the Parcels and perform the maintenance set forth in said notice, all in the name of and for the account of Owner. Developer shall have the absolute right of entry upon the Parcels to perform such maintenance and shall in no event be held to be a trespasser upon the Parcels, but no entry in any buildings is authorized. Developer, by reason of its doing so, shall not be liable or responsible to Owner or any other person or entity for any losses or damages thereby sustained by Owner or any occupants of the Parcels or of anyone claiming by or under either an occupant or Owner, unless such loss or damage arose from the willful misconduct or gross negligence of Developer, its agents, contractors or employees in performing any such maintenance. The reasonable and necessary cost of such maintenance, plus a fifteen percent (15%) management fee, shall be paid by Owner to Developer within ten (10) days after the date of receiving a statement therefor, which statement shall specify the details of the maintenance performed and the costs thereof. In the event that Owner shall fail to pay Developer any such amounts when due, Developer shall have all of the rights and remedies provided for in Section 11 hereof.

4. MAINTENANCE AND MANAGEMENT OF COMMON AREAS BY DEVELOPER

Common Areas of the Center are defined as: all parking areas, ring roads, access roads and facilities furnished, made available or maintained by Developer in or near the Center and outside of the Parcels, including parking areas designated from time to time by Developer for use by Owner or its tenant or its or their employees or customers, truck ways, driveways, loading docks and areas, delivery areas, multi-story parking facilities (if any), package pickup stations, exterior elevators, escalators and pedestrian sidewalks, malls, courts and ramps, landscaped areas,

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retaining walls, exterior stairways, bus stops, first-aid and comfort stations, lighting facilities, sanitary systems, utility lines, water filtration and treatment facilities and other areas and improvements provided by Developer for the general use in common of occupants, tenants and their customers, department stores and outlot owners in the Center. The Common Areas shall at all times be subject to the exclusive control and management of Developer, and Developer shall have the right, from time to time, to add to, subtract from and modify the Common Areas and to establish, modify and enforce reasonable rules and regulations respecting use of the Common Areas provided that access to and the visibility of the Parcels is not materially impaired and Developer shall cause the parking areas in the Common Areas to contain a sufficient number of parking spaces to comply with local code or ordinance applicable thereto. Developer shall maintain the Common Areas in a manner consistent with the operation of a first class shopping center in the metropolitan area in which the Center is located.

The parties acknowledge that in addition to the REA, the Parcels are subject to the Leases, and as the "Landlord" under the Leases, Owner may be subject to certain covenants and have certain duties and obligations regarding the Common Areas. Notwithstanding anything in the REA or the Leases to the contrary and notwithstanding the conveyance of the Parcels to Owner and the assignment of the Leases to Owner, Developer and its successors and assigns, shall retain and perform those certain rights and duties of the "Developer" under the REA and "Landlord" under the Leases, subject to the terms of the REA and Leases, but only to the extent recited therein, to insure, construct, install, maintain, repair, replace and manage the Common Areas defined herein but subject to the terms of Section 3 above.

5. GRANT OF EASEMENT OVER, AND MAINTENANCE AND USE OF RING ROAD AND ENTRANCE DRIVES

a. Access Maintenance Charge. Owner shall pay, without deduction, set-off or prior demand, its proportionate share of all costs and expenses relating to Developer's ownership, operation, repair, maintenance, lighting, policing, restoration, replacement and improvement of the Center ring road (the "Ring Road"), entrance drives (the "Entrance Drives") and Common Areas designated from time to time by Developer for use by Owner or its tenant or its or their employees or customers, including without limitation, real estate taxes, insurance premiums, a reasonable allowance for depreciation of maintenance equipment and a management fee of 15% of all other charges attributable to such Common Area (the "Access Maintenance Charge"). The Access Maintenance Charge shall be Owner's proportionate share of such expenses on the following basis: Two Thousand Seven Hundred Sixty Dollars (\$2,760.00) per year, payable in equal monthly installments of One Hundred Fifteen Dollars (\$115.00) per month through January 31, 2002. The Access Maintenance Charge shall increase by 15% commencing February 1, 2002 and on each fifth anniversary thereof.

The Access Maintenance Charge shall be paid by Owner to Developer in advance, commencing on the Closing Date and on the first day of each month thereafter.

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b. Non-Exclusive Easement to Owner. Developer does hereby create, grant and convey unto Owner, its tenants, licensees, and invitees, a permanent, non-exclusive easement in common with Developer and all others to whom Developer has granted or may hereafter grant rights, over, upon and across the Ring Road, Entrance Drives and such of the Common Areas as are designated from time to time by Developer for use by Owner or its tenant or its or their employees or customers, as such Ring Road, Entrance Drives and Common Areas may be changed from time to time, for purposes of access, ingress and egress to and from the Parcels and utility service to and storm water drainage of the Parcels. Developer reserves the right, in its sole discretion, to change from time to time the configuration, location, number and size of the Ring Road, Entrance Drives and Common Areas, so long as Owner's access to one or more public streets is not materially impaired. The number, location and size of any curb cuts for ingress and egress to and from the Parcels onto the Ring Road and Entrance Drives shall be subject to the prior written approval and consent of Developer and the approval rights, if any, of any occupant of the Center pursuant to the terms and provisions of the REA or otherwise. In the event of either (i) termination of rights and easements for access over the Ring Road, Entrance Drives or Common Areas as a result of the expiration or earlier termination of the REA, or (ii) the need for granting of a separate access easement in order to comply with a requirement of the Local Authorities for consent to redevelopment of the Parcels, Developer shall create, grant and convey to Owner an access easement over Developer's Property the terms and description of which shall be subject to Developer's and Owner's reasonable approval.

c. Continuing Obligation. In the event that Owner shall Transfer (as such term is defined in Section 9 herein) Owner's complete interest in the Parcels, the Owner's transferee shall be responsible for payment of the Access Maintenance Charge allocable to the Parcels, and, except as provided below, Owner shall be released from further liability for the Access Maintenance Charge allocable to the transferred Parcels arising or accruing from and after the effective date of such Transfer, provided that the following conditions are satisfied:

- i. With respect to accrued liability, any and all amounts which shall then be due and payable by Owner shall have been paid to Developer;
- ii. Developer shall have received promptly after the effective date of such Transfer, written notice from Owner of the Transfer and the name and address of the transferee;
- iii. Neither Owner, Owner's nominee, a partnership or joint venture in which Owner holds an interest, or Owner's Affiliate (as such term is defined hereinafter) holds title to the transferred Parcels, or any portion thereof or any interest therein.

If Owner shall fail to deliver any such written notice or pay any accrued amounts due, liability for payment of the Access Maintenance Charge shall continue to be binding upon and

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enforceable against Owner until such failure is cured; notwithstanding the foregoing, such liability shall be binding upon and enforceable against the transferee at all times. In the event, after demand for payment is delivered by Developer to the transferee, such transferee shall fail to pay the Access Maintenance Charge when due, Owner's liability for such payment shall continue and Owner agrees to pay Developer any and all of the Access Maintenance Charge due and outstanding within thirty (30) days after Developer delivers to Owner a written demand for payment. In the event that the Owner shall fail to pay to Developer any amounts to be paid under this Section 5, when due, Developer shall have all the rights and remedies provided in Section 11 hereof. Notwithstanding anything herein to the contrary, (1) in the event the Owner Transfers the Parcels to a third party with a net worth of at least Five Million and 00/100 Dollars (\$5,000,000.00) (increased by three percent (3%) per annum commencing on the first anniversary of the date hereof) at the time of the Transfer, or the third party transferee is affiliated with an entity which assumes or guarantees the debts of the third party transferee and the affiliated entity has a net worth of at least Five Million and 00/100 Dollars (\$5,000,000.00) (increased by three percent (3%) per annum commencing on the first anniversary of the date hereof) at the time of the Transfer, then in such case Owner shall be fully released from its obligation for the Access Maintenance Charge allocable to the transferred Parcels and becoming due and payable after the date of Transfer, including any obligation which may otherwise arise due to the transferee's failure to pay the Access Maintenance Charge, and (2) in the event Owner intends to Transfer the Parcel to a third party with a net worth less than Five Million Dollars (\$5,000,000.00) (increased by three percent (3%) per annum commencing on the first anniversary of the date hereof) at the time of the Transfer, Owner may first offer to sell the Parcel to Developer on the same terms then being offered to third parties (the "Offer Terms"). Developer shall have thirty (30) days after the receipt of the Offer Terms within which to notify Owner in writing of Developer's agreement to purchase the Parcel on the Offer Terms. In the event Developer does not exercise its right to purchase the Parcel within such 30-day period, Owner shall be entitled to sell the Parcel to any other third party on terms no more favorable to the purchaser than those contained in the Offer Terms, within one hundred eighty (180) days after the end of such 30-day period. In the event Owner concludes such sale to a third party on such terms, Owner shall be fully released from its obligation for the Access Maintenance Charge allocable to the transferred Parcel and becoming due and payable after the date of Transfer, including any obligation which may otherwise arise due to the transferee's failure to pay the Access Maintenance Charge. In the event Owner does not sell the Parcel within such 180 days or intends to sell the Parcel on terms more favorable to the purchaser than those contained in the Offer Terms, then Owner shall again be obligated to offer to sell the Parcel to Developer as provided above.

d. "Affiliate" Defined. As used in this Agreement, the word "Affiliate" shall mean (a) any corporation or other entity that directly or indirectly controls, is controlled by or is under common control with Owner, (b) an entity at least a majority of whose economic interest is owned by Owner, (c) any general or limited partnership, or limited liability partnership in which Owner is a general partner, or (d) any limited liability company in which Owner is a member. For purposes of this paragraph, "control" shall mean the power to direct the management of such entity through voting rights, ownership or contractual

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obligations.

6. USE

a. Permitted Use. Owner agrees that it shall use, occupy and operate the Parcels, or shall cause the Parcels to be used, occupied and operated solely for the operation of a restaurant which may serve alcoholic beverages and for no other use or purpose ("Permitted Use");

b. Change of Use. If Owner proposes to change the primary use of the Parcels or either of them from the Permitted Use applicable thereto, Owner shall first notify Developer in writing of the proposed primary use (hereinafter referred to as "Proposed Use"). Should Developer fail to deliver to Owner its approval or disapproval of the change of the primary use to the Proposed Use within (i) thirty (30) days after receipt from Owner of written notice of the Proposed Use, and (ii) ten (10) days after written notice is delivered by Owner to Developer, after expiration of the initial thirty (30) day period (which notice shall advise Developer that failure to respond will result in the Proposed Use being conclusively presumed to be approved), then Developer shall be conclusively presumed to have approved the Proposed Use. Notwithstanding anything to the contrary contained herein, from and after the cessation of Owner's Permitted Use, Owner may use its Parcels, if used at all, only for such lawful retail, service or entertainment purpose(s) which is/are (a) in compliance with all now existing zoning ordinances applicable to the Parcels, including now existing special use variances, if any (but any change or modification of such zoning or variances shall be subject to the approval of Developer in Developer's sole and absolute discretion), (b) allowed and not in conflict with the existing REA and Prohibited Uses (as hereinafter defined), and (c) shall not violate any now existing exclusive use rights (i.e., the right granted by Developer to an owner or tenant in the Center to exclusively sell or lease a specific category of merchandise or type of service or restaurant) granted to other owners and tenants in the Center, so long as such exclusive rights continue to be binding on Developer and the Center (an "Exclusive").

c. Prohibited Uses. For so long as the Center is operated as a commercial real estate establishment, in no event shall the Parcels or any part thereof be used for any use prohibited under the REA, or for any purpose or purposes which would produce or be accompanied by the following characteristics (each a "Prohibited Use");

- i. Any noise, vibration, litter, odor (obnoxious or toxic), dust, dirt or other activity which may constitute a public or private nuisance;
- ii. Any unusual firing, explosive or other damaging or dangerous hazards;
- iii. Any factory use, warehouse operation, processing or rendering plant, or any assembling, manufacturing, distilling, refining, smelting, industrial, agriculture, drilling or mining operation;

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- iv. Any trailer court, mobile home park, lot or showroom for sale of new or used motor vehicles, trailers or mobile homes, labor camp, junk yard, stockyard or animal raising;
- v. Any dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the premises from authorized uses and if handled in a reasonably clean and sanitary manner;
- vi. Any commercial laundry or dry cleaning plant, laundromat, veterinary hospital, car or truck washing establishment;
- vii. Any automobile, truck, trailer or other motor vehicle body, fender or other repair work, or any gasoline or fuel pumps;
- viii. Any automobile, truck, trailer or other motor vehicle painting or customizing work;
- ix. Any cemetery, mortuary or crematorium;
- x. Any pool or billiard establishment, amusement center or game room, bowling alley, amusement park or gallery, carnival, sporting event or other sports activity or shooting gallery;
- xi. Any second hand store, surplus store or flea market;
- xii. Any drug rehabilitation center or "halfway" house, massage parlor, health club;
- xiii. Any so-called "off-track betting" operation; or
- xiv. Any sale or display of pornographic materials, adult book store, or adult entertainment use or any other manner or use which is inconsistent with a family entertainment center and retail destination.

For purposes of this Section 6, it is specifically acknowledged and agreed that the Center shall not be deemed to be no longer operating due to temporary cessations of operations resulting from damage and destruction, casualty, force majeure or any other cause not the fault of Developer.

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In addition to the foregoing, Owner acknowledges and agrees that Owner's use, occupation, operation and development of the Parcels shall be in all respects subject to those restrictions and limitations applicable to the Parcels contained in the REA and shall be in compliance with applicable Laws, including but not limited to zoning regulations.

d. Exclusive Use. From and after the date hereof and through January 31, 2002 but only for so long as the Leases are in full force and effect and the Parcels are continuously open and operating for the uses specified in Section 6(a) above, Developer shall not lease, sublease or otherwise operate or contract, by conveyance or otherwise in the Center, for a food service establishment featuring or specializing in the sale, at retail, of the following:

- i. as to the Parcel known as LL/01 consisting of approximately 1.05 acres, seafood in a manner similar to the operation of a Red Lobster restaurant, and
- ii. as to the Parcel known as LL/02 consisting of approximately .92 acres, Italian food in a manner similar to the operation of an Olive Garden restaurant.

Featuring or specializing for the purposes of this provision shall mean that such items as aforesaid, shall be identified as major menu items of sales volume of public identification. The aforesaid restriction shall not be applicable to any food service establishment, to any purveyor of unprepared foods intended for future off-premises consumption and shall not be applicable to any in-line tenants of the Center.

7. PARKING RATIO

Owner shall maintain or cause to be maintained on the Parcels at all times no fewer than the greater of: (i) five and one-half (5.5) parking spaces for every one thousand (1,000) square feet of floor area in any building constructed on the Parcels; or (ii) the number of parking spaces required by the Local Authorities. Owner agrees to take no action which would reduce the parking ratio below that specified herein. All vehicular parking spaces shall be at least the greater of 9 feet wide or the minimum dimensions for standard American automobiles required by the Local Authorities or Laws.

8. CONSTRUCTION BY OWNER

a. Owner's Construction Work. To the extent Owner elects to perform, or cause to be performed, development (including design, engineering, construction and installation) of the Improvements to be located on the Parcels, and to perform, or cause to be performed, all other work associated with the development of the Parcels (all included within the term "Owner's Work", as previously defined herein), then such Owner's Work shall be performed only in accordance with the Plans and Specifications approved by Developer in

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accordance with the process described in Section 1 of this Agreement.

b. Utility Lines Serving the Center. Owner shall be responsible for field verification of the location of any and all utilities (including existing irrigation, exterior light or pylon sign utility runs serving the Center or neighboring developments) contained on the Parcels prior to commencement of Owner's Work and shall notify the Center's operation director or Developer's tenant coordinator prior to beginning any such work. If any of the utility runs are cut or damaged during Owner's Work, Owner shall repair, replace and/or reposition the utility run immediately, at Owner's sole cost and expense.

c. General Construction Requirements.

Construction Standards. Owner's Work shall be done (a) at Owner's sole cost and expense, (b) by contractors or subcontractors who are appropriately licensed, fully bonded and sufficiently insured, and (c) in substantial compliance with the approved Plans and Specifications. Owner agrees that all Construction activities performed by Owner, or on Owner's behalf, shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of all governmental bodies having jurisdiction over the Parcels and Developer's Property. All Construction shall utilize new materials, and shall be performed in a good, safe and workmanlike manner. Owner's Construction activities shall not: (i) cause any unreasonable increase in the cost of constructing improvements, if any, by Developer, (ii) unreasonably interfere with construction work, if any, being performed on any other part of the Developer's Property, (iii) unreasonably interfere with the operation, use, occupancy or enjoyment of any part of Developer's Property by Developer, any other party or its permittees, or (iv) cause any building located on the Developer's Property to be in violation of any Laws.

ii. Indemnification of Developer. Owner agrees to defend, protect, indemnify and hold harmless Developer from and against all claims and demands, including any action or proceeding brought thereon, and all costs, loss, expenses and liabilities of any kind relating thereto, including reasonable attorney fees and cost of suit, arising out of or resulting from any construction activities performed or authorized by Owner; provided, however, that the foregoing shall not be applicable to either events or circumstances caused by the gross negligence or willful act or omission of Developer, its licenses, concessionaires, agents, servants, employees, or any one claiming by, through or under any of them.

9. OWNER'S TRANSFER

a. Transfer. As used in this Agreement, the term "Transfer" shall mean a sale, lease,

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assignment, transfer, alienation or conveyance (or agreement to do any of the foregoing) of the Parcels, or any portion thereof, or any interest therein, whether any such sale, lease, assignment, transfer, alienation or conveyance is effectuated directly, indirectly, voluntarily or involuntarily, by Owner or any third party, by operation of law or otherwise. The term "Transfer" shall not include any lien, pledge, deed of trust, mortgage or other grant of a security interest in the Parcels to finance the development of the Parcels.

b. Notice to Developer. Owner shall notify Developer of the occurrence of any Transfer. Such notice shall be in writing, addressed to Developer as provided in Section 13 hereof, and shall be sent no more than fifteen (15) business days prior to the completion of such Transfer.

10. DEVELOPER'S RIGHT OF RECAPTURE

Intentionally omitted.

11. REMEDIES

In the event that Owner either (i) fails to pay Developer when due any amounts owed by Owner to Developer under this Agreement, or (ii) shall otherwise fail to perform any of Owner's covenants, agreements or obligations hereunder within ten (10) days after written notice thereof by Developer to Owner (unless a longer time period is set forth elsewhere in this Agreement), Developer shall have all rights, privileges and remedies to enforce said collection or performance as shall be provided or permitted by law or equity from time to time including, without limitation, the right to invoke any one or more of the following remedies:

- a. Institute suit against Owner to enforce collection of the amounts owed to Developer pursuant hereto, together with interest thereon at the highest lawful rate permitted by the laws of the state where the Center is located, court costs, attorneys' fees and para-professional fees;
- b. Institute suit in equity to the extent permitted by law to compel compliance with the terms and conditions of this Agreement;
- c. With respect to the payment of the Access Maintenance Charge, to record against title to the Parcels a notice of lien which shall constitute a lien in favor of Developer on the interest of Owner and which may be foreclosed by Developer in proceedings in the nature of a foreclosure, with all of the rights and remedies afforded by the laws of the state where the Parcels is located to secured creditors in such proceedings; provided, however, that any liens shall be subordinate and subject to any bona fide first mortgage, to or held by an unrelated third party, existing upon the Parcels prior to recordation of the notice of lien;

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- d. Set-off any such amounts due from Owner to Developer against any amounts due from Developer to Owner; and
- e. If no emergency exists, to pay or perform the Owner's omitted obligation after giving the above required notice, and in any emergency situation, to pay or perform the same immediately without notice or delay. Developer, by reason of its doing so, shall not be liable or responsible to Owner or any other person or entity for any losses or damages thereby sustained by Owner or any occupants of the Parcels or of anyone claiming by or under either an occupant or Owner, unless such loss or damage arose from the gross negligence or willful misconduct of Developer, its agents, contractors or employees in paying or performing any such obligation. The reasonable and necessary cost of Developer's payment or performance of such obligation, together with a fifteen percent (15%) management fee, shall be paid by Owner to Developer within ten (10) days after the date of receiving a statement therefor, which statement shall specify the details of the obligation paid or performed and the cost thereof.
- f. In the event Owner fails to pay within thirty (30) days after the same is due and payable any sum or charge required to be paid by Owner to Developer under this Agreement, such unpaid amount shall bear interest from the due date thereof to the day of payment at an annual rate equal to the lesser of twelve percent (12%) or the highest rate of interest that may lawfully be charged to Owner then required to pay interest under this Agreement. Such interest shall be paid by Owner to Developer at the time of payment of the unpaid principal amount.

All rights, privileges and remedies afforded Developer by this Agreement shall be deemed cumulative and the exercise of any one of such rights, privileges and remedies shall not be deemed to be a waiver of any other right, remedy or privilege set forth herein.

12. WAIVERS

No act, delay or omission by either party in exercising any right or enforcing against the other any term or provision of this Agreement shall impair any such right or be construed or deemed to be a waiver of the same or any other such term or provision. A waiver by either party of any breach of the terms and provisions of this Agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other terms and provisions herein contained.

13. NOTICES

All notices or communications ("Notices") to be given under or pursuant to this Agreement shall be in writing, addressed to the parties at their respective addresses as set forth below, and shall be delivered by U.S. certified mail, postage prepaid, return receipt requested, or reputable, national, pre-paid overnight delivery service for which written evidence of delivery is available or by facsimile transfer (provided concurrent notice is delivered by reputable, national prepaid overnight delivery service).

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If to Developer: Simon Property Group (Illinois), L.P.
National City Center
115 West Washington Street
Indianapolis, Indiana 46204
ATTN: Peripheral Development Department
Fax No.: (317) _____

If to Owner: Red Garden, LLC
106 Vail Lane
Watchung, NJ 07060
ATTN: Marci Shapiro
Fax No.: (908) 756-3895

with a copy to: Arnold Litt, Esq.
Herten, Burstein, Sheridan & Litt, LLC
Court Plaza North
25 Main Street
Hackensack, NJ 07601-7032
Fax No.: (201) 342-6611

Notices shall be effective (i) three (3) days after deposit in the U.S. mail if delivered by certified mail, or (ii) on the next business day if sent by overnight delivery service or (iii) by 5:00 p.m. on a business day if confirmation of such facsimile transfer is made by 3:00 p.m. EST on the same business day. The parties may change their notice addresses from time to time upon written notice to the other and as parties other than the originally named Developer and/or Owner obtain an interest in the Developer's Property or Parcels, respectively, or any portion thereof, subject to the terms and conditions of this Agreement. The transferor Developer or Owner shall advise the other party of the name and address of the party to receive notice as provided herein, provided that until such time as the transferor Developer or Owner notifies the other party of any such transferee party or other change in the address, such other party shall be entitled to continue to rely on the accuracy of the notice address previously in effect.

All charges which are due from Owner to Developer pursuant to any provision of this Agreement may be sent via prepaid first class regular mail delivery, shall be made payable to Developer and shall be directed, together with a copy of the invoice for the period to which it relates, to the address set forth below or at such other address as Developer may subsequently designate by written notice to Owner:

Simon Property Group (Illinois), L.P.
ID# _____
P.O. Box 2004
Indianapolis, IN 46255

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14. MISCELLANEOUS PROVISIONS

- a. Governing Law. This Agreement shall be governed and construed under and in accordance with the laws of the state where the Center is located according to its fair meaning and not in favor of or against any party.
- b. Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be held to be invalid, illegal or unenforceable in any respect, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall not be affected thereby, and each and every other term, provision and condition of this Agreement (and the application thereof) shall be legal, valid and enforceable to the fullest extent permitted by law.
- c. Gender and Number. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, and vice versa, unless the context requires otherwise.
- d. Section Heading. The section headings herein are for convenience or reference purposes only and shall not limit or otherwise affect or be used in the construction or interpretation of the terms and provisions of this Agreement or any part hereof.
- e. Counterparts. This Agreement may be executed and acknowledged in multiple originals or counterparts, each of which will be an original and, when all of the parties to this Agreement have signed and acknowledged at least one (1) original, such copies together will constitute a fully executed and binding Agreement.
- f. Entire Agreement. This Agreement constitutes the sole agreement of the parties hereto and supersedes any prior discussions, understandings or agreements (written or oral) between the parties respecting the within subject matter.
- g. Amendment. This Agreement shall not be amended or modified unless such amendment is set forth in writing executed by Developer and Owner.
- h. Attorneys' Fees. If either party files any action or brings any proceeding against the other arising out of this Agreement, or is made a party to any action or proceeding brought by a third party arising out of this Agreement, then, as between Developer and Owner, the prevailing party shall be entitled to recover, as an element of its costs of suit and not as damages, reasonable attorneys' fees, para-professional fees and court costs to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorneys' fees or para-professional fees.

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i. Binding Effect. Each and all of the covenants, restrictions, conditions and provisions contained in this Agreement, whether of an affirmative or negative nature, (i) are made for the direct and mutual benefit of the Parcels, and Developer's Property, and each and every portion thereof, and will constitute covenants running with the land of the Parcels and Developer's Property; (ii) will bind every owner of all or any portion of the Parcels and Developer's Property to the extent that such portion is affected or bound by the covenants, conditions or restrictions to be performed on the behalf of such portion provided that the rights and obligations of Developer herein respecting approval of Plans and Specifications and of the Use of the Parcel, liability to Owner for the maintenance and management of Common Areas (including without limitation collection of the Access Maintenance Charge), and enforcement of the terms and conditions of this Agreement, including without limitation, the self-help remedies and other remedies granted herein shall run with, be binding upon and shall inure to the benefit of the Owner, from time to time, of not less than sixty percent (60%) of the leaseable area in the Center, or if no owner of property in the Center owns at least 60% of the leaseable area in the Center, then to one of such owners which is designated as the successor Developer hereunder in a deed or other instrument of record, and no other owner of a portion of the Developer's Property shall be entitled to exercise such approval rights liable to Owner for such Common Area maintenance and management obligations, collect such Access Maintenance Charge or exercise such enforcement remedies; and (iii) will inure to the benefit of the parties and their respective successors and assigns.

j. Conflicts. To the extent of a conflict between either, all or any combination of this Agreement, any applicable Laws, the REA and/or the approved Plans and Specifications, the terms and provisions of either of this Agreement, Laws, the REA and/or the approved Plans and Specifications which impose the most stringent standard shall control. Notwithstanding anything to the contrary contained herein, to the extent of a conflict between either, all or any combination of this Agreement and the Leases (as such Leases, as amended currently exist, without further amendment and during their current terms, as such terms may be extended pursuant to options to renew currently existing in the Leases and validly exercised), the terms and provisions of the Leases shall control.

k. Joint and Several Liability. If any future owner is a partnership or other business organization the members of which are subject to personal liability pursuant to statute, court rule or common law, the liability of each such member shall be deemed to be joint and several.

15. LIMITATION OF LIABILITY

Anything to the contrary herein contained notwithstanding, there shall be absolutely no personal liability on persons, firms or entities who constitute Developer with respect to any of the terms, covenants, conditions and provisions of this Agreement, and Owner shall, subject to the rights of any first mortgagee, look solely to the interest of Developer, its successors and assigns, in the Center for the satisfaction of each and every remedy of Owner in the event of default by

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Developer hereunder; such exculpation of personal liability is absolute and without any exception whatsoever. In the event the Developer transfers its interest in Developer=s Property, it shall be released from all liability for performance of any covenants, restrictions and conditions on the part of the Developer which is thereafter to be performed hereunder. The transferee shall be deemed to have assumed all of the covenants, restrictions and conditions herein to be observed by the Developer with the result that such covenants, restrictions and conditions shall bind Developer, its successors and assigns, only during and in respect of their respective successive periods of ownership.

Developer acknowledges that Owner is a limited liability company, and so long as Owner is a limited liability company, duly organized and validly existing under the laws of the state in which it is organized, and registered to do business, if required, in the state in which the Parcels are located, notwithstanding anything to the contrary herein contained, there shall be absolutely no personal liability on persons, firms or entities constituting the members of Owner with respect to any of the terms, covenants, conditions and provisions of this Agreement, and Developer shall, subject to the rights of any first mortgagee, look solely to the assets of Owner and the interest of Owner, its successors and assigns, in the Parcels and Center for the satisfaction of each and every remedy of Developer in the event of default by Owner hereunder; such exculpation of personal liability is absolute and without any exception whatsoever, but is personal to Owner and shall not apply to any future owner of the Parcels.

16. INDEMNIFICATION AND INSURANCE

a. Indemnification of Developer. Owner shall indemnify, defend, protect and hold harmless Developer, from and against all losses, claims, liabilities, damages, costs and expenses (including, without limitation, reasonable attorney's fees, para-professional fees and other costs of litigation) arising out of, related to, caused by or resulting from any default by Owner hereunder or the death of or any accident, injury (personal or bodily), loss or damage whatsoever, actually or claimed to be suffered or sustained by any person, or to the property of any person (such losses, claims, liabilities, damages, costs and expenses are collectively referred to hereinafter as "Loss"), as shall occur on the Parcels, except to the extent that any such Loss is caused by reason of the gross negligence or willful misconduct of Developer, its agents, contractors or employees.

b. Owner's Commercial General Liability Insurance. Owner shall at all times maintain in full force and effect commercial general liability insurance with a financially responsible insurance company or companies authorized to do business in the state where the Parcels are located, with an AM Best rating of "A-IX" (or the equivalent thereof) or better in each of the previous three (3) years, written on an occurrence basis covering claims of Loss from products and completed operations, contractual liability (including, without limitation, coverage of the indemnities under this Agreement), bodily injury including death, personal injury, and broad-form property damage arising out of incidents or accidents on the Parcels (including the consequential damages from any of the foregoing),

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with a limit of not less than Three Million Dollars (\$3,000,000) per occurrence. Said limits may be provided through a combination of primary and excess (umbrella) liability policies. All insurance shall be primary with respect to the Parcels and shall name Developer as an additional insured to the extent of the foregoing indemnity.

c. Owner's All Risk Property Insurance. Owner shall carry all risk property insurance coverage, including builder's risk insurance coverage, in an amount at least equal to the full replacement cost of all Improvements on the Parcels, without deduction for depreciation, insuring against all risks (subject to exclusion of certain risks customarily excluded from time to time in the so-called "all-risk" policy), and insuring specifically against at least the following perils: loss or damage by fire, lightning, windstorm, cyclone, tornado, hail, explosion, earthquake, subsidence, flood, water damage other than floor or sprinkler leakage damage, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, collapse of building or roof, boiler and machinery equipment, aircraft, vehicle and smoke damage and sprinkler leakage. Such insurance shall be carried with a financially responsible insurance company or companies authorized to do business in the state where the Parcels are located with a Best rating of "A-IX" (or the equivalent thereof) or better in each of the previous three (3) years. Such insurance may be carried in whole or in part under a policy or policies covering other liabilities and locations of the Owner, or a subsidiary, successor, affiliate or controlling corporation of such Owner; provided, however, that (A) such policy or policies shall insure the risks and full amount required under this Agreement and (B) the inclusion of additional coverage or risks shall not materially diminish the coverage or insurance proceeds available under said policy or policies.

d. Owner's Builder's Risk Insurance. During the performance of any Owner's Work, Owner shall maintain or cause to be maintained Builder's risk Insurance covering Developer, Owner and the tenant under any lease(s) of the Parcels, as their interests may appear, against loss or damage by fire, vandalism and malicious mischief and such other risks as are customarily covered by a so-called "extended coverage endorsement" of Owner's Work and all materials, equipment, supplies and temporary structures of all kinds incidental to Owner's Work and equipment, all while forming a part of or contained in such improvements or temporary structures, or while on the Parcels or within 100 feet thereof or when adjacent thereto while on sidewalks, streets or alleys, all to the full insurable value thereof at all times on a completed value basis.

e. Dramshop Insurance. If alcohol is served from, in or about the Premises, Owner shall cause to be maintained so-called "dramshop" insurance insuring both Developer, Owner and the tenant under any leases of the Parcels with commercially reasonable limits, provided however, so long as the current Leases remain in effect, such dramshop insurance shall only be required in the event the State of Illinois now has, or hereafter enacts a statute which provides that a judgment obtained against a retailer, or any other person or entity, dispensing alcoholic beverages, as defined by said statute, shall be a lien

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against the real estate from which said alcoholic beverages were improperly dispensed (sometimes referred to as a dram shop act).

f. Certificate of Insurance. Owner shall, upon execution of this Agreement and thereafter upon request, furnish a certificate to Developer, evidencing that the insurance referred to herein above is in full force and effect. All policies of insurance carried by Owner, or endorsements issued under any blanket policy or policies covering those liabilities required to be insured against, shall provide that the same may not be canceled or reduced in scope or amount below that required hereunder without at least thirty (30) days' prior written notice being given by the insurer to Developer.

g. Indemnification of Owner. Developer shall indemnify, defend, protect and hold harmless Owner, from and against all losses, claims, liabilities, damages, costs and expenses (including, without limitation, reasonable attorney's fees, para-professional fees and other costs of litigation) arising out of, related to, caused by or resulting from any default by Developer hereunder or the death of or any accident, injury (personal or bodily), loss or damage whatsoever, actually or claimed to be suffered or sustained by any person, or to the property of any person (such losses, claims, liabilities, damages, costs and expenses are collectively referred to hereinafter as "Loss"), as shall occur on the Common Areas, except to the extent that any such Loss is caused by reason of the gross negligence or willful misconduct of Owner, its agents, contractors or employees.

h. Developer's Commercial General Liability Insurance. Developer shall at all times maintain in full force and effect commercial general liability insurance with a financially responsible insurance company or companies authorized to do business in the state where the Common Areas is located, with an AM Best rating of "A-IX" (or the equivalent thereof) or better in each of the previous three (3) years, written on an occurrence basis covering claims of Loss from products and completed operations, contractual liability (including, without limitation, coverage of the indemnities under this Agreement), bodily injury including death, personal injury, and broad-form property damage arising out of incidents or accidents on the Common Areas (including the consequential damages from any of the foregoing), with a limit of not less than Three Million Dollars (\$3,000,000) per occurrence. Said limits may be provided through a combination of primary and excess (umbrella) liability policies. All insurance shall be primary with respect to the Common Areas and shall name Owner as an additional insured to the extent of the foregoing indemnity.

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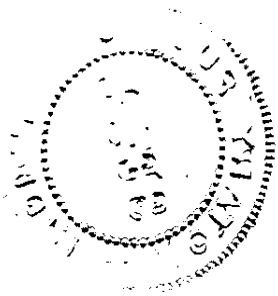
e. Dramshop Insurance. If alcohol is served from, in or about the Premises, Owner shall cause to be maintained so-called "dramshop" insurance insuring both Developer, Owner and the tenant under any leases of the Parcels with commercially reasonable limits, provided however, so long as the current Leases remain in effect, such dramshop insurance shall only be required in the event the State of Illinois now has, or hereafter enacts a statute which provides that a judgment obtained against a retailer, or any other person or entity, dispensing alcoholic beverages, as defined by said statute, shall be a lien against the real estate from which said alcoholic beverages were improperly dispensed (sometimes referred to as a dram shop act).

f. Certificate of Insurance. Owner shall, upon execution of this Agreement and thereafter upon request, furnish a certificate to Developer, evidencing that the insurance referred to herein above is in full force and effect. All policies of insurance carried by Owner, or endorsements issued under any blanket policy or policies covering those liabilities required to be insured against, shall provide that the same may not be canceled or reduced in scope or amount below that required hereunder without at least thirty (30) days' prior written notice being given by the insurer to Developer.

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OWNER:

RED GARDEN, LLC

By: _____

[Signature]
Marci Shapiro, Managing Member
Paul Schmidt, Authorized Agent

STATE OF New Jersey)

COUNTY OF Bergen)

) SS:

Paul Schmidt as authorized agent for

Before me, a Notary Public in and for said County and State, personally appeared Marci Shapiro, to me personally known and known to be the Managing Member of Red Garden, LLC, who executed the foregoing instrument for and on behalf of said limited liability company.

WITNESS my hand and Notarial seal this 28th day of December, 2000.

Notary Public

[Signature]
KAREN WINDT
A Notary Public of New Jersey
My Commission Expires May 19, 2004

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LIST OF EXHIBITS

- | | |
|------------|---|
| Exhibit A | Legal Description of Developer's Property |
| Exhibit B- | Legal Description of Parcels |
| Exhibit C | Site Plan of the Center |

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EXHIBIT A

Shopping Center Legal Description Lincolnwood

Lots 1, 2, 3, 4, 5, 6, 7 and 8 in Lincolnwood Town Center Subdivision, being a subdivision of part of the North Half of Section 35, Township 41 North, Range 13 East of the Third Principal Meridian in Cook County, Illinois.

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EXHIBIT A-1

Red Lobster Parcel

THAT PART OF LOT 8, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF LOT 8; THENCE NORTH 88 DEGREES, 20 MINUTES, 30 SECONDS EAST, 238 FEET ALONG THE NORTH LINE OF LOT 8; THENCE SOUTH 01 DEGREE, 39 MINUTES, 30 SECONDS EAST, 127.88 FEET; THENCE SOUTH 44 DEGREES, 03 MINUTES, 39 SECONDS WEST, 176.40 FEET TO THE SOUTHWEST LINE OF LOT 8; THENCE NORTH 45 DEGREES, 56 MINUTES, 21 SECONDS WEST, 160 FEET ALONG LAST SAID LINE TO THE WEST LINE OF LOT 8; THENCE NORTH 01 DEGREE, 39 MINUTES, 21 SECONDS WEST, 136.50 FEET ALONG LAST SAID LINE TO THE PLACE OF BEGINNING, ALL IN LINCOLNWOOD TOWN CENTER RESUBDIVISION, BEING A PART OF THE NORTH 1/2 OF SECTION 35, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

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EXHIBIT A-2

Olive Garden

THAT PART OF LOT 8 DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 8; THENCE SOUTH 89 DEGREES 56 MINUTES 11 SECONDS WEST 172.00 FEET ALONG THE SOUTH LINE OF SAID LOT 8; THENCE NORTH 45 DEGREES 56 MINUTES 21 SECONDS EAST 56.13 FEET ALONG THE SOUTHWEST LINE OF LOT 8; THENCE NORTH 44 DEGREES 03 MINUTES 39 SECONDS EAST 176.40 FEET THENCE NORTH 1 DEGREES 39 MINUTES 30 SECONDS WEST 127.88 FEET TO THE NORTH LINE OF LOT 8 A DISTANCE OF 238.00 FEET EAST OF THE NORTHWEST CORNER OF LOT 8; THENCE NORTH 88 DEGREES 20 MINUTES 30 SECONDS EAST 73.00 FEET ALONG THE NORTH LINE OF LOT 8; THENCE SOUTH 11 DEGREES 20 MINUTES 44 SECONDS EAST 30.00 FEET; THENCE SOUTH 81 DEGREES 33 MINUTES 33 SECONDS EAST 28.00 FEET TO THE EAST LINE OF LOT 8; THENCE SOUTH 0 DEGREES 03 MINUTES 49 SECONDS EAST 140.00 FT; THENCE SOUTH 89 DEGREES 56 MINUTES 11 SECOND WEST 13.50 FEET; THENCE SOUTH 0 DEGREES 03 MINUTES 49 SECONDS EAST 122.00 FEET ALL ALONG SAID EAST LINE TO THE PLACE OF BEGINNING, ALL IN LINCOLNWOOD TOWN CENTER SUBDIVISION, BEING A PART OF THE NORTH 1/2 OF SECTION 35, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

NOW IS SIMON™

3333 W. Touhy Avenue
 Lincolnwood, IL 60465
 CORP # 2310

M

10171860

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MCCORMICK BLVD.

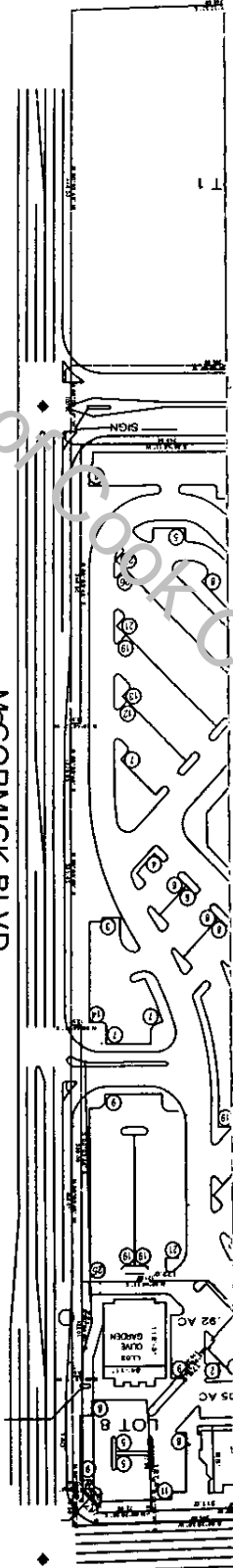


Exhibit C

This exhibit is provided for illustrative purposes only, and shall not be deemed to be a warranty, representation or agreement by Landlord that the Center, Common Areas, buildings and/or stores will be as illustrated on this exhibit, or that any tenants which may be referenced on this exhibit will at any time be occupants of the Center. Landlord reserves the right to modify size, configuration and occupants of the Center at any time.

PROJECT DATA

CARSON PIRIE SCOTT 118,327
 JOPENNEY 106,110

TOTAL DEPARTMENT STORE GLA 224,437

Level 01 112,008
 Level 02 89,906

TOTAL SMALL SHOPS GLA 201,914

426,351

TOTAL AMOUNT OF PARKING: 1880

PARKING RATIO: 4.42

Modified: October 27, 2007

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