

UNOFFICIAL COPY

0010894957

7876/0148 38 001 Page 1 of 36

2001-09-25 15:57:55

Cook County Recorder 91.00



0010894957

Return to Box 324 (MTJ)  
Record against P.I.N.S.:  
18-07-104-001 through -022, inclusive, and -031.  
18-07-200-001 through -021, inclusive.  
18-07-103-001, -006, -007, -008, and -012.

MAIL TO RECORDER'S BOX 324

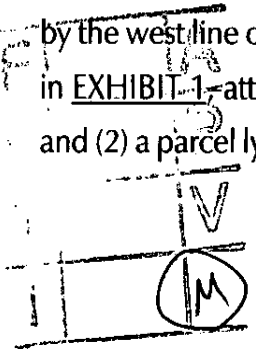
Property of Cook County Clerk's Office

**DECLARATION OF EASEMENTS, COVENANTS AND CONDITIONS**

**THIS DECLARATION OF EASEMENTS, COVENANTS AND CONDITIONS**, (hereinafter referred to as the "DECLARATION") is made effective as of this 4<sup>th</sup> day of SEPTEMBER, 2001, by and between the Village of Western Springs, an Illinois Municipal Corporation (hereinafter the "VILLAGE"), and Gurrie Rhoads, individually, and Gurrie Rhoads d/b/a Rhoads Development Company, (Gurrie Rhoads and Rhoads Development Company are collectively referred to as the "DEVELOPER") and George L. Bruckert, Jr., as Authorized Representative and Trustee under the Last Will and Testament of George L. Bruckert, deceased, (hereinafter referred to as the "OWNER OF RECORD"). Gurrie Rhoads, Rhoads Development Company and George L. Bruckert, Jr., as Trustee, are collectively referred to in this DECLARATION as the "OWNERS."

**RECITALS**

**WHEREAS**, the OWNER OF RECORD holds legal title to and possession of two parcels of real property generally located at the southwest corner of the Commonwealth Avenue and 47<sup>th</sup> Street intersection in Western Springs, Cook County, Illinois, consisting of (1) a parcel lying adjacent to and west of the improved Commonwealth Avenue right-of-way and south of the 47<sup>th</sup> Street right-of-way with a westerly lot line defined by the west line of a service road right-of-way located east of the Flagg Creek watercourse (as legally described in EXHIBIT 1 attached hereto and made a part hereof and hereinafter known as the "SUBJECT PROPERTY"), and (2) a parcel lying adjacent to and west of the SUBJECT PROPERTY and extending to the west side and bank



MAIL TO RECORDER'S BOX 324

RECORDING FEE 91.00

(NFK) 9/25/01 61006

OK BY GM 3689

of the Flagg Creek watercourse (as legally described in EXHIBIT 2, attached hereto and made a part hereof and hereinafter referred to as "PARCEL "A""); and

**WHEREAS**, the DEVELOPER is the contract purchaser of the SUBJECT PROPERTY and PARCEL "A" and desires to construct on the SUBJECT PROPERTY a retail garden center and two (2) office buildings. The DEVELOPER has petitioned for and received from the VILLAGE final approval of a development plan for a conditional use commercial planned development for the SUBJECT PROPERTY for the purpose of constructing a retail garden center and two (2) office buildings in the C-2 Community Shopping District under Ordinance No. 01-2162 (hereinafter referred to as the "COMMONWEALTH COMMERCIAL DEVELOPMENT"). Ordinance No. 01-2162 is attached hereto as EXHIBIT 3 and made a part hereof. Since PARCEL "A" was not part of the approved COMMONWEALTH COMMERCIAL DEVELOPMENT, no buildings have been approved by the VILLAGE for construction on said property.

The approval of the COMMONWEALTH COMMERCIAL DEVELOPMENT was subject to the DEVELOPER satisfying 34 conditions set forth on EXHIBIT A of Ordinance No. 01-2162, including (1) condition Number 9 which provides that the unimproved Commonwealth Avenue right-of-way and a service road, which are both located within the boundaries of the SUBJECT PROPERTY and are both legally described in Vacation Ordinance No. 01-2161 (hereinafter referred to as the "COMMONWEALTH ROW"), be vacated, (2) condition Number 12 which provides that the OWNERS, at their cost, are responsible for the future installation, maintenance, repair and replacement of all storm water management and other drainage structures, water and sewer mains and related structures, including without limitation fire hydrants, driveway and parking lot improvements, and landscaping and retaining wall improvements under terms, conditions and provisions set forth in this DECLARATION as approved by the Offices of the Village Engineer and Village Attorney, and (3) condition Number 31 which provides that the OWNERS shall sign this DECLARATION providing for the future maintenance of that portion of Flagg Creek lying adjacent to the SUBJECT PROPERTY and PARCEL "A" under terms, conditions and provisions approved by the Offices of the Village Engineer and Village Attorney; and

**WHEREAS**, the corporate authorities of the Village of Western Springs approved the vacation of the COMMONWEALTH ROW under Ordinance No. 01-2161, on March 19, 2001, subject to the terms set forth in said Ordinance. Also, the corporate authorities of the Village of Western Springs approved a document entitled, Agreement Made Between the Village of Western Springs and Currie Rhoads in regard to the Vacation of a Portion of the Commonwealth Avenue and a Service Road (hereinafter the "VACATION AGREEMENT")

under Resolution No. 01-1689, on March 19, 2001, subject to the terms set forth in said VACATION AGREEMENT; and

**WHEREAS**, the DEVELOPER has paid compensation to the Village of Western Springs in the amount of Thirty Six Thousand and no/100 Dollars (\$36,000.00) for the vacation as required by Ordinance No. 01-2161 and the VACATION AGREEMENT, and has fulfilled the remaining obligations set forth in Ordinance No. 01-2161 and the VACATION AGREEMENT; and

**WHEREAS**, the terms, conditions, provisions and other obligations of this DECLARATION have been reviewed and approved by the Offices of the Village Engineer and the Village Attorney; and

**WHEREAS**, the OWNER OF RECORD agrees to sell and transfer legal title to the SUBJECT PROPERTY and PARCEL "A" to the DEVELOPER. In addition, prior to the consumation of the sale and transfer of legal title to the SUBJECT PROPERTY and PARCEL "A," the OWNER OF RECORD authorizes and consents to the recording of the following specific documents and any related, necessary documents by the VILLAGE and the DEVELOPER against title to said properties: (1) the Plat of Vacation, the VACATION AGREEMENT and Ordinance No. 01-2161 relative to the vacation of the COMMONWEALTH ROW; (2) the final Plat of Subdivision and Ordinance No. 01-2162 relative to the COMMONWEALTH COMMERCIAL DEVELOPMENT; and (3) this DECLARATION relating to the COMMONWEALTH COMMERCIAL DEVELOPMENT; and

**WHEREAS**, once the OWNER OF RECORD sells and transfers legal title to the SUBJECT PROPERTY and PARCEL "A" to the DEVELOPER as required by this DECLARATION, the OWNER OF RECORD shall be released from any and all other obligations set forth in this DECLARATION; and

**WHEREAS**, the Village of Western Springs is authorized to enter into this Agreement in accordance with the authority and powers provided by Article VII, Section 10 of the Illinois Constitution of 1970; and

**WHEREAS**, the terms, conditions, provisions and other obligations of this DECLARATION are perpetual in nature, and shall be covenants running with the SUBJECT PROPERTY and PARCEL "A" and shall not terminate or expire, unless authorized in writing by the corporate authorities of the Village of Western Springs, in their sole discretion.

**NOW, THEREFORE**, in consideration of the Village of Western Springs approving the COMMONWEALTH COMMERCIAL DEVELOPMENT under Ordinance No. 01-2162, the VACATION AGREEMENT under Resolution No. 01-1689 and the vacation of the COMMONWEALTH ROW under Ordinance No. 01-2161, and other good and valuable consideration including the compensation paid to the VILLAGE by the DEVELOPER for the right-of-way vacation, the receipt and sufficiency of which are hereby acknowledged, Gurrie Rhoads, Rhoads Development Company and George L. Bruckert, Jr., as Authorized Representative and Trustee under the Last Will and Testament of George L. Bruckert, deceased, agree to the following terms, conditions and provisions and other obligations set forth in this DECLARATION:

**I. INCORPORATION OF RECITALS**

The foregoing Recitals and all documents recited herein which are not attached as exhibits to this DECLARATION are incorporated by reference as if fully set forth herein as material terms, conditions and provisions of this DECLARATION.

**II. EASEMENTS, COVENANTS, AND CONDITIONS TO RUN WITH THE LAND (THE SUBJECT PROPERTY AND PARCEL "A")**

A. The OWNERS agree to fulfill and comply with all of the terms, conditions and provisions and other obligations set forth in this DECLARATION as well as the VILLAGE documents approving the COMMONWEALTH COMMERCIAL DEVELOPMENT under Ordinance No. 01-2162 and its attached exhibits, approving the VACATION AGREEMENT for the COMMONWEALTH ROW under Resolution No. 01-1689 and their attached exhibits, and vacating the COMMONWEALTH ROW under Ordinance No. 01-2161 and its attached exhibits.

B. The easements, covenants and conditions and other obligations set forth in this DECLARATION shall run with the land referred to herein as the SUBJECT PROPERTY and PARCEL "A" even if the land is consolidated, subdivided or all or some portion thereof is sold, leased or otherwise transferred at some future date, unless the corporate authorities of the Village of Western Springs, in their sole discretion, consent to the termination or modification of such easements, covenants and conditions and other obligations. The easements, covenants and conditions and other obligations set forth in this DECLARATION shall be binding upon and enforceable against all successors in title or interest, grantees, successor owners, executors, heirs,

representatives, transferees and assigns of the SUBJECT PROPERTY, or any portion thereof, or PARCEL "A" or any portion thereof.

C. Any references to any party to this DECLARATION shall also include the party's successors in title or interest, grantees, successor owners, executors, heirs, representatives, transferees, and assigns. It is understood by the parties that the DEVELOPER intends to acquire legal title to the SUBJECT PROPERTY and PARCEL "A" and that if such a transfer of ownership occurs that the DEVELOPER, as well as any other person who obtains an ownership interest in the SUBJECT PROPERTY or PARCEL "A" in the future, will be bound by the terms, conditions and provisions and other obligations set forth in this DECLARATION. It is the obligation of the legal or beneficial owners of the SUBJECT PROPERTY and PARCEL "A" to maintain on file with the VILLAGE a current list of the names, addresses and telephone numbers of all persons or entities that have an ownership interest in said properties.

D. The OWNERS agree as follows:

1. The OWNERS declare and grant to the VILLAGE the following perpetual, non-exclusive easements over, under across, in and upon the entire SUBJECT PROPERTY and PARCEL "A", except for those portions of the SUBJECT PROPERTY improved with a principal building (e.g., the garden center building and the office buildings), and the Flagg Creek watercourse lying adjacent to the SUBJECT PROPERTY and PARCEL "A" for the purposes and subject to the terms, conditions and provisions of this DECLARATION, all of which shall run with the land both as to benefit and burden, and which shall be binding upon and inure to the benefit of the OWNERS, their successors in title or interest, grantees, successor owners, executors, heirs, representatives, transferees and assigns;
2. The OWNERS agree and declare that the Flagg Creek watercourse maintenance, general property maintenance and infrastructure maintenance provisions and obligations pertaining to both the SUBJECT PROPERTY and PARCEL "A," as set forth in this DECLARATION or in other VILLAGE documents approved relative to the COMMONWEALTH COMMERCIAL DEVELOPMENT, are material terms, conditions and provisions of this DECLARATION and they agree to fulfill and comply with those maintenance provisions and related obligations; and

3. The OWNERS, at their cost, agree to install, maintain, repair and replace all infrastructure (above and below grade) improvements, storm water management and other drainage structures, water and sewer mains and related structures, including without limitation fire hydrants, driveway and parking lot improvements, and landscaping and retaining wall improvements relative to the COMMONWEALTH COMMERCIAL DEVELOPMENT so that said improvements (1) perform or operate as designed, (2) are maintained on an as needed basis or as directed by the Department of Code Enforcement and the Village Engineer to remain in a safe and good working condition, and (3) continue to conform to the applicable requirements of the Municipal Code of Western Springs of 1997, as amended, and any manufacturers' design specifications and accepted industry standards. The OWNERS grant to the VILLAGE a non-exclusive easement for entry and access over, under, across in and upon all parts of the SUBJECT PROPERTY and PARCEL "A" for purposes of providing the VILLAGE with the right but not the obligation or duty to perform such maintenance, repair and replacement work to said improvements, in its sole discretion, along with the right to recover the cost of such work directly from the OWNERS and all successors in title or interest, grantees, successor owners, executors, heirs, representatives, transferees and assigns or to lien said properties and take all other action authorized by 65 ILCS 5/11-31-1, as amended, or 65 ILCS 5/11-31-2, as amended, or similar applicable law. Except in emergency situations, the VILLAGE shall provide prior written notice to the OWNERS of the specific instances of failure to comply with any of the terms, conditions, provisions or obligations of this DECLARATION, and the OWNERS shall have a reasonable time period, as determined by the Department of Code Enforcement and the Village Engineer, to remedy said defects before the VILLAGE, in its discretion, enters onto said properties to remedy said defects. The OWNERS shall reimburse the VILLAGE for the cost of any such remedial work upon demand. If the OWNERS fail to reimburse the VILLAGE, they consent and agree that the cost of such remedial work shall, upon recordation of a notice of lien with the Recorder of Deeds of Cook County, Illinois, constitute either a Section 11-31-1 or Section 11-31-2 lien against the title to the SUBJECT PROPERTY or PARCEL "A" (or both) and said lien can be foreclosed upon in accordance with 65 ILCS 5/11-31-1, as amended, or 65 ILCS 5/11-31-2, as amended. The OWNERS, at their cost, shall repair pavement, concrete, landscaped areas or other areas damaged by the VILLAGE if the VILLAGE performs such future installation, maintenance, repair and replacement work. If the VILLAGE performs such work, it can include said costs in the Section 11-31-1 or Section 11-31-2 lien referred to above.



**III. MAINTENANCE OBLIGATIONS FOR THE SUBJECT PROPERTY AND PARCEL "A"**

A. The OWNERS agree to fulfill and comply with all of the terms, conditions and provisions and other obligations set forth in the VILLAGE documents approving the COMMONWEALTH COMMERCIAL DEVELOPMENT under Ordinance No. 01-2162 and its attached exhibits (see Exhibit 3 attached hereto), approving the VACATION AGREEMENT for the COMMONWEALTH ROW under Resolution No. 01-1689 and its attached exhibits, and vacating the COMMONWEALTH ROW under Ordinance No. 01-2161 and its attached exhibits, and any future amendments to such documents. The VACATION AGREEMENT and Ordinance No. 01-2161 with its attached exhibits are incorporated herein by reference and made a part hereof.

**IV. MAINTENANCE OBLIGATIONS FOR FLAGG CREEK**

A. The OWNERS, at their cost, agree to take all necessary action (including but not limited to weed and tree cutting and rock, silt and debris removal) relative to that portion of the Flagg Creek watercourse (and its east and west sides and banks) lying adjacent to the SUBJECT PROPERTY and PARCEL "A" in accordance with the provisions of Title 5 and any other applicable provisions of the Village of Western Springs Municipal Code, as amended, or as directed by the Department of Code Enforcement and the Village Engineer to assure that no condition, whether artificial or natural (including without limitation, all types of vegetation, leaves, branches, roots, plants, trees, shrubs, weeds, beaver dams, log jams, silt, rocks, debris, refuse, junk, or any other type of material or objects) in or adjacent to the Flagg Creek watercourse, including its banks and sides, slows or otherwise impedes, retards or reduces the capacity of the free flow of water in the Flagg Creek watercourse. Except in emergency situations, the VILLAGE shall provide prior written notice to the OWNERS of the specific instances of failure to comply with any of the terms, conditions, provisions or obligations of this DECLARATION, and the OWNERS shall have a reasonable time period, as determined by the Department of Code Enforcement and the Village Engineer, to remedy said defects before the VILLAGE, in its discretion, enters onto said properties to remedy said defects. The OWNERS, at their expense, shall complete all specified remedial work in a timely manner and the maintenance obligations set forth in this DECLARATION shall be the sole responsibility of the OWNERS. However, nothing in this DECLARATION shall be deemed to conflict with the VILLAGE'S right to access and enter onto the SUBJECT PROPERTY and PARCEL "A" pursuant to and for the purposes set forth in this DECLARATION.

**V. EASEMENTS FOR INGRESS AND EGRESS**

The OWNERS shall reserve for themselves and grant to the VILLAGE (and its employees, agents and contractors), a perpetual non-exclusive easement over, under, across, in and upon the property legally described in EXHIBIT 1 and 2, consisting of the entire area of the SUBJECT PROPERTY and PARCEL "A", except for those portions of the SUBJECT PROPERTY improved with a principal building (e.g., the garden center and the office buildings), and that portion of the Flagg Creek watercourse (and its east and west sides and banks) lying west of and adjacent to the SUBJECT PROPERTY and PARCEL "A", for purposes of providing adequate storm water drainage control and an unimpeded free flowing Flagg Creek watercourse, together with reasonable entry upon and access thereto. Said easement shall be perpetual and shall run with the land and shall be binding upon the OWNERS, their successors in title or interest, grantees, successor owners, executors, heirs, representatives, transferees and assigns, to insure the integrity and free flow of water in the Flagg Creek watercourse and to allow access by the VILLAGE (and its employees, agents or contractors) for maintenance purposes. No obstruction shall be placed or allowed to remain, nor shall alterations be made, which in any manner impedes, retards or reduces the capacity of the free flow of water in the Flagg Creek watercourse. In the event such obstructions or alterations are found to exist, or if the OWNERS, their successors in interest or title, grantees, successor owners, executors, heirs, representatives, transferees, and assigns, otherwise fail to properly maintain the Flagg Creek watercourse in accordance with the terms of this DECLARATION, the VILLAGE, with prior notice and only after the OWNERS have had a reasonable time period (as determined by the Department of Code Enforcement and the Village Engineer) to remedy any instances of failure to comply with the terms, conditions, provisions or obligations of this DECLARATION, shall have the right, but not the obligation or duty, to perform, or have performed on its behalf, any maintenance work in, to or upon the Flagg Creek watercourse and its adjacent side and bank areas, or to remove said obstructions or alterations, or to perform other maintenance, repair, alteration or replacement work as may be reasonably necessary to insure that the free flow of water in the Flagg Creek watercourse remains unimpeded and that no blockage or retarding of such flow or reduction in flow capacity results. In emergency situations, the VILLAGE will attempt to contact the OWNERS but is not required to allow them time to remedy any unsafe or hazardous condition. The OWNERS shall reimburse the VILLAGE for the cost of any such work upon demand, and, if the OWNERS fail to do so, they agree that the cost of such work shall, upon recordation of a notice of lien with the Recorder of Deeds of Cook County, Illinois, constitute a Section 11-31-1 or Section 11-31-2 lien against the title to the SUBJECT PROPERTY or PARCEL "A" (or both), and the OWNERS further consent and agree that said lien can be foreclosed upon in accordance with 65 ILCS 5/11-31-1, as amended, and 65 ILCS 5/11-31-2, as amended. The cost of work incurred by either the VILLAGE or any of its contractors, employees or agents shall include all expenses and costs associated with the performance of such work, including, but not limited to, reasonable



engineering, consulting and attorneys' fees related to the planning and actual performance of the work.

**VI. EXHIBITS**

The following marked exhibits are attached to this DECLARATION and are made a part hereof:

EXHIBIT 1 - Legal Description of the SUBJECT PROPERTY

EXHIBIT 2 - Legal Description of the PARCEL "A"

EXHIBIT 3 - Ordinance No. 01-2162 (Approving the COMMONWEALTH COMMERCIAL DEVELOPMENT)

**VII. MISCELLANEOUS PROVISIONS**

- A. If any term, condition or provision of this DECLARATION or the application of any such term, condition or provision to any party shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this DECLARATION or the application of such term, condition or provision to other parties or persons shall not be affected, and each remaining provision of this DECLARATION shall be enforced to the fullest extent permitted by law.
- B. Each party to this DECLARATION has read and understood the terms, conditions and provisions and other obligations set forth in this DECLARATION and voluntarily agrees to be bound by the same. Each party had an opportunity to consult with its own legal counsel relative to the terms, conditions and provisions and other obligations set forth in this DECLARATION, and, after such consultation, voluntarily signed this DECLARATION.
- C. The laws of the State of Illinois shall govern the interpretation, validity, enforcement and performance of the terms of this DECLARATION. The parties agree that for the purpose of any litigation or proceeding brought with respect to this DECLARATION and its enforcement, venue shall be in either the Circuit Courts of Cook County, Illinois or the United States District Court in Chicago, Illinois. The parties agree to submit to the jurisdiction of such courts for the purpose of any such litigation, proceeding or a judgment entered against any party pertaining to this

DECLARATION and its enforcement.

- D. This DECLARATION represents the entire agreement and understanding between the parties concerning the matters set forth in this DECLARATION and supersedes all prior negotiations, discussions, understandings and agreements, whether written or oral, between the parties relating to the subject matter of this DECLARATION.
- E. All notices, demands or other communications of any kind to be given or delivered under this Agreement shall be in writing and shall be deemed to have been properly given if (a) delivered by hand, (b) delivered by a nationally recognized overnight courier service, (c) sent by registered or certified United States Mail, return receipt requested and first class postage prepaid, or (d) facsimile transmission followed by a transmission confirmation copy being sent by U.S. Mail on the same day. Such communications shall be sent to the parties at their respective addresses as follows:

If to DEVELOPER:

Currie Rhoads  
4329 Commonwealth Avenue  
Western Springs, Illinois 60558  
(708) 246 - 2556 (office)  
(708) 246 - 2909 (fax)

If to OWNER OF RECORD:

George L. Bruckert, Jr.  
Riordan & Larson  
208 South LaSalle Street - Suite 650  
Chicago, Illinois 60604  
(312) 346-4740 (office)  
(312) 346-1168 (fax)

If to VILLAGE:

Village Manager  
Village of Western Springs  
740 Hillgrove Avenue  
Western Springs, Illinois 60558  
(708) 246 -1800 (office)  
(708) 246 -0284 (fax)

# UNOFFICIAL COPY

0010894957

Either party may change such address for delivery to the other party by delivery of a notice in conformity with the provisions of this Section specifying such change. Notice shall be deemed proper (i) on the date of delivery, if delivery is by hand, (ii) three (3) days after the date of mailing if sent by certified or registered mail, (iii) on the date of delivery by the overnight courier, or (iv) the next business day after the date of transmission by facsimile.

- F. The OWNERS agree to defend, indemnify and hold harmless the VILLAGE and its officials, employees, agents and contractors from and against any and all claims, actions, lawsuits, damages, costs, expenses, and liabilities, including but not limited to, attorney's fees, costs and expenses of litigation, expert witness fees and consultant fees, asserted against them or sought to be imposed upon them, individually, jointly or severally, and which arise directly or indirectly out of or in connection with the VILLAGE'S performance under the terms of this DECLARATION, except for any omissions or wrongful or negligent acts of the VILLAGE and its officials, employees, agents and contractors performed under this DECLARATION.

## VIII. RECORDING

Upon full execution of this DECLARATION and after the recording the Final Plat of Subdivision for the COMMONWEALTH COMMERCIAL DEVELOPMENT, the VILLAGE, at the DEVELOPER'S cost, shall record this DECLARATION against title to the SUBJECT PROPERTY and PARCEL "A" with the Office of Recorder of Deeds of Cook County, Illinois. The VILLAGE shall provide the OWNERS with a fully executed copy of this DECLARATION that has a recording number affixed thereto.

**IN WITNESS WHEREOF**, Gurrie Rhoads, individually, and as the Owner of Rhoads Development Company, George L. Bruckert, Jr., as Authorized Representative and Trustee under the Last Will and Testament of George L. Bruckert, deceased, and the Village President and Clerk of the Village of Western Springs, as duly authorized under Ordinance No. 01-2161 and Ordinance No. 01-2162, have signed this Declaration of Easements, Covenants and Conditions on the day and year written below and their signatures

# UNOFFICIAL COPY

0010894957

have been attested to by a Notary Public as set forth on the attached Attestation pages.

RHOADS DEVELOPMENT COMPANY

By: *Gurrie Rhoads*  
Gurrie Rhoads, Owner

Date: 8-17-01

VILLAGE OF WESTERN SPRINGS

By: *John W. Krawick*  
Village President

Date: 9-6-01

GURRIE RHOADS

By: *Gurrie Rhoads*  
Gurrie Rhoads

Date: 8-17-01

ATTEST: *Jeanne M. Joice*  
Village Clerk

Date: 9-6-01

GEORGE L. BRUCKERT, JR., AS AUTHORIZED REPRESENTATIVE  
AND TRUSTEE UNDER THE LAST WILL AND TESTAMENT OF  
GEORGE L. BRUCKERT, DECEASED

By: *George L. Bruckert, Jr.*  
George L. Bruckert, Jr.

Date: 8-17-01

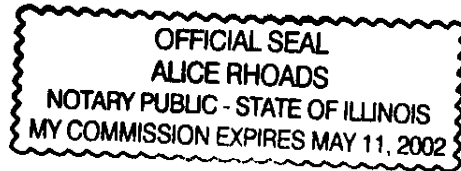
ATTESTATION

I, ALICE RHOADS, do hereby certify on oath, that Gurrie Rhoads, in his individual capacity and as the Owner of Rhoads Development Company, is personally known to me, and appeared before me on this 17<sup>th</sup> day of AUGUST, 2001, and signed this instrument as his free and voluntary act.

Signed and sealed by me on this 17<sup>th</sup> day of AUGUST, 2001.

Alice Rhoads

Notary Public



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

0010894957

## ATTESTATION

I, ALICE RHOADS, do hereby certify on oath, that George L. Bruckert, Jr., as Authorized Representative and Trustee under the Last Will and Testament of George L. Bruckert, deceased, personally known to me, appeared before me on this 17<sup>th</sup> day of AUGUST, 2001, and signed this instrument as his free and voluntary act.

Signed and sealed by me on this 17<sup>th</sup> day of AUGUST, 2001.

Alice Rhoads

Notary Public





# UNOFFICIAL COPY

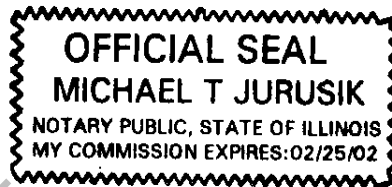
0010894957

## ATTESTATION

I, Michael T. Jurusik, do hereby certify on oath, that the President of the Village of Western Springs, personally known to me, appeared before me on this 6<sup>TH</sup> day of SEPTEMBER, 2001, and signed this instrument as his free and voluntary act.

Signed and sealed by me on this 6<sup>TH</sup> day of SEPTEMBER, 2001.

Michael T. Jurusik  
Notary Public



This Document was Prepared By:

Michael T. Jurusik  
Klein, Thorpe and Jenkins, Ltd.  
20 North Wacker Drive, Suite 1660  
Chicago, Illinois 60606  
(312) 984-6400  
[mtjurusik@ktjnet.com](mailto:mtjurusik@ktjnet.com)

C:\My Documents\WESTERN SPRINGS\Zoning Matters\Planned Development\47th and Commonwealth Development\Declaration of Easement-Commonwealth03-12-01.wpd

# UNOFFICIAL COPY

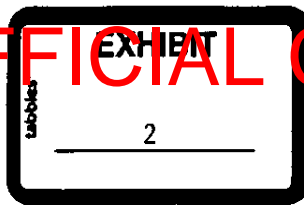
0010894957

**EXHIBIT 1**  
**Legal Description**

Lot 1 in Commonwealth Commercial Center Subdivision, being a Subdivision in th North of Half of Section 7, Township 38 North, Range 11, East of the Third Principal Meridian, in Cook County, Illinois.

Property of Cook County Clerk's Office

UNOFFICIAL COPY



PARCEL "A"

0010894957

## LEGAL DESCRIPTION

That part of Lots 25, 26 and 27 in Block 3 of Forest Hills Commercial and Park District Subdivision described as follows: Commencing at a point 57.28 feet South of the Northeast corner of Lot 27 in Block 3 of said Subdivision for a Point of Beginning; thence South 00 degrees 02 minutes 39 seconds West, along the East line of said Lots 27, 26 and 25, a distance of 215.47 feet to a point on the East line of Lot 25 in Block 3; thence North 30 degrees 14 minutes 18 seconds West to a point on the West Line of said Lot 26 which is 44.44 feet South of the Northwest corner of said Lot 26; thence North along the West line of said Lots 26 and 27 to a point in the West line of said Lot 27 which is 60.18 feet South of the Northwest corner of said Lot 27; thence Easterly a distance of 74.84 feet, more or less, to the Point of Beginning.

All in Forest Hills Commercial and Park District Subdivision of Blocks 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32, 41, 42, 43 and 44 in Forest Hills of Western Springs, a subdivision of the East 1/2 of Section 7, Township 38 North, Range 12 East of the Third Principal Meridian, and that part of Blocks 12, 13, 14 and 15 in The Highlands, being a subdivision of the Northwest 1/4 and the West 800 feet of the North 144 feet of the Southwest 1/4 of Section 7, Township 38 North, Range 12 East of the Third Principal Meridian, lying East of a line 33 feet West of and parallel with the East line of said Northwest 1/4 of said Section 7; also Lots 1, 2, 3, 4 and 5 (except that part thereof dedicated for street by Plat Document Number 209880) in Block 12 in The Highlands, aforesaid, all in Cook County, Illinois; also Fair Elms Avenue (now vacated), as shown on Plat of Forest Hills of Western Springs, aforesaid, filed in the Office of the Registrar of Titles of Cook County, Illinois, as Document Number 209880.

also

That part of Lots 9 and 10 in Block 12 in the Highlands, said Highlands being a subdivision of the Northwest 1/4 and the West 800 feet of the North 144 feet of the Southwest 1/4 of Section 7, Township 38 North, Range 12 East of the Third Principal Meridian, described as follows: Commencing at a point 60.18 feet South of the Northeast corner of Lot 10 in Block 12 of said Subdivision for a Point of Beginning; thence South along the East line of said Lots 10 and 9 to a point which is 43.21 feet South of the Northeast corner of said Lot 9; thence Northwesterly, along a line which forms an angle of 30 degrees 10 minutes 40 seconds with the East line of said Lots 10 and 9 in the Northwest quadrant of their intersection, a distance of 95.34 feet to a point on a line which forms an angle of 62 degrees 02 minutes 39 seconds with the last described line in the Southeast quadrant of their intersection; thence Easterly along the last described line a distance of 47.95 feet, more or less, to the Point of Beginning.

# UNOFFICIAL COPY

ORDINANCE NO. 01-2162



VOTE: Passed by an omnibus vote.

Voting aye: Trustees Blackman,

Kannry, Leenheers, McMurray,

Pelizzari, Spetter and President

Milano. Voting nay: none.

DATE: March 19, 2001

APPROVING A FINAL PLAN OF  
SUBDIVISION FOR PHASE ONE OF A  
CONDITIONAL USE COMMERCIAL  
PLANNED DEVELOPMENT FOR A  
COMMERCIAL GARDEN CENTER AND  
OFFICE BUILDING LOCATED AT THE  
SOUTHWEST CORNER OF  
COMMONWEALTH AVENUE AND 47<sup>TH</sup>  
STREET.

0010894957

WHEREAS Gurrie Rhoads, contract purchaser of certain parcels of property adjacent to Commonwealth Avenue and South of 47<sup>th</sup> Street east of Flagg Creek, in Western Springs, Cook County, Illinois, herein referred to as the petitioner, has petitioned the Village of Western Springs for final approval of Phase One of a conditional use commercial planned development for said property for the purpose of constructing a retail garden center and one (1) office building in the C-2 - Community Shopping District; and

WHEREAS, said petition for approval of a preliminary development plan has been reviewed by the Village staff and the Village consultants pursuant to the requirements of the Western Springs Municipal Code of 1997, as amended, Title 10: Development Control Ordinance; Chapter 3: Administrative Bodies and Procedures; Subsection 14: Conditional Uses, Chapter 8: Planned Developments, and Chapter 10: Subdivisions; and

WHEREAS, subsequent thereto, as required by the provisions of the Western Springs Municipal Code of 1997, as amended, Title 10: Development Control Ordinance; Chapter 3: Administrative Bodies and Procedures; Subsection 14: Conditional Uses, Chapter 8: Planned Developments, and Chapter 10: Subdivisions, the Western Springs Plan Commission conducted public meetings for the purpose of reviewing said petition, said meetings occurring on August 17, 2000; September 21, 2000; October 19, 2000; November 9, 2000 and a public hearing was held on September 7, 2000; and

WHEREAS, based upon the submitted petition and the testimony and evidence presented, the Plan Commission makes the following findings of fact and issues the following recommendation in regard to this proposed planned development. Pursuant to Section 10-8-1 of the Western Springs Development Control Ordinance ("DCO"), a planned development is classified as a conditional use and should be evaluated under the seven (7) conditional use Standards and the six (6) planned development Guidelines, unless just cause is shown for any departure from any of these Guidelines.

## Finding of Fact:

### A. Conditional Use Standards

As a general finding of fact which is applicable to and in satisfaction of each of the seven (7) conditional use Standards, the Commission states that the proposed development contains intended land uses, a garden center and two office buildings, which are classified as permitted uses in the C-2 Commercial Shopping District. The proposed development will be built on land (the "subject property") that has a C-2 Commercial Shopping District zoning designation; the land lying west of and adjacent to the subject property and lying east of and adjacent to Flagg Creek, which is zoned under the "A" Single-family Residence District, is not part of the subject property and is not included in the proposed development ("outlot A").

Even though the proposed development is comprised of permitted land uses, the Plan Commission finds that the proposed development satisfies the seven (7) conditional use Standards as follows:

1. **That the establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.**

The Commission finds that the establishment, maintenance or operation of this proposed development will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare because the proposed uses for the property, a garden center and two office buildings, are classified as permitted uses in the C-2 Commercial Shopping District. Moreover, this proposed development does not involve any land uses that are noxious or inherently dangerous or inconsistent with the permitted and customary commercial uses of the applicable zoning District. The conditions, covenants and restrictions that the Commission recommends for the development and for the operation of the garden center and the two office buildings, as set forth in Exhibit "A" attached hereto and made a part hereof, including the landscaping requirement, and the lighting and traffic regulations, are intended so that the development does not have any negative impact on or be detrimental to or endanger the public health, safety, morals, comfort or general welfare.

2. **That the conditional use will not be injurious to the uses and enjoyment in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood in which it is to be located.**

The proposed development will be built on land (the "subject property") that has a long standing C-2 Commercial Shopping District zoning designation; the land lying west of and adjacent to the subject property and lying east of and adjacent to Flagg Creek,

which is zoned under the "A" Single-Family Residence District, is not part of the subject property and is not included in the proposed development ("outlot A"). Because the proposed garden center and two office buildings are classified as permitted uses in the C-2 Commercial Shopping District and the proposed development does not involve any land uses that are noxious or inherently dangerous or inconsistent with the permitted and customary commercial uses of this zoning District, the proposed development will not be injurious to the uses and enjoyment in the immediate vicinity for the purposes already permitted. The proposed development will be a less intensive use of the property than other use in the C-2 Community Shopping District. This proposed development also offers a site plan design, landscape and other amenities that are residential in character as opposed to a more common type of permitted commercial/office retail use (e.g., a strip mall, gas station, dry cleaners or a fast food restaurant) which might substantially diminish or impair property values.

In further satisfaction of the above considerations, the proposed development will provide an attractive, well-maintained earth and sod berm landscaped with desirable vegetation and trees to create a buffer between the residences to the east of Commonwealth Avenue and the development and said berm and landscaping will serve as a visual buffer and a noise buffer to minimize the impact that the Toll Highway has on those residences.

The Commission finds that this planned development will not substantially diminish and impair property values within the surrounding residential area.

3. **That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.**

The Commission finds that the establishment of the proposed development will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning districts of said property. Specifically, the subject property is the last tract of undeveloped land in this area and all of the surrounding property (which is zoned under the R-2 Single-Family Residence or "A" Single-Family Residence classifications) which is suitable for development has either been developed with residential housing or been approved for residential development. In addition, the residentially zoned outlot "A" is located in a floodplain, exhibits poor soil conditions and based on the history of the parcel, it is highly unlikely that the property is going to be developed in the future. Thus, this proposed development creates no impediment to the normal and orderly development and improvement of the surrounding property.

4. **That adequate public utilities, access roads, drainage and/or necessary facilities have been or will be provided.**



The Commission finds that adequate public utilities, access roads, drainage and/or necessary facilities already exist or to the extent such improvements do not exist, they will be provided as part of this proposed development.

5. **That adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion in the public streets.**

Traffic studies have been performed by Kenig, Lindgren, O'Hara, Aboona, Inc. on July 25, 2000, and reviewed by the Village Engineer, James J. Benes and Associates on August 24, 2000, and September 14, 2000. The Village Engineer has concluded that adequate capacity exists at the intersection of 47<sup>th</sup> Street and Commonwealth Avenue as well as the adjacent roadway system to accommodate this development. Moreover, consideration by the Village Engineer has been given as well as to several other design alternatives for ingress and egress to the proposed development from Commonwealth Avenue and 47<sup>th</sup> Street. The Commission finds that adequate measures have been or will be taken to provide safe ingress or egress to the proposed development based on a design plan intended to minimize traffic congestion in the public streets.

6. **That the proposed conditional use is not contrary to the objectives of the current Comprehensive Plan for the Village.**

The Commission finds that the proposed development is not contrary to the objectives of the Village's Official Land Use Plan which is incorporated into the Village's Long Range Plan (a/k/a the Comprehensive Plan) in that this proposed development will enhance the stability of the Village's business areas and provide financial benefits for the whole community because it will create a stronger commercial retail base to generate new retail sales tax revenue to offset the cost of operating the municipality and providing high quality public services to the community. Moreover, the Commission expects that the availability of new office building space will result in attracting a wider variety of service-oriented businesses to the Village as well as possibly encouraging certain service-oriented businesses located in the central business district to relocate to the proposed development thereby increasing the amount of retail space (and sales tax revenue) available within the Village. This proposed development also offers a site plan design, landscape and other amenities that are residential in character as opposed to a more common type of commercial/office retail use (e.g., a strip mall, gas station, dry cleaners or a fast food restaurant). This development will provide an attractive, well-maintained earth and sod berm landscaped with desirable vegetation and trees that buffers the residences to the east of Commonwealth Avenue from both the development and the sight line and noise of the Toll Highway. Consequently, this proposed development will serve to preserve and maintain the basic high quality single-family residential character of the Village.

7. **That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified pursuant to the**

recommendations of the Plan Commission and approved by the Village Board.

The Commission finds that the proposed uses for the property, a garden center and two office buildings, are permitted uses in the C-2 Commercial Shopping District and conform to the applicable regulations of this zoning District, except for those regulations that are to be modified pursuant to this Recommendation. In this instance, the Commission recommends that the required fifty foot (50') front yard set back for the proposed east office building be reduced to forty-five feet (45') and the required fifty foot (50') side yard set back for the proposed garden center be reduced to approximately forty and three tenths feet (40.3'), as proposed by the development plan. The modification of the required front yard set back (office building) and side yard set back (garden center) will not negatively impact the surrounding residential property uses. Also, the Commission recommends that the required sixty-five (65) parking spaces for the garden center use be satisfied by the forty-seven (47) parking spaces provided in the parking lot adjacent to the garden center as well as a sharing of eighteen (18) additional parking spaces located in the parking lot adjacent to proposed office building number one, as designed on the site plan. Based on the information supplied by the petitioner which was reviewed by the Village Engineer in regard to expected peak hours of operation and customer traffic, the sharing of parking spaces between the garden center and the office building(s) will not negatively impact the surrounding residential property uses, public facilities or cause congestion in the public streets.

B. Planned Development Guidelines

The Plan Commission finds that the proposed development satisfies the six (6) planned development Guidelines as follows:

**10-8-3A. The planned development should be compatible with the character of the underlying zoning district in which it is located.**

The Commission finds that this planned development, which consists of a proposed garden center, two office buildings, driveway and parking facilities, landscaping and other related improvements, is compatible with the character of the underlying zoning district (C-2 Commercial Shopping District) in which it is located. In the C-2 Commercial Shopping District, a garden center and an office building are classified as permitted uses and a planned development is listed as a conditional use.

**10-8-3B. The planned development should be consistent with the official planning policies and the Official Land Use Plan.**

The Commission finds that the planned development is generally consistent with the official planning policies and the Official Land Use Plan of the Village because this proposed development will enhance the stability of the Village's business areas and provide financial benefits for the whole community because it will create a stronger commercial retail base to generate new retail sales tax revenue to offset the cost of

operating the municipality and providing high quality public services to the community. Consequently, this proposed development will serve to preserve and maintain the basic high quality single-family residential character of the Village.

Although it is the policy of the Land Use Plan to preserve and maintain the basic high quality single-family residential character of the Village, the Purpose and Intent of the DCO recognizes that its provisions exist to "protect the character and stability of residential, business and industrial areas" within the Village. In addition to simply constructing single-family homes, the Village must provide, on an annual basis, the resources to construct and maintain an infrastructure and provide high quality public services that support and benefit these homes and the citizens of the Village. Since 1992, the Village has embarked on a 20-year infrastructure improvement program (e.g., acquisition and installation of new equipment and making repairs and replacements to the water distribution and production system, sewers, streets, building facilities, other municipal equipment and stock), which is funded out of reserves from the Village's General Fund. Part of the monies that go into this Fund are annual sales tax revenues generated by local retail merchants. Moreover, since the enactment of the Property Tax Extension Limitation Law (tax cap legislation) in 1994, which generally restricts non home rule communities to a maximum 5% annual increase in its general tax levy, the Village's ability to raise additional revenues by increasing its tax levy has been restricted. Thus, the Village has a greater dependence on a strong commercial retail base to generate new retail sales tax revenue to offset the cost of operating the municipality and providing high quality public services to the community. This proposed development will enhance the stability of the Village's business areas and provide financial benefits for the whole community instead of preserving an undeveloped, unproductive commercial parcel.

This proposed development offers a site plan design, landscape and other amenities that are residential in character as opposed to a more common type of commercial/office retail use (e.g., a strip mall, gas station, or fast food restaurant). Moreover, this development will provide an attractive, well-maintained earth and sod berm landscaped with desirable vegetation and trees that effectively buffers and screens the residences to the east of Commonwealth Avenue from both the development and the sight line and noise of the Toll Highway. Finally, for over the past ten years, the property has not attracted any appreciable interest for residential development, albeit one town home development proposal in 1998 which revealed poor soil conditions at the site resulting in the developer refusing to develop the property because of the prohibitive requirements of building residences on such land.

The Commission expects that this proposed development will protect the character and stability of the Village's business areas (See, Section 10-1-2C) in several ways. First, the proposed development will provide a viable relocation site for a long-standing Village-based retail business (Vaughan's) in order to retain the retail sales revenue generated by that business and allow for the expansion of Walgreen's and Dominick's. Second, the Commission expects that the availability of new office building space will result in attracting a wider variety of service-oriented businesses to the Village

as well as possibly encouraging certain service-oriented businesses located in the central business district to relocate to the proposed development thereby increasing the amount of retail space (and sales tax revenue) available within the Village. Equally important, this property is the last parcel of undeveloped commercially zoned land in the Village and therefore, it offers a final opportunity to increase the retail sales revenue collected by the Village by having such land developed in part as a retail commercial use as permitted under the C-2 zoning District.

In regard to the Official Land Use Plan, the Commission acknowledges that the Plan "identifies the specific land uses desired by the Village" as of its adoption date of February 26, 1990. Admittedly, the specific land use recommendation (number 8) states that despite its C-2 zoning classification, the subject property is "inappropriate for commercial use and should be combined with the southern portion of the site to form one residential development site." Consistent with recommendation number 8, the Land Use Map shows the subject property as a "mixed residential" area. Nevertheless, the Commission finds just cause for departing from the specific land use recommendation (number 8) for this property in this case and recommends the proposed commercial/office development for the following reasons:

1. The acts of the Village in approving the Commonwealth development (the southern portion of the site), dedicating a new Commonwealth Avenue right of way (east of the existing Commonwealth Avenue which was never vacated or abandoned by the Village and permitting its sale of the Waterford Subdivision parcel renders land use recommendation (number 8) impractical.
2. The property referred to in recommendation number 8 can no longer be combined with the southern portion of the site to form one residential development, as a consequence of the Commonwealth development, the relocating Commonwealth Avenue and the development of the Waterford Subdivision parcel, and therefore, the specific land use recommendation (number 8) for this property is no longer valid and cannot be achieved.
3. The failed attempt in 1998 to develop the subject property with a residential development revealed that the site has poor soil conditions and the building requirements are prohibitive to build residential housing on such land. The 1998 proposed development produced a study that confirmed that the site was not suitable for a single-family residential housing development because of said poor soil conditions. Except for the 1998 proposed development, there have been no other viable residential development proposals for the site since the adoption of the Land Use Plan in February 1990.
4. The proposed development will be a less intensive use of the property than other use in the C-2 Community Shopping District. This proposed



development also offers a site plan design, landscape and other amenities that are residential in character as opposed to a more common type of permitted commercial/office retail uses (e.g., a strip mall, gas station, dry cleaners or a fast food restaurant) which might substantially diminish or impair property values.

5. The proposed commercial/office use development appears to be a viable proposal.

On this record, the proposed development conforms with or supports the Village's official planning policies in that it satisfies each of the subsections of Section 10-1-2, (PURPOSE AND INTENT) and Section 10-8-2, (INTENT OF PLANNED DEVELOPMENT) of the DCO as well as the six (6) Guidelines required of a planned development (Section 10-8-3 of the DCO).

**10-8-3C. The planned development should preserve the value of the surrounding residential area.**

The proposed development will be built on land (the "subject property") that has a long-standing C-2 Commercial Shopping District zoning designation; the land lying west of and adjacent to the subject property and lying east of and adjacent to Flagg Creek, which is zoned under the "A" Single Family Residence District, is not part of the subject property and is not included in the proposed development "outlot A". Because the proposed garden center and two office buildings are classified as permitted uses in the C-2 Commercial Shopping District and the proposed development does not involve any land uses that are noxious or inherently dangerous or inconsistent with the permitted and customary commercial uses of this zoning District, the proposed development will not be injurious to the uses and enjoyment in the immediate vicinity for the purposes already permitted. The proposed development will be a less intensive use of the property than other use in the C-2 Community Shopping District. This proposed development also offers a site plan design, landscape and other amenities that are residential in character as opposed to a more common type of permitted commercial/office retail use (e.g., a strip mall, gas station, dry cleaners or a fast food restaurant) which might substantially diminish or impair property values.

This development will provide an attractive, well-maintained earth and sod berm landscaped with desirable vegetation and trees that effectively buffers and screens the residences to the east of Commonwealth Avenue from both the development and the sight line and noise of the Toll Highway.

The Commission finds that this planned development should preserve the value of the surrounding residential area.

**10-8-3D.** Any unusual physical, topographical or historical features of the site of the planned development, which are of importance to the people of the area or the community, should be preserved.

The Commission finds that this planned development will preserve certain unusual physical, topographical or historical features of the site, which are of importance to the people of the area and the community. Specifically, this planned development will result in the maintenance of the existing floodway and flood provides storm water conveyance and storage for the Flagg Creek tributary area. The required storm water management improvements will further enhance the storm water drainage characteristics of this property and the downstream Flagg Creek drainage basin. In its current state, the property is untamed green space with undesirable species of vegetation and trees. In addition to maintaining and improving the drainage features, the developer shall provide access pathways to the natural open spaces of the Flagg Creek corridor. This development will provide an attractive, well-maintained earth and sod berm landscaped with desirable vegetation and trees that effectively buffers and screens the residences to the east of Commonwealth Avenue from both the development and the sight line and noise of the Toll Highway.

**10-8-3E.** The minimum area of a planned development should be five acres.

The Commission finds that this proposed development encompasses a total of 4.35 acres of land and that there is prior precedent of other approved planned developments within the Village which have not met the five acre minimum area. Although this guideline suggests a minimum five acre area, consistent with the spirit of the planned development concept, the Village has in the past approved planned developments that contained smaller development sites, including most recently, the Gammonley development (located south of 55th Street and west of Wolf Road) which was comprised of approximately three acres of land. The Commission recognizes that the Village is a built-out community that lacks vacant, undeveloped five acre or larger tracts of land. The planned development process allows the Village to maintain a higher degree of control over the development of this property. The proposed development is a creative approach for the use of the property that will allow the Village to retain a longstanding Village-based business on a parcel that has not had another viable development proposal during the past 10 years. The one other development proposal for this property (a town home development in 1998) failed because of poor soil conditions and the prohibitive requirements of building in such soils. Thus, there is just cause for departing from the five acre minimum in this case.

**10-8-3F.** Yards along the periphery of a planned development should be compatible with the yards of the adjacent properties.

The Commission finds that the yards along the periphery of this planned development are compatible with the yards of the adjacent properties. For example, the



front yards of the single-family residential (R-2) zoned lots located adjacent to the east side of Commonwealth Avenue, directly across from the proposed development, have a 30.00 foot front yard set back. The side yard of the proposed development, which is located adjacent to the west side of Commonwealth Avenue, provides a 45.00 foot set back for the office building and a 125.00 foot set back for the Garden Center. The proposed development provides a 40.30 foot side yard set back from the south side of 47th Street which has no actual corresponding adjacent properties for comparison because the park land is located on the north side of 47th Street. Likewise, the proposed development provides a 175.00 foot rear yard set back from Commonwealth Avenue which has no actual corresponding adjacent properties for comparison with the properties on the opposite side of Commonwealth Avenue fronts 48<sup>th</sup> Street; and

**WHEREAS**, after conducting public meetings, the Village Board of Trustees granted approval to the proposed conditional use commercial planned development subject to certain changes, conditions and additions attached as Exhibit "A" in Resolution No. 00-1681 adopted by the President and Village Board of Trustees on December 18, 2000; and

**WHEREAS**, the Developer has revised the Preliminary Plan and has filed a Final Plan for Phase One of the subject property that incorporates the changes, additions and conditions contained in Resolution No. 00-1681; and

**WHEREAS**, said petition for approval of the Final Plan for Phase One has been reviewed by the Village staff and the Village consultants pursuant to the requirements of the Western Springs Municipal Code of 1997, as amended, Title 10: Development Control Ordinance; Chapter 3: Administrative Bodies and Procedures, Subsection 14: Conditional Uses, Chapter 8: Planned Developments and Chapter 10: Subdivisions; and

**WHEREAS**, subsequent thereto, as required by the provisions of the Western Springs Municipal Code of 1997, as amended, Title 10: Development Control Ordinance; Chapter 3: Administrative Bodies and Procedures, Subsection 14: Conditional Uses, Chapter 8: Planned Developments, and Chapter 10: Subdivisions, the Western Springs Plan Commission conducted public meetings for the purpose of reviewing said petition, said meetings occurring on February 22, 2001 and March 1, 2001.

**NOW THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WESTERN SPRINGS, COOK COUNTY, ILLINOIS**, as follows:

**SECTION 1.** That the final plan legally described as follows:

LOTS 7 TO 27, BOTH INCLUSIVE, IN BLOCK 2 IN FOREST HILLS COMMERCIAL AND PARK DISTRICT SUBDIVISION HEREINAFTER DESCRIBED (EXCEPTING

THAT PART DEDICATED FOR ROADWAY PURPOSES COMMONLY KNOWN AS RELOCATED COMMONWEALTH HIGHWAY PER DOCUMENT NUMBER 92980474 AND ALSO EXCEPTING THAT PART DEDICATED FOR ROADWAY PURPOSES COMMONLY KNOWN AS 47TH STREET).

Also

THAT PART OF VACATED COMMONWEALTH HIGHWAY LYING WEST OF AND ADJOINING SAID LOTS 8 TO 27, BOTH INCLUSIVE, IN SAID BLOCK 2, AND EAST OF A LINE 33 FEET EAST OF AND PARALLEL WITH THE CENTER LINE OF COMMONWEALTH HIGHWAY.

Also

LOTS 1 TO 14, BOTH INCLUSIVE, IN BLOCK 3 IN FOREST HILLS COMMERCIAL AND PARK DISTRICT SUBDIVISION HEREINAFTER DESCRIBED (EXCEPTING THAT PART DEDICATED FOR ROADWAY PURPOSES COMMONLY KNOWN AS 47TH STREET).

Also

THOSE PARTS OF LOTS 15 TO 21, BOTH INCLUSIVE, IN BLOCK 3 IN FOREST HILLS COMMERCIAL AND PARK DISTRICT SUBDIVISION HEREINAFTER DESCRIBED, LYING NORTHEASTERLY OF A LINE EXTENDING ACROSS SAID LOTS, WHICH LINE INTERSECTS THE WEST LINE OF SAID LOT 15 AT A POINT 18.34 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 15, AND WHICH LINE ALSO INTERSECTS THE SOUTH LINE OF LOT 21 AT A POINT 29.01 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 21.

Also

THAT PART OF VACATED COMMONWEALTH HIGHWAY LYING EAST OF AND ADJOINING SAID LOTS 1 TO 20, BOTH INCLUSIVE, IN SAID BLOCK 3, AND WEST OF A LINE 33 FEET WEST OF AND PARALLEL WITH THE CENTER LINE OF COMMONWEALTH HIGHWAY.

Also

THAT PART OF AN EXISTING SERVICE LANE DEDICATED PER THE PLAT OF FOREST HILLS COMMERCIAL AND PARK DISTRICT SUBDIVISION HEREINAFTER DESCRIBED, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT 57.28 FEET SOUTH OF THE NORTHEAST CORNER OF LOT 27 IN BLOCK 3 OF SAID SUBDIVISION FOR A POINT OF BEGINNING, THENCE NORTH 87 DEGREES 58 MINUTES 41 SECONDS EAST A DISTANCE OF 33.02 FEET TO A

POINT ON THE WEST LINE OF LOT 3 IN BLOCK 3, THENCE SOUTH 00 DEGREES 02 MINUTES 39 SECONDS WEST A DISTANCE OF 312.34 FEET, THENCE NORTH 18 DEGREES 59 MINUTES 07 SECONDS WEST A DISTANCE OF 101.21 FEET TO A POINT 72.75 FEET SOUTH OF THE NORTHEAST CORNER OF LOT 25 IN BLOCK 3, THENCE NORTH 00 DEGREES 02 MINUTES 39 SECONDS EAST ALONG THE EAST LINES OF LOTS 25, 26 AND 27 IN BLOCK 3 A DISTANCE OF 215.47 FEET TO THE POINT OF BEGINNING.

Also

THAT PART OF COMMONWEALTH HIGHWAY DEDICATED PER THE PLAT OF FOREST HILLS COMMERCIAL AND PARK DISTRICT SUBDIVISION HERINAFTER DESCRIBED, LYING SOUTH OF THE SOUTH LINE OF 47TH STREET FOR THE NORTH LINE OF SAID PARCEL, LYING 33 FEET WEST OF AND 33 FEET EAST OF THE CENTER LINE OF SAID COMMONWEALTH HIGHWAY FOR THE WEST AND EAST LINES OF SAID PARCEL, AND LYING NORTHERLY OF THE NORTHERLY LINE OF RELOCATED COMMONWEALTH AVENUE DEDICATED FOR STREET BY PLAT DOCUMENT NUMBER 92980474 FOR THE SOUTHERLY LINE OF SAID PARCEL.

ALL IN FOREST HILLS COMMERCIAL AND PARK DISTRICT SUBDIVISION OF BLOCKS 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32, 41, 42, 43 AND 44 IN FOREST HILLS OF WESTERN SPRINGS, A SUBDIVISION OF THE EAST 1/2 OF SECTION 7, TOWNSHIP 38 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THAT PART OF BLOCKS 12, 13, 14 AND 15 IN THE HIGHLANDS, BEING A SUBDIVISION OF THE NORTHWEST 1/4 AND THE WEST 800 FEET OF THE NORTH 144 FEET OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 38 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF A LINE 33 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID NORTHWEST 1/4 OF SAID SECTION 7; ALSO LOTS 1, 2, 3, 4 AND 5 (EXCEPT THAT PART THEREOF DEDICATED FOR STREET BY PLAT DOCUMENT NUMBER 209880) IN BLOCK 12 IN THE HIGHLANDS, AFORESAID, ALL IN COOK COUNTY, ILLINOIS; ALSO FAIR ELMS AVENUE (NOW VACATED), AS SHOWN ON PLAT OF FOREST HILLS OF WESTERN SPRINGS, AFORESAID, FILED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS, AS DOCUMENT NUMBER 209880.

is hereby approved.

**SECTION 2.** That the approval of the final plan as set forth in Section 1 above is conditioned upon and subject to the recitals as set forth in Exhibit "A" which is attached hereto and made part thereof.

**UNOFFICIAL COPY** 0010894957

PASSED by the Board of Trustees of the Village of Western Springs, Cook County, Illinois, at a Regular Meeting thereof, held on the 19<sup>th</sup> day of March, 2001 and approved by me as President on the same day.

*Audanne Milano*  
Village President

ATTEST:

*Jeanine M. Jince*  
Village Clerk

Property of Cook County Clerk's Office

County of Cook

The undersigned, Village Clerk of the Village of Western Springs, Cook County, Illinois, do hereby certify that foregoing is a true and correct copy of the original of which is on file in my office.

In witness whereof, I have hereunto set my hand and of the seal of the Village of Western Springs, Cook County, Illinois, this 20<sup>th</sup> day of *April* 2001

*Carolyn A. Sullivan*  
Village Clerk

# UNOFFICIAL COPY

Exhibit "A"

0010894957

## Conditions of Final Approval

1. That the overall site plan conforms to the preliminary site plan entitled "Overall Site Plan", prepared by William F. Lorek, P.E., revision date November 02, 2000 and reviewed by the Village Engineer, James J. Benes and Associates on November 2, 2000 and approved by the President and Board of Trustees on December 18, 2000 as noted in the Village Engineer's memorandum dated November 2, 2000.
2. That the final phase 1 site plan entitled "Commonwealth Commercial Center Phase I", prepared by William F. Lorek, P.E., revision date February 15, 2001 and reviewed by the Village Engineer, James J. Benes and Associates on February 16, 2001 be approved as noted in the Village Engineer's memorandum dated February 19, 2001.
3. That the Storm Water Management Calculations dated February 15, 2001 prepared by William F. Lorek, P.E. and reviewed by the Village Engineer, James J. Benes and Associates on February 16, 2001 be approved as noted in the Village Engineer's memorandum dated February 19, 2001.
4. That the final landscape plan entitled "Final Phase I Landscape Plan" prepared by the Linden Group, revision date February 15, 2001 and reviewed by Staff on February 19, 2001 conforms to the approved preliminary plan and be approved.
5. That the garden center elevations prepared by the Linden Group, dated July 24, 2000 be approved.
6. That the office building elevations prepared by the Linden Group, dated July 26, 2000 be approved.
7. The developer has agreed to construct a path or walkway providing pedestrian access to the Flag Creek. The path as depicted on the final phase I site plan entitled "Commonwealth Commercial Center Phase I", prepared by William F. Lorek, P.E., revision date February 15, 2001 and reviewed by the Village Engineer, James J. Benes and Associates on February 16, 2001 be approved as noted in the Village Engineer's memorandum dated February 19, 2001.
8. That the final plat of subdivision entitled "Plat of Subdivision Commonwealth Commercial Center" dated February 21, 2001, prepared by Genesis Survey, P.C. and reviewed by the Village Engineer, James J. Benes and Associates on February 22, 2001 be approved as noted in the Village Engineer's memorandum dated February 22, 2001.



9. That the Plan Commission acknowledges that the final approval of this conditional Use Permit for a Commercial Planned Development shall be contingent upon the approval of a Plat of Vacation by the President and Board of Trustees.
10. That the roadway-striping plan for Commonwealth Avenue at 47<sup>th</sup> Street depicted on the final phase 1 site plan entitled "Commonwealth Commercial Center Phase I", prepared by William F. Lorek, P.E., revision date February 15, 2001 and reviewed by the Village Engineer, James J. Benes and Associates on February 16, 2001 be approved as noted in the Village Engineer's memorandum dated February 19, 2001.
11. That the photometric plan, revision date August 31, 2000 prepared by the Linden Group and reviewed by the Village Engineer, James J. Benes and Associates on February 20, 2001 be approved as noted in the Village Engineer's memorandum dated February 20, 2001.
12. The developer proposes to extend 6" diameter water main into the development with a connection to the existing 12" main located in the west R.O.W. of Commonwealth Avenue. Two hydrants will be installed to provide fire protection and provide adequate coverage for the development. As a condition of final approval, the Village and the person, partnership, trust or corporation that currently owns the subject property and the outlot "A" parcel located east of Flagg Creek, south of 47<sup>th</sup> Street as well as that portion of Flagg Creek adjacent to the proposed development, shall execute a declaration and covenants which shall be recorded against title to the above-described property with the Cook County Recorder of Deeds Office and shall be enforceable against the owners, successor owners or successors in interest that provides for the future installation, maintenance, repair and replacement of all stormwater management and other drainage structures, water and sewer mains and related structures, including without limitation fire hydrants, driveway and parking lot improvements, and landscaping and retaining wall improvements in a form and content approved by the Offices of the Village Engineer and Village Attorney. This declaration and covenants shall impose on the owners, successor owners or successors in interest, at his/her/its/their cost, the obligation and responsibility of performing all future maintenance, repair and replacement work in regard to the above-described development improvements as deemed necessary by the Director of Code Enforcement and the Village Engineer in order to comply with the Village Code, as amended, and shall grant to the Village a non-exclusive easement for entry upon and access to all parts of the subject property and outlot "A" for purposes providing the Village with the right but not the obligation to perform such maintenance, repair and replacement work, in its sole discretion, along with the right to recover the cost of such work directly from the owners, successor owners or successors in interest or to lien the property and take all other action provided for 65 ILCS 5/11-31-2, as amended, or similar applicable law, including any law contained in the Illinois Municipal Code, as amended. The developer and the



# UNOFFICIAL COPY

0010894957

owners, successor owners or successors in interest, at his/her/its/their cost, shall repair pavement, concrete, landscaped areas or other areas damaged by the Village if the Village performs such future installation, maintenance, repair and replacement work.

13. The existing drainage pattern for the development property is from the existing western Commonwealth Avenue R.O.W. line to Flagg Creek. The proposed development will continue to maintain the existing drainage pattern with the addition of a storm water detention basin to be located at the south end of the development adjacent to Commonwealth Avenue. The Illinois Department of Natural Resources Office of Water Resources in a letter dated January 29, 2001 concurs with the floodway delineation as depicted on the overall site plan. Should the developer propose modification of the Floodway, concurrence must be received from the Illinois Department of Natural Resources, Office of Water Resources.
14. The parking requirements for the proposed development are based upon the requirements set forth in Section 10-4-7 of the Code: Office, business and professional services, 3 parking spaces per 1,000 square feet of gross floor area. Freestanding stores, 4 parking spaces per 1,000 square feet of gross floor area including the outdoor sales area.

The developer has proposed the following parking plan:

East Two Story Office Building 37 spaces required  
48 spaces provided

Garden Center 65 spaces required  
47 spaces provided

West Two Story Office Building 37 spaces required  
48 spaces provided

By sharing the parking spaces on the entire site, the number of spaces provided exceeds the total number of required spaces. The proposed parking plan is hereby approved for the garden center and the office building located in Phase One for office, business and professional services.

In the event that the developer should choose to lease space to medical or dental offices the developer will be required to modify the site plan and construct the appropriate number of parking spaces as detailed in Table 4-2 of the Code.

15. Parking shall not be permitted along the west side of Commonwealth Avenue for safe ingress and egress from the site and to also promote the utilization of the internal parking facility. Signage will be provided by the Village.

16. In the event that the Garden Center is operational prior to the occupancy of the office building, the developer shall provide at a minimum an additional twenty (20) improved parking spaces on site to meet the parking requirements and anticipated parking demand of the Garden Center. The developer shall at all times during the phasing of the project meet the individual and shared occupancy parking requirements of the garden center and office building or buildings.
17. Garden Center employees are required to park in the adjacent office center parking lot in order to provide the maximum number of spaces for garden center patrons.
18. The developer has agreed that in the event that basements are constructed in either of the office buildings or garden center, the space created will be non-habitable space and utilized only for storage or mechanical room purposes. A meeting room may also be constructed for incidental use.
19. Storage, display or sales of products, plant life or other materials shall be prohibited at all times in any of the designated parking spaces, roadways or access aisles depicted on the site plan.
20. Outdoor sales shall be limited to the areas designated as "outdoor sales areas" on the approved site plan.
21. Storage, display or sales of products, plant life or other materials shall be prohibited at all times on the walkway in front of (east side) of the building i.e. prohibited east of the east building line.
22. Propane storage and dispensing shall comply with all applicable building and fire codes. Propane storage and dispensing operations shall be prohibited at all times in any of the designated parking spaces, roadways or access aisles depicted on the site plan.
23. The developer agrees to install a pager or other suitable notification system that complies with the Illinois Noise Control Board Regulations. Public address systems are prohibited.
24. Deliveries of product or materials shall be confined to daytime hours (8:00 a.m. – 6:00 p.m.) weekdays and 9:00 a.m.- 12 noon Saturdays.
25. Overnight or long term parking of incoming delivery vehicles be prohibited on the site.
26. Parking, stacking or unloading of delivery vehicles on Commonwealth Avenue is prohibited.
27. The approved hours of operation for the garden center are as follows:

# UNOFFICIAL COPY

Weekdays 9:00 a.m. – 8:00 p.m.  
Saturdays 9:00 a.m. – 5:00 p.m.  
Sundays 10:00 a.m. – 4:00 p.m.

0010894957

28. Overnight parking of Garden Center vehicles is prohibited in the areas east of the Garden Center building line fronting Commonwealth Avenue. The developer shall provide a fencing plan to screen garden center delivery vehicles and yard equipment (lift truck). The fencing plan shall be reviewed by the Plan Commission and approved by the Village Board prior to the issuance of a building permit.
29. That the proposed building signage and center signage as depicted on the garden center elevation, dated July 24, 2000, the Final Phase I Landscape Plan, dated February 15, 2001 and the Commonwealth Commercial Center Phase I revision date February 15, 2001 be approved.
30. In the event that the garden center ceases operation, the Plan Commission shall review the proposed future use under the requirements of the Conditional Use and Planned Development Sections of the Code and forward a recommendation to the President and Board of Trustees for their review and approval.
31. As a condition of final approval, the Village Board and the petitioner or the person, partnership, trust or corporation that currently owns "A" zoned parcel east of Flagg Creek, south of 47<sup>th</sup> Street as well as that portion of Flagg Creek adjacent to the proposed development execute a declaration and covenants which shall be recorded against title to the property with the Cook County Recorder of Deeds Office and shall be enforceable against the owners, successor owners in interest that provides for the future maintenance of said portion of Flagg Creek in a form and content to be approved by the Offices of the Village Engineer and Village Attorney.
32. The developer has agreed to construct the landscaping walls, berming and plantings along Commonwealth Avenue in the early stages of construction. Work above the top of foundation shall not be permitted until the walls, berms and landscaping along Commonwealth Avenue is complete.
33. As a condition of the issuance of the occupancy permit for the Garden Center, Gurrie Rhoads shall make a lump sum payment to the Village in the amount of Three Thousand Dollars (\$3,000.) which shall be held in the Village's site management escrow account relating to the development for a period of one calendar year from the date of the occupancy permit for purposes of reimbursing the actual cost of front yard landscaping installed by the below listed owners of record on their below listed properties with the reimbursement amount per property not to exceed the dollar amounts listed below:

- A. Mr. and Mrs. Stephen Jackson, 4705 Commonwealth Avenue.  
Maximum reimbursement: Five Hundred Dollars (\$500.)
- B. Mr. and Mrs. Justin Hlavin, 4709 Commonwealth Avenue.  
Maximum reimbursement: One Thousand Dollars (\$1,000.)
- C. Mr. and Mrs. Dimitri Carrigan, 4711 Commonwealth Avenue.  
Maximum reimbursement: One Thousand Dollars (\$1,000.)
- D. Mr. and Mrs. Mark Tannenbaum, 4715 Commonwealth Avenue.  
Maximum reimbursement: Five Hundred Dollars (\$500.)

Upon receipt of paid invoices relating to the actual cost of front yard landscaping installed on any of the above properties, the Director of Fire and Inspectional Services shall issue a check drawn from said escrow account made payable to the owner of record in an amount equal to the actual cost of the installed landscaping or the maximum reimbursement amount listed above, whichever is lesser. If an owner of record does not install any front yard landscaping and submit paid invoices relating to such landscaping to the Director for reimbursement within one calendar year of the date of the occupancy permit, the owner of record shall have no right to such reimbursement. The balance of the lump sum payment shall be returned to Gurrie Rhoads after the expiration of the one calendar year period following the issuance date of the occupancy permit.

- 34. That the above stated conditions shall be covenants of record that run with the land and shall be recorded with the Cook County Recorder of Deeds.

Property of Cook County Clerk's Office