

Prepared by and after recording return to:

Pachter, Gregory & Finocchiaro, PC
790 Estate Drive
Suite 150
Deerfield, IL 60015
Attn: Patricia B. Gregory



(14)
8055508, 622
259
10058508

**GATEWAY CENTER
FIRST AMENDMENT TO
EASEMENT AND OPERATING AGREEMENT**

This First Amendment to Easement and Operating Agreement ("First Amendment") is made and entered into as of the 18th day of October, 2002, by and between Gateway Center of Palatine LLC, an Illinois limited liability company (the "Freed Owner"), the Village of Palatine, an Illinois home rule municipality (the "Public Parking Garage Property Owner"), and D. Nellie's Properties LLC, an Illinois limited liability company (the "Retail Property Owner").

WHEREAS, the Freed Owner and the Public Parking Garage Property Owner (each an "Owner") entered into that certain Easement and Operating Agreement dated as of October 1, 2001 with respect to the Property (the "OEA");

WHEREAS, the Freed Owner has conveyed, on the date hereof, the Retail Parcel to the Retail Property Owner. The Retail Parcel is legally described on Exhibit A hereto. The Public Parking Garage Parcel is legally described on Exhibit B hereto, and the Commercial Parcel is legally described on Exhibit C hereto.

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WHEREAS, the Freed Owner, the Public Parking Garage Property Owner and the Retail Property Owner desire to amend the OEA.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owners agree as follows:

1. All capitalized terms used but not defined herein shall have the same meaning as in the OEA.
2. Recital "H" of the OEA is hereby amended to read as follows:

RECORDING FEE 78.00
Final Execution DATE 11/13/02 COPIES 0
10-16-02 OK BY ZM ZB

Box 333



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"The Retail Property Owner will construct (or cause to be constructed) upon and within the Retail Parcel a two (2) story building (the "Retail Improvements") containing approximately 19,867 gross square feet of space for retail and commercial uses substantially in accordance with the plans and specifications described in the PUD for the Retail Parcel, as amended from time to time (the "Retail Improvements Plans")."

3. Recital "I" of the OEA is hereby amended to read as follows:

"The Public Parking Garage Property Owner will construct (or cause to be constructed) upon and within the Public Parking Garage Parcel a multi-level above-grade parking structure (the "Public Parking Garage Improvements") sufficient in size to contain approximately one thousand two hundred fifty (1250) parking spaces for standard size passenger vehicles of which: 334 parking spaces initially as depicted on **Exhibit E** shall be the Mandatory Parking Spaces for the use of the Commercial Property; up to 44 parking spaces in the area depicted on **Exhibit E** shall be the Required Parking Space Area for the use of the Commercial Property; and 70 parking spaces initially as depicted on **Exhibit E** shall be the Retail Parking Spaces for the use of the Retail Property and the Commercial Property as herein provided. The Public Parking Garage Improvements shall also include entrance and exit ramps to and from grade level and three (3) stairways and three (3) elevator shaft enclosures for elevators providing vertical transportation. The Public Parking Garage Improvements shall be substantially in accordance with the plans and specifications described in the PUD for the Public Parking Garage Parcel (the "Public Parking Garage Improvements Plans")."

4. **Exhibit E** attached to the OEA is hereby deleted and **Exhibit E** attached to this First Amendment is substituted in lieu thereof.

5. Section 2.2(C) of the OEA is hereby amended to read as follows:

"The Public Parking Garage Property Owner hereby grants to the Retail Property Owner for the benefit of the Customers of the Retail Improvements: (i) a non-exclusive easement for parking on those seventy (70) parking spaces located in the Public Parking Garage Improvements and initially as depicted on **Exhibit E** in the OEA twenty-four (24) hours a day and seven (7) days a week (the "Retail Parking Spaces") and (ii) a non-exclusive easement for parking in the entire Public Parking Garage Improvements after normal business hours free of charge with respect to all parking spaces other than the Mandatory Parking Spaces, the Retail Parking Spaces and the Required Parking Spaces. The Public Parking Garage Property Owner will be solely responsible for the installation and maintenance of a sign at each of the Retail Parking Spaces, which signs shall convey: (i) that such space is for use only by Customers and employees of the Retail Improvements, Customers of any retail establishments in the Commercial Improvements and Visitors to the Commercial Improvements;

and (ii) that the use of each such space is limited to three (3) hours per Customer or Visitor per day or as otherwise agreed to by the Retail Owner, the Commercial Property Owner and the Public Parking Garage Property Owner. Such signs shall be reasonably acceptable to the Retail Property Owner and the Commercial Property Owner. Upon completion of the Public Parking Garage Improvements, the Retail Parking Spaces may be relocated within the Public Parking Garage Property by the Public Parking Garage Owner provided the Retail Property Owner and the Commercial Property Owner agree with such relocation (said agreement not to be unreasonably withheld), and thereafter at the request of the Retail Property Owner and the Commercial Property Owner, an amendment to this Agreement showing said relocated Retail Parking Spaces shall be executed by the Owners and recorded against the Property. The Easement granted hereby shall terminate at such time as the Retail Improvements have been demolished and construction of a replacement building not commenced and diligently proceeding within two (2) years and completed within three (3) years thereof. Retail Property Owner shall not sell, lease or charge for the use of the Retail Parking Spaces, except for the "pass thru" of costs and charges associated therewith, including without limitation, real estate taxes. The term "Customers" shall mean members of the general public using the Retail Parking Spaces solely while patronizing establishments located in the Retail Improvements or retail establishments in the Commercial Improvements. The term "Visitor" shall mean individuals who are guests or invitees of Commercial Property Owner or any tenant thereof, but shall not include any employee or owner of either of the foregoing. The Public Parking Garage Property Owner agrees that the Retail Parking Spaces shall only benefit the Retail Property and the Commercial Property as herein provided, and Public Parking Garage Property Owner shall not grant any easements, licenses or right to use the Retail Parking Spaces to any other person or for the benefit of any other land and/or improvements."

6. Section 2.2 (E) is hereby inserted in the OEA to read as follows:

"The Freed Owner and the Retail Property Owner hereby acknowledge and agree that as of the date hereof they have entered into an agreement pursuant to which certain improvements are to be made to the Retail Property. Each of the Freed Owner and the Retail Property Owner have certain obligations with respect to the construction and/or the payment of construction costs with respect to the common areas to be located on the Retail Property, all as definitively set forth in **Exhibit D** attached hereto and becoming a part of the OEA (the "Construction Work"). The Retail Property Owner, the Freed Owner and the Public Parking Garage Property Owner agree that until such time as the Retail Property Owner completes that portion of the Construction Work required to be completed by the Retail Property Owner pursuant to **Exhibit D**, the Retail Parking Spaces shall be only for the sole use of Customers of any retail establishments in the Commercial Improvements and Visitors to the Commercial

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Improvements and for the use of contractors of the Retail Improvements during the construction thereof.”

7. Section 3.2(A) of the OEA is hereby amended to read as follows:

“The Retail Property Owner hereby grants to the Commercial Property Owner a non-exclusive easement for (i) vehicular ingress and egress for its Permittees in, over, on, across and through the driveways and roads located on the Retail Property as the same may exist from time to time, (ii) pedestrian ingress and egress for its Permittees in, over, on, across and through the driveways, roads and sidewalks located on the Retail Property as the same may exist from time to time, and (iii) parking in, over, across and through the parking areas located on the Retail Property as the same may exist from time to time by Customers of the retail establishments located in the Commercial Improvements and Visitors to the Commercial Improvements. The Retail Property Owner and the Commercial Property Owner shall install signs which convey that (i) such parking spaces are only for the use of Customers and employees of the Retail Improvements, Customers of any retail establishments in the Commercial Improvements and Visitors to the Commercial Improvements; and (ii) that the use of each such space is limited to two (2) hours per Customer or Visitor per day or as otherwise agreed to by the Retail Owner, and the Commercial Property Owner.”

8. Section 3.2(C) of the OEA is hereby amended to read as follows:

“The Public Parking Garage Property Owner hereby grants to Commercial Property Owner and the occupants of the Commercial Property Improvements and their guests and invitees an exclusive easement for parking in, over, on, across and through (i) the Mandatory Parking Spaces in accordance with Section 7.5(A) hereof and (ii) the Required Parking Space Area in accordance with Section 7.5(B) hereof. The Public Parking Garage Property Owner hereby grants to the Commercial Property Owner for the benefit of the Customers of the retail establishments located in the Commercial Improvements and Visitors to the Commercial Improvements, a non-exclusive easement for parking in the Retail Parking Spaces. The Easements granted hereby shall terminate at such time as the Commercial Improvements have been demolished and construction of a replacement building not commenced and diligently proceeding within two (2) years and completed within three (3) years thereof. Commercial Property Owner and said occupants shall not sell, lease or charge for the use of the Mandatory Parking Spaces, the Required Parking Spaces or the Retail Parking Spaces, except for the “pass thru” of costs and charges associated therewith, including without limitation, real estate taxes. The Public Parking Garage Property Owner will be solely responsible for installing and maintaining signage for the Retail Parking Spaces in accordance with the provisions of Section 2.2 (C) hereof. The Public Parking Garage Property Owner agrees that the Retail Parking Spaces shall only benefit the Retail Property and the Commercial Property as herein

provided, and Public Parking Garage Property Owner shall not grant any easements, licenses or right to use the Retail Parking Spaces to any other person or for the benefit of any other land and/or improvements."

9. Section 3.2(D) of the OEA is hereby amended to read as follows:

"If the Commercial Property Improvements or any portion thereof are destroyed or demolished, Public Parking Garage Owner and its Permittees may use the Mandatory Parking Spaces, the Required Parking Spaces and the Retail Parking Spaces until the Commercial Property Improvements have been restored or replaced, but only to the extent not needed by occupants of the Commercial Property who continue to occupy same after such destruction or demolition."

10. Section 7.1 of the OEA is hereby amended to read as follows:

"Each Owner (hereinafter in this Section 7.1, the "Indemnifying Owner") covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the other Owners (hereinafter in this Section 7.1, collectively the "Indemnitee") from and against any and all claims, including any actions or proceedings, against the Indemnitee, for losses, liabilities, damages, judgments, costs and expenses by or on behalf of any person, firm, corporation or governmental authority, other than the Indemnitee, arising from (i) the injury to or death of any person or damage to the property of any Permittee located on the Parcel owned by the Indemnifying Owner; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or willful act or omission of the Indemnitee or its Permittee so injured or damaged; or (ii) the Indemnifying Owner's and its Permittees' use, exercise or enjoyment of an Easement (including, but not limited to, any Easement granted in Article 23) or Facility, and from and against all costs, attorneys' fees, expenses and liabilities incurred with respect to any such claim, action or proceeding arising therefrom. In case any action or proceeding is brought against the Indemnitee by reason of any such claim, the Indemnifying Owner, upon notice from the Indemnitee, covenants to resist or defend such action or proceeding with attorneys reasonably satisfactory to the Indemnitee."

11. Notwithstanding anything in Section 8.1 of the OEA to the contrary, the Parking Space Tax allocated to the Retail Parking Spaces shall be paid fifty percent (50%) by the Retail Property Owner and fifty percent (50%) by the Commercial Property Owner.

12. Section 8.5 of the OEA is hereby amended to delete all references to "Retail Property Owner," and accordingly shall read as follows:

"Notwithstanding the provisions of Paragraph 8.1 to the contrary, the Commercial Property Owner shall be entitled to a reduction in the Parking Space Tax otherwise due under Paragraph 8.1 hereof (i) for calendar year 2003 payable

in 2004, in an amount equal to the 2003 Tax Increment Deficiency paid to the Village of Palatine pursuant to Section 10.12(a) of the Redevelopment Agreement, and (ii) thereafter, in an amount equal to any TIF Deficiency paid to the Village pursuant to Section 9.10 of the Redevelopment Agreement.”

13. Section 9.1(A) of the OEA is hereby amended to read as follows:

“Real and Other Property – Each of the Owners shall keep their respective Improvements and common areas insured for not less than 100% of their replacement cost through “Special Form” coverage. In addition, the Public Parking Garage Property Owner shall keep its machinery and personal property owned by the Public Parking Garage Property Owner and used in the operation of the Public Parking Garage Property insured for not less than one hundred percent (100%) of its replacement cost through “Special Form” coverage. Each Owner other than the Public Parking Garage Owner shall separately insure on an “Special Form” basis its loss of rental income or use caused by business interruption or extra expense incurred to reduce such loss of income, in such amounts and with such deductibles as may be carried by prudent owners of first-class commercial buildings in the greater Chicago area, and shall pay all premiums for such coverage. Replacement cost shall be determined annually by an independent appraiser or by a method acceptable to the insurance company providing such coverages. Such policies shall be endorsed with a replacement coverage endorsement and an agreed amount clause (waiving any applicable co-insurance clause) in accordance with such determination or appraisal.”

14. Section 9.1(B) of the OEA is hereby amended to read as follows:

“Public Liability - The Commercial Property Owner, the Retail Property Owner and the Public Parking Garage Property Owner shall each (1) insure against public liability claims and losses on a comprehensive or commercial general liability form of insurance with broad form coverage endorsements covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about their respective Parcel, or as a result of its operations thereon (including contractual liability covering obligations created by this Agreement including, but not limited to, those indemnity obligations contained in this Agreement), and (2) maintain automobile liability insurance for owned, non-owned and hired vehicles, each coverage in such amounts as may be required by Law and as may from time to time be carried by prudent owners of first-class commercial or public parking garage buildings (as the case may be) in the greater Chicago area, but in all events for limits, as to each Owner and its Parcel, of not less than \$1,000,000 each occurrence and \$2,000,000 aggregate for personal and bodily injury or property damage with an amount not less than \$5,000,000 umbrella coverage. Each of the Operator, the other Owners and any property manager of such Owner’s Parcel shall be “additional insureds” under such policy as it applies to the insuring Owner’s Parcel. Joseph Freed and

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Associates LLC shall be the initial property manager of the Commercial Property."

15. Section 9.1(C) of the OEA is hereby inserted to read as follows:

"Each Owner, at its sole cost and expense, shall purchase and keep in full force and effect (or cause to be purchased and kept in full force and effect), dram shop insurance (as hereinafter described) during such period that the sale of so-called "alcoholic liquors" (within the meaning of the Illinois Liquor Control Act, as now or hereafter amended) occurs on or from its Parcel; each such Owner being a "Serving Owner." At least ten (10) days before the commencement of such activity and continuously thereafter, the Serving Owner shall deliver (or cause to be delivered to the other Owners) a policy of dram shop insurance in form, substance and with insurers reasonably satisfactory to each Other Owner, with total limits of liability for bodily injury, loss of means of support, and property damage because of occurrence of not less than Two Million Dollars (\$2,000,000.00), indemnifying each such Owner and their respective Permittees, against any and all liability by virtue of the Illinois Liquor Control Act, any amendments or supplements thereto, or any similar legislation having jurisdiction concerning the sale of alcoholic liquors on or from the Serving Owner's Parcel. During any time that the required dram shop insurance is for any reason not in force, then, during all and any such times, no sale, merchandising, or exchange of so-called "alcoholic liquors" shall be made in, upon or from any part of an Owner's Parcel."

16. Section 10.02 of the OEA is hereby amended by inserting the following provision at the end thereof:

(which shall not include the sidewalk, landscaping or other areas adjacent to the retail building up to the curb) OWNER

"Commercial Property Owner shall contribute to the following maintenance costs incurred by Retail Property Owner for the common areas on the Retail Parcel: (i) patching of paved surfaces; (ii) restriping parking areas and drive-lanes; (iii) resealing parking areas; (iv) removing papers, debris and filth from common areas and other janitorial work (the items in this clause (iv) are collectively, "Janitorial Costs"); (v) maintaining and replacing any directional, stop or handicap parking signs; (vi) mowing and maintaining landscaped areas including replacing dead or dying plant materials; and (vii) snow removal (the costs in items (i) – (vii) inclusive are herein collectively "Common Area Costs"). In no event shall Common Area Costs include costs that would be considered a capital expenditure under generally acceptable accounting standards; it being agreed that all such expenditures shall be the responsibility of the Retail Property Owner. The Common Area Costs (other than Janitorial Costs referred to in clause (iv) above) shall be paid fifty percent (50%) by the Retail Property Owner and fifty percent (50%) by the Commercial Property Owner. The Janitorial Costs referred to in clause (iv) above shall be paid seventy-five percent (75%) by the Retail Property Owner and twenty-five percent (25%) by the Commercial

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Property Owner. Within thirty (30) days following the commencement of such maintenance by Retail Property Owner (and thereafter at least sixty (60) days prior to the beginning of each calendar year), Retail Property Owner shall provide Commercial Property Owner with an estimated budget ("Budget") for the balance of the current calendar year (or the ensuing calendar year, as the case may be) containing the Common Area Costs for such period. Retail Property Owner may (i) use its own employees to perform certain of the maintenance work and may (ii) hire companies affiliated with it to perform the maintenance of the common area, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the Palatine, Illinois area; it being agreed that this provision shall be construed strictly against Retail Property Owner. The Budget shall be in form and content reasonably acceptable to Commercial Property Owner and shall identify separate cost estimates for the categories of Common Area Costs specified above. If Commercial Property Owner disapproves the proposed Budget, it shall consult with the Retail Property Owner to establish a final approved Budget. Approval of the Budget, or any of the line items comprising a part thereof, shall not be considered a waiver of Commercial Property Owner's right to audit and/or contest, challenge or dispute the Reconciliation (as hereinafter defined). Retail Property Owner shall use its diligent, good faith efforts to operate and maintain the common area in accordance with the Budget.

Commercial Property Owner shall pay to Retail Property Owner in equal monthly payments, in advance, its share of the Common Area Costs based upon the amount set forth in the approved Budget; or, if a Budget is not approved, then the lesser of the amount set forth in the unapproved Budget or the monthly payment established for Commercial Property Owner for the prior year. Within sixty (60) days after the end of each calendar year, Retail Property Owner shall provide Commercial Property Owner with a statement setting forth the actual Common Area Costs paid by Retail Property Owner for the maintenance of the common area (each statement and supporting data are collectively called the "Reconciliation") and the share of the aggregate thereof that is attributable to Retail Property Owner and Commercial Property Owner. The Reconciliation shall separately identify costs categories specified in the foregoing paragraph and shall be in a form reasonably acceptable to Commercial Property Owner. If the amount paid by Commercial Property Owner shall have exceeded its actual share of Common Area Costs for such calendar year, Retail Property Owner shall refund by check the excess to Commercial Property Owner at the time the Reconciliation is delivered, or if the amount paid by Commercial Property Owner for such calendar year shall be less than its actual share of Common Area Costs for such calendar year, Commercial Property Owner shall pay the balance of its share to Retail Property Owner within thirty (30) days after receipt of such Reconciliation, less any amounts disputed in writing. If Retail Property Owner does not refund amounts shown by the Reconciliation to be owed Commercial Property Owner, then Commercial Property Owner may offset the refund owed against payment for Common Area Costs due for any future period. Within one

hundred eighty (180) days after the date of receipt of a Reconciliation, Commercial Property Owner shall have the right to audit Retail Property Owner's books and records pertaining to Common Area Costs for the calendar year covered by such Reconciliation by notifying Retail Property Owner of its intent to audit at least fifteen (15) days prior to the designated audit date. If such audit shall disclose any error in the determination of the Common Area Costs, or any allocation thereof to Commercial Property Owner, Commercial Property Owner shall provide Retail Property Owner with a copy of the audit and an appropriate adjustment shall be made forthwith. The cost of any audit shall be assumed by Commercial Property Owner unless Commercial Property Owner shall be entitled to a refund in excess of ten percent (10%) of the amount calculated by Retail Property Owner as Commercial Property Owner's share for the applicable calendar year, in which case Retail Property Owner shall pay the cost of such audit. If Retail Property Owner does not respond to the results of such audit within sixty (60) days after receipt of the audit, then Commercial Property Owner shall have the right to offset the refund claimed from the date Retail Property Owner receives the audit, plus costs of the audit if appropriate, against subsequent payments due Retail Property Owner; provided, however, Retail Property Owner shall retain the right to dispute the results of such audit for a period of six (6) months following receipt of such audit.

In the event all or a portion of the common areas on the Retail Parcel or the Commercial Parcel are damaged by fire or other casualty, the Owner of the Parcel upon which such damage occurred, at its sole cost and expense, shall cause said common areas to be returned to their condition which existed immediately prior to such casualty."

17. Section 11.9 of the OEA is hereby amended to read as follows:

"If any Owner fails to perform any non-monetary obligation hereunder within thirty (30) days of receipt of written notice thereof (provided however that no advance written notice shall be required in the event of an emergency), then the non-Defaulting Owner, acting in good faith, shall have the right to cure such default. To effectuate any such cure, the non-Defaulting Owner shall have the right to enter upon the Parcel of the Defaulting Owner (but not into any building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Owner. Each Owner shall be responsible for the default of its Permittees. In the event any non-Defaulting Owner shall cure a default, the Defaulting Owner shall reimburse the non-Defaulting Owner for all costs and expenses incurred in connection with such curative action, plus interest as provided in Section 11.4, within ten (10) days after receipt of demand therefor, together with reasonable documentation supporting the expenditures made. Any notice of default sent pursuant to this Section 11.9 to a Defaulting Owner shall simultaneously be sent to any first priority mortgagee of the Defaulting Owner which has previously requested any other Owner, in writing, to forward such notices to it, and such first priority mortgagee shall have the right to

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cure the default on behalf of the Defaulting Owner within the time specified above for a cure by the Defaulting Owner. Notwithstanding the foregoing, in no event shall the provisions in this Section 11.9 apply to, benefit, or burden the Village of Palatine during the period that it is an Owner hereunder.”

18. Section 20.1 of the OEA is hereby amended to provide that the existing notice information for the Retail Property Owner is hereby deleted and the following substituted in lieu thereof:

“Notice to the Retail Property Owner shall be sent to:

Mark Dolezal
1308 Bull Creek Drive
Libertyville, Illinois 60048

with a copy to:

Ross & Hardies
150 N. Michigan Avenue
Suite 2500
Chicago, Illinois 60601
Attn: Donald Gibson

19. Section 21.12(A) of the OEA is hereby amended to read as follows:

“(A) The term "Mortgage" as used in this Agreement shall mean any mortgage (or any trust deed) given primarily to secure the repayment of money owed by the mortgagor and constituting a lien on all or a substantial portion of the real property encumbered by such mortgage). The term "Mortgagee" as used in this Agreement shall mean the Mortgagee from time to time under any such Mortgage (or the beneficiary under any such trust deed). The term "First Mortgage" shall mean a Mortgage that is superior to all other voluntary liens and monetary encumbrances (other than the statutory lien for real estate taxes). The Commercial Owner acknowledges that as of the date hereof, LaSalle Bank National Association ("LaSalle"), whose address for purposes of notice in accordance with Section 21.12(B) is 135 South LaSalle Street, Chicago, Illinois 60603, Attention: Commercial Real Estate, is a Mortgagee of, and the holder of a First Mortgage on, the Commercial Property. LaSalle shall be deemed to have taken all actions required under Section 21.12(B) necessary to receive notices to Mortgagees under Section 21.12(B).”

20. Section 22.2 of the OEA is hereby amended to read as follows:

"If subsequent to completion of the Commercial Improvements and the Retail Improvements, an Owner shall sell, assign, transfer, convey or otherwise dispose of its portion of the Property (other than as security for a loan to such Owner and other than pursuant to a lease, license or similar agreement), then (a) such Owner shall be entirely freed and relieved of any and all covenants and obligations arising under this Agreement which accrue under this Agreement from and after the date such Owner shall so sell, assign, transfer, convey or otherwise dispose of its interest in such portion of the Property, and (b) the Person who succeeds to such Owner's interest in such portion of the Property shall be deemed to have assumed any and all of the covenants and obligations arising under this Agreement of such Owner theretofore accruing or which accrue under this Agreement from and after the date such Owner shall so sell, assign, transfer, convey or otherwise dispose of its interest in such Property. Notwithstanding the foregoing, the Public Parking Garage Property Owner acknowledges and agrees that, upon the transfer of the Retail Parcel as contemplated in the Amendment to Redevelopment Agreement by and between the Village of Palatine ("Village") and the Freed Owner recorded on the same date as this First Amendment, the foregoing provisions in clauses (a) and (b) of this Section 22.2 shall apply to the Freed Owner with respect to the Retail Parcel. Notwithstanding the foregoing, the Public Parking Garage Property Owner acknowledges and agrees that, upon the repurchase of the Retail Parcel by the Village or the conveyance to a third party designated by the Village pursuant to that certain redevelopment agreement entered into by and between the Village and the Retail Property Owner recorded on the same date as this First Amendment, the foregoing provisions in clauses (a) and (b) of this Section 22.2 shall apply to D. Nellie's Properties LLC with respect to the Retail Parcel."

21. Except as expressly amended herein, all terms and provisions of the OEA shall remain in full force and effect.

22. This First Amendment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

23. This First Amendment shall be recorded with the Cook County Recorder's office.

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IN WITNESS WHEREOF, the Owners have executed this First Amendment as of the 18th day of October, 2002.

FREED OWNER

GATEWAY CENTER OF PALATINE, LLC,
an Illinois limited liability company

By: [Signature]
LAURANCE H. FREED, Manager

PUBLIC PARKING GARAGE PROPERTY OWNER:

VILLAGE OF PALATINE, an Illinois municipal corporation

ATTEST:

[Signature: Suzanne M. Bartels]
Name: SUZANNE M. BARTELS
Acting Village Clerk

By: [Signature]
Name: _____
Village President **MANAGER**

RETAIL PROPERTY OWNER:

D. NELLIE'S PROPERTIES LLC, an Illinois limited liability company

By: [Signature: Mark R. Dolezal]
Name: MARK R. DOLEZAL

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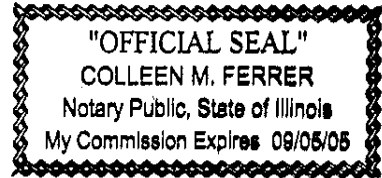
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Colleen M. Ferrer, a Notary Public in and for the County and State aforesaid, do hereby certify that Laurance H. Freed the Manager of Gateway Center of Palatine, LLC, an Illinois limited liability company (the "Company"), personally known to me to be the same person whose name is subscribed to the foregoing Agreement as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the Agreement as his own free and voluntary act, and as the free and voluntary act of the corporation, for itself and as Managing member of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 17 day of October, 2002.

Colleen M. Ferrer
Notary Public

My Commission Expires: _____



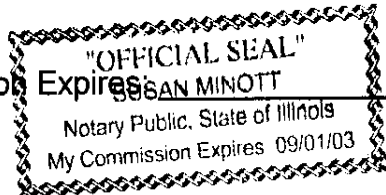
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, SUSAN MINOTT, a Notary Public in and for the County and State aforesaid, do hereby certify that MICHAEL CASSADY, as PRESIDENT of the Village of Palatine, an Illinois municipal corporation, and SUZANNE BARTELS, as VILLAGE MANAGER ACTIVE Village Clerk of the Village, personally known to me to be the same persons whose names are subscribed to the foregoing Agreement as such President and Village Clerk, respectively, appeared before me this day in person and acknowledged that they signed and delivered the Agreement as their own free and voluntary act, and as the free and voluntary act of the Village, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 17 day of OCTOBER, 2002.

Susan Minott
Notary Public

My Commission Expires: _____



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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Patrick E. Brady, a Notary Public in and for the County and State aforesaid, do hereby certify that Mark R. Oleson the Manager of D. Nellie's Properties LLC, an Illinois limited liability company (the "Company"), personally known to me to be the same person whose name is subscribed to the foregoing Agreement as such Manager, he, appeared before me this day in person and acknowledged that he signed and delivered the Agreement as his own free and voluntary act, and as the free and voluntary act of the corporation, for itself and as Manager the Company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18th day of October, 2002.

Patrick E. Brady
Notary Public

My Commission Expires: 5/8/06



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EXHIBIT "A"

Parcel 1.

Lot 2 in Gateway Center Resubdivision, being a subdivision of part of the southeast quarter of Section 15, Township 42 North, Range 10 East of the Third Principal Meridian, Cook County, Illinois, said plat having been recorded October 30, 2001 as Document 0011012354.

Property of Cook County Clerk's Office

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EXHIBIT "B"

Parcel 1.

Lot 3 in Gateway Center Resubdivision, being a subdivision of part of the southeast quarter of Section 15, Township 42 North, Range 10 East of the Third Principal Meridian, Cook County, Illinois, said plat having been recorded October 30, 2001 as Document 0011012354.

Property of Cook County Clerk's Office
Pia #: 02-15-400-040
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EXHIBIT "C"

Parcel 1.

Lot 1 in Gateway Center Resubdivision, being a subdivision of part of the southeast quarter of Section 15, Township 42 North, Range 10 East of the Third Principal Meridian, Cook County, Illinois, said plat having been recorded October 30, 2001 as Document 0011012354.

Property of Cook County Clerk's Office


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EXHIBIT "D"

CONSTRUCTION WORK

Property of Cook County Clerk's Office

A handwritten signature in black ink, consisting of several loops and a long tail, is written over the diagonal watermark text.

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NARRATIVE FOR DUTY NELLIES ("DN")/JOSEPH FRED AND ASSOCIATES
("JFA")

GATEWAY CENTER - PALATINE, ILLINOIS 9/20/02 rev 21250797

1. Shared Cost Work

A. Installed By JFA

SPLIT VALUES

- i. The cost of the existing underground utility work on the retail site that was intended for use by the retail building is estimated by JFA to be \$87,847. (This does not include the cost of the through-site water main that was paid for by the City of Palatine.) Despite said estimate, JFA has agreed to value said work at \$40,000 to be shared equally between JFA and DN. The utilities were installed in their current locations based on the Spaceco civil plans dated 5-16-02. (Work has been completed by JFA) \$40,000
- ii. Concrete curbs along Smith St. recommended for installation prior to the completion of the office building and garage per the ADB Sept. 5th sketches. This work includes the excavation, backfill, and topsoil re-spread required. (Work to be completed by JFA). \$16,540
- iii. CECO Service - The cost of the underground utility infrastructure for the retail site is \$13,400.00. This work is complete and will be shared by DN at a cost of \$7000 (Work has been completed by JFA) \$7,000
- iv. Temporary fencing is required by the Village to isolate the DN site from garage and office. This needs to be more substantial than a snow fence. Budget \$5,000 for this fence. (Work to be completed by JFA). \$5,000
- v. Smith St. ROW landscaping and the landscaping in the Smith Rd. Construction enclosed by the curb work per the ADB Sept. 5th sketch (Work to be complete by JFA). \$18,102
- vi. Signage. The site signage for the garage, office and retail is \$30,948 with the Village taking \$16,191. The cost agreed to be split is \$4000. (Work to be completed by JFA with site signs on the DN site completed by DN). \$4000

B. Installed by DN

- i. Budget for future DN parking lot, including curbs, asphalt and an allowance of \$5,000 for relocating existing sewer structures, excluding building sidewalks and light poles. Proposed parking lot is rectangular in shape, approximately 60' x 280'. (Work to be completed by DN) \$50,721
- ii. Light poles for parking lot: Allow six at \$2,500 each. (Work to be done by DN) \$15,000

TOTAL SHARED COST WORK \$156,363

2. **DN Work:** Completion of the following is to be done by DN at its sole cost and expense:

- i. The DN building area is to remain in the rough graded condition that exists at this current time. For additional recommendation and for geotechnical information, see TSC report dated 3/13/01. Remainder of retail site excavation: Building area grading **21250797**
- ii. The 18' fire lane (see Spaceco L1 plan) will be installed with base course by JFA/VOP per the Spaceco G1 plan grades. DN shall be 100% responsible for the surface, binder course, and repairs/modifications to complete the work at a later date.
- iii. Landscape work on retail site.
- iv. Extension and service line capacity of Nicor gas, Ameritech telephone, AT&T cable to the proposed DN building.
- v. Connection of irrigation systems to be installed this Fall at Smith St. frontage but intended to be connected to DN building for permanent operations out of DN water service room.
- vi. Sidewalk on south side of DN site running from Smith St. to garage parking.
- vii. Sidewalk and landscaping around DN building and entry areas.
- viii. South entry drive entering Smith St. including center island and signage

3. **Freed Work:** Completion of the following is to be done by JFA at its sole cost and expense:

- i. Smith Street Sidewalk extending from Colfax to railroad ROW
- ii. North entry concrete driveway that serves as the east entry to the office building and extends to Smith Street
- iii. Fire lane base course for 18' wide x 230' long (approximately) fire line between the parking garage (on the east) and the DN building. The base course is 10" of compacted stone (typically CA-6)

4. **Miscellaneous Notes**

- i. Underground utilities -- All the underground utility work indicated on the Spaceco civil engineering plans dated 5-16-02 is now complete. Curbs and fire lane paving shall be installed per the Spaceco plans dated 5-16-02
- ii. The costs presented in this narrative are budgets and do not include a general contractors fee, general conditions, and insurance.
- iii. Relocating of existing water main to avoid conflict with proposed DN building is to be done by the Village of Palatine at Village cost

ORDINANCE 0-148-02

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iv. DN approved the following work to be performed by Alter Design Builders:

- (1) installation of sleeves for utilities, at a cost of \$4,131; and
- (2) installation of an all-weather driveway (i.e. curb, stone base and binder course) at the south entry of Lot 2 to Smith Street, at a cost of \$2,500.

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DN has agreed to pay JFA for said costs described in (1) and (2) above.

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**GATEWAY CENTER
SMITH AND COLFAX STREET
PALATINE, IL.**

9/9/02 REV. 9-20-02

**TO: BOB FINK
FROM: STEVE UHLARIK**

RE: DURTY NELLIES SITE BUDGET COSTS

THE FOLLOWING IS A BUDGET SUMMARY OF THE SITE COSTS PROVIDED BY ALTER GROUP
RE-FORMATTED TO DESCRIBE THE DEAL WITH DURTY NELLIES

COSTS TO COMPLETE DURTY NELLIES (BUDGET)	AGREED UPON			DN OWES JFA at DN Loan Closing
	JFA 50%	DURTYN 50%	JFA 100%	
TOTAL	\$97,847.00	\$40,000.00	\$20,000.00	\$24,131.00
	\$57,721.00	\$50,721.00	\$25,360.50	\$25,360.50
	\$4,000.00	\$0.00	\$0.00	\$4,000.00
	\$16,540.00	\$16,540.00	\$8,270.00	\$8,270.00
	\$9,300.00	\$9,300.00	\$9,300.00	\$9,051.00
	\$18,102.00	\$18,102.00	\$9,051.00	\$9,051.00
	\$15,000.00	\$15,000.00	\$7,500.00	\$7,500.00
	\$13,400.00	\$7,000.00	\$3,500.00	\$3,500.00
	\$1,736.00	\$4,000.00	\$2,000.00	\$2,000.00
	\$5,000.00	\$5,000.00	\$2,500.00	\$2,500.00
	\$241,666.00	\$156,363.00	\$78,181.50	\$51,952.00
			\$13,300.00	\$32,860.50
				\$19,091.50

**COSTS TO COMPLETE DURTY NELLIES
PARKING LOT, SMITH ST. LANDSCAPE**

AGREED UPON

JFA 50% DURTYN 50% JFA 100%

SITE UTILITIES (INCLUDES SLEEVES)	\$0.00				
FUTURE PARKING LOT WORK	\$87,847.00	\$40,000.00	\$20,000.00	\$24,131.00	
ALLEY BEHIND BLDG.	\$4,000.00	\$0.00	\$0.00	\$4,000.00	
SMITH ST. CONC. AND CURBS	\$16,540.00	\$16,540.00	\$8,270.00	\$8,270.00	
SMITH ST. SIDEWALK	\$9,300.00	\$9,300.00	\$9,300.00	\$9,051.00	
LANDSCAPE: EXCLUDING AROUND NEW BUILDING	\$18,102.00	\$18,102.00	\$9,051.00	\$9,051.00	
LIGHTING: IN FUTURE PARKING LOT	\$15,000.00	\$15,000.00	\$7,500.00	\$7,500.00	
PUBLIC UTILITIES (CECO)	\$13,400.00	\$7,000.00	\$3,500.00	\$3,500.00	
SIGNAGE	\$1,736.00	\$4,000.00	\$2,000.00	\$2,000.00	
SHARE IN SITE SIGNAGE (\$30,948.75: VILLAGE IS TAKING \$16191)					
RETAIL SPECIFIC SITE SIGNAGE					
ALL WEATHER SOUTH ENTRYWAY					
TEMP. FENCE REQ'D BY VILLAGE	\$5,000.00	\$5,000.00	\$2,500.00	\$2,500.00	
SUBTOTAL	\$241,666.00	\$156,363.00	\$78,181.50	\$51,952.00	\$32,860.50
			\$13,300.00		\$19,091.50

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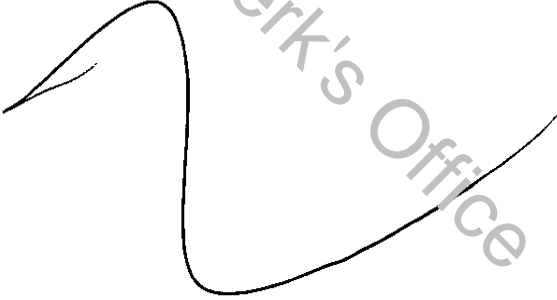
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EXHIBIT "E"

PLAN SHOWING MANDATORY, REQUIRED
AND RETAIL PARKING SPACES

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EXHIBIT E

PLAN SHOWING
MANDATORY, REQUIRED AND
RETAIL PARKING SPACES

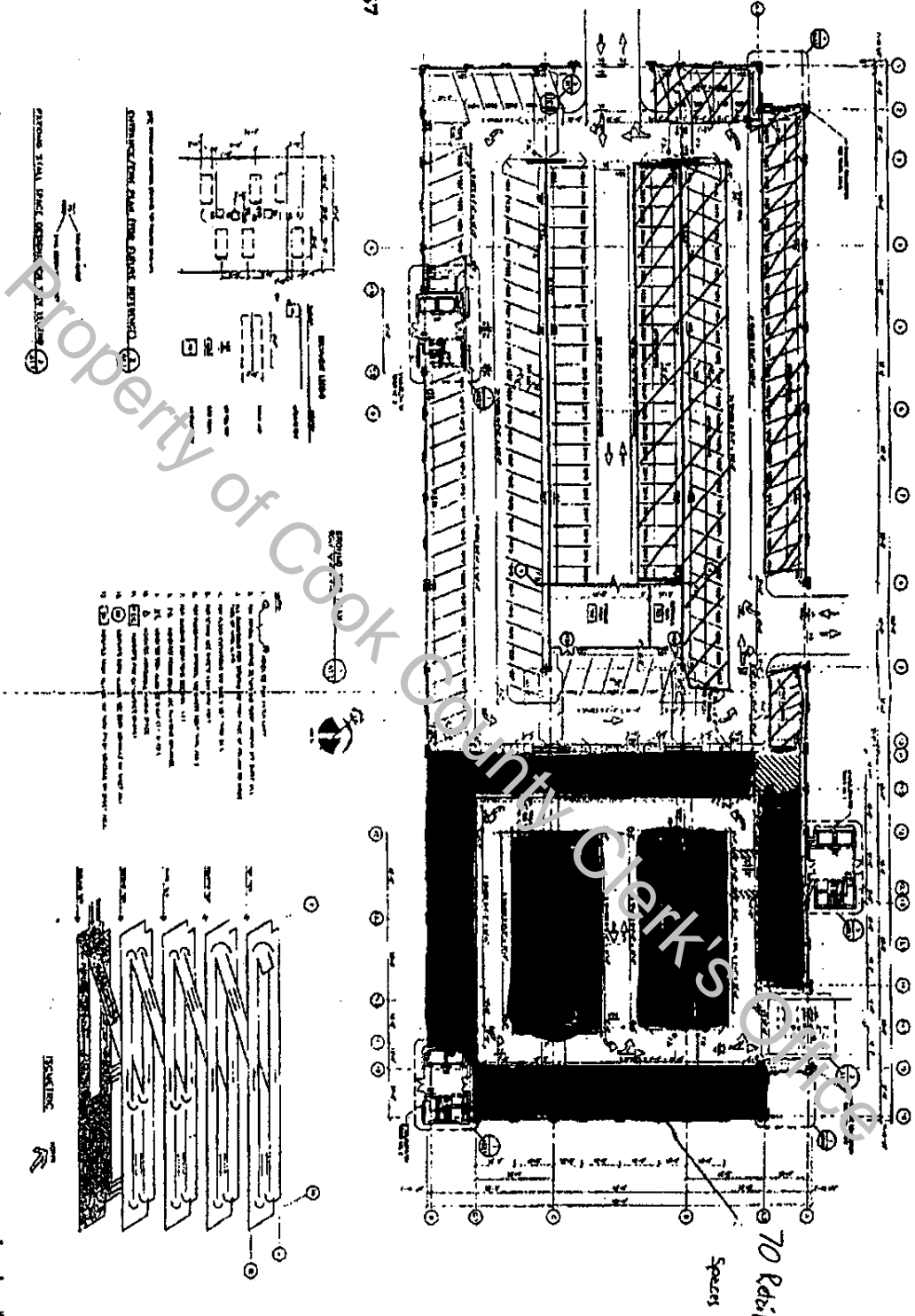
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Masonry
Spacers

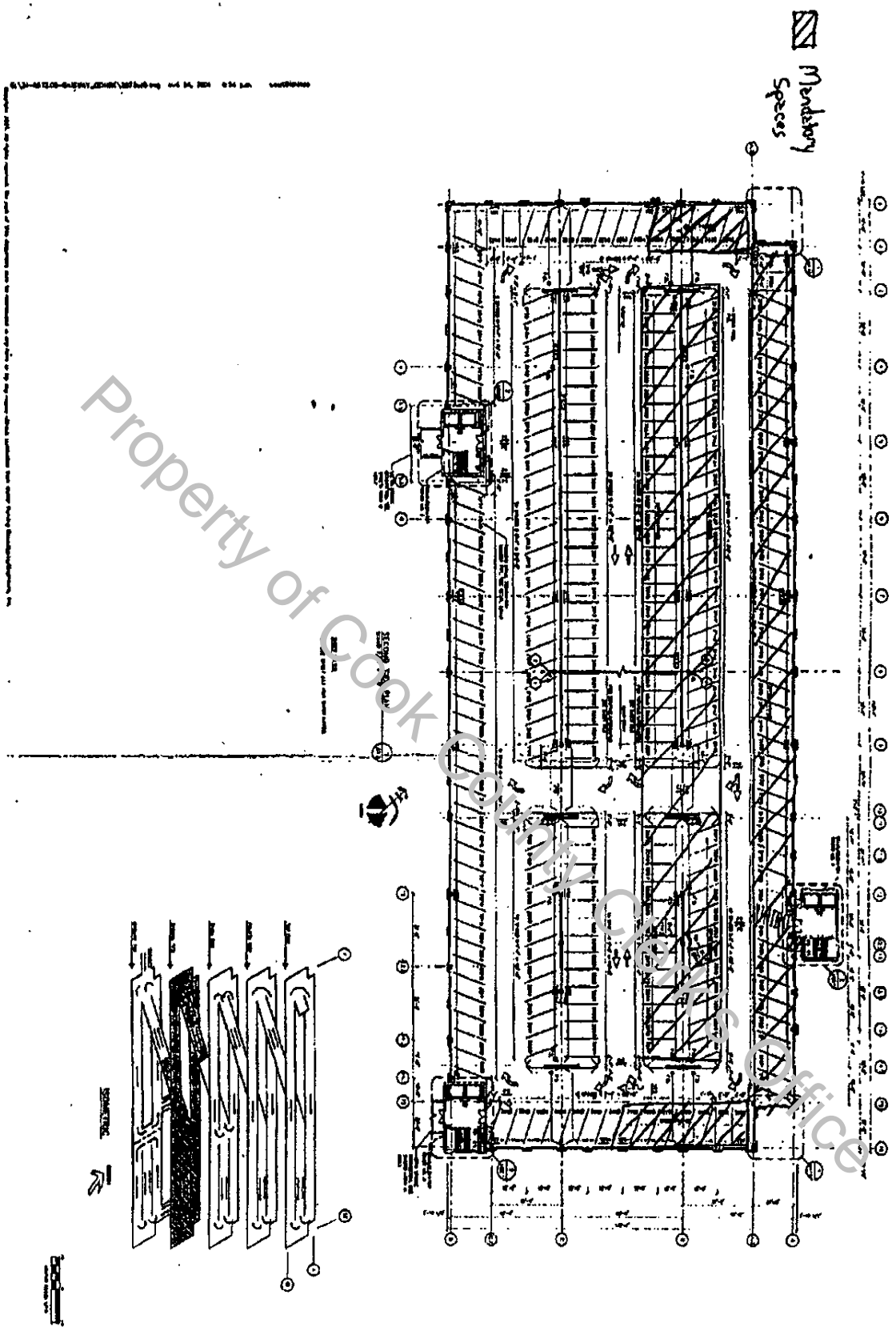


A1.1	GROUND TIER PLAN	GATEWAY CENTER PARKING STRUCTURE		DATE	SCALE	SHEET NO.	TOTAL SHEETS
		PLATNE	KLMOB				

EXHIBIT E

11012357

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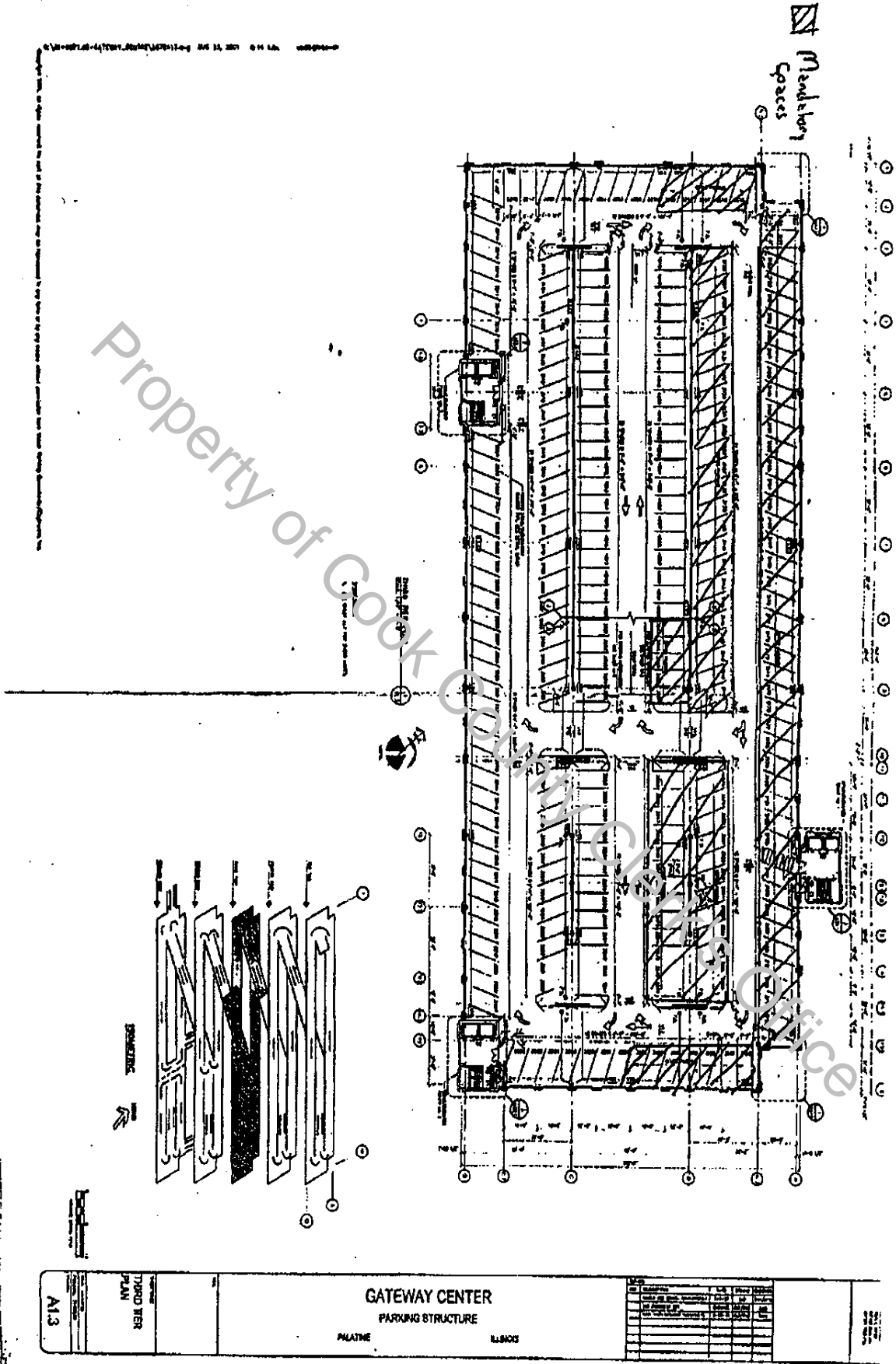


A12 SECOND TIER PLAN	GATEWAY CENTER PARKING STRUCTURE		<table border="1"> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>DATE</th> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DESCRIPTION	DATE									
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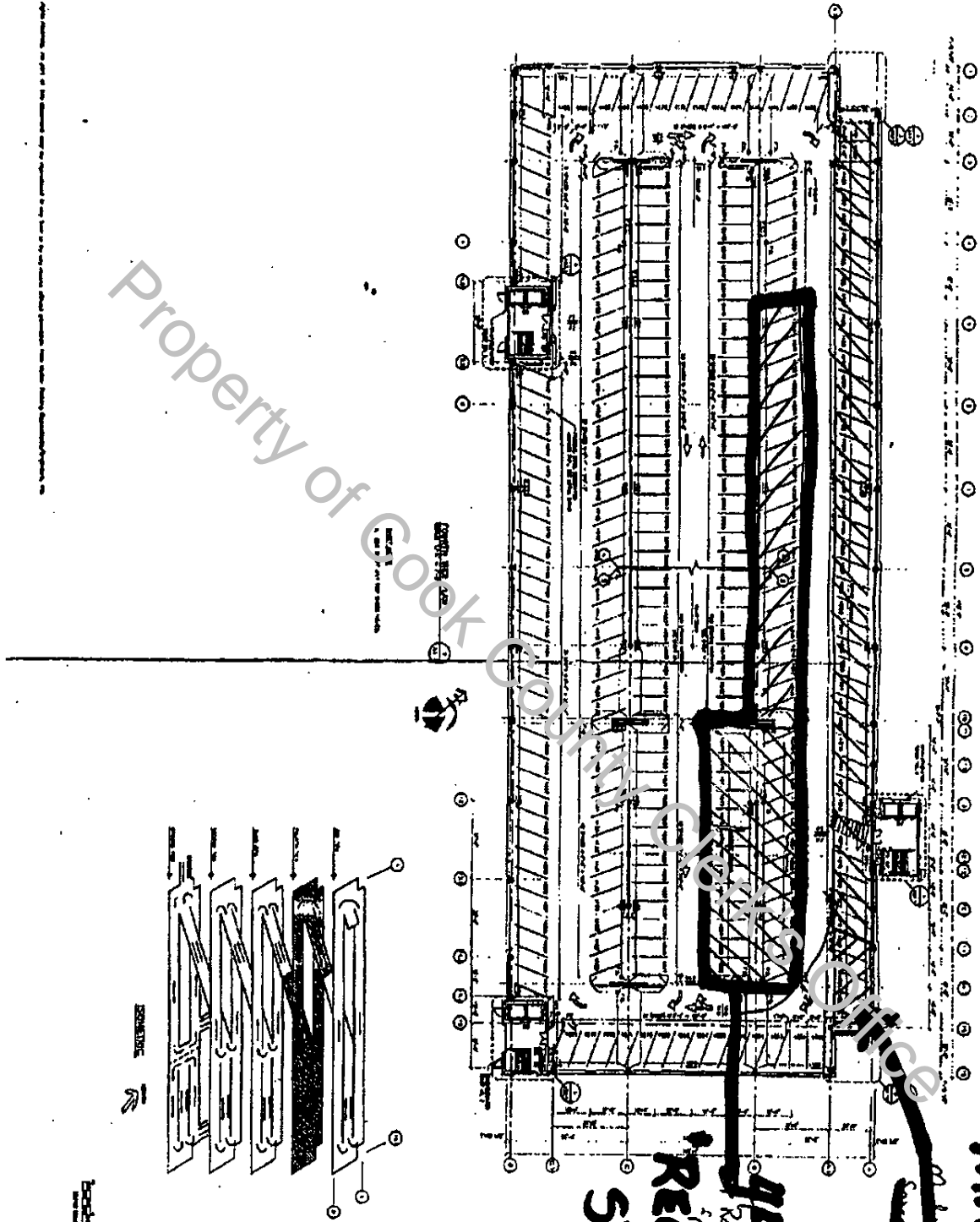
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MANDATORY SPACES

44
Required Spaces

REQUIRED SPACES

TITLE GATEWAY CENTER PARKING STRUCTURE PALATKA 11012357	PROJECT NO. 11012357	SHEET NO. 11012357	DATE 11/11/11
	DRAWN BY PALATKA	CHECKED BY PALATKA	APPROVED BY PALATKA

AT/A
 FOURTH FLOOR
 PLAN

95