

UNOFFICIAL COPY



Doc#: 0333718024
Eugene "Gene" Moore Fee: \$82.00
Cook County Recorder of Deeds
Date: 12/03/2003 10:36 AM Pg: 1 of 30

RECORD & RETURN TO:

SAFEWAY INC.
Real Estate Law Division
5918 Stoneridge Mall Road
Pleasanton, CA 94588
Dominick's Store No. 1113

8174168 D2 SCG 208 11

Property of Cook County Clerk's Office

**DECLARATION OF EASEMENTS
WITH COVENANTS AND RESTRICTIONS AFFECTING LAND**

BOX 333-CTI

UNOFFICIAL COPY

10/29/03

TABLE OF CONTENTS

1.	RECITALS.....	1
2.	DECLARATION.....	2
3.	DEFINITION OF BUILDING AREA AND COMMON AREA.....	2
4.	USE.....	2
5.	BUILDINGS.....	6
6.	COMMON AREA USE.....	7
7.	INTENTIONALLY LEFT BLANK.....	11
8.	COMMON AREA MAINTENANCE.....	11
9.	INDEMNIFICATION. INSURANCE.....	14
10.	REALTY TAXES AND ASSESSMENTS.....	15
11.	EMINENT DOMAIN.....	17
12.	CANCELLATION. MODIFICATION. DURATION.....	18
13.	RELEASE FROM LIABILITY.....	18
14.	DEFAULT.....	19
15.	NOTICES.....	20
16.	LENDER PROTECTION.....	21
17.	GENERAL PROVISIONS.....	22

Property of Cook County Clerk's Office

UNOFFICIAL COPY

DECLARATION OF EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND

THIS DECLARATION OF EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("**Declaration**") is made as of October 31, 2003 by **DOMINICK'S FINER FOODS, LLC**, a Delaware limited liability company ("**Dominick's**").

1. RECITALS.

1.1. Ownership. Dominick's is the fee owner of that certain real property depicted on the Site Plan attached to and made a part of this Declaration as Exhibit A labeled Lot 1, Lot 2, Lot 3, Lot 4, Lot 5 and Lot 6, and which property is more particularly described on Exhibit B attached to and made a part of this Declaration ("**Lot 1, Lot 2, Lot 3, Lot 4, Lot 5 and Lot 6**"). Dominick's, its tenants, subtenants, successors and assigns, currently operate a retail shopping center anchored by a grocery supermarket upon Lot 1, Lot 2, Lot 3, Lot 4, Lot 5 and Lot 6 (Lot 1, Lot 2, Lot 3, Lot 4, Lot 5 and Lot 6, together with all buildings and other improvements now or hereafter located thereon are collectively referred to herein as the "**Shopping Center**"). The grocery supermarket is located on Lot 3. All or portions of the Shopping Center may be sold or leased to third parties for development and operation of business, commercial, office, professional or mercantile purposes (retail and service), subject to the terms of this Declaration. The term "**Lot**" shall mean any one of Lot 1, Lot 2, Lot 3, Lot 4, Lot 5 or Lot 6 individually, and the term "**Lots**" shall mean collectively, Lot 1, Lot 2, Lot 3, Lot 4, Lot 5 and Lot 6. Any reference in this Declaration to a specific numbered Lot shall mean such Lot as shown on the Site Plan attached to and made a part of this Declaration as Exhibit A.

1.2. Declarant. The term "**Declarant**" as used herein shall mean Dominick's, so long as (i) Dominick's is an Owner or (ii) Dominick's is a lessee of Lot 3, and thereafter any person or entity who owns Lot 3.

1.3. Owner. The term "**Owner**" as used in this Declaration shall mean and refer to each person or entity that holds fee title to any portion of the Shopping Center from time to time, and the term "**Owners**" shall refer to all of the persons and entities that collectively own fee title to the entire Shopping Center from time to time. The term "Owner" or "Owners," unless otherwise provided in this Declaration, shall not include any lender, trust deed beneficiary or mortgagee, nor any lessee, tenant or occupant of space in the Shopping Center.

1.4. Permittees. The term "**Permittees**" shall mean the tenant(s) or occupant(s) of a Lot, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Lot, and/or (ii) such tenant(s) or occupant(s).

1.5. Walgreen. The term "**Walgreen**" or "**Walgreens**" shall mean Walgreen Co. or any successor tenant from time to time under the Walgreens Lease. The term "**Walgreen Lease**" or "**Walgreens Lease**" shall mean that certain Lease dated _____, 2003 between LaSalle Stony, L.L.C. and 6312 Nagle Ventures, LLC, collectively as landlord, and Walgreen Co., as

UNOFFICIAL COPY

tenant, demising the improvements on Lot 5, as such Lease may be amended, modified, assigned, extended, renewed, restated and/or replaced from time to time.

1.6. Purpose. Declarant desires that the Lots be developed, operated and maintained in conjunction with one another pursuant to a general plan of improvement to form a commercial shopping center and desires that the Lots be subject to the easements and the covenants, conditions and restrictions set forth below.

2. DECLARATION. It is the intent of this Declaration that the following encumbrances shall attach to and run with the Lots and shall be for the benefit of and shall be limitations upon Declarant and all future Owners of the Lots, and that all easements set forth in this Declaration shall be appurtenant to the dominant estates.

3. DEFINITION OF BUILDING AREA AND COMMON AREA.

3.1. Building Area. "Building Area" as used in this Declaration shall mean those portions of Lot 1 devoted from time to time to the uses described in clause (ii) of the first sentence of Section 4.4.1(a) below or occupied by a building containing no more than six thousand (6,000) square feet of floor area and used for a purpose that complies with the terms of this Declaration, and those portions of Lot 3, Lot 4, Lot 5 and Lot 6, inclusive, located within the building limit lines shown on Exhibit A. Building Area shall also include all paving, curbs and other improvements that (a) are located beneath a canopy or similar weather shelter, or (b) constitute a part of a drive-through facility. Lot 1 may only be developed and improved with: (i) a building devoted exclusively to the uses described in clause (ii) of the first sentence of Section 4.4.1(a) below; or (ii) a building containing no more than six thousand (6,000) square feet of floor area and used for purposes that comply with the terms of this Declaration. The Building Area does not and shall not include any portion of Lot 2.

3.2. Common Area. "Common Area" shall be all of the Shopping Center except the (i) Building Area, and (ii) outdoor playground area used in conjunction with a fast-food restaurant facility, if any, permitted under this Declaration.

3.3. Conversion to Common Area. Those portions of the Building Area on each Lot that are not from time to time used or cannot under the terms of this Declaration be used for buildings shall become part of the Common Area for the uses permitted under this Declaration and shall be improved, kept and maintained as Common Area as provided in this Declaration. An area converted to Common Area may be converted back to Building Area by its development as Building Area, if, at the time of conversion back to Building Area, it meets the requirements of this Declaration and the laws and ordinances of the City of Chicago, Illinois.

4. USE.

4.1. Use in General. The Shopping Center shall be used for the construction, operation and maintenance of business, commercial, office, professional and mercantile (retail and service) establishments as specified in this Declaration and related facilities, including common and vehicular parking areas, all as more specifically described below. Subject to the terms of this

UNOFFICIAL COPY

Declaration, the Building Area shall be used for business, commercial, office, professional or mercantile purposes (retail and service) that are allowed and not prohibited by law or ordinance of the City of Chicago, Illinois.

4.2. Nuisances. No portion of the Shopping Center shall be used by any Owner or any Permittees for (i) the conduct of any illegal, offensive, noisy or dangerous trade, business, activity or occupation, (ii) any activity that physically interferes with the business of any other Owner or any other Permittees, or (iii) any other unreasonable use not compatible with the operation of a shopping center of comparable size and stature, well maintained in accordance with the standards of this Declaration; provided, however, that the terms of this Section 4.2 shall not apply to Lot 5 or the use thereof during the continuance of the Walgreens Lease (including during any extensions or renewals thereof).

4.3. Prohibited Uses.

4.3.1 The Owners recognize their respective customers' need for adequate parking facilities in close proximity to their premises and the importance of protecting such parking facilities against unreasonable or undue encroachment that is likely to result from long term and/or excessive parking by patrons or employees of certain types of business establishments. Therefore, the Owners covenant and agree that no part of Lot 1, Lot 4, Lot 5 or Lot 6 shall be devoted to the use or operation of any (i) entertainment or recreational facility, including, without limitation, a theater of any kind, carnival, bowling alley, skating rink, amusement center, electronic or mechanical games arcade (except that not more than three (3) arcade machines shall be allowed if incidental to the operation of a business that is otherwise permitted hereunder), pool or billiard hall, betting parlor, off-track betting establishment, bingo parlor, health or aerobic spa or studio (unless such studio is a personal training facility no larger than 4,500 square feet of floor area, which may have classes as an incidental use, as long as any such class shall not exceed 25 people at any given time), gym, massage parlor, pornographic shop, adult book store, banquet hall, auditorium, nightclub, dance hall, tavern, cocktail lounge, any facility for the on-premises consumption of alcoholic beverages, any fast food, sit down or take out restaurant, any donut shop, any coffee shop, any sandwich shop, or any bakery, (ii) any truant or corrections facility; (iii) training or educational facility (other than a Sylvan Learning Center or similar use), including, without limitation, a beauty school, barber college, place of instruction, or any other operation catering primarily to students or trainees rather than to customers, but excluding training by Owners or Permittees incidental to the conduct of their businesses within the Shopping Center; (iv) a funeral home; (v) sleeping quarters or lodging; (vi) the outdoor housing or raising of animals; (vii) the sale or storage of automobiles, boats or other vehicles; (viii) any industrial use; or (ix) a church, temple, synagogue, mosque or the like. Notwithstanding the prohibitions and restrictions contained in this Section 4.3.1 and the "grocery exclusive" described in Section 4.4.1 below, a restaurant (whether fast food, sit down and/or take out) containing up to 2,000 square feet of floor area in size that serves food typically served at a hot dog stand, Asian cuisine and/or Mexican cuisine may be established and operated on Lot 4, Lot 5 and/or Lot 6 (the "**Restaurant Right**"). Notwithstanding anything contained in this Section 4.3.1 to the contrary, the restrictions set forth in this Section 4.3.1 shall not apply to Lot 5 or the use thereof during the continuance of the Walgreens Lease (including during any extensions or renewals thereof).

UNOFFICIAL COPY

4.3.2 In addition to the restrictions set forth in Section 4.3.1 above, and notwithstanding the grocery exclusive and the fuel exclusive, during the continuance of the Walgreens Lease (including during any extensions or renewals thereof), no portion of Lot 1 shall be used for any one or combination of the following uses: (i) the operation of a drug store or a so-called prescription pharmacy or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind; (ii) the operation of a business (except where the primary business is the operation of a camera store) in which photofinishing services and/or photographic film are offered for sale; (iii) the operation of a business in which greeting cards and/or gift wrap are offered for sale; (iv) the operation of a business in which prepackaged food items for off premises consumption are offered for sale (except for take out and delivery from any restaurant otherwise permitted under this Declaration and except for the sale of such products as a secondary part of and ancillary or incidental to the primary use of Lot 1 as a retail gas station); or (v) the sale of so-called health and/or beauty aids and/or drug sundries, except that no more than 1,000 square feet of combined sales or display area may be devoted to the sale of health and/or beauty aids and/or drug sundries as a secondary part of and ancillary or incidental to a barbershop's, hairstylist's, tanning salon's or beauty shop's operation or the primary use of Lot 1 as a retail gas station.

4.3.3 In addition to the restrictions set forth in Section 4.3.1 above, and notwithstanding the grocery exclusive, the fuel exclusive, and the pharmacy exclusive, during the continuance of the Walgreens Lease (including during any extensions or renewals thereof), no portion of Lot 3 shall be used for any one or combination of the following uses, except to the extent that any of the following uses are a part of the primary use of Lot 3 as a grocery store or food supermarket: (i) the operation of a drug store or a so-called prescription pharmacy or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind; (ii) the operation of a business (except where the primary business is the operation of a camera store) in which photofinishing services and/or photographic film are offered for sale; (iii) the operation of a business in which greeting cards and/or gift wrap are offered for sale; (iv) the operation of a business in which prepackaged food items for off premises consumption are offered for sale (except for take out and delivery from any restaurant otherwise permitted under this Declaration); or (v) the sale of so-called health and/or beauty aids and/or drug sundries, except that no more than 1,000 square feet of combined sales or display area may be devoted to the sale of health and/or beauty aids and/or drug sundries as a secondary part of and ancillary or incidental to a barbershop's, hairstylist's, tanning salon's or beauty shop's operation.

4.4. Lot 1 and Lot 3 Exclusives.

4.4.1. (a) Except as provided in this Section 4.4.1, the Owner or occupant of Lot 1 and Lot 3 shall have the sole and exclusive right to: (i) sell food for off-premises consumption ("**grocery exclusive**"); and (ii) operate a retail gas station (full service and/or self service) selling gasoline and other fuels, oil and other petroleum products and power sources for automobiles and other means of transport, a car wash and a convenience store ancillary to the retail gas station selling groceries, beer and wine, and other items commonly sold from time to time in a general food supermarket (the "**fuel exclusive**"). Furthermore, except as provided in

UNOFFICIAL COPY

this Section 4.4.1, the Owner or occupant of Lot 3 shall have the sole and exclusive right to sell “prescription pharmacy merchandise” (defined later) (“**pharmacy exclusive**”), so long as the primary use of Lot 3 is a grocery store or food supermarket. The grocery exclusive is subject to the Restaurant Right and the sale of food for off-premises consumption in connection therewith. “**Prescription pharmacy merchandise**” means merchandise that, under the laws of the State of Illinois, is required to be dispensed by or under the supervision of a registered or licensed pharmacist.

(b) Notwithstanding the grocery exclusive and the fuel exclusive, each store in the Shopping Center, other than the stores on Lot 1 and Lot 3, may devote up to, but not more than the lesser of (i) five hundred (500) square feet of sales area (including aisle space adjacent thereto) or (ii) sales area (including aisle space adjacent thereto) of up to ten percent (10%) of the total square footage of the store to the sale of food for off-premises consumption.

(c) Notwithstanding anything contained in this Section 4.4.1 to the contrary, the grocery exclusive, the pharmacy exclusive, the fuel exclusive and the square footage limitation on the sales area for the sale of food for off-premises consumption set forth in Section 4.4.1(b) above shall not apply to Lot 5 or the use thereof during the continuance of the Walgreens Lease (including during any extensions or renewals thereof), and shall not prohibit, limit, restrict or otherwise affect or impair the right of the tenant or any subtenant under the Walgreens Lease to use the premises demised under the Walgreens Lease for any use or purpose and/or to sell any types of products or offer any types of services from the premises demised under the Walgreens Lease. Furthermore, if the Walgreens Lease terminates, and the Owner or any Permittee of Lot 5 establishes or permits the establishment of the operation of a replacement pharmacy on Lot 5 (a “**Replacement Pharmacy**”) prior to the two year anniversary of the termination or expiration, as the case may be, of the Walgreens Lease, then the grocery exclusive, the pharmacy exclusive, the fuel exclusive and the square footage limitation on the sales area for the sale of food for off-premises consumption set forth in Section 4.4.1(b) above shall not apply to Lot 5 or the use thereof, and shall not prohibit, limit, restrict or otherwise affect or impair the right of the Owner or the Permittees of Lot 5 to use Lot 5 for any use or purpose and/or to sell any types of products or offer any types of services from Lot 5. The grocery exclusive, the pharmacy exclusive, the fuel exclusive and the square footage limitation on the sales area for the sale of food for off-premises consumption set forth in Section 4.4.1(b) above no longer shall be subject to the right described in the immediately preceding sentence if the Replacement Pharmacy ceases to operate for a continuous period of four (4) months following its opening for any reason other than (a) a strike, lockout or other labor difficulty, fire or other casualty, condemnation, war, riot, insurrection, act of God, the requirements of any local, state or federal law, rule, regulation, or any other reason beyond the reasonable control of the Owner or Permittees of Lot 5 (other than financial) or (b) temporary closure due to the restoration, reconstruction, expansion, alteration or remodeling of any buildings or improvements located on Lot 5.

4.4.2. Each of the grocery exclusive, the pharmacy exclusive, and the fuel exclusive contained in this Section 4.4 shall terminate and be of no further force or effect if:

UNOFFICIAL COPY

(i) a grocery store is not operated on Lot 3 for a continuous period of twenty four (24) months or more for any reason other than (a) a temporary closure caused by strike, lockout or other labor difficulty, fire or other casualty, condemnation, war, riot, insurrection, act of God, the requirements of any local, state or federal law, rule, regulation, or any other reason beyond the reasonable control of the Owner or occupant of Lot 3 (other than financial) or (b) temporary closure due to the restoration, reconstruction, expansion, alteration or remodeling of any buildings or improvements located on Lot 3;

(ii) at any time the condition set forth in clause (i) occurs, Dominick's, any affiliate of Dominick's or a corporate successor of either are not operating twenty (20) or more grocery stores in the Chicago metropolitan area; and

(iii) at any time the condition set forth in clause (i) occurs, Dominick's, any affiliate of Dominick's or a corporate successor of either is not operating a grocery store within a five (5) mile radius of the Shopping Center (measured as the crow flies from any point on the perimeter of the Shopping Center) for any reason other than a reason described in clauses (a) or (b) of clause (i) above in this Section 4.4.2.

4.5 Drive-Throughs. No facility on a Lot for vehicular drive-up or drive-through in which the stopping or standing of motor vehicles in line at a location for dropoff and/or pickup is intended (as, for example, at a restaurant, car wash or bank) shall be designed, constructed, used or operated in any manner such that motor vehicles in line at such facility interfere with the normal pattern and flow of pedestrian or vehicular traffic on and across the Shopping Center and/or any drive-through facility serving Lot 5.

5. BUILDINGS.

5.1. Location. No buildings shall be constructed, erected or maintained anywhere within the Shopping Center except within the Building Area as defined in Section 3.1 and depicted on the Site Plan. Canopies may encroach from the Building Area over the Common Area and canopy support columns may encroach onto the Common Area provided such canopies and support columns do not interfere with the normal use of the Common Area and provided further such canopies and support columns shall be considered part of the buildings to which they are attached and not part of the Common Area improvements.

5.2. Design and Construction. The buildings shall be designed so that the building foundations shall not encroach from one Lot onto another Lot. The design and construction of the buildings shall be in conformity with sound architectural and engineering standards, the laws, ordinances and regulations of the City of Chicago, Illinois and shall be constructed using first quality construction materials and methods. All buildings on Lot 1, Lot 3, Lot 4 and Lot 5 shall be one story only (but may include mezzanines), and all buildings on Lot 6 shall be one story or two stories only (but may include mezzanines). Nothing contained in this Section 5.2 shall prohibit or restrict the placement of satellite dishes, antennae, mechanical equipment, screening and penthouse enclosures on top of any building.

UNOFFICIAL COPY

5.3. Design Review. No new buildings and Common Area improvements on Lot 4 and Lot 6 and no exterior changes or alterations to existing buildings and Common Area improvements on Lot 4 and Lot 6 shall be made without the prior written approval of Declarant, which approval may be given or denied in Declarant's sole discretion, except that Declarant may not unreasonably withhold or delay its approval of new buildings or proposed exterior changes or alterations to the existing buildings on Lot 4 and Lot 6 that are consistent with the architectural design and quality of the Shopping Center. Declarant's approval rights under this Section 5.3 shall not apply to signs, canopies, awnings and/or storefronts from time to time on Lot 4 or Lot 6.

5.4. Encroachment. With respect to buildings that exist on the date this Declaration is executed, if building wall footings encroach from one Lot onto another Lot, the Owner onto whose Lot the footings encroach shall cooperate in granting an encroachment easement to the Owner whose building wall footings encroach.

5.5. [Intentionally omitted]

5.6. Maintenance. Subject to Section 5.7, each Owner shall maintain, at its expense, all buildings and improvements on the portion of the Shopping Center owned by it in good condition and repair.

5.7. Damage or Destruction. In the event of any damage to or destruction of any building in the Shopping Center, the Owner of the Lot upon which such building is located, at its election, at its sole cost and risk and with all due diligence, shall either (i) restore or replace such building, subject to the provisions of this Declaration, or (ii) raze and remove all parts of such damaged or destroyed building then remaining and the debris resulting therefrom and otherwise clean and restore the Building Area affected by such casualty to a level and clean condition.

6. COMMON AREA USE.

6.1. Grant of Easements. Each Owner, as grantor, hereby grants solely to the other Owners only for the benefit of such other Owners and the Permittees, a nonexclusive easement for the use of parking areas, aisles, driveways, roadways, walkways and sidewalks on the Common Area of the grantor's Lot for ingress and egress by pedestrian and vehicular traffic, the parking of motor vehicles, loading and unloading of commercial and other delivery vehicles, and use of facilities installed thereon for the comfort and convenience of Owners and Permittees.

6.2. Use. Subject to existing easements of record and the provisions of Section 6.8 below, the Common Area shall be used for parking areas, aisles, driveways, roadways, walkways, ingress and egress by pedestrian and vehicular traffic, parking of motor vehicles, loading and unloading of commercial and other delivery vehicles, for driveway purposes, and for the comfort and convenience of the customers, invitees and employees of all businesses and occupants of the buildings constructed on the Building Area from time to time. Notwithstanding anything contained herein to the contrary, there shall at all times be not less than two hundred twenty-five parking spaces available on Lot 2 for automobiles.

UNOFFICIAL COPY

6.3. No Barriers. No walls or fences of any kind shall be constructed or maintained on the Common Area, or any portion thereof, by any party that will prevent or impair the use or exercise of any of the easements granted in this Declaration, or the free access and movement of, including, without limitation, pedestrians and vehicular traffic between the various Lots; provided, however reasonable traffic controls, as may be necessary to guide and control the orderly flow of traffic, may be installed so long as access driveways to the parking areas in the Common Area are not closed or blocked. The only exception to this provision shall be (i) for conversions of the Building Area and Common Area permitted by this Declaration and (ii) for incidental encroachments upon the Common Area that may occur as a result of the use of the ladders, scaffolding, storefront barricades and similar facilities resulting in temporary obstruction of the Common Area, all of which are permitted under this Declaration so long as their use is kept within reasonable requirements of construction work being expeditiously pursued. Notwithstanding anything to the contrary above, at all times truck access to the loading dock for the buildings on Lot 3 and Lot 5 shall remain open and unimpeded. Notwithstanding anything contained in this Section 6.3 to the contrary, the Owner of Lot 3 and Walgreens (during the continuance of the Walgreens Lease, including during any extensions or renewals thereof) may place up to eight (8) Shopping Cart Corrals (as defined below), in the aggregate, on and about Lot 2, so long as: (I) there shall at all times be not less than two hundred twenty-five (225) usable parking spaces available on Lot 2 for automobiles; (II) the Shopping Cart Corrals and the use thereof do not interfere with the normal pattern and flow of pedestrian or vehicular traffic to, from, on and across the Shopping Center, and (III) the owner of each Shopping Cart Corral shall, at its sole cost (and not to be included as part of the CAM Costs) keep its Shopping Cart Corral(s) in good condition and repair. For purposes hereof, "**Shopping Cart Corrals**" shall mean equipment customarily used from time to time in shopping centers of similar stature, for customers to return their shopping carts in the parking areas of the Shopping Center (as opposed to returning them to the applicable store), and for the temporary storage of such shopping carts, pending their return to the applicable store within a reasonable time period. Declarant, as the Owner of Lot 2, as grantor, hereby grants to the other Owners and the Permittees a nonexclusive easement over and across Lot 2 to install, use, repair and maintain the Shopping Cart Corrals on the terms and subject to the conditions set forth above in this Section 6.3.

6.4. Limitations on Use. Customers and invitees shall not be permitted to park on the Common Area except while shopping or transacting business in the Shopping Center.

6.5. No Use Fee. Persons using the Common Area in accordance with this Declaration shall not be charged any fee for such use without the written consent of the Owners unless such fee shall be ordered by an appropriate governmental authority. If an appropriate governmental authority imposes a surcharge or regulatory fee on customer or employee parking or based on the number of parking spaces within the Shopping Center or any other similar fee or charge, then the Owners by mutual agreement shall use their best efforts to institute an equitable and uniform fee collection parking system for the Shopping Center.

6.6. Utility and Service Easements. Each Owner ("**grantor**") grants to the other Owners easements for the use, repair and replacement of existing storm water detention pond(s), storm drains, sewers, gas, electric and other utility lines located on each grantor's respective Lots.

UNOFFICIAL COPY

At any time and from time to time the Owner of a Lot shall have the right to relocate on its Lot any utility line installed that is subject to the foregoing grant of easement, provided that any such relocation (i) shall be performed only after thirty (30) days' notice in writing to the Owner of each Lot served by the utility line, (ii) shall not unreasonably interfere with or diminish utility service to the Lots served by the utility line, (iii) shall be performed without cost or expense to the Owner or occupant of any other Lot, (iv) shall provide for the relocated utility line to be relocated using material and design standards that equal or exceed those originally used, and (v) shall not interfere with the business operation of the Owners or occupants served by the utility line, and the relocated utilities shall not interfere with site lines to the buildings on the Lots of the other Owners, who may reasonably determine whether such interference has occurred or will occur. The Owner performing such relocation shall provide as-built plans for all such relocated utility lines to the Owners of all Lots served by such utility lines. All mains, sewers, conduits, lines and other public utilities and related equipment (collectively, "**Utility Equipment**") installed or relocated in the Shopping Center by any Owner after the date of this Declaration shall be installed and maintained below the ground level or surface of such Owner's Lot, except for: (a) such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the Owner of the affected Lot; and (b) any Utility Equipment that is of a type and is to be installed in a location consistent with any Utility Equipment located above-ground in the Shopping Center as of the date of this Declaration. Notwithstanding the foregoing or anything contained in this Declaration to the contrary, no Owner or Permittees may in any event undertake any relocation or repair work described in this Section 6.6 affecting any other Lot (except repair work of an emergency nature and normal minor repairs in the ordinary course that do not interfere with the business of any other Owner or any Permittees) during the months of November or December unless the Owner of the affected Lots(s) shall consent thereto.

6.7. Signs. No signs shall be located on the Common Area of the Shopping Center except (i) directional, delivery and traffic signs for guidance upon the Common Area, (ii) the pylon sign on Lot 2, as described below, advertising certain businesses conducted in the Shopping Center (other than businesses being conducted on Lot 1), (iii) signs located on the facade of any building that encroach, in immaterial respects, into the air space of the Common Area; and (iv) signs restricting parking to periods of limited duration (but not restricting use to any particular customers, clientele or other users, except as may be required by applicable laws), provided that such periods of limited duration have been approved by all of the Owners. No signs shall obstruct the ingress and egress shown on the Site Plan or reduce the visibility of buildings in the Shopping Center. The signs located on the Common Area of the Shopping Center shall comply with all applicable local sign ordinances. The pylon sign located on Lot 2 as of the date hereof shall not be removed, relocated or replaced without the prior written consent of the Owners of Lots 3, 4, 5 and 6 (and Walgreens, during the continuance of the Walgreens Lease, including during any extensions or renewals thereof). The surface area on the pylon sign shall be allocated to each Owner, other than the Owner of Lot 1, based on a fraction, the numerator of which shall be the floor area of the buildings constructed on such Owner's Lot(s) and the denominator of which shall be the floor area of all of the buildings constructed on Lot 3, Lot 4, Lot 5 and Lot 6, except to the extent such buildings are occupied by Declarant or Permittees (such as Walgreens) existing on the date of this Declaration who shall be permitted to maintain the size and location of the signage

UNOFFICIAL COPY

panels on the pylon sign related to their uses that exist on the date of this Declaration, as long as Declarant or each such Permittee remains an occupant of the Shopping Center. Signs installed in the Common Area after the date of this Declaration, except signs installed on Lot 1 related to the uses described in clause (ii) of the first sentence of Section 4.4.1(a) above or the uses of the building that is constructed on Lot 1 in compliance with this Declaration and signs installed in the signage panels on the pylon sign, must be approved by all Owners, other than the Owner of Lot 1, which approval shall not be unreasonably withheld. Declarant, as the Owner of Lot 2, as grantor, hereby grants to the Owners of Lots 3, 4, 5 and 6 and to their respective Permittees, a nonexclusive easement to install, repair, maintain and replace signs in the signage panels on the pylon sign on Lot 2 on the terms and subject to the conditions set forth above in this Section 6.7. The Owner of Lot 1 shall be permitted to install a pylon sign on Lot 1.

6.8. Outside Merchandising. The selling, displaying or merchandising of goods shall be confined to the interior of the buildings, and, except as hereinafter provided, shall not be conducted upon the Common Area. The Owner and Owner's tenant(s) of Lot 3, Lot 4, Lot 5 and Lot 6 may use those portions of the Common Area located on Lot 2 comprising up to ten feet (10') of the sidewalk immediately adjacent to the exterior building wall of the Building Area on their respective Lots for the placement of shopping carts and for the display of merchandise, provided the pedestrian use of the sidewalks and vehicular use of the drive aisles adjacent thereto shall not be unreasonably impeded by such use. Declarant, as the Owner of Lot 2, as grantor, hereby grants to the Owners of Lot 3, Lot 4, Lot 5, and Lot 6 only for the benefit of such Owners and their respective tenants, a nonexclusive easement over and across Lot 2 to use up to ten feet (10') of the sidewalk immediately adjacent to the exterior building wall of the Building Area on their respective Lots for the placement of shopping carts and for the display of merchandise, provided the pedestrian use of the sidewalks and vehicular use of the drive aisles adjacent thereto shall not be unreasonably impeded by such use. Notwithstanding the foregoing terms of this Section 6.8, so long as the Owner of Lot 1 is the same as the Owner of Lot 3, and the Building Area on Lot 1 has not been developed in accordance with the first sentence of Section 3.1 above, then the Owner of Lot 3 may use the Common Area on Lot 1 for the outdoor display of merchandise that does not violate the terms of this Declaration (including, without limitation, Sections 4.2, 4.3.1 and 4.3.2 above), provided that: (i) such merchandise and its display, and all structures, improvements, lighting and equipment related thereto is attractive and consistent with shopping centers of comparable size and stature, well maintained in accordance with the standards of this Declaration; (ii) such merchandise and its display, and all structures, improvements, lighting and equipment related thereto do not interfere with the normal pattern and flow of pedestrian or vehicular traffic to, from, on and across the Shopping Center; (iii) the Owner of Lot 3 shall, at its sole cost (and not to be included as part of the CAM Costs) keep all structures, improvements, lighting and equipment related to such display in good condition and repair; and (iv) such merchandise and its display and all structures, improvements, lighting and equipment related thereto shall not interfere with site lines to the buildings on the Lots of the other Owners, who may reasonably determine whether such interference has occurred or will occur.

6.9. General. All of the uses permitted within the Common Area shall be used with reason and judgment so as not to interfere with the primary purpose of the Common Area, which is to provide for parking for the customers, invitees and employees of those businesses conducted

UNOFFICIAL COPY

within the Building Area and for the servicing and supplying of such businesses. The easements hereinabove granted shall be used and enjoyed by each Owner and the Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or any Permittees at any time conducted on its Lot, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith.

Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Shopping Center. No easements, except those expressly set forth in this Section 6, shall be implied by this Declaration.

7. INTENTIONALLY LEFT BLANK

8. COMMON AREA MAINTENANCE.

8.1. Maintenance Standards. Declarant, at its sole cost and expense, shall maintain the Common Area in good condition and repair and in compliance with all applicable laws and ordinances. Without limiting the generality of the foregoing, the maintenance shall include the following:

8.1.1. Maintaining, repairing and replacing when necessary the parking area surfaces in a good, safe, level, smooth and evenly covered condition with the type of surfacing material and striping originally installed or such substitute therefor as shall in all respects be equal in quality, use and durability;

8.1.2. Promptly removing all snow, ice, papers, debris, filth and refuse and washing or thoroughly sweeping the area to the extent reasonably necessary to keep the area in a neat, clean and orderly condition, and free of snow and ice;

8.1.3. Maintaining, repairing and replacing sidewalks, curbs, walkways, parking areas, signs, planting and irrigation systems, trash facilities, drainage and common utility facilities and similar installations, except that each Owner shall be solely responsible for maintaining, repairing and replacing the sidewalks and signs on its own Lot, but each Owner shall not be responsible for cleaning, washing, shoveling or sweeping such sidewalks (which shall be Declarant's responsibility under Section 8.1.2);

8.1.4. Operating, keeping in repair and replacing when necessary such artificial lighting facilities as shall be reasonably necessary to keep the Common Area (including, without limitation, the parking areas) adequately lit at all times when any business is open in the Shopping Center and for an additional sixty (60) minutes after the last of such businesses closes for the day;

8.1.5. Maintaining all landscaped areas and making such replacement of shrubs and other landscaping as is necessary.

UNOFFICIAL COPY

8.1.6. Maintaining liability insurance with respect to injuries to persons and damage to property occurring in the Common Area and casualty insurance covering the improvements on the Common Area;

8.1.7. Servicing, maintaining, monitoring, repairing and replacing any security systems and alarms in the Common Area;

8.1.8. Maintaining, repairing and replacing Christmas and other seasonal decorations used in the Common Area; and

8.1.9. Making any alterations, additions or improvements required to be made to the Common Area in order to comply with applicable governmental laws, ordinances, rules, regulations and orders.

Declarant shall cause the work described in this Section 8.1 to be commenced and completed within a reasonable time.

8.2. CAM Costs. (a) Declarant's maintenance of the Common Area in the manner outlined in Section 8.1 is referred to herein as "**CAM Maintenance**." Declarant, shall have the right at any time, at its election, to appoint a third party manager ("**Common Area Operator**") as an agent of the Owners to perform the CAM Maintenance, provided that any such election and appointment shall not relieve Declarant from or otherwise affect Declarant's obligations under this Section 8. Declarant shall exercise such right to appoint a Common Area Operator, if at all, by at least thirty (30) days' prior written notice to each Owner (and Walgreens, during the continuance of the Walgreens Lease, including during any extensions or renewals thereof), which notice shall identify the Common Area Operator. Each Owner shall pay its pro rata share of the reasonable cost of the CAM Maintenance ("**CAM Costs**"). Each Owner's pro rata share of CAM Costs shall be a fraction, the numerator of which is the number of square feet of floor area of the building(s) located on such Owner's Lot, and the denominator of which is the total number of square feet of floor area of all of the buildings in the entire Shopping Center. Payment shall be made by each Owner within 30 days after receipt of an invoice for its pro rata share of CAM Costs, together with a detailed itemization of the CAM Costs included within such invoice, or Declarant or the Common Area Operator, as applicable, may charge a monthly reasonable, estimated amount to be applied towards each Owner's pro rata share of CAM Costs, to be reconciled within 90 days of the end of each calendar year. Within sixty (60) days after the end of each calendar year, Declarant or the Common Area Operator, as applicable, shall deliver to each Owner a detailed itemization of the CAM Costs paid or incurred during the immediately preceding calendar year. If the accounting with respect to any annual reconciliation reflects that an Owner's actual pro rata share of aforesaid CAM Costs is less than that paid by such Owner for such calendar year, then Declarant will cause to be refunded to such Owner (or, at such Owner's option, credit such overpayment against amounts next due hereunder) the amount of such overpayment within thirty (30) days after delivery of such itemization of CAM Costs. If an Owner's actual pro rata share of the aforesaid CAM Costs, as reflected in such annual itemization and reconciliation, is more than the amount paid by said Owner for such calendar year, the Owner shall pay Declarant or the Common Area Operator the amount of such deficiency within thirty

UNOFFICIAL COPY

(30) days after receipt of Declarant's or the Common Area Operator's statement and documentation of the CAM Costs.

(b) Subject to the terms set forth below in this Section 8.2, CAM Costs shall include: (i) the wages, salaries and benefits of Declarant's employees performing CAM Maintenance, provided that such wages, salaries and benefits shall be equitably allocated based on the actual amount of time spent by such employees performing CAM Maintenance, relative to the amount of time spent by such employees on other work or activities on Declarant's behalf (as evidenced by time cards and other reasonable evidence); (ii) the premiums for any insurance carried under Section 8.1.6; (iii) charges of independent contractors (including, without limitation, the Common Area Operator, if any) performing CAM Maintenance; (iv) depreciation or amortization over their respective useful lives (or, in lieu thereof if applicable, rental payments) on all tools, equipment and machinery used in performing CAM Maintenance; and (v) if Declarant does not elect to appoint a Common Area Operator, a fee of fifteen percent (15%) of the reasonable cost of CAM Maintenance to cover Declarant's supervision, management, accounting and similar services in connection with performing CAM Maintenance ("**CAM Management Fee**"). CAM Costs shall not include: (a) any item or cost which is reimbursed by insurance or otherwise compensated; (b) any interest or penalties incurred as a result of Declarant's failure to pay a bill as the same shall become due (other than as a result of another Owner's failure to make payments under this Section 8.2 when due); (c) any expenses incurred due to the fault or negligence of Declarant or its employees; (d) Declarant's overhead, management, administrative, accounting and office expenses, other than the CAM Management Fee, if applicable; and (e) real estate taxes and other ad valorem taxes and assessments.

(c) Notwithstanding anything contained in this Section 8.2 to the contrary, CAM Costs shall be consistent with and shall only include such costs that were charged to Bond Drug Company of Illinois ("Bond") prior to the execution of this Declaration under Sections 7 and/or 22 of that certain Lease dated May 24, 1984, between Norwest National Bank u/t/a dated March 1, 1978 known as Trust Number 6913 and Paul Butera, together as original lessor, and Bond as lessee, as amended by an Amendment to Lease dated June 5, 1985. Without limiting the terms of the immediately preceding sentence, Lot 5 shall not be assessed the CAM Management Fee during the continuance of the Walgreens Lease (including, during any extensions or renewals thereof). Lot 5 shall be assessed the CAM Management Fee only following the termination or expiration of the Walgreens Lease. CAM Costs for each Lot shall be billed separately to the Owner thereof, or upon an Owner's written direction, to the tenant of such Lot.

8.3. Audit. Declarant shall maintain complete and accurate books of account and records of the CAM Costs, which books of account and records for each calendar year shall be maintained by Declarant for at least two (2) years after the expiration of such calendar year. An Owner, at its sole cost and expense, shall be entitled to have an audit made of such books of account and records by representatives of Owner. Such audit may be made only by Owner giving Declarant at least twenty (20) days prior written notice of its intent to audit. An Owner may not perform more than one audit for each calendar year, and such audit must be completed within two (2) years from the expiration of the calendar year being audited. If the audit discloses that any reimbursement by Owner for the period audited was not correct, Owner shall immediately pay any

UNOFFICIAL COPY

additional amount due Declarant as disclosed by the audit, and Declarant shall immediately refund Owner the amount of any overpayment as disclosed by the audit.

9. INDEMNIFICATION. INSURANCE.

9.1. Owner's Indemnification. Each Owner ("**Indemnifying Owner**") hereby agrees to indemnify, protect, hold harmless and defend the other Owners and the Permittees from and against all demands, claims, causes of action or judgments, and all reasonable expenses incurred in investigating or resisting the same, for injury to person, loss of life or damage to property occurring (i) on the Indemnifying Owner's Lot, except if caused by the sole negligence or willful act or omission of the Owner or tenant seeking indemnification or the Permittees of such Owner or tenant in the performance of their duties on such Owner's or tenant's behalf, or (ii) anywhere else in the Shopping Center if caused by the sole negligence, willful act or omission of the Indemnifying Owner or the employees, contractors or agents of such Indemnifying Owner in the performance of their duties on such Indemnifying Owner's behalf.

9.2. Insurance. Throughout the term of this Declaration, each Owner shall procure and maintain (or cause to be procured and maintained) general and/or comprehensive public liability and property damage insurance against claims for personal injury (including contractual liability arising under the indemnity contained in Section 9.1 above), death, or property damage occurring upon such Owner's Lot, with single limit coverage of not less than an aggregate of Two Million Dollars (\$2,000,000.00) including umbrella coverage, if any. The limits of liability set forth in the immediately preceding sentence shall be increased on the commencement of the sixth (6th) year after the date of this Declaration and at five (5) year intervals thereafter by agreement of the Owners or, in the absence of agreement, then by percentage increases in the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items, as of the date of adjustment over such index as of the first day of the preceding five (5) year period. Throughout the term of this Declaration, each Owner shall procure and maintain (or cause to be procured and maintained) fire and extended coverage insurance covering the buildings and the other improvements within such Owner's Lot to the extent of not less than 100% of the replacement value thereof. The insurance coverage described above in this Section 9.2 shall be procured through companies that are authorized to do business in the State of Illinois and are governed by the regulatory authority that establishes maximum rates in the vicinity. Each Owner shall name each other Owner, and Walgreen (during the continuance of the Walgreen Lease, including during any extensions or renewals thereof), provided the Owner obtaining such insurance has been supplied with the name of such other Owner in the event of a change thereof, as additional insureds on the above-required insurance coverages; provided, however, that notwithstanding such naming of additional insureds, the provisions of Section 9.1 above shall still apply. Upon request, each Owner shall provide the other Owners with a copy of a certificate of insurance evidencing the insurance required to be carried under this Section 9.2. Each Owner shall waive, and shall cause its insurers to waive, all rights of subrogation with respect to any claims to the extent covered by insurance.

UNOFFICIAL COPY

10. REAL ESTATE TAXES AND ASSESSMENTS.

10.1. Payment of Taxes for 2003 and Prior Years. Declarant agrees to pay or cause to be paid, prior to the delinquency thereof, all real estate taxes assessed against the entire Shopping Center for the calendar year 2003 (payable during the calendar year 2004) and prior years; provided, however, that nothing contained in this Section 10.1 shall relieve Dominick's or the Owner of Lot 5 from or otherwise modify or affect any of their respective rights or obligations under Section 5.9 of that certain Real Property Sale Agreement dated as of August 28, 2003, as the same may be amended, relating to the purchase and sale of Lot 4, Lot 5 and Lot 6.

10.2. Tax Division Petition. Promptly after the recording of this Declaration, the Owners shall execute and deliver such petitions as may be required to cause each of the Lots within the Shopping Center to be assessed as a separate tax parcel. Declarant agrees to use its best efforts to cause the Cook County Tax Assessor to establish separate property identification numbers and tax parcels for, and separately assess, each Lot in the Shopping Center.

10.3. Payment of Taxes Prior to Separate Tax Parcels. Subject to Section 10.1 above (which shall govern the payment of all real estate taxes assessed against the entire Shopping Center for the calendar year 2003 [payable during the calendar year 2004] and prior years), for all years prior to that in which each Lot in the Shopping Center is assessed as a separate tax parcel: (i) Declarant shall pay the real estate taxes for the entire Shopping Center on or before the date such taxes become due and payable and shall send evidence of such payment to all of the other Owners; and (ii) each Owner shall reimburse Declarant, subject to the provisions below regarding each Owner's responsibility to pay assessments attributable to improvements on its own Lot(s), for such Owner's Tax Prorata Share (as defined below) of the real estate taxes attributable to the land comprising the Shopping Center. Each Owner shall make such reimbursement payment promptly after receipt of evidence that Declarant has paid the tax bills for the Shopping Center, together with an invoice for the amount due Declarant under this Section 10.3. Declarant shall pay all special benefit taxes and special assessments over the longest time permitted by law, and each Owner's reimbursement obligations under this Section 10.3 with respect to any such special benefit taxes and special assessments shall be based on the payment of such taxes and assessments over the longest time permitted by law, regardless of whether Declarant actually pays such taxes and assessments over the longest time permitted by law. For purposes of this Section 10.3, an Owner's "Tax Prorata Share" shall mean the square footage of such Owner's Lot divided by the aggregate square footage of all of the Lots. With respect to any real estate taxes that are attributable to any assessment based on improvements to an Owner's Lot, there shall be no proration of said real estate taxes, but rather, each Owner shall be responsible for any real estate taxes that are attributable to any assessment based on improvements to such Owner's Lot. Such allocation shall be based on information the parties obtain from the Office of the Cook County Assessor as to how the taxes assessed against the Shopping Center were determined. No Owner shall be responsible for all or any portion of any so-called "impact fees" arising by reason of improvements not on such Owner's Lot.

10.4. Payment of Taxes After Separate Tax Parcels. After each Lot in the Shopping Center is assessed as a separate tax parcel, each Owner shall pay, or cause to be paid, prior to the delinquency thereof, all real estate taxes assessed against such Owner's Lot.

UNOFFICIAL COPY

10.5 Failure to Pay Taxes. If the Declarant fails to pay before delinquency any real estate taxes required to be paid by Declarant under Sections 10.1 or 10.3 above, or if any Owner fails at any time to pay before delinquency taxes or assessments on any portion of its Lot or Lots that becomes a lien on any of the Common Area, then, except while the validity thereof is being contested by judicial or administrative proceedings, any other Owner may pay such taxes and/or assessments together with interest, penalties and costs, and in any such event, the defaulting Owner obligated to pay such taxes and/or assessments shall promptly reimburse such other Owner for all such taxes and/or assessments, interest, penalties, and costs and other charges. Any such claim for reimbursement, together with interest, penalties, costs and charges as set forth above, shall be a secured right, and a lien shall attach and take effect upon recordation of a proper claim of lien by the claimant in the office of the Cook County, Illinois Recorder of Deeds. The claim of lien shall include the following: (i) the name of the claimant; (ii) a statement concerning the basis of the claim of the lien; (iii) the last known name and address of the Owner or reputed Owner of the Lot against which the lien is claimed; (iv) a description of the property against which the lien is claimed; and (v) a statement that the lien is claimed pursuant to this provision of the Declaration reciting the date and document recording number of this Declaration. The claim of lien shall be duly verified, acknowledged and contain a certificate that a copy of the lien has been served upon the Owner against whom the lien is claimed, either by personal service or by mailing to the defaulting Owner as provided in Section 15. The lien so claimed shall attach from the date of recordation solely in the amount claimed and it may be enforced in any manner allowed by Illinois law for the foreclosure of liens. Notwithstanding the foregoing, such liens shall be subordinate to any mortgage or deed of trust given in good faith and for value now or hereafter encumbering the property subjected to the lien, which mortgage or deed of trust was recorded prior to the recording of the lien, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take free and clear from any such then existing lien filed by an Owner under this Section, but otherwise subject to the provisions of this Declaration.

10.6. Appeals. Declarant agrees to provide the Owners of Lot 4, Lot 5 and Lot 6 any notices of assessment on Lot 4, Lot 5 and Lot 6 in advance of any appropriate appeal date so that the Owners of Lot 4, Lot 5 and Lot 6 may appeal such assessment. An Owner or any tenant shall have the right to contest the validity or the amount of any tax or assessment levied against the Shopping Center or any improvement thereon for any year prior to that in which each Lot in the Shopping Center is assessed as a separate tax parcel, provided that such Owner or tenant shall not take any action that will cause or allow the institution of foreclosure proceedings. If one or more of the Owners and/or tenants desire to contest any real estate taxes assessed against the Shopping Center for any year prior to that in which each Lot in the Shopping Center is assessed as a separate tax parcel, such Owners and tenants shall cooperate with one another in connection with any such contest. Declarant shall cooperate in the institution of any such proceedings to contest the validity or amount of real estate taxes and will execute any documents required therefor, so long as Declarant is not required to incur any cost or expense in doing so. Declarant and each Owner covenants and agrees that if there shall be any refunds or rebates on account of any tax, governmental imposition or levy paid hereunder for any year prior to that in which each Lot in the Shopping Center is assessed as a separate tax parcel, such refund or rebate shall belong to the Owners, in the same proportion that the applicable tax, imposition or levy to which such refund or

UNOFFICIAL COPY

rebate relates, was paid by each Owner. Any such refunds or rebates received by Declarant or by any other Owner shall be held in trust for the benefit of the Owners entitled to any portion of such refund or rebate, and shall be forthwith equitably paid to the applicable Owners as provided above. Declarant shall, on request of the contesting Owner(s), sign any receipt that may be necessary to secure the payment of any such refund or rebate, and shall pay over to the Owners such refund or rebate as received by Declarant.

11. EMINENT DOMAIN.

11.1. Owner's Right to Award. Nothing herein shall be construed to give any Owner any interest in any award or payments made to another Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Owner's Lot, or construed to give the public or any government any rights in the Shopping Center. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Area, the award attributable to the land and improvements of such portion of the Common Area shall be payable only to the Owner in fee thereof, and no claim thereon shall be made by the Owners of any other portion of the Common Area.

11.2. Collateral Claims. Notwithstanding anything contained in Section 11.1 to the contrary, all other Owners may file collateral claims with the condemning authority for their losses that are separate and apart from the value of the land area and improvements taken from another Owner.

11.3. Tenant's Claim. Nothing in this Section 11 shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between tenant and Owner for all or a portion of any such award or payment.

11.4. Restoration of Common Areas. The Owner of the fee of each portion of the Common Area so condemned shall promptly repair and restore, at its cost, the remaining portion of the Common Area owned by it as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer without contribution from any other Owner.

11.5 Takings of Lot 2. Notwithstanding anything contained in this Section 11 to the contrary, in the event any part of Lot 2 shall be taken by reason of condemnation or under eminent domain, and if in the opinion of any Owner or Permittee, reasonably exercised, the Common Area and/or driveway access to and from adjacent roads are no longer suitable for the business of the Owners of Lots 4, 5 and/or 6, or the Permittees of such Lots, then such Owner(s) and/or Permittees shall be entitled to the award in connection with any such condemnation or eminent domain proceeding insofar as the same represents compensation for or loss of parking easement rights and cross access easement rights, if and to the extent available under applicable law.

11.6 Definition. For the purposes of this Section 11, the term "condemnation or under eminent domain proceedings" and words of similar import shall include conveyances and grants made in anticipation of or in lieu of such proceedings.

UNOFFICIAL COPY

12. CANCELLATION. MODIFICATION. DURATION.

12.1. Cancellation. This Declaration may be canceled only by a written agreement signed by all of the Owners of the Shopping Center (and Walgreens, during the continuance of the Walgreens Lease, including during any extensions or renewals thereof), and no Owner or Walgreens shall be obligated to enter into any such cancellation agreement. Any such approved cancellation agreement shall be recorded in the office of the County County, Illinois Recorder of Deeds.

12.2. Modification. Delegation of Authority. This Declaration may be modified only by the written agreement of all the Owners of the Shopping Center (and if such modification adversely affects Lot 5, by Walgreens as well, but only during the continuance of the Walgreens Lease, including during any extensions or renewals thereof), which modification agreement shall be recorded in the office of the Cook County, Illinois Recorder of Deeds. No Owner, or Walgreens (if applicable), shall be obligated to enter into any such modification agreement. Any purchaser, lender, lessee, grantee, sublessee, or other party having any interest in any portion of a Lot of which Dominick's is the Owner or lessee shall be deemed to have appointed Dominick's its attorney-in-fact for such Lot for the purpose of negotiating and entering into any modifications of this Declaration.

12.3. Consents. Wherever in this Declaration the consent or approval of an Owner or Walgreens is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof that requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner or Walgreens under this Declaration, to be effective, must be given, denied or conditioned expressly and in writing. If an Owner or Walgreens shall not grant its approval or consent, or shall not agree, the reasons therefor shall be stated in reasonable detail in writing.

12.4. Duration. Unless otherwise canceled and terminated as permitted in this Declaration, all the easements granted in this Declaration shall be effective commencing on the date of recordation of this Declaration with the Cook County, Illinois Recorder of Deeds and shall remain in full force and effect thereafter in perpetuity. If any provision of this Declaration is held to be invalid by any court, the invalidity of that provision shall not affect the validity of the remaining provisions of this Declaration. If any provision of this Declaration is held to constitute a violation of the rule against perpetuities, that provision shall be deemed to remain in effect until the death of the last survivor of the now living descendants of George W. Bush, President of the United States, plus 21 years thereafter.

13. RELEASE FROM LIABILITY. Any person or entity acquiring fee or leasehold title to any portion of the Shopping Center shall be bound by this Declaration only as to the Lot or portion thereof acquired by such person or entity, and only to the extent of such title. Such person or entity shall be bound by this Declaration only during the period such person or entity is

UNOFFICIAL COPY

the fee or leasehold owner of such Lot or portion thereof. Although persons or entities may be released under this Section, the easements, covenants and restrictions in this Declaration shall continue to be benefits and servitudes upon the Shopping Center running with the land.

14. DEFAULT.

14.1. Default. In the event of default or threatened default of this Declaration, only the Owners (and Walgreens, during the continuance of the Walgreens Lease, including during any extensions or renewals thereof) shall be entitled to institute proceedings for full and adequate relief from the consequences of such default by injunction and/or all other available legal and equitable remedies, including payment of any amounts due and/or specific performance. During the continuance of the Walgreens Lease (including during any extensions or renewals thereof), Walgreens shall have the right, but not the obligation, to enforce this Declaration on behalf of the Owner of Lot 5, and/or to cure a breach or default hereunder by the Owner of Lot 5, which enforcement or cure shall be accepted by the other Owner(s) as if effected by the Owner of Lot 5. Notwithstanding the terms set forth in the immediately preceding sentence, the Owner of Lot 5 shall have the right, but not the obligation, to enforce this Declaration on its own behalf at any time and from time to time.

14.2. Remedies for Default. If the Owner of any Lot, during the term of this Declaration, shall default in the full, faithful and punctual performance of any obligation required under this Declaration, and if upon the expiration of thirty (30) days after written notice from any other Owner or Walgreens (during the continuance of the Walgreens Lease, including during any extensions or renewals thereof) stating with particularity the nature and extent of such default, the defaulting Owner has failed to cure such default, and if a diligent effort is not then being made to cure such default, then any other Owner (and Walgreens, during the continuance of the Walgreens Lease, including during any extensions or renewals thereof), in addition to all other remedies it may have at law or in equity, shall have the right to perform such obligation of this Declaration on behalf of such defaulting Owner and to be reimbursed by such defaulting Owner for the cost thereof with interest at twelve percent (12%) per annum. If the default (i) prevents another Owner or any Permittees from conducting business on its Lot (including, without limitation, blocking access to the loading docks for the buildings on Lot 3 or Lot 5), or (ii) creates an emergency (defined to be the imminent danger of harm to persons or material property), then the 30-day notice shall not be required and any other Owner (and Walgreens, during the continuance of the Walgreens Lease, including during any extensions or renewals thereof) may immediately exercise the foregoing rights, provided it gives notice of such default to the defaulting Owner as soon as is reasonably possible. Any such claim for reimbursement, together with interest as set forth above, shall be a secured right, and a lien shall attach and take effect upon recordation of a proper claim of lien by the claimant in the office of the Cook County, Illinois Recorder of Deeds. The claim of lien shall include the following: (i) the name of the claimant; (ii) a statement concerning the basis of the claim of the lien; (iii) the last known name and address of the Owner or reputed Owner of the Lot against which the lien is claimed; (iv) a description of the property against which the lien is claimed; (v) a description of the work performed or payment made that has given rise to the claim of lien and a statement itemizing the amount of the lien; and (vi) a statement that the lien is claimed pursuant to the provision of this Declaration reciting the date

UNOFFICIAL COPY

and document recording number of this Declaration. The claim of lien shall be duly verified, acknowledged and contain a certificate that a copy of the lien has been served upon the Owner against whom the lien is claimed, either by personal service or by mailing to the defaulting Owner as provided in Section 15. The lien so claimed shall attach from the date of recordation solely in the amount claimed and it may be enforced in any manner allowed by Illinois law for the foreclosure of liens. Notwithstanding the foregoing, such liens shall be subordinate to any mortgage or deed of trust given in good faith and for value now or hereafter encumbering the property subjected to the lien, which mortgage or deed of trust was recorded prior to the recording of the lien, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take free and clear from any such then existing lien filed by an Owner (or Walgreens, during the continuance of the Walgreens Lease, including during any extensions or renewals thereof) under this Section, but otherwise subject to the provisions of this Declaration. The failure of the Owner or Owners of any of the Lots subject to this Declaration (or Walgreens, during the continuance of the Walgreens Lease, including during any extensions or renewals thereof) to insist in any one or more cases upon the strict performance of any of the promises, covenants, conditions, restrictions or agreements in this Declaration shall not be construed as a waiver or relinquishment for the future breach of the provisions of this Declaration.

14.3. Attorneys' Fees. If suit is brought for the enforcement of this Declaration or as a result of any alleged default under it (including appeals), the successful party or parties to such suit shall be entitled to be paid reasonable attorneys' fees and costs by the losing party or parties, and any judgment or decree rendered shall include an award therefor.

14.4. Governing Law. This Declaration shall be governed, enforced by, and construed in accordance with the laws of the State of Illinois without regard to its conflicts of law principles.

14.5 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted by law or in equity.

14.6 No Termination for Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any party to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Lot made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Lot covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

15. NOTICES.

15.1. Notices. Notice given by any Owner hereunder, to be effective, shall also simultaneously be delivered to Walgreens during the continuance of the Walgreens Lease, including during any extensions or renewals thereof. Notices made by the Owners or Walgreens pursuant hereto may be served personally or may be served by depositing the same in the United States mail, postage prepaid, certified or registered mail or nationally recognized overnight delivery service (such as Federal Express), addressed as follows:

UNOFFICIAL COPY

If to Declarant: Safeway Inc.
Real Estate Law Division (Dominick's 1113)
5918 Stoneridge Mall Road
Pleasanton, CA 94588

With a copy to: Real Estate Department
Dominick's Finer Foods, LLC.
711 Jorie Blvd.
Oak Brook, IL 60523-2246

If to Owner of Lot 4,
Lot 5 and Lot 6: LaSalle Stony, L.L.C
c/o Sherwood Partners, L.L.C.
790 Frontage Road, Suite 305
Northfield, Illinois 68093
Attention: Sherwood Blitstein

With a copy to: Keith J. Wenk, Esq.
Mason, Silver, Wenk & Mishkin, L.L.C.
1033 Skokie Blvd., Suite 250
Northbrook, Illinois 60062

If to Walgreens: Walgreen Co.
Attention: Law Department
Mail Stop No. 2252
200 Wilmot Road
Deerfield, Illinois 60015
Re: Store #1463

15.2. Change of Address. The addresses set forth above may be changed by written notice given pursuant to the provisions of this Section. If the fee interest in any Lot in the Shopping Center is transferred, the transferring Owner shall provide prompt written notice to all other Owners of the name and address of the transferee of such Lot.

16. LENDER PROTECTION. This Declaration, and the rights, privileges, covenants, agreements and easements under this Declaration with respect to each Owner and all Lots, shall be superior and senior to any lien placed upon any Lot, including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach of this Declaration shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value, but all of the covenants and restrictions, easements and conditions and other provisions, terms and conditions contained in this Declaration shall be binding upon and effective against any person or entity (including any mortgagee or beneficiary under a deed of trust) who acquires title to any Lot or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

UNOFFICIAL COPY

17. GENERAL PROVISIONS.

17.1. No Covenant to Operate. Nothing, either expressed or implied, contained in this Declaration shall obligate any Owner or Permittee to operate (for any period of time) any type of business on its Lot(s).

17.2. Running of Benefits and Servitudes; Rights of Successors. The easements, restrictions, benefits, and obligations hereunder shall create mutual benefits and servitudes upon all the Lots of the Shopping Center running with the land. This Declaration shall bind and inure to the benefit of the parties hereto, their respective heirs, personal representatives, tenants, successors, and/or assigns. The grantee of any Lot or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original Owner or from a subsequent Owner of such Lot, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other Owner(s), to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

17.3. Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Common Area to the general public or for the general public or for any public purposes whatsoever, it being the intention of the parties hereto that this Declaration shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Common Area of the Lots herein affected, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to the control of the Owners. Notwithstanding any other provisions in this Declaration to the contrary, Owners may periodically restrict ingress and egress from the Common Area in order to prevent a prescriptive easement from arising by reason of continued public use, provided Owners will not restrict all access to the Shopping Center without the consent of the other Owners, which consent shall not be unreasonably withheld. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such a time as to have a minimum effect on the operation of the Shopping Center.

17.4. Document Execution and Change. It is understood and agreed that until this document is fully executed and delivered by the authorized partners, corporate officers, members or other individuals, as applicable, of Declarant, there is not and shall not be an agreement of any kind between the Owners upon which any commitment, undertaking or obligation can be founded. It is further agreed that once this document is fully executed and delivered, it contains the entire agreement between the Owners with respect to the subject matter hereof and shall not be modified, changed or altered in any respect except by a written document executed and delivered by the authorized partners, corporate officers, members or other individuals, as applicable, of the Owners (and if such modification, change or alteration adversely affects Lot 5, by the authorized corporate officers or other individuals of Walgreens as well, but only during the continuance of the Walgreens Lease, including during any extensions or renewals thereof).

UNOFFICIAL COPY

17.5. Interpretation. Whenever used in this Declaration, the term "including" shall be deemed to be followed by the words "without limitation". Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. The captions and headings of the Sections of this Declaration are for convenience of reference only, and shall not be deemed to define or limit the provisions of this Declaration.

17.6. No Joint Venture; Agency. It is not intended by this Declaration to, and nothing contained in this Declaration shall, create any partnership, joint venture or other joint or equity type agreement between the Owners. Nothing in this Declaration shall be deemed or construed to create the relationship of principal and agent, or of limited or general partners, or of joint venturers, or any other association between or among the Owners.

17.7. Waiver of Right to Jury Trial. Each of Declarant and each subsequent Owner, by taking title to all or any part of the Shopping Center, desires and intends that any disputes arising between them with respect to or in connection with this Declaration be subject to expeditious resolution in a court trial without a jury. Therefore, each of Declarant and each subsequent Owner hereby waives the right to a trial by jury of any cause of action, claim, counter claim or cross complaint in any action, proceeding or other hearing brought by or against such party on any matter whatsoever arising out of, or in any way connected with, this Declaration, the relationship of such parties concerning the subject matter of this Declaration, or any claim of injury or damage, or the enforcement of any remedy under any statute, law, ordinance, rule or regulation now or hereafter in effect concerning this Declaration.

17.8. Time of Essence. Time is of the essence of this Declaration.

17.9 Single Zoning Lot. The Shopping Center shall continue to be treated as one zoning lot for the purposes of complying with the City of Chicago Zoning Ordinance. No Owner shall have the right to request or obtain any amendment to the City of Chicago Zoning Ordinance as applicable to any portions of the Shopping Center or to the planned development (BPD No. 329) covering the Shopping Center without the prior written consent of the other Owners and Walgreens (during the continuance of the Walgreens Lease, including during any extensions or renewals thereof), which consent shall not be unreasonably withheld. No Owner shall have the right to request or obtain a variance to the City of Chicago Zoning Ordinance as applicable to any portions of the Shopping Center if the granting or approval of such variance or any changes or improvements pursuant thereto would cause any other Owner's Lot or the improvements thereon to be in violation of the City of Chicago Zoning Ordinance.

17.10 Estoppel Certificates. Each Owner and Walgreens (during the continuance of the Walgreens Lease, including during any extensions or renewals thereof), within thirty (30) days of its receipt of a written request from the other Owner(s) or Walgreens (during the continuance of the Walgreens Lease, including during any extensions or renewals thereof), shall from time to time provide the requesting Owner or Walgreens a certificate binding upon such Owner or Walgreens stating: (a) to the best of such Owner's or Walgreens' knowledge, whether any Owner or Walgreens is in default or violation of this Declaration and if so identifying such default or

UNOFFICIAL COPY

violation; and (b) that this Declaration is in full force and effect and identifying any amendments to the Declaration as of the date of such certificate.

17.11 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Lot, the parties agree that this Declaration shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and cannot be rejected, in whole or in part, by the bankrupt person or entity.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Easements with Covenants and Restrictions Affecting Land as of the date first written above.

DECLARANT:

DOMINICK'S FINEER FOODS, LLC,
a Delaware limited liability company

By: Dominick's Supermarkets, Inc.,
a Delaware corporation
Its: Member

By: Wendee P. Tolsted
Assistant Vice President

By: [Signature]
Assistant Secretary

Form Approved: WAM

UNOFFICIAL COPY

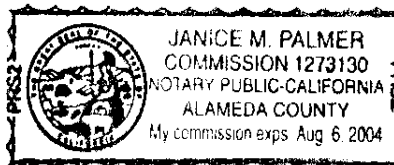
ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
 COUNTY OF ALAMEDA)

On October 29, 2003, before me, Janice M. Palmer, Notary Public, personally appeared Wendall Mitchell and Jerome P. Harrison, personally known to me (or proved on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Janice M. Palmer
 Signature



(Seal)

Property of Cook County Clerk's Office

UNOFFICIAL COPY

LIST OF EXHIBITS

- EXHIBIT A - Site Plan
- EXHIBIT B - Legal Description

Property of Cook County Clerk's Office

UNOFFICIAL COPY**EXHIBIT B****LEGAL DESCRIPTION**

Lots 1, 2, 3, 4, 5 and 6 of Dominick's Nagle Subdivision of the City of Chicago, Illinois, recorded as Document Number 5030234156 with the Cook County Recorder of Deeds, SECTION 6, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS

13-06-207-005-0000

13-06-207-006-0000

13-06-207-007-0000

13-06-207-008-0000

13-06-207-009-0000

13-06-207-010-0000

13-06-207-011-0000

13-06-207-012-0000

13-06-207-013-0000

13-06-207-014-0000

13-06-207-015-0000

13-06-207-016-0000

13-06-207-017-0000

13-06-207-018-0000

Property of Cook County Clerk's Office