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Eugene "Gene" Moore Fee: \$74.00  
Cook County Recorder of Deeds  
Date: 03/26/2004 01:41 PM Pg: 1 of 26

THIS DOCUMENT PREPARED BY:

SAFEWAY, INC.  
5918 Stoneridge Mall Road  
Oakland, CA 94588  
Attn: Real Estate Law Division

Permanent Tax Index No.  
04-34-200-017-0000 and a portion of  
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**DECLARATION OF COVENANTS, EASEMENTS,  
CONDITIONS AND RESTRICTIONS**

THIS DECLARATION ("Declaration") is made this 19<sup>th</sup> day of March, 2004, by DOMINICK'S FINER FOODS, LLC., a Delaware limited liability company (the "Declarant").

**RECITALS:**

A. Declarant is the owner of a parcel of land located in the Village of Glenview (the "Village"), Cook County, Illinois, which parcel of land is legally described on Exhibit A attached hereto and by this reference incorporated herein (the "Dominick's Parcel").

B. Declarant is also the owner of an outlot parcel of land ("Outlot") and a retail shop parcel of land that is contiguous to the Dominick's Parcel, which parcels are legally described on Exhibit B attached hereto and by this reference incorporated herein (the "Sale Parcels").

C. The Dominick's Parcel and the Sale Parcels are part of a retail/commercial development commonly known as the Glen Towncenter, which is subject to: (a) a certain Declaration of Protective Covenants, Conditions and Restrictions dated November 30, 1999 and recorded on December 6, 1999 as Document No. 9134902 in favor of the Village (the "Glenview Declaration"); (b) a certain Declaration of Covenants, Easements, Conditions and Restrictions dated June 20, 2001 and recorded on July 12, 2001 as Document No. 20616875 in favor of the Owner of Lot 4 in Dominick's Resubdivision of Lot 32 in Glenview Naval Station Subdivision No. 2 (the "World Savings Bank Declaration"); and (c) a certain Declaration of Covenants, Easements, Conditions and Restrictions dated \_\_\_\_\_ and recorded on \_\_\_\_\_ as Document No. \_\_\_\_\_ in favor of the Owner of Lot 4 in the Dominick's Resubdivision of Lots 1, 2 and 3 in Dominick's Subdivision (the "Lot 4 Declaration").

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D. Declarant desires to establish for itself, its successors and assigns and the owners and occupants from time to time of the Dominick's Parcel and the Sale Parcels and their customers, employees, agents, and invitees certain covenants, easements, conditions and restrictions in order to provide for the harmonious and complimentary use of the Dominick's Parcel and the Sale Parcels.

**NOW, THEREFORE,** Declarant declares and covenants that the Dominick's Parcel and the Sale Parcels are and shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, restrictions, conditions, easements, charges and liens as hereinafter set forth.

1. **Definitions.** The following words, when used in this Declaration, shall have the following meanings:

1.1 "**Common Areas**" shall mean all areas on the Dominick's Parcel and the Sale Parcels other than "building areas". Building areas are those areas on which a building is now built or hereafter constructed. The Common Areas shall include, but not be limited to, all sidewalks, walkways, aisles, vehicular driveways, parking areas, entrance and exits and the landscaped areas.

1.2 "**Constant Dollars**" means the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth (6<sup>th</sup>) calendar year following the date of this Declaration, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "**Base Index Number**" shall be the level of the Index for the month during which this Declaration is dated; the "**Current Index Number**" shall be the level of the Index for the month of September of the year preceding the adjustment year; the "**Index**" shall be the Consumer Price Index for All Urban Consumers, U.S. City Average, All items published by the United States Department of Commerce (base year 1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then Declarant shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result that would have been achieved by the Index.

1.3 "**Declarant**" shall mean Dominick's Finer Foods, LLC, and any successor in interest or assignee of such party.

1.4 "**Dominick's Parcel**" shall mean the real property described in **Exhibit A** attached hereto and incorporated herein by this reference.

1.5 "**Floor Area**" shall mean the actual number of square feet of floor space contained on each floor within a building, including any mezzanine or basement space (including storage areas in the case of catalogue showrooms), as measured from the exterior faces of the exterior walls; provided, however that the following areas shall not be included in such calculations: (i) space attributable to any multi-deck, platform, rack, or other multi-level system used solely for the storage of merchandise or supplies that is located vertically above any floor or basement level; (ii) any

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wholly enclosed space used for building utilities or mechanical equipment such as vertical ducts or shafts; and (iii) any canopy, drive-up teller or drive through areas.

1.6 **“Owner”** or **“Owners”** shall mean and refer to the owners and their successors or assigns who from time to time become owners of any portion of the Dominick’s Parcel or the Sale Parcels. Each Owner shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the Parcels owned by it that accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Owner shall be released from the obligations of this Declaration arising subsequent to the effective date on the transfer notice.

An Owner transferring all or any portion of its interest in the Butera Parcel or the Sale Parcels shall give notice to all other Owners and shall include therein at least the following information: (i) the name and address of the new Owner; and (ii) a copy of the legal description of the portion of the Shopping Center transferred. Until the notice of transfer is given, the transferring Owner shall (for the purpose of this Declaration only) be the transferee’s agent. If a Parcel is owned by more than one Owner, the Owner(s) holding at least fifty-one percent (51%) of the ownership interest in the Parcel shall designate one of their number to represent all Owners of the Parcel, and such designated Person shall be deemed the Owner for such Parcel.

1.7 **“Outlot”** shall mean Lot 3.

1.8 **“Outlot Owner”** shall mean the Owner of Lot 3.

1.9 **“Parcel”** shall mean a separate legal lot.

## 2. **Outlot Building Restrictions.**

2.1 **Parking Ratio.** The ratio of parking area to the area of all floors in the building located on the Outlot shall be not less than four (4) parking spaces for standard size American made automobiles for each one thousand (1,000) square feet of Floor Area in the building located on the Outlot.

2.2 **Building Size.** The Floor Area of the building located on the Outlot shall not be more than allowed by all applicable laws and ordinances based on the size of the Outlot and the required parking spaces and shall not exceed a total of eight thousand eight hundred (8,800) square feet.

2.3 **Building Height.** No building or structure on the Outlot shall exceed the greater of (i) one story or (ii) twenty five (25) feet in height; provided, however, that cupolas, architectural features and decorative features may be constructed provided that the height of such features together with the height of the building does not exceed thirty (30) feet.

2.4 **Building Location.** The location of any building constructed on the Outlot shall be confined to the Permissible Building Area for the Outlot as depicted on the Site Plan attached hereto

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as Exhibit C and incorporated herein by reference (hereinafter referred to as “Site Plan”). The construction of any building on the Outlot shall be subject to the provisions of Section 3 below.

## 2.5 Signage.

(a) Outlot Owner shall have the right to construct no more than one (1) monument type sign upon the Outlot at the location depicted on the Site Plan. The monument sign shall be constructed in substantial accordance with the drawing attached hereto as Exhibit D and incorporated herein by this reference, subject to such changes as may be required by the Village. Outlot Owner shall keep and maintain such sign in a first-class manner and shall bear the entire cost of constructing, installing, maintaining, repairing and replacing such sign.

(b) Outlot Owner shall have the right to install signage on the exterior of the building located on the Outlot provided that (i) such signage shall comply with all applicable laws and ordinances; and (ii) such signs shall conform to the sign standards set forth on Exhibit E attached hereto and incorporated herein by this reference.

2.6 Barricades. No fence, barrier, barricade or wall of any kind or nature whatsoever shall be constructed or placed upon the Outlot, except for (i) a “garden”, “trash” or “receiving area” that shall be enclosed by a fence or other kind of wall; (ii) drive-thru areas; (iii) curbs, landscaping and bumper stops that may be erected in order to define the boundaries of the Outlot; and (iv) any fence, barrier, barricade or wall required by applicable governmental authorities.

3. Approval of Improvements on the Outlot. If Outlot Owner desires to construct a building or other structure at any time on the Outlot, the following conditions and restrictions will apply:

3.1 Plan Approval. The Outlot shall be developed in substantial accordance with the Site Plan. No construction shall be commenced on the Outlot unless and until Declarant shall have also approved the elevation drawings for the building, the engineering plans and the landscaping plans for the Outlot. If Declarant does not provide Outlot Owner with written notice of disapproval of any elevation drawings for the construction of a building on the Outlot, the engineering plans and/or the landscaping plan, within fifteen (15) days of Declarant’s receipt of Outlot Owner’s proposed elevation drawings, engineering plans and/or landscaping plans, as the case may be, Outlot Owner’s elevation drawings, engineering plans and/or landscaping plans, as the case may be, shall be deemed approved by Declarant.

3.2 Material Alterations. If Outlot Owner desires to make any material alterations to the exterior of the improvements located on the Outlot or to the Site Plan that has previously been approved by Declarant, Outlot Owner shall submit the site plan and/or elevation drawings for such alterations to Declarant for its approval prior to the commencement of any construction of such alterations. If Declarant does not provide Outlot Owner with written notice of disapproval of any site plan revisions or elevation drawings for the proposed alterations within thirty (30) days of

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Declarant's receipt of Outlot Owner's proposed site plan and/or elevation drawings, Outlot Owner's site plan and/or elevation drawings, as the case may be, shall be deemed approved by Declarant.

3.3 **Lighting Systems.** Lighting systems, including, but not limited to, light standards and method of illumination used out-of-doors shall require Declarant's prior written approval prior to installation, which approval shall be granted to the extent needed to comply with applicable laws and ordinances.

## 4. **Construction Requirements.**

4.1 **"Construction" Defined.** The word "construction" includes construction, alterations, additions, repair and maintenance, replacement, rebuilding, demolition and razing permitted or required under this Declaration.

4.2 **Performance of Construction.** Outlot Owner shall perform any construction permitted in accordance with Section 3 above: (a) in accordance with the Site Plan; (b) with due diligence and in a good and workmanlike manner, using new and/or high quality materials; (c) in full cooperation with Declarant to the extent necessary to effect a unified, integrated shopping center development; (d) in accordance with any governmental requirements; (e) only after having procured and paid for, so far as the same are required, all municipal and other governmental permits and authorizations; (f) in accordance with the terms and provisions of this Declaration; and (g) in accordance with the terms and provisions of the Glenview Declaration, the World Savings Bank Declaration and the Lot 4 Declaration. Outlot Owner, in the performance of its construction, shall not: (w) cause any unnecessary or unreasonable increase in the cost of construction by Declarant; (x) unreasonably interfere with any other construction being performed by Declarant; (y) unreasonably interfere with business being conducted on Lot 1 and Lot 2; or (z) unreasonably impair the use, occupancy or enjoyment of Lot 1 and Lot 2 or any part thereof. Except in case of emergency, the right of Outlot Owner to enter upon Lot 1 and Lot 2 for the exercise of any right pursuant to the easements hereinafter set forth shall be undertaken only in such a manner so as to minimize any interference with the business of the Owners of Lot 1 and Lot 2.

4.3 **Safety Measures.** Outlot Owner shall at all times take any and all safety measures that are reasonably required to protect Lot 1 and Lot 2 from injury or damage that is caused by or results from the performance of Outlot Owner's construction. Outlot Owner shall erect or cause to be erected an adequate and sightly appearing construction barricade in conformance with all applicable building and safety codes, rules and regulations, and shall maintain such barricades until such construction has been substantially completed.

4.4 **Construction License.** Following approval by Declarant of the Site Plan and the plans as required under Section 3.1 above, Outlot Owner shall have a temporary license to use the roadways located on Lot 2 for ingress and egress between the Outlot and the streets for vehicles and equipment engaged in such construction; provided, however, that:



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(a) Outlot Owner shall pay all costs and expenses incurred by the Owner of Lot 2 in maintaining such roadways and in making repairs thereto that arise out of the use of such roadways by Outlot Owner's construction vehicles or equipment;

(b) Outlot Owner shall not unreasonably obstruct the free flow of pedestrian or vehicular traffic on Lot 2;

(c) The Owner of Lot 2 shall have the right from time to time to designate reasonable times and conditions of usage of such roadways by such vehicles and equipment; and

(d) At no time shall any vehicle or equipment used in such construction, or any materials used in such construction, be parked or stored on Lot 1 or Lot 2.

4.5 **Utility Lines.** No utility lines, such as, but not limited to, wires, pipes and conduits and supporting poles, shall be located or appear at or above ground level.

## 5. **Maintenance of Improvements.**

5.1 **Maintenance Obligations.** At all times, each Parcel and the improvements thereon, including landscaping and lawn treatment, shall be kept and maintained in a clean, neat, attractive and slightly manner, harmonious with and in the same manner as the Dominick's Parcel. Garbage and trash shall, at no time, accumulate on any Parcel, but rather shall be stored in a standard covered receptacle or receptacles until being collected by a disposal service. Each Owner shall use reasonable efforts to prevent debris and other material from being deposited onto any roadway adjoining such Owner's Parcel in connection with its use of its Parcel or any travel thereon. Each Owner shall promptly clean any roadway if such debris is deposited by such Owner.

5.2 **Casualty.** In the event of any damage or destruction to any building on a Parcel, the Owner of such Parcel shall either restore or replace such building or all rubble and debris resulting from such damage or destruction shall be removed forthwith, and such Owner shall restore such Parcel to a safe, orderly and clean condition as soon as reasonably possible.

5.3 **Environmental.** Each Owner agrees that it shall not use, or permit the use of Hazardous Materials on, about, under or in their respective Parcels, except in the ordinary course of the business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Each Owner agrees to defend, protect, indemnify and hold the other Owners harmless from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereof, including, but not limited to, costs of investigation, remedies, response and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Materials used or permitted to be used by such indemnifying party, whether or not in the ordinary course of business. For the purpose of this **Section 5.3**, the term (i) "**Hazardous Materials**" shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous

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pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law, and (ii) “**Environmental Laws**” shall mean all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations that relate to or deal with human health or the environment, all as may be amended from time to time.

## 6. Definitions and Reservations of Easements.

6.1 **Ingress and Egress.** Declarant hereby reserves or grants and establishes for the benefit of the Owners of Lot 1 and Lot 3 and their subtenants, licensees, concessionaires, suppliers, agents, employees, customers and invitees, a non-exclusive easement for pedestrian and vehicular ingress and egress (and the right and privilege to use, in common with Declarant and the owners and tenants from time to time of Lot 1 and Lot 3 and their respective subtenants, licensees, concessionaires, suppliers, agents, employees, customers and invitees), in, to, over and across all of the Common Areas of Lot 2 for the purpose of ingress and egress and providing access to and from public and private rights-of-way in connection with the use of Lot 2. Notwithstanding the above, the easements herein established are subject to the right of the Owner of Lot 2 to:

- (a) Make improvements and repairs to the Common Areas located within Lot 2 and to do all acts in connection therewith, including, without limitation, the temporary closing of such areas;
- (b) Impose reasonable regulations relative to the use of such easement areas; e.g., speed limits, prohibition of use by heavy vehicles, and installation of traffic control devices;
- (c) Provide traffic lanes delineating and controlling the flow of traffic and provide for the striping of traffic lanes; and
- (d) Temporarily close any part of such easement areas for the prevention of the acquisition of public rights in and to such areas.

Notwithstanding the foregoing, (i) prior to closing off any portion of the Common Area, as herein provided, the Owner of Lot 2 shall give written notice to the Owners of Lot 1 and Lot 3 of its intention to do so, and shall attempt to coordinate such closing with the Owners of Lot 1 and Lot 3 so that no unreasonable interference in the passage of pedestrians or vehicles or the conduct of business on Lot 1 and Lot 3 shall occur and (ii) any work to the Common Area shall be completed as quickly as possible and in a manner so as to minimize interference with the use of the Common Area or the conduct of business on Lot 1 and Lot 3.

6.2 **Utility Easements.** Declarant hereby grants and establishes non-exclusive easements under, through and across the Common Areas of Lot 1, Lot 2 and Lot 3 for such water system lines, telephone and/or electrical conduits or systems, gas mains, sewer lines, drainage lines and other public utilities that may be required to service any portion of Lot 1, Lot 2 or Lot 3. Declarant shall also have the right to establish such easements as may be reasonably required by the Village or any public utility company in connection with the furnishing of utility services to Lot 1, Lot 2 or Lot 3.

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All such systems, structures, mains, sewers, conduits, lines and other public utilities and instrumentalities shall be installed and maintained below the ground level or surface for such easements. If the installation of a utility line shall benefit only the Dominick's Parcel, Declarant shall be solely responsible for the cost and expense of the installation of the utility line. If the installation of a utility line shall only benefit Lot 2 or Lot 3, the Owner of the benefitted Parcel shall be solely responsible for the cost and expense of the installation of the utility line. If it is necessary for the owner and/or occupant of a Parcel to excavate on another Parcel for the installation, maintenance and/or repair of said utilities, such excavation shall be done in a good and workmanlike manner and shall be scheduled so as not to interfere with the conduct of business or flow of traffic on such Parcel and all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) shall be completed as quickly as possible. Each Owner shall maintain the utility lines located on its respective Parcel except if said utility line is used exclusively by another Owner, said other Owner shall be solely responsible for the maintenance of the utility line. Notwithstanding the foregoing, the Owner of a Parcel shall have the right to consent to the actual placement and location of any utilities to be installed on its Parcel before construction commences, which consent shall not be unreasonably withheld or delayed.

6.3 **Signage Easement.** Declarant hereby reserves for itself an exclusive easement for the maintenance, repair and replacement of the pylon sign that Declarant has constructed on Lot 2 in the location depicted on the Site Plan.

## 7. Use.

7.1 **Use in General.** The Shopping Center shall be used for the construction, operation and maintenance of business, commercial, 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. The Building Area shall be used for business, commercial, professional or mercantile purposes (retail and service) of the type usually carried on in a shopping center of comparable size, which are allowed and not prohibited by law or ordinance of the City of Glenview, Illinois.

7.2 **Nuisances.** No portion of the Shopping Center shall be used by the Owners or any Owner's tenants for (i) the conduct of any illegal, offensive, noisy or dangerous trade, business, activity or occupation, (ii) any activity which physically interferes with the business of any other Owner or Owner's tenants, or (iii) any other unreasonable use not compatible with the operation of a first-class shopping center, well maintained in accordance with the standards of this Declaration.

7.3 **Prohibited Uses.** 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 parking by patrons or employees of certain types of business establishments. Therefore, the Owners covenant and agree that, except with the written consent of Declarant first had and obtained, which consent may be withheld in Declarant's sole and absolute discretion, no



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part of Lot 2 and Lot 3 shall be devoted to the use or operation of any (i) entertainment or recreational facility, including, without limitation, a theater, carnival, bowling alley, skating rink, amusement center, electronic or mechanical games arcade (as the primary business), pool or billiard hall, betting parlor, bingo parlor, health or aerobic spa or studio, gym, massage parlor, pornographic shop, adult book store, nightclub, dance hall, tavern, cocktail lounge, any facility for the on-premises consumption of alcoholic beverages, any restaurant, or any truant or corrections facility; or (ii) training or educational facility, 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 employee training by Owners or Owner's tenants incidental to the conduct of their businesses within the Shopping Center.

## 7.4 Lot 1 Exclusives.

7.4.1 Except as provided in this Section 7.4.1, the Owner or occupant of Lot 1 shall have the sole and exclusive right to: (i) sell food for off-premises consumption ("**grocery exclusive**"); and (ii) sell "prescription pharmacy merchandise" (defined later) ("**pharmacy exclusive**"). "**Prescription pharmacy merchandise**" means merchandise which, under the laws of the State of Illinois, is required to be dispensed by or under the supervision of a registered or licensed pharmacist. Notwithstanding the grocery exclusive, stores in the Shopping Center other than the store on Lot 1 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.

7.4.2. Each of the grocery exclusive and the pharmacy exclusive contained in this Section 7.4 shall terminate and be of no further force or effect if, at any time a grocery store is not operated on Lot 1 and a grocery store is not operated by Dominick's, any affiliate of Dominick's or a corporate successor of either 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 a continuous period of twenty four (24) months or more 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 of Lot 1, any affiliate of Dominick's or a corporate successor of either (other than financial) or (b) temporary closure due to the restoration, reconstruction, expansion, alteration or remodeling of any buildings or improvements located on Lot 1. The provisions of Section 7.4.1 are for the benefit of Lot 1 and may be enforced pursuant to the provisions of Article 10 only by the Owners of Lot 1.

## 8. Operation and Maintenance of Common Areas.

8.1 Maintenance Standards. Each Owner, at its sole cost and expense, shall maintain the Common Area on its lot(s) in good condition and repair. Without limiting the generality of the foregoing, the maintenance shall include the following:

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8.1.1 Maintaining and repairing the parking area surfaces in a 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 Removing all 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;

8.1.4 Operating, keeping in repair and replacing when necessary such artificial lighting facilities as shall be reasonably required;

8.1.5 Maintaining any perimeter walls in a good condition and state of repair;

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

8.1.7 Paying the wages, salaries, benefits, payroll burden fees and charges of personnel employed by Owner and the charges of independent contractors retained by Owner for the maintenance, repair, management and/or supervision of the Common Area;

8.1.8 Depreciation or amortization (or, in lieu thereof, rental payments) on all tools, equipment and machinery used in the operation and maintenance of the Common Area;

8.1.9 Payment of premiums for insurance carried by Owner (and any deductible under such insurance that Owner incurs or pays following an insured casualty) on the Common Area;

8.1.10 Servicing, maintaining and monitoring of any fire sprinkler system, security systems and alarms in the Common Area;

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

8.1.12 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.

**8.2 Maintenance Obligation.** Declarant shall have the right at any time, at its election, to (i) maintain the Common Area on Lot 1, Lot 2 and Lot 3 in the manner as outlined in Section 9.1 ("**CAM Maintenance**") itself, (ii) appoint a third party manager ("**Common Area**

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**Operator**") as an agent of the Owners to perform the CAM Maintenance, or (iii) require the Owner of Lot 2 to perform the CAM Maintenance. Declarant shall exercise such right, if at all, by at least thirty (30) days' written notice to each Owner of Declarant's election regarding the maintenance of the Common Area on Lot 1, Lot 2 and Lot 3. Following Declarant's exercise of such right, each Owner shall pay its pro rata share of the 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 ground floor area of all buildings within the Owner's Parcel and the denominator of which is the total number of square feet of ground floor area of all buildings on Lot 1, Lot 2, Lot 3 and the Parcel that is subject to the Lot 4 Declaration. Payment shall be made within 30 days after receipt of an invoice for such cost together with reasonable back-up documentation, or Declarant or the Common Area Operator or the Owner of Lot 2, as applicable, may charge a monthly estimated maintenance charge, to be reconciled within 90 days of the end of each calendar year. If Declarant elects to have the Owner of Lot 2 perform the CAM Maintenance, Declarant shall promptly forward to the Owner of Lot 2 the fee that Declarant receives from the Owner of the parcel of land described on **Exhibit F** attached hereto and by this reference incorporated herein pursuant to Section 7.1 of the World Savings Bank Declaration, and the Owner of Lot 2 shall credit such fee against CAM Costs.

8.3 **Interference.** Each Owner shall not (nor shall they permit their respective tenants, subtenants, licensees, concessionaires, suppliers, agents or employees to) interfere with, obstruct, inhibit or otherwise adversely affect any other Owner's use and enjoyment of the Common Areas or the rights granted under this Declaration with respect to the Common Areas.

8.4 **Nuisances.** No Owner shall (nor shall any Owner permit their respective tenants, subtenants, licensees, concessionaires, suppliers, agents or employees to) create any nuisance upon or illegally use the Common Areas, and each Owner agrees not to violate any applicable law, ordinance, rule, regulation, permit or code that would adversely affect the use and enjoyment of the Common Areas or the rights granted under this Declaration with respect to the Common Areas.

## 9. **Indemnification/Insurance.**

9.1 **Indemnification.** Each Owner shall indemnify and hold the other Owners harmless from and against any and all claims, actions, damages, fines, liabilities and expenses of every kind nature and sort whatsoever (including reasonable attorney's fees, court costs and expenses) that may be imposed upon, incurred by or asserted against the indemnified party or its property in connection with loss of life, personal injury and/or property damage arising from or out of any occurrence upon or at the property owned by the indemnifying party that is occasioned wholly or in part by any act or omission of the indemnifying owner or its tenants, subtenants, licensees, concessionaires, suppliers, agents, employees, customers and invitees, or occasioned by the manner of construction or design of buildings or other improvements on the property owned by the indemnifying owner, or occasioned by the failure of the indemnifying owner to perform its obligations under this Declaration, except to the extent caused by the willful or negligent acts or omissions of the indemnified party or to the extent covered by insurance. With respect to any indemnification

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provided for hereunder, the indemnifying owner shall immediately respond and take over the expense, defense and investigation of all such claims arising under this indemnity.

9.2 **Insurance.** Each Owner shall cause to be procured and maintained comprehensive general public liability insurance with minimum limits of not less than Three Million and No/100 Dollars (\$3,000,000.00) in Constant Dollars combined single limit with respect to injury or death or property damage, which policy or policies shall:

- (a) Name the other Owners as an additional named insured;
- (b) Be written by solvent and responsible insurance companies licensed to do business in the State of Illinois;
- (c) Provide that such policy or policies may not be canceled by the insurer without first giving the other Owners at least thirty (30) days' prior written notice; and
- (d) Include contractual liability coverage insuring the indemnity obligations provided for herein.

All insurance required by this Section 9.2 shall be procured from companies rated by Best's Insurance Reports not less than A-/VIII. All insurance may be provided under (i) an individual policy covering such Owner's Parcel, (ii) a blanket policy or policies that includes other liabilities, properties and locations of such Owner; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than Twenty Million and No/100 Dollars (\$20,000,000.00) in Constant Dollars, then such insuring Owner shall also maintain excess liability coverage that is needed to establish a total liability insurance limit of Twenty Million and No/100 Dollars (\$20,000,000.00) in Constant Dollars, (iii) a plan of self-insurance, provided that any Owner so self-insuring notifies the other Parties of its intent to self-insure, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by an Owner in compliance with this Section 9.2, such Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance. Each Owner agrees to furnish to any Owner requesting the same a certificate(s) of insurance (or proof via its Internet web site), or statement of self-insurance, as the case may be, evidencing that the insurance required to be carried by such Owner is in full force and effect.

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## 10. General Provisions.

### 10.1 Covenants Run With the Land.

(a) The easements, rights, privileges, covenants, conditions and restrictions contained herein shall be deemed to be covenants running with the land. If any of the Parcels are hereinafter divided into two or more Parcels, all of the Owners of said Parcels shall be entitled to the benefits of the easements, rights and privileges granted hereunder and all of said owners shall be burdened by the easements, rights and privileges imposed hereunder.

(b) The easements, covenants, rights, privileges, benefits and obligations created hereby shall inure to the benefit of and be binding upon the Owners of Lot 1, Lot 2 and Lot 3, and their successors and assigns; provided, however, that upon the transfer of ownership of any of the Parcels, the liability of the transferor for breach of any covenant or obligation occurring thereafter shall terminate upon satisfaction of the notice requirements set forth in Section 1.6 above; provided, however, that the transferor shall not be relieved of any liability for breach of any covenant or obligation under this Declaration arising prior to such transfer.

10.2 Duration. Except as otherwise provided herein, each easement, covenant, restriction and undertaking of this Declaration shall be for the term of forty (40) years from the date hereof, after which time they shall be automatically extended for successive periods of ten (10) years each, unless terminated within one hundred eighty (180) days of the expiration of the initial forty (40) year term or any extension thereof by an instrument executed by each of the Owners.

### 10.3 Default.

(a) The occurrence of any one or more of the following events shall constitute a material default and breach of this Declaration by the non-performing Owner (the "**Defaulting Owner**"):

- (i) The failure to make any payment required to be made hereunder within thirty (30) days of the due date; or
- (ii) The failure to observe or perform any of the covenants, conditions or obligations of this Declaration, other than as described in (i) above, within forty-five (45) days after the issuance of a notice by the other Owner (the "**Non-Defaulting Owner**") specifying the nature of the default claimed.

(b) With respect to any default under (a)(i) or (a)(ii) above, the Non-Defaulting Owner shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of, and at the expense of, the Defaulting Owner; provided, however, that if the default constitutes an emergency condition, the Non-Defaulting Owner shall have the right to cure such default upon such advance notice



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as is reasonably possible under the circumstances or, if necessary, without advance notice so long as notice is given as soon as possible thereafter. 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 occupants.

(c) If under this Declaration a Non-Defaulting Owner is compelled or elects pursuant to this Declaration to pay any sum of money or do any acts that require the payment of money by reason of the Defaulting Owner's failure or inability to perform any of the provisions of this Declaration to be performed by such other Defaulting Owner, the Defaulting Owner shall promptly, upon demand, reimburse the Non-Defaulting Owner for such sums. All such sums shall bear interest at the rate of two percent (2%) per annum over the then existing prime rate of interest that from time to time is charged by Bank One (but in no event exceeding the applicable maximum rate per annum permitted by Illinois law) from the date of expenditure until the date of such reimbursement. The prime rate shall be the announced and published prime rate or corporate base rate by First National Bank of Chicago from time to time. A determination of the interest rate in effect as aforesaid shall be made on the date of expenditure and on the last business day of each month thereafter and shall remain in effect until the effective date of the next determination.

(d) Each Non-Defaulting Owner shall have the right to prosecute any proceedings at law or in equity against the Defaulting Owner hereto, or any other party, who violates or attempts to violate or defaults upon any of the provisions contained in this Declaration, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another Owner of any of the terms, covenants or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to an Owner under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

10.4 **Modification Provisions.** This Declaration may not be modified in any respect whatsoever, or rescinded in whole or in part, except with the consent of each Owner, and then only by written instrument duly executed and acknowledged by said owners and duly recorded in the office of the Recorder of Deeds of Cook County.

10.5 **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of Lot 1, Lot 2 or Lot 3 to the general public or for the general public or for any public purposes whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.



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If intended for Outlot Owner: John Butera & Associates  
1033 West Golf Road  
Hoffman Estates, IL 60194  
Attention: John Butera

10.10 **Estoppel Certificates.** Each party shall, upon request of the other party, provide such other party or any proposed or existing occupant, assignee or lienholder, without charge, a certificate in form as reasonably provided by such other party certifying, if and to the extent true, that such other party is not in default under this Declaration and that this Declaration is in full force and effect or, if untrue, specifying the nature of such default or invalidity or defect.

10.11 **Construction.** This Declaration shall be construed in accordance with the laws of the State of Illinois. This Declaration shall be given a broad construction so that the intention of Declarant to confer commercially usable rights of enjoyment is carried out.

10.12 **Excusable Delays.** Whenever performance is required of any party under this Declaration, such party shall use all due diligence to perform and take all necessary measures and good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, governmental delays in processing land use and other approvals, inclement weather, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such party, the time for performance as herein specified shall be approximately extended by the amount of the delay actually so caused. The provisions of this Subsection shall not operate to excuse any party from the prompt payment of any moneys required by this Declaration.

10.13 **Attorney's Fees.** If any person entitled to the benefits of this Declaration brings or commences any legal action to enforce or interpret any of the terms of this Declaration and obtains a judgment, the prevailing party in such action shall be entitled to recover its reasonable attorney's fees (including its reasonable costs and attorney's fees on any appeal) and all court costs in addition to all other appropriate relief.

10.14 **Severability.** If any term or provision of this Declaration or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

10.15 **Not a Partnership.** The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between Declarant and the Owners.

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10.16 **Third Party Beneficiary Rights.** This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise specifically provided herein.

10.17 **Captions and Headings.** The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein. In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

10.18 **Mechanic Liens.** The Owners hereby agree to indemnify, defend and hold one another harmless from and against any and all liability, claims, damages, expenses (including reasonable attorneys fees), judgments, proceedings, causes of action and judicial sales arising out of the existence or threat of mechanic's or materialmen's liens on each respective parcel or charges due or claimed as a result of work or materials performed or supplied, or claimed to have been performed or supplied, to each respective parcel by or on behalf of the contracting party ordering said work.

10.19 **Reasonableness of Consent.** Unless specifically provided in this Declaration that an Owner may withhold its consent or approval in its absolute discretion, such consent or approval shall not be unreasonably withheld, delayed or conditioned.

**IN WITNESS WHEREOF**, the undersigned has executed this Declaration of Covenants, Easements, Conditions and Restrictions as of the day and year first above written.

**DOMINICK'S FINER FOODS, LLC**, a Delaware limited liability company

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

Its: Member

By: Wendzel Mitchell  
Name: Wendzel Mitchell  
Its: ASST. Vice President

By: Linda S. McDonald  
Name: LINDA S. MCDONALD  
Its: ASST. SECRETARY

Form Approved: uau

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## ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 )  
 COUNTY OF ALAMEDA )      ss.

On March 19, 2004, before me, Sylvia Burnett, Notary Public, personally appeared Wendall Mitchell and Linda S. MacDonald personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, 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.

Signature Sylvia Burnett



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## EXHIBIT A

### LEGAL DESCRIPTION OF DOMINICK'S PARCEL

Lot 1 in the Dominick's Resubdivision of Lots 1, 2 and 3 in Dominick's Subdivision in part of Sections 27 & 34, Township 42 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

04-34-200-015-0000 part of

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## EXHIBIT B

### LEGAL DESCRIPTION OF SALES PARCEL

Lot 2 and Lot 3 in the Dominick's Resubdivision of Lots 1, 2 and 3 in Dominick's Subdivision in part of Sections 27 & 34, Township 42 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

04-34-200-015-0000 part of

04-34-200-017-0000

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## EXHIBIT D

### SIGN STANDARDS

Signage on the exterior of the building constructed on the Outlot shall be provided as herein specified, and Outlot Owner shall not erect or maintain, nor suffer to remain, any sign on the exterior of the building constructed on the Outlot except as permitted herein. Outlot Owner shall erect a sign (the "Store Front Sign") on the front of the building constructed on the Outlot that complies with local sign ordinances and Declarant's requirements. Declarant's requirements are as follows:

#### **General Requirements**

- A. The Store Front Sign shall be the only sign permitted on the Outlot other than Outlot Owner's Monument Sign.
- B. Wording on large scale sign shall be limited to the store or Outlot Owner's trade name only. Outlot Owner's customary signature or logo, hallmark, insignia, or other trade identification will be respected within the guidelines set forth, provided that it meets with the local sign ordinance.
- C. Outlot Owner shall maintain said signs in good state of repair.

#### **II. SPECIFIC REQUIREMENTS**

- A. All characters shall be individually lighted channel letters with a translucent front.
- B. The maximum letter height for a single row of letters shall be 36" for uppercase letters and/or logos and 24" for lower case letters; the minimum letter height for a single row of letters shall be 18", and the letter height for a double row of letters shall be 9".
- C. Multiple rows of letters shall not exceed 20" in total height, including the space between the rows.
- D. The minimum distance between letters shall be 1.25". No bold face type will be permitted.
- E. The depth of letters shall be 5.5".
- F. The total horizontal measurement of the sign shall not exceed 70% of the lease space width, and shall in no case exceed a length of 30'.
- G. Signage area shall not be greater than 10% of the store front area including windows and doors.
- H. All signs shall have dark bronze returns.

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- I. All signs shall have dark bronze returns.
- J. Double neon tubing shall match the plex face in color, and shall be individually gas filled to ten mm of pressure.
- K. Sign letter channel frames shall be constructed of aluminum (minimum .090) with flat or molded plastic faces mounted with concealed fasteners. The channel frames shall be dark bronze anodized. All letters shall be illuminated with neon tubes that are powered by normal factory transformers that are installed in the letters.
- L. Outlot Owner shall install a seven day timing device that will control the Store Front Sign so that hours of illumination can be controlled in accordance with the overall shopping center policy.
- M. Paper signs, stickers, banners and flags are prohibited.
- N. All sign transformers, disconnects (unless in conflict with Village Ordinances), raceways and ballast boxes and decals shall be concealed behind a sign band wall. Manufacturer's names, stamps and decals shall not be exposed.
- O. All plex sign lenses shall be Rohn & Haas or equivalent
- P. No exposed neon or incandescent bulbs or flashing, blinking, rotating, or moving signs or makers shall be permitted.
- Q. No Store Front Sign or other signage on the Premises shall be housed or contained in an illuminated or non-illuminated sign can or box that is mounted on the exterior of the sign area, unless expressly approved by Declarant in writing.

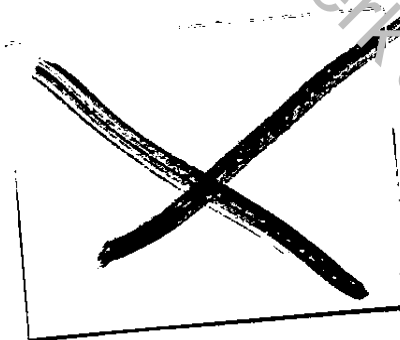
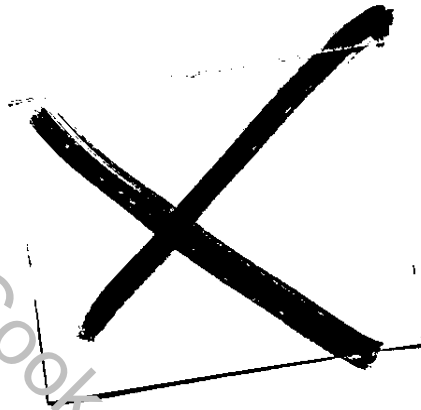
Small-scale signs stating store hours, which are neatly lettered on the glass of the building constructed on the Outlot, shall be permitted subject to Declarant's approval.

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**EXHIBIT E**

**SITE PLAN**

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## Attachment A to Exhibit E

The Permissible Building Area for the Outlot (as described in Section 2.4), the location of Buyer's monument sign on the Outlot (as described in Section 2.5), and the location of Seller's existing pylon sign on Lot 2 (as described in Section 6.3) shall be in accordance with Ordinance No. 4103 adopted by the Village of Glenview on November 2, 1999.

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## EXHIBIT F

### LEGAL DESCRIPTION OF ADJACENT OUTLOT

Lot 4 in Dominick's Resubdivision of Lot 32 in Glenview Naval Air Station Subdivision No. 2, being a Subdivision of Sections 15, 21, 22, 23, 26, 27, 28 and 34, all in Township 42 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

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