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0411932014

This instrument prepared by,  
And after recording,  
Please return to:

Schwartz, Cooper,  
Greenberger  
& Krauss, Chartered  
180 N. LaSalle Street  
Suite 2700  
Chicago, Illinois 60601  
Attn: Ronald B. Grais, Esq.

Doc#: 0411932014  
Eugene "Gene" Moore Fee: \$102.50  
Cook County Recorder of Deeds  
Date: 04/28/2004 10:39 AM Pg: 1 of 40

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## DEVELOPMENT, OPERATION AND RECIPROCAL EASEMENT AGREEMENT

THIS DEVELOPMENT, OPERATION AND RECIPROCAL EASEMENT AGREEMENT ("Agreement") is made this 22 day of April, 2004 by and between ACACIA CREDIT FUND 9 - A L.L.C., a Delaware limited liability company, ("Residential Owner"), THE WOODS OF SOUTH BARRINGTON, L.L.C., a Delaware limited liability company ("Developer"), THE WOODS OF SOUTH BARRINGTON II, L.L.C., ("Commercial Owner") (the Commercial Owner and the Residential Owner are sometimes hereinafter collectively referred to as "Parties" and individually referred to as a "Party").

### RECITALS

WHEREAS, Residential Owner is the owner of record of approximately 535 acres of land ("Residential Parcel") located in the Village of South Barrington, Illinois, more particularly described on Exhibit A attached hereto and made a part hereof;

WHEREAS, Commercial Owner is the owner of record of approximately 62 acres of land ("Commercial Parcel") located adjacent to the Residential Parcel, more particularly described on Exhibit B attached hereto and made a part hereof. The Commercial Parcel and the Residential Parcel are sometimes hereinafter collectively referred to herein as the "Property";

WHEREAS, pursuant to that certain Annexation and Development Agreement (the "Annexation Agreement") dated January 11, 2001 and recorded with the Cook County Recorder of Deeds on January 19, 2001 as Document Number 0010049341, and that Consent Decree in Case No. CH 14950, Circuit Court of Cook County, County Department Chancery Division dated December 19, 2003 and recorded with the Recorder of Deeds on January 18, 2004 as Document Number 0401631118 ("Consent Decree"), Residential Owner (as assignee pursuant to this Agreement of certain of Developer's rights and obligations under the Annexation Agreement) is obligated to construct and maintain (subject to the Residential Owner's right to assign its obligations to maintain to one or more of the Associations defined in Article 9 of the Annexation Agreement or to a certified utility or agency qualified to operate certain of the Infrastructure Improvements, as hereinafter defined) certain infrastructure improvements including Sanitary Sewer Improvements, Water Improvements, Stormwater Improvements, Roadway Improvements, Pedestrian Improvements and Street Lighting (each, as hereinafter defined) and wetland mitigation (collectively, hereinafter sometimes referred to as

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“Infrastructure Improvements”) on the Property for use by the Residential Owner, the Commercial Owner, the owners of the Klehm Parcel, as described on Exhibit C attached hereto and made a part hereof, and the owners of the Rose School Parcel, as described on Exhibit D attached hereto and made a part hereof;

**WHEREAS**, the Residential Owner and the Commercial Owner each desire to memorialize the Infrastructure Improvement obligations of the Residential Owner and the Commercial Owner as set forth with more particularity below, to grant easements on the Property to assure Residential Owner access for the construction, operation, maintenance, repair, replacement and renewal, as necessary, of the Infrastructure Improvements, to grant easements on the Property to the Commercial Owner for the construction, use, maintenance, repair, replacement and renewal of connections to the Infrastructure Improvements (“Commercial Parcel Utility Connections”) located on or which serve the Commercial Parcel and to cure Residential Owner’s default under this Agreement, on the terms and conditions as set forth in this Agreement;

**WHEREAS**, the Residential Owner and the Commercial Owner desire to confirm certain agreements and understandings with respect to each parties’ rights relating to the Infrastructure Improvements; and

**WHEREAS**, this Agreement is for the benefit of, and shall be binding upon, the Property and any and all subsequent owners of any portion thereof, shall run with the land, and shall apply to and bind the successors in interest, and any owners of any portion of the Commercial Parcel and the Residential Parcel, as hereinafter set forth.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby agree as follows:

1. **ASSIGNMENT OF RIGHTS OF DEVELOPER** Pursuant to Article 25(g) of the Annexation Agreement, Developer hereby assigns all of its rights under the Annexation Agreement and Developer’s rights and obligations under the Consent Decree with respect to the Residential Parcel to Residential Owner and with respect to the Commercial Parcel to Commercial Owner.

2. **SANITARY SEWER IMPROVEMENTS.**

2.01 **Construction.** Except as set forth herein, Residential Owner, at Residential Owner’s sole cost and expense, shall construct those sewer mains and related improvements generally as set forth on the Preliminary Engineering Plans (as defined in the Annexation Agreement) and on Exhibit E attached to the Annexation Agreement, and as shown on Exhibit E hereto as may be finally approved by the Village in the Final Engineering Plans (as defined in the Annexation Agreement) (herein referred to individually as a “Sanitary Sewer Improvement” and collectively as the “Sanitary Sewer Improvements”). The Sanitary Sewer Improvements specifically include without limitation, the lift station to be constructed in the Detention/Water Facility Area, (“Sanitary Sewer Lift Station”) the force main to be constructed in the Sanitary Sewer Easement Area (“Force Main”), any required sewer mains from the lift station to Areas B and C (as shown on the Neighborhood Plan which is part of the Annexation Agreement), and the improvements to the Village Sewer Facility described in section 2.03 hereof, all of which shall

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be located on the Commercial Parcel. Except as set forth in the preceding sentence, Commercial Owner shall construct any other sanitary sewer required to connect the buildings on the Commercial Parcel to the Sanitary Sewer Lift Station or Village Sewer Facilities. Commercial Owner further agrees that the construction and connection of Commercial Parcel Utility Connections to the Sanitary Sewer Improvements and/or the Village Sewer Facilities shall be the sole responsibility and at the sole cost and expense of the Commercial Owner. Residential Owner shall construct the Sanitary Sewer Improvements in Detention/Water Facility Area and Sanitary Sewer Easement Area no later than ten (10) months after the date of the Village's approval of the Final Engineering Plans (as defined in the Annexation Agreement); provided, however, notwithstanding anything to the contrary contained in this Section 2.02, in the event of a delay in the Village's approval of the Final Engineering Plans, the Residential Owner shall construct the Force Main on the Commercial Parcel no later than six (6) months after the date of the Village's approval of the Final Engineering Plans.

2.02 Klehm Parcel and Rose School Parcel. Residential Owner further agrees that at such time as Residential Owner has extended Sanitary Sewer Improvements to the portions of Residential Parcel immediately adjacent to the Klehm Parcel and the Rose School Parcel, Residential Owner shall extend Sanitary Sewer Improvements to the boundaries of said parcels of sufficient size to serve, respectively, a single family home on the Klehm Parcel and the existing (as of the date hereof) elementary school on the Rose School Parcel, as provided in Paragraph 3.F. of the Consent Decree. The construction costs for the extension of the Sanitary Sewer Improvements to the boundaries of the Klehm Parcel and the Rose School Parcel, shall be Residential Owner's responsibility, provided, however, extension of the sewer lines from the boundary of such parcels to the buildings(s) thereon, and the tap-in, usage and other fees payable to the Residential Owner, utility companies or other public or private third parties for use of the Sanitary Sewer Improvements, shall be the responsibility of and paid by the owners of said parcels.

2.03 Maintenance of Sanitary Sewer Improvements. Residential Owner, at its sole cost, shall be solely responsible for the operation, maintenance, repair and replacement of the Sanitary Sewer Improvements constructed by Residential Owner, whether located on the Residential Parcel, in the Detention/Water Facility Area or the Sanitary Sewer Easement Area; provided, however, Residential Owner may convey the Sanitary Sewer Improvements to and assign such operation, maintenance, repair and replacement obligations for the Sanitary Sewer Improvements, to a certified utility or agency qualified to operate such improvements (the "Operating Utility"). The Commercial Owner shall be responsible for the operation, maintenance, repair and replacement for any sanitary sewer it installs on the Commercial Parcel but may convey such sewer and assign such responsibility to the Operating Utility. Exhibit E attached hereto shows the location of the Water Improvement Pump and Treatment Facility, the Sanitary Sewer Lift Station, the Stormwater Detention Area (as defined herein) (collectively, hereinafter referred to as the "Detention/Water Facility Area") and the easement area for the Sanitary Sewer line ("Sanitary Sewer Easement Area") connecting to the Village Sewer Facilities (as defined below) to be located on the Commercial Parcel for the benefit of the Property.

2.04 Village Sewer Facilities. The Village owns, operates and maintains a 16" sanitary sewer trunk main and related lift stations and facilities at the northwest corner of Higgins and Bartlett Roads (the "Village Sewer Facilities"). Pursuant to Article 4b. of the Annexation

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Agreement, in connection with the development of the Property, Residential Owner, at its sole cost, shall undertake upgrades to the Village Sewer Facilities, increasing pumping capacity in existing Village lift stations by approximately 3400 population equivalents ("P.E.") (i.e. the P.E.'s required in the Annexation Agreement) and undertaking related improvements as set forth on Exhibit E attached to the Annexation Agreement.

(i) Use of Village Sewer Facilities. Pursuant to Article 4.b. of the Annexation Agreement, the Village has agreed to permit Residential Owner to connect the Sanitary Sewer Improvements to the upgraded Village Sewer Facilities. Pursuant to Article 4.b. of the Annexation Agreement, upon Residential Owner's completion of the Sanitary Sewer Improvements necessary for the initial phase of the occupancy of either the Residential Parcel or the Commercial Parcel, Residential Owner covenants that it shall connect the Sanitary Sewer Improvements to the Village Sewer Facilities. Pursuant to Article 4.b. of the Annexation Agreement, the Village further agreed that the Village shall at all times reserve adequate capacity therein (i.e., approximately 2,600 P.E.) in order to serve the Property, the Klehm Parcel and the Rose School Parcel.

(ii) Village Sewer Facilities Connection Fees. Pursuant to Article 4.d. of the Annexation Agreement, Residential Owner and Commercial Owner shall each pay the Village's duly adopted sewer connection fee ("Connection Fees") in effect from time to time for the portion(s) of the Residential Parcel and Commercial Parcel, as the case may be, the Party is then connecting to the Village Sewer Facilities (which amounts have been established and which shall be applicable to the use and development of the Property for the period commencing on October 1, 2002 based on 14.00/gallon of daily discharge (i.e., the rate heretofore set by the Village for the period commencing October 1, 2002), subject to additional increases as set forth in Section 2.03(iii) below). The Parties shall each have the right to prepay all or any portion of the then effective sewer connection fees at any time applicable to their respective parcels, which prepayment shall satisfy all sewer connection fee obligations for the gallons of daily discharge covered by such payment and pursuant to Article 4.d. of the Annexation Agreement, the Village shall have the right to charge reasonable, generally applicable and non-discriminatory user fees in connection with the use of the Village Sewer Facilities. Pursuant to Article 4.b. of the Annexation Agreement, and notwithstanding anything to the contrary contained in this Section 2, Residential Owner may connect the Sanitary Sewer Improvements to the Village Sewer Facilities notwithstanding that neither Residential Owner nor Commercial Owner may have prepaid the sewer connection fees with respect to allowable uses on the Property serviced by the Village Sewer Facilities.

(iii) Increases in Village Sewer Facilities Connection Fees. Increases in Connection Fees commencing from and after the date of this Agreement until the seventh anniversary of the date the Village issues the first building permit for any dwelling unit to be constructed on the Property shall be calculated as set forth in Article 17d. of the Annexation Agreement.

2.05 Metropolitan Water Reclamation District Annexation Fees. Each of Residential Owner and Commercial Owner shall pay the fees assessed, due and payable with respect to its parcel in connection with (i) the relocation of the Detention/Water Facility Area or other portions of the Property, to the Facility Planning Area of the Metropolitan Water Reclamation District of



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the Greater Chicago Area (from the Barrington Facility Planning Area) and (ii) the corresponding annexation of the Metropolitan Water Reclamation District of the Greater Chicago Area to incorporate the Property.

2.06 Areas B, C and N and Sanitary Sewer Improvements. Pursuant to Subparagraph 3.J.viii.a. of the Consent Decree, in the event the Village or its permitted assignee, the South Barrington Park District, purchases Areas B, C and N described in Paragraph 3.J. of the Consent Decree, and only in such event, Residential Owner waives its right to install Sanitary Sewer Improvements in such Areas and instead, shall install a trunk sewer line adjacent to each such Area. Any connections to said trunk sewer line and increased sewer capacity in excess of that required by the Annexation Agreement which is hereinafter required by the Village or its assignees to serve such Areas shall be installed and maintained at the sole cost and expense of the Village or its assignees and any fees assessed, due and payable with respect to such Areas which may be charged pursuant to Sections 2.04(i) and (ii) above shall also be the responsibility of the Village; the Village may assign the operation, maintenance, repair and replacement responsibility for such connections to the Operating Utility.

2.07 Use. The Sanitary Sewer Improvements shall be constructed and used for the sole purpose of providing sanitary sewer/wastewater treatment and disposal service for the benefit of the Property, the Klehm Parcel and the Rose School Parcel only, and for no other real property whatsoever.

2.08 The Sanitary Sewer Easement. In order to provide the Commercial Owner with the ability to develop the Commercial Parcel in accordance with its proposed site plan, the Commercial Owner shall have the right to approve the location of the Sanitary Sewer Easement Area on the Final Engineering Plans, such approval not to be unreasonably withheld or delayed. Residential Owner shall submit the Final Engineering Plans to Commercial Owner for approval of the location of the Sanitary Sewer Easement Area prior to their submission to the Village. Commercial Owner shall have ten (10) days to review and approve the proposed location of the Sanitary Sewer Easement Area on the Final Engineering Plans or, upon the reasonable request of and the payment by the Commercial Owner of any costs associated therewith, to request Residential Owner to relocate the Sanitary Sewer Easement Area. Commercial Owner's failure to request Residential Owner to relocate the Sanitary Sewer Easement Area within said ten (10) day period shall conclusively be deemed an approval by Commercial Owner of the location of the Sanitary Sewer Easement Area as shown on the Final Engineering Plans. If the Village shall not approve the relocation of the Sanitary Sewer Easement Area from the location approved on the Preliminary Engineering Plans, and the Village instead requires minor revisions to the Final Engineering Plans, Residential Owner shall have the right to revise the Final Engineering Plans to comply with the Village's requirements, which such revisions shall be at the sole cost and expense of Commercial Owner. Upon the Village's approval of Final Engineering Plans, Residential Owner shall construct the Force Main in the approved Sanitary Sewer Easement Area pursuant to the Final Engineering Plans approved by the Village. After approval by the Village of Final Engineering Plans and construction of the Force Main, Commercial Owner may request further relocation of the Sanitary Sewer Easement Area and Force Main, any such requests and relocation to be performed at Commercial Owner's sole cost and expense.

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## 3. WATER IMPROVEMENTS INCLUDING FIRE PROTECTION.

3.01 Construction. Except as otherwise set forth herein, Residential Owner, at Residential Owner's sole cost and expense, shall construct those wells, water mains and water storage facilities including the Water Improvement Pump and Treatment Facility, required to accommodate the potable water and fire protection needs of the Property, the Klehm Parcel and the Rose School Parcel generally as set forth on the Preliminary Engineering Plans and on Exhibit F attached to the Annexation Agreement and as may be finally approved by the Village in the Final Engineering Plans (as defined in the Annexation Agreement) (herein referred to individually as a "Water Improvement" and collectively as the "Water Improvements"). Residential Owner shall construct no later than ten (10) months after the date of the Village's approval of the Final Engineering Plans (as defined in the Annexation Agreement), the Water Improvements located in the Detention/Water Facility Area including the Water Improvement and Treatment Facility ("Water Improvement and Treatment Facility"), which are necessary to bring potable water to the Commercial Parcel.

3.02 Residential Owner agrees that at such time as Residential Owner has extended the Water Improvements to the portions of the Residential Parcel immediately adjacent to the Klehm Parcel and the Rose School Parcel, Residential Owner shall extend Water Improvement lines to the boundaries of said parcels of sufficient size to serve, respectively, a single family home on the Klehm Parcel and the existing (as of the date hereof) elementary school on the Rose School Parcel. The construction costs for the extension of the Water Improvements to the boundaries of the Klehm Parcel and Rose School Parcel shall be Residential Owner's responsibility, but the cost of the extension of the Water Improvement lines from the boundary of each parcel to the building(s) thereon, and the tap-in, usage and other fees payable to the utility companies or other public or private third parties for the use of the Water Improvements shall be paid by the owners of said parcels. The owners of the Klehm Parcel and the Rose School Parcel shall be responsible for the operation, maintenance, repair and replacement of such connections but may convey such connections and assign such responsibility to the Operating Utility.

3.03 Maintenance. Residential Owner, at its sole cost, shall be solely responsible for the operation, maintenance, repair and replacement of the Water Improvements on the Property (excluding the Commercial Parcel Utility Connections); provided, however, Residential Owner shall assign such operation, maintenance, repair and replacement obligations to the Operating Utility. Upon completion of construction of the Commercial Parcel Utility Connections, the Commercial Owner shall be responsible for the operation, maintenance, repair and replacement for the Commercial Parcel Utility Connections but, may convey such connections and assign such responsibility to the Operating Utility.

3.04 Regulatory Compliance. Residential Owner acknowledges that the planning, construction and operation of the Water Improvements will be subject to compliance with the Illinois Environmental Protection Act provisions on capacity, 415 ILCS 5/15b and related regulations.

3.05 Connection Fees for Water Improvements. Pursuant to Article 5.d. of the Annexation Agreement, provided the Water Improvements are used and maintained in compliance with the terms of the Annexation Agreement and/or the Consent Decree, no water permit or water connection fees or recurring water user fees and charges shall be required by the

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Village in connection with the use and development of the Property unless mandated by state or federal law.

3.06 Areas B, C and N and Water Improvements. Pursuant to Subparagraph 3.J.viii. of the Consent Decree, in the event Village or its permitted assignee, the South Barrington Park District, purchases Areas B, C and N, Residential Owner hereby waives its right to install the Water Improvements in Areas B, C and N and instead shall install a water main adjacent to such Areas in order to serve each such Area in accordance with the Consent Decree. Any connections to said water main and any additional potable water or fire protection needs in excess of that required by the Annexation Agreement which is hereinafter required by the Village or its assignees to serve such Areas shall be installed and maintained at the sole cost and expense of the Village or its assignees; the Village shall be responsible for the operation, maintenance, repair and replacement of such connections but, may convey such connections and assign such responsibility to the Operating Utility.

3.07 Use. The Water Improvements shall be constructed and used for the sole purpose of providing potable water and fire protection service for the benefit of the Property, the Klehm Parcel and the Rose School Parcel; provided, however, the Residential Owner shall not be required to provide Water Improvements for the Property, the Klehm Parcel or the Rose School Parcel in excess of that required as set forth in the Preliminary PUD Plan (as defined in the Annexation Agreement).

## 4. STORMWATER DRAINAGE/FLOOD PLAIN/WETLANDS.

4.01 General Stormwater Drainage Construction. Residential Owner, at Residential Owner's sole cost and expense, shall construct those storm sewers, detention systems and compensatory storage facilities required for the stormwater drainage of the Property generally as set forth on the Preliminary Engineering Plans and on Exhibit G attached to the Annexation Agreement and as may be approved by the Village in the Final Engineering Plans (herein referred to individually as a "Stormwater Improvement" and collectively as the "Stormwater Improvements") in compliance with the applicable Village ordinances and all other applicable laws and regulations, and the Annexation Agreement. Residential Owner shall construct the Stormwater Improvements in the Detention/Water Facility Area no later than ten (10) months after the date of the Village's approval of the Final Engineering Plans (as defined in the Annexation Agreement). It is contemplated that the "ditch" currently located on the Commercial Parcel shall drain into the Stormwater Improvements constructed in the Detention/Water Facility Area; provided, however, the Commercial Owner shall be solely responsible to obtain all required approvals and permits for and shall pay all costs of any rechanneling of said ditch which may be required to develop the Commercial Parcel.

### 4.02 Location, Platting and Conveyance of Stormwater Improvements and the Detention/Water Facility Area.

(i) In connection with the provision of stormwater management facilities for portions of the Property intended to be developed pursuant to a Final PUD Plan, Final Subdivision Plat (both such terms defined in the Annexation Agreement) and Final Engineering Plans, Residential Owner shall have the right to locate Stormwater Improvements in the Detention/Water Facility Area in accordance with the Preliminary Engineering Plans and Preliminary PUD Plan and on other portions of the Property; for

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which approval of the Final PUD Plan, Final Subdivision Plat and Final Engineering Plans (other than Final Engineering Plans for stormwater management for the affected portions of the Property) has not then been sought or granted. Notwithstanding anything to the contrary contained in this Section 4.02, Residential Owner shall use commercially reasonable efforts to obtain Final Engineering approval from the Village to locate those Stormwater Improvements which are to be situated on the Commercial Parcel in the area as shown on Exhibit E attached hereto and made a part hereof. In the event that after using commercially reasonable efforts to obtain said approval, such approval is not forthcoming, Residential Owner shall not be required to deviate from the Preliminary PUD Plans and Preliminary Engineering Plans with respect to the location of the Stormwater Improvements on the Commercial Parcel. In the event the Commercial Owner desires to reconfigure the Stormwater Improvements on the Commercial Parcel to an area different from that approved on the Preliminary PUD Plans and the Preliminary Engineering Plans after Residential Owner's construction thereof, the Commercial Owner shall be solely responsible for (x) obtaining all required permits and approvals therefore; and (y) the actual reconstruction of such Stormwater Improvements, all at the Commercial Owner's sole cost and expense.

(ii) At the sole cost and expense of Residential Owner, the Detention/Water Facility Area shall be plotted on the Final Subdivision Plat and thereafter, in consideration for the Residential Owner assuming the maintenance, repair, and replacement obligations for the Detention/Water Facility Areas as set forth hereunder, the Detention/Water Facility Area shall be conveyed by the Commercial Owner to the Residential Owner or, at the option of Residential Owner, to any assignee Associations (as defined in Article 9 of the Annexation Agreement).

4.03 Maintenance of Stormwater Improvements. The Commercial Owner shall have no obligation to own, operate, maintain, repair or replace the Stormwater Improvements (other than as set forth in subsection 4.02 above, the reconfigured ditch on the Commercial Parcel and any other detention area solely serving the Commercial Parcel, which shall remain Commercial Owner's obligation to operate, maintain, repair and replace), and Residential Owner shall be solely responsible to own, operate, maintain, repair and replace the same, which obligations shall be assigned by Residential Owner to one or more of the Associations, as provided in Article 9 of the Annexation Agreement; provided, however, the Commercial Owner shall pay its proportionate share of the cost of the operation and maintenance of the Stormwater Improvements.

4.04 Areas B, C and N and Cost Sharing. Pursuant to Subparagraph 3.J.viii.b. of the Consent Decree, in the event Village or its permitted assignee, the South Barrington Park District, purchases Areas B, C and N and only then, the Village shall pay its proportionate share of the cost of the operation and maintenance of the Stormwater Improvements located in the Detention/Water Facility Area; provided, any stormwater management capacity in excess of that required by the Annexation Agreement which is hereafter required by the Village or its assignees to serve such Areas shall be installed and maintained at the sole cost and expense of the Village or its assignees.



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## 4.05 Wetlands

(i) The Parties acknowledge that a Wetland Delineation Report has been prepared by Environmental Planning Team-Chicago, dated May 16, 2000, and revised and re-dated as of October 4, 2000 (the "Wetland Delineation Report"). The Wetland Delineation Report identifies approximately 68.7 acres of wetlands and other waters of the United States at the Property (collectively, the "Wetlands") that may be regulated under the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*). The Parties further acknowledge that an additional .823 acres of wetlands that are not federally regulated are located on the Residential Parcel.

(ii) The Parties further acknowledge that certain of the Infrastructure Improvements shall affect the following Wetlands areas:

A. In the Residential Parcel, a total of 5.433 acres of federally-regulated wetlands (the "Residential Wetlands");

B. In the Commercial Parcel, a total of 1.690 acres of federally-regulated wetlands (the "Commercial Wetlands").

(iii) Residential Owner Responsibilities

A. Residential Owner shall secure a permit from the U.S. Army Corps of Engineers under Section 404 of the federal Water Pollution Control Act (33 U.S.C. § 134) prior to commencement of any development activities affecting the Residential Wetlands (the "Residential Wetlands Permit"). Under no circumstances shall Residential Owner commence any development activities affecting the Residential Wetlands without a Residential Wetlands Permit.

B. Residential Owner's development of the Residential Parcel shall materially comply and be fully consistent with all terms and conditions of the Residential Wetlands Permit. Residential Owner may perform such wetlands mitigation on any portion of the Residential Parcel as may be necessary or required under the Residential Wetlands Permit, or applicable guidelines and policies of the U.S. Army Corps of Engineers and the United States Environmental Protection Agency, to replace affected ecological resources and to lessen the impact of the development of the Residential Parcel on the environment, provided, all such mitigation shall be at Residential Developer's sole cost and expense.

C. Residential Owner shall be solely responsible for securing the Residential Wetlands Permit and complying with its terms and conditions in connection with its development of the Residential Wetlands. To the extent permitted by federal law, Residential Owner may assign its obligations under the Residential Wetlands Permit to one or more of the Associations pursuant to the terms of the Annexation Agreement.

D. Residential Owner agrees that it will not commence any activities on the Residential Parcel that may affect the .823 acres of wetlands that are not

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federally regulated without the prior written approval of the Village of South Barrington, such approval not to be unreasonably withheld, conditioned or delayed. Any activities undertaken by Residential Owner affecting this area shall be consistent with such terms and conditions as the Village of South Barrington may reasonably impose.

E. Residential Owner agrees that up to 2.538 acres of the Residential Parcel may be used by Commercial Owner to mitigate the impact of development of the Commercial Parcel on the Commercial Wetlands, as set out more fully below.

F. Areas B, C, E, and N, Outlots A and C and the Wetlands. Pursuant to Subparagraph 3.J.viii.b. and Paragraph 3.K. of the Consent Decree, in the event the Village or its permitted assignee, the South Barrington Park District ("Park District"), acquires Areas B, C, E or N or the Village acquires Outlots A or C in accordance with the Annexation Agreement or the Consent Decree (in any event, hereinafter individually referred to as a "Publicly Owned Area" and collectively as "Publicly Owned Areas"), Residential Owner shall have the right to perform wetlands mitigation on any Wetland located on such Publicly Owned Areas delineated in the Wetland Delineation Report and in the Annexation Agreement, as may be required or permitted in the Residential Wetlands Permit. Such wetlands mitigation shall be at Residential Owner's sole cost and expense; provided, however, the Village or its permitted assignee shall pay its proportionate share of maintenance of the Wetlands, as required by the Associations; provided, further, if any portion of the Residential Wetlands is located on Area N, and Area N is owned by the Park District, the Park District shall be required to maintain the Wetlands located on Area N at its sole cost and expense. The proportionate share of the cost of the maintenance of the Wetlands required to be paid by the Park District shall thereafter exclude Area N from the computation thereof; provided, any additional wetland mitigation in excess of that required by the Residential Wetlands Permit which is hereafter required due to the Village or Park District's plans to develop any of the Publicly Owned Areas, shall be installed and maintained at the sole cost and expense of the Village or Park District, as the case may be.

(iv) Commercial Owner Responsibilities.

A. Commercial Owner shall secure a permit from the U.S. Army Corps of Engineers under Section 404 of the federal Water Pollution Control Act (33 U.S.C. § 134) prior to commencement of any development activities affecting the Commercial Wetlands (the "Commercial Wetlands Permit"). Under no circumstances shall Commercial Owner commence any development activities affecting the Commercial Wetlands without a Commercial Wetlands Permit.

B. Commercial Owner's development of the Commercial Parcel shall comply and be fully consistent with all terms and conditions of the Commercial Wetlands Permit. Commercial Owner shall, at its own cost and expense, perform such wetlands mitigation as may be necessary or required under the Commercial Wetlands Permit, or applicable guidelines and polices of the U.S. Army Corps of

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Engineers and the United States Environmental Protection Agency, to replace affected ecological resources and to lessen the impact of the development of the Commercial Parcel on the environment.

C. Because mitigation may not be feasible on the Commercial Parcel, the Commercial Owner may use up to 2.538 acres on the Residential Parcel, the location of which shall be designated by the Residential Owner or such other areas as the Residential Owner and the Commercial Owner mutual agree upon, to mitigate the impact of development of the Commercial Parcel on the Commercial Wetlands; provided, however, the Commercial Owner's use of such areas on the Residential Parcel for said mitigation shall be at no cost or expense to the Commercial Owner. Notwithstanding anything to the contrary set forth hereunder, at the sole cost and expense of Commercial Owner, the Residential Owner shall be responsible for maintaining the mitigation areas for the Commercial Wetlands which are located on the Residential Parcel which such maintenance shall include but is not limited to any monitoring required by the Commercial Wetlands Permit of said Wetland mitigation area.

D. Commercial Owner shall be solely responsible for securing the Commercial Wetlands Permit and complying with its terms and conditions in connection with its development of the Commercial Wetlands and mitigation of the impact of said development on the Commercial Wetlands. To the extent permitted by federal law, Commercial Owner may assign its obligations under the Commercial Wetlands Permit.

4.06 Protection of Environmentally Sensitive Areas. Both Commercial Owner and Residential Owner shall implement best management practices in connection with the protection of environmentally sensitive areas on the respective parcels. Such best management practices shall include, but not be limited to, utilization of natural vegetative buffers, placement of trees and shrubs in strategic locations to reduce wind erosion, construction of sediment traps inside stormwater basins, immediate seeding and placement of erosion blankets in sensitive areas at final grade.

4.07 Stormwater Improvement Specifications. In preparing Final Engineering Plans for the Stormwater Improvements, Residential Owner shall cause to be undertaken detailed hydrologic and hydraulic models to determine the base flood elevation for the north tributary of Spring Creek so as to determine the specific limits of any flood plain on the Property and to account for specific drainage conditions prevailing before and after development, and to determine the extent and definition of existing depressional storage areas on the property. Final design of the Stormwater Improvements shall be consistent with the intent and purpose of the Village's Special Flood Hazard Areas Ordinance, Title 12, Chapter 1. In its preparation of Final Engineering Plans, Residential Owner shall follow the procedures of Title 12 of the Village's codes regarding Water Quality Management; provided, however the Commercial Owner acknowledges that the Residential Owner will likely seek technical relief from various portions of said Title 12 including (i) relief from Chapter 2 (Stream and Wetland Protection) by way of a conditional use permit primarily to account for filling and relocation of lowland conservancy areas in the Stormwater Improvements and in areas designated for wetlands mitigation and to modify certain setbacks so as to accommodate the location of the Stormwater Improvements and

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the enhancement of existing wetlands; (ii) relief from Chapter 3 (Soil Erosion Control) primarily concerning the intent to improve and supplement natural vegetation within 25 feet of water courses, lakes, ponds and wetlands (rather than leaving them undisturbed); and (iii) relief from Chapter 4 (Stormwater Drainage and Detention) primarily confirming that, upon completion of supporting calculations as outlined in Title 12-4-8, there will be no oversizing of the Stormwater Improvements on the Property to accommodate storage for offsite upstream areas.

## 5. ROADWAYS, PEDESTRIAN CIRCULATION AND STREETLIGHTS.

### 5.01 Residential Owner Construction of Roadways.

(i) Residential Owner, at Residential Owner's sole cost and expense, shall construct those roadway improvements necessary to permit Residential Owner's use and development of the Property generally as shown on the Preliminary Engineering Plans and on Exhibit H attached to the Annexation Agreement, as may hereafter be finally approved by the Village pursuant to the Final Engineering Plans and relevant agency permits (herein referred to individually as a "Roadway Improvement" and collectively as the "Roadway Improvements"), and as specifically shown on Exhibit F attached hereto. Residential Owner shall complete the construction of the Roadway Improvements at Route 59 and South Woods of South Barrington Drive, through the Detention/Water Facility area and to the southern boundary of such Detention/Water Facility Area and the Commercial Parcel and related improvements at Route 59 no later than ten (10) months after the date of the Village's approval of the Final Engineering Plans (as defined in the Annexation Agreement). Residential Owner shall install traffic signalization, if any, only at such time as applicable warrants therefore are met; except for signalization located at Route 59 and South Woods of South Barrington Drive, and any signalization on Route 72, which such signalization Commercial Owner shall be responsible for providing as hereinafter set forth.

### (ii) Commercial Owner Construction of Commercial Roadway Improvements.

A. Commercial Owner, at Commercial Owner's sole cost and expense, shall construct the Roadway Improvements related to the Commercial Parcel (except as required under Section 5.01(i) above), generally as shown on the Preliminary Engineering Plans, as may hereafter be finally approved by the Village pursuant to the Preliminary and Final PUD and Final Engineering Plans and relevant agency permits for the Commercial Parcel, and generally as shown on Exhibit F attached hereto as "Commercial Roadway Improvements" (collectively, "Commercial Roadway Improvements").

B. Pursuant to a Settlement Agreement dated August 22, 1997 in Condemnation Case Nos. 90 L 51100 and 90 L 51101 ("Condemnation Case"), Commercial Owner shall install, at its sole cost and expense, signal hardware and interconnection on Route 59 as and when warrants require installation of such signals, whether warrants are satisfied during or after the development of the Commercial Parcel. All costs, including maintenance, electricity and energy relating to such signalization pursuant to the Condemnation Case shall be paid by Commercial Owner, and Commercial Owner shall have any cost recovery rights against the owner of the land west of Route 59.



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5.02 Specifications for Construction of Roadways. The width of rights-of-way on the Property in which the applicable Roadway Improvements are to be located and the construction of each roadway shall conform with the widths and specifications shown on the Preliminary PUD Plan, the Preliminary PUD/Subdivision Plat (as defined in the Annexation Agreement) and the Preliminary Engineering Plans, as finally approved in the Final PUD/Subdivision Plat and Final Engineering Plans approved by the Village.

5.03 Dedication of Roadway; Improvement in Area E to Village. Residential Owner shall dedicate the Roadway Improvements located on the Residential Parcel to the Village (unless located within a right-of-way owned and controlled by IDOT or the Cook County Highway Department) after the Village has inspected the such Roadway Improvements to confirm that construction has been completed in accordance with the requirements of the Annexation Agreement, and pursuant to Article 7.a. of the Annexation Agreement, the Village has agreed to accept the dedication of said Roadway Improvements which have then been constructed by Residential Owner promptly upon Residential Owner's completion and tender thereof. Pursuant to Article 7.a. of the Annexation Agreement, for the 20-year period commencing on the date of the completion of the Roadway Improvements located in Area E of the Property, the Village shall be solely responsible for the operation, maintenance, repair and replacement of the same; provided, however, that pursuant to Paragraph 3.G. of the Consent Decree, the Residential Owner (or assignee Associations, as defined in Article 9 of the Annexation Agreement), has waived its right to require the Village to be responsible for the cost of said maintenance and repair of the dedicated Roadway Improvement located in Area E of the Property for the twenty (20) year period and instead, shall reimburse the Village for the cost of said maintenance and repair during such twenty year period.

5.04 Construction of Pedestrian Improvements and Street Lighting. Residential Owner, at Residential Owner's sole cost and expense, shall construct pedestrian paths and street lighting, all as generally shown on Preliminary PUD Plan and the Preliminary Engineering Plans and as may hereafter be finally approved by the Village pursuant to the Final Engineering Plans (referred to herein as, respectively, the "Pedestrian Improvements" and "Street Lighting"). The Pedestrian Improvements and the Street Lighting may be located within dedicated rights-of-way, easements or common lots, as shown on the Preliminary PUD Plan, the Preliminary PUD/Subdivision Plat, the Preliminary Engineering Plans and on any Final PUD Plan, Final Subdivision Plat and Final Engineering. Residential Owner shall have the right in connection with any phase of development of the Residential Parcel to construct only such Pedestrian Improvements and such Street Lighting as may be necessary for such phase.

5.05 Dedication of Pedestrian Improvements and Street Lights. Residential Owner shall dedicate such Pedestrian Improvements and Street Lighting to the Village (unless located within a right-of-way owned and controlled by IDOT or the Cook County Highway Department) after the Village has inspected the such Pedestrian Improvements and Street Lighting to confirm that construction has been completed in accordance with the requirements of the Annexation Agreement and pursuant to Article 7.b. of the Annexation Agreement, the Village has agreed to accept the dedication of said Pedestrian Improvements and Street Lighting which have then been constructed by Residential Owner promptly upon Residential Owner's completion and tender thereof.

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5.06 Maintenance. Residential Owner shall be solely responsible for the operation, maintenance, repair and replacement of the Pedestrian Improvements and Street Lighting, which obligations may be assigned by Residential Owner to one or more of the Associations, as provided in Article 9 of the Annexation Agreement, notwithstanding that certain Pedestrian Improvements and Street Lighting are located within a publicly dedicated right-of-way or public easement and may be dedicated to the Village.

## 6. GRANTS OF EASEMENTS.

6.01 Construction. The Commercial Owner hereby grants and conveys to Residential Owner, a temporary access and construction easement, in, over and through the Commercial Parcel (including the Detention/Water Facility Area and the Sanitary Sewer Easement Area) for purposes of providing vehicular and pedestrian ingress and egress to the Commercial Parcel for persons, construction equipment, materials and other items incidental or relating to the construction of the Infrastructure Improvements. This temporary construction easement shall automatically terminate upon the date of the completion of the Infrastructure Improvements. In the event that the Detention/Water Facility Area is subsequently conveyed by the Commercial Owner to the Residential Owner and the Commercial Owner elects to cure a default by the Residential Owner or its successors or assigns pursuant to Section 10 hereunder, the Residential Owner or its successors and assigns hereby grants Commercial Owner a temporary access and construction easement in, over and through the Detention/Water Facility Area (and the Residential Parcel, if required) for purposes of providing vehicular and pedestrian ingress and egress to the Detention/Water Facility Area for persons, construction equipment, materials and other items incidental or relating to the construction of the Infrastructure Improvements. This temporary construction easement shall automatically terminate upon the date the Commercial Owner completes its cure of said default.

### 6.02 Utility Easements.

(i) The Commercial Owner hereby grants and conveys to Residential Owner (or in the event of an assignment of such obligations to the Associations pursuant to Article 9 of the Annexation Agreement, utility companies or other public or private third parties), an easement for use of the Infrastructure Improvements located on, over, under and through the Commercial Parcel (including the Detention/Water Facility Area and the Sanitary Sewer Easement Area) that serve or benefit the Residential Parcel, the Klehm Parcel and the Rose School Parcel, together with the right, permission and authority to enter upon such portions of the Commercial Parcel as may be reasonably necessary to operate, maintain, repair, replace, modify or relocate such Infrastructure Improvements. Residential Owner shall use reasonable diligence in exercising its rights under this easement so as to cause minimal interference with Commercial Owner's use of the Commercial Parcel.

(ii) The Residential Owner hereby grants and conveys to Commercial Owner an easement for use of the Infrastructure Improvements located on, over, under and through the Residential Parcel that serve or benefit the Commercial Parcel. In the event that the Detention/Water Facility Area is subsequently conveyed by the Commercial Owner to the Residential Owner, the Residential Owner or its successors and assigns hereby grants Commercial Owner an easement for the use of the Infrastructure

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Improvements located on, over, under and through the Residential Parcel (including Detention/Water Facility Area) and for construction, use, maintenance, repair and replacement of the Commercial Parcel Utility Connections. Commercial Owner shall use reasonable diligence in exercising its rights under this easement so as to cause minimal interference with the Residential Owner's use of the Residential Parcel.

## 7. NOTICES.

All notices and other communications hereunder shall be in writing and shall be delivered personally or shall be sent (a) by registered mail, certified mail, or Express Mail service, postage prepaid and return receipt requested or (b) by a nationally utilized overnight delivery service addressed to the parties as follows:

If to Village: Village of South Barrington  
30 South Barrington Road  
South Barrington, Illinois 60010  
Attn: Village President

with a copy to: Storino, Ramello & Durkin  
9501 West Devon Avenue  
Rosemont, Illinois 60018  
Attn: Donald J. Storino

If to Residential Owner: Acacia Credit Fund 9-A L.L.C.  
c/o Acacia Capital Corporation  
One Arizona Center  
400 East Van Buren, Suite 650  
Phoenix, Arizona 85004  
Attn: Steve Benson  
Phone: (602) 253-5563  
Fax: (602) 253-0859

with a copy to: Toll Brothers, Inc.  
3103 Philmont Avenue  
Huntingdon Valley, Pennsylvania 19006  
Attn: General Counsel

with a copy to: Toll Brothers, Inc.  
3103 Philmont Avenue  
Huntingdon Valley, Pennsylvania 19006  
Attn: Douglas C. Yearly, Jr., SVP

with a copy to: Schain Burney Ross & Citron, Ltd.  
222 N. LaSalle Street, Suite 1910  
Chicago, Illinois 60601  
Attn: Gary L. Plotnick

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with a copy to: Biskind, Hunt & Taylor, PLC  
11201 North Tatum Blvd., Suite 330  
Phoenix, Arizona 85028  
Attn: Neil D. Biskind, Esq.  
Phone: (602) 955-1822  
Fax: (602) 955-2272

If to Developer: The Woods of South Barrington  
c/o Mesirow Stein Real Estate  
350 North Clark Street  
Chicago, Illinois 60610  
Attn: Richard Stein

If to Commercial Owner: The Woods of South Barrington II  
c/o Mesirow Stein Real Estate  
350 North Clark Street  
Chicago, Illinois 60610  
Attn: Richard Stein

with a copy to: Schwartz, Cooper, Greenberger & Krauss  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601  
Attn: Ronald B. Grais

Any notice in accordance herewith shall be deemed received when delivery is received or refused, as the case may be. By giving at least five (5) days prior written notice thereof, any party may, from time to time and at any time, change its address for notice hereunder.

## 8. INSURANCE.

### 8.01 During Construction and Maintenance of Infrastructure Improvements.

(i) Prior to commencing construction of the Infrastructure Improvements, the Residential Owner performing said construction shall obtain or require its contractors to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages in Constant Dollars set forth below:

- A. Workers' Compensation - statutory limits
- B. Employers' Liability - \$500,000
- C. Comprehensive General/Commercial General Liability and Business Auto Liability as follows:
  - (1) Bodily Injury - \$ 5,000,000 per occurrence
  - (2) Property Damage - \$5,000,000 per occurrence



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- (3) Independent Contractors Liability; same coverage as set forth in subsections (1) and (2) above;
- (4) Products/Completed Operations Coverage which shall be kept in effect for two years after completion of work;
- (5) "XCU" Hazard Endorsement, if applicable;
- (6) "Broad Form" Property Damage Endorsement;
- (7) "Personal Injury" Endorsements; and
- (8) "Blanket Contractual Liability" Endorsement.

If the construction activity involves the use of another's parcel, then the owner of such parcel shall be an additional insured and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Declaration, without at least thirty (30) days prior written notice to the named insureds and each additional insured. If such insurance is canceled or expires then the constructing party shall immediately stop all work on or use of the other party's parcel until either the required insurance is reinstated or replacement insurance obtained.

(ii) The Residential Owner (or in the event the maintenance obligations have been assigned to the Associations as set forth in Article 9 of the Annexation Agreement or utility companies, the Association or utility companies) shall maintain or cause to be maintained in full force and effect with respect to the Infrastructure Improvements located on the Commercial Parcel: (i) Commercial General Liability Insurance with a combined single limit of liability of not less than Ten Million Dollars (\$10,000,000) in Constant Dollars (as hereinafter defined in Section 8.06) for bodily injury to or death of any person and consequential damages, and for property damage, arising out of any one occurrence which coverage shall be the primary coverage with respect to the Infrastructure Improvements located on the Commercial Parcel. The Residential Owner shall cause the Commercial Owner to be named as an "additional insured" under such policy; and (ii) such other insurance as the Residential Owner deems necessary.

8.02 General Insurance Coverage. Except to the extent coverage is provided by the insurance required to be maintained under Section 8.01 above, Residential Owner and Commercial Owner shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance with respect to those areas of the Residential Parcel and Commercial Parcel, respectively, which the Associations (as defined in the Annexation Agreement) would be required to insure with a combined single limit of liability of not less than Five Million Dollars (\$5,000,000) in Constant Dollars for bodily injury or death, and for property damage, arising out of any one occurrence on its parcel, which insurance shall be primary.

8.03 Indemnity. To the extent such claims are not covered by Section 8.04 herein, the Residential Owner and the Commercial Owner shall (each an "Indemnitor") defend, protect, indemnify and hold the other (the "Indemnitee") harmless from and against all claims, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities (including reasonable attorneys' fees and costs of suit) arising from or as a result of the injury to or death of

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any person, or damage to the property of any person occurring within the parcel owned by such Indemnitor; which claims would be recoverable, except for (i) claims caused by the negligent or willful act or omission of such Indemnitees or (ii) claims which would not be covered as an Association (as defined in the Annexation Agreement) insurance obligation. In addition thereto, Residential Owner or its assignees shall not be responsible (fiscally or otherwise) for the maintenance, repair or replacement of any Infrastructure Improvements which require maintenance, repair or replacement due to the negligence of the Commercial Owner or the Village.

8.04 Waiver. Residential Owner and Commercial Owner (the "Releasing Party") hereby releases and waives for itself, and each person claiming by, through or under it, each other Party and their agents, employees and contractors (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon the Releasing Party's parcel which loss or damage is covered by the insurance maintained by the Releasing Party or required to be maintained by the Releasing Party under this Section 8, IRRESPECTIVE (i) OF THE CAUSE, INCLUDING NEGLIGENCE ON THE PART OF THE RELEASED PARTY, OR (ii) OF THE AMOUNT OF SUCH INSURANCE REQUIRED OR ACTUALLY CARRIED, INCLUDING ANY DEDUCTIBLE OR SELF INSURANCE RESERVE. The Residential Owner and the Commercial Owner shall each use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given.

8.05 Minimum Requirements. All insurance required hereunder may be provided under (i) an individual policy covering the premises, (ii) a blanket policy or policies which includes other liabilities, properties and/or locations of such Party; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than Twenty Million Dollars (\$20,000,000) in Constant Dollars, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit of Twenty Million Dollars (\$20,000,000) in Constant Dollars, (iii) a plan of self-insurance, provided that any such Party agrees that upon request it shall deliver to such other Parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such Party or its parent company or other affiliate maintaining a self-insurance program benefiting such Party has a tangible net worth of One Hundred Million Dollars (\$100,000,000) in Constant Dollars, 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 a Party in compliance with this Section, such Party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed Fifty Thousand Dollars (\$50,000) in Constant Dollars unless such Party complies with the requirements regarding self-insurance pursuant to (iii) above. Each Party and Association shall furnish to any Party requesting the same, a certificate(s) of insurance evidencing that the insurance required to be carried by such Party is in full force and effect.

(i) The insurance required pursuant to Sections (8.01) and (8.02) above shall include the following provisions:

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A. shall provide for severability of interests shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other named insureds; and

B. shall provide for contractual liability coverage with respect to the indemnity obligation set forth herein and bodily injury coverage.

8.06 Constant Dollars. Constant Dollars means the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the sixth calendar year following the date of this Agreement, and thereafter at five-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 June 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 the Parties 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 which would have been achieved by the Index.

9. MECHANIC'S LIENS. In the event any mechanic's lien is filed against the parcel of one party as a result of services performed or materials furnished for the use of another party, upon request of the party whose parcel is subject to such lien, the party permitting or causing such lien to be filed shall, within thirty (30) days of receipt of such request, cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent a party permitting or causing such lien from contesting the validity thereof in any manner such party chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such party shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien.

Each Party shall defend, indemnify and hold harmless each other Party from and against any mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and liabilities in connection therewith, including reasonable attorney's fees and court costs, arising out of a Party's nonperformance of its respective obligations under this Section 9.

## 10. RIGHT TO CURE

10.01 Right to Cure for Breach of Obligations with Notice. In the event a Party (a "Defaulting Owner") shall fail to perform its obligations hereunder, the other Party (the "Non-Defaulting Owner") may send notice to the Defaulting Owner regarding said failure to perform and setting forth the obligation which the Defaulting Owner has failed to perform. In the event such obligation is not performed within thirty (30) days after receipt of such notice (unless the Defaulting Owner shall have commenced to perform the same within such period and shall be

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diligently proceeding to perform the same), then the Non-Defaulting Owner upon ten (10) days prior written notice to the Defaulting Owner, shall have the right to perform the same. In the event curing such default by the Non-Defaulting Owner requires access to the Defaulting Owner's parcel, the Defaulting Owner hereby grants the Non-Defaulting Owner an easement on, over, under and through the Defaulting Owner's parcel for all such purposes necessary to effect such cure. The Defaulting Owner shall not be deemed to have failed to perform its obligations hereunder for so long as such delay is prevented due to strikes, lockouts, inability to procure materials, power failure, acts of God, governmental restrictions, enemy actions, civil commotion, fire, unavoidable casualty or other causes beyond the control of the Defaulting Owner provided that lack of funds shall not be deemed a cause beyond the control of the Defaulting Owner.

10.02 Right to Cure in an Emergency. In the event failure to perform any repair or maintenance causes an emergency, or performance of such repair or maintenance is necessary to prevent or relieve an emergency, then the notice required to be given hereunder need only be such reasonable notice, if any, as is warranted by the nature of the specific condition involved. If appropriate action is not timely taken by the Defaulting Owner (or one or more of the Associations, as provided in Article 9 of the Annexation Agreement), the Non-Defaulting Owner shall be entitled immediately to perform such repair or maintenance.

10.03 Reimbursement. In the event the Non-Defaulting Owner performs any of the obligations of the Defaulting Owner who fails to perform as aforesaid, the Non-Defaulting Owner, in addition to any other remedies it may have, shall be reimbursed by the Defaulting Owner within thirty (30) days of presentation of the appropriate statement therefore, failing which, in addition to any other remedies it may have, the Non-Defaulting Owner shall have a lien against real property and improvements of the Defaulting Owner for the unpaid amount together with interest thereon from the date said reimbursement was due at the rate of 15% per annum or the highest rate permitted by law, whichever is lower. Such lien shall be subordinate and junior to the interest of any mortgagee, lessee or subleasee of the affected property, irrespective of when their interest attached, and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

10.04 Other Remedies. In addition to the foregoing, if a default of a material provision of this Agreement continues for a period of thirty (30) days following receipt of written notice specifying the particulars of such default, the Non-Defaulting Owner may institute legal action against the Defaulting Owner for specific performance, declaratory relief, damages or other suitable legal or equitable remedy. In addition to the recovery of damages and of any sums expended on behalf of the Defaulting Owner, the prevailing party in the action shall be entitled to receive from the non-prevailing party its actual attorney's fees and costs for services rendered to the prevailing party in any such action (including any appeal thereof). The remedies provided in this Section 10.04 and the enforcement thereof as herein provided shall be in addition to and not in substitution for or exclusion of any other rights and remedies which the parties may have under this Agreement or at law or in equity.

10.05 Mediation. If a dispute arises as to what constitutes a breach of this Agreement, the parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association before resorting to arbitration or litigation.

11. **VILLAGE ENFORCEMENT.** As required in Article 9 of the Annexation Agreement, the following Village Enforcement Rights are set forth herein substantially in conformance with the CCR Executive Summary (as defined in Article 9 of the Annexation Agreement) and the Village Enforcement Rights set forth on Exhibit A to Exhibit K of the Annexation Agreement:

11.01 Easement for Maintenance. An irrevocable license and easement is hereby granted to duly designated officials and employees of the Village to go upon the Property for the purposes of



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maintaining and repairing, except as otherwise provided hereunder, the Stormwater Improvements, Sanitary Sewer Improvements, Water Improvements, Roadway Improvements, Pedestrian Improvements, Street Lighting and any other utility or public services located on or which may be located on the Property. Said easement rights shall be exercised only to the extent and for such period of time as is required to accomplish said maintenance or repair ("Village Right to Cure"). Except in the event of emergency situations, the Village shall serve written notice upon the Residential Owner (or Association, utility or agency as the case may be or Commercial Owner, collectively, "Responsible Party") setting forth the manner in which the Responsible Party has failed to comply with its obligations under this Agreement. Said notice shall include a demand that such deficiency be cured within ten (10) days from the date such notice is received. If such deficiency has not been cured within said ten (10) days (unless the Responsible Party shall have commenced to perform the same within such period and shall be diligently proceeding to perform the same) or any extension thereof granted by the Village, the Village may exercise its easement rights under this Agreement by entering the Property and performing such maintenance or repair that, in the Village's reasonable opinion, the Responsible Party has failed to perform. The Responsible Party shall reimburse the Village for all expenses, including administrative costs, incurred by it in performing such reasonable maintenance or repair. If the Responsible Party does not reimburse the Village in full for all such expenses incurred within thirty (30) days after receipt of a bill detailing such expenses, then the portion of the cost of such maintenance or repair not so reimbursed shall be assessed in equal shares against all of the Property and shall become a lien upon such Properties, which lien shall be in all respects subject and subordinate and junior to any prior mortgage recorded against all or any portion of such Property; provided, however, such liens shall not attach to those portion(s) of the Property which are conveyed to individual property owners for use by such individual owners as single-family or single two-family residences; and provided further that such liens shall attach to and become a lien on any property owned by any of the Associations (as defined in the Article 9 of the Annexation Agreement). The Village shall be under no obligation to exercise the rights herein granted except as it shall determine to be in its best interest. No failure to exercise any right herein granted to the Village shall be construed as a waiver of that or any other rights.

11.02. Village Recoupment of Cost of Maintenance. In connection with any expenses incurred by the Village's exercise of the Village's Right to Cure, the Village is hereby granted the right, and the Residential Owner hereby waives any right to object thereto, to impose one or more special service taxes areas ("Cure Tax"), the form of which shall be subject to the reasonable approval of the Corporate Authorities (as defined in the Annexation Agreement) and the Residential Owner (which Residential Owner has been assigned the rights and obligations of Developer pursuant to this Agreement), the sole purpose of which Cure Tax is to permit the Village to levy a special service area tax solely to provide funds to the Village necessary to reimburse or contribute to the funds expended by the Village in its exercise of the Village's Right to Cure.

11.03. Village Consent to Amendment to Agreement. No amendment to this Agreement shall be valid or enforceable without the express consent of the Village solely where such amendment limits or abrogates the rights of the Village as set forth in this Article 11.

12. PROPORTIONATE SHARE. The Commercial Owner's and, if the Village or its permitted assignee shall acquire any of Areas B, C or N, then (pursuant to Subparagraphs 3.J.viii.a. and b. of the Consent Decree), the Village's proportionate share of the cost of the operation and maintenance of any of the Infrastructure Improvements as set forth herein shall be prorated according to the total area of the Commercial Owner's or Village's parcels, as the case may be, divided by the total area of the Property.

13. GENERAL PROVISIONS.

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13.01 Amendments. This Agreement may be amended, supplemented, extended or modified in any respect whatsoever, or rescinded in whole or in part, only by a written instrument duly executed and acknowledged by all of the Parties hereto and recorded in the land records of Cook County, Illinois.

13.02 Attorneys' Fees. In the event of any controversy, claim or dispute relating to this Agreement or an alleged breach of the terms and conditions hereof, the prevailing party shall be entitled to recover from the losing party reasonable costs and expenses, including reasonable attorneys' fees and court costs.

13.03 Burden and Benefit/Running with the Land. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. The easements created, granted and conveyed herein shall be a covenant running with the land as a burden or benefit upon the Residential Parcel or the Commercial Parcel, as the case may be.

13.04 Severability. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable under present or future laws, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

13.05 Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of Illinois.

13.06 Counterparts. This Agreement may be executed in one or more counterparts, with each such counterpart collectively constituting one agreement.

13.07 Recordation. A counterpart original of this Agreement shall be recorded in the official land records of the County of Cook, Illinois, and the costs of such recordation shall be equally shared by the Commercial Owner and the Residential Owner.

14. **NO OTHER RIGHTS**. Except to the extent expressly set forth in this Agreement, no other rights or easements are created or reserved by this Agreement.

15. **SAVINGS CLAUSE**. Each easement established under this document shall not be subject to the rule against perpetuities. Said easements shall continue for any period beyond the rule against perpetuities.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

~~THE WOODS OF SOUTH BARRINGTON, L.L.C., a  
Delaware limited liability company~~

~~By: [Signature] New Stein Real Estate, Inc., Member~~

By: \_\_\_\_\_

Its: Manager Senior Managing Director

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**THE WOODS OF SOUTH BARRINGTON  
II, L.L.C., an Illinois limited liability company**

By: \_\_\_\_\_  
Its: Manager

**ACACIA CREDIT FUND 9 – A L.L.C., a  
Delaware limited liability company**

By: Fund 9-A Management Company L.L.C.,  
a Delaware limited liability company, its  
Managing Member

By: Acacia Capital Corporation, a  
California corporation, its  
Managing Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**THE WOODS OF SOUTH BARRINGTON II, L.L.C.,**  
Delaware limited liability company

By: \_\_\_\_\_

**ACACIA CREDIT FUND 9 – A L.L.C., a**  
Delaware limited liability company

By: Fund 9-A Management Company L.L.C., a  
Delaware limited liability company, its  
Managing Member

By: Acacia Capital Corporation, a  
California corporation, its  
Managing Member

By: *Stewart S. Benson*  
Name: STEWART S. BENSON  
Title: EXECUTIVE VICE PRESIDENT

Property of Cook County Clerk's Office



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## ACKNOWLEDGEMENTS

STATE OF ILLINOIS     )  
   ) SS  
 COUNTY OF COOK        )

On this 21<sup>st</sup> day of April, 2004 before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Richard Stein, being the person authorized by THE WOODS OF SOUTH BARRINGTON, L.L.C., a Delaware limited liability company ("Company"), to execute such instrument to me personally well known, who stated that he is the Officer of Member of said Company, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

21<sup>st</sup> IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 21<sup>st</sup> day of April, 2004.

GIVEN under my hand and Notary Seal this 21<sup>st</sup> day of April, 2004.

My commission expires 1/27/08.

Richard A. Rawlings  
 Notary Public



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STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

On this 21<sup>st</sup> day of April, 2004 before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Richard Stein, being the person authorized by THE WOODS OF SOUTH BARRINGTON II, LLC, an Illinois limited liability company ("Company"), to execute such instrument to me personally well known, who stated that he is the Officer & Member of said Company, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 21<sup>st</sup> day of April, 2004.

GIVEN under my hand and Notary Seal this 21<sup>st</sup> day of April, 2004.

My commission expires 7/27/08.

Richard A. Rawlings  
Notary Public



# UNOFFICIAL COPY

STATE OF ARIZONA )

) SS

COUNTY OF MARICOPA )

On this 19<sup>th</sup> day of APRIL, 2004 before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Sevens Benson being the person authorized by ACACIA CAPITAL CORPORATION, a California corporation ("Corporation"), the Managing Member of FUND 9-A MANAGEMENT COMPANY L.L.C., a Delaware limited liability company, the Managing Member of ARCIA CREDIT FUND 9-A L.L.C., a Delaware limited liability company, to execute such instrument to me personally well known, who stated that he is the Managing Member of said Corporation, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

19<sup>th</sup> IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this APRIL day of APRIL, 2004.

GIVEN under my hand and Notary Seal this 19<sup>th</sup> day of APRIL, 2004.

My commission expires May 5, 2006.

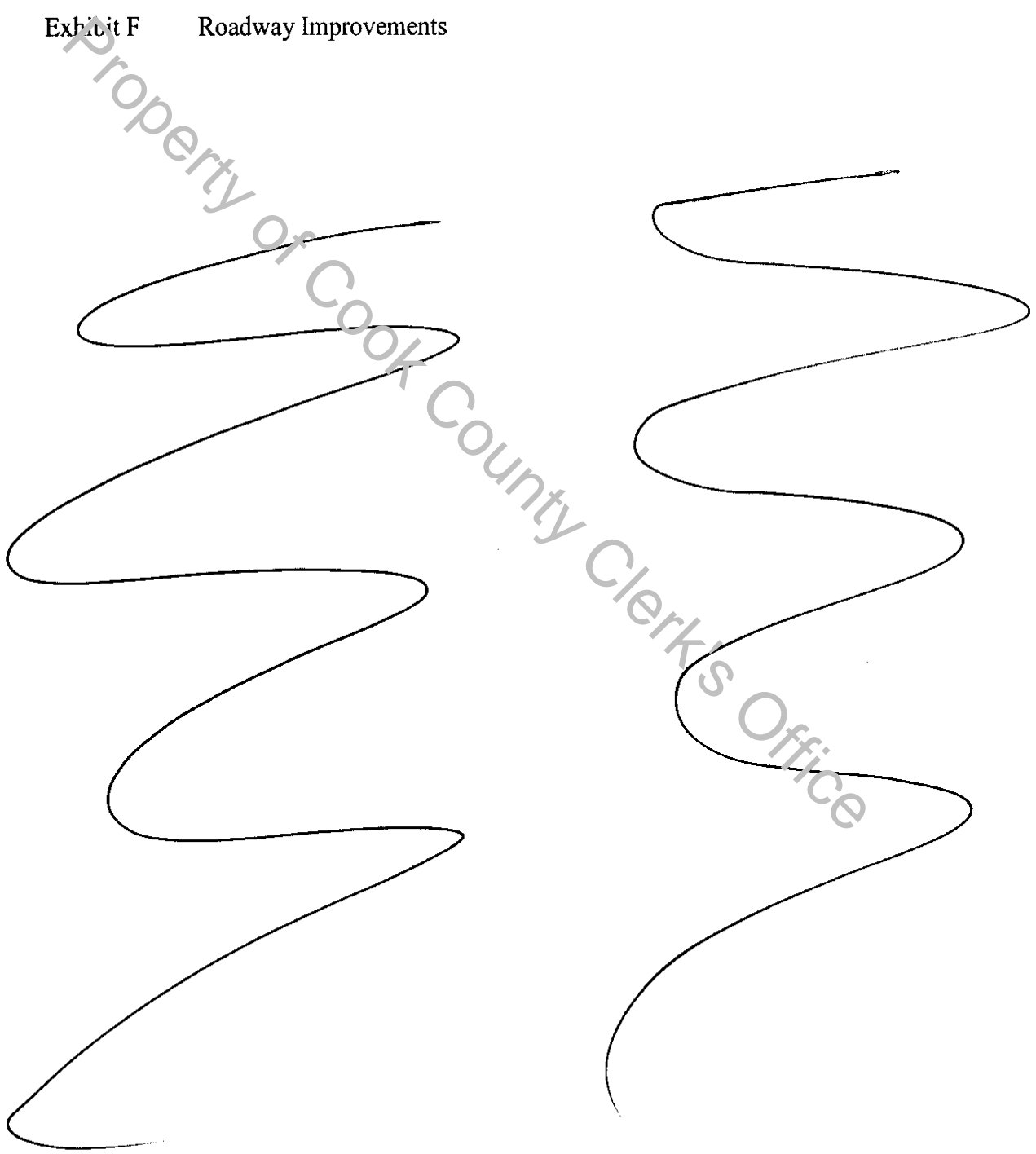
Kelley D'Amato  
Notary Public



# UNOFFICIAL COPY

## EXHIBITS

- Exhibit A Residential Parcel
- Exhibit B Commercial Parcel
- Exhibit C Klehm Parcel
- Exhibit D Rose School Parcel
- Exhibit E Detention/Water Facility Area and Sanitary Sewer Easement Area
- Exhibit F Roadway Improvements





**UNOFFICIAL COPY****EXHIBIT A  
LEGAL DESCRIPTION****RESIDENTIAL PARCEL****PARCEL 1:**

**THAT PART OF SECTION 28, AND 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 28; THENCE SOUTH 00°19'35" EAST ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 2624.22 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 28; THENCE SOUTH 00°04'45" EAST ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33, A DISTANCE OF 643.38 FEET; THENCE SOUTH 89°40'35" WEST, A DISTANCE OF 1079.11 FEET TO A POINT ON LINE 1079.10 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SECTION 33; THENCE SOUTH 00°04'45" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 281.47 FEET; THENCE NORTH 89°40'35" EAST, A DISTANCE OF 1079.11 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 33; THENCE SOUTH 00°04'45" EAST ALONG SAID EAST LINE, A DISTANCE OF 1707.93 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 33; THENCE NORTH 89°58'22" WEST ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 508.00 FEET; THENCE SOUTH 00°02'15" WEST, A DISTANCE OF 428.90 FEET; THENCE SOUTH 89°58'22" EAST, A DISTANCE OF 508.00 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 33; THENCE SOUTH 00°02'15" WEST ALONG SAID EAST LINE, A DISTANCE OF 351.59 FEET TO A POINT ON THE NORTH LINE OF HIGGINS ROAD DEDICATED PER DOCUMENT NUMBER 1208573; THENCE NORTH 69°18'19" WEST ALONG SAID NORTH LINE, A DISTANCE OF 2766.41 FEET TO A POINT ON THE EAST LINE OF ILLINOIS ROUTE 59 ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 11194096; THENCE NORTH 00°11'17" WEST ALONG THE EAST LINE OF SAID ILLINOIS ROUTE 59, A DISTANCE OF 2421.01 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33; THENCE NORTH 00°11'05" WEST ALONG THE EASTERLY RIGHT OF WAY LINE OF STATE ROUTE 59 RECORDED AS DOCUMENT 11190496, A DISTANCE OF 2637.83 FEET TO A POINT ON THE NORTHERLY LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28; THENCE NORTH 00°12'10" WEST ALONG THE EASTERLY RIGHT OF WAY LINE OF STATE ROUTE 59 RECORDED AS DOCUMENT NUMBER 11668686, A DISTANCE OF 485.70 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG THE EASTERLY RIGHT OF WAY LINE OF STATE ROUTE 59 RECORDED AS DOCUMENT NUMBER 11113029 FOR THE FOLLOWING THREE (3) COURSES; (1) THENCE NORTHERLY ALONG A CURVE CONCAVE**

# UNOFFICIAL COPY

EASTERLY AND HAVING A RADIUS OF 4724.70 FEET AND A CHORD BEARING OF NORTH 06°32'11" EAST, AN ARC LENGTH OF 1111.22 FEET TO A POINT OF TANGENCY; (2) THENCE NORTH 13°16'19" EAST, A DISTANCE OF 303.90 FEET TO A POINT OF CURVATURE; (3) THENCE NORTHERLY ALONG A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 1482.40 FEET AND A CHORD BEARING OF NORTH 01°26'20" WEST, AN ARC LENGTH OF 761.22 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28; THENCE SOUTH 89°50'29" EAST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 276.87 FEET; THENCE SOUTH 00°09'31" WEST, A DISTANCE OF 752.98 FEET; THENCE SOUTH 89°50'29" EAST, A DISTANCE OF 394.43 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 107.00 FEET, AN ARC LENGTH OF 154.21 FEET TO A POINT OF TANGENCY; THENCE NORTH 07°34'59" EAST, A DISTANCE OF 98.51 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 40.00 FEET, AN ARC LENGTH OF 51.33 FEET TO A POINT OF TANGENCY; THENCE NORTH 81°06'19" EAST, A DISTANCE OF 287.58 FEET; THENCE NORTH 10°14'25" EAST, A DISTANCE OF 66.11 FEET; THENCE NORTH 00°34'33" EAST, A DISTANCE OF 384.46 FEET TO A POINT 33.00 FEET SOUTH OF AS MEASURED PERPENDICULAR TO THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28; THENCE NORTH 89°50'29" WEST ALONG A LINE 33 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 845.00 FEET; THENCE NORTH 00°09'31" EAST, A DISTANCE OF 33.00 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28; THENCE SOUTH 89°50'29" EAST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 1989.06 FEET TO A POINT ON A LINE 123.76 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28; THENCE SOUTH 00 DEGREES 27 MINUTES 50 SECONDS EAST ALONG SAID PARALLEL LINE; A DISTANCE OF 173.25 FEET TO A POINT ON A LINE 173.24 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 28; THENCE SOUTH 89 DEGREES 50 MINUTES 29 SECONDS EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 123.76 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 28; THENCE SOUTH 00°27'50" EAST ALONG SAID EAST LINE, A DISTANCE OF 2454.80 FEET TO THE POINT OF BEGINNING; EXCEPT FOR THE FOLLOWING DESCRIBED PROPERTY:

**THOSE PORTIONS OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 33; THENCE NORTH 89° 58' 22" WEST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 508.00 FEET TO A LINE 508.00**

**UNOFFICIAL COPY**

FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST QUARTER; THENCE SOUTH 00° 02' 15" WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 428.90 FEET TO A LINE 428.90 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID SOUTHEAST QUARTER; THENCE SOUTH 89° 58' 22" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 508.00 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER; THENCE SOUTH 00° 02' 15" WEST ALONG SAID EAST LINE, A DISTANCE OF 351.59 FEET TO THE NORTH LINE OF ILLINOIS ROUTE 72 AS MONUMENTED AND OCCUPIED; THENCE NORTH 69° 18' 19" WEST ALONG SAID NORTH LINE, A DISTANCE OF 2766.41 FEET TO A POINT ON THE EAST LINE OF ILLINOIS ROUTE 59 ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 11194096; THENCE NORTH 00° 11' 17" WEST ALONG THE EAST LINE OF SAID ILLINOIS ROUTE 59, A DISTANCE OF 1096.63 FEET TO A POINT ON A NON-TANGENT CURVE; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 50.00 FEET WITH AN ARC LENGTH OF 80.49 FEET AND A CHORD BEARING OF SOUTH 46° 18' 23" EAST TO A POINT OF COMPOUND CURVATURE; THENCE EASTERLY ALONG A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 467.00 FEET AND AN ARC LENGTH OF 68.92 FEET TO A POINT OF REVERSE CURVATURE THENCE EASTERLY ALONG A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 798.00 FEET AND AN ARC LENGTH OF 365.16 FEET TO A POINT OF REVERSE CURVATURE; THENCE EASTERLY ALONG A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 552.00 FEET AND AN ARC LENGTH OF 125.61 FEET TO A POINT OF REVERSE CURVATURE; THENCE EASTERLY ALONG A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 198.00 FEET AND AN ARC LENGTH OF 66.38 FEET TO A POINT OF REVERSE CURVATURE; THENCE EASTERLY ALONG A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 30.00 FEET AND AN ARC LENGTH OF 35.16 FEET TO A POINT OF REVERSE CURVATURE; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 196.00 FEET AND AN ARC LENGTH OF 39.98 FEET TO A POINT OF REVERSE CURVATURE; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 232.00 FEET AND AN ARC LENGTH OF 125.75 FEET TO A POINT OF COMPOUND CURVATURE; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 754.00 FEET WITH AN ARC LENGTH OF 60.64 FEET AND A CHORD BEARING OF NORTH 22° 40' 42" EAST TO A POINT OF NON-TANGENCY; THENCE SOUTH 51° 22' 16" EAST, A DISTANCE OF 822.83 FEET; THENCE SOUTH 65° 47' 33" EAST, A DISTANCE OF 381.45 FEET; THENCE SOUTH 00° 02' 39" EAST, A DISTANCE OF 557.45 FEET TO A LINE 160.00 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF SAID SOUTHEAST QUARTER; THENCE SOUTH 89° 58' 22" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 762.78 FEET TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33; THENCE SOUTH 00° 04' 45" EAST ALONG SAID EAST LINE, A DISTANCE OF 160.00 FEET TO THE POINT OF BEGINNING, CONTAINING 62.179 ACRES OF LAND MORE OR LESS, ALL IN COOK COUNTY, ILLINOIS.

**UNOFFICIAL COPY****PARCEL 2:**

**THAT PART OF SECTION 21, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 21; THENCE NORTH 89°50'29" WEST ALONG THE SOUTH LINE OF SAID SECTION 21, A DISTANCE OF 2389.69 FEET TO A POINT ON A CURVE, BEING A POINT ON THE EAST LINE OF ILLINOIS ROUTE 59 PER DOCUMENT NUMBER 11113029; THENCE NORTHERLY ALONG THE EAST LINE OF SAID ILLINOIS ROUTE 59 PER DOCUMENT NUMBERS 11113029 AND 11549027 FOR THE FOLLOWING THREE COURSES; (1) THENCE NORTHERLY ALONG A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 1482.40 FEET AND A CHORD BEARING OF NORTH 21°41'01 WEST WITH AN ARC LENGTH OF 286.34 FEET TO A POINT ON A CURVE; (2) THENCE NORTHERLY ALONG A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 2242.01 FEET AND A CHORD BEARING OF NORTH 20°03'26" EAST WITH AN ARC LENGTH OF 384.99 FEET TO A POINT OF TANGENCY; (3) THENCE NORTH 24°58'30" EAST, A DISTANCE OF 2212.09 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 21; THENCE SOUTH 89°51'08" EAST ALONG SAID NORTH LINE, A DISTANCE OF 533.41 FEET; THENCE NORTH 00°21'39" WEST, A DISTANCE OF 1131.30 FEET TO A POINT ON THE EAST LINE OF SAID ILLINOIS ROUTE 59 PER DOCUMENT NUMBER 11442738; THENCE NORTHERLY ALONG SAID EAST LINE FOR THE FOLLOWING THREE (3) COURSES; (1) THENCE NORTH 24°58'30" EAST, A DISTANCE OF 1195.93 FEET; (2) THENCE NORTH 27°49'55" EAST, A DISTANCE OF 200.22 FEET; (3) THENCE NORTH 24°58'12" EAST, A DISTANCE OF 257.37 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION 21; THENCE NORTH 89°57'47" EAST ALONG SAID NORTH LINE, A DISTANCE OF 134.37 FEET; THENCE SOUTH 36°57'24" WEST, A DISTANCE OF 285.13 FEET; THENCE SOUTH 00°14'47" EAST, A DISTANCE OF 600.00 FEET; THENCE SOUTH 82°06'19" EAST, A DISTANCE OF 221.79 FEET TO A POINT ON A CURVE BEING THE WEST LINE OF BARTLETT ROAD PER DOCUMENT NUMBER 11113027; THENCE ALONG THE WEST LINE OF SAID BARTLETT ROAD PER DOCUMENT NUMBERS 11113027 AND 8026898 FOR THE FOLLOWING SEVEN (7) COURSES; (1) THENCE SOUTHERLY ALONG A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 5779.65 FEET AND A CHORD BEARING OF SOUTH 06°40'43" WEST WITH AN ARC LENGTH OF 182.71 FEET; (2) THENCE SOUTH 89°50'29" WEST, A DISTANCE OF 13.94 FEET; (3) THENCE SOUTH 00°09'31" EAST, A DISTANCE OF 154.30 FEET TO A POINT ON A CURVE; (4) THENCE SOUTHERLY ALONG A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 5779.65 FEET AND A CHORD BEARING OF SOUTH 02°02'21" WEST WITH AN ARC LENGTH OF 443.40 FEET; (5) THENCE NORTH 89°50'29" EAST, A DISTANCE OF 17.00 FEET; (6) THENCE SOUTH 00°09'31" EAST, A DISTANCE OF 991.17 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 21; (7) THENCE SOUTH**



# UNOFFICIAL COPY

00°11'19" EAST, A DISTANCE OF 389.83 FEET; THENCE NORTH 89°48'41" EAST, A DISTANCE OF 33.00 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 21; THENCE SOUTH 00°11'19" EAST ALONG SAID EAST LINE, A DISTANCE OF 2245.24 FEET TO THE POINT OF BEGINNING, CONTAINING 158.419 ACRES OF LAND, MORE OR LESS, IN COOK COUNTY, ILLINOIS.

*P/N #s*

- 01-21-202-003
- 01-21-204-004
- 01-21-400-002
- 01-28-200-005
- 01-28-200-006
- 01-28-200-008
- 01-28-400-001
- 01-28-401-001
- 01-28-402-001
- 01-33-200-009
- 01-33-200-011
- 01-33-200-012
- 01-33-200-014
- 01-33-200-015
- 01-33-200-016
- 01-33-200-017
- 01-33-200-018
- 01-33-200-019

*Route 59 + Higgins Road  
South Barrington, Illinois*

Property of Cook County Clerk's Office

**UNOFFICIAL COPY****EXHIBIT B  
LEGAL DESCRIPTION****COMMERCIAL PARCEL:****PARCEL 1**

**THOSE PORTIONS OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 33; THENCE NORTH 89° 58' 22" WEST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 508.00 FEET TO A LINE 508.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST QUARTER; THENCE SOUTH 00° 02' 15" WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 428.90 FEET TO A LINE 428.90 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID SOUTHEAST QUARTER; THENCE SOUTH 89° 58' 22" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 508.00 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER; THENCE SOUTH 00° 02' 15" WEST ALONG SAID EAST LINE, A DISTANCE OF 351.59 FEET TO THE NORTH LINE OF ILLINOIS ROUTE 72 AS MONUMENTED AND OCCUPIED; THENCE NORTH 69° 18' 19" WEST ALONG SAID NORTH LINE, A DISTANCE OF 2766.41 FEET TO A POINT ON THE EAST LINE OF ILLINOIS ROUTE 59 ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 11194096; THENCE NORTH 00° 11' 17" WEST ALONG THE EAST LINE OF SAID ILLINOIS ROUTE 59, A DISTANCE OF 1096.63 FEET TO A POINT ON A NON-TANGENT CURVE; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 50.00 FEET WITH AN ARC LENGTH OF 80.49 FEET AND A CHORD BEARING OF SOUTH 46° 18' 23" EAST TO A POINT OF COMPOUND CURVATURE; THENCE EASTERLY ALONG A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 467.00 FEET AND AN ARC LENGTH OF 68.92 FEET TO A POINT OF REVERSE CURVATURE THENCE EASTERLY ALONG A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 798.00 FEET AND AN ARC LENGTH OF 365.16 FEET TO A POINT OF REVERSE CURVATURE; THENCE EASTERLY ALONG A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 552.00 FEET AND AN ARC LENGTH OF 125.61 FEET TO A POINT OF REVERSE CURVATURE; THENCE EASTERLY ALONG A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 198.00 FEET AND AN ARC LENGTH OF 66.38 FEET TO A POINT OF REVERSE CURVATURE; THENCE EASTERLY ALONG A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 30.00 FEET AND AN ARC LENGTH OF 35.16 FEET TO A POINT OF REVERSE CURVATURE; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 196.00 FEET AND AN ARC LENGTH OF 39.98 FEET TO A POINT OF REVERSE CURVATURE; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE NORTHWESTERLY**

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HAVING A RADIUS OF 232.00 FEET AND AN ARC LENGTH OF 125.75 FEET TO A POINT OF COMPOUND CURVATURE; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 754.00 FEET WITH AN ARC LENGTH OF 60.64 FEET AND A CHORD BEARING OF NORTH 22° 40' 42" EAST TO A POINT OF NON-TANGENCY; THENCE SOUTH 51° 22' 16" EAST, A DISTANCE OF 822.83 FEET; THENCE SOUTH 65° 47' 33" EAST, A DISTANCE OF 381.45 FEET; THENCE SOUTH 00° 02' 39" EAST, A DISTANCE OF 557.45 FEET TO A LINE 160.00 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF SAID SOUTHEAST QUARTER; THENCE SOUTH 89° 58' 22" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 762.78 FEET TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33; THENCE SOUTH 00° 04' 45" EAST ALONG SAID EAST LINE, A DISTANCE OF 160.00 FEET TO THE POINT OF BEGINNING, CONTAINING 62.179 ACRES OF LAND MORE OR LESS, ALL IN COOK COUNTY, ILLINOIS.

01-33-200-012

01-33-200-013

01-33-200-015

01-33-200-017

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## EXHIBIT C LEGAL DESCRIPTION

### ROY AND SARAH KLEHM PARCEL:

THAT PART OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 28; THENCE NORTH  $89^{\circ}50'29''$  WEST ALONG THE NORTH LINE OF SAID SECTION 28, A DISTANCE OF 1267.58 FEET; THENCE SOUTH  $00^{\circ}34'33''$  WEST, A DISTANCE OF 33.00 FEET TO A POINT ON THE SOUTH LINE OF PENNY ROAD AS MONUMENTED AND OCCUPIED SAID POINT BEING ALSO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH  $00^{\circ}34'33''$  WEST, A DISTANCE OF 417.46 FEET; THENCE SOUTH  $10^{\circ}14'25''$  WEST, A DISTANCE OF 66.11 FEET; THENCE SOUTH  $81^{\circ}06'19''$  WEST, A DISTANCE OF 287.58 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ALONG A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 40.00 FEET AND AN ARC LENGTH OF 51.33 FEET TO A POINT OF TANGENCY; THENCE SOUTH  $07^{\circ}34'59''$  WEST, A DISTANCE OF 98.51 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ALONG A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 107.00 FEET AND AN ARC LENGTH OF 154.21 FEET TO A POINT OF TANGENCY, THENCE NORTH  $89^{\circ}50'29''$  WEST, A DISTANCE OF 394.43 FEET; THENCE NORTH  $00^{\circ}09'31''$  EAST, A DISTANCE OF 719.98 FEET TO THE SOUTH LINE OF PENNY ROAD AS MONUMENTED AND OCCUPIED; THENCE SOUTH  $89^{\circ}50'29''$  EAST ALONG SAID SOUTH LINE A DISTANCE OF 845.00 FEET TO THE POINT OF BEGINNING, CONTAINING 11.976 ACRES OF LAND MORE OR LESS, ALL IN COOK COUNTY, ILLINOIS.

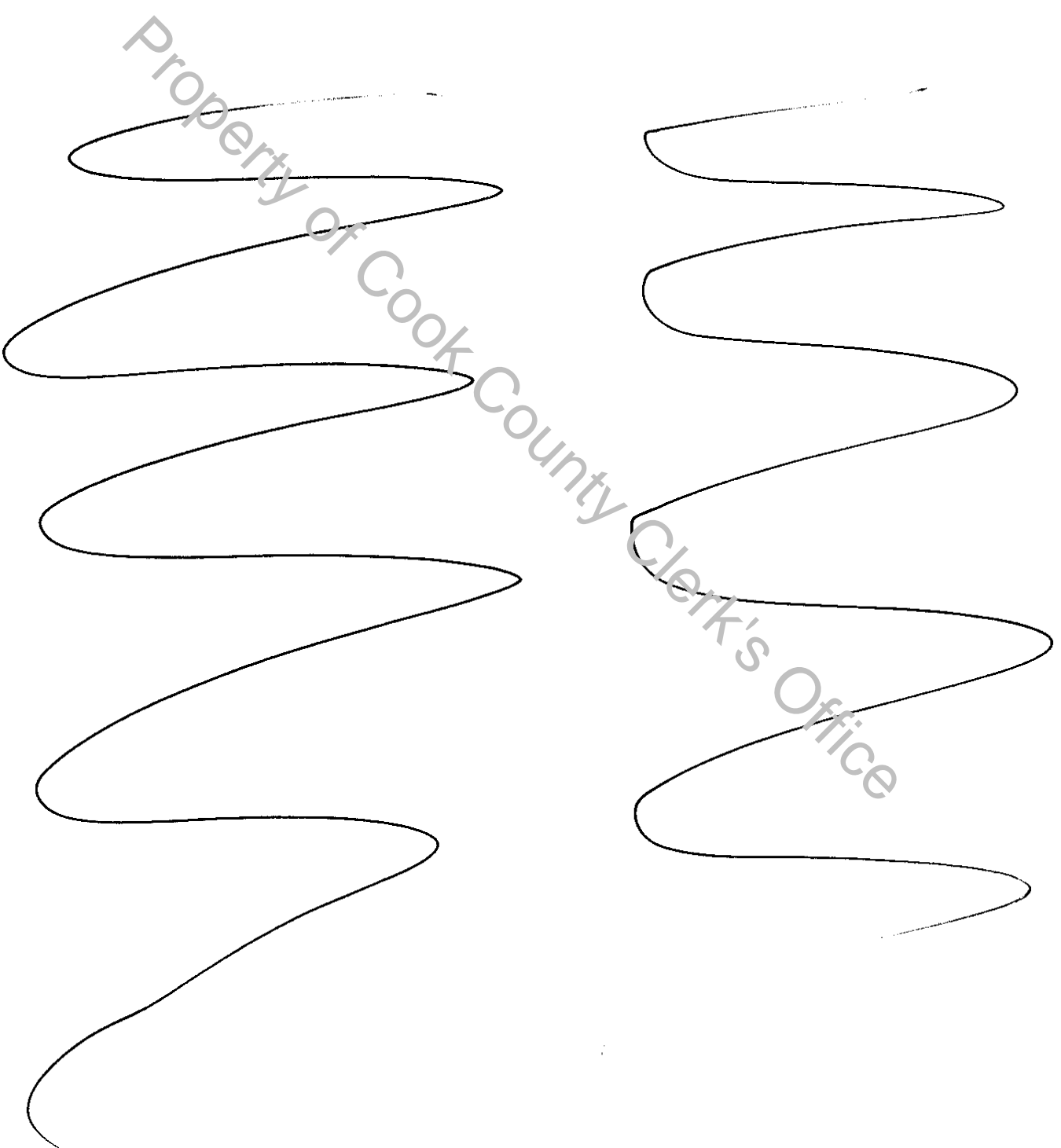


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**EXHIBIT D  
LEGAL DESCRIPTION**

**ROSE SCHOOL PARCEL**

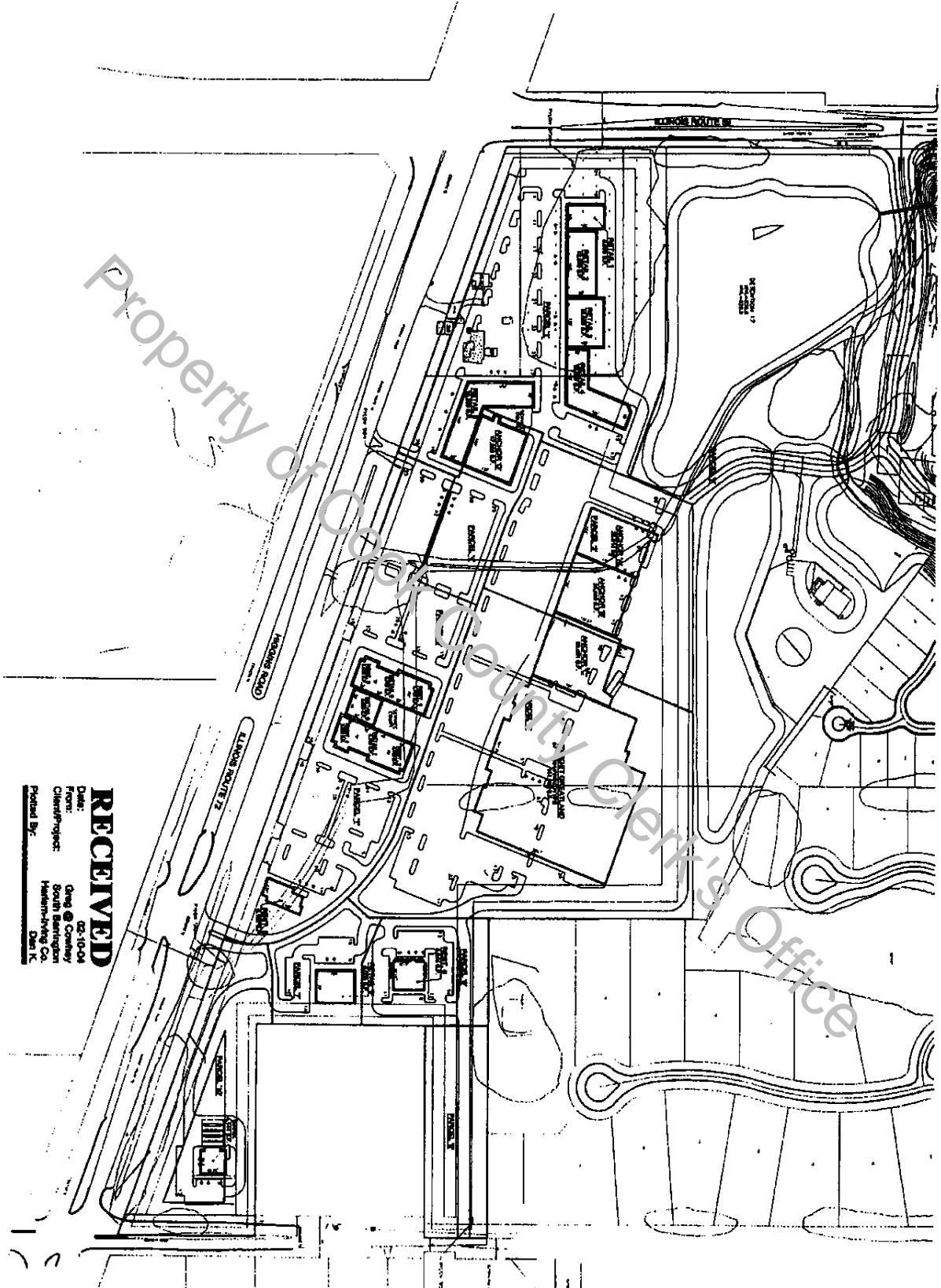
**61 W. Penny Road, South Barrington, Illinois 60010**



# UNOFFICIAL COPY

## EXHIBIT E

### DETENTION/WATER TREATMENT FACILITY



**RECEIVED**  
 Date: 02-10-04  
 From: Greg & Cathy  
 Client/Project: South Barrington  
 Hayden-Sving Co.  
 Dair K  
 Printed By:

# UNOFFICIAL COPY

## EXHIBIT F

### ROADWAY IMPROVEMENT RESPONSIBILITY

1. Commercial Owner shall be responsible for the Roadway Improvements located at the Higgins Road/Route 59 Intersection including the second left turn lane on the west approach (from eastbound Higgins Road to northbound Route 59).
2. Commercial Owner shall be responsible for the following Roadway Improvements located at the Higgins Road/Bartlett Road Intersection:
  - a. The right turn lane on west approach (from eastbound Higgins Road to southbound Bartlett Road); and
  - b. The right turn lane on south approach (from northbound Bartlett Road to eastbound Higgins Road).
3. Residential Owner shall be responsible for the following Roadway Improvements located at the Route 59/Penny Road Intersection:
  - a. The right turn lane on south approach (from northbound Route 59 to eastbound Penny Road);
  - b. The right turn lane on west approach (from eastbound Penny Road to southbound Route 59); and
  - c. The second northbound through lane on Route 59.
4. Residential Owner shall be responsible for the following Roadway Improvements located at the Bartlett Road/Penny Road Intersection:
  - a. The left turn lane on the south approach, i.e. from northbound Bartlett Road to westbound Penny Road;
  - b. The left turn lane on east approach (from westbound Penny Road to southbound Bartlett Road); and
  - c. The second eastbound through lane on Penny Road.
5. Commercial Owner shall be responsible for the following Roadway Improvements located at the Route 59/Southerly Access Road Intersection:
  - a. Signal Installation if and when warranted;
  - b. The right turn lane on south approach (from northbound Route 59 to Access Road);
  - c. The left turn lane on the north approach. (from southbound Route 59 to Access Road); and
  - d. Construction of the road located 1100 feet north of the intersection of Route 59 and Higgins Road through the Commercial Parcel to the Water Improvement Pump and Treatment Facility.
6. Residential Owner shall be responsible for the Roadway Improvements located at the Route 59/Northerly Subdivision Road Intersection including the left turn lane on the north approach (from southbound Route 59 to Subdivision Road).

# UNOFFICIAL COPY

7. Commercial Owner shall be responsible for the following Roadway Improvements located at the Bartlett Road/Southerly Access Road Intersection (right turn in, right turn out, left turn in only [no left turn out]):
  - a. The left turn lane on south approach (from northbound Bartlett Road to Access Road); and
  - b. The right turn lane on the north approach (from southbound Bartlett Road to Access Road).
8. Commercial Owner shall be responsible for the Right in and Right out Roadway Improvements located at the Higgins Road/Westerly Access Road Intersection.
9. Commercial Owner shall be responsible for the following Roadway Improvements located at Higgins Road/Easterly Access Road Intersection:
  - a. Signal Installation shared with Avalon property if and when warranted;
  - b. The two left turn lanes on the west approach (from eastbound Higgins Road to the Access Road); and
  - c. The right turn lane on east approach (from westbound Higgins Road to the Access Road).