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Doc#: 0609627040 Fee: \$46.50
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 04/06/2006 11:02 AM Pg: 1 of 12

DECLARATION OF EASEMENTS

This Declaration of Easements is made and entered into this 8th day of February, 2006 by and between Zero Investment and Management Corp., an Illinois corporation c/o Malet Realty Ltd., 900 W. Jackson Boulevard, #4W, Chicago, Illinois 60607 ("Parcel 1 Owner"), and TSS Meadows Group LLC, an Illinois limited liability company, 3327 Springdale, Glenview, IL 60025 ("Parcel 2 Owner") (Parcel 1 Owner, Parcel 2 Owner and any successor owner may be referred to herein as "Owner" as the context requires).

WITNESSETH:

WHEREAS, effective as of the date of this Declaration of Easements ("Declaration"), the Parcel 1 Owner owns, legally and beneficially, a certain parcel of real estate commonly known as 1655-69 Algonquin Road, Rolling Meadows, Cook County, Illinois, legally described in Exhibit A attached hereto and by this reference made a part hereof ("Parcel 1"); and

WHEREAS, effective as of the date of this Declaration the Parcel 2 Owner owns, legally and beneficially, a certain parcel of real estate commonly known as 1675 Algonquin Road, Rolling Meadows, Cook County, Illinois, legally described in Exhibit B attached hereto and by this reference made a part hereof ("Parcel 2") (Parcel 1 and Parcel 2 may each also be referred to herein as "Parcel" or may be collectively referred to as the "Parcels" as the context requires); and

WHEREAS, Parcel 1 and Parcel 2 are contiguous and adjacent to each other, are part of the shopping center known as The MarketPlace of Rolling Meadows ("Shopping Center"), and are parties to that certain Declaration of Covenants, Restrictions and Easement dated June (undated), 1999 and recorded as Document No. 99606491, as amended by that certain Amendment of Declaration of Covenants, Restrictions and Easements dated May 13, 2002 and recorded as Document No. 0020561602 (collectively "Declaration 1"), that certain Declaration of Restrictions dated June 22, 1999 and recorded as Document No. 99606488 ("Declaration 2") and that certain Declaration of Restrictions dated June 22, 1999 and recorded as Document No. 99606489 ("Declaration 3") (Declaration 1, Declaration 2 and Declaration 3 are collectively referred to herein as the "Shopping Center Declarations"); and

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WHEREAS, the City of Rolling Meadows intends to install a traffic light at or near the Shopping Center, and in conjunction therewith, Parcel 2's access may no longer exist to the ring road ("Ring Road") depicted on the Site Plan ("Site Plan") attached hereto as Exhibit C and made a part hereof; and

WHEREAS, The Parcel 2 Owner desires an easement for vehicular ingress and egress upon and over the southwest corner of Parcel 1 as generally depicted on the Site Plan for such vehicular ingress and egress; and

WHEREAS, Parcel 1 Owner has agreed to provide the Ingress/Egress Easement, as hereinafter defined, for the benefit of Parcel 2, pursuant the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. PREAMBLE. The recitals set forth in the preamble hereof are incorporated herein by this reference.

2. GRANT OF EASEMENT. Parcel 1 Owner hereby grants and declares for the benefit of Parcel 2, and for the benefit and use of the Parcel 2 Owner and its lessees, customers, employees, patrons, licensees, and invitees, and its respective successors and assigns, as an appurtenance to Parcel 2, a perpetual non-exclusive easement ("Ingress/Egress Easement") for vehicular ingress and egress over and upon the Opening, as hereinafter defined, at the southwest portion of Parcel 1, as generally depicted by cross-hatching on the Site Plan, to and from the Ring Road ("Ingress/Egress Easement Area"). The Ingress/Egress Easement shall be in effect upon and from the date that the Parcel 2 Owner completes the construction work as set forth herein as Section 3A.

3. CONSTRUCTION WORK ON PARCEL 1.

A. Opening Construction. The Parcel 2 Owner shall cause an entrance opening ("Opening") to be created to the Ring Road by removing approximately forty (40) lineal feet of the existing concrete curb and gutter on the southwest corner of Parcel 1 adjacent to the parking area on Parcel 1 as depicted on the Site Plan. The Parcel 2 Owner shall also cause the area where the existing curb and gutter are removed to be paved in a manner which is level with and consistent in quality and all other respects with other paved areas in the Shopping Center over which vehicular traffic occurs. No parking spaces located on Parcel 1 shall be removed or affected due to such construction.

B. Construction Requirements. All work to be performed by the Parcel 2 Owner or its contractors and subcontractors (the contractors and subcontractors are collectively referred to herein as the "Contractors") in the Ingress/Egress Easement Area pursuant to this Declaration shall be at the Parcel 2 Owner's sole cost and expense. Prior to any construction work, the Parcel 2 Owner shall obtain (i) all required permits from all required governmental authorities; and (ii) all required consents for such work from all required parties pursuant to the terms and conditions of the Shopping Center Declarations and shall deliver copies of same to the Parcel 1 Owner. All such work shall be done in a good and workmanlike manner and in compliance with all statutes,

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laws, rules, regulations, orders, permits, approvals and licenses of governmental authorities having jurisdiction. The Parcel 2 Owner must give written notice to the Parcel 1 Owner regarding its intended date of commencement of all such construction, which commencement date shall be subject to Parcel 1 Owner's written approval, which approval may not be unreasonably withheld or delayed. The Parcel 2 Owner shall take all necessary measures to minimize any disruption to the Parcel 1 Owner's business and parking or other inconvenience to Parcel 1 caused by such construction. No construction materials shall be stored on Parcel 1 and the Parcel 2 Owner shall cause all construction debris to be removed upon the completion of construction. No liens may be placed on Parcel 1 due to such construction and any liens so placed must be removed in accordance with the provisions of Section 6.06 of Declaration 1. Upon completion of work, the Parcel 2 Owner must provide the Parcel 1 Owner with copies of final lien waivers for all such work performed by or at the direction of the Parcel 2 Owner for such construction. The Parcel 2 Owner is responsible for any and all repairs, replacements and restoration work to Parcel 1 including, without limitation, the repair or replacement of any pavement, landscaping, fences, utility lines or other improvements on Parcel 1 which are damaged or destroyed in conjunction with the foregoing construction.

- C. Contractors' Insurance All contractors and subcontractors (collectively the "Contractors") participating in construction on the Ingress/Egress Area shall be reputable and shall meet all licensing and insurance requirements of the State of Illinois. During construction, the Parcel 2 Owner shall cause all Contractors to procure, pay for and maintain during the continuance of any and all construction on the Ingress/Egress Area, insurance in the following minimum coverages and limits of liability with an insurance company or companies authorized to do business in the State of Illinois:
- (i) Workmen's Compensation, Employer's Liability Insurance with limits of not less than \$1,000,000.00 and as required by any Employee Benefit Acts or other statutes applicable where the work is to be performed as will protect Contractors from liability under the aforementioned act or statutes.
 - (ii) Commercial General Liability Insurance (including Contractors' Protective Liability) in an amount not less than \$1,000,000.00 per occurrence whether involving bodily injury liability (or death resulting therefrom) or property damage liability or a combination thereof with a minimum aggregate limit of \$2,000,000.00. Such insurance shall provide for broad form blanket contractual liability coverage and shall insure Contractors against any and all claims for bodily injury, including death resulting therefrom and damage to the property of the Parcel 1 Owner and others and arising from its operations under the contracts whether such operations are performed by the Parcel 2 Owner's Contractors or by anyone directly or indirectly employed by any such Contractors.

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(iii) Comprehensive Automobile Liability Insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired, or non-owned in an amount not less than \$1,000,000.00 for each person in one accident, and \$2,000,000.00 for injuries sustained by two or more persons in any one accident and property damage liability in an amount not less than \$100,000.00 for each accident. Such insurance shall insure the Parcel 2 Owner's Contractors against any and all claims for bodily injury, including death resulting therefrom and damage to the property of others arising from its operations under the contracts whether such operations are performed by the Parcel 2 Owner's Contractors, or by anyone directly or indirectly employed by any such Contractors.

All policies shall be endorsed to include as additional insured parties, the Parcel 2 Owner, its officers, directors, employees, agents and Lender. All additional insured parties shall be given thirty (30) days' prior written notice of any reduction, cancellation or non-renewal of coverage. Prior to the commencement of any construction on the Ingress/Egress Area, the Parcel 2 Owner shall cause its Contractors to provide a certificate of insurance naming all such parties as additional insureds and evidencing all required such coverage.

4. DIVISION OF PARCEL. If part or all of Parcel 2 is hereafter divided into two (2) or more parts by separation of ownership or by lease, all parts shall enjoy the rights and benefits declared, granted and reserved in this Declaration with respect to such Parcel 2. Notwithstanding anything contained herein to the contrary, if Parcel 2 is divided by separation of ownership or by lease, and the portion of such Parcel 2 adjacent to Parcel 1 no longer has the right to use any such easement granted herein, than all other portions of such Parcel 2 shall have no right to use such easement or easements.

5. TERMINATION OF INGRESS/EGRESS EASEMENT. [Intentionally Omitted]

6. RUNNING OF BENEFITS AND BURDENS. Subject to the limitations herein expressly set forth, all of the provisions of this Declaration, including the benefits and burdens, are declared to be perpetual covenants running with the land which are binding upon Parcel 1 and inure to the benefit of Parcel 2 and their respective Owners, lessees, employees, patrons, licensees and invitees, and their successors and assigns as may hereafter exist.

7. DEFAULTS AND REMEDIES.

A. Defaults. The failure by an Owner hereto to perform any provision of this Declaration to be performed by such Owner (the "Defaulting Party") shall constitute a default if (i) a failure to perform any monetary obligation is not cured within fifteen (15) days after the Defaulting Party receives written notice thereof from another Owner (the "Non-Defaulting Party"); and (ii) a failure to perform any non-monetary obligation is not cured within fifteen (15) days after the Defaulting Party receives written notice thereof from the Non-Defaulting Party, provided however, if the nature of the Defaulting Party's failure is such that it cannot reasonably

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be cured within such fifteen (15) day period, then such Defaulting Party shall not be deemed to be in default if such Defaulting Party shall commence to cure such failure to perform within such fifteen (15) day period and shall diligently thereafter and in good faith cure same within thirty (30) days thereafter.

B. Remedies. If a Defaulting Party shall have failed to cure a default after the fifteen (15) day period set forth above, the Non-Defaulting Party may, at its election, but without obligation therefor (i) seek specific performance of any obligation of the Defaulting Party; (ii) pursue an action for injunctive or declaratory relief; (iii) from time to time without releasing the Defaulting Party in whole or in part from the Defaulting Party's obligation to perform any and all covenants, conditions and agreements to be performed by the Defaulting Party hereunder, cure the default at the Defaulting Party's cost; or (iv) exercise any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. All such remedies may be exercised alternatively or cumulatively. All reasonable costs, including, but not limited to attorneys' fees and court costs incurred by the Non-Defaulting Party in order to cure such a default by the Defaulting Party, shall be due from the Defaulting Party upon demand therefor delivered by the Non-Defaulting Party, and shall constitute a lien on the Parcel of the Defaulting Party which may be enforced in the manner of enforcement of judgment liens. The Non-Defaulting Party may record a memorandum of such lien against the Parcel of the Defaulting Party.

8. INDEMNIFICATION. The Parcel 2 Owner shall indemnify, defend and hold harmless the Parcel 1 Owner from and against any and all claims, losses, damages, injuries, liability and costs (including reasonable attorneys' fees and costs of litigation) (collectively the "Claims") arising from the death of or any accident, occurrence, injury, loss or damage whatsoever caused to any person or to the property of any person or entity as shall occur on Parcel 1 directly or indirectly related to the construction on Parcel 1 or the easements granted hereunder unless such Claims are the result of the negligence or willful misconduct of the Parcel 1 Owner.

9. ATTORNEY'S FEES. If an Owner of a Parcel or portion of a Parcel brings an action to enforce the terms hereof or declare rights hereunder against another Owner of a Parcel or portion of a Parcel, the prevailing Owner in such action shall be entitled to recover from the non-prevailing Owner, reasonable attorneys' fees and costs of such action.

10. MORTGAGE. Any mortgage affecting any portion of Parcel 2 shall at all times be subject to and subordinate to the terms of this Declaration. The Parcel 2 Owner hereby acknowledges that the effectiveness of this Declaration remains subject to the written consent of the Parcel 1 Lender. Following such consent of the Parcel 1 Lender, such current mortgage and any subsequent mortgage affecting any portion of Parcel 1 shall at all times be subject and subordinate to the terms of this Declaration. The covenants and agreements set forth herein shall not be affected by any foreclosure or deed in lieu of foreclosure, and any person or entity, including, but not limited to a mortgagee or beneficiary of a deed of trust, which hereinafter acquires title to any portion of Parcel 1 or Parcel 2 shall be subject to the terms and provisions hereof.

11. ESTOPPEL CERTIFICATES. Every Owner of a Parcel encumbered by this Declaration

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shall, from time to time, but not more often than two (2) times per year, in addition to any that may be required in connection with sales or financings, within ten (10) days after written request from another Owner or any mortgagee, prospective mortgagee, or other lender of the Owner, execute, acknowledge and deliver to the requesting Owner a certificate ("Estoppel Certificate") stating: (i) that the terms and conditions of this Declaration are unmodified and are in full force and effect (or if modified, identifying such modifications); (ii) whether there exists any default under the terms and conditions of this Declaration, and if so, specifying the nature and extent thereof; and (iii) such other facts as may be reasonably requested. Any Owner failing to provide an Estoppel Certificate within ten (10) days after request for same, shall, in addition to any other remedies available to the requesting party be estopped from asserting any claims which are contrary to the statements contained in the form of estoppel certificate submitted to it.

12. TERMINATION OF COVENANT LIABILITY. Whenever a transfer of ownership of all or any portion of a Parcel shall occur, the transferor shall not be liable for any subsequent breach of the covenants set forth herein with respect to the property transferred; provided, however, that such transfer shall not result in the termination of such transferor's liability for a breach of a covenant occurring prior to such transfer. Upon transfer of ownership of part or all of Parcel 1 or part or all of Parcel 2, the new Owner thereof shall be deemed to have acquired such Parcel subject to all of the covenants and responsibilities herein provided and shall be deemed to have assumed all of the obligations binding upon such Parcel arising, occurring, or to be performed on or after the date of such transfer. Notwithstanding anything set forth or implied herein to the contrary, upon the transfer of all or part of a Parcel, the transferee shall have the obligation to pay any and all funds which might arise hereunder with respect to a Parcel or portion of such Parcel transferred to transferee which have accrued prior to the transfer of ownership of such Parcel or portion of such Parcel to such transferee and which remain unpaid.

13. GOVERNING LAW; VENUE. This Declaration shall be governed, construed and interpreted in accordance with the laws of the State of Illinois and Cook County, Illinois shall be deemed a proper venue for the enforcement hereof.

14. NOTICE. Any and all notices required or permitted to be given hereunder may be served by an Owner or such Owner's attorneys, shall be in writing and shall be deemed served (i) if by personal delivery, on the date the same is actually received by the addressee thereof; or (ii) if by United States certified mail, return receipt requested, postage fully prepaid, addressed as set forth herein on the date which is three (3) business days after same is deposited with United States Postal Service (or its successor); or (iii) if by overnight courier service such as Federal Express or other nationally recognized courier, on the first business day after deposit with such overnight courier service to the address of such Owner as set forth herein. Any Owner may change its notice address hereinafter by delivering notice of same to each other Owner.

15. NO WAIVER. No delay or omission of any Owner hereunder in the exercise of any right accruing upon any default of any other Owner shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Owner of a breach or a default of any of the terms and conditions of this Declaration by any other Owner shall not be construed to be a waiver of any subsequent breach or default of the same

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or any other provision of this Declaration or a waiver by any other Owner. Except as otherwise specifically provided in this Declaration, no remedy provided in this Declaration shall be exclusive, but each shall be cumulative with all other remedies provided in this Declaration and at law or in equity.

16. SEVERABILITY. In the event any part of this Declaration is deemed to be invalid, illegal or otherwise unenforceable as being against public policy, or otherwise, such portion which is determined to be invalid, illegal or otherwise unenforceable shall be deemed severed herefrom and the balance of this Declaration shall continue in full force and effect, provided, however, that if all of the easements granted herein shall be deemed invalid, illegal or unenforceable as aforesaid, this Declaration shall be deemed revoked and void and shall automatically terminate.

17. HEADINGS. The headings set forth herein are for convenience of reference only and shall not be deemed to impair, enlarge or otherwise affect the substantive meaning of any provision to which such heading may relate.

18. ENTIRE AGREEMENT. This Declaration, including the exhibits attached hereto, contains the entire agreement of the parties hereto with respect to the subject matter hereof, supersedes any and all prior agreements which may have heretofore been entered into relating to the subject matter hereof, and shall not be modified or amended except in a writing signed by all then current Owners, which amendatory writing shall be in recordable form and shall be effective upon full execution of such writing. Such amendatory writing shall be recorded with the Cook County Recorder of Deeds in Cook County, Illinois or in such other public or quasi-public office hereinafter designated for the recording of easements and other documents affecting title to the real estate comprising Parcel 1 and Parcel 2 by and at the sole cost and expense of the Owner requesting such amendatory writing.

19. COUNTERPARTS. This Declaration may be executed in multiple counterparts, each one of which shall be deemed an original but all of which, taken collectively, shall be deemed a single instrument; provided, that this Declaration shall not be enforceable against any Owner hereto unless all Owners hereto have executed at least one (1) counterpart.

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IN WITNESS WHEREOF, the undersigned hereby approve this Declaration of Easements and acknowledge that this Declaration of Easements shall be placed of record with the Recorder of Cook County, Illinois for the purpose of affecting title to the Parcels described herein.

Zero Investment and Management Corp.,
an Illinois corporation

By: [Signature]
Its: Secretary

TSS Meadows Group LLC,
an Illinois limited liability company

By: [Signature]
Its: Manager

Consent of MB Financial Bank, N.A.

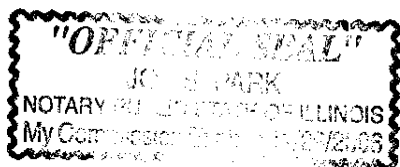
The foregoing Declaration of Easements is agreed to and acknowledged by MB Financial Bank, N.A.

By: [Signature]
Its: SR. Vice President
Date: March 24, 2006

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ZERO SHIM, a Secretary, of Zero Investment and Management Corp., an Illinois corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of the corporation for the uses and purposes therein set forth.

Given under my hand and official seal this 24th day of March, 2006



[Signature]
Notary Public

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STATE OF ILLINOIS)
) SS.
COUNTY OF Lake)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Sam Syrezzelas, a Manager of TSS Meadows Group LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act and as the free and voluntary act of the limited liability company for the uses and purposes therein set forth.

Given under my hand and official seal this 23rd day of March, 2006



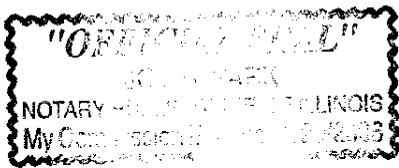
Michael C

Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Charles K. Oh, a Sr. V.P. of MB Financial Bank, N.A., personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act and as the free and voluntary act of the corporation for the uses and purposes therein set forth.

Given under my hand and official seal this 24th day of March, 2006



Jim M

Notary Public

THIS INSTRUMENT PREPARED BY: Michael Caron, Lyon & Caron LLP, 790 Estate Drive, Suite 180, Deerfield, IL 60015

AFTER RECORDING RETURN TO:

William D. Dallas
Regas, Frezados & Dallas LLP
111 West Washington Street
Suite 1525
Chicago, IL 60602

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EXHIBIT A

Legal Description for Parcel 1

LOT 9 IN THE RESUBDIVISION OF MARKETPLACE OF ROLLING MEADOWS ACCORDING TO THAT PLAT DATED MARCH 23, 1999 THEREOF RECORDED IN THE COOK COUNTY RECORDER'S OFFICE ON SEPTEMBER 27, 1999 AS DOCUMENT NUMBER 99910798, IN COOK COUNTY, ILLINOIS.

STREET ADDRESS: 1655-69 Algonquin Road, Rolling Meadows, Illinois

PIN: 08-09-302-031-0000

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EXHIBIT B

Legal Description for Parcel 2

LOT 10 IN THE RESUBDIVISION OF MARKETPLACE OF ROLLING MEADOWS ACCORDING TO THAT PLAT DATED MARCH 23, 1999 THEREOF RECORDED IN THE COOK COUNTY RECORDER'S OFFICE ON SEPTEMBER 27, 1999 AS DOCUMENT NUMBER 99910798, IN COOK COUNTY, ILLINOIS.

STREET ADDRESS: 1675 Algonquin Road, Rolling Meadows, Illinois

PIN: 08-09-403-034-0000
08-09-302-032-0000

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Site Plan

The rectangular area which is cross-hatched is the approximate easement area. The Opening will be approximately 24'.

