Doc#: 0624227032 Fee: \$52.50 Eugene "Gene" Moore RHSP Fee:\$10.00

Cook County Recorder of Deeds
Date: 08/30/2006 10:01 AM Pg: 1 of 15

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Terrance A. Noyes, LLC P.O. Box 2128 Dillon, Colorado 80435-2128



MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is effective as of July 28, 2006, and executed between KIMCO SELECT CHICAGO 694 LLC, a Delaware limited liability company ("Landlord"), and WHOLF FOODS MARKET GROUP, INC., a Delaware corporation ("Tenant").

WITNESSETH:

In consideration of the premises, and of the mutual covenants and agreements set forth in that certain Lease dated as of July 28, 2006 (the "Lease"), by and between Landlord and Tenant, Landlord has leased to Tenant, and Tenant has leased from Landlord, certain real estate and improvements thereon (such real estate and improvements are hereinafter collectively referred to as the "Demised Premises") shown on the site plan attached hereto as Exhibit A and made a part hereof for all purposes, located The Streets of Woodfield Annex, located at the southwest corner of the intersection of Martingale Road and Woodfield Mal' Road in Schaumburg, Illinois (the "Development") which is legally described in Exhibit B attached hereto and a part hereof, for a term of twenty (20) years after the first day of the month next to lowing the Commencement Date (as defined in the Lease), with options to extend the term for six (6) additional terms of five (5) years each, which term commences in accordance with the provisions of the Lease.

Parking and Common Areas.

shall contain the greater of the number of parking spaces required by Section L1(b) of the Lease or the number of parking spaces required by applicable law, all of which shall be surface parking spaces as shown on the site plan attached hereto as Exhibit A on a hard paved surface, fully lighted and in compliance with applicable law. Throughout the Demised Term, Tenant and its suppliers, employees, agents, customers, contractors, business invitees, subtenants, licensees and concessionaires (the "Tenant Parties") shall have the non-exclusive right to use the Common Area (including all of the parking areas in the Development) in common with Landlord and other tenants of the Development. Landlord shall not grant the right to use the Common Area to any party other than to Landlord, Tenant, the Tenant Parties and tenants of the Development, their customers, employees, business invitees and suppliers.

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Protected Parking Area. No charge shall be made for the parking of Ъ. vehicles in the Development. The location and configuration of the parking spaces in the Development shall be as shown on Exhibit A. That portion of the surface parking area labeled on Exhibit A as the Protected Parking Area is referred to herein as the "Protected Parking Area". Landlord shall not authorize or permit in the Underground Garage or the Protected Parking Area (x) the erection or placement of any buildings, structures, kiosks, food facilities or other improvements; (y) any promotions, exhibits, carnivals, shows, rides, displays, signs (other than necessary traffic and directional signs) or the like; or (z) any other use that would interfere with Tenant's use of the Demised Premises or rights contained herein; provided, however, Landlord may do the following within the Protected Farking Area: (1) install plants, shrubs and other landscaping required by law or for Site Plan Approval; (2) make any replacements of any existing landscaping, (3) install any structures or objects as generally reflected on Exhibit A or replacements thereto of the same or smaller size, and (4) make common area improvements such as lighting standards, bumper guards, curbs, ramps and directional signs. Further, Landlord shall not permit the Protected Parking Area to be used for overnight parking, valet parking, the parking of commercial vehicles, or for storage of any vehicles, equipment or materials. In addition, Landlord may not (i) make any changes to the Common Area located outside of the Protected Parking Area which would (A) reduce the size of the Critical Access Points to the Development denicted on Exhibit A (the "Critical Access Points"), (B) relocate the Critical Access Points from their general locations depicted on Exhibit A, (C) reduce the access capabilities of the Critical Access Points from their capabilities on the date of this Lease (for example, a Cr. tical Access Point allowing full access in and out of the Development on the date of this Least could not be changed to "right in/right out" only), (D) otherwise materially modify pedestrian or vehicular access to the Development or the Demised Premises from what is depicted on the site plan attached hereto as Exhibit A, or (E) reduce the number of parking spaces on the Development below the number required by Section 1.1(b) of the Lease, or (ii) make my changes to the loading dock area or the loading dock access ways serving the Demised Premises. Notwithstanding the foregoing, Tenant may install, at Tenant's sole cost and expense, a shopping cart corral system selected or designed by Tenant within the Undergroun's Garage and the Protected Parking Area in the locations shown on Exhibit A (or to the extent such locations are not shown on Exhibit A, in locations which are reasonably acceptable to Landlord and Tenant). Any parking spaces occupied by cart corrals shall still count 22 parking spaces for satisfying the parking requirements contained in this Lease. In addition Tenant shall have the right at any time and from time to time to require Landlord to have parking in the Protected Parking Area during the hours of 8:00 a.m. to 10:00 p.m. daily to a maximum of ninety (90) minutes per visit, to provide appropriate signage in the Protected Parking Area indicating the maximum period of time that parking is allowed and to monitor and enforce any such limit on parking. Tenant shall have the right, at Tenant's cost and expense, to monitor and enforce such limit on parking in the Protected Parking Area and to monitor and enforce Tenant's exclusive right to use the Underground Garage, including without limitation, the right to have violating cars towed; provided, however, Tenant shall not tow cars from the Protected Parking Area without having first notified (via signage or other suitable method) persons parking in the Protected Parking Area that their vehicles are subject to being towed by Tenant for violation of such limit on parking,

which notification shall make clear that any towing is being undertaken by Tenant and not by Landlord. Tenant agrees that Tenant's right to enforce such limit on parking, including without limitation, the right to have violating cars towed, shall be Tenant's sole remedy for such violations, and Tenant agrees to indemnify, hold harmless and defend Landlord from and against any and all claims, lawsuits (including reasonable attorneys' fees) or other legal actions brought against Landlord that arise out of any actions taken by Tenant pursuant to this paragraph to the same extent as provided in Section 9.4(a) of the Lease.

- Site Plan. The Critical Access Points, the Protected Parking Area, the No Euild Area (as defined below), and the parking areas in the No Build Area and the Protected Parking Area shall be as depicted on the site plan attached hereto as Exhibit A, and the Critical Access Points, the Protected Parking Area, the No Build Area, the parking ar a in the No Build Area and the Protected Parking Area and the other Common Areas of the Development as depicted on site plan attached hereto as Exhibit A may not be movified in any respect except as expressly permitted in Sections 1b or Section 1e hereof or by a written agreement signed by all of the parties. Notwithstanding the foregoing, the building located on the parcel identified on Exhibit A as the "Restaurant Building Pa cel' may be relocated north or east of its current location (as depicted on Exhibit A) and/or econfigured, so long the overall size of the building is not increased and the number of parking spaces on the Restaurant Building Parcel is not reduced. If the City of Schaumburg mandates a change to the site plan attached hereto as Exhibit A which Tenant does not approve, Landlord shall not be in default hereunder, and Tenant's sole remedy shall be to terminate this Lease. Tenant's approval of any City of Schaumburg mandated change to the sit: rlan shall be deemed granted if all of the following shall have occurred: (i) Tenant fails to notify Landlord of Tenant's disapproval within ten (10) business days after Landlord delivers to Tenant its request for such consent, (ii) Landlord then gives Tenant written notice of such failure (the "no response notice") which contains in BOLD AND CONSPICUOUS letters the consequences of failing to respond, and (iii) Tenant still fails to notify Ludlord of Tenant's disapproval within five (5) business days after Landlord delivers the no response notice to Tenant.
 - Employee Parking. Parking in the Protected Parking Area by employees d. of the tenants of the Development (other than employees of Tenant), is prohibited. Landlord may designate portions of the Common Area of the Development as employee parking areas (the "Employee Parking Areas") for the employees of Tenant and the employees of the other tenants of the Development. If Landlord designates Employee Parking Areas, Tenant shall advise its employees of Landlord's designation of the Employee Parking Areas, of the requirement that they park only in the Employee Parking Areas located either in the Protected Parking Area or on the top level of the parking structure located at the far end of the Development from the Demised Premises and that they are subject to being fined and/or towed if they park elsewhere in the Development. Landlord shall require the employees of the other tenants of the Development to use only the Employee Parking Areas located outside of the Protected Parking Area. Tenant shall have the right, at Tenant's cost and expense, to monitor and enforce such limit on parking, including without limitation, the right to have violating cars towed; provided, however, Tenant shall not tow cars without having first notified (via signage or other

suitable method) employees parking outside of the Employee Parking Areas that their vehicles are subject to being towed by Tenant for violation of such limit on parking, which notification shall make clear that any towing is being undertaken by Tenant and not by Landlord. Tenant agrees that Tenant's right to enforce such limit on parking, including without limitation, the right to have violating cars towed, shall be Tenant's sole remedy for such violations, and Tenant agrees to indemnify, hold harmless and defend Landlord from and against any and all claims, lawsuits (including reasonable attorneys' fees) or other legal actions brought against Landlord that arise out of any actions taken by Tenant pursuant to this paragraph to the same extent as provided in Section 9.4(a) of the Legge.

- the No Puild Area is referred to herein as the "No Build Area". In addition, the No Build Area shall include that portion of the Streets at Woodfield Shopping Center parking lot that is located across Martingale Road from the Development and labeled on Exhibit A as "No Build Area". Landlord shall not authorize or permit in the No Build Area the erection or placement of any buildings, structures, kiosks or other improvements or any other use that would interfere with Tenant's use of the Demised Premises or rights contained herein; provided, however, Landlord may do the following within the No Build Area: (1) install plants, shrub, and other landscaping required by law or for Site Plan Approval; (2) make any replacements of any existing landscaping, (3) install any structures or objects as generally reflected on Exhibit A or replacements thereto of the same or smaller size, and (4) make common area improvements such as lighting standards, bumper guards, curbs, ramps and directional signs.
- Tenant's Use. The Demised Premises shall be used only for the operation of a supermarket or grocery store for the purpose of (i) the sale of products, foods, merchandise, 2. services and items generally sold in supermarkets or grocery stores including, without limitation, produce, meat, poultry, seafood, dairy, cereals, grains, fruits and vegetables, frozen foods, grocery products, household items, bulk foods, gourmet foods bakery goods, prepared foods, alcoholic beverages (including wine and beer), vitamins, body care products, cosmetics, health care items, beauty aids, plants, flowers, books, magazines, medicinal nerbs, naturopathic and homeopathic remedies, nutritional supplements, smoothies and/or fresh fuit drinks, and any other product, food, merchandise, services, or item sold in other supermarkets or grocery stores operated by Whole Foods Market, Inc. or by supermarket or grocery store entities owned or controlled by Whole Foods Market, Inc., (ii) the operation of an in-store bakery, cafe and/or a delicatessen style or sit down style restaurant, including the cooking required therefor coffee bar and juice bar (any such café, restaurant, or coffee or juice bar may have at least one hundred (100) seats for Tenant's customers) and (iii) providing services ancillary or complementary to the foregoing, including, without limitation, a branch bank, cooking demonstrations and cooking classes; provided, however, in no event shall vending machines constitute more than an incidental part of Tenant's business in the Demised Premises. Landlord represents and warrants that the Demised Premises are zoned for the operation of a supermarket; provided, however, Tenant shall be responsible for (a) obtaining any required licenses and permits issuable by applicable governmental authorities for Tenant's operations in the Demised Premises, and (b) complying with all laws concerning the cleanliness, safety and operation of the Demised Premises. In no event shall Tenant use the Demised Premises in a manner which violates any of

the Prohibited Uses set forth in $\underline{\text{Exhibit } K}$ to the Lease, nor shall Landlord permit any other portion of the Development to be used in a manner which violates any of the Prohibited Uses set forth in $\underline{\text{Exhibit } K}$.

3. Restrictive Covenant.

- Except as prohibited by law, Landlord shall not permit in any other portion of the Development any movie theater, bowling alley, dance hall or discotheque with a customer entrance located within three hundred (300) feet of any customer entrance into the Demised Premises that exists at the time Landlord proposes entering into a lease with such movie theater, bowling alley, dance hall or discotheque; any gaseline or service station or automotive service or repair business; any health club, fitness center, weight room, gymnasium or the like with a customer entrance located within the hundred (300) feet of any customer entrance into the Demised Premises that exists at the time Landlord proposes entering into a lease with such health club, fitness center, weigh, room, gymnasium or the like; any other grocery store, supermarket or organic foods or natural foods market (including, without limitation, a Fresh Market, Central Market, Trader Joe's, Wild Oats or any similar organic foods, natural foods or upscale grocery store); the sile of produce, meat, poultry, seafood, dairy, cheese, cereals, grains, fruits and vegetables, frozen foods, grocery products, bulk foods, gourmet foods, bakery goods, alcoholic beve ages (including beer and wine), medicinal herbs, naturopathic or homeopathic remedies, nutritional supplements, or vitamins; or any use inconsistent with the customary character of a first-class retail shopping center (such as, without limitation, a "sex", "head" or "paw1" shop use).
- b. Except as prohibited by law, Landlord shall not permit on any land contiguous or adjacent to the Development (including, without limitation, any land that would be contiguous or adjacent to the Development out for any intervening road, street, alley or highway) ("Related Land") now or hereafter exceed by Landlord or its affiliates any grocery store, supermarket or organic foods or natural foods market in excess of 2,000 square feet (including, without limitation, a Fresh Mark A, Central Market, Trader Joe's, Wild Oats or any similar organic foods, natural foods or upscale grocery store); or any use inconsistent with the customary character of a first-class retail shopping center (such as, without limitation, a "sex", "head" or "pawn" shop use or a 'massage parlor").
- c. Notwithstanding the foregoing, if Tenant fails to operate a groce; store or supermarket in at least fifty percent (50%) of the Demised Premises for a period of six (6) consecutive months (and such failure is not due to remodeling, casualty or events or forces described in Section 17.9 of the Lease), Landlord may deliver written notice to Tenant that Landlord may enter into leases with tenants in the Development or on Related Land which may violate the provisions of this Section 3 ("Exclusive Recapture Notice"). If Tenant fails to re-commence the operation of a grocery store or supermarket in at least fifty percent (50%) of the Demised Premises within thirty (30) days after receipt of such Exclusive Recapture Notice, any lease entered into between the date of receipt of such Exclusive Recapture Notice by Tenant and the date Tenant re-commences the operation of a grocery store or supermarket in at least fifty percent (50%) of the Demised Premises shall not be subject to the provisions of this Section 3.

- 4. <u>Exceptions to Restrictive Covenant.</u> Notwithstanding the foregoing, the provisions of Section 3 above shall not:
- a. prohibit Landlord from leasing premises in the Development to a Crate and Barrel store, provided that such store shall be subject to the following limitations: (A) a maximum of 6,000 square feet of area will be dedicated to the sale of alcohol and food products; (B) no food products requiring refrigeration may be sold (other than refrigerated products in vending machines provided solely for employee use); (C) no "fresh" food or plant items including meats, fruit, plants, and dairy products may be sold; and (D) no vitamins or supplements may be sold;
- b. prohibit Landlord from leasing premises on Related Land for the sale of alcoholic beverages (including beer and wine); or
- c. prohibit "incidental sales" of any of the prohibited items described in Section 3 above by any tenant in the Development or on Related Land. For purposes of the foregoing, a tenant shall be deemed to be conducting only "incidental sales" of such prohibited items only if the aggregate Abor area in such tenant's premises devoted to the display of such items (other than vitamins, redicinal herbs, naturopathic or homeopathic remedies, and nutritional supplements) does not exceed the lesser of (1) three percent (3%) of the rentable area of such tenant's premises or (2) 150 square feet. Notwithstanding the foregoing, however, the sale of vitamins, naturopathic or homeopathic remedies and/or nutritional supplements by any tenant in the Development is expressly prohibite 1.

This Memorandum is executed for the purpose of giving notice of the existence of the Lease and that certain terms thereof encumber the Development and the Adjacent Retail Parcel. In addition to the above provisions, the Lease includes provisions containing covenants and obligations similar to those commonly found in other leases including, but not limited to provisions regarding construction of improvements, maintenance and signs. Reference should be made to the Lease (and any amendments thereto that may be energed into) for a full description of the rights and duties of Landlord and Tenant, and this Memorandum of Lease shall in no way affect the terms and conditions of the Lease or the interpretation of the rights and duties of Landlord and Tenant thereunder.

[Signatures on following page]

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UNOFFICIAL CC

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum of Lease to be executed under their respective seals effective from and as of the day and year first above written.

LANDLORD:

KIMCO SELECT CHICAGO 694 LLC

By: Kimco Select Chicago, L.L.C., Sole Member and Manager

JFA Management LLC, its Manager By:

Bv: Name: Thomas H. Fragmon

Duly Authorized Manager

TENANT:

WHOLE FOODS MARKET GROUP, INC., a

Droport, Coop, Delaware corporation

Patrick Bradley, President – Midwest

C/O/A/S O/A/CO

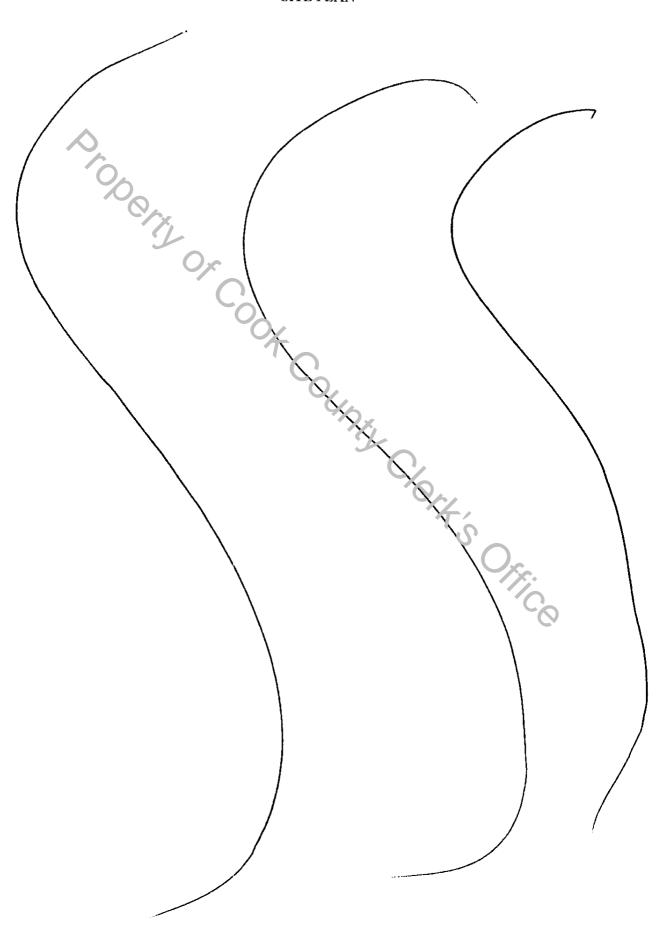
STATE OF <u>Illinois</u>
COUNTY OF <u>look</u>) ss.
Before me, the undersigned, a Notary Public in and for said State, personally appeared Ihomas H. Fraerman, known to me and known by me to be the Manager of JFA Management U.C., an IUItalishing and acknowledged the execution of the foregoing Memorandum of Lease for and on behalf of said hinted liability congange.
Given under my hand and seal of office this 28th day of, 2006.
Notary Public Notary Public
My commission expires: "OFFICIAL SFAL" Notary's Name (printed):
Christine M. Ulaich Notary Public, State of 1 thiois My Commission Exp. 07/11/2009
STATE OF <u>Illinois</u>
STATE OF <u>Ulinois</u> COUNTY OF <u>Cook</u>) ss.
Before me, the undersigned, a Notary Public in and for said State, personally appeared Patrick Bradley, known to me and known by me to be the President – Midwest Region of Whole Foods Market Group, Inc., a Delaware corporation and acknowledged the execution of the foregoing Memorandum of Lease for and on behalf of said corporation
Given under my hand and seal of office this Oth day of August, 2006.
Notary Public Public
My commission expires: Notary's Name (printed):
May 04, 2009 Ainée S. de Langlade
OFFICIAL SEAL Notary Public - State of Illinois AIMEE'S DE LANGLADE

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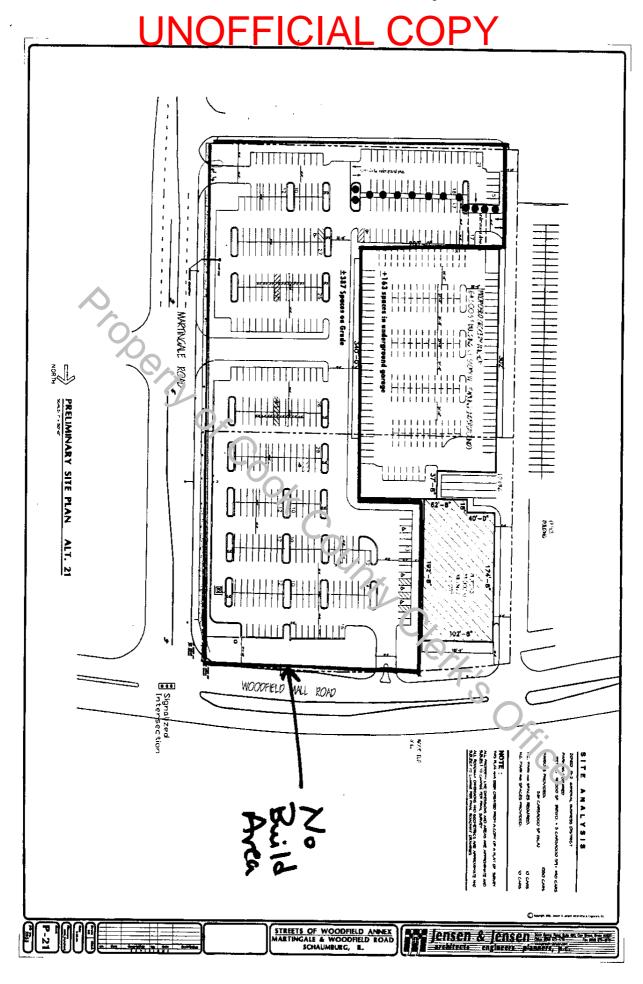
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EXHİBIT A

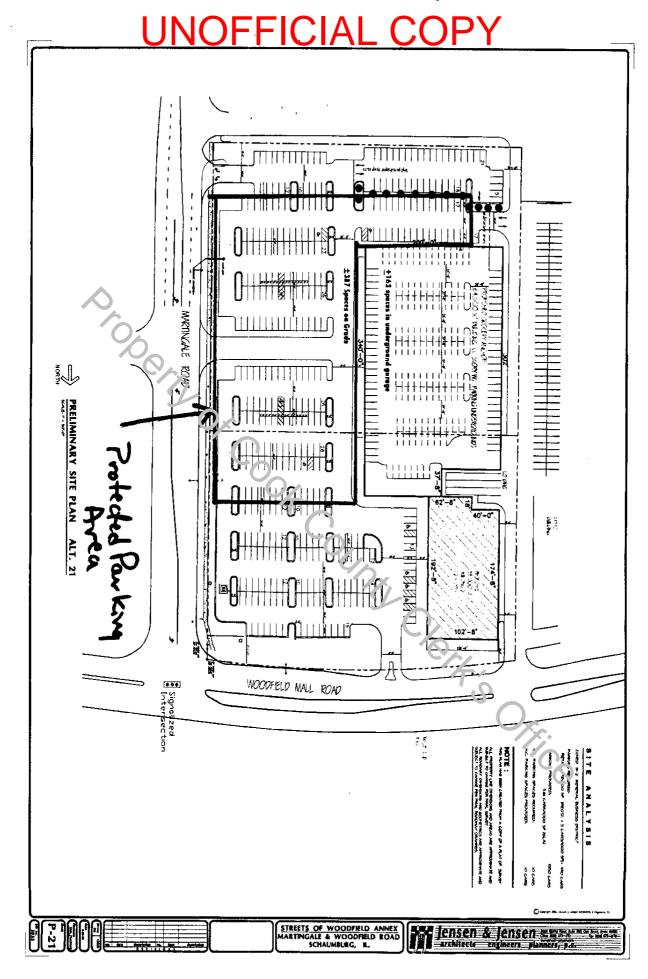
SITE PLAN



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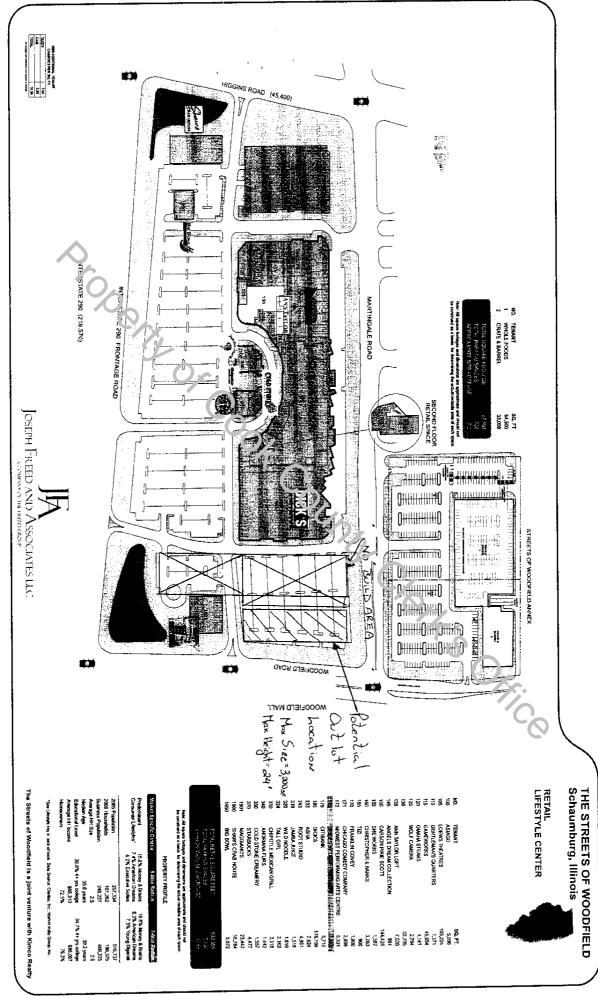


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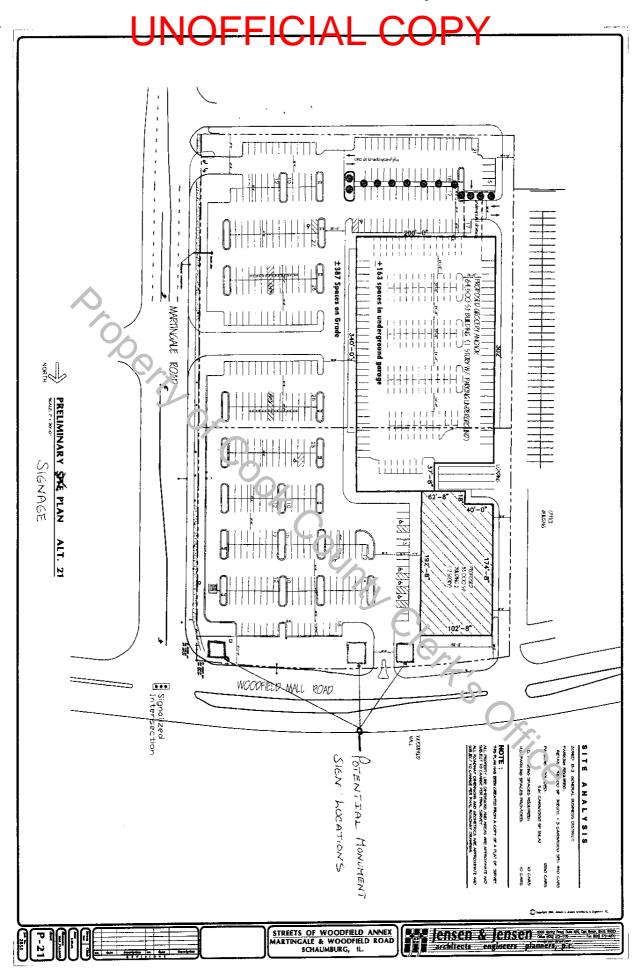


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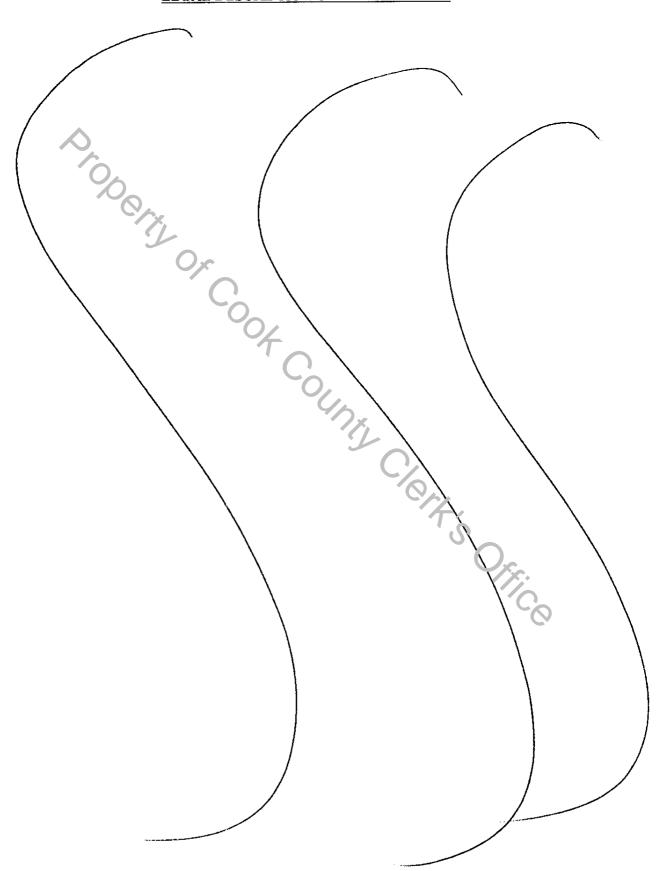


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EXHIBIT B

LEGAL DESCRIPTION OF DEVELOPMENT



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Clart's Office

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Schaumburg, Illinois

LEGAL DESCRIPTION

THAT PART OF THE WEST ½ OF THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, CANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF WOODFIELD ROAD AS DEDICATED PER DOCUMENT 20944554 WITH THE EAST LINE OF SAID WEST 1/4 OF THE SOUTHEAS' 1/4; THENCE SOUTH 0 DEGREES 33 MINUTES 31.5 SECONDS WEST ALONG SAID R. ST LINE 700 FEET; THENCE NORTH 89 DEGREES 26 MINUTES 28.5 SECONDS WEST 450 (EET ALONG A LINE DRAWN PERPENDICULARLY TO SAID EAST LINE; THENCE NORTH 0 DEGREES 33 MINUTES 31.5 SECONDS EAST 694.283 FEET ALONG A LINE PARALLEL WITH SAID EAST LINE TO A POINT IN SAID SOUTH LINE OF WOODFIELD ROAD, THENCE EAGTELY 445.846 FEET ALONG SAID SOUTH LINE OF WOODFIELD ROAD BEING THE ARCOF A CIRCLE OF 1859.86 FEET RADIUS CONVEX TO THE NORTH WHOSE CHORD BEAKS NORTH 89 DEGREES 45 MINUTES 1 SECOND EAST TO A POINT OF TANGENCY, THENCE SOUTH 83 DEGREES 22 MINUTES 56 SECONDS EAST 5.294 FEET ALONG SAID SUSTITILIZE OF WOODFIELD ROAD TO HEREIN DESIGNATED POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.