

UNOFFICIAL COPY



Doc#: 1026004126 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/17/2010 02:02 PM Pg: 1 of 9

ACCESS EASEMENT AGREEMENT

THIS AGREEMENT is made this 27th day of October, 2009 and is by and between Fox Investments, Inc. ("Parcel A Owner"), an Illinois corporation, and Wolf Point Plaza, L.L.C. ("Parcel B Owner"), an Illinois limited liability company.

RECITALS:

WHEREAS, Parcel B Owner is the title holder of record of certain real property in the Village of Orland Park, Cook County, Illinois, as legally described on Exhibit "A" attached hereto and made a part hereof ("Parcel B"); and

WHEREAS, Parcel A Owner is the title holder of record of certain real property in the Village of Orland Park, Cook County, Illinois, as legally described on Exhibit "A" attached hereto and made a part hereof ("Parcel A"); and

WHEREAS, the Parcel B Owner desires to construct a driveway on Parcel B, the curb of which will extend a minor amount onto the 159th Street public right of way which fronts Parcel A, as depicted on the Site Plan attached hereto as Exhibit B;

WHEREAS, the Parcel A Owner is willing to give its permission to proceed in exchange for the promises contained herein; and

WHEREAS, the parties desire to provide Parcel A with an access easement over the driveway to be constructed on Parcel B for access to the 159th Street public right of way, and otherwise subject the parcels to the terms, covenants, easements and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, in consideration of TEN and No/100 DOLLARS, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions. For purposes hereof:

(a) The term "Owner" or "Owners" shall mean the Parcel A Owner (as to Parcel A) and the Parcel B Owner (as to Parcel B) and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real

UNOFFICIAL COPY

property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.

(b) The term "Parcel" or "Parcels" shall mean each separately identified parcel of real property now constituting a part of the real property subjected to this Agreement as legally described on Exhibit "A" and identified on the Site Plan (defined hereinbelow), that is, Parcel A and Parcel B, and any future subdivisions thereof.

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

(d) The term "Site Plan" shall mean that site plan of the Parcels attached hereto as Exhibit "B" and by reference made a part hereof. Except as may be otherwise provided in this Agreement, the Site Plan is for identification purposes only.

(e) The term "Driveway" shall mean that driveway and related driveway improvements, paving, curbing, entrances and exits, in the location on Parcel B as shown crosshatched on the Site Plan.

2. Ingress and Egress Easement.

(a) Parcel B Owner hereby grants to the Parcel A Owner and its Permittees, for the benefit of Parcel A, a nonexclusive, perpetual easement for vehicular and pedestrian access, ingress and egress over and across the Driveway.

(b) The opening and access point contemplated between the Parcels for use of the Driveway as contemplated herein is shown on the Site Plan and is hereinafter called the "Access Opening". The Access Opening shall in no event be blocked, closed or removed and shall at all times remain in place as shown on the Site Plan. There shall be maintained between the Access Opening a smooth and level grade transition to allow the use of the Driveway for pedestrian and vehicular ingress and egress as set forth in Section 2 above. Except with respect to the Access Opening, each Owner shall be permitted to maintain a fence, curbing, landscaping or other improvements along the boundary line of its Parcel.

(c) The easement hereinabove granted shall be used and enjoyed by the Parcel A Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of the Parcel B Owner or its Permittees at any time conducted on Parcel B, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith.

3. Construction and Maintenance. The Parcel B Owner shall construct the Driveway at the same time that the Parcel B Owner develops Parcel B. Once constructed, the Parcel B Owner, at its sole cost and expense, shall maintain the Driveway in first-class working condition and shall keep the Driveway clear of all debris and snow accumulating thereon.

4. Representations.

(a) The Parcel A Owner warrants and represents that it is the lawful owner of record of Parcel A and that as such it has full power and authority to execute this Agreement and

UNOFFICIAL COPY

grant the easements herein granted.

(b) The Parcel B Owner warrants and represents that it is the lawful owner of record of Parcel B and that as such it has full power and authority to execute this Agreement.

5. **Easements to Run with the Land.** The easement described herein is to and shall run with the land, and shall be for the benefit and use of Parcel A.

6. **Indemnification.** Each Owner having rights with respect to an easement granted hereunder shall indemnify and hold the Owner whose Parcel is subject to the easement harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of such Owner, its contractors, employees, agents, or others acting on behalf of such Owner.

7. **Insurance.** At all times during the term of this Agreement, each Owner shall carry commercial general liability and property damage insurance covering its Parcel, in commercially reasonable amounts and shall name each other Owner as an additional insured thereon.

8. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of Parcel A or Parcel B to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that the easements granted herein shall be strictly limited to and for the purposes herein expressed.

9. **Notices.** All notices or communication to any party pursuant hereto shall be deemed to have been given or delivered when deposited in the United States mail, registered or certified mail, and with proper postage, registration or certification fees prepaid, addressed to the party for whom intended as follows:

Parcel B Owner: Wolf Point Plaza, L.L.C.
5406 W. Devon Ave., Suite 204
Chicago, Illinois 60646
Facsimile: (773) 774-4606
Attn: Manager

With a Copy To: Levick Legal Group, LLC
350 W. Hubbard St., Ste. 620
Chicago, IL 60654
Attn: Michael J. Levick

Parcel B Owner: Fox Investments, Inc.
11150 S. Cicero Avenue
Alsip, IL 60803

With a Copy To: David B. Sosin
Sosin & Arnold, Ltd.
11800 S. 75th Avenue, Suite 300
Palos Heights, IL 60463

UNOFFICIAL COPY

or to such other address as the party to be given such notice may designate by written notice to the other party in the manner hereinbefore provided.

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

11. **Titles and Captions.** All section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor effect the interpretation of this Agreement.

12. **Entire Agreement.** This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. Any amendment to this Agreement must be in writing and signed by both parties.

13. **Attorneys' Fees.** In the event an arbitration, suit or action is brought by any party under this Agreement to enforce any of its terms, or in any appeal therefrom, it is agreed that the prevailing party shall be entitled to reasonable attorneys fees to be fixed by the arbitrator, trial court and/or appellate court.

14. **Pronouns and Plurals.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

15. **Waiver.** The waiver by a party of a breach of any provision of this Agreement by another party shall not operate or be construed as a waiver of any subsequent breach by first party.

16. **Savings Clause.** If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

17. **Counterparts Clause.** This Agreement may be executed in counterparts, each of which when taken together shall constitute one instrument.

18. **Recordation.** This Agreement shall be recorded in the Cook County Recorder's Office.

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

20. **No Third Party Beneficiary Rights.** This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto, except those Permittees described in Section 1 herein.

21. **Liens.** Parcel B Owner shall not permit any liens to stand against Parcel A for any work done or materials furnished in connection with Parcel B Owner's construction and maintenance of the Driveway; provided, however, that Parcel B Owner may contest the validity of any such lien, but upon a final determination of the validity thereof, Parcel B Owner shall

UNOFFICIAL COPY

cause the lien to be satisfied and released of record. Parcel B Owner shall, within thirty (30) days after the receipt of written notice from Parcel A Owner, cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, failing which Parcel A Owner shall have the right, at Parcel B Owner's expense, to transfer said lien to bond. Parcel B Owner shall indemnify, defend and hold harmless Parcel A Owner from any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on any appeal), liens, claims of lien, judgments, proceedings and causes of action of any kind whatsoever, arising out of or in any way connected with the performance of such construction and maintenance, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

22. Detention. Parcel B Owner shall ensure that Parcel B provides all detention necessary to accommodate the Driveway and all buildings, drives and parking lots constructed on Parcel B, as required by the Village of Orland Park or other governmental authority. Nothing contained herein shall be interpreted or construed as providing any detention or drainage rights or easements.

23. Approvals Contingency. Notwithstanding the execution by the parties hereof, this Agreement contemplates the Parcel B Owner shall obtain all approvals necessary for the construction, maintenance and operation of the Driveway and related improvements and the establishment of certain curb cuts at the Access Openings. Should the Parcel B Owner not obtain such approvals or otherwise determine in its discretion that such approvals are no longer obtainable or if construction does not commence on Parcel B, then the Parcel B Owner, in its sole discretion, may terminate this Agreement by recording with the appropriate county recorder's office, a termination notice ("Termination Notice") signed only by the Parcel B Owner within six months after the date of this Agreement. Upon the recording of the Termination Notice and providing written notice of its intent to record same to the Parcel A Owner pursuant to Section 9 above, this Agreement shall be null and void and of no further force or effect. If no Termination Notice is properly recorded in the county recorder's office within six months after the date of this Agreement, this Section 23 shall be null and void.

[Signature Page Follows]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

<p>PARCEL A OWNER:</p> <p>FOX INVESTMENTS, INC., an Illinois corporation</p> <p>By: <u>[Signature]</u></p> <p>Its: <u>FOX INVESTMENTS</u></p>	<p>PARCEL B OWNER:</p> <p>WOLF POINT PLAZA, L.L.C., an Illinois limited liability company</p> <p>By: <u>[Signature]</u></p> <p>Its: <u>MANAGER</u></p>
<p>ATTEST:</p> <p>By: <u>[Signature]</u></p> <p>Its: <u>SP</u></p>	<p>ATTEST:</p> <p>By: _____</p> <p>Its: _____</p>

Property of Cook County Clerk's Office

**THIS DOCUMENT PREPARED BY
AND AFTER RECORDING SHOULD BE MAILED TO:**

David B. Sosin
Sosin & Arnold Ltd
11800 S. 75th Avenue, Suite 300
Palos Heights, IL 60463

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, David B. Soles, a Notary Public in and for said County and State, do hereby certify that Michael Land and John Land being the Vice President and Secretary of Fox Investments, Inc., appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary acts, and as their free and voluntary acts for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 27th day of October, 2009.



David B. Soles
Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Deborah Bourland, a Notary Public in and for said County and State, do hereby certify that Charles Markopoulos, being the Manager of Wolf Point Plaza, LLC, appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 9 day of November, 2009.



Deborah Bourland
Notary Public

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTIONS OF PARCELS

Parcel A

The West 400 feet of the South 544.5 feet of the South 60 acres of the East half of the Southwest quarter of Section 17, Township 36 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois (except part taken for highway).

P.I.N. : 27-17-301-013-0000

Parcel B

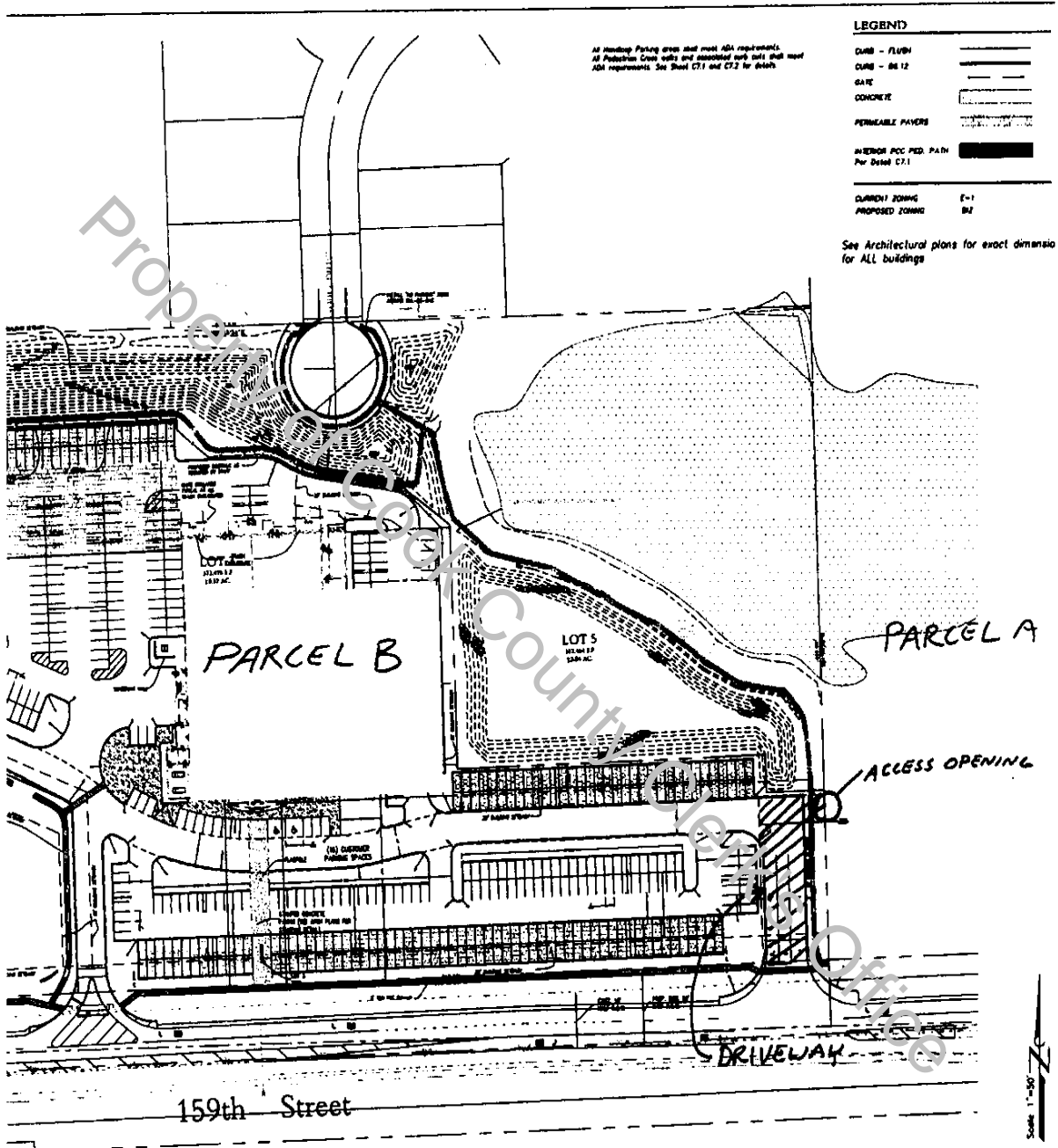
That part of the west half of the southwest quarter of Section 17, Township 36 North, Range 12 east of the Third Principal Meridian described as follows: commencing at the northwest corner of the south 20 acres of said west half; thence N88°47'03"E along the north line of said south 20 acres, being also the south line of Equestrian Place South and the westerly extension thereof, 320.42 feet for a point of beginning; thence continuing N88°47'03"E along the easterly extension of the last described course, 470.25 feet; thence southeasterly along a circular curve having a radius of 60.0 feet concave to the northeast, the chord of which bears S22°25'49"E, 132.25 feet; thence S4°25'26"W, 39.01 feet; thence S81°16'54"E, 77.64 feet; thence S53°45'31"E, 58.71 feet; thence S1°52'10"E, 225.31 feet; thence N88°07'50"E, 312.45 feet; thence S1°52'10"E, 34.99 feet; thence N88°22'34"E, 58.13 feet to the east line of said west half; thence S1°41'46"E along said east line, 155.50 feet to a point on a line 69.0 feet north of and parallel with the center line of 159th Street as dedicated by Document 10909318; thence S88°07'50"W along said parallel line, 762.36 feet; thence N1°52'10"W, 174.35 feet; thence N67°45'59"W, 209.48 feet; thence S88°07'50"W, 43.04 feet; N1°47'35"W, 351.03 feet to the point of beginning in Cook County, Illinois.

P.I.N. : Portion of 27-17-300-003-0000

UNOFFICIAL COPY

EXHIBIT B

SITE PLAN



LAN	WOLF POINT PLAZA NEC 159th STREET AND WOLF ROAD ORLAND PARK, ILLINOIS	Craig R. Knoche & Associates Civil Engineers, P.C. <small>11111 S. 159th Street • Orland Park, IL 60455 • Phone: 708.585.1111 • Fax: 708.585.1112</small>	DATE: 2-24-01 PER: [Signature] CDR: [Signature] C1