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Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 09/22/2015 03:34 PM Pg: 1 of 13

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S. Strauss

Prepared by and return to: John A. Bain, Akin Gump Strauss Hauer & Feld LLP, 1700 Pacific Avenue, Suite 4100, Dallas, Texas 75201

## EASEMENT AGREEMENT FOR RECIPROCAL ACCESS AND PARKING

THIS EASEMENT AGREEMENT FOR RECIPROCAL ACCESS AND PARKING (hereinafter, this "Agreement") is made and entered into as of the 21<sup>st</sup> day of September, 2015, by LQ PROPERTIES L.L.C., a Delaware limited liability company ("Owner 1"), and IL. & IN. RESTAURANT REALTY LLC, an Illinois limited liability company ("Owner 2" with each Owner 1 and Owner 2 being sometimes referred to as a "Party" or "Owner" and collectively as the "Parties" or the "Owners").

### WITNESSETH:

**WHEREAS**, Owner 1 is the owner of that certain real property located in Cook County, Illinois, having an address of 1730 East Higgins Road, Schaumburg, Illinois 60173, and being more particularly described on Exhibit A, which is attached hereto and incorporated herein for all purposes ("Tract 1");

**WHEREAS**, Owner 2 is the owner of that certain real property located in Cook County, Illinois, having an address of 1700 East Higgins Road, Schaumburg, Illinois 60173, and being more particularly described on Exhibit B, which is attached hereto and incorporated herein for all purposes ("Tract 2", and collectively with Tract 1, the "Tracts", or singularly, a "Tract");

**WHEREAS**, Owner 1, its successors and assigns, desire to use the parking areas and drive aisles located on Tract 2 through the use of a non-exclusive easement over Tract 2, which easement Owner 2 is willing to grant subject to the terms and conditions of this Agreement; and

**WHEREAS**, Owner 2, its successors and assigns, desire to use the parking areas, drive aisles and the driveways providing access to Tract 1 and to East Higgins Road and Kimberly Drive (collectively, the "Driveway") located on Tract 1 through the use of a non-exclusive

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easement over the foregoing described portions of Tract 1, which easement Owner 1 is willing to grant subject to the terms and conditions of this Agreement.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereby agree as follows:

### 1. Cross Access and Parking Easements.

- (a) Tract 1. Owner 1 hereby grants, sells and conveys to Owner 2, for the benefit of, and as an appurtenance to, Tract 2, a perpetual, irrevocable, non-exclusive easement (the "**Tract 1 Cross Easement**") for (i) vehicular and pedestrian ingress and egress over and upon the driving aisles and the Driveway now existing or constructed in the future on Tract 1 in order to provide Owner 2 and its Permittees access to and from Tract 1 and East Higgins Road and Kimberly Drive, and (ii) parking over and upon the parking areas now existing or constructed in the future on Tract 1 (the "**Tract 1 Cross Easement Area**").
- (b) Tract 2. Owner 2 hereby grants, sells and conveys to Owner 1, for the benefit of, and as an appurtenance to, Tract 1, a perpetual, irrevocable, non-exclusive easement for vehicular and pedestrian ingress and egress and parking (the "**Tract 2 Cross Easement**") over and upon the parking areas, driveways and drive aisles now existing or constructed in the future on Tract 2 (the "**Tract 2 Cross Easement Area**"). The Tract 1 Cross Easement and the Tract 2 Cross Easement shall be collectively referred to herein as the "**Cross Access and Parking Easement**," and such easements are depicted on Exhibit C attached hereto and incorporated herein. The Tract 1 Cross Easement Area and the Tract 2 Cross Easement Area shall be collectively referred to herein as the "**Common Area**". Notwithstanding anything to the contrary herein, however, neither Owner 1 nor any Permittees (defined below) of Owner 1 shall be permitted to park any trailers, buses or other oversized vehicles (i.e. vehicles with more than 3 axles or that weigh more than 10,000 pounds) on any portion of Tract 2, and Owner 2 may erect signage (subject to local ordinance) restricting the same; provided that Owner 2 shall bear the responsibility for removing any vehicles that are in violation of the foregoing restriction (at no cost to Owner 1). Owner 1 shall make commercially reasonable efforts (excluding towing or vehicle removal) to ensure that its Permittees comply with the foregoing restriction.
- (c) Use of Common Area. The Cross Access and Parking Easement herein granted shall be used and enjoyed by each Owner and its agents, tenants, contractors, employees, licensees, guests and invitees (collectively "**Permittees**") in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time

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conducted on its Tract. In furtherance of the foregoing, no barriers, fences or other hindrances to free and unrestricted pedestrian and vehicular traffic shall be erected or maintained on or within the Common Area; provided, however, that each Party shall have the right to exercise reasonable control and to make reasonable changes from time-to-time with respect to directing and regulating vehicular traffic and providing for safe and proper vehicular and pedestrian access over and across that portion of the Common Area that lies in their respective Tracts; and provided further however, that (i) any changes made by Owner 2 to the Tract 2 Cross Easement Area shall in no event reduce the available parking for the Owner 1 Permittees to a number that would render Tract 1 non-compliant with applicable statutes, laws, codes, ordinances, governmental rules, regulations or orders, including, without limitation, zoning laws, and (ii) any changes made by Owner 1 to the Driveway or the Tract 1 Cross Easement Area shall in no event permanently impair or prevent the Owner 2 Permittees' ingress and egress as provided in Section 1(a) hereof or reduce the available parking for the Owner 2 Permittees to a number that would render Tract 2 non-compliant with applicable statutes, laws, codes, ordinances, governmental rules, regulations or orders, including, without limitation, zoning laws. Portions of the Common Area may be temporarily obstructed during repairs and maintenance to the same or during construction or renovations.

- (d) Maintenance. Each Owner shall maintain, at its own expense, those portions of the Common Area located on its Tract in good repair, keeping the same clean, swept and free of debris, free from ice and snow, properly surfaced, striped, in a safe and sightly condition, and in compliance with all applicable statutes, laws, codes, ordinances, governmental rules, regulations and orders; provided, however, that (i) Owner 2 shall reimburse Owner 1 for Thirty-Five Percent (35%) of the maintenance costs (collectively, "**Driveway Maintenance Costs**") incurred by Owner 1 in connection with maintaining, repairing or replacing the Driveway and/or any appurtenances to or component parts thereof (collectively, "**Driveway Maintenance**"), and (ii) prior to undertaking any individual Driveway Maintenance project having a cost in excess of \$25,000.00, Owner 1 shall advise Owner 2 of the same in writing, which Driveway Maintenance shall be subject to the written approval of Owner 2, not to be unreasonably withheld, conditioned or delayed. In the event Owner 2 shall fail to respond to any Driveway Maintenance proposed by Owner 1 within ten (10) business days, then such proposed Driveway Maintenance shall be deemed approved by Owner 2. Owner 2 shall reimburse Owner 1 for its share of the Driveway Maintenance Costs within thirty (30) days of being presented with an invoice for such costs, together with reasonable supporting documentation. Notwithstanding anything contained in this Agreement to the contrary, Owner 1 and Owner 2, at each such Party's sole cost and expense, shall each be responsible for promptly repairing, restoring or reconstructing any damage or destruction to any portion of the Tracts, the Common Area or any improvements or other property located thereon caused by such Party or its Permittees, irrespective of the location of any of the foregoing

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property, unless such maintenance or repair obligation is assumed in writing by the other Party to this Agreement.

2. Insurance. Each Owner shall maintain or cause to be maintained such insurance as is reasonable and customary.
3. Default. In the event that any Owner (the “**Defaulting Owner**”) shall fail, at any time, to perform its respective obligations under this Agreement, including, without limitation, failure to perform the maintenance or reimbursement obligations under this Agreement, and such default shall continue for fifteen (15) days after such Defaulting Owner receives notice from the other Owner (the “**Non-Defaulting Owner**”) of such default, then the Non-Defaulting Owner shall have the right, but not the obligation, to perform, or cause to be performed, the Defaulting Owner’s obligations or cure such Defaulting Owner’s default, as applicable, and either charge the costs and expenses of the same (including, but not limited to, the reasonable fees of attorneys, engineers, consultants and surveyors engaged in connection therewith) to the Defaulting Owner or be entitled to reimbursement of the same by the Defaulting Owner within fifteen (15) days after delivery of written demand for reimbursement from the Non-Defaulting Owner, which demand shall include paid receipts or invoices for the amount due. All such costs and expenses not reimbursed within said fifteen (15) day period shall be subject to a late charge of ten percent (10%) of such costs and expenses, and interest shall accrue on such costs and expenses at the rate of twelve percent (12%) per annum, but not to exceed the maximum amount permitted by applicable law, from the date such costs were incurred until the date reimbursement is received.
4. Private Rights. Nothing contained herein shall be construed as or deemed to create any rights for the benefit of the general public or any other persons or entities other than the Owners and their respective successors in title.
5. Successors and Assigns. The terms and provisions of this Agreement shall be deemed to be covenants running with the land and shall be binding upon and shall inure to the benefit of the successors, grantees, devisees and assigns of the Parties. The Parties agree that this Agreement may be recorded in the real property records of Cook County, Illinois. Any obligations contained herein shall be construed as covenants and not as conditions and a violation of any said covenant shall not result in a forfeiture or reversion of title to the easement interests granted by this Agreement. The covenants, easements, agreements, promises and duties contained in this Agreement are not personal and may only be enforced by or against one of the Owners for so long as such Owner owns an interest in its Tract, and each Owner shall have no continuing obligation or liability for the covenants, easements, agreements, promises and duties contained herein upon the sale of all of its interest in its Tract.
6. Indemnification. Owner 1 shall indemnify, defend and hold harmless Owner 2 and its officers, employees and affiliates (collectively, the “**Owner 2 Indemnified Parties**”)



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from and against any and all claims, liabilities, losses, causes of action, fines, penalties, litigation, lawsuits, administrative proceedings, administrative investigations, costs and expenses, including reasonable attorneys' fees, court costs, and other costs of suit (collectively, "Losses"), to the extent arising out of (a) any act or omission of Owner 1 or any party claiming by, through or under Owner 1, in the exercise of the rights granted pursuant to this Agreement, and/or (b) the breach by Owner 1 of any provision of this Agreement. Notwithstanding the foregoing, Owner 1 shall have no obligation to indemnify any Owner 2 Indemnified Party for any Losses resulting from the gross negligence or willful misconduct of any Owner 2 Indemnified Party. Owner 2 shall indemnify, defend and hold harmless Owner 1 and its officers, employees and affiliates (collectively, the "Owner 1 Indemnified Parties") from and against any and all Losses, to the extent arising out of (x) any act or omission of Owner 2 or any party claiming by, through or under Owner 2, in the exercise of the rights granted pursuant to this Agreement, and/or (ii) the breach by Owner 2 of any provision of this Agreement. Notwithstanding the foregoing, Owner 2 shall have no obligation to indemnify any Owner 1 Indemnified Party for any Losses resulting from the gross negligence or willful misconduct of any Owner 1 Indemnified Party.

7. Injunctive Relief. Each Owner acknowledges that any breach or violation of this Agreement may cause irreparable harm to the other Owner for which there is no adequate remedy at law. Accordingly, in addition to any other remedies available at law or equity, the Owners, if aggrieved by a breach or threatened breach of any of the provisions of this Agreement, shall be entitled to seek from any court of competent jurisdiction an order for specific performance and/or for temporary and/or permanent injunctive relief to enforce the provisions of this Agreement without the necessity of proving actual damages or posting bond or other security.
8. Interpretation. When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural, and vice versa, and words in the masculine gender shall include the feminine and neuter genders, and vice versa. If any Tract is owned by two or more persons or entities at any one time, all of such parties shall be jointly and severally liable for all of the obligations imposed on the Owner of such Tract pursuant to this Agreement.
9. Applicable Law. This Agreement shall be governed by and construed according to the laws of the State of Illinois, without regard to conflicts of laws principles.
10. Title and Headings; References. Titles and headings to paragraphs herein are inserted for convenience or reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. All paragraph references in this Agreement are to the paragraphs of this Agreement unless expressly stated to the contrary.
11. Enforceability. If any provision of this Agreement shall be unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid, or

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shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if such provision had been incorporated herein as so limited or as if such provision had not been included herein, as the case may be.

12. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (a) depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, or (b) delivering the same in person to such party via a hand delivery service, Federal Express or any other nationally recognized courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:
- For notice to Owner 1:  
 LO Properties L.L.C.  
 909 Hidden Ridge, Suite 600  
 Irving, Texas 75038  
 Attention: General Counsel
- For notice to Owner 2:  
 IL. & IN. Restaurant Realty LLC  
 PO Box 59470  
 Schaumburg, IL  
 Attention: Michael Ruben
13. **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all signatory Parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.
14. **Waiver of Default.** It is not a waiver of or consent to default if the non-defaulting Party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.
15. **Integration.** This Agreement contains the complete agreement of the Parties and cannot be terminated, varied, modified or amended except by written agreement of the Parties. Any amendments or modifications hereof, whenever made, shall be superior to any and all liens as if such amendment or modification had been executed concurrently herewith. The Parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this Agreement.
16. **Recitals.** Any recitals in this Agreement are represented by the Parties to be accurate, and constitute a part of the substantive agreement.

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17. Time. Time is of the essence with respect to every provision of this Agreement. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.
18. Matters of Record. The conveyances made and rights granted in this Agreement are made subject to all applicable easements, restrictions, covenants and conditions of record in the chain of title to the Tracts.
19. No Joint Venture. Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or create any partnership, joint venture or other association between or among any of the Owners.

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IN WITNESS WHEREOF, LQ PROPERTIES L.L.C., has caused this Agreement to be executed under seal by its duly authorized representative as of that date set forth above.

LQ PROPERTIES L.L.C., a Delaware limited liability company



By: \_\_\_\_\_  
 Name: Mark Chloupek  
 Title: Vice President

STATE OF Texas )  
 ) SS.  
 COUNTY OF Dallas )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Mark Chloupek, the Vice President of LQ PROPERTIES L.L.C., a Delaware limited liability company, personally known or proven 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, sealed and delivered the 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 official seal, this 16<sup>th</sup> day of September, 2015.

Commission expires:


  
 \_\_\_\_\_  
 Notary Public

*[Signature Page to Easement Agreement for Reciprocal Access and Parking]*





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## EXHIBIT A

### Tract 1 Description

Lot 1 in Judith Johnson Sixth Resubdivision, being a resubdivision of Lot 1 in Judith Johnson Fifth Resubdivision in the West ½ of the Southeast ¼ of Section 13, Township 41 North, Range 10 East of the Third Principal Meridian, According to the Plat thereof recorded April 10, 1981 as Document 25835316, in Cook County, Illinois.

Tax ID. 07-13-408-009-0000

Address: 1730 East Higgins Road, Schaumburg, Illinois 60173

Property of Cook County Clerk's Office

Exhibit A

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## EXHIBIT B

### Tract 2 Description

Lot 2 in Judith Johnson Sixth Resubdivision, being a resubdivision of Lot 1 in Judith Johnson Fifth Resubdivision in the West ½ of the Southeast ¼ of Section 13, Township 41 North, Range 10 East of the Third Principal Meridian, According to the Plat thereof recorded April 10, 1981 as Document 25835316, in Cook County, Illinois.

Tax ID. 07-13-408-010-0000

Address: 1700 East Higgins Road, Schaumburg, Illinois 60173

Property of Cook County Clerk's Office

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EXHIBIT C

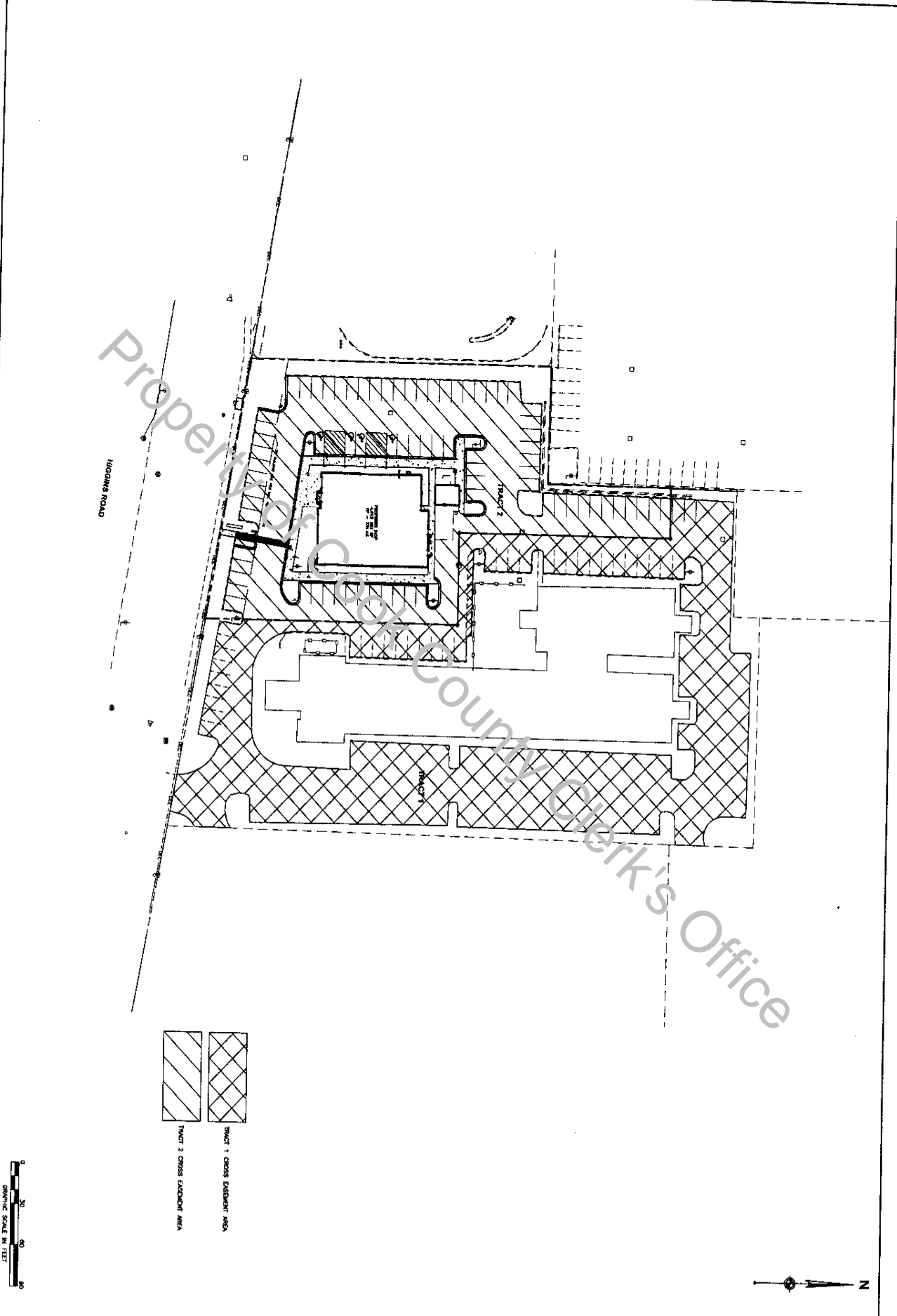
DEPICTION OF EASEMENTS

[ATTACHED]

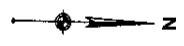
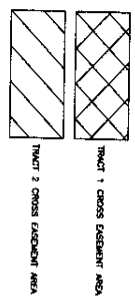


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Layout Tab Name: C200 SITE PLAN, Images: Aerial2.jpg, Plot2.jpg, Plot3.jpg, Plot4.jpg, Plot5.jpg, Plot6.jpg, Plot7.jpg, Plot8.jpg, Plot9.jpg, Plot10.jpg, Plot11.jpg, Plot12.jpg, Plot13.jpg, Plot14.jpg, Plot15.jpg, Plot16.jpg, Plot17.jpg, Plot18.jpg, Plot19.jpg, Plot20.jpg, Plot21.jpg, Plot22.jpg, Plot23.jpg, Plot24.jpg, Plot25.jpg, Plot26.jpg, Plot27.jpg, Plot28.jpg, Plot29.jpg, Plot30.jpg, Plot31.jpg, Plot32.jpg, Plot33.jpg, Plot34.jpg, Plot35.jpg, Plot36.jpg, Plot37.jpg, Plot38.jpg, Plot39.jpg, Plot40.jpg, Plot41.jpg, Plot42.jpg, Plot43.jpg, Plot44.jpg, Plot45.jpg, Plot46.jpg, Plot47.jpg, Plot48.jpg, Plot49.jpg, Plot50.jpg, Plot51.jpg, Plot52.jpg, Plot53.jpg, Plot54.jpg, Plot55.jpg, Plot56.jpg, Plot57.jpg, Plot58.jpg, Plot59.jpg, Plot60.jpg, Plot61.jpg, Plot62.jpg, Plot63.jpg, Plot64.jpg, Plot65.jpg, Plot66.jpg, Plot67.jpg, Plot68.jpg, Plot69.jpg, Plot70.jpg, Plot71.jpg, Plot72.jpg, Plot73.jpg, Plot74.jpg, Plot75.jpg, Plot76.jpg, Plot77.jpg, Plot78.jpg, Plot79.jpg, Plot80.jpg, Plot81.jpg, Plot82.jpg, Plot83.jpg, Plot84.jpg, Plot85.jpg, Plot86.jpg, Plot87.jpg, Plot88.jpg, Plot89.jpg, Plot90.jpg, Plot91.jpg, Plot92.jpg, Plot93.jpg, Plot94.jpg, Plot95.jpg, Plot96.jpg, Plot97.jpg, Plot98.jpg, Plot99.jpg, Plot100.jpg  
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Property for Cook County Clerk's Office



<b>EXH</b>	SHEET NO.	<b>IL IN RESTAURANT REALTY, LLC</b> <b>SITE IMPROVEMENT PLANS</b> 1700 EAST HIGGINS ROAD SCHAUMBURG, ILLINOIS	 <b>WOOLPERT</b>	1818 South Meyers Road Suite 120 Oakbrook Terrace, IL 60181 630.424.8080 FAX: 630.486.3751	PROJECT No: 75650	No.	DATE	REVISION
	DATE 08/28/15 DES. TR DR. JZ CKD. TR							

CROSS EASEMENT AREA EXHIBIT