



Doc# 1627204000 Fee \$96.00
RHSP Fee:\$9.00RPF Fee \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 09/28/2016 09:50 AM Pg: 1 of 30

8976 795 RKO

PREPARED BY, RECORDED AT THE
REQUEST OF AND WHEN RECORDED
MAIL TO:

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
Attn: Christopher L. Hartmann, Esq.

PERMANENT PARCEL NUMBERS:
See attached Exhibit A and Exhibit B

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY
FIRST AMENDMENT TO OUTPARCEL AGREEMENT

15 This First Amendment to Outparcel Agreement (this "Amendment") is made as of this day of July, 2016 by and between SCP 2009-C32-06 LLC, a Delaware limited liability company ("Outlot Owner"), and ABT OWNER 1, L.P., a Delaware limited partnership ("Mall Owner").

RECITALS

WHEREAS, Mall Owner is the fee owner of the retail shopping center in South Barrington, Illinois known as the Arboretum of South Barrington (the "Mall"), as described in Exhibit A attached hereto;

WHEREAS, Outlot Owner is the owner of that certain parcel of land within the Mall, as described in Exhibit B attached hereto (the "Lot");

WHEREAS, the Lot and the Mall are subject to that certain Declaration of Covenants, Conditions, Restrictions and Easements for the Mall which have been recorded with the Cook County Recorder on July 30, 2007 as Document No. 0721115096 (the "Declaration");

WHEREAS, on March 27, 2008, Highland Park CVS, L.L.C., an Illinois limited liability company (as predecessor in interest to Outlot Owner as owner of the Lot) and Arboretum of South Barrington, LLC, a Delaware limited liability company ("ASB") (as predecessor in interest to Mall Owner as owner of the Mall), as "Developer", entered into that certain Outparcel Agreement (the "Outparcel Agreement"), which Outparcel Agreement, among other things, is attached hereto as Exhibit C and sets forth the agreement between the parties in regard to certain CAM expenses for the Mall;

WHEREAS, Outlot Owner has leased the Lot to Highland Park CVS, L.L.C., an Illinois limited liability company ("Outlot Tenant"), pursuant to a certain lease agreement between Outlot Owner and Outlot Tenant, dated as of June 19, 2009 (the "Outlot Lease");

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WHEREAS, Arboretum Mall Owner, LLC, a Delaware limited liability company ("Arboretum"), succeeded to the rights and obligations of ASB as "Developer" under the Outparcel Agreement;

WHEREAS, Mall Owner succeeded to the rights and obligations of Arboretum as "Developer" under the Outparcel Agreement; and

WHEREAS, the parties hereto wish to amend the Outparcel Agreement on and subject to the terms and provisions hereof.

NOW, THEREFORE, in consideration of the Recitals, which by this reference are incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties intending to be legally bound hereby do hereby agree as follows:

1. DEFINED TERMS. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Outparcel Agreement.
2. COMMON AREA MAINTENANCE EXPENSES. Effective as of January 1, 2015, Section 1.E of the Outparcel Agreement is amended and restated in its entirety as follows:

Common Area Maintenance Expenses ("CAM Expenses"). CAM Expenses shall be the reasonable costs incurred by Developer in maintaining and where necessary replacement of components of the Common Areas of the Shopping Center. CAM Expenses shall include, but shall not be limited to, Developer's costs in operating, managing, lighting, repairing, replacing and maintaining the Common Areas of the Shopping Center, and shall specifically include management fees to a management company (provided that if the management company is an affiliate of Developer, the management fees shall be consistent with management fees charged by unaffiliated management companies providing similar services for similar services in the same geographic market), maintenance of landscaping improvements, irrigation improvements, stormwater drainage improvements, sidewalks, parking lots, service and access roads and all other traffic improvements, as well as seasonal decorating, line painting, water and sewer charges if applicable, insurance premiums, trash removal, security contracts, music, accounting, gas and oil, and personnel costs to implement said services, and an administrative fee equal to 13% of all CAM Expenses. Developer may also include in CAM Expenses the amortized costs (over the useful life of the improvement as determined in accordance with generally accepted accounting principles) of the following capital items: (i) equipment purchased for the Shopping Center and exclusively used in maintenance thereof; (ii) cost saving devices primarily used to reduce CAM Expenses; and (iii) capital

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improvements to comply with laws provided such laws were not in effect at the date the Shopping Center first opened for business. CAM Expenses shall exclude: (a) the cost of any alterations and improvements generally classified as capital expenses other than those specifically permitted above; (b) any cost or expense to the extent Developer is paid or reimbursed from any person or entity, including for work or services specially performed for any tenant or outlot owner of the Shopping Center, or any insurance proceeds received by Developer; (c) salaries and wages to any employee for services not directly related to the maintenance or operating of the Shopping Center and in no event above the level of project manager for the Shopping Center; (d) payments of principal and interest made on any indebtedness relating to the Shopping Center; (e) telephone and internet; (f) security supplies; (g) professional fees; (h) office supplies; (i) rent expenses; (j) office copier; (k) postage and messenger; (l) administrative salaries and administrative fringe benefits; and (m) fines or interest incurred due to late payment of invoices related to CAM Expenses. Outlot Owner shall pay to Developer its Pro Rata Share in the mode and manner as provided in Section 3 below. If any portion of the Shopping Center is vacant during any Year then, with respect to those CAM Expense items which vary with occupancy of the Shopping Center, Developer shall, in compliance with sound management principles, adjust such variable expenses to reflect that such expenses were incurred for 100% of the Shopping Center in the relevant Year.

3. **OUTLOT LEASE.** Outlot Owner and Mall Owner hereby agree that for so long as (i) the Outlot Lease remains in full force and effect and Outlot Tenant is the tenant thereunder and (ii) Outlot Tenant is in actual physical possession and occupancy of, and is operating, the Lot pursuant to the Outlot Lease as a retail pharmacy (the foregoing items (i) and (ii) are referred to herein collectively as, the "Consent Conditions"), Outlot Owner and Mall will not amend Section 1.E (after giving effect to the amendment set forth in Section 2 of this Amendment) (the "Consent Section") of the Outparcel Agreement (except for amendments of an administrative or ministerial nature or to correct any clerical error) without the consent (the "Consent Right") of Outlot Tenant (which consent shall not be unreasonably withheld, conditioned or delayed). The Consent Right (A) is personal to Outlot Tenant and is not assignable by Outlot Tenant by assignment, sublease, merger, consolidation, indirect transfer, operation of law or otherwise (except pursuant to a Permitted Transfer (as hereinafter defined)); and in the event the Consent Right is so assigned (except pursuant to a Permitted Transfer), the Consent Right shall automatically terminate and be of no further force and effect upon any such assignment, and (B) for the avoidance of doubt, does not apply to any other term, provision, condition or section of, or any assignment of, the Outparcel Agreement. For so long as the Consent Conditions have been satisfied, in the event that (i) Outlot Owner does not pay any CAM Expenses and/or Estimated CAM in full to Mall Owner as and when they become due under the Outparcel Agreement and (ii) Outlot Tenant has not already paid such CAM

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Expenses and/or Estimated CAM in full to Mall Owner pursuant to the Outparcel Agreement, then Outlot Tenant shall pay such CAM Expenses and/or Estimated CAM in full as set forth in the Outparcel Agreement directly to Mall Owner within fifteen (15) days following Mall Owner's demand therefor. The terms and provisions of this Section 3 shall automatically terminate and be of no further force and effect on the first date on which the Consent Conditions are no longer satisfied. From time to time promptly following the written request of Mall Owner, Outlot Owner and/or Outlot Tenant shall provide written notice to Mall Owner as to whether the Consent Conditions are then satisfied. For purposes hereof: (I) a "Permitted Transfer" shall mean (i) an indirect transfer of an interest in Outlot Tenant to an Affiliate of Outlot Tenant, which Affiliate of Outlot Tenant, following such transfer, shall own, directly or indirectly, one hundred percent (100%) of the ownership interests in Tenant, or (ii) a transfer to a subsidiary of Outlot Tenant so long as (A) the Outlot Lease is also assigned to such subsidiary and (B) after giving effect to such transfer, such subsidiary shall be an Affiliate of Outlot Tenant and Outlot Tenant shall own, directly or indirectly, one hundred percent (100%) of the ownership interests in such subsidiary, (II) "Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person, (III) "Control" shall mean the power to direct the management or policies of an entity, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise (subject to reasonable and customary major decision and/or veto rights in favor of another Person) and (IV) "Person" shall mean shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

4. NOTICE. All notices hereunder shall be in writing and shall be delivered via messenger or recognized overnight courier to the parties as follows:

To Mall Owner: ABT Owner 1, L.P.
591 West Putnam Avenue
Greenwich, Connecticut 06830

To Outlot Owner: SCP 2009-C32-026 LLC
c/o MPP-Barrington, LLC
859 Horation Boulevard
Buffalo Grove, Illinois 60089
Attn: Greg Lovasz

With copy to: Liechty & McGinnis, LLP
11910 Greenville Avenue, Suite 400
Dallas, Texas 75243
Attn: Lorne O. Liechty, Esq.

and to:

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Wells Fargo Bank Northwest, National Association
299 South Main Street, 12th Floor
Salt Lake City, Utah 84111
Attention: Corporate Trust Administration

and to: (but only for so long as Outlot Tenant remains the tenant of the Outlot Parcel under the Outlot Lease and the Outlot Lease is in full force and effect):

Highland Park CVS, L.L.C.
One CVS Drive
Woonsocket, Rhode Island 02895
Attn: Property Administration, Store No. 5481

5. **AUTHORITY.** The parties hereto represent and warrant that each person executing this Amendment on behalf of such party has the authority to bind the parties hereto.
6. **MODIFICATION.** Except as expressly modified herein, all terms and conditions of the Outparcel Agreement remain unchanged and in full force and effect. In the event of any conflict between the terms of the Outparcel Agreement and this Amendment, the terms of this Amendment shall control.
7. **SUCCESSORS AND ASSIGNS.** Except as otherwise set forth in Section 3 of this Amendment, the rights and obligations set forth in this Amendment shall inure to and be binding upon the successors and assigns of the parties hereto.

[Signatures on Following Page]

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IN WITNESS WHEREOF, Outlot Owner and Mall Owner have executed this Amendment as of the date first set forth above.

OUTLOT OWNER:

SCP 2009-C32-026 LLC,
a Delaware limited liability company

By: Bhupen Patel
Name: BHUPEN PATEL
Title: manager

MALL OWNER:

ABT OWNER 1, L.P.,
a Delaware limited partnership

By: ABT OWNER 1 GP, L.L.C.,
a Delaware limited liability company,
its general partner

By: _____
Name: _____
Title: _____

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

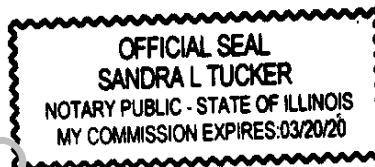
I, the undersigned, a Notary Public for said County and state, do hereby certify that BHUAEN PATEL, personally known to me to be the OWNER of SCP 2009-C32-026 LLC, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such OWNER, he signed and delivered the said instrument pursuant to authority given by the members of said limited liability company as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

WITNESS my hand and notarial seal or stamp, this 26th day of August, 2016.

Sandra L. Tucker
Notary Public

My commission expires:

3/20/20



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IN WITNESS WHEREOF, Outlot Owner and Mall Owner have executed this Amendment as of the date first set forth above.

OUTLOT OWNER:

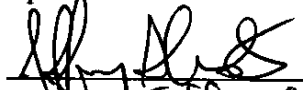
SCP 2009-C32-026 LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

MALL OWNER:

ABT OWNER 1, L.P.,
a Delaware limited partnership

By: ABT OWNER 1 GP, L.L.C.,
a Delaware limited liability company,
its general partner

By: 
Name: Jeffrey Siskler
Title: Vice President

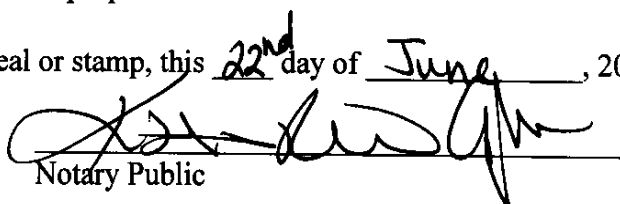
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STATE OF Connecticut)
COUNTY OF Fairfield) SS. Greenwich

I, the undersigned, a Notary Public for said County and state, do hereby certify that ~~Jeffrey Shuster~~ personally known to me to be the Vice President of ABT OWNER 1 GP, L.L.C., a Delaware limited liability company, the general partner of ABT OWNER 1, L.P., a Delaware limited partnership, and 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 as such Vice President, he signed and delivered the said instrument pursuant to authority given by the members of said limited liability company as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

WITNESS my hand and notarial seal or stamp, this 22nd day of June, 2016.


Notary Public

My commission expires:

Kristin Rocco Coppola
Notary Public State of Connecticut
My Commission Expires:
March 31, 2021

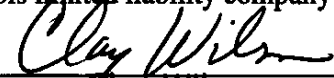


Notary of Cook County Clerk's Office

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The undersigned, as the "Outlot Tenant" named in the First Amendment to Outparcel Agreement to which this signature page is attached, by its execution of this signature page below, hereby agrees to be bound by the terms and provisions of Section 3 of the First Amendment to Outparcel Agreement to which this signature page is attached without in any way becoming a party to the Outparcel Agreement.

HIGHLAND PARK CVS, L.L.C.,
an Illinois limited liability company

By: 
Name: Clay Wilson
Title: RVP, Real Estate

CVS Legal Approval: Julie W. Connelly

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STATE OF Alabama)
)
COUNTY OF Jefferson) SS.

I, the undersigned, a Notary Public for said County and state, do hereby certify that Clay Wilson personally known to me to be the RVP of HIGHLAND PARK CVS, L.L.C., an Illinois limited liability company, and 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 as such Clay Wilson, he signed and delivered the said instrument pursuant to authority given by the members of said limited liability company as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

WITNESS my hand and notarial seal or stamp, this 18th day of July, 2016.

Donna McDaniel
Notary Public

My commission expires:

Donna McDaniel
My Commission Expires
September 25, 2018

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EXHIBIT A

Mall Legal Description

PARCEL 1:

LOTS 1 AND 3 IN ARBORETUM OF SOUTH BARRINGTON, BEING A SUBDIVISION OF PARTS OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 30, 2007 AS DOCUMENT 0721115094 IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 7 IN THE ARBORETUM OF SOUTH BARRINGTON SECOND RESUBDIVISION, BEING A RESUBDIVISION OF LOT 6 IN ARBORETUM OF SOUTH BARRINGTON FIRST RESUBDIVISION, IN PARTS OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 30, 2008 AS DOCUMENT 0812122096 IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOTS 8, 9, 10, 11, 12 AND 13 IN ARBORETUM OF SOUTH BARRINGTON THIRD RESUBDIVISION BEING A RESUBDIVISION OF LOT 8 IN ARBORETUM OF SOUTH BARRINGTON SECOND RESUBDIVISION BEING A SUBDIVISION OF PARTS OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN. ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 13, 2012 AS DOCUMENT NO. 1225729066, IN COOK COUNTY, ILLINOIS.

PINS: 01-33-209-001-0000

01-33-209-002-0000

01-33-209-006-0000

01-33-209-007-0000

01-33-209-014-0000

01-33-209-017-0000

01-33-209-018-0000

01-33-209-019-0000

01-33-209-020-0000

01-33-209-021-0000

01-33-209-022-0000

01-33-209-023-0000

01-33-209-024-0000

*New corner of Route 72
Barrington Rd, South
Barrington, Ill 60010*

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EXHIBIT B
Lot Legal Description

LOT 4 IN ARBORETUM OF SOUTH BARRINGTON, BEING A SUBDIVISION OF PARTS OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED JULY 30, 2007 AS DOCUMENT NO. 0721115094, IN COOK COUNTY, ILLINOIS.

PIN: Parts of 01-33-200-007-0000 and 01-33-200-015-0000

Address: Northwest of the intersection of Route 72 and Bartlett Road, South Barrington, Illinois

6510

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EXHIBIT C
Outparcel Agreement
(Attached)

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

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Exhibit C

OUTPARCEL AGREEMENT

This Outparcel Agreement (this "Agreement") is made this 27 day of March, 2008 (the "Effective Date"), by and between HIGHLAND PARK CVS, L.L.C., an Illinois limited liability company ("Outlot Owner") and ARBORETUM OF SOUTH BARRINGTON, LLC, a Delaware limited liability company ("Developer").

RECITALS

A. Developer is the fee owner of the retail shopping center in South Barrington, Illinois known as the Arboretum of South Barrington (the "Shopping Center" which is further defined in Section 1 below) and also the Declarant under the Declaration (as defined below).

B. Outlot Owner is the fee owner of the parcel of land within the Shopping Center described on Exhibit A hereto (the "Lot").

C. The Lot and the Shopping Center are subject to the Declaration of Covenants, Conditions, Restrictions and Easements for the Shopping Center which have been recorded with the Cook County Recorder on July 30, 2007 as Document No. 0721115096; such declaration is referred to herein as the "Declaration."

D. This Agreement, referenced as an "Outparcel Agreement" in the Declaration, is intended to supplement the terms of the Declaration with respect to matters addressed herein.

E. Capitalized terms used herein shall have the meaning ascribed such terms in the Declaration, unless otherwise defined herein.

NOW, THEREFORE, in consideration of the Recitals, which by this reference are incorporated herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS.

A. Shopping Center. The entire Arboretum of South Barrington retail center to be built on the land shown on Exhibit B hereto, as such land may from time to time be reduced, or as such land may be increased by the addition of other contiguous land, and with all structures and improvements which may be included by Developer within the development. The Shopping Center shall include the Lot and all existing and future outparcels which may be developed in conjunction with the Shopping Center but which are not or shall not in the future be under Developer's ownership.

B. Common Areas. Common Areas shall have the same meaning ascribed Common Areas under the Declaration.

C. Pro Rata Share. A fraction, the numerator of which is the gross square footage of the ground floor area of all buildings constructed on the Lot and the denominator of which is the aggregate of the gross square footage of the ground floor floor area of all buildings in the

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Shopping Center except for service buildings, management offices and other areas within the Shopping Center controlled by Developer but not for retail use.

D. Year. A calendar year.

E. Common Area Maintenance Expenses ("CAM Expenses"). CAM Expenses shall be the reasonable costs incurred by Developer in maintaining and where necessary replacement of components of the Common Areas of the Shopping Center. CAM Expenses shall include, but shall not be limited to, Developer's costs in operating, managing, lighting, repairing, replacing and maintaining the Common Areas of the Shopping Center, and shall specifically include management fees to a management company (provided that if the management company is an affiliate of Developer, the management fees shall be consistent with management fees charged by unaffiliated management companies providing similar services for similar services in the same geographic market), maintenance of landscaping improvements, irrigation improvements, stormwater drainage improvements, sidewalks, parking lots, service and access roads and all other traffic improvements, as well as seasonal decorating, line painting, water and sewer charges if applicable, insurance premiums, trash removal, personnel costs to implement said services, and an administrative fee equal to 10% of all CAM Expenses. Developer may also include in CAM Expenses the amortized costs (over the useful life of the improvement as determined in accordance with generally accepted accounting principles) of the following capital items: (i) equipment purchased for the Shopping Center and exclusively used in maintenance thereof; (ii) cost saving devices primarily used to reduce CAM Expenses; and (iii) capital improvements to comply with laws provided such laws were not in effect at the date the Shopping Center first opened for business. CAM Expenses shall exclude: (a) the cost of any alterations and improvements generally classified as capital expenses other than those specifically permitted above; (b) any cost or expense to the extent Developer is paid or reimbursed from any person or entity, including for work or services specially performed for any tenant or outlot owner of the Shopping Center, or any insurance proceeds received by Developer; (c) salaries and wages to any employee for services not directly related to the maintenance or operating of the Shopping Center and in no event above the level of project manager for the Shopping Center; (d) payments of principal and interest made on any indebtedness relating to the Shopping Center; and (e) fines or interest incurred due to late payment of invoices related to CAM Expenses. Outlot Owner shall pay to Developer its Pro Rata Share in the mode and manner as provided in Section 3 below. If any portion of the Shopping Center is vacant during any Year then, with respect to those CAM Expense items which vary with occupancy of the Shopping Center, Developer shall, in compliance with sound management principles, adjust such variable expenses to reflect that such expenses were incurred for 100% of the Shopping Center in the relevant Year.

F. Unavoidable Delays. As applied to any deadlines for the parties to perform their respective obligations under this Agreement, such deadlines shall be subject to extension on account of any delays caused by casualty loss or Acts of God, severely inclement weather, strikes or labor disturbance, civil disorder, order of any governmental agency or court having jurisdiction over the Shopping Center, shortage of labor or materials, default of contractors, subcontractors or suppliers, and any other occurrences beyond the reasonable control of the party whose performance has been delayed.

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2. **PAYMENT OF CAM EXPENSES.** Developer shall estimate, for each Year, Outlot Owner's annual Pro Rata Share of CAM Expenses (the "Estimated CAM"). Outlot Owner shall pay one-twelfth (1/12) of the Estimated CAM in advance of the first day of each month, commencing on the date when Outlot Owner opens for business on the Lot. If the date Outlot Owner opens for business is not the first day of a month, Outlot Owner shall pay a prorated amount for such partial month. Within one-hundred twenty (120) days after the expiration of any Year, Developer shall forward to Outlot Owner an itemized statement (the "Reconciliation Statement") showing Outlot Owner's actual Pro Rata Share of CAM Expenses for the previous Year and Outlot Owner's actual CAM Expense payments for that Year. Should the actual CAM Expense for that Year be less than the Estimated CAM paid by Outlot Owner, then, within thirty (30) days after the date of the Reconciliation Statement, Developer shall issue a credit against Outlot Owner's next due installment of CAM Expenses for any amount paid by Outlot Owner in excess of the actual CAM Expense for that Year. If the sum of Outlot Owner's Estimated CAM payments is less than the CAM Expense for that Year, Outlot Owner shall remit the balance due to Developer within thirty (30) days after notice of the deficiency.

3. **LATE CHARGES.** In the event of the failure of the Outlot Owner to pay CAM Expenses within five (5) days after Developer notifies Outlot Owner in writing that such CAM Expenses are due to be paid, Outlot Owner shall be liable to Developer for a late charge equal to Two Hundred Fifty and no/100 Dollars (\$250.00) in order to reimburse Developer for its additional administrative costs as a result of such breach. Imposition of such late charge shall not abrogate or limit any rights or remedies which the Landlord may otherwise have hereunder. Developer shall not be required to provide written notice of CAM Expenses being due and payable more than once during any twelve (12) month period.

4. **OUTLOT OWNER'S SELF-HELP RIGHTS.** If Developer fails to maintain the Common Areas as required under the Declaration and such failure materially adversely affects Outlot Owner's ability to conduct its business on the Lot, then Outlot Owner shall provide written notice to Developer of such failure (except in the event of an emergency, as provided below). If Developer fails to cure such failure within seventy-two (72) hours following Developer's receipt of such written notice (or such longer period as reasonably necessary for Developer to cure such failure, provided Developer commences such cure within such 72-hour period and diligently pursues such cure thereafter), then Outlot Owner shall have the right to cause such failure to be cured, at its own cost, and offset Outlot Owner's direct out of pocket costs of completing such cure against Outlot Owner's Pro Rata Share of CAM Expenses next becoming due and payable hereunder. Notwithstanding the foregoing, Outlot Owner shall have no right to effect any cure which involves construction, excavation, repair or replacement of the improvements constituting parking areas (except those parking areas located immediately adjacent to the Lot within the area shown as the "CVS Tract Area" on Exhibit D attached hereto, to which Outlot Owner's self-help rights provided herein shall apply), utility systems, storm water management systems, water detention areas or other permanent infrastructure improvements in the Shopping Center. Subject to the restriction set forth in the immediately preceding sentence, in the event of an emergency (e.g. snow, ice, fallen trees, disabled vehicles, or other obstructions which materially adversely affect business operations at the Lot), Outlot Owner may immediately, without notice, cure such emergency situation at Outlot Owner's sole cost and expense and without reimbursement from Developer. If, however, Outlot Owner delivers oral notice to Developer during normal Shopping Center business hours regarding such

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an emergency, and if Developer fails to cure or commence to cure such emergency situation within two (2) hours following Developer's receipt of such oral notice, then Outlot Owner shall have the right to cure such emergency situation, at its own cost, and offset Outlot Owner's direct out of pocket costs of completing such cure (but not more than \$1,000 per emergency occurrence) against Outlot Owner's Pro Rata Share of CAM Expenses subsequently becoming due and payable hereunder. If an emergency situation affects areas of the Shopping Center in addition to the areas immediately adjacent to the Lot, then Developer shall be deemed to have commenced to cure such emergency situation when Developer has commenced a cure anywhere at the Shopping Center, provided Developer diligently and continuously pursues such cure to completion.

5. COMMON AREAS.

(a) Developer hereby confirms: (i) that the Common Areas shall include, without limitation, all areas of the Shopping Center outside the footprint of the buildings, as they may exist from time to time, and all improvements and facilities which may be provided for the general use of the Users (as defined in the Declaration) of the Shopping Center located in such areas from time to time (collectively, the "Non-Footprint Areas"); and (ii) that the non-exclusive easements granted to Outparcel Owners (as defined in the Declaration, including Outlot Owner) under Section 4.A of the Declaration apply to such Non-Footprint Areas of the Shopping Center. To the extent that the definition of Common Areas as set forth in the Declaration does not expressly include such Non-Footprint Areas, Developer hereby grants to Outlot Owner and its agents, employees, vendors and customers all of the easements set forth in Section 4.A of the Declaration with respect to the Non-Footprint Areas, and such easements shall run with the land of the Lot and Shopping Center and shall not terminate upon termination of this Agreement as provided in Section 9 hereof but shall terminate upon termination of the Declaration.

(b) Notwithstanding anything to the contrary in the Declaration, Developer shall not make any changes to the size or configuration of the Common Areas within the "CVS Tract Area" as shown on Exhibit D attached hereto, including, without limitation, the parking areas and landscaped areas within said CVS Tract Area, without the written consent, which consent shall not be unreasonably withheld, of Outlot Owner. Without limiting the generality of the foregoing, it is understood and agreed that a change in the Common Areas which changes the configuration of or reduces the number of parking spaces within the CVS Tract Area shall require such written consent of Outlot Owner. Outlot Owner acknowledges that the landscaping within the landscaped areas of the Common Areas, including those landscaped areas included as part of the Common Areas within the CVS Tract Area, will be planted, designed and arranged in accordance with the Master Landscaping Plan (as defined in the Declaration), and Outlot Owner hereby consents to such landscaping, and consents to any changes to such landscaping within such landscaped areas required by the Village from time to time.

6. DEVELOPER'S REPURCHASE RIGHTS: OUTLOT OWNER'S OBLIGATION TO LEASE.

(a) If Outlot Owner fails to construct an approximately 12,900 square foot building (the "Building") or is not otherwise open for business at the Lot within eighteen (18) months (other than for Unavoidable Delays timely claimed and documented by means of written

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notice to Developer, which shall operate to extend such eighteen (18) month period to the extent of the delay) following the later to occur of (i) Closing of Outlot Owner's purchase of the Lot, (ii) substantial completion of all access driveways, asphalt paving and striping in the parking area, curbs, parking medians, gutters, storm water elements, light poles and lights, landscaping in accordance with the landscaping plans approved by the Village, landscape irrigation system, and utilities (including electrical, water, cable, gas, phone lines and sanitary sewer lines) stubbed at the Lot or otherwise (as applicable) proximate to the Lot, and upon which Outlot Owner's construction and development of the Lot is dependent (excluding landscaping which is delayed because it is normally performed during a different season) (the "Applicable Site Work"), including, without limitation, driveways in close proximity to the Lot that provide access between the Lot and Bartlett Road and Higgins Road (Route 72) and those site improvements adjacent to but excluding the Lot and within the area shown as the "CVS Tract Area" on Exhibit D attached hereto and incorporated herein by reference, and (iii) Declarant's approval of Outlot Owner's plans and specifications for the Building and other improvements on the Lot as required under the Declaration (the "Completion Deadline"), then Developer shall have the right to repurchase (the "Right of Repurchase") the Lot for a purchase price which shall be the higher of (a) the appraised fair market value of the improved Lot or (b) the purchase price Outlot Owner paid for the Lot, plus the actual cost of the Building to the extent completed, excluding any fixtures or interior build out. The appraised fair market value of the Lot, to the extent then improved, shall be determined by an MAI appraiser mutually agreed upon by the parties. In the event the parties cannot agree on a single MAI appraiser, then each party shall obtain its own MAI appraiser and the appraised market value shall be the average of Outlot Owner's appraiser and Developer's appraiser unless the appraisals differ by ten percent (10%) or more. If the appraisals differ by ten percent (10%) or more, then Outlot Owner's appraiser and Developer's appraiser shall agree upon a third MAI appraiser whose appraisal shall determine the fair market value of the improved Lot. Final determination shall occur not later than ninety (90) days following the date Developer shall exercise the Right of Repurchase. Developer must exercise the Right of Repurchase by written notice to Outlot Owner delivered within ninety (90) days after the Completion Deadline; provided, however, that if Outlot Owner has substantially completed construction of the building at the time Developer delivers notice of Developer's election to repurchase, Outlot Owner may obtain an additional 60 days within which to open for business by delivery of written notice of such election to Developer, whereupon, Developer's right to repurchase the Property shall be suspended for a period sixty (60) days, and if Outlot Owner shall open for business on or before the expiration of such 60-day period, then Developer's right to repurchase the Property shall be null and void. For purposes of this Section 6(a), completion of construction of the building shall be deemed to have occurred upon receipt of a certificate of substantial completion from Outlot Owner's site engineer and issuance of an unconditional certificate of occupancy for the Lot.

(b) If Developer fails to deliver timely written notice exercising the Right of Repurchase as set forth in Section 6(a) above, then the applicable right thereupon automatically ceases and terminates and is of no further force and effect without any further action of the parties. If requested by Outlot Owner after completion of construction or expiration of the Right of Repurchase, Developer shall promptly execute a termination agreement and shall deliver the same to Outlot Owner.

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(c) If Developer validly exercises the Right of Repurchase, the closing of Developer's repurchase of the Lot shall occur in the office of Developer's title company within sixty (60) days after final determination of the fair market value of the Lot. At the repurchase closing, Developer shall pay the cash portion of the repurchase price in the form of a certified or cashier's check or wire transfer. Both parties shall furnish evidence of their capacity and authority for the closing of said repurchase transaction and execute all other necessary documents to close the repurchase transaction. Outlot Owner shall execute and deliver to Developer (a) a duly executed Special Warranty Deed conveying marketable fee simple title to the Property free of any and all liens, encumbrances, easements, restrictions, covenants or other title defects, except the lien of nondelinquent real estate taxes and any liens, encumbrances, easements, restrictions, covenants or other title defects which existed at the time Outlot Owner took title to the Lot from Developer; (b) a duly executed affidavit on the standard form customarily used therefor by the Developer's title company, against parties in possession and mechanic's liens with respect to the Lot; (c) a duly executed nonforeign affidavit in form and substance satisfactory to Developer and Developer's title company; and (d) any and all other documents reasonably appropriate to convey the Lot to Developer.

(d) Developer shall pay all expenses incident to any loan (e.g. loan commitment fees, preparation of note, mortgage, and other loan documents, recording fees, Mortgagee's Title Policy, prepayable interest, credit reports); any closing fee; and for copies of documents pertaining to restrictions, easements, or conditions affecting the Lot. Outlot Owner shall pay for all costs of releasing existing loans and recording the releases and all taxes, assessments and other charges accruing against the Property during the period of Outlot Owner's ownership of the Lot.

(e) After opening for business at the Lot, if Outlot Owner ceases operation at the Lot for a period of six (6) consecutive months (other than for Unavoidable Delays timely claimed and documented by means of written notice to Developer), then Outlot Owner shall exercise commercially reasonable efforts to lease the Lot to another user.

7. **EXCLUSIVITY.** Outlot Owner shall have the exclusive right to operate as a drug store or retail pharmacy at the Shopping Center, and no other tenant or occupant of the Shopping Center shall operate a pharmacy prescription department as part of its use, sell items requiring dispensation by or through a registered or licensed pharmacist (including where such dispensation is in connection with the operation of a mail order facility), or sell film or photo processing services. In addition, the following restriction shall apply to the east side of the Shopping Center as depicted on the site plan attached hereto as Exhibit C (the "Restricted Area"): No tenant or occupant of the Restricted Area shall be permitted to sell health and beauty aids as a principal use; provided, however, sale of such items as an accessory use to another use shall be permitted (Examples: a specialty food market like Whole Foods or Fresh Market could sell shampoos and other personal products; a day spa would be permitted to sell beauty aids such as skin creams).

Outlot Owner shall not maintain on the Lot any use which violates any exclusive use now or hereafter granted by Developer in favor of other Users of the Shopping Center ("Other Exclusives"), provided that Outlot Owner is given written notice of such Other Exclusives and provided that (as long as the Lot is used as a CVS Pharmacy or similar retail pharmacy store)

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such Other Exclusives do not prohibit or in any way restrict Outlot Owner's Operative Sales (defined below). "Operative Sales" shall mean any of the uses described in the first paragraph of this paragraph 7, and the sale of greeting cards and gifts, candy, over the counter drugs, vitamins, alcoholic beverages, frozen and packaged food, soda, ice cream, automotive accessories, telephone cards and accessories, toys, medical aids and/or any other general merchandise commonly sold at other CVS Pharmacies in metropolitan Chicago, Illinois on the date hereof, the operation, as an accessory use, of a minute clinic/health clinic, or the placement and operation inside the building on the Lot of a bank automated teller machine. Outlot Owner hereby consents to Developer granting such Other Exclusives effecting the Lot, subject to the limitations set forth herein.

8. **INSURANCE REQUIREMENTS.** Notwithstanding anything to the contrary in the Declaration, but only if and to the extent CVS Caremark Corporation is the provider of the insurance coverages required of Outlot Owner under the Declaration, (a) any property insurance required to be carried by Outlot Owner under the Declaration may have a deductible amount not in excess of \$500,000; (b) Outlot Owner may provide evidence of its insurance coverages in lieu of providing copies of Outlot Owner's insurance policies; and (c) Outlot Owner may self-insure any of its insurance obligations under the Declaration, including, without limitation, self-insurance retentions in its commercial general liability insurance policies.

9. **TERM OF AGREEMENT.** This Agreement shall commence on the Effective Date and shall terminate forty (40) years after the Effective Date, and thereafter shall be automatically extended without further act or deed of Outlot Owner or Developer, except as may be required by law, for succession periods of five (5) years. Notwithstanding the foregoing, this Agreement shall terminate upon termination of the Declaration.

10. **RECORDING.** The parties hereto agree to execute, as of the Effective Date, a Memorandum of Agreement in form reasonably acceptable to Developer and Outlot Owner, and to cause such Memorandum of Agreement to be recorded in the real estate records with respect to the Shopping Center and the Lot. The parties hereto agree that such Memorandum of Agreement shall include, among other things, (a) a reference to Outlot Owner's self-help rights set forth in Section 4 of this Agreement, (b) a reference to the requirement that Outlot Owner's reasonable consent be required for any changes to the Common Areas immediately adjacent to the Lot, as described in Section 5 of this Agreement, (c) a reference to Developer's repurchase rights, as described in Section 6 of this Agreement, and (d) a full description of Outlot Owner's exclusivity rights set forth in Section 7 of this Agreement.

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11. **NOTICES.** All notices hereunder shall be in writing and delivered via messenger or recognized overnight courier to the parties as follows:

If to Developer:	Arboretum of South Barrington, LLC 400 Skokie Blvd., Suite 405 Northbrook, IL 60062 Attention: Michael H. Jaffe
------------------	--

If to Outlot Owner:	Highland Park CVS, L.L.C. c/o CVS Caremark Corporation One CVS Drive Woonsocket, RI 02895 Attention: Property Administration Department, Store No. 5481
---------------------	--

12. **DEFAULT.** If a party is in breach of this Agreement, the non-breaching party shall give written notice specifying the nature of the alleged breach to the party alleged to be in breach. If the party receiving the notice has not cured the alleged breach within five (5) days after receiving the notice, that party shall be in default under this Agreement and the non-defaulting party shall have all remedies at law.

13. **ATTORNEYS' FEES.** In the event of default by Outlot Owner or Developer pursuant to this Agreement, Developer or Outlot Owner, as applicable, shall be entitled to receive its reasonable attorneys' fees and costs in connection with enforcement of this Agreement.

14. **SUCCESSORS AND ASSIGNS.** The rights and obligations under this Agreement shall inure to and be binding upon the successors and assigns of Developer and Outlot Owner.

[Remainder of this page intentionally left blank]

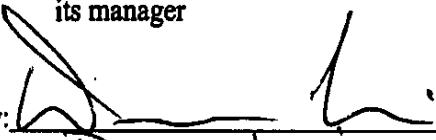
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Dated the date first written above.

DEVELOPER:

ARBORETUM OF SOUTH BARRINGTON, LLC
a Delaware limited liability company

By: **RREEF America, L.L.C.,**
a Delaware limited liability company,
its manager

By: 
Name: Domenic Lanni
Title: Vice President

OUTLOT OWNER:

HIGHLAND PARK CVS, L.L.C.
an Illinois limited liability company

By: _____
Name: _____
Title: _____

Property of Cook County Clerk's Office

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Dated the date first written above.

DEVELOPER:

ARBORETUM OF SOUTH BARRINGTON, LLC
a Delaware limited liability company

By: **RREEF America, L.L.C.,**
a Delaware limited liability company,
its manager

By: _____
Name: _____
Title: _____

OUTLOT OWNER:

HIGHLAND PARK CVS, L.L.C.
an Illinois limited liability company

By: *Timothy E. Kramer*
Name: **TIMOTHY E. KRAMER**
Title: **ASST. S.E.C.Y./SENIOR LEGAL COUNSEL**

Property of Cook County Clerk's Office

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EXHIBIT A

The Lot

LOT 4 IN ARBORETUM OF SOUTH BARRINGTON, BEING A SUBDIVISION OF PARTS OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED JULY 30, 2007 AS DOCUMENT NO. 0721115094, IN COOK COUNTY, ILLINOIS.

PIN: Parts of 01-33-200-007-0000 and 01-33-200-015-0000

Address: Northwest of the intersection of Route 72 and Bartlett Road, South Barrington, Illinois

60010

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EXHIBIT B

Shopping Center

PARCEL 1:

LOTS 1, 3, AND 4 IN ARBORETUM OF SOUTH BARRINGTON, BEING A SUBDIVISION OF PARTS OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED JULY 30, 2007 AS DOCUMENT 0721115094, IN COOK COUNTY, ILLINOIS.

AND

LOTS 5 AND 6 IN ARBORETUM OF SOUTH BARRINGTON FIRST RESUBDIVISION, BEING A RESUBDIVISION OF LOT 5 IN ARBORETUM OF SOUTH BARRINGTON, BEING A SUBDIVISION OF PARTS OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 42 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 17, 2007 AS DOCUMENT 0735103072, IN COOK COUNTY, ILLINOIS.

*n/w corner of Route 24 + Bartlett
Road, South Barrington Ill 60010*

01 33 209 007

002

004

010

012

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EXHIBIT C

Restricted Area

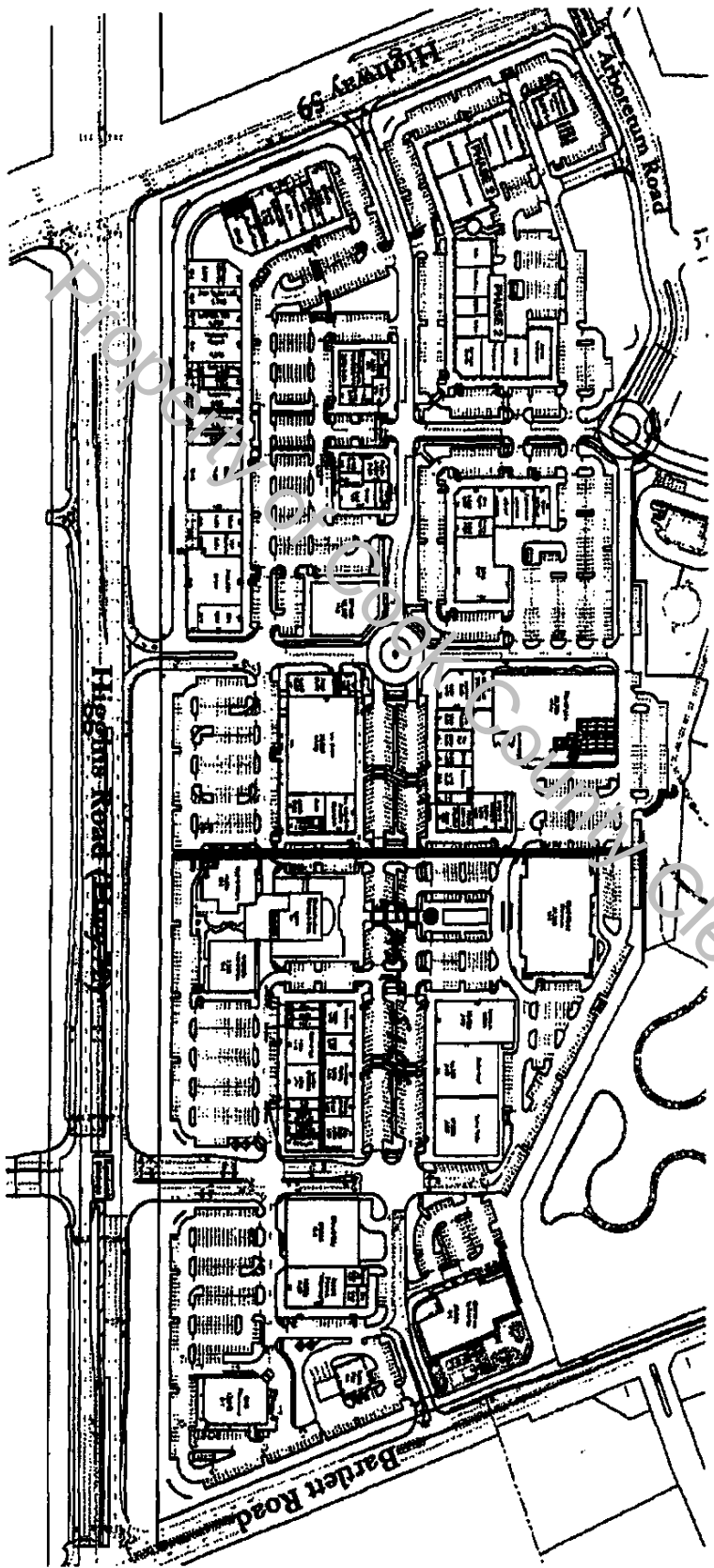
[See attached]

**COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____**

**COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____**

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A The Arboretum OF SOUTH BARRINGTON



Lease Status Plan SP-68-v1001.16.09



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EXHIBIT D

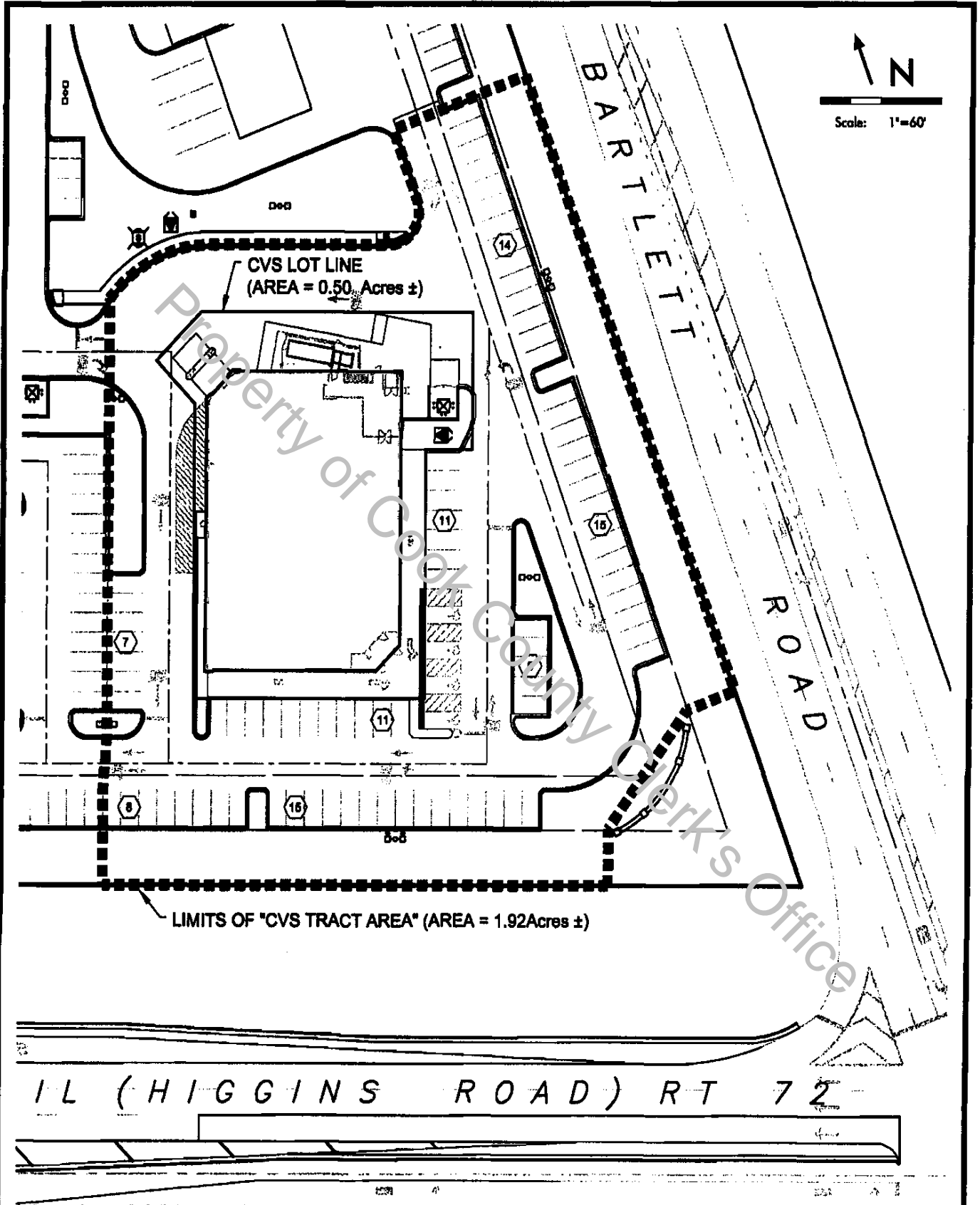
CVS Tract Area

[See attached]

**COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____**

**COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____**

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IL (HIGGINS ROAD) RT 72

**CVS TRACT
AREA EXHIBIT**

**ARBORETUM OF
SOUTH BARRINGTON**
VILLAGE OF SOUTH BARRINGTON, ILLINOIS

HAEGER ENGINEERING
consulting engineers • land surveyors
1300 Plum Grove Road, Schaumburg, IL 60173 • Tel: 847.394.6600 Fax: 847.394.6608
www.haegerengineering.com

Project Manager: T.A.S. Engineer: E.A.S. Sheet 1 / 1
Date: 03/19/08 Project No. 05076D