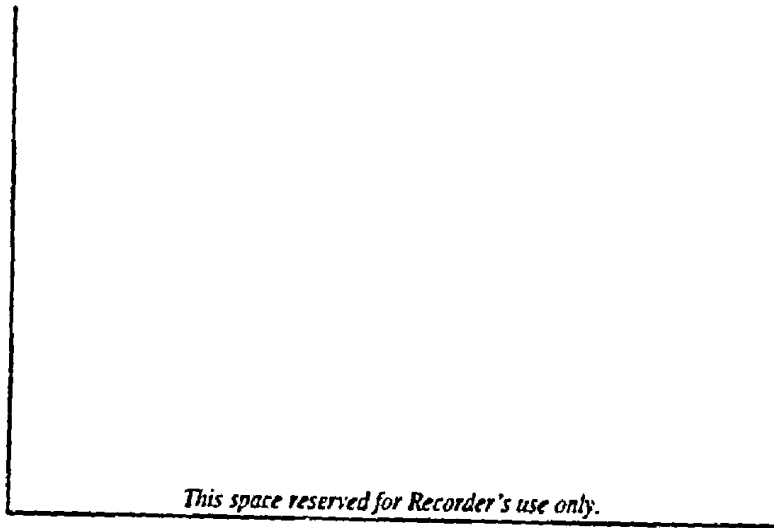


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*This space reserved for Recorder's use only.*

**RECORDED AGREEMENT**

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## RECORDED AGREEMENT

THIS AGREEMENT ("Agreement") is made as of this 10th day of JUNE, 1998, by and between **COMMUNITY CENTERS ONE, L.L.C.**, a Delaware limited liability company ("CCO") and **ROCK SOLID, L.L.C.**, an Illinois limited liability company ("RS").

### WITNESSETH:

WHEREAS, Community Centers Three, L.L.C., a Delaware limited liability company is the grantor, and RS is the grantee of that certain unimproved real property located in the Village of Schaumburg, County of Cook and State of Illinois, which property is legally described on Exhibit A hereto (the "Out-Parcel"); and

WHEREAS, CCO is the owner of that certain real property located in the Village of Schaumburg, County of Cook and State of Illinois, which property is legally described on Exhibit B hereto (the "Shopping Center Parcel") which is adjacent to the Out-Parcel, and, therefore, CCO has a legitimate interest in the operations on the Out-Parcel (the word "Parcel" when used herein shall mean either the Shopping Center Parcel or the Out-Parcel, depending on the context in which such word is used);

WHEREAS, RS, CCO, and Costco Wholesale Corporation entered into that certain Operation and Reciprocal Easement Agreement dated June 17, 1998 ("OEA") which both binds and burdens each of the Parcels; and

WHEREAS, CCO and RS desire to create and acquire certain additional rights in their respective Parcels and to apportion certain rights and obligations to the extent the same are not in conflict with the OEA, unless the same is acknowledged hereunder, or create a default under the OEA;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

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## ARTICLE I

### Maintenance and Operation of Common Areas and Improvements

#### Section 1.1 Use of Out-Parcel.

(a) RS shall operate a full service, sit-down, waitress service restaurant offering hand-crafted micro-brewed beverages on the Out-Parcel or any lawful retail use not prohibited herein and provided any change of use (a) does not conflict with (i) a then existing lease agreement, exclusive use agreement or restriction of record for the Shopping Center, or other out-lots adjacent to the Shopping Center as shown on Exhibit "C," or (ii) zoning laws or other applicable ordinances, and (b) does not require more parking spaces than RS's initial restaurant use of the Out-Parcel. In addition, RS shall not allow its Out-Parcel to be used for those uses stated as prohibited in Article 5.2 of the OEA.

#### Section 1.2 Repurchase Option.

(a) If RS is in violation of Section 1.1(a), above, and such violation continues for three (3) months after notice thereof from CCO, then CCO shall have the option to repurchase the Out-Parcel (including all buildings and improvements thereon, but excluding RS's trade fixtures, signs, personal property and other items identifying RS's business) for a price equal to the then fair market value (as hereinafter defined) of the Out-Parcel (including all buildings and improvements thereon).

The fair market value of the Out-Parcel shall be determined by agreement or, if the parties cannot agree within fifteen (15) days of CCO's election to repurchase, by appraisal in accordance with the following procedures: CCO shall promptly designate an appraiser and notify RS of its selection. Within ten (10) days after receipt of such notice, RS may, but need not, give written notice to CCO designating a second appraiser, and if the second appraiser is not so designated, then the first appraiser shall proceed to appraise the Out-Parcel. If a second appraiser is so designated, the first and second appraisers shall each appraise the Out-Parcel. If within sixty (60) days after the second appraiser is designated, the first and second appraisers do not agree upon the appraised value of the Out-Parcel and are unable to reduce the range of their difference so that the higher appraisal does not exceed the lower appraisal by more than ten percent (10%), then they shall jointly designate a third appraiser. Any appraiser designated under this Section shall be disinterested, shall be qualified to appraise retail and commercial real estate in the Schaumburg, Illinois area of the type covered by this Agreement, shall be a member of the American Institute of Real Estate Appraisers or Society of Real Estate Appraisers (or any successor organization of comparable standing if either of those is not then in existence), and shall have been actively engaged in the appraisal of real estate in the Chicago, Illinois area for at least five (5) years immediately preceding his designation. Each party shall pay the fee and expenses of the appraiser designated by it and one-half (1/2) of the fees and expenses of the third appraiser, if any. After designation of the

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appraiser or appraisers, he or they shall promptly proceed to determine the fair market value of the property being appraised for its highest and best use. If there are two appraisers and the higher appraisal does not exceed the lower appraisal by more than ten percent (10%), then the fair market value shall be deemed to be the average of such appraisals. If there are three appraisers and they are unable to agree upon the fair market value, then the fair market value shall be deemed to be the average of the two appraisals which are closest in value to each other. The appraiser or appraisers shall promptly notify the parties hereto of their determination.

(b) If RS continues its violation of Section 1.1 (a) for three (3) months after notice thereof from CCO, CCO may exercise the repurchase option with respect to the noticed violation by giving RS written notice, if at all, within one (1) year of the end of the three (3) month period or CCO's option to repurchase shall be deemed void for the noticed violation. CCO shall continue to have the right to repurchase for RS's future violations of Section 1.1 in accordance with this paragraph (b). During the 10-day period beginning on the date of the final written determination of the fair market value of the Out-Parcel, CCO shall have the right to withdraw the notice of exercise of the option. If CCO withdraws its option pursuant to this paragraph, CCO shall continue to have the unexercised option to purchase by reason of future violations of Section 1.1(a) in the manner above provided.

(c) Upon exercise, this option shall become a binding contract of sale, and not later than Ninety (90) days after final determination of the purchase price, RS shall convey title to the Out-Parcel to CCO or its nominee by a recordable special warranty deed subject only to taxes not yet due and payable, all encumbrances (other than mortgages or other liens (except any arising out of CCO's acts or omissions)) affecting the Out-Parcel as of the date hereof and such as may hereafter affect the Out-Parcel either with CCO's approval or for reasons beyond RS's control, and CCO shall pay to RS the purchase price for the Out-Parcel determined pursuant to this section, by certified or cashier's check; except that CCO may elect to assume the lien of any indebtedness upon the Out-Parcel, in which event the purchase price above provided shall be payable at closing by such assumption and by payment in certified or cashier's check to RS of the amount by which the total purchase price exceeds the outstanding principal balance of the indebtedness secured by the lien (mortgage or otherwise) assumed by CCO, with interest thereon to be prorated to the closing.

(d) Closing shall take place in escrow at the office of Chicago Title Insurance Company, Chicago, Illinois or such other title company as shall be approved by CCO (the "Title Company"), provided title is shown good. RS agrees to furnish CCO a copy of its most recent survey and title commitment of the Out-Parcel. RS shall convey title to CCO subject to the Permitted Exceptions as defined under that certain Purchase Agreement (as hereinafter defined). The sale shall be closed through escrow in accordance with the general provisions of usual form of Deed and Money Escrow Agreement then in use by the Title Company with such special provisions inserted in the escrow agreement as may be required to conform with this Agreement. Upon creation of said escrow, payment of purchase price and delivery of deed shall be made through escrow. The escrow costs shall be divided equally between the parties.

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**Section 1.3 Shopping Center Common Areas.**

(a) The term "Common Areas" as used in this Section 1.3 shall include, without limitation, the parking areas, roadways, pedestrian sidewalks, loading docks, delivery areas, landscaped areas, and all other areas of improvements which may be provided by CCO for the general use of occupants of the Shopping Center Parcel and their agents, employees, and customers.

RS agrees to pay CCO, as provided in paragraph (f) below, without deduction or setoff, the following amounts:

(i) RS's Proportionate Share (as determined in Section 1.4(c), below) of the cost of operating and maintaining the Common Areas (the "Common Area Cost"), including, without limitation, the cost of the following: lighting, utilities, cleaning, snow and trash removal, line painting, security (if provided), maintenance, materials, labor costs, equipment (including without limitation, the cost of service agreements on equipment), tools, general repairs, employee benefits and payroll taxes, management fees, accounting fees, legal fees, permits, license and inspection fees, sales, use, and service taxes, and the repair or replacement of paving, curbs, sidewalks, the parking lot, drive ways, landscaping, drainage facilities, and lighting facilities, as may be necessary from time to time, and any other cost of operation of the improvements on the Common Areas. In no event, however, shall RS be required to pay for any maintenance of the buildings located on the Shopping Center Parcel which house other tenants or occupants of the Shopping Center Parcel. The Common Area Cost shall include depreciation of equipment acquired for use in maintenance of the Common Areas, but shall not include the original cost of the equipment. CCO has the right to include in Common Area Cost, and to establish as a reserve, such amounts (and for such period of time) as CCO deems reasonable for the paving of the Shopping Center Parcel. The amount of such reserve charged as a Common Area Cost for any Calendar Year shall not exceed five percent (5%) of the total Common Area Cost for said year, exclusive of Insurance Cost (as hereinafter defined).

(ii) RS's Proportionate Share of all costs and premiums (the "Insurance Cost") for public liability and any other insurance policy which may be carried by CCO insuring the Common Areas.

(c) RS's Proportionate Share of Common Area Cost and Insurance Cost shall be determined by multiplying such expenses by a fraction, the numerator of which is the area of the footprint of the buildings located on RS's Out-Parcel and the denominator of which is the total number of square feet of floor area of the buildings located in the Shopping Center Parcel. RS's Proportionate Share of the Common Area Cost and Insurance Cost shall be estimated by CCO prior to the first day of each calendar year. CCO shall notify RS of the estimates which shall be paid, together with an amount equal to fifteen percent (15%) of the estimates as payment of administrative costs of CCO by RS in advance on the first day of each and every calendar month throughout the calendar year. At the end of the calendar year, when CCO has calculated the exact amount of RS's Proportionate Share of the costs, CCO shall notify RS of the exact amount. Any deficiencies in the

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payments (including administrative costs) made by RS shall be paid by RS to CCO within ten (10) days of demand therefor. Any surplus paid by RS during the preceding calendar year shall be applied against the next due monthly installments of the costs due from RS. During any period during which this Agreement is in effect for less than a full calendar year, the costs shall be prorated on a daily basis so that RS shall only pay RS's Proportionate Share of the costs attributable to the portion of the calendar year occurring within the said period.

(d) Any delay or failure of CCO in delivering any estimate or statement described in this section or in computing or billing RS's Proportionate Share of the foregoing costs shall not constitute a waiver of the continuing obligations of RS under this section. RS shall be deemed to have waived the right to dispute any matter relating to the calculation of Common Area Cost and Insurance Cost if any claim or dispute is not asserted in writing to CCO within one (1) year of delivery to RS of (i) the billing statement setting forth the exact amount of such costs incurred by CCO for the period in question or (ii) the claim for Common Area Cost and Insurance Cost due. RS's obligations to pay the amounts as set forth in this Agreement shall survive the expiration or earlier termination of this Agreement.

(e) RS shall commence paying fifty percent (50%) of the amounts due to CCO for the Common Area Cost as of the date that RS, its agents or contractors commence pouring the footings of the building to be built on the Out-Parcel, and one hundred percent (100%) of the amounts due to CCO for the Common Area Cost shall be payable to CCO commencing as of the Required Opening Date (as hereinafter defined). All other amounts due under this Section 1.4 shall be payable by RS to CCO commencing as of the date that RS takes possession of the Out-Parcel.

## ARTICLE II

### Building and Transfer Restrictions

**Section 2.1 Improvement to the Out-Parcel.** RS shall deliver to CCO final plans and specifications for the construction of improvements on the Out-Parcel, for CCO's review and approval as more particularly set forth in the Agreement for Purchase and Sale between RS and CCO dated as of January 30, 1998 (the "Purchase Agreement"). Except for the construction to be approved in the aforesaid plans and specifications, no other improvements shall be constructed on the Out-Parcel, nor shall any existing improvements be altered unless improvements meet with all governmental approvals and are consistent with a first class Shopping Center and are not incompatible in CCO's reasonable judgment with the character and aesthetics of the balance of the improvements on the Shopping Center Parcel. In addition:

(a) no storage of merchandise or other personalty shall be permitted on the exterior of the building on the Out-Parcel except for properly screened trash storage and/or removal facilities and equipment in areas approved by CCO;

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(b) No signs or banners of any type shall be permitted in the Out-Parcel unless in compliance with sign criteria of the governmental agencies or other entities having jurisdiction over such matters and not incompatible in CCO's judgment with the character and aesthetics of the signs on the balance of the Shopping Center Parcel. CCO shall have the reasonable right to review RS's signs or banners to ensure compatibility with the character and aesthetics of the balance of the Shopping Center Parcel;

(c) all heating and air conditioning equipment shall be screened from ground view;

(d) no parking or storage of automobiles, trailers or similar equipment shall be permitted on the Out-Parcel for a period in excess of twenty-four (24) hours, except during the periods of initial construction;

(e) RS will erect and maintain proper barricades to prevent unauthorized vehicular and pedestrian traffic from entering its construction site;

(f) all construction materials must be contained on the Out-Parcel;

(g) no structure (including signs) shall exceed thirty (30) feet in height above adjacent grade, except for special architectural elements which shall be subject to Seller's prior written approval which may be withheld in Seller's sole discretion. In the event that such feature complies with documents of record, law and the approval of other tenants, if necessary, the approval of CCO shall not be unreasonably withheld, delayed or conditioned.

(h) the total area of all building(s) on the Out-Parcel may not contain more than twenty four thousand (24,000) square feet of floor area and not exceed a building footprint of twelve thousand (12,000) square feet.

(i) RS shall comply at all times with the Rules and Regulations attached hereto as Exhibit D and incorporated herein.

It is hereby acknowledged that the OEA may appear to be in conflict with this Section, however the parties agree and acknowledge that the terms and conditions of this Section shall control, to the extent that this does not create a default under the OEA, in the event of a conflict on the subject matter discussed in this Section.

## ARTICLE III

### Default and Remedies

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If RS shall fail to pay when or before due any sum of money becoming due to be paid to CCO hereunder, and such failure shall continue for a period of ten (10) days after written notice from CCO to RS of such failure, RS shall pay to CCO on demand, in addition to said sum, a late charge in an amount equal to the lesser of (1) three percent (3%) per annum in excess of the "Prime Rate"; and (2) the highest lawful rate. The "Prime Rate" shall be the rate announced as such from time to time by The First National Bank of Chicago or its successor. If there shall be no such announced rate of such bank or its successor, then the "Prime Rate" shall be equal to the average of such equivalent rate as is charged from time to time by the five largest major money-center banks (determined on the basis of net assets) then licensed to operate in the State of Illinois. In addition to the foregoing and to any other remedies at law CCO may have, CCO shall have the option of filing a notice of the amount due with the office of the Cook County Recorder, which amount shall be a lien on the Out-Parcel and, after the giving of at least thirty (30) days prior written notice to all other lien holders, said lien may be foreclosed in the same manner as a mortgage of real property under the laws of the State of Illinois.

If RS shall fail to comply with any term, provision or covenant of this Agreement other than failing to pay when or before due any sum of money becoming due to CCO hereunder, and shall not cure such failure within thirty (30) days after written notice from CCO to RS of such failure, CCO shall have the option of pursuing any one or more of the following remedies, or any other remedy it may have at law:

- (1) perform said obligation of RS and charge RS therefor, RS grants to CCO, its agents, employees and contractors, an easement to enter upon the Out-Parcel for the purpose of performing such obligation; or
- (2) seek specific performance or injunctive relief from a court of competent jurisdiction.

It is hereby acknowledged that the OEA may appear to be in conflict with this Section, however the parties agree and acknowledge that the terms and conditions of this Section shall control as to the enforcement of this Agreement in the event of a conflict on the subject matter discussed in this Section.

ARTICLE IV

Miscellaneous

Section 4.1 Modifications. This Agreement may not be modified in any respect whatsoever or rescinded in whole or in part, except with the consent of all parties hereto, and then only by written instrument duly executed in recordable form and duly recorded in the office of Cook County, Illinois Recorder of Deeds.

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**Section 4.2 Taxes.** RS shall pay when due the real estate taxes, assessments and other like charges which may be levied, assessed or charged against the Out Parcel, or any part thereof (collectively, the "Taxes").

**Section 4.3 Successors and Assigns.** Except as otherwise provided in this Agreement, the easements and rights granted and obligations assumed herein (a) are made for the direct, mutual and reciprocal benefit or burden of the real property affected; (b) will constitute covenants running with the land; and (c) will be binding upon and inure to the benefit of the parties' respective successors, assigns, transferees, tenants, employees, agents, customers, licensees and invitees.

**Section 4.4 Indemnification.** Each of the parties shall indemnify, defend and hold the other party harmless of and from any and all loss, cost, liability, damage, injury or expense, including reasonable attorney's fees, which may arise by reason of any violation of law, ordinance or regulation or by reason of injury to or death of any person(s), damage to property, or claims of lien for work performed and/or materials or supplies furnished, or arising out of or in connection with the use of the parking area on the indemnifying party's Parcel, or arising from or in connection with the willful or negligent acts or omissions of the indemnifying party or its agents, servants, contractors, employees or successors in interest.

**Section 4.5 Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed and no other representations or promises, written or oral, made by either party to the other which is not contained herein shall be binding or valid.

**Section 4.6 Attorney's Fees.** In the event of any controversy, claim, or dispute relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs related to the enforcement of this Agreement. For the purposes of this Section 4.6, the term "prevailing party" shall be defined as that party that is successful in obtaining substantially all of the relief sought in the case of a claimant, or the party that is successful in defending against substantially all of the relief sought in the case of a defendant.

**Section 4.7 Notices.** It is hereby acknowledged that the OEA may appear to be in conflict with this Section, however the parties agree and acknowledge that the terms and conditions of this Section shall control for the giving of notices under this Agreement in the event of a conflict on the subject matter discussed in this Section. Any notice, demand or request which may be permitted, required or desired to be given in connection therewith shall be given in writing and directed to Seller and Purchaser as follows:

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CCO: c/o Developers Diversified Realty Corporation  
34555 Chagrin Boulevard  
Moreland Hills, Ohio 44022-1004  
Attn: Joan U. Allgood, Esq.  
Facsimile No.: 216-247-5076

With a copy to  
its attorneys: Rudnick & Wolfe  
203 N. LaSalle Street  
Suite 1800  
Chicago, Illinois 60601  
Attn: Carole L. Pechi, Esq.  
Facsimile No.: 312-236-7516

RS: Rock Solid, L.L.C.  
c/o Michael T. Origer  
61 South Barrington Road  
South Barrington, Illinois 60010  
Facsimile No.: 847-842-0013

With a copy to  
its attorneys: O'Halloran Kosoff Geitner & Cook, P.C.  
650 Dundee Road  
Suite 475  
Northbrook, Illinois 60062  
Attn: Sally Joyce, Esq.  
Facsimile No.: 847-291-9230

Notices shall be deemed properly delivered and received when and if either (i) personally delivered; (ii) delivered by Federal Express or other overnight courier; (iii) three (3) business days after being deposited in the U.S. Mail, by certified mail, return receipt requested, postage prepaid, or (iv) when sent by facsimile with proof of transmission and a copy of the notice with proof of its transmission being sent by regular mail on the date of transmission.

Either party may change its address at any time by notifying the other in writing, of such change. Service of any notice pursuant hereto shall be deemed complete at the time of delivery.

**Section 4.8 Insurance.** It is hereby acknowledged that the OEA may appear to be in conflict with this Section, however the parties agree and acknowledge that the terms and conditions of this Section shall control, to the extent that this Section does not create a default under the OEA, in the event of a conflict on the subject matter discussed in this Section. Each party shall obtain and maintain at all times public liability insurance insuring against claims on account of death, bodily

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injury or property damage that may arise from or be occasioned by the condition, use or occupancy of its respective Parcel by customers, invitees, licensees and employees. All insurance required under this Section 4.8 shall be obtained and maintained in a reputable insurance company or companies qualified to do business in the State of Illinois. The insurance required under this Section 4.8 shall have limits for bodily injury or death in the amounts of not less than \$3,000,000 for injury to or death of one person, \$3,000,000 for injury to or death of more than one person in one accident and property damage insurance in an amount not less than \$1,000,000. In addition, each party shall cause to be carried fire and extended coverage insurance on all buildings on their respective Parcels in an amount at least sufficient to avoid the effect of any coinsurance provisions of such policies and in any event in an amount not less than one hundred percent (100%) of the reconstruction cost of such improvements. Said insurance may be carried under a "blanket" policy or policies covering other properties of the party and its subsidiaries, controlling or affiliated corporations, provided there is a separate endorsement to the policy satisfying the conditions of this paragraph. Such insurance shall name all of the parties hereto or their successors as additional insureds thereunder. Such insurance shall provide that the insurance may not be cancelled without at least ten (10) days' prior written notice being given by the insurer to each party named as an additional insured. Notwithstanding the above, either party may self-insure the first \$250,000.00 of insurance on its buildings, provided the self-insuring party has a minimum net worth of \$100,000,000.00 and provides evidence of such net worth reasonably satisfactory to the other party upon request.

RS shall also carry all coverages required under the statutes, laws, rules and regulations of the State of Illinois, including, but not limited to, coverage for workmen's compensation and dram shop liability, in addition to the insurance required above.

**Section 4.9 Construction.** RS agrees to commence construction of the facilities and improvements upon the Out-Parcel as soon as reasonably possible after RS's acquisition of the Out-Parcel, subject to Unavoidable Delays (as hereinafter defined). In no event shall construction commence later than fifteen (15) days after the date possession of the Out-Parcel is granted to RS. RS agrees that upon such commencement of construction, it will, with all due diligence, complete said facilities and improvements, such completion to be not later than ten (10) months thereafter ("Required Opening Date"), except for Unavoidable Delays. In the event of any such Unavoidable Delays, the time for completion shall be extended by the period of such Unavoidable Delays. RS's construction shall be in a good and workmanlike manner and in substantial compliance with the approved Plans and Specifications and with all applicable laws and ordinances of governmental bodies having jurisdiction over the Out-Parcel. As used in this Agreement "Unavoidable Delays" shall mean delays caused by governmental orders or edicts; governmental rationing or allocation of materials; industry-wide strikes, lockouts, fires, acts of God, disasters, riots, delays in transportation, shortages of labor or materials or any other cause beyond the control of the party asserting such delays (but not including inability to obtain financing) and severe weather which causes RS or its contractors to be unable to construct the facilities and improvements. In the event RS shall fail to commence construction within the time period set forth above (or as extended by Unavoidable Delays), RS agrees to use its best efforts to sell the Out-Parcel to a bona fide purchaser who will

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commence development of the Out-Parcel and complete such development within the required time period and in accordance with the terms of this Agreement. In the event RS fails to construct its improvements in accordance with this Section and fails to sell the Out-Parcel as provided herein, CCO shall have the right to purchase the Out-Parcel pursuant to Section 1.2 of this Agreement.

**Section 4.10 Release of Liability and Waiver of Subrogation.** CCO and RS on their behalf and on behalf of their insurers and successors and assigns, hereby waive all rights of recovery and causes of action, and release against the other party, their beneficiaries and their officers, directors and employees from any liability (including loss of rent or profit) for all losses and damages occasioned to the property located within or upon or constituting a part of their respective Parcels, which losses and damages arise from a loss covered under the types of policies required by Section 4.8 hereof, even though such loss might have been occasioned by the negligence or fault of the other party. Any policies of the type required by said Section 4.8 which each party may carry shall provide for waivers of any right of subrogation that the insurer may acquire against the other party hereto with respect to any losses.

**Section 4.11 No Partnership Joint Venture or Principal Agent Relationship.** Nothing in this Agreement nor any acts of the parties hereto shall be construed or deemed by the parties, or by any third person, to create the relationship of partnership, of joint venture, or of principal and agent, between the parties hereto.

**Section 4.12 Severability.** If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which is invalid or unenforceable) except those terms or provisions which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**Section 4.13 Governing Laws.** This Agreement shall be construed and governed in accordance with the internal and conflicts laws of Illinois.

**Section 4.14 Hazardous Material.**

- (a) (i) RS hereby agrees that all operations or activities upon, or any use or occupancy of either Parcel, or any portion thereof, by RS, its assignees, subtenants, and their respective agents, servants, employees, representatives and contractors (collectively, "RS Affiliates"), throughout the term of this Agreement, shall be in all respects in compliance with all laws then governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, release, spillage, leakage, dumping, discharge or disposal of any Hazardous Material.

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- (ii) RS agrees to indemnify, defend and hold CCO and CCO affiliates harmless from any and all claims, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses, including reasonable attorneys' fees and expenses, consultant fees, and expert fees together with all other costs and expenses of any kind or nature that arise during or after the termination of this Agreement, directly or indirectly, from or in connection with the presence, suspected presence, release or suspected release of any Hazardous Material in or into the air, soil, surface water or groundwater at, on, about, under or within the Out-Parcel or the Shopping Center Parcel, or any portion of either thereof caused by RS or RS Affiliates.
- (iii) In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the "Remedial Work") is required under any applicable law, by any judicial order, or by any governmental entity as the result of operations or activities upon, or any use or occupancy of any portion of the Out-Parcel by RS or RS Affiliates, then at CCO's option, either RS shall perform or cause to be performed the Remedial Work in compliance with such law or CCO may cause the Remedial Work to be performed and RS shall reimburse CCO within ten (10) days of demand therefor. All Remedial Work performed by RS shall be performed by one or more contractors, selected by RS and approved in advance in writing by CCO. All costs and expenses of such Remedial Work shall be paid by RS, including, without limitation, the charges of such contractor(s), the consulting engineer, and CCO's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work.
- (b) CCO agrees to indemnify, defend and hold RS and RS affiliates harmless from any and all claims, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses, including reasonable attorneys' fees and expenses, consultant fees, and expert fees, together with all other costs and expenses of any kind or nature (except in all cases CCO shall have no liability for consequential damages or lost profits of RS) that arise during or after the termination of this Agreement, directly or indirectly, from or in connection with the presence, suspected presence, release or suspected release of any Hazardous Material in or into the air, soil, surface water or groundwater at, on, about, under or within the Out-Parcel or the Shopping Center, or any portion of either thereof caused by CCO. In no event,

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however, shall CCO have any obligation to remediate any Hazardous Material.

As used in this Agreement, "Hazardous Material" shall mean any hazardous or toxic waste, substance or petroleum product as defined for purposes of the Comprehensive Environmental Response, Compensation and Liability Act of 1982 U.S.C. Section 9061, and all amendments thereto.

**Section 4.12 Conflict with OEA.** Except to the extent otherwise acknowledged in this Agreement, this Agreement is intended to benefit and burden the Parcels to the extent that such benefits and burdens are not in conflict with any express term or provision of the OEA or cause a default under the OEA. If any term or provision of this Agreement shall, to any extent, cause a default under the OEA, such term or provisions shall be stricken and the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which shall be a default) except those terms or provisions which are made subject to or conditioned upon such term or provision, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by the OEA. If any term or provision of this Agreement shall be in conflict with any express term or provision under the OEA and the conflict is not otherwise acknowledged in this Agreement, the terms of the OEA shall control and the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which shall be a conflict) except those terms or provisions which are made subject to or conditioned upon such term or provision, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by the OEA. The parties hereto agree that the silence of the OEA on any subject matter shall not constitute a conflict with this Agreement if such subject matter is discussed in this Agreement.

HEREIN ENDS THIS PAGE

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

**COMMUNITY CENTERS ONE, L.L.C.**, a  
Delaware limited liability company

By: **DD COMMUNITY CENTERS  
ONE, INC.**

Attest: 

By:   
Joan U. Allgood  
Its: President

Its: SECRETARY

**ROCK SOLID, L.L.C.**, an Illinois limited  
liability company

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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# UNOFFICIAL COPY

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

**COMMUNITY CENTERS ONE, L.L.C.**, a  
Delaware limited liability company

By: **DD COMMUNITY CENTERS  
ONE, INC.**

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Joan U. Allgood

Its: \_\_\_\_\_

Its: President

**ROCK SOLID, L.L.C.**, an Illinois limited  
liability company

Attest: [Signature]

By: [Signature]

Its: SECRETARY

Its: MANAGER

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STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, a Notary Public in and for said County in the State aforesaid, do hereby certify that NAIM J ELIAS II, MANAGER of **ROCK SOLID, L.L.C.**, an ILLINOIS limited liability company and SALLY O JOYCE, SECRETARY of said limited liability company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such MANAGER and SECRETARY respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth and said SECRETARY then and there acknowledged that SHE, as custodian of the corporate seal of said limited liability company, did affix the corporate seal to said instrument as HER own 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 10<sup>th</sup> day of JUNE, 1999.

Donna J. Huber  
NOTARY PUBLIC  
"OFFICIAL SEAL"  
DONNA J. HUBER  
Notary Public, State of Illinois  
My Commission Expires Aug. 5, 1995

My Commission expires:  
8-5-99

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OHIO  
STATE OF ILLINOIS )  
COUNTY OF COOK )  
CUYAHOGA ) SS

COMMUNITY CENTERS ONE,  
INC, the managing  
member of

I, a Notary Public in and for said County in the State aforesaid, do hereby certify that JOAN U. ALLGOOD, PRESIDENT of COMMUNITY CENTERS ONE, L.L.C., a Delaware limited liability company and LOREN F. HENRY, SECRETARY of said managing member limited liability company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such PRESIDENT and SECRETARY respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said managing member limited liability company for the uses and purposes therein set forth and said officers then and there acknowledged that they, as custodian of the corporate seal of said limited liability company, did affix the corporate seal to said instrument as their own 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 10th day of JUNE, 1998.

Jane C. Jurenek  
NOTARY PUBLIC  
Jane C. Jurenek  
Notary Public - State of Ohio  
My Commission Expires Dec 29, 2001

My Commission expires:

\_\_\_\_\_

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## EXHIBIT A

### OUT-PARCEL LEGAL DESCRIPTION

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STREET ADDRESS: 1325 McArthur  
 CITY: SCHAUMBURG COUNTY: COOK

EXHIBIT A  
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**LEGAL DESCRIPTION:**

LOT 3 IN WOODFIELD VILLAGE GREEN RESUBDIVISION NUMBER ONE, BEING A RESUBDIVISION OF PART OF LOT 1 IN WOODFIELD VILLAGE GREEN WOODFIELD-76 SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS AS SHOWN ON THAT CERTAIN PLAT OF WOODFIELD VILLAGE GREEN RESUBDIVISION NUMBER ONE, RECORDED MAY 26, 1998 AS DOCUMENT 98434509;

SAID PROPERTY BEING ALSO DESCRIBED AS FOLLOWS:

THAT PART OF LOT 1 IN WOODFIELD GREEN WOODFIELD-76 SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PART OF THE FRACTIONAL SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 26, 1993 AS DOCUMENT NO. 93580462, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH 85 DEGREES, 12 MINUTES, 52 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1 A DISTANCE OF 127.60 FEET TO A BEND POINT; THENCE EASTERLY ALONG SAID NORTH LINE OF LOT 1, BEING THE ARC OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1,859.86 FEET, HAVING A CHORD BEARING OF SOUTH 74 DEGREES 28 MINUTES 39 SECONDS EAST, A DISTANCE OF 295.90 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A CURVE, BEING CONCAVE TO THE WEST, HAVING A RADIUS OF 30.00 FEET, HAVING A CHORD BEARING OF SOUTH 18 DEGREES 02 MINUTES 36 SECONDS EAST, A DISTANCE OF 35.80 FEET FOR A POINT OF REVERSE CURVATURE; THENCE SOUTHERLY ALONG THE ARC OF A CURVE, BEING CONCAVE TO THE EAST, HAVING A RADIUS OF 98.50 FEET, HAVING A CHORD BEARING OF SOUTH 08 DEGREES 30 MINUTES 20 SECONDS WEST, A DISTANCE OF 26.23 FEET FOR A POINT OF TANGENCY; THENCE SOUTH 00 DEGREES 52 MINUTES 03 SECONDS WEST 35.84 FEET FOR A POINT OF CURVATURE; THENCE SOUTHWESTERLY ALONG THE ARC OF A CURVE, BEING CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 34.50 FEET, HAVING A CHORD BEARING OF SOUTH 45 DEGREES 52 MINUTES 11 SECONDS WEST, A DISTANCE OF 54.19 FEET FOR A POINT OF TANGENCY; THENCE NORTH 89 DEGREES 07 MINUTES 49 SECONDS WEST 234.73 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A CURVE, BEING CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 119.83 FEET, HAVING A CHORD BEARING OF SOUTH 46 DEGREES 04 MINUTES 06 SECONDS WEST, A DISTANCE OF 189.34 FEET; THENCE SOUTH 00 DEGREES 56 MINUTES 09 SECONDS WEST 16.30 FEET; THENCE SOUTH 03 DEGREES 35 MINUTES 52 SECONDS WEST 21.82 FEET FOR A POINT OF CURVATURE; THENCE SOUTHWESTERLY ALONG THE ARC OF A CURVE, BEING CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 24.50 FEET, HAVING A CHORD BEARING OF SOUTH 50 DEGREES 18 MINUTES 56 SECONDS WEST, A DISTANCE OF 39.95 FEET TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 00 DEGREES 28 MINUTES 35 SECONDS EAST ALONG SAID WEST LINE OF LOT 1 A DISTANCE OF 317.18 FEET; THENCE NORTH 00 DEGREES 40 MINUTES 03 SECONDS EAST ALONG SAID WEST LINE OF LOT 1 A DISTANCE OF 75.69 FEET TO THE PLACE OF BEGINNING; ALL IN COOK COUNTY, ILLINOIS.

PIN No. 07-12-400-032  
 07-12-400-033

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**EXHIBIT B**

**SHOPPING CENTER PARCEL**

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EXHIBIT B

PROPOSED LOT 1 IN WOODFIELD VILLAGE GREEN RESUBDIVISION NUMBER ONE, BEING A RESUBDIVISION OF PART OF LOT 1 IN WOODFIELD VILLAGE GREEN WOODFIELD-76 SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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**EXHIBIT C**

**SHOPPING CENTER AND OUTLOT SITE PLAN**

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**WOODFIELD VILLAGE GREEN  
RESUBDIVISION NUMBER ONE**

P.L.N. 07-12-400-028  
 P.L.N. 07-12-400-032  
 P.L.N. 07-12-400-033  
 P.L.N. 07-12-400-034  
 P.L.N. 07-12-400-039

EXHIBIT C

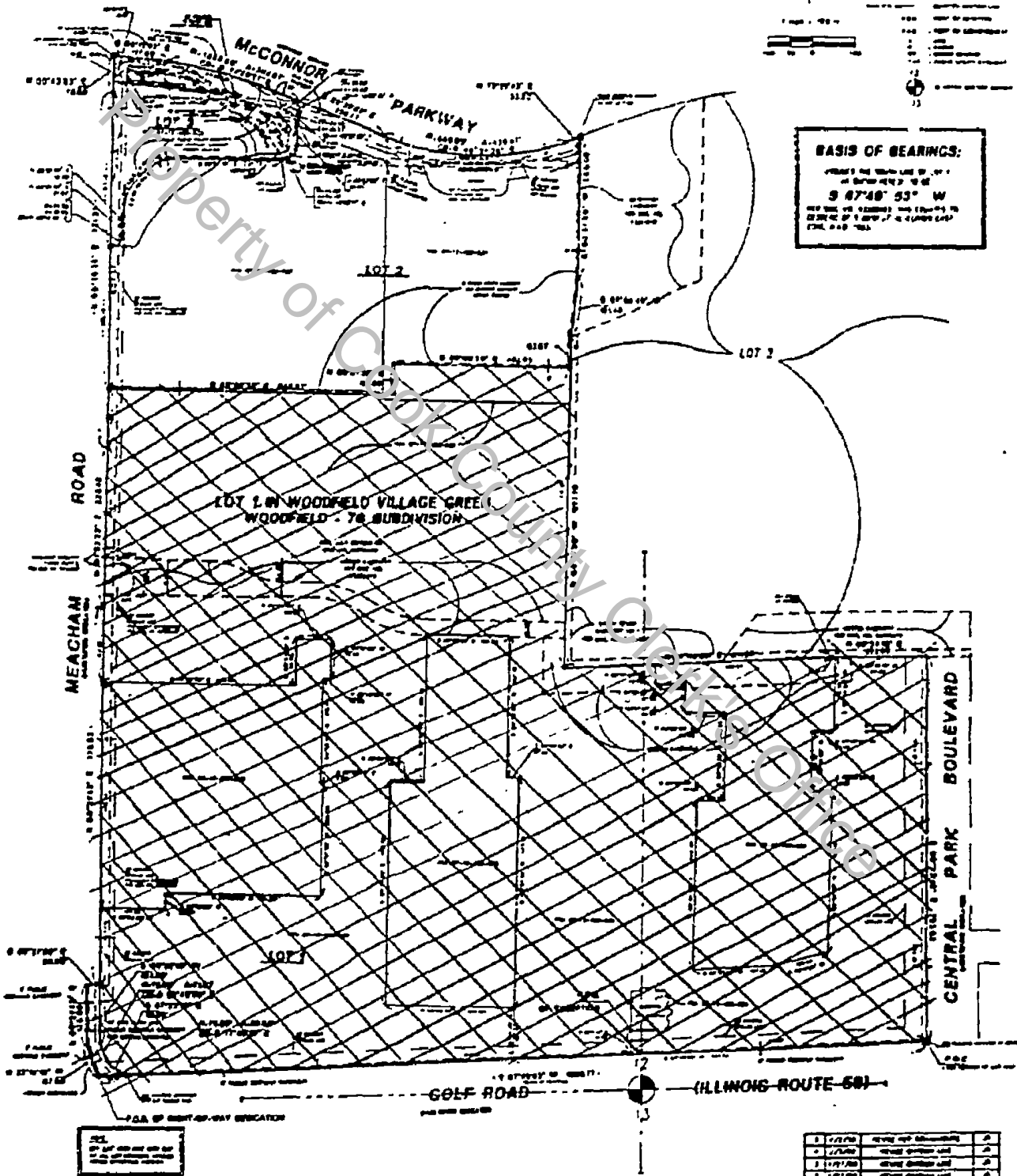
Being a resubdivision of part of Lot 1 in Woodfield Village Green Resubdiv. No. 78  
 Subdivision being a subdivision of part of the Eastern Quarter and the Eastern  
 Quarter of Section 17, Township 41 North, Range 10 East of the Third Principal Meridian,  
 and part of the Eastern Quarter of Section 17, Township 41 North, Range 10  
 East of the Third Principal Meridian, according to the plat thereon recorded July 24, 1984,  
 Document No. 93360461, in Cook County, Illinois.

Lot 1 owned by Community Centers One, L.L.C.

**AREA TABLE**

Lot No.	Acres	Area
Lot 1	1.5000	0.0000
Lot 2	1.5000	0.0000
Lot 3	1.5000	0.0000
Lot 4	1.5000	0.0000

Lot 3 owned by Community Centers Three L.L.C.



**LEGEND**

(Symbol)	1/4" = 1' SCALE
(Symbol)	1/8" = 1' SCALE
(Symbol)	1/16" = 1' SCALE
(Symbol)	1/32" = 1' SCALE
(Symbol)	1/64" = 1' SCALE
(Symbol)	1/128" = 1' SCALE
(Symbol)	1/256" = 1' SCALE
(Symbol)	1/512" = 1' SCALE
(Symbol)	1/1024" = 1' SCALE
(Symbol)	1/2048" = 1' SCALE
(Symbol)	1/4096" = 1' SCALE

**BASIS OF BEARINGS:**  
 FROM THE MERIDIAN OF 1857  
 AN ANGLE OF 75° 05'  
 S 87°40' 53" W  
 69.366 FT. DISTANCE TO CORNER OF LOT 1 IN WOODFIELD  
 (PLAT, P. 102)

THE PLANES AND ELEVATIONS OF THE SURFACE ARE SHOWN BY THE SHADING OF THE LOTS. THE ELEVATIONS ARE IN FEET ABOVE MEAN SEA LEVEL.  
 THE PLANES AND ELEVATIONS OF THE SURFACE ARE SHOWN BY THE SHADING OF THE LOTS. THE ELEVATIONS ARE IN FEET ABOVE MEAN SEA LEVEL.

ROBERT E. COMBAY, INC.  
 SURVEYORS  
 215 N. DEARBORN STREET  
 CHICAGO, ILL. 60610  
 TEL. (312) 467-1111

(Symbol)	1/4" = 1' SCALE	(Symbol)	1/4" = 1' SCALE
(Symbol)	1/8" = 1' SCALE	(Symbol)	1/8" = 1' SCALE
(Symbol)	1/16" = 1' SCALE	(Symbol)	1/16" = 1' SCALE
(Symbol)	1/32" = 1' SCALE	(Symbol)	1/32" = 1' SCALE
(Symbol)	1/64" = 1' SCALE	(Symbol)	1/64" = 1' SCALE
(Symbol)	1/128" = 1' SCALE	(Symbol)	1/128" = 1' SCALE
(Symbol)	1/256" = 1' SCALE	(Symbol)	1/256" = 1' SCALE
(Symbol)	1/512" = 1' SCALE	(Symbol)	1/512" = 1' SCALE

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## EXHIBIT D

### RULES AND REGULATIONS

It is hereby acknowledged that the OEA may appear to be in conflict with this Exhibit, however the parties agree and acknowledge that to the extent that this Exhibit does not create a default under the OEA the terms and conditions of this Exhibit shall control in the event of a conflict on the subject matter discussed in this Exhibit.

1. RS shall not (i) conduct or permit any fire, bankruptcy or auction sale (whether real or fictitious) unless directed by order of a court of competent jurisdiction. RS may, however, conduct a bona fide liquidation or going-out-of-business sale if terminating its operations, for a period not to exceed four (4) consecutive weeks. RS shall not (ii) conduct or permit any fictitious "Going Out of Business" sale nor represent or advertise that it regularly or customarily sells merchandise as a "manufacturer's outlet," "distributor," or "wholesaler," but RS may represent and advertise that it conducts business at "offprice" or at "retail;" (ii) use, or permit to be used, the malls or sidewalks adjacent to the buildings on the Out-Parcel, or any other area outside the buildings on the Out-Parcel for solicitation or for the sale or display of any merchandise or for any other business, occupation or undertaking, or for outdoor public meetings, circus or other entertainment; (iii) use or permit to be used any sound broadcasting or amplifying device which can be heard outside of the buildings on the Out-Parcel (other than as permitted below) or any flickering lights; (iv) operate or cause to be operated "elephant trains" or similar transportation devices; or (v) use or permit to be used any portion of the buildings on the Out-Parcel for any unlawful purpose or otherwise contrary to law, or use or permit the use of any portion of the buildings on the Out-Parcel as regular living quarters, sleeping apartments or lodging rooms or for the conduct of any manufacturing business. RS shall be permitted to use outdoor amplifying equipment, provided such amplification is permitted by law, the sound produced by such equipment is not audible further than 100 feet away from RS's building and CCO does not receive complaints regarding the amplification. If any of the foregoing conditions are not met for the use of outdoor amplification, RS shall immediately discontinue the use of the amplification equipment upon notice from the legal authorities having jurisdiction thereof or upon written notice from CCO.
2. RS shall not, nor shall RS at any time, permit any occupant of the buildings on the Out-Parcel to: (i), use, operate or maintain the buildings on the Out-Parcel in such manner that any rates for any insurance carried by CCO, or the occupant of any premises within the Shopping Center Parcel, shall thereby be increased; or (ii) commit waste, perform any acts or carry any practices which may injure the Shopping Center Parcel or be a nuisance or menace to other tenants in the Shopping Center Parcel.

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3. RS shall not obstruct any sidewalks, passages, exits, entrances, truck ways, loading docks, package pick-up stations, pedestrian sidewalk or ramps of the Shopping Center Parcel.
4. Except for any satellite telecommunications system, RS shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of buildings on the Out-Parcel. RS shall not knowingly and intentionally interfere with radio or television broadcasting or reception from or in the Shopping Center Parcel or elsewhere.
5. RS shall comply with all laws relating to solid waste management including, but not limited to, recycling. Unless otherwise prohibited by applicable law, RS shall store all its trash and garbage in containers within its buildings on the Out-Parcel and/or in the portion of the Out-Parcel designated by CCO. RS shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions issued from time to time by CCO.
6. RS and RS's employees shall park their cars only in such portion of the parking area designated for those purposes by any governmental entity. Upon CCO's request, RS shall furnish CCO with state automobile license numbers assigned to RS's employees. In the event, after two consecutive incidents in any month that RS's employees fail to park their cars in designated parking areas as aforesaid, then CCO, at its option, shall charge the RS Ten Dollars (\$10.00) per day or partial day per car parked in any area other than that designated.
7. CCO shall uniformly enforce rules and regulations of the Shopping Center Parcel to the extent applicable. No waiver of such enforcement by CCO shall be construed to prevent CCO from thereafter enforcing any such Rules and Regulations.
8. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of the Agreement to which these Rules and Regulations are attached.
9. RS shall be responsible for the observance of all of the foregoing rules by RS's employees, agents, clients, customers, invitees and guests.
10. RS agrees to comply with all additional and supplemental rules and regulations which are typically promulgated for a shopping center parcel or out-parcel of the same type or quality as the Shopping Center Parcel or Out-Parcel, upon notice of same from CCO.
11. Trailers or trucks shall not be permitted to remain parked overnight in any area of the Shopping Center Parcel or Out-Parcel, whether loaded, unloaded or partially loaded. No parking shall be permitted of any trailer, truck or other vehicle in any area of the Shopping

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Center Parcel or Out-Parcel at any time for purposes of advertising or promotion without CCO's prior written permission.

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