### **UNOFFICIAL**

# A RESOLUTION APPROVING AN INDENTURE OF ESTABLISHMENT OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS WITH REGARD TO THE CENTRAL/WILKE SHOPPING CENTER

BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF ARLINGTON HEIGHTS:

SECTION ONE: A certain Indenture of Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements between Principal Mutual Life Insurance Company, the owner of 1012 of the Central/Wilke Shopping Center and the Village of Arlington Heights, the owner of Lot 1 of the Central/Wilke Shopping Center, establishing non-exclusive easements for ingress and egress for the passage and parking of motor vehicles throughout the shopping center, the operation and maintenance of the common areas, and building restrictions, a true and correct copy of which is attached hereto, be and the same is hereby approved.

SECTION TWO: The Village President and Village Clerk are hereby authorized and directed to execute said indenture on behalf of the Village of Arlington Heights.

SECTION THREE: This resolution size the in full force and effect from and after its passage and approval in the manner provided by law.

AYES: HAHN, KUCERA, HAYES, WALTON, GUAGLICARDO, STENGREN, HETTINGER, DADAY, MULDER

NAYS: HONE

PASSED AND APPROVED this 20th day of October, 1997.

ATTEST:

Calwarators Village Clerk

AGRRES: SENIORCO. VEN

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LEGAL DEPARTMENT
VILLAGE OF ANLINGTON HEIGHTS

33 South Arlington Heights Rd. Arlington Heights, IL 60005

297-062

### INDENTURE OF ESTABLISHMENT OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS

This Agreement is made and entered into this 20th day of October 1997 by and between the Village of Arlington Heights, a municipal corporation ("Village"), and Principal Mutual Life Insurance Company, an lowa corporation ("Principal"). Village and Principal are each sometimes referred to as an "Owner" and collectively as the "Owners".

Whereas, Village owns real property in the Village of Arlington Heights, Cook County, Illinois, described in Exhibit "A", attached and nereby incorporated by reference and referred to as "Lot 1"; and

Whereas, Principal owns of real property in the Villago of Arlington Heights, Cook County, Illinois, described in Exhibit "B", attached and hereby incorporated by reference and referred to as "Lot 2" (each of Lot 1 and Lot 2 are sometimes referred to as a "Parcel"); and

Whereas, there no longer is a tenant of the supermarket building located on Lot 1;

Whereas, the Owners intend that all employees and invitees will share the parking areas and driveways that exist on Lot 1 and Lot 2;

Now, therefore, in consideration of the mutual benefits that will flow to all Owners, it is mutually agreed as follows:

#### I. EASEMENTS

The Owners hereby establish non-exclusive easements for ingress and egress and for the passage and parking of motor vehicles into, out of, on, over and across, all parking areas, driveways, service areas, entrances, and exits shown on Exhibit "C",

LEGAL DEPARTMENT
VILLAGE OF ARLINGTON HEIGHTS

33 South Arlington Heights 9d. Arlington Heights, 12, 19005

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over and across Lot 1 and Lot 2, which Parcels comprise the property commonly known as Central Piaza, ("Center"), may be used as an integrated area by the owners, tenants, and subtenants thereof, and their customers, suppliers, licensees and invitees.

- 2. The Owners hereby jointly establish non-exclusive easements for the ingress and egress and passage of pedestrians into, out of, on, over and across, all portions of the Center not improved with a building or outdoor plaza and excluding limited use areas ("the Common Area") as generally shown on Exhibit "C", so that the Center may be used as an integrated area by the owners, tenants, and subtenants and their customers, suppliers, licensees and invitees.
- 3. The Owners hereby jointly establish non-exclusive easements under, through and across the Common Area of the Center for domestic water sprinkler system and fire system lines, telephone or electrical conduits or systems, gas mains, other public utilities, and service easements. These systems, structures, mains, sewers, conduits, lines and other public utilities and instrumentalities, will be installed and maintained below the ground level or surface of the easements, and will be constructed coordinated and maintained as an integrated system throughout the Center.

#### II. OPERATION AND MAINTENANCE OF COMMON AREA

- 1. Each Owner shall keep and maintain the Common Area on its Parcel in first-class condition, order and repair in accordance with the standards set forth in Exhibit D and shall perform, without limitation, the services set forth in Exhibit D.
- 2. Each Owner shall keep the parking area on its Parcel well-lighted during all periods of darkness for not less than one-half (1/2) hour after said period.
- 3. Sufficient parking spaces will be maintained in the Common Area, but in no event less than the ratio of parking spaces to leasable area in the Center excilable as of the date hereof, as more particularly set forth in Exhibit C attached hereto, except for a reduction mutually agreed to by the Owners resulting from construction of additional improvements allowed hereunder and subject to all required zoning approvals.
- 4. No buildings shall be razed or removed from their respective Parcel except as may be necessary prior to rebuilding or restoration or by reason of a taking by condemnation. In the event an Owner razes or removes its building(s) pursuant to this Agreement, said building area shall be left in the same condition as required under this Agreement, and shall not become part of the Common Area.
- 5. No use, operation or occupancy will be made, conducted or permitted on any part of the Center which use or operation is obviously detrimental to the operation of the

Center in the reasonable judgment of the Owner(s) still using their Parcels for a use permitted by the zoning code. Included among the uses or operations which are prohibited because of their obvious detriment to the uses at the Center, as well as their obvious detrimental effect upon the general appearance of the Center and conflict with the reasonable standards of appearance, maintenance and housekeeping required by this Agreement are uses or operations which produce or are accompanied by characteristics such as, but not limited to, the following:

- (a) Any noise, litter, odor or other activity which may constitute a public or private nuisance:
- (b) Any physically damaging or dangerous hazards;
- (c) Any assembly or manufacturing operation which would be permitted only in a heavy manufacturing or industrial zone, distillation, refining, smelting, industrial, agricultural, drilling or mining operation;
- (d) Any trailer court, mobile home park, lot for sale of new or used motor vehicles, auto repair (except as may be strictly ancillary to the operation of a department store), labor camp, junk yard, stock yard or animal raising (other than pet shops and veterinarian offices); or
- (e) Any dumping, disposal, incineration or reduction of garbage or refuse, other than handling or reducing such was elif produced on the Center from permitted uses and if handled in a reasonably clean and sanitary manner.
- 6. So as neither to interfere with the use of the Common Area nor detract from the appearance of the Center, outdoor selling (other than outdoor seating for restaurants in the areas shown on Exhibit C and outdoor sales areas in the areas shown on Exhibit C) will not be permitted on the Center. No fence, structure or other obstruction of any kind, except as may be specifically permitted in this Agreement or except for decorative features and customer conveniences, shall be placed, kept, permitted or maintained nor any goods stored or delivery vehicles parked upon the Common Area without the prior written consent of the Owners hereto, except such of the foregoing as are reasonably necessary or proper for the construction, repair or rebuilding authorized hereunder. The Owners may build on those areas located within their respective parcels and shown on Exhibit C as outlots.
- 7. The Owner of Lot 1 will pay all taxes and assessments when due on its Parcel. The Owner of Lot 2 will pay all taxes and assessments when due on its Parcel. The Owners of the Parcels will maintain sufficient public liability insurance or maintain sufficient assets for self insurance in the amount of Five Million Dollars (\$5,000,000.00) combined single limit for bodily injury and property damage to cover all claims or judgments arising from the use of their respective Parcels, and each will supply the other with certificates of insurance or proof of self insurance. The policies will provide that the insurance represented by the certificate will not be changed or canceled without providing 30 days written notice to the holder of the insurance and the holder of the certificates.

8. If either Owner fails to maintain the Common Area, the other Owner may perform the required maintenance after providing 45 days written notice. The curing Owner may then bill the defaulting Owner for the expense incurred. The defaulting Owner will then have 15 days within which to pay the bill, and if the defaulting Owner does not pay, the curing Owner will have a lien on the parcet of the defaulting Owner for the amount of the bill. Upon the written request of either Owner made not more frequently than once every three (3) years, the Owners shall review the commercial reasonableness of the insurance limits contained herein.

The lien provided for above may be filed for record by the curing Owner as a claim of lien against the defaulting Owner in the office of the Recorder of Deeds of Cook County, Illinois, signed and verified and containing:

- (i) A statement of the unpaid amount of costs and expenses:
- (ii) A description of the portion of the Center which is the subject of the lien; and
- (iii) The name of the swner or reputed owner of the property which is the subject of the alleges inch.

The lien when filed and recorded against the real property described in the lien will be prior and superior to any right, title, into est, lien or claim that may be or has been acquired or attached to the real property after the time of filing the lien. The lien will be for the use and benefit of the person curing the default of the defaulting Owner and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

#### III. BUILDING RESTRICTIONS

- 1. All the buildings constructed in the Center will be constructed so as to complement the other buildings located in the Center to give the appearance of a uniform integrated facility.
- 2. Any building or addition or use will meet all Local Code, State and Federal requirements or applicable variations will be obtained.
- Prior to construction involving changes to the exterior of any building or any portion
  of the Common Area, the Owner will submit its plans and specifications to the other
  Owner for informational purposes.
- 4. Each Owner shall keep and maintain or cause to be kept and maintained in a good and safe state of repair and in a clean and orderly condition, all areas, improved and unimproved, of its Parcel, including without limitation the exterior of all buildings on its Parcel.

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- 5. Each Owner hereby agrees that in the event of the damage or destruction of all or any part of the buildings on the its Parcel from any casualty required to be insured against pursuant to this Agreement, such Owner shall have of the option to either (i) reconstruct or (ii) raze such buildings.
- 6. The Owners agree to use due diligence in order to cause any building or other improvement which an Owner elects to repair, replace or rebuild pursuant to this Agreement to be completed and ready for occupancy as expeditiously as possible.
- 7. To the extent an Owner does not elect to restore all or a portion of its building which is damaged or destroyed by a casualty, such Owner shall raze the portions thereof which are not restored or rehabilitated and clear away all debris. Any Owner performing any such razing shall do so in a manner so as not to interfere with or affect the structural integrity of any other Owner's improvements.
- 8. If any portion of the Common Area on an Owner's Parcel is damaged or destroyed by any casualty required to be insured against pursuant to this Agreement during the term of this Agreement, such Owner will promptly rebuild, replace and repair such damaged or destroyed portion of the Common Area to the same condition and usefulness and to the same general appearance as existed immediately prior to such damage or destruction. Any insurance proceeds paid to any Owner by virtue of such damage or destruction shall be used by the Owner obligated to so rebuild, replace and repair for rebuilding, replacing and repairing. The Owners covenant and agree with each other that any Common Area which such Owner is required to rebuild, replace or repair shall be completed as expeditiously as reasonably possible and, in any event, within six (6) months, weather permitting, after such damage or destruction occurs, and further agree that such Owner shall, prior to commencing such rebuilding, replacement or repair, comply with the requirements herein set forth with respect to initial construction and the requirements set forth in this Agreement.

#### IV. GENERAL PROVISIONS

 Each easement, restriction and covenant over Lot 1 will be appurtenant to and for the benefit of Lot 2. Each easement, restriction and covenant over Lot 2 will be appurtenant to and for the benefit of Lot 1. All easements, restrictions and covenants will run with the land.

The restrictions, easements, covenants, benefits and obligations created will inure to the benefit of and be binding on the Owners, their successors and assigns; provided, however, that if any Owner sells any portion or all of its interest in any parcel, the purchaser is deemed to assume and shall be bound by these covenants and agreements and, the seller will be released and discharged from any and all further obligations under this agreement.

- 2. Before either Owner conveys its Lot, the Owner, will submit the name of the proposed purchaser to the other Owner for informational purposes.
- 3. Each notice, demand, request, consent, approval, disapproval, designation or other communication, including plans and specifications, (all of the foregoing are herein referred to as a "notice"), that a Party is required or desires to give or make or communicate to any other Party shall be in writing and shall be deemed to have been given or made when mailed by Certified or registered United States Mail, postage prepaid, return receipt requested, or sent via a recognized overnight courier service:

addressed in the case

of Village to:

33 South Arlington Heights Road

Arlington Heights, Illinois 60005-1499
Attention: Director of Planning & Community

Development

and addressed in the case of Principal to:

711 High Street

Des Moines, Iowa 50392

Attention: Commercial Real Estate Equity

- 4 Except as otherwise provided, each casement, setback line, covenant, restriction and undertaking of this document will be astablished in perpetuity from the date of this Agreement.
- 5. In the event of any violation or threatened violation by any Owner, lessee, or occupant of any portion of the Center of any of these terms, covenants, and conditions, any or all of the Owners of the property included within the Center, will have the right to enjoin the violation or threatened violation in a court of competent jurisdiction.
- 6. The Owner of Lot 1 agrees to indemnify and hold harmless the Owner of Lot 2 from any and all liability in any way accruing as a result of activity on Lot 1 unless such liability is caused by the Owner of Lot 2. The Owner of Lot 2 agrees to indemnify and hold harmless the Owner of Lot 1 from any and all liability in any way accruing as a result of activity on Lot 2 unless such liability is caused by the Owner of Lot 1.
- This Agreement may only be modified or rescinded, in whole or in part, in writing signed by all the Owners and recorded in the Office of the Recorder of Deeds of Cook County, Illinois.
- 8. No breach of this Agreement will entitle any Owner to cancel, rescind or terminate this Agreement, but this limitation will not affect in any manner, any other rights or remedies that the Owner may have by reason of any breach of this Agreement. These covenants or restrictions will be binding on and effective against the Owner

of any of the property or any portion thereof whose title is acquired by foreclosure, trustee's sale, or otherwise.

- If any clause, sentence or other portion of this Agreement becomes illegal, null or void for any reason, or is held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.
- 10. By signing this Agreement, the Owners hereby rescind and revoke the December 8, 1978 'Indenture of Establishment of Protective Covenants Conditions and is ants to .

  Cook County Clark's Office Restrictions and Grant of Easements' (Recording number 25018565) and all amendments to that Indenture.

IN WITNESS WHEREOF, the Owners hereto have executed this Agreement on the day And Andrew Committee States

Rept C Enter 2nd 1.0 President Committee States

Office first written above.

Village of Arlington Heights

DOCUMENT PREPARED BY AND AFTER RECORDING RETURNED TO:

Pachter, Gregory & Finocchiaro, P.C. 300 W. Washington Suite 1600 Chicago, IL 60606 Attn: Larry H. Pachter, Esq.

STATE OF COUNTY OF	) )	SS
same person appeared before me this delivered the said instrum	Village  day intent as	hereby certify that <u>Fowlar Corso</u> , the ge of Arlington Heights personally known to me to be the whose name is subscribed to the foregoing instrument in person and acknowledged that <u>She</u> signed and signed and purposes therein set forth.
<b>GIVEN</b> under my h	and an	ind Notarial Seal this <u>3/s/r</u> day of <u>OP 77</u> , 19 <u>97</u> ,
	Ox	Notary Public
My Commission Expires:		Cox Irene B. Smith
OFFICIAL REAL IRENE B SMITH Notary Putility State of I My Commission Expires 2	ł Janons	County Co
		CATO OFFICE

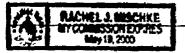
STATE OF IOWA SS **COUNTY OF POLK** in the State aforesaid, do hereby certify that Scott D. Harris, Assistant Director, Company personal, ad to the foregoing instrumedged that they signed untary act, free and voluntary act set forth.

J and Notarial Seal this Aday of Coption

Washing Company personal, add to the foregoing instruments with the signed untary act set forth.

J and Notarial Seal this Aday of Coption

Notary Public Commercial Real Estate/Equities and Kalph ( Fucher and Vie Prolident of Principal Mutual Life Insurance Company personally known to me to be the same persons whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act, free and voluntary act of said corporation for the uses and purposes therein set forth. GIVEN under my hand and Notarial Seal this At day of September 1997. My Commission Expires:



#### Exhibit A

#### **Lot 1 Legal Description**

Number One (., action 8, Township 41 N.

Sounty, Illinois.

OR COLUMN CONTROL OF CONTROL

#### Exhibit B

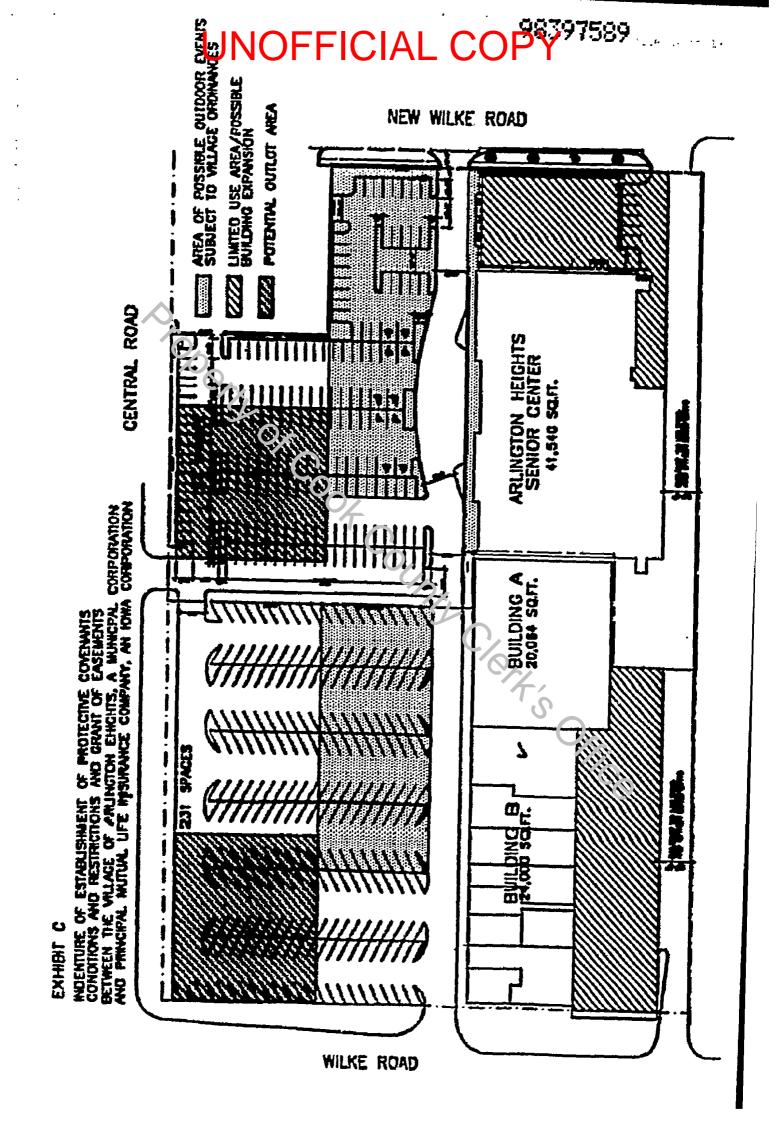
#### **Lot 2 Legal Description**

Number Two (2).

ction 8, Township 41 Nc.

county, Illinois.

OR 53 101 505



#### **EXHIBIT D**

#### RULES, REGULATIONS AND MAINTENANCE STANDARDS

Each Owner, during the period it is obligated to maintain its Parcel or the Parcel of another Owner in accordance with the terms of this Agreement, shall observe and use its best efforts to cause its respective permittees to observe the Rules, Regulations and Maintenance Standards of each relevant section of this Exhibit "D" as may from time to time be amended or modified by mutual consent with respect to the Parcel(s) it is obligated to maintain.

#### A. COMMONAREA

- 1. Each Owner or its permittee shall:
  - (a) Inspect, maintain, repair and replace the surface of the parking areas, curbs and sidewalks, kerping them level, smooth and evenly covered with the type of surface material originally installed thereon or such substitute therefor as shall be in all respects, equal in quality, appearance and durability
  - (b) Maintain, replace and repair such appropriate parking area entrance, exit and directional signs, markers and lights to keep same in good, clean and legible condition, as well as repair and replace striping as required.
  - (c) Clean parking area lighting fixtures and relain, repair and replace fixtures and standards as needed.
  - (d) Maintain, repair and replace landscaping in the Common Area as necessary.
  - (e) Clean any signs within the Common Area, including relamping and repairs as required.
  - (f) Furnish pest abatement controls, as necessary.
  - (g) Clean, repair, maintain and replace all utility facilities, to the extent that the same are not cleaned, repaired, maintained or replaced by public utilities.
  - (h) Remove all papers, debris, filth and refuse from the Center, and sweep paved areas as required. All sweeping shall be done before the buildings of the Center shall be open for business with the public, as allowed by local code, using proper motor-driven cleaning vehicles in the parking areas where feasible.

- (i) Empty all trash and rubbish containers located in the Common Area for the use of permittees at least daily and wash same at intervals sufficient to maintain them in a clean and sanitary condition, and otherwise maintain and keep same in an attractive and good working condition.
- (j) Clean all sewer catch basins on a schedule sufficient to maintain all sewer lines in a free-flowing condition, and regularly inspect all mechanical equipment related to storm and sanitary sewer facilities and keep same in proper working order.
- (k) Sweep all ramps and stairways, if any, at intervals sufficient to maintain same in a clean condition; inspect same at regular intervals; and promptly sepair same upon the occurrence of any irregularities or worn portions thereof.
- (I) Clean all glass, including skylights, plate glass and/or glass-enclosed devices at intervals sufficient to maintain the same in a clean condition.
- (m) Inspect all surface utility facilities servicing the Common Area, including, but not limited to, hose bibbs, standpipes, sprinklers and domestic water lines, at regular intervals and promptly repair or replace same, as the occasion may require, upon the occurrence of any defect or malfunctioning.
- (n) Inspect all Common Area amenities, benches, and directional, traffic and other signs at regular intervals, maintain same in a clean and attractive surface condition, and promptly repair or replace upon the occurrence of any defects or irregularities thereio.
- 2. The improvements on and to the Common Area shall be repaired or replaced with materials, apparatus and facilities of a quality at least equal to the original.
- 3. All Owners shall use commercially reasonable efforts to require their respective permittees to comply with all regulations with respect to the Common Area, including, but not limited to, posted speed limits, directional markings and parking stall markings.
- 4. With respect to all mechanical and electrical facilities and systems, including, but not limited to, the lighting facilities, plumbing, ventilating, cooling and sprinkling systems, and actuated or manually operated doors, each Gymer shall (a) inspect the same at regular intervals; (b) promptly repair the same upon the occurrence of any failure or malfunction; and (c) with respect to the plumbing, ventilating and cooling systems, maintain the same so as to comply with the performance specifications set forth in this Agreement and all local and State Codes.

#### B. USES

The provisions of this Section B shall apply to all uses.

- 1. All public area, including vestibules, entrances and returns, doors, fixtures, windows and plate glass shall be maintained in a safe, neat and clean condition.
- 2. All trash, refuse and waste materials shall be regularly removed from the premises of each Occupant of the Center and, until removal, shall be stored (a) in adequate containers, which containers shall be located so as not to be visible to the general public shopping in the Center, and (b) so as not to constitute any health or fire hazard or nuisance to any occupant. No burning of trash, refuse or waste materials shall occur.
- 3. No portion of the Center shall be used for lodging purposes.

#### C. CONDUCT OF PERSONS

The Owners hereto do hereby establish the following rules and regulations for the use of roadways, walkways, malls, parking areas and other common facilities provided for the use of permittees:

- 1. No person shall use any roadway, walkway or mall, except as a means of egress from or ingress to any floor area and parking areas within the Center, or adjacent public streets. Such use shall be in an orderly manner, in accordance with the directional or other signs or guides. Roadways shall not be used at a speed in excess of twenty (20) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers.
- 2. Except for employees of occupants of the Center, no person shall use any parking areas except for the parking of automobiles during the period of time such persons or the occupants of such vehicle are customers or business invitees of the establishments within the Center. No vehicles shall be parked at the Center overnight.
- 3. Unless required by applicable law, and in the absence of the written consent of all of the Owners, no one may, in or on any part of the Common Area:
  - (a) Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever.
  - (b) Exhibit any sign, placard, banner, notice or other written material.
  - (c) Distribute any circular, booklet, handbill, placard or other material.
  - (d) Solicit membership in any organization, group or association or contribution for any purpose.

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- (e) Parade, rally, patrol, picket, demonstrate or engage in any illegal conduct that might tend to interfere with or impede the use of any portion of the Common Area by any permittees, use any portion of the Common Area in any way not consistent with the operation of the Center for its intended purpose, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interest of any of the retail establishments within the Center.
- (f) Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind
- (g) Create or produce in any manner noise or sound that is annoying, unpleasant or distasteful to any permittee.
- (h) Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvement within the Center, or the property of any permittee situated within the Center.

No Owner shall exercise any remedy contained in the Indenture as a result of a default of this Paragraph C.3. provided the defaulting Owner is using commercially reasonable efforts to exclude or stop such act or acts on its Parcel or if it is prevented by law from excluding or stopping such acts or acts on its Parcel. In taking any action hereunder, each Owner is not the agent for any other Owner or occupant of the Center, unless expressly authorized to do so by such other Owner or occupant in writing.

### STAFF REQUESTFOR BOARD ACTION

VILLAGE BOARD MEETING DATE October 20, 1997

Agenda	Section XI, Legal	Department Charles Witherington Perkins, AICH Director of Planning and Community Development			
ftem:	Indenture of Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements	Date Due to Village Manager	October 20, 1997		

#### BACKGROUND

When the Village purchased the east half of the Central/Wilke Shopping Center for redevelopment as the new Senior Center, the accumulation was subject to the existing restrictive covenants that run with the property. Prior to closing on the property. Village Attorney Jack Siegel provided an opinion that the proposed modifications for the Senior Center could be accomplished within the confines of the existing covenants. However, it was determined from the onset that it would be beneficial for both the Village and the adjacent property owner to renegotiate the covenants which were originally established in 1978. The attached covenants have been negotiated to reflect the current needs of the Village and adjacent property owner.

#### RECOMMENDATION

It is recommended that the Village Board of Trustees adopt a resolution authorizing the execution of the revised restrictive covenants for the Senior Center property.

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