



| UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE | | PROOF OF CLAIM | | | | | | | | | |
|---|---|--|-------------------------------------|---|---|---|--------------------------------|---|---------------------------------------|--|-----------------------------------|
| In re FAVAR Concepts, Ltd | Case Number 03-10953 |  485651 Bar Date Ref # 10-G1-3356 | | | | | | | | | |
| <small>NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small> | | <input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if this address differs from the address on the envelope sent to you by the court. <small>If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.</small> | | | | | | | | | |
| Name of Creditor and Address <div>0354851485651</div> TARRAGON REALTY INVESTORS INC 3100 MONTICELLO STE 200 DALLAS TX 75205 | | | | | | | | | | | |
| Creditor Telephone Number () | CREDITOR TAX ID # 94-2432628 | | | | | | | | | | |
| ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR Lease ID TX-354 | | Check here <input type="checkbox"/> replaces or amends a previously filed claim dated _____ | | | | | | | | | |
| 1 BASIS FOR CLAIM <table><tr><td><input type="checkbox"/> Goods sold</td><td><input type="checkbox"/> Personal injury/wrongful death</td><td><input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)</td></tr><tr><td><input type="checkbox"/> Services performed</td><td><input type="checkbox"/> Taxes</td><td><input type="checkbox"/> Wages, salaries, and compensation (Fill out below)</td></tr><tr><td><input type="checkbox"/> Money loaned</td><td><input checked="" type="checkbox"/> Other (describe briefly)</td><td>Your social security number _____</td></tr></table> Rent and other amounts due under lease _____ Unpaid compensation for services performed from _____ to _____ (date) (date) | | | <input type="checkbox"/> Goods sold | <input type="checkbox"/> Personal injury/wrongful death | <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) | <input type="checkbox"/> Services performed | <input type="checkbox"/> Taxes | <input type="checkbox"/> Wages, salaries, and compensation (Fill out below) | <input type="checkbox"/> Money loaned | <input checked="" type="checkbox"/> Other (describe briefly) | Your social security number _____ |
| <input type="checkbox"/> Goods sold | <input type="checkbox"/> Personal injury/wrongful death | <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) | | | | | | | | | |
| <input type="checkbox"/> Services performed | <input type="checkbox"/> Taxes | <input type="checkbox"/> Wages, salaries, and compensation (Fill out below) | | | | | | | | | |
| <input type="checkbox"/> Money loaned | <input checked="" type="checkbox"/> Other (describe briefly) | Your social security number _____ | | | | | | | | | |
| 2. DATE DEBT WAS INCURRED <u>Feb. 2003 - June 30, 2003</u> 3 IF COURT JUDGMENT, DATE OBTAINED _____ | | | | | | | | | | | |
| 4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE \$ <u>35,105.99</u> (unsecured) \$ _____ (secured) \$ _____ (unsecured priority) \$ <u>35,105.99</u> (total) | | | | | | | | | | | |
| <small>If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.</small> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges. | | | | | | | | | | | |
| 5 SECURED CLAIM <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief description of collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of collateral \$ _____ Amount of arrearage and other charges at time case filed included in secured claim above, if any \$ _____ | | 6 UNSECURED PRIORITY CLAIM <input type="checkbox"/> Check this box if you have an unsecured priority claim. Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650*) earned within 90 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier. 11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal family or household use. 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child. 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other: Specify applicable paragraph of 11 U.S.C. § 507(a) _____ <small>Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small> | | | | | | | | | |
| 7 CREDITS The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. | | | | | | | | | | | |
| 8 SUPPORTING DOCUMENTS Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. | | | | | | | | | | | |
| 9 DATE-STAMPED COPY To receive an acknowledgment of your claim, please enclose a self-addressed stamped envelope and an additional copy of this proof of claim. | | | | | | | | | | | |
| The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 4:00 p.m., September 15, 2003, Pacific Daylight Time. <div>BY MAIL TO Bankruptcy Management Corporation P.O. BOX 900 El Segundo, CA 90245-0900</div> <div>BY HAND OR OVERNIGHT DELIVERY TO Bankruptcy Management Corporation 1330 East Franklin Avenue El Segundo, CA 90245</div> | | THIS SPACE FOR COURT USE ONLY FILED SEP 12 2003 BMC Fleming Companies Claim  11936 | | | | | | | | | |
| DATE SIGNED <u>9/11/03</u> | SIGN and print the name and title. If any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any). <u>Kathryn Mansfield, Exec Vice President</u> | | | | | | | | | | |
| Penalty for presenting fraudulent claim is a fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 AND 3571. See Other Side For Instructions | | | | | | | | | | | |



TARRAGON REALTY INVESTORS, INC.

September 11, 2003

Via Airborne Express

Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo, CA 90245

Re FAVAR Concepts, Ltd
Case No 03-10953

Dear Sir or Madam

I have enclosed one original and two copies of a Proof of Claim form completed by Creditor Tarragon Realty Investors, Inc along with the documents supporting this claim

Please acknowledge receipt of these documents by returning a file-stamped copy of the Proof of Claim in the enclosed self-addressed and stamped envelope

Very truly yours,

Kathryn Mansfield
Executive Vice President,
Secretary and Corporate Counsel

KM jw
Enclosures

CENTRAL MANAGEMENT, INC
9319 LBJ FREEWAY, SUITE 204
DALLAS TX 75243

FILMING COMPANIES, INC
C/O THE STAUBACH CO (LEASE ID TX-354)
1945 LAKELPOINT DRIVE
LEWISVILLE TX 75057

02 98 01 23 01
NOTICE # 1121

Billing for 03/03

Date 02/21/2003

| Charges | Current | Past Due | Total |
|-----------------|----------|-----------|-----------|
| ----- | ----- | ----- | ----- |
| BASE RENT | 7,593 75 | 13,631 34 | 21,225 09 |
| C A M | 1,894 93 | 3,789 86 | 5,684 79 |
| TAX REIMB | 1,298 77 | 2,597 54 | 3,896 31 |
| 02 CAM RECOVERY | | 7,693 26- | 7,693 26- |

Total due and payable

23,112 93

MAKE CHECK TO

TARRAGON REALTY INVESTORS, INC

SEND TO

UNIVERSITY CENTER
C/O CENTRAL MANAGEMENT, INC
9319 LBJ FREEWAY, SUITE 204
DALLAS, TX 75243

CENTRAL MANAGEMENT, INC
9319 LBJ FREEWAY, SUITE 204
DALLAS TX 75243

FILMING COMPANIES, INC
C/O THE STAUBACH CO (LEASE ID TX-354)
1945 LAKEPOINT DRIVE
LEWISVILLE TX 75067

02 98 01 23 01
NOTICE # 1131

Billing for 04/03

Date 03/21/2003

| Charges | Current | Past Due | Total |
|-----------|----------|----------|-----------|
| BASE RENT | 7,593 75 | 7,593 75 | 15,187 50 |
| C.A.M. | 1,894.93 | 1,894.93 | 3,789 86 |
| TAX REIMB | 1,298 77 | 1,767 95 | 3,066 72 |

Total due and payable

22,044 08
=====

MAF: CMT KTD

TARRACON REALTY INVESTORS, INC

REMIT TO

UNIVERSITY CENTER
C/O CENTRAL MANAGEMENT, INC.
9319 LBJ FREEWAY, SUITE 204
DALLAS, TX 75243

CENTRAL MANAGEMENT, INC.
9319 LBJ FREEWAY, SUITE 204
DALLAS TX 75243

FILMING COMPANIES, INC
c/o THE STAUBACH CO. (LEASE ID TX-354)
1945 LAKEPOINT DRIVE
LEWISVILLE TX 75057

02 98 01 23 01

NOTICE # 1144

Billing for 05/03

Date 04/21/2003

| Charges | Current | Past Due | Total |
|-----------|----------|-----------|-----------|
| BASE RENT | 7,593 75 | 10,862 71 | 18,456 46 |
| C A M | 1,894.93 | 3,789 86 | 5,684 79 |
| TAX REIMB | 1,298 77 | 2,597.54 | 3,896 31 |

Total due and payable

28,037 56

MARK CHECK TO

LARRAGON REALTY INVESTORS, INC

SHIP TO

UNIVERSITY CENTER
C/O CENTRAL MANAGEMENT, INC
9319 LBJ FREEWAY, SUITE 204
DALLAS, TX 75243

CENTRAL MANAGEMENT, INC
9319 IRVING BLVD, SUITE 204
DALLAS TX 75243

FIRMING COMPANIES, INC
c/o THE STAUDACH CO (IFASE ID TX-354)
1915 LAKEPOINT DRIVE
LEWISVILLE TX 75057

02 98 01 23 01

NOTICE # 1156

Billing for 06/03

Date 05/22/2003

**** PLEASE NOTE OUR NEW MAILING ADDRESS ****

| Charges | Current | Past Due | Total |
|-----------|----------|-----------|-----------|
| BASE RENT | 7,593 75 | 16,856 19 | 24,449 94 |
| C A M | 1,894 93 | 3,789 86 | 5,684 79 |
| TAX REIMB | 1,298,77 | 2,597 54 | 3,896 31 |

Total due and payable

34,031 04

MAKE CHECKS TO

PAMPAGON REALTY INVESTORS, INC

SEND TO

UNIVERSITY CENTER
c/o CENTRAL MANAGEMENT, INC
9319 IRVING BLVD, SUITE 204
DALLAS, TX 75243

CENTRAL MANAGEMENT INC
9319 LBJ FREEWAY SUITE 204
DALLAS TX 75243

FIRMING COMPANIES INC
c/o THE STAUBACH CO (LEASE ID IX-354)
1945 LAKEPOINT DRIVE
LEWISVILLE TX 75057

02 98 01 23 01

NOTICE # 1192

Billing for 07/03

Date 06/23/2003

REVISED INVOICE

| Charges | Current | Past Due | Total |
|-----------|----------|-----------|-----------|
| BASE RENT | 7,593.75 | 17,931.14 | 25,524.89 |
| C.A.M. | 1,894.93 | 3,789.86 | 5,684.79 |
| TAX REIMB | 1,298.77 | 2,597.54 | 3,896.31 |

Total due and payable

35,105.99

MAKE CHECK TO

HARRAGON REALTY INVESTORS, INC

REMIT TO

UNIVERSITY CENTER
c/o CENTRAL MANAGEMENT, INC
9319 LBJ FREEWAY SUITE 204
DALLAS, TX 75243

RETAIL LEASE

CENTER UNIVERSITY CENTER

LANDLORD TARRAGON REALTY INVESTORS, INC

TENANT FAVAR CONCEPTS, LTD

DBA "YES'LESS" FOOD & MORE

Original Deed

LEASE AGREEMENT
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LEASE AGREEMENT

THIS LEASE, dated for reference purposes July 11, 2000, is made by and between TARRAGON REALTY INVESTORS INC , as Landlord, and FAVAR CONCEPTS, LTD , a Delaware corporation, DBA "YES'LESS" FOOD & MORE, as Tenant

1 CERTAIN LEASE PROVISIONS

The descriptions and amounts set forth below are qualified by their usage elsewhere in this Lease, including those Articles referred to in parenthesis

1 1 Demised Premises (Article 2 1) Unit # 23 Center UNIVERSITY CENTER
Street Address 1529 N Valley Mills Drive
City WACO County MCLENNAN State TX Zip 76710

1 2 Gross Leasable Area of Demised Premises (Article 2 1) approximately 22,500 square feet

1 3 Use Clause (Article 2 3) Retail sale of packaged grocery and food items, produce, fresh meats and seafood and other grocery and general merchandise

1 4 Lease Term (Article 3 1) Ten (10) Years, Zero (0) Months

1 5 Lease Commencement Date (Article 3 1) The Commencement Date shall be determined as the earlier of (a) ninety (90) days from the date Landlord delivers the Demised Premises to Tenant for completion of Tenant's work, or (b) "opening for business" The anticipated delivery date is July 10, 2000

1 6 Lease Expiration Date (Article 3 1) The last day of the one hundred twentieth (120th) month following the Commencement Date

1 7 Security Deposit (Article 4) \$7,593 75

1 8 Tenant's Addresses (Article 5 1, 28 10)

(A) Notice Address Favar Concepts, Ltd , a Delaware corporation
3338 Commercial Avenue, Suite 11, Northbrook, IL 60062, Attn William Marquard, President
w/a copy to Darren J McCleve, P C , 1413 E Leland Street, Suite 100, Mesa, AZ 55203

(B) Billing Address Same

1 9 Landlord's Addresses (Article 5 1, 28 10)
(A) Notice Address TARRAGON REALTY INVESTORS, INC ,
3100 MONTICELLO, SUITE 200, DALLAS, TX 75205, with a copy to Central Management, Inc ,
5444 Westheimer, Suite 1925, Houston, TX 77056

(B) Payment Address TARRAGON REALTY INVESTORS, INC , c/o Central Management, Inc ,
5444 Westheimer, Suite 1925, Houston, TX 77056

1 10 Base Rent Commencement Date (Articles 5 1, 5 3) Except as may be otherwise provided for in this Lease, Base Rent shall become due and payable beginning on the Commencement Date as defined in Section 1 5 hereinabove

1 11 Base Monthly Installments (Articles 5 1, 5 3)
From Month 1 - Month 60 Annually \$ 91,125 00 Monthly \$ 7,593 75
From Month 61 - Month 120 Annually \$ 102,600 00 Monthly \$ 8,550 00 *

• Notwithstanding anything to the contrary, the Minimum Base Monthly Rent payable beginning in the sixty first (61st) month of the primary Term shall be adjusted and be equal to the greater of (a) eighty percent (80%) of the average total rent (percentage rent and Base Rent only) paid during the three complete lease years immediately preceding the adjustment date, or (b) \$8,550 per month In the event there is insufficient data to determine the adjusted rent on or before the sixty first (61st) month, Tenant shall pay to Landlord, as Base Rent, \$8,550 00 monthly until Landlord receives gross sales information from Tenant, as required under this Lease, and is able to determine the correct amount of the adjustment, such amount due to be retroactive to the adjustment date Upon such determination, Landlord shall provide written notice to Tenant of any underpayment of Base Minimum Rent as a result of rental averaging and Tenant shall have thirty days to pay the full amount of such underpayment The Monthly Base Rent due during the remaining Term shall be adjusted accordingly.

1 12 Percentage Rent (Articles 5 1 5 4) 2 00 % of Gross Sales above natural break point (Natural break point is determined by dividing the then current base minimum rent by 2 00%)

- 1 13 Additional Rent (Article 5 1, 5 5)
Estimated Operating Expense Charges \$ 1,200 00 per Month (Article 5 5)
*Electricity paid directly by Tenant all other utilities are included in Operating Expenses
- Estimated Real Estate Tax Charges \$ 1,106 25 per Month (Article 5 5)
_____ \$ _____ per Month (Article ____)
_____ \$ _____ per Month (Article ____)
- 1 14 Merchants' Association/Marketing Fund (Article 7) Intentionally deleted
- 1 15 Brokers (Article 28 7) Darrent J McCleve, P C , Real Estate and Development Services and Insignia Retail Group
- 1 16 This Lease consists of 28 Articles on 14 pages, plus Exhibits A, B C, D, E and 2 additional pages of Addenda

LANDLORD
TARRAGON REALTY INVESTORS, INC

TENANT
FAVAR CONCEPTS, Ltd , a Delaware corporation
dba/ "YES!LESS" FOOD & MORE

BY [Signature]
NAME James W. Chutkan
TITLE Gen. Vice President
DATE 7/11/00

BY [Signature]
NAME W H MacQuarrie
TITLE PRESIDENT
DATE 6-27-00

2 **PREMISES**

2.1 **Demised Premises** Landlord hereby leases to Tenant and Tenant leases from Landlord, for the Term, at the rental and upon all of the conditions set forth herein, that certain real property known by unit number and address specified in Article 1.1 hereof, consisting of the approximate gross leasable area specified in Article 1.2 hereof and which is referred to herein as the "Demised Premises". The Demised Premises are depicted in Exhibit A attached hereto. The Demised Premises are located in a Shopping Center, which Shopping Center the real property on which it is situated, walkways, driveways, fences, landscaping, and any parking facilities or structures appurtenant thereto, are hereinafter collectively referred to as the "Shopping Center", and described in Exhibit B attached hereto.

Both Landlord and Tenant shall have the right to verify the actual square footage of the Demised Premises from time to time during the term of this Lease. Measurements for determining the gross leasable area of said Demised Premises shall be taken from the outside face of all walls not shared with another tenant, and from the center line of all demising walls which are shared with other tenants. Pursuant to any subsequent measurement as the result of action by the Landlord or at the request of the Tenant, Landlord shall adjust the gross leasable area of the Demised Premises to reflect the actual area as determined by such method of measurement, however the adjustment shall not exceed ten percent (10%) of the approximate square footage of the Demised Premises specified in Article 1.2 hereof. Any cost to measure the Demised Premises shall be the sole obligation of the party initiating such determination.

2.2 **Proportionate Share** Tenant's share of the total gross leasable area of the Shopping Center shall be the percentage equal to a fraction, the numerator of which shall be the gross leasable area of the Demised Premises and the denominator of which shall be the total gross leasable area of the Shopping Center. Said percentage shall hereinafter be referred to as Tenant's "Proportionate Share". Tenant's Proportionate Share may be adjusted from time to time as the gross leasable area of the Demised Premises or of the Shopping Center changes, for whatever reason.

2.3 **Use Clause** Tenant is permitted to use the Demised Premises for the purposes specified in Article 1.3 hereof, and for no other purpose whatsoever. Tenant shall obtain, at its own expense, all necessary governmental licenses and permits for such use. Tenant shall not conduct any second hand, auction, distress, fire, bankruptcy or going-out-of-business sales.

2.4 **Common Area** As long as the Lease remains in effect and Tenant is not in default hereunder beyond any applicable cure period, Tenant shall have the non-exclusive right, in common with the Landlord, other tenants, subtenants, employees and invitees, to use the common areas of the Shopping Center, which include, but are not limited to, walkways, patios, landscaped areas and parks, sidewalks, service corridors, recreational facilities, restrooms, stairways, elevators, plazas, malls, thoroughways, parking areas and roadways, provided that Landlord shall have the right at any time to exclude therefrom such areas as Landlord may determine so long as access to the Demised Premises is not unreasonably denied, provided, however, in no event shall any changes adversely affect the "protected area" shown by crosshatch on Exhibit A or the approximate areas of access easements shown on Exhibit A.

3 **LEASE TERM**

3.1 **Term** The Term of this Lease shall be as defined in Article 1.4 hereof, commencing on the Lease Commencement Date specified in Article 1.5 hereof, and ending on the Lease Expiration Date specified in Article 1.6 hereof, unless sooner terminated pursuant to any provision of this Lease.

3.2 **Change in Lease Commencement Date** If for any reason Landlord cannot deliver possession of the Demised Premises to Tenant on the anticipated delivery date pursuant to Article 1.5, Landlord shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of the Tenant hereunder. However, in such case Tenant shall not be obligated under any provisions of this Lease until possession of the Demised Premises is tendered to Tenant, which date shall be the new delivery date for the purposes of calculating the Lease Commencement Date and the Lease Expiration Date as both are defined in Articles 1.5 and 1.6, respectively. In the event that Landlord shall permit Tenant to occupy Demised Premises prior to said delivery date, such occupancy shall be subject to all of the provisions of this Lease. Said early possession shall not advance the Lease Expiration Date.

Upon Landlord's request, the parties agree to execute in writing an Addendum to certify The Lease Commencement Date and The Lease Expiration Date hereof, but this Lease shall not be affected in any manner if either party fails or refuses to execute such Addendum.

4 **SECURITY DEPOSIT**

Tenant shall deposit with Landlord upon execution of this Lease the amount specified in Article 1.7 hereof to be held by Landlord as security for Tenant's faithful performance of Tenant's duties and obligations hereunder. Tenant shall not be entitled to interest on such deposit. If Tenant fails to pay rent or other charges due hereunder, or otherwise defaults with respect to the provisions of this Lease, Landlord may, without notice to Tenant, apply or retain all or any portion of said deposit for the payment of rent or other charges in default or for the payment of any sum to which Landlord may become obligated by reason of Tenant's default or to compensate Landlord for any loss or damage which Landlord may suffer thereby. If Landlord so uses or applies all or any portion of said deposit, Tenant shall, within ten (10) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore said deposit to the full amount heretofore stated. The deposit shall be returned to Tenant within sixty (60) days following the expiration of the Term hereof, provided Tenant has fully performed all of its duties and obligations hereunder. If Tenant shall default under this Lease more than two (2) times in any twelve (12) month period, irrespective of whether or not such default is cured, then the security deposit shall, within ten (10) days after demand by Landlord, be increased by Tenant to an amount equal to the greater of (i) three (3) times the amount specified in Article 1.7 or (ii) three (3) months' fixed rent.

5.1 **Payment** All rents shall be payable in advance, without prior demand or any right of offset or deduction, in monthly installments on the first day of each calendar month of the Term hereof. Tenant shall pay all rents to Landlord in lawful money of the United States of America at the address stated in Article 1.9(B) or to such other persons or at such other places as Landlord may designate in writing.

If the Lease Commencement Date occurs on a day other than the first day of a calendar month, then all rents shall be prorated for the balance of that month based upon the actual number of days the Lease is in effect during said calendar month. The term "Lease Year" as hereinafter used, refers to each successive twelve-month period beginning with the Lease Commencement Date as it may be adjusted pursuant to Article 3.2 hereof. Notwithstanding anything to the contrary contained herein, after Lease expiration Landlord shall have the right to reconcile all rents billed, paid and/or owed by Tenant during the Term hereof and thereafter submit a final billing to Tenant. Upon receipt thereof, Tenant shall submit payment in full to Landlord within thirty (30) days, or Landlord shall remit to Tenant any overpayment, if any within said time period.

5.2 **Late Fees** Should Tenant fail to pay when due any installment of rent or any other sum payable to Landlord under the terms of this Lease, Landlord may assess interest at the highest legal rate from and after the date on which any such sum shall be due and payable, and such interest, and/or a Late Fee of \$50.00, which shall be paid by Tenant to Landlord at the time of payment of the delinquent sum provided, however, nothing charged hereby shall ever exceed the amount that may properly be charged or recovered under the laws of the state in which the Demised Premises are located.

5.3 **Base Rent** Payment of Base Rent shall begin on the Base Rent Commencement Date specified in Article 1.10. If the Base Rent Commencement Date occurs on a day other than the first day of a calendar month, then Base Rent shall be prorated for the balance of that month based upon the actual number of days from the Base Rent Commencement Date through the last day of said calendar month. The amount of each monthly installment of Base Rent for the Demised Premises for the entire term of this Lease shall be as specified in Article 1.11.

5.4 **Percentage Rent** Tenant shall pay Landlord as Percentage Rent the percentage of Gross Sales (as hereinafter defined) stated in Article 1.12. A statement showing Gross Sales from the Demised Premises, together with any percentage rent due, shall be reported by Tenant annually to Landlord within ninety (90) days following the end of each Lease Year. Percentage Rent payable for any partial Lease Year shall be calculated by pro-rating the breakpoints as necessary to give appropriate weight to sales made in such partial Lease Year.

"Gross Sales" as used in this Lease shall mean and include (as of the date of the transaction) the sale price of all merchandise sold (including gift and merchandise certificates) and charges for all services and all other receipts from the business performed by Tenant or any other person, firm or corporation selling merchandise or services in, upon or from any part of the Demised Premises whether for cash or credit, and shall include gross sales from vending machines (except telephone and postage stamp), all orders by means of mail, telephone, electronic, video, computer or other technology-based system, whether existing now or developed in the future and all other such orders received or filled at the Demised Premises, all deposits not refunded to purchasers and orders taken at the Demised Premises although such orders may be filled elsewhere.

Not included in "Gross Sales" are the following: (a) refunds and trade-in allowances to customers, (b) the amount of all sales use, excise, retailer's occupation or similar taxes imposed in a specific amount, or percentage of, or determined by, the amount of retail sales made upon the Demised Premises, (c) returns to shippers and manufacturers, (d) the amount of sales not in the ordinary course of Tenant's business of fixtures, machinery or equipment which Tenant has the right to remove from the Demised Premises after use in the conduct of Tenant's business in the Demised Premises, (e) the value of any exchange or transfer of merchandise between stores of Tenant where such exchange or transfer is made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale made in, at or from the Demised Premises, (f) lottery tickets. No deduction shall be allowed for uncollected or uncollectible credit accounts, or charges for bank or other credit cards.

Tenant shall keep and maintain in a manner consistent with good accounting practice, accurate and complete records of its Gross Sales for each Lease Year for three (3) years thereafter. Within ninety (90) days of the end of each Lease Year, Tenant shall submit to Landlord a statement of total Gross Sales made during the previous Lease Year, said statement to be certified to be accurate by a Certified Public Accountant, and to be signed by Tenant. Landlord shall have the right as it deems necessary to audit all books and records relating to said statement at any time. If any audit reveals that Gross Sales for any Lease Year have been under-reported by more than two percent (2%), Tenant shall pay any Percentage Rent found to be due, the cost of the audit and interest on the unpaid Percentage Rent from the date due at the highest rate allowed by law.

5.5 **Additional Rent** Additional Rent, which is subject to periodic adjustment, shall be payable on and after the Lease Commencement Date in the amounts shown in Article 1.13 hereof. Both Tenant and Landlord expressly understand that all other sums excepting Base Rent which may become due from time to time under this Lease shall be deemed Additional Rent. Additional Rent shall include but not be limited to late charges, interest, operating expenses, real estate taxes, attorneys' fees, security deposits and any cash bond which may be required to be posted hereunder.

"Operating Expense Charge" as used herein, shall mean Tenant's Proportionate Share of the Shopping Center's operating expenses. Operating expenses are defined as the amounts paid or payable in connection with the management, maintenance, repair and operation of the Shopping Center. Operating expenses shall include but not be limited to landscaping, sprinklers, security, repaving and re-striping parking lots, cost of public utilities, liability and property damage insurance, roof and other repairs, lighting, maintenance, removal of snow, trash, rubbish, garbage and other refuse, machinery and equipment used in maintenance, costs of personnel to implement services, direct parking, and police Shopping Center, all costs, charges and expenses incurred by Landlord in connection with any change of any company providing utility services, including, without limitation, maintenance, repair, installation, and service costs associated therewith and seven percent (7%) of all the foregoing costs for Landlord's administrative and overhead costs. No Administrative fee shall be charged on utility cost, insurance premiums or Real Estate Tax Charges. Operating Expenses shall not include depreciation on the Shopping Center, cost of improvements made for other tenants of the Shopping Center, real estate broker's commissions, roof replacements, repairs to the structure of the Shopping Center, mortgage interest and capital items, as defined under Generally Accepted Accounting Principals ("GAPP"), except those capital items which are intended to reduce other

Operating Expenses or which are required to be made by the Landlord as a direct result of any governmental regulation or law that was not enacted on or before the date of this Lease. On an annual or other basis, Landlord shall mail to Tenant a statement of operating expenses and a calculation of Tenant's Proportionate Share thereof. Tenant shall pay Landlord for Tenant's Proportionate Share, less any payment of Estimated Operating Expense Charges for the fiscal period to which such expenses apply, within thirty (30) days after receipt thereof. Any overpayment by Tenant that is greater than an amount equal to the then current monthly base rent shall be refunded to Tenant by Landlord within thirty (30) days from such determination and any overpayment by Tenant that is less than an amount equal to the then current monthly Base Rent shall be applied as a credit against Tenant's proportionate share of any current or future Operating Expenses. Tenant's obligations shall be prorated to account for any fractional portion of a fiscal period included in the term of its Lease. Tenant shall also pay to Landlord, on the first day of each calendar month commencing on the Lease Commencement Date and continuing throughout the term of the Lease, the Estimated Operating Expense Charges stated in Article 1 13 as they may be adjusted from time to time. Notwithstanding the above, in no event shall the operating expenses (other than real estate taxes, utilities and insurance premiums) exceed fifty (\$0.50) per square foot in the first year of the Lease, and such operating expenses shall not increase at a rate greater than seven percent (7.00%) per year throughout the Term ("Operating Expense Cap").

"Real Estate Tax Charge" as used herein shall mean Tenant's Proportionate Share of general and special taxes, assessments, duties and levies charged and levied upon or assessed against the Shopping Center and/or any improvement situated on the real property on which the Shopping Center stands, any leasehold improvement, and all costs and fees incurred by Landlord in contesting or negotiating with the public authorities as to same. Upon receipt of the tax bill(s), Landlord shall mail to Tenant a statement of taxes and Landlord's calculation of Tenant's Proportionate Share thereof. Tenant shall pay Landlord for Tenant's Proportionate Share, less any payments of Estimated Real Estate Tax Charges for the fiscal year to which such taxes apply, within thirty (30) days after receipt thereof. Tenant's obligations shall be prorated to account for any fractional portion of a tax fiscal year included in the term of its Lease. Tenant shall also pay to Landlord, on the first day of each calendar month, commencing on the Lease Commencement Date and continuing throughout the term of the Lease, the Estimated Real Estate Tax Charges stated in Article 1 13 as they may be adjusted from time to time.

In the event of the enactment, adoption or enforcement by any governmental authority of any assessment, levy or tax, whether sales, use or otherwise, on or in respect of the rentals and charges set forth herein, or on or in respect of the right to lease or occupy the Shopping Center, the Demised Premises or both, Tenant shall pay such assessment, levy or tax to Landlord, or at Landlord's option, Tenant shall pay such assessment, levy or tax directly to the governmental authority. If such assessment, levy or tax is imposed on or in respect of all of the rentals derived from the Shopping Center, or is imposed on or in respect of the Shopping Center as a whole, Tenant shall pay to Landlord its Proportionate Share of such assessment, levy or tax. Notwithstanding the foregoing, this shall not impose upon Tenant the obligation to reimburse Landlord for any income, gift, inheritance or estate tax as such taxes are now structured.

Notwithstanding anything to the contrary hereinabove, prior to the beginning of each calendar year during the Term of the Lease, Landlord shall provide to Tenant an estimate of the Common Area Costs, excluding those costs which are outside of Landlord's direct control, including, but not limited to, insurance premiums, real estate taxes and utilities, shall not exceed the previous year's actual Common Area Costs by more than seven percent (7%), provided that this limitation shall not affect Tenant's liability for its proportionate share of the actual Common Area Costs as herein provided. The estimated Common Area Costs through the end of the first full calendar year during the Lease Term shall be as set forth in Article 1 13. Monthly, during the Term of this Lease, Tenant shall pay Landlord one-twelfth (1/12) of the Tenant's proportionate share of such estimated Common Area Costs, in advance, at the same time and place as the Base Rent. Within one hundred eighty (180) days after the end of each calendar year during the Term hereof, and within one hundred eighty (180) days following the expiration of the Term of this Lease, Landlord shall submit to Tenant an Adjustment Bill (defined below) for the actual amount of Common Area Costs required to be paid by Tenant. If Tenant's proportionate share of the actual Common Area Costs with respect to such period exceeds the aggregate amount(s) previously paid by Tenant with respect thereto, Tenant shall pay to Landlord the deficiency within thirty (30) days following written notice from Landlord. However, if the aggregate amount(s) previously paid by Tenant with respect thereto exceeds Tenant's proportionate share of the actual Common Area Costs for such period, then Landlord shall (a) administer a credit for such amount against Tenant's estimated monthly Common Area Costs for the current year or (b) in the event the amount of any overpayment is equal to or greater than the then due monthly base rent, Landlord shall pay Tenant a refund of such net surplus within thirty (30) days following the date of such determination. The "Adjustment Bill" and other billings shall set forth reasonable detail regarding the compilation of the total Common Area Costs during the subject period and the method of calculating Tenant's proportionate share. Upon Tenant's request, Landlord shall provide any additional information that Tenant may reasonably require in order to verify the date, amount and purpose of all Common Area Costs reflected in Landlord's Adjustment Bill, provided Tenant reimburses Landlord for Landlord's out of pocket expenses to produce such additional supporting materials, including reasonable accounting fees, copying costs, postage, and the costs of supplies.

5.6 **Additional Taxes.** If Landlord is assessed additional taxes or if its present taxes are increased as a result of any value placed on Tenant's leasehold, fixtures or furnishings, or goods and services, then immediately upon demand Tenant shall pay to Landlord the amount of said additional tax or the amount of the increase. If it is not lawful for Tenant to reimburse Landlord, the rent payable to Landlord under this Lease will be revised to yield to Landlord the same net rental after the imposition of any such tax upon Landlord as would have been payable to Landlord prior to the imposition of any such tax. Tenant will pay promptly when due all sales, merchandise or personal property taxes on Tenant's personal property in the Demised Premises and any other taxes payable by Tenant, the non-payment of which might give rise to a lien on the Premises or the Tenant's interest in the Premises.

6 UTILITIES

Tenant shall make application for, obtain, pay for and be solely responsible for all utilities required, used or consumed in the Demised Premises, including, but not limited to, gas, water (including water for domestic uses and for fire protection), telephone, electricity, sewer service, garbage collection services, HVAC maintenance services or any similar service. In the event that any charge for any utility supplied to the Demised Premises is not paid by Tenant to supplier when due, then Landlord may, but shall not be required to, pay such charge for and on behalf of Tenant, with any such amount paid by Landlord being repaid by Tenant to Landlord as Additional Rent promptly upon demand. Additionally, if Landlord shall elect to supply any utilities to the Demised Premises, then Tenant shall pay to Landlord the cost of its utility consumption and the cost of supplying separate metering devices if necessary. Landlord agrees that the cost to Tenant of any utilities supplied by Landlord shall not exceed the amount Tenant would

have paid if it independently obtained such service from the local utility supplier. Landlord and Tenant hereby agree that Landlord shall not be liable for any interruptions or curtailment in utility services due to causes beyond its control or due to Landlord's alteration, repair or improvement of the Demised Premises or the Shopping Center.

Notwithstanding the foregoing, if permitted by law, Landlord shall have the right at any time and from time to time during the Term of this Lease to either contract for services from an alternate utility provider(s) or continue to contract for services from the utility company (or companies) providing such service as of the date of this Lease. Tenant shall cooperate with Landlord and any utility provider of Landlord's choice at all times and, as reasonably necessary, allow Landlord and utility provider reasonable access to electric lines, feeders, risers, wiring and any other machinery within the Premises, provided that commercially reasonable efforts shall be made to minimize any interference with Tenant's operations and that Tenant will not be obligated to pay any amount in connection therewith. Landlord shall in no way be liable or responsible for any loss, damage or expense that Tenant may sustain or incur by reason of any change, failure, interference, disruption or defect in the supply or character of the utility service(s) furnished to the Premises, or if the quality or character of such service supplied by the utility provider is no longer available or suitable for Tenant's requirements, and no such change, failure, defect, unavailability, or unsuitability shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under the Lease.

7 **Intentionally omitted**

8 **ACCEPTANCE**

Tenant acknowledges that it has fully inspected the Demised Premises, including but not limited to any and all mechanical equipment, and hereby accepts such "As Is". Tenant also acknowledges that the Demised Premises are suitable for the purposes for which the same are leased in their present condition. Tenant further acknowledges that Landlord has made no warranties or representations as to either the condition or the suitability of the Demised Premises in terms of the Use as specified in Article 1.3. This Lease is and shall be considered to be, the only agreement between the parties hereto and their representatives and agents. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. Except as set forth in this Lease, there are no other representations or warranties between the parties and all reliance with respect to representations is solely upon the representations and agreements contained in this document.

9 **ASSIGNMENT OR SUBLETTING**

Tenant shall not voluntarily or by action of law transfer, assign, sublet, mortgage or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Demised Premises without Landlord's prior written consent (which consent shall not be unreasonably withheld), nor shall Tenant suffer or permit the Premises or any part thereof to be used or occupied by others without Landlord's prior written consent, which consent not to be unreasonably withheld or delayed. Any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be void and shall constitute a breach of the Lease. Regardless of Landlord's consent, no subletting or assignment or other transfer shall release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder. In the event the Base Rent payable under an assignment or sublease is greater than the base rent payable by Tenant, Landlord and Tenant shall split any excess or premium rent equally during the primary Term of the Lease; thereafter, all excess or premium rents shall be paid to Landlord.

As a condition of obtaining Landlord's consent, Tenant shall submit to Landlord with its request the effective date of the transfer (it must be at least sixty days after submission date), the name of the proposed assignee or subtenant, the terms and provisions of the proposed transaction, the proposed use, a financial statement, a business history and such other information as is necessary to demonstrate to Landlord that the proposed assignee or subtenant has business experience and financial strength and stability equal to or greater than that of Tenant.

In addition, Tenant shall execute an agreement with Landlord agreeing to pay to Landlord, as Additional Rent, fifty percent (50%) of all moneys or other consideration received by Tenant from its transferee in excess of the amounts owed by Tenant to Landlord under this Lease, which Additional Rent shall be paid to Landlord as and when received by Tenant. In the event Landlord shall consent to a sublease, assignment or transfer, Tenant shall pay Landlord \$100.00 for administrative fees incurred in connection with such consent.

10 **CONDUCT OF BUSINESS**

10.1 **Operation** Tenant covenants and agrees that it will operate and conduct within the Demised Premises the business it is permitted to operate and conduct under the provisions of this Lease, except while the Demised Premises are untenable by reason of fire or other casualty. Tenant agrees to conduct its business in a first class manner consistent with reputable business standards and practices, and that it will at all times keep and maintain within and upon the Demised Premises an adequate stock of merchandise and trade fixtures to service and supply the usual and ordinary demands and requirements of its customers and that it will keep the Demised Premises in a neat, clean and orderly condition. Notwithstanding anything to the contrary herein, nothing herein shall be construed as a covenant by Tenant to open or continuously operate its business from the Demised Premises. In the event Tenant ceases to operate its business, Tenant shall not be released from its obligations hereunder and shall continue to pay percentage rent during the period it is not operating assuming that Tenant's sales on a monthly basis are not less than the average sales during the 12 months preceding the discontinuance.

10.2 **Business Hours** Except as otherwise set forth herein, Tenant agrees to keep open the Demised Premises and to operate the business conducted therein during normal hours of operation for most other Yes!Less stores, and at such additional hours and on such days and evenings (including Sundays) as may be determined from time to time by Tenant. A vacation or abandonment

of their premises by any other tenant in the Shopping Center shall not in any way release Tenant from its obligations under this Lease

11 RULES & REGULATIONS

Tenant agrees to comply with and observe the following rules and regulations, and Tenant's failure to keep and observe them shall constitute a default of this Lease. Landlord reserves the right from time to time to amend or supplement said rules and regulations, and to adopt and promulgate additional rules and regulations applicable to the Demised Premises and the Shopping Center, provided that such additional rules and regulations do not materially affect Tenant's business and/or use of the Demised Premises. Notice of such amended or additional rules and regulations shall be given to Tenant, and Tenant agrees thereupon to comply with and observe all rules and regulations and amendments and additions thereto.

- 11.1 All loading and unloading of goods shall be done only in the loading and unloading area(s) designated for such purposes on the site plan (Exhibit A)
- 11.2 Intentionally Deleted
- 11.3 All garbage and refuse shall be kept in the kind of container specified by Landlord, and shall be placed outside the Demised Premises prepared for collection in the manner required by applicable laws and the rules and regulations promulgated hereunder. Tenant shall pay the cost of removal of any Tenant's refuse or rubbish.
- 11.4 No radio or television or similar device shall be installed without first obtaining in each instance Landlord's prior written consent. No aerial, antenna, satellite dish or similar device shall be erected on the roof or exterior walls of the Shopping Center or on the grounds, without the prior written consent of Landlord. Any such device so installed without such consent shall be subject to removal without notice at any time, without liability to the Landlord therefor, costs incurred by Landlord for such removal shall be paid by Tenant.
- 11.5 No loudspeakers, televisions, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the Demised Premises without the prior written consent of Landlord.
- 11.6 If the Demised Premises are equipped with heating facilities separate from those in the remainder of the Shopping Center, Tenant shall keep the Demised Premises at a temperature sufficient to prevent freezing of water pipes and fixtures.
- 11.7 Tenant shall keep exterior areas immediately adjoining the Demised Premises clean and free from snow, ice, dirt and rubbish to the satisfaction of Landlord, and Tenant shall not place or permit any obstruction or merchandise outside Tenant's Demised Premises.
- 11.8 The plumbing facilities shall not be used for any purpose other than that for which they are constructed, and no foreign substance of any kind shall be deposited therein. The expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by the tenant whose employees, agents or invitees shall have caused same. Tenant shall be responsible for all sanitary sewer lines up to the limit of Tenant's private sewer line, whether or not such lines are located within the Demised Premises, provided, however, Landlord shall be responsible for maintenance, repair and replacement of the main sewer lines serving the Shopping Center and the Demised Premises.
- 11.9 Tenant shall, at Tenant's cost, employ a qualified pest extermination contractor, whose services shall be scheduled not less than bi-monthly and so as not to unreasonably interfere with the operation of the Shopping Center.
- 11.10 Tenant shall not burn any trash or garbage of any kind in or about the Shopping Center.
- 11.11 Tenant and its employees shall park their motor vehicles only in those parking areas designated for that purpose by Landlord, and Tenant shall provide Landlord with a list of its employees' motor vehicle license tag numbers. If Tenant and/or its employees are in violation of this rule, Landlord shall have the right to tow said vehicle at Tenant's expense.
- 11.12 Tenant shall not make noises, cause disturbances, or create odors which may be offensive to other tenants of the Shopping Center or their employees, agents, customers or invitees.
- 11.13 Tenant's access to the roof is limited to maintenance of equipment installed with Landlord's approval, and inspections for damage to that equipment. Neither Tenant nor its agents or employees shall enter upon the roof at any time without the express prior approval of Landlord.
- 11.14 Neither Tenant, its agents nor its employees shall solicit business in the parking area or other common areas, nor shall Tenant, its agents or its employees, distribute or display any handbills or other advertising matter in or on automobiles or other vehicles parked in the parking area, or in other common areas. If any such materials are distributed, Tenant shall pay Landlord for the cost of cleanup.
- 11.15 There shall be no commercial use of any of the common area.

12 DEFAULTS AND REMEDIES

12.1 **Defaults.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(A) The failure by Tenant to make any payment of Base Rent, Additional Rent or any other payment required to be made by Tenant hereunder within five (5) days from the date of Landlord's written notice that the payment due was not received on or before the due date, or

(B) More than three (3) occurrences by Tenant within any one Lease Year for the nonpayment of rent when due hereunder necessitating that Landlord because of such non-payment, shall have served upon Tenant within said Lease Year more than three (3) written notices. This default shall be deemed a non-curable default, or

(C) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than Paragraph (A) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant, or

(D) The insolvency of the Tenant or the execution by Tenant of an assignment for the benefit of creditors, or

(E) The filing by Tenant for reorganization or arrangement under any law relating to bankruptcy or insolvency, or

(F) The appointment of a receiver or trustee to take possession of substantially all of Tenant's assets located at the Demised Premises or of Tenant's interest in this Lease or

12.2 **Remedies** Upon the occurrence of any event of default, Landlord shall, beyond any applicable grace or cure period, have the right at any time thereafter to pursue any one or more of the following remedies with or without notice or demand. Pursuit of any of the following remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rents due to Landlord hereunder or of any damages accruing to Landlord by reason of the Tenant's violation of any of the terms, conditions or covenants herein contained.

(A) Terminate this Lease, in which event Tenant shall immediately surrender the Demised Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearage in rents, enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be occupying the Demised Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim or damages therefor. Tenant agrees to pay to Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Demised Premises on satisfactory terms or otherwise.

(B) Enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be occupying the Demised Premises, by force if necessary, without being liable for prosecution or any claim for damages therefor, and relet the Demised Premises and receive rents therefrom. Tenant agrees to pay Landlord on demand any deficiency that may arise by reason of such reletting.

(C) Enter upon the Demised Premises by force if necessary, without being liable for prosecution or any claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease. Tenant agrees to reimburse Landlord on demand for the actual expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant from such action, provided Landlord acted within and according to applicable law.

(D) At its option, if permitted by applicable law, declare the rents for the entire remaining Term, and other indebtedness if any, immediately due and payable without regard to whether or not possession shall have been surrendered to or taken by Landlord, and may commence action immediately thereupon and recover judgment therefor.

Any rents which may be due Landlord, whether by acceleration or otherwise, as provided herein, shall include Base Rent, Percentage Rent, if any, and any Additional Rent provided for herein. It shall be deemed that Percentage Rent for any period after such default would have been at a monthly rate thereafter equal to the average monthly Percentage Rent which Tenant was obligated to pay Landlord under Article 5.4 during the preceding year.

(E) Demand payment for any rents be made by certified check, cashier's check or money order.

13 INSURANCE

13.1 **Tenant's Insurance** Tenant, at its sole expense, shall obtain and keep in force during the Term of this Lease the following policies of insurance, naming Landlord as a co-insured:

(A) Comprehensive general liability insurance and personal injury liability insurance, insuring Tenant against liability for injury to persons or damage to property occurring in or about the Demised Premises or arising out of the ownership, maintenance, use or occupancy thereof. Said insurance shall specify a single occurrence policy limit of at least \$1,000,000,

(B) All Risk property insurance, including coverage against damage caused by fire, windstorm, explosion, aircraft, vehicles, smoke, riot or vandalism on all of Tenant's personal property, trade fixtures, leasehold improvements and furnishings in the minimum amount of 80% of their replacement cost,

(C) Glass Insurance covering 100% of the replacement cost of all storefront glass at the Demised Premises, and

(D) Worker's Compensation insurance insuring Tenant from all claims for personal injury, disease and/or death under the worker's compensation law of the state where the Shopping Center is located, in the amounts required by law.

13.2 **Landlord's Insurance** Landlord shall obtain and keep in force during the Term of this Lease fire and extended coverage in amounts equal to the full replacement value of the improvements, including general liability insurance, on the Shopping Center and all common areas within said Shopping Center. Tenant agrees that it will not store, keep, use, sell or offer for sale in or upon the Demised Premises, gasoline and related products, firearms, explosives or any other article which may be prohibited by the standard form of fire insurance policy, or which will increase Landlord's insurance cost.

13.3 **Insurance Policies** Insurance required to be obtained by Tenant hereunder shall be in companies rated A+, AAA or better in "Best's Insurance Guide", and licensed to do business in the state where the policy is written. Tenant shall furnish Landlord proof of insurance policies within thirty (30) days after the execution of this Lease but not later than ten (10) days prior to possession of Demised Premises. Such policies shall provide that coverage may not be canceled or reduced without at least ten (10) days written notice first being given to Landlord. If Tenant shall fail to procure and maintain the insurance required hereunder, Landlord may but shall not be required to procure and maintain the same, and any amounts paid by Landlord for such insurance shall be Additional Rent, which shall be due and payable by Tenant on the next succeeding date on which a Base Rent installment is due.

13.4 **Waiver of Subrogation** As long as their respective insurers so permit without additional premium, Tenant and Landlord each waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other for loss or damage to such waiving party or its property or the property of other under its control, where such loss or damage is insured under any insurance policy in force at the time of such loss or damage.

14 **NO PERSONAL LIABILITY OF LANDLORD**

"Landlord", as used in this Lease insofar as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners at the time in question of the Demised Premises. In the event of any transfer of title, the Landlord named herein shall automatically be freed and relieved from and after the date of such transfer or conveyance of all personal liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed, provided that any funds in the hands of such Landlord at the time of such transfer shall be turned over to the grantee. Tenant shall look solely to the estate and property of Landlord in the Shopping Center of which the Demised Premises are a part for the satisfaction of Tenant's remedies for collection of a judgment or other judicial process requiring the payment of money by Landlord in the event of any default or breach by Landlord of any of the terms, covenants and conditions of Lease to be observed and/or performed by Landlord, and no other property or assets of Landlord, its partners or agents shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies. However, Landlord shall be liable to damages to Tenant arising from (a) Landlord's fraudulent conduct, or (b) Landlord's willful misapplication or misappropriation of (i) insurance proceeds or any award paid in the event of a condemnation or (ii) any amounts paid in escrow or trust or otherwise to Landlord to be used for a specific purpose as set forth in this Lease.

15 **HOLD HARMLESS**

Subject to Section 13.4, Tenant covenants and agrees to indemnify and hold Landlord harmless from and against any and all losses, claims, demands, damages (but not consequential damages), liabilities or expenses (including reasonable attorneys' fees) resulting from the negligence or willful acts or omissions of Tenant or its agents, contractors, subcontractors or employees in the use, occupancy, repair or alteration of the Demised Premises. The foregoing shall not apply to any loss, claim, damage, liability or expense arising out of or resulting from any negligent, willful or otherwise wrongful act or omission of Landlord or its agents, contractors, subcontractors or employees. Subject to Section 13.4, Landlord covenants and agrees to indemnify and hold Tenant harmless from and against any and all losses, claims, demands, damages (but not consequential damages), liabilities or expenses (including reasonable attorneys' fees) resulting from the negligence or willful acts or omissions of Landlord or its agents, contractors, subcontractors or employees in the use, occupancy, operation or maintenance of the Common Area or any portion of the Shopping Center other than the Demised Premises or from any defect in the Demised Premises which Landlord is responsible to correct under the terms of this Lease and which Landlord fails to correct within a reasonable period of time after notice under the circumstances. The foregoing shall not apply to any loss, claim, damage, liability or expense arising out of or resulting from any negligent, willful or otherwise wrongful act or omission of Tenant or its agents, contractors, subcontractors or employees.

16 **ACCESS TO DEMISED PREMISES**

Landlord, its agents, representatives and designees shall have the right to enter the Demised Premises upon 48 hours notice to Tenant, if possible under the circumstances, to examine and inspect the same, or to make such repairs, additions or alterations as Landlord may deem necessary or proper for the safety, improvement or preservation thereof. Landlord shall also have the right to enter the Demised Premises during Tenant's regular business hours upon reasonable notice to Tenant, to exhibit same to prospective purchasers, mortgagees, lessees and tenants. During the ninety (90) days prior to the Lease Expiration Date, Landlord may place upon the Demised Premises "For Lease" or other similar signs which Tenant shall permit to remain thereon displayed.

17 **ALTERATIONS**

17.1 **Alterations by Landlord** The Shopping Center and common areas are at all times subject to the exclusive control and management of Landlord. Without limiting the generality of the foregoing, Landlord has the right in its management and operation of the Shopping Center to do and perform such acts in and to the Shopping Center as in the use of good business judgment the Landlord determines to be advisable for the more efficient and proper operation of the Shopping Center, including

(A) Obstruct or close off all or any part of the Shopping Center for the purpose of maintenance, repair or construction, provided, however, Landlord shall use commercially reasonable efforts to maintain access and parking for Tenant and the Demised Premises.

- (B) Use any part of the Common Area (except in Tenant's Protected Area indicated by cross-hatching on Exhibit A) for merchandising, display, decorations, entertainment, and structures designed for retail selling or special features or promotional activities,
- (C) Change area, arrangement or use of Shopping Center or any part thereof,
- (D) Construct other buildings, structures or improvements in the Shopping Center and make alterations thereof, additions thereto subtraction therefrom, or rearrangements thereof, build additional stories on any building, and construct additional buildings or facilities adjoining or proximate to the Shopping Center, provided no such building structures or improvements are constructed within Tenant's protected area shown by crosshatch on Exhibit A
- (E) Construct multiple deck, elevated or underground parking facilities, and expand, reduce or alter same in any manner whatsoever, provided such work does not reduce Tenant's parking area within the Tenant's protected area shown by crosshatch on Exhibit A

17.2 **Alterations by Tenant** Tenant shall not make any structural or mechanical alterations in any portion of the Demised Premises, nor make any alterations in the storefront or the exterior of the Demised Premises without the prior written consent of Landlord, such approval not to be unreasonably withheld. Tenant shall not make any interior alterations at a cost in excess of \$5,000 without first obtaining written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. All alterations, additions and improvements provided for herein shall become, upon completion, the property of Landlord subject to the terms of this Lease, however if Landlord at its sole option so elects, Tenant shall promptly remove all alterations, additions and improvements and any other property placed in the Demised Premises by Tenant and Tenant shall be responsible for any damage caused by such removal. In the event Tenant does not remove any improvements or alteration upon surrender of the Premises, and so long as Landlord has not granted its approval to install such improvements or alterations subject to a condition to remove and restore, then such improvements or alterations shall become a part of the Premises and property of the Landlord.

18 **REPAIRS AND MAINTENANCE**

18.1 **Landlord's Obligations** Landlord, at Landlord's cost, shall keep in good order, condition and repair the structural portions of the Shopping Center, the roof, and all Common Areas of the Shopping Center and all costs incurred by Landlord in making such repairs or performing such maintenance shall be Operating Expenses as defined in Article 5.5, provided that Landlord shall have no obligation to perform any act which is the obligation of Tenant or any other tenant in the Shopping Center.

18.2 **Tenant's Obligations** Tenant, at Tenant's expense, shall keep in good order, condition and repair the Demised Premises and every part thereof including, without limiting the generality of the foregoing, all plumbing and sewer lines to the point where they intersect with common lines, heating, air conditioning, ventilating, electrical and lighting facilities and equipment within the Demised Premises up to and including Tenant's meter and electrical breakers, fixtures, interior walls and interior surfaces of exterior walls, ceilings, windows, doors and plate glass located within or upon the Demised Premises. All repairs made by Tenant shall be at least of the same quality, design and class as that of the original work.

If Tenant refuses or neglects to make repairs and/or to maintain the Demised Premises or any part thereof in a manner reasonably satisfactory to Landlord, Landlord shall have the right, but not the obligation, upon giving Tenant reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant. Such work shall be paid for by Tenant, as Additional Rent, promptly upon receipt of a bill therefor. Tenant shall, during the Term of this Lease, provide scheduled monthly heating and air conditioning service and inspections in the form of a preventive maintenance contract with a reputable commercial service contractor.

18.3 **Surrender** On the last day of the Term hereof, or on any sooner termination or date on which Tenant ceases to possess the Demised Premise, Tenant shall surrender the Demised Premises and the keys thereto to Landlord in good and clean condition, ordinary wear and tear excepted. Prior to such surrender, Tenant shall repair any damage to the Demised Premises occasioned by its removal of trade fixtures, furnishings and equipment, which repair shall include the patching and filling of holes and repair of structural damage.

19 **LIENS**

Tenant shall suffer no liens of any kind to be placed upon the Demised Premises or the Shopping Center. If any lien is placed upon the Demised Premises or the Shopping Center as a result of any work done on behalf of Tenant, or as a result of any goods or services sold or rendered to Tenant, then Tenant shall, within twenty (20) days of the imposition of the lien, cause said lien to be removed at Tenant's sole expense. Other than the initial Tenant Improvements, at any time Tenant either desires to or is required to make repairs or alterations in accordance with this Lease costing in excess of \$50,000, Landlord may require Tenant, at Tenant's sole cost and expense, to obtain and provide to Landlord a lien and completion bond (or such other applicable bond as determined by Landlord) in an amount equal to the estimated cost of such improvements to insure Landlord against liability including but not limited to liability for mechanics' and materialmen's liens and to insure completion of the work. Notwithstanding the foregoing, Tenant hereby indemnifies Landlord from and against any cost, expense, claims, and liability that may arise as a result of any lien being filed or placed upon the Demised Premises or the Shopping Center as a result of the initial Tenant Improvements and Tenant shall diligently prosecute removal of said lien.

20 DAMAGE OR DESTRUCTION

If the Demised Premises or the Shopping Center shall be damaged or destroyed by fire or other casualty, Landlord shall have the following options

20.1 Lease Termination

(A) If the Shopping Center or the Demised Premises is damaged or destroyed to the extent of fifty percent (50%) or more of its reasonable market value prior to the time of said damage or destruction, Landlord may terminate this Lease as of the date of the occurrence. Notwithstanding the preceding sentence, if a casualty described in the preceding sentence occurs more than twenty-four (24) months prior to the expiration of the Term, provided the insurance proceeds are adequate to complete the required repairs and restoration and Tenant shall waive in writing any right that Tenant may have to terminate the Lease prior to the Lease Expiration Date (as contained in Paragraph 2 of the Addendum to Lease attached and a part hereof), then Landlord shall repair or restore the Demised Premises to the same condition as existed prior to such casualty.

If (i) the Shopping Center or the Demised Premises is damaged or destroyed to the extent of fifty percent (50%) or more of its reasonable market value prior to the time of said damage or destruction, (ii) such casualty is uninsured or the insurance proceeds are insufficient to complete the required repairs and restoration, and (iii) Landlord does not commence such repairs and restoration and commit in writing to diligently complete same within the later of (a) twenty (20) days after written request by Tenant that Landlord commence restoration, or (b) sixty (60) days following the date of the casualty, then Tenant shall have the right to terminate this Lease by written notice to Landlord given at anytime prior to Landlord's commencement of the repair or restoration.

(B) If the Shopping Center or the Demised Premises is damaged or destroyed to the extent of less than fifty percent (50%) of its reasonable market value prior to the time of said damage or destruction but the Shopping Center cannot, in the sole judgment of Landlord, be operated economically as an integral unit then Landlord may terminate this Lease as of the date of the occurrence, except when proceeds from Landlord's insurance shall be adequate to complete the required repairs and restoration in which case the Landlord shall commence the repairs and restoration within thirty (30) days from its receipt of insurance proceeds.

(C) If the Demised Premises are damaged or destroyed within the last twenty four (24) months of the Term of this Lease or any extension thereof, to the extent that Tenant cannot carry on Tenant's business, then Landlord or Tenant may terminate this Lease as of the date of the occurrence.

(D) In the event of any casualty not covered by (A), (B) or (C) above, Landlord shall repair or restore the Demised Premises to the same condition as existed prior to such casualty.

20.2 Repair or Restoration If Landlord elects to repair or restore the Demised Premises to the same condition as existed before such damage or destruction, it shall proceed with reasonable dispatch to perform the necessary work. However, notwithstanding anything in this Lease to the contrary, if the cost of repair or restoration exceeds any insurance proceeds available for such work, Landlord may terminate this Lease unless Tenant shall, after notice of the amount of deficiency, pay to Landlord that deficiency. Upon Landlord's election to repair or restore the Demised Premises, the Base Rent shall be abated until such work is completed, the Demised Premises are delivered to Tenant and for sixty (60) days thereafter or until Tenant opens for business, whichever is sooner, but Landlord shall not be liable to Tenant for any delay which arises by reason of labor strikes, adjustments of insurance or any other cause beyond Landlord's control, and in no event shall Landlord be liable for any loss of profits or income. If fire or other casualty causing damage to the Demised Premises or other parts of the Shopping Center shall have been caused by the negligence or misconduct of the Tenant, its agents, representatives, employees, or of any other person entering the premises under express or implied invitation of Tenant, such damage shall be repaired by Landlord at the expense of Tenant despite contrary provisions appearing in this Lease and in such event there shall be no abatement of rent.

21 CONDEMNATION

If the Demised Premises shall be taken by right of eminent domain, in whole or in part, for public purposes or should be sold by Landlord under the threat of the exercise of such power, then this Lease, at the option of Landlord, shall terminate and the Rent shall be properly apportioned to the date of such taking, and the Landlord shall receive the entire award for the lands and improvements so taken, or the entire amount of any payment made under the threat of the exercise of power or eminent domain, and Tenant shall have no claim for the value of any portion of its leasehold estate so terminated except any claim to which Tenant is solely entitled not affecting Landlord's claim. If less than twenty-five percent (25%) part of the Demised Premises shall be taken, this Lease shall not terminate but Landlord, at its sole expense, shall promptly restore and reconstruct the Demised Premises, provided such restoration and reconstruction shall make the same reasonably suitable for the uses for which the Demised Premises are leased, but in no event shall Landlord be required to expend any amount greater than the amount received by Landlord as compensation for the portion of the Demised Premises taken by the condemnor. Tenant's rental obligations during the unexpired portion of this Lease shall be adjusted proportionately to reflect the gross leasable area remaining in the Demised Premises, as of the date on which the condemning authority takes title or possession.

22 FORCE MAJEURE

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, inability to procure materials, loss of utility services, restrictive governmental laws or regulations, riots, insurrection, war, acts of God or other reason or a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not operate to excuse Tenant from the prompt payment of Rent or any other charges under this Lease.

23 **Intentionally Deleted**

24 **SUCCESSION TO LANDLORD'S INTEREST**

24 1 **Attornment** Tenant shall attorn and be bound to any of Landlord's successors under all the terms, covenants and conditions of this Lease for the balance of the remaining Term

24 2 **Subordination** This Lease shall be subordinate to the lien of any mortgage or security deed or the lien resulting from any other method of financing or refinancing now or hereafter in force against the Shopping Center, any portion thereof, or upon any buildings hereafter placed upon the land of which the Demised Premises are a part, and to any and all advances to be made under such mortgages, and all renewals, modifications, extensions consolidations and replacements thereof The aforesaid provisions shall be self-operative and no further instrument shall be required to evidence such subordination Tenant covenants and agrees to execute and deliver upon demand such further instrument or instruments subordinating this Lease on the foregoing basis to the lien of any such mortgage or mortgages as shall be desired by Landlord and any mortgagees or proposed mortgagees, and hereby irrevocably appoints Landlord the attorney-in-fact of Tenant to execute and deliver such instrument or instruments within fifteen (15) days after written notice to do so

24 3 **Intentionally Deleted**

24 4 **Estoppel Certificate** Within ten (10) days after request therefor by Landlord, or in the event that upon any sale, assignment or hypothecation of the Demised Premises and/or the land thereunder by Landlord an estoppel certificate shall be required from Tenant Tenant agrees to deliver in recordable form a certificate to any proposed mortgagee or purchaser, or to Landlord, certifying that this Lease is unmodified and in full force and effect (or if modified, that the same is in full force and effect as modified, and stating the modifications) that there are no defenses or offsets thereto (or stating those claimed by Tenant) and the dates to which Base Rent Percentage Rent and Additional Rent have been paid

25 **SURRENDER OF PREMISES**

25 1 At the expiration or earlier termination of this Lease, Tenant shall surrender the Demised Premises to Landlord broom clean and in the same condition as when tendered by Landlord, reasonable wear and tear and insured casualty excepted Tenant shall promptly repair any damage to the Demised Premises caused by the removal of any furniture, trade fixtures or other personal property placed in the Demised Premises

25 2 Should Tenant with Landlord's written consent, hold over at the end of the term hereof, Tenant shall become a Tenant at will and any such holding over shall not constitute an extension of this Lease During such holding over, Tenant shall pay rent and other charges at the highest monthly rate provided herein If Tenant holds over at the end of the term hereof without Landlord's written consent Tenant shall pay Landlord as liquidated damages a sum equal to 150% of the rent to be paid by Tenant to Landlord for all the time Tenant shall so retain possession of the Demised Premises, provided that the exercise of Landlord's rights under this clause shall not be interpreted as a grant of permission to Tenant to continue in possession

26 **SIGNS**

Tenant shall not have the right to erect signs on the exterior walls of the Demised Premises or anywhere else on the property without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed in the case of signage on the exterior walls of the Demised Premises At lease termination, Tenant shall remove all signs and at its own expense repair any damage caused by such removal All and any signs erected by Tenant must meet the criteria established by Landlord in Exhibit "D" hereof Notwithstanding anything to the contrary Landlord shall grant Tenant, at Tenant's expense the right to install Tenant's name and logo on the Shopping Center's central monument/pylon sign, the design and materials for such monument/pylon sign to be subject to Landlord's reasonable approval and specifications Tenant shall be initially permitted to install its signage on the uppermost panel measuring 13 feet in length by 9 75 inches high, on both sides of the Shopping Center's monument/pylon sign, however, Landlord reserves the right to remove, redesign or relocate said monument/pylon sign at Landlord's discretion throughout the Term of this Lease and from time to time

27 **HAZARDOUS MATERIALS**

Tenant covenants not to introduce any hazardous or toxic materials onto the Shopping Center, Demised Premises, or the grounds surrounding the Shopping Center, without (a) first obtaining Landlord's written consent and (b) complying with all applicable federal state and local laws or ordinances pertaining to the transportation, storage use or disposal of such materials, including but not limited to obtaining proper permits

If Tenant's transportation, storage use or disposal of hazardous or toxic materials on the Shopping Center, Demised Premises, or the grounds surrounding the Shopping Center results in (1) contamination of the soil or the surface or ground water or (2) loss or damage to person(s) or property, then Tenant agrees to respond in accordance with the following paragraph

Tenant agrees (i) to notify Landlord immediately of any contamination, claim of contamination, loss or damage, (ii) after consultation and approval by Landlord, to clean up and (iii) to indemnify defend and hold Landlord harmless from and against any claims suits, causes of action costs and fees, including attorney's fees, arising from or connected with any such contamination claim of contamination, loss or damage This provision shall survive the termination of this Lease

28 1 **Partial Invalidity** If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law

28 2 **Successors and Assigns** Except as otherwise provided herein, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, executors successors and assigns

28 3 **Waiver** The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord or Tenant, unless such waiver is in writing by Landlord or Tenant, as the case may be

28 4 **Accord and Satisfaction** No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided

28 5 **Attorneys' Fees** In the event any action is commenced for any breach of any covenant, condition or agreement herein contained, the prevailing party in such action shall be entitled to receive all costs incurred in such action, including without limitation, all reasonable attorneys' fees

28 6 **Time Is Of The Essence** Time is of the essence of this agreement

28 7 **Broker's Commission** Tenant warrants that it has had no dealings with any broker or agent in connection with this Lease except as designated in Article 1 5 and covenants to pay, hold harmless and indemnify Landlord from and against any and all cost expense or liability for any compensation, commissions and charges claimed by any broker or agent with respect to this Lease or the negotiation thereof

28 8 **Entire Agreement** This Lease and the Exhibits and Addenda, if any, attached hereto and forming a part hereof, set forth all the covenants promises agreements, conditions and understandings between Landlord and Tenant concerning the Demised Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them

28 9 **No Recordation** Tenant's recordation of this Lease or any memorandum or short form of it will be void and a default under this Lease

28 10 **Applicable Law** The validity, performance and enforcement of this Lease shall be governed by the laws of the state in which the Shopping Center is located

28 11 **Notices** Whenever under this Lease provision is made for any demand notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other party, it shall be in writing and sent by certified mail return receipt requested, postage prepaid, to the address set forth in Articles 1 8(A) and 1 9(A) hereof or to such other address as may be given by a party to the other by proper notice hereunder The date on which the certified mail is deposited with the United States Postal Service shall be the date on which any proper notice hereunder shall be deemed given

28 12 **Quiet Enjoyment** Landlord warrants that it has full right and power to execute and perform this Lease and provided Tenant is not in default beyond any applicable cure period Landlord covenants and agrees that Tenant shall have peaceful and quiet enjoyment of the Premises and all appurtenances belonging thereto, including the use of Common Areas, throughout the Lease Term and all Option Periods or until this Lease is earlier terminated as provided herein, subject, however, to the express terms covenants and conditions contained in this Lease.

28 13 **Compliance with Law** Tenant shall comply with all present and future laws, ordinances and regulations applicable to the use of Demised Premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisance in upon or connected with the Demised Premises, all at Tenant's sole expense

28 14 **Superior Law** If any provision of this Lease is ever in conflict with any applicable law or regulation, either now in effect or hereafter adopted, said law or regulation shall control

28 15 **Guarantor** In the event that there is a guarantor of this Lease, said guarantor shall have the same obligations as Tenant under this Lease

28 16 **Intentionally Deleted**

28 17 **Landlord's Fees** Whenever Tenant requests Landlord to take any action or give any consent required or permitted under this Lease, Tenant will reimburse Landlord for all of Landlord's out of pocket costs incurred in reviewing the proposed action or consent, including, without limitation, reasonable attorneys', engineers' architects', accountants' and other professional fees, within ten (10) days after Landlord's delivery to Tenant of a statement of such costs Tenant will be obligated to make such reimbursement without regard to whether Landlord consent to any such proposed action

28 18 **Exhibits** The Exhibits listed in Article 1 16 are attached hereto and by this Article made a part hereof


28 19 **Execution of Lease** The submission of this Lease for examination does not constitute a reservation of or option for the Demised Premises and this Lease becomes effective as a lease only upon execution and delivery thereof by Landlord and Tenant If Tenant is a corporation, Tenant shall furnish Landlord with such evidence as Landlord reasonably requires to evidence the binding effect on Tenant of the execution and delivery of this Lease


28 20 **Non-Disturbance Agreement** As of the date hereof, Landlord has pledged the Shopping Center as collateral in a general collateral pool to secure a credit line extended by a commercial lender for Landlord's benefit Furthermore, Landlord reserves the right to obtain additional loans or otherwise refinance the Shopping Center from time to time Whereas Tenant has requested that a non-disturbance agreement be executed between Tenant and Landlord's lender(s), Landlord hereby consents and agrees to use its reasonable efforts to obtain a subordination and non-disturbance agreement in a form and substance as required by Landlord's lender(s)

IN WITNESS WHEREOF, the parties have subscribed their respective signatures in execution hereof, on the day and year written

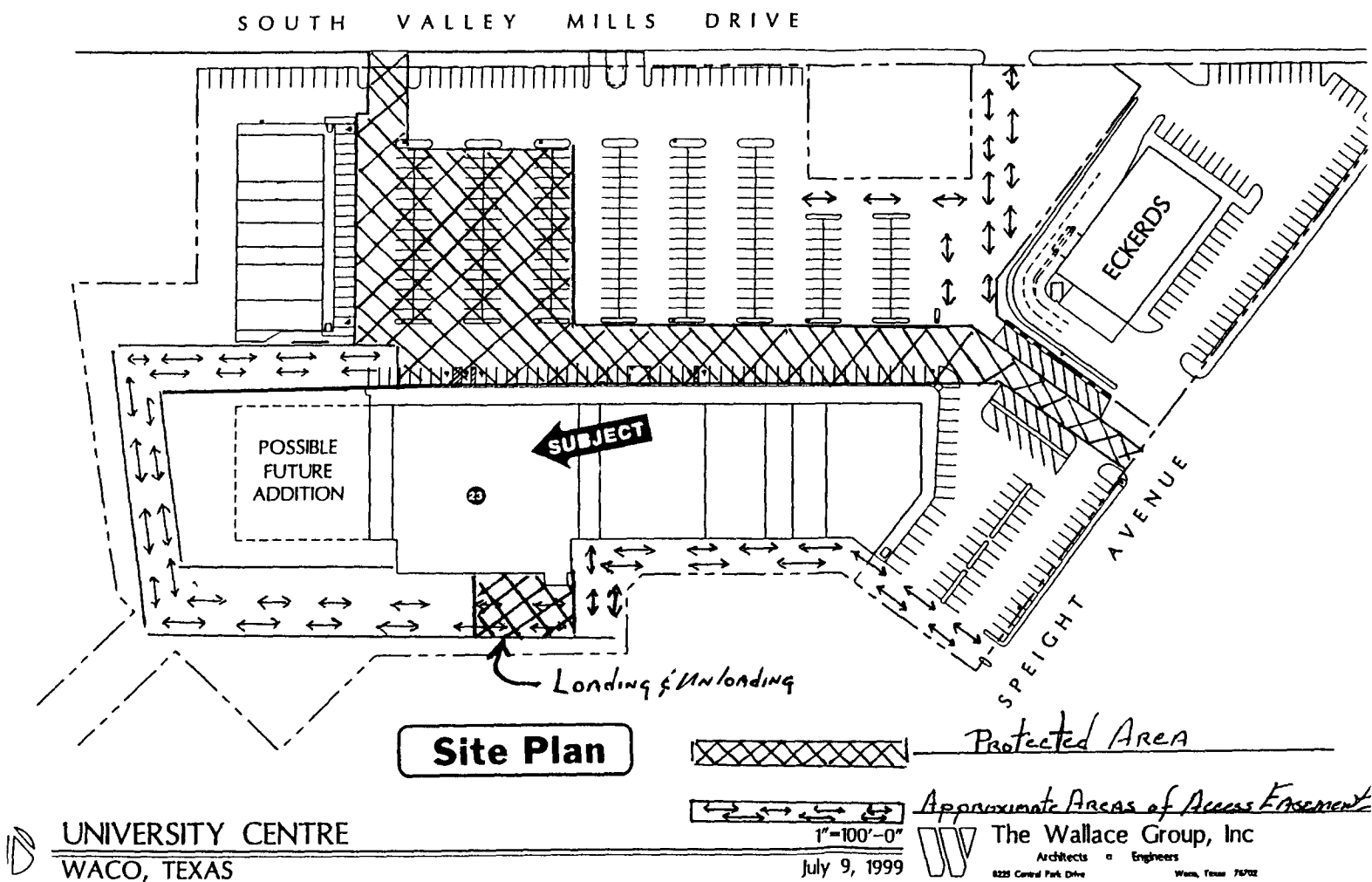
LANDLORD
TARRAGON REALTY INVESTORS, INC

TENANT
FAVAR CONCEPTS, Ltd , a Delaware corporation
dba/ "YES'LESS" FOOD & MORE

BY 
NAME Thomas W O'Rourke
TITLE Sen Vice President
DATE 7/11/00

BY 
NAME W H MARQUES
TITLE PRESIDENT
DATE 6-27-00

LEASE AGREEMENT
EXHIBIT A
SITE PLAN



Tenant FAVAR CONCEPTS, Ltd., a Delaware corporation

DBA YES'LESS Food & More

Demised Premises approximately 22,500 square feet

Frontage approximately 150 linear feet

Maximum Depth approximately 150 linear feet

The Demised Premises and the Shopping Center as shown above are approximations

Tenant's Initials _____
Landlord's Initials _____

LEASE AGREEMENT
EXHIBIT B
LEGAL DESCRIPTION

UNIVERSITY CENTER

STATE OF TEXAS
COUNTY OF MCLENNAN

BEING all that tract of land in the Cities of Waco and Beverly Hills, McLennan County, Texas, being all of TRACT ONE, TRACT TWO, TRACT THREE, TRACT FOUR, TRACT SIX, and part of TRACT FIVE, all described in a deed to National Income Realty Trust recorded in Volume 1725, Page 48 of the Deed Records of McLennan County, Texas, and being further described as follows:

BEGINNING at a point on the South line of South Valley Mills Drive (150 R.O.W.) being the Northwest corner of said TRACT TWO, a 1/2" steel rod set for corner;

THENCE South 80 degrees 55 minutes 00 seconds East (Reference) 536.48 feet along South Valley Mills Drive to a 1/2" steel rod set at the Northwest corner of that called 0.23 acres conveyed to Church's Fried Chicken, Inc. by deed recorded in Volume 1341, Page 588 of the Deed Records of McLennan County, Texas;

THENCE South 09 degrees 05 minutes 00 seconds West 100.20 feet to a 1/2" steel rod set at the Southwest corner of said Church's tract;

THENCE South 80 degrees 55 minutes 00 seconds East 100.00 feet to a 1/2" steel rod set at the Southeast corner of said Church's tract;

THENCE North 09 degrees 05 minutes 00 seconds East 100.20 feet to a 1/2" steel rod set at the Northeast corner of said Church's tract;

THENCE South 80 degrees 55 minutes 00 seconds East 170.30 feet along South Valley Mills Drive to a 1/2" steel rod set at the West corner of the Teresa J. Gardner tract described in Volume 1546, Page 878 of the Deed Records of McLennan County, Texas;

THENCE South 44 degrees 40 minutes 58 seconds East 25.99 feet to a 1/2" steel rod set at the North corner of that called 1.072 acres described in a deed to Beverly Hills Speight Development, L.P., recorded in Volume 401, Page 477 of the Official Public Records of McLennan County, Texas;

THENCE South 45 degrees 42 minutes 36 seconds West 213.50 feet to a 1/2" steel rod set for corner;

THENCE South 08 degrees 39 minutes 14 seconds West 31.67 feet to a 1/2" steel rod set for corner;

THENCE South 44 degrees 53 minutes 04 seconds East 177.68 feet to an axle found at the South corner of said 1.072 acres;

THENCE South 45 degrees 42 minutes 36 seconds West 267.17 feet along the Northwest line of Speight Avenue (50 R.O.W.) to an "x" found for the East corner of Lot 1, Block 1 of the Word of Faith Addition recorded in Volume 1335, Page 465 of the Deed Records of McLennan County, Texas;

THENCE North 44 degrees 34 minutes 14 seconds West 146.21 feet to a 1/2" steel rod found for corner;

THENCE North 80 degrees 39 minutes 05 seconds West 199.68 feet to a 1/2" steel rod found at the Northwest corner of said Lot 1;

THENCE South 54 degrees 18 minutes 42 seconds West 14.18 feet to a 1/2" steel rod set for corner;

THENCE South 09 degrees 24 minutes 17 seconds West 70.00 feet to a 1/2" steel rod set at an inside corner of Lot 1, Block 1 of the Bol Con Addition recorded in Volume 892, Page 167 of the Deed Records of McLennan County, Texas;

THENCE North 80 degrees 37 minutes 46 seconds West 189.40 feet to a 1/2" steel rod set for corner;

THENCE South 46 degrees 23 minutes 31 seconds West 172.53 feet to a 1/2" steel rod set at the West corner of said Bol Con Addition;

THENCE North 43 degrees 58 minutes 48 seconds West 230.23 feet along the Northeast line of Block L of the Hays Heights Addition, Part 1 to a 1/2" steel rod found at the North corner of Lot 5, Block L;

THENCE South 45 degrees 28 minutes 40 seconds West 218.50 feet to a 3/8" steel rod found at the West corner of said Lot 5, being also the most Westerly South corner of said TRACT THREE;

THENCE North 43 degrees 28 minutes 09 seconds West 49.02 feet along the Northeast line of Connally Drive (50 R.O.W.) to a 1/2" steel rod set at the South corner of Lot E, Block L recorded in Volume 1278, Page 185 of the Deed Record of McLennan County, Texas;

THENCE North 45 degrees 25 minutes 54 seconds East 218.59 feet to a 1/2" steel rod set at the East corner of said Lot E;

THENCE North 45 degrees 23 minutes 13 seconds West 23.70 feet to a 1/2" steel rod set for corner;

THENCE North 09 degrees 01 minutes 16 seconds East 284.00 feet to a 1/2" steel rod found at the Southwest corner of that called 0.826 acres described in deed to Zippy Prop., Inc. recorded in Volume 1674, Page 58 of the Deed Record of McLennan County, Texas;

THENCE South 80 degrees 54 minutes 01 seconds East 180.00 feet to a 1/2" steel rod set at the Southeast corner of said 0.826 acres;

THENCE North 08 degrees 56 minutes 26 seconds East 199.81 feet to the Point of Beginning, containing 16.606 acres of land;

TITLE EXCEPTIONS

- 1 THE FOLLOWING RESTRICTIVE COVENANTS OF RECORD ITEMIZED BELOW (WE MUST EITHER INSERT SPECIFIC RECORDING DATA OR DELETE THIS EXCEPTION)
Volume 1742, Page 75, of the Deed Records of McLennan County, Texas, and Volume 401, Page 483 of the Official Public Records of McLennan County, Texas, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c)
- 2 ANY DISCREPANCIES, CONFLICTS, OR SHORTAGES IN AREA OR BOUNDARY LINES, OR ANY ENCROACHMENTS, OR PROTRUSIONS, OR ANY OVERLAPPING OF IMPROVEMENTS
- 3 HOMESTEAD OR COMMUNITY PROPERTY OR SURVIVORSHIP RIGHTS, IF ANY OF ANY SPOUSE OF ANY INSURED (APPLIES TO THE OWNER POLICY ONLY)
- 4 ANY TITLES OR RIGHTS ASSERTED BY ANYONE, INCLUDING, BUT NOT LIMITED TO PERSONS, THE PUBLIC, CORPORATIONS, GOVERNMENTS OR OTHER ENTITIES,
 - A TO TIDELANDS, OR LANDS COMPRISING THE SHORE OR BEDS OF NAVIGABLE OR PERENNIAL RIVERS AND STREAMS, LAKES, BAYS, GULFS OR OCEANS, OR
 - B TO LANDS BEYOND THE LINE OF THE HARBOR OR BULKHEAD LINES AS ESTABLISHED OR CHANGED BY ANY GOVERNMENT, OR
 - C TO FILLED-IN LANDS, OR ARTIFICIAL ISLAND, OR
 - D TO STATUTORY WATER RIGHTS, INCLUDING RIPARIAN RIGHTS, OR
 - E TO THE AREA EXTENDING FROM THE LINE OF MEAN LOW TIDE TO THE LINE OF VEGETATION, OR THE RIGHTS OF ACCESS TO THAT AREA OR EASEMENT ALONG AND ACROSS THAT AREA(APPLIES TO THE OWNER POLICY ONLY)
- 5 STANDBY FEES, TAXES AND ASSESSMENTS BY ANY TAXING AUTHORITY FOR THE YEAR 1999, AND SUBSEQUENT YEARS, AND SUBSEQUENT TAXES AND ASSESSMENTS BY ANY TAXING AUTHORITY FOR PRIOR YEARS DUE TO CHANGE IN LAND USAGE OR OWNERSHIP
- 6 THE TERMS AND CONDITIONS OF THE DOCUMENTS CREATING YOUR INTEREST IN THE LAND
- 7 MATERIALS FURNISHED OR LABOR PERFORMED IN CONNECTION WITH PLANNED CONSTRUCTION BEFORE SIGNING AND DELIVERING THE LIEN DOCUMENT DESCRIBED IN SCHEDULE A, IF THE LAND IS PART OF THE HOMESTEAD OF THE OWNER. (APPLIES TO THE MORTGAGEE TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN ONLY, AND MAY BE DELETED IF SATISFACTORY EVIDENCE IS FURNISHED TO US BEFORE A BINDER IS ISSUED)
- 8 LIENS AND LEASES THAT AFFECT THE TITLE TO THE LAND, BUT THAT ARE SUBORDINATE TO THE LIEN OF THE INSURED MORTGAGE (APPLIES TO MORTGAGEE POLICY ONLY)

-- continued --

TITLE EXCEPTIONS

9 THE FOLLOWING MATTERS AND ALL TERMS OF THE DOCUMENTS CREATING OR OFFERING EVIDENCE OF THE MATTERS (WE MUST INSERT MATTERS OR DELETE THIS EXCEPTION)

a All terms and conditions of the Height Restrictions and Cross Access Easement between Brookview Hills and The Drake Group, Inc , dated September 30, 1988, recorded in Volume 1646, Page 243 and as amended in instrument dated October 17, 1988, recorded in Volume 1646, Page 259 of the Deed Records of McLennan County, Texas and as cited on the survey dated February 11, 1999 by Ray L Vannoy, Registered Professional Land Surveyor No 1988

b All terms and conditions of the Easement Agreement and Restrictive Covenants between National Income Realty Trust and Al Copeland Enterprises, Inc , dated February 11, 1992, recorded in Volume 1742, Page 75 of the Deed Records of McLennan County, Texas and as cited on the survey dated February 11, 1999 by Ray L Vannoy, Registered Professional Land Surveyor No 1988

c All terms and conditions of the Reciprocal Ingress and Egress Easement Agreement and Restrictions between Tarragon Realty Investors, Inc , Beverly Hills - Spright Development L P and Eckerd Corporation, dated December 31, 1998, recorded in Volume 401, Page 483 of the Official Public Records of McLennan County, Texas and as cited and shown on the survey dated February 11, 1999 by Ray L Vannoy, Registered Professional Land Surveyor No 1988

d A 10 foot Sanitary Sewer Easement as recorded in Volume 1021, Page 483 of the Deed Records of McLennan County, Texas and as shown on the survey dated February 11, 1999 by Ray L Vannoy, Registered

Professional Land Surveyor No 1988

e A 25 foot Access Easement as recorded in Volume 892, Page 167 of the Deed Records of McLennan County Texas and as shown on the survey dated February 11, 1999 by Ray L Vannoy, Registered Professional Land Surveyor No 1988

f A 5 foot T P & L Company Easement as recorded in Volume 846, Page 547 of the Deed Records of McLennan County, Texas and as shown on the survey dated February 11, 1999 by Ray L Vannoy, Registered Professional Land Surveyor No 1988

g A 10 foot T P & L Company and Southwestern Bell Telephone Company Easement as recorded in Volume 846, Page 547 and Volume 1263, Page 284 of the Deed Records of McLennan County, Texas and as shown on the survey dated February 11, 1999 by Ray L Vannoy, Registered Professional Land Surveyor No 1988

h A 30 foot utility easement as recorded in Volume 838, Page 402, Volume 892, Page 167, and Volume 1335, Page 465 of the Deed Records of McLennan County, Texas and as shown on the survey dated February 11, 1999 by Ray L Vannoy, Registered Professional Land Surveyor No 1988

i A 10 foot utility easement as recorded in Volume 651, Page 347 of the Deed Records of McLennan County, Texas and as shown on the survey dated February 11, 1999 by Ray L Vannoy, Registered Professional Land Surveyor No 1988

j An Ingress/Egress Easement as recorded in Volume 401, Page 483 of the Official Public Records of McLennan County, Texas and as shown on the survey dated February 11, 1999 by Ray L Vannoy, Registered Professional Land Surveyor No 1988

k A 20 foot Temporary Construction Easement as recorded in Volume 401, Page 483 of the Official Public Records of McLennan County, Texas and as shown on the survey dated February 11, 1999 by Ray L Vannoy Registered Professional Land Surveyor No 1988

l Visible easement(s) as evidenced by the location of the telephone line, overhead power lines, power poles, guy wires, electric box, electric meters, water meters, water valves, gas meters, light poles, sanitary sewer manholes, signs and pay phones as shown on the survey dated February 11, 1999 by Ray L Vannoy, Registered Professional Land Surveyor No 1988

m Location of the fence along the property line adjoining the Zippy Prop , Inc tract (1674-58) as shown on the survey dated February 11, 1999 by Ray L Vannoy, Registered Professional Land Surveyor No 1988 Company insures the insured against loss, if any, sustained by the insured under the terms of this Policy by reason of a final, non-appealable judgment of a court of competent jurisdiction that orders the removal of this improvement because it encroaches over or into the Zippy Prop , Inc tract Company agrees to provide defense to

-- continued --

TITLE EXCEPTIONS

the insured in accordance with the terms of this Policy if suit is brought against the insured to require the removal of this improvement because it encroaches as herein stated EXPRESS INSURANCE LANGUAGE MORTGAGEE POLICY ONLY

n Location of the asphalt parking which encroaches over the property line along South Valley Mills Drive and along Speight Avenue as shown on the survey dated February 11, 1999 by Ray L Vannoy, Registered Professional Land Surveyor No 1988 Company insures the insured against loss, if any, sustained by the insured under the terms of this Policy by reason of a final, non-appealable judgment of a court of competent jurisdiction that orders the removal of this improvement because it encroaches over the property line along South Valley Mills Drive and along Speight Avenue Company agrees to provide defense to the insured in accordance with the terms of this Policy if suit is brought against the insured to require the removal of this improvement because it encroaches as herein stated EXPRESS INSURANCE LANGUAGE MORTGAGEE POLICY ONLY

o Location of the asphalt and concrete improvements (parking) which encroach onto the 10 foot sanitary sewer easement, the 30 foot utility easement and the 10 foot utility easement as shown on the survey dated February 11, 1999 by Ray L Vannoy, Registered Professional Land Surveyor No 1988 Company insures the insured against loss, if any, sustained by the insured under the terms of this Policy by reason of a final, non-appealable judgment of a court of competent jurisdiction that orders the removal of this improvement because it encroaches over or into the 10 foot sanitary sewer easement, the 30 foot utility easement and the 10 foot utility easement Company agrees to provide defense to the insured in accordance with the terms of this Policy if suit is brought against the insured to require the removal of this improvement because it encroaches as herein stated EXPRESS INSURANCE LANGUAGE MORTGAGEE POLICY ONLY

p Location of the building which encroaches onto the 30 foot utility easement as shown on the survey dated February 11, 1999 by Ray L Vannoy, Registered Professional Land Surveyor No 1988 Company insures the insured against loss, if any, sustained by the insured under the terms of this Policy by reason of a final, non-appealable judgment of a court of competent jurisdiction that orders the removal of this improvement because it encroaches over or into the 30 foot utility easement Company agrees to provide defense to the insured in accordance with the terms of this Policy if suit is brought against the insured to require the removal of this improvement because it encroaches as herein stated EXPRESS INSURANCE LANGUAGE MORTGAGEE POLICY ONLY

q Pending disbursement of the full proceeds of the loan secured by the

lien instrument set forth under Schedule "A" hereof, this policy insures only to the extent of the amount actually disbursed, but increases as each disbursement is made in good faith and without knowledge of any defects in, or objections to the title up to the face amount of the policy Nothing contained in this paragraph shall be construed as limiting any exception under Schedule "B", or any printed provision of this policy (MORTGAGEE POLICY ONLY)

r Schedule "B", Item No 2 will be amended to read "Shortages in Area" on the MORTGAGEE POLICY ONLY

s Rights of tenants, as tenants only, under unrecorded leases or rental agreements

t Any visible and apparent easements on or across the subject property, the existence of which do not appear of record (OWNER'S TITLE POLICY ONLY)

RECIPROCAL INGRESS AND EGRESS EASEMENT AGREEMENT AND RESTRICTIONS

This RECIPROCAL INGRESS AND EGRESS EASEMENT AGREEMENT AND RESTRICTIONS (the "Agreement") is dated as of the 31st day of December, 1998, by TARRAGON REALTY INVESTORS, INC., a Nevada corporation having an address at 3100 Monticello Avenue, Suite 200, Dallas, Texas 75205 ("Tarragon"), BEVERLY HILLS - SPEIGHT DEVELOPMENT, L P, a Texas limited partnership having an address c/o The Sheldon Development Company, 14643 Dallas Parkway, Suite #910, Dallas, Texas 75240 ("BH-SD"), and ECKERD CORPORATION, a Delaware corporation having an address at 8333 Bryan Dairy Road, Largo, Florida 33777 ("Eckerd")

Introductory Provisions

The following matters form the basis for and are incorporated into this Agreement for all purposes

A Tarragon is the owner of certain real property located in the City of Waco, McLennan County, Texas (the "Tarragon Tract"), as further shown and described on Exhibit A attached hereto and incorporated herein for all purposes

B Pursuant to a Purchase Agreement dated June 4, 1998, Tarragon agreed to convey a portion of the Tarragon Tract shown and described on Exhibit B attached hereto and incorporated herein for all purposes (the "BH-SD Tract") to The Sheldon Development Company, BH-SD's predecessor-in-interest, and contemporaneously with the execution and immediately prior to the recordation of this Agreement, Tarragon has conveyed the BH-SD Tract to BH-SD. The remaining portion of the Tarragon Tract is shown and described on Exhibit K attached hereto and incorporated herein for all purposes, and is hereinafter referred to as the "Tarragon Retained Tract"

C Pursuant to a lease of even date herewith (the "Eckerd Lease") between BH-SD and Eckerd, Eckerd has leased the BH-SD Tract from BH-SD

D Tarragon and BH-SD desire to enter into this Agreement in order to, inter alia, (i) establish an easement for reciprocal ingress and egress to and from the Tarragon Retained Tract and the BH-SD Tract, and (ii) establish certain signage restrictions with respect to the BH-SD Tract

NOW, THEREFORE, for and in consideration of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration and the covenants and agreements contained herein, Tarragon and BH-SD do hereby agree as follows

1 BH-SD Easement BH-SD hereby grants for the benefit of the owner of the Tarragon Retained Tract and its successors, assigns, heirs, beneficiaries, invitees, customers, and others using or occupying the Tarragon Retained Tract the following perpetual, nonexclusive

easements

(a) Easement for pedestrian and motor vehicle access, ingress, and egress over, across, through, and along that portion of the BH-SD Tract which is designated for vehicular and/or pedestrian access, ingress, and egress, as the case may be, but excluding any drive-through lanes adjacent to any building constructed on the BH-SD Tract, provided, however that subject to the maintenance of the easement area described in Paragraph 1(b) below for its intended purpose nothing contained herein is intended to prohibit BH-SD from constructing improvements on the BH-SD Tract, and

(b) Easement for vehicular ingress and egress across the part of the BH-SD Tract shown and described on Exhibit G attached hereto and incorporated herein for all purposes

2 Tarragon Easements Tarragon hereby grants for the benefit of the owner of the BH-SD Tract and its successors, assigns, heirs, beneficiaries, invitees, customers, and others using or occupying the BH-SD Tract the following perpetual, nonexclusive easements

(a) Easement for pedestrian and motor vehicle access, ingress, and egress over, across, through, and along that portion of the Tarragon Retained Tract which is designated for vehicular and/or pedestrian access, ingress, and egress, as the case may be, provided, however, that subject to the use restriction provided for in Paragraph 3, below, and subject to the maintenance of the easement areas described in Paragraphs 2(b) and 2(c) below for their intended purposes, nothing contained herein is intended to prohibit Tarragon from constructing improvements on the Tarragon Retained Tract,

(b) Easement for vehicular ingress and egress across the part of the Tarragon Tract shown and described on Exhibit C attached hereto and incorporated herein for all purposes, provided, however, that a portion of the area covered by this easement is currently used for vehicular parking as shown on Exhibit C, and Tarragon reserves the right to continue to use such portion of such area for vehicular parking, or to use an equivalent portion of such area for vehicular parking provided that the same shall not impede the vehicular ingress and egress granted in this easement, and

(c) Easement for vehicular ingress and egress across the part of the Tarragon Tract shown and described on Exhibit D attached hereto and incorporated herein for all purposes

3 Use Restriction Subject to the current existence of the Subway Building (as defined below), and subject to the provisions of Paragraph 5, below, that portion of the Tarragon Retained Tract shown and described on Exhibit E attached hereto and incorporated herein for all purposes will be used only for parking or landscaping, except to the extent that any portion of such property is subject to the temporary construction easement described in Paragraph 4 below, or the ingress and egress easements described in Paragraphs 2(b) and 2(c) above

4 Temporary Construction Easement BH-SD plans to construct certain improvements (the "Eckerd Improvements") on the BH-SD Tract pursuant to the Eckerd Lease

Tarragon hereby grants to BH-SD and its contractors a temporary easement (the "Temporary Construction Easement") over and across the portion of the Tarragon Retained Tract shown and described on Exhibit F attached hereto (the "Temporary Construction Easement Area") and incorporated herein for all purposes, for the purpose of constructing the Eckerd Improvements on the BH-SD Tract. In connection therewith, BH-SD and its contractors may enter upon the Temporary Construction Easement Area as necessary in connection with the construction of the Eckerd Improvements, and may store materials and equipment thereon. The Temporary Construction Easement shall terminate upon the earlier to occur of (i) thirty (30) days following the completion of the construction of the Eckerd Improvements, or (ii) that date which is 180 days after the date hereof. BH-SD shall indemnify and hold Tarragon harmless from any and all loss, damages, claims, or causes of action of any kind whatsoever arising from or in connection with the use of the Temporary Construction Easement by BH-SD or any of its agents, representatives, employees, or contractors, and upon the termination of the Temporary Construction Easement BH-SD shall (x) remove all trash, debris and equipment placed on the Temporary Construction Easement Area in connection with the construction of the Eckerd Improvements, and (y) repair any damage to the Temporary Construction Easement Area caused by the exercise by BH-SD or BH-SD's contractors of the rights granted by the Temporary Construction Easement.

5 Demolition of Subway Building, Demolition Easement Pursuant to a Shopping Center Lease dated June 21, 1989, Tarragon currently leases a portion of a building (the "Subway Building") located on the Tarragon Retained Tract to Subway Restaurants, Inc. ("Subway"). Pursuant to the terms of a Removal and Escrow Agreement of even date herewith between Tarragon and BH-SD (the "Removal and Escrow Agreement"), promptly after the vacation by Subway of the Subway Building, Tarragon will demolish and remove the Subway Building from the Tarragon Retained Tract. The Removal and Escrow Agreement provides, inter alia, that if Tarragon does not complete the demolition and removal of the Subway Building as provided therein by the date specified in Paragraph 4 of the Removal and Escrow Agreement (the "Outside Demolition Date"), BH-SD shall have the right to enter onto the Tarragon Retained Tract to itself complete such demolition and removal. In connection therewith, Tarragon hereby contingently grants to BH-SD and its contractors a temporary easement (the "Subway Building Removal Easement") over and across the Tarragon Retained Tract for the purpose of demolishing the Subway Building and removing it from the Tarragon Retained Tract. In connection therewith, BH-SD and its contractors may enter upon the Tarragon Retained Tract as necessary in connection with the demolition and removal of the Subway Building, and may store materials and equipment thereon. The Subway Building Removal Easement shall be deemed effective upon the failure of Tarragon to complete the demolition and removal of the Subway Building in accordance with the terms of the Removal and Escrow Agreement by the Outside Demolition Date, and shall terminate upon the completion of the demolition and removal of the Subway Building. BH-SD shall indemnify and hold Tarragon harmless from any and all loss, damages, claims, or causes of action with respect to injury to person, loss of life or damage to property resulting from the use of the Subway Building Removal Easement by BH-SD or any of its agents, representatives, employees, or contractors, and upon the termination of the Subway Building Removal Easement BH-SD shall (x) remove all trash, debris and equipment placed on

the Tarragon Retained Tract in connection with the demolition and removal of the Subway Building, and (y) repair any damage to the Tarragon Retained Tract caused by the exercise by BH-SD or BH-SD's contractors of the rights granted by the Subway Building Removal Easement. Tarragon shall notify BH-SD of the vacation by Subway of the Subway Building promptly after the occurrence thereof.

6 Maintenance of Easement Areas Each of Tarragon and BH-SD, respectively, shall maintain the easements area described herein located on its respective property in good condition and repair, and shall repair and restore any easement area located on its property after any damage thereto.

7 Eckerd Sign

(a) Eckerd currently has a free-standing Eckerd pylon sign (the "Eckerd Sign") located on the Tarragon Retained Tract, as shown on the map which is attached hereto as Exhibit H and incorporated herein for all purposes. Tarragon hereby agrees that the Eckerd Sign may remain on the Tarragon Retained Tract until either (a) the existing lease between Tarragon and Eckerd (the "Tarragon-Eckerd Lease") for rental of space near the Tarragon Retained Tract expires or is terminated, or (b) the installation of a new free-standing Eckerd pylon sign on the BH-SD Tract. Upon any installation of a free-standing Eckerd pylon sign on the BH-SD Tract, Eckerd agrees to cause the existing Eckerd free-standing pylon sign on the Tarragon Tract to be promptly removed. In connection therewith, Tarragon hereby contingently grants to Eckerd and its contractor a temporary easement (the "Eckerd Sign Removal Easement") over and across the Tarragon Retained Tract for the purpose of removing the Eckerd Sign from the Tarragon Retained Tract. In connection therewith, Eckerd and its contractor may enter upon the Tarragon Retained Tract as necessary in connection with the removal of the Eckerd Sign, and may store materials and equipment thereon. The Eckerd Sign Removal Easement shall be deemed effective upon (i) the expiration of the Tarragon-Eckerd Lease, or (ii) the installation of a new free-standing Eckerd pylon sign on the BH-SD Tract, and shall terminate upon the completion of the removal of the Eckerd Sign. Eckerd shall indemnify and hold Tarragon harmless from any and all loss, damages, claims, or causes of action with respect to injury to person, loss of life or damage to property resulting from the use of the Eckerd Sign Removal Easement by Eckerd or any of its respective agents, representatives, employees, or contractors, and upon the termination of the Eckerd Sign Removal Easement Eckerd shall (x) remove all trash, debris and equipment placed on the Tarragon Retained Tract in connection with the removal of the Eckerd Sign, and (y) repair any damage to the Tarragon Retained Tract caused by the exercise by Eckerd or its contractor of the rights granted by the Eckerd Sign Removal Easement.

(b) Eckerd shall use its reasonable efforts to avoid material interference with Tarragon's use and/or occupancy of the Tarragon Retained Tract in its removal of the Eckerd Sign.

8 Restrictions on Signage, Sign Easement

(a) In the event that BH-SD or Eckerd, as a lessee of BH-SD, desires to erect more than one free-standing pylon sign on the BH-SD Tract, Tarragon's prior written consent to the location and design of any such additional free-standing pylon signs shall first be obtained so that the visibility of the shopping center located adjacent to the Tarragon Retained Tract shall not be unreasonably restricted, in Tarragon's reasonable judgment

(b) Tarragon acknowledges that an existing free-standing billboard structure (the "Billboard") on the BH-SD Tract may in the future be moved to the location shown and described on Exhibit J attached hereto and incorporated herein for all purposes (the "Billboard Easement Area"), and that part of the Billboard as so located will encroach on the Billboard Easement Area. Tarragon hereby grants for the benefit of the owner of the BH-SD Tract an exclusive easement over the Billboard Easement Area for the installation and maintenance of the Billboard or any replacement billboard structure, which easement shall terminate upon the removal of the Billboard or any replacement billboard structure after it is installed thereon

9 Binding Effect The terms of this Agreement shall run with the Tarragon Retained Tract and the BH-SD Tract and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns who become owners of the Tarragon Retained Tract and/or the BH-SD Tract, and shall inure to the benefit of and be binding upon Eckerd so long as Eckerd is the tenant of the BH-SD Tract. This Agreement and the covenants and easements contained herein may be enforced by Eckerd so long as Eckerd is a tenant of the BH-SD Tract

10 Entire Agreement This Agreement constitutes the sole and entire agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof and cannot be modified except by the subsequent written agreement of the parties and cannot be modified or terminated without the prior written consent of Eckerd so long as Eckerd is the tenant of the BH-SD Tract

11 No Partnership None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties or their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of a joint enterprise. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights to, or in favor of, any person or entity who is not a party hereto

12 Notice

(a) All notices desired or required to be given under this Agreement shall be in writing and shall be sent to the parties at the respective addresses set forth on the first page of this Agreement either (i) by certified mail (return receipt requested), in which event such notices shall be deemed effective three (3) days after being mailed, except that any notice sent to Eckerd by certified mail shall only be deemed received upon receipt or refusal to accept delivery, (ii)

by Federal Express or other reputable, comparable overnight delivery service, in which event such notices shall be deemed effective one (1) day after being mailed, or (iii) by personal delivery, in which event such notices shall be deemed effective upon receipt. Rejection or other refusal to accept, or the inability to deliver because of a change of address of which no notice was given, shall constitute a receipt of the notice.

(b) Any party shall have the right from time to time, upon at least ten (10) days' prior written notice thereof in accordance with the provisions hereof, to change its respective address and to specify any other address within the United States of America, provided, however, notwithstanding anything herein contained to the contrary, in order for the notice of address change to be effective it must actually be received.

(c) Any notice executed by attorneys for a party shall have the same force and effect as though signed by Buyer or Seller, as the case may be.

(d) Any notice sent to Eckerd shall reference Store #0856R and shall be sent to the attention of Eckerd's Real Estate Department.

(e) Upon conveyance of the Tarragon Retained Tract or the BH-SD Tract to a third party, the new owner of the applicable tract shall notify the owner of the other tract of such conveyance, and shall inform the owner of the other tract of its notice address.

13 Applicable Law This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

14 Severability In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15 Time Time is of the essence with respect to this Agreement.

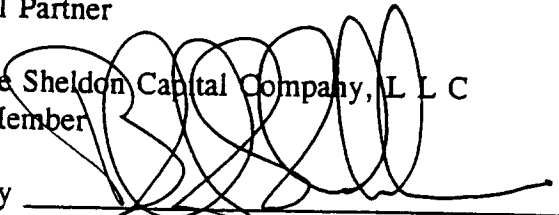
16 Counterparts This Agreement may be signed in one or more counterparts (or with counterpart signature pages) which, taken together, shall constitute a fully executed Agreement and shall be considered a single document.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Reciprocal Ingress and Egress Easement Agreement and Restrictions as of the date first above written

BEVERLY HILLS-SPEIGHT DEVELOPMENT, L P

By S Cap Co -Beverly Hills, L L C ,
General Partner

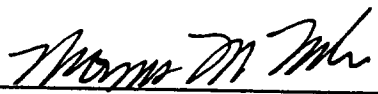
By The Sheldon Capital Company, L L C
Member

By 
Brett S Sheldon,
Member

TARRAGON REALTY INVESTORS, INC

By _____
Name
Title

ECKERD CORPORATION

By 
Name Thomas M. Nash
Title Vice President

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Reciprocal Ingress and Egress Easement Agreement and Restrictions as of the date first above written


BEVERLY HILLS-SPEIGHT DEVELOPMENT, L P

By S Cap Co -Beverly Hills, L L C ,
General Partner

By The Sheldon Capital Company, L L C
Member

By _____
Brett S Sheldon,
Member

TARRAGON REALTY INVESTORS, INC

By  _____
Name TODD C. MINOR
Title SR VICE PRES & TREAS.


ECKERD CORPORATION

By _____
Name
Title

This instrument was acknowledged before me on the ____ day of _____, 1998,
by _____ of Tarragon Realty Investors, Inc , a Nevada
corporation, on behalf of said trust

Notary Public Signature

Given under my hand

 PATRICIA A. SHERMAN BRUCE
Notary Public, State of Texas
My Commission Expires
AUG 4, 2001

Given under my hand and seal of office this 31 day of December, 1998

Patricia A. Sham Buck
Notary Public Signature

STATE OF ~~TEXAS~~ ^{FLORIDA} §
COUNTY OF ~~DALLAS~~ ^{Pinellas} §

This instrument was acknowledged before me on the 29th day of December, 1998, by Thomas M. Nash, Vice President of Eckerd Corporation, a Delaware corporation, on behalf of said corporation.

75390_4

 BONNIE J. BARNHILL
COMMISSION # CCS24249
EXPIRES NOV 22 2002
BONDED THROUGH
ATLANTIC BONDING CO., INC.

on Bonnie J Barnhill
Notary Public Signature

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 17 day of Dec, 1998,
by Todd Minor of Tarragon Realty Investors, Inc , a Nevada
corporation, on behalf of said trust

Misty Mitchell

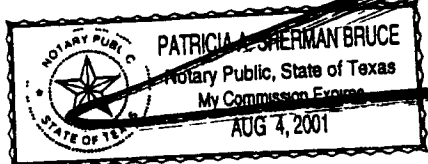
Notary Public Signature

STATE OF TEXAS §
 §
COUNTY OF DALLAS §



~~Before me a Notary Public in and for the State of Texas, on this day personally appeared Brett S. Sheldon, a member of The Sheldon Capital Company, L.L.C., a Texas limited liability company, as sole member of S Cap Co -Beverly Hills, L L C , a Texas limited liability company, as sole general partner of Beverly Hills-Speight Development, L.P., a Texas limited partnership, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed said instrument as the act and deed of such limited liability company, such limited liability company, and such limited partnership, for the purposes and consideration therein expressed, and in the capacity therein stated~~

Given under my hand and seal of office this 31st day of December, 1998



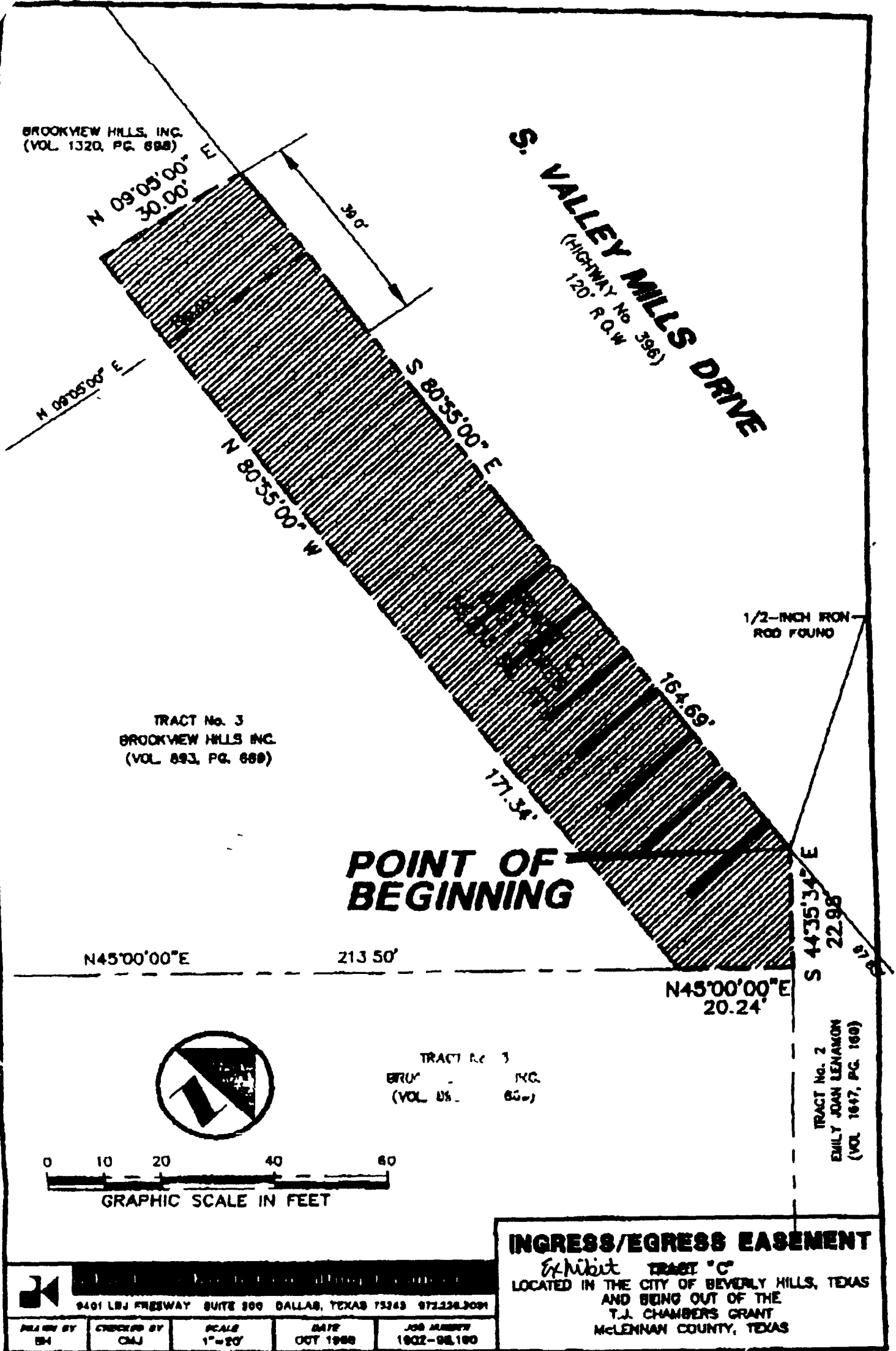
Pat A. Sherman Bruce

Notary Public Signature

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 1998,
by _____ of Eckerd Corporation, a
Delaware corporation, on behalf of said corporation

Notary Public Signature



0008 AND 1002-C

DESCRIPTION OF INGRESS/EGRESS EASEMENT

DESCRIPTION, of a 0.121 acre tract of land situated the T.J. Chambers Grant, City of Beverly Hills, McLennan County, Texas; said tract being the same tract described in deed to Brookview Hills, Inc., recorded in Volume 893, Page 669 of the Deed Records of McLennan County, Texas, said tract also being part of tract of land described in deed to Brookview Hills Inc., recorded in Volume 1320, Page 698 of the Deed Records of McLennan County, Texas, said 0.121 acre tract being more particularly described as follows,

BEGINNING, at a 1/2-inch iron rod found on the southeast corner of said tract, said point also being on the south right-of-way line of S Valley Mills Drive (State Highway 396, a 150 foot wide right-of-way),

THENCE, South 44 degrees, 35 minutes, 34 seconds East, departing the south right-of-way line of said S Valley Mills Drive, a distance of 22.98 feet to a point for corner; said point also being the east corner of a tract of land described in deed to Emily Joan Lenamon, recorded in Volume 1647, Page 160 of the Deed Records of McLennan County, Texas;


THENCE, North 45 degrees, 00 minutes, 00 seconds East, a distance of 20.24 feet to a point for corner, said point also being on the north line of said Brookview Hills Inc.,

THENCE, North 80 degrees, 55 minutes, 00 seconds West, a distance of 171.34 feet to a point for corner,

THENCE, North 09 degrees, 05 minutes, 00 seconds East, a distance of 30.00 feet to point for corner; said point also being on the south right-of-way line of said S Valley Mills Drive,

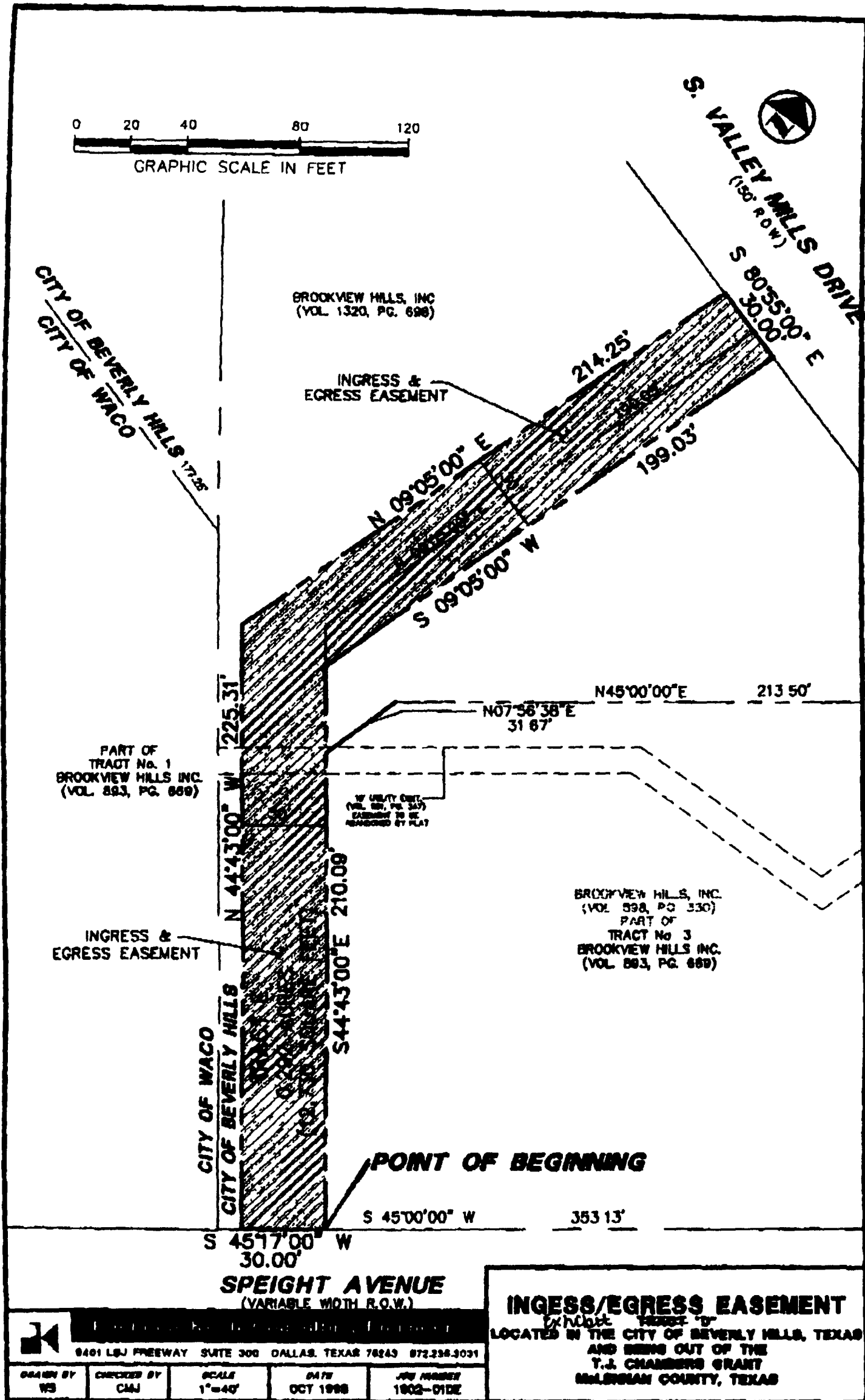
THENCE, South 80 degrees, 55 minutes, 00 seconds East, along the south right-of-way line of said S Valley Mills Drive; a distance of 164.69 feet to the POINT OF BEGINNING.

CONTAINING, 0.121 acres or 5,273 square feet of land, more or less.

| | | | | |
|---|-------------------|-----------------|------------------|---------------------------|
|  | | | | |
| 8401 LBJ FREEWAY SUITE 300 DALLAS TEXAS 75243 972.336.3031 | | | | |
| DRAWN BY BH | CHECKED BY CMJ | SCALE 1"=20' | DATE OCT 1998 | JOB NUMBER 1902-86.190 |

INGRESS/EGRESS EASEMENT
Exhibit TRACT "C"
LOCATED IN THE CITY OF BEVERLY HILLS, TEXAS
AND BEING OUT OF THE
T.J. CHAMBERS GRANT
MCLENNAN COUNTY, TEXAS

DWG NO. 1902-C



DATE 10/19/98

DESCRIPTION OF INGRESS/EGRESS EASEMENT

DESCRIPTION, of a 0.292 acre tract of land situated in the T.J. Chambers Grant, City of Beverly Hills, McLennan County, Texas; said tract being all of a tract of land described in deed to Brookview Hills Inc., recorded in Volume 1320 Page 688 of the Deed Records of McLennan County, Texas; said 0.292 acre tract of land being more particularly described as follows;

BEGINNING at the southeast corner of a tract of land described in deed to Brookview Hills Inc., recorded in Volume 898, Page 330 and Volume 893, Page 669 of the Deed Records of McLennan County, Texas; said point also being on the northwest right-of-way line of Speight Avenue (a variable width right-of-way),

THENCE, South 45 degrees, 17 minutes, 00 seconds West, along the northwest right-of-way line of said Speight Avenue, a distance of 30.00 feet to a point for corner;

THENCE, North 44 degrees, 43 minutes, 00 seconds West, departing the northwest right-of-way line of said Speight Avenue, a distance of 225.31 feet to a point for corner;

THENCE, North 09 degrees, 05 minutes, 00 seconds East, a distance of 214.25 feet to a point for corner; said point also being on the south right-of-way line of S. Valley Mills Drive (a 150 foot wide right-of-way);

THENCE, South 80 degrees, 55 minutes, 00 seconds East, along the south right-of-way line of said S. Valley Mills Drive, a distance of 30.00 feet to a point for corner;

THENCE, South 09 degrees, 05 minutes, 00 seconds West, a distance of 199.03 feet to a point for corner;

THENCE South 44 degrees, 43 minutes, 00 seconds East, a distance of 210.09 feet to the POINT OF BEGINNING;

CONTAINING, 0.292 acres or 12,730 square feet of land, more or less.

INGRESS/EGRESS EASEMENT

Exhibit TRACT "D"
LOCATED IN THE CITY OF BEVERLY HILLS, TEXAS
AND BEING OUT OF THE
T.J. CHAMBERS GRANT
MCLENNAN COUNTY, TEXAS



Pacheco Koch Consulting LLC
8401 LBJ FREEWAY SUITE 300 DALLAS TEXAS 76248 972.235.9544

DRAWN BY
WS

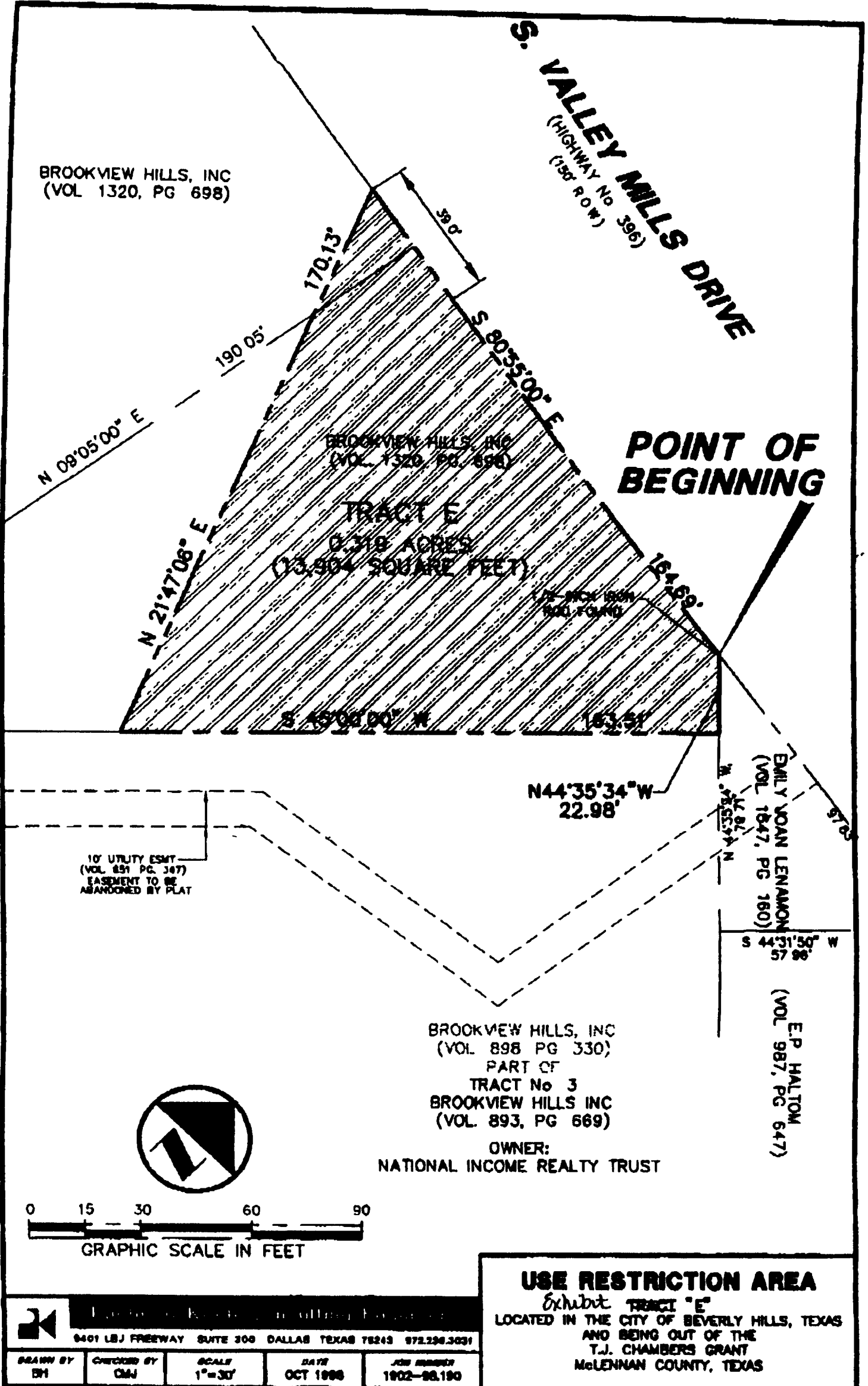
CHECKED BY
CMJ

SCALE
1"=40'

DATE
OCT 1998

JOB NUMBER
1902-01DE

DRW NO: 1902-01DE



DESCRIPTION OF A USE RESTRICTION AREA

DESCRIPTION, of a 0.319 acre tract of land situated the T.J. Chambers Grant, City of Beverly Hills, McLennan County, Texas, said tract being all of a tract described in deed to Brookview Hills, Inc., recorded in Volume 1320, Page 698 of the Deed Records of McLennan County, Texas; said 0.319 acre tract being more particularly described as follows;

BEGINNING, at a 1/2-inch iron rod found on the south right-of-way of S. Valley Mills Drive (State Highway 396, a 150 foot wide right-of-way), said point also being the northwest corner of a tract of land described in deed to Emily Joan Lenamon, recorded in Volume 1647, Page 160 of the Deed Records of McLennan County, Texas;

THENCE, South 44 degrees, 35 minutes, 34 seconds East, a distance of 22.98 feet to a point for corner, said point also the north corner of said Emily Joan Lenamon tract,

THENCE, South 45 degrees, 00 minutes, 00 seconds West, a distance of 183.51 feet to a point for corner; said point being the east corner of a tract of land described in deed to Brookview Hills, Inc., recorded in Volume 898, Page 330 and Volume 893, Page 669 of the Deed Records of McLennan County, Texas,

THENCE, North 21 degrees, 47 minutes, 08 seconds West, a distance of 170.13 feet to a point for corner; said point also being on the south right-of-way line of said S. Valley Mills Drive;

THENCE, South 80 degrees, 55 minutes, 00 seconds East, along the south right-of-way line of said S. Valley Mills Drive, a distance of 164.69 feet to the POINT OF BEGINNING,

CONTAINING, 0.319 acres or 13,904 square feet of land, more or less.

USE RESTRICTION AREA

Exhibit TRACT "E"
LOCATED IN THE CITY OF BEVERLY HILLS, TEXAS
AND BEING OUT OF THE
T.J. CHAMBERS GRANT
MCLENNAN COUNTY, TEXAS



Engineering & Surveying

8401 LBJ FREEWAY SUITE 300 DALLAS TEXAS 75243 972 235 3031

DRAWN BY
BH

CHECKED BY
CMW

SCALE
1"=30'

DATE
OCT 1998

JOB NUMBER
1902-98.190

DWG NO: 1902-E

DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT

DESCRIPTION of a 0.202 acre tract of land situated in the T.J. Chambers Grant, City of Beverly Hills, McLennan County, Texas; said tract being all of a tract of land described in deed to Brookview Hills Inc., recorded in Volume 1320, Page 698 of the Deed Records of McLennan County, Texas; said 0.202 acre tract of land being more particularly described as follows;

BEGINNING at the southeast corner of a tract of land described in deed to Brookview Hills Inc., recorded in Volume 888 Page 330 and Volume 893, Page 669 of the Deed Records of McLennan County, Texas; said point also being on the northwest right-of-way line of Speight Avenue (a variable width right-of-way)

THENCE, South 45 degrees, 17 minutes, 00 seconds West, along the northwest right-of-way line of said Speight Avenue, a distance of 20.00 feet to a point for corner;

THENCE, North 44 degrees, 43 minutes, 00 seconds West, departing the northwest right-of-way line of said Speight Avenue, a distance of 187.57 feet to a point for corner;

THENCE, North 07 degrees, 56 minutes, 38 seconds East, a distance of 31.87 feet to a point for corner;

THENCE, North 45 degrees, 00 minutes, 00 seconds East, a distance of 220.34 feet to a point for corner; said point also being on the south right-of-way line of said S. Valley Mills Drive;

THENCE, South 44 degrees, 33 minutes, 34 seconds West, a distance of 20.00 feet to a point for corner;

THENCE, South 07 degrees, 56 minutes, 38 seconds West, a distance of 31.87 feet to a point for corner;

THENCE, South 44 degrees, 43 minutes, 00 seconds East, a distance of 210.09 feet to the POINT OF BEGINNING;

CONTAINING, 0.202 acres or 8,790 square feet of land, more or less.



8401 LBJ FREEWAY SUITE 300 DALLAS TEXAS 75243 972-335-3031

DRAWN BY
WS

CHECKED BY
JAK

SCALE
1"=50'

DATE
OCT 1998

JOB NUMBER
1802-010E

**TEMPORARY CONSTRUCTION
EASEMENT**

Exhibit "T"
LOCATED IN THE CITY OF BEVERLY HILLS, TEXAS
AND BEING OUT OF THE
T.J. CHAMBERS GRANT
MCLENNAN COUNTY, TEXAS

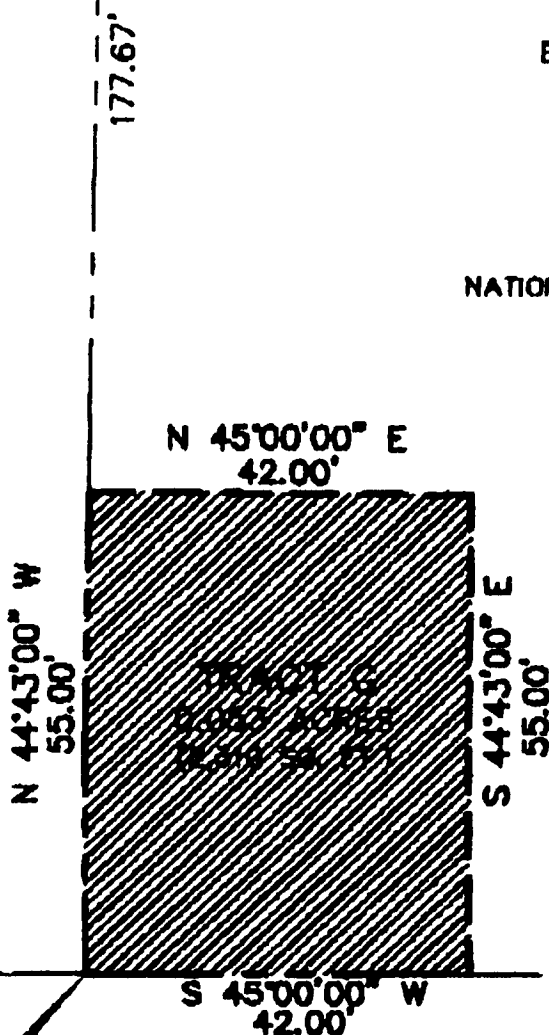
FORM NO. 1802-01FE

CITY OF WACO
CITY OF BEVERLY HILLS

BROOKVIEW HILLS, INC
(VOL. 898, PG. 330)

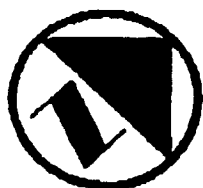
TRACT No 3
BROOKVIEW HILLS INC
(VOL. 893, PG. 669)

OWNER
NATIONAL INCOME REALTY TRUST



POINT OF
BEGINNING

SPEIGHT AVENUE
(VARIABLE WIDTH ROW)



INGRESS/EGRESS EASEMENT

EXHIBIT TRACT "G"
LOCATED IN THE CITY OF BEVERLY HILLS, TEXAS
AND BEING OUT OF THE
T.J. CHAMBERS GRANT
MCLENNAN COUNTY, TEXAS



9401 LBJ FREEWAY SUITE 300 DALLAS TEXAS 75243 9722969091

DRAWN BY
BH

CHECKED BY
CMJ

SCALE
1"=20'

DATE
OCT 1998

JOB NUMBER
1002-00190

0102-0

DESCRIPTION OF INGRESS/EGRESS EASEMENT

DESCRIPTION, of a 0.053 acre tract of land situated the T.J. Chambers Grant, City of Beverly Hills, McLennan County, Texas; said tract being part of a tract of land described in deed to Brookview Hills, Inc, recorded in Volume 898, Page 330 and Volume 893, Page 669 of the Deed Records of McLennan County, Texas, said tract also being part of Lots 8-9, Gatlin's Re-subdivision, on addition to the City of Beverly Hills, Texas according to the plat recorded in Volume 651, Page 347 of the Deed Records of McLennan County, Texas; said 0.0334 acre tract being more particularly described as follows:

BEGINNING, at a corner at the southwest corner of said tract; said point being in the north right-of-way line of Speight Avenue (a variable width right-of-way);


THENCE, North 44 degrees, 43 minutes, 00 seconds West, departing the north right-of-way line of said Speight Avenue, a distance of 55.00 feet to a point for corner;

THENCE, North 45 degrees, 00 minutes, 00 seconds East, a distance of 42.00 feet to a point for corner;

THENCE, South 44 degrees, 43 minutes, 00 seconds East, a distance of 55.00 feet to a point for corner, said point being on the north right-of-way line of said Speight Avenue,

THENCE, South 45 degrees, 00 minutes, 00 seconds West, continuing along the north right-of-way line of said Speight Avenue, a distance of 42.00 feet to the POINT OF BEGINNING,

CONTAINING, 0.053 acres or 2,310 square feet of land, more or less.

| | | | | |
|---|-------------------|-----------------|------------------|---------------------------|
|  | | | | |
| 9401 LBJ FREEWAY SUITE 300 DALLAS, TEXAS 75243 972.234.3001 | | | | |
| DRAWN BY BH | CHECKED BY CMJ | SCALE 1"=20' | DATE OCT 1998 | JOB NUMBER 1902-08.190 |

INGRESS/EGRESS EASEMENT

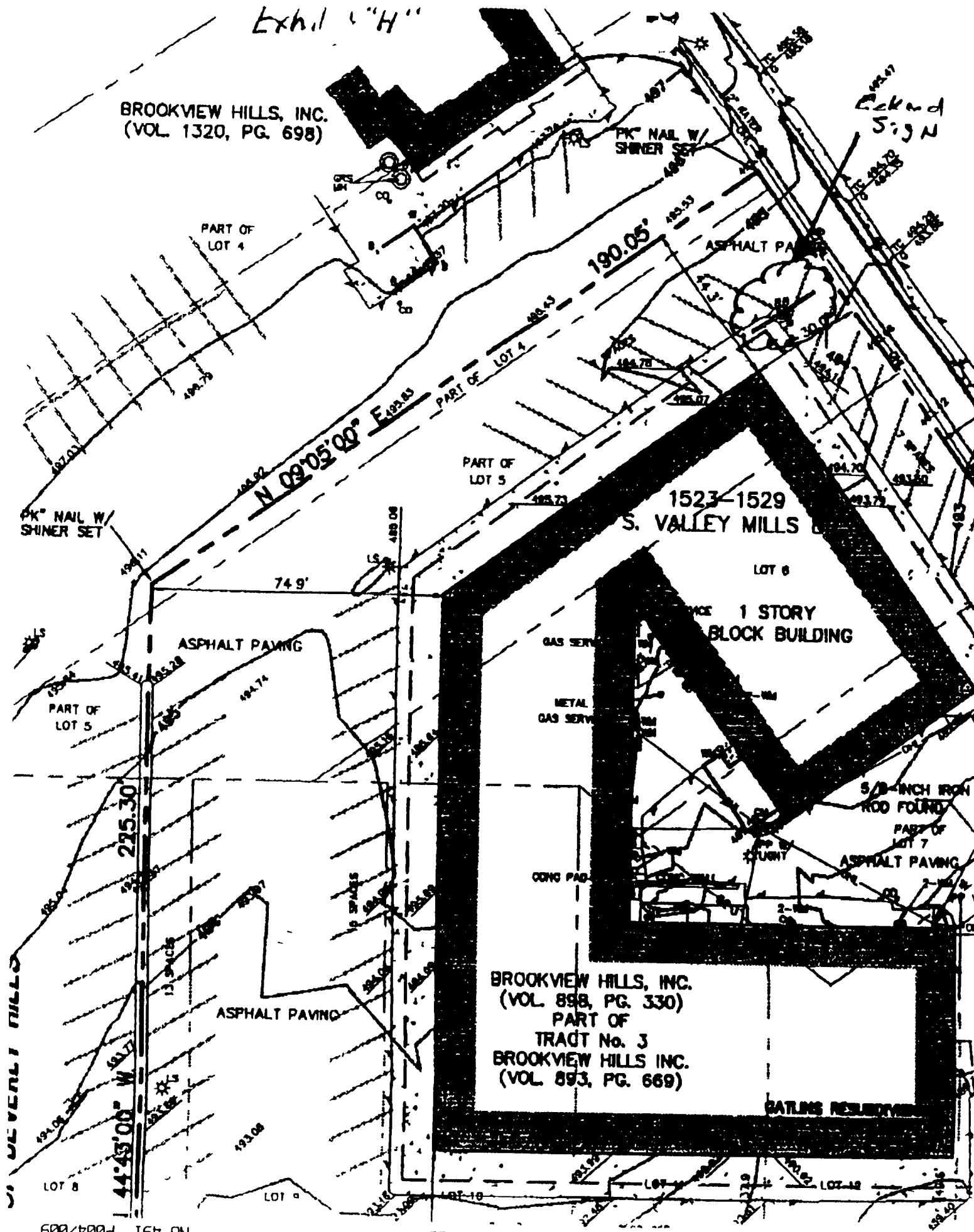
EXHIBIT TRACT "G"
LOCATED IN THE CITY OF BEVERLY HILLS, TEXAS
AND BEING OUT OF THE
T.J. CHAMBERS GRANT
MCLENNAN COUNTY, TEXAS

DWG NO: 1902-G

Exhibit "H"

BROOKVIEW HILLS, INC.
(VOL. 1320, PG. 698)

Record
SIGN

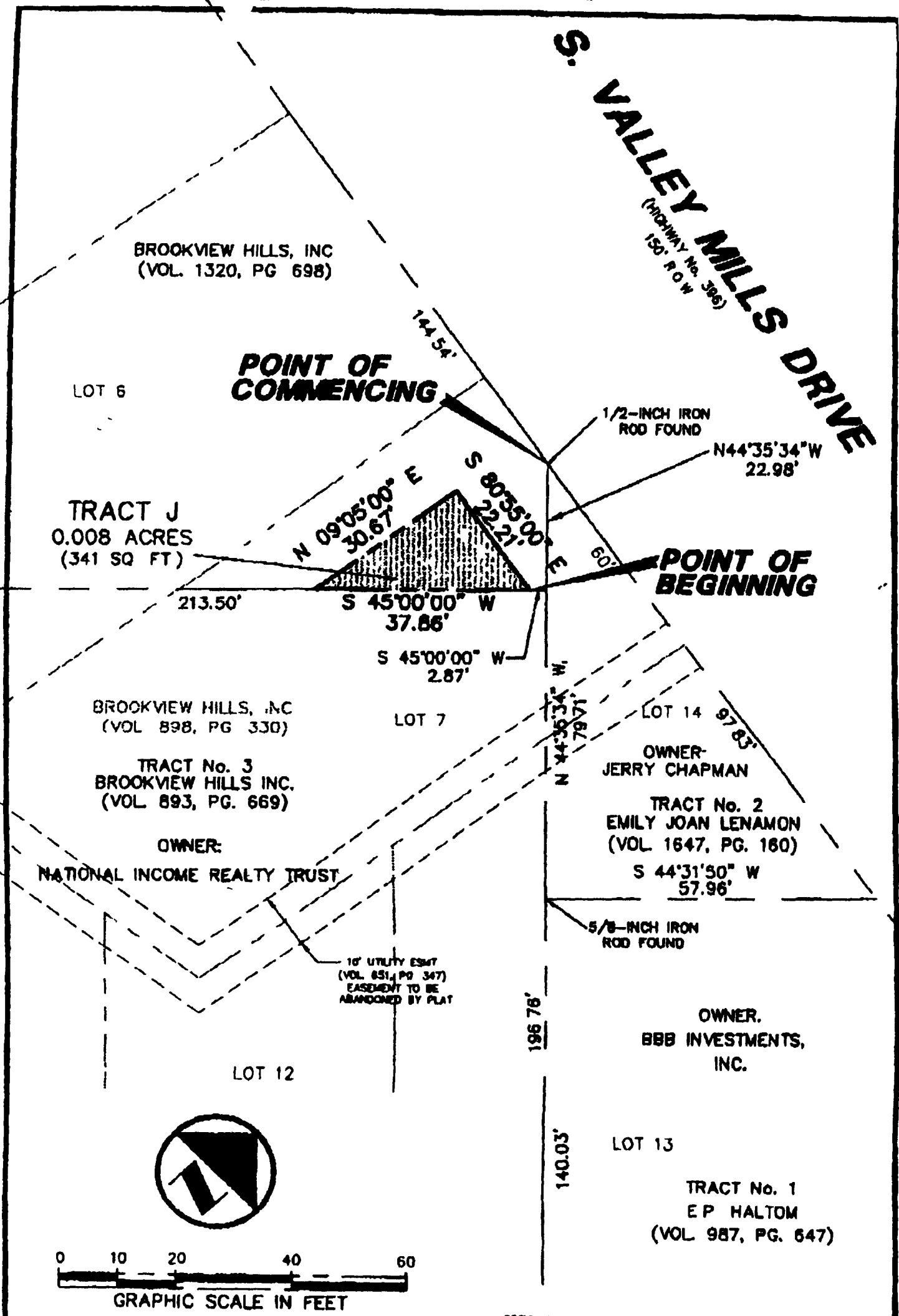


BROOKVIEW HILLS, INC.
(VOL. 898, PG. 330)
PART OF
TRACT No. 3
BROOKVIEW HILLS INC.
(VOL. 893, PG. 669)

CATLINS RESERVATION

NO 491 P004/009

11/06/98 09 47 THE SHELDON COMPANY + 2127513738



BILLBOARD RELOCATION EXHIBIT

EXHIBIT TRACT "J"

LOCATED IN THE CITY OF BEVERLY HILLS, TEXAS
AND BEING OUT OF THE
T.J. CHAMBERS GRANT
MCLENNAN COUNTY, TEXAS

| | | | | |
|---|-------------------|-----------------|------------------------|--------------------------|
| 8401 LBJ FREEWAY SUITE 300 DALLAS, TEXAS 75243 8723383931 | | | | |
| DRAWN BY BH | CHECKED BY CMJ | SCALE 1"=20' | 1/4"=1'-0" OCT 1998 | JOB NUMBER 1998-88190 |

DESCRIPTION OF BILLBOARD SIGN RELOCATION

DESCRIPTION, of a 0.008 acre tract of land situated the T.J. Chambers Grant, City of Beverly Hills, McLennan County, Texas, said tract being part of a tract of land described in deed to Brookview Hills, Inc, recorded in Volume 898, Page 330 and Volume 893, Page 669 of the Deed Records of McLennan County, Texas; said tract also being all of Lot 7, Gatlins Re-subdivision, an addition to the City of Beverly Hills, Texas according to the plat recorded in Volume 651, Page 347 of the Deed Records of McLennan County, Texas; said 0.008 acre tract being more particularly described as follows,

COMMENCING, at a 1/2-inch iron rod found at the northwest corner of a tract of land described in deed to Emily Joan Lenamon, recorded in Volume 1647, Page 160 of the Deed Records of McLennan County, Texas; said point also being on the south right-of-way line of S. Valley Mills Drive (a 150 wide right-ofway),


THENCE, South 45 degrees, 00 minutes, 00 seconds West, a distance of 2.87 feet to the POINT OF BEGINNING,

THENCE, South 45 degrees, 00 minutes, 00 seconds West, a distance of 37.86 feet to a point for corner;

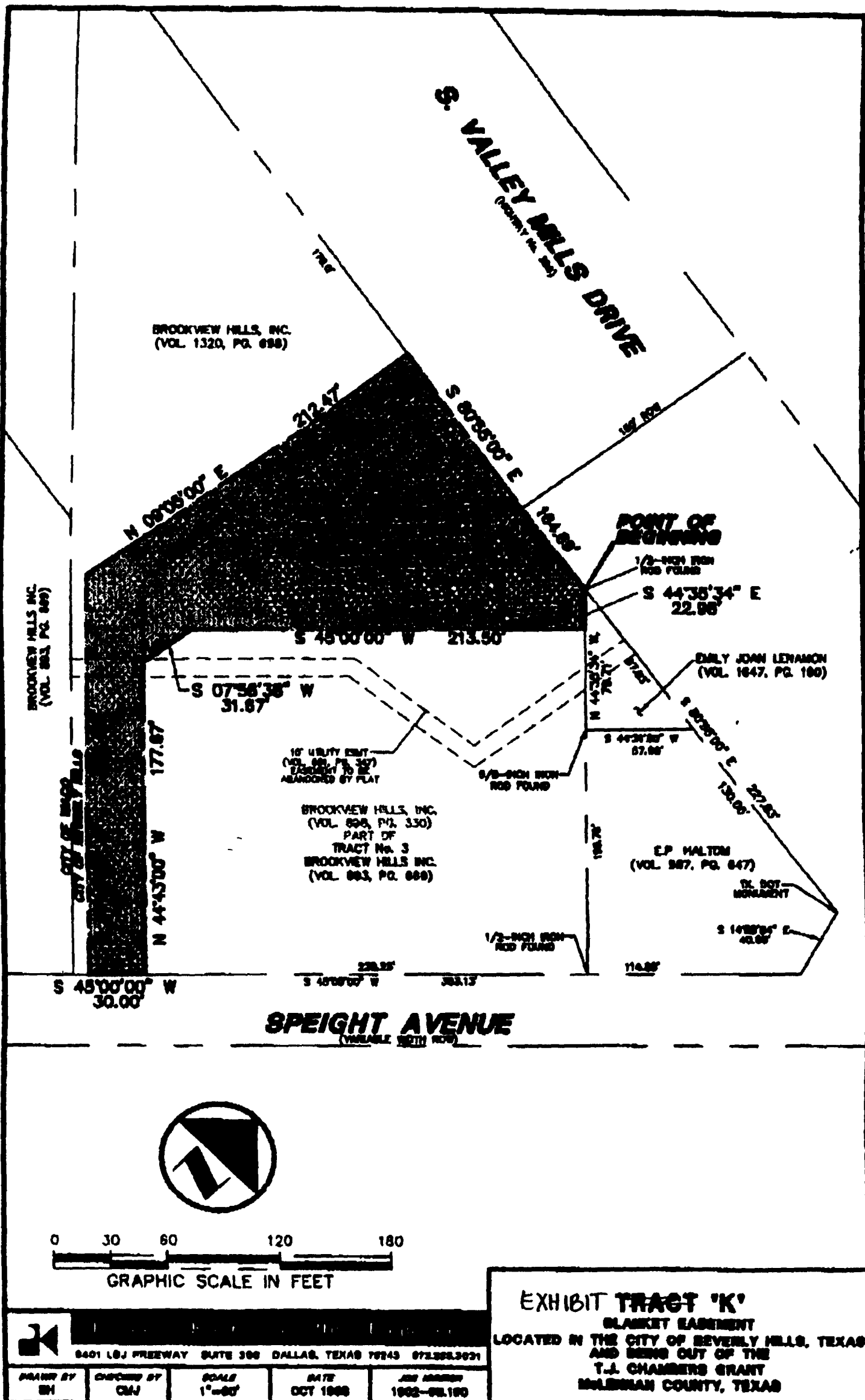
THENCE, North 09 degrees, 05 minutes, 00 seconds East, a distance of 30.67 feet to a point for corner;

THENCE, South 80 degrees, 55 minutes, 00 seconds East, a distance of 22.21 feet to the POINT OF BEGINNING;

CONTAINING, 0.008 acres or 341 square feet of land, more or less

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|---|-------------------|-----------------|------------------|---------------------------|
|  | | | | |
| 8401 LBJ FREEWAY SUITE 300 DALLAS, TEXAS 75243 972.235.3631 | | | | |
| DRAWN BY BH | CHECKED BY CMJ | SCALE 1"=20' | DATE OCT 1998 | JOB NUMBER 1802-88.190 |

| |
|--|
| BILLBOARD RELOCATION EXHIBIT |
| EXHIBIT TRACT "J" |
| LOCATED IN THE CITY OF BEVERLY HILLS, TEXAS AND BEING OUT OF THE T.J. CHAMBERS GRANT MCLENNAN COUNTY, TEXAS |



**DESCRIPTION OF BLANKET EASEMENT
TRACT K**

DESCRIPTION, of a 0.711 acre tract of land situated in the T.J. Chambers Grant, City of Beverly Hills, McLennan County, Texas; said tract being part of a tract of land described in deed to Brookview Hills, Inc., recorded in Volume 898, Page 330 and Volume 893, Page 668; said tract also being part of a tract of land described in deed to Brookview Hills, Inc. recorded in Volume 1320, Page 698 of the Deed Records of McLennan County, Texas; said 0.711 acre tract of land being more particularly described as follows;

BEGINNING at a 1/2-inch iron rod found at the northwest corner of a tract of land described in deed to Emily Joan Lenamon recorded in Volume 1847, Page 180 of the Deed Records of McLennan County, Texas; said point also being on the south right-of-way line of S. Valley Mills Drive (State Highway 396), (a 150 foot wide right-of-way);

THENCE, South 44 degrees, 35 minutes, 34 seconds East, departing the south right-of-way line of said S. Valley Mills Drive, a distance of 22.98 feet to a point for corner;

THENCE, South 45 degrees, 00 minutes, 00 seconds West, a distance of 213.50 feet to a point for corner;

THENCE, South 07 degrees, 56 minutes, 38 seconds West, a distance of 31.67 feet to a point for corner;

THENCE, south 44 degrees, 43 minutes, 00 seconds East, a distance of 177.87 feet to a point for corner; said point also being on the north right-of-way line of Speight Avenue (a variable width right-of-way);

THENCE, North 45 degrees, 00 minutes, 00 seconds West, along the north right-of-way line of said Speight Avenue, a distance of 30.00 feet to a point for corner;

THENCE, North 44 degrees, 43 minutes, 00 seconds West, departing the north right-of-way line of said Speight Avenue, a distance of 228.47 feet to a point for corner;

THENCE, North 09 degrees, 05 minutes, 00 seconds East, a distance of 212.47 feet to a point for corner; said also being on the south right-of-way line of said S. Valley Mills Drive;

THENCE, South 80 degrees, 55 minutes, 00 seconds East, along the northwest right-of-way line of said S. Valley Mills Drive, a distance of 184.89 feet to the POINT OF BEGINNING;

CONTAINING, 0.711 acres or 30,988 square feet of land, more or less.


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|---|-------------------|-----------------|------------------|---------------------------|
|  | | | | |
| 9401 LBJ FREEWAY SUITE 300 DALLAS TEXAS 75243 972.334.9041 | | | | |
| DRAWN BY BN | CHECKED BY CMJ | SCALE 1"=80' | DATE OCT 1998 | JOB NUMBER 1002-00.190 |

EXHIBIT TRACT 'K'
BLANKET EASEMENT
LOCATED IN THE CITY OF BEVERLY HILLS, TEXAS
AND BEING OUT OF THE
T.J. CHAMBERS GRANT
MCLENNAN COUNTY, TEXAS

DWG NO: 1002-K



DESCRIPTION OF TRACT A

DESCRIPTION, of a 1.783 acre tract of land situated in the T.J. Chambers Grant, City of Beverly Hills, McLennan County, Texas; said tract being part of a tract of land described in deed to Brookview Hills, Inc., recorded in Volume 898, Page 330 and Volume 893, Page 689; said tract also being part of a tract of land described in deed to Brookview Hills, Inc., recorded in Volume 1320, Page 698 of the Deed Records of McLennan County, Texas; said 1.783 acre tract of land being more particularly described as follows;

BEGINNING at a 1/2-inch Iron rod found at the southwest corner of a tract of land described in deed to E. P. Haltom recorded in Volume 987, Page 847 of the Deed Records of McLennan County, Texas; said point also being on the north right-of-way line of Speight Avenue (a variable width right-of-way);

THENCE, South 45 degrees, 00 minutes, 00 seconds West, along the north right-of-way line of said Speight Avenue, a distance of 288.25 feet to a point for corner;

THENCE, North 44 degrees, 43 minutes, 00 seconds West, departing the north right-of-way line of said Speight Avenue, a distance of 228.47 feet to a point for corner;

THENCE, North 09 degrees, 05 minutes, 00 seconds East, a distance of 212.47 feet to a point of corner;

THENCE, South 80 degrees, 55 minutes, 00 seconds East, a distance of 164.89 feet to a point for corner; said point also being on the south right-of-way line of S. Valley Mills Drive (a 150 wide right-of-way);

THENCE, South 44 degrees, 35 minutes, 34 seconds East, departing the south right-of-way line of said S. Valley Mills Drive, a distance of 219.73 feet to the POINT OF BEGINNING;

CONTAINING, 1.783 acres or 77,665 square feet of land, more or less.



9401 LBJ FREEWAY SUITE 300 DALLAS TEXAS 75243 972.996.3631

DRAWN BY
BH

CHECKED BY
CMJ

SCALE
1"=50'

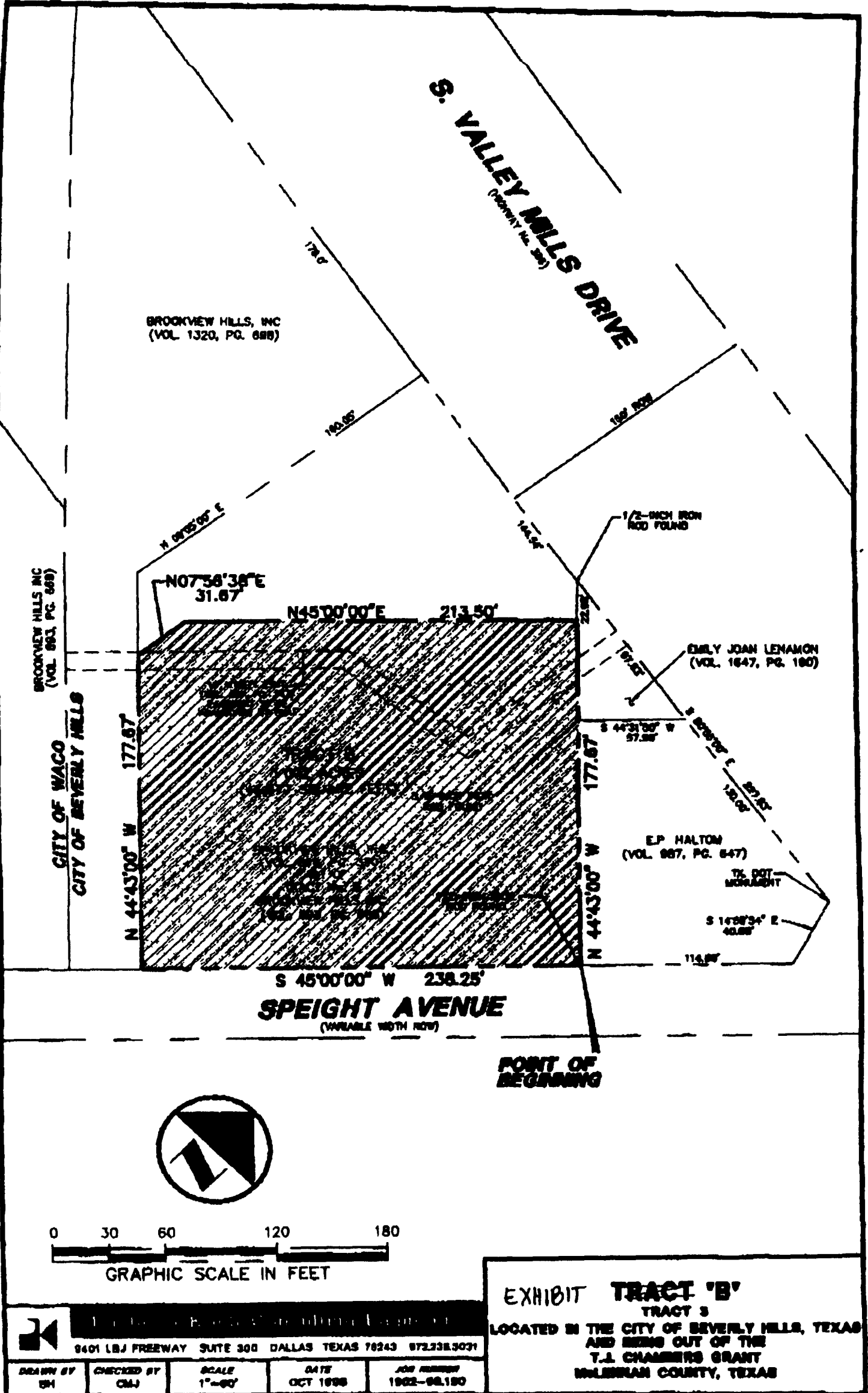
DATE
OCT 1998

JOB NUMBER
1802-00.100

EXHIBIT TRACT 'A'

BLANKET EASEMENT
LOCATED IN THE CITY OF BEVERLY HILLS, TEXAS
AND BEING OUT OF THE
T.J. CHAMBERS GRANT
MCLENNAN COUNTY, TEXAS

ENG NO: 1802-A



DESCRIPTION OF TRACT B

DESCRIPTION, of a 1.072 acre tract of land situated in the T.J. Chambers Grant, City of Beverly Hills, McLennan County, Texas; said tract being all of a tract of land described in deed to Brookview Hills Inc. recorded in Volume 898, Page 330 and Volume 893, Page 669, of the Deed Records of McLennan County, Texas, said 1.072 acre tract of land being more particularly described as follows;

BEGINNING at a 1/2-inch iron rod found on the northwest right-of-way line of Speight Avenue (a variable width right-of-way);

THENCE, South 45 degrees, 00 minutes, 00 seconds West, along the northwest right-of-way line of said Speight Avenue and along the south line of said Brookview Hills Inc., a distance of 238.25 feet to a point for corner; said point also being the southeast corner of a tract of land described in deed to E.P. Haltom, recorded in Volume 987, Page 647 of the Deed Records of McLennan County, Texas;

THENCE, North 44 degrees, 43 minutes, 00 seconds West, along the southwest line of said Brookview Hills Inc. tract, a distance of 177.67 feet to a point for corner;

THENCE, North 07 degrees, 56 minutes, 38 seconds East, a distance of 31.67 feet to a point for corner;

THENCE, North 45 degrees, 00 minutes, 00 seconds East, a distance of 213.50 feet to a point for corner; said point also being on the south line of a tract of land described in deed to Emily Joan Lenamon, recorded in Volume 1647, Page 160 of the Deed Records of McLennan County, Texas;

THENCE, South 44 degrees, 35 minutes, 34 seconds East, continuing along the south line of said E.P. Haltom tract, a distance of 196.76 feet to the POINT OF BEGINNING;

CONTAINING, 1.072 acres or 46,677 square feet of land, more or less.



Pacheco Koch Consulting, Inc.

9401 LBJ FREEWAY SUITE 300 DALLAS TEXAS 75243 972.235.9031

DRAWN BY
BH

CHECKED BY
CMJ

SCALE
1"=80'

DATE
OCT 1998

JOB NUMBER
1802-08.190

EXHIBIT TRACT 'B'

TRACT 2

LOCATED IN THE CITY OF BEVERLY HILLS, TEXAS
AND BEING OUT OF THE
T.J. CHAMBERS GRANT
MCLENNAN COUNTY, TEXAS

DWG NO: 1802-B

24184

HEIGHT RESTRICTIONS AND CROSS ACCESS EASEMENT

This Agreement made and executed this 30 day of September, 1988, by and between Brookview Hills, Inc ("Seller") and The Drake Group, Inc ("Purchaser")

R E C I T A L S

A Seller has on this day conveyed to Purchaser (i) the real property known generally as "Southgate Shopping Center" and more particularly described in Exhibit "A" which is attached hereto and made a part hereof and (ii) the real property described generally as "Tracts" and more particularly described in Exhibit "B" which is attached hereto and made a part hereof, and

B In consideration of the sale of Southgate Shopping Center to Purchaser (i) Seller has required Purchaser to place restrictions limiting the height of structures which might be constructed upon the Tracts and (ii) Purchaser has required Seller to enter into reciprocal easements of ingress and egress with Purchaser so that there will exist free ingress and egress in perpetuity between Southgate Shopping Center and the Tracts

NOW, THEREFORE, in consideration of the premises, the sale by Seller to Purchaser of Southgate Shopping Center and the Tracts, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows

1

Restrictions

1.1 The Tracts shall be subject to the following restrictions

AGREED/8 (SGATE)

- 1 -

1646/243 DR

A No structure of any type which exceeds one (1) story in height shall be erected on Tract 1 and Tract 5 until this restriction is terminated in accordance with Section 1 3 herein

B No structure of any type which exceeds two (2) stories in height shall be erected on Tract 3 or Tract 6 until this restriction is terminated in accordance with Section 1 3 herein

In construing the above referenced deed restrictions, the word "story" shall be defined in the same manner as story is defined in the City of Waco municipal ordinances

1 2 Unless otherwise amended or terminated as provided herein, the restriction set forth in Section 1 1 shall run with the land and shall be binding on all parties and persons claiming under them for a period beginning on the date of this Agreement and continuing until the Note is paid in full Whenever used herein, the term "Note" shall refer to that certain promissory note executed by Purchaser payable to Seller which arises out of and relates to Purchaser's purchase from Seller of the Property and Tracts The filing of a release of the deed of trust lien securing the Note shall be deemed a release of all restrictions set forth in this Agreement

1 3 It is specifically provided that any of the restrictions contained herein may be amended, modified, revoked, terminated, abandoned, or waived, in whole or in part, at any time by an instrument signed by both (i) Seller, its successors or assigns, and (ii) Purchaser, its successors or assigns The restrictions contained

11
herein, if not sooner terminated by the parties, shall be terminated upon the payment of the Note

1 4 The restrictions herein set forth shall be binding upon Purchaser, its successors or assigns, and all parties claiming by, through or under Purchaser, and all subsequent owners of all or any part of the Tracts, each of whom shall be obliged and bound to observe such restriction. Any owner of all or any portion of the Property or Tracts, or any holder of the Note, shall have the right to enforce same, including but not limited to, the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or enforce the observance of the restriction. Any owner of all or any portion of the Property or Tracts, or any holder of the Note, shall have, in addition to all remedies provided above, an action for damages. Failure of any owner of all or any portion of the Property or tracts, or any holder of the Note, to enforce such restriction at the time of any violation thereof shall not be deemed a waiver of their right to do so at any time thereafter.

1 5 The invalidity of the restriction provided herein by judgment or court order shall in no way affect any of the other provisions in this Agreement which shall remain in full force and effect.

II

Reciprocal Ingress and Egress Easement

2 1 Seller hereby GRANTS, SELLS, and CONVEYS unto Purchaser, its successors and assigns, and Purchaser hereby GRANTS, SELLS, and CONVEYS unto Seller, its successors and assigns, each for the benefit of the other, a free, non-exclusive blanket easement ("Easement") to use the Tracts and Southgate Shopping Center for the purposes herein set forth.

2 2 The Easement granted herein shall be for the purpose of providing pedestrian and vehicular ingress and egress over and across the Tracts and Southgate Shopping Center

2 3 The Easement granted herein shall be perpetual and fully assignable by Purchaser, its successors and assigns, and Seller, its successors and assigns

2 4 The Easement granted herein shall be non-exclusive and Purchaser and Seller reserve the right to convey similar easements to such other persons as Purchaser or Seller shall deem necessary to enhance the value of the Tracts and Southgate Shopping Center

2 5 This Easement shall run with the land and be binding upon and inure to the benefit of the respective parties, their successors and assigns The Easement is appurtenant to the Property Should any third party acquire the Southgate Shopping Mall, it shall acquire all Easement rights granted herein to Purchaser

2 6 Seller and Purchaser hereby bind themselves, their successors and assigns, to warrant and forever defend the Easement and rights set forth herein against every person lawfully claiming or to claim the same or any part thereof, by, through, or under, but not otherwise

2 7 The Easement granted herein is subject to all matters of record at the date of this Agreement

2 8 The deed of trust securing the Note and the vendor's lien held by Seller which affects the Property and the Tracts shall be and remain inferior and subordinate to this Easement

2 9 The parties agree to execute such other and further documents and instruments as are necessary and/or desirable to effect the purposes herein expressed

AGREED (SGATE)

- 4 -

2 10 This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect and excepting a subsequent modification in writing, signed by the party to be charged and filed against either the Tracts or Southgate Shopping Center.

III

General

3 1 Time is of the essence in this Agreement.

3 2 This Agreement constitutes the entire agreement of the parties, all understandings and agreements heretofore had between the parties are merged in this Agreement, which alone fully and completely expresses their understandings. This Agreement may not be amended, modified, altered or changed or in any respect whatsoever, unless initialled by Seller and Purchaser, or by a further agreement in writing, signed by both parties and attached hereto as an addendum to this Agreement.

3 3 Any notices required or permitted hereunder shall be in writing and either hand delivered or sent United States mail, postage prepaid, registered or certified mail, return receipt requested addressed as follows:

Seller Brookview Hills, Inc
 Attn: Mark S. Knapp
 P O Box 5301
 Waco, Texas 76708-0301

Purchaser The Drake Group, Inc
 Attn: Hoke Smith, President
 Suite 200, L B 119
 17101 Preston Road
 Dallas, Texas 75248

Any notices sent in accordance herewith shall be deemed received, whether or not actually received, on the fifth business day after the date on which same is postmarked, unless hand delivered, in which event it shall be deemed received on the date of actual receipt

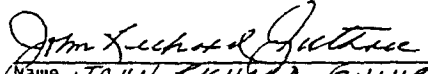
3 4 This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Texas

3 5 If this Agreement or any term or provision hereof becomes the subject of litigation, the prevailing party in such litigation shall be entitled to recover from the non-prevailing party court costs and reasonable attorney's fees


3 6 The parties hereto agree that the covenants contained in this Agreement shall apply to and be binding upon the successors and permitted assigns of the parties hereto

EXECUTED this day and year first above written

BROOKVIEW HILLS, INC

BY 
Name JOHN RICHARD GUTHRIE
Title PRESIDENT

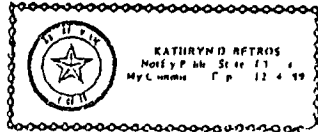
THE DRAKE GROUP, INC

BY 
HOKE SMITH, President

STATE OF TEXAS

COUNTY OF McLennan

This instrument was acknowledged before me on the 3rd day of October 1988, by John Richard Guthrie, President of Brookview Hills, Inc, a Texas corporation, on behalf of said corporation



Commission Expires 12-04-89

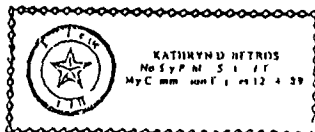
Kathryn D. Betros
Notary Public, State of Texas

Printed Name Kathryn D. Betros

STATE OF TEXAS

COUNTY OF McLennan

This instrument was acknowledged before me on the 3rd day of October 1988, by Hoke Smith, President of The Drake Group, Inc, a Texas corporation, on behalf of said corporation



Commission Expires 12-04-89

Kathryn D. Betros
Notary Public, State of Texas

Printed Name Kathryn D. Betros

AGREEB/8 (SGATE)

- 7 -

TRACT 1 CHAMBERLAIN HOLDING CENTER 10 730 A F

Fieldnote for a survey of 0.17 acres of land out of the T J Chamber Grant in the City of Brookview Hills, McLennan County, Texas, being a part of that certain tract of land conveyed to Brookview Hills, Inc. as Tract One in deed recorded in Vol. 893 Page 669 of said County deed records.

Beginning at an iron stake in the South line of South Valley Mills Drive and the North line of said Brookview Hills, Inc. tract N 80°55' W 170 feet from its North-east corner, said point of beginning also being the North-west corner of Church's Lease Tract Vol. 1065 Page 472

Thence S 90°5' W at 100 feet pass Church's Lease Tract

Southwest corner in all 150 feet to a nail in asphalt for Southeast corner of this

Thence N 80°55' W 225 feet to a nail in asphalt for South-west corner of this

Thence N 90°0' E 150 feet to a nail in asphalt in the South line of said Drive

Thence S 80°55' E 225 feet along the South line of said Drive to the place of beginning

130

130

EXHIBIT " 11 "

PAGE 1 OF 6

TRACT 2 CHAMBERLAIN HOLDING CENTER 10 600 A F

Fieldnote for a survey of 0.1780 acres of land out of the T J Chamber Grant in the City of Brookview Hills, McLennan County, Texas, being a part of that certain tract of land conveyed as Tract Two in deed recorded in Vol. 1320, Page 609 of said County deed records.

Beginning at a nail in concrete in the South line of South Valley Mills Drive, said point being the Northwest corner of said Brookview Hills, Inc. tract

Thence N 80°55' E 35 feet to the South line of said Drive to an "X" painted in concrete for Northeast corner of this

Thence S 90°11' 47" W 160 feet to an "X" painted in concrete on West side of building for Southeast corner of this

Thence N 80°55' W 35 feet to an "X" painted in concrete in the West line of said Brookview Hills, Inc. tract

Thence N 90°01' 47" E 160 feet along the West line of said Brookview Hills, Inc. tract to the place of beginning

EXHIBIT " 11 "

PAGE 2 OF 6

TRACT 5, SOUTHGATE SHOPPING CENTER 66,051.72 S. F.

Fieldnotes for a survey of 1.577 acres of land out of the T. J. Chambers Grant in the City of Jersey Hills, McLennan County, Texas, being a part of that certain tract of land conveyed to Brookview Hills, Inc. by deed recorded in Vol 898, Page 330 of said County deed records, also a part of that certain tract of land conveyed a tract One in deed to said Brookview Hills, Inc. which is recorded in Vol 893, Page 669 of said deed records

Beginning at an iron stake in the Northwest line of Speight Ave at the South or Southwest corner of Brookview Hills, Inc. tract Vol 898, Page 330

Thence S 45°19'49" W 230.25 feet with the Northwest line of Speight Ave to a nail in asphalt for Southwest corner of this

Thence N 44°43'31" W 225.3 feet to a nail in asphalt for corner

Thence N 9°05' E 189.9 feet to a nail in asphalt in the South line of South Valley Hills Drive

Thence S 80°55' E 141.4 feet along the South line of said Drive to an iron stake in concrete at the Northeast corner of said Brookview Hills, Inc. Tract (898-330)

Thence S 44°35'34" E 220.8 feet to the place of beginning

EXHIBIT " 11 "
PAGE 5 OF 1

TRACT 6, SOUTHCAMP STOPPING CHAIR 75,527 18 3 1

Fieldnotes for a survey of 0.815 acres of land out of the J. J. Chambers Grant in the City of Brookview Hills, McLennan County, Texas, being a part of that certain tract of land conveyed as First Tract in deed to Brookview Hills, Inc. and recorded in Vol. 1320, Page 698, also a part of that certain tract of land conveyed as Tract One to Brookview Hills, Inc. deed recorded in Vol. 893, Page 669 of McLennan County, Texas deed records.

Beginning at an "X" painted in Concrete in the South line of South Valley Mills Drive and the North line of Brookview Hills, Inc. tract (1320-698) S 80°55' E 35 feet from its Northwest corner

Thence S 80°55' E 178 feet along South line of said Drive to a nail in asphalt in North line of Brookview Hills, Inc. tract (893-669) for Northeast corner of this

Thence S 90°14'40" W 200 feet to a nail in asphalt for Southeast corner of this

Thence N 80°55' W 177 2/3 feet to an "X" painted in concrete on West side of building for Southwest corner of this

Thence N 90°01'47" E 100 feet along the West side of said building and said West side extended to the place of beginning

TRACT 1, SOUTHCAMP SHOPPING CENTER 10,750 ± F

Fieldnotes for a survey of 0.13 acre of land out of the T. J. Chamber Grant in the City of Beverly Hills, McLenan County, Texas, being a part of that certain tract of land conveyed to Beverly Hills, Inc. as tract One in deed recorded in Vol. 893, Page 669 of said County deed records.

Beginning at an iron stake in the South line of South Valley Mills Drive and the North line of said Brookview Hills, Inc. tract, N 80°55' E 130 feet from its North-east corner, said point of beginning also being the North-west corner of Church's Lease tract, Vol. 1065, Page 472
 Thence S 90°05' W, at 100.2 feet past Church's Lease tract Southwest corner, in all 150 feet to a nail in asphalt for Southeast corner of this
 Thence N 80°55' W 125 feet to a nail in asphalt for South-west corner of this
 Thence N 90°05' E 150 feet to a nail in asphalt in the South line of said Drive
 Thence S 80°55' E 125 feet along the South line of said Drive to the place of beginning

EXHIBIT " 1; "
 PAGE 1 OF

TRACT 5, SOUTHGATE SHOPPING CENTER 66,951.72 S F.

Fieldnotes for a survey of 1.537 acres of land out of the T J Chambers Grant in the City of Beverly Hills, McLennan County, Texas, being a part of that certain tract of land conveyed to Brookview Hills, Inc by deed recorded in Vol 898, Page 330 of said County deed records, also a part of that certain tract of land conveyed as Tract One in deed to said Brookview Hills, Inc which is recorded in Vol. 893, Page 669 of said deed records

Beginning at an iron stake in the Northwest line of Speight Ave at the South or Southeast corner of Brookview Hills, Inc tract Vol 898, Page 330

Thence S 45°19'49" W 238.25 feet with the Northwest line Speight Ave to a nail in asphalt for Southwest corner of this

Thence N 44°43'31" W 225.3 feet to a nail in asphalt for corner

Thence N 90°05' E 189.9 feet to a nail in asphalt in the South line of South Valley Mills Drive

Thence S 80°55' E 144.8 feet along the South line of said Drive to an iron stake in concrete at the Northeast corner of said Brookview Hills, Inc Tract (898-330)

Thence S 44°35'34" E 220.8 feet to the place of beginning

EXHIBIT " B "
PAGE 3 OF 4

TRACT 6, SOUTHGATE SHOPPING CENTER 35,523.18 S F

Fieldnotes for a survey of 0.8155 acres of land out of the T. J. Chambers Grant in the City of Beverly Hills, McLennan County, Texas, being a part of that certain tract of land conveyed as First Tract in deed to Brookview Hills, Inc. and recorded in Vol. 1320, Page 698, also a part of that certain tract of land conveyed as Tract One to Brookview Hills, Inc. deed recorded in Vol. 893, Page 669 of McLennan County, Texas deed records.

Beginning at an "X" painted in Concrete in the South line of South Valley Mills Drive and the North line of Brookview Hills, Inc. tract (1320-698) S 80°55' E 35 feet from its Northwest corner

Thence S 80°55' E 178 feet along South line of said Drive to a nail in asphalt in North line of Brookview Hills, Inc. Tract (893-669) for Northeast corner of this

Thence S 9°14'40" W 200 feet to a nail in asphalt for Southeast corner of this

Thence N 80°55' W 177 25 feet to an "X" painted in concrete on West side of building for Southwest corner of this

Thence N 9°01'47" E 200 feet along the West side of said building and said West side extended to the place of beginning

EXHIBIT "B"
PAGE 4 OF 4

Filed for Record on the 20 day of OCTOBER A D. 1988 at 11⁰⁰ o'clock a M.
uly Recorded this the 20 day of OCTOBER A D. 1988 at 155 o'clock P M.

FRANK DENNY, County Clerk
McLennan County, Texas

BY

J. Martinez

Deputy

19⁰⁰

98 RD 6051A (SJ)

RETURN TO: PASB
REPUBLIC TITLE OF TEXAS, INC.
300 CRESCENT COURT, SUITE 100
DALLAS, TEXAS 75201

RELEASE OF HEIGHT RESTRICTIONS

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS
COUNTY OF MCLENNAN §

WHEREAS, on the 30th day of September, 1988, Brookview Hills, Inc (Seller) conveyed certain property to The Drake Group, Inc (Purchaser) by Warranty Deed recorded in Volume 1646, Page 235 retaining for Seller a vendor's lien and getting a Deed of Trust which is recorded in Volume 1409, Page 194 of the Deed of Trust Records for McLennan County, Texas At the same time, Seller placed certain height restrictions, on the property retained by seller as well as the property conveyed to Purchaser, by the Height Restrictions and Cross Access Agreement recorded in Volume 1646, Page 243 of the Deed Records of McLennan County, Texas (hereinafter "Restrictions") Said Restrictions were to terminate upon the payment of the Note in the principal amount of \$2,300,000 00 (said Note further described in the Deed of Trust listed above) However, said Note was never paid, instead, Brookview Hills, Inc, by and through its Trustee, Mark S Knapp, took the property back by Trustee's Deed dated July 2, 1991, recorded in Volume 1720, Page 223 of the Deed Records of McLennan County, Texas

NOW, THEREFORE, the current owners of the property, described in the Restrictions, join together herein along with the Trustee of said Trustee's Deed for the sole purpose of declaring that all restrictions, set forth in the Restrictions, under Section I, paragraphs 1.1 - 1.5, are hereby terminated and the property described in the Restrictions is discharged and fully released from any and all restrictions by the undersigned whatsoever

EXECUTED this 23 day of November, 1998

RELEASE OF HEIGHT RESTRICTIONS

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS
COUNTY OF MCLENNAN §

WHEREAS, on the 30th day of September, 1988, Brookview Hills, Inc (Seller) conveyed certain property to The Drake Group, Inc (Purchaser) by Warranty Deed recorded in Volume 1646, Page 235 retaining for Seller a vendor's lien and getting a Deed of Trust which is recorded in Volume 1409, Page 194 of the Deed of Trust Records for McLennan County, Texas At the same time, Seller placed certain height restrictions, on the property retained by seller as well as the property conveyed to Purchaser, by the Height Restrictions and Cross Access Agreement recorded in Volume 1646, Page 243 of the Deed Records of McLennan County, Texas (hereinafter "Restrictions") Said Restrictions were to terminate upon the payment of the Note in the principal amount of \$2,300,000 00 (said Note further described in the Deed of Trust listed above) However, said Note was never paid, instead, Brookview Hills, Inc, by and through its Trustee, Mark S Knapp, took the property back by Trustee's Deed dated July 2, 1991, recorded in Volume 1720, Page 223 of the Deed Records of McLennan County, Texas

NOW, THEREFORE, the current owners of the property, described in the Restrictions, join together herein along with the Trustee of said Trustee's Deed for the sole purpose of declaring that all restrictions, set forth in the Restrictions, under Section I, paragraphs 1 1 - 1 5, are hereby terminated and the property described in the Restrictions is discharged and fully released from any and all restrictions by the undersigned whatsoever

EXECUTED this 18 day of December 1998

Mark S Knapp, Trustee

J Lawrence Guthrie

Janice Guthrie Knapp

G _____
general partnership

By _____

Name _____

TARRAGON REALTY INVESTORS, INC
a Nevada corporation

By _____

Name _____

Title _____

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF _____ §

THIS INSTRUMENT was acknowledged before me on this _____ day of _____, 1998, by Mark S Knapp, Trustee

Seal

Notary Public, State of Texas
Printed name
Commission expires

Mark S Knapp
Mark S Knapp, Trustee

J. Lawrence Guthrie, Partner
J Lawrence Guthrie, Partner

Janice Guthrie Knapp
Janice Guthrie Knapp, Partner

general partnership

By _____

Name _____

NATIONAL INCOME REALTY
TRUST, a California business trust

By _____

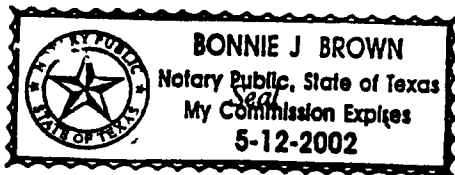
Name _____

Title _____

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF McLENNAN §

THIS INSTRUMENT was acknowledged before me on this 23 day of
November, 1998, by Mark S Knapp, Trustee

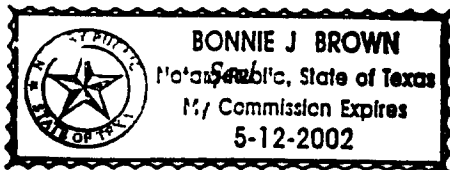


Bonnie J Brown
Notary Public, State of Texas
Printed name.
Commission expires

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF McLENNAN §

THIS INSTRUMENT was acknowledged before me on this 23 day of
November, 1998, by J Lawrence Guthrie, Partner of Guthrie, Associate



Bonnie J. Brown

Notary Public, State of Texas

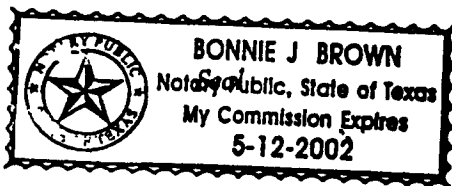
Printed name

Commission expires

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF McLENNAN §

THIS INSTRUMENT was acknowledged before me on this 23 day of
November, 1998, by Janice Guthrie Knapp, Partner of Guthrie Associate



Bonnie J. Brown

Notary Public, State of Texas

Printed name

Commission expires

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF _____ §

THIS INSTRUMENT was acknowledged before me on this _____ day of _____, 1998, by _____ (title) of GUTHRIE ASSOCIATES OF TEXAS, general partnership, on behalf of said partnership

Notary Public, State of Texas

Printed name _____

Commission expires _____

Seal

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF Dallas §

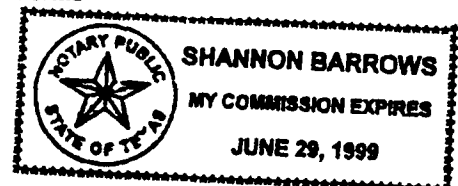
THIS INSTRUMENT was acknowledged before me on this 18th day of December, 1998, by Chris W Clinton, Senior Vice President (title) of TARRAGON REALTY INVESTORS, INC, a Nevada corporation, on behalf of said corporation.

Notary Public, State of Texas

Printed name _____

Commission expires _____

Seal



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

J. A. "Andy" Harwell

1-7-99 02 18 PM 9900669

INGE \$19.00

J A "ANDY" HARWELL, County Clerk
MCLENNAN COUNTY, TEXAS

4553 IM

EASEMENT AGREEMENT AND
RESTRICTIVE COVENANT

1/18/1992
Page 25

This Agreement made and entered into effective February 14, 1992, by and between NATIONAL INCOME REALTY TRUST ("NIRT") and AL COPELAND ENTERPRISES, INC. ("ACE").

WITNESSETH

WHEREAS NIRT is the owner of the Southgate shopping center situated on the real property set forth and described on Exhibit-A, attached hereto and made apart hereof ("Property No. 1"), and

WHEREAS, ACE is the owner of the real property as set forth and described on Exhibit B, attached hereto and made a part hereto ("Property No. 2"), and

WHEREAS NIRT and ACE desire to grant to each other certain rights in and to Property No 1 and Property No 2, in order to facilitate there free and unobstructed flow of vehicular and pedestrian traffic between the two properties, and to otherwise affect the properties as described herein

NOW THEREFORE, for and in consideration of the terms covenants and conditions contained herein, and for the mutual benefit of the parties, they do hereby agree as follows.

- 1 In consideration of the grants and restrictions contained herein, ACE hereby pays and delivers to NIRT the sum of Ten Thousand and no/100 (\$10,000.00) Dollars, receipt of which is acknowledged by NIRT as full and adequate consideration for the grants and restrictions contained in this Agreement.
- 2 NIRT and ACE hereby grant, each to the other, a nonexclusive easement over and across all of Property No 1 and Property No 2 for the purpose of the mutual, reciprocal and interdependent use of the entrance and exit drives, driveways, roadways, open and covered walks, gazebos and breezeways, if any. The purpose of such reciprocal cross easements is to facilitate ingress and egress to and from Property No. 1 and Property No 2 for vehicular and foot traffic. Said easements shall be for the benefit of ACE and NIRT and their respective licensees, invitees and customers.
- 3 It is further understood and agreed between ACE and NIRT that neither party shall erect barricades, fences, structures or other obstacles along the boundary line between Property No 1 and Property No 2, so as to interfere with or materially retard the free flow of traffic between the two lots, it being the intention of the parties hereto provide for mutual parking.

ived 19 May 00 08 49 AM From 2547538412 To 6037195344

Get faxes by email. Free.  Fax.com

Page 3 of 5

05/19/2000 08 47 2547538412

MARK S KNAPP

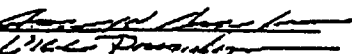
PAGE 03

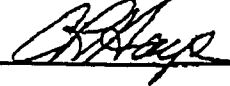
- 4 ACE and NIRT further agree and understand that nothing contained herein shall restrict ACE's or NIRT's right to fully develop its respective properties, being Property No. 1 and Property No. 2, except to the limited extent set forth in paragraph 3 above, which is specifically limited to development as set forth therein on the boundary lines between Property No. 1 and Property No. 2 in a manner that would materially interfere with or materially retard the free flow of traffic between the two properties.
- 5 NIRT hereby agrees that it shall not, except with the written consent of ACE first had and obtained, directly or indirectly engage in or acquire any financial or beneficial interest in (except a minority interest in publicly traded securities) or grant a lease or sell property to any person, firm or corporation to engage in the operation of a restaurant which includes the sale of chicken as a primary menu item within the Southgate Shopping Center (identified herein as Property No. 1 and as further described on Exhibit A).
- 6 NIRT and Ace further declare that it is their intention that the obligation and rights contained herein shall be binding upon them, and their successors and assigns, as a real obligation running with Property No. 1 and Property No. 2, as set forth and described herein, and that in any sale or lease of all or a portion of Property No. 1 or Property No. 2 the above obligations, rights and prohibitions shall be incorporated.

IN WITNESS WHEREOF, the parties have set their hands on the day, month and year set forth below

NIRT
(NATIONAL INCOME REALTY TRUST)

AL COPELAND ENTERPRISES, INC

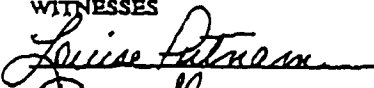
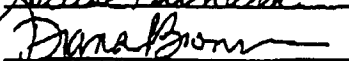
By 
Chief Executive Officer

By 



Date 07/11/92

Date 02/14/92

WITNESSES

WITNESSES

STATE OF LOUISIANA

PARISH OF JEFFERSON

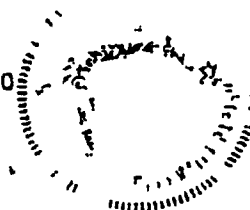
BEFORE ME, the undersigned notary, personally came and appeared CARL R. Hays known whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed same in his capacity as Chief Operating Officer of Al Copeland Enterprises, Inc., identified in the foregoing instrument as his free act and deed for the purpose and consideration stated therein

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14th day of February 1992

Elva R. Saltafornaggio
Notary Public

My commission is for life

ELVA R. SALTAFORNAGGIO
NOTARY PUBLIC
PARISH OF JEFFERSON
My Commission is for life.



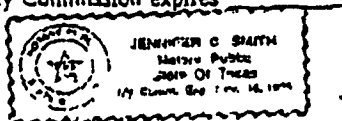
STATE OF TEXAS

COUNTY OF Dallas

BEFORE ME, the undersigned notary, personally came and appeared Chris M. Denton known whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed same in his capacity as Vice President of National Income Realty Trust, identified in the foregoing instrument as his free act and deed for the purpose and consideration stated therein

Jennifer C. Smith
Notary Public

My Commission expires



05/19/2000 08 47 2547538412

MARK S KNAPP

AGE 04

70
EXIT G A

7-90 JSF11

23 74* 9 214 363 6528 H 2

EXHIBIT 'A'
SOUTHGATE SHOPPING CENTER

The following BOUNDARY DESCRIPTION defines a parcel of land containing approximately 15.80 Acres of land situated at the SOUTHEAST corner of Spring Valley Mills and Speight Ave, located in the City of WACO and the City of BEVERLY HILLS in MCLENNAN COUNTY, TEXAS.

BEGINNING at the NORTHEAST corner of SITE and Spring Valley Mills Drive S 44°36'34" E, a Distance of 220.8' feet to a corner.

THENCE S 45°19'49" W, a distance of 238.25' to a point.

THENCE S 45°27'04" W, a distance of 266.55' to a corner.

THENCE N 44°34'37" W, a distance of 146.24' to a corner.

THENCE N 80°39'57" W, a distance of 199.63' to a corner.

THENCE S 54°16'28" W, a distance of 14.18' to a corner.

THENCE S 09°22'03" W, a distance of 70.0' to a corner.

THENCE N 80°39'57" W, a distance of 180.0' to a point.

THENCE N 80°39'57" W, a distance of 9.4' to a corner.

THENCE S 46°22'32" W, a distance of 172.5' to a corner.

THENCE N 43°57'47" W, a distance of 230.3' to a corner.

THENCE S 45°27'41" W, a distance of 218.5' to a corner.

THENCE N 43°27'08" W, a distance of 49.07' to a corner.

THENCE N 45°24'55" E, a distance of 218.65' to a corner.

THENCE N 45°24'12" W, a distance of 23.7' to a point.

THENCE N 45°24'12" W, a distance of 212.09' to a point.

THENCE N 45°24'12" W, a distance of 48.71' to a point.

THENCE N 45°24'12" W, a distance of 195.18' to a corner.

THENCE N 0°09'24" E, a distance of 221.81' to a corner.

THENCE S 80°55' E, a distance of 140.0' to a point.

THENCE S 80°55' E, a distance of 108.0' to a point.

THENCE S 80°55' E, a distance of 160.0' to a point.

THENCE S 80°55' E, a distance of 180.0' to a point.

79

5/14

1-23-20 4 8-PM

9734* 3 214 333 6828 H 3

THENCE S 80°55' E, a distance of 35 0' to a point.
THENCE S 80°55' E, a distance of 178 0' to a point
THENCE S 80°55' E, a distance of 197 60' to a point
THENCE S 80°55' E, a distance of 125 0' to a point.
THENCE S 80°55' E, a distance of 100 0' to a point
THENCE S 80°55' E, a distance of 25 2' to a point.
THENCE S 80°55' E, a distance of 144.80' to a point of beginning

2

of the County of McLENNAN State of T E X A S all that certain
piece or parcel of land, lying and being situated in the County
of McLennan and State of Texas, and being described as follows:
Being a tract of land out of the T J Chambers Grant in McLennan
County Texas, and being a part of Lots 2 3 and 4 of Gatlin's
Resubdivision of Blocks 12, 13 and 14 of the A Wheeler Addition to
the City of Waco McLennan County Texas BEGINNING at an iron
stake in the south line of State Highway #6 north 80 degrees 55' W
398 13 feet from the intersection of the south line of the said
Highway with the cutback line of the NW line of Speight Avenue
THENCE S 9 degrees 05' W 100 2 ft to an iron stake for the SE
corner of this THENCE N 80 degrees 55' W 100 ft to an iron stake
for the SW corner of this THENCE N 9 degrees 05' E 100.2 ft
to an iron stake for the NW corner of this in the South line of the
said State Highway #6 THENCE S 80 degrees 55' E 100 ft with the
South line of the said Highway to the place of beginning, according
to survey of Uran-Roden & Company, Registered Public Surveyors
of date July 16 1969

Subject to all easements and restrictions of record in McLennan
County, Texas

EXHIBIT # B

Filed for Record on the 2 day of MARCH A D. 1992 at 9:55 o'clock A M

Duly Recorded this the 2 day of MARCH A D 1992 at 12:38 o'clock P M.

FRANK DENNY, County Clerk
McLennan County, Texas

By [Signature] Deputy

**LEASE AGREEMENT
EXHIBIT C
CONSTRUCTION RIDER**

1 Tenant has inspected the Demised Premises and accepts them in their present condition. Tenant has the responsibility, except as stated elsewhere in this Lease, to repair all existing construction as required for Tenant's use and occupancy, including, but not limited to, storefronts, heating and air conditioning systems, electrical systems, lighting, partitions, doors and all finishes.

2 Tenant shall, at Tenant's sole expense, furnish to Landlord construction drawings and specifications (hereinafter called "Plans"), describing all work necessary to construct the Demised Premises for Tenant's use and occupancy (hereinafter called "Tenant Improvements"). Tenant shall furnish to Landlord three (3) copies of the Plans for Landlord's review and approval, which is required prior to the initiation of any work on the Tenant Improvements. Landlord shall have ten (10) business days from the date of Landlord's receipt of the Plans to review them. In the event Landlord fails to indicate its approval of the Plans in writing within the aforementioned time frame, the Plans shall be deemed approved.

3 Tenant shall, at Tenant's sole expense, perform all work necessary to complete the Tenant Improvements as approved by Landlord.

4 Tenant shall cause the Tenant Improvements to be constructed in compliance with all applicable ordinances, laws, rules and regulations of all governmental authorities, and shall secure written approval of the Plans from such governmental authorities before beginning work on the Tenant Improvements. In the event that said governmental authorities require changes or alterations in the Plans before granting Tenant written approval, then Tenant shall, at Tenant's sole expense, cause the Plans to be revised to indicate the required changes or alterations and shall furnish to Landlord two (2) copies of the revised Plans for Landlord's records.

5 Tenant shall cause the Tenant Improvements to be constructed by a contractor (hereinafter called "Tenant's Contractor") licensed by the appropriate governmental authorities and shall require Tenant's Contractor to furnish to Landlord a Certificate of Insurance as proof of insurance coverage in at least the following amounts:

(A) Workers Compensation Insurance in the amounts required by law in the state in which the Shopping Center is located,

(B) Comprehensive general liability insurance and personal injury liability insurance, specifying a single occurrence policy limit of at least \$1,000,000,

(C) Products/Completed Operations Insurance,

(D) Independent Contractors Insurance

(E) Personal liability insurance specifying a single occurrence policy limit of at least \$1,000,000

(F) Owned and hired automobile and equipment liability insurance, and

(G) Builders Risk Insurance in the minimum amount of the contract between Tenant and Tenant's Contractor.

6 Tenant shall, before opening for business, furnish to Landlord a Certificate of Occupancy or other documentation indicating acceptance of construction by the appropriate governmental authorities. Tenant shall also furnish to Landlord an acceptable Affidavit of No Liens and Waivers of Lien from Tenant's Contractor and its subcontractors.

7 Tenant shall, at Tenant's sole expense, furnish signs and the electrical connections thereto in compliance with Exhibit D hereof.

8 Tenant Improvement Allowance. Landlord, at Landlord's expense, shall provide and deliver the Demised Premises in an "as is, vanilla shell" condition. In addition, Landlord shall deliver the Premises with two (2) ADA compliant restrooms, HVAC units in good working order and shall contribute a tenant finish allowance not to exceed Fifty Thousand Dollars (\$50,000.00) toward the actual cost to complete Tenant's work, such allowance to be paid to Tenant upon Landlord's receipt of evidence of completion including a copy of the Certificate of Occupancy, lien waivers, receipts, and any other supporting materials that Landlord may reasonably require to determine that the work has been properly completed and all cost therefor have been satisfied. All cost attributable to tenant improvements, furniture, fixtures and equipment in excess of that provided by Landlord shall be at Tenant's sole cost and expense. All such improvements shall be subject to Landlord's prior written approval and comply with all governing codes, ordinances and laws.

LANDLORD
TARRAGON REALTY INVESTORS, INC

TENANT
FAVAR CONCEPTS, Ltd, a Delaware corporation
dba/ YES'LESS" FOOD & MORE

BY [Signature]

BY [Signature]

NAME James H. Clark

NAME W H MARQUINO

TITLE Senior Vice President

TITLE PRESIDENT

DATE 7/11/00

DATE 7 6 00

**LEASE AGREEMENT
EXHIBIT D
TENANT SIGN CRITERIA
(Individual Letters)**

Tenant's fascia sign ("hereinafter called "Sign") shall be designed, built, installed and maintained in strict accordance with the following criteria

1 Design

(A) The Sign shall be individually lighted letters mounted directly to the sign fascia, or mounted on a continuous metal bar or raceway. All letters and symbols shall be formed with metal sides and plastic faces, the letters shall have a minimum depth of four (4) inches with the plastic faces being a minimum of three-sixteenths (3/16) inch thick. The Sign shall be lighted adequately to achieve an even lighting level across the face of the letter. All wiring and electrical devices shall be hidden from view. If a raceway or wiring bar is provided, it shall be colored to match the sign fascia.

(B) Mounting of the Sign shall be performed in a workmanlike manner. Tenant accepts responsibility for any damage to the property caused by Tenant's sign installer.

(C) All materials used in the fabrication and mounting of the Sign, including but not limited to fasteners, bolts and screws, shall be rustproof. If the sign fascia is metal, then the fascia shall be protected from galvanic reaction with all metal parts of the Sign.

2 Size The Sign shall conform to the following size and location requirements

(A) The length of the Sign shall not be greater than eighty percent (80%) of the frontage of the Demised Premises. The length of the Sign shall be measured from the outer edge of the first letter to the outer edge of the last letter.

(B) The vertical height of the Sign shall not be greater than fifty percent (50%) of the sign fascia, and in no case shall the vertical height of the Sign be less than eighteen (18) inches. The vertical height of the Sign shall be measured from the tallest letter and shall include the tails of lower case letters that extend below the line. In cases where Sign letters are stacked, the vertical height measurement shall include all stacked letters and the spaces between letter rows. Raceways and wiring bars shall be included in the vertical height measurement.

3 Location The Sign shall be centered on the Tenant's storefront horizontally, and shall be centered on the sign fascia vertically. If the fascia is angular, the Sign shall be mounted perpendicular to the ground and diagonal bracing shall be attached to the rear of the sign.

4 Landlord's Approval Tenant, at Tenant's sole expense, shall have prepared and shall submit to Landlord two (2) copies of the plans and specifications for Tenant's Sign, prior to fabrication of the Sign. The plans shall include detailed information concerning the size, location, materials, color, electrical devices and connections. Landlord shall have ten (10) business days from Landlord's receipt of the plans to approve/disapprove them. In the event Landlord should fail to indicate its approval of the Tenant's plans in writing within the aforementioned time frame, the plans shall be deemed approved.

5 Applicable Laws Tenant is responsible for securing all necessary permits and approvals from governmental authorities having jurisdiction. Tenant shall further cause the Sign to be fabricated and installed to comply with all applicable laws, rules and ordinances promulgated by the governmental authorities having jurisdiction, and in accordance with the plans as approved by Landlord.

6 Other Signage Tenant shall not place any under canopy signage in front of the Demised Premises without prior written approval of Landlord. In the event Landlord determines that under canopy signs are desirable for the Shopping Center, Tenant shall place such a sign according to specifications provided by Landlord. Tenant shall be prohibited from placing any other signage on, about or in front of the Shopping Center, or the Demised Premises, without the prior written consent of Landlord. This shall include but not be limited to banner signs, marquee signs, trailer signs, billboard signs, and window painted signs. Notwithstanding anything to the contrary herein, Landlord hereby grants Tenant the right to install and maintain "Grand Opening" signage, similar to that being used at the majority of Tenant's stores, for a period not to exceed thirty (30) days ("Grand Opening License"). Upon the expiration of the Grand Opening License period, Tenant shall remove any "Grand Opening" signage and repair and restore any damage that may have occurred pursuant to such installation, use and removal. Additionally, Landlord shall, during the Term of this Lease and any extension periods, permit Tenant to install and maintain "temporary window signage", including posters, hanging signs, or other reasonable forms of advertisement consistent with the retail grocery industry, so long as the gross area of such signage is not greater than thirty percent (30%) of the window glass upon which or behind that such signage is displayed. If Tenant violates this restriction, Landlord shall have the right, without notice to Tenant, to remove such signage without liability therefor or, following notice of default and expiration of any applicable cure period, prosecute its remedies under this Lease.

7) Maintenance Tenant shall maintain the Sign during the Term of this Lease and any extension thereof. The Sign shall be kept clean and in operating condition and Tenant shall develop a continuing maintenance program to ensure same.

LEASE AGREEMENT
EXHIBIT E
GUARANTY OF LEASE

TENANT LAVER CONCEPTS, Ltd., a Delaware corporation
DBA YES! LESS FOOD & MORE

SHOPPING CENTER UNIVERSITY CENTER
LEASE DATED July 11, 2000

FOR VALUE RECEIVED and in consideration of and as an inducement for the execution and delivery of the Lease referred to above between Landlord and Tenant the undersigned Guarantor hereby guarantees to Landlord the full and prompt payment of all Rent and any and all other sums and charges payable by Tenant under the Lease and the full and timely performance and observance of all the covenants, terms, conditions and agreements in the Lease to be performed and observed by the Tenant. Guarantor hereby covenants and agrees that if default shall at any time be made by the Tenant in the payment of any such Rent or of the covenants, terms, conditions or agreements in the Lease the Guarantor will promptly pay such Rent and other sums and charges to the Landlord and/or perform and fulfill all of such terms, covenants, conditions and agreements and will pay the Landlord all damages and expenses including attorney's fees that may arise in consequence of any default by the Tenant under the Lease or by the enforcement of this Guaranty.

This Guaranty is an absolute and unconditional guaranty of payment and of performance. It shall be enforceable against the Guarantor without the necessity of any suit or proceedings on the Landlord's part of any kind or nature whatsoever against the Tenant and without the necessity of any notice of non payment, non performance, non observance, acceptance of this Guaranty, or any other notice or demand to which the Guarantor hereby expressly waives. The Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of the Guarantor hereunder shall in no way be terminated, affected, diminished or impaired by reason of the assertion or failure to assert by the Landlord against the Tenant any of the rights and remedies available to the Landlord or by relief of Tenant from any of the Tenant's obligations under this Lease by the rejection of the Lease in connection with proceedings under the Bankruptcy laws now or hereafter in effect or otherwise.

This Guaranty shall be limited to the first sixty (60) month primary Lease Term without exception and the liability of the Guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, modification of the Lease or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Lease, or by reason of any extensions of time that may be granted by the Landlord to the Tenant or by reason of a change for different use of the Demised Premises or by reason of any dealings or transactions or matters or things occurring between Landlord and the Tenant whether or not the Guarantor has knowledge or notice thereof. Landlord reserves the right to obtain credit report.

The assignment by Landlord of the Lease and/or the Rents and other receipts thereof made either with or without the Guarantor's knowledge or notice shall in no manner whatsoever release the Guarantor from any liability as Guarantor. This Guaranty may be assigned by Landlord.

All the Landlord's rights and remedies under the said Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be an exclusion or a waiver of any of the others. This Guaranty shall be binding upon the Landlord and Tenant and their respective successors and assigns.

IN WITNESS WHEREOF the undersigned has executed this Guaranty of Lease as of the day and year set forth below.

Guarantor LEMINING COMPANIES, INC.

Date 7/10/00

Name Charles L. Hall

(If other than an individual please print full name and title of the officer or director authorized to sign on behalf of Guarantor)

Signature [Signature]

Address _____

Telephone _____

Social Security/ fax ID # _____

ADDENDUM TO LEASE

BETWEEN

TARRAGON REALTY INVESTORS, INC

AND

FAVAR CONCEPTS, Ltd , a Delaware corporation
dba/"YES'LESS" Food & More

WHEREAS Tarragon Realty Investors, Inc (Landlord) and Favar Concepts, Ltd, d/b/a Yes'Less Food & More (Tenant) have entered into that certain Lease dated 11 day of July, 2000 and

WHEREAS Landlord and Tenant wish to incorporate the following terms and conditions into the Lease,

NOW THEREFORE the following terms and conditions shall be a part of the Lease without otherwise modifying the Lease, however should anything contained herein conflict with other language or covenants within the Lease the terms and conditions contained in this Addendum To Lease shall supercede and govern with respect to such conflicts

1 Tenant's Renewal Option Notwithstanding anything contained in the Lease to the contrary, so long as Tenant is not in default of the Lease either at the time Tenant elects to exercise this option or upon the effective date of the renewal term, Tenant shall have the right to extend the Term of this Lease for two additional five (5) year periods (the "Option Periods") by providing Landlord notice of its election to exercise the option at least one hundred twenty (120) days prior to the expiration of the original Term hereof. All terms and conditions of the Lease shall remain the same and without change except (a) the expiration date shall be extended sixty (60) months and (b) the annual minimum Base Rent during the Option Period(s) shall be the greater of (a) eighty percent (80.00%) of the average total rent (percentage rent & base minimum rent) paid during three prior years or (b) \$115,515.00 during the 1st Option and \$130,058.00 during the 2nd Option.

In the event Tenant is in default of the Lease at the time Tenant elects to exercise this renewal option or should an event of default exist immediately prior to the effective date of the Option Period, and such default is not cured as required under the Lease, Tenant's option to renew and extend this Lease as provided herein shall become null and void.

2 Option to Terminate So long as Tenant is not then in default of this Lease, Tenant shall have a one time option to terminate this Lease at the end of the sixtieth (60th) month following the Commencement Date by providing Landlord with one hundred fifty (150) days prior written notice of its election to terminate and paying to Landlord an early termination fee equal to the sum of (a) the unamortized amount of Landlord's direct cost toward tenant improvements, (b) unamortized costs for real estate commissions, and (c) fifteen thousand (\$15,000) dollars. The early termination fee shall be due and payable within five (5) days from the date of Tenant's termination notice.

3 Exclusivity So long as Tenant is not in default and maintains continuous operations as a grocery store from the Demised Premises, Tenant shall have the exclusive right to operate as a grocery store in the Shopping Center and Landlord shall not enter into any lease with a prospective tenant that derives twenty percent (20.00%) or more of its gross sales from packaged food, produce, fresh meat, dairy products and seafood without prior written approval from Tenant.

4 Opening and Operating Consent Tenant shall not have an affirmative obligation to open or continuously operate. Notwithstanding, Tenant shall not be released from any of its obligations under the Lease.

5 Audit Rights Landlord shall maintain for a period of at least two (2) years following the end of the period to which they pertain complete and accurate books and records of all Common Area Costs paid or incurred by Landlord and all payments of Common Area Costs received from Tenant or any other tenant or occupant of any portion of the Shopping Center. Such books and records shall be kept at a location in the continental United States known to Tenant, and Tenant or its auditors shall have the right, with reasonable notice, to inspect, copy and audit such books and records at any time during normal business hours. Landlord shall promptly repay Tenant for any overpayments which Tenant or its auditors identify together with interest thereon at the Interest Rate from the date paid by Tenant until refunded in full. If such overpayments exceed three percent (3%) of Tenant's proportionate share of the Common Area Costs for the period, Landlord shall pay for the cost of the audit within ten (10) days following receipt of Tenant's invoice therefor. If Landlord fails to maintain sufficient documentation to substantiate any of said Common Area Costs, Landlord shall upon demand refund to Tenant Tenant's proportionate share of all unsubstantiated Common Area Costs together with interest thereon at the Interest Rate from the date paid until refunded in full.

6 Self-Help Rights Should Landlord or Landlord's independent contractor fail to operate and maintain the Common Area within Tenant's Protected Area in accordance with the requirements of this Lease, Tenant may give Landlord thirty (30) days written notice thereof setting forth with particularity its objections or claimed deficiencies, and if such objections and/or deficiencies are not corrected to Tenant's satisfaction within said thirty (30) day period, or in the event that such correction requires more than thirty (30) days and is not commenced promptly and performed diligently or continues beyond the time reasonably needed to correct the deficiency then Tenant, in addition to any other right or remedy, shall have the right thereafter to correct any or all such deficiencies, or cause such deficiencies to be corrected by an independent contractor, and to continue to do so without further notice unless and until Landlord resumes full performance of its obligations hereunder. Upon demand by Tenant, Landlord shall pay Tenant an amount equal to all actual out-of-pocket costs, fees and expenses paid or incurred by Tenant for such operation, maintenance and repairs. If Landlord fails to pay to Tenant such total amount within ten (10) days after receiving a written demand therefor and reasonable evidence of the amount thereof, Tenant may elect to deduct such amount from the next payments due to Landlord hereunder until recovered in full.

7 **Landlord's Obligation to Minimize** Landlord shall contest Real Estate Taxes by appropriate means when reasonable to do so in Landlord's judgment. If any general or special assessment, whether ordinary or extraordinary, is assessed in whole or in part against the Shopping Center which may be payable over a term of years not extending beyond the term of this Lease, Landlord will exercise its right to make payment over such term of years.

8 **Landlord's Default, Notice and Grace** If Landlord shall fail to perform any of its obligations when as due under this Lease (a 'breach' or 'default'), and if such default continues for a period of more than thirty (30) days after written notice from Tenant specifying such default (or as to any default which is reasonably curable but requires more than thirty (30) days to remedy, then if such default continues for such longer period as is reasonably required to cure the same provided that such cure is commenced promptly and pursued diligently), Tenant may at its option exercise any of its rights and remedies at any time thereafter. The foregoing shall not act to extend the time period for Landlord's repairs and Tenant's self-help rights provided herein.

9 **Tenant's Remedies** Except as herein expressly provided, none of Tenant's remedies shall be deemed exclusive of any other remedies available at law or in equity, and all such remedies shall be cumulative. Tenant's remedies for breach or default by Landlord shall include, without limitation, the rights to: (1) without curing such default, perform the obligation of Landlord specified in such notice and incur any expense necessary to do so, and/or (2) sue for injunctive relief and/or (3) sue for specific performance, and/or (4) sue for damages and/or (5) set off any amount expended or damages incurred by Tenant as a result of such default against the next payments of Base Rent or other charges coming due under this Lease until recovered in full, and/or (6) avail itself of any other remedy provided herein or available at law or in equity. Upon demand by Tenant, Landlord shall pay Tenant an amount equal to the cost of any expense incurred pursuant to clause (1) above.

10 **Landlord's Responsibility for Hazardous Materials** To the best of Landlord's actual knowledge, Landlord represents, warrants and agrees that as of the date hereof and the delivery date, the Demised Premises, Common Areas and all other portions of the Shopping Center are and will be free from asbestos and other hazardous or toxic materials, wastes or other substances or underground storage tanks which violate, are required to be removed or remediated by or give rise to any liability under any Federal, state, local or other statute, rule, regulation or other law governing or protecting the environment. If at any time any removal or remediation of any environmental contaminant is sought or ordered or any liability or penalty is sought or imposed by any person with respect to the authority having jurisdiction thereof on account of the presence of any hazardous or toxic substance whether based on alleged violation of applicable environmental standards, actual damage to persons or property resulting therefrom, or otherwise, Landlord shall defend, indemnify and hold harmless Tenant therefrom and against all claims, demands, losses, costs, expenses and liabilities on account thereof, unless and to the extent caused by any breach of Tenant's obligations hereunder.

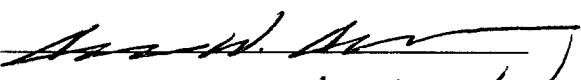
11 **Private Restrictions** Landlord represents and warrants that Tenant will not be prevented from or restricted in conducting any part of its Primary Business in or from the Demised Premises or in exercising any of the right herein granted with respect to the Common Area because of any private restriction, covenant, lease, encumbrance or agreement entered into by any person having or having had an interest in the Premises or any portion of the Shopping Center. If Tenant is so prevented or restricted because of any court order or other judicial determination arising out of any such private restriction, covenant or agreement, the Base Rent and other charges to be paid by Tenant hereunder shall be equitably abated during the period of such prevention or restriction according to the nature and degree thereof and, if said period shall continue for ninety (90) days or more after notice from Tenant to Landlord, Tenant may cancel this Lease by notice in writing to Landlord at any time thereafter during said period, and in the event of such termination Tenant shall have no further obligation or liability hereunder. From and after the execution and delivery hereof, Landlord shall defend, indemnify and save harmless Tenant against all actions, claims, costs (including attorney's fees) and losses arising out of the existence of any such lease, encumbrance, restriction, covenant or agreement or allegation of the existence thereof.

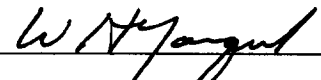
EXCEPT AS HEREBY AMENDED, all other provisions of said Lease are hereby confirmed and ratified.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum on the date first above written.

LANDLORD
TARRAGON REALTY INVESTORS, INC

TENANT
FAVAR CONCEPTS, Ltd , a Delaware corporation
dba/ "YES!LESS" FOOD & MORE

BY 
NAME Thomas W. Anderson
TITLE Senior Vice President
DATE 7/11/00

BY 
NAME W. H. MAROUCARD
TITLE PRESIDENT
DATE 7.6.00

COMMENCEMENT DATE CERTIFICATE

THIS COMMENCEMENT DATE CERTIFICATE is made as of the _____ day of _____, 2000, by and between TARRAGON REALTY INVESTORS INC (hereinafter called 'Landlord') and YES'LESS, FOOD & MORE (hereinafter called Tenant')

RECITALS

A Landlord and Tenant have entered into a Lease (the 'Lease') dated as of _____, 2000, whereby Landlord leased to Tenant and Tenant leased from Landlord certain real property located in the City of Waco, State of Texas, which real property is outlined in black and cross-hatched on Exhibit A attached hereto and made a part hereof

B In accordance with the Lease, Landlord and Tenant desire to set forth herein the date upon which the Term of the Lease will commence (the 'Lease Commencement Date')

NOW THEREFORE the parties hereby agree as follows

1 All delivery obligations were fulfilled and the delivery date of the Demised Premises occurred on _____, 2000

2 The Lease Commencement Date is hereby established as _____, 2000

IN WITNESS WHEREOF, Landlord and Tenant have caused this Commencement Date Certificate to be executed as the day and year first above written

LANDLORD
TARRAGON REALTY INVESTORS, INC

TENANT
FAVAR CONCEPTS, Ltd , a Delaware corporation
dba/ "YES'LESS" FOOD & MORE

BY _____
NAME _____
TITLE _____
DATE _____

BY _____
NAME _____
TITLE _____
DATE _____