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Atlanta, Ga 30339*

**DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS
AND GRANT OF EASEMENTS**

THIS DECLARATION of Restrictions, Covenants and Conditions and Grant of Easements is made and entered into as of the 31 day of July, 2002, by NAP CRUSE MARKETPLACE LLC, an Ohio limited liability company.

WITNESSETH:

WHEREAS, Declarant is the owner of the Property; and

WHEREAS, the Property is comprised of several Tracts which the Declarant anticipates will be developed separately; and

WHEREAS, Declarant desires that the Tracts be developed as a commercial shopping center substantially as depicted on the Site Plan and, in connection with such development, Declarant desires to establish certain restrictions, covenants, conditions, and easements with respect to the development, operation, management, and use of the Property.

NOW, THEREFORE, for and in consideration of the benefits accruing to each of the Tracts from the restrictions, covenants, conditions, and easements created hereby, Declarant hereby submits and subjects the Property to the restrictions, covenants, conditions, and easements hereinafter set forth.

1. **Definitions and Meanings.** In addition to any other terms whose definitions are fixed and defined by this Declaration, each of the following defined terms, when used in this Declaration with an initial capital letter, shall have the meaning ascribed thereto by this Paragraph 1:

1.1 "Building Area" shall mean the limited areas of each Tract within which buildings (which for this purpose of this document shall include any appurtenant canopies, supports, loading docks, truck ramps, and other outward extensions, as well as attached trash compactors and utility transformers) may be constructed, placed, or located.

1.2 "Common Area" shall mean all areas within the exterior boundaries of the Property and within the area of any easements appurtenant thereto which are for the general and non-exclusive use, convenience, and benefit of any Owner or Occupant of any building located on the Property, including, but not limited to, roadways, driveways, loading areas (exclusive of loading docks and truck ramps), islands, parking areas, entrances and exits, access drives (including paving, striping, and curb and gutter), sidewalks, and landscaping; provided, however, Common Area shall not include developed Building Area or the Publix Service Area or the Publix Sidewalk Area.

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1.3 "Declarant" shall mean NAP CRUSE MARKETPLACE, LLC, an Ohio limited liability company.

1.4 "Declaration" means this Declaration of Restrictions, Covenants and Conditions and Grant of Easements.

1.5 "Improvements" means any permanent building or structure constructed or erected on all or any portion of a Tract.

1.6 "Leasable Floor Area" means floor area calculated in square feet located in or appurtenant to buildings constructed or to be constructed on a Tract, which Leasable Floor Area shall include, without limitation: the ground floor area within said buildings; enclosed vestibules; exclusive passageways; basements; storage areas; mezzanines used for purposes other than storage of merchandise or as an employee break room; exclusive outdoor garden shops or sales areas; and exclusive enclosed loading areas. Any permissible building not used for sale purposes (automatic car wash and fuel canopy) may be excluded from leasable floor area if allowed under applicable government regulations.

1.7 "Occupant" shall mean any Owner or tenant, subtenant, assignee, concessionaire, or licensee who, from time to time, is entitled to use or occupy all or any portion of the Property under an ownership right or any lease, sublease, assignment, concession, license, or other similar agreement.

1.8 "Outparcel 1" shall mean all that tract or parcel of land depicted and designated "Outparcel 1" on the Site Plan, and being more particularly described in Exhibit "A" attached hereto and by reference thereto incorporated herein.

1.9 "Outparcel 2" shall mean all that tract or parcel of land depicted and designated "Outparcel 2" on the Site Plan, and being more particularly described in Exhibit "A" attached hereto and by reference thereto incorporated herein.

1.10 "Outparcel 3" shall mean all that tract or parcel of land depicted and designated "Outparcel 3" on the Site Plan, and being more particularly described in Exhibit "A" attached hereto and by reference thereto incorporated herein.

1.11 "Outparcel 4" shall mean all that tract or parcel of land depicted and designated "Outparcel 4" on the Site Plan, and being more particularly described in Exhibit "A" attached hereto and by reference thereto incorporated herein.

1.12 "Outparcel 5" shall mean all that tract or parcel of land depicted and designated "Outparcel 5" on the Site Plan, and being more particularly described in Exhibit "A" attached hereto and by reference thereto incorporated herein.

1.13 "Outparcel" or "Outparcels" shall mean, individually or collectively, as the case may be, Outparcel 1, Outparcel 2, and Outparcel 3, Outparcel 4 and Outparcel 5.

1.14 "Owner" or "Owners" shall mean, individually or collectively, as the case may be, any person or entity owning from time to time fee simple title to all or any portion of a Tract, including without limitation, Declarant. If more than one person or entity owns fee simple title to any Tract, they, collectively, shall be deemed the "Owner" of such Tract.

1.15 "Property" shall mean all that tract or parcel of land consisting of the Shopping Center Tract, Outparcel 1, Outparcel 2, Outparcel 3, Outparcel 4 and Outparcel 5, and being more particularly described on Exhibit "A" attached hereto and by reference thereto incorporated herein.

1.16 "Publix" shall mean Publix Super Markets, Inc., a Florida corporation.

1.17 "Publix Lease" shall mean that certain Lease Agreement between Publix and Declarant, dated December 20, 2001, as the same may now or hereafter be modified and amended, in respect to the Publix Premises.

1.18 "Paragraph 19.07 Area" shall mean that portion of the Common Area of the Shopping Center Tract which is contiguous with the Publix Sidewalk Area, which Paragraph 19.07 Area is outlined in green and substantially depicted and so designated on the Site Plan.

1.19 "Publix Premises" shall mean the Publix Storeroom, the Publix Sidewalk Area, and the Publix Service Area and attendant parking areas, collectively, which Publix Premises is outlined in red and substantially depicted and so designated on the Site Plan.

1.20 "Publix Service Area" shall mean that portion of the Publix Premises lying outside of but adjacent to the Publix Storeroom, within which is located certain improvements including, without limitation, emergency walkways (to the extent exclusively serving the Publix Storeroom), loading docks, truck pits or ramps, scissor lifts, trash compactor, transformer, and utility meters serving the Publix Storeroom, which Publix Service Area is substantially depicted and so designated on the Site Plan.

1.21 "Publix Sidewalk Area" shall mean that portion of the Publix Premises consisting of the entire sidewalk lying directly in front of the Publix Storeroom (but excluding any vestibule appurtenant to the Publix Storeroom) and extending from the outside face of the front wall of the Publix Storeroom to and including the face of the curb abutting the sidewalk and extending the full width of the Publix Storeroom, which Publix Sidewalk Area is substantially depicted and so designated on the Site Plan.

1.22 "Publix Storeroom" shall mean the building intended to be initially used and occupied by Publix for the operation of a grocery supermarket, as substantially depicted and so designated on the Site Plan.

1.23 "Pylon Sign 1" shall mean to the pylon currently shown as located on Outparcel 2 at the location depicted on the Site Plan.

1.24 "Pylon Sign 2" shall mean the pylon sign currently shown as located on the Shopping Center tract at the location depicted on the Site Plan.

1.25 "Service Drive" shall mean that portion of the Common Area consisting of (i) the entrances and exits between the Shopping Center Tract and adjoining publicly dedicated rights-of-way, and (ii) the driveway area extending from said entrances and exits to the Publix Service Area, which Service Drive is substantially depicted and so designated on the Site Plan.

1.26 "Shopping Center" shall mean the commercial shopping center to be developed on the Shopping Center Tract substantially as depicted on the Site Plan.

1.27 "Shopping Center Tract" shall mean all that tract or parcel of land depicted and so designated on the Site Plan, and being more particularly described in Exhibit "A" attached hereto and by reference thereto incorporated herein.

1.28 "Site Plan" shall mean that certain Site Plan attached hereto as Exhibit "C" and by reference thereto incorporated herein.

1.29 "Tract" or "Tracts" shall mean, individually or collectively, as the case may be, the Shopping Center Tract, Outparcel 1, Outparcel 2, Outparcel 3, Outparcel 4 and Outparcel 5.

1.30 "Utility Lines" shall mean, collectively, the Common Utility Lines and Private Utility Lines which are defined as follows:

1.30.1 "Common Utility Lines" shall mean those facilities and systems for the transmission of utility services, drainage of sanitary sewage, and drainage and storage of surface water which are installed to provide the applicable service on the Tracts or to the Common Area, exclusive of the Building Area; and

1.30.2 "Private Utility Lines" shall mean those facilities and systems for the transmission of utility services and drainage of sanitary sewage which are installed to provide the applicable service exclusively to the Building Area on each respective Tract. For purposes of this Declaration, a Utility Line extending between a Common Utility Line and a building shall be considered a Private Utility Line.

2. Scope; Term; Rights of General Public and Occupants; Rights of Publix.

2.1 Scope. The within restrictions, covenants, conditions, and easements are essentially necessary for the use and benefit of the Property, and all portions thereof, and are for commercial and economic benefit of the Owners of the Tracts and, subject to the provisions of

Paragraph 2.4 hereof, their Occupants. Regardless of whether or not they are specifically mentioned in any deeds or conveyances of all or any portion of the Property, the benefits and burdens of each restriction, covenant, condition, and easement set forth in this Declaration shall run with the title to the particular Tracts involved and shall benefit or bind the Owners thereof, their respective heirs, successors, successors-in-title, legal representatives and assigns. Any Owner shall be bound by this Declaration only as to the Tract(s) or portion thereof owned by same. In addition, an Owner shall be bound by this Declaration only during the period it is the fee simple owner of such Tract(s) or portion thereof, except as to obligations, liabilities or responsibilities that arise or accrue during said period.

2.2 Term. The easements set forth in this Declaration shall be perpetual in duration unless otherwise specifically provided. The restrictions, covenants and conditions set forth in this Declaration shall be binding upon and enforceable against Owners and Occupants for a period of twenty (20) years from the date this Declaration is filed in the public deed records maintained by the appropriate governmental subdivision in which the Property is located, after which time, such restrictions, covenants, and conditions shall be automatically extended for successive periods of twenty (20) years each. In the event any law prohibits any such restrictions, covenants, and/or conditions from being enforceable for a period in excess of twenty (20) years, or beyond any other stated period, the Owner of the Shopping Center Tract is granted a power of attorney, coupled with an interest, to rerecord this Declaration at any time and from time to time for the purpose of extending the enforceability of same as contemplated by this Paragraph 2.2.

2.3 No Rights in Public Generally. The easements, restrictions, covenants and conditions created, reserved, granted and established in this Declaration do not, are not intended to, and/or shall not be construed to create any easements, rights or privileges in and for the benefit of the general public. Notwithstanding anything to the contrary contained herein, each Owner shall have the right to prohibit or limit any solicitation, petition signing, distribution of literature, collection of money, giving of speeches, leafletting, picketing, carrying of signs, canvassing, demonstrations, or similar activities within that portion of the Common Area located on said Owner's Tract, and in addition, until the Publix Lease has terminated, Publix shall have the right to prohibit or limit any solicitation, petition signing, distribution of literature, collection of money, giving of speeches, leafletting, picketing, carrying of signs, canvassing, demonstrations, or similar activities within the Paragraph 19.07 Area, the Publix Service Area, and the Publix Sidewalk Area.

2.4 Rights of Occupants. With respect to the easements created by this Declaration, each benefiting Owner shall be entitled to designate from time to time which, if any, of its occupants shall be entitled to utilize and enjoy such easements. No independent rights shall be created by this Declaration as to any Occupants, except for those which may be terminated or withdrawn at any time by the Owner through whom such rights were derived.

2.5 Rights of Publix. Anything to the contrary contained herein notwithstanding, until the Publix Lease has terminated, (i) this Declaration may be abrogated, modified, rescinded or

amended in whole or in part only with the consent of Publix, and (ii) Publix shall have the right, but not the obligation, to enforce this Declaration, and to avail itself of the remedies provided herein or otherwise at law or in equity for violation hereof, to the same extent as the Owner of the Shopping Center Tract.

3. Common Area Improvements.

3.1 Construction of Common Area Improvements. The Common Area shall be constructed substantially as shown on the Site Plan, and to the extent not so shown on the Site Plan, shall be subject to the prior written approval of the Owner of the Shopping Center Tract. The Common Area improvements shall be constructed in a good and workmanlike manner and in accordance with good engineering standards.

3.2 Parking Area. The parking area on each Tract shall be in accordance with the Site Plan, shall be subject to the prior written approval of the Owner of the Shopping Center Tract to the extent not so shown on the Site Plan, and shall conform to applicable governmental laws, rules, and regulations. Each Tract shall maintain an on-site, on-grade parking ratio not less than the greater of: (i) five (5) vehicle parking spaces for each 1,000 square feet of Leasable Floor Area located on said Tract or (ii) the minimum number of vehicle parking spaces required under the applicable governmental laws, rules, or regulations, without regard for any variance or special exception therefrom. Each such parking space shall have a minimum width of ten (10) feet, except on Outparcels 3 and 4 as shown on the site plan which shall have parking spaces of 9 feet minimum width and furthermore if not prohibited by applicable governmental law, rule, ordinance or regulation without variance a auto service facility on Outparcel 4 may count (up to 10 spaces) for parking purposes the bays in its facility. In the event of a condemnation or appropriation by exercise of the power of eminent domain of a portion of a Tract, or sale or transfer thereof in lieu of such condemnation or appropriation, that reduces the number of parking spaces below that which is required herein, the Owner whose Tract is so affected shall use its best efforts to restore and/or substitute parking spaces in order to comply with the parking requirements set forth herein. If such compliance is not possible, such Owner shall not be deemed in default hereunder, but shall not be permitted to expand the amount of Leasable Floor Area located on its Tract.

3.3 Lighting. Each Owner shall keep its Tract (including the freestanding identification sign[s] located thereon, if any) fully illuminated each day from one-half (1/2) hour prior to the time at which any occupant opens for business until dawn, and from dusk until one (1) hour after the Premises shall be closed for business, or such longer period of time as the Owner of such Tract may deem appropriate. Each Owner further agrees to keep any exterior building security lights on from one-half (1/2) hour prior to the time at which any occupant opens for business until dawn, and from dusk until one (1) hour after the Premises shall be closed for business. The lighting system utilized on any Tract shall be designed to produce a minimum maintained lighting intensity to the greatest of the following intensity levels: (i) the minimum intensity level required by applicable law, ordinance, (ii) measured at three (3) feet above grade of five (5) foot candles at all points in the Common Area of each Tract or (iii) such intensity as is

reasonably appropriate for public safety. The Common Area lighting for each Tract shall be wired and metered separately, or in such other manner as is mutually acceptable to the Owners thereof.

3.4 Common Area Signage. No signs shall be erected within the Common Area, other than signs required by applicable governmental laws, rules, and regulations, freestanding identification signs (as set forth in Paragraph 5.1(iv) hereof), Pylon Sign 1 (as set forth in Paragraph 9.1.1 hereof), Pylon Sign 2 (as set forth in Paragraph 9.1.2 hereof), and signs which may be erected by Publix, within the Paragraph 19.07 Area and/or Publix Premises providing notice of the right of Publix to prohibit or limit solicitation, petition signing, distribution of literature, collection of money, giving of speeches, leafletting, picketing, carrying of signs, canvassing, demonstrations, or any similar activity within the Paragraph 19.07 Area and Publix Premises. The erecting of signage contained in this Paragraph 3.4 includes, but is not limited to, the parking by any Occupant, other than Publix, of vehicles bearing signage identifying such Occupant in the Common Area.

3.5 Modification or Alteration. No owner shall make changes to the improved Common Area on its Tract without the approval of the owner of the Shopping Center Tract; provided, however, each Owner shall have the right, from time to time without obtaining the consent or approval of the Owner of the Shopping Center Tract, to make, at its own expense, any insignificant change, modification, or alteration in the portion of the Common Area located on such Owner's Tract subject to the following terms and conditions:

- (i) the accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the other Tracts) is not unreasonably restricted or hindered;
- (ii) the parking ratio requirements set forth in Paragraph 3.2 hereof are met;
- (iii) no change shall be made to the Service Drive or to the access points between the Common Area and the public streets;
- (iv) no building, fence, or other barrier which would unreasonably prevent or obstruct parking, or the passage of vehicular or pedestrian travel for the purposes herein permitted, shall be erected or permitted within or across any parking area, roadway, driveway, entranceway, or sidewalk located on any Tract; provided, however, the foregoing provision shall not prohibit the installation of landscaping, berms or planters, nor of limited curbing and other forms of traffic controls; and such modification or alteration shall comply with all applicable governmental laws, rules, and regulations.

3.6 Parking Area Relocation. Notwithstanding anything to the contrary contained herein, each Owner shall have the right at any time, and at its sole cost and expense, to relocate, alter, or change any parking areas on such Owner's Tract if:

- (i) the Owner of such Tract pays all costs incurred in connection with such relocation, alteration, or change;
- (ii) such relocation, alteration, or change is completed so as to minimize interference to the Owners and occupants of the other Tracts and has the same intersecting point at any adjacent Tract;
- (iii) such relocation complies with the terms and provisions of Paragraph 3.5(i)-(v) hereof; and
- (iv) the Owner(s) of the other affected Tracts have consented in writing to such relocation, alteration, or change, which consent shall not be unreasonably withheld, conditioned, or delayed.

3.7 Maintenance. Subject to express terms and provisions of this Declaration to the contrary, each Owner, at its expense, shall maintain, or cause to be maintained in good order and in a sightly and safe condition, the portion of the Common Area which is constructed on its Tract. The minimum standard of maintenance for the Common Area shall be comparable to the standard of maintenance followed in other first class retail developments of comparable size in the market area in which the Property is located, and in compliance with all applicable governmental laws, rules, and regulations. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony and integrity of the Tracts as a whole.

4. Building Improvements.

4.1 Location of Buildings. Unless otherwise consented to in writing by the Owner of the Shopping Center Tract, all buildings shall be located only within the Building Areas designated on the Site Plan, and the Leasable Floor Area for buildings to be located on each Tract as designated on the Site Plan shall not be exceeded. To the extent not so designated on the Site Plan, the location of and Leasable Floor Area for buildings to be located on each Tract shall be subject to the prior written approval of the Owner of the Shopping Center Tract.

4.2 Architectural Approval. The Owner of the Shopping Center Tract has established an architectural theme for the exterior of all buildings, building signage, and other structures to be constructed, placed, or located within the Property. In order to ensure compliance with such theme, any Owner intending to build on a Tract shall submit to the Owner of the Shopping Center Tract architectural plans or drawings (the "Plans") depicting the exterior elements of the proposed building or structure and depicting the building signage for approval by the Owner of the Shopping Center Tract prior to the commencement of any construction. Upon the issuance of any disapproval or recommendation for change, the submitting Owner and the Owner of the Shopping Center Tract shall consult mutually to establish approved Plans for the proposed construction. The Owner of the Shopping Center Tract shall not arbitrarily or unreasonably withhold approval of the Plans or recommend changes in the Plans which otherwise conform

with the requirements hereof. Approval of the Plans by the Owner of the Shopping Center Tract shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with applicable laws. Construction of any such buildings, building signage, and other structures shall not be commenced until the Plans shall have been approved in writing by the Owner of the Shopping Center Tract. No material deviation shall be made from the approved Plans.

4.3 Building Signage. Subject to the provisions of Paragraph 4.2 hereof, any Occupant occupying less than 25,000 square feet of Leasable Floor Area on any Tract may not have more than one (1) identification sign placed on the exterior of each building or portion thereof which it occupies; provided, however, that if any such Occupant is freestanding or located at the corner of a building, then such Occupant may have an identification sign on each side of such corner, or its building. Subject to the provisions of Paragraph 4.2 hereof, any Occupant occupying at least 25,000 square feet of Leasable Floor Area on any Tract may have more than one identification sign placed on the exterior of the building it occupies. No exterior identification sign attached to any building or service canopy shall:

- (i) be placed on canopy roofs extending above the building or service canopy roof, placed on penthouse walls or placed so as to project above the parapet, canopy, or the top of the wall upon which it is mounted; or
- (ii) be placed at any angle to the building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk; or
- (iii) be painted on the surface of any building; or
- (iv) consist of flashing, moving, or audible signs, or signs employing exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers.

4.4 Construction. Construction activities on any Tract shall not:

- (i) cause any unreasonable increase in the cost of constructing improvements upon another Owner's Tract;
- (ii) unreasonably interfere with construction being performed on any other Tract;
- (iii) unreasonably interfere with the use, occupancy, or enjoyment of any other Tract by the Owner or Occupants of such other Tract; or
- (iv) cause any building or building signage located on any other Tract to be in violation of any law, rule, regulation, order, or ordinance authorized by any city, county, state, federal government, or any department or agency thereof having jurisdiction over the Property.

4.5 Maintenance. After completion of construction of building improvements, including but not limited to building signage, on each Tract, each Owner shall maintain and keep the building improvements, including but not limited to building signage, located on its Tract in first class condition and state of repair, in compliance with all laws, rules, and regulations of governmental authorities exercising jurisdiction thereover, and in compliance with the provisions of this Declaration. Each Owner shall store all trash and garbage in adequate containers, shall locate such containers such that they are not readily visible from the parking area, and shall arrange for regular removal of such trash or garbage.

4.6 Damage or Destruction of Building Improvements. In the event any of the building improvements, including but not limited to building signage, are damaged by fire or other casualty, the owner upon whose Tract such building improvements, including but not limited to building signage, are located shall immediately remove the debris resulting from such event and, within a reasonable time thereafter, such Owner shall either:

- (i) repair or restore the building improvements, including but not limited to building signage, so damaged;
- (ii) erect other building improvements, including but not limited to building signage, in such location; or
- (iii) demolish the damaged portion of such building improvements and promptly restore the area to the same standards as the Common Area either as automobile parking and drive area or a landscaped condition, in which event the area shall be Common Area until a replacement building is erected.

Such Owner shall elect one of the foregoing options within sixty (60) days from the date of such casualty and, thereafter, promptly commence and diligently pursue completion of such option.

5. Outparcels.

5.1 Outparcel Improvement. In addition to any other applicable provisions of this Declaration, unless otherwise consented to in writing, by the Owner of the Shopping Center Tract, the following requirements, limitations and restrictions shall be applicable to the Outparcels:

- (i) No more than one (1) building shall be constructed on any Outparcel (except on Outparcel 3 which may contain a separate building for a car wash, incidental to the operation of a gas station convenience store, and the buildings on said Outparcels shall accommodate only one (1) business operation thereon;

- (ii) Any building or other structure (exclusive of any freestanding identification sign otherwise permitted under this Declaration) erected on an Outparcel shall:
 - (a) be no more than one (1) story in height (excluding any approved mezzanine);
 - (b) not exceed twenty-five (25) feet in height (measured in accordance with applicable governmental regulations); and
 - (c) otherwise comply with all governmental rules, regulations, ordinances and laws.
- (iii) Notwithstanding anything to the contrary contained herein, the Leasable Floor Area of any building constructed on an Outparcel shall be limited (1) to the square footage as shown on Exhibit C hereto and (2) to the extent that the number and size of on-grade (or in the case of Outparcel 4 up to 10 spaces may be allowed for service bays) vehicle parking spaces required or as allowed by all applicable rules, regulations, ordinances and laws (without reduction in such number by virtue of the granting of a variance or special exception to such rules, regulations, ordinances or laws by the governmental authority having jurisdiction thereof) can be constructed and maintained within the boundaries of such Outparcel. The provisions of Section 1.6 hereof and all applicable rules, regulations, ordinances, and laws to the contrary notwithstanding, for the purposes of this Paragraph 5.1, the Leasable Floor Area of any building to be constructed on an Outparcel shall also be deemed (except as it relates to Outparcel 5) to include any outdoor balconies, patios, and outdoor areas utilized for retail sales or food or beverage service (exclusive of areas utilized exclusively for drive-thru or walk up take-out food or beverage service) .
- (iv) Each Outparcel may have no more than one (1) freestanding identification sign located thereon. Outparcel 3 may have one (1) building sign on each building on said Outparcel; provided, however, such Outparcel and building identification signs shall comply with all applicable rules, regulations, ordinances, and laws relative to such signage and shall not unreasonably interfere with visibility of Pylon Sign 1, Pylon Sign 2, or any of the Shopping Center identification signs from roadways adjacent to that portion of the Shopping Center upon which each Shopping Center identification sign is located.

6. Ingress and Egress Easements.

6.1 Grant of Easement. Subject to the provisions of Paragraph 2.4 hereof, Declarant hereby declares, establishes, creates, and grants for the benefit of, and as a burden upon, each Tract the non-exclusive right, privilege, and easement for vehicular and pedestrian access, ingress, and egress over and across all roadways, driveways, entrance ways and sidewalks from

time to time located on the Common Area of any Tract for the purpose of providing pedestrian and vehicular access, ingress, and egress, but not parking, between said Tracts and publicly dedicated rights-of-way abutting said Tracts. The foregoing easement shall not be construed to, and shall not, create any construction or other easement for the installation or construction of roadways, driveways, entrance ways and sidewalks by any Owner on the property of another Owner. Any other term hereof to the contrary notwithstanding, until the Publix Lease has terminated, the Publix Sidewalk Area and the Publix Service Area shall be for the exclusive use of Publix.

6.2 Relocation. Notwithstanding anything to the contrary contained herein, each Owner shall have the right at any time, and at its sole cost and expense, to relocate, alter, or change any roadway, driveway or entranceway, or sidewalk located on the Common Area of such Owner's Tract provided such relocation, alteration, or change complies with the terms and conditions set forth in Paragraph 3.6(i-iv) hereof.

6.3 No Parking Easement. This Declaration is not intended to, and does not, create for the benefit of any Tract any right, license or easement for parking purposes upon another Tract, and the Owner of any Tract shall have the right to enforce this provision by towing violators pursuant to applicable governmental regulations (if any) or upon notice to the Owner of any Adjacent Tract.

6.4 Avoidance of Prescription. Anything to the contrary contained in this Paragraph 6 notwithstanding, the Owner of each Tract shall be entitled to interrupt or disturb the passage of vehicular and pedestrian access, ingress, and egress over and across all roadways, driveways, entrance ways, and sideways from time to time located on that portion of the Common Area located on said Owner's Tract for a period not to exceed one (1) day in each calendar year for the purpose of preventing the creation of prescriptive easement rights in and to such areas in favor of the public; provided, however, until the Publix Lease has terminated, such interruption or disturbance shall occur on a day on which Publix is closed for business with respect to the Shopping Center Tract.

7. Utility Easements.

7.1 Grant of Easement. Subject to the provisions of Paragraph 2.4 hereof, Declarant hereby declares, establishes, creates, and grants for the benefit of, and as a burden upon, each Tract the non-exclusive right, privilege, and easement in, to, over, under, along, and across those portions of the Common Area necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation and removal of Utility Lines, including but not limited to sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone and communication lines. The Utility Line easement area shall be no larger than whatever is necessary to reasonably satisfy the requirements of the provider of such service if the Utility Line is to be owned by a public utility, or five (5) feet on each side of the Utility Line if the Utility Line is to be owned by an Owner. The Owner of the Tract burdened by such easement shall have the right to require, at the expense of the Owner of the Tract benefited by such

easement, that a copy of an as-built survey of such Utility Line be delivered to the Owner of such burdened Tract after installation of the Utility Line.

7.2 Location of Utilities. All -Utility Lines shall be underground except:

- (i) pad mounted electrical transformers, if any, shall be located at the rear of a building;
- (ii) as may be necessary during periods of construction, reconstruction, repair, or temporary service;
- (iii) as may be required by governmental agencies having jurisdiction over the Property; or
- (iv) as may be required by the provider of such service.

7.3 Relocation. Any Owner shall have the right at any time to relocate a Utility Line located upon its Tract upon thirty (30) days prior written notice to the other Owners; provided, however, that such relocation:

- (i) shall not interfere with or diminish the utility service to the other Tracts;
- (ii) shall not reduce or unreasonably impair the usefulness or function of such Utility Line;
- (iii) shall be performed without cost or expense to the other Owners;
- (iv) shall be completed using materials and design standards which equal or exceed those originally used;
- (v) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction thereover; and
- (vi) shall comply with the terms and conditions of Paragraph 3.5(i-v) hereof.

7.4 Maintenance and Repair.

7.4.1 Private Utility Lines. Each Owner shall maintain and replace, at its sole cost and expense, its Private Utility Lines, in a first class condition, regardless of where such Private Utility Lines are located, unless the provider of the service or a governmental or quasi-governmental authority has agreed to maintain such Utility Lines. Any maintenance and repair of non-dedicated utilities located on another Owner's Tract shall be performed only after five (5) days notice to the Owner of such Tract (except in an emergency, when the work may be initiated with reasonable notice), shall be done

after normal business hours whenever possible, and otherwise shall be performed in such a manner as to cause as little disturbance in the use of such Tract as is practicable under the circumstances. Any Owner performing, or causing to be performed, maintenance or repair work promptly shall pay all costs and expenses associated therewith, diligently shall complete such work as quickly as possible, and promptly shall clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to commencement of such work.

7.4.2 Common Utility Lines. Common Utility Lines shall be maintained and replaced as part of the Common Area pursuant to Paragraph 3.7 hereof.

8. Stormwater Drainage.

8.1 Grant of Easement. Subject to the provisions of Paragraph 2.4 hereof, Declarant hereby declares, establishes, creates, and grants for the benefit of, and as a burden upon, each Tract, a perpetual, non-exclusive easement in, over, and across the Common Area for the purpose of discharging stormwater drainage and/or runoff from any Tract upon and across those portions of the Common Area located on any other Tract.

8.2 Conditions. The foregoing stormwater drainage easement rights shall be subject to the following terms and conditions:

- (i) Common Area grades and the surface water drainage/retention system for each Tract shall be constructed in strict conformance to all applicable governmental rules, regulations, and ordinances; and
- (ii) No Owner shall alter or permit to be altered the surface elevation or grade of those portions of the Common Area located on such Owner's Tract if such alteration would materially increase the flow of surface water onto an adjacent Tract or change the rate or concentration of flow or points of discharge from such Tract.

9. Sign Easements.

9.1.1 Grant of Pylon Sign 1 Easement. Notwithstanding anything to the contrary contained in this Declaration, Declarant hereby declares, establishes, creates, and grants for the benefit of the Shopping Center Owner, and as a burden upon Outparcel 2, a perpetual, non-exclusive easement in, over, and across the Common Area of Outparcel 2 for the purpose of constructing, installing, maintaining, repairing, replacing, or restoring signage identifying the Owner and tenants of the Shopping Center, upon Pylon Sign 1, as such signage may be constructed, installed, maintained, repaired, replaced, or restored as hereinafter provided. The Owner of the Shopping Center Tract and the Owner of Outparcel 2 agree to cooperate with each other in obtaining permits for Pylon Sign 1 and, if necessary, to make joint application for such permits.

9.1.2 Grant of Pylon Sign 2 Easement. Notwithstanding anything to the contrary contained in this Declaration, Declarant hereby declares, establishes, creates, and grants for the benefit of the Shopping Center Tract, and its designees, and as a burden upon the Shopping Center Parcel, for the purposes of constructing, installing, maintaining, repairing, replacing, or restoring signage identifying the Owners of the Shopping Center Tract, and tenants of the Shopping Center Tract, upon Pylon Sign 2, as such signage may be constructed, installed, maintained, repaired, replaced, or restored as hereinafter provided. The exact location of Pylon Sign 2 shall be designated by the Owner of the Shopping Center Tract. The easement contained herein shall include the right to construct, install, maintain, repair, replace and restore electrical lines, conduits, and facilities to serve Pylon Sign 2, as well as appropriate landscaping at the base of Pylon Sign 2. Pylon Sign 2 shall be designed by the Owner of the Shopping Center Tract. Pylon Sign 2 shall have such sign area, and shall contain the signs of such Owners and Occupants, as the Owner of the Shopping Center Tract, in its sole discretion, may designate.

9.2 Terms and Conditions. The foregoing Pylon Sign 1 and Pylon Sign 2 (collectively, the "Pylon Signs") signage easement rights shall be subject to the following terms and conditions:

- (i) The content of any sign identifying the Owner or Occupant of the Shopping Center Tract shall be limited to identification of such Owner or Occupant. The color, design, and specifications of such sign shall be subject to the approval of the Owner of the Shopping Center Tract, which approval shall not be unreasonably, withheld, conditioned, or delayed.
- (ii) The Owner of each Tract shall be responsible for obtaining, at its expense, all permits and approvals which may be required for the exercise of the rights, privileges, and easements granted said Owner, or its Occupant, pursuant to this Paragraph 9.
- (iii) The Owner of the Shopping Center Tract shall cause the sign boxes for each sign to be constructed and installed upon the Pylon Signs. Each sign shall be separately wired to a junction box located at or near the base of the Pylon Signs. Each owner of any portion of the Shopping Center Tract, or Tenant thereof entitled to a sign box thereon (except Publix) shall reimburse the Owner of the Shopping Center Tract for the cost of constructing and installing the sign box (including electrical wiring to the junction box at or near the base of the Pylon Signs) incurred by the Owner of the Shopping Center Tract. Such reimbursement shall be a condition precedent to the exercise of the rights, privileges, and easements set forth in this Paragraph 9.

9.3 Maintenance. The Pylon Signs, the sign boxes, and sign panels shall be operated, maintained, and repaired in a manner consistent with other first class retail developments of comparable size in the market area in which the Property is located, and in compliance with all applicable governmental laws, rules, regulations, and ordinances. The Owner of each Tract within the Shopping Center Tract shall provide and install at its expense the sign panels for such Owner's sign. Each Owner shall, at its expense, maintain its sign panel. In the event each sign consists of a separate sign box, the Owner utilizing such sign box shall maintain all lighting elements within such sign box. In the event sign panels for more than one (1) sign jointly utilize a single sign box, then the Owners utilizing such sign box shall maintain all lighting elements located within such sign box and shall pay their pro rata share of the cost thereof. The Owner of the Shopping Center Tract shall maintain the sign boxes and the Pylon Signs. The cost of maintaining the Pylon Signs shall be prorated among the Owners in proportion to relative sign area. With respect to each Pylon Sign, the cost of maintaining the sign box for the Shopping Center Tract shall be borne by the Owner of the Shopping Center Tract, and the cost of maintaining the sign boxes for the Owners of the Outparcels shall be prorated among the Owners of the Outparcels on the basis of relative sign area of sign panels utilizing each such sign box.

10. Construction, Maintenance and Repair

10.1 General Obligations. Any and all construction, installation, maintenance, repair, replacement, or restoration work or services performed by any Owner on another Owner's Tract pursuant to the terms and provisions of this Declaration:

- (i) shall be done only upon reasonable notice to the Owner of the affected Tract;
- (ii) shall be done in a manner so as to minimize, to the extent reasonably possible, any interruption and interference to the Owner or Occupant of the affected Tract in the normal operation of such Tract and the improvements thereon;
- (iii) shall comply with all governmental laws, rules, and regulations; and
- (iv) shall be performed in accordance with the other terms and provisions of this Declaration.

After the completion of any work, the affected easement area shall be left in a clean and orderly condition, with all debris removed therefrom, with trenches and cuts properly filled, with any paving, curbing, plants, shrubbery, or other improvements on such easement areas which may have been disturbed by such work restored to their former or better condition, and all areas within which dirt has been exposed shall be appropriately reseeded.

11. Restrictive Covenants.

11.1 Restrictions on Use.

11.1.1 Prohibited Uses. Without the prior written consent of the Owner of the Shopping Center Tract, no portion of any Tract shall be used for any of the following purposes: any manufacturing operation, the sale or repair of motor vehicles (which shall not preclude an auto facility on Outparcel 4 which does "light repair and service" meaning menu-driven services that may include, but are not limited to, such items as tires, tire repair, balancing, mounting, alignment, tune-ups, quick lube, periodic maintenance and other similar engine services, and further meaning that no motor vehicles will be stored outside the building overnight), semi-tractors, boats, trailers, or mobile homes, a lumberyard, a dry cleaning plant, a cinema or theater, skating rink, bowling alley, discotheque, dance hall, nightclub, amusement gallery, pool room, health spa, adult entertainment facility, gymnasium, massage parlor, adult book store, pinball or electronic game room, a so-called "head shop", funeral parlor, flea market, bingo parlor, cafeteria, car wash (except for a single bay automated car wash allowed on Outparcel 3), carnival, or any activity in the Common Areas which would make parking spaces unavailable for customer use (excluding "Cart Corrals"). In addition, without the prior written consent of the Owner of the Shopping Center Tract, no other premises on any Tract located within 500 feet of the Publix Storeroom (which distance shall be measured from the demising wall of the Publix Storeroom nearest said other premises to the demising wall of said other premises nearest the Publix Storeroom) shall be used for a day care center, or a restaurant and/or cocktail lounge, the primary focus of which is to provide an atmosphere in which the patrons engage predominately in social encounters rather than dining, such restaurants/cocktail lounges being similar in nature to Bennigan's, T.J. Applebee's, and T.G.I. Friday's; provided however any provision of this Section 11.1.1 to the contrary notwithstanding, the Owner of the Shopping Center Tract shall be permitted to lease premises within "BLDG 300" as depicted and so designated on the Site Plan, for operation of a restaurant, so long as such restaurant does not exceed 5,400 square feet in size; and provided further any such restaurant shall not be located within 270 feet of the Publix Storeroom (which distance shall be measured from the Publix Storeroom demising wall nearest said other premises to the demising wall of said other premises nearest the Publix Storeroom).

11.1.2 Exclusive Uses. Without the prior written consent of the Owner of the Shopping Center Tract, no portion of any Tract except the Publix Premises shall be used for the operation of a grocery supermarket, bakery, delicatessen, fish market, the sale of drugs or other products which are required by law to be dispensed by a registered pharmacist, or to engage in retail sales of items of food for "off-premises" consumption. The terms and provisions of the foregoing sentence to the contrary notwithstanding, occupants of the Outparcels or shop space on the rest of the Shopping Center Tract shall not be prohibited from engaging in the operation of:

- (i) a sit down restaurant offering prepared ready-to-eat food items for consumption either on or off the premises;

- (ii) a delicatessen or sandwich shop type restaurant (but not a bakery) which offers take out service as an incidental part of its restaurant operation, provided that at least seventy percent (70%) of the Leasable Floor Area of such restaurant (exclusive of kitchen or food preparation area) is utilized for seated dining purposes;
- (iii) a health food store or nutrition center provided it shall not exceed 1,600 square feet of Leasable Floor Area, ice cream parlor or frozen yogurt store, franchise doughnut shop (equivalent to a Dunkin' Donut or Krispy Kreme operation), bagel shop, candy store, or a pizza pickup or delivery outlet, all of which may offer the sale of food items for consumption on or off the premises; and
- (iv) a combination gas station and convenience food store operation, provided that the floor area devoted to the sale of food and beverage products shall not exceed 2,200 square feet, and further provided (a) that the permitted gas station/convenience store is not operated under the tradename or name brand of another grocery supermarket entity or general merchandise retailer, its subsidiaries or affiliates; and (b) any provision of this subparagraph (iv) to the contrary notwithstanding, in the event the owner or operator of the gas station/convenience is acquired by or merged into such other grocery supermarket entity or general merchandise retailer, the permitted gas station/convenience store shall not be prohibited from continuing to operate under the same tradename or brand name utilized prior to such acquisition, or such other national or regional gas station/convenience store tradename or brand name previously unaffiliated with a grocery supermarket or general merchandise retailer.
- (v) A video rental or sale store (similar to Blockbuster Video) which may offer the sale of items normally sold at movie theaters (i.e. popcorn or candy) for consumption off the Premises.

11.1.3 Additional Exclusive Uses. Subject to the provisions of 11.1 and 11.2 hereof, and except on the Publix premises (as described on Exhibit C) during the term of the Publix lease and on Outparcel 3 and 4 and as to (f) below Outparcel 2, no part of the Shopping Center shall be used for the following purposes:

- (a) Operation of a gasoline service station (which shall include any business selling, or dealing in gasoline, kerosene, benzol, naphtha or any fuel to be used for internal combustion engines) (the "Motor Fuel Use"); or
- (b) Operation of any store containing less than 8,000 square feet and specializing primarily in the sale of frequently purchased items of food and sundries at high turnover, high profit margin and low volume per purchase including, by way of example and not limitation, White Hen Pantry, Convenient, 7-Eleven, Mini-Mart, and Circle-K (the "Convenience Store Use"); or

- (c) Operation of any car wash (the "Car Wash Use"); or
- (d) Operation of automobile service centers, including the advertising, sale or installation of tires or vehicle lubricants and/or automotive maintenance and repair, or fast lubrication services such as Jiffy Lube, Lube Pros, Oil Express, or Grease Monkey (the "Automotive Service Use"); or
- (e) sale of bulk propane (the "Propane Use"); or
- (f) as a commercial banking facility, as a primary business purpose .

12. Assessments.

12.1 Maintenance of Driveways, Shared Utility Lines and Retention Areas. The Owner of the Shopping Center Parcel and the Owners of the Outparcels will be benefited by the Perpetual Driveways, the Utility Lines which may be installed to serve more than one Parcel ("Common Utility Lines") and the Detention Ponds and the septic system. The Perpetual Driveway, the Common Utility Lines and the Detention Ponds and septic system are hereinafter referred to collectively as the "Common Maintenance Items". The Owner of the Shopping Center Parcel shall be responsible for managing, maintaining, operating, improving, insuring and paying taxes on the Common Maintenance Items, and is hereby granted all necessary easements therefor. Commencing upon the date of occupancy of each Outparcel, each Outparcel and its then Owner shall become subject to the Assessments described below relating to the costs incurred by the Owner of the Shopping Center Parcel in connection with managing, maintaining, operating, improving, insuring and paying taxes on the Common Maintenance Items. In addition each outparcel shall initially be responsible for a one time assessment for initial sewer service equal to \$14.00 per gallon of estimated usage. This shall be paid prior to the commencement of any construction or the provisions of this Section 12 shall apply.

12.2 Creation of the Lien and Personal Obligation for Assessments. The parties hereby agree, and each Owner of an Outparcel by acceptance of a deed or ground lease to an Outparcel (and for the purpose of this Section 12 only, the term "Owner" when applied to an Outparcel shall be deemed to include any ground lessee of the Outparcel), whether or not it shall be so expressed in such deed or ground lease, is deemed to covenant and agree, and does covenant and agree, to pay to the Owner of the Shopping Center Parcel an annual payment for the purposes specified in Subsection 12 below (said annual payment, as it may be adjusted from time to time in the manner hereinafter provided, is referred to herein as the "Assessment"). The obligation of the Owner of an Outparcel to begin payment of the Assessment shall commence upon the pouring of any building footing(s) for any building located on such Outparcel. Each Assessment, together with Interest (as defined in Section 12.7, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Outparcel. Each Assessment, together with Interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Outparcel at the time when the Assessment fell due.

12.3 Purpose of Assessments. Assessments levied hereunder shall be the required contribution of the Owner of the Outparcel towards the cost of managing, maintaining, operating, improving and insuring the Common Maintenance Items, including, but not limited to:

- (i) Payment of expenses of operating, and maintaining the Common Maintenance Items;
- (ii) Payment of premiums for insurance obtained with regard to the Common Maintenance Items;
- (iii) Costs of paying ad valorem taxes assessed against the Common Maintenance Items;
- (iv) Costs of maintaining, repairing and replacing the Common Maintenance Items as reasonably necessary;
- (v) Reimbursing Owner of the Shopping Center the cost of operating, repairing or maintaining the sewage septic system serving the premises initially that cost is estimated to be \$4.84 per thousand gallons of usage and shall be billed monthly in arrears
- (vi) Repaying funds, and interest thereon, borrowed by the Owner of the Shopping Center Parcel for purposes of maintaining, repairing, replacing, improving, insuring and paying taxes on the Common Maintenance Items; and
- (vii) Doing any other thing or things necessary or desirable, in the reasonable judgment of the Owner of the Shopping Center Parcel, to ensure the good, safe and attractive condition of the Common Maintenance Items.

12.4 Adjustment of Assessment and Proration. The initial Assessment for each Outparcel shall be as provided in Section 12 above. The Owner of the Shopping Center Parcel may increase the Assessment for all Outparcels by ten percent (10%) in January of the fifth (5th) year following the recordation of this Declaration, and every five (5) years thereafter. The Owner of the Shopping Center Parcel shall notify the Owner of each Outparcel of an authorized adjustment by February 1 of the calendar year in which such adjustment is made.

12.5 Determination of Maintenance Needs. In its reasonable judgment, the Owner of the Shopping Center Parcel shall have the sole and exclusive authority for the determination of management, maintenance, insurance and capital improvement needs for the Common Maintenance Items, and such determination shall be binding upon all Owners of the Outparcels. The Owner shall supply the Outparcel Owners an annual budget of expenses, and each Outparcel Owner shall have the right upon ten (10) days written notice to audit owner's maintenance records in Owner's office. In the event the Owner of the Shopping Center Parcel fails, after reasonable notice, to maintain the Common Maintenance Items in a good and safe condition for the purposes intended, the Owner of an Outparcel shall have the right to take such action as is necessary to put the Common Maintenance Items in good and safe condition for the purposes intended, and the right to collect from the Owner of the Shopping Center Parcel all reasonable costs incurred in connection therewith. If the Owner of the Outparcel is not promptly reimbursed for reasonable costs incurred as aforesaid, such Owner shall have the right, after ten (10) days written notice, to impose and enforce a lien upon the Shopping Center Parcel in the manner set forth in Subsection 10.7 below.

12.6 Certificate of Payment and Compliance. The Owner of the Shopping Center Tract shall, upon demand at any time but not more than two (2) times per year, furnish to any Owner liable for any Assessment hereunder a certificate in writing, signed by an officer of the then current Owner of the Shopping Center Tract, setting forth whether said Assessment has been paid by such Owner, and whether in said Owner's opinion the Requesting Owner is as of the date of said certificate in compliance with the provisions of this Declaration. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

12.7 Effect of Non-Payment of Assessment. Any Assessment not paid within thirty (30) days after its due date shall bear interest from the due date at the greater of (i) the maximum rate allowed by law, or (ii) fifteen percent (15%) per annum; all references in this Declaration to "Interest" shall mean interest accruing at said rate. The Owner of the Shopping Center Parcel may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien against the Outparcel, and there shall be added to the amount of such assessment attorney's fees and costs of collection, on appeal or otherwise, and the Interest and attorney's fees and costs shall also be secured by the lien against the Outparcel.

12.8 Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be absolutely subordinate to the lien of any first mortgage now or hereafter placed upon the Outparcel. This subordination shall not relieve the Outparcel from liability for any Assessments now or hereafter due and payable, and shall not relieve any mortgagee or assignee of such mortgagee who obtains title to the Outparcel from Assessments falling due subsequent to the time such mortgagee or assignee obtains title.

12.9 Exempt Property. Any portion of the Property dedicated and accepted by the local public authorities and devoted to public use, to the extent of any easement or other interest

therein so dedicated and accepted, shall be exempt from the Assessments, charges and liens created herein.

13. Insurance.

13.1 Liability Insurance. Each Owner shall maintain or cause to be maintained in full force and effect comprehensive general liability insurance covering the Common Area located within such Owner's Tract, with a combined single limit of liability of not less than \$2,000,000.00 for bodily or personal injury or death and for property damage arising out of any one occurrence. Such insurance shall be procured from responsible insurance companies authorized to engage in the business of general liability insurance in the state in which the Property is located. Each Owner agrees to furnish to any other Owner requesting the same a certificate of insurance evidencing that the insurance required to be carried by such Owner is in full force and effect.

13.2 Self-Insurance. The provisions of Article 13 and any other provisions of this Declaration to the contrary notwithstanding, Declarant and/or any Owner or Tenant may at any time elect not to procure and maintain any insurance policies required or otherwise provided in this Declaration, provided any Owner or Tenant electing to do so shall give prior notice thereof to Declarant certifying that at the time of such election the aggregate net worth of any such Owner or Tenant so electing is not less than \$500,000,000.00 (as determined in accordance with generally accepted accounting principles) and shall include with such notice the financial statement of such Owner or Tenant for such Owner or Tenant's most recent fiscal year or other reasonable financial information, which financial statements shall be prepared in accordance with generally accepted accounting principles and (if available) audited by a certified public accountant. If at any time after the giving of any such notice and delivery of any such financial statement, any such Owner or Tenant fails in any fiscal year to maintain at least the net worth stated above, then such Owner's or Tenant's right to self-insure shall be immediately and automatically thereupon suspended from the moment of any such failure to maintain said minimum net worth for so long as party's net worth is not a minimum of \$500,000,000.00, and in any such event the Owner or Tenant shall forthwith from that time forward maintain insurance policies as required or otherwise provided for in this Declaration.

14. Liens. In the event any mechanic's lien is filed against a Tract as a result of services performed for or materials furnished to the Owner of another Tract, such Owner shall cause such lien to be released and discharged of record within thirty (30) days of receipt of notice of such lien, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Additionally, the other Owner permitting or causing such lien to be filed shall indemnify, defend, and hold harmless the Owner of the Tract upon which said lien was filed against any liability, loss, damage, costs, or expenses (including reasonable attorney's fees actually incurred and court costs) on account of such claim of lien.

15. General.

15.1 Amendment. The provisions of this Declaration may be abrogated, modified, rescinded or amended in whole or in part only with the consent of all of the Owners of the Tracts in a written instrument duly recorded with the Clerk of Superior Court of Forsyth County, Georgia.

15.2 Enforcement. This Declaration may be enforced by any Owner by any action available at law or in equity, including, but not limited to injunctive relief and specific performance. In the event the Owner of an Outparcel defaults in the performance of any of its obligations pursuant to this Declaration and such default shall continue for a period of thirty (30) days after receipt of written notice of said default from the Owner of any other Tract, the Owner of such other Tract shall be entitled to cure such default, provided, (i) the defaulting Owner is not then in the process of diligently attempting to cure the default, and (ii) no notice or opportunity to cure shall be required in the event the default creates an emergency or interferes with the use of such other Owner's Tract.

15.3 Partial Invalidity. In the event any provision of this Declaration is determined to be illegal or legally unenforceable, such determination shall have no effect upon the remaining terms and provisions hereof, and the remaining terms and provisions hereof shall continue in full force and effect.

14.4 Notice.

15.4.1 Form. Every notice, demand, consent, approval, or other document or instrument required or permitted to be served upon or given to any Owner shall be in writing and shall be delivered in person or sent by registered or certified mail, postage prepaid, return receipt requested, and, if to Declarant and/or to Publix, shall be delivered to the following addresses, respectively:

If to Declarant:

NAP Cruse Marketplace, LLC
c/o North American Properties
4755 Dogwood Road
Atlanta, GA 30075

With a copy to:

Peter M. Hartman, Esq.
Hartman, Simons, Spiehlman & Wood, LLP
6400 Powers Ferry Road, N.W.
Atlanta, Georgia 30339

If to Publix:

Publix Super Markets, Inc.
1936 George Jenkins Boulevard
Lakeland, Florida 33801
ATTN: John Frazier
Vice President, Real Estate

With a copy to:

McClure & McClure, LLC
2849 Paces Ferry Road
Suite 160
Atlanta, Georgia 30339
ATTN: Jay Y. McClure, Esq.

and, if to any Owner, at an address specified in the manner set forth in Paragraph 14.4.2 hereof for change of address.

15.4.2 Change of Address. Any Owner may specify or change the place for service of notice by sending a notice to the other Owner(s), which notice shall become effective ten (10) days after delivery thereof. All such notice addresses shall be within the United States.

15.4.3 Notice to Lender. If a lender has theretofore sent a written notice to an Owner which expressly states that it is the holder of a security interest in a Tract, describes the nature of the security interest, and sets forth the name and address of such lender, then until such Owner receives a written notice to the contrary from such lender, such Owner shall send to such lender copies of all notices which it sends to any other Owner pursuant to this Paragraph 14.4.

15.5 Indemnity. Each Owner (herein, individually, "Indemnitor") shall defend, indemnify, and hold harmless the other Owners from all claims, losses, actions, proceedings and costs (including reasonable attorney's fees actually incurred and court costs) resulting from any construction, including liens, or any accident, injury, loss, or damage occurring to any person or to the property of any person arising out of or resulting from the Indemnitor's exercise of the rights, privileges, and easements granted herein (provided, however, that the foregoing shall not be applicable to events or circumstances caused by the negligence or willful act or omission of the indemnified Owner), or resulting from the Indemnitor's violation of any of the restrictions, covenants, and conditions established hereby.

IN WITNESS WHEREOF, the Declarant has caused this Agreement to be executed by its duly authorized representatives as of the day and year first above written.

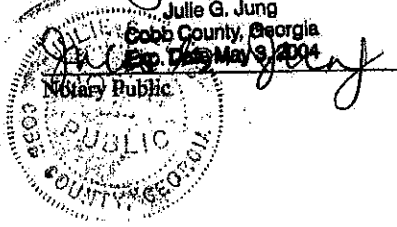
DECLARANT:

Signed, sealed and delivered in my presence this 30 day of July, 2002.

NAP CRUSE MARKETPLACE, LLC, an Ohio limited liability company

Julie G. Jung
Witness

By: NAP INVESTMENTS
MANAGEMENT COMPANY,
INC., As Its Manager



By: Stephen R. Lam
Name: Stephen R. Lam
Title: Authorized Agent

Exhibit List:

- Exhibit A** **Legal Description of Shopping Center Tract (also Property) including Outparcels 1-5**
- Exhibit B** **Intentionally Omitted**
- Exhibit C** **Site Plan (shows Publix Parcel)**

STORE NO.: _____
SITE: GA HIGHWAY 20 & SAMPLES ROAD,
CUMMING, FORSYTH COUNTY,
GEORGIA
SHOPPING
CENTER: CRUSE MARKETPLACE
STOREROOM: 44,271 Square Feet

EXHIBIT "A"

Shopping Center Tract Legal Description

All that tract or parcel of land lying and being in Land Lots 364 and 429 of the 2nd District of Forsyth County, Georgia, and being more particularly described as follows:

Commencing at a 5/8" rebar set intersecting the Northern right-of-way of Georgia State Route 20 (AKA Buford Highway) (100' right-of-way) and the Eastern right-of-way of Samples Road (60' right-of-way); Thence along said right-of-way of Georgia State Route 20 the following courses and distances: South 54 degrees 07 minutes 12 seconds East, a distance of 20.21 feet to a 5/8" rebar set; South 54 degrees 07 minutes 12 seconds East, a distance of 136.55 feet to a 5/8" rebar set; South 54 degrees 07 minutes 12 seconds East, a distance of 137.45 feet to a point; South 54 degrees 07 minutes 30 seconds East, a distance of 6.54 feet to a 5/8" rebar set, said 5/8" rebar set being the TRUE POINT OF BEGINNING; Thence leaving said right-of-way North 67 degrees 25 minutes 49 seconds East, a distance of 55.07 feet to a 5/8" rebar set; Thence North 38 degrees 59 minutes 55 seconds East, a distance of 248.06 feet to a 5/8" rebar set; Thence North 51 degrees 00 minutes 05 seconds West, a distance of 170.00 feet to a 5/8" rebar set; Thence North 51 degrees 00 minutes 05 seconds West, a distance of 137.04 feet to a 5/8" rebar set; Thence North 79 degrees 13 minutes 51 seconds West, a distance of 51.36 feet to a 5/8" rebar set; Thence North 32 degrees 04 minutes 24 seconds East, a distance of 41.76 feet to a point; Thence along a curve to the right, an arc length of 110.21 feet, said curve having a radius of 1950.00 feet with a chord distance of 110.20 feet, at North 33 degrees 41 minutes 32 seconds East, to a point; Thence North 35 degrees 18 minutes 41 seconds East, a distance of 96.79 feet to a point; Thence along a curve to the left, an arc length of 226.63 feet, said curve having a radius of 900.00 feet with a chord distance of 226.03 feet, at North 28 degrees 05 minutes 52 seconds East, to a point; Thence North 20 degrees 53 minutes 02 seconds East, a distance of 79.74 feet to a 5/8" rebar set; Thence South 70 degrees 00 minutes 51 seconds East, a distance of 50.17 feet to a 5/8" rebar set; Thence South 51 degrees 00 minutes 05 seconds East, a distance of 44.42 feet to a 5/8" rebar set; Thence North 38 degrees 59 minutes 55 seconds East, a distance of 59.43 feet to a 5/8" rebar set; Thence South 71 degrees 25 minutes 09 seconds East, a distance of 137.10 feet to a 5/8" rebar set; Thence North 38 degrees 59 minutes 55 seconds East, a distance of 155.93 feet to a 5/8" rebar set; Thence South 51 degrees 00 minutes 05 seconds East, a distance of 80.00 feet to a 5/8" rebar set; Thence South 38 degrees 59 minutes 55 seconds West, a distance of 179.31 feet to a 5/8" rebar set; Thence South 51 degrees 00 minutes 05 seconds East, a distance of 312.45 feet to a

5/8" rebar set; Thence South 38 degrees 59 minutes 55 seconds West, a distance of 421.66 feet to a 1/2" rebar found; Thence South 50 degrees 59 minutes 57 seconds East, a distance of 250.26 feet to a 1/2" rebar found; Thence South 01 degrees 16 minutes 20 seconds East, a distance of 91.25 feet to a 5/8" rebar set; Thence South 38 degrees 59 minutes 55 seconds West, a distance of 101.43 feet to a 5/8" rebar set; Thence North 51 degrees 00 minutes 05 seconds West, a distance of 60.00 feet to a 5/8" rebar set; Thence South 38 degrees 59 minutes 55 seconds West, a distance of 254.43 feet to a 5/8" rebar set; Thence South 34 degrees 49 minutes 55 seconds West, a distance of 45.87 feet to a 5/8" rebar set on the Northern right-of-way of Georgia State Route 20; Thence along said right-of-way North 54 degrees 13 minutes 32 seconds West, a distance of 64.64 feet to a 5/8" rebar set; Thence leaving said right-of-way North 65 degrees 24 minutes 37 seconds East, a distance of 56.66 feet to a 5/8" rebar set; Thence North 38 degrees 59 minutes 55 seconds East, a distance of 205.63 feet to a 5/8" rebar set; Thence North 51 degrees 00 minutes 05 seconds West, a distance of 160.76 feet to a 5/8" rebar set; Thence North 51 degrees 00 minutes 05 seconds West, a distance of 151.56 feet to a 5/8" rebar set; Thence South 83 degrees 59 minutes 55 seconds West, a distance of 51.54 feet to a 5/8" rebar set; Thence South 38 degrees 59 minutes 55 seconds West, a distance of 175.64 feet to a 5/8" rebar set; Thence South 11 degrees 11 minutes 20 seconds West, a distance of 68.45 feet to a 5/8" rebar set on the Northern right-of-way of Georgia State Route 20; Thence along said right-of-way North 54 degrees 07 minutes 30 seconds West, a distance of 94.29 feet to a 5/8" rebar set; Said 5/8" rebar set being the TRUE POINT OF BEGINNING.

Said tract contains 10.247 Acres.

STORE NO.: _____
SITE: GA HIGHWAY 20 & SAMPLES ROAD,
CUMMING, FORSYTH COUNTY,
GEORGIA
SHOPPING
CENTER: CRUSE MARKETPLACE
STOREROOM: 44,271 Square Feet

EXHIBIT "A-1"

Outparcel Legal Descriptions

OUTPARCEL 1

All that tract or parcel of land lying and being in Land Lot 429 of the 2nd District of Forsyth County, Georgia, and being more particularly described as follows:

Commencing at a 5/8" rebar set intersecting the Northern right-of-way of Georgia State Route 20 (AKA Buford Highway) (100' right-of-way) and the Eastern right-of-way of Samples Road (60' right-of-way); Thence along said right-of-way of Georgia State Route 20 South 54 degrees 07 minutes 12 seconds East, a distance of 20.21 feet to a 5/8" rebar set, said 5/8" rebar set being the TRUE POINT OF BEGINNING; Thence leaving said right-of-way North 27 degrees 40 minutes 48 seconds East, a distance of 68.00 feet to a point; Thence along a curve to the right, an arc length of 149.52 feet, said curve having a radius of 1950.00 feet with a chord distance of 149.48 feet, at North 29 degrees 52 minutes 36 seconds East, to a point; Thence North 32 degrees 04 minutes 24 seconds East, a distance of 73.72 feet to a 5/8" rebar set; Thence South 79 degrees 13 minutes 51 seconds East, a distance of 51.36 feet to a 5/8" rebar set; Thence South 51 degrees 00 minutes 05 seconds East, a distance of 137.04 feet to a 5/8" rebar set; Thence South 38 degrees 59 minutes 55 seconds West, a distance of 304.32 feet to a 5/8" rebar set on the Northern right-of-way of Georgia State Route 20; Thence along said right-of-way North 54 degrees 07 minutes 12 seconds West, a distance of 136.55 feet to a 5/8" rebar set; Said 5/8" rebar set being the TRUE POINT OF BEGINNING.

Said tract contains 1.146 Acres.

OUTPARCEL 2

All that tract or parcel of land lying and being in Land Lot 429 of the 2nd District of Forsyth County, Georgia, and being more particularly described as follows:

Commencing at a 5/8" rebar set intersecting the Northern right-of-way of Georgia State Route 20 (AKA Buford Highway) (100' right-of-way) and the Eastern right-of-way of Samples Road (60' right-of-way); Thence along said right-of-way of Georgia State Route 20 the following courses and distances: South 54 degrees 07 minutes 12 seconds East, a distance of 20.21 feet to a 5/8" rebar set; South 54 degrees 07 minutes 12 seconds East, a distance of 136.55 feet to a 5/8" rebar set, said 5/8" rebar set being the TRUE POINT OF BEGINNING; Thence leaving said right-of-way North 38 degrees 59 minutes 55 seconds East, a distance of 304.32 feet to a 5/8" rebar set; Thence South 51 degrees 00 minutes 05 seconds East, a distance of 170.00 feet to a 5/8" rebar set; Thence South 38 degrees 59

minutes 55 seconds West, a distance of 248.06 feet to a 5/8" rebar set; Thence South 67 degrees 25 minutes 49 seconds West, a distance of 55.07 feet to a 5/8" rebar set on the Northern right-of-way of Georgia State Route 20; Thence along said right-of-way the following courses and distances: North 54 degrees 07 minutes 30 seconds West, a distance of 6.54 feet to a point; North 54 degrees 07 minutes 12 seconds West, a distance of 137.45 feet to a 5/8" rebar set; Said 5/8" rebar set being the TRUE POINT OF BEGINNING.

Said tract contains 1.155 Acres.

OUTPARCEL 3

All that tract or parcel of land lying and being in Land Lot 429 of the 2nd District of Forsyth County, Georgia, and being more particularly described as follows:

Commencing at a 5/8" rebar set intersecting the Northern right-of-way of Georgia State Route 20 (AKA Buford Highway) (100' right-of-way) and the Eastern right-of-way of Samples Road (60' right-of-way); Thence along said right-of-way of Georgia State Route 20 the following courses and distances: South 54 degrees 07 minutes 12 seconds East, a distance of 20.21 feet to a 5/8" rebar set; South 54 degrees 07 minutes 12 seconds East, a distance of 136.55 feet to a 5/8" rebar set; South 54 degrees 07 minutes 12 seconds East, a distance of 137.45 feet to a point; South 54 degrees 07 minutes 30 seconds East, a distance of 6.54 feet to a 5/8" rebar set; South 54 degrees 07 minutes 30 seconds East, a distance of 94.29 feet to a 5/8" rebar set, said 5/8" rebar set being the TRUE POINT OF BEGINNING; Thence leaving said right-of-way North 11 degrees 11 minutes 20 seconds East, a distance of 68.45 feet to a 5/8" rebar set; Thence North 38 degrees 59 minutes 55 seconds East, a distance of 175.64 feet to a 5/8" rebar set; Thence North 83 degrees 59 minutes 55 seconds East, a distance of 51.54 feet to a 5/8" rebar set; Thence South 51 degrees 00 minutes 05 seconds East, a distance of 151.56 feet to a 5/8" rebar set; Thence South 38 degrees 59 minutes 55 seconds West, a distance of 264.01 feet to a 5/8" rebar set on the Northern right-of-way of Georgia State Route 20; Thence along said right-of-way the following courses and distances: North 54 degrees 13 minutes 32 seconds West, a distance of 52.45 feet to a 3/4" open top pipe found; North 54 degrees 07 minutes 30 seconds West, a distance of 103.86 feet to a 5/8" rebar set, Said 5/8" rebar set being the TRUE POINT OF BEGINNING.

Said tract contains 1.124 Acres.

OUTPARCEL 4

All that tract or parcel of land lying and being in Land Lot 429 of the 2nd District of Forsyth County, Georgia, and being more particularly described as follows:

Commencing at a 5/8" rebar set intersecting the Northern right-of-way of Georgia State Route 20 (AKA Buford Highway) (100' right-of-way) and the Eastern right-of-way of Samples Road (60' right-of-way); Thence along said right-of-way of Georgia State Route 20 the following courses and distances: South 54 degrees 07 minutes 12 seconds East, a distance of 20.21 feet to a 5/8" rebar set; South 54 degrees 07 minutes 12 seconds East, a distance of 136.55 feet to a 5/8" rebar set; South 54 degrees 07 minutes 12 seconds East, a distance of 137.45 feet to a point; South 54 degrees 07 minutes 30 seconds East, a distance of 6.54 feet to a 5/8" rebar set; South 54 degrees 07 minutes 30 seconds East, a distance of 94.29 feet to a 5/8" rebar set; South 54 degrees 07 minutes 30 seconds East, a

distance of 103.86 feet to a 3/4" open top pipe set; South 54 degrees 13 minutes 32 seconds East, a distance of 52.45 feet to a 5/8" rebar set, said 5/8" rebar set being the **TRUE POINT OF BEGINNING**; Thence leaving said right-of-way North 38 degrees 59 minutes 55 seconds East, a distance of 264.01 feet to a 5/8" rebar set; Thence South 51 degrees 00 minutes 05 seconds East, a distance of 160.76 feet to a 5/8" rebar set; Thence South 38 degrees 59 minutes 55 seconds West, a distance of 205.63 feet to a 5/8" rebar set; Thence South 65 degrees 24 minutes 37 seconds West, a distance of 56.66 feet to a 5/8" rebar set on the Northern right-of-way of Georgia State Route 20; Thence along said right-of-way North 54 degrees 13 minutes 32 seconds West, a distance of 135.77 feet to a 5/8" rebar set; Said 5/8" rebar set being the **TRUE POINT OF BEGINNING**.

Said tract contains 0.943 Acre.

OUTPARCEL 5

All that tract or parcel of land lying and being in Land Lot 429 of the 2nd District of Forsyth County, Georgia, and being more particularly described as follows:

Commencing at a 5/8" rebar set intersecting the Northern right-of-way of Georgia State Route 20 (AKA Buford Highway) (100' right-of-way) and the Eastern right-of-way of Samples Road (60' right-of-way); Thence along said right-of-way of Georgia State Route 20 the following courses and distances: South 54 degrees 07 minutes 12 seconds East, a distance of 20.21 feet to a 5/8" rebar set; South 54 degrees 07 minutes 12 seconds East, a distance of 136.55 feet to a 5/8" rebar set; South 54 degrees 07 minutes 12 seconds East, a distance of 137.45 feet to a point; South 54 degrees 07 minutes 30 seconds East, a distance of 6.54 feet to a 5/8" rebar set; South 54 degrees 07 minutes 30 seconds East, a distance of 94.29 feet to a 5/8" rebar set; South 54 degrees 07 minutes 30 seconds East, a distance of 103.86 feet to a 3/4" open top pipe set; South 54 degrees 13 minutes 32 seconds East, a distance of 52.45 feet to a 5/8" rebar set; South 54 degrees 13 minutes 32 seconds East, a distance of 135.77 feet to a 5/8" rebar set; South 54 degrees 13 minutes 32 seconds East, a distance of 64.64 feet to a 5/8" rebar set, said 5/8" rebar set being the **TRUE POINT OF BEGINNING**; Thence leaving said right-of-way North 34 degrees 49 minutes 55 seconds East, a distance of 45.87 feet to a 5/8" rebar set; Thence North 38 degrees 59 minutes 55 seconds East, a distance of 254.43 feet to a 5/8" rebar set; Thence South 51 degrees 00 minutes 05 seconds East, a distance of 60.00 feet to a 5/8" rebar set; Thence North 38 degrees 59 minutes 55 seconds East, a distance of 101.43 feet to a 5/8" rebar set; Thence South 01 degrees 16 minutes 20 seconds East, a distance of 371.55 feet to a 1/2" rebar found; Thence South 34 degrees 50 minutes 40 seconds West, a distance of 101.25 feet to a 5/8" rebar set on the Northern right-of-way of Georgia State Route 20; Thence along said right-of-way North 54 degrees 13 minutes 32 seconds West, a distance of 304.65 feet to a 5/8" rebar set; Said 5/8" rebar set being the **TRUE POINT OF BEGINNING**.

Said tract contains 1.796 Acres.

