

COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS AGREEMENT

Ubaldo's Seafood House – Approximately 1.5524 Acres
Fairfield Town Center

This Covenants, Conditions, Restrictions and Easements Agreement ("**Agreement**") made and entered into as of this 4th day of November, 2016, by and between **FAIRFIELD TOWN CENTER, LLC**, an Indiana limited liability company ("**Developer**"), and **UBALDO'S RESTAURANT, INC.**, a Texas corporation, having its principal place of business at c/o Alicia's Mexican Restaurant, Inc., 26326 Northwest Freeway, Cypress, Texas 77429 ("**Owner**").

WITNESSETH:

WHEREAS, Developer is the owner of certain real property described in EXHIBIT A ("**Developer's Property**"); and

WHEREAS, Owner is the owner of certain real property located adjacent to, or in close proximity to, Developer's Property which it has or is purchasing contemporaneously with the execution and delivery of this Agreement ("**Closing Date**"), which property is described in EXHIBIT B ("**Parcel**"), and is shown for information purposes on the site plan attached as EXHIBIT C; and

WHEREAS, Owner desires to develop the Parcel and Owner may hereafter elect to convey, lease or otherwise transfer, subject to the terms and conditions set forth in this Agreement, all or certain portions of the Parcel to other persons or entities; and

WHEREAS, by reason of the proximity of the Parcel to Developer's Property, which is part of the shopping center site commonly known as Fairfield Town Center ("**Center**"), Developer and other owners of the property adjacent to, or in close proximity to, the Center have a substantial interest in the manner of development of the Parcel; and

WHEREAS, as a condition to Developer's agreement to sell the Parcel to Owner, the parties have agreed to subject the Parcel to the terms, conditions and provisions of this Agreement.

NOW, THEREFORE, for and in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and the mutual covenants set forth in this Agreement, the parties, intending to be legally bound, agree as follows:

Article I. IMPROVEMENTS TO THE PARCEL

Section 1.1 Improvements Subject to Developer Approval.

Developer and Owner acknowledge and agree that Developer has an interest in the manner in which all property adjacent to or in close proximity to the Center is developed, including the Parcel. Accordingly, Developer shall have the right to review and approve any and all plans for the construction, reconstruction, replacement, remodeling, alteration, addition, installation or modification of exterior improvements subsequent to the initial construction (collectively "**Construction**") of any building, exterior signage, lighting, landscaping, access drives, parking areas, utility lines or other improvements (collectively "**Improvements**") to be located on the Parcel to ascertain that such Improvements (a) are compatible with and shall not adversely affect other portions of the Center with respect to, without limitation, matters of signage, utilities, traffic circulation, parking, safety and health hazards, emergency access, landscaping, building height, visibility, curb cuts (including, but not limited to, curb cuts onto adjacent public roads), quality of workmanship and materials, type, grade, color and texture of exterior materials, compatibility of architectural and landscape design with other Improvements in the Center and other similar matters that could have an impact on other portions of the Center, and (b) are compatible with the Standards (defined herein). Such approval by Developer shall not be deemed to be an assumption of the responsibility by Developer for the accuracy, sufficiency or propriety of the Plans and Specifications (hereafter defined) or a representation that the Plans and Specifications provide for the Construction of Improvements that comply with applicable laws, rules, ordinances, regulations, covenants or restrictions.

RP-2016-505713

Section 1.2 Submission of Plans.

No later than forty-five (45) calendar days prior to the commencement of any Construction of Improvements on the Parcel or any portion thereof, and prior to any submission to any federal, state, county or municipal agency, board, department or other governmental or quasi-governmental body ("**Local Authority**"), or to Friendswood Development Company (or its successors and assigns) ("**Friendswood**"), Owner shall deliver to Developer an electronic copy and four (4) copies of its schematic site plan(s) showing the following: (i) location of any buildings; (ii) the facilities and related improvements (including ingress and egress, curb cuts, traffic flow, signage, parking ratio, utility lines and facilities, and lighting); (iii) the location and nature of decorative features, including, but not limited to, landscaping, planters, directories and benches; (iv) setback lines; (v) building height and building area; (vi) schematic architectural and engineering plans; (vii) grading and drainage plans; and (viii) outline floor plans of the building shell of any and all buildings to be constructed on the Parcel, showing principal exterior dimensions, exterior design concept, the type, grade, color and texture of exterior materials and the basic exterior painting design, canopies, truck court and trash/service area shielding, rooftop screening, and any and all exterior building signs or other permanent signs contemplated for location on the Parcel. All of the above-mentioned plans are referred to as the "**Plans and Specifications**," and that work conducted by Owner or Owner's agents, contractors or subcontractors as specified or depicted in the Plans and Specifications shall be referred to in this Agreement as "**Owner's Work**."

Section 1.3 Developer Objections.

Within thirty (30) calendar days after Developer's receipt of the last to be delivered of the Plans and Specifications, Developer shall review such Plans and Specifications to determine that the proposed Improvements are compatible with and shall not cause a materially adverse effect or shall not have a materially adverse impact on any other portion(s) of the Center with respect to those matters set forth in Section 1.1 above. Developer shall at all times act reasonably and in good faith in approving or disapproving Owner's Plans and Specifications. Developer's approval of the Plans and Specifications shall be evidenced in writing.

RP-2016-505713

In the event of Developer's disapproval of the Plans and Specifications, Owner shall revise the Plans and Specifications to incorporate any and all changes as may be reasonably requested to secure Developer's approval and shall deliver an electronic copy of the revised Plans and Specifications to Developer. Within fifteen (15) calendar days after Developer's receipt of the revised Plans and Specifications, Developer shall review such revised Plans and Specifications in accordance with all the provisions of this Article I.

Notwithstanding anything herein to the contrary, under no circumstances shall Owner submit any of the Plans and Specifications to Friendswood prior to obtaining Developer's approval of same, nor shall Owner submit the Plans and Specifications to a Local Authority prior to obtaining Developer's approval and Friendswood's approval of same.

Section 1.4 Continuing Right of Approval.

Without limitation of any other provision of this Agreement, it is further understood that the exterior improvements placed on the Parcel shall be developed using similar building materials and compatible architectural concepts as are used in other buildings in the Center and that Developer shall retain architectural approval over the entire development of the Parcel. The transfer of the Parcel, or any part thereof, to a permitted transferee, or the review and approval of Plans and Specifications by Local Authorities in connection with the granting of a permit, license or other governmental approvals, shall in no way be deemed to preclude Developer from exercising its approval rights of Plans and Specifications prior to the commencement of any and all Construction on the Parcel.

Section 1.5 Development Guidelines.

Owner acknowledges the receipt of a copy of the document prepared by Developer and known as "Peripheral Development Criteria – Fairfield Town Center" dated August 14, 2012 and kept on file at the offices of Developer ("**Standards**"). Owner agrees that any and all exterior development on the Parcel shall be subject to the applicable Standards. To the extent of a conflict between the Standards and this Agreement, the terms and provisions of this Agreement shall control.

Section 1.6 Signage and Height Conditions.

Subject to the prior approval rights of Developer set forth in this Agreement, and without limitation of any other provision of this Agreement, the Standards, applicable Laws (hereafter defined) or the approved Plans and Specifications (the most stringent of which shall apply), the following conditions are agreed to by Owner:

1. No sign shall be permitted upon the Parcel unless the design and location of such sign has been first approved by Developer as part of approved Plans and Specifications, or otherwise approved by Developer. All signs shall be professionally prepared, in keeping with the operation of a first class shopping center, and in compliance with all applicable laws, codes, ordinances, rules, regulations, covenants and restrictions ("**Laws**"); and
2. No temporary sign (except for development information or construction lending/financing signs during the period prior to the completion of Owner's Work), paper sign, banner or streamer shall be permitted upon any portion of the Parcel at any time.

Subject to any and all restrictions of record, Friendswood's approval, and Developer's review of the final Plans and Specifications as otherwise set forth herein, as between Developer and Owner, Developer agrees to permit the following:

1. Owner's building height shall not exceed twenty-five feet (25').
2. Owner may have up to three (3) building signs, and a "To Go" parking area sign.
3. Owner may illuminate the three (3) building signs using LED front-lit or back-lit letters, with a pinning allowance of 1.5 inches.
4. Owner, at Owner's sole cost and expense, shall be permitted to place one (1) double-sided panel on the shared monument sign identified on Exhibit C ("Monument Sign").

Section 1.7 Restrictions on Actions.

Owner acknowledges that the Parcel is a part of an integrated development comprising a variety of uses in which certain actions of Owner may have an adverse effect on the Center. Therefore, without limitation of the provisions of this Article I or any other provisions of this Agreement, Owner agrees not to take any of the following actions without Developer's prior written consent, which consent Developer shall not unreasonably withhold, condition or delay:

1. make any request or application to any public, private, or governmental governing body having jurisdiction over public roads and highways adjacent to the Parcel, including, but not limited to, any state, county or local highway department of transportation, for any curb cuts or other access points providing access from such public roads to the Parcel, even if and notwithstanding the fact that such curb cut is located entirely on the Parcel and not on Developer's Property;
2. make any request or application to any Local Authority or to Friendswood for any monument, pylon, or exterior building signage other than that permitted in Section 1.6 above;
3. make any request or application to any Local Authority or to Friendswood for any variance or replatting of or other exception to the currently applicable requirements relating to use of the Parcel, any building setback lines, parking requirements, building height requirements, building to land coverage ratios, screening access, or other platting or building code requirements; nor
4. submit the Plans and Specifications to a Local Authority or to Friendswood in connection with any change or modification in platting, the issuance of a building permit or other permits, licenses or approvals, or for any other reason, unless such Plans and Specifications have been reviewed and approved or deemed approved in advance by Developer in accordance with this Article I.

If any changes are requested or required by a Local Authority or Friendswood to approved Plans and Specifications, such changes shall be subject to Developer's review and

RP-2016-505713

approval or disapproval in accordance with Article I. Owner shall deliver to Developer for its review written notice of the requested or required changes.

Article II. MAINTENANCE OF THE PARCEL

Section 2.1 Standard of Maintenance.

Owner shall maintain or cause to be maintained the Parcel and all Improvements located thereon in good order, condition, and repair, in a manner comparable to that used in the maintenance of Fairfield Town Center, including, but not limited to, keeping the landscaping, parking areas and exterior in good repair and in a neat and clean condition, free of accumulation of trash and debris, including repair of pot-holes in parking lot areas, periodic re-stripping of parking areas, periodic mowing of grass, removal and replacement of dead shrubbery and exterior repair, as needed, of buildings and structures thereon. In the event Owner fails to so maintain the Parcel, within ten (10) calendar days after written notice thereof from Developer (or if the maintenance is of such nature as cannot reasonably be performed within ten (10) calendar days, then if Owner fails to commence to cure such failure within ten (10) calendar days after receipt of written notice, and thereafter diligently pursues the same to completion), then Developer may perform the maintenance and Owner shall promptly reimburse Developer for the cost thus incurred, plus a twenty-five percent (25%) administrative fee. Developer shall have the absolute right of entry upon the Parcel to perform such maintenance, and shall in no event be held to be a trespasser upon the Parcel, but no entry into any buildings is authorized.

Developer shall maintain or cause to be maintained the common storm water line and other common facilities associated therewith that serve the Parcel in a good, clean and safe condition, appearance and repair, and further shall at all times, and from time to time, cause the prompt removal of all paper, debris, refuse, snow and ice and the sweeping of paved common areas (if any) when and as required in order that the, storm water line and other facilities associated therewith be maintained as provided for in this Agreement.

Section 2.2 Fire and Casualty; Condemnation.

In the event of damage or destruction to any Improvements on the Parcel by reason of fire or other casualty or the loss of any part of the Parcel or Improvements on it by reason of condemnation, Owner shall perform or cause to be performed either: (i) prompt restoration of

such Improvements to the condition existing prior to such damage, destruction or condemnation, reasonable wear and tear excepted; or (ii) razing and removal of any such Improvements, in which event Owner shall replace such Improvement with either (at Owner's discretion) (A) paved parking or other Improvements or uses consistent with this Agreement and approved by Developer prior to their construction; or (B) landscaping in a manner approved by Developer, which approval shall not be unreasonably withheld.

Section 2.3 Common Area Maintenance.

Owner shall pay to Developer the sum of Five Thousand Five Hundred Dollars (\$5,500.00) per year ("**Maintenance Charge**"), commencing upon the Closing Date, to reimburse Developer for Developer's maintenance of facilities that serve the Parcel. The Maintenance Charge for the first year shall be paid in advance at Closing, and thereafter shall be payable in annual installments, in advance, on the anniversary of the first day of the month immediately following Closing Date. The Maintenance Charge shall be increased by ten percent (10%) every five (5) years on the anniversary of the first day of the month immediately following the Closing Date.

Section 2.4 Non-Exclusive Easement to Owner.

Developer does hereby create, grant and convey unto Owner, its tenants, licensees, and invitees, a permanent, non-exclusive easement in common with Developer and all others to whom Developer has granted or may hereafter grant rights, over, upon, and across the ring road and entrance drives as shown on Exhibit C, as they may be changed from time to time, for purposes of access, ingress, and egress to and from the Parcel. Developer reserves the right, in its sole discretion, to change from time to time the configuration, location, number and size of the ring road and entrance drives, so long as Owner's access to public streets is not materially impaired. The number, location, and size of any curb cuts for ingress and egress to and from the Parcel onto the ring road and entrance drives shall be subject to the prior written approval and consent of Developer, not to be unreasonably withheld, conditioned, or delayed.

Section 2.5 Ring Road Extension

Owner agrees that the cost of constructing any portion of the ring road located on Owner's Parcel shall be solely the responsibility of the Owner. In the event Developer constructs (or causes to be constructed) the portion of the ring road which is located on Owner's Parcel, Owner shall reimburse Developer for the cost of constructing the portion of the ring road located upon the Parcel.

Article III. USE

Section 3.1 Permitted Use.

Owner agrees that Owner shall use, occupy and operate the Parcel, or shall cause the Parcel to be used, occupied and operated, for the purpose of the construction and operation of a sit down seafood restaurant, with full bar service, operating under the trade name "Ubaldo's Seafood House", and for no other use or purpose, except as may be specified in this Section 3.1 ("**Permitted Use**"). Any change in the Permitted Use shall require Developer's prior written consent, not to be unreasonably withheld, conditioned, or delayed. Owner shall provide Developer with thirty (30) calendar days' advance written notice of the proposed change in use ("**Change of Use Notice**"). Developer's consent shall not be deemed to be unreasonably withheld if the proposed principal use:

- A. Is for the operation of an outlet store or stores ("**Outlet Store**"). As used herein, the term "Outlet Store" shall mean any use as (i) a manufacturer's direct discount retail store or discount outlet center, (ii) any store billing, naming, or advertising itself as an "outlet," "premium outlet," "factory store" or any phrase confusingly similar thereto, or (iii) any discount retailer of a specific category of apparel or accessories such as those currently operated in discount outlet centers such as Houston Premium Outlets in Houston, Texas, San Marcos Premium Outlets in San Marcos, Texas, Tanger Outlet Center in San Marcos, Texas, Round Rock Premium Outlets in Round Rock, Texas, or Katy Mills in Katy, Texas; or
- B. Would violate an existing exclusive use clause applicable to the Center at the time the Change of Use Notice is issued.

Owner expressly acknowledges that Owner's Permitted Use is nonexclusive, and that other tenants or owners in the Center may conduct business which is similar to that of Owner.

Section 3.2 Standard of Operation.

Owner agrees to allow or permit the Parcel to be used only for the operation of a retail establishment normally found in the highest class of shopping centers and malls in the state in which the Parcel is located. For the avoidance of doubt, the following uses are prohibited:

1. Any noise, vibration, litter, odor (obnoxious or toxic), dust, dirt, or other activity which may constitute a public or private nuisance;
2. Any unusual firing, explosive, or other damaging or dangerous hazards;
3. Any factory use, warehouse operation, processing or rendering plant, or any assembling, manufacturing, distilling, refining, smelting, industrial, agriculture, drilling, mining operation or other similar operation;
4. Any trailer court, mobile home park, lot or showroom for the sale of new or used motor vehicles, trailers, or mobile homes, labor camp, junk yard, stockyard, or animal raising;
5. Any dumping, disposal, incineration, or reduction of garbage or refuse other than handling or reducing such waste if produced on the premises from authorized uses and if handled in a reasonably clean and sanitary manner;
6. Any commercial laundry or dry cleaning plant, laundromat, veterinary hospital, car or truck washing establishment;
7. Any automobile, truck, trailer, or other motor vehicle body, fender, or other repair work, tire, battery or automobile accessories store, or any gasoline or fuel pumps;
8. Any automobile, truck, trailer, or other motor vehicle painting or customizing work;
9. Any cemetery, mortuary, or crematorium;

10. Any pool or billiard establishment, amusement center or game room, bowling alley, amusement park or gallery, carnival, sporting event, shooting gallery, or other sports activity;
11. Any second-hand store, surplus store, or flea market;
12. Any drug rehabilitation center or "halfway" house, massage parlor, health club;
13. Any so-called "off-track betting" operation;
14. Any sale or display of pornographic materials, adult book store, adult entertainment use, or any other manner or use which is inconsistent with a family entertainment center and retail destination.

Section 3.3 Trade Name.

The business on the Parcel shall be conducted under the trade name "Ubaldo's Seafood House" unless Developer approves another trade name in writing.

Article IV. PARKING RATIO

Section 4.1 Minimum Parking Ratio

Owner shall maintain or cause to be maintained on the Parcel at all times no fewer than the greater of (i) 4.5 parking spaces per 1,000 square feet of floor area upon the Parcel, and (ii) the number of parking spaces required by the Local Authorities. All vehicular parking spaces shall be of the minimum dimensions as required by the Local Authorities, Friendswood, or Laws.

Article V. CONSTRUCTION BY OWNER

Section 5.1 Owner's Construction Work.

Owner shall perform, or cause to be performed, all development (including design, engineering, construction and installation) of the Improvements to be located on the Parcel, and shall perform, or cause to be performed, all other work associated with the development of the Parcel (all included within the term "**Owner's Work**"), in accordance with the Plans and

RP-2016-505713

Specifications approved by Developer in accordance with the process described in Article I of this Agreement.

Owner shall be responsible for field verification of the location of any and all utilities (including existing irrigation, exterior light or pylon sign utility runs serving the Center or neighboring developments) contained on the Parcel prior to commencement of Owner's Work. If any of the utility runs are cut or damaged during Owner's Work, Owner shall repair, replace and/or reposition the utility run immediately, at Owner's sole cost and expense, and shall notify the Center's operation director or Developer's tenant coordinator prior to beginning any such work.

Section 5.2 Time to Commence.

Owner shall commence Owner's Work within twelve (12) months of the Closing Date. In the event of any Unavoidable Delays the time for commencement of Construction on the Parcel shall be extended by the period of such Unavoidable Delay, and Owner shall diligently pursue Construction to completion. As used in this Agreement, "**Unavoidable Delay(s)**" means any delay caused by the following reasons:

1. Governmental laws, regulations, ordinances or edicts, including permitting regulations or unobtained approvals due to such laws, regulations, ordinances or edicts;
2. Governmental rationing or allocation of materials;
3. Extreme adverse weather;
4. Strikes, lock-outs, labor troubles, fires, acts of God, natural disasters, riots, insurrection, delays in transportation, shortage of labor, inability to procure material, failure of power or any other cause of a like nature beyond the reasonable control of the party asserting such delays.
5. **Owner's inability to obtain financing or permits shall not be deemed to be an Unavoidable Delay.**

Section 5.3 Commencement of Owner's Work.

As used in this Agreement, the commencement of Construction shall be deemed to have occurred, with respect to any building on the Parcel, with the pouring of the footings and foundations therefor, and with respect to any other portion of Owner's Work including, without limitation, portions of Owner's Work referred to in the Plans and Specifications, the actual beginning of the process of Construction on the Parcel.

Section 5.4 Completion of Owner's Work.

Owner shall complete Construction and open the Improvements for business no later than three hundred sixty-five (365) calendar days after the commencement of Construction ("**Construction Period**"), subject to Unavoidable Delays. As used in this Agreement, Construction shall be deemed to be completed after Owner has submitted, obtained and delivered to Developer, and Developer has received, a certificate of occupancy, or its equivalent as required by the Local Authorities having jurisdiction over the Parcel, if any.

Section 5.5 Developer's Right to Repurchase – Owner's Failure to Commence Construction.

In the event that Owner fails to commence Construction as set forth in Section 5.2 herein, as such period may be extended as provided in this Agreement or due to Unavoidable Delays, then Developer may, at its option, repurchase the Parcel together with any Improvements thereon ("**Developer's Repurchase Right**"). Upon exercise of the Developer's Repurchase Right as set forth herein, Owner shall be obligated to sell the Parcel to Developer on the terms and conditions provided for in this Agreement.

1. Exercise of Option. Developer may, at its option, exercise the Developer's Repurchase Right by delivery of written notice to Owner of Developer's intent to repurchase the Parcel ("**Repurchase Notice**"). The Repurchase Notice shall set forth the closing date, place and time in accordance with the terms set forth in this Agreement.
2. Repurchase Price. The purchase price for the repurchase of the Parcel shall be equal to the purchase price Owner paid to Developer for the purchase of the Parcel (the "**Repurchase Price**").

3. Due Diligence. During the sixty (60) day period following the date of the Repurchase Notice, Developer shall have the right to (a) perform soil and environmental tests of the Parcel, and (b) do and perform any other investigations or evaluations which Developer, in its reasonable judgment, deems necessary to determine the condition and suitability of the Parcel. Developer shall bear the cost of performing such tests and evaluations ("**Developer's Due Diligence**").
4. Hazardous Conditions. As between Developer and Owner, Developer shall be solely liable for any and all adverse impact to the Parcel and necessary corrective actions to remedy any hazardous conditions caused solely by Developer, Developer's consultants, agents, or representatives during the course of Developer's Due Diligence. In the event a hazardous condition is caused or created by Developer, Developer shall immediately (1) cease and desist its investigation, (2) institute commercially reasonable containment procedures, and (3) notify Owner of such condition and remedial steps taken by Developer.
5. Indemnification. Developer shall protect, defend, indemnify, save and hold harmless Owner against and from any and all claims, demands, liens, fines, suits, actions, proceedings, orders, decrees and judgments of any kind or nature whatsoever by or in favor of anyone whomsoever, and against and from any and all costs, damages and expenses (including, but not limited to, actual and statutory attorneys' fees and court costs at all levels) caused by any act or omission of Developer, or any of Developer's employees, agents, contractors or consultants, in, upon, at, from or about the Parcel and arising from or related to Developer's Due Diligence. Notwithstanding provisions in this Agreement with respect to survival to the contrary, this indemnity shall survive the closing on the repurchase of the Parcel. Notwithstanding anything to the contrary contained in this Agreement, Developer's indemnity obligations under this Section 5.5 shall not extend to (i) claims arising out of the negligence or willful misconduct of Owner or Owner's employees, agents, or contractors, or (ii) any environmental conditions existing prior to the closing of the Developer's repurchase of the Parcel.

6. Insurance. Developer shall procure and agrees to continue in force until the closing on the repurchase of the Parcel (or cause Developer's agents, contractors and representatives to so procure and continue in force) Comprehensive General Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence, or Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, either of which shall cover Developer and name Owner and/or its designee as an additional insured; and Workmen's Compensation in accordance with statutory requirements. The coverages specified in this Section shall be procured from responsible insurance companies authorized to do business in the state where the Parcel is located and having an A.M. Best's rating of "A-VIII" or above (or the equivalent rating thereof). Prior to performing any tests or investigations, Developer shall provide Owner with certificates evidencing that all such insurance applicable to Developer's Due Diligence is in full force and effect and stating the terms thereof. Notwithstanding the foregoing, Developer may self-insure for all insurance coverage required in this section, to the extent that Developer is not prohibited by law from doing so.
7. Condition of Title. In the event that Developer elects to exercise Developer's Repurchase Right, good and marketable title to the Parcel, together with any Improvements thereon and Owner's interest in appurtenant rights and easements, shall be conveyed by Owner to Developer by special warranty deed subject only to those exceptions to title that existed at the time the Parcel was conveyed by Developer to Owner and utility easements and other agreements entered into by Owner (excluding agreements creating liens and/or restrictive covenants against the Parcel, unless otherwise agreed to by Developer) that do not materially and adversely affect the marketability of the Parcel; provided that Developer may elect to take title subject to any other liens and encumbrances recorded against the Parcel subsequent to the Closing Date, and in such event Developer shall deduct the amount of such liquidated liens secured by the Parcel from the Repurchase Price. Except as set forth above, the foregoing shall not be deemed to require Developer to take title subject to any other liens and encumbrances recorded

against the Parcel subsequent to the Closing Date should Developer elect to exercise Developer's Repurchase Right, nor shall Developer be required to become personally obligated for any such liens and encumbrances. Developer, at Developer's option and at Developer's expense, shall obtain prior to closing an owner's policy of title insurance insuring good and marketable fee simple title to the Parcel in the form and manner Developer requires. Developer or its designee, shall take title to the Parcel free and clear of any and all liens and encumbrances except those permitted above, and Owner shall be required to remove any objections to title which do not comply with the foregoing requirements.

8. Closing. Developer and Owner shall close on the repurchase of the Parcel within ten (10) calendar days after expiration of the due diligence period set forth in Section 5.5(3) above. The closing shall be completed by escrow on the date and time set forth in the Repurchase Notice or such other date and time mutually and reasonably acceptable to both parties.
9. Closing Costs. Owner shall pay or credit against the Repurchase Price, any transfer taxes, Owner's attorney's fees, the cost recording of the deed and other closing documents, and one-half of the closing and escrow fees charged by the title insurer; except that the Developer shall pay Developer's attorney's fees, the premium for the title insurance policy, one-half of the closing and escrow fees charged by the title insurer, the cost of the survey if required by Developer, and any recording fees for its mortgage or other loan documents, if any.
10. Real Estate Taxes. Real estate taxes shall be prorated to the date of closing.

Section 5.6 Developer's Right to Repurchase – Owner's Failure to Operate.

1. Right to Repurchase. If after initially opening for business on the Parcel Owner fails to open for business on the Parcel for a period three hundred sixty-five (365) days (subject to an extension for force majeure, Unavoidable Delays and other delays outside of Owner's control), Developer shall have the option (but shall not be required) to repurchase the Parcel and all improvements under the terms specified in this Section 5.6. If Developer exercises the right to repurchase set

forth in this Section 5.6, then the purchase price shall be the Fair Market Value (hereafter defined) at the time Developer opts to repurchase the Parcel.

2. Fair Market Value. The "**Fair Market Value**" of the Parcel shall be as agreed to by Developer and Owner. Should Owner and Developer fail to reach an agreement in writing as to the Fair Market Value of the Parcel, the Fair Market Value of the Parcel shall be estimated by two (2) qualified MAI or SREA real estate appraisers with experience in appraising commercial property, one to be appointed and compensated by Owner and the other to be appointed and compensated by Developer. Owner and Developer shall appoint such appraiser within fifteen (15) calendar days after the date either party notifies the other that it is unable to reach an agreement as to the Fair Market Value. If within thirty (30) calendar days from their appointment, the two appraisers agree to an appraisal of value not differing by more than fifteen percent (15%), then an average of the two appraisals shall be used for the Fair Market Value of the Parcel. If the two appraisals differ by more than fifteen percent (15%), then the two appraisers shall appoint a third appraiser chosen from a list of three (3) appraisers designated by the National Headquarters of the American Institute of Real Estate Appraisers. The three appraisers so appointed shall then, within thirty (30) calendar days of the date the third appraiser is appointed, estimate the Fair Market Value of the Parcel. The decisions of the appraisers, or a majority of them, shall be binding upon the parties. If the appraisers, or a majority of them, cannot agree on the Fair Market Value of the Parcel, it shall be determined by adding all three estimates and dividing the total of all three estimates by three (3). The fee of the third appraiser shall be split equally by Owner and Developer.

In the event Developer exercises its rights under Section 5.6, then Owner shall be obligated to sell the Parcel to Developer on the terms and conditions set forth in Section 5.5(3) – Section 5.5(10) of this Agreement.

Section 5.7 Staging Area.

Owner shall confine the storage of equipment and materials and the staging of its construction to its Parcel and use diligent efforts to have its contractors and subcontractors use only those construction entrances approved by Developer and designated by Owner for such purposes.

Section 5.8 General Construction Requirements.

1. Construction Standards. Owner's Work shall be done (a) at Owner's sole cost and expense, (b) by contractors or subcontractors who are appropriately licensed, fully bonded and sufficiently insured, and (c) in substantial compliance with the approved Plans and Specifications. Owner agrees that all Construction activities performed by Owner, or on Owner's behalf, shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of all governmental bodies having jurisdiction over the Parcel. All Construction shall utilize new materials, and shall be performed in a good, safe and workmanlike manner. Owner's Construction activities shall not: (i) cause any unreasonable increase in the cost of constructing improvements, if any, by Developer, (ii) unreasonably interfere with construction work, if any, being performed on any other part of the Developer's Property, (iii) unreasonably interfere with the operation, use, occupancy or enjoyment of any part of Developer's Property by Developer, any other party or its permittees, or (iv) cause any building located on the Developer's Property to be in violation of any Laws.

2. Indemnification of Developer. Owner agrees to defend, protect, indemnify and hold harmless Developer from and against all claims and demands, including any action or proceeding brought thereon, and all costs, loss, expenses and liabilities of any kind relating thereto, including reasonable attorney fees and cost of suit, arising out of or resulting from any construction activities performed by Owner; provided, however, that the foregoing shall not be applicable to either events or circumstances caused by or resulting from the negligence or willful act or

omission of Developer, its licenses, concessionaires, agents, servants, employees, or any one claiming by, through or under any of them.

Article VI. REMEDIES

Section 6.1 Developer's Remedies

Unless set forth to the contrary in this Agreement, in the event that Owner either (i) fails to pay Developer when due any amounts owed by Owner to Developer under this Agreement and such failure to pay continues for thirty (30) calendar days after written notice thereof from Developer to Owner, or (ii) shall otherwise fail to perform any of Owner's covenants, agreements or obligations under this Agreement within thirty (30) calendar days after written notice thereof by Developer to Owner, Developer shall have all rights, privileges and remedies to enforce the collection or performance as shall be provided or permitted by law or equity from time to time including, without limitation, the right to invoke any one or more of the following remedies:

1. Institute suit against Owner to enforce collection of the amounts owed to Developer pursuant to this Agreement, together with interest thereon at the lower of (i) the rate of ten percent (10%) per annum or (ii) the highest lawful rate permitted by the laws of the state where the Parcel is located, court costs and attorneys' fees;
2. Institute suit in equity to the extent permitted by law to compel compliance with the terms and conditions of this Agreement;
3. Set-off any such amounts due from Owner to Developer against any amounts due from Developer to Owner; and
4. If no emergency exists, to perform Owner's omitted obligation after giving the above required notice, and in any emergency situation, to perform the Owner's omitted obligation after such notice as is reasonable under the circumstances. Developer, by reason of Developer's performing Owner's omitted obligation, shall not be liable or responsible to Owner or any other person or entity for any losses or damages thereby sustained by Owner or any occupants of the Parcel or of anyone claiming by or under either an occupant or Owner, unless such loss or

damage arose from Developer's negligence or willful misconduct in performing any such obligation. The cost of Developer's performance of such obligation, together with a twenty-five percent (25%) management fee, shall be paid by Owner to Developer within ten (10) calendar days after the date of receiving a statement therefor, which statement shall specify the details of the obligation performed and the cost thereof.

5. In the event Owner fails to pay within thirty (30) calendar days after notice from Developer that any sum or charge required to be paid by Owner to Developer under this Agreement is due and unpaid, such unpaid amount shall bear interest from the due date thereof to the day of payment at an annual rate equal to the lower of (i) the rate of ten percent (10%) per annum or (ii) the highest lawful rate permitted by the laws of the state where the Parcel is located. Such interest shall be paid by Owner to Developer at the time of payment of the unpaid principal amount.

Notwithstanding anything set forth in this Agreement to the contrary, if any default occurs other than the payment of money, which cannot with due diligence be cured within a period of thirty (30) calendar days and Owner or Developer (as the case may be), prior to the expiration of such period, commences to eliminate the cause of such default and is continuously and diligently working to cure such default, then the non-defaulting party shall not have the right to exercise any of its remedies in the event of the other party's default. All rights, privileges and remedies afforded Developer by this Agreement shall be deemed cumulative and the exercise of any one of such rights, privileges and remedies shall not be deemed to be a waiver of any other right, remedy or privilege set forth in this Agreement.

Article VII. WAIVERS

Section 7.1 No Waiver

No act, delay or omission by either party in exercising any right or enforcing against the other any term or provision of this Agreement shall impair any such right or be construed or deemed to be a waiver of the same or any other such term or provision. A waiver by either party

of any breach of the terms and provisions of this Agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other terms and provisions contained in this Agreement.

Article VIII. NOTICES

Section 8.1 Manner of Notice

All notices or communications ("**Notices**") to be given under or pursuant to this Agreement shall be in writing, addressed to the parties at their respective addresses as set forth below, and shall be delivered by reputable, national, pre-paid overnight delivery service.

If to Developer: FAIRFIELD TOWN CENTER, LLC
 111 Monument Circle, Suite 3500
 Indianapolis, Indiana 46204
 Attn: Peripheral Development Department

With a copy to: FAIRFIELD TOWN CENTER, LLC
 180 East Broad Street
 Columbus, Ohio 43215
 Attn: Legal Department

If to Owner: UBALDO'S RESTAURANT, INC.

Notice given in accordance with this Agreement shall be sufficient service thereof and shall be deemed given as of the date deposited with the delivery service, as evidenced by the delivery receipt. The parties may change their notice addresses from time to time upon written notice to the other and as parties other than the originally named Developer and/or Owner obtain an interest in the Developer's Property or the Parcel, respectively, or any portion thereof, subject to the terms and conditions of this Agreement. The transferor Developer or Owner shall advise

RP-2016-505713

the other party of the name and address of the party to receive notice as provided in this Agreement, provided that until such time as the transferor Developer or Owner notifies the other party of any such transferee party or other change in the address, such other party shall be entitled to continue to rely on the accuracy of the notice address previously in effect.

All charges which are due from Owner to Developer pursuant to any provision of this Agreement may be sent via prepaid first class regular mail delivery, shall be made payable to Developer and shall be directed, together with a copy of the invoice for the period to which it relates, to the address set forth below or at such other address as Developer may subsequently designate by written notice to Owner:

FAIRFIELD TOWN CENTER, LLC
c/o Washington Prime Group
180 East Broad Street
Columbus, Ohio 43215

Article IX. MISCELLANEOUS PROVISIONS

Section 9.1 Governing Law.

This Agreement shall be governed and construed under and in accordance with the laws of the state where the Parcel is located according to its fair meaning and not in favor of or against any party.

Section 9.2 Severability.

If any term, provision or condition contained in this Agreement is, to any extent, held to be invalid, illegal or unenforceable in any respect, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall not be affected thereby, and each and every other term, provision and condition of this Agreement (and the application thereof) shall be legal, valid and enforceable to the fullest extent permitted by law.

Section 9.3 Gender and Number.

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, and vice versa, unless the context requires otherwise.

Section 9.4 Section Headings.

The section headings in this Agreement are for convenience or reference purposes only and shall not limit or otherwise affect or be used in the construction or interpretation of the terms and provisions of this Agreement or any part of this Agreement.

Section 9.5 Counterparts.

This Agreement may be executed and acknowledged in multiple originals or counterparts, each of which shall be an original and, when all of the parties to this Agreement have signed and acknowledged at least one (1) original, such copies together shall constitute a fully executed and binding Agreement.

Section 9.6 Entire Agreement.

Except as otherwise provided in this Agreement, this Agreement constitutes the sole agreement of the parties and supersedes any prior discussions, understandings or agreements (written or oral) between the parties respecting the within subject matter.

Section 9.7 Amendment.

This Agreement shall not be amended or modified unless such amendment is set forth in writing executed by Developer and Owner.

Section 9.8 Attorneys' Fees.

If either party files any action or brings any proceeding against the other arising out of this Agreement, or is made a party to any action or proceeding brought by a third party arising out of this Agreement, then, as between Developer and Owner, the prevailing party shall be entitled to recover, as an element of its costs of suit and not as damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover

its costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorneys' fees.

Section 9.9 Binding Effect.

Each and all of the covenants, restrictions, conditions and provisions contained in this Agreement, whether of an affirmative or negative nature, (i) are made for the direct and mutual benefit of the Parcel, and the Developer's Property, and each and every portion thereof, and shall constitute covenants running with the land of the Parcel and the Developer's Property; (ii) shall bind every owner of all or any portion of the Parcel and the Developer's Property to the extent that such portion is affected or bound by the covenants, conditions or restrictions to be performed on the behalf of such portion; and (iii) shall inure to the benefit of the parties and their respective successors and assigns.

Section 9.10 Conflicts.

To the extent of a conflict between either, all or any combination of this Agreement, the Standards, any applicable Laws, and/or the approved Plans and Specifications, the terms and provisions which impose the most stringent standard shall control.

Section 9.11 Time.

If a final date of any period, deadline, due date, or date of performance falls on a Saturday, Sunday, or federal holiday, the date shall be extended to the immediately following date that is not a Saturday, Sunday, or federal holiday.

Article X. LIMITATION OF LIABILITY

Section 10.1 Limitation of Liability

Anything to the contrary in this Agreement notwithstanding, no general or limited partner of Developer, or any general or limited partner of any partner of Developer, or any shareholder of any corporate partner of any partner of Developer, or any other holder of any equity interest in the Developer, or in any entity comprising the Developer or its partners, shall be personally liable with respect to any of the terms, covenants, conditions and provisions of this Agreement, or the performance of Developer's obligations under this Agreement. Under no circumstances

RP-2016-505713

whatsoever shall Developer or any constituent parties have any liability to Owner for any consequential damages such as, but not limited to, lost profits. The liability of Developer for Developer's obligations under this Agreement shall be limited to Developer's interest in the Center, and Owner shall look solely to the interest of Developer, its successors and assigns, in the Center, for the satisfaction of each and every remedy of Owner against Developer. Owner shall not look to any of Developer's other assets seeking either to enforce Developer's obligations under this Agreement, or to satisfy any money or deficiency judgment for Developer's failure to perform such obligations, such exculpation of personal liability is and shall be absolute and without any exception whatsoever.

Section 10.2 Definition of "Developer"

The term "**Developer**" means only the owner at the time in question of the present Developer's interest in the Center (excluding the Parcel). In the event of a sale or transfer of the Center (by operation of law or otherwise) or in the event of the making of a lease of all or substantially all of the Center, or in the event of a sale or transfer (by operation of law or otherwise) of the leasehold estate under any such lease, the grantor, transferor or lessor, as the case may be, shall be and is (to the extent of the interest or portion of the Center or leasehold estate sold, transferred or leased) automatically and entirely released and discharged, from and after the date of such sale, transfer or leasing, of all liability with respect of the performance of any of the terms of this Agreement on the part of Developer thereafter to be performed; provided that the purchaser, transferee or lessee (collectively, "**Transferee**") has assumed and agreed to perform, subject to the limitations of this Section 10.2 (and without further agreement between the other parties to this Agreement, or among such parties and the Transferee) and only during and in respect of the Transferee's period of ownership of the Developer's interest under this Agreement, all of the terms of this Agreement on the part of Developer to be performed during such period of ownership, it being intended that Developer's obligations under this Agreement shall, as limited by this Section 10.2, be binding on Developer, its successors and assigns only during and in respect of their respective, successive periods of ownership.

Article XI. INDEMNIFICATION AND INSURANCE

Section 11.1 Indemnification.

Owner shall indemnify, defend, protect and hold harmless Developer, from and against all losses, claims, liabilities, damages, costs and expenses (including, without limitation, reasonable attorney's fees and other costs of litigation) arising out of, related to, caused by or resulting from the death of or any accident, injury (personal or bodily), loss or damage whatsoever, actually or claimed to be suffered or sustained by any person, or to the property of any person (such losses, claims, liabilities, damages, costs and expenses are collectively referred to hereafter as "**Loss**"), as shall occur on the Parcel, except to the extent that any such Loss is caused by reason of the negligence or willful misconduct of Developer. Developer shall indemnify, defend, protect and hold harmless Owner, from and against all Loss as shall occur on the Developer's Property, except to the extent that any such Loss is caused by reason of the negligence or willful misconduct of Owner.

Section 11.2 Commercial General Liability Insurance.

Owner shall at all times maintain, or shall cause to be maintained, in full force and effect commercial general liability insurance with a financially responsible insurance company or companies with a Best rating of "A-VII" (or the equivalent thereof), written on an occurrence basis covering claims of Loss from products and completed operations, contractual liability (including, without limitation, coverage of the indemnities under this Agreement), bodily injury including death, personal injury, and broad-form property damage arising out of incidents or accidents on the Parcel (including the consequential damages from any of the foregoing), with a combined single limit in an amount not less than Three Million Dollars (\$3,000,000) per occurrence. Such limits may be provided through a combination of primary and excess (umbrella) liability policies. All insurance shall be primary with respect to the Parcel and shall name Developer as an additional insured to the extent of the foregoing indemnity.

Developer shall at all times maintain in full force and effect commercial general liability insurance with a financially responsible insurance company or companies with a Best rating of "A-VII" (or the equivalent thereof), written on an occurrence basis covering claims of Loss from products and completed operations, contractual liability (including, without limitation, coverage

of the indemnities under this Agreement), bodily injury including death, personal injury, and broad-form property damage arising out of incidents or accidents on the Center (including the consequential damages from any of the foregoing), with a combined single limit in an amount not less than Three Million Dollars (\$3,000,000) per occurrence. Such limits may be provided through a combination of primary and excess (umbrella) liability policies. All insurance shall be primary with respect to the Center and shall name Owner as an additional insured to the extent of the foregoing indemnity.

Section 11.3 Owner's All Risk Property Insurance.

Owner shall carry, or shall cause to be carried, all risk property insurance coverage, including builder's risk insurance coverage, in an amount at least equal to the full replacement cost of all Improvements on the Parcel, without deduction for depreciation, insuring against all risks (subject to exclusion of certain risks customarily excluded from time to time in the so-called "all-risk" policy), and insuring specifically against at least the following perils: loss or damage by fire, lightning, windstorm, cyclone, tornado, hail, explosion, earthquake, subsidence, flood, water damage other than floor or sprinkler leakage damage, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, collapse of building or roof, boiler and machinery equipment, aircraft, vehicle and smoke damage and sprinkler leakage. Such insurance shall be carried with a financially responsible insurance company or companies authorized to do business in the state where the Parcel is located with a Best rating of "A-VII" (or the equivalent thereof). Such insurance may be carried in whole or in part under a policy or polices covering other liabilities and locations of the Owner, or a subsidiary, successor, affiliate or controlling corporation of such Owner; provided, however, that (A) such policy or policies shall insure the risks and full amount required under this Agreement and (B) the inclusion of additional coverage or risks shall not materially diminish the coverage or insurance proceeds available under such policy or policies.

Section 11.4 Certificate of Insurance.

Owner shall, upon execution of this Agreement and thereafter upon request, furnish a certificate to Developer, evidencing that the insurance referred to in this Agreement is in full force and effect. All policies of insurance carried by Owner, or endorsements issued under any

blanket policy or policies covering those liabilities required to be insured against, shall provide that the same may not be canceled or reduced in scope or amount below that required under this Agreement without at least thirty (30) calendar days' prior written notice being given by the insurer to Developer.

Article XII. MODIFICATIONS TO THE CENTER

Section 12.1 Modifications.

Developer reserves the right to change or modify and to add to or subtract from the size and dimensions of the Center or any part thereof, the number, location and dimensions of the buildings and stores, the size and configuration of the parking areas, entrances, exits and parking aisle alignments, dimensions of hallways, malls and corridors, the number of floors in any building, the location, size and number of tenants' spaces and kiosks which may be erected, the identity, type and location of other stores and tenants, and the size, shape, location and arrangement of common areas, and to design and decorate any portion of the Center as it desires, but the size and location of the access to the Parcel from the adjacent public roadways and the easements benefitting the Parcel shall not be adversely affected except as a result of casualty, condemnation or other occurrence beyond Developer's control.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

SIGNATURES APPEAR ON FOLLOWING PAGE.

RP-2016-505713

Covenants, Conditions, Restrictions and Easements Agreement
Ubaldo's Seafood House – Fairfield Town Center

EXHIBIT LIST

<u>Exhibit</u>	<u>Page Reference</u>
Exhibit A Legal Description of Developer's Property	1
Exhibit B Legal Description of the Parcel	1
Exhibit C Site Plan of the Center	1, 7

RP-2016-505713

Covenants, Conditions, Restrictions and Easements Agreement
Ubaldo's Seafood House – Fairfield Town Center

EXHIBIT A **Legal Description of Developer's Property**

RP-2016-505713



3000 Wilcrest Drive, Suite 210 — Houston, Texas 77042 — (713) 993-0327 — Fax (713) 993-9231

**METES AND BOUNDS DESCRIPTION
41.95 ACRES (1,827,306 SQUARE FEET)
JNO. W. BAKER SURVEY, ABSTRACT NUMBER 116
HARRIS COUNTY, TEXAS**

Being a tract or parcel containing 41.95 acres (1,827,306 square feet) of land situated in the JNO. W. Baker Survey, Abstract Number 116, Harris County, Texas, being out of and a portion of Restricted Reserve "B", Block 2 of Houston Premium Outlets, Replat No. 1, a subdivision of record at Film Code Number 632030 of the Map Records of Harris County, Texas and out of and a portion of the remainder of a called 162.974 acre tract, as described in deed to CPG Houston Holdings, L.P. under Harris County Clerk's File Number 20070019833, said 41.95 acre tract being more particularly described by metes and bounds as follows (bearings are based on the recorded plat of said Houston Premium Outlets, Replat No. 1);

COMMENCING for reference at a 5/8-inch iron rod with cap found in the northeasterly right-right-of-way line of U.S. Highway 290 (width varies), as recorded under Harris County Clerk's File Numbers B814753 and 20080384076, marking the west end of a cutback line at the intersection of the northwesterly right-of-way line of Parkway Ridge Way (100 feet wide), as recorded at Film Code Numbers 615030 and 632030 of the Map Records of Harris County, Texas, same being the most southerly corner of said Restricted Reserve "B";

THENCE, North 68°56'07" West, along the northeasterly right-of-way line of said U.S. Highway 290, a distance of 1,013.30 feet to a found 5/8-inch iron rod with cap marking an angle point in said northeasterly right-of-way line;

THENCE, North 68°08'29" West, continuing along said northeasterly right-of-way line, a distance of 74.13 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the west corner of a called 1.581 acre tract, as described in deed to Chick-Fil-A under Harris County Clerk's File Number 20130633021, the **POINT OF BEGINNING** and the most southerly southeast corner of the herein described tract;

THENCE, North 68°08'29" West, continuing along said northeasterly right-of-way line, a distance of 601.23 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the most westerly southwest corner of the herein described tract;

THENCE, North 21°51'31" East, departing said northeasterly right-of-way line, over and across said Restricted Reserve "B", a distance of 304.91 feet to an "X" in concrete set marking an interior corner of the herein described tract;

THENCE, North 68°08'20" West, continuing over and across said Restricted Reserve "B", a distance of 607.67 feet to a point in the southeasterly right-of-way line of Fairfield Falls Way (100 feet wide), as recorded at Film Code Numbers 615030 and 632030 of the Map Records of Harris County, Texas, same being the most westerly corner of the herein described tract;

THENCE, along the southeasterly right-of-way line of said Fairfield Falls Way the following three (3) courses;

North 14°36'44" East, a distance of 234.00 feet to an "X" in concrete set marking the beginning of a curve to the right;

RP-2016-505713

Northeasterly, a distance of 359.62 feet along the arc of said curve to the right, having a radius of 1,150.00 feet, a central angle of 17°55'02" and a chord which bears North 23°34'15" East, 358.16 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the end of said curve;

North 32°31'45" East, a distance of 75.56 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the west end of a cutback line at the intersection of the southwesterly right-of-way line of Cypresswood Drive (width varies), as recorded at Film Code Number 499141 of the Map Records of Harris County, Texas, same being the most westerly north corner of the aforesaid Restricted Reserve "B" and the most westerly north corner of the herein described tract;

THENCE, North 76°04'11" East, along said cutback line, a distance of 34.44 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in the southwesterly right-of-way line of said Cypresswood Drive, marking the most easterly end of said cutback line, the most northerly corner of said Restricted Reserve "B" and the most northerly corner of the herein described tract and the beginning of a curve to the left;

THENCE, along the southwesterly right-of-way line of said Cypresswood Drive the following eight (8) courses;

Southeasterly, a distance of 213.69 feet along the arc of said curve to the left, having a radius of 1,400.00 feet, a central angle of 08°44'43" and a chord which bears South 64°45'44" East, 213.48 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking a point of reverse curvature;

Southeasterly, a distance of 112.98 feet along the arc of said curve to the right, having a radius of 2,300.00 feet, a central angle of 02°48'52" and a chord which bears South 67°43'39" East, 112.97 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking a point of reverse curvature;

Southeasterly, a distance of 77.99 feet along the arc of said curve to the left, having a radius of 2,450.00 feet, a central angle of 01°49'26" and a chord which bears South 67°13'57" East, 77.98 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the end of said curve;

South 68°08'40" East, a distance of 1,397.15 feet to a 5/8-inch iron rod with cap found marking the beginning of a curve to the right;

Southeasterly, a distance of 239.25 feet along the arc of said curve to the right, having a radius of 2,300.00 feet, a central angle of 05°57'36" and a chord which bears South 65°09'52" East, 239.14 feet to a 5/8-inch iron rod with cap found marking a point of reverse curvature;

Southeasterly, a distance of 145.69 feet along the arc of said curve to the left, having a radius of 1,400.00 feet, a central angle of 05°57'44" and a chord which bears South 65°09'49" East, 145.62 feet to a 5/8-inch iron rod found marking the end of said curve;

South 68°13'37" East, a distance of 44.03 feet to a 5/8-inch iron rod found marking the beginning of a curve to the left;

Southeasterly, a distance of 166.60 feet along the arc of said curve to the left, having a radius of 2,470.00 feet, a central angle of 03°51'53" and a chord which bears South 70°09'37" East, 166.57 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the northerly end of a radii cutback line at the intersection of the northwesterly right-of-way line of the aforesaid Parkway Ridge Way, the most northerly east corner of said Restricted Reserve "B", the most northerly east corner of the herein described tract and a point of reverse curvature;

THENCE, Southeasterly, a distance of 38.03 feet along the arc of said curve to the right, having a radius of 25.00 feet, a central angle of 87°09'23" and a chord which bears South 28°24'54" East, 34.47 feet to a 5/8-inch iron rod with cap found in the northwesterly right-of-way line of said Parkway Ridge Way, marking the most easterly corner of said Restricted Reserve "B", the most easterly corner of the herein described tract and the end of said curve;

THENCE, along the northwesterly right-of-way line of said Parkway Ridge Way the following four (4) courses;

South 15°09'56" West, a distance of 77.34 feet to a 5/8-inch iron rod with cap found marking the beginning of a curve to the right;

Southwesterly, a distance of 267.92 feet along the arc of said curve to the right, having a radius of 630.00 feet, a central angle of 24°22'00" and a chord which bears South 27°20'55" West, 265.91 feet to a 5/8-inch iron rod with cap found marking the end of said curve;

South 39°31'55" West, a distance of 255.27 feet to a 5/8-inch iron rod with cap found marking the beginning of a curve to the left;

Southwesterly, a distance of 42.70 feet along the arc of said curve to the left, having a radius of 730.00 feet, a central angle of 03°21'06" and a chord which bears South 37°51'22" West, 42.70 feet to a point for the most southerly corner of the herein described tract;

THENCE, departing said northwesterly right-of-way line, over and across said Restricted Reserve "B", the following nine (9) courses;

North 49°56'15" West, a distance of 17.99 feet to the beginning of a curve to the left;

Northwesterly, a distance of 87.44 feet along the arc of said curve to the left, having a radius of 92.66 feet, a central angle of 54°04'08" and a chord which bears North 76°58'19" West, 84.23 feet to a point of reverse curvature;

Northwesterly, at a distance of 188.33 feet passing an "X" in concrete set marking the most easterly corner of a called 0.9990 acre tract, as described in deed to Bank of America, N.A. under Harris County Clerk's File Number 20130334336, at a distance of 277.54 feet passing an "X" in concrete set marking the most northerly corner of said called 0.9990 acre tract and continuing in all a total distance of 329.30 feet along the arc of said curve to the right, having a radius of 390.50 feet, a central angle of 48°18'58" and a chord which bears North 75°16'49" West, 319.63 feet to a point of tangency;

North 54°02'25" West, a distance of 72.93 feet to the beginning of a curve to the left;

Northwesterly, a distance of 76.80 feet along the arc of said curve to the left, having a radius of 801.28 feet, a central angle of 05°29'31" and a chord which bears North 57°52'35" West, 76.77 feet to an "X" in concrete set marking the most easterly corner of a called 1.4527 acre tract, as described in deed to Whataburger Real Estate, LLC under Harris County Clerk's File Number 20130598855 and marking a point of compound curvature;

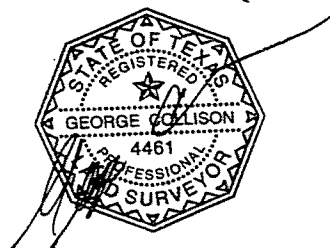
Northwesterly, a distance of 211.05 feet along the arc of said curve to the left, having a radius of 3,759.82 feet, a central angle of 03°12'58" and a chord which bears North 64°01'57" West, 211.03 feet to an "X" in concrete set marking the most easterly corner of a called 0.970 acre tract, as described in deed to Taco Bell of America, LLC under Harris County Clerk's File Number 20130554765 and marking a point of compound curvature;

Northwesterly, a distance of 20.23 feet (called 20.27 feet) along the arc of said curve to the left, having a radius of 1,830.00 feet, a central angle of 00°38'00" (called 00°38'05") and a chord which bears North 66°44'55" West (called North 66°37'41" West), 20.23 feet (called 20.27 feet) to a point of tangency;

North 68°06'09" West, at a distance of 116.06 feet passing an "X" in concrete set marking the most northerly corner of said called 0.970 acre tract, same being the most easterly corner of a called 1.581 acre tract, as described in deed to Chick-Fil-A, Inc. under Harris County Clerk's File Number 20130633021 and continuing in all a total distance of 336.27 feet to an "X" in concrete set marking the most northerly corner of said called 1.581 acre tract and an interior corner of the herein described tract;

South 21°54'17" West, along the northwest line of said called 1.581 acre tract, a distance of 313.31 feet to the **POINT OF BEGINNING** and containing 41.95 acres (1,827,306 square feet) of land. This description is based on an exhibit prepared by Terra Surveying, Inc., dated April 8, 2014, latest revision dated April 17, 2014, TSC Project Number 1617-1331-S.

Compiled By: Gregory Mata.
Reviewed By: George Collison, R.P.L.S.
Terra Surveying Company, Inc.
3000 Wilcrest Drive, Suite 210
Houston, Texas 77042
1617-1331-Exhibit 41.95AcMB.doc



RP-2016-505713

**METES AND BOUNDS DESCRIPTION
4.338 ACRES (188,957 SQUARE FEET)
RESTRICTED RESERVE "C"
HOUSTON PREMIUM OUTLETS, REPLAT NO. 1
JNO. W. BAKER SURVEY, A-116
J.W. MOODY SURVEY, A-547
HARRIS COUNTY, TEXAS**

PARCEL 2

Being a tract or parcel containing 4.338 acres (188,957 square feet) of land situated in the JNO. W. Baker Survey, A-116 and the J.W. Moody Survey A-547, Harris County, Texas, being out of and a portion of the remainder of Restricted Reserve "C", Block 3 of Houston Premium Outlets, Replat No. 1, a subdivision plat of record at Film Code Number 632030 of the Map Records of Harris County, Texas, same being out of and a portion of the remainder of a called 162.974 acre tract, as described in deed to CPG Houston Holdings, L.P. under Harris County Clerk's File Number 20070019833, said 4.338 acre tract being more particularly described by metes and bounds as follows (bearings are based on the recorded plat of said Houston Premium Outlets, Replat No. 1);

COMMENCING for reference at a point in the northerly end of a radii cutback line at the intersection of the southeasterly right-of-way line of Parkway Ridge Way (100 feet wide) with the southwesterly right-of-way line of Cypresswood Drive (width varies), as referenced on HEB Fairfield, a subdivision plat of record at Film Code Number 647170 of the Map Records of Harris County, Texas, same being the most northerly corner of said HEB Fairfield and the beginning of a curve to the left;

THENCE, along the southwesterly right-of-way lines of said Cypresswood Drive, common with the northeasterly lines of said HEB Fairfield, the following three (3) courses;

Southeasterly, a distance of 203.52 feet along the arc of said curve to the left, having a radius of 1,400.00 feet, a central angle of 08°19'46" and a chord which bears South 80°51'12" East, 203.34 feet to the end of said curve;

South 85°04'29" East, a distance of 206.12 feet to a point for the beginning of a curve to the left;

Southeasterly, a distance of 197.01 feet along the arc of said curve to the left, having a radius of 2,450.00 feet, a central angle of 04°36'26" and a chord which bears South 87°21'39" East, 196.95 feet to the northeast corner of said HEB Fairfield;

THENCE, South 21°52'13" West, departing the southwesterly right-of-way line of said Cypresswood Drive, and along the east line of said HEB Fairfield common with the west line of the remainder of the aforesaid Restricted Reserve "C", a distance of 380.16 feet to the **POINT OF BEGINNING** and north corner of the herein described tract;

THENCE, departing the east line of said HEB Fairfield, over and across the remainder of said Restricted Reserve "C", the following eight (8) courses;

South 68°07'48" East, a distance of 416.60 feet to a point for the northerly northeast corner of the herein described tract and the beginning of a curve to the right;

RP-2016-505713

Southeasterly, a distance of 47.13 feet along the arc of said curve to the right, having a radius of 30.00 feet, a central angle of $90^{\circ}01'10''$ and a chord which bears South $23^{\circ}08'21''$ East, 42.43 feet to a point for the most easterly corner of the herein described tract;

South $21^{\circ}52'13''$ West, a distance of 362.90 feet to a point for the south corner of the herein described tract;

North $68^{\circ}07'48''$ West, a distance of 225.96 feet to the beginning of a curve to the left;

Westerly, a distance of 54.46 feet along the arc of said curve to the left, having a radius of 80.00 feet, a central angle of $39^{\circ}00'07''$ and a chord which bears North $87^{\circ}37'52''$ West, 53.41 feet to the end of said curve;

South $72^{\circ}52'05''$ West, a distance of 117.92 feet to the beginning of a curve to the right;

Westerly, a distance of 54.46 feet along the arc of said curve to the right, having a radius of 80.00 feet, a central angle of $39^{\circ}00'07''$ and a chord which bears North $87^{\circ}37'52''$ West, 53.41 feet to the end of said curve;

North $68^{\circ}07'48''$ West, a distance of 28.32 feet to a point in the east line of the aforesaid HEB Fairfield and being the west corner of the herein described tract;

THENCE, North $21^{\circ}52'13''$ East, a distance of 502.77 feet to the **POINT OF BEGINNING** and containing 4.338 acres (188,957 square feet) of land. This description is based on an exhibit prepared by Terra Surveying Company, Inc., dated April 11, 2014, TSC Project Number 1617-1331-S.

RP-2016-505713

Covenants, Conditions, Restrictions and Easements Agreement
Ubaldo's Seafood House – Fairfield Town Center

EXHIBIT B **Legal Description of the Parcel**

1.5524 ACRE TRACT LOCATED IN THE J.W. MOODY SURVEY
ABSTRACT NO. 547, HARRIS COUNTY, TEXAS

Tract I - (Fee Simple Estate):

BEING 1.5524 ACRES (67,623 SQUARE FEET) OF LAND LOCATED IN THE J.W. MOODY SURVEY, ABSTRACT NO. 547, HARRIS COUNTY, TEXAS AND BEING OUT OF RESTRICTED RESERVE "C" BLOCK 3, HOUSTON PREMIUM OUTLETS REPLAT NO. 1, A SUBDIVISION PER MAP OR PLAT THEREOF RECORDED UNDER FILM CODE NO. 6.320.30 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, WITH ALL BEARINGS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE 4204, NAD 83; COMMENCING AT A 5/8 INCH IRON ROD WITH CAP STAMPED "WINDROSE LAND SERVICES" FOUND SET ON THE EAST LINE OF SAID RESTRICTED RESERVE "C" MARKING THE MOST SOUTHERLY CORNER OF UNRESTRICTED RESERVE "A": BLOCK 1, FAIRFIELD APARTMENTS, AS PER THE MAP OR PLAT THEREOF, RECORDED IN FILM CODE NO. 658248 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS AND A WESTERLY CORNER OF RESTRICTED RESERVE "A": BLOCK 1, FAIRFIELD MASON ROAD LANDSCAPE RESERVES. MAP OR PLAT THEREOF, RECORDED IN FILM CODE NO. 364011, MAP RECORDS OF HARRIS COUNTY, TEXAS AND THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT; THENCE NORTH 68°08'08" WEST, ALONG THE SOUTH LINE OF UNRESTRICTED RESERVE "A": BLOCK 1, SAME BEING THE NORTH LINE OF SAID RESERVE "C", A DISTANCE OF 354.25 FEET TO A 5/8 INCH IRON ROD WITH CAP STAMPED REKHA 4218 SET FOR THE PLACE OF CURVATURE AND THE BEGINNING OF A CURVE TO THE RIGHT IN THE EAST LINE OF THE HEREIN DESCRIBED TRACT WHOSE CENTER BEARS SOUTH 21°51'56" WEST; THENCE IN A SOUTHEASTERLY DIRECTION ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 30.00 FEET, A CENTRAL ANGLE OF 90°00'21" AN ARC LENGTH OF 47.13 FEET AND A LONG CHORD WHICH BEARS SOUTH 23°07' 54" EAST, 42.43 FEET TO A 5/8 INCH IRON ROD WITH CAP STAMPED "WINROSE LAND SERVICES" FOUND FOR THE POINT OF TANGENCY AND THE MOST EASTERLY NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT; THENCE SOUTH 21°52'16" WEST, ALONG THE EAST LINE OF THE HEREIN DESCRIBED TRACT, A DISTANCE OF 362.96 FEET TO A 5/8 INCH IRON ROD WITH CAP STAMPED REKHA 4218 SET FOR THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH A 5/8 INCH IRON ROD WITH CAP STAMPED "HOVIS" BEARS SOUTH 68°07'55" EAST, 0.76 FEET; THENCE NORTH 68°07'55" WEST, ALONG THE SOUTH LINE OF THE HEREIN DESCRIBED TRACT, A DISTANCE OF 172.58 FEET TO A 5/8 INCH IRON ROD WITH CAP STAMPED REKHA 4218 SET FOR THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT, FROM WHICH A

RP-2016-505713

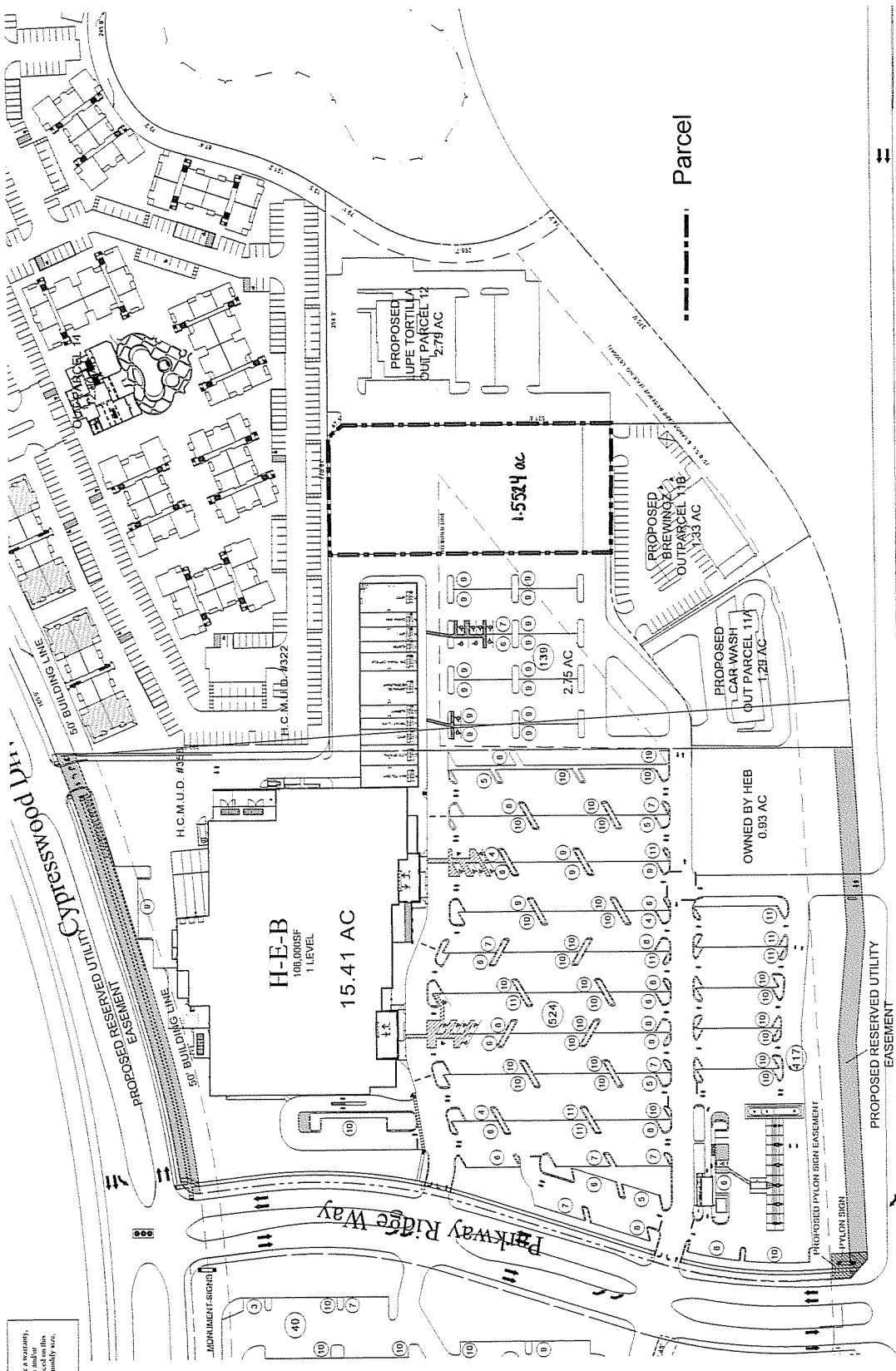
FOUND 5/8 INCH IRON ROD WITH CAP STAMPED "HOVIS" BEARS NORTH 68°07'55" WEST, 52.65 FEET; THENCE NORTH 21°52'16" EAST, ALONG THE WEST LINE OF THE HEREIN DESCRIBED TRACT, A DISTANCE OF 392.65 FEET TO A 5/8 INCH IRON ROD WITH CAP STAMPED REKHA 4218 SET FOR THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT; THENCE SOUTH 68°09'05" EAST ALONG THE NORTH LINE OF SAID RESERVE "C" AND THE SOUTH LINE OF SAID RESERVE "A"· AND THE NORTH LINE OF THE HEREIN DESCRIBED TRACT, A DISTANCE OF 142.58 FEET TO THE PLACE OF BEGINNING, CONTAINING 1.5524 (67,623 SQUARE FEET) OF LAND, AS SHOWN ON SURVEY UNDER JOB NO. 0615-3604 PREPARED BY REKHA ENGINEERING, INC.

RP-2016-505713

Covenants, Conditions, Restrictions and Easements Agreement
Ubaldo's Seafood House – Fairfield Town Center

EXHIBIT C **Site Plan of the Center**

RP-2016-505713



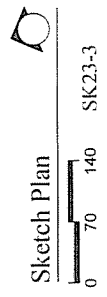
This exhibit is provided for illustrative purposes only, and shall not be deemed to be a warranty, representation or agreement by J. Anderson that the Center, Common Areas, buildings and/or exhibits will at any time be recipients of this Center. Landlord reserves the right to modify size, configuration and occupants of the Center at any time.

PROPOSED PHASE II Project Data

H-E-B	100,000
SHOPS	22,339
Total GLA	130,339

TOTAL PARKING SPACES: 780
 SPACE/1000 SF OF GLA: 6.98

NOTE:
 OUTLOTS TO SELF PARK @ MINIMUM
 3.0 STALLS PER 1,000 SF GLA
 Modified: October 30, 2014



Sketch Plan

Houston Premium Outlet/Fairfield Town Center
 Houston, TX
 CORP # 5027

Sheet 3 of 3

RP-2016-505713
Pages 44
11/08/2016 02:20 PM
e-Filed & e-Recorded in the
Official Public Records of
HARRIS COUNTY
STAN STANART
COUNTY CLERK
Fees \$184.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



Stan Stanart

COUNTY CLERK
HARRIS COUNTY, TEXAS

RP-2016-505713