

MEMORANDUM OF AGREEMENT

WHEREAS, STANTON J. PERHAM, Jr. and SALLY S. PERHAM individually and as the organizers of a Connecticut Limited Liability Company (hereinafter the Perhams) have entered into a Contract of Sale to purchase the property known as 18-22 Reef Road, Fairfield, Connecticut; and

WHEREAS, STARWOOD CERUZZI FAIRFIELD LLC (hereinafter Starwood Ceruzzi) has entered into a Contract of Sale to purchase property known as 1481-1487 Post Road, 1519-1545 Post Road, 1499-1519 Post Road, 26 Reef Road, 44 Sherman Street and 56 Sherman Street, Fairfield Connecticut, which property abuts the property at 18-22 Reef Road; and

WHEREAS, The Perhams presently operate a restaurant-deli establishment known as the Firehouse Deli at 18-22 Reef Road, Fairfield; and

WHEREAS, Starwood Ceruzzi has filed a special permit application with the Town of Fairfield Town Plan and Zoning Commission relative to the premises being purchased by it as detailed above; and

WHEREAS, the Perhams and Starwood Ceruzzi are desirous of resolving issues pertaining to the respective parties' uses of the property to be acquired by them, and to create and maintain a spirit of cooperation;

NOW THEREFORE, in consideration of the sum of ONE (\$1.00) DOLLAR and the mutual promises contained herein, the parties hereto agree as follows:

1. Starwood Ceruzzi will grant a permanent easement in favor of 18-22 Reef Road for the portion of the existing underground greasetrap, located to the north of the Firehouse Deli property, extending onto the property to be purchased by Starwood Ceruzzi. Said easement shall confirm that the cost of any and all maintenance of the greasetrap, subsequent to the completed development of the property to be acquired by Starwood Ceruzzi including the disturbance of improvements to the land located above the greasetrap, shall be the sole responsibility of the owners of 18-22 Reef Road.
2. Subject to the provisions of Paragraph 5 of this Agreement, Starwood-Ceruzzi hereby grants permission to the Perhams, and their successors in ownership of 18-22 Reef Road, to have exclusive use of the defined patio area specified herein for so long as 18-22 Reef Road is used as a

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restaurant/deli. The defined patio area as described below will be used by the owners of 18-22 Reef Road only for the purpose of patron seating and dining for a restaurant/deli business.

The defined patio area will start at a point 4' southerly of the southeasterly point of the building line on Reef Road as proposed by Starwood Ceruzzi and will extend westerly a length of 80' by a straight line running parallel to the southerly building line as proposed by Starwood Ceruzzi to a point 4' south of said southerly building line as delineated on that certain set of plans entitled "Starwood-Ceruzzi, Fairfield Center" with specific reference to Sheet SK5-1 entitled "1st Floor & Parking" dated 3-2-98 and revised through 4-13-98.

The area which is 4' wide and 80' in length, lying southerly of the aforesaid southerly building line as proposed by Starwood Ceruzzi and northerly of the aforesaid defined patio area shall be reserved by Starwood Ceruzzi for pedestrian access and any and all permissible uses to and from Reef Road and the main parking field and for delivery access.

The owners of 18-22 Reef Road shall establish a clearly defined freestanding buffer consisting of above-ground planters and/or the like, said buffer to be located on the defined patio area adjacent to the 4' X 80' pedestrian access area as described above. Starwood Ceruzzi will not permit main entry doors to any of its tenants along the 80' permissible patio area along the southerly building wall and will not permit kitchen or service area windows on said wall to any tenant area other than patron area. Loading and emergency doors may be located on this wall.

The owners of 18-22 Reef Road shall be responsible for maintaining the defined patio area and shall provide and maintain a certificate of insurance, hold harmless agreement, or other acceptable instrument to hold Starwood Ceruzzi harmless from any liability from the use of the defined patio area by the patrons, invitees, agents, employees, or contractors of the owners of 18-22 Reef Road.

Any damage done to the defined patio area by Starwood Ceruzzi in the course of the development of the properties to be purchased by it as specified above will be repaired in a timely manner by Starwood Ceruzzi so as to restore the defined patio area to its original condition.

The defined patio area and the accessway area as described above shall be delineated on the plans presented by Starwood Ceruzzi to the Town of Fairfield Planning and Zoning Commission for approval, by notation on said plans designating said defined patio area for 18-22 Reef Road restaurant-deli patio use.

Starwood Ceruzzi shall not alter that certain set of plans entitled "Starwood-Ceruzzi Fairfield Center" dated 3-2-98 and revised through 4-13-98 in any way which would impair the use of the defined patio area by the owners of 18-22 Reef Road.

3. Starwood Ceruzzi and the Perhams will execute cross easements as necessary to ensure the Perhams access through Starwood Ceruzzi property to the kitchen door and rear of 18-22 Reef Road for loading requirements and other needs. Specifically, access for trucks and/or other vehicles, including delivery and refuse removal, must be provided directly to the kitchen door now existing on the southerly side of 18-22 Reef Road. The final parking layout of Starwood Ceruzzi will permit tractor trailer maneuvering on-site to access the kitchen door of 18-22 Reef Road.

Starwood Ceruzzi and the Perhams will also execute such documentation as is necessary to permit the utilization of land of the Perhams for parking by Starwood Ceruzzi patrons as detailed on Sheet SK5-1 of the relevant plans as referenced above, as well as the utilization of the 65 spaces which are available for downtown patrons on the ground level parking on the Starwood Ceruzzi property by patrons, contractors, etc. of the Perhams; provided, however, that any such parking by patrons and contractors of the Perhams shall be subject to the two hour maximum time limit as contained in that certain license agreement between the Town of Fairfield and Starwood Ceruzzi. Whether or not the license agreement between the Town of Fairfield and Starwood Ceruzzi remains in force, the ability of patrons and contractors of the Perhams to utilize, on a non-exclusive basis, 25 ground level parking spaces (which shall be undesignated), subject to a two hour maximum time limit, shall continue unimpeded, said right to continue for as long as 18-22 Reef Road is used as a restaurant/deli. It is understood and agreed that spaces 2, 3, 4 and 5 which shall not be separated or curbed, as delineated on the plans attached hereto, shall be reserved for the exclusive use of the owners of 18-22 Reef Road and may, after striping of the parking area by Starwood Ceruzzi, be identified as such by the Perhams.

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4. The parties hereto agree that the greenhouse to the rear of 18-22 Reef Road shall not be disturbed during construction by Starwood Ceruzzi. Starwood Ceruzzi shall have the right to alter the planting area around the existing greenhouse and replace same, if necessary, at its expense, subject to the Perhams' approval of said revised planting area, which approval shall not be unreasonably withheld, and the existence of a planting area i.e. soil at least two (2') feet in width along the entire perimeter of the existing greenhouse. The existing plantings adjacent to the greenhouse shall be replanted by Starwood Ceruzzi in the revised planting area or eight (8') foot arbor vitae planted in said planting area, all at the expense of Starwood Ceruzzi.

5. The Perhams agree not to oppose, directly or indirectly, Starwood Ceruzzi's Town of Fairfield Planning and Zoning application.

6. It is understood and agreed by the parties hereto that this Agreement is subject to the Town of Fairfield Planning and Zoning Commission approving the special permit application of Starwood Ceruzzi.

This Agreement is also subject to the Town of Fairfield Planning and Zoning Commission and Town of Fairfield Fire Marshal approving the defined patio area and access way area as delineated on the plans presented by Starwood Ceruzzi to the Town of Fairfield.

This Agreement is also subject to a closing of title on and transfer of ownership to Starwood Ceruzzi of the properties being purchased by it as specified above and a closing of title on and transfer of ownership to the Perhams or their assignee of 18-22 Reef Road.

7. Subsequent to the occurrence of the events specified in Paragraph 5 above, this Agreement, or any excerpts therefrom or summaries thereof, may, at the option of the Perhams, be recorded on the Land Records of the Town of Fairfield.

8. This Agreement shall be binding upon the parties, and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 9 day of June, 1998.

STARWOOD CERUZZI FAIRFIELD LLC

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

Duly Authorized

\_\_\_\_\_  
STANTON J. PERHAM, JR.

\_\_\_\_\_  
SALLY S. PERHAM

STATE OF CONNECTICUT)

) ss: <sup>Westport</sup> ~~FAIRFIELD~~ June 9, 1998

COUNTY OF FAIRFIELD )

Personally appeared, John Ceruzzi, of STARWOOD CERUZZI FAIRFIELD, LLC, duly authorized, signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed before me and the free act and deed of said limited liability company, before me.

Susan C. Lisowsky  
my Commission Expires: 12-31-98

Commissioner of the Superior  
Court

STATE OF CONNECTICUT)

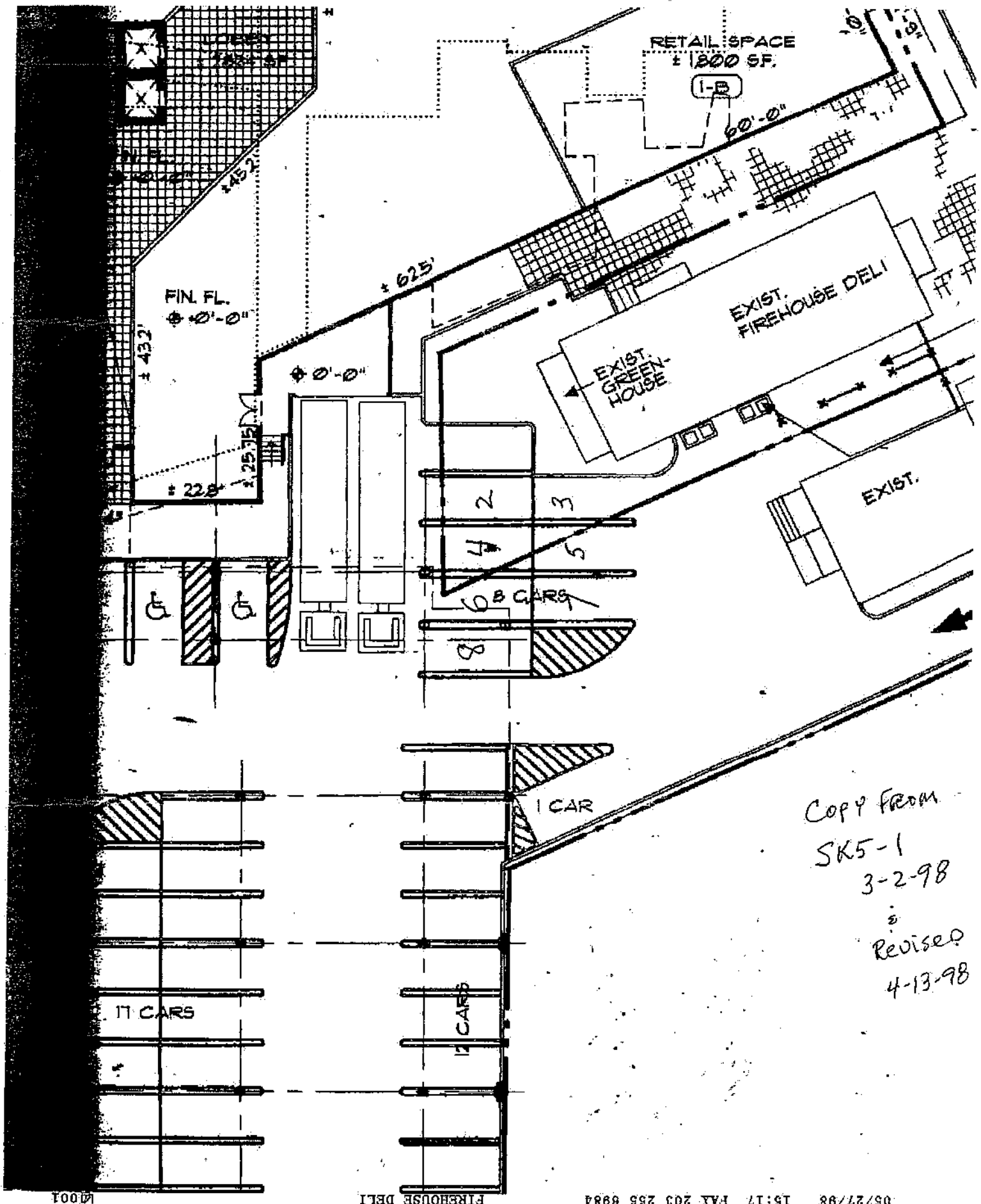
) ss: FAIRFIELD JUNE 9, 1998

COUNTY OF FAIRFIELD )

Personally appeared STANTON J. PERHAM, Jr. and SALLY S. PERHAM, signers and sealers of the foregoing instrument and acknowledged the same to be their free act and deed before me.

William S. Fitzpatrick  
WILLIAM S. FITZPATRICK

Commissioner of the Superior  
Court



Copy From  
 SK5-1  
 3-2-98  
 Revised  
 4-13-98

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FIREHOUSE DELI

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