

Execution Copy
4/15/96

JUN 7 1996

COPY

**AN AGREEMENT RELATING TO THE
DEVELOPMENT AND REGULATION OF ROADS AND
RELATED FACILITIES TO SERVE THE CUNEO PROPERTY**

Entered Into By, Between, And Among

THE COUNTY OF LAKE, ILLINOIS

And

THE VILLAGE OF VERNON HILLS, ILLINOIS

And

THE JOHN F. CUNEO 1935 TRUST

And

G.A.Z., Inc.

As Of

June 7, 1996

3835080

TABLE OF CONTENTS

PREAMBLES	1
Section 1. Recitals	6
Section 2. Local Land Resource Management Plan.	6
Section 3. General Standards	6
Section 4. Butterfield Road Dedications and Improvements	9
A. Right-of-Way	9
B. Utilities	9
C. Improvements	9
D. Costs and Security	10
Section 5. Butterfield Road Intersections; Allanson Road Extension.	10
A. Right-of-Way	10
B. Intersection Improvements.	11
1. Improvements and Standards	11
2. Costs and Security	11
3. Signal Maintenance and Control	12
4. Time for Performance	12
C. Limitation on Butterfield Access	14
D. Butterfield Road Stormwater Control	14
1. Improvements and Standards	14
2. Costs and Security	14
3. Time For Performance	14
Section 6. Butterfield to Milwaukee Thoroughfare and Huntington Connection.	15
A. Right-of-Way	15
B. Improvements and Standards	15
C. Costs and Security	16
D. Time For Performance	16

Section 7. Lake View Extension and Signalized EJ&E Crossing	17
A. Right-of-Way	17
B. ICC Approval	18
C. Improvements and Standards	18
D. Costs and Security	19
E. Time For Performance	19
Section 8. Commercial Frontage Road Dedications and Improvements	20
A. Right-of-Way	20
B. Commercial Frontage Road Improvements and Standards	21
C. Commercial Frontage Road Initial Improvement.	21
1. Costs and Security	21
2. Time For Performance	21
D. Commercial Frontage Road Ultimate Improvement.	22
1. Costs and Security	22
2. Time For Performance	23
Section 9. Milwaukee/Artaius North Intersection Dedications and Improvements.	23
A. Right-of-Way	23
B. Improvements and Standards	23
C. Costs and Security	24
1. Initial Milwaukee/Artaius North Intersection	24
2. Ultimate Milwaukee/Artaius North Intersection	24
D. Time For Performance.	24
Section 10. Dedication of Additional Utility Easements and Sites	25
Section 11. Connections	26
Section 12. Property Interest Acquisition Outside the Zale Property.	26
Section 13. Improvements	29
A. General Standards	29
B. Contract Terms; Prosecution of the Work	29

C.	Engineering Services	30
D.	Inspections and Approvals	30
E.	Other Approvals	30
F.	Construction Traffic	31
G.	Completion of the Improvements	31
H.	Dedication of the Improvements	32
	1. Final Inspection and Approval of the Improvements	32
	2. Dedication and Acceptance of the Improvements	33
I.	"As-Built" or "Record" Drawings and Specifications of the Improvements	33
J.	Transfer of Ownership of the Improvements and Easements	34
K.	Two-Year Guaranty of the Improvements	34
L.	County and Village Right to Complete Work	35
Section 14.	Damage to Public Property	36
Section 15.	Term and Termination	36
	A. Effective Date and Term	36
	B. Right to Terminate	37
	C. Effect and Use of Agreement Following Termination	37
Section 16.	Defense of Agreement	37
Section 17.	Successors	37
Section 18.	Costs and Fees	38
	A. Zale Costs and Fees	38
	B. Cuneo Costs and Fees	39
	C. Failure to Pay	39
	D. Condition Precedent	40
Section 19.	Enforcement	40
Section 20.	Warranties	40
Section 21.	Entire Agreement	41
Section 22.	Amendments	41

Section 23. Notices	41
Section 24. Location of Properties	44
Section 25. Exhibits	44
Section 26. Recording	45
Section 27. Execution in Counterparts.	46

**AN AGREEMENT RELATING TO THE
DEVELOPMENT AND REGULATION OF ROADS AND
RELATED FACILITIES TO SERVE THE CUNEO PROPERTY**

THIS AGREEMENT, made and entered into as of this 7th day of June, 1996, by, between and among (i) the County of Lake, an Illinois body politic and corporate (the "County"); (ii) the Village of Vernon Hills, an Illinois municipal corporation (the "Village"); (iii) Bank of America Illinois, John F. Cuneo, Jr., Consuela Cuneo McAlister, and William G. Myers, as successor Trustees under Declaration of Trust dated August 12, 1935 (said Trustees and said Trust are referred to, collectively, as "Cuneo"); and (iv) G.A.Z., Inc., an Illinois Corporation ("Zale") (the County, the Village, Cuneo, and Zale are hereinafter sometimes individually or collectively referred to as "Parties"),

W I T N E S S E T H:

WHEREAS, on November 15, 1988, the Village entered into an annexation agreement with Cuneo and parties related to Cuneo (the "Cuneo Owners") to annex and zone an approximately 1174 acre tract of undeveloped land that is generally depicted on the site plan attached as Exhibit A to this Agreement (the "Site Plan") and is to be legally described on Exhibit B to be attached to this Agreement pursuant to Section 24 of this Agreement (the "Cuneo Property") (the aforesaid annexation agreement is referred to as the "Original Annexation Agreement," and the Original Annexation Agreement together with any and all subsequent amendments thereto, other than the "Annexation Agreement Amendment" required pursuant to the "Cuneo Land Management Agreement" as hereinafter defined, are hereinafter collectively referred to as the "Annexation Agreement"); and

WHEREAS, under the Original Annexation Agreement, the Village agreed to annex the Cuneo Property and to use its best efforts to obtain water and sewer service for portions of the Cuneo Property from the County, and the Cuneo Owners, on behalf of themselves and their successors and assigns and all future owners of any portion of the Cuneo Property, agreed to abide by certain restrictions on development of the Cuneo Property; and

WHEREAS, Zale has entered into a contract with the Cuneo Owners, including Cuneo, to purchase, as a successor to the Cuneo Owners, a portion of the Cuneo Property containing approximately 937 acres, as generally depicted on Exhibit A and to be legally described on Exhibit B to be attached to this Agreement pursuant to Section 24 of this Agreement (the "Zale Property"); and

WHEREAS, Zale has petitioned the Village for approval of a Regional Planned Unit Development for a residential and golf course development on the Zale Property pursuant to the procedures contained in the Village's Zoning Code and the understandings contained in the Original Annexation Agreement (the "Zale Development"); and

WHEREAS, the Zale Development is to be devoted in part to residential development of no more than 2,100 dwelling units to be located on that portion of the Zale Property generally depicted on the Site Plan and to be legally described on Exhibit B to be attached to this Agreement pursuant to Section 24 of this Agreement (the "Zale Residential Property"); and

WHEREAS, the remainder of the Zale Development, located on that portion of the Zale Property generally depicted on Exhibit A and to be legally described on Exhibit B to be attached to this Agreement pursuant to Section 24 of this Agreement (the "Village Golf Course Property"), is to be devoted to (i) an eighteen hole golf course together with associated facilities to be owned

and operated by or on behalf of the Village; or (ii) public open space free from the construction of buildings, structures, roads, or any and all other improvements not directly related to the use of the Village Golf Course Property for public open space purpose; or both; and

WHEREAS, Cuneo intends that portions of the remainder of the Cuneo Property, all of which portions are owned entirely by Cuneo or by parties subject to Cuneo's legal control and direction, are generally depicted on Exhibit A, and are to be legally described on Exhibit B to be attached to this Agreement pursuant to Section 24 of this Agreement, shall be devoted exclusively to retail commercial, office, and hotel uses (the "Cuneo Intersection Commercial Property," the "Cuneo South Commercial Property," the "Cuneo North Commercial Property," and, collectively, the "Cuneo Commercial Properties"); and

WHEREAS, Zale and the Village both intend that the Zale Development will be undertaken in substantial conformity with the Site Plan; and

WHEREAS, the County desires that Zale and Cuneo shall be responsible to limit and mitigate any undue adverse impacts that the Zale Development and the future development and use of the Cuneo Commercial Properties might otherwise have on County roads and related facilities; and

WHEREAS, the Parties seek to arrive at early and binding agreements concerning the obligations and duties of each Party to the others and to the public at large with respect to limiting and mitigating the adverse impacts of the Zale Development and the future development and use of the Cuneo Commercial Properties on County roads and related facilities; and

WHEREAS, in furtherance of the aforesaid objectives, the Parties have reviewed, considered, and agreed and entered to that certain "Joint Local Land Resource Management Plan

and Agreement" dated as of June 13, 1995, and recorded in the Office of the Lake County Recorder of Deeds on April 15, 1996, as Document No. 3810882 (the "Cuneo Land Management Agreement"), which Agreement forms a necessary basis for properly planning, developing, and utilizing the public facilities that will be impacted by, and that will provide service to, the Zale Development and the Cuneo Commercial Properties; and

WHEREAS, pursuant to the Cuneo Land Management Agreement, the Parties agreed to enter into this Agreement to limit and mitigate the adverse impacts of the Zale Development and the future development and use of the Cuneo Commercial Properties on County roads and related facilities; and

WHEREAS, the Parties intend that the road utilization and construction standards and obligations for the Zale Development and future development and use of the Cuneo Commercial Properties shall be in substantial compliance with this Agreement and in compliance with all applicable federal, state, County, and Village laws, statutes, codes, ordinances, resolutions, rules and regulations ("Requirements of Law"); and

WHEREAS, the Parties intend that this Agreement, including the Site Plan and all Exhibits incorporated into this Agreement, shall constitute an integral and necessary part of the Local Land Resource Management Plan adopted jointly by the Parties pursuant to the Cuneo Land Management Agreement; and

WHEREAS, the Parties intend that the obligations and understandings contained in this Agreement, including the Site Plan and all Exhibits incorporated into this Agreement; in the Cuneo Land Management Agreement; in the Sewer and Water Agreement; in the Annexation Agreement Amendment; and in all ordinances adopted, and all covenants and agreements

executed, pursuant to said Agreements (the "Controlling Documents") shall supplement, and not supplant, the obligations and understandings contained in the Annexation Agreement and any ordinances adopted pursuant to the Annexation Agreement (the "Annexation Documents"), but that, in the event of any conflict or inconsistency, the provisions of the Controlling Documents shall control and take precedence over the provisions of the Annexation Documents; and

WHEREAS, as required pursuant to Subsection 2.F of the Cuneo Land Management Agreement, the Village and the County, as of the effective date of this Agreement, have reviewed, considered, agreed and entered into that certain "Agreement for Sanitary Sewer and Water Supply Services to the Cuneo Service Area of the Village of Vernon Hills" (said Agreement together with any and all ordinances adopted, and covenants and agreements executed, pursuant to said Agreement are hereinafter referred to collectively as the "Sewer and Water Agreement"); and

WHEREAS, the Parties have the power and authority to enter into this Agreement pursuant to the provisions of Article VII, Section 10 of the Illinois Constitution of 1970; the Local Land Resource Management Planning Act, 50 ILCS 805/1 *et seq.*; and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*; and

WHEREAS, after full consideration of all traffic planning and intergovernmental issues affecting this matter, the County has determined that it is in the best interests of its citizens and the public welfare to enter into this Agreement; and

WHEREAS, after full consideration of all traffic planning and intergovernmental issues affecting this matter, the Village has determined that it is in the best interests of its citizens and the public welfare to enter into this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants herein made and pursuant to all applicable statutes and local ordinances, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties do hereby enter into the following:

A G R E E M E N T

Section 1. Recitals.

The foregoing recitals are by this reference incorporated into, and made a part of, this Agreement.

Section 2. Local Land Resource Management Plan.

The terms and conditions set forth in this Agreement, including specifically, but without limitation, the road utilization and construction standards and obligations established pursuant to Section 3 through Section 14 of this Agreement, shall constitute an integral and necessary part of the Local Land Resource Management Plan adopted jointly by the Parties pursuant to the Cuneo Land Management Agreement.

Section 3. General Standards.

The development and regulation of roads and related facilities to serve the Zale Development and the future development and use of the Cuneo Commercial Properties shall be (i) in substantial conformity with the Site Plan, (ii) pursuant to and in strict accordance with this Agreement and, (iii) except as expressly otherwise provided in this Agreement, pursuant to and in strict accordance with the following:

1. the Cuneo Land Management Agreement, and the ordinances adopted, and the covenants and agreements executed, pursuant to said Agreement; and
2. the Lake County Highway Access Regulation Ordinance; and
3. the Lake County Highway Utility and Facility Placement Ordinance; and
4. the Lake County Watershed Development Ordinance; and
5. the Illinois Manual on Uniform Traffic Control Devices for Streets and Highways; and
6. the Annexation Agreement and the Annexation Agreement Amendment; and
7. the Vernon Hills Zoning Code and Subdivision Ordinance, except as otherwise provided in the Annexation Agreement or the Annexation Agreement Amendment; and
8. the Vernon Hills Municipal Code, including without limitation the Vernon Hills Building Code, except as otherwise provided in the Annexation Agreement or the Annexation Agreement Amendment; and
9. the Vernon Hills Cuneo Property Development and Use Ordinance, as defined in Subsection 2.A of the Cuneo Land Management Agreement; and
10. all other Requirements of Law.

In the event of a conflict between or among any of the above documents, the document that provides the greatest control and protection to the County and the Village, as determined by the County Administrator and the Village Manager, respectively, in their sole and absolute discretion, shall control; provided, however, that in the event of a conflict between the terms and provisions of this Agreement and any of the above documents, the terms and provisions of this Agreement shall control; and provided further that if any term, condition, covenant, or provision of the Controlling Documents is in conflict or inconsistent with, any term, condition,

covenant, or provision contained in the Annexation Documents, the Controlling Documents shall control, take precedence over, and supersede every such term, condition, covenant, or provision of the Annexation Documents.

Accordingly, the Village, Zale, and Cuneo agree that they shall not approve or execute any amendment to any of the Annexation Documents that is in conflict with any of the terms, conditions, covenants, or provisions of the Controlling Documents. The Village, Zale, and Cuneo further agree that they shall individually and collectively take all such actions, in addition to approving and executing the "Annexation Agreement Amendment" pursuant to Subsection 2.D of the Cuneo Land Management Agreement, and execute all such documents, as may be necessary at any time during the term of this Agreement to further amend any or all of the Annexation Documents as necessary to conform them to the Controlling Documents. However, in the absence of any conflict or inconsistency, the terms, conditions, covenants, and provisions of the Annexation Documents shall remain and be in full force and effect.

Without limiting the generality of any of the provisions set forth in the preceding paragraphs of this Section, the Parties specifically acknowledge and agree as follows:

- (1) The depictions, terms, conditions, restrictions, and provisions contained on or in the Controlling Documents relating to Butterfield Road, Milwaukee Avenue, and the internal road network of the Zale Development and the Cuneo North Commercial Property, shall control, take precedence over, and supersede any and all conflicting or inconsistent terms, conditions, restrictions, and provisions set forth in Article XVI and XVII of the Annexation Agreement.

- (2) The limitations, restrictions, and conditions imposed by this Agreement, or by any of the other Controlling Documents, on the Village's duty or obligation to grant any "Development Approval" (as defined in Subsection 2.I of the Cuneo Land Management Agreement) shall control, take precedence over, and supersede any and all contrary duties and obligations contained in the Annexation Documents.

Section 4. Butterfield Road Dedications and Improvements.

- A. **Right-of-Way.** Zale shall dedicate sufficient land along the entire Butterfield Road frontage of the Zale Property to provide a minimum 60 foot half right-of-way and any temporary construction easements that may be required. Zale shall complete the dedications required pursuant to this Subsection on or before the date on which the County's County Engineer (the "County Engineer") issues any access permit for either of the intersection improvements required pursuant to Subsection 5.B of this Agreement. The dedications required pursuant to this Subsection shall be at Zale's sole cost and expense.
- B. **Utilities.** Zale shall remove, relocate, or abandon in place, any and all utilities or facilities that are within or adjacent to the Butterfield Road right-of-way, as such right-of-way shall be established pursuant to Subsection 4.A of this Agreement (the "Butterfield Road Right-of-Way"). All such removal, relocation, or abandonment shall be at Zale's sole cost and expense and shall be in compliance with the requirements of the Lake County Highway Utility and Facility Placement Ordinance and the requirements set forth in Exhibit C to this Agreement.
- C. **Improvements.** The County has planned, and agrees to pursue diligently to completion, a project to widen Butterfield Road adjacent to the Zale Property from a point

directly north of Station 3 + 800 south to the intersection of Butterfield Road and Illinois Route 60, including related intersection improvements at Route 60 (the "Butterfield Road Improvements"). The Butterfield Road Improvements will, in part, benefit the Zale Development.

D. **Costs and Security.** In consideration of the County's undertaking the Butterfield Road Improvements and the benefits to be provided to the Zale Property thereby, Zale shall contribute to the County the sum of \$1,500,000 in payment of the portion of the cost of the Butterfield Road Improvements attributable to the Zale Development. To guaranty such payment, Zale shall deliver to the Lake County Division of Transportation, on or before the "Agreement Date," as established pursuant to Subsection 2.A of the Cuneo Land Management Agreement (the "Agreement Date"), either (i) an irrevocable letter of credit in a form satisfactory to the County, in compliance with Section 6 of the Cuneo Land Management Agreement, and in the amount of \$1,500,000; or (ii) \$1,500,000 in the form of cash or a certified check. If a letter of credit is provided, it shall be conditioned to guaranty the payment to the County of \$1,500,000 in the form of cash or a certified check on or before the earlier of (i) February 6, 1998; or (ii) 30 days after the County Engineer's written demand for such payment accompanied by a certificate from the County Engineer certifying that advertisements soliciting bids for the Butterfield Road Improvements will appear within 45 days after the date of such certificate.

Section 5. Butterfield Road Intersections; Allanson Road Extension.

A. **Right-of-Way.** Zale shall acquire and dedicate, in addition to the right-of-way that Zale is required to dedicate pursuant to Subsection 4.A of this Agreement, right-of-way, including any temporary construction easements that may be required, for (i) two full-access

intersections with Butterfield Road, one of which shall be aligned with Allanson Road ("Butterfield/Allanson Intersection"), and one of which shall be aligned with Huntington Drive North ("Butterfield/Huntington North Intersection"); and (ii) an additional westbound lane on Allanson Road extending from the Butterfield/Allanson Intersection to Washington Street (the "Allanson West Extension"), all as required pursuant to Subsection 5.B of this Agreement. The area, extent, and configuration of such additional rights-of-way and easements shall be subject to the requirements and approval of the County Engineer. Zale shall complete the dedications required pursuant to this Subsection on or before the date on which the County Engineer issues an access permit for either the Butterfield/Allanson Intersection or the Butterfield/Huntington North Intersection; provided, however, that the County Engineer shall not refuse to issue an access permit for the Butterfield/Allanson Intersection based solely on Zale's inability to acquire and dedicate the rights-of-way and easements for the Butterfield/Allanson Intersection or the Allanson West Extension across property other than the Cuneo Property if eminent domain proceedings to acquire such rights-of-way and easements have been initiated pursuant to Section 12 of this Agreement. The acquisitions and dedications required pursuant to this Subsection shall be at Zale's sole cost and expense.

B. Intersection Improvements.

1. Improvements and Standards. Zale shall design and construct the Butterfield/Allanson and Butterfield/Huntington North Intersections and the Allanson West Extension to the satisfaction of the County Engineer and in accordance with the standards, specifications, and requirements of the Lake County Highway Access Regulation Ordinance and the provisions of Exhibit D attached to this Agreement.

2. Costs and Security. The design and construction of the Butterfield/Allanson and Butterfield/Huntington North Intersections and of the Allanson West Extension shall be at Zale's sole cost and expense and shall be secured by Zale, on or before the date on which the County Engineer issues an access permit for either the Butterfield/Allanson Intersection or the Butterfield/Huntington North Intersection, by an irrevocable letter of credit in a form satisfactory to the County, in compliance with Section 6 of the Cuneo Land Management Agreement, and in the amount of \$3,600,000, which amount shall be adjusted to equal 130 percent of the County Engineer's estimate of the cost of the design and construction of said Intersections and Extension within 30 days following the County's approval of the final engineering plans for such work.

3. Signal Maintenance and Control. Zale shall install emergency vehicle preemption systems, hardwire interconnection systems, and pedestrian crossing systems at the Butterfield/Allanson and Butterfield/Huntington North Intersections. The Village shall execute a standard County traffic signal policy agreement agreeing to assume and pay, with respect to the aforesaid Intersections, (i) 25 percent of all traffic signal maintenance, repair, upgrade, and replacement costs (collectively, "Signal Maintenance Cost"); (ii) 100 percent of all traffic signal energy costs; and (iii) 100 percent of the costs of compliance by the Village with the County's emergency vehicle preemption policies. The County shall be responsible for paying 50 percent of the Signal Maintenance Costs and for securing the agreement of the Village of Mundelein to pay 25 percent of the Signal Maintenance Costs.

4. Time for Performance. Except for the ordinances, covenants, and agreements provided for in Subsections 2.A through 2.F of the Cuneo Land Management Agreement, neither the Village nor the County shall grant or approve any Development Approval for the Zale

Development, or any part thereof, unless and until Zale has applied for and received access permits from the County Engineer for both the Butterfield/Allanson Intersection and the Butterfield/Huntington North Intersection; provided, however, that at anytime after the "Closing Date" as defined in Subsection 2.I of the Cuneo Land Management Agreement, the Village may issue Development Approvals for the Zale Property that allow Zale, at its sole risk, to undertake the following preliminary site and off-site work (the "Preliminary Development Activities"), subject to, but prior to submission of, final engineering; subject to the recording of a final plat of subdivision; and subject to the issuance of the aforesaid access permits: (i) mass site grading; (ii) installation of on-site underground utility facilities; (iii) installation of off-site underground utility facilities, but only upon receipt from the County Engineer of any and all permits required pursuant to the Lake County Highway Utility and Facility Placement Ordinance for such off-site installation; and (iv) subject to the approval of the County Engineer, which approval may be withheld or made subject to any conditions deemed necessary or appropriate in the sole discretion of the County Engineer, construction of on-site streets not connecting to the Butterfield/Allanson or Butterfield/Huntington North Intersections.

Zale shall complete the design and construction of the Butterfield/Allanson and Butterfield/Huntington North Intersections and of the Allanson West Extension, and such improvements shall be open to vehicular traffic, no later than 24 months after the date on which the County Engineer has issued access permits for said Intersections; provided, however, that said 24-month deadline shall not apply to the construction of that portion of the Butterfield/Allanson Intersection or the Allanson West Extension located west of the existing Butterfield Road right-of-way for which the necessary rights-of-way and easements were not

acquired as of the date on which the County Engineer issued an access permit for the Butterfield/Allanson Intersection pursuant to Subsection 5.A of this Agreement, and such portions of the Butterfield/Allanson Intersection and the Allanson West Extension shall be constructed and opened to vehicular traffic as expeditiously as possible after the required rights-of-way and easements have been acquired and dedicated.

C. **Limitation on Butterfield Access.** Except only for the Butterfield/Allanson and Butterfield/Huntington North Intersections, and temporary construction access as approved by the County Engineer pursuant to the County Highway Access Regulation Ordinance, access to Butterfield Road from the Zale Property shall be prohibited.

D. **Butterfield Road Stormwater Control.**

1. **Improvements and Standards.** Within the Zale Property, Zale shall dedicate easements for, and shall design and construct, approximately 2.6 acre-feet of detention or retention capacity, and all related facilities and improvements, as necessary to meet the stormwater detention and retention needs of the Butterfield/Allanson and Butterfield/Huntington North Intersections and a full five lane improvement of Butterfield Road between a point 90 meters south of the EJ&E Railroad right-of-way on the south and a point 100 meters north of Golf Road on the north. Such dedication, design, and construction shall be to the satisfaction of the County Engineer and in accordance with the Lake County Watershed Development Ordinance and the provisions of Exhibit E attached to this Agreement.

2. **Costs and Security.** The dedication, design, and construction required pursuant to Paragraph 5.D1 of this Agreement shall be at Zale's sole cost and expense and shall

be secured by Zale on or before the Agreement Date pursuant to Section 6 of the Cuneo Land Management Agreement.

3. Time For Performance. Unless otherwise approved by the County Engineer, which approval may be withheld or made subject to any conditions deemed necessary or appropriate in the sole discretion of the County Engineer, Zale shall complete the dedication and design required pursuant to Paragraph 5.D1 of this Agreement on or before the date on which the County Engineer issues access permits for either the Butterfield/Allanson Intersection or the Butterfield/Huntington North Intersection.

Section 6. Butterfield to Milwaukee Thoroughfare and Huntington Connection.

A. Right-of-Way. Zale shall dedicate sufficient land to provide a minimum 100 foot full width right-of-way, as well as any temporary construction easements that may be required, for a continuous road connecting the "Milwaukee/Artaius North Intersection" (as defined in Subsection 9.A of this Agreement) to the Butterfield/Allanson Intersection (the "Thoroughfare"). Zale shall also dedicate sufficient land to provide a minimum 80 foot full width right-of-way, as well as any temporary construction easements that may be required, for a road connecting the Thoroughfare to the Butterfield/Huntington North Intersection (the "Huntington Connection").

B. Improvements and Standards. Zale shall design and construct the Thoroughfare and the Huntington Connection to the satisfaction of the County Engineer, in accordance with, respectively, the provisions of Exhibit F and Exhibit G attached to this Agreement; as depicted on the internal road network schematic plan attached as Exhibit H to this Agreement (the "Cuneo Internal Road Plan"); and pursuant to final engineering plans approved by the County Engineer. The final engineering plans for the Thoroughfare and the Huntington Connection shall, unless

otherwise approved by the County Engineer, incorporate and comply with the standards established by Pace, the Suburban Bus Division of the Regional Transportation Authority, for intersuburban bus routes. The Thoroughfare and the Huntington Connection shall each have two through lanes that shall have minimum posted speed limits of 30 miles per hour. The Village agrees to prohibit, and to adopt and maintain ordinances prohibiting, any traffic control signs or regulations on the Thoroughfare or on the Huntington Connection other than those warranted pursuant to the Illinois Manual on Uniform Traffic Control Devices for Streets and Highways. The Village further agrees to prohibit, and to adopt and maintain ordinances prohibiting, any traffic control signs or regulations on the Thoroughfare or on the Huntington Connection prohibiting turning movements at the Butterfield/Allanson Intersection, the Butterfield/Huntington North Intersection, or the intersection of the Thoroughfare and the Huntington Connection.

C. **Costs and Security.** The design and construction of the Thoroughfare and the Huntington Connection shall be at Zale's sole cost and expense and shall be secured by Zale on or before the Agreement Date pursuant to Section 6 of the Cuneo Land Management Agreement.

D. **Time For Performance.** Unless otherwise approved by the County Engineer, which approval may be withheld or made subject to any conditions deemed necessary or appropriate in the sole discretion of the County Engineer, Zale shall complete the dedications required pursuant to Subsection 6.A of this Agreement on or before the date on which the County Engineer issues access permits for either the Butterfield/Allanson Intersection or the Butterfield/Huntington North Intersection.

Zale shall complete the design and construction of, and shall open to vehicular traffic, the entire Huntington Connection and the segment of the Thoroughfare located in that portion of the Zale Property depicted on the Site Plan and on the Cuneo Internal Road Plan as the "West Zale Property" no later than 24 months after the Agreement Date. Zale shall complete the design and construction of, and shall be open to vehicular traffic, the segment of the Thoroughfare located in that portion of the Zale Property depicted on the Site Plan and on the Cuneo Internal Road Plan as the "East Zale Property" no later than the earlier of (i) 48 months after the Agreement Date, (ii) the day before the date on which the Village issues any building permit for any lot or parcel located within the East Zale Property, (iii) 18 months after Zale first conveys any portion of the East Zale Property to any other party other than the Village, or (iv) 18 months after the Village grants any Development Approval for any portion of the Cuneo North Commercial Property.

The Village agrees that it will not issue any building permit for any lot or parcel located within the East Zale Property unless and until it has received the County Engineer's written certification and acknowledgement that the segment of the Thoroughfare located in the East Zale Property has been designed and constructed and is open to vehicular traffic, pursuant to this Section.

Section 7. Lake View Extension and Signalized EJ&E Crossing.

A. **Right-of-Way.** Zale shall dedicate sufficient land to provide a minimum 80 foot full width right-of-way, as well as any temporary construction easements that may be required, for an extension of Lake View Parkway from its current northerly terminus to and including an intersection with the Thoroughfare (the "Lake View Extension"). The Village shall grant, at its sole cost and expense, all necessary easements, rights-of-way, licenses, and other property

rights that are necessary or convenient for the construction, installation, and maintenance of the Lake View Extension, including specifically, but without limitation, all property rights, easements, and any other permission legally required to allow the permanent use, as part of the Lake View Extension, of the Village-owned property located between the existing north Lake View Parkway right-of-way line and the existing south EJ&E Railroad right-of-way line.

B. **ICC Approval.** The County shall exercise all reasonable and best efforts, including the taking of any and all necessary actions, to secure from the Illinois Commerce Commission ("ICC") permission and authorization to establish a signalized at-grade vehicular, pedestrian and bike trail crossing for the Lake View Extension over the Elgin, Joliet & Eastern Railroad right-of-way (the "Signalized EJ&E Crossing"). The Village, Zale, and Cuneo shall cooperate in, and delegate all authority required and execute all documents necessary in connection with, all such County efforts including specifically, but without limitation, agreeing to be named as a petitioner or co-petitioner on any petition, complaint, or other pleading or document filed with the ICC or any other administrative agency or court. Zale shall be responsible for paying all of the County's out-of-pocket expenses, including attorney, engineering, and expert witness fees, in connection with all such County efforts.

C. **Improvements and Standards.** Zale shall design and construct the Lake View Extension, including the Signalized EJ&E Crossing, to the satisfaction of the County Engineer in accordance with the provisions of Exhibit G attached to this Agreement and pursuant to final engineering plans approved by the County Engineer. In addition, the Signalized EJ&E Crossing shall meet all applicable ICC standards and requirements, including specifically, but without limitation, the standards and requirements related to railroad crossing signals and associated

warning devices and equipment. The Lake View Extension shall have a minimum posted speed limit of 30 miles per hour. The Village agrees to prohibit, and to adopt and maintain ordinances prohibiting, any traffic control signs or regulations on the Lake View Extension, including the Signalized EJ&E Crossing, other than those warranted pursuant to the Illinois Manual on Uniform Traffic Control Devices for Streets and Highways. The Village further agrees to prohibit, and to adopt and maintain ordinances prohibiting, any traffic control signs or regulations on the Thoroughfare or on the Lake View Extension prohibiting turning movements at the intersection of the Thoroughfare and the Lake View Extension.

D. **Costs and Security.** The design and construction of the Lake View Extension, including the Signalized EJ&E Crossing, shall be at Zale's sole cost and expense and shall be secured by Zale on or before the Agreement Date pursuant to Section 6 of the Cuneo Land Management Agreement.

E. **Time For Performance.** Unless otherwise approved by the County Engineer, which approval may be withheld or made subject to any conditions deemed necessary or appropriate in the sole discretion of the County Engineer, Zale and the Village shall complete the dedications and grants required pursuant to Subsection 7.A of this Agreement on or before the date on which the County Engineer issues an access permit for either the Butterfield/Allanson Intersection or the Butterfield/Huntington North Intersection.

Zale shall complete the design and construction of the Signalized EJ&E Crossing, and the Signalized EJ&E Crossing shall be open to vehicular traffic, on or before the earlier of (i) the date on which the design and construction of the Signalized EJ&E Crossing is required to be completed pursuant to the ICC order approving the Signalized EJ&E Crossing, or (ii) the date

that is 12 months after the date on which the ICC, or any court reviewing the action of the ICC, issues its order approving the Signalized EJ&E Crossing.

Zale shall complete the design and construction of the remainder of the Lake View Extension, and the remainder of the Lake View Extension shall be open to vehicular traffic, no later than the earlier of (i) the date established for the completion of the Signalized EJ&E Crossing pursuant to the preceding sentence, (ii) 48 months after the Agreement Date, (iii) the day before the date on which the Village issues any building permit for any lot or parcel located within the East Zale Property, (iv) 18 months after Zale first conveys any portion of the East Zale Property to any other party other than the Village, or (v) 18 months after the Village grants any Development Approval for any portion of the Cuneo North Commercial Property. The Village agrees that it will not issue any building permit for any lot or parcel located within the East Zale Property unless and until it has received the County Engineer's written certification and acknowledgement that the remainder of the Lake View Extension has been designed and constructed, and is open to vehicular traffic, pursuant to this Section.

Section 8. Commercial Frontage Road Dedications and Improvements.

A. **Right-of-Way.** In addition to the Thoroughfare dedications required of Zale pursuant to Subsection 6.A of this Agreement, Cuneo shall dedicate sufficient land through and across the Cuneo North Commercial Property to create a 160 foot full width right-of-way, as well as any related stormwater detention and retention facility easements and temporary construction easements that may be required, for frontage roads and intersections, as required pursuant to Subsection 8.B of this Agreement (the "Commercial Frontage Road"), to give access to the Cuneo North Commercial Property. The right-of-way required to be dedicated pursuant

to this Subsection shall be dedicated at the same time that the right-of-way for the Thoroughfare is dedicated pursuant to Section 6 of this Agreement. Nothing in this Agreement shall be construed to require the dedication, design, or construction of any frontage roads or intersections outside of the right-of-way required to be dedicated pursuant to this Subsection.

B. **Commercial Frontage Road Improvements and Standards.** Zale and Cuneo shall design and construct the Commercial Frontage Road to the satisfaction of the County Engineer, in accordance with the provisions of Exhibit I to this Agreement and the schematic plan attached as Attachment 1 to Exhibit I ("Initial Improvement") and the provisions of Exhibit J to this Agreement and the schematic plan attached as Attachment 1 to Exhibit J ("Ultimate Improvement"), and pursuant to final engineering plans approved by the County Engineer. The Commercial Frontage Road shall at all times have a minimum posted speed limit of no less than 30 miles per hour. The Village agrees to prohibit, and to adopt and maintain ordinances prohibiting, any traffic control signs or regulations on the Commercial Frontage Road other than those warranted pursuant to the Illinois Manual on Uniform Traffic Control Devices for Streets and Highways. The Village further agrees to prohibit, to adopt and maintain ordinances prohibiting, and to object to, any traffic control signs or regulations on the Commercial Frontage Road or on Milwaukee Avenue prohibiting turning movements at the "Milwaukee/Artaius North Intersection" (as defined in Subsection 9.A of this Agreement.)

C. **Commercial Frontage Road Initial Improvement.**

1. **Costs and Security.** The design and construction of the Commercial Frontage Road Initial Improvement shall be at Zale's sole cost and expense and shall be secured by Zale

on or before the Agreement Date pursuant to Section 6 of the Cuneo Land Management Agreement.

2. Time For Performance. Zale shall complete the design and construction of the Commercial Frontage Road Initial Improvement, and the Commercial Frontage Road Initial Improvement shall be open to vehicular traffic, no later than the earlier of (i) 48 months after the Agreement Date, (ii) the day before the date on which the Village issues any building permit for any lot or parcel located within the East Zale Property, (iii) 18 months after Zale first conveys any portion of the East Zale Property to any other party other than the Village, or (iv) 18 months after the Village grants any Development Approval for any portion of the Cuneo North Commercial Property.

The Village agrees that it will not issue any building permit for any lot or parcel located within the East Zale Property unless and until it has received the County Engineer's written certification and acknowledgement that the Commercial Frontage Road Initial Improvement has been designed and constructed, and is open to vehicular traffic, pursuant to this Section.

D. Commercial Frontage Road Ultimate Improvement.

1. Costs and Security. The design and construction of the Commercial Frontage Road Ultimate Improvement shall be at Cuneo's sole cost and expense and shall be secured by Cuneo by an irrevocable letter of credit in a form satisfactory to the County, in compliance with Section 6 of the Cuneo Land Management Agreement, and in an amount equal to 130 percent of the County Engineer's estimate, as it may be revised from time-to-time, of the cost of the design and construction of the Commercial Frontage Road Ultimate Improvement. Cuneo shall post the letter of credit required pursuant to this Paragraph no later than the date on which the

Village grants any Development Approval for any portion of the Cuneo North Commercial Property. The Village shall not grant any Development Approval for any portion of the Cuneo North Commercial Property unless and until the Village has received the County Engineer's written certification and acknowledgement that the County has received the letter of credit required pursuant to this Paragraph.

2. Time For Performance. Cuneo shall complete the design and construction of the Commercial Frontage Road Ultimate Improvement, and the Commercial Frontage Road Ultimate Improvement shall be open to vehicular traffic, no later than the date on which the Village issues any temporary, conditional, or permanent occupancy permit for any structure located on the Cuneo North Commercial Property. The Village shall not issue any temporary, conditional, or permanent occupancy permit for any structure located on the Cuneo North Commercial Property unless and until the Village has received the County Engineer's written certification and acknowledgement that the Commercial Frontage Road Ultimate Improvement has been designed and constructed, and is open to vehicular traffic, pursuant to this Section.

Section 9. Milwaukee/Artaius North Intersection Dedications and Improvements.

A. Right-of-Way. In addition to the dedications required pursuant to Subsection 8.A of this Agreement for the Commercial Frontage Initial Improvement and the Commercial Frontage Road Ultimate Improvement, Cuneo, and Zale as Cuneo's successor to any portion of the Cuneo Property acquired by Zale, shall, at its sole cost and expense, dedicate right-of-way, as well as any temporary construction easements that may be required, for the signalized full-access intersection at Milwaukee Avenue and Artaius Parkway North (the "Milwaukee/Artaius North Intersection"), as required pursuant to Subsection 9.B of this Agreement.

B. **Improvements and Standards.** Zale and Cuneo shall, each to the extent hereinafter provided, design, construct, and signalize the Milwaukee/Artaius North Intersection in accordance with the requirements and standards set forth in Section 8 of this Agreement and in the Commercial Frontage Road Plans attached to this Agreement as Exhibits I and J.

C. **Costs and Security.**

1. **Initial Milwaukee/Artaius North Intersection.** The design and construction of that stage of the Milwaukee/Artaius North Intersection improvement required as part of the Commercial Frontage Road Initial Improvement (the "Initial Milwaukee/Artaius North Intersection") shall be the responsibility of Zale, shall be at Zale's sole cost and expense, and shall be secured by Zale on or before the Agreement Date pursuant to Section 6 of the Cuneo Land Management Agreement.

2. **Ultimate Milwaukee/Artaius North Intersection.** The design and construction of that stage of the Milwaukee/Artaius North Intersection improvement required as part of the Commercial Frontage Road Ultimate Improvement (the "Ultimate Milwaukee/Artaius North Intersection") shall be Cuneo's responsibility, shall be at Cuneo's sole cost and expense, and shall be secured by Cuneo as part of the security required pursuant to Paragraph 8.D.1 of this Agreement; provided, however, that the County shall not require, or shall surrender, any such letter of credit, to the extent that the said portion of said Intersection, or any part thereof, has been secured pursuant to the requirements of the Illinois Department of Transportation.

D. **Time For Performance.** Unless otherwise approved by the County Engineer, which approval may be withheld or made subject to any conditions deemed necessary or appropriate in the sole discretion of the County Engineer, Cuneo, and Zale as Cuneo's successor to any

portion of the Cuneo Property acquired by Zale, shall complete the dedications required pursuant to Subsection 9.A of this Agreement on or before the date on which the County Engineer issues an access permit for either the Butterfield/Allanson Intersection or the Butterfield/Huntington North Intersection, but in no event later than the date such dedications are required to be completed by the Illinois Department of Transportation.

Zale and Cuneo shall, each to the extent of its responsibility as defined in Subsection 9.C of this Agreement, complete the design and construction of the Milwaukee/Artaius North Intersection in accordance with the terms and schedules set forth in Section 8 of this Agreement and in the Commercial Frontage Road Plans attached to this Agreement as Exhibits I and J.

Section 10. Dedication of Additional Utility Easements and Sites.

To the extent not otherwise provided for in the right-of-way dedications required pursuant to this Agreement, Cuneo, and Zale as Cuneo's successor to any portion of the Cuneo Property acquired by Zale, shall, at its sole cost and expense, dedicate, or cause to be dedicated, to the County any and all such easements on, under, across, and through the Cuneo Property as may be necessary to permit the construction, installation, operation, maintenance, repair, removal, and replacement of the "Cuneo Utility Facilities," as defined in, and in accordance with the terms of, the Sewer and Water Agreement. Zale shall, in addition and at its sole cost and expense, acquire and dedicate to the County fee simple interests to the property designated in the Sewer and Water Agreement as the sites for the Cuneo Elevated Water Storage Reservoir and the Cuneo Ground Water Storage Reservoir. No such Cuneo Utility Facility easements or sites shall be located in the Butterfield Road Right-of-Way or in any other right-of-way owned by the County, except as otherwise specifically approved by the County Engineer. All

dedications required pursuant to this Section 10 shall occur at or before the time specified in Subsection 13.J of this Agreement.

Section 11. Trail Connections.

To the extent not otherwise provided for in the right-of-way dedications required pursuant to this Agreement, Zale and the Village shall, at their sole cost and expense, dedicate rights-of-way for, and Zale, at its sole cost and expense, shall design and construct, pedestrian and bike trails, as depicted on Exhibit K to this Agreement or as otherwise approved by the County Engineer, to connect to, and to interconnect through the Cuneo Property, the existing and planned regional and local trail systems shown on said Exhibit. All such pedestrian and bike trails shall be designed and connected in accordance with the requirements of, and pursuant to final engineering plans approved by, the Village and, if applicable, the agency or agencies owning the aforesaid regional and local trail systems. No such pedestrian or bike trails shall be located in the Butterfield Road Right-of-Way or in any other right-of-way owned by the County, except as otherwise specifically approved by the County Engineer.

Section 12. Property Interest Acquisition Outside the Zale Property.

Zale shall use its reasonable and good faith best efforts to acquire all of the rights-of-way, easements and sites lying outside the Zale Property that is necessary to design and construct the improvements for which it is responsible pursuant to Section 4 through Section 11 of this Agreement (the "Required Property Interests"). Thereafter, the County agrees, upon the written request of Zale, to initiate eminent domain proceedings to acquire any of the Required Property Interests that Zale has been unable to acquire. The Required Property Interests, other than those that are part of the Cuneo Property, are currently estimated to be as depicted on Exhibit L

attached to this Agreement, but Exhibit L shall not serve to limit the extent of the Required Property Interests if, based on final engineering plans and other reliable information, the County determines that additional Property Interests lying outside the Zale property are necessary to design and construct the improvements for which Zale is responsible pursuant to Section 4 through Section 11 of this Agreement. The County's obligation to initiate and prosecute to completion any eminent domain proceeding pursuant to this Section shall be subject to the following conditions:

- (1) Any eminent domain proceeding initiated by the County pursuant to this Section shall be at the sole cost and expense of Zale, and Zale shall be responsible for all of the County's costs associated with any such eminent domain proceeding, which costs shall specifically include, without limitation, the payment of the eminent domain award, any and all assessments for damage to the remainder of the property taken, and all of the County's legal, appraisal, engineering, expert witness, and other consulting and administrative fees, costs, and expenses incurred or accrued in connection with the preparation and prosecution of any such proceeding ("County Costs").
- (2) The County Costs shall be secured by Zale, on or before the date on which the County initiates an eminent domain proceeding pursuant to this Section, by an irrevocable letter of credit, in compliance with Section 6 of the Cuneo Land Management Agreement, in the amount of 130 percent of the County Administrator's initial estimate of the County Costs related to such proceedings (the "Eminent Domain Security"). The County Administrator shall have the right and authority to

draw on the Eminent Domain Security from time-to-time as necessary to pay, or to reimburse the County for, the County Costs.

- (3) If the County Administrator at any time determines that the Eminent Domain Security related to any eminent domain proceeding initiated pursuant to this Section is, or is likely to become, insufficient to pay, or to reimburse the County for, the actual County Costs, the County Administrator shall inform Zale of that fact and demand additional security in an amount sufficient to cover the County Administrator's estimate of foreseeable additional County Costs. Unless and until such additional amount is deposited by Zale, the County Administrator may direct that (i) all efforts of the County related to such eminent domain proceeding shall be suspended or terminated; (ii) all or any County or Village Development Approvals granted, or to be granted, pursuant to this Agreement to or for the benefit of Zale shall be revoked or refused; and (iii) any security posted by Zale pursuant to this Agreement shall be drawn upon.
- (4) If, following the conclusion of an eminent domain proceeding initiated by the County pursuant to this Section, the amount of the Eminent Domain Security is insufficient to pay, or to reimburse the County for, the total actual County Costs related thereto, a written demand for payment of the balance due shall be mailed to Zale. Unless such balance is paid within 30 days following the delivery of such demand, the County Administrator may direct that (i) all or any County or Village Development Approvals granted, or to be granted, pursuant to this Agreement to or for the benefit of Zale shall be revoked or refused; and (ii) any security posted by Zale pursuant

to this Agreement shall be drawn upon. If an unused balance remains in the Eminent Domain Security after paying and reimbursing the total actual County Costs, it shall be returned to Zale.

Section 13. Improvements.

A. **General Standards.** The dedication, design, construction, installation, maintenance, and all other requirements set forth in Section 4 through Section 11 of this Agreement (the "Work") with respect to the improvements described in said Sections (collectively, the "Improvements") shall be undertaken pursuant to and in accordance with the standards and requirements set forth in this Section and in Section 3 of this Agreement. As to each particular Improvement, the Party responsible for any Work related thereto pursuant to this Agreement (the "Responsible Party") shall cause all such Work to be completed in a good and workmanlike manner and with due dispatch in accordance with the applicable schedules required pursuant to Section 4 through Section 11 of this Agreement. All materials used for, or in connection with, any Work related to any of the Improvements shall be new and of first quality.

B. **Contract Terms; Prosecution of the Work.** The Responsible Party shall include in every contract for Work on the Improvements (i) terms requiring the contractor to prosecute the Work diligently and continuously, in full compliance with, and as required by or pursuant to, this Agreement and all Requirements of Law, until it is properly completed and (ii) terms providing that the Responsible Party may take over and prosecute the Work if the contractor fails to do so in a timely and proper manner. The Responsible Party shall promptly file with the Village Clerk and the County Engineer an executed copy of each contract for Work on the Improvements prior to the commencement of any such Work. If any such Work is abandoned,

or performed in violation of this Agreement, or of the contract therefor, then the Responsible Party shall promptly and aggressively act to cause the Work to be completed properly and within the applicable times for completion established in Section 4 through Section 11 of this Agreement.

C. **Engineering Services.** The Responsible Party shall provide, at its expense, all engineering services for the design and construction of the Improvements, including full inspection services of a professional resident engineer responsible for overseeing the construction of the Improvements. The Responsible Party shall promptly provide the name of such resident engineer and a telephone number or numbers at which such resident engineer can be reached, to: (i) the Village in the case of any Improvement being constructed on right-of-way or other property owned by, or to be dedicated to, the Village or (ii) the County Engineer in the case of any Improvement being constructed on right-of-way or other property owned by, or to be dedicated to, the County or the State of Illinois (the "Responsible Agency"). The Responsible Party shall also provide the County Engineer with the resident engineer information required to be given to the Village pursuant to (i) above.

D. **Inspections and Approvals.** All Work on the Improvements shall be subject to inspection and approval by representatives of the Responsible Agency at all times; provided, however, that the County Engineer shall have the right to inspect all such Work at all times for the limited purpose of establishing compliance under this Agreement.

E. **Other Approvals.** Where the construction and installation of any Improvement requires the consent, permission, or approval of any public agency or private party, the Responsible Party shall promptly file all applications, enter into all agreements, post all security,

pay all fees and costs, and otherwise take all steps that may be required to obtain such consent, permission, or approval.

F. **Construction Traffic.** The Village and the County each reserve the right, with respect to roads subject to their respective jurisdictions, to designate certain prescribed routes of access to the Zale Property and the Cuneo Commercial Properties for construction traffic related to the Zale Development, the development of the Cuneo Commercial Properties, or the construction of the Improvements to provide protection of pedestrians and to minimize disruption of traffic and damage to paved street surfaces; provided, however, that such designated routes shall not be unreasonably or unduly circuitous nor shall they unreasonably or unduly hinder or obstruct direct and efficient access to the Zale Property or the Cuneo Commercial Properties for construction traffic. At all times during construction of the Improvements, and until completion of the Improvements and approval and, where appropriate, acceptance thereof by the Village and the County, Zale and Cuneo shall keep all routes used for construction traffic related to the Zale Development, the development of the Cuneo Commercial Properties, and construction of the Improvements free and clear of mud, dirt, debris, obstructions, and hazards and shall repair any damage caused by such construction traffic.

G. **Completion of the Improvements.** The Improvements shall be completed by the Responsible Party and made ready for inspection, approval and, where appropriate, acceptance by the Village and the County pursuant to Subsection 13.H and Subsection 13.J of this Agreement, and contracts for such Work shall be entered into by the Responsible Party at such time as is necessary to ensure that the subject Improvements are completed pursuant to the schedules required pursuant to Section 4 through Section 11 of this Agreement. The Responsible

Party shall be allowed extensions of time beyond the completion dates required by this Agreement only for unavoidable delay caused by strikes, lockouts, acts of God, or other factors beyond the control and ability to remedy of the Responsible Party or any agent or contractor hired by, or on behalf of, the Responsible Party; provided, however, that no extension of time shall be allowed for any delay caused by weather conditions unless such weather conditions are unusually severe or abnormal considering the time of year and the particular locality involved. The Responsible Party shall, within two days after any unavoidable delay commences and again within two days after such delay terminates, give notice to the County for its review and approval of such delay, the cause for such delay, the period or anticipated period of such delay, and the steps taken by the Responsible Party to mitigate the effects of such delay. Any failure of the Responsible Party to properly give such notice shall be deemed a waiver of any right to an extension of time for any such delay.

H. **Dedication of the Improvements.**

1. **Final Inspection and Approval of the Improvements.** The Responsible Party shall notify the Village and the County when it believes that any or all of the Improvements have been fully and properly completed and shall request final inspection, approval, and acceptance of the Improvement or Improvements by the Responsible Agency; provided, however, that the County Engineer shall have the right to inspect any or all of the Improvements for the limited purpose of establishing compliance under this Agreement. Such notice and request shall be accompanied by the "as-built" or "record" drawings required by Subsection 13.I of this Agreement and, with respect to the Responsible Agency only, by proposed drafts of the documents of title transfer, if any, required by Subsection 13.J of this Agreement. Such notice

and request shall be given far enough in advance of the applicable completion date required for the subject Improvement pursuant to this Agreement to allow the Village and the County time to inspect the Improvements and to prepare a punch list of items requiring repair or correction and to allow the Responsible Party time to make all required repairs and corrections prior to such completion date. The Responsible Party shall promptly make all necessary repairs and corrections as specified on the punch list. Neither the Village nor the County shall be required to approve or accept any Improvement until such Improvement, including all punch list items, has been fully and properly completed.

2. Dedication and Acceptance of the Improvements. The Responsible Party shall dedicate the Improvements, and associated rights-of-way and sites, as required pursuant to Section 4 through Section 11 of this Agreement. Neither the execution of this Agreement nor the approval or recordation of any plat of subdivision for any part of the Zale Property or the Cuneo Commercial Properties shall constitute an acceptance by the Village or the County of any of the Improvements, including without limitation, any streets or other public facilities that are depicted as "dedicated" on any such plat. No Improvement shall be accepted by the Village or by the County except in writing by the County Engineer or by the Village President and Board of Trustees by resolution duly adopted, as the case may be, specifying with particularity the Improvement or Improvements being accepted.

I. "As-Built" or "Record" Drawings and Specifications of the Improvements. The Responsible Party shall, no later than the date on which it gives the notice of completion and request for approval and acceptance required pursuant to Subsection 13.H of this Agreement, provide (i) to the Responsible Agency three sets of "as-built" or "record" drawings and

specifications for any completed Improvement, including one set on a reproducible Mylar, and (ii) to the County Engineer, if the County is not the Responsible Agency, two additional sets of said drawings and specifications, including one set on a reproducible Mylar. Such "as-built" or "record" drawings and specifications shall depict the subject Improvement as built and shall include all final dimensions, elevations, and calculations necessary to fully describe the Improvement and to establish its compliance with all applicable standards and requirements.

J. Transfer of Ownership of the Improvements and Easements. Upon the Responsible Agency's approval of, and prior to acceptance of, any Improvement to be accepted by the Responsible Agency pursuant to Subsection 13.H of the Agreement, the Responsible Party shall execute, or cause to be executed, such documents as the Responsible Agency shall request to transfer ownership of such Improvement to, and to evidence ownership of such Improvement by, the Responsible Agency, free and clear of all liens, claims, encumbrances, and restrictions unless otherwise approved by the Responsible Agency in writing. At the same time, the Responsible Party shall grant, or cause to be granted, to the Responsible Agency all such easements or other property rights as the Responsible Agency may require to install, operate, maintain, service, repair, and replace such Improvement that have not previously been granted to the Responsible Agency, free and clear of all liens, claims, encumbrances, and restrictions unless otherwise approved by the Responsible Agency in writing.

K. Two-Year Guaranty of the Improvements. The Responsible Party hereby guaranties the prompt and satisfactory correction of all defects and deficiencies in any of the Improvements, including, without limitation, landscaping installed by the Responsible Party on public lands or within public rights-of-way or easements, that occur or become evident within

two years after approval and acceptance of the Improvements by the Responsible Agency pursuant to Subsection 13.H and Subsection 13.J of this Agreement. If any such defect or deficiency occurs or becomes evident during such period, then the Responsible Party shall, within 10 days, weather permitting, after written demand from the Responsible Agency to do so, correct it or cause it to be corrected. In the event any Improvement is repaired or replaced pursuant to such a demand, the Guaranty provided by this Subsection shall be extended, as to such repair or replacement, for two full additional years from the date of such repair or replacement.

L. **County and Village Right to Complete Work.** If the Responsible Party fails or refuses to diligently pursue all Work relating to any Improvement required by this Agreement to completion within the time periods prescribed in this Agreement or to correct any defect or deficiency as required pursuant to Subsection 13.K of this Agreement, then the County shall have, and Zale and Cuneo hereby grant to the County, in addition to all other rights afforded to the County in this Agreement and by law, the right, at the County's option, to complete such Work or to correct such defect or deficiency using either its own forces or contractors hired for that purpose. For such purpose, the County shall have the right to draw from the performance securities deposited pursuant to Section 4 through Section 9 and Section 12 of this Agreement and Section 6 of the Cuneo Land Management Agreement. The County shall also have the right to demand payment directly from the Responsible Party, based either on costs actually incurred or the County's reasonable estimates of costs to be incurred, an amount of money sufficient to defray the entire cost of such Work, including legal and engineering fees and administrative

expenses. The Responsible Party shall, upon demand by the County, pay such amount to the County.

In any case where the Village is the Responsible Agency, and the County has, after 30 days advance written notice from the Village delivered in the manner provided in Section 23 of this Agreement, failed to exercise its rights under this Subsection 13.L, the Village may, as to any Work for which it is the Responsible Agency, but subject to the limitation stated in the last sentence of Paragraph 6.H.2 of the Cuneo Land Management Agreement, exercise such rights in its own name.

Section 14. Damage to Public Property. All mud, dirt, or debris deposited on any street, sidewalk, or other public property in or adjacent to the Zale or Cuneo Commercial Properties by any Responsible Party, or any agent of or contractor hired by, or on behalf of, any Responsible Party, shall be promptly cleaned by such Responsible Party; and such Responsible Party shall repair any damage to any street, sidewalk, or other public property that may be caused by the activities of such Responsible Party or any agent of or contractor hired by, or on behalf of, said Responsible Party.

Section 15. Term and Termination.

A. **Effective Date and Term.** Subject to Subsection 2.H of the Cuneo Land Management Agreement, this Agreement shall take effect as of the date first above written when executed and delivered by the duly authorized representative of each of the Parties. Thereafter, this Agreement shall continue in full force and effect unless and until terminated pursuant to Subsection 15.B of this Agreement.

B. Right to Terminate. If, and at any time after the Cuneo Land Management Agreement is terminated pursuant to Subsection 4.B of said Agreement, any Party shall have the right to terminate this Agreement after providing written notice to all of the other Parties in the manner provided in Section 23 of this Agreement.

C. Effect and Use of Agreement Following Termination. If this Agreement is terminated pursuant to Subsection 15.B of this Agreement, nothing in this Agreement shall thereafter affect or waive, or be construed to affect or waive, any of the rights and obligations of any of the Parties with respect to the development and use of, or the provision of any public service to, the Cuneo Property, and this Agreement shall not thereafter be admissible in any court or before any governmental or administrative agency for any purpose.

Section 16. Defense of Agreement.

Unless and until this Agreement is terminated pursuant to its terms, the Parties, and each of them, shall use their best efforts to defend the validity of this Agreement, the Required Documents, and all ordinances adopted, and all covenants and agreements executed, pursuant to this Agreement and the Required Documents, including every portion thereof and every approval given, and every action taken, pursuant thereto. Such best efforts shall include at least retaining competent counsel, providing testimony when so requested, and hiring, or sharing in the cost of, expert witnesses.

Section 17. Successors.

This Agreement, and each of its terms, conditions, provisions, covenants, agreements, and obligations, shall run with and bind the Zale Property and the Cuneo North Commercial Property in perpetuity, and shall extend to, bind, and inure to the benefit of the Parties hereto,

and to each of them, and their respective legal representatives, heirs, grantees, successors, and permitted assigns. If any of the terms, conditions, provisions, covenants, agreements, or obligations of this Agreement would otherwise be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provision, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing time limits, then such term, condition, provision, covenants, agreement, or obligation shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of George Herbert Walker Bush, 41st President of the United States.

Section 18. Costs and Fees.

A. **Zale Costs and Fees.** In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement or by applicable County or Village codes, ordinances, resolutions, rules, or regulations, Zale shall pay to the County, within 30 days after receipt of the County's written demand or demands therefor and reasonable supporting documentation, all legal, engineering, and other consulting or administrative fees, costs, and expenses incurred or accrued in connection with the negotiation, preparation, consideration, prosecution, and review of this Agreement and all proceedings initiated, ordinances adopted, and all agreements, covenants, and plans executed, pursuant to this Agreement. Payment of all such fees, costs, and expenses for which demand has been made, but payment has not been received, by the County prior to execution of this Agreement shall be made by a certified or cashier's check as a condition precedent to the execution of this Agreement by the Chairman of the County Board. Zale agrees that it will continue to be liable for and to pay, within 30 days after receipt of the County's written demand or demands therefor and reasonable supporting

documentation, such fees, costs, and expenses incurred or accrued in connection with any applications, documents, or proposals, whether formal or informal, of whatever kind submitted by Zale during the term of this Agreement in connection with the development and use of the Zale Property. Further, Zale agrees that it shall be liable for and will pay, within 30 days after receipt of the County's written demand or demands therefor and reasonable supporting documentation, all costs incurred by the County for publications and recordings required in connection with the aforesaid matters.

B. **Cuneo Costs and Fees.** In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement or by applicable County or Village codes, ordinances, resolutions, rules, and regulations, Cuneo shall pay to the County, within 30 days after receipt of the County's written demand or demands therefor and reasonable supporting documentation, all legal, engineering, and other consulting or administrative fees, costs, and expenses incurred or accrued in connection with any applications, documents, or proposals, whether formal or informal, of whatever kind submitted by Cuneo during the term of this Agreement in connection with the development and use of any portion of the Cuneo Commercial Properties. Further, Cuneo agrees that it shall be liable for and will pay to the County, within 30 days after receipt of the County's written demand or demands therefor and reasonable supporting documentation, all costs incurred by the County for publications and recordings required in connection with the aforesaid matters.

C. **Failure to Pay.** If Zale or Cuneo fails to pay fees, costs, or expenses as required by, and within the time allowed pursuant to, this Section, then Zale or Cuneo, whichever is responsible pursuant to this Section for the payment of such fees, costs, or expenses, shall also

become liable for and shall pay (i) interest on the unpaid fees, costs, or expenses accruing from the date on which they were due and (ii) any and all collection costs incurred by the County in relation to the unpaid fees, costs, and expenses at issue.

D. **Condition Precedent.** Notwithstanding any other provision of this Agreement, the payment, when due, of all of fees, costs, and expenses, due pursuant to this Section, together with interest thereon and collection costs related thereto, shall be a condition precedent to each and every obligation of the County to be performed under this Agreement, the Cuneo Land Management Agreement, and any of the other Required Documents at any time after such payment is due.

Section 19. Enforcement.

The Parties, and each of them, may in law or in equity, by suit, action, mandamus, specific performance, or any other proceeding, enforce or compel performance of this Agreement. The Parties, and each of them, acknowledge and agree that any breach of this Agreement by any Party will constitute irreparable harm and immediate injury for which monetary damages are and will be inadequate. Any Party that is found to be in violation of this Agreement pursuant to an enforcement action hereunder shall be liable for all costs, including attorneys' fees, of the enforcing Party.

Section 20. Warranties.

Each of the Parties warrants and represents to all of the other Parties and agrees that:

- (1) This Agreement is executed by duly authorized agents or officers of such Party, and all such agents or officers have executed the same in accordance with the lawful authority vested in them pursuant to all applicable procedural and substantive requirements;

(2) This Agreement is binding and valid and will be specifically enforceable according to its terms against such Party;

(3) This Agreement will not violate any presently existing provisions of law nor any applicable order, writ, injunction, or decree of any court or governmental department, commission, board, bureau, agency, or instrumentality applicable to such Party;

(4) Such Party has been represented by counsel of its own choosing in the negotiation and preparation of this Agreement; and

(5) Such Party has entered into this Agreement, including all Exhibits attached hereto and incorporated herein, of its own free will and upon advice of counsel, and that such Party intends to be legally bound by this Agreement.

Section 21. Entire Agreement.

Except for the Cuneo Land Management Agreement and the Required Documents, there are no representations, covenants, promises, or obligations not contained in this Agreement, including the Exhibits attached hereto and incorporated herein, that form any part of this Agreement or upon which any Party is relying in entering this Agreement.

Section 22. Amendments.

This Agreement shall not be modified, changed, altered, amended, or terminated without the duly authorized and written consent of each of the Parties given pursuant to resolutions duly adopted by their respective corporate authorities.

Section 23. Notices.

All notices required under this Agreement, whether expressly or by operation of applicable codes, statutes, ordinances, or regulations, shall be in writing and shall, unless said code,

statute, ordinance, or regulation specifically provides otherwise, be deemed delivered to the addressee thereof when delivered in person or by express mail or messenger at the address set forth below or three days after deposit thereof in any main or branch United States Post Office, certified or registered mail, return receipt requested, postage prepaid, properly addressed to the Parties, respectively, as follows:

TO THE COUNTY:

County Administrator
Lake County Administrator's Office
18 North County Street
Waukegan, Illinois 60085

with a copy to:

Lake County Engineer
Division of Transportation
600 West Winchester Road
Libertyville, Illinois 60048

and a copy to:

Clifford L. Weaver, Esq.
Burke, Weaver & Prell
55 West Monroe Street
Suite 800
Chicago, Illinois 60603

TO THE VILLAGE:

Village President
Village of Vernon Hills
290 Evergreen Drive
Vernon Hills, Illinois 60061

with a copy to:

Village Manager
Village of Vernon Hills
290 Evergreen Drive
Vernon Hills, Illinois 60061

TO ZALE:

The Zale Companies
100 Lexington Drive
Suite 100
Buffalo Grove, Illinois 60089-6931
Attention: Mr. Edward Zale

with a copy to:

Howard D. Galper, Esq.
Marks, Marks, and Kaplan, Ltd.
120 North LaSalle
Suite 3200
Chicago, Illinois 60602

and a copy to:

Jerry Hoskins
Vice President and
Chief Operating Officer
The Zale Companies
100 Lexington Drive
Suite 100
Buffalo Grove, Illinois 60689

TO CUNEO:

John F. Cuneo 1935 Trust
c/o Bank of America Illinois
231 South LaSalle Street
Chicago, Illinois 60697
Attention: Leonard P. Diorio

with a copy to:

John F. Cuneo, Jr.
23675 West Chardon Road
Grayslake, Illinois 60030

and a copy to:

William G. Myers, Esq.
Rothschild, Barry & Myers
55 West Monroe Street
Suite 3900
Chicago, Illinois 60603

By notice as herein required, any Party may change the addressees or addresses given above, but no such change shall be effective as to any Party until such notice is actually received by such Party.

Section 24. Location of Properties.

The Parties acknowledge that the Cuneo, Zale, Zale Residential, Village Golf Course, and Cuneo Commercial Properties have not been specifically located and measured as of the Effective Date of this Agreement. Said Properties have only been generally depicted on the Site Plan. On or before the Agreement Date, Zale shall have a survey conducted of said Properties and shall cause to be prepared accurate legal descriptions of each of said Properties. The legal descriptions as so developed and prepared shall be attached to this Agreement, on or before the Agreement Date, as Exhibit B, and shall thereafter be treated for all purposes as a part of this Agreement in the same manner as if they had been attached to this Agreement at the time of its execution. The survey and preparation of the legal descriptions required pursuant to this Section shall be at Zale's sole cost and expense.

Section 25. Exhibits.

The following Exhibits are attached to this Agreement and are by this reference incorporated into and made a part of this Agreement:

- Exhibit A: Cuneo Property Site Plan.
- Exhibit B: Legal Descriptions of
Cuneo Property;
Zale Property;
Zale Residential Property;
Village Golf Course Property;
Cuneo Intersection Commercial Property;
Cuneo South Commercial Property; and
Cuneo North Commercial Property
- Exhibit C: Utilities and Facilities in Butterfield Road Right-of-Way.
- Exhibit D: Butterfield Road Access Related Improvements.
- Exhibit E: Butterfield Road Stormwater Control Requirements.
- Exhibit F: Thoroughfare Access and Design Related Requirements.
- Exhibit G: Lake View Extension and Huntington Connection Access and Design Related Requirements.
- Exhibit H: Cuneo Internal Road Plan.
- Exhibit I: Commercial Frontage Road Initial Improvement Access and Design Related Requirements.
- Exhibit J: Commercial Frontage Road Ultimate Improvement Access and Design Related Requirements.
- Exhibit K: Pedestrian and Bike Trail Plan.
- Exhibit L: Estimated Required Property Interests.

Section 26. Recording.

Upon taking effect, this Agreement or, if each of the Parties in its respective discretion agrees, a summary memorandum of this Agreement, shall be recorded against the Zale Property and the Cuneo North Commercial Property by the County, at the sole cost and expense of Zale and Cuneo, respectively, with the Lake County Recorder of Deeds.

Section 27. Execution in Counterparts.

This Agreement may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute the Agreement.

IN WITNESS WHEREOF, the Parties have, by their duly authorized agents, set their hands and affixed their seals on the date first above written.

COUNTY OF LAKE

ATTEST: _____
Willard Helander
County Clerk

By: _____
Robert W. Depke
County Board Chairman

VILLAGE OF VERNON HILLS

ATTEST: Kathleen A. Ryg
Kathy Ryg
Village Clerk

By: Roger L. Byrne
Roger L. Byrne
Village President

Section 27. Execution in Counterparts.

This Agreement may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute the Agreement.

IN WITNESS WHEREOF, the Parties have, by their duly authorized agents, set their hands and affixed their seals on the date first above written.

COUNTY OF LAKE

ATTEST: Willard R. Helander By:
Willard Helander
County Clerk

Robert W. Depke
Robert W. Depke
County Board Chairman

VILLAGE OF VERNON HILLS

ATTEST: _____
Kathy Ryg
Village Clerk

By: _____
Roger L. Byrne
Village President

G.A.Z., Inc.

ATTEST: Virginia Wafer
Its: Jecy

By: Edward J. Lee
Its: Pres.

CUNEO

BANK OF AMERICA ILLINOIS, JOHN F. CUNEO, JR., CONSUELA CUNEO McALISTER, WILLIAM G. MYERS, as Successor Trustees under Declaration of Trust dated August 12, 1935,

By:

Bank of America Illinois

John F. Cuneo, Jr.
Sr. Vice President

John F. Cuneo, Jr.

William G. Myers
William G. Myers

Who by their above signatures warrant and represent that they are a majority of said Trustees and, as such majority, are duly and fully authorized to act for, and to bind, all of said Trustees and the aforesaid Trust.

G.A.Z., Inc.

ATTEST: _____

By: _____

Its: _____

Its: _____

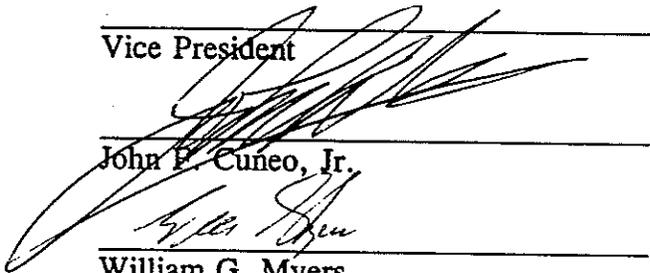
CUNEO

BANK OF AMERICA ILLINOIS, JOHN F. CUNEO, JR., CONSUELA CUNEO McALISTER, WILLIAM G. MYERS, as Successor Trustees under Declaration of Trust dated August 12, 1935,

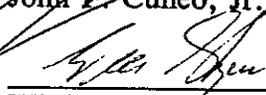
By:

Bank of America Illinois

Vice President



John F. Cuneo, Jr.



William G. Myers

Who by their above signatures warrant and represent that they are a majority of said Trustees and, as such majority, are duly and fully authorized to act for, and to bind, all of said Trustees and the aforesaid Trust.

EXHIBITS TO ROAD AGREEMENT

- Exhibit A: Cuneo Property Site Plan.
- Exhibit B: Legal Descriptions of
Cuneo Property;
Zale Property;
Zale Residential Property;
Village Golf Course Property;
Cuneo Intersection Commercial Property;
Cuneo South Commercial Property; and
Cuneo North Commercial Property
- Exhibit C: Utilities and Facilities in Butterfield Road Right-of-Way.
- Exhibit D: Butterfield Road Access Related Improvements.
- Exhibit E: Butterfield Road Stormwater Control Requirements.
- Exhibit F: Thoroughfare Access and Design Related Requirements.
- Exhibit G: Lake View Extension and Huntington Connection Access and Design Related Requirements.
- Exhibit H: Cuneo Internal Road Plan.
- Exhibit I: Commercial Frontage Road Initial Improvement Access and Design Related Requirements.
- Exhibit J: Commercial Frontage Road Ultimate Improvement Access and Design Related Requirements.
- Exhibit K: Pedestrian and Bike Trail Plan.
- Exhibit L: Estimated Required Property Interests.

COPY

Execution Copy

3892960

FIRST AMENDMENT TO
AN AGREEMENT RELATING TO THE
DEVELOPMENT AND REGULATION OF ROADS AND
RELATED FACILITIES TO SERVE THE CUNEO PROPERTY

G#581767

Entered Into By, Between, And Among

THE COUNTY OF LAKE, ILLINOIS

And

THE VILLAGE OF VERNON HILLS, ILLINOIS

And

THE JOHN F. CUNEO 1935 TRUST

And

G.A.Z., Inc.

As Of

September 10, 1996

Prepared by, and After Recording
Return to:

Peter M. Friedman, Esq.
Burke, Weaver & Prell
55 West Monroe Street
Suite 800
Chicago, Illinois 60603
(312) 578-6566

FIRST AMENDMENT TO CUNEO ROAD AGREEMENT

THIS FIRST AMENDMENT TO THE CUNEO ROAD AGREEMENT (the "First Amendment") made and entered into as of this 10th day of September, 1996, by, between and among (i) the County of Lake, an Illinois body politic and corporate (the "County"); (ii) the Village of Vernon Hills, an Illinois municipal corporation (the "Village"); (iii) Bank of America Illinois, John F. Cuneo, Jr., Consuela Cuneo McAlister, and William G. Myers, as successor Trustees under Declaration of Trust dated August 12, 1935 (said Trustees and said Trust are referred to, collectively, as "Cuneo"); and (iv) G.A.Z., Inc., an Illinois corporation ("Zale") (the County, the Village, Cuneo, and Zale are hereinafter sometimes individually or collectively referred to as the "Parties"),

W I T N E S E T H:

WHEREAS, on June 13, 1995, the Parties entered into that certain "Joint Local Land Resource Management Plan and Agreement" (the "Land Management Agreement"), to control and regulate the use and development of the property commonly known as the "Cuneo Property," as legally described in Exhibit B to the Land Management Agreement; and

WHEREAS, on June 7, 1996, pursuant to the Land Management Agreement, the Parties entered into that certain "Agreement Relating to the Development and Regulation of Roads and Related Facilities to Serve the Cuneo Property" (the "Road Agreement"), to limit and mitigate the adverse impacts of the development of the Cuneo Property on County roads and related facilities; and

WHEREAS, a dispute has arisen regarding the proper determination of what part of the Cuneo Property is contained within that part of the Cuneo Property defined and identified as the "East Zale Property" pursuant to Subsection 6.D of the Road Agreement; and

WHEREAS, to resolve this dispute, the Village and Zale have requested that the definition of the East Zale Property be clarified by amending certain exhibits to the Road Agreement; and

WHEREAS, the County has agreed to clarify the definition of the East Zale Property, as set forth in Section 2 of this First Amendment, subject to Zale's agreement to amend certain other sections of the Road Agreement, as set forth in Sections 3 and 4 of this First Amendment, to accelerate the required time for completion of the main thoroughfare roads required by the Road Agreement and to modify the terms on which other road improvements will be completed, all as more fully set forth below; and

WHEREAS, as set forth in Section 4 of the Road Agreement, the County has planned, and Zale has agreed to fund in part, a project to widen Butterfield Road from a point adjacent to the Cuneo Property south to the intersection of Butterfield Road and Illinois Route 60, including related intersection improvements at Route 60 (collectively, the "County Butterfield Road Project"); and

WHEREAS, pursuant to Sections 4 and 5 of the Road Agreement, Zale is required, among other things, to provide for the dedication of right-of-way and other property for the widening of Butterfield Road and for the design and construction of two-full access intersections with Butterfield Road, one of which shall be aligned with Allanson Road and one of which shall be aligned with Huntington Drive North (collectively, the "Zale Butterfield Road Project"); and

WHEREAS, the County's Division of Transportation and Zale's engineers have determined that combining the County and Zale Butterfield Road Projects into a single consolidated project under County jurisdiction and control will, if feasible, benefit the public health, safety, welfare, and convenience by, among other things, reducing the total cost of the

design and construction of the County and Zale Butterfield Road Projects; lessening the traffic disruption caused by or associated with the construction of the Butterfield Road Projects; and assuring timely completion of the Zale Butterfield Road Project; and

WHEREAS, the County, Zale, and the Village now desire to amend the Road Agreement to clarify the definition of East Zale Property; and

WHEREAS, the County, Zale, and the Village now desire to amend the Road Agreement to accelerate, by 12 months, the final date for completion of the main thoroughfare roads that will serve the Cuneo Property; and

WHEREAS, the County, Zale, and the Village now desire to amend the Road Agreement to authorize the County Administrator to require Zale to enter into one or more agreements with the County providing, among other things, for the consolidation of all or portions of the County and Zale Butterfield Road Projects; and

WHEREAS, Cuneo agrees with and supports the amendments to the Road Agreement as set forth in this First Amendment; and

WHEREAS, the Parties intend that this First Amendment shall constitute an integral and necessary part of the Local Land Resource Management Plan adopted jointly by the Parties pursuant to the Land Management Agreement; and

WHEREAS, after full consideration of all utility, planning, and intergovernmental issues affecting this matter, the Village has determined that it is in the best interests of its citizens and the public welfare to enter into this First Amendment; and

WHEREAS, after full consideration of all utility, planning, and intergovernmental issues affecting this matter, the County has determined that it is in the best interests of its citizens and the public welfare to enter into this First Amendment;

NOW, THEREFORE, for and in consideration of the foregoing recitals and the mutual covenants herein made, and pursuant to Subsection 2.L of the Land Management Agreement and Section 22 of the Road Agreement, and all other applicable statutes and local authorities, including specifically, but without limitation, Article VII, Section 10 of the Illinois Constitution of 1970; the Local Land Resource Management Planning Act, 50 ILCS 805/1 *et seq.*; the Illinois Governmental Cooperation Act, 5 ILCS 220/1 *et seq.*; and 605 ILCS 5/5-101.7, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties do hereby agree as follows:

1. GENERAL.

A. Recitals. The foregoing recitals are true and correct and are hereby incorporated into this First Amendment.

B. Definitions. Unless specifically provided otherwise in this First Amendment, the words and phrases used in this First Amendment shall have the meanings ascribed to them in the Road Agreement.

C. Conflicts. This First Amendment is intended to modify and amend the Road Agreement. Therefore, to the extent that the terms and provisions of this First Amendment conflict with or are inconsistent with the Road Agreement, the terms and provisions of this First Amendment shall control.

D. Survival of Road Agreement Terms. Except as expressly modified in this First Amendment, all terms, conditions, and provisions of the Road Agreement shall remain in full force and effect; provided, however, that any other provision of the Road Agreement shall be deemed modified as necessary to give practical effect to the provisions of this First Amendment.

E. Recordation. Upon its proper execution by all of the Parties, the County shall cause this First Amendment to be recorded in the Office of the Lake County Recorder of Deeds, at Zale's sole cost and expense, against those portions of the Cuneo Property against which the Road Agreement was recorded pursuant to Section 26 of the Road Agreement.

2. EXHIBIT AMENDMENTS.

A. Revised Exhibit A. "Exhibit A Revised As Of September 10, 1996," attached hereto and incorporated herein ("Revised Exhibit A"), shall be, and it is hereby, substituted in place of Exhibit A (the "Cuneo Property Site Plan") attached to the Road Agreement, and any and all references in the Road Agreement, as hereby amended, to Exhibit A or to the Cuneo Property Site Plan shall be deemed to be a reference to Revised Exhibit A.

B. Revised Exhibit H. "Exhibit H Revised As Of September 10, 1996," attached hereto and incorporated herein ("Revised Exhibit H"), shall be, and it is hereby, substituted in place of Exhibit H (the "Cuneo Internal Road Plan") attached to the Road Agreement, and any and all references in the Road Agreement, as hereby amended, to Exhibit H or to the Cuneo Internal Road Plan shall be deemed to be a reference to Revised Exhibit H.

C. Revised Exhibit K. "Exhibit K Revised As Of September 10, 1996," attached hereto and incorporated herein ("Revised Exhibit K"), shall be, and it is hereby, substituted in place of Exhibit K (the "Pedestrian Bike Trail Plan") attached to the Road Agreement, and any and all references in the Road Agreement, as hereby amended, to Exhibit K or to the Pedestrian Bike Trail Plan shall be deemed to be a reference to Revised Exhibit K.

3. **ACCELERATION OF COMPLETION DATE
FOR CERTAIN ROAD IMPROVEMENTS.**

A. East Thoroughfare. Subsection 6.D of the Road Agreement, entitled "Time For Performance," shall be, and it is hereby, amended by amending clause (i) of the second paragraph of said Subsection 6.D to change the phrase "48 months" to the phrase "36 months," so that said clause (i) shall hereafter be and read as follows:

"(i) 36 months after the Agreement Date,"

B. Lake View Extension. Subsection 7.E of the Road Agreement, entitled "Time For Performance," shall be, and it is hereby, amended by amending clause (ii) of the third paragraph of said Subsection 7.E to change the phrase "48 months" to the phrase "36 months," so that said clause (ii) shall hereafter be and read as follows:

"(ii) 36 months after the Agreement Date,"

C. Commercial Frontage Road Initial Improvement. Paragraph 8.C.2 of the Road Agreement, entitled "Time For Performance," shall be, and it is hereby, amended by amending clause (i) of the first paragraph of said Paragraph 8.C.2 to change the phrase "48 months" to the phrase "36 months," so that said clause (i) shall hereafter be and read as follows:

"(i) 36 months after the Agreement Date,"

The Parties hereby agree and stipulate that the term "Agreement Date," as used in this Section 3, as well as in the Land Management Agreement and in the Road Agreement, shall for all purposes be deemed to refer to the date of June 7, 1996, which is the Closing Date of the transfer of the Zale Property from Cuneo to Zale pursuant to Subsection 2.I of the Cuneo Land Management Agreement.

4. **SUPPLEMENTAL AGREEMENTS TO CONSOLIDATE BUTTERFIELD ROAD PROJECTS.**

Section 5 of the Road Agreement, entitled "Butterfield Road Intersections; Allanson Road Extension," shall be, and it is hereby, amended by adding a new Subsection 5.E to said Section 5, which new Subsection 5.E shall hereafter be and read as follows:

"E. Supplemental Agreements.

If required at any time by the County Administrator, Zale shall, and hereby agrees to, fulfill any or all of its obligations under this Section 5, as well as those under Section 4 of this Agreement, by entering into and complying with one or more supplemental agreements with the County pursuant to this Subsection 5.E (a "Supplemental Agreement").

Each Supplemental Agreement shall be approved and executed by the County Administrator, on behalf of the County, and by Zale and shall include in substance at least the following provisions:

1. A detailed description of improvements, and related work, for which Zale is responsible pursuant to Section 4 or Section 5 of this Agreement that are to be incorporated into, and undertaken by the County in conjunction with, the County Butterfield Road Improvements while at the same time being deleted from the improvements and work to be provided by Zale pursuant to said Sections of this Agreement (the "Incorporated Improvements").
2. Zale shall pay the full cost of the Incorporated Improvements. In lieu of the letter of credit required pursuant to Paragraph 5.B.2 of this Agreement and Paragraph 6.A.3 of the Land Management Agreement, Zale shall

provide, as security for payment of the cost of the Incorporated Improvements and pursuant to such terms as may be required by the County Administrator, a letter of credit or cash deposit in an initial amount equal to not less than 130 percent of the County Engineer's estimate of the cost of the Incorporated Improvements (the "Substitute Security"). Zale shall deposit the Substitute Security on or before a date specified in the Supplemental Agreement, which date shall be no later than the earlier of (a) February 6, 1998; or (b) 30 days after the County Engineer's written demand for such deposit accompanied by a certificate from the County Engineer certifying that advertisements soliciting bids for a project including the Incorporated Improvements will appear within 45 days after the date of such certificate.

3. Zale shall pay to the County all legal, engineering, and other consulting or administrative fees, costs, and expenses incurred or accrued by the County in connection with the negotiation, preparation, consideration, and execution of the Supplemental Agreement.
4. Savings from all Supplemental Agreements, up to \$1,000,000, accruing as a result of combining the Butterfield Road Improvements and the Incorporated Improvements in a single project shall be retained by the County; all such savings in excess of \$1,000,000 and up to \$2,000,000 shall be retained by Zale; and all such savings in excess of \$2,000,000 shall be divided equally between the County and Zale. All such savings accruing to the County shall be deposited into the County Motor Fuel Tax

Fund and shall be used solely for improvements to, or associated with, Butterfield Road.

Nothing in this Subsection 5.E shall, however, obligate the County or the County Administrator to approve or execute any Supplemental Agreement.

By executing and complying with a Supplemental Agreement approved and executed by the County Administrator pursuant to this Subsection 5.E, Zale shall be deemed to have satisfied, to the extent set forth in such Supplemental Agreement, its obligations under this Agreement and the Land Management Agreement with respect to all of the Incorporated Improvements covered by such Supplemental Agreement; provided, however, that any improvement or work not covered by a Supplemental Agreement shall remain fully subject to all of the provisions of this Agreement.

If Zale's obligations under Subsections 5.A and 5.B of this Agreement with respect to the Butterfield/Allanson Intersection and the Butterfield/Huntington North Intersection are satisfied by execution of a Supplemental Agreement, then, provided that Zale shall have satisfied all other conditions precedent required pursuant to this Agreement for issuance of access permits from said Intersections, Zale's delivery of the Substitute Security required pursuant to such Supplemental Agreement shall be construed, for all purposes under this Agreement and the Land Management Agreement, to have the same effect as the issuance by the County, and the receipt by Zale, of access permits for said Intersections.

No work done by the County pursuant to a Supplemental Agreement and no Incorporated Improvement designed, constructed, and installed pursuant to any such Supplement Agreement shall be subject to the provisions of Section 13 of this Agreement.

5. EXEMPTION OF COUNTY WORK FROM IMPROVEMENT REQUIREMENTS.

The first sentence of Subsection 13.A of the Road Agreement, entitled "General Standards," shall be, and it is hereby amended in its entirety to exempt the County's Butterfield Road Improvements from the requirements of Section 13 of said Agreement, so that the said first sentence of said Subsection 13.A shall hereafter be and read as follows:

"The dedication, design, construction, installation, maintenance, and all other requirements with respect to the improvements, other than the Butterfield Road Improvements, set forth and described in Section 4 through Section 11 of this Agreement (collectively, the "Improvements") shall be undertaken pursuant to and in accordance with the standards and requirements set forth in this Section and in Section 3 of this Agreement (the "Work").

6. EXECUTION IN COUNTERPARTS.

This First Amendment may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute the First Amendment.

IN WITNESS WHEREOF, the Parties have, by their duly authorized agents, set their hands and affixed their seals on the date first above written.

COUNTY OF LAKE

ATTEST: Willard R. Helander
Willard Helander
County Clerk

By: Robert W. Depke
Robert W. Depke
County Board Chairman

VILLAGE OF VERNON HILLS

ATTEST: Kathy Ryg
Kathy Ryg
Village Clerk

By: Roger L. Byrne
Roger L. Byrne
Village President

G.A.Z., Inc.

ATTEST: _____

By: _____

Its: _____

Its: _____

CUNEO

BANK OF AMERICA ILLINOIS, JOHN F. CUNEO, JR., CONSUELA CUNEO McALISTER, WILLIAM G. MYERS, as Successor Trustees under Declaration of Trust dated August 12, 1935,

By:

Bank of America Illinois

Vice President

John F. Cuneo, Jr.

William G. Myers

Who by their above signatures warrant and represent that they are a majority of said Trustees and, as such majority, are duly and fully authorized to act for, and to bind, all of said Trustees and the aforesaid Trust.

VILLAGE OF VERNON HILLS

ATTEST: _____
Kathy Ryg
Village Clerk

By: _____
Roger L. Byrne
Village President

G.A.Z., Inc.

ATTEST: *Virginia Kraft*
Its: *Secy*

By: _____
Its: *Exec V.P.*

CUNEO

BANK OF AMERICA ILLINOIS, JOHN F. CUNEO, JR., CONSUELA CUNEO McALISTER, WILLIAM G. MYERS, as Successor Trustees under Declaration of Trust dated August 12, 1935,

By:

Bank of America Illinois

Vice President

John F. Cuneo, Jr.

William G. Myers

Who by their above signatures warrant and represent that they are a majority of said Trustees and, as such majority, are duly and fully authorized to act for, and to bind, all of said Trustees and the aforesaid Trust.

VILLAGE OF VERNON HILLS

ATTEST: _____
Kathy Ryg
Village Clerk

By: _____
Roger L. Byrne
Village President

G.A.Z., Inc.

ATTEST: _____

By: _____

Its: _____

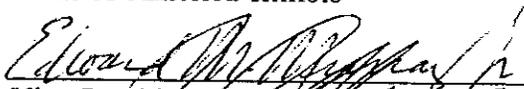
Its: _____

CUNEO

BANK OF AMERICA ILLINOIS, JOHN F. CUNEO, JR., CONSUELA CUNEO McALISTER, WILLIAM G. MYERS, as Successor Trustees under Declaration of Trust dated August 12, 1935,

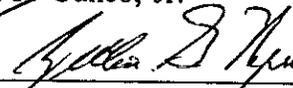
By:

Bank of America Illinois



Vice President

John F. Cuneo, Jr.



William G. Myers

Who by their above signatures warrant and represent that they are a majority of said Trustees and, as such majority, are duly and fully authorized to act for, and to bind, all of said Trustees and the aforesaid Trust.

Execution Copy

Exhibit A Revised As Of September 10, 1996

REVISED CUNEO PROPERTY SITE PLAN