

**JOINT LOCAL LAND RESOURCE MANAGEMENT
PLAN AND AGREEMENT
FOR THE CUNEO PROPERTY**

THIS AGREEMENT, made and entered into as of this 13th day of June, 1995, 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 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 Subsection 2.K 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" as provided for in Subsection 2.D of this Agreement, 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 Subsection 2.K 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 Exhibit A and to be legally described on Exhibit B to be attached to this Agreement pursuant to Subsection 2.K of this Agreement (the "Zale Residential Property"); and

WHEREAS, the remainder of the Zale Development is to be devoted to an eighteen hole golf course and associated facilities to be owned and operated by or on behalf of the Village and 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 Subsection 2.K of this Agreement (the "Village Golf Course Property"); 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 Subsection 2.K 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 general accordance with the Site Plan; and

WHEREAS, the Village desires to enter into an agreement with the County to obtain sewer and water service for the Cuneo Commercial Properties and the Zale Development; 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 on County sewer and water systems; and

WHEREAS, the Parties seek to arrive at an early and binding agreement 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 on County sewer and water systems; and

WHEREAS, in furtherance of the aforesaid objectives, the Parties have reviewed, considered, and agreed to adopt jointly a Local Land Resource Management Plan containing certain land resource management and zoning standards to be enforced within the Cuneo Property that form a necessary basis for properly planning, developing, securing, 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, the Parties intend that the obligations and understandings contained in this Agreement, and in the ordinances adopted, and the covenants and agreements executed, pursuant to this Agreement, shall supplement, and not supplant, the obligations and understandings contained in the Annexation Agreement, but that, in the event of any conflict or inconsistency, the provisions of this Agreement, and of the ordinances adopted, and covenants and agreements executed, pursuant to this Agreement, shall control and take precedence over the provisions of the Annexation Agreement; and

WHEREAS, the Parties intend that the Site Plan, this Agreement, including the Exhibits incorporated herein; the ordinances adopted, the covenants and agreements executed pursuant to this Agreement; and the financial security required and provided pursuant to this Agreement shall constitute a Local Land Resource Management Plan containing, and providing for enforcement of, land resource management and zoning standards applicable to the Zale Development and to the Cuneo Commercial Properties; 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 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 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 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:

L A N D M A N A G E M E N T 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. Land Resource Management Ordinances, Covenants, and Agreements.

A. Village Ordinance. On or before March 1, 1996, or such later date as may be approved in writing by the County Administrator (the "Agreement Date"), the Village shall either (i) deliver directly to the County in the manner provided in Section 14 of this Agreement or (ii) deposit into the Escrow established pursuant to Section 5 of this Agreement a validly approved and adopted, fully executed, legally binding, and properly certified copy of the "Cuneo

Property Development and Use Ordinance," in form and substance the same as or substantially similar to Exhibit C to this Agreement.

B. **Zale Covenant.** On or before the Agreement Date, Zale shall either (i) record and deliver directly to the County in the manner provided in Section 14 of this Agreement or (ii) deposit into the Escrow established pursuant to Section 5 of this Agreement a validly and fully executed, legally binding and enforceable, and irrevocable covenant in form and substance the same as or substantially similar to the covenant attached to this Agreement as Exhibit D (the "Zale Property Development and Use Covenant").

C. **Cuneo Covenants.** On or before the Agreement Date, Cuneo shall either (i) record and deliver directly to the County in the manner provided in Section 14 of this Agreement or (ii) deposit into the Escrow established pursuant to Section 5 of this Agreement three, separate, validly and fully executed, legally binding and enforceable, and irrevocable covenants in form and substance the same as or substantially similar to the three covenants attached to this Agreement as Exhibits E-1, E-2, and E-3 (the "Cuneo Commercial Properties Development and Use Covenants").

D. **Annexation Agreement Amendment.** On or before the Agreement Date, the Village shall either (i) record and deliver directly to the County in the manner provided in Section 14 of this Agreement or (ii) deposit into the Escrow established pursuant to Section 5 of this Agreement a validly and fully executed, legally binding and enforceable, irrevocable, and properly certified copy of an amendment to the Annexation Agreement, in form and substance the same as or substantially similar to the amendment attached to this Agreement as Exhibit F (the "Annexation Agreement Amendment").

E. **Road Agreement.** On or before the Agreement Date, the Village shall either (i) deliver directly to the County in the manner provided in Section 14 of this Agreement or (ii) deposit into the Escrow established pursuant to Section 5 of this Agreement four duplicate original copies of the "Agreement Relating to the Development and Regulation of Roads and Related Facilities to Serve the Cuneo Property," in form and substance the same as or substantially similar to the document attached to this Agreement as Exhibit G (the "Road Agreement"), that have been validly approved and legally and properly executed by the duly authorized representatives of the Village, Zale, and Cuneo.

F. **Sewer and Water Agreement.** On or before the Agreement Date, the Village shall either (i) deliver directly to the County in the manner provided in Section 14 of this Agreement or (ii) deposit into the Escrow established pursuant to Section 5 of this Agreement four duplicate original copies of the "Agreement for Sanitary Sewer and Water Supply Services to the Cuneo Service Area of the Village of Vernon Hills," in form and substance the same as or substantially similar to the document attached to this Agreement as Exhibit H (the "Sewer and Water Agreement"), that have been validly approved and legally and properly executed by the duly authorized representatives of the Village.

G. **County Execution of Road Agreement and Sewer and Water Agreement.** Within 15 days after the date on which the Village, Zale, and Cuneo deliver directly to the County fully adopted, approved, executed, legally binding, and, to the extent required, properly recorded or certified copies of all of the ordinances, covenants, and agreements required pursuant to Subsection 2.A through Subsection 2.F of this Agreement (the "Required Documents") or within 15 days following the County's receipt of the notice specified in

Subparagraph 5.B.1(b) of this Agreement, whichever the case may be, and provided that all County fees and costs required to be paid pursuant to this Agreement and the Road Agreement have been paid and that all letters of credit required to be delivered or deposited on or before the Agreement Date pursuant to Subsection 6.A of this Agreement, have been so delivered or deposited, the County Chairman and County Clerk shall execute and attest the Road Agreement and the Sewer and Water Agreement and shall either (i) deliver original, executed copies of said Agreements directly to each of the Parties to this Agreement in the manner provided in Section 14 of this Agreement or (ii) deposit said copies into the Escrow established pursuant to Section 5 of this Agreement.

H. **Effective Date of Required Documents.** Notwithstanding any other provision of this Agreement or of any of the Required Documents, none of the Required Documents shall take effect unless and until (i) all of the Parties shall have executed and delivered, or deposited into the Escrow established pursuant to Section 5 of this Agreement, all of the Required Documents; (ii) all letters of credit required to be delivered or deposited on or before the Agreement Date pursuant to Subsection 6.A of this Agreement shall have been delivered or deposited as provided in said Subsection; (iii) Zale and Cuneo shall have executed and delivered to the County and the Village, or deposited into the Escrow established pursuant to Section 5 of this Agreement, the Certification of Closing required pursuant to Paragraph 4.B.2 of this Agreement; and (iv) any and all conditions precedent to the effectiveness of any of the Required Documents established pursuant to the terms of any of the Required Documents shall have been satisfied.

I. **Development and Use Restriction.** Unless this Agreement has been terminated pursuant to Subsection 4.B of this Agreement, no Party shall develop or use, or allow the development or use, of any portion of the Zale Property or the Cuneo Commercial Properties except in accordance with the Site Plan, this Agreement, and the Required Documents. Unless this Agreement has been terminated pursuant to Subsection 4.B of this Agreement, no Party shall conduct, or cause to be conducted, any grading or other construction work on the Zale Property or the Cuneo Commercial Properties at any time prior to the date on which (i) the Required Documents shall have been fully adopted, approved, executed, delivered or deposited, and, to the extent required, recorded or certified, pursuant to Subsections 2.A through 2.G of this Agreement; (ii) all letters of credit required to be delivered or deposited on or before the Agreement Date pursuant to Subsection 6.A of this Agreement shall have been delivered or deposited as provided in said Subsection; (iii) the Required Documents shall have taken effect pursuant to Subsection 2.H of this Agreement; and (iv) the Certification of Closing, as defined in Paragraph 4.B.2 of this Agreement, shall have been delivered or deposited as provided in said Paragraph (the "Closing Date"). After the Closing Date, "Preliminary Development Activities," as defined in Paragraph 5.B.4 of the Road Agreement may be authorized to be performed in accordance with the terms and conditions set forth in said Paragraph 5.B.4 of the Road Agreement.

Without limiting the generality of the first two sentences of this Subsection 2.I, the Parties specifically acknowledge and agree that neither the Village nor the County shall, at any time during the term of this Agreement, execute, seal, or stamp any plat of subdivision, or grant any other authorization or approval for any work, development, or use of, on, or for

("Development Approval") the Zale Development, the Zale Property, or the Cuneo Commercial Properties, or any part of any of them, other than Development Approvals for Preliminary Development Activities authorized pursuant to Paragraph 5.B.4 of the Road Agreement, unless (i) such Development Approval shall be in substantial conformity with the Site Plan; (ii) all of the Required Documents shall have been fully adopted, approved, executed, recorded, and delivered or deposited as required pursuant to Subsection 2.A through 2.G of this Agreement; (iii) all letters of credit required to be delivered or deposited on before the Agreement Date pursuant to Subsection 6.A of this Agreement shall have been delivered or deposited as provided in said Subsection; (iv) all the Required Documents shall have taken effect pursuant to Subsection 2.H of this Agreement; (v) the Certification of Closing shall have been delivered or deposited pursuant to Paragraph 4.B.2 of this Agreement; and (vi) all of the obligations imposed by the Required Documents with respect to the property included in such Development Approval shall have been fulfilled as and to the extent required, as of the time such Development Approval is requested, pursuant to the provisions of this Agreement and the Required Documents.

J. **County Property.** For so long as the Annexation Agreement remains in effect, the Village shall not, without the County's prior written consent, annex any property owned by the County. The Village further acknowledges and agrees, based upon Pace v. The City of Evanston and other applicable law, that it does not have, and will not attempt to exercise, zoning jurisdiction over any property of the County that may be annexed to the Village.

K. **Location of Properties.** The Parties acknowledge that the Cuneo, Zale, Cuneo 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 Subsection shall be at Zale's sole cost and expense.

L. **Future Amendments.** After the Required Documents have taken effect pursuant to Subsection 2.H of this Agreement, none of the Required Documents shall be amended, modified, repealed, or terminated except upon the prior written consent of all of the Parties pursuant to the terms and conditions of the respective Required Document.

Section 3. Conflicts with Annexation Agreement.

If, and to the extent that, any depiction, term, condition, restriction, covenant, or provision of the Site Plan, this Agreement, or any of the Required Documents (collectively, the "Controlling Documents") is in conflict or inconsistent with any depiction, term, condition, restriction, covenant, or provision contained in the Annexation Agreement or any ordinances adopted pursuant to the Annexation Agreement (collectively, the "Annexation Documents"), the Controlling Documents shall control, take precedence over, and supersede every such depiction, term, condition, restriction, covenant, or provision of the Annexation Documents, and the Village, Zale, and Cuneo shall individually and collectively have a continuing duty and obligation, in addition to the duty and obligation to approve and execute the Annexation Agreement Amendment pursuant to Subsection 2.D of this Agreement, to take all such actions,

and execute all such documents, as may be necessary at any time during the term of this Agreement to further amend the Annexation Documents as necessary to conform them to the Controlling Documents. However, in the absence of any conflict or inconsistency, the depictions, terms, conditions, restrictions, 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 immediately preceding paragraph, the Parties specifically acknowledge and agree as follows:

- (i) The depictions, terms, conditions, restrictions, covenants, and provisions contained on or in the Controlling Documents relating to the design, use, and density of any portion of the Zale Property or the Cuneo Commercial Properties shall control, take precedence over, and supersede any and all conflicting or inconsistent depictions, terms, conditions, restrictions, covenants, and provisions, if any, set forth in Article VI through Article VIII of the Annexation Agreement.
- (ii) The terms, conditions, restrictions, covenants, and provisions of the Sewer and Water Agreement, including specifically, but without limitation, the "County Sewer and Water Ordinances" (as defined in Section 2.6 of said Agreement) shall control, take precedence over, and supersede any and all conflicting or inconsistent terms, conditions, restrictions, covenants, and provisions, if any, set forth in Article XII, Section J and Section K, and Article XIV, of the Annexation Agreement.

- (iii) The depictions, terms, conditions, restrictions, covenants, and provisions contained on or in the Controlling Documents, including specifically, but without limitation, the Road Agreement, related to Butterfield Road, Milwaukee Avenue, or the internal road network of the Zale Development and the Cuneo Commercial Properties, shall control, take precedence over, and supersede any and all conflicting or inconsistent depictions, terms, conditions, restrictions, covenants, and provisions, if any, set forth in Article XVI and Article XVII of the Annexation Agreement.
- (iv) The limitations, restrictions, and conditions placed on the Village's obligation to grant any Development Approval contained in this Agreement, or in any of the other Controlling Documents, shall control, take precedence over, and supersede any and all contrary duties and obligations contained in any of the Annexation Documents.

Section 4. Term and Termination.

A. **Effective Date and Term.** 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 (the "Effective Date") and shall thereafter continue in full force and effect unless and until terminated pursuant to Subsection 4.B of this Agreement.

B. **Right to Terminate.**

1. **Failure to Approve and Adopt Required Documents.** At any time after the Agreement Date, any Party shall have the right to terminate this Agreement, but only after providing written notice of its intent to do so to all of the other Parties in the manner provided

in Section 14 of this Agreement (a "Notice of Intent to Terminate") unless, prior to a date that is at least 45 days after the date of said Notice of Intent to Terminate but before any Party delivers a "Notice of Termination" as hereinafter provided, all of the Parties shall have either (i) delivered directly to each other in the manner provided in Section 14 of this Agreement or (ii) deposited into the Escrow established pursuant to Section 5 of this Agreement fully adopted, approved, executed, legally binding, and, to the extent required, properly recorded or certified copies of all of the Required Documents. The right to terminate provided by this Paragraph shall be exercised, if at all, only before the occurrence of either of the events specified in Clauses (i) and (ii) of the preceding sentence and only by delivering a "Notice of Termination" to all Parties in the manner provided in Section 14 of this Agreement and, if the Escrow has been established pursuant to Section 5 of this Agreement, by depositing a copy of such Notice, together with an affidavit of service on all parties, in such Escrow. The right to terminate provided by this Paragraph shall expire and be of no further force or effect unless exercised within the time and in the manner specified in the preceding sentence.

2. Failure of the Zale Property Transfer. Cuneo and Zale represent, warrant, and agree that the Cuneo Owners have heretofore entered into a valid and enforceable contract to sell the Zale Property to Zale and that such contract is in full force and effect. At any time after the date that is 45 days after the Agreement Date, any Party shall have the right to terminate this Agreement, but only after providing written notice of its intent to do so to all of the other Parties in the manner provided in Section 14 of this Agreement (a "Notice of Intent to Terminate"), unless, prior to a date that is at least 45 days after the date of said Notice of Intent to Terminate but before any Party delivers a "Notice of Termination" as hereinafter

provided, Zale and Cuneo shall have either (i) delivered directly to the County and the Village in the manner provided in Section 14 of this Agreement or (ii) deposited into the Escrow established pursuant to Section 5 of this Agreement their mutual, written, sworn certification that Zale has acquired record title to, or sole beneficial interest in, the Zale Property (the "Certification of Closing"). The right to terminate provided by this Paragraph shall be exercised, if at all, only before the occurrence of either of the events specified in Clauses (i) and (ii) of the preceding sentence and only by delivering a "Notice of Termination" to all Parties in the manner provided in Section 14 of this Agreement and, if the Escrow has been established pursuant to Section 5 of this Agreement, by depositing a copy of such Notice, together with an affidavit of service on all parties, in such Escrow. The right to terminate provided by this Paragraph shall expire and be of no further force or effect unless exercised within the time and in the manner specified in the preceding sentence.

3. Termination by Agreement. This Agreement may be terminated at any time by the written agreement of all of the Parties by their respective corporate authorities and pursuant to resolutions duly adopted by said corporate authorities.

C. Effect and Use of Agreement Following Termination. If this Agreement is terminated pursuant to Subsection 4.B of this Agreement, this Agreement shall cease to be of any force or effect except that all Parties shall have a continuing duty to, and shall, take any and all actions necessary, including approving, executing, delivering, and recording any and all documents necessary, to rescind, repeal, cancel, terminate, and release any and all of the Required Documents that may have been approved, executed, delivered, or recorded prior to such termination. Following any such termination, nothing in this Agreement shall 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 5. Document Escrow.

A. **Escrow Election.** By giving written notice to all of the other Parties in the manner provided in Section 14 of this Agreement at any time before the Agreement Date, any Party may require that, in lieu of direct delivery of the Required Documents, the Certification of Closing, and any letters of credit required to be delivered on or before the Agreement Date as otherwise required pursuant to Subsection 2.A through Subsection 2.G, Paragraph 4.B.2, and Subsection 6.A of this Agreement, the Required Documents, the Certification of Closing, and all such letters of credit shall be deposited in, and thereafter shall be held in and disbursed from, an escrow (the "Escrow") to be established and maintained (i) pursuant to an escrow agreement approved in advance by the County Administrator and conforming to the provisions of Subsection 5.B of this Agreement (the "Escrow Agreement") and (ii) with the Chicago Title & Trust Company (the "Escrow Agent").

B. **Escrow Terms and Cost.**

1. **Escrow Agreement Terms.** The Escrow Agreement shall, at a minimum, provide as follows:

- (a) On or before the Agreement Date, the Village, Zale, and Cuneo shall deposit into the Escrow, fully adopted, approved, executed, legally binding, and properly certified copies of all of the Required

Documents and all letters of credit required to be deposited on or before the Agreement Date pursuant to Subsection 6.A of this Agreement.

- (b) On or before the fifteenth day after the County receives notice from the Escrow Agent that the Required Documents have been deposited into the Escrow, the County Chairman and County Clerk shall execute and attest the deposited copies of the Road Agreement and the Sewer and Water Agreement.
- (c) On or before the forty-fifth day after the Agreement Date, Zale and Cuneo shall deposit into the Escrow the Certification of Closing.
- (d) If, and whenever, all documents required in the three preceding Subparagraphs have been deposited and executed in the manner required in said Subparagraphs, the Escrow Agent shall immediately, and in proper sequence with any documents affecting the title and ownership of the Cuneo Property, record the Zale Property Development and Use Covenant, the Cuneo Commercial Properties Development and Use Covenants, the Annexation Agreement Amendment, and the Road Agreement or, if approved and deposited pursuant to said Agreement, a summary memorandum thereof. Immediately following such recording, the Escrow Agent shall distribute original, executed, or properly

certified, copies of all of the Required Documents to all of the Parties and shall deliver all original letters of credit to the County.

- (e) If all documents required in the first three Subparagraphs of this Paragraph have not been deposited and executed in the manner, as and when required in said Subparagraphs, the Escrow Agent shall continue to hold any and all previously deposited documents until
- (i) all such documents have been so deposited and executed, in which event, the Escrow Agent shall proceed as provided in Subparagraph 5.B.1(d) of this Paragraph or
 - (ii) a Notice of Termination, together with an affidavit of service on all Parties, is deposited by any Party, in which event, the Escrow Agent shall cancel and void the signatures on any documents previously deposited and return all such documents to the Party or Parties that deposited them.

2. Escrow Costs. The Party or Parties who serve the Escrow election notice pursuant to Subsection 5.A of this Agreement shall bear the entire cost of establishing and maintaining the Escrow, including specifically, but without limitation, all recordation fees and expenses.

Section 6. Performance Security.

A. Performance Letters of Credit Required; General Requirements Applicable to Such Letters.

1. Zale Master Letter of Credit. Zale shall (a) on or before the Agreement Date, either (i) deliver directly to the County in the manner provided in Section 14 of this

Agreement or (ii) deposit into the Escrow established pursuant to Section 5 of this Agreement a validly and fully executed, legally binding and enforceable, and irrevocable letter of credit in the amount of \$11,000,000 and (b) shall, 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," as those terms are defined in the Road Agreement, increase the amount of such letter of credit to \$14,300,000 (the "Master Letter of Credit") as security for the performance of the following obligations (the "Zale Performance Obligations"):

- (a) The dedications and utility work required pursuant to Subsections 4.A, 4.B, and 5.A of the Road Agreement; and
- (b) The dedication, design and construction of the Butterfield Road Stormwater Control Improvements as required pursuant to Subsection 5.D of the Road Agreement; and
- (c) The design and construction of the Thoroughfare and Huntington Connection Improvements as required pursuant to Section 6 of the Road Agreement; and
- (d) The design and construction of the Lake View Extension and Signalized EJ&E Crossing Improvements as required pursuant to Section 7 of the Road Agreement; and
- (e) The design and construction of the Commercial Frontage Road Initial Improvement as required pursuant to Section 8 of the Road Agreement; and

- (f) The design and construction of the Initial Milwaukee/Artaius North Intersection Improvement as required pursuant to Section 9 of the Road Agreement; and
- (g) The dedication of the Cuneo Utility Facility easements and sites, and the dedication, design and construction of the trail connections, as required pursuant to Section 10 and Section 12 of the Road Agreement; and
- (h) The repair of damage to roads pursuant to Section 14 of the Road Agreement; and
- (i) The design, construction, and installation of the Cuneo Initial Utility Facilities as required pursuant to Subsection 3.2A of the Sewer and Water Agreement; and
- (j) Payment of all County fees, costs, and expenses due from Zale pursuant to this Agreement or the Road Agreement.

2. Zale Butterfield Road Improvements Letter of Credit. Zale shall, on or before the Agreement Date, either (i) deliver directly to the County in the manner provided in Section 14 of this Agreement or (ii) deposit into the Escrow established pursuant to Section 5 of this Agreement a validly and fully executed, legally binding and enforceable, and irrevocable letter of credit in the amount of \$1,500,000, or cash in lieu thereof, as required pursuant to Subsection 4.D of the Road Agreement as security for Zale's share of the cost of the Butterfield Road Improvements described in said Subsection (the "Butterfield Road Improvement Letter of Credit").

3. Zale Butterfield Intersections Letter of Credit. Zale shall, 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, provide to the County's Division of Transportation the \$3,600,000 letter of credit required pursuant to Paragraph 5.B.2 of the Road Agreement as security for the design and construction of the improvements described in said Subsection (the "Butterfield Intersections Letter of Credit").

4. Cuneo Letters of Credit. Cuneo shall provide to the County's Division of Transportation, at the times and in the amounts provided in Subsection 8.D and Paragraph 9.C.2 of the Road Agreement, the letters of credit required pursuant to said Subsection and said Paragraph as security for the design and construction of the improvements described in said Subsection and said Paragraph, the repair of damage to roads pursuant to Section 14 of the Road Agreement, and the payment of all County fees, costs, and expenses due from Cuneo pursuant to this Agreement or the Road Agreement.

5. Zale Eminent Domain Letter of Credit. Zale shall provide to the County's Division of Transportation, at the times, in the amounts, and subject to the conditions provided in Section 12 of the Road Agreement, the letters of credit required in said Section as security for the matters set forth in said Section.

6. Cuneo Additional Utility Facilities Letter of Credit. Each owner, subdivider, or developer seeking any Development Approval shall provide to the Village, at the times and in the amounts provided in Subsection 3.2B of the Sewer and Water Agreement, the letter of credit required in said Subsection as security for the design, construction and installation of the portion of the Cuneo Additional Utility Facilities for which such party is responsible.

7. General Requirements. Each letter of credit required to be provided pursuant to Paragraphs 6.A.1 through 6.A.6 of this Agreement (a "Performance Letter of Credit") shall be provided to the County's Division of Transportation or the Village, as required pursuant to said Paragraphs, (the "Administering Agency") and shall be held by such Administering Agency, until reduced and released pursuant to Subsection 6.E of this Agreement, as security for performance by the Party required to provide such Performance Letter of Credit (the "Responsible Party") of the obligations set forth in said Paragraphs as well as all other obligations and responsibilities of the Responsible Party pursuant to this Agreement, the Road Agreement, and the Sewer and Water Agreement.

B. Guaranty Letters of Credit.

1. Road Improvements. As a condition of the Administering Agency's approval and acceptance pursuant to Subsections 13.H and 13.J of the Road Agreement of any road improvement required pursuant to said Agreement (a "Road Improvement"), the Responsible Party shall post a new and separate letter of credit in the amount of 15 percent of the actual total cost of such Road Improvement as security for the performance of the Responsible Party's obligations under Subsection 13.K and Sections 14 and 18 of the Road Agreement (a "Road Improvement Guaranty Letter of Credit"). Each Road Improvement Guaranty Letter of Credit shall be held by the Administering Agency in escrow until the end of the two-year guaranty period set forth in Subsection 13.K of the Road Agreement or until two years after the proper correction of, and payment for, any defect or deficiency in the subject Improvement pursuant to Subsection 13.K of the Road Agreement, whichever occurs later. If the Administering Agency is required to draw down on any Road Improvement Guaranty Letter

of Credit by reason of the Responsible Party's failure to fulfill its obligations under Subsection 13.K or Sections 14 or 18 of the Road Agreement, then the Responsible Party shall within 10 days thereafter cause such Road Improvement Guaranty Letter of Credit to be increased to its full original amount.

2. Sewer and Water Facilities. As a condition of the Administering Agency's approval and acceptance pursuant to Paragraph 3.1B4 of the Sewer and Water Agreement of any sewer or water facility required pursuant to said Agreement (a "Sewer or Water Facility"), the Responsible Party shall post, or cause to be posted, a new and separate letter of credit in the amount of 15 percent of the actual total cost of such Sewer or Water Facility as security for the performance of the Responsible Party's obligations under the Sewer and Water Agreement and all applicable ordinances, rules, and regulations of the Administering Agency (a "Sewer and Water Facility Guaranty Letter of Credit"). Each Sewer and Water Facility Guaranty Letter of Credit shall be held by the Administering Agency pursuant to the requirements of the applicable ordinances, rules, and regulations of the Administering Agency. If the Administering Agency is required to draw down on any Sewer and Water Facility Guaranty Letter of Credit by reason of the Responsible Party's failure to fulfill its obligations under the Sewer and Water Agreement or any applicable ordinances, rules, and regulations of the Administering Agency, then the Responsible Party shall within 10 days thereafter cause such Sewer and Water Facility Guaranty Letter of Credit to be increased to its full original amount.

C. Cost of Letters of Credit. The Responsible Party shall bear the full cost of securing and maintaining every Performance Letter of Credit and every Guaranty Letter of Credit required to be provided by such Responsible Party pursuant to this Section.

D. Form of Letters of Credit. Every Performance Letter of Credit and every Guaranty Letter of Credit provided pursuant to this Section shall be irrevocable, in a form satisfactory to the County Administrator, and from a bank acceptable to the County Administrator, having capital resources of at least \$50,000,000, having an office in the Chicago Metropolitan Area, and being insured by the Federal Deposit Insurance Corporation. Each Performance Letter of Credit and each Guaranty Letter of Credit shall, at a minimum, provide that (i) it shall expire no earlier than one year after the date of its issuance and, in no event, until 60 days after written notice of such expiration has been given by the issuing bank to the Administering Agency; (ii) it may be drawn on based upon the Administering Agency's certification that the Responsible Party has failed to fulfill any of the obligations for which the Performance Letter of Credit or Guaranty Letter of Credit is security, as stated in Subsection 6.A and Subsection 6.B of this Agreement, as well as for the reasons stated in the final sentence of Subsection 6.F of this Agreement and the final sentence of Subsection 6.G of this Agreement; (iii) it shall not require the consent of the Responsible Party prior to any draw on it by the Administering Agency; (iv) it shall not be cancelled without the prior written consent of the Administering Agency; and (v) if at any time it will expire within 45 or any lesser number of days, and if it has not been renewed, and if any obligation of the Responsible Party for which it is security remains uncompleted or unsatisfactory, then the Administering Agency may, without notice and without being required to take any further action of any nature whatsoever, call and draw down the Performance Letter of Credit or the Guaranty Letter of Credit and may thereafter retain and use all proceeds (1) as security for the satisfactory completion of all such obligations, (2) to complete all such obligations and (3) to reimburse the Administering Agency

for any and all costs and expenses, including legal fees and administrative costs, incurred by the Administering Agency, as the Administering Agency shall determine.

E. Reductions and Release.

1. Performance Letter of Credit -- General Provisions. Except as provided in Paragraphs 6.E.2 and 6.E.3 below, each Performance Letter of Credit may provide that the aggregate amount of the Performance Letter of Credit may be reduced and finally released to reimburse the Responsible Party for payments made in respect of work satisfactorily performed and completed on any Road Improvement or any Sewer or Water Facility for which such Performance Letter of Credit is security; provided, however, that no such reduction shall be permitted (i) except upon joint written direction by the Responsible Party and the Administering Agency; (ii) except upon presentation by the Responsible Party of proper contractors' sworn statements, partial or final waivers of lien, as may be appropriate, and all such additional documentation as the Administering Agency may reasonably request to demonstrate satisfactory completion of the Road Improvement or Sewer or Water Facility in question and full payment of all contractors, subcontractors, and material suppliers; (iii) unless such reduction will not reduce the remaining value of such Performance Letter of Credit to an amount less than 130 percent of the cost, as estimated by the Administering Agency, of all work remaining to be done and for which such Performance Letter of Credit is security; and (iv) unless the amount of such reduction is equal to or greater than 30 percent of the original value of such Performance Letter of Credit; and, provided further, however, that no reduction that would result in the amount of such Performance Letter of Credit being reduced below 40 percent of its original value shall be permitted except upon approval and acceptance pursuant to Subsections 13.H and 13.J of the

Road Agreement of any Road Improvement or upon approval and acceptance pursuant to Paragraph 3.1B4 of the Sewer and Water Agreement of any Sewer or Water Facility, and upon the posting of the required Guaranty Letter of Credit pursuant to Subsection 6.B of this Agreement, in which event such Performance Letter of Credit shall be finally released and surrendered by the Administering Agency. In addition, and notwithstanding any other provision of this Subsection, no credit or other allowance for completed Sewer or Water Facility work shall be given for purposes of reducing the Master Letter of Credit unless and until the County Department of Public Works has certified in writing to the Administering Agency that the subject Sewer or Water Facility was completed in compliance with the applicable provisions of the Sewer and Water Agreement.

2. Master Letter of Credit. Notwithstanding any other provision of this Agreement, no reduction in the amount of the Master Letter of Credit required pursuant to Paragraph 6.A.1 of this Agreement shall be permitted except pursuant to the following special terms and conditions:

- (a) There shall be no reduction in the Master Letter of Credit unless and until the County Engineer determines, in writing, that the total remaining cost to complete the Zale Performance Obligations (the "Zale Completion Cost") is \$7,700,000 or less (the "County Engineer's First Draw Determination"). At any time following the County Engineer's First Draw Determination, the Master Letter of Credit may either (i) be reduced, in the manner provided in Subsection 6.E.1 of this Agreement, to no less than \$10,010,000

or (ii) replaced by a series of separate letters of credit consisting of one for each of the Zale Performance Obligations that has not then yet been satisfactorily completed and fully paid for by Zale and approved and accepted in the manner provided in either the Road Agreement or the Sewer and Water Agreement, whichever is applicable (the "Zale Substitute Letters of Credit"). If provided, each Zale Substitute Letter of Credit (i) shall comply with all provisions of this Section 6 applicable to Performance Letters of Credit and shall, for all purposes, constitute and be treated as Performance Letters of Credit under this Section 6, (ii) shall be in an amount equal to 130 percent of the County Engineer's estimate of the cost to complete the Zale Performance Obligation for which such Zale Substitute Letter is security, and (iii) may thereafter be reduced in the manner provided in Paragraph 6.E.1 of this Agreement.

- (b) Unless and until the Master Letter of Credit is replaced with Zale Substitute Letters of Credit in the manner provided in the preceding Subparagraph, the Master Credit of Letter shall not be reduced below the level permitted in the preceding Subparagraph unless and until the County engineer determines, in writing, that the Zale Completion Cost is \$4,400,000 or less (the "County Engineer's Second Draw Determination"). At any time following

the County Engineer's Second Draw Determination, the Master Letter of Credit may be reduced, in the manner provided in Paragraph 6.E.1 of this Agreement, to no less than \$5,720,000. Unless replaced with Zale Substitute Letters of Credit in the manner provided in the preceding Subparagraph, the Master Letter of Credit shall be not be further reduced unless and until such Master Letter of Credit is completely released, in the manner provided in Paragraph 6.E.1 of this Agreement and when, but in no event before, Zale has posted, pursuant to Subsection 6.B of this Agreement, all Guaranty Letters of Credit required in connection with the Zale Performance Obligations.

- (c) If all or any part of the design and construction obligations relating to the "Initial Milwaukee/Artaius North Intersection," as defined and set forth in Subsection 9.B and Subsection 9.C of the Road Agreement, are secured pursuant to the requirements of the Illinois Department of Transportation, the Zale Completion Cost shall be reduced by an amount equal to the County Engineer's estimate of the cost of the design and construction obligations secured pursuant to the requirements of the Illinois Department of Transportation.
- (d) If the Illinois Commerce Commission ("ICC") does not approve the "Signalized EJ&E Crossing," as defined and set forth in Section 7 of the Road Agreement, and if the County

Administrator, in his sole and absolute discretion, determines in writing that all appeals and other actions to reverse the ICC's determination have been exhausted, or would be fruitless, the Zale Completion Cost shall be reduced by the amount of \$236,000.

3. Butterfield Improvements and Intersections Letters of Credit.

Notwithstanding any other provision of this Agreement, the Performance Letters of Credit required pursuant to Paragraphs 6.A.2 and 6.A.3 of this Agreement shall not be reduced in amount for any reason unless and until the Road Improvements for which they are security have been finally and fully completed, approved, and accepted pursuant to the provisions of the Road Agreement; provided, however, that the requirement of acceptance prior to release may, for good cause shown, be waived by the County Engineer if doing so would not adversely affect the interests of the County.

4. Guaranty Letters of Credit. Notwithstanding any other provision of this Agreement, no Guaranty Letter of Credit shall be reduced in amount by reason of any cost incurred by the Responsible Party to satisfy its obligations under Subsection 13.K or Sections 14 or 18 of the Road Agreement or its obligations to repair, correct or replace any Sewer or Water Facility.

F. Replenishment of Letters of Credit. If at any time the Administering Agency determines that the funds remaining in any Performance Letters of Credit, other than the Master Letter Credit at any time before it is first reduced pursuant to Paragraph 6.E.1 of this Agreement and other than the Butterfield Road Improvements Letter of Credit, are not, or may not be, sufficient to pay in full the remaining unpaid cost of the Road Improvements or Sewer or Water

Facilities secured by such Performance Letter of Credit and all unpaid or reasonably anticipated fees, costs, and expenses related thereto, or that the funds remaining in any Guaranty Letter of Credit are not, or may not be, sufficient to pay all unpaid costs of correcting any and all defects and deficiencies in the respective Road Improvements or Sewer or Water Facilities secured by such Guaranty Letter of Credit and all unpaid or reasonably anticipated fees, costs, and expenses related thereto, then, within 10 days following a written demand by the authorized representative of the Administering Agency, the Responsible Party shall increase the amount of such Performance or Guaranty Letter of Credit to an amount determined by the authorized representative of the Administering Agency to be sufficient to pay such unpaid costs, fees, and expenses. Failure to so increase the amount of any such Letter of Credit shall be grounds for the Administering Agency to draw down the entire remaining balance of such Letter of Credit and any other Letter of Credit provided by the Responsible Party pursuant to this Section.

G. Replacement of Letters of Credit. If at any time the Administering Agency determines that the bank issuing any Performance Letter of Credit or any Guaranty Letter of Credit is without capital resources of at least \$50,000,000, is unable to meet any federal or state requirement for reserves, is insolvent, is in danger of becoming any of the foregoing, or is otherwise in danger of being unable or unwilling to honor such Letter of Credit at any time during its term, or if the Administering Agency otherwise reasonably deems itself to be insecure, then the Administering Agency shall have the right to demand that the Responsible Party provide a replacement letter of credit from a bank satisfactory to the Administering Agency. Such replacement letter of credit shall be deposited with the Administering Agency not later than 10 days following such demand. Upon such deposit, the Administering Agency shall surrender

the original Letter of Credit to the Responsible Party. Failure to provide such a replacement letter of credit shall be grounds for the Administering Agency to draw down any or all of the remaining balance of such Letter of Credit and any other Letter of Credit provided by the Responsible Party pursuant to this Section 6.

H. Use of Funds in the Event of Breach of Agreement.

1. Administering Agency. If the Responsible Party (i) fails or refuses to complete or correct any Road Improvement in accordance with the Road Agreement, (ii) fails or refuses to complete or correct any Sewer or Water Facility in accordance with the Sewer and Water Agreement, or (iii) fails or refuses to pay immediately any amount demanded by the County pursuant to Section 18 of the Road Agreement or Section 9 of this Agreement, or in any other manner fails or refuses to meet fully any of its obligations under this Agreement, the Road Agreement or the Sewer and Water Agreement, then the Administering Agency may, in its discretion, draw on and retain all or any of the funds remaining in any Performance Letter of Credit and any Guaranty Letter of Credit provided by such Responsible Party covering that portion of the work to which such failure or refusal relates, (i) as security for the satisfactory completion of all such obligations, (ii) to complete all such obligations, and (iii) to reimburse the Administering Agency for any and all costs and expenses, including legal fees and administrative costs, incurred by the Administering Agency, as the Administering Agency shall determine. The Administering Agency thereafter shall have the right to take any action it deems reasonable and appropriate to mitigate the effects of such failure or refusal, including the right to complete or correct any Road Improvement or Utility Facility, and to reimburse itself from the proceeds of such Performance Letters of Credit and Guaranty Letters of Credit for all of its

costs and expenses, including legal fees and administrative expenses, resulting from or incurred as a result of the Responsible Party's failure or refusal to fully meet its obligations under this Agreement, the Road Agreement, or the Sewer and Water Agreement, as the case may be. If the funds remaining in such Performance Letters of Credit and Guaranty Letters of Credit are insufficient to repay fully the Administering Agency for all such costs and expenses, and to maintain a cash reserve equal to the total amount of all required Guaranty Letters of Credit during the entire time such Guaranty Letters of Credit should have been maintained by the Responsible Party, then the Responsible Party shall, upon demand of the Administering Agency therefor, immediately deposit with the Administering Agency such additional funds as the Administering Agency determines are necessary to fully repay such costs and expenses and, failing such deposit, the Administering Agency may draw upon and retain, for the purposes hereinabove stated, the entire proceeds of any and all other Performance Letters of Credit and Guaranty Letters of Credit provided by such Responsible Party. Upon satisfactory completion of all of the Responsible Party's obligations under this Agreement, the Road Agreement, and the Sewer and Water Agreement, and expiration of the applicable two-year guaranty period set forth in Subsection 6.B of this Agreement, or two years after the proper correction of, and payment for, any defect or deficiency in any Road Improvement pursuant to Subsection 13.K of the Road Agreement, whichever occurs later, any amounts remaining from the funds drawn pursuant to this Subsection, but without interest on such funds, shall be promptly refunded to the Responsible Party.

2. **Responsible Agency.** If the Responsible Party (i) fails or refuses to complete any Road Improvement in accordance with the Road Agreement, (ii) fails or refuses to complete any

Sewer or Water Facility in accordance with the Sewer and Water Agreement, or (iii) fails or refuses to pay immediately any amount demanded by the County pursuant to Section 18 of the Road Agreement or Section 9 of this Agreement, or in any other manner fails or refuses to meet fully any of its obligations under this Agreement, the Road Agreement or the Sewer and Water Agreement, and if the Administering Agency has not exercised its rights pursuant to Paragraph 6.H.1 of this Agreement, then the County or the Village, whichever is not the Administering Agency, with respect to any Road Improvement or any Utility Facility that is to be dedicated to it pursuant to either the Road Agreement or the Sewer and Water Agreement, (the "Responsible Agency") may, in its discretion and in the manner provided in Section 14 of this Agreement, direct the Administering Agency to exercise such rights to the extent necessary to mitigate the effects of such failure or refusal on the Responsible Agency with respect to such Improvement or Facility, and, upon receiving such direction, the Administering Agency shall so exercise its rights; provided, however, that the Village shall not be entitled to give any such direction with respect to the Master Letter of Credit at any time before the County Engineer's First Draw Determination.

I. **County Lien Rights.**

1. **Right to Impose Liens.** If any money, property, or other consideration due from any Responsible Party to the County pursuant to this Agreement, the Road Agreement, or the Sewer and Water Agreement is not either recovered from the Letters of Credit required pursuant to this Section or paid or conveyed to the County by the Responsible Party within 10 days after a demand for such payment or conveyance, then the County Administrator shall have the right to impose and record a lien, in the amount of such money or the County Engineer's

reasonable estimate of the value of such property or other consideration, together with interest and costs of collection, including legal fees and administrative expenses, upon all portions of the Zale Property or the Cuneo North Commercial Property then owned by such Responsible Party, and the County shall have the right to collect such amount or value, with interest and costs, including legal fees and administrative expenses, and the right to enforce such lien in the same manner as in statutory mortgage foreclosure proceedings.

2. **Limitation; Duty to Release.** The County's right to impose and record liens pursuant to Paragraph 6.I.1 above shall not apply to any portion the Zale Property or the Cuneo North Commercial Property that is, at the time such lien is to be recorded, no longer owned by or subject to the legal control and direction, whether directly or indirectly, of Zale or Cuneo, as the case may be. The County shall, at the written request of Zale or Cuneo, as the case may be, accompanied by evidence satisfactory to the County that such party has entered into and is ready to close on a contract for the sale of a portion of the property subject to any lien imposed and recorded pursuant to Paragraph 6.I.1 of this Agreement, release such lien as to such property if, but only if, the requesting party either (i) offers and provides a letter of credit meeting the requirements of this Section and in the amount of 130 percent of the amount of the lien to be released or (ii) offers and provides two MAI appraisals of the property that will remain subject to such lien following such release that establish, to the satisfaction of the County Administrator, that such property remaining subject to such lien has a value in excess of 200 percent of such lien.

3. **Subordination.** Every lien imposed and recorded pursuant to Paragraph 6.I.1 of this Agreement shall be subordinate to any first mortgage now or hereafter placed upon

any such Property; provided, however, that such subordination shall apply only to charges that have become due and payable prior to a sale or transfer of any such Property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Property from liability for any charges thereafter becoming due, nor from the lien of any subsequent charge.

Section 7. Defense of Agreement.

Unless and until this Agreement is terminated pursuant to Subsection 4.B of this Agreement, 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 said Agreement and 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 8. 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 Commercial Properties in perpetuity, and shall extend to, bind, and inure to the benefit of the Parties hereto, and to each of them, and to the benefit of their respective 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, covenant, 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 9. 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, and review of this Agreement and all of the Required Documents. 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 any and all of 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, or 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 any and all of 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 fees, costs, and expenses, due pursuant to this Section 9, 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 Road Agreement, the Sewer and Water Agreement, and any of the other Required Documents at any time after such payment is due.

Section 10. 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 enforcement and litigation costs and expenses, including attorneys' fees, of the enforcing Party.

Section 11. 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 12. Entire Agreement.

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 13. Amendments.

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

Section 14. 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 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

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 15. Exhibits.

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

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: Cuneo Property Development and Use Ordinance

Exhibit D: Zale Property Development and Use Covenant

Exhibit E: Cuneo Commercial Properties Development and Use Covenants

Exhibit F: Annexation Agreement Amendment

Exhibit G: Road Agreement

Exhibit H: Sewer and Water Agreement.

Section 16. 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 17. 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
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: _____

Section 17. 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: _____
Kathy Ryg
Village Clerk

By: _____
Roger L. Byrne
Village President

G.A.Z., Inc.

ATTEST: *Virginia Wolfe*
Virginia Wolfe
Its: Secretary

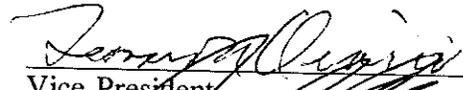
By: *Gerald Hoskins*
Gerald Hoskins
Its: Vice President

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,

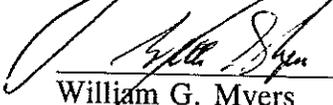
By:

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.