

**ORDINANCE NO. O-2026-XX**

**AN ORDINANCE REPEALING PORTIONS OF ORDINANCE NO. E-3987 REGARDING A PLANNED UNIT DEVELOPMENT AND A PLANNED DEVELOPMENT SUBDIVISION IMPROVEMENT AGREEMENT FOR 50 E. LOOP ROAD, WHEATON, ILLINOIS**

**WHEREAS**, the City of Wheaton, Illinois, ("City") is an Illinois Home Rule Municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970, and as such, the City may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, on May 2, 1994, the Wheaton City Council passed Ordinance No. E-3987 "Ord. E-3987" entitled, "An Ordinance Amending the Wheaton Zoning Ordinance Map and Granting a Special Use Permit for a Planned Unit Development on a Certain Piece of Property Located on the South Side of East Loop Road approximately 300 Feet East of Naperville Road – Outback Steakhouse Restaurant" ("the Subject Property"), which was recorded against the Subject Property on May 19, 1994 as Document No. R94-114712 (a copy of Ord. E-3987 is attached hereto as Exhibit A); and

**WHEREAS**, the Subject Property is legally described as follows:

Lot 1 in KEIM'S OUTBACK SUBDIVISION, being a resubdivision of Lot 2 in KEIM'S EAST LOOP ROAD SUBDIVISION, a resubdivision of Lot 2 in KEIM'S RESUBDIVISION of Lot 6 in DANADA FARMS EAST UNIT 1, in Section 28, Township 39 North, Range 10, East of the Third Principal Meridian, according to the plat of resubdivision record May 19, 1994 as Document No. R94-114712, in DuPage County, Illinois.

Commonly known as: 50 East Loop Road, Wheaton, Illinois

PIN: 05-28-402-012; and

**WHEREAS**, Ord. E-3987 approved the following:

1. Rezoning of the Subject Property to C-5 Special Use/Planned Unit Development District;
2. Granting a special use to permit the construction and use of a planned unit development for an Outback Steakhouse restaurant subject to certain conditions, including but not limited to the following;
  - a. A "shared access" between the Subject Property and the property immediately east thereof;
  - b. Designated fire lanes;
  - c. Certain building construction/material requirements;
  - d. Payment of a \$5,000 Road Improvement Contribution;
3. The final plat of subdivision; and

**WHEREAS**, Ord. E-3987 contained a provision that the special use permit, conditions, restrictions and requirements constituted a declaration of restrictive covenants and shall bind all successors, assigns and grantees; and

**WHEREAS**, on July 11, 1994, a Planned Development Subdivision Improvement Agreement between the City and Outback Steakhouse of Florida, Inc. was recorded against the Subject Property as Document No. R94-149556 (the "Subdivision Agreement"), and all of the conditions contained therein

have since been met by the developer/owner (a copy of the Subdivision Agreement is attached hereto as Exhibit B); and

**WHEREAS,** the restaurant on the Subject Property has been vacant since 2013: and

**WHEREAS,** there is a prospective new owner/developer who is seeking to redevelop the Subject Property as a nursery school; and

**WHEREAS,** a Special Use Permit and Planned Unit Development approval are no longer a requirement under the Wheaton Zoning Ordinance to redevelop the property as a nursery school; and

**WHEREAS,** all other conditions for the special use are no longer applicable to a new development on the Subject Property; and

**WHEREAS,** as Ord. E-3987 and the Subdivision Agreement are restrictions on the Subject Property, the prospective new owner/developer wishes to remove them from the title for the Subject Property.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

**Section 1:** The foregoing recitals are incorporated herein as substantive provisions, factual and legislative findings and represent the intent of this Ordinance as if fully set forth herein.

**Section 2:** All parts of Ord. E-3897, except Section 2.E. which approved the Final Subdivision Plat and the Final Subdivision Plat itself which was attached to Ord. E-3987, are hereby repealed and shall have no further force or effect. Notwithstanding, the City may require the new owner/developer to enter into a new written agreement with the City for the City to enforce compliance with fire lane designations in accordance with applicable City Code.

**Section 3:** The Subdivision Agreement is also repealed and shall have no further force or effect.

**Section 4:** All ordinances or parts of ordinances in conflict with these provisions are repealed.

**Section 5:** This Ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Roll Call Vote

Ayes:  
Nays:  
Absent:

Passed:  
Published:

## ORDINANCE NO. E-3987

AN ORDINANCE AMENDING THE WHEATON ZONING ORDINANCE MAP AND  
GRANTING A SPECIAL USE PERMIT FOR A PLANNED UNIT DEVELOPMENT ON A  
CERTAIN PIECE OF PROPERTY LOCATED ON THE SOUTH SIDE OF EAST LOOP  
ROAD APPROXIMATELY 300 FEET EAST OF NAPERVILLE ROAD-  
OUTBACK STEAKHOUSE RESTAURANT

WHEREAS, written application has been made to amend the Zoning Map, which is attached to and forms the part of, the Zoning Ordinance of Wheaton, Illinois and for the issuance of a special use permit for a planned unit development to allow the construction of a Restaurant on property legally described herein within the city limits of Wheaton, Illinois, and located on the south side of East Loop Road approximately 300 feet east of Naperville Road; and

WHEREAS, the Plan Commission reviewed the application at its April 5, 1994 meeting and has recommended approval; and

WHEREAS, pursuant to notice as required by the Illinois Municipal Code and the City Zoning Ordinance, a public hearing was conducted by the Board of Zoning Appeals on April 12, 1994 to consider the zoning amendment and special use permit; and the Wheaton Board of Zoning Appeals has recommended approval of the zoning amendment and issuance of the special use permit.

NOW THEREFORE, BE IT ORDAINED by the City Council of Wheaton, DuPage County, Illinois ("City"), pursuant to its home rule powers, as follows:

Section 1: The Zoning Map, which is attached to and forms a part of the City Zoning Ordinance, is amended by including the following-described C-5 zoned property in the C-5 Special Use/Planned Unit Development District zoning classification:

THE WESTERLY 170 FEET OF LOT 2 AS MEASURED PERPENDICULAR TO THE WESTERLY LINE IN KEIM'S EAST LOOP SUBDIVISION BEING A SUBDIVISION OF PART OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED JUNE 28, 1991 AS DOCUMENT NO. R91-080372, IN DU PAGE COUNTY, ILLINOIS

PIN 05-28-402-011

This property is commonly located at the south side of East Loop Road approximately 300 feet east of Naperville Road ("Subject Property").

Section 2: Pursuant to the Findings of Fact determined by the Wheaton Board of Zoning Appeals, a special use permit is granted to permit the construction and use of a planned unit development consisting of a Restaurant in substantial compliance with the Site Plan entitled "Outback Steakhouse-Wheaton, Illinois-Preliminary Site Plan", by Cowhey, Gudmunson, Leder, Ltd., dated February 10, 1994, revised March 25, 1994, and the representations, including

R943114712

hours of operation, architectural renderings and plans contained in the document entitled "Outback Steakhouse of Florida, Inc. Planned Unit Development Application to City of Wheaton, Illinois" dated February 15, 1994 and in further full compliance with the following conditions, restrictions and requirements:

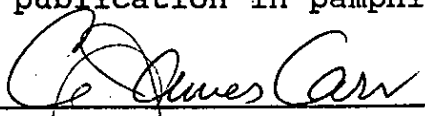
- R94 114712
- A. In the event of any future development of the real estate east of and adjacent to the Subject Property with a compatible use as determined by the City Council, owner, lessee any other person or entity with an interest in the Subject Property, by accepting the benefits contained in this ordinance, agree to "shared access" between the Subject Property and the property immediately east of the Subject Property, along the rear parking area of those two parcels of real estate.
  - B. Prior to the issuance of an Occupancy Permit, fire lanes shall be designated as indicated by the City of Wheaton Fire Department, at the expense of the Developer. By accepting the benefits of this Ordinance and Special Use Permit, the development of the Subject Property, and using the Subject Property as provided for in this Ordinance, owner hereby authorizes the City to enforce compliance with the fire lane designations. Additionally, a paver block fire lane connection shall be provided to the Danada East Shopping Center adjacent to the Subject Property.
  - C. The rear elevation of the restaurant building to be constructed on the Subject Property shall include brick soldier course and rowlocks, similar to that which is contained on the front and sides of the restaurant building.
  - D. The dumpster enclosure shall be constructed of the same brick used in the construction of the restaurant building.
  - E. The Final Subdivision Plat of Keim's Outback Subdivision, prepared by Peter A. Blaeser, an Illinois Professional Land Surveyor, and dated February 24, 1994, is hereby approved. The Mayor is authorized to sign the approval form on said Plat of Subdivision and the City Clerk is authorized and directed to attest to the signature of the Mayor.
  - F. A bicycle rack shall be provided on the site.
  - G. Prior to the issuance of a site development permit, owner\developer shall:
    - (1) File a final set of engineering plans with the City Engineer; the plans shall be subject to the reasonable approval of the City Engineer.

- (2) File a site lighting plan in conformance with the requirements of the City Zoning Ordinance with the City Engineer; the lighting plan shall be subject to the reasonable approval of the City Engineer.
- (3) File with the City Engineer evidence from the DuPage County Department of Environmental Concerns written evidence approving connection of the sanitary sewer on the Subject Property with the sanitary sewer system servicing the property.
- H. Developer\Owner shall pay to the City, not later than the date of issuance of the occupancy permit for the Subject Property, the sum of \$5,000 ("Road Improvement Contribution") as its only contribution for any and all future improvements to East Loop Road and/or the intersections of East Loop Road and Naperville Roads ("Improvements"). The Road Improvement Contribution shall be placed in an interest bearing account by the City. In the event Improvements expanding road capacity have not commenced within five (5) years from the date of this ordinance, the Road Improvement Contribution, plus all interest thereon, shall be refunded by the City to Developer\Owner. If the \$5,000 is expended for Road Improvements, the Subject Property and Developer\Owner shall have no further financial responsibility, and shall not be required to make any additional payment of any kind, for any Road Improvements. If the \$5,000 is returned to the Developer\Owner, the Developer\Owner may be subject to other financing mechanisms for purposes of financing Road Improvements.
- I. The owner of the Subject Property shall maintain all landscaping and plantings on the Subject Property so that the number, quality, and character of the landscaping shall not be less than that which is illustrated on the approved landscape plan.
- J. This special use permit, and the conditions, restrictions, and requirements recited herein, shall be considered a declaration of restrictive covenants and shall be binding upon the Subject Property and its owner, its successor, assigns, and grantees; this ordinance shall be recorded in the office of J.P. Carney, Recorder of Deeds, DuPage County, Illinois.

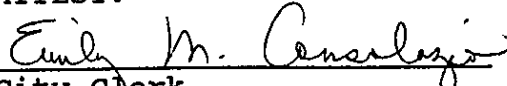
Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.

894 E 114712

Section 4: The ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Ayes:

Roll Call Vote:  
Councilman Gerig  
Councilman Maxwell  
Councilman Mork  
Councilwoman Davenport  
Councilman Eckhoff  
Mayor Carr

Nays:

None

Absent:

Councilwoman Culler

Motion Carried Unanimously

Passed: May 2, 1994  
Published: May 3, 1994

R94 114712

THIS PLAT HAS BEEN SUBMITTED TO THE COUNTY RECORDER FOR THE PURPOSES OF RECORDING BY:

CITY OF WHEATON

303 W. WENLEY ST.

WHEATON IL 60187

(COUNTY) (STATE) (ZIP CODE)

DUPAGE COUNTY RECORDER'S CERTIFICATE

STATE OF ILLINOIS )  
COUNTY OF DU PAGE )

THIS INSTRUMENT 894-114712 WAS FILED FOR RECORD IN THE RECORDER'S OFFICE OF DUPAGE COUNTY, ILLINOIS, ON THE 14 DAY OF MAY, A.D., 1994 AT 11:30 O'CLOCK A.M. AND WAS RECORDED IN BOOK 167 OF PLATS ON PAGE 19.

For Details of this  
Doc. # 894-114712  
See Doc. 894-114712

*[Signature]*  
DUPAGE COUNTY RECORDER

CITY ENGINEER'S CERTIFICATE

STATE OF ILLINOIS )  
COUNTY OF DU PAGE )

I, Paul G. Roman, CITY ENGINEER OF WHEATON, ILLINOIS, DO HEREBY CERTIFY THAT ALL REGULATIONS GOVERNING PLATS ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHEATON, ILLINOIS HAVE BEEN COMPLIED WITH.

DATED AT WHEATON, ILLINOIS, THIS 19 DAY OF MAY, A.D., 1994.

*[Signature]*  
CITY ENGINEER

PLAT COMMISSIONER'S CERTIFICATE

STATE OF ILLINOIS )  
COUNTY OF DU PAGE )

APPROVED THIS 24 DAY OF APRIL, A.D., 1994 BY THE PLAT COMMISSIONER OF THE CITY OF WHEATON, ILLINOIS.

*[Signature]*  
PLAT COMMISSIONER

CITY COUNCIL'S CERTIFICATE

STATE OF ILLINOIS )  
COUNTY OF DU PAGE )

APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WHEATON, ILLINOIS THIS 24 DAY OF MAY, A.D., 1994.

ATTEST: *[Signature]* CITY CLERK *[Signature]* MAYOR

CITY COLLECTOR'S CERTIFICATE

STATE OF ILLINOIS )  
COUNTY OF DU PAGE )

I, James P. Hume, CITY COLLECTOR FOR THE CITY OF WHEATON, ILLINOIS, DO HEREBY CERTIFY THAT THERE ARE NO DELINQUENT OR UNPAID CURRENT OR PROPORTIONED SPECIAL ASSESSMENTS OR ANY DEFERRED INSTALLMENTS THEREOF THAT HAVE BEEN APPOINTED AGAINST THE TRACT OF LAND INCLUDED IN THE ANNEXED PLAT.

DATED AT WHEATON, DUPAGE COUNTY, ILLINOIS, THIS 19 DAY OF MAY, A.D., 1994.

*[Signature]*  
CITY COLLECTOR

COUNTY CLERK'S CERTIFICATE

STATE OF ILLINOIS )  
COUNTY OF DU PAGE )

I, GARY A. KING, COUNTY CLERK OF DUPAGE COUNTY, ILLINOIS, DO HEREBY CERTIFY THAT THERE ARE NO DELINQUENT GENERAL TAXES, NO UNPAID CURRENT TAXES, NO UNPAID FORFEITED TAXES AND NO DELINQUENT TAX SALES AGAINST ANY OF THE LAND INCLUDED IN THE ANNEXED PLAT.

I, FURTHER CERTIFY THAT I HAVE RECEIVED ALL STATUTORY FEES IN CONNECTION WITH THE ANNEXED PLAT.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, COUNTY CLERK OF WHEATON, ILLINOIS THIS 16 DAY OF APRIL, A.D., 1994.

*[Signature]*  
COUNTY CLERK

SUBSURFACE WATER STATEMENT

STATE OF ILLINOIS )  
COUNTY OF DU PAGE )

TO THE BEST OF OUR KNOWLEDGE AND BELIEF THE DRAINAGE OF SURFACE WATERS WILL NOT BE CHANGED BY THE CONSTRUCTION OF SUCH SUBDIVISION OR ANY PART THEREOF, OR THAT IF SUCH SURFACE WATER DRAINAGE WILL BE CHANGED, REASONABLE PROVISION HAS BEEN MADE FOR COLLECTION AND DIVERSION OF SUCH SURFACE WATERS INTO PUBLIC ARKAS, OR DRAINAGE WHICH THE SUBDIVIDER HAS A RIGHT TO USE, AND THAT SUCH SURFACE WATERS WILL BE PLANNED FOR IN ACCORDANCE WITH GENERALLY ACCEPTED ENGINEERING PRACTICES SO AS TO REDUCE THE LIKELIHOOD OF DAMAGE TO THE ADJOINING PROPERTY BECAUSE OF THE CONSTRUCTION OF THE SUBDIVISION.

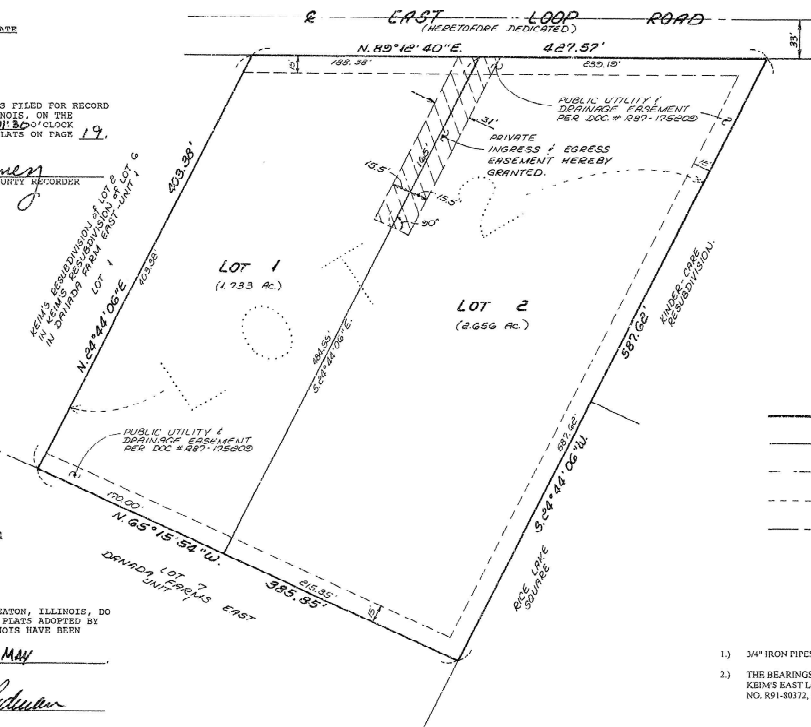
DATED THIS 14 DAY OF MAY, A.D., 1994.

*[Signature]* ENGINEER *[Signature]* SURVEYOR

MY LICENSE EXPIRES ON 11-30-94

# KEIM'S OUTBACK SUBDIVISION

IN PART OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 22 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.



TOTAL AREA OF SUBDIVISION  
4.389 Acres (More or Less)

BOOK 167  
Page 19

LEGEND

- SUBDIVISION BOUNDARY LINE (Heavy Solid Line)
- TOP LINE/PROPOSED LINE (Solid Line)
- BUILDING LINE (Long Dashed Line)
- EASEMENT LINE/LIMITS OF EASEMENT (Short Dashed Lines)
- CENTERLINE (Single Dashed Lines)

NOTES

- 3/4" IRON PILES AT ALL LOT CORNERS UNLESS OTHERWISE NOTED.
- THE BEARINGS SHOWN HEREON ARE BASED ON THE RECORD BEARINGS IN KEIM'S EAST LOOP ROAD SUBDIVISION RECORDED 62991, AS DOCUMENT NO. 891-5072, IN DUPAGE COUNTY, ILLINOIS.

PRIVATE INGRESS AND EGRESS EASEMENT PROVISION

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS IS HEREBY GRANTED OVER THOSE PORTIONS OF LOTS 1 AND 2 IDENTIFIED ON THE HEREIN PLAT BY CROSS-HATCHING FOR THE PURPOSE OF PROVIDING VEHICULAR ACCESS TO THE MUTUAL BENEFIT OF OWNERS AND ASSIONS OF SAID LOTS 1 AND 2 IN KEIM'S OUTBACK SUBDIVISION, SUBJECT TO SUCH COVENANTS, CONDITIONS, LIMITATIONS, RESTRICTIONS, RIGHTS OF TERMINATION, AND MAINTENANCE OBLIGATIONS AS MAY HEREINAFTER BE ESTABLISHED BY THE OWNER OR OWNERS OF SAID LOTS 1 AND 2 BY SEPARATE INSTRUMENT OR INSTRUMENTS RECORDED WITH THE DUPAGE COUNTY RECORDER OF DEEDS OFFICE.

SURVEYOR'S CERTIFICATE

STATE OF ILLINOIS )  
COUNTY OF DUPAGE )

I, PETER A. BLASER, AN ILLINOIS PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT I HAVE SURVEYED AND SUBDIVIDED THE FOLLOWING DESCRIBED PROPERTY:

LOT 1 IN KEIM'S EAST LOOP ROAD SUBDIVISION, BEING A SUBDIVISION OF PART OF SECTION 28, TOWNSHIP 22 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED JUNE 28, 1991 AS DOCUMENT NO. 891-5072, IN DUPAGE COUNTY, ILLINOIS.

THE PLAT HEREON DRAWING IS A CORRECT REPRESENTATION OF SAID SURVEY AND SUBDIVISION, ALL DIMENSIONS SHOWN ARE IN FEET AND DECIMAL PARTS THEREOF CORRECTED TO A TEMPERATURE OF 68 DEGREES FAHRENHEIT.

I FURTHER CERTIFY THAT THE PROPERTY SHOWN ON THE PLAT HEREON DRAWN IS SITUATED WITHIN THE CORPORATE LIMITS OF A MUNICIPALITY WHICH HAS ADOPTED A COMPREHENSIVE PLAN AND WHICH IS EXERCISING THE SPECIAL POWERS AUTHORIZED BY DIVISION 12 OF ARTICLE 11 OF ILLINOIS MUNICIPAL CODE AS HERETOFORE AND HEREAFTER AMENDED AND THAT BASED UPON A REVIEW OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP PANEL NUMBER 17919-0048B WITH EFFECTIVE DATE OF APRIL 15, 1992 AND ADVISED BY FEMA LETTER OF MAP REVISION DATED OCTOBER 11, 1991, IT IS MY OPINION THAT NO PART OF THE SUBJECT PROPERTY DESCRIBED IS LOCATED WITHIN A SPECIAL FLOOD HAZARD AREA AS IDENTIFIED BY SAID FEMA MAP.

I FURTHER CERTIFY THAT ALL REGULATIONS ENACTED BY THE CITY COUNCIL RELATIVE TO PLATS AND SUBDIVISION HAVE BEEN COMPLIED WITHIN THE PREPARATION OF THIS PLAT AND ALL PROVISIONS OF THE STATUTES OF THE STATE OF ILLINOIS RELATIVE TO PLATS HAVE BEEN COMPLIED WITH.

GIVEN UNDER MY HAND AND SEAL THIS 14 DAY OF MAY, A.D., 1994.

*[Signature]*  
ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 3072  
MY EXPIRATION DATE: NOVEMBER 30, 1994



CEMCON, Ltd.

Consulting Engineers, Land Surveyors & Planners  
11511 COUNTY PARK  
WINFIELD, ILLINOIS 60190  
(708) 653-1030

DATE OF COMPLETION: 5/14/94 JOB NO. 003-017

APPROX. SEAL

*[Signature]*  
NOTARY  
*[Signature]*  
PLEASE TYPE/PRINT NAME

GIVEN UNDER MY HAND AND SEAL THIS 14 DAY OF MAY, A.D., 1994.

STATE OF ILLINOIS )  
COUNTY OF DU PAGE )

I, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE AFORESAID COUNTY AND STATE, DO HEREBY CERTIFY THAT THE FOREGOING SIGNATURES OF THE OWNERS CERTIFICATE ARE PERSONALLY KNOWN TO ME TO BE THE SAME PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENTS, WHO APPEARED BEFORE ME THIS DAY IN PERSON AND ACKNOWLEDGED THAT THEY SIGNED AND DELIVERED SAID INSTRUMENT AS THEIR FREE AND VOLUNTARY ACT AND AS THE FREE AND VOLUNTARY ACT SAID 894-114712 AND THEN THEREAFTER DID AFFIX THE CORPORATE SEAL OF SAID 894-114712 AND THEN THEREAFTER DID AFFIX THE CORPORATE SEAL OF SAID 894-114712 PURSUANT TO THE SET FORTH.

GIVEN UNDER MY HAND AND SEAL THIS 14 DAY OF MAY, A.D., 1994.

*[Signature]*  
NOTARY  
*[Signature]*  
PLEASE TYPE/PRINT NAME

PLANNED DEVELOPMENT  
SUBDIVISION IMPROVEMENT  
AGREEMENT

THIS AGREEMENT made and entered into this 27th June 1994  
 by and between the City of Wheaton, an Illinois Corporation, and having its  
 office at City Hall, 303 West Wesley Street, Wheaton, Illinois hereinafter  
 called "City" and Outback Steakhouse of Florida, Inc., ~~X~~  
a Florida Corporation, hereinafter called the "Developer"

WITNESSETH:

WHEREAS, the Developer is seized and possessed in fee simple title in  
 himself or his nominee to the real estate described as follows:

A ~~Lot 1, containing 1.733 Acres in Keim's Outback Subdivision~~

See Attached Legal

Index Number 05 28 402 011 Property

WHEREAS, the Developer desires to subdivide said property described  
 above and has submitted to the City a plat of subdivision designated as:  
Keim's Outback Subdivision

and which subdivision plat has been approved by the Plan Commission and City  
 Council of the City; and

WHEREAS, the City is willing to approve said subdivision plat provided  
 that this agreement is executed to insure the completion of certain public  
 improvements in accordance with its duly enacted ordinances, as a condition to  
 the issuance of occupancy permits for any buildings to be constructed on the  
 property.

NOW THEREFORE, it is mutually agreed as follows:

Prep By: Return to  
 City of Wheaton  
 303 W Wesley  
 Wheaton, IL 60187

RECORDED  
 DU PAGE COUNTY

R94-149556

94 JUL 11 PM 12:00

Exhibits A, B, and C are not attached to the  
 copy presented for recording. These exhibits  
 are on file with the City Engineer of the City of Wheaton.

Note to Recorder:



IMPROVEMENTS

R94 149556

1. The developer shall furnish at his own cost and expense all necessary materials, labor and equipment to complete the required improvements required by the Subdivision Control Ordinance. These improvements are as follows: monuments, sanitary sewers and all appurtenances, storm drainage systems and all appurtenances, watermains and all appurtenances, street lighting and all appurtenances, street signs, street pavements to include curb and gutter, sidewalks, parkway trees, parkway landscaping, and detention area landscaping. All these improvements shall be in accordance with the standards, specifications, and requirements of the City of Wheaton. Such improvements are purportedly indicated by the plans and specifications approved by the City of Wheaton, shown on Exhibit A attached hereto which exhibit has been prepared by Cowhey, Gudmundson Leder, Ltd.

\_\_\_\_\_ who are registered professional engineers. All utility lines and services to be replaced under the street shall be installed prior to paving.

ESCROW AND CONSTRUCTION CONTRACT

2. Attached hereto is Exhibit B, an executed contract between the Developer and a contractor, or a complete cost estimate prepared by a professional engineer, for the construction and improvements described in paragraph 1 hereof. Prior to the execution of this agreement, the Developer shall deposit in escrow (Exhibit "C") an amount equal to the sum of the total of the amounts required to pay said contractor, or 125% of the engineer's cost estimate including all final lot staking and surveying monumentation, by irrevocable letter of credit or cash, in escrow with the City of Wheaton,  
Illinois to be disbursed with the joint written order of the City Engineer, of the City of Wheaton and Outback  
Steakhouse - Richard J. Beach, agent for the Developer for the sole purpose of paying for the improvements herein described. Until said

escrow (Exhibit "C") is established with the City of Wheaton, this agreement shall not be in force and effect. The contract shall be executed by the escrow agent, who shall be approved by the City and who shall be deemed a party to this contract.

#### CONSTRUCTION OBSERVATIONS

3. All work shall be subject to spot construction observations and the approval of the City Engineer, and his written approval thereof shall be a condition precedent to payout or reduction of the funds deposited in escrow. The Developer shall be responsible for inspecting and insuring that his work meets with the approved plans and specifications.

#### OBSERVATION FEES

4. The Developer shall pay 2% of the total cost of the improvement to the City of Wheaton as an construction observation fee, as required by Ordinance. Payment is to be made within ten (10) days of the execution of this agreement.

#### INSURANCE

5. Prior to commencement of any work provided for herein, the Developer and/or his contractors shall furnish the City with certificates of insurance providing for workmen's compensation and employer's liability insurance, including occupational disease coverage and comprehensive liability insurance to cover said work in the following amounts:

- (a) Workmen's compensation (statutory limits)
- (b) Employer's liability (limits \$500,000/1,000,000 including liability for injury or death of City's employees).
- (c) A minimum of Two Hundred Fifty Thousand (\$250,000) Dollars for injury to one person.
- (d) A minimum of Five Hundred Thousand (\$500,000) Dollars for injury to more than one person.

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- (e) A minimum of One Hundred Thousand (\$100,000) Dollars for property damage.

The above amounts being the minimum for each accident. Said certificate or certificates of insurance shall further provide that the City is co-insured with respect to the provisions of said policy as to the improvements covered by this contract.

In addition, by its execution of this agreement, the Developer hereby agrees to indemnify and hold harmless the City, its agents and employees, and each of them, against all loss, damage, attorney's fees or expense which they may sustain or become liable for on account of injury or death of persons, or on account of damage to or destruction of property resulting from the performance of this work agreement by the Developer or his contractors or any employee or subcontractor of any of them, or by the City its agents or employees, or due to the condition of the premises or other property of the Developer upon, about, or in connection with which any work incident to the performance of the terms of this agreement is carried on.

#### ACCEPTANCE AND GUARANTEE

6. The Developer for the work herein specified guarantees that the workmanship and material furnished under the specifications and used in said work will be furnished and performed in accordance with well known established practice and standards recognized by engineers in the trade. All such work shall be new and of the best grade of their respective kinds for the purpose. All materials and workmanship will be guaranteed by the Developer and his escrow agent for a period of one year from the date of final acceptance by the City.

Prior to requesting acceptance, the Developer shall inspect and repair all deficiencies in the subject work. The City will then inspect and provide a list of deficiencies ("Punchlist").

R94-149556

The Developer shall cause all deficiencies to be repaired within 60 days of receipt of the list of deficiencies or the City shall have the right to make or cause the repairs to be made and draw on the escrow, described in Paragraph 2, to insure compliance with this agreement. Failure to complete the deficiencies within 60 days may also require a re-inspection by the City at the Developer's expense. Any re-inspections by the City shall be paid for by the Developer based on time and material costs as actually incurred by the City.

There shall be retained by the City, from the amount due upon the contract, a deferred payment in the amount of ten (10) percent of the total final contract price of the improvements, which amount will be retained for one year after the completion of, and final acceptance of, the improvement, as a guarantee upon the part of the Developer that the workmanship and materials furnished therefore are first class and as above provided, and that the improvement is and will remain in good and sound condition for and during the one year period from and after its completion and acceptance.

The Developer shall make or cause to be made at its own expense, any and all repairs which may become necessary under and by virtue of this contract guarantee, and shall leave the improvement in good and sound condition, satisfactory to the City Engineer, at the expiration of the guarantee. In said event and at the expiration of such period, the amount retained as a guarantee, less any and all necessary expenses which may have been incurred by the City in connection with the maintenance of the improvement, shall be paid over to the Developer as full payment for any balance due under this contract for said improvement.

Further, if during said guarantee period, the improvement shall in the opinion of the City Engineer, require any repairs or renewals which in his judgement are necessitated by reason of settlement of foundation, structure or backfill, or other defective workmanship or materials, the Developer shall

R94 149556

upon notification by the City Engineer of necessity for such repair or renewals, make such repairs or renewals, at its own cost and expense. Should the Developer fail to make such repairs, renewals, within a reasonable time after notification as herein before provided, or to start work within one week after such notification, the City may cause such work to be done, either by contract or otherwise, and the entire cost and expense thereof shall be paid and deducted from the amount retained as a guarantee. Should such cost and expense exceed the amount retained or remaining in the guarantee fund, the Developer or its surety, shall pay such amount of excess to the City.

#### TIME LIMIT

7. The Developer shall cause said improvements herein described to be completed within one year from the date hereof. If work is not completed within the time prescribed herein, then the City shall have the right to complete said work and draw on funds in escrow as provided in Exhibit "C". The Developer shall cause his consulting engineers to correct drawings to show work as actually constructed and said engineers shall turn over original tracings thereof to the City as and for the City's property.

#### ORDINANCES

8. Notwithstanding this Improvement Agreement, in the event a valid ordinance of the City was overlooked at the date hereof, the Developer upon notice from the City and prior to acceptance of the subdivision shall install or perform the improvement or work so required; further, any law or ordinance which shall be passed after the date of this Agreement, which is a law or ordinance directed to the health, safety or welfare of the public, shall apply to this property as of the effective date of said law or ordinance.

#### LIEN WAIVERS

9. The Developer shall furnish the City with a contractor's affidavit showing all subcontractors and material suppliers and further furnish lien

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waivers that all persons who have done work, or have furnished material under this agreement, and are entitled to a lien therefore under any laws of the State of Illinois, have been fully paid or are not longer entitled to such lien.

#### OCCUPANCY PERMITS

10. It is agreed that no occupancy permits shall be issued for any building in said subdivision until all improvements required by this agreement have been completed, except for final road surface course, public sidewalks, and parkway trees. Parkway trees shall be installed within six months from the issuance of a occupancy permit. It is also agreed that parkway trees that do not meet City standards will be replaced and maintained by the Developer no later than 60 days after notification by the City.

#### MAINTENANCE

11. The Developer shall be responsible for the maintenance of the required improvements until such time as they are accepted by the City. This maintenance shall include routine maintenance such as snow removal, pruning and watering of parkway trees, landscaping and street sweeping as well as emergency maintenance such as sewer blockages. If the Developer requests and the City elects, at the time of the execution of this agreement, to have the City perform this maintenance he hereby agrees to reimburse the City its cost for the performance of this maintenance upon the receipt of an invoice from the City setting forth said cost to the City.

#### RESOLUTION

12. It is hereby agreed that the following development shall comply with the strict adherence of Subdivision or Planned Unit Development Ordinance requirements and as approved by ORDINANCE E-3987 a copy of which is attached hereto and made a part hereof.

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BINDING EFFECT

13. This agreement shall be binding upon all parties, their successors and assigns and grantees.

SUCCESSION

14. This agreement cancels and supersedes any agreements heretofore entered into between the parties which are in conflict with the provision hereof.

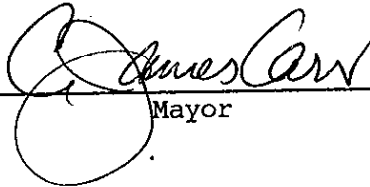
AMENDMENTS

15. All amendments to this agreement shall be in writing and approved by the City Council. City Ordinance provisions in effect at the time of the request for an amendment shall apply. (Unless specified otherwise.)

IN WITNESS WHEREOF, the City has caused this agreement to be executed by its Mayor and attested by its Clerk and the Owner has executed this agreement, all as of the date first above written.

CITY OF WHEATON, an Illinois  
Municipal Corporation

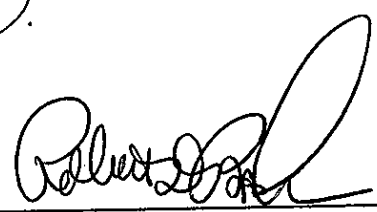
BY

  
Mayor

ATTEST:

  
City Clerk

X DEVELOPER:

  
BY Robert D. Basham, President

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ORDINANCE NO. E-3987

AN ORDINANCE AMENDING THE WHEATON ZONING ORDINANCE MAP AND GRANTING A SPECIAL USE PERMIT FOR A PLANNED UNIT DEVELOPMENT ON A CERTAIN PIECE OF PROPERTY LOCATED ON THE SOUTH SIDE OF EAST LOOP ROAD APPROXIMATELY 300 FEET EAST OF NAPERVILLE ROAD-

OUTBACK STEAKHOUSE RESTAURANT

*50 E. LOOP ROAD WHEATON, ILL.*

WHEREAS, written application has been made to amend the Zoning Map, which is attached to and forms the part of, the Zoning Ordinance of Wheaton, Illinois and for the issuance of a special use permit for a planned unit development to allow the construction of a Restaurant on property legally described herein within the city limits of Wheaton, Illinois, and located on the south side of East Loop Road approximately 300 feet east of Naperville Road; and

WHEREAS, the Plan Commission reviewed the application at its April 5, 1994 meeting and has recommended approval; and

WHEREAS, pursuant to notice as required by the Illinois Municipal Code and the City Zoning Ordinance, a public hearing was conducted by the Board of Zoning Appeals on April 12, 1994 to consider the zoning amendment and special use permit; and the Wheaton Board of Zoning Appeals has recommended approval of the zoning amendment and issuance of the special use permit.

NOW THEREFORE, BE IT ORDAINED by the City Council of Wheaton, DuPage County, Illinois ("City"), pursuant to its home rule powers, as follows:

Section 1: The Zoning Map, which is attached to and forms a part of the City Zoning Ordinance, is amended by including the following-described C-5 zoned property in the C-5 Special Use/Planned Unit Development District zoning classification:

THE WESTERLY 170 FEET OF LOT 2 AS MEASURED PERPENDICULAR TO THE WESTERLY LINE IN KEIM'S EAST LOOP SUBDIVISION BEING A SUBDIVISION OF PART OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED JUNE 28, 1991 AS DOCUMENT NO. R91-080372, IN DU PAGE COUNTY, ILLINOIS

PIN 05-28-402-011

This property is commonly located at the south side of East Loop Road approximately 300 feet east of Naperville Road ("Subject Property").

Section 2: Pursuant to the Findings of Fact determined by the Wheaton Board of Zoning Appeals, a special use permit is granted to permit the construction and use of a planned unit development consisting of a Restaurant in substantial compliance with the Site Plan entitled "Outback Steakhouse-Wheaton, Illinois-Preliminary Site Plan", by Cowhey, Gudmunson, Leder, Ltd., dated February 10, 1994, revised March 25, 1994, and the representations, including



hours of operation, architectural renderings and plans contained in the document entitled "Outback Steakhouse of Florida, Inc. Planned Unit Development Application to City of Wheaton, Illinois" dated February 15, 1994 and in further full compliance with the following conditions, restrictions and requirements:


- A. In the event of any future development of the real estate east of and adjacent to the Subject Property with a compatible use as determined by the City Council, owner, lessee any other person or entity with an interest in the Subject Property, by accepting the benefits contained in this ordinance, agree to "shared access" between the Subject Property and the property immediately east of the Subject Property, along the rear parking area of those two parcels of real estate.
- B. Prior to the issuance of an Occupancy Permit, fire lanes shall be designated as indicated by the City of Wheaton Fire Department, at the expense of the Developer. By accepting the benefits of this Ordinance and Special Use Permit, the development of the Subject Property, and using the Subject Property as provided for in this Ordinance, owner hereby authorizes the City to enforce compliance with the fire lane designations. Additionally, a paver block fire lane connection shall be provided to the Danada East Shopping Center adjacent to the Subject Property.
- C. The rear elevation of the restaurant building to be constructed on the Subject Property shall include brick soldier course and rowlocks, similar to that which is contained on the front and sides of the restaurant building.
- D. The dumpster enclosure shall be constructed of the same brick used in the construction of the restaurant building.
- E. The Final Subdivision Plat of Keim's Outback Subdivision, prepared by Peter A. Blaeser, an Illinois Professional Land Surveyor, and dated February 24, 1994, is hereby approved. The Mayor is authorized to sign the approval form on said Plat of Subdivision and the City Clerk is authorized and directed to attest to the signature of the Mayor.
- F. A bicycle rack shall be provided on the site.
- G. Prior to the issuance of a site development permit, owner\developer shall:
  - (1) File a final set of engineering plans with the City Engineer; the plans shall be subject to the reasonable approval of the City Engineer.

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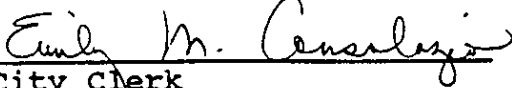
- (2) File a site lighting plan in conformance with the requirements of the City Zoning Ordinance with the City Engineer; the lighting plan shall be subject to the reasonable approval of the City Engineer.
  - (3) File with the City Engineer evidence from the DuPage County Department of Environmental Concerns written evidence approving connection of the sanitary sewer on the Subject Property with the sanitary sewer system servicing the property.
- H. Developer\Owner shall pay to the City, not later than the date of issuance of the occupancy permit for the Subject Property, the sum of \$5,000 ("Road Improvement Contribution") as its only contribution for any and all future improvements to East Loop Road and/or the intersections of East Loop Road and Naperville Roads ("Improvements"). The Road Improvement Contribution shall be placed in an interest bearing account by the City. In the event Improvements expanding road capacity have not commenced within five (5) years from the date of this ordinance, the Road Improvement Contribution, plus all interest thereon, shall be refunded by the City to Developer\Owner. If the \$5,000 is expended for Road Improvements, the Subject Property and Developer\Owner shall have no further financial responsibility, and shall not be required to make any additional payment of any kind, for any Road Improvements. If the \$5,000 is returned to the Developer\Owner, the Developer\Owner may be subject to other financing mechanisms for purposes of financing Road Improvements.
- I. The owner of the Subject Property shall maintain all landscaping and plantings on the Subject Property so that the number, quality, and character of the landscaping shall not be less than that which is illustrated on the approved landscape plan.
- J. This special use permit, and the conditions, restrictions, and requirements recited herein, shall be considered a declaration of restrictive covenants and shall be binding upon the Subject Property and its owner, its successor, assigns, and grantees; this ordinance shall be recorded in the office of J.P. Carney, Recorder of Deeds, DuPage County, Illinois.

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 4: The ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Ayes:

Roll Call Vote:

Councilman Gerig  
Councilman Maxwell  
Councilman Mork  
Councilwoman Davenport  
Councilman Eckhoff  
Mayor Carr

Nays:

None

Absent:

Councilwoman Culler

Motion Carried Unanimously

Passed: May 2, 1994  
Published: May 3, 1994

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**COWHEY GUDMUNDSON LEDER, LTD.**

ROBERT E. COWHEY, P.E.  
ROBERT W. GUDMUNDSON, P.E.  
PAUL D. LEDER, P.E.  
RANDALL A. DRUECK, P.E.  
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HUBERT J. LOFTUS, JR., P.E.  
DONNA L. DELBRIDGE, P.E.  
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DWAYNE L. GILLIAN, P.E.  
J. MARSHALL EAMES

FILE 1342/400

APRIL 26, 1994

ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST  
FOR  
OUTBACK STEAKHOUSE  
WHEATON, ILLINOIS

PAGE 1

ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	EXTENSION
<b>A. EXCAVATION &amp; GRADING</b>					
1.	TOPSOIL STRIP		LUMP SUM	2,250.00	2,250.00
2.	CLAY CUT, CLAY FILL & COMPACT		LUMP SUM	7,500.00	7,500.00
3.	TOPSOIL RESPREAD		LUMP SUM	1,550.00	1,550.00
4.	EROSION CONTROL FABRIC FENCE	1,250	C.Y.	5.00	6,250.00
5.	GENERAL EROSION CONTROL INCL. CONSTRUCTION ENTRANCE, STRAW BALES, ETC.		LUMP SUM	2,750.00	2,750.00
TOTAL EXCAVATION & GRADING					\$20,300.00
<b>B. SANITARY SEWER</b>					
1.	6" PVC SANITARY SEWER	243	L.F.	20.00	4,860.00
2.	48" DIA. MANHOLE W/FRAME, LID & CHIMNEY SEAL	1	EA.	1,300.00	1,300.00
3.	GREASE TRAP STRUCTURE	1	EA.	2,000.00	2,000.00
4.	SELECT GRANULAR BACKFILL	243	L.F.	12.00	2,916.00
5.	ADJUST EXISTING STRUCTURES	1	EA.	400.00	400.00
6.	CONNECTION TO EXISTING MANHOLE	1	EA.	700.00	700.00
TOTAL SANITARY SEWER					\$12,176.00

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ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	EXTENSION
<b>C. WATERMAIN</b>					
1.	6" D.I. WATERMAIN	220	L.F.	16.00	3,520.00
2.	2" COPPER SERVICE	15	L.F.	15.00	225.00
3.	POLYETHYLENE TUBE	220	L.F.	2.50	550.00
4.	6" VALVE & BOX INCL. PRESSURE TAP	1	EA.	1,500.00	1,500.00
5.	2" SERVICE VALVE & BOX	1	EA.	500.00	500.00
6.	FIRE HYDRANT W/AUX. VALVE	1	EA.	1,450.00	1,450.00
7.	SELECT GRANULAR BACKFILL	235	L.F.	10.00	2,350.00
<b>TOTAL WATERMAIN</b>					<b>\$10,095.00</b>
<b>D. STORM SEWER</b>					
1.	10" RCP (CL IV)	222	L.F.	15.00	3,330.00
2.	12" RCP (CL IV)	168	L.F.	17.00	2,856.00
3.	15" RCP (CL IV)	224	L.F.	19.00	4,256.00
4.	24" DIA. INLET	2	EA.	425.00	850.00
5.	48" DIA. INLET	4	EA.	800.00	3,200.00
6.	48" DIA. CATCH BASIN	1	EA.	900.00	900.00
7.	48" DIA. MANHOLE	1	EA.	950.00	950.00
8.	SELECT GRANULAR BACKFILL	560	L.F.	10.00	5,600.00
9.	RESTRICTOR ASSEMBLY	1	EA.	400.00	400.00
<b>TOTAL STORM SEWER</b>					<b>\$22,342.00</b>
<b>E. PAVEMENT, CURB &amp; SIDEWALK</b>					
1.	TYPE A PAVEMENT (HEAVY)	2,610	S.Y.	14.50	37,845.00
2.	TYPE B PAVEMENT	2,930	S.Y.	12.00	35,160.00
3.	CONCRETE APRON (8" PCC ON 7" AGGREGATE BASE)	75	S.Y.	35.00	2,625.00
4.	B6.12 CONCRETE CURB & GUTTER	1,925	L.F.	8.00	15,400.00
5.	SAWCUT EXISTING CURB ON EAST LOOP ROAD	78	L.F.	6.00	468.00
6.	PUBLIC SIDEWALK	744	S.F.	2.75	2,046.00
7.	PRIVATE SIDEWALK (INCL. MONOLITHIC CURB WHERE SHOWN)	2,644	S.F.	2.75	7,271.00

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ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	EXTENSION
8.	PARKING LOT PAVEMENT PAINT STRIPE, SYMBOLS, SIGNAGE & H.C. WHEEL STOPS		LUMP SUM	975.00	975.00
9.	EAST LOOP ROAD THERMOPLASTIC PAVEMENT STRIPES & SYMBOLS		LUMP SUM	750.00	750.00
10.	EMERGENCY ACCESS DRIVE "GRASSROAD PAVERS II PLUS" COMPLETE INSTALLED PER PLAN	95	S.Y.	12.00	1,140.00
TOTAL PAVEMENT, CURB SIDEWALK					\$103,680.00

## F. PARKING LOT LIGHTING

1.	LIGHTS, POLES, FOUNDATIONS & WIRING, COMPLETE	6	EA.	1,700.00	10,200.00
TOTAL PARKING LOT LIGHTING					\$10,200.00

## RECAP

A.	EXCAVATION & GRADING	\$20,300.00
B.	SANITARY SEWER	\$12,176.00
C.	WATERMAIN	\$10,095.00
D.	STORM SEWER	\$22,342.00
E.	PAVEMENT, CURB, SIDEWALK	\$103,680.00
F.	PARKING LOT LIGHTING	\$10,200.00
SUB-TOTAL		\$178,793.00
ADD 25% FOR L.O.C. (CITY REQUIREMENTS)		\$44,698.25
TOTAL LETTER OF CREDIT		\$223,491.25

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