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Inst. No. _____
Filed _____
Date _____

39028
INST. NO. _____
POLK COUNTY, IOWA
FILED FOR RECORD
AT 10⁵⁰ MAR - 8 1977 A.M.
KATHLEEN SHINSTINE, Recorder
Deputy

EASEMENT AGREEMENT

THIS AGREEMENT made this 7th day of March, 1977,
between Raccoon Valley Investment Co., an Iowa corporation, with
offices in Polk County, Iowa (hereinafter referred to as "Grantor"
and General Growth Properties, a Massachusetts voluntary association
(hereinafter referred to as "Grantee").

WHEREAS, the following circumstances exist:

A. Grantor is the owner of certain real estate described on
Exhibit "A" attached hereto and made a part hereof, said real estate
being herein called "Tract I".

B. Grantee is the owner of certain real estate described on
Exhibit "B" attached hereto and made a part hereof, said real estate
being herein called "Tract II".

C. That a storm sewer presently exists on Tract I commencing
in the northeastern portion of the Tract and running in a south-
westerly direction.

D. The Grantee wishes to connect into the storm sewer on Tract
I as more fully described in Paragraph C above in order to service
the real estate on Tract II.

E. Grantee proposes to connect into said existing storm sewer
on Tract I by constructing a storm sewer approximately 277 feet
in length from its property to the existing storm sewer on Tract I
as follows:

Commencing at the S.E. Corner of the NW 1/4 of the
SE 1/4 of Section 20, Township 78 N, Range 24 West
of the 5th P.M., Des Moines, Polk County, Iowa,
thence West, along the South line of the NW 1/4 of
the SE 1/4 of said Section 20, 566.5 feet, to the
point of beginning of said Storm Sewer Easement, thence
South, in a straight line, 277.0 feet, to the end of
said Storm Sewer Easement.

NOW, THEREFORE, in consideration of \$1.00 and other good and valuable consideration, it is agreed between the parties as follows:

1 - Grantor hereby grants to Grantee an easement 25 feet in width to construct a new storm sewer and to tie into the existing storm sewer in the SW 1/4 of the SE 1/4 of Section 20, Township 78 N, Range 24 West of the 5th P.M., Des Moines, Polk County, Iowa, centered on a line described as follows:

Commencing at the S.E. Corner of the NW 1/4 of the SE 1/4 of Section 20, Township 78 N, Range 24 West of the 5th P.M., Des Moines, Polk County, Iowa, thence West, along the South Line of the NW 1/4 of the SE 1/4 of said Section 20, 566.5 feet, to the point of beginning of said Storm Sewer Easement, thence South, in a straight line, 277.0 feet, to the end of said Storm Sewer Easement.

During construction the easement described above shall be increased in width to 50.0 feet as shown on the attached plat, Exhibit "C".

This easement is granted on the condition that, if, in carrying out the above-described operations, any damage is done to improvements or other property of Grantor, Grantee shall be liable for such damage and shall compensate Grantor for any and all damages resulting therefrom.

Grantee warrants that construction will be completed within a reasonable time after execution of this Agreement and will notify Grantor when construction is completed at which time the easement shall be considered to have decreased in width 25 feet as heretofore described.

2 - Modification of Existing Contours on Tract I. Grantee shall have the right, subject to Grantor's written approval which approval shall not unreasonably be withheld, to modify existing contours on Tract I which border Tract II, to improve the flow drainage of water from the Tract. All costs of such modification shall be borne by the Grantee.

3 - Installation of Manholes. Grantee shall install at its own cost, manholes as follows:

- a. One at the area where the contemplated storm sewer enters Tract I from Tract II; and
- b. One manhole to be placed as designated by Grantor.

4 - Filling of Drainage Ditch. Grantee shall completely fill and compact, to a reasonably normal compaction with clean fill dirt only and with no debris of any nature, the existing drainage ditch during the period of construction contemplated herein at Grantee's complete cost.

5 - Limitation on Connection to Existing Storm Sewers. This easement shall only extend to real estate located in Tract II. Grantee shall not be allowed to connect on to the existing storm sewer system on Tract I for the purpose of draining any other real estate located outside of Tract II.

6 - Grantor's Right of Construction. Grantor reserves the right to use the property to which this easement extends in any manner whatsoever, provided the same does not affect this easement, or is inconsistent with the rights contained herein, subject, however, to the provisions of Paragraphs 10 and 11. Nothing herein shall prohibit Grantor from paving over the property to which this easement extends, building over it, or using it for any other purpose which Grantor may desire, subject to the above provisions.

7 - Conduct of Grantee. Grantee covenants and agrees with Grantor that it will, at all times, exercise the rights conveyed hereunder in a reasonable manner; and so as to render the least possible interference to the Grantor.

8 - Other Easements. The easement granted herein shall not limit the Grantor's right from time to time to grant easements to others as Grantor shall deem necessary. This right shall include, but not be limited to, the Grantor's right to tap into the existing storm sewer for its own use without any prior approval from, or notice to, Grantee, provided that such additional easements shall not cause the capacity of the storm sewer on Tract I to be exceeded.

9 - Compliance with Proposed Laws. The Grantee shall construct the proposed storm sewer in conformance with all applicable federal, state, county and city laws and ordinances. That prior to any construction, the Grantee shall provide the Grantor a written certification from its designated licensed engineer directed to Grantor that the proposed storm sewer complies with all such applicable laws and ordinances.

10 - Maintenance. Maintenance shall be as follows:

- a. Grantee shall from time to time and at all times hereafter repair and maintain at its sole cost and expense in a proper, substantial and workmanlike manner the new storm sewer to be constructed on Tract I by Grantee.
- b. Grantee shall pay 60% of the costs of any future maintenance needed on the now existing storm sewer located on Tract I or on any relocation thereof contemplated pursuant to the provisions of paragraph 11 of this Agreement. Any party who is allowed to tap into the storm sewer system located on Tract I for the purpose of draining real estate located outside of Tract I shall pay a pro rata share of the costs of any future maintenance described in this subparagraph (b). The pro rata share to be paid by said party tapping into said system shall be determined by dividing the additional acres to be serviced by the total acres serviced by the sewer system, and Grantee's pro rata cost shall be reduced proportionately.
- c. In the event Grantor should construct any buildings over the storm sewer system, then, notwithstanding the provisions of subparagraphs (a) and (b) of this Paragraph 10, Grantor shall bear the cost of getting to the storm sewer such as any damages to existing buildings over the storm sewer and work caused in getting to the storm sewer and the cost of repairing

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such damages. However, once the storm sewer has been reached, Grantee will bear its share of the cost of any repairs or maintenance as set out in subparagraphs (a) and (b) of this Paragraph 10.

Grantor shall have the right to cause any future maintenance or repairs to the storm sewer system to be done upon reasonable notice to Grantee, and Grantor shall certify under oath the costs thereof to Grantee who shall be responsible for said costs in the manner described in the foregoing provisions of this Paragraph 10.

11 - Relocation of Present Sewer System. Notwithstanding the provisions of this Agreement, Grantor shall have the right at its sole cost and expense to relocate the present sewer system if in its discretion Grantor deems it necessary to do so. Upon completion of the rerouted storm sewer system, Grantee shall be required at its cost and expense to disconnect from Grantor's existing storm sewer system and connect into the rerouted storm system. Grantor shall at its sole cost and expense route the new storm sewer system to the Grantee's manhole described in Paragraph 3(a) of this Agreement or as close thereto as possible to allow connection by Grantee.

12 - Indemnification of Grantor. Grantee shall indemnify Grantor from any and all liability for personal injuries, property damage, or for loss of life or property resulting from, the acts of Grantee, or their agents, in connection with construction of the new storm sewer, use of said storm sewer, or any means of ingress thereto.

13 - Modification. The making, execution and delivery of this Agreement by Grantor and Grantee has been induced by no representations, statements, warranties, or agreements other than those herein expressed. This Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof. This instrument may be amended or modified only by an instrument of equal formality signed by the respective parties.

14 - Notice. Any notice or report required under this Agreement shall be sent to the parties and the agent hereunder at the addresses respectively listed below unless such addresses change by written notice to each person concerned, in which event the new address given shall be used for the sending of such notice or report. Any required notice shall be made by certified mail, properly addressed and postage prepaid.

GRANTOR: Raccoon Valley Investment Co.
2127 Mc Kinley Avenue
Des Moines, Iowa 50321

GRANTEE: General Growth Properties
1055 6th Avenue
P. O. Box 1536
Des Moines, Iowa 50306

15 - Binding on Successors and Assigns. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective heirs, successors and assigns of the Grantor and Grantee.

16 - Trust Clause. General Growth Properties (the Trust) is a voluntary association established under the laws of the Commonwealth of Massachusetts by a Declaration of Trust dated May 19, 1970, which together with all Amendments thereto is on file with the Secretary of the Commonwealth of Massachusetts. The obligations of the Trust are not personally binding upon, nor shall resort be had to the private property of any of the Trustees, shareholders, officers, employees or agents of the Trust, but the Trust property only shall be bound.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

GRANTOR:
Raccoon Valley Investment Co.

By [Signature]
E. C. Coppola, President

GRANTEE:
General Growth Properties

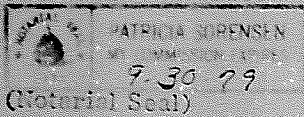
By [Signature]
Stanley Richards, President

ATTEST:
[Signature]
Ruth Francis, Secretary

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STATE OF IOWA)
) SS
COUNTY OF POLK)

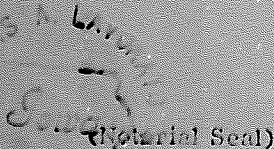
On this 7th day of March, 1977, before me, a Notary Public in and for Polk County, Iowa, personally appeared Stanley Richards and Ruth Francis, to me personally known, who being by me duly sworn did say that they are respectively the President and Secretary of said GENERAL GROWTH PROPERTIES, a Massachusetts voluntary association established under Declaration of Trust dated May 19, 1970, (the "Trust"), and that said instrument was signed in behalf of said Trust by authority of its Trustees and said Stanley Richards and Ruth Francis acknowledged the execution of said instrument to be the voluntary act and deed of said Trust by it voluntarily executed.



Patricia Sorensen
Patricia Sorensen, Notary Public
in and for Polk County, Iowa
My Commission expires Sept. 30, 1979.

STATE OF IOWA)
) SS
COUNTY OF Polk)

On this 7 day of March, 1977, before me a Notary Public in and for Polk County, Iowa, personally appeared E. C. Cappola and [Signature] to me personally known, who being by me duly sworn did say that they ^{are} respectively the President and [Signature] of said Corporation (and that the seal affixed to said instrument is the seal of said [Signature]) (and that no seal has been procured by the said Corporation) and that said instrument was signed (and sealed) in behalf of said corporation by authority of its Board of Directors and said E. C. Cappola and [Signature] acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.



Louis A. Laurato
LOUIS A. LAURATO Notary Public
in and for _____ County, _____
My Commission expires: _____

EXHIBIT A TO EASEMENT AGREEMENT

The following described real estate situated in Polk County, Iowa, identified in the Easement Agreement as Tract I.

"The S. W. 1/4 of the S. E. 1/4 of Section 20T78NR24 West of the 5th P. M. Des Moines, Polk County, Iowa; except the North 322.2 feet of the East 411.0 feet thereof; and except the S. E. 1/4 of the S. W. 1/4 of the S. E. 1/4 thereof; but including the West 150.0 feet of said S. E. 1/4 of the S. W. 1/4 of the S. E. 1/4." Said tract of land being subject to and together with any and all easements of record.

EXHIBIT B TO EASEMENT AGREEMENT

The following described real estate situated in Polk County, Iowa, identified in the Easement Agreement as Tract II.

The Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of Section 20, Township 78 North, Range 24 West of the 5th P. M., Polk County, Iowa, except the following:

Beginning at the intersection of the East line of Southwest 21st Street and the South line of Watrous Avenue, Thence East along the South line of Watrous Avenue 500 feet, thence South and parallel to the East line of Southwest 21st Street 400 feet, thence West 500 feet to the East line of Southwest 21st Street, thence North to place of beginning.

