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6500 N. Andrews Avenue • Fort Lauderdale, FL 33309 • Phone 954-776-1616

MEMORANDUM

DATE: August 30, 2019, **revised October 10, 2019**

TO: Alex A. David, AICP
Interim Community Development Director

FROM: Kristen Nowicki, AICP, Senior Planner

SUBJECT: Site Plan Review of Point Royale Apartments; 18901 S. Dixie Highway (SP-2018-026)
Highlighted words are additions to the existing words

Applicant: Cedar Holding, LLC

Location: 18901 S. Dixie Highway; Folio Numbers 36-6005-070-0010 and 36-6005-014-0010

Property Size: 3.58 acres + 0.67 acres = 4.25 acres

Current Uses: Retail building (the "US-1 Discount Mall") and Vacant

Proposed Use: Residential Apartment Building and Park

Future Land Use Designation: Mixed Use

Zoning District: TRC, Transit Corridor District and SF, Single Family

Background and Applicant's Request: The applicant intends to redevelop the 3.58-acre site. The current US-1 Discount Mall would be demolished and replaced with a new, 7-story, 236-unit apartment building, adding a residential component to the commercial Point Royale Plaza.

Town Consultant Review

The Site Plan application has been reviewed for consistency with the Town of Cutler Bay's Growth Management Plan and Land Development Regulations, including but not limited to: Section 3-33 - Site plan application, Section 3-59 - TRC, Transit Corridor District, Section 3-55 - SR, Single-Family Residential Zoning District, Section 3-80 - Nonresidential and Mixed use (Architecture and Form Standards), Article VIII - Landscape and Tree Protection, Article V - Green Standards, Article IX - Transportation Requirements, and Section 3-151 - Exterior Lighting Standards.

Consistency with Growth Management Plan

The subject property is designated as "Mixed Use" on the Town of Cutler Bay Future Land Use Map. This permits a mix of uses with residential uses encouraged in the form of vertical or

horizontal mixed use. Adding the proposed residential use into the existing Point Royale Plaza will create horizontal mixed use. Along the U.S. 1 corridor, the Mixed Use designation allows residential uses comprising no less than 20% and no more than 80% of the buildings on a development site. The proposed site plan is consistent with the Town's Growth Management Plan.

The table below indicates the density, intensity and site utilization along the U.S. 1 corridor on property designated as Mixed Use:

Mixed Use - U.S. 1 Corridor	Permitted	Proposed
Maximum Floor Area Ratio	2.5	1.84
Multi-Family Density	75 units per acre	66.9 units per acre
Maximum Height	72 ft, with no more than 35 ft adjacent to single family	Apartments: 70 ft 6 in Garage: 35 ft (adjacent to single family)
Residential use in relation to other uses on a mixed use site	No less than 20% and no more than 80%	43.1% Residential (proposed) 56.9% Commercial (existing)

Zoning

The subject property is in the TRC, Transit Corridor District. Included in the permitted uses is Multi-family Residential. The applicant is proposing a multi-family residential use and is therefore in compliance with the permitted uses. The proposed development also complies with the site development standards in the TRC district. A two-story height bonus and a 10% reduction in required parking are requested with the Town's Green Building Program Designation, Section 3-74(4). No variances are requested. Regarding parking, it should be noted that 147 of the 236 apartments are one-bedroom units, and the remaining 89 are two-bedroom. There are no 3- or 4-bedroom floorplans offered.

Height Bonus & Parking Reduction - Green Building Program Designation

The applicant is requesting two additional stories on the apartment building, taking it from the 5 stories permitted in the TRC Zoning District to 7 stories. The proposed design is within the limits of the Growth Management Plan (maximum 72 feet). In addition, the applicant requests a 10% reduction in required parking.

The additional height and reduced parking requirement are components of the Town's Green Building Program Designation (Section 3-74).

Per Section 3-74(1)(a), the applicant must successfully register the project with the Green Building Certification Institute or the state green building coalition, or other third party certifying agency as approved by the town manager, and provide evidence of such registration.

The applicant has received approval by the Town Manager to utilize the National Green Building Standard (NGBS)/ICC 700 certification at the Gold level for this project. NGBS is comparable to LEED or FGBC.

Following the criteria for NGBS Multi-Family New Construction, the applicant's accredited professional, Abney + Abney Green Solutions, has registered the project through NGBS. The application includes a checklist indicating which credits are claimed to achieve Gold level certification. The application is satisfactory and will be subject to compliance before, during, and after construction to achieve the certification.

Uses Surrounding Proposed Apartment Site

	Future Land Use	Zoning District
Subject Property (future apartments)	Mixed Use	TRC, Transit Corridor
South	Single Family	SF, Single Family
Southeast (future park site)	Mixed Use	SF, Single Family
Southwest	Mixed Use	TRC, Transit Corridor
Northeast	Water (Canal)	Water Use
West	Mixed Use	TRC, Transit Corridor

Adjacent Site to be Improved as a Park

The subject 3.58-acre site is adjacent to, and under the same ownership as, a vacant parcel in the SR, Single-Family Residential Zoning District. The Single-Family property is 0.65 acres and proposed to be rezoned at a future date to PK, Park District and improved as a park, including fitness amenities, shade structures, a water feature, and an area for dogs. If the Point Royale Apartments Site Plan is approved by the Town, as a condition of approval, the applicant will improve and dedicate the 0.65-acre site to the Town under subsequent actions.

Environmental Review

The application complies with Article V of the Town's Land Development Regulations, Green Standards. Section 3-72, Standards, covers the requirements for bicycle parking, parking for Electric Vehicles, materials and water conservation. Along with the Green Building Program Designation, the project will comply with Section 3-73, Recycling and diversion of construction and demolition waste.

The standard environmental review was performed by the Miami-Dade County Department of Regulatory and Economic Resources (DERM) for compliance with the requirements of Chapter 24 of the Miami-Dade County Code. A letter of no objection was provided by DERM staff.

Covenant Running with the Land In Lieu of Unity of Title and Easement and Operating Agreement

A "Covenant Running with The Land In Lieu Of Unity of Title" was executed in 1986 to bind together the multiple parcels within the Point Royale Shopping Center. An "Easement and Operating Agreement" is an exhibit to the Covenant, and it references ingress and egress, shared access, shared parking, utilities, and construction. It is recommended that both documents be revised to reflect the changes in the site plan as a result of this application.

Architecture and Form Standards

The proposed elevations comply with Section 3-80- Nonresidential and Mixed Use. In particular, the following amenities will be provided on the property and adjacent proposed park:

Per 3-80(t): 4 features for developments over 5 acres in area

- (1) Patio with a minimum of 1,000 square feet in area with shaded seating;
- (2) Pedestrian plaza with a minimum of 1,000 square feet in area with benches and shade structures;
- (5) Outdoor shaded playground area with a minimum of 1,000 square feet in area;
- (8) Clock tower or other focal feature (decorative entryway feature into park)

Per 3-80(u): 8 features

- (1) Canopies or portico integrated with the building's massing and style;
- (2) Overhangs with a minimum of three feet in depth along all building walls;
- (5) Raised cornice or building banding with a minimum of two reliefs along the building facade;
- (9) Ornamental and structural architectural details, other than cornices, which are integrated into the building structure and overall design;
- (10) Projected and covered entry a minimum of five feet in width;
- (12) Decorative landscape planters, a minimum of five feet wide, and areas for shaded seating consisting of a minimum of 100 square feet;
- (13) Integration of specialty pavers, or stamped concrete along the building's walkway. Said treatment shall constitute a minimum of 60 percent of walkway area;
- (14) Water elements, such as a decorative fountain or similar water feature, a minimum of 300 square feet in area

Landscape Design

The landscape plans adhere to Article VII – Landscaping and Tree Preservation as well as the Miami-Dade County criteria.

Site Plan Criteria, Per Section 3-33(2)

In evaluating an approval of a Site Plan application under per Sec. 3-33(2), Approval Criteria, of the Town's Land Development Regulations, the following evaluation standards apply.

1. The development permitted by the application, if granted, conforms to the growth management plan, is consistent with applicable area or neighborhood studies or plans, and would serve a public benefit warranting the granting of the application at the time it is considered.

The proposed development conforms to the Growth Management Plan and applicable area or neighborhood studies. The subject property complies with the permitted uses in the "Mixed Use" designation on the Town of Cutler Bay Future Land Use Map and the uses permitted in the TRC Zoning District.

The applicant is proposing to add a multi-family residential use to the existing commercial plaza in place of a multi-tenant discount market. The 1- and 2-bedroom apartments will be offered at market rental rates to accommodate professionals, new college graduates, and small families. The nearby retail and restaurant uses in Point Royale Plaza will benefit by having new residents within walking distance to support their businesses. The addition of the residential use creates a "Mixed Use" plaza, conforming to the intent of the Growth Management Plan.

The adjacent vacant site, under the same ownership, is also proposed to be improved as a public park (and dedicated to the Town), which will enhance the quality of life for the new apartment residents as well as the current neighbors.

2. The development permitted by the application, if granted, will have a favorable impact on the environmental and natural resources of the town, including consideration of the means and estimated cost necessary to minimize the adverse impacts, the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the natural and human environment, and whether any irreversible or irretrievable commitment of natural resources will occur as a result of the proposed development.

As a redevelopment project, the proposed development is required to comply with the Town's landscaping requirements. The new landscaping will have a favorable impact on the environmental and natural resources of the town, as well as a favorable visual impact. Improvements to the adjacent vacant site will also have a favorable environmental impact to the Town, as it will become a public park to be utilized by all residents of the Town.

3. The development permitted by the application, if granted, will have a favorable or unfavorable impact on the economy of the town.

The proposed use, residential apartments, complies with the permitted uses in the TRC Zoning district. According to the applicant, the current use, an indoor multi-tenant discount/flea market is about 65% occupied. New apartments will bring new residents to the area who will experience convenient access to shopping, a grocery store, and restaurants, therefore contributing to a favorable impact on the economy of the Town.

4. The development permitted by the application, if granted, will efficiently use or not unduly burden water, sewer, solid waste disposal, recreation, education or other necessary public facilities which have been constructed or planned and budgeted for construction.

The site of the proposed apartments is currently occupied and therefore utilizes water, sewer, and solid waste services. The utility lines will be upgraded and redesigned to accommodate the new use. In particular, the water line serving the site is proposed to be upgraded to meet the demand of a residential building. Recycling and waste diversion will be a part of the proposed use, as it is required per the National Green Building Standards. Twenty-two Electric Vehicle parking spaces are planned for the garage, which prioritizes spaces for residents who have electric vehicles. Recreation will be improved as the plan, if the apartments are approved, is to develop the adjacent vacant site as a park and dedicate it to the Town. Educational services have been reviewed by the Miami-

Dade County School District and any required fees are being handled directly through the School District and the applicant. Stormwater runoff will be improved upon redevelopment, by providing upgraded drainage structures.

5. The development permitted by the application, if granted, will efficiently use or not unduly burden or affect public transportation facilities, including mass transit, roads, streets and highways which have been constructed or planned and budgeted for construction, and if the development is or will be accessible by public or private roads, streets or highways.

The proposed development will efficiently use or not unduly burden or affect public transportation facilities, including mass transit, roads, or streets. A public transit stop is located within walking distance. A dedicated path from the proposed building connecting to the current public sidewalk will provide a walkway for transit riders to and from the transit stop.

The applicant provided a traffic study, which was reviewed by KCI (the Town's Consultant). The proposed development is determined not to adversely diminish levels of service. The review follows, below.

Traffic Review

The proposed Pointe Royale Apartments project, located at 18901 South Dixie Highway in Cutler Bay, consists of a 236 residential unit multi-family development, which will replace 49,959 square feet of an existing commercial shopping center. The proposed development is expected to produce a net -180 daily trips, a net +43 AM peak hour trips, and a net -70 PM peak hour trips.

José L. Rodríguez, P. E. (Florida 45596), of KCI Technologies, Inc. (KCI) has reviewed the original Pointe Royale Apartments Traffic Study report, dated December 2018, and the revised report, dated May 13, 2019 prepared by David Plummer & Associates. All the comments were successfully addressed.

Overall, the proposed project does not produce an adversely diminished Level of Service (LOS) on US-1/SR-5/South Dixie Highway or Marlin Road. All roadway segments, with and without the proposed project, are projected to operate within the Town of Cutler Bay's adopted LOS standards. This is consistent with the Town's Growth Management Plan.

Similarly, the results of the future with project conditions show that the overall LOS for the Marlin Road and Belview Drive intersection will continue to operate within the LOS standards adopted by the Town of Cutler Bay.

The US-1 / Marlin Road intersection is expected to continue to experience delays during the AM and PM peak hours. Signal timing improvements for the AM and PM peak hours are recommended to reduce the southeast bound and northwest bound approach delays.

As part of the traffic study, a mobility and circulation plan was completed. The plan shows that the project site is located in an area that is conducive for pedestrian and bicycle activities and is

well served by a number of Miami-Dade Transit routes and is within walking distance to the South Dade Trail and the South Miami-Dade Busway.

Recommendation:

The staff recommendation is for **approval** of the requested Site Plan and Green Building Program Designation, subject to the following conditions:

- The applicant dedicate land to the Town for public park purposes (Folio No. 36-6005-014-0010)
- Prior to the Certificate of Occupancy for the residential building, the applicant shall deliver the park and associated amenities to the Town as shown in the submitted site plans (sheets A0.06, A0.08, A1.02, A1.02C, PH-01, L-2.00, L-5.00, and L-5.50).
- Fulfilment of the requirements per Section 3-74, Green Building Program Designation, for the two-story height bonus and 10% parking reduction.
- **Revisions to both the Covenant Running with the Land In Lieu of Unity of Title and Easement and Operating Agreement**

1. General Conditions

1.1 The proposed development will be built in accordance with the plans submitted entitled "Point Royale Apartments", consisting of 29 sheets and prepared by Modis Architects, LLC, and Landscapede, LLC, and dated 8/7/2019 and 8/22/2019. The survey was prepared by Narciso J. Ramirez and consists of one page dated December 28, 2018. The Traffic Study was performed by David Plummer & Associates and was dated May 13, 2019. The Green Building Program application was prepared by Abney + Abney Green Solutions and was dated April 12, 2019.

1.2 All applicable impact fees shall be paid by the Applicant prior to issuance of building permit.

1.3 The Applicant shall provide a letter acknowledging compliance with the applicable Level of Services requirements prior to the issuance of final permit to the property.

1.4 Applicant shall submit verification from Miami-Dade County that the proposed new development has been reviewed and approved for all access management consideration prior to the issuance of the final building permit.

1.5 Flood elevations shall be reviewed and approved for consistency with FEMA requirements and the Town's National Insurance Flood Program Ordinance prior to building permit approval.

1.6 The Applicant shall comply with applicable conditions and requirements by Miami-Dade County Public Works Department, Fire Rescue Department, and the Department of Regulatory and Economic Resources (DRER).

2. Construction General Conditions

2.1 Construction Staging

2.1.1 The Applicant shall submit a construction staging plan for review and approval prior to commencement of construction.

2.1.2 A Construction and Maintenance of Traffic (MOT) Plan shall be provided by the Applicant to the Building and Public Works Departments for approval prior to start of construction. Access points by construction vehicles shall be provided within the MOT.

2.2 The Applicant shall provide a Construction Air Quality Management Plan to the Department prior to the start of construction.

2.3 A Construction, Demolition and Materials Management Plan (CDMMP) must be submitted by the Applicant at time of building permit.

2.4 The Applicant shall provide an Erosion Control Plan prior to the issuance of any building permit. The Applicant shall submit a plan for erosion and sedimentation control to be implemented before the site is cleared or graded including areas where top soil will be removed and contours of slopes will be cleared. The Plan shall also include location and type of erosion control measures, storm water and sediment management systems, and a vegetative plan for temporary and permanent stabilization. The Plan shall remain on-site for the duration of the construction activity.

2.5 Construction shall only take place Monday through Friday during the hours of 8:00 a.m. and 5:00 p.m.

3. Landscaping

3.1 The Applicant shall meet all of the minimum requirements of the Town Code, Chapters 18 and 24 of the Miami-Dade County Code and specifically comply with all conditions imposed by Miami-Dade County Department of Regulatory and Economic Resources (DRER) and more specifically, DERM.

3.2 The property shall be landscaped in accordance with the landscape plan, included with the site plan submittal.

3.3 The Applicant shall preserve existing trees (including native trees) during the development of the project, wherever possible. If the trees must be removed, the Applicant shall be required to mitigate the impact in accordance with DERM requirements. If the relocated trees do not survive, the Applicant shall be required to replace the trees in compliance with DERM requirements.

4. Green Building Program Designation

4.1 The applicant shall comply with Town of Cutler Bay Land Development Code Section 3-74(1)(d):

- d. Prior to the issuance of the first principal building permit the applicant shall post a performance bond equal to five percent of the total cost of the construction in order to secure performance and fulfillment of the applicant's obligation to obtain the applicable level of certification. In lieu of the bond required by this section, the town may accept an irrevocable letter of credit from a financial institution authorized to do business in the state or provide evidence of cash deposited in an escrow account in a financial institution in the state in the name of the applicant and the town. The letter of credit or escrow shall be in the same amount of the bond if it were posted. If the project fails to meet the criteria required for certification by the Green Building Certification Institute or other nationally recognized certifying agency within one year after receiving the town's certificate of occupancy, the applicant shall either request an extension or forfeit 100 percent of the bond. The applicant, for good cause shown, may request an extension of time of up to one additional year to achieve certification. Such extension may be granted at the sole discretion of the town council after having considered the factors and improvements necessary to achieve the requisite certification. If certification is not achieved within two years after receiving the town's certificate of occupancy, the applicant shall forfeit 100 percent of the bond. Funds that become available to the town from the forfeiture of the performance bonds shall be deposited in a green building fund established by the town.

5. Environmental

5.1 The Applicant shall meet the requirements of the Miami-Dade County Water-Use Efficiency Standards Manual, effective January 2009, as may be amended from time to time.

5.2 All storm water shall be retained inside the property. All storm water drainage systems shall be maintained in working at all times in order to avoid localize flooding during and after a storm. Parking shall be prohibited on top of any drainage inlet or drainage manhole.

6. Signs

6.1 Provide the Signage Plan, if any, prior to submitting for building permit approval.

6.2 All signs should be consistent with the Town's Sign Regulation in Article VIII of the Town Code.

7. Building

7.1 The Applicant shall use interior paints and wood finishes with low volatile organic compound levels that do not exceed 50 grams per liter flat, or 150 grams per liter non-flat. This shall be noted on the approved plans.

7.2 Paving materials for sidewalks, courtyards, and non-covered parking lots with a minimum solar reflective index (SRI) of 29.

8. Enforcement

8.1 Noncompliance with the approved site plan and the terms of this approval shall be considered a violation of the Town Code. Penalties for such violation(s) shall be prescribed by the Town Code, which include, but are not limited to, the revocation of the approval granted by this Resolution.

KCI Project No. 481900318.04

Employee-Owned Since 1988

1986 JUN 10 PM 4:12

86R189674

**COVENANT RUNNING WITH THE
LAND IN LIEU OF UNITY OF TITLE**

OFF REC 12918 PG 463

Pointe Royale Associates, Ltd., a Florida limited partnership which is the fee simple owner of Parcel 1 as described in Exhibit A hereto, joined by Fabulous Diamonds Partnership, a Florida general partnership which is the fee simple owner of Parcel 2 as described in Exhibit A hereto, (hereinafter collectively "Owner"), hereby makes, declares and imposes on the land described in Exhibit A hereto the easements and covenants running with the title to the land, which shall be binding on the Owner, the heirs, successors and assigns, personal representatives, mortgagees, lessees, and against all persons claiming by, through or under them;

WHEREAS, Each party comprising the Owner holds the respective fee simple title to the land in Dade County, Florida, described in Parcel 1 and Parcel 2 of Exhibit "A" attached hereto, respectively, and made a part hereof, hereinafter called "The Property";

WHEREAS, Owner intends to develop said property for business purposes possibly through a phased development; and

WHEREAS, this instrument is executed in order to assure that any phased development of The Property with future ownership will not violate the Zoning Code of Metropolitan Dade County.

NOW THEREFORE, in consideration of the premises, Owner hereby agrees as follows:

1. The Property will be developed in substantial conformity with the site plan entitled, "Site Plan", prepared by Stuart Cohen & Associates Architects, P.A., dated the 25th day of April, 1986. No modification shall be effected in said site plan without the Director of the Building and Zoning Department; provided the Director finds that the modification conforms with the standards established in Sec. 257 Code of Metropolitan Dade County, and provided further, that should the Director withhold such approval, the then owner(s) of the phase or portion of the property, for which modification is sought, shall be permitted to seek such modification by application to modify the plan or covenant at public hearing before the Zoning Appeals Board or Board of County Commissioners of

This instrument prepared by:

Paul A. Lester, Esq.
Shapiro, Lester & Abramson, P.A.
3250 Mary Street, Suite 405
Miami, Florida 33131

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OFF REC 12918 PG 464

Metropolitan Dade County, Florida (whichever by Law has jurisdiction over such matter).

2. Each phase will be developed in substantial accordance with said site plan.

3. In the event of multiple ownerships subsequent to said site plan approval, each of the subsequent owners, mortgagees and other parties in interest shall be bound by the terms, provisions and conditions of this instrument and of Exhibit B (Easement and Operating Agreement) attached hereto.

4. The provisions of this instrument shall become effective upon their recordation in the public records of Dade County, Florida, and shall continue in effect for a period of thirty (30) years after the date of such recordation, after which time they shall be extended automatically for successive periods of ten (10) years each, unless released in writing by the then owners and the Director of the Building and Zoning Department, acting for and on behalf of Dade County, Florida, upon the demonstration and affirmative finding that the same is no longer necessary to preserve and protect the property for the purposes herein intended.

5. The provisions of this instrument may be amended, added to, derogated, deleted, modified, or changed from time to time as provided herein.

Should this Declaration of Restrictive Covenants be so modified, amended or released, the Director of the Metropolitan Dade County Building and Zoning Department, or his successor, shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.

6. Enforcement shall be by action at law or in equity against any parties or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages. The prevailing party bringing the action or suit shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney.

T2918-70 465

7. Invalidation of any one of these covenants by judgment or Court in no wise shall affect any of the other provisions, which shall remain in full force and effect.

Signed, executed and acknowledged on this 10th day of June, 1986.

Signed and delivered
in the presence of:

Pointe Royale Associates, Ltd.
a Florida limited partnership

By: Pointe Royal Associates, a Florida
Joint Venture as General Partner of
the limited partnership

By: Salsa Investment Company, a
a Florida general partnership

By: Robert L. Shapiro

General Partner

Fabulous Diamonds Partnership

By: [Signature]
General Partner

[Signature]
(As to Associates)

[Signature]
(As to Diamonds)

STATE OF FLORIDA)
COUNTY OF DADE) SS:

The foregoing instrument was acknowledged before me this 10 day of JUNE, 1986, by Robert L. Shapiro, as General Partner of Salsa Investment Company, a Florida general partnership as joint venturer of Pointe Royal Associates, a Florida Joint Venture as general partner of Pointe Royale Associates, Ltd., a Florida limited partnership, on behalf of said limited partnership.

[Signature]
NOTARY PUBLIC, State of Florida
at Large

My Commission Expires:

OFF REC 12918 PG 466

STATE OF FLORIDA)

) SS:

COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 10
 day of May, 1986, by Manuel Gauran, as General Partner of
 Fabulous Diamonds Partnership, a ~~Florida corporation~~, on behalf of
 the ~~corporation~~
Partnership

[Signature]
 NOTARY PUBLIC, State of Florida
 at Large

My Commission Expires:



DEC 12 1988 467

Exhibit A

To the Covenant Running With the Land in Lieu of Unity of Title
Between Pointe Royale Associates, Ltd. and Fabulous Diamonds
Partnership

PARCEL 1: (The property of Pointe Royale Associates, Ltd.)

All of Tract A and Tract C and a portion of Tract B of Point Royale Shopping Center according to the plat thereof, as recorded in Plat Book 99, Page 64, of the Public Records of Dade County, Florida, as is more particularly described as follows:

Commence at the intersection of the Southeasterly corner of the said Tract B and the Southeasterly Right of Way line of the State Road No. 5 (U.S. No. 1); thence run South 59°00'20" East for a distance of 145.67 feet, thence run South 52°55'00" East for a distance of 227.69 feet to the Point of Beginning; thence continue South 52°55'00" East for a distance of 183.78 feet; Being an intersection with a circular curve concave to the Northwest from said intersection, thence run Southwest along the arc of said curve having a radius of 8,277.49 feet, through a central angle of 00°58'00" for a distance of 139.65 feet; thence North 52°55'00" West for a distance of 194.60 feet, thence North 37°05'00" East for a distance of 139.23 feet to the Point of Beginning.

PARCEL 2: (The property of Fabulous Diamonds Partnership)

Tract B of Point Royal Shopping Center according to the plat thereof as recorded in Plat Book 99, at Page 64, of the Public Records of Dade County, Florida, less the following parcel:

Commence at the intersection of the Southeasterly corner of the said Tract B and the Southeasterly Right of Way line of the State Road No. 5 (U.S. No. 1); thence run South 59°00'20" East for a distance of 145.67 feet, thence run South 52°55'00" East for a distance of 227.69 feet to the Point of Beginning; thence continue South 52°55'00" East for a distance of 183.78 feet; Being an intersection with a circular curve concave to the Northwest from said intersection, thence run Southwest along the arc of said curve having a radius of 8,277.49 feet, through a central angle of 00°58'00" for a distance of 139.65 feet; thence North 52°55'00" West for a distance of 194.60 feet, thence North 37°05'00" East for a distance of 139.23 feet to the Point of Beginning.

OFF REC 12918 76 468

EASEMENT AND OPERATING AGREEMENT

This Agreement is made as of the 10 day of June, 1986, by and between Pointe Royale Associates, Ltd., a Florida limited partnership ("Associates"), and Fabulous Diamonds Partnership, a Florida general partnership ("Diamonds").

R E C I T A L S:

A. Associates is the owner of Tract A and of Tract C of Point Royale Shopping Center, according to the plat thereof, as recorded in Plat Book 99, at Page 64, of the Public Records of Dade County, Florida ("Tract A" and "Tract C", respectively).

B. Associates is also the owner of a portion of Tract B of Point Royale Shopping Center, according to the plat thereof, as recorded in Plat Book 99, at Page 64, of the Public Records of Dade County, Florida, as described in that certain Warranty Deed, dated as of June 10, 1986, between Diamonds, as grantor, and Associates, as grantee, recorded June 10, 1986, under Clerk's File Number 86R189672, of the Public Records of Dade County, Florida ("Associates B Property").

C. Diamonds is the owner of that portion of Tract B of Point Royale Shopping Center, according to the plat thereof, as recorded in Plat Book 99, at Page 64, of the Public Records of Dade County, Florida described in Exhibit A attached hereto and made a part hereof by this reference (the "Diamonds Property").

D. Tract A, the Associates B Property and the Diamonds Property (the Associates B Property and the Diamonds Property being sometimes hereinafter collectively called "Tract B"), and Tract C are subject to certain covenants, conditions, restrictions, dedications, and easements of record affecting said lands, including without limitation that certain Restrictive Covenant and Amendment to Lease Instrument, dated June 4, 1971 ("Restrictive Covenants Agreement"), executed by Universal American Realty Corporation, a Delaware corporation ("Universal"), recorded August 30, 1971, in Official

This instrument prepared by:

Paul A. Lester, Esq.
Shapiro, Lester & Abramson, P.A.
3250 Mary Street, Suite 405
Miami, Florida 33131

2918 76 469

Records Book 7352, Page 206, of the Public Records of Dade County, Florida, as amended by that certain Cancellation Agreement, dated February 18, 1976 ("Cancellation Agreement"), between Universal, and W. T. Grant Company, recorded April 21, 1976, in Official Records Book 9300, Page 183, of the Public Records of Dade County, Florida (the Restrictive Covenants Agreement and the Cancellation Agreement being hereinafter collectively called the "Restrictive Covenants"); that certain Indenture, dated April 28, 1971 ("Lease Indenture"), between Universal and The Grand Union Company, recorded May 10, 1971, in Official Records Book 7215, Page 732, of the Public Records of Dade County, Florida, as modified by that certain Supplemental Indenture, dated August 17, 1976, between the Equitable Life Assurance Society of the United States ("Equitable"), as then owner of Tract A of Point Royale Shopping Center, according to the plat thereof, recorded in Plat Book 59, at Page 64, of the Public Records of Dade County, Florida ("Tract A"), and Universal, the then owner of Tract B and of Tract C (the Lease Indenture and the Supplemental Indenture being hereinafter collectively called the "Indenture"); and that certain cross parking Easements Agreement, dated April 29, 1971 ("Easement Agreement"), recorded May 6, 1971, in Official Records Book 7212, Page 144, of the Public Records of Dade County, Florida (the Restrictive Covenants, the Indenture and the Easement Agreement being hereinafter collectively called the "Existing Agreements").

E. The parties hereto agree that the Existing Agreements were entered into, in part benefit Tract A, Tract B, and Tract C, respectively, and that said Existing Agreements constitute covenants running with such lands. In that Associates is as of the date hereof the sole owner of Tract A and Tract C, and of the Associated B Property, and Diamonds is the sole owner of the Diamonds Property all as above described, Associates and Diamonds desire to replace the Existing Agreements with this Agreement as set forth below, but without in any way modifying, impairing or otherwise affecting the Existing Agreements to the extent they directly concern any lands other than Tract A, Tract B or Tract C.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged by the parties hereto, the parties agree as follows:

1. The recitals above stated are true and correct and are incorporated as part of this Agreement as though set forth herein at length.

2. This Agreement expressly supersedes and replaces the Existing Agreements solely as to Tract A, Tract B and Tract C and without effect on any other property which is otherwise affected or subject to any provisions of the Existing Agreements. All of the terms, conditions, and covenants within said Existing Agreements are hereby terminated and deemed to be of no further force or effect without need for any additional act by any party.

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3. In consideration of the above and to further define the rights of the parties hereunder, Associates and Diamonds hereby appropriate each of their specific reservation rights to each other such that each will grant appropriate easements to utility companies and to public authorities and other entities requiring dedications and easements so as to permit the then existing or contemplated future use of the Associates B Property and the Diamonds Property without impediment or material interference from any party whether owner or in any other capacity.

4. A. Associates and Diamonds have entered into that certain Covenant Running With The Land In Lieu of Unity Of Title, dated 10/15/86, recorded under Clerk's File No. for 86R189674, of the Public Records of Brevard County, Florida ("Covenant In Lieu Agreement"). The Covenant In Lieu Agreement is incorporated as part of this Agreement by this reference and made a part hereof. The parties acknowledge that the Covenant In Lieu Agreement constitutes a covenant running with the land subject to release or modification by the appropriate authorities of the Planning and Zoning Department of Metropolitan Brevard County, Florida, and the parties hereby do grant to each other, their tenants, sub tenants, concessionaires and the employees, customers and invitees of each of them for themselves and for the benefit of each of their successors, representatives and assigns and all other permitted occupants or addressees of Tract A and Tract C, the Associates B Property and of the Diamonds Property, such non exclusive rights to easements in perpetuity (unless sooner amended, modified or terminated in accordance with the terms of this Agreement and so long as said properties are used collectively as a retail shopping center) as follows:

(i) easements for use in common with such other owners, tenants, sub tenants, concessionaires and the respective employees, customers and invitees of each, in and to the parking areas, lots and driveways, that may from time to time in the future be laid out and established for motor vehicle traffic and parking on the Associates B Property and on the Diamonds Property, respectively; provided that neither party hereto nor any subsequent owner of any portion of Tract B shall take any action which would impair the then existing rights of any owner to park motor vehicles on the parking areas for Tract B as shown on the Site Plan (hereinafter defined);

(ii) easements in the common area of each parcel for ingress to and egress from the other parcel and to and from U.S. Highway 1;

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(iii) easements in the common area of each parcel for the passage and parking of vehicles;

(iv) easements in common area of each parcel for the passage and accommodation of pedestrians;

(v) easements for access and service roads across the common area of each parcel to public and private roadways;

(vi) easements for the installation, use, operation, maintenance, repair, replacement, relocation and removal of utility facilities in each such parcel; and

(vii) easements on each such parcel during the period of construction of buildings and improvements in favor of each such other parcel;

provided, however, that, all of the above easements are to be consistent with and as required by that certain Site Plan of Tract B approved by Associates and Diamonds, dated April 25, 1986, and prepared by Stuart Cohen & Associates Architects, P.A. ("Site Plan"), which Site Plan may not be amended without the prior written consent of Associates and Diamonds and each of their successors and assigns as the case may be.

B. Other than as set forth in that certain Maintenance Agreement, dated June 2, 1986 ("Maintenance Agreement"), between the parties as attached hereto as Exhibit B, there shall be no payment of any fee or charge for such easements by the owners, tenants, sub-tenants, and concessionaires of the property subject to this Agreement. In no event other than (i) in a public emergency, or (ii) by consent of each of the owners of Tract A, Tract B and Tract C, shall the motor vehicle parking areas and common and service driveways or rights to ingress and egress to the Diamonds Property or the Associates B Property or to Tract A or Tract C, be blocked off by a fence, blockade, or be allowed to deteriorate as to maintenance or paving, so as to prevent the free flow of pedestrian and vehicle traffic or otherwise prevent such parking areas and driveways from being used and maintained as set forth herein. Subject to required governmental approvals, if any, nothing contained in this Agreement shall prevent the owners of each portion of Tract A, Tract B, and Tract C from time to time from changing or designating the location or layout or reducing or increasing the size of the motor vehicle parking lots or driveways, or passage thereof; locations for points of entry of ingress and egress; locations of pedestrian walkways or passageways; or locations for access for maintenance and repair to utility facilities, provided that in each such case (i) prior written consent of Partners, or of its successors or assigns as the case

OFF REC 12918 PG 472

may be, is obtained, and (iii) such changes do not impair the existing use of such areas as contemplated by this Agreement and by the Site Plan. Further, this Agreement shall apply to such areas as are from time to time so changed and relocated. Further, in each such case, Tract A, the Associates B Property, the Diamonds Property, and Tract C and all portions of such shall be deemed to be mutually dominant and servient estates as to the mutual non-exclusive easements granted in this Agreement.

C. Nothing contained in this Agreement will be deemed to be a dedication of any portion of the properties described herein to the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to and for the purpose expressed herein.

D. Other than as set forth in that certain Maintenance Agreement, dated June 10, 1986 ("Maintenance Agreement"), each party shall otherwise maintain and keep in good repair the parking areas and rights of ways situated on its premises and shall keep such areas and rights of ways striped and clear and free of rubbish and obstructions and shall provide adequate drainage and lighting thereon. Each party shall maintain without obstruction and keep in good repair, access and points of entry and exit to U.S. Highway #1 from, over and across Tracts A, B, and C, and by and through Tracts A, B and C, unless other provisions are otherwise made between the parties for such maintenance.

E. Associates agrees to provide Diamonds with a reasonable easement for signage on a portion of the Associates Property fronting on U.S. Highway #1, in all cases subject to and absolutely conditioned on approval of such signage at Diamond's expense by all required governmental authorities. Associates shall cooperate with Diamonds in Diamonds' seeking to obtain such required governmental approvals.

5. The provisions of this Agreement may be enforced by legal and equitable proceedings, and shall be construed and enforced under Florida law, and venue herefor shall be in Brevard County, Florida.

6. Any provision, representation, warranty of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

7. No waiver of any provisions of this Agreement shall be effective unless such waiver is in writing, and signed by the party deemed to have so waived, and the same shall then be effective only for the period and on the conditions and for the specific instances and purposes specified in such writing.

8. If a party hereto shall retain or engage any attorney or attorneys to collect, enforce or protect its interest with respect

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to this Agreement, or any instrument or document delivered pursuant to this Agreement, the non-prevailing party in any court action shall pay all of the reasonable costs and expenses of such collection, enforcement or protection, including without limitation all reasonable attorney's fees and court costs.

9. This Agreement embodies the entire Agreement and understanding of the parties. This Agreement may not be modified or amended without the consent of the owners of Tract A, Tract B and Tract C, and to the extent required without the consent of any holder of a mortgage or mortgages on any portion of Tract A, Tract B or Tract C and without prior written approval of the office of the County Attorney.

10. This Agreement may be executed simultaneously in any number of counterparts each of which counterparts shall be deemed one and the same Agreement.

Executed as of the day and year first above written.

Signed and delivered
in the presence of

Pointe Royale Associates, Ltd.
a Florida limited partnership

By: Pointe Royal Associates, a Florida
Joint Venture as General Partner of
the United partnership

By: Salma Investment Company, a
a Florida general partnership

By: Robert L. Shapiro

General Partner

Fabulous Diamonds Partnership

By: General Partner

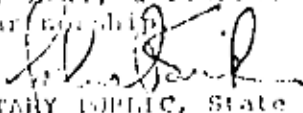
(As to Associates)

(As to Diamonds)

12918 474

STATE OF FLORIDA)
) SS:
 COUNTY OF DADE)

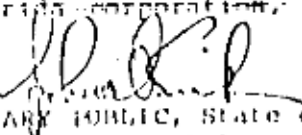
The foregoing instrument was acknowledged before me this 10 day of June, 1986, by Robert L. Shapiro, as General Partner of Silva Investment Company, a Florida general partnership as joint venturer of Pointe Royal Associates, a Florida Joint Venture as general partner of Pointe Royale Associates, Ltd., a Florida limited partnership, on behalf of said limited partnership.


 NOTARY PUBLIC, State of Florida
 at Large

My Commission Expires:

STATE OF FLORIDA)
) SS:
 COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 10 day of May, 1986, by Michael L. Gaudin, as General Partner of Fabulous Diamonds Partnership, a Florida corporation, on behalf of the corporation.
 Partnership


 NOTARY PUBLIC, State of Florida
 at Large

My Commission Expires:

OFF REC 12918 PG 475

Exhibit A

To The Easement and Operating Agreement between Pointe Royale Associates, Ltd., and Fabulous Diamonds Partnership constituting the Legal Description of the Diamonds Property.

Tract B of the Pointe Royale Shopping Center, according to the Plat thereof as recorded in Plat Book 99, at Page 64 of the Public Records of Dade County, Florida less that parcel described as follows:

Commence at the intersection of the Southeasterly corner of the said Tract B and the Southeasterly Right of Way line of the State Road No. 5 (U.S. No. 1); thence run South 59°00'20" East for a distance of 145.67 feet; thence run South 52°55'00" East for a distance of 227.69 feet to the Point of Beginning; thence continue South 52°55'00" East for a distance of 183.78 feet; Being an intersection with a circular curve concave to the Northwesterly from said intersection, thence run Southwesterly along the arc of said curve having a radius of 8,277.49 feet, through a central angle of 00°58'00" for a distance of 139.65 feet; thence North 52°55'00" West for a distance of 194.60 feet, thence North 37°05'00" East for a distance of 139.23 feet to the Point of Beginning.

RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA
RECORD 12918 PG 475
RICHARD P. BRINKER
CLERK CIRCUIT COURT

1986 JUN 10 PM 4:12

86R189675

OFF REC 12918 PG 476

EASEMENT AND OPERATING AGREEMENT

This Agreement is made as of the 10 day of June, 1986, by and between Pointe Royale Associates, Ltd., a Florida limited partnership ("Associates"), and Fabulous Diamonds Partnership, a Florida general partnership ("Diamonds").

R E C I T A L S:

A. Associates is the owner of Tract A and of Tract C of Point Royale Shopping Center, according to the plat thereof, as recorded in Plat Book 99, at Page 64, of the Public Records of Dade County, Florida ("Tract A" and "Tract C", respectively).

B. Associates is also the owner of a portion of Tract B of Point Royale Shopping Center, according to the plat thereof, as recorded in Plat Book 99, at Page 64, of the Public Records of Dade County, Florida, as described in that certain Warranty Deed, dated as of June 10, 1986, between Diamonds, as grantor, and Associates, as grantee, recorded June 10, 1986, under Clerk's File Number 86R189672, of the Public Records of Dade County, Florida ("Associates B Property").

C. Diamonds is the owner of that portion of Tract B of Point Royale Shopping Center, according to the plat thereof, as recorded in Plat Book 99, at Page 64, of the Public Records of Dade County, Florida described in Exhibit A attached hereto and made a part hereof by this reference (the "Diamonds Property").

D. Tract A, the Associates B Property and the Diamonds Property (the Associates B Property and the Diamonds Property being sometimes hereinafter collectively called "Tract B"), and Tract C are subject to certain covenants, conditions, restrictions, dedications, and easements of record affecting said lands, including without limitation that certain Restrictive Covenant and Amendment to Lease instrument, dated June 4, 1971 ("Restrictive Covenants Agreement"), executed by Universal American Realty Corporation, a Delaware corporation ("Universal"), recorded August 30, 1971, in Official

This instrument prepared by:

Paul A. Lester, Esq.
Shapiro, Lester & Abramson, P.A.
3250 Mary Street, Suite 405
Miami, Florida 33131

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Records Book 7352, Page 206, of the Public Records of Dade County, Florida, as amended by that certain Cancellation Agreement, dated February 18, 1976 ("Cancellation Agreement"), between Universal, and W. T. Grant Company, recorded April 21, 1976, in Official Records Book 9300, Page 783, of the Public Records of Dade County, Florida (the Restrictive Covenants Agreement and the Cancellation Agreement being hereinafter collectively called the "Restrictive Covenants"); that certain Indenture, dated April 28, 1971 ("Lease Indenture"), between Universal and The Grand Union Company, recorded May 10, 1971, in Official Records Book 7215, Page 732, of the Public Records of Dade County, Florida, as modified by that certain Supplemental Indenture, dated August 17, 1976, between the Equitable Life Assurance Society Of the United States ("Equitable"), as then owner of Tract A of Point Royale Shopping Center, according to the plat thereof, recorded in Plat Book 99, at Page 64, of the Public Records of Dade County, Florida ("Tract A"), and Universal, the then owner of Tract B and of Tract C (the Lease Indenture and the Supplemental Indenture being hereinafter collectively called the "Indenture"); and that certain cross parking Easements agreement, dated April 29, 1971 ("Easement Agreement"), recorded May 6, 1971, in Official Records Book 7212, Page 144, of the Public Records of Dade County, Florida (the Restrictive Covenants, the Indenture and the Easement Agreement being hereinafter collectively called the "Existing Agreements").

E. The parties hereto agree that the Existing Agreements were entered into, to in part benefit Tract A, Tract B, and Tract C, respectively, and that said Existing Agreements constitute covenants running with such lands. In that Associates is as of the date hereof the sole owner of Tract A and Tract C, and of the Associates B Property, and Diamonds is the sole owner of the Diamonds Property all as above described, Associates and Diamonds desire to replace the Existing Agreements with this Agreement as set forth below, but without in any way modifying, impairing or otherwise affecting the Existing Agreements to the extent they directly concern any lands other than Tract A, Tract B or Tract C.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged by the parties hereto, the parties agree as follows:

1. The recitals above stated are true and correct and are incorporated as part of this Agreement as though set forth herein at length.

2. This Agreement expressly supersedes and replaces the Existing Agreements solely as to Tract A, Tract B and Tract C and without effect on any other property which is otherwise affected or subject to any provisions of the Existing Agreements. All of the terms, conditions, and covenants within said Existing Agreements are hereby terminated and deemed to be of no further force or effect without need for any additional act by any party.

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3. In consideration of the above and to further define the rights of the parties hereunder, Associates and Diamonds hereby appropriate each of their specific reservation rights to each other such that each will grant appropriate easements to utility companies and to public authorities and other entities requiring dedications and easements so as to permit the then existing or contemplated future use of the Associates B Property and the Diamonds Property without impediment or material interference from any party whether owner or in any other capacity.

4. A. Associates and Diamonds have entered into that certain Covenant Running With The Land In Lieu of Unity Of Title, dated May 10, 1986, recorded under Clerk's File Number 86-189674, of the Public Records of Dade County, Florida ("Covenant in Lieu Agreement"). The Covenant in Lieu Agreement is incorporated as part of this Agreement by this reference and made a part hereof. The parties acknowledge that the Covenant in Lieu Agreement constitutes a covenant running with the land subject to release or modification by the appropriate authorities of the Building and Zoning Department of Metropolitan Dade County, Florida, and the parties hereby do grant to each other, their tenants, sub-tenants, concessionaires and the employees, customers and invitees of each of them for themselves and for the benefit of each of their successors, representatives and assigns and all other permitted occupants or admittees of Tract A and Tract C, the Associates B Property and of the Diamonds Property, such non-exclusive rights to easements in perpetuity (unless sooner amended, modified or terminated in accordance with the terms of this Agreement and so long as said properties are used collectively as a retail shopping center) as follows:

(i) easements for use in common with such other owners, tenants, sub-tenants, concessionaires and the respective employees, customers and invitees of each, in and to the parking areas, lots and driveways, that may from time to time in the future be laid out and established for motor vehicle traffic and parking on the Associates B Property and on the Diamonds Property, respectively; provided that neither party hereto nor any subsequent owner of any portion of Tract B shall take any action which would impair the then existing rights of any owner to park motor vehicles on the parking areas for Tract B as shown on the Site Plan (hereinafter defined):

(ii) easements in the common area of each parcel for ingress to and egress from the other parcel and to and from U.S. Highway #1;

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(iii) easements in the common area of each parcel for the passage and parking of vehicles;

(iv) easements in common area of each parcel for the passage and accommodation of pedestrians;

(v) easements for access and service roads across the common area of each parcel to public and private roadways;

(vi) easements for the installation, use, operation, maintenance, repair, replacement, relocation and removal of utility facilities in each such parcel; and

(vii) easements on each such parcel during the period of construction of buildings and improvements in favor of each such other parcel;

provided, however, that, all of the above easements are to be consistent with and as required by that certain Site Plan of Tract B approved by Associates and Diamonds, dated April 25, 1986, and prepared by Stuart Cohen & Associates Architects, P.A. ("Site Plan"), which Site Plan may not be amended without the prior written consent of Associates and Diamonds and each of their successors and assigns as the case may be.

B. Other than as set forth in that certain Maintenance Agreement, dated June 10, 1986 ("Maintenance Agreement"), between the parties as attached hereto as Exhibit B, there shall be no payment of any fee or charge for such easements by the owners, tenants, sub-tenants, and concessionaires of the property subject to this Agreement. In no event other than (i) in a public emergency, or (ii) by consent of each of the owners of Tract A, Tract B and Tract C, shall the motor vehicle parking areas and common and service driveways or rights to ingress and egress to the Diamonds Property or the Associates B Property or to Tract A or Tract C, be blocked off by a fence, blockade, or be allowed to deteriorate as to maintenance or paving, so as to prevent the free flow of pedestrian and vehicle traffic or otherwise prevent such parking areas and driveways from being used and maintained as set forth herein. Subject to required governmental approvals, if any, nothing contained in this Agreement shall prevent the owners of each portion of Tract A, Tract B, and Tract C from time to time from changing or designating the location or layout or reducing or increasing the size of the motor vehicle parking lots or driveways, or passage thereof; locations for points of entry of ingress and egress; locations of pedestrian walkways or passageways; or locations for access for maintenance and repair to utility facilities, provided that in each such case (i) prior written consent of Partners, or of its successors or assigns as the case

12918 70 480

may be, is obtained, and (ii) such changes do not impair the existing use of such areas as contemplated by this Agreement and by the Site Plan. Further, this Agreement shall apply to such areas as are from time to time so changed and relocated. Further, in each such case, Tract A, the Associates B Property, the Diamonds Property, and Tract C and all portions of each shall be deemed to be mutually dominant and servient estates as to the mutual non-exclusive easements granted in this Agreement.

C. Nothing contained in this Agreement will be deemed to be a dedication of any portion of the properties described herein to the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to and for the purpose expressed herein.

D. Other than as set forth in that certain Maintenance Agreement, dated June 10, 1986 ("Maintenance Agreement"), each party shall otherwise maintain and keep in good repair the parking areas and rights-of-ways situated on its Premises and shall keep such areas and rights-of-ways striped and clear and free of rubbish and obstructions and shall provide adequate drainage and lighting thereon. Each party shall maintain without obstruction and keep in good repair, access and points of entry and exit to U.S. Highway #1 from, over and across Tracts A, B, and C, and by and through Tracts A, B and C, unless other provisions are otherwise made between the parties for such maintenance.

E. Associates agrees to provide Diamonds with a reasonable easement for signage on a portion of the Associates Property fronting on U.S. Highway #1, in all cases subject to and absolutely conditioned on approval of such signage at Diamond's expense by all required governmental authorities. Associates shall cooperate with Diamonds in Diamonds' seeking to obtain such required governmental approvals.

5. The provisions of this Agreement may be enforced by legal and equitable proceedings, and shall be construed and enforced under Florida law, and venue herefor shall be in Dade County, Florida.

6. Any provision, representation, warranty of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

7. No waiver of any provisions of this Agreement shall be effective unless such waiver is in writing, and signed by the party deemed to have so waived, and the same shall then be effective only for the period and on the conditions and for the specific instances and purposes specified in such writing.

8. If a party hereto shall retain or engage any attorney or attorneys to collect, enforce or protect its interest with respect

DEC 12 1988 481

to this Agreement, or any instrument or document delivered pursuant to this Agreement, the non-prevailing party in any court action shall pay all of the reasonable costs and expenses of such collection, enforcement or protection, including without limitation all reasonable attorney's fees and court costs.

9. This Agreement embodies the entire Agreement and understanding of the parties. This Agreement may not be modified or amended without the consent of the owners of Tract A, Tract B and Tract C, and to the extent required without the consent of any holder of a mortgage or mortgages on any portion of Tract A, Tract B or Tract C and without prior written approval of the office of the County Attorney.

10. This Agreement may be executed simultaneously in any number of counterparts each of which counterparts shall be deemed one and the same Agreement.

Executed as of the day and year first aboved written.

Signed and delivered
in the presence of:

Pointe Royale Associates, Ltd.
a Florida limited partnership

By: Pointe Royal Associates, a Florida
Joint Venture as General Partner of
the limited partnership

By: Salsa Investment Company, a
a Florida general partnership

By: Robert L. Shapiro

General Partner

Fabulous Diamonds Partnership

By: General Partner

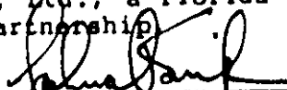
Paul A. Foster
David S. Lerner
(As to Associates)

Paul A. Foster
David S. Lerner
(As to Diamonds)

OFF 12918 PG 482

STATE OF FLORIDA)
) SS:
 COUNTY OF DADE)


The foregoing instrument was acknowledged before me this 10 day of June, 1986, by Robert L. Shapiro, as General Partner of Salsa Investment Company, a Florida general partnership as joint venturer of Pointe Royal Associates, a Florida Joint Venture as general partner of Pointe Royale Associates, Inc., a Florida limited partnership, on behalf of said limited partnership.


 NOTARY PUBLIC, State of Florida
 at Large

My Commission Expires:

STATE OF FLORIDA)
) SS:
 COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 10 day of May, 1986, by MANUEL GAUNAURO, as General Partner of Fabulous Diamonds Partnership, a ~~Florida corporation~~, on behalf of the ~~corporation~~.
Partnership


 NOTARY PUBLIC, State of Florida
 at Large

My Commission Expires:

OFF REC 12918 PC 483

Exhibit A

To The Easement and Operating Agreement between Points Royale Associates Ltd., and Fabulous Diamonds Partnership constituting the Legal Description of the Diamonds Property

Tract B of the Point Royale Shopping Center, according to the Plat thereof as recorded in Plat Book 99, at Page 64 of the Public Records of Dade County, Florida less that parcel described as follows:

Commence at the intersection of the Southeasterly corner of the said Tract B and the Southeasterly Right of Way line of the State Road No. 5 (U.S. No. 1); thence run South 59°00'20" East for a distance of 145.67 feet, thence run South 52°55'00" East for a distance of 227.69 feet to the Point of Beginning; thence continue South 52°55'00" East for a distance of 183.78 feet; Being an intersection with a circular curve concave to the Northwesterly from said intersection, thence run Southwesterly along the arc of said curve having a radius of 8,277.49 feet, through a central angle of 00°58'00" for a distance of 139.65 feet; thence North 52°55'00" West for a distance of 194.60 feet, thence North 37°05'00" East for a distance of 139.23 feet to the Point of Beginning.

JUN 29 1986 484

MAINTENANCE AGREEMENT

This Agreement is made as of the 10th day of June, 1986, by and between Pointe Royale Associates, Ltd., a Florida limited partnership ("Associates"), and Fabulous Diamonds Partnership, a Florida general partnership ("Diamonds").

R E C I T A L S:

WHEREAS, the parties have heretofore entered into an agreement of even-date entitled Easement and Operating Agreement ("Easement Agreement"), a copy of which is attached herewith and made a part hereof as Exhibit A; and

WHEREAS, the parties hereto wish to provide for the maintenance of the easement areas described in the property ("Property") which is subject to the Easement Agreement.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are mutually acknowledged, by the parties hereto, agree as follows:

1. The Easement Agreement is incorporated and made a part hereof as though set forth herein at length. All terms defined in the Easement Agreement and used herein shall have the meanings given in the Easement Agreement.

2. (a) Notwithstanding anything to the contrary previously contained in the Supplemental Indenture or any of the other Existing Agreements as defined in the Easement Agreement, the cleaning, maintenance and repair (collectively "maintenance") of the parking areas as well as storm sewers, utility installations, parking facilities and landscaping as shown on the Site Plan as to Tract B, inclusive of the Associates B Property and the Diamonds Property, shall be maintained by the owner of the Associates B Property, which is presently Partners. Such maintenance shall be undertaken by Associates or its successors or assigns, as the case may be, at a cost ("Maintenance Fee") to the owner of the Diamonds Property and to the owner or owners of any portion or portions thereof (on a pro rata basis) of Five Hundred Dollars (\$500) per month payable to the owner of the Associates B Property in advance on the first (1st) day of each month, said amount payable in United States legal tender or by check written on a Dade County, Florida bank, subject at all times to increase as defined in Paragraph 2(b) hereof.

(b) (i) The Maintenance Fee described in Paragraph 2(a) above is subject to increase by an amount computed in accordance with the provision of this Paragraph 2(b) (the "Inflation Adjustment"). Associates, inclusive of its successors and assigns, shall compute the Inflation Adjustment by computing increases, if

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any, in the cost of living for each Adjustment Month (hereinafter defined) during the term of the Agreement ("Term") based upon increases in the "Consumer Price Index Urban Wage Earners and Clerical Workers, U.S. City Average", published by the Bureau of Labor Statistics of the United States Department of Labor ("Index"). The Maintenance Fee for each year of the Term after the initial year shall be determined on each Adjustment Month by multiplying the Maintenance Fee for the immediately preceding calendar year by a fraction, the numerator of which is the integer 100 plus the excess of (i) the current Index number for the month immediately preceding the Adjustment Month over (ii) the Index number for the corresponding month in the immediately preceding calendar year, and the denominator of which is 100. The result obtained as a result of each such adjustment shall be the Maintenance Fee for the ensuing year of the Term. The "Adjustment Month" shall be January of each calendar year.

(iii) If the Index is discontinued, the "Consumer Price Index Seasonally Adjusted U.S. City Average For All Items For Urban Wage Earners and Clerical Workers", published monthly in the "Monthly Labor Review" by the Bureau of Labor Statistics of the United States Department of Labor ("CPI-W") shall be used in the place of the Index. If the CPI-W is discontinued, comparable statistics on the purchasing power of the consumer dollar published by the Bureau of Labor Statistics of the United States Department of Labor shall be used in the place of the Index. In the event the Bureau of Labor Statistics shall no longer publish such comparable statistics, comparable statistics published by a responsible financial periodical or other recognized authority selected by Associates shall be used in the place of the Index. If the Base Year "1967 = 100" ("Base Year") used in computing the Index is changed, the figures used in making the Inflation Adjustment shall accordingly be changed so that all increases in the Index are taken into account, notwithstanding any such change in the Base Year. In no event or circumstance shall the Inflation Adjustment result in a decrease in the Maintenance Fee.

(iii) Associates shall notify Diamonds of each Inflation Adjustment during the Term. If the Current Index Number has not been published on or before the Adjustment Month, the Maintenance Fee shall remain due and payable for the Adjustment Month unadjusted and unadjusted for each and every calendar month thereafter, and the Inflation Adjustment shall be made promptly after publication of the Current Index Number. Diamonds shall immediately remit to Associates any Inflation Adjustment which is in arrears from the Adjustment Month immediately upon said notification, which sum shall be added to and become a part of the Maintenance Fee.

3. A. ~~This Agreement~~ ^{MAINTENANCE FEE} shall (i) commence on the earlier of Associates obtaining a certificate of completion or occupancy on improvements described on the Site Plan as to the Associates Property, or (ii) January 19, 1990.

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8. This Agreement shall constitute a covenant running with the land binding on the parties, their successors and assigns and shall be effective a term of thirty (30) years from the date hereof. Further the initial said term of this Agreement shall be renewed automatically for an additional fifteen (15) year term thereafter unless the owners of at least three quarters (3/4) of the fee simple interest of Tract B place an instrument of record at the end of the said initial term not consenting to such additional fifteen (15) year term or otherwise modifying the additional fifteen (15) year term of this Agreement.

4. The provisions of this Agreement may be enforced by legal and equitable proceedings, and shall be construed and enforced under Florida law, and venue herefor shall be in Dade County, Florida.

5. Any provision, representation, warranty of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

6. No waiver of any provisions of this Agreement shall be effective unless such waiver is in writing, and signed by the party deemed to have so waived, and the same shall then be effective only for the period and on the conditions and for the specific instances and purposes specified in such writing.

7. If a party hereto shall retain or engage any attorney or attorneys to collect, enforce or protect its interest with respect to this Agreement, or any instrument or document delivered pursuant to this Agreement, the non-prevailing party in any court action shall pay all of the reasonable costs and expenses of such collection, enforcement or protection, including without limitation all reasonable attorney's fees and court costs.

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8. This Agreement may be executed simultaneously in any number of counterparts each of which counterparts shall be deemed one and the same Agreement.

Executed as of the day and year first above written.

Signed and delivered
in the presence of:

Pointe Royale Associates, Ltd.
a Florida limited partnership

By: Pointe Royal Associates, a Florida
Joint Venture as General Partner of
the limited partnership

By: Salsa Investment Company, a
a Florida general partnership

By: Robert L. Shapiro

General Partner

Fabulous Diamonds Partnership

By: General Partner

[Signature]
(As to Associates)

[Signature]
(As to Diamonds)

STATE OF FLORIDA)
COUNTY OF DADE) 691

The foregoing instrument was acknowledged before me this 10 day of JUNE, 1986, by Robert L. Shapiro, as General Partner of Salsa Investment Company, a Florida general partnership as joint venturer of Pointe Royal Associates, a Florida Joint Venture as general partner of Pointe Royale Associates, Ltd., a Florida limited partnership, on behalf of said limited partnership.

[Signature]
NOTARY PUBLIC, State of Florida
at Large

My Commission Expires:

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STATE OF FLORIDA)
) ss:
 COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 10
 day of May, 1986, by Richard P. Brinker, as General Partner of
 Fabulous Diamonds Partnership, a Florida corporation, on behalf of
 the corporation.
Richard P. Brinker

Richard P. Brinker
 NOTARY PUBLIC, State of Florida
 at Large

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA
 OF THE COUNTY OF DADE
 My Commission Expires
 RICHARD P. BRINKER
 CLERK OF THE COURT