



**With Compliments**

**Robert Gould**

IM Property Investment (USA) LLC  
77 West Wacker Drive Suite 4025  
Chicago IL 60601

**Memorandum of Understanding  
Regarding the Installation of Certain Permeable Pavers  
in Central Park Adjacent to the Central Athletic Complex**

This Memorandum of Understanding ("Agreement") is made this 28 day of February, 2017 by and between Wheaton Park District, an Illinois park district and unit of local government ("Park District"); I.M. Properties (Illinois 7) LLC, a Delaware limited liability company ("I.M. Properties"); and Roundy's Supermarkets, Inc., a Wisconsin corporation ("Roundy's"). The Park District, I.M. Properties and Roundy's are hereinafter sometimes individually referred to as a "Party" and collectively as the "Parties."

**Recitals**

WHEREAS, the Park District owns certain real property located at 600 S. Main Street, Wheaton, Illinois, commonly referred to as "Central Park," and 500 S. Naperville Road, Wheaton, Illinois, commonly referred to as the "Central Athletic Complex" (Central Park and the Central Athletic Complex are hereinafter collectively referred to as the "Park Property"); and

WHEREAS, I.M. Properties owns certain real property located at 625 S. Main Street, Wheaton, Illinois, currently leased by Roundy's and improved and operated as a Mariano's grocery store ("Mariano's"); and

WHEREAS, the Mariano's is located adjacent to and directly south of the Central Athletic Complex and adjacent to and directly east of Central Park; and

WHEREAS, the Mariano's contains certain stormwater improvements, including what is commonly referred to as the Mariano's north detention vault; and

WHEREAS, the Park Property is currently improved with a variety of park and recreational amenities, including tennis courts, athletic fields, and a recreation center; and

WHEREAS, the Park District is in the process of renovating the Park Property to add additional recreational improvements and amenities, including newly configured athletic fields, ice skating rinks, and a garden park referred to as Gateway Gardens that will serve as a garden entrance to downtown Wheaton (collectively, the "Planned Improvements"); and

WHEREAS, the Planned Improvements include replacing approximately 6,674 square feet of an existing asphalt parking lot north of the Central Athletic Complex with permeable pavers ("Parking Improvements"); and

WHEREAS, the Parking Improvements are located within the tributary area of the Mariano's north detention vault; and

WHEREAS, the City of Wheaton is requiring certain stormwater detention in connection with the Parking Improvements and the Park District has requested that a portion of the excess

detention volume in Mariano's north detention vault be utilized to satisfy the Park District's detention obligations; and

WHEREAS, the Park District hired V3 Companies of Illinois, LTD ("V3"), a civil engineering firm, to analyze the impact of the Parking Improvements; and

WHEREAS, V3 determined that the Parking Improvements will have no detrimental maintenance, stormwater quantity, or water quality effects on the existing Mariano's north detention vault or the property in general; and

WHEREAS, based on the foregoing, I.M. Properties and Roundy's have agreed to allow the Park District to proceed with the Parking Improvements and utilize a portion of the excess detention volume in the Mariano's north detention vault, subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference and made a part hereof as though fully set forth in this paragraph 1, the same constituting the factual basis for this Agreement.

2. Compliance with Laws. All construction or other work or activity performed by any entity in connection with the Planned Improvements shall be performed in a safe and workmanlike manner, lien free, and in accordance with all applicable federal, state and local laws, including the ordinances and regulations of the City of Wheaton.

3. Indemnification. To the fullest extent permitted by law, the Park District shall protect, indemnify, save, defend and hold harmless I.M. Properties and Roundy's from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, losses, costs and expenses (including reasonable attorney fees), which I.M. Properties and Roundy's may incur or become obligated for by reason of the Parking Improvements or any accident, bodily injury, death of person, or loss of or damage to tangible property, arising indirectly or directly in connection with or under, or as a result of this Agreement; but only to the extent caused by any act or omission of the Park District, its employees, agents, contractors, representatives, successors or assigns.

4. No Third Party Beneficiary. This Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities, defenses and/or privileges of the Park District, and/or any of their respective officials, officers and/or employees, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act.

5. Choice of Law and Venue. This Agreement is governed by the laws of the State of Illinois. Any suit or action arising under this Agreement shall be commenced in the Circuit Court of the 18th Judicial Circuit, DuPage County, Illinois. In any suit or action arising under this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs of litigation.

6. No Waiver. Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all Parties. The failure of any Party to enforce the provisions of this Agreement, or require performance by any other Party of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of that Party to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

7. Non-Assignment. This Agreement is non-assignable in whole or in part by any of the Parties, and any assignment shall be void without prior written consent of the other Parties.

8. Entire Agreement. This Agreement contains the entire agreement between the Parties and no statement, promise or inducement, whether oral or written, made by any Party to any other Party that is not contained in this written Agreement shall be valid or binding.

9. Amendment. No amendment or modification shall be made to this Agreement unless it is in writing and signed by the Parties.

10. Headings. The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

11. Notice. All notices, demands, requests, exercises and other communications required or permitted to be given by any Party under this Agreement shall be in writing and shall be deemed given when such notice has been personally delivered, sent by email, or deposited in the United States mail, with postage thereon prepaid, addressed to the other Parties at the following addresses:

If to Park District:

Michael J. Benard  
Executive Director  
Wheaton Park District  
102 E. Wesley St., Wheaton, IL 60187  
Email: mbenard@wheatonparks.org

If to I.M. Properties:

Robert Gould  
Vice President - US Operations

IM Property Investments (USA) LLC  
77 West Wacker Drive, Suite 4025  
Chicago, Illinois 60601  
Email: Robert.Gould@improperties.co.uk

If to Roundy's:

(if by courier or personal delivery)  
Roundy's Supermarkets, Inc.  
ATTN: Daniel P. Farrell (MS-3300)  
Vice President – Real Estate  
875 East Wisconsin Avenue  
Milwaukee, WI 53202-5402  
Email: Dan.Farrell@roundys.com


(if by US Mail)  
Roundy's Supermarkets, Inc.  
ATTN: Daniel P. Farrell (MS-3300)  
Vice President – Real Estate  
P.O. 473  
Milwaukee, WI 53201-0473  
Email: Dan.Farrell@roundys.com

12. Severability. The invalidity of any section, paragraph or subparagraph of this Agreement shall not impair the validity of any other section, paragraph or subparagraph. If any provision of this Agreement is determined to be unenforceable, such provision shall be deemed severable and the Agreement may be enforced with such provision severed or as modified by such court.

IN WITNESS WHERE OF the Parties hereto have set their respective hands and seals the day and year first above written.

**WHEATON PARK DISTRICT**

By:   
President, Board of Park Commissioners

ATTEST:   
Secretary, Board of Park Commissioners

**I.M. PROPERTIES (ILLINOIS 7) LLC**

By: 

Its: VP (US OPERATIONS)

ATTEST: 

Its: Financial Controller

**ROUNDY'S SUPERMARKETS, INC.**

By: 

Its: William L. Dowling  
VP, Corporate Counsel

ATTEST: Daniel Farrell

Its: V.P. Real Estate