

BILL NO. 2198

ORDINANCE NO. 1975

**AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A CONTRACT FOR THE SALE OF EXCESS RIGHT-OF-WAY ALONG CLARKSON ROAD FROM LEA OAK NORTHWARD BEING THE OLD MoDOT RIGHT-OF-WAY.**

WHEREAS, property is being developed along the east side of Clarkson Road from Lea Oak Drive eastward to the corner at the Chesterfield Parkway; and

WHEREAS, with the development of said property, the outer road, which was maintained by the Missouri Department of Transportation is no longer necessary by either MoDOT nor by the City of Chesterfield; and

WHEREAS, MoDOT has transferred said right-of-way to the City of Chesterfield and the City of Chesterfield having received the same determines that it is not necessary for the City to maintain said property and that the property be sold and vacated; and

WHEREAS, the City has negotiated an agreement with Caplaco/Dierbergs for the vacation of said right-of-way and the purchase of said property by Caplaco/Dierbergs in accordance with the contract attached.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:**

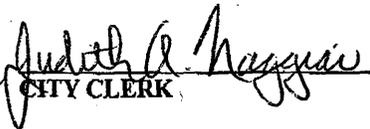
**Section 1.** The City Administrator of the City of Chesterfield is hereby authorized to enter into a sale contract between the City of Chesterfield and Caplaco/Dierbergs for the sale of certain property as identified in the contract, which is attached hereto and made a part hereof and marked "Exhibit 1" as if fully set out herein.

**Section 2.** This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 20th day of OCTOBER 2003.

  
MAYOR

ATTEST:

  
DEPUTY CITY CLERK

09/24/2003 04:44PM

## SALE CONTRACT

THIS SALE CONTRACT made and entered into as of this 1<sup>ST</sup> day of DECEMBER, 2003, by and between CAPLACO EIGHTEEN, INC., a Missouri corporation, and DIERBERGS HERITAGE, INC., a Missouri corporation, as tenants-in-common, each as to an undivided one-half (1/2) interest collectively, as Purchaser, and the CITY OF CHESTERFIELD, a Missouri municipal corporation, with an address at 16052 Swingley Ridge Road, Chesterfield, Missouri 63017, as Seller,

WITNESSETH:

WHEREAS, Seller will endeavor to make its best efforts to acquire from the Missouri Department of Transportation fee simple title to a parcel of land located in the City of Chesterfield, County of St. Louis, and State of Missouri, described on Exhibit A, attached hereto and incorporated herein by reference (the "Property"),

WHEREAS, Seller desires to sell the Property to Purchaser and Purchaser desires to purchase the Property from Seller,

NOW THEREFORE, for and in consideration of the foregoing and the mutual covenants hereof, the parties hereto stipulate, covenant, and agree as follows:

1. Seller agrees to sell and Purchaser agrees to purchase the Property for a purchase price of One Hundred Sixty Thousand Dollars (\$160,000.00), lawful money of the United States.
2. Closing shall be at the offices of Abstar Title Company, 9765 Clayton Road, St. Louis, Missouri 63124 ("Abstar Title"). The "Closing Date" shall be a date designated by Purchaser in written notice to Seller confirming that the contingencies specified in

paragraph 6 hereof have been fulfilled or waived by Purchaser, which date must be within fifteen (15) days after such notice from Purchaser.

3. On Closing Date, Seller shall execute and deliver to Purchaser a Special Warranty Deed conveying marketable fee simple title to the Property to Purchaser subject only to general taxes, if any, not due and payable as of Closing Date and special assessments, zoning, subdivision and land use laws, and covenants, restrictions, rights of way, easements and other exceptions now of record. Subject to fulfillment of the contingencies specified in paragraphs 6 and 7 hereof, Purchaser shall be obligated to close the purchase of the Property.

General taxes and, if any, the current installment for special assessments shall be adjusted as of Closing Date based upon the respective periods of ownership of Purchaser and Seller during the relevant taxing period.

4. Within three (3) days after the "Acceptance Date" (i.e., the date on which Purchaser receives a fully executed copy of this Sale Contract from Seller) Purchaser shall deposit with Abstar Title, in escrow, the sum of Ten Thousand Dollars (\$10,000.00) as Earnest Money under this Sale Contract. The Earnest Money is herein called the "Earnest Money." Purchaser shall be entitled to all interest earned by Abstar Title on all Earnest Money. If sale be closed, the Earnest Money, together with interest thereon, if any, shall be applied to the purchase price. If sale be not closed due and owing to the fault of Purchaser, the Earnest Money, together with interest thereon, if any, shall be paid over to Seller on account of such damages as Seller may sustain, but Seller shall nevertheless be entitled to specific performance. If Seller fails or refuses to close hereunder, either Purchaser shall be entitled to specific performance, or at Purchaser's election all Earnest Money and interest thereon, if any, shall be returned to Purchaser

and Purchaser shall be entitled to terminate this Sale Contract without further obligation on Purchaser.

5. On Closing Date, the balance of the purchase price, after the credits and adjustments provided for herein, shall be paid by Bank Cashier's Check drawn on a Metropolitan St. Louis area bank or wired United States Federal Funds.

6. The obligation of Purchaser to close under this Sale Contract is expressly contingent upon compliance with each of the following conditions and occurrence of each of the following events on or before the respective Contingency Date shown hereinafter for each contingency. In the event that on or before the Contingency Dates shown hereinafter, there has not been compliance with any of the following conditions or any of the following events have not occurred, then Purchaser may, at its option, terminate this Sale Contract or waive the unfulfilled contingencies. On or before each Contingency Date, Purchaser shall notify Seller in writing (i) that the contingencies in question have been fulfilled or waived, or (ii) that this Sale Contract is terminated by reason of unfulfilled contingencies. Failure to give notice within the times set forth herein shall be deemed an election to terminate this Sale Contract because of contingencies. In the event Purchaser exercises said option to terminate this Sale Contract, this Sale Contract shall be of no further force and effect, neither party shall have any further rights, obligations, or liability hereunder, except for Purchaser's obligation under paragraph 7 hereof, and all Earnest Money and interest thereon, if any, shall be returned to Purchaser:

(a) Purchaser, at Purchaser's expense, shall have obtained from Abstar Title a Commitment for an ALTA Form B Owner's Policy of Title Insurance on the Property committing to insure in Purchaser marketable fee simple title to the Property. (Contingency Date: 6 months after the Acceptance Date.)

(b) Purchaser shall have obtained, at Purchaser's expense, written environmental reports, confirming that the Property and adjacent properties are free of all hazardous materials which might cause the Property to be in violation of any applicable environmental laws or governmental regulations. (Contingency Date: 6 months after the Acceptance Date.)

(c) Purchaser shall have obtained from City of Chesterfield and any other required governmental authorities all of the following: all necessary approvals for commercial zoning, being City of Chesterfield PC District, for the Property and the "Additional Property" described in Exhibit B, attached hereto and incorporated herein by reference (which Additional Property is exactly the same real estate with the identical legal description now subject to the zoning request presently before the City of Chesterfield), so that Purchaser can develop the Property and the Additional Property as a retail shopping center in accordance with approved plans, said zoning to be satisfactory to Purchaser in Purchaser's sole judgment and discretion. (Contingency Date: 6 months after the Acceptance Date.)

7. The rights and obligations of both parties hereunder are contingent upon acquiring the Property within six (6) months from date hereof. In the event that, for any reason, Seller does not acquire the Property within six (6) months from date hereof, either party may terminate this Sale Contract at any time thereafter and prior to such acquisition, by giving notice of termination to the other party. Seller shall notify Purchaser in writing of Seller's acquisition of the Property within five (5) days after such acquisition.

8. Each party hereto hereby represents to the other that said party has dealt with no real estate broker or other person, in such a manner as to give rise to a claim for real estate commission, or finders' fees, against the other party. Each party hereto agrees to

indemnify and hold harmless the other against all claims for real estate commission, and/or finders' fees arising from this transaction and the conduct of the indemnifying party. The indemnifications herein contained shall survive Closing hereunder.

9. Notwithstanding the fulfillment or waiver of the contingencies specified in paragraph 6 hereof, Purchaser shall not be obligated to close hereunder unless:

(a) Purchaser can obtain from Abstar Title on Closing Date, at Purchaser's cost, for the applicable premium, an Owner's Policy of Title Insurance in ALTA form in accordance with the Commitment obtained pursuant to paragraph 6(a) hereof and with no additional exceptions, and with the standard exceptions for mechanics' liens, survey, and parties in possession deleted, and containing an ALTA Form 3.0 Zoning Endorsement expressly insuring that the Property and the Additional Property are zoned Commercial PC in accordance with City of Chesterfield Zoning Ordinance, and as such, may be used as a retail shopping center.

(b) None of the Property shall have been materially and adversely affected in any way between date hereof and Closing Date as a result of any legislative or regulatory change, or evidence of noncompliance with environmental laws and regulations.

In the event Purchaser declines to close hereunder because of one of the reasons specified in clauses (a), (b), or (c) hereinbefore, then if Purchaser so elects, all Earnest Money shall be returned to Purchaser and neither party shall have any further obligations hereunder. No money damages will be paid by Seller to Purchaser under any circumstances should this sale not be completed for any reason.

10. Any notice or other communication required or which may be given hereunder shall be in writing and either delivered personally to Seller or to Purchaser, mailed

certified or registered mail, return receipt requested, postage prepaid, or delivered by messenger service, and shall be deemed given when so delivered personally, or if mailed or delivered, upon receipt (except that the failure of either party to accept delivery of notice shall cause the date of mailing or attempted personal delivery to be the date of receipt). The addresses of the parties are:

To Seller:

City of Chesterfield  
16052 Swingley Ridge Road  
Chesterfield, MO 63017  
Attn: \_\_\_\_\_

To Purchaser:

Caplaco Eighteen, Inc.  
c/o Capitol Land Company  
11850 Studt Avenue  
St. Louis, MO 63141  
Attn: George K. Capps

and

Dierbergs Heritage, Inc.  
c/o Dierbergs Markets, Inc.  
16690 Swingley Ridge Road  
Chesterfield, MO 63017  
Attn: Jerry Ebest, Director of Real Estate

Any party may change the persons and addresses to which notices or other communications are to be sent by giving written notice thereof in the manner provided herein for giving notice.

11. In order to induce Purchaser to purchase the Property at the aforesaid purchase price, Seller makes to Purchaser the following representations and warranties, which representations and warranties shall survive Closing hereunder and shall be considered made as of the date hereof and, subject to the following parenthetical clause, as of Closing Date (Seller

hereby undertaking to advise Purchaser promptly upon Seller obtaining knowledge of any facts that would result in a change to the representations and warranties contained in subparagraphs (b) and/or (c) below prior to Closing, provided that Purchaser shall have the right, at Purchaser's option, to terminate this Sale Contract and to have all Earnest Money returned to Purchaser upon receiving any such advice from Seller):

(a) That, Seller has no knowledge of any actions or proceedings pending in any court or before any governmental agency affecting the Property.

(b) That, the undersigned is duly authorized to enter into this Sale Contract and to take all such action as may be necessary and proper to implement the same.

12. Seller agrees that during Seller's period of ownership, Seller will not cause (i) any liens, whether voluntary or involuntary, any deeds of trust or mortgages, leases, or occupancy agreements to be placed on the Property which will not be released at Closing; or (ii) any easements, conditions, or restrictions to be placed on the Property without the prior written consent of Purchaser, which consent Purchaser will not unreasonably withhold. If any lien, voluntary or involuntary, exists at Closing, Purchaser may cause that lien to be discharged and the cost to be deducted from the purchase price, provided that with respect to any involuntary lien Seller may furnish to Purchaser, at Seller's sole cost and expense, express title insurance from Abstar Title in lieu of the discharge of the involuntary lien in question at Closing.

13. Purchaser represents and warrants to the City of Chesterfield that Caplaco Eighteen, Inc., Caparco Two, Inc., and Dierbergs Heritage, Inc., now own fee simple title to all of the real estate described in Exhibit B hereto, which is the identical real estate now subject to the zoning request pending before the City of Chesterfield.

14. Purchaser represents that Purchaser has entered into an Easement Agreement with Davis Street Land Company of Missouri II, L.L.C., a copy of which is attached hereto as Exhibit C and which is hereby incorporated herein by reference.

15. This Sale Contract shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns and personal representatives.

16. This Sale Contract contains the entire agreement of the parties with respect to the subject matter hereof, and all prior written and oral agreements, representations, undertakings and the like are merged into, and shall be superseded by, the provisions of this Sale Contract.

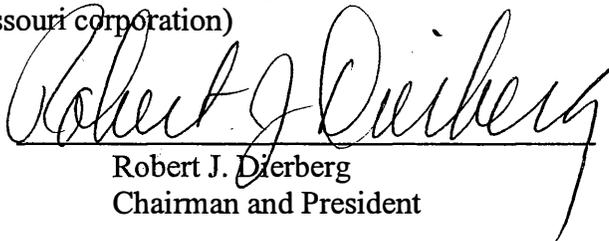
17. Purchaser has executed and delivered four (4) counterparts of this Sale Contract to Seller. This Sale Contract shall be null and void and of no force or effect unless Seller has delivered a fully executed counterpart hereof to Purchaser on or before \_\_\_\_\_, 2003, or such later date to which Purchaser may extend said time in writing.

IN WITNESS WHEREOF, the undersigned have executed this Sale Contract as  
of the day and year first above written.

CAPLACO EIGHTEEN, INC.  
(a Missouri corporation)

By:   
George K. Capps  
President

DIERBERGS HERITAGE, INC.  
(a Missouri corporation)

By:   
Robert J. Dierberg  
Chairman and President

PURCHASER

CITY OF CHESTERFIELD  
(a Missouri municipal corporation)

By:   
Authorized Representative

SELLER

# EXHIBIT A

## MODOT Access Road

### LEGAL DESCRIPTION

A tract of land being part of U.S. Survey 2002, Township 45 North, Range 4 East, St. Louis County, Missouri and being more particularly described as follows:

Beginning at a point on the Eastern Right-of-Way of Relocated Route 340 (aka Clarkson Road) as established by deed recorded in Book 8383, page 2153 of the St. Louis County Records, said point being North 30 degrees 58 minutes 26 seconds East, 10.00 feet from the intersection of the South line of a tract of land formerly of Edmund J. Swantner according to instrument recorded in Book 6043, page 323 of the St. Louis County Records with said Eastern Right-of-Way of Relocated Route 340, said point being 135.00 feet perpendicular distant Easterly of baseline station 202+39.7 of the North Bound Lane of Relocated Route 340; thence Westerly perpendicular to said baseline, North 59 degrees 01 minutes 34 seconds West, 65.00 feet to a point, said point being 70 feet perpendicular distant Easterly of baseline station 202+39.7; thence Northerly and parallel to said baseline, North 30 degrees 58 minutes 26 seconds East, 510.25 feet to a point, said point being 70 feet perpendicular distant Easterly of baseline station 207+49.99; thence 100.73 feet along a curve to the right, having a radius of 1923.86 feet and a chord bearing of North 32 degrees 28 minutes 26 seconds East to a point, said point being 72.64 feet perpendicular distant Easterly of baseline station 208+50.7; thence North 33 degrees 57 minutes 57 seconds East, 151.60 feet to a point in the Northeasterly line of Relocated Route 340 as established by deed recorded in book 8442, page 2359 of the St. Louis County Records, said point being 80.55 feet perpendicular distant Easterly of baseline station 210+01.7; thence along said Northeasterly line, South 84 degrees 12 minutes 17 seconds East, 43.59 feet to a point, said point being 120 feet perpendicular distant Easterly of said baseline; thence Southerly and parallel to said baseline along the Easterly line of Relocated Route 340 as established by said deed recorded in Book 8442, page 2359, deed recorded in Book 8538, page 2270 of the St. Louis County Records and Book 8383, page 2153, as aforementioned, South 30 degrees 58 minutes 26 seconds West, 620.62 feet to a point, said point being 120 feet perpendicular distant Easterly of baseline station 204+00; thence South 24 degrees 07 minutes 52 seconds West, 125.90 feet to a point, said point being 135 feet perpendicular distant Easterly of baseline station 202+75; thence South 30 degrees 58 minutes 26 seconds West, 35.26 feet to the point of beginning and containing 0.892 Acres (38,862 Square Feet) more or less.

## EXHIBIT B

A tract of land being all of Lot "A" of Swantner Acres, a subdivision according to the plat thereof recorded in Plat Book 143, page 50 of the St. Louis County Records, part of Parcel 1 and all of Parcel 2 of "A Boundary Adjustment Plat of a Tract of Land in U.S. Survey 2002, Township 45 North, Range 4 East" according to the plat thereof recorded in Plat Book 255, page 52 of the St. Louis County Records, part of a tract of land conveyed to Francis Macalady by deed recorded in Book 8811, page 1587, all of a tract of land conveyed to Francis Macalady by deed recorded in Book 6713, page 2348 and part of a tract of land conveyed to Emil Rauscher by deed recorded in Book 2401, page 634 all of the St. Louis County Records, all being situated in U.S. Survey 2002, Township 45 North, Range 4 East, St. Louis County, Missouri and being more particularly described as follows:

Beginning at a point in the Western line of Baxter Road, 30 feet wide, being the Southeastern corner of a tract of land conveyed to Raymond Felling by deed recorded in Book 2285, page 468 of the St. Louis County Records; thence along the Southern line of Felling, South 76 degrees 38 minutes 20 seconds West, 10.54 feet to the Northeastern corner of aforesaid Lot "A" of "Swantner Acres"; thence along the Eastern line of said Lot "A", South 4 degrees 59 minutes 46 seconds West, 106.50 feet to an angle point therein; thence South 5 degrees 04 minutes 14 seconds East, 96.47 feet to the Southeastern corner of said Lot "A"; thence along the Southern line of said Lot "A" and the Southern line of a tract of land conveyed to Caparco Two, Inc. by deed recorded in Book 10020, page 1926 of the St. Louis County Records, South 72 degrees 57 minutes 29 seconds West, 755.18 feet to a point in the Eastern Right-of-Way of Relocated Route 340 (aka Clarkson Road) as established by deed recorded in Book 8383, page 2153 of the St. Louis County Records; thence along said Eastern Right-of-Way, North 30 degrees 58 minutes 26 seconds East, 45.26 feet to an angle point therein; thence North 24 degrees 07 minutes 52 seconds East, 125.90 feet to an angle point therein; thence continuing along said Right-of-Way and along the Eastern Right-of-Way as established by deeds recorded in Book 8538, page 2270 and Book 8442, page 2359 of the St. Louis County Records, North 30 degrees 58 minutes 26 seconds East, 620.62 feet to a point on the Southern line of property conveyed to Elmer A. Weinrich by deed recorded in Book 2260, page 446 of the St. Louis County Records; thence along said Southern line of Weinrich, South 84 degrees 12 minutes 17 seconds East, 360.24 feet to a point on the Western line of Baxter Road, as aforementioned; thence along said Western line, South 4 degrees 59 minutes 46 seconds West, 224.36 feet to the point of beginning and containing 6.494 Acres (282,860 Square Feet) more or less.

# EXHIBIT C

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

## EASEMENT AGREEMENT

This EASEMENT AGREEMENT made and entered into as of this 18<sup>th</sup> day of September, 2003, by and between CAPLACO EIGHTEEN, INC., a Missouri corporation, CAPARCO TWO, INC., a Missouri Corporation, both with an address at c/o Capitol Land Company, 11850 Studt Avenue, St. Louis, Missouri 63141, Attn: George K. Capps, and DIERBERGS HERITAGE INC., a Missouri corporation, with an address at 16690 Swingley Ridge Road, Chesterfield, Missouri 63006, Attn: Jerry Ebest, Director of Real Estate (hereinafter collectively called "Caplaco-Dierbergs" and being grantor), and DAVIS STREET LAND COMPANY OF MISSOURI II, L.L.C., a Missouri limited liability company, not personally but as Trustee for Chesterfield Place Trust, with an address at 622 Davis Street, Suite 200, Evanston, Illinois 60201, Attn: Robert Perlmutter (hereinafter called "Davis" and being grantee).

### WITNESSETH:

Whereas, Caplaco-Dierbergs collectively own the fee simple title to the real estate described in Exhibit A, attached hereto and incorporated herein by reference (the "Caplaco-Dierbergs Parcel"),

Whereas, Davis owns fee simple title to the real estate described in Exhibit B, attached hereto and incorporated herein by reference (the "Davis Parcel"),

Whereas, Caplaco-Dierbergs intends to acquire from the City of Chesterfield certain real estate drawn hatched on Exhibit C, attached hereto and incorporated herein by reference, after its acquisition by the City of Chesterfield from the Missouri Department of Transportation, said real estate being herein sometimes called the "MODOT Access Road," and after such acquisition by Caplaco-Dierbergs said real estate shall constitute part of the Caplaco-Dierbergs Parcel,

Whereas, to facilitate development of both the Caplaco-Dierbergs Parcel and the Davis Parcel, the parties have agreed to construct and maintain a new access road which will provide access to both Parcels in lieu of what is now afforded by the MODOT Access Road,

Whereas, Caplaco-Dierbergs has agreed to grant to Davis a non-exclusive easement to use the hereinafter defined New Access Road,

NOW THEREFORE, for and in consideration of the foregoing and the mutual covenants and agreements herein contained, the parties hereto hereby stipulate, covenant, and agree as follows:

1. Caplaco-Dierbergs hereby gives, grants, and conveys to Davis for the use and benefit of the Davis Parcel, its tenants, and their employees, invitees, and licensees a non-exclusive, perpetual easement in, on, and across that portion of the real estate shown cross-hatched on Exhibit D hereto (the "New Access Road") now owned by Caplaco-Dierbergs, for the full uninterrupted right of vehicular ingress to and egress from the Davis Parcel.

TO HAVE AND TO HOLD the said Easement, together with all rights and appurtenances to the same belonging unto Davis and to its successors and assigns forever.

2. Upon its acquisition of the MODOT Owned Access Road and contingent upon such acquisition actually being consummated, Caplaco-Dierbergs hereby agrees to give, grant, and convey to Davis for the use and benefit of the Davis Parcel, its tenants, and their employees, invitees, and licensees a non-exclusive, perpetual easement in, on, and across the MODOT Owned Access Road, for the full uninterrupted right of vehicular ingress to and egress from the Davis Parcel. It is contemplated that prior to acquisition of the MODOT Owned Access Road by Caplaco-Dierbergs, the MODOT Owned Access Road will be used for ingress to and egress from the Caplaco-Dierbergs Parcel and the Davis Parcel, in accordance with the rules and regulations of the Missouri Department of Transportation, but subject to interruption for the construction contemplated by paragraph 3 hereof.

TO HAVE AND TO HOLD the said Easement, together with all rights and appurtenances to the same belonging unto Davis and to its successors and assigns forever.

3. Promptly after execution of this Easement Agreement and prior to acquisition of the MODOT Owned Access Road by Caplaco-Dierbergs, Caplaco-Dierbergs and Davis will jointly enter into a construction contract with Brinkmann Construction Company for construction of the New Access Road in accordance with plans approved by the parties in writing upon the execution of this Easement Agreement and which plans are hereby incorporated herein by reference, said construction contract to be at a cost and upon terms and conditions satisfactory to both Caplaco-Dierbergs and Davis. The cost of such construction shall be paid by the parties hereto at the times and in the manner provided in said construction contract, and shall be paid seventy-seven percent (77%) by Caplaco-Dierbergs and twenty-three percent (23%) by Davis. Such shared costs shall include work on the extension of Lea Oak Drive at the intersection of Clarkson Road, including without limitation work on traffic signal modifications at Clarkson Road and Lea Oak Drive, all in accordance with plans approved by the parties in writing upon execution of this Easement Agreement and which plans are hereby incorporated herein by reference. Such shared costs shall not include the cost of curb cuts or islands serving only the Caplaco-Dierbergs Parcel, as these costs will be shown separately in said construction contract and will be paid by Caplaco-Dierbergs.

4. Caplaco-Dierbergs will maintain the New Access Road from time to time in good condition and repair, said maintenance to include snow removal and resurfacing, if and when necessary, and Davis shall reimburse Caplaco-Dierbergs from time to time, but no more often than quarterly, for twenty-three percent (23%) of all reasonable and necessary costs incurred for such maintenance, repair and snow removal, and for costs incurred by Caplaco-Dierbergs with respect to the extension of Lea Oak Drive including that portion located in Drew Station Shopping Center, each such reimbursement to be paid within fifteen (15) days after receipt of an invoice with backup documentation from Caplaco-Dierbergs therefor. In the event Caplaco-Dierbergs does not, after reasonable written notice from Davis, fulfill its maintenance obligations, Davis shall have the right to do so and to be reimbursed by Caplaco-Dierbergs for its share of the costs incurred.

However, until such time as the first store on the Caplaco-Dierbergs Parcel opens for business, Davis shall, at its sole cost and expense, maintain those portions of the access drives utilized by customers of the Davis Parcel and which are not utilized for access by Caplaco-Dierbergs construction traffic.

5. During construction of the New Access Road, Davis shall have a temporary license to use for access to the Davis Parcel the part of the Caplaco-Dierbergs Parcel shown on Exhibit E, attached hereto and made a part hereof, said temporary license to lapse and terminate automatically as soon as the New Access Road is completed so as to permit use.

6. During construction from time to time on the Caplaco-Dierbergs Parcel, until such time as the first store on the Caplaco-Dierbergs Parcel opens for business to the public, Caplaco-Dierbergs will require, subject to governmental approval, construction traffic to utilize the route shown hatched on Exhibit F, attached hereto and incorporated herein by reference. Caplaco-Dierbergs, at its sole cost and expense, shall keep the area utilized for its construction traffic unobstructed and clean and in good repair during and as a result of its use for construction traffic. In addition to the foregoing, Caplaco-Dierbergs shall (subject to obtaining all necessary governmental approvals) install and maintain during construction on Caplaco-Dierbergs Parcel, until such time as the first store on the Caplaco-Dierbergs Parcel opens for business to the public, the fencing and screening shown on Exhibit F.

7. The parties acknowledge that the New Access Road will not be connected to the Lea Oak Drive extension until such time as necessary easements have been obtained from the owner of Drew Station Shopping Center.

8. Caplaco-Dierbergs hereby gives, grants, and conveys to Davis for the use and benefit of the Davis Parcel a non-exclusive, perpetual easement in and on the approximate location on the Caplaco-Dierbergs Parcel shown on Exhibit G, attached hereto and incorporated herein by reference (the "Davis Sign Location") to install and maintain from time to time a sign of the size, design, and configuration shown on Exhibit H, attached hereto and incorporated herein by reference, provided that the use of said easement by Davis is subject to fulfillment of all of the following four conditions: (i) the easement may be used by Davis only after all site work on the Caplaco-Dierbergs Parcel is substantially completed, (ii) Davis shall have obtained, at its sole cost and expense, all necessary governmental approvals for the installation, use, and maintenance of its sign, and (iii) the use of the easement by Davis shall cause no detriment to

Caplaco-Dierbergs in obtaining all necessary governmental approvals for the installation and maintenance, from time to time, of a sign desired by Caplaco-Dierbergs in either location shown on Exhibit G hereto as Alternate #1 or Alternate #2 for a Caplaco-Dierbergs sign. The aforesaid easement to Davis includes the right to install and maintain, at the sole cost and expense of Davis, an electrical conduit for electrical service to the Davis Sign Location in a location subject to the reasonable approval of Caplaco-Dierbergs, and Davis shall be obligated to repair and restore, at its sole cost and expense, any damage to the Caplaco-Dierbergs Parcel caused or occasioned by such installation and maintenance. In the event that the City of Chesterfield requires that, in lieu of separate signs by Caplaco-Dierbergs and Davis, only one sign shall be permitted, then in such event, such sign shall contain reference to only one shopping center name, which shall be mutually agreed upon by the parties.

TO HAVE AND TO HOLD the said Easement, together with all rights and appurtenances to the same belonging unto Davis and its successors and assigns forever.

9. Upon its acquisition of the MODOT Owned Access Road and contingent upon such acquisition actually being consummated, and within thirty (30) days after written request therefor, Caplaco-Dierbergs hereby agrees to give, grant and convey to Ameren UE and any other utility with existing facilities in the MODOT Owned Access Road an easement to keep and maintain existing overhead power lines and any other existing facilities which serve the Davis Parcel in the MODOT Owned Access Road.

10. Any notice or statement or other formal communication between the parties hereto shall be in writing and shall be sent by United States certified or registered mail, postage prepaid, UPS, Federal Express or other overnight delivery, or by recognized messenger service to the other party hereto at the address or addresses shown on the first page hereof, or to such other address or addresses as either party may furnish to the other by notice in writing from time to time.

11. In any action to enforce rights hereunder, the prevailing party shall be entitled to recover reasonable legal expenses and all costs.

12. This EASEMENT AGREEMENT is expressly contingent upon (i) receipt by Caplaco-Dierbergs from the Missouri Department of Transportation and other governmental authorities of necessary permits for construction of the New Access Road, and (ii) execution by both Caplaco-Dierbergs and Davis of the construction contract described in paragraph 3 hereof. In the event that, for any reason, any of the aforesaid contingencies are not fulfilled within thirty (30) days from date hereof, then either Caplaco-Dierbergs or Davis may terminate this EASEMENT AGREEMENT by giving written notice of termination to the other party at any time after the expiration of thirty (30) days from date hereof and prior to the fulfillment of said contingencies. In the event of such termination, neither party shall have any rights, obligations, or liability hereunder.

13. Neither Caplaco-Dierbergs nor Davis shall authorize recording in the St. Louis County Records of this EASEMENT AGREEMENT or any notice thereof at any time prior to fulfillment of both contingencies described in paragraph 12 hereof. In the event either party authorizes recording of this EASEMENT AGREEMENT or any notice thereof in the

St. Louis County Records at any time prior to the fulfillment of both of the contingencies described in paragraph 12 hereof, said party shall be liable for all damages sustained by the other party.

14. This EASEMENT AGREEMENT shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns, as owners of the Parcels hereinbefore described. Upon the conveyance of all of its interest in the Parcels hereinbefore described, any party hereto shall be automatically released from all obligations hereunder accruing thereafter and the grantee of any such conveyance shall have the benefits and obligations of this EASEMENT AGREEMENT during its period of ownership of the Parcel in question as an agreement running with the land.

IN WITNESS WHEREOF, the undersigned have caused this EASEMENT AGREEMENT to be executed by their representatives thereunto duly authorized as of the day and year first above written.

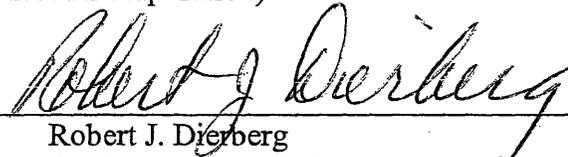
CAPLACO EIGHTEEN, INC.  
(a Missouri Corporation)

by   
George K. Capps  
President

CAPARCO TWO, INC.  
(a Missouri corporation)

by   
George K. Capps  
President

DIERBERGS HERITAGE, INC.  
(a Missouri corporation)

by   
Robert J. Dierberg  
Chairman and President

“Caplaco-Dierbergs”

DAVIS STREET LAND COMPANY OF  
MISSOURI II, L.L.C.  
(a Missouri limited liability company)  
not personally but as Trustee for Chesterfield Place  
Trust)

by   
Manager

“Davis”

STATE OF MISSOURI )  
 )  
COUNTY OF ST. LOUIS )

SS:

On this <sup>mp</sup>~~8th~~ day of ~~SEPTEMBER~~<sup>2003</sup> 2002, before me personally appeared GEORGE K. CAPPS, to me personally known, who, being by me duly sworn, did say that he is the President of CAPLACO EIGHTEEN, INC., a corporation of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation, by authority of its Boards of Directors, and said GEORGE K. CAPPS acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Charles Matthew Pross  
Notary Public

My Term Expires:

" NOTARY SEAL "  
Charles Matthew Pross, Notary Public  
St. Louis County, State of Missouri  
My Commission Expires 12/10/2004



STATE OF MISSOURI )  
 )  
COUNTY OF ST. LOUIS )

SS:

On this <sup>JMP-  
2003</sup> 8<sup>th</sup> day of SEPTEMBER 2002, before me personally appeared GEORGE K. CAPPS, to me personally known, who, being by me duly sworn, did say that he is the President of CAPARCO TWO, INC., a corporation of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation, by authority of its Boards of Directors, and said GEORGE K. CAPPS acknowledged said instrument to be the free act and deed of said corporation.

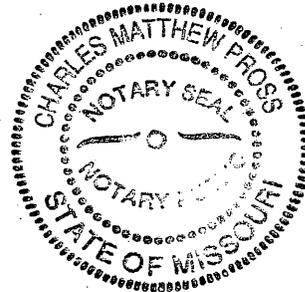
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Charles Matthew Pross

Notary Public

My Term Expires:

" NOTARY SEAL "  
Charles Matthew Pross, Notary Public  
St. Louis County, State of Missouri  
My Commission Expires 12/10/2004



STATE OF MISSOURI )  
 )  
COUNTY OF ST. LOUIS )

SS:

JMP  
2003

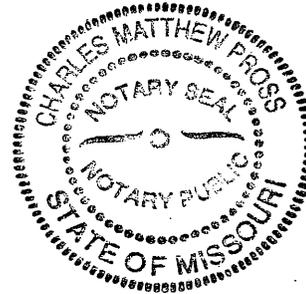
On this 8<sup>TH</sup> day of SEPTEMBER 2002, before me personally appeared ROBERT J. DIERBERG, to me personally known, who, being by me duly sworn, did say that he is the Chairman and President of DIERBERGS HERITAGE, INC., a corporation of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation, by authority of its Boards of Directors, and said ROBERT J. DIERBERG acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Charles Matthew Pross  
Notary Public

My Term Expires:

" NOTARY SEAL "  
Charles Matthew Pross, Notary Public  
St. Louis County, State of Missouri  
My Commission Expires 12/10/2004





**EXHIBIT A  
DIERBERGS-CAPLACO PARCEL  
LEGAL DESCRIPTION**

A tract of land being all of Lot "A" of Swantner Acres, a subdivision according to the plat thereof recorded in Plat Book 143, page 50 of the St. Louis County Records, part of Parcel 1 and all of Parcel 2 of "A Boundary Adjustment Plat of a Tract of Land in U.S. Survey 2002, Township 45 North, Range 4 East" according to the plat thereof recorded in Plat Book 255, page 52 of the St. Louis County Records, part of a tract of land conveyed to Francis Macalady by deed recorded in Book 8811, page 1587, all of a tract of land conveyed to Francis Macalady by deed recorded in Book 6713, page 2348 and part of a tract of land conveyed to Emil Rauscher by deed recorded in Book 2401, page 634 all of the St. Louis County Records, all being situated in U.S. Survey 2002, Township 45 North, Range 4 East, St. Louis County, Missouri and being more particularly described as follows:

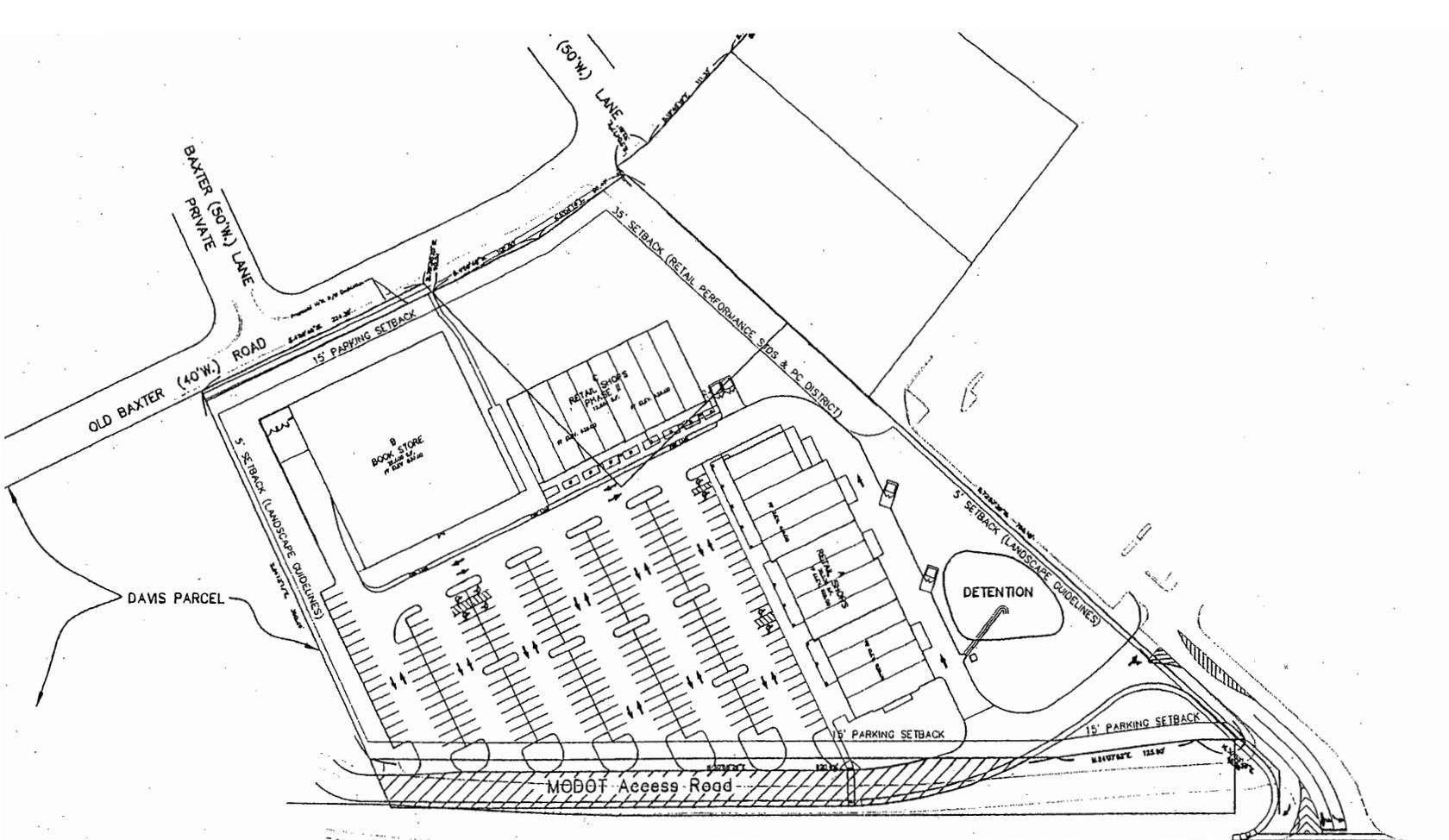
Beginning at a point in the Western line of Baxter Road, 30 feet wide, being the Southeastern corner or a tract of land conveyed to Raymond Felling by deed recorded in Book 2285, page 468 of the St. Louis County Records; thence along the Southern line of Felling, South 76 degrees 38 minutes 20 seconds West, 10.54 feet to the Northeastern corner of aforesaid Lot "A" of "Swantner Acres"; thence along the Eastern line of said Lot "A", South 4 degrees 59 minutes 46 seconds West, 106.50 feet to an angle point therein; thence South 5 degrees 04 minutes 14 seconds East, 96.47 feet to the Southeastern corner of said Lot "A"; thence along the Southern line of said Lot "A" and the Southern line of a tract of land conveyed to Caparco Two, Inc. by deed recorded in Book 10020, page 1926 of the St. Louis County Records, South 72 degrees 57 minutes 29 seconds West, 755.18 feet to a point in the Eastern Right-of-Way of Relocated Route 340 (aka Clarkson Road) as established by deed recorded in Book 8383, page 2153 of the St. Louis County Records; thence along said Eastern Right-of-Way, North 30 degrees 58 minutes 26 seconds East, 45.26 feet to an angle point therein; thence North 24 degrees 07 minutes 52 seconds East, 125.90 feet to an angle point therein; thence continuing along said Right-of-Way and along the Eastern Right-of-Way as established by deeds recorded in Book 8538, page 2270 and Book 8442, page 2359 of the St. Louis County Records, North 30 degrees 58 minutes 26 seconds East, 620.62 feet to a point on the Southern line of property conveyed to Elmer A. Weinrich by deed recorded in Book 2260, page 446 of the St. Louis County Records; thence along said Southern line of Weinrich, South 84 degrees 12 minutes 17 seconds East, 360.24 feet to a point on the Western line of Baxter Road, as aforementioned; thence along said Western line, South 4 degrees 59 minutes 46 seconds West, 224.36 feet to the point of beginning and containing 6.494 Acres (282,860 Square Feet) more or less.

EXHIBIT B

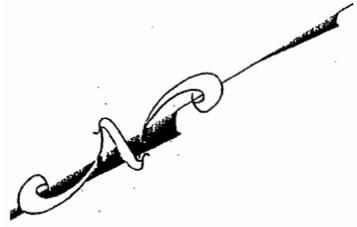
A tract of land in U.S. Survey 2002, Township 45 North, Range 4 East of the 5th Principal Meridian, City of Chesterfield, St. Louis County, Missouri, and being more particularly described as follows:

Beginning at the Southeast corner of a tract of land conveyed to Elmer E. and Janet C. Weinrich, Trustees, by deed recorded in Book 13047 Page 1869 of the records of the Recorder of Deeds Office in St. Louis County, Missouri, being a point on the Western line of Old Baxter Road (originally 30 feet wide); thence along the Southern line of said Weinrich property North 84 degrees 17 minutes 00 seconds West 405.66 feet to a point on the Southeastern line of Clarkson Road (Route 340) as established by deed recorded in Book 8558 Page 2087 of the above said records; thence along the Southeastern line of Clarkson Road North 33 degrees 59 minutes 09 seconds East 97.63 feet to a point 85.48 feet perpendicular distance Southeast of Station 210 + 95.65 on the base line of the northbound of Clarkson Road; thence North 49 degrees 58 minutes 03 seconds East 182.94 feet to a point 145.00 feet perpendicular distance Southeast of Station 212 + 68.64 feet on the base line of the northbound lane of Clarkson Road; thence along the Southeast line and the Southwest line of Clarkson Road, as established by deed recorded in Book 8325 Page 413 of the above said records the following courses and distances: North 48 degrees 40 minutes 57 seconds East 165.62 feet to a point 65.50 feet perpendicular distance Southeast of Base Line Ramp No. 2, South 46 degrees 57 minutes 47 seconds East 122.50 feet to a point 187.00 feet perpendicular distance Southeast of Station 6 + 00 on the Base Line Ramp No. 2 South 06 degrees 51 minutes 57 seconds West 43.78 feet to a point 213.30 feet perpendicular distance Southeast of Station 5 + 69.84 feet on the Base Line Ramp No. 2 (Station 5 + 72.3 record), South 83 degrees 12 minutes 15 seconds East 19.33 feet to a point on the Western line of Old Baxter Road; thence along the Western line of Old Baxter Road South 04 degrees 56 minutes 00 seconds West 219.84 feet to the Point of Beginning and containing 86,371 square feet or 1.983 acres more or less.

Being the same tracts of land as described in instruments recorded in Book 8347 Pages 535 and Book 13047 Page 1869 of the St. Louis County Records.



CLARKSON ROAD (MISSOURI STATE HIGHWAY 340) NORTHBOUND LANE  
 (WIDTH VARIES)

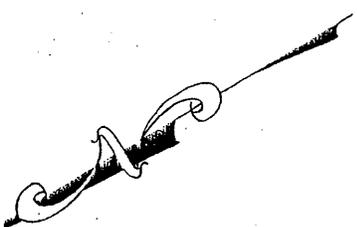
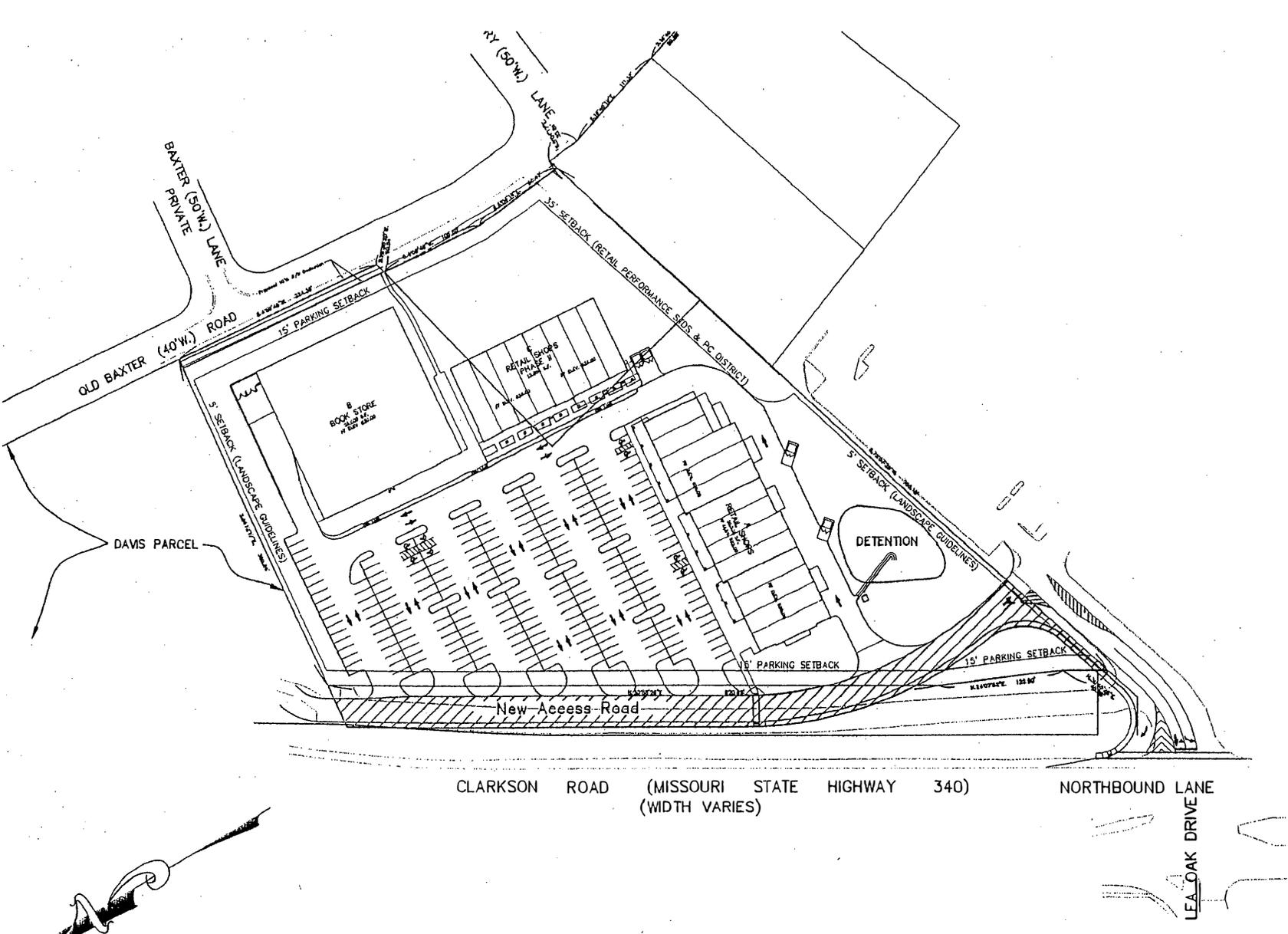


150 300  
 SCALE IN FEET

Scale 1" = 150'

*EXHIBIT C*  
*CHESTERFIELD OAKS*  
*Chesterfield, Missouri*

the clayton  
 engineering  
 company, inc.  
 ENGINEERS • SURVEYORS • PLANNERS



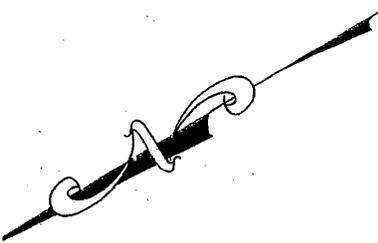
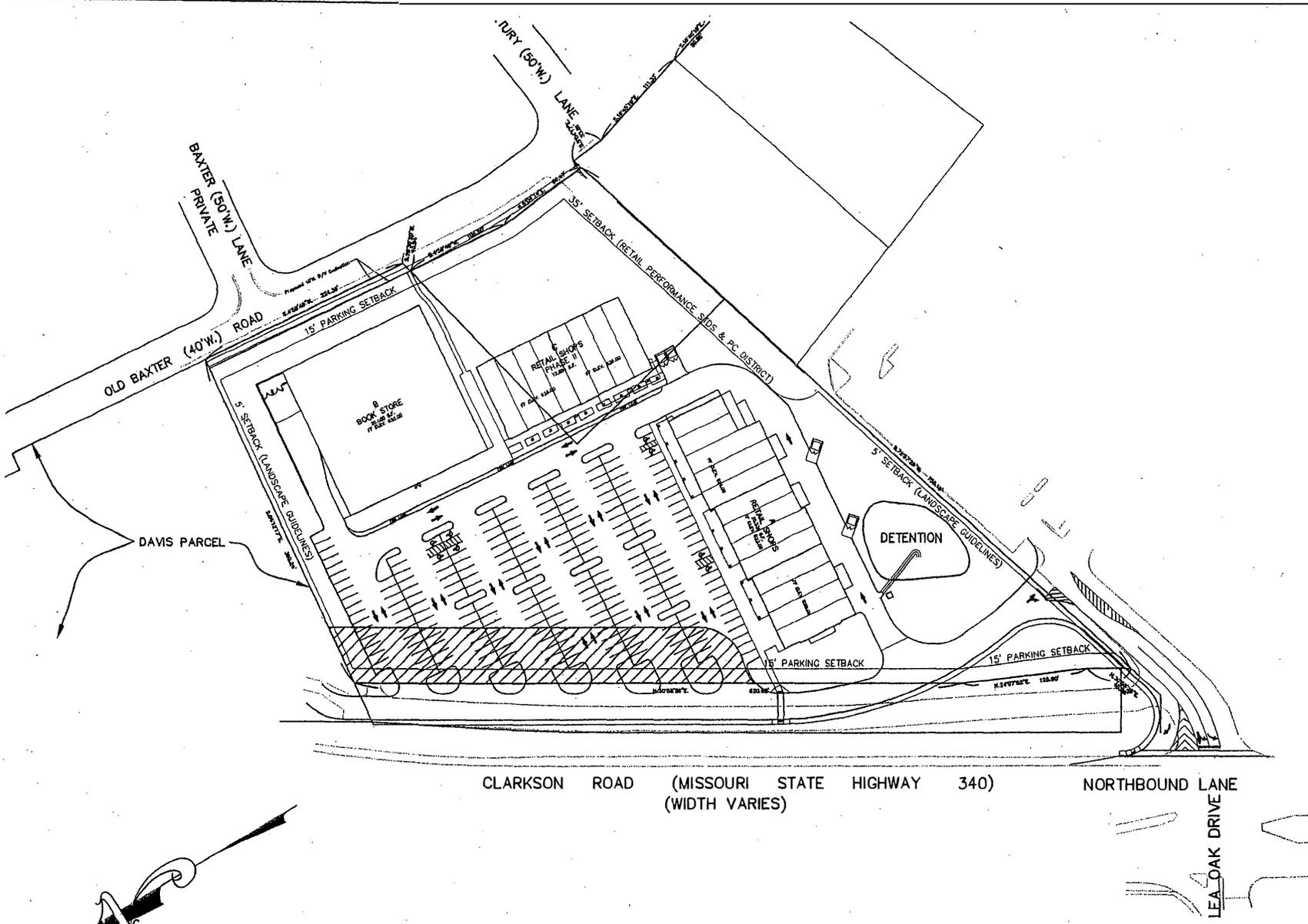
150 300  
SCALE IN FEET

Scale 1" = 150'

**EXHIBIT D**  
*Cross Access Easement*

**CHESTERFIELD** **OAKS**  
*Chesterfield, Missouri*

the  
clayton  
engineering  
company, inc.  
ENGINEERS • SURVEYORS • PLANNERS

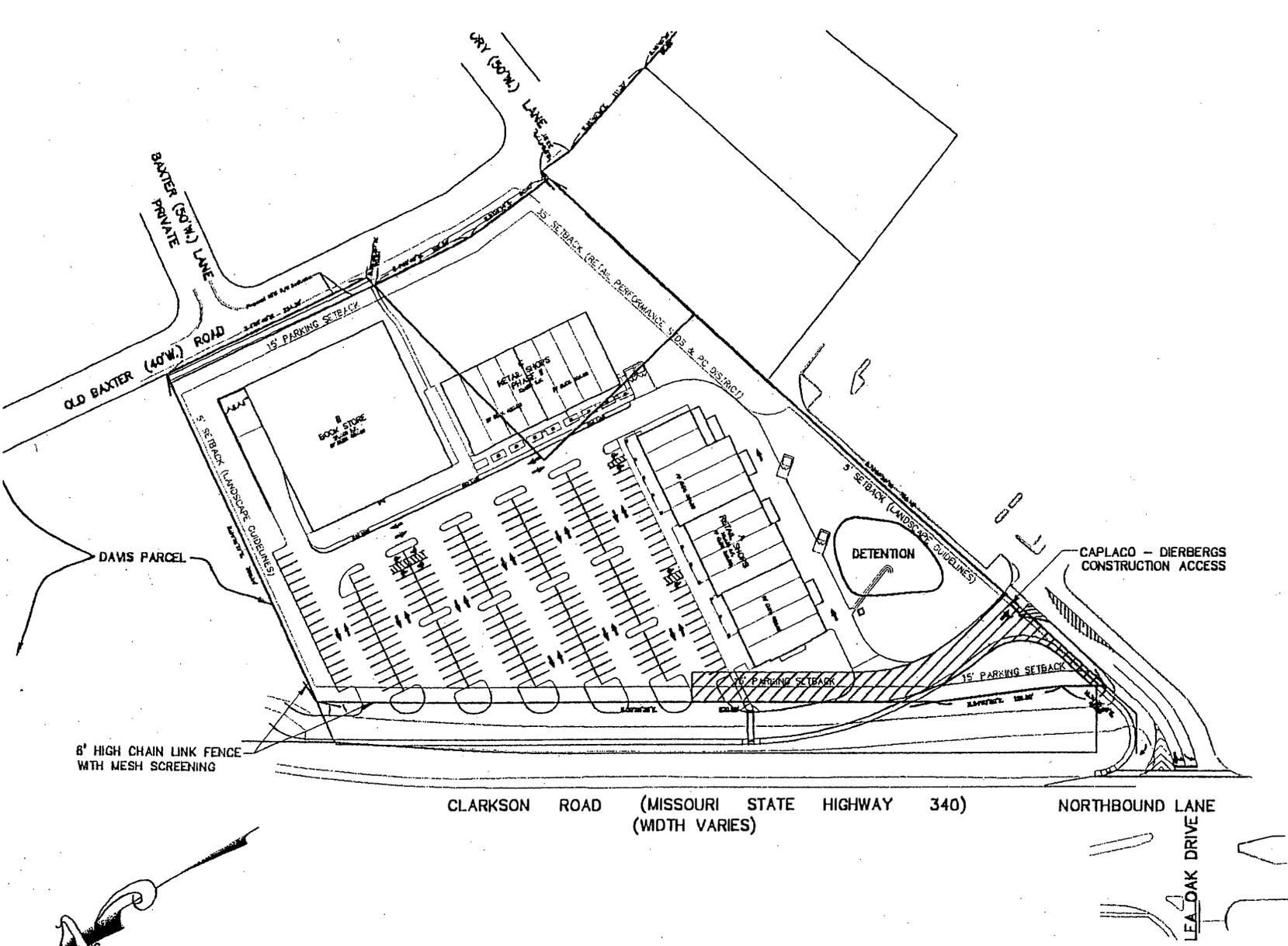


150 300  
SCALE IN FEET

Scale 1" = 150'

*EXHIBIT E*  
*Davis Street Land - Temporary Construction Acces*  
*CHESTERFIELD OAKS*  
*Chesterfield, Missouri*

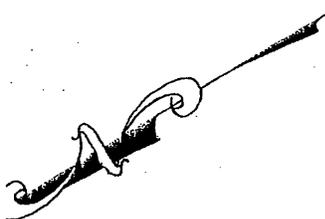
the clayton engineering company, Inc.  
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6' HIGH CHAIN LINK FENCE WITH MESH SCREENING

CLARKSON ROAD (MISSOURI STATE HIGHWAY 340) (WIDTH VARIES) NORTHBOUND LANE

LEA OAK DRIVE



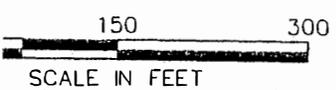
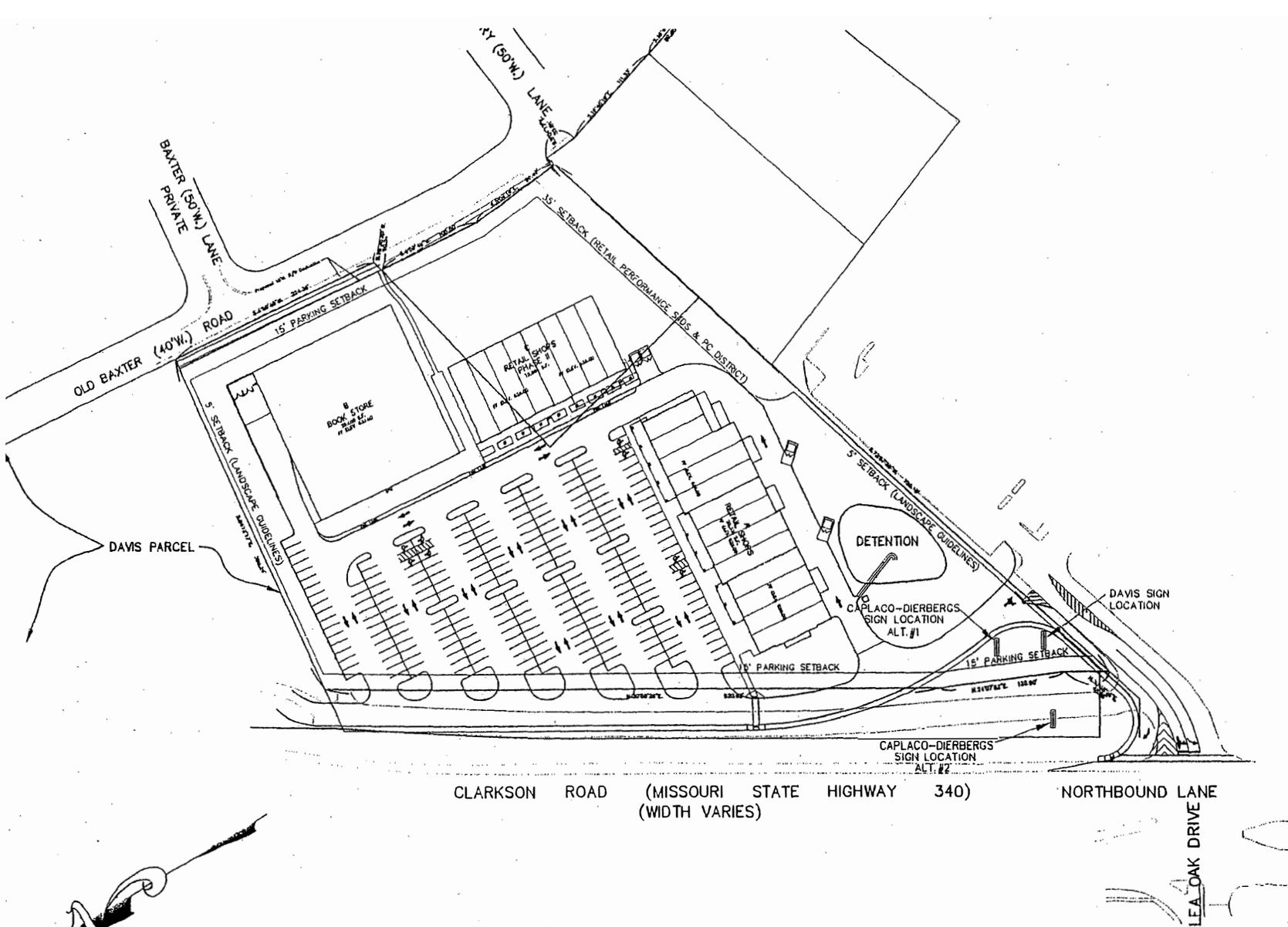
150 300

SCALE IN FEET

1" = 150'

EXHIBIT F  
 Caplaco - Dierbergs Construction Access  
 CHESTERFIELD OAKS  
 Chesterfield, Missouri

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Scale 1" = 150'

CLARKSON ROAD (MISSOURI STATE HIGHWAY 340) (WIDTH VARIES) NORTHBOUND LANE  
LEA OAK DRIVE

*EXHIBIT G*  
*Sign Locations*

*CHESTERFIELD* *OAKS*  
*Chesterfield,* *Missouri*