

FILED SARPY CO. NE.

INSTRUMENT NUMBER

98 013415

98 MAY 26 AM 9:43

*George J. Newberry*

REGISTER OF DEEDS

98-13415

Counter a  
 Verify [initials]  
 D.E. [initials]  
 Proof [initials]  
 Fee \$ 65.00  
 Ck  Cash  Chg

STS

~~After recording, return to:~~

James F. Kasher  
 Croker, Huck, Kasher, DeWitt,  
 Anderson & Gonderinger, P.C.  
 2120 S. 72nd St., #1250  
 Omaha, NE 68124

**SUBORDINATION, NON-DISTURBANCE AND  
 ATTORNMENMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT ("Agreement") is made as of this 19th day of January, 1998, by and among WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY AND/OR OMAHA WOODMEN LIFE INSURANCE SOCIETY, a Nebraska corporation, d/b/a WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY ("Woodmen"), AMERITRADE HOLDING CORPORATION ("Ameritrade"), and SOUTHROADS SHOPPING CENTER LIMITED LIABILITY COMPANY ("Southroads").

**RECITALS**

A. Woodmen is the lessor named in, and the present holder of, the lessor's interest in and to a certain lease (the "Underlying Lease") executed on or about June 29, 1965, a Notice of which lease was recorded in Book 35 of Miscellaneous Records at Page 367 in the Office of the Sarpy County Register of Deeds.

B. Woodmen holds a leasehold mortgage of the Underlying Lease, executed on September 2, 1965, and recorded in Book 158 of Mortgage Records at Page 269 in the Office of the Sarpy County Register of Deeds (the "Leasehold Mortgage"). Woodmen is also the beneficiary under a Deed of Trust, dated March 25, 1994, filed April 13, 1994, as Instrument No. 94-08338 ("Deed of Trust"), in the Office of the Sarpy County Register of Deeds. The Leasehold Mortgage and Deed of Trust constitute a lien against, without limitation, the premises demised in the Underlying Lease and all improvements located on the demised premises.

C. Presently Southroads is the Lessee of the premises in Sarpy County demised in the Underlying Lease, as more particularly described in the Underlying Lease (the "Premises").

D. Southroads has demised a portion of the Premises demised by the Underlying Lease to Ameritrade pursuant to a Commercial Lease Agreement (the "Ameritrade Lease")

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contingent upon the execution of a mutually agreeable Attornment and Non-Disturbance Agreement.

E. Under the Ameritrade Lease, Ameritrade will make significant improvements to the premises demised thereunder.

F. Woodmen has agreed that subject to the terms and conditions of this Agreement Woodmen shall not disturb Ameritrade so long as it is in compliance with the Ameritrade Lease and further that in the event that the Underlying Lease is terminated for any reason or in the event of the foreclosure of the Leasehold Mortgage or Deed of Trust or deed in lieu of such foreclosure, Woodmen and Southroads have agreed that there shall be an attornment of the Ameritrade Lease.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. **Subordination.**

a. Subject to the terms of this Agreement, the Ameritrade Lease and the leasehold estate created thereby is hereby declared to be, and hereafter shall continue at all times to be, junior, subject and subordinate to the Underlying Lease, Leasehold Mortgage and Deed of Trust including, without limitation, (i) any and all increases, renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Underlying Lease, Leasehold Mortgage and Deed of Trust (and any notes secured by said instruments) and (ii) any future mortgage, deed of trust or encumbrance affecting the Premises held by or made for the benefit of Woodmen (and its successors and assigns). The foregoing subordination is self-operative without the necessity for execution of any further instruments.

b. Ameritrade hereby covenants with Woodmen that Ameritrade will not cause the Ameritrade Lease to be subordinated to any interests other than those held by or made for the benefit of Woodmen (and its successors and assigns) without prior written notice to and prior written consent of Woodmen.

c. At any time at the election of Woodmen, Woodmen shall have the right to declare the Ameritrade Lease superior to the lien, provisions, operation and effect of the Underlying Lease, Leasehold Mortgage and Deed of Trust.

2. **Attornment.** Notwithstanding the foregoing subordination, if, while the Ameritrade Lease is still in force, the interest of Southroads in the Premises pursuant to the Underlying Lease is terminated for any reason or in the event of the foreclosure of the Leasehold Mortgage or Deed of Trust or deed in lieu of such foreclosure, Ameritrade shall be bound to Woodmen or such other transferee, successor or assign, as the case may be, (herein and hereafter together called the "Purchaser") pursuant to all of the terms, covenants and conditions of the Lease for the balance of the term of the Lease then remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if the Purchaser were the original landlord under the Lease, and Tenant does

hereby attorn to and agree to attorn to the Purchaser, as its landlord, said attornment to be effective and self-operative, without the execution of any further instruments, upon Purchaser succeeding to the interest of Southroads under the Lease.

3. **Nondisturbance.** Notwithstanding the foregoing subordination, if, while the Ameritrade Lease is still in force, the interest of Southroads in the Premises pursuant to the Underlying Lease is terminated for any reason or in the event of the foreclosure of the Leasehold Mortgage or Deed of Trust or deed in lieu of such foreclosure, Purchaser covenants and agrees to be bound by the provisions of the Lease for the balance of the term of the Lease then remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Ameritrade Lease, and the Ameritrade Lease shall not be terminated, nor shall such Ameritrade's use, possession or enjoyment of the leased premises be interfered with, nor shall the leasehold estate granted by the Ameritrade Lease be affected in any other manner, in any foreclosure or any action or proceeding instituted under or in connection with the Underlying Lease, Leasehold Mortgage and Deed of Trust (and any notes secured by said instruments).

4. **Further Acts.** Notwithstanding any provisions contained in Paragraphs 1 and 2 above which state that the attornment and subordination are effective and self-operative without the execution of any further instrument, the parties agree that, upon request of any party to this Agreement, the other parties shall execute such written agreement(s) to evidence and affirm any and all obligations under this Agreement, and further, Ameritrade agrees that it will execute from time to time such further assurances and estoppel certificates as may reasonably be requested by Woodmen or Southroads. Without limiting the generality of the foregoing, if and to the extent that Southroads rejects the Ameritrade Lease in any federal or state proceeding, the parties will immediately enter into a new lease between Ameritrade (or its successors or assigns) and Woodmen (or any Purchaser) on the same terms as the Ameritrade Lease, provided execution of such new lease does not violate any bankruptcy law or related court order.

5. **Limitation.** Neither Woodmen nor any Purchaser shall be:

a. liable for any act or omission of Southroads or any prior landlord (including the loss or misappropriation of any rental payments or security deposits);

b. subject to any credits, claims, setoffs, offsets or defenses which Ameritrade may have against Southroads or any prior landlord, except for the setoffs Ameritrade is expressly entitled to under Section 12.02 of the Ameritrade Lease, relating or pertaining to Southroads' failure to meet its obligations under the Ameritrade Lease with respect to payment of real estate taxes, provision of services required under the terms of the Ameritrade Lease, or maintenance of the Common Area, Parking Area (as those terms are defined in the Ameritrade Lease), or exterior roofing of the premises demised under the Ameritrade Lease;

c. bound by (or responsible for) any advance payment of rent or any other monetary obligations under the Ameritrade Lease to Southroads in excess of one month's prepayment thereof in the case of rent, or in excess of one periodic payment in advance in the case of any other monetary obligations under the Ameritrade Lease;

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- d. responsible for any security deposit not actually received by Woodmen or any Purchaser;
- e. bound by any amendment, assignment (in whole or in part), subletting, extension, renewal or modification of the Ameritrade Lease to which Woodmen or any Purchaser has not consented in writing, and any attempted amendment, assignment (in whole or in part), subletting, extension, renewal or modification of the Ameritrade Lease without said consent shall be null and void and of no force and effect;
- f. liable for any latent and/or patent defects in the construction of the leased premises;
- g. liable for any breach of any warranty in the Lease by Southroads or a prior landlord;
- h. bound by any obligation to repair, replace, rebuild or restore the leased premises, or any part thereof, in the event of damage by fire or other casualty, or in the event of partial condemnation, beyond such repair, replacement, rebuilding or restoration as may be required of the landlord under the Ameritrade Lease and as can reasonably be accomplished with the use of the net insurance proceeds or the net condemnation award actually received by or made available to Woodmen (as successor in interest to Southroads) or Purchaser; and
- i. required to remove any person occupying the leased premises or any part thereof.

Woodmen shall not be liable for any reason for amounts in excess of the value of Woodmen's interest in the subject property, or for consequential or punitive damages of any kind.

6. **Notice.** Ameritrade agrees to give prompt written notice to Woodmen (and to any successor in interest to Woodmen of which Ameritrade has been notified) of: (a) any default of Southroads under the Ameritrade Lease if such default is of such a nature as to give Ameritrade a right to terminate the Ameritrade Lease, reduce rent or to credit or offset any amounts against future rents; and (b) any attempt by Southroads (including any successor or assignee of Southroads) to amend, modify, terminate, or render the Ameritrade Lease void.

7. **Cure.** If, within thirty (30) days after receipt of written notice from Tenant, Woodmen, at Woodmen's sole option, commences to cure a default of Southroads under the Ameritrade Lease that is capable of being cured by Woodmen, or commences to pursue any other of its remedies under the Deed of Trust and thereafter diligently pursues such cure to completion, Ameritrade agrees not to terminate the Ameritrade Lease, consent or acquiesce in the termination of the Ameritrade Lease or surrender the leased premises and agrees to continue to be bound by the terms of the Ameritrade Lease and this Agreement.

8. **Payments of Rent to Woodmen.** In consideration of Woodmen's nondisturbance agreement under Paragraph 3 hereof, from and after notice is given to Ameritrade by Woodmen that there is an Event of Default (as defined in the Underlying Lease, Leasehold Mortgage or

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Deed of Trust) and that, pursuant to the terms of the assignment of leases and rents granted by Southroads to Woodmen, Ameritrade shall thereafter pay to Woodmen or as directed by Woodmen, all rentals and all other monies due or to become due under the Ameritrade Lease, and Southroads hereby expressly authorizes Ameritrade to make such payments to Woodmen and hereby releases and discharges Ameritrade from any liability to Southroads on account of any such payments.

9. **Assignment.** Southroads, by its execution hereof, agrees that this Agreement does not constitute a waiver by Woodmen of any of Woodmen's rights under the Underlying Lease, Leasehold Mortgage or Deed of Trust and any assignments of leases or rents contained therein or in a separate instrument or in any way release Southroads from any of the terms, conditions, obligations, covenants and agreements of said documents.

10. **Condemnation/Casualty.** In the event the leased premises or any part thereof is taken for public purposes by condemnation or transfer in lieu thereof or the same are damaged or destroyed, the rights of Southroads and Ameritrade to any condemnation award or insurance proceeds will be determined and controlled by the applicable provisions of the Underlying Lease and the Ameritrade Lease, subject to clause b. in Paragraph 5 of this Agreement.

11. **Authority.** The parties hereto covenant and agree that the person signing on their behalf has full power, authority and authorization to execute this Agreement, without the necessity of any consents, authorizations or approvals, or, if such consents, authorizations or approvals are required, they have been obtained prior to the execution hereof. Ameritrade, Southroads and Woodmen hereby warrant and represent to one another that they are duly formed and currently in good standing under their jurisdiction of organization, that they are currently qualified to transact business in the state where the leased premises is located, and that they have full legal capacity to enter into this Agreement.

12. **Prevailing Party.** Should any action or proceeding be commenced to enforce any of the provisions of this Agreement, the prevailing party in such action will be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, including reasonable attorney's fees to the extent allowed by applicable law.

13. **Notices.** All notices, consents, approvals or other instruments required or permitted to be given by any party pursuant to this Agreement shall be in writing and given by (i) hand delivery, (ii) facsimile, (iii) express overnight delivery service, or (iv) certified mail, return receipt requested, and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) transmission, if delivered by facsimile, (c) the next business day, if delivered by express overnight delivery service, or (d) the third business day following the day of deposit of such notice with the United States Postal Service, if sent by certified mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers), as applicable (specified below):

If to Southroads:

Alan Baer  
c/o Steven W. Seline, Esq.

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Kutak Rock  
The Omaha Building  
1650 Farnam St.  
Omaha, NE 68102-2186  
Fax No. (402) 346-1148

If to Woodmen:

Woodmen of the World Life Insurance Society  
Woodmen Tower  
1700 Farnam St.  
Omaha, NE 68102  
Attn: Investment Division  
Fax No. (402) 342-5136

If to Ameritrade:

c/o James F. Kasher, Esq.  
Croker, Huck, Kasher, DeWitt, Anderson & Gonderinger, P.C.  
1250 Commercial Federal Tower  
2120 S. 72nd St.  
Omaha, NE 68124  
Fax No. (402) 390-9221

14. **Successors.** All provisions, covenants and agreements contained in this Agreement shall bind, inure to the benefit of, and equally relate to, Ameritrade and its successors and assigns, jointly and severally, Southroads, and its successors and assigns, jointly and severally, and Woodmen, and its successors and assigns, jointly and severally.

15. **Miscellaneous.**

a. Southroads and Ameritrade represent and warrant to Woodmen that, as of the date hereof, there are no agreements other than the Ameritrade Lease in existence or contemplated between Southroads and Ameritrade, relating to the leased premises or with respect to any other matter related to Ameritrade's occupancy of the leased premises.

b. This Agreement may be modified, changed or amended only by an agreement in writing signed by all of the parties hereto to their respective successors in interest.

- c. This Agreement may be signed in counterparts.
- d. This Agreement shall be governed by the laws and decisions of the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed and sealed as of the day and year first hereinabove set forth.

WOODMEN OF THE WORLD  
 LIFE INSURANCE SOCIETY and/or  
 OMAHA WOODMEN LIFE INSURANCE  
 SOCIETY, a Nebraska corporation, d/b/a  
 WOODMEN OF THE WORLD LIFE  
 INSURANCE SOCIETY

By: *John G. Bookout*  
 Title: John G. Bookout, President

By: *James L. Mounce*  
 Title: James L. Mounce, Secretary

AMERITRADE HOLDING CORPORATION

By: *Susan M. Hohman*  
 Its: *V.P., Human Resources / Facilities*

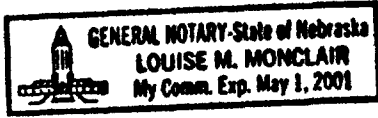
SOUTHROADS SHOPPING CENTER  
 LIMITED LIABILITY COMPANY

By: *Ala Bai*  
 Its: *Chairman*

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

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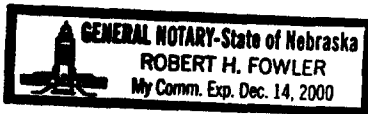
The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of January, 1998, by John G. Bookout and James L. Mounce, as President and Secretary, respectively, of Woodmen of the World Life Insurance Society and/or Omaha Woodmen Life Insurance Society, a Nebraska corporation, on behalf of the corporation.



Louise M. Monclair  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

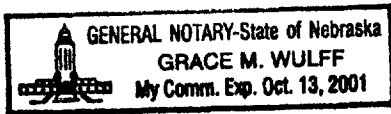
The foregoing instrument was acknowledged before me this 23 day of January, 1998, by Susan M Hohman, VP of Ameritrade Holding Corporation, a Delaware corporation, on behalf of the corporation.



Robert H. Fowler  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 22 day of January, 1998, by ALAN BAER, CHAIRMAN of Southroads Shopping Center Limited Liability Company, a ~~NEBRASKA~~ DELAWARE limited liability company, on behalf of the limited liability company.



Grace M. Wulff  
Notary Public



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EXHIBIT "A"

LEGAL DESCRIPTION

A portion of the following tract:

A tract of land lying wholly within the Southwest Quarter (SW $\frac{1}{4}$ ) of Section 14, Township 14 North, Range 13 East of the 6th P.M., in the City of Bellevue, in Sarpy County, Nebraska, containing the following parcels of land: All of Lots 2C1A, 2C1B, 2C2, 3, 4A2, 4A2B, 4C, 5A, 5A2, 5C, 6A1A1, 6A1A2, 6A1A3, 6B, 7A1, 7B, 8A, 8A1, 8A2, 8A3, 8C, and 8D, in CLINTON'S SUBDIVISION, in said Section 14; all of Tax Lots F2B1B1, F2B1B2 and G4 in said Section 14; All of Lots 7 and 10, and part of Lots 11 and 12, in LAWNDALE, a Subdivision in said Section 14; All of Lots 1 and 2, and part of Lots 3, 6, and 7, in JULL'S SUBDIVISION, in said Section 14; and, also portions of vacated Prairie Avenue, all being more particularly described as follows:

Beginning at the intersection of the East right-of-way line of State Highway 73-75, and the North right-of-way line of Childs Road; thence North 15°20'02" West (assumed bearing), along said East right-of-way line of State Highway 73-75, 488.69 feet; thence continuing along said East right-of-way line, along a curve to the left with a radius of 2,914.90 feet, and an arc length of 462.94 feet (chord bearing North 20°21'12" West, 462.46 feet), to the intersection of said East right-of-way line and the South right-of-way line of Brewster Road; thence North 73°25'50" East, along said South right-of-way line, 654.09 feet; thence North 60°00'48" East, continuing along said South right-of-way line, 354.84 feet; thence North 74°31'17" East, continuing along said South right-of-way line, 20.55 feet; thence South 00°15'35" West, 134.81 feet; thence South 88°27'10" East, 107.52 feet; thence South 00°37'45" West, 3.50 feet; thence South 88°27'10" East, 3.00 feet; thence North 00°37'45" West, 3.50 feet; thence South 89°19'25" East, 94.31 feet; thence South 00°09'16" West, 76.14 feet; thence North 87°15'31" East, 82.20 feet; thence South 00°54'27" West, 71.73 feet; thence North 89°11'48" West, 35.42 feet; thence South 00°15'43" West, 610.98 feet; thence North 89°45'33" West, 29.54 feet; thence South 55°03'43" West, 15.00 feet; thence South 34°56'17" East, 349.00 feet; thence South 10°19'57" East, 36.03 feet, to a point on the North right-of-way line of Childs Road; thence South 89°57'58" West, along North right-of-way line of Childs Road, 1,099.18 feet, to the Point of Beginning.

EXCEPT that part thereof more particularly described as follows:

A tract of land located in Tax Lot L, in the Southwest Quarter (SW $\frac{1}{4}$ ) of Section 14, Township 14 North, Range 13 East of the 6th P.M., in the City of Bellevue, in Sarpy County, Nebraska, more particularly described as follows:

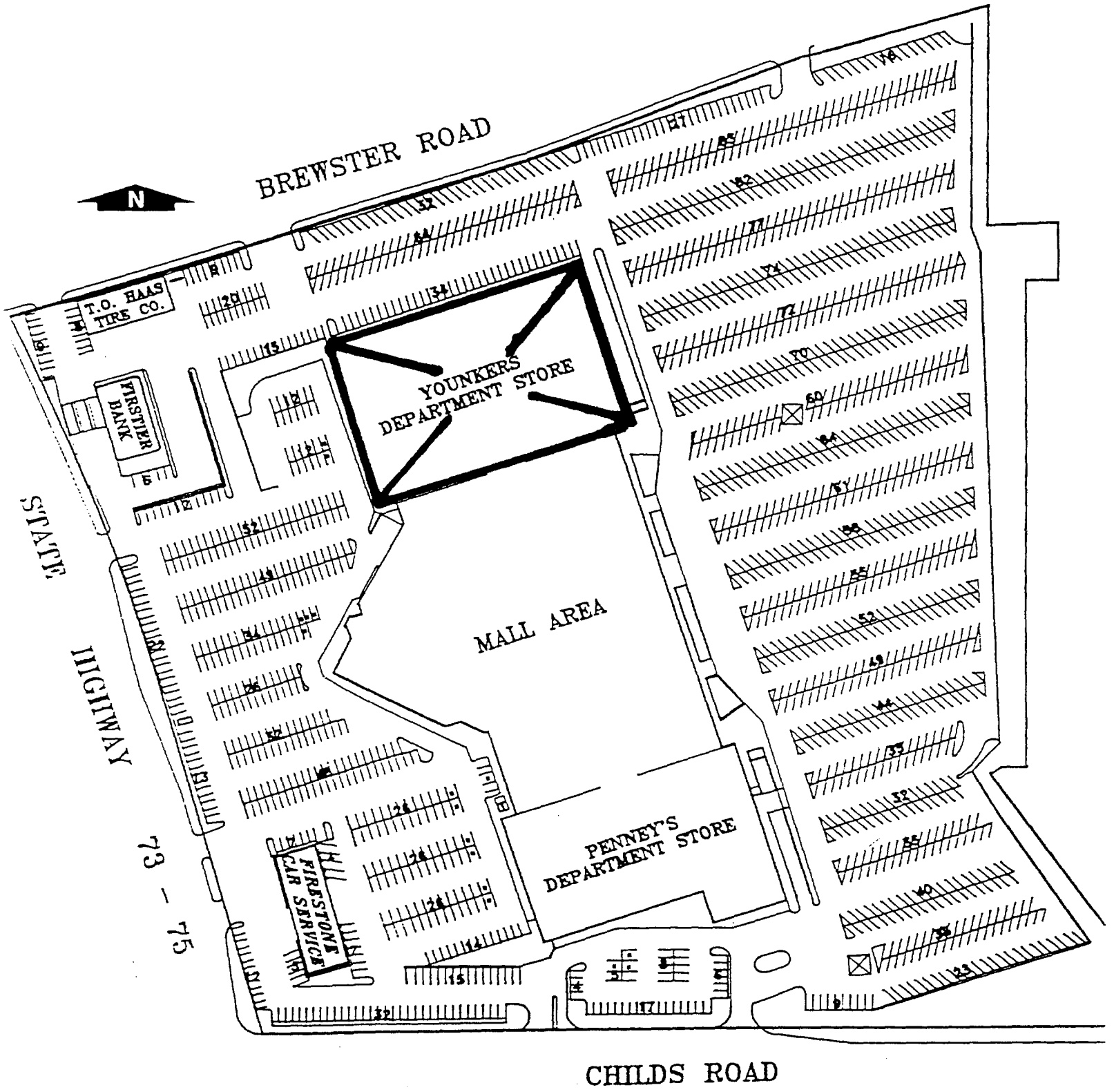
Beginning at the Southwest corner of said Tax Lot L, said point also being the intersection of the East right-of-way line of Nebraska Highway 73-75 and the North right-of-way line of Childs Road; thence North 15°20'02" West (assumed bearing), along the East right-of-way line of Nebraska Highway 73-75, a distance of 13.48 feet; thence North 89°57'58" East, along a line parallel to said North right-of-way line of Childs Road, a distance of 588.56 feet; thence South 00°02'02" East, 13.00 feet, to a point on the North right-of-way line of Childs Road; thence South 89°57'58" West, along the North right-of-way line of Childs Road, a distance of 585.00 feet, to the Point of Beginning.

NOTE: The above premises is also described as Lot L, Clinton's Subdivision, in said Section 14, Township 14 North, Range 13 East of the 6th P.M., in Sarpy County, Nebraska.

NOTE: Said portion of the above described tract is delineated in bold on the map attached hereto as Exhibit A - Demised Premises.

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EXHIBIT A - DEMISED PREMISES  
SOUTHROADS MALL - AMERITRADE LEASE  
January 19, 1998

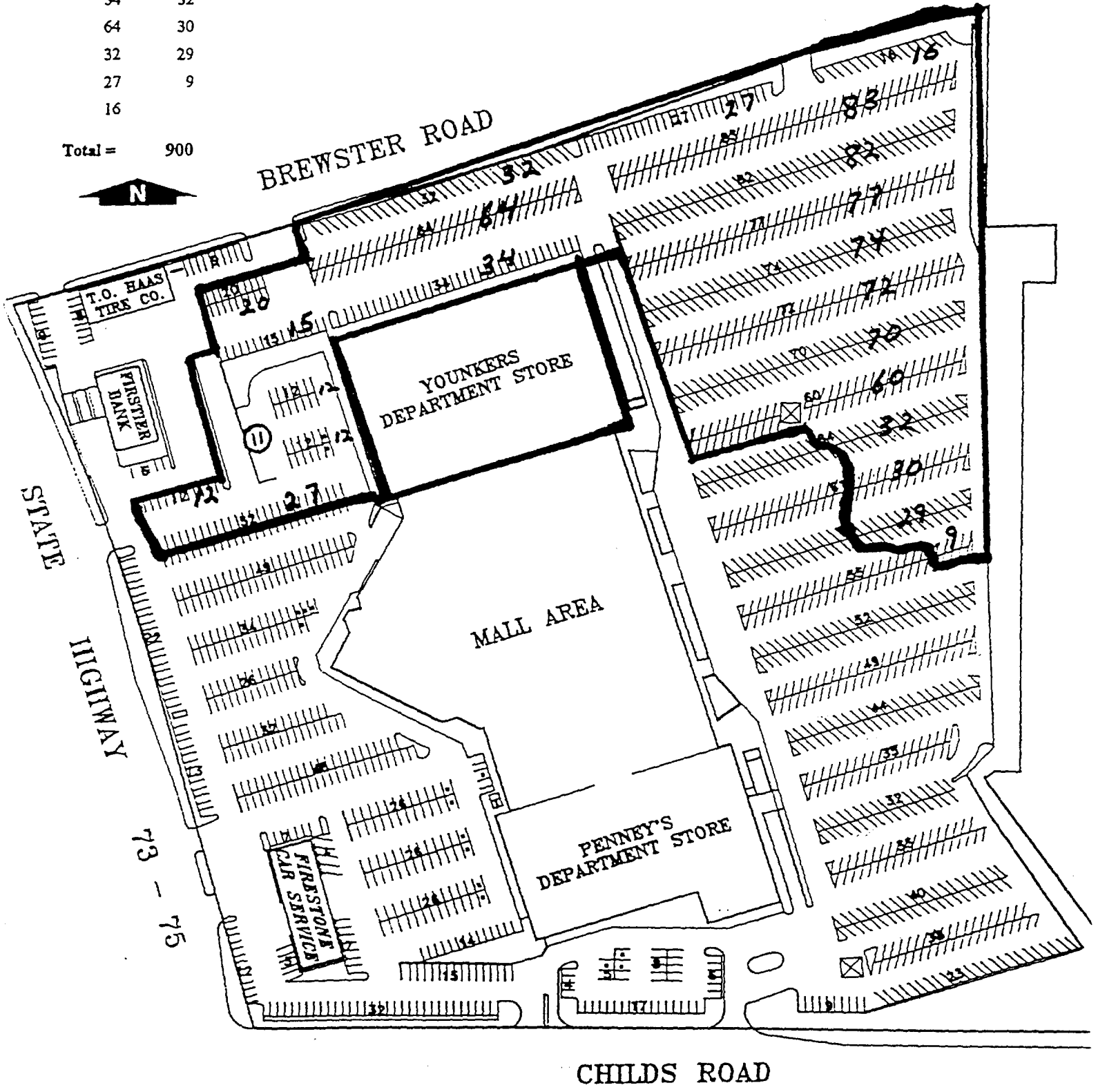


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EXHIBIT B - DESIGNATED PARKING  
 SOUTHRoadS MALL - AMERITRADE LEASE  
 January 19, 1998

- 12 83
- 27 82
- 12 77
- 12 74
- 11 72
- 15 70
- 20 60
- 34 32
- 64 30
- 32 29
- 27 9
- 16

Total = 900



CHILDS ROAD