

Bellevue, NE
941 Fort Crook Road
PN 182249
897230-002 BAH

COUNTED SM P.F. X
VERIFY DM D.E. DM
PROOF _____
FEES \$ 98.50
CHECK # 4582
CHG _____ CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2007-14279
2007 MAY 16 A 11:38 AM
Glenn J. Diesing
REGISTER OF DEEDS

Return to:
Corporation Service Company
Post Office Box 2969
Springfield, IL 62708

BFS Retail & Commercial Operations, LLC
333 East Lake Street
Bloomington, IL 60108
Attn: Law Department- Real Estate Section

NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS NONDISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement"), dated as of February 27, 2004, is among **WOODMAN OF THE WORLD LIFE INSURANCE SOCIETY**, a Nebraska corporation, whose address is 1700 Fairham Street, Omaha, Ne 68102 ("Prime Landlord"), **SOUTHROADS SHOPPING CENTER LIMITED LIABILITY COMPANY**, a Delaware limited liability company, **D/B/A SOUTHROADS MALL**, whose address is 1001 Fort Crook Road, Bellevue, Nebraska 68005 ("Landlord") and **BFS RETAIL & COMMERCIAL OPERATIONS, LLC**, a Delaware limited liability company, whose address is 333 East Lake Street, Bloomington, Illinois 60108 ("Tenant").

WITNESSETH:

WHEREAS, Prime Landlord is the owner in fee simple of a portion of the shopping center (the "Shopping Center") commonly known as the Southroads Shopping Center, located in the City of Bellevue, County of Sarpy, State of Nebraska, as more particularly described on Exhibit A attached hereto and made a part hereof (the "Prime Landlord Property");

WHEREAS, Prime Landlord has leased the Prime Landlord Property to Landlord pursuant to the following documents (collectively, the "Prime Lease"): that certain Lease by and between Prime Landlord, as lessor, and Alan Baer and J. D. Diesing, as Trustees of the E. John Brandeis Trust, as lessee, a Short Form of which was filed June 30, 1965 in Misc. Book 35 at Page 367; as assigned pursuant to that certain Assignment of Lease dated January 1, 1979, filed July 31, 1979 in Misc. Book 52 at Page 505, executed by Alan Baer, J. D. Diesing, Lester K. Marcus and Allan Jay Garfinkle, as Trustees of the E. John Brandeis Trust, in favor of Alan Baer, assigning an undivided 3/4 of the lessee's interest under the above lease, under the terms therein provided; as assigned pursuant to that certain Assignment of Ground Lease dated as of April 1,

A

1984, filed April 30, 1984 in Misc. Book 57 at Page 270, executed by Alan Baer in favor of Patrician Equities Corp., a Florida Corporation, assigning all of the lessee's interest under the above lease, under the terms therein provided; as assigned pursuant to that certain Assignment of Ground Lease dated April 1, 1984, filed April 30, 1984 in Misc. Book 57 at Page 273, executed by Patrician Equities Corp., a Florida Corporation, in favor of Southroads Mall Limited Partnership, a Nebraska Limited Partnership, assigning all of the lessee's interest under the above lease, under the terms therein provided; as affected by the Supplementary Assignment of Ground Lease dated June 25, 1984, filed July 3, 1984 in Misc. Book 57 at Page 453, executed by and between Patrician Equities Corp., a Florida Corporation, as assignor, and Southroads Mall Limited Partnership, a Nebraska Limited Partnership, as assignee; as affected by Attornment and Nondisturbance Agreement, filed October 28, 1981, in Misc. Book 54 at Page 717, Records, Sarpy County, Nebraska, executed by and between Prime Landlord and the Southroads Bank; as affected by Attornment and Nondisturbance Agreement, filed October 28, 1981, in Misc. Book 54 at Page 718, Records, Sarpy County, Nebraska, executed by and between E. J. Brandeis Trust and The Southroads Bank; as affected by Assignment of Lease dated December 31, 1974, filed August 27, 1975 in Misc. Book 48 at Page 465, executed by Alan Baer, J. D. Diesing, Lester Marcus and Harry B. Cohen, Trustees of the E. John Brandeis Trust in favor of Alan Baer, assigning an undivided ¼ of the lessee's interest under the above lease, under the terms therein provided; as affected by Amendment to Note and Indenture of Mortgage dated April 1, 1984, filed April 30, 1984, in Misc. Book 57 at Page 276, executed by and between Prime Landlord and Southroads Mall Limited Partnership; as affected by Assignment of Lessor's interest in Leases and Rents by Landlord, assignor, to Prime Landlord, assignee, dated March 25, 1994, filed April 13, 1994 as instrument No. 94-08339; as affected by Assumption Agreement and Amendment of Ground Lease by and between Landlord and Prime Landlord, dated March 25, 1994, filed April 13, 1994 as instrument No. 94-08340; as affected by Assignment of Ground Lease by Alan Baer, assignor, to Landlord, assignee, filed April 13, 1994, as instrument No. 94-08344;

WHEREAS, Landlord is the owner in fee simple of a portion of the Southroads Shopping Center, as more particularly described on Exhibit B attached hereto and made a part hereof (the "Landlord Property") (the Prime Landlord Property and the Landlord Property are collectively referred to herein as the "Shopping Center Property").

WHEREAS, Prime Landlord is the beneficiary under those certain Deed of Trust Documents (as defined herein) which affect all or a portion of the Shopping Center Property. The term "Deed of Trust Documents" shall mean the following documents: (a) that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement from Landlord, as trustor, in favor of Prime Landlord, as beneficiary, dated as of March 25, 1994 and filed April 13, 1994 at instrument No. 94-08338; (b) that certain Assignment of Lessor's Interest in Leases and Rents from Landlord, as assignor, in favor of Prime Landlord, as assignee, dated as of March 25, 1994 and filed April 13, 1994 as instrument No. 94-08339; (c) that certain Financing Statement from Landlord in favor of Prime Landlord, filed April 13, 1994 at instrument No. 94-08341; and (d) that certain Modification Agreement by and between Landlord and Prime Landlord, dated as of April 1, 2001, filed July 27, 2001 as instrument No. 2001-23152.

WHEREAS, pursuant to and in accordance with the terms and conditions set forth in that certain Lease dated as of February 27, 2004 by and between Landlord and Tenant (as may be amended from time to time, the "Sublease"), Landlord has leased to Tenant that certain real estate and related improvements commonly known as 941 Fort Crook Road North, City of Bellevue, County of Sarpy, State of Nebraska, Lot 4, as cross hatched and outlined in red on the shopping center plot plan ("Shopping Center Plot Plan") attached hereto as Exhibit C (the "Premises"), which Premises is a part of the Shopping Center Property, together with a) all improvements that have been or may be placed on the Premises; and (b) the non-exclusive right to use the Common Areas (as defined in the Sublease) of the Shopping Center Property.

WHEREAS, the Prime Landlord, Landlord and Tenant desire to establish certain rights, safeguards, obligations and priorities with regard to their respective interests by means of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants of the parties and other good and valuable consideration, Prime Landlord, Landlord and Tenant agree as follows:

1. Existence of Prime Lease. The Prime Landlord and Landlord each state that, to the best of their knowledge, the following is true and correct: (a) the Prime Lease is in full force and effect; (b) the Prime Lease has not been modified except as specifically set forth above; (c) neither Prime Landlord nor Landlord is in default under the Prime Lease; and (d) the Prime Lease commenced as of July 1, 1965 and expires as of June 30, 2064.
2. Consent to Sublease. The Prime Landlord hereby consents to the sublease of the Premises from Landlord to Tenant pursuant to and in accordance with the terms of the Sublease. Prime Landlord agrees and acknowledges that the execution of the Sublease does not constitute a default by Landlord under the Prime Lease.
3. Nondisturbance; Attornment. Provided the Sublease is in full force and effect and the Tenant is not in default under the Sublease (beyond any applicable cure period), then Prime Landlord, Landlord and Tenant agree as follows:
 - a. The Tenant's right of possession to the Premises and Common Areas located on the Prime Landlord Property and the Tenant's other rights, duties and obligations arising out of the Sublease shall not be disturbed, modified, enlarged or otherwise affected by reason of: (i) a default by Landlord under the Prime Lease or Deed of Trust Documents; (ii) any exercise by Prime Landlord of its rights or remedies under the Prime Lease or Deed of Trust Documents (or the note it secures), at law or in equity; (iii) any performance by Prime Landlord of its obligations under the Prime Lease or Deed of Trust Documents; (iii) any other term or condition set forth in the Prime Lease (except for the natural expiration of the term of the Prime Lease) or Deed or Trust Documents. Further, the Tenant shall not be named as a party defendant in any proceedings resulting from a default of the Landlord under the Prime Lease or Deed of Trust Documents (including, without limitation, the

C

foreclosure of the lien of the Deed of Trust Documents) nor in any other way be deprived of its rights under the Sublease.

- b. If the current term of the Prime Lease or any renewal thereof shall terminate for any reason before the expiration of the term of the Sublease (as renewed or extended), then the following provisions shall apply:
- i. The Sublease shall continue as a direct lease ("Direct Lease") between the Prime Landlord, as landlord, and the Tenant, as tenant, with the same force and effect as if the Prime Landlord, as landlord, and the Tenant, as tenant, had entered into a lease as of the date of termination of the Prime Lease (the "Prime Lease Expiration Date"). Under the Direct Lease, the Prime Landlord shall be responsible for all of the obligations and liabilities of the Landlord under the Sublease and shall have all of the rights and remedies of the Landlord under the Sublease; provided, however, that in no event shall the Prime Landlord be: (1) liable for any act or omission of the Landlord; (2) subject to any offsets or deficiencies which the Tenant might be entitled to assert against the Landlord; or (3) bound by any payments of rent or additional rent made by the Tenant to the Landlord for more than one month in advance. The Direct Lease shall commence as of the Prime Lease Expiration Date and shall contain the same terms, covenants and conditions as those contained in the Sublease.
 - ii. Tenant shall, pursuant to and in accordance with the terms of the Sublease, as modified by this Agreement, continue to have the nonexclusive right to use such portions of the Landlord Property that are a part of the Common Areas of the Shopping Center.
- c. In the event the Prime Landlord or any other person acquires title to the Landlord Property pursuant to the exercise of any remedy provided for in the Deed of Trust Documents or by conveyance in lieu of foreclosure, the Sublease shall not be terminated or affected by the foreclosure, conveyance or sale in any such proceeding. The Prime Landlord also covenants that any sale by it of the Landlord Property as a result of the exercise of any rights and remedies under the Deed of Trust Documents, or otherwise, shall be made subject to the Sublease and the rights of the Tenant under the Sublease. Tenant shall, pursuant to and in accordance with the terms of the Sublease, as modified by this Agreement, continue to have the nonexclusive right to use such portions of the Landlord Property that are a part of the Common Areas of the Shopping Center.
- d. Prime Landlord shall have no personal liability to Tenant or to any party claiming by or through Tenant. Notwithstanding anything to the contrary herein, in the event of a judgment by Tenant against Prime Landlord arising out of any breach or default by Prime Landlord in any term or provision of this Agreement, Tenant agrees to look only to the equity of the Prime Landlord in the land and

improvements that constitute the Premises and to the rents, issues, and profits derived therefrom, including, without limitation, insurance and sale proceeds and eminent domain awards, for the satisfaction of said judgment. Nothing herein shall prevent Tenant from obtaining injunctive relief or specific performance from the Prime Landlord. In the event that the judgment cannot be fully satisfied as set forth in the proceeding sentence, Tenant may deduct the unsatisfied balance from any rent thereafter accruing to Prime Landlord under the Sublease (whether as a sublease or a Direct Lease).

- e. If any term, provision, covenant or condition of the Sublease is or shall be contrary, contradictory, conflicting or silent with respect to any term, provision, covenant or condition of the Prime Lease, the Sublease shall control and determine the Tenant's rights, duties and obligations with respect to the Tenant's possession, use and enjoyment of the Premises or the Common Areas located on the Prime Landlord Property.
- f. The provisions set forth in this Section 3 shall be self-operative and effective without execution of any further instruments on the part of either party. However, each of Prime Landlord and Tenant agrees to execute and deliver to the other party such other reasonable instruments as such party shall request in order to comply with these provisions.
- g. Prime Landlord shall have no duty to provide notice to Tenant of defaults or claims of default under the Prime Lease. However, in the event of a default by Landlord under the Prime Lease, Prime Landlord shall accept cure of such default from Tenant within the same period of time in which to cure such default as granted to the Landlord under the Prime Lease prior to any exercise by Prime Landlord of its rights and remedies under the Prime Lease (including, without limitation, the termination of the Prime Lease). In the event the Prime Lease is terminated for any reason, Prime Landlord agrees to deliver notice thereof to Tenant via certified mail at the following address:

BFS Retail & Commercial Operations, LLC
333 East Lake Street
Bloomington, IL 60108
Attn.: Law Department - Real Estate Section

- 4. License. Prime Landlord hereby agrees with Tenant that in the event Tenant is required pursuant to any environmental law applicable to the Premises or Common Areas located on the Prime Landlord Property, to investigate, remediate, clean up or otherwise respond to environmental conditions existing on the Premises or Common Areas located on the Prime Landlord Property, Tenant and its agents or contractors shall have a non-exclusive license to access the Premises and Common Areas located on the Prime Landlord Property for the purpose of performing such investigation, remediation, etc. on the Premises or Prime Landlord Property.

E

5. Modifications. This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest.
6. Successors and Assigns. This Agreement shall run with the land and inure to the benefit of and be binding upon the parties and their successors and assigns.
7. Counterpart Execution. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
8. Headings. The headings, titles and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.
9. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the state in which the Shopping Center Property is located.
10. Entire Agreement. This Agreement shall constitute the entire agreement of the parties hereto; all prior agreements between the parties, whether written or oral, are merged herein and shall be of no force and effect.
11. Notices. All notices required under this Agreement shall be deemed to be properly served if sent by registered or certified mail with return receipt requested or by a nationally recognized overnight mail delivery service, to Prime Landlord, Landlord and Tenant at the addresses as specified on the first page of this Agreement, or to such other addresses which Prime Landlord, Landlord or Tenant, as applicable, may designate in writing delivered to the other parties for such purpose. Date of service of a notice shall be the date on which such notice is either deposited in a post office of the United States Postal Service or deposited with such nationally recognized overnight mail delivery service, as applicable.

(End of document. Execution on following page.)

F

TO INDICATE THEIR AGREEMENT TO THE ABOVE, the parties or their authorized representatives or officers have signed this document.

PRIME LANDLORD:

**WOODMAN OF THE WORLD LIFE
INSURANCE SOCIETY,**
a Nebraska corporation

WITNESS:

Melanie Andersen
Name: Melanie Andersen
Name:

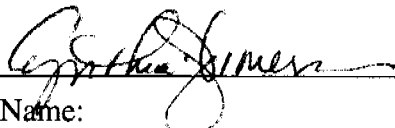
By: [Signature]
Name: Dean R Holdsworth
Title: Manager, Mortgage & Real Estate

G

LANDLORD:

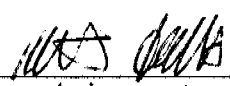
**SOUTHROADS SHOPPING CENTER
LIMITED LIABILITY COMPANY,**
a Delaware limited liability company

WITNESS:



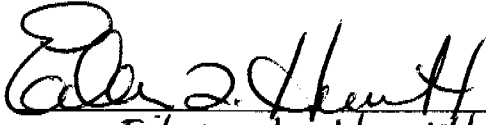
Name:

Name:

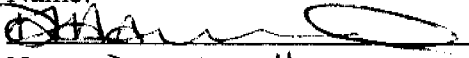
By: 

Name: Hilmar Dahlke
Title: V.P.

WITNESS:



Name: Eileen L. Hewitt

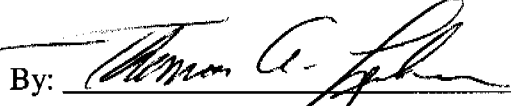


Name: DEYKA HAMILTON

TENANT:

**BFS RETAIL & COMMERCIAL
OPERATIONS, LLC,**

a Delaware limited liability company

By: 

Name: Thomas A. Lesh

Title: Manager, Assets/Transactions *MMR*

I

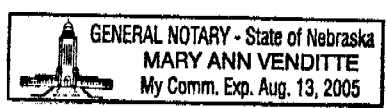
STATE OF Nebraska)
) SS:
COUNTY OF Douglas)

Before me, MaryAnn Venditte, a Notary Public in and for the above State and County, on this 16th day of August, 2004, personally appeared Dean R Holdsworth, Manager of Woodman of the World Life Insurance Society, a Nebraska Corporation, and known to me to be the same person who signed and acknowledged that he/she signed the foregoing instrument as such Manager of said corporation for and on behalf of the corporation, and that he/she executed the same as his/her free and voluntary act and deed and as the free and voluntary act and deed of the corporation, for the uses and purposes set forth in the instrument.

IN TESTIMONY WHEREOF, I have subscribed my signature and affixed my official seal on the day and year set forth above.

MaryAnn Venditte
Notary Public

My commission expires: 8/13/2005



7

STATE OF NEBRASKA)
) SS:
COUNTY OF SARPY)

Before me, Judy Peterson, a Notary Public in and for the above State and County, on this 1st day of September, 2004, personally appeared Helmuth Dahlke, _____ of Southroads Shopping Center Limited Liability Company, a Delaware limited liability company, and known to me to be the same person who signed and acknowledged that he/she signed the foregoing instrument as such Vice President, of said limited liability company for and on behalf of the limited liability company, and that he/she executed the same as his/her free and voluntary act and deed and as the free and voluntary act and deed of the limited liability company, for the uses and purposes set forth in the instrument.

IN TESTIMONY WHEREOF, I have subscribed my signature and affixed my official seal on the day and year set forth above.

Judy L. Peterson
Notary Public

My commission expires:

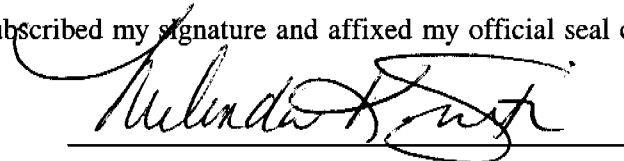
GENERAL NOTARY - STATE OF NEBRASKA
JUDY L. PETERSON
MY COMM. EXP. AUGUST 24, 2005

K

STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)

Before me, Melinda K. Smith, a Notary Public in and for the above State and County, on this 17th day of September, 2004, personally appeared Thomas A. Leshar, Manager, Assets/Transactions of BFS Retail & Commercial Operations, LLC, and known to me to be the same person who signed and acknowledged that they signed the foregoing instrument as such Manager, Assets/Transactions of said limited liability company for and on behalf of the limited liability company, and that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of the limited liability company, for the uses and purposes set forth in the instrument.

IN TESTIMONY WHEREOF, I have subscribed my signature and affixed my official seal on the day and year set forth above.



Notary Public

My commission expires:



L

EXHIBIT A

LEGAL DESCRIPTION OF PRIME LANDLORD PROPERTY

M

Parcel A:

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°25'60" East, along said South right-of-way line, 654.09 feet; thence North 69°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" East, 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 said 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 1/4) of Section 14, Township 14 North, Range 13 East of the 6th P.M., 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 588.55 feet; thence South 0°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 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.

N

EXHIBIT B

LEGAL DESCRIPTION OF LANDLORD PROPERTY

Parcel B:

A tract of land being all of Lots 4 and 5, and parts of Lots 3, 6 and 7, in Jull's Subdivision, a subdivision in Sarpy County, Nebraska, together with the Easterly 20.00 feet of vacated Prairie Avenue adjacent to said Lots 3, 4 and 5 on the West, all being more particularly described as follows: Commencing at the intersection of the South right of way line of Brewster Road and the East right of way line of State Highway 73-75; thence Easterly, along said South right of way line, on the following 4 described courses: 1) North 73°25'50" East (assumed bearing), 654.09 feet; 2) thence North 69°00'48" East, 354.84 feet; 3) thence North 74°31'17" East, 20.55 feet; 4) thence North 75°21'07" East, 21.36 feet, to the Northwest corner of said Lot 5, and the point of beginning; thence North 72°56'34" East, 76.06 feet, along the North line of said Lots 5 and 6; thence North 74°11'15" East, 50.36 feet, along the North line of said Lots 6 and 7; thence North 72°56'54" East, 50.50 feet, along the North line of said Lots 6 and 7; thence North 77°08'24" East, 14.99 feet, along the North line of said Lot 7; thence South 00°09'36" West, 198.49 feet; thence North 89°19'25" West, 94.31 feet; thence South 00°37'45" West, 3.50 feet; thence North 88°27'10" West, 3.00 feet; thence North 00°37'45" East, 3.50 feet; thence North 88°27'10" West 107.52 feet; thence North 00°15'35" East, 134.81 feet; thence North 75°21'07" East, 21.36 feet to the point of beginning. (NOTE: Sometimes described as Lot A, in Jull's Subdivision, in Section 14, Township 14 North, Range 13 East of the 6th P.M., Sarpy County, Nebraska.)

Being the same property conveyed in Master Commissioner's Deed of record in Instrument 94-03972 in said Register's Office.

Municipally known as 941 Ft. Crook Road, Bellevue, NE
Tax Parcel ID#010508732

P

EXHIBIT C

SHOPPING CENTER PLOT PLAN

[See Attached]

Amos
2007-14279Q

2007-14279Q

Exhibit C

Demised
Premises

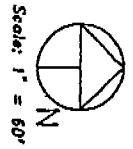
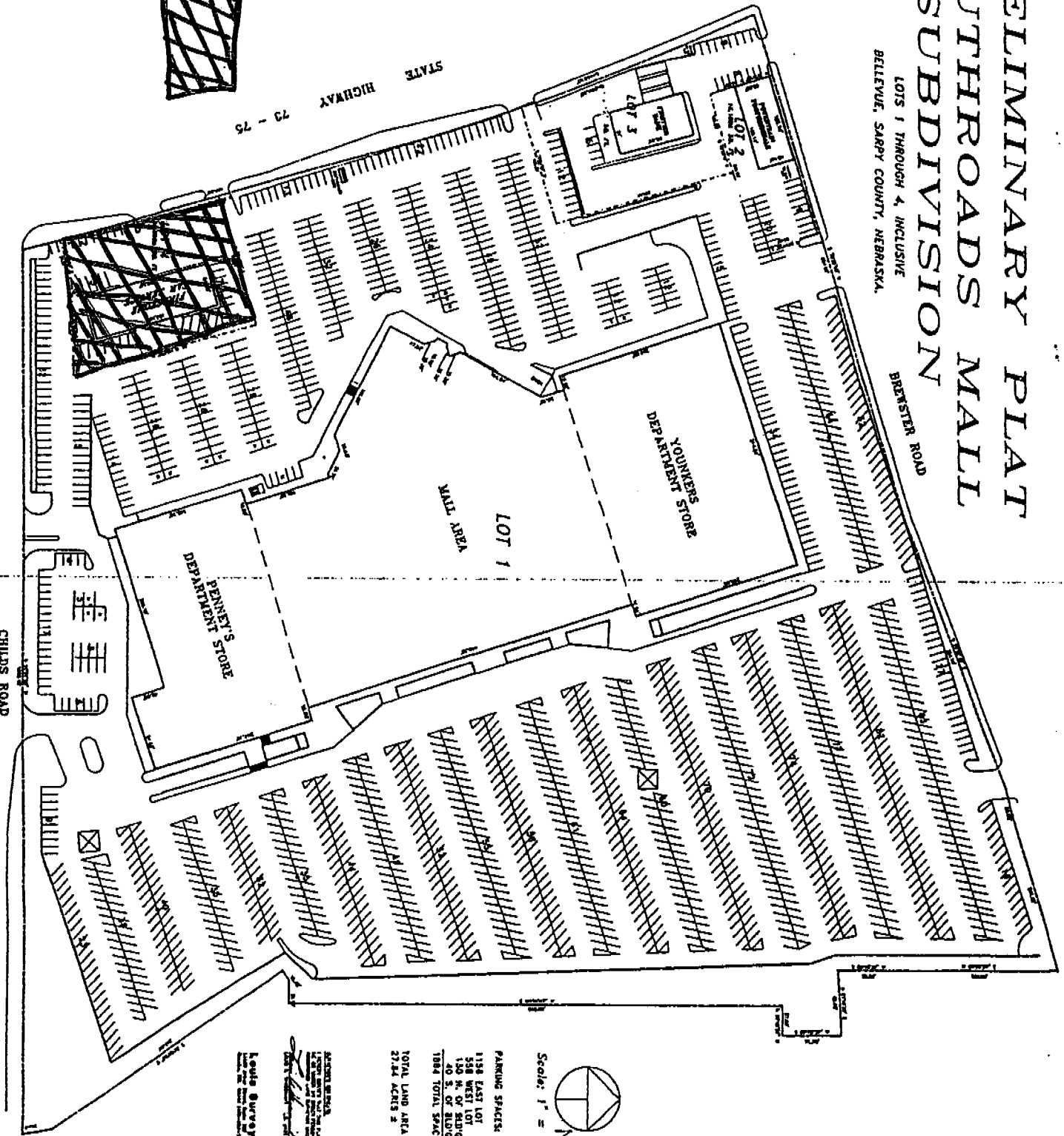


PRELIMINARY PLAT SOUTHROADS MALL SUBDIVISION

LOTS 1 THROUGH 4, INCLUSIVE
BELLEVUE, SARPY COUNTY, NEBRASKA

BENNETT ROAD

STATE HIGHWAY 73 - 76



PARKING SPACES:
1198 EAST LOT
358 WEST LOT
150 % OF BUILDING
1804 TOTAL SPACES
TOTAL LAND AREA MALL
27.64 ACRES ±

AGREEMENT BETWEEN
LOUIS BURROUGHS AND THE BOARD OF SUPERVISORS OF THE CITY OF BELLEVUE, NEBRASKA
LOUIS BURROUGHS
LOUIS BURROUGHS
LOUIS BURROUGHS

