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DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS

THIS Declaration of Covenants and Easements is made as of the 28th day of August, 1992, by KV-CENTER ASSOCIATES, a Nebraska general partnership ("Developer").

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain tract of land shown on the Plan ("Site Plan") attached hereto as Exhibit A hereof, said lands being more particularly described by metes and bounds in Exhibit B hereof ("Shopping Center"); and

WHEREAS, Developer intends to develop the Shopping Center according to a general plan of improvement to form an integral retail and commercial development; and

WHEREAS, Developer in furtherance of its intent to provide for the development of the Shopping Center into an integral retail and commercial development desires that said Tract be subject to certain easements and operating covenants, and such other conditions and restrictions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions, and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Developer hereby agrees that the real property described on Exhibit "B" be subject to the following Declaration of Covenants, Easements and Restrictions ("Declaration") as follows:

1. Definitions.

(a) "Common Areas" shall mean all areas within the exterior boundaries of the Shopping Center exclusive of the buildings built within the Building Area depicted on the Site Plan and the respective truck docks and receiving areas, building canopies, pilasters, overhangs, and footings projecting onto the Common Areas, such Common Areas being for the general use, enjoyment, convenience and benefit of Developer, Hy-Vee, and all Occupants (hereinafter defined) and their Permittees (hereinafter defined), including, but not limited to:

(i) All parking areas;

(ii) All roadways to provide vehicular access and ingress and egress to and from the Shopping Center, including entrances and

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exits to and from the public roadways and streets;

(iii) All sidewalks and walkways providing pedestrian access to and within the Shopping Center;

(iv) Landscaped and exterior planted areas in the Shopping Center;

(v) All curbs, and lighting standards, paving, traffic and directional signs and traffic striping and markings as located in the Shopping Center;

(vi) All storm water drainage facilities; and

The Common Areas are as shown on Exhibit A, but shall exclude:

(i) Any portions of the Shopping Center which may, from time to time, be occupied by any duly dedicated public street or highway;

(ii) Such portions of the Shopping Center as may be, from time to time, exclusively appropriated, set aside or reserved for use as a permanent or temporary outdoor selling area, if any, as indicated on Exhibit A; and

(iii) Ramps, loading areas, delivery passages and service corridors located within or as a part of any building belonging to or reserved for the exclusive use of any store or any Occupant of the Shopping Center.

(b) "Grantee" shall mean the Party to whom the easement is granted.

(c) "Grantor" shall mean the Party who is granting an easement.

(d) "Occupant" shall mean any person or legal entity who is entitled to the exclusive use and occupancy of any building or portion thereof in the Shopping Center under rights contained in any deed, lease or similar agreement.

(e) "Party" shall mean Developer and after conveyance of any Tract of the Shopping Center the respective successors and assigns of Developer who become owners of any of said Tracts.

(f) "Permissible Building Areas" as used herein shall mean that portion of the Shopping Center shown on Exhibit A as "Permissible Building Areas" and which shall encompass by definition "Future Development Areas" and/or "Out Parcels" which are shown on Exhibit A. Canopies may encroach from the Permissible Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

(g) "Permittee" shall mean any Occupant, and any officer, director, employee, agent, contractor, customer, invitee, licensee, vendor, subtenant or concessionaire of any Occupant or of Developer insofar as their activities relate to the intended use of the Building Area of the Shopping Center.

(h) "Tract" shall mean that portion of the Shopping Center owned by a Party.

(i) "Building Area" shall mean the limited areas of the Shopping Center within which buildings (including canopies, supports, loading docks, trucks and other outward extensions, pilasters and footings projecting into the Common Area) and/or "Outside Sales Areas" are shown on the Site Plan.

(j) "Floor Area" shall mean the actual number of square feet of floor space contained on each floor within any building as measured from the exterior faces of exterior walls or store front and/or the center line of common walls; provided, however, that the following shall not be included in such calculations: mezzanine storage space, mezzanine office space, loading docks which are not heated or air-conditioned, building canopies, pilasters, overhangs, enclosed recessed openings and any utility and/or mechanical equipment room or space. Each party shall direct its architect or engineer to make a determination of the total Floor Area of any building on such Party's Tract within one hundred twenty (120) days of the date of completion of such building. Within a reasonable time thereafter such Party shall certify to all other Parties the Floor Area applicable to such building. The calculation of

Floor Area for any Building shall include fifty percent (50%) of any "Outside Sales Area," as hereinafter defined.

During any period of rebuilding, repairing, replacement or reconstruction of a building, the Floor Area of that building shall be deemed to be the same as existed immediately prior to that period. Upon the completion of such rebuilding, repairing, replacement, or reconstruction, the Party on whose Tract such building is located, shall cause a new determination of Floor Area for such building to be made in the manner described above, and such determination shall be sent to the Party requesting same.

(k) "Outside Sales Area" shall mean an area shown on the Site Plan as immediately adjacent to a building which is used exclusively by an Occupant of such building for sales and/or storage and which may be enclosed by a fence or other security barriers but doesn't include any area used for temporary promotions or occasional sales activities. The number of square feet contained within an Outside Sales Area may not exceed twenty percent (20%) of the Floor Area contained on the ground floor of any building.

2. Use.

(a) Shopping Center. No use or service shall be permitted which is inconsistent with the operation of a comparable first class retail shopping center. Without limiting the generality of the foregoing, the following uses or services shall not be consistent with the concept of a comparable first class retail shopping center.

(i) Any use which emits a noxious odor, noise or sound which can be heard or smelled outside of any building in the Shopping Center;

(ii) Any operation used as a warehouse operation (other than in connection with the primary use of on premises retail sales) and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operations;

(iii) Any "second hand" store or store selling surplus merchandise as a principal method of doing business;

(iv) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors in the rear of any building);

(v) Any fire sale (other than merchandise actually damaged by fire on the premises), bankruptcy sale (unless pursuant to court order) or auction house operation;

(vi) Any bowling alley or skating rink;

(vii) Any living quarters, sleeping apartments or lodging rooms;

(viii) Any mortuary;

(ix) Any flea market, pool or billiard hall, car wash or dance hall in Areas A, H, K, I and C;

(x) Any establishment selling, leasing or exhibiting pornographic materials or selling or exhibiting obscene performances;

(b) Storage Prohibited. No merchandise, equipment or services shall be displayed, offered for sale or lease, or stored within the Common Area (except for temporary promotions or occasional sales activities which do not unreasonably interfere with the use of the common area); provided, however, that the foregoing prohibition shall not be applicable to the temporary storage of shopping carts on each parcel by an Owner or Occupant thereof.

3. Buildings.

(a) Design and Construction. The exterior elevations of the buildings located on the Shopping Center shall be approved in writing by Developer prior to commencement of construction and the building wall footings shall not encroach from one Tract onto another Tract except as provided for in Subsection c. below. The design and construction shall be of first-class quality. No building shall have a metal exterior, except for architectural treatments or canopies. Any

owner of a tract in the Shopping Center shall have the right to install, replace, maintain and utilize, cable and satellite communication facilities upon the rooftop of its building subject to the Architectural Control Committee.

(b) Location. No building shall be constructed on any Tract (as either immediate development or future expansion) except within the Permissible Building Areas, Future Development Areas and the Out Parcels.

(c) Easements. In the event the building wall footings encroach from one Tract onto another, despite best efforts to avoid that occurrence, the Party onto whose Tract the footings encroach shall grant an encroachment permit or easement to the Party whose building wall footings encroach up to a maximum distance of three (3) feet onto the other Party's Tract. It is understood and agreed that the provisions of this Declaration 3(c) shall survive the termination of this Declaration and shall continue thereafter so long as any Party's building exists. Prior to utilizing such easement the Grantee Party must provide Plans and Specifications to the Grantor Party to allow such party the opportunity to consider utilizing common footings and possible cost allocation between such parties.

4. Common Areas.

(a) Grant of Easements. Each Party, as Grantor, hereby grants to the other Party, as Grantee, and to its Permittees, a nonexclusive and perpetual easement over, through and around the Common Areas on their respective tracts for roadways, storm water drainage, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, and the use of facilities installed for the comfort and convenience of Permittees and Occupants of all the buildings constructed on the Permissible Building Areas.

(b) Limitations on Use.

(i) Customers. Each Party shall use reasonable efforts to ensure that customers and invitees do not park on the Common Areas except while shopping or transacting business in the Shopping Center.

(ii) Employees. Each Party shall use reasonable efforts to ensure that employees do not park on the Common Areas, except in areas, if any, designated in Exhibit A as "employee parking areas" located on each Party's respective Tracts. The Parties hereto may from time to time mutually designate and approve in writing certain "employee parking areas" not shown in Exhibit A. However, in any event, the Parties agree that their employees shall only park on each Party's respective Tract.

(iii) General. All of the activity permitted within the Common Areas shall be used with reason and judgment so as not to interfere with the primary purpose of the Common Areas which is to provide for parking for the customers, invitees and employees of those businesses conducted within the Permissible Building Areas and Out Parcels and for the servicing and supplying of such businesses. No charge shall be assessed to customers or invitees using the Common Areas for purposes of parking.

(c) Utility and Service Easements. The Parties shall cooperate in the granting of appropriate and proper perpetual easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Shopping Center. After initial construction each Party shall pay for its own installation and maintenance of storm drains, sewers and utilities and shall cause all work in connection therewith to be completed as quickly as possible so as to minimize interference with the use of the Common Areas by the Parties and their Permittees. All Parties will use their best efforts to cause the installation of such utility service lines prior to paving of the Common Areas. No such lines, sewers, utilities or services of One Party shall be installed within the Permissible Building Area of another Party's Tract, without the written consent of the other Party.

(d) Water Flow. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the Party's improvements substantially as shown in Exhibit A (including without limitation building and building expansion, curbs, drives and paving) shall be permitted

so long as such construction is in accordance with requirements of and approved by local government entities having proper jurisdiction.

(e) Service Drive. All Parties agree that the Service Drive Exhibit A shall be used for purposes of ingress and egress from Oak View Drive into the Shopping Center and common areas located thereon. Any Party on whose tract any such service drive is located does hereby grant and convey to all other Parties for their use and for the use of their Occupants and Permittees, in common with others entitled to use the same, a perpetual non-exclusive easement for ingress and egress and the passage and accommodation of delivery and other service vehicles upon, over, and across that portion of the Grantor's Tract which is covered by the Service Drive. Such easement shall be appurtenant to and for the benefit of each such Grantee's Tract.

(f) Construction Indemnification. The exercise of easements and rights granted under this Section shall not result in damage or injury to the improvements of the other Party and shall not interrupt or unreasonably interfere with the business operations conducted by any other Party in the Shopping Center. In addition, each Grantee, at its expense, shall promptly repair, replace or restore any and all improvements of Grantor which have been damaged or destroyed by the Grantee in the exercise of the easements granted under this Section and shall hold the Grantor harmless from all loss, liability, damage, claim, demand, cause of action, cost or expense, including, without limitation, reasonable attorney's fees, incurred in connection with the Grantee's use of said easements.

(g) Lighting.

1. Lighting of Common Areas. All lighting standards and fixtures erected and installed upon the Common Area of each Party's Tract shall be provided by a manufacturer acceptable to the local municipality and shall be connected to the meter of such Party and the power used thereby charged to such Party. During all hours when any Occupant is open for business and Common Area lighting is necessary, and for thirty (30) minutes after such business hours, each Party shall each, at their own expense, keep lighted all Common Areas on their respective Tracts which have been developed

with parking lots and common area lighting. In no event shall any Party be obligated to light the fixtures (although it may elect to light its Tract during later hours) upon its Tract later than thirty (30) minutes after all stores are closed. Each Party shall keep lighted upon their respective Tracts, and metered to their separate meters, security lights which shall be lighted during all hours of darkness, whether or not any tenants or occupants of such Party's Tract are open for business or the business of any Occupant.

(h) Construction Easement. During the period(s) of construction, maintenance, restoration and/or repair, each Party grants to the other, its employees, contractors, subcontractors and others engaged in performing such work for it, a temporary easement to use portions of the Common Areas to the extent necessary for the purpose of performing such work; provided, however, that each such easement shall terminate when the work therefor is completed, and that any such work shall be performed in a manner so as not to unreasonably interfere with the other Party's construction or operation of its business.

(i) No signs, fences, hedges, curbing, barriers, walls or other structures which would prohibit the free flow of pedestrian or automotive traffic as intended by this Declaration, shall be erected by any Party on the Common Areas of their respective tracts, except as indicated on the Site Plan.

(j) Each Party agrees to prohibit any use of the Common Areas on its Tract, other than providing ingress and egress, parking and the like for customers, invitees and business visitors of the Shopping Center insofar as their activities relate to the intended use of the Building Area of the Shopping Center, unless the prior written consent of the other Party is obtained. If any portion of the parking areas is used for temporary and seasonal promotions the owner of such tract must keep drives clear and unobstructed and maintain the minimum parking ratios specified in 5(b).

5. Development, Maintenance and Taxes.

(a) Arrangement. The arrangement of the Common Areas shown on the Site Plan attached as Exhibit "A" is preliminary and prior to initial construction of any improvements on any of the properties. It is, therefore, agreed that such Site Plan may be amended so as to change the configuration of Common Areas and building areas; provided, however, that after conveyance by Developer to any Party of title to any tract the written consent of such Party to a substantial change of such configuration shall be required which consent shall not unreasonably be withheld.

(b) "Parking Area" Ratio. The parking area ratio of Tract C shall be five (5) car spaces per thousand (1,000) square feet of enclosed retail Floor Area built on Tract C. The parking area ratio of Tract I shall be five and one-quarter (5.25) car spaces per one thousand (1,000) square feet of enclosed retail Floor Area built on Tract I. The overall parking area ratio of the Shopping Center, exclusive of Tract C and Tract I, shall be at least five and one-half (5.5) car spaces for each one thousand (1,000) square feet of retail Floor Area built on the Shopping Center.

(c) Development. The development and construction of improvements by Developer and any Party and the respective rights, obligations and duties among themselves with regards to such improvement may be set forth in a separate agreement.

6. Maintenance of Common Areas.

(a) Standards. Following completion of the improvements on the Common Areas, the Parties shall maintain the Common Areas in good condition and repair. The maintenance is to include, without limitation, the following:

(1) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(2) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly

sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(3) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;

(4) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

(5) Maintaining all sidewalks in a good condition and state of repair;

(6) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary;

(7) Inspecting, maintaining, repairing and replacing storm and sanitary drainage system, storm water drainage system, electrical, gas, water, telephone and irrigation systems;

(b) Expenses. The respective Parties may pay the maintenance expense of their respective Tracts for, including, but not limited to, those items set forth in Section (a) above.

(c) By Agent. The Parties may appoint a third party as agent of the Parties to maintain the Common Areas to a unified standard as above outlined. Said third party shall receive a fee that is mutually acceptable to all Parties to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas. Any Anchor Tenant occupying premises having more than 60,000 square feet of retail space may elect to provide its own maintenance for its common area and shall then be relieved of any obligation to contribute to the maintenance of common area not located on its respective parcel or tract.

(d) Self-Help. If any Party responsible for doing so ("Responsible Party") fails to maintain the Common Areas of its respective Tract after the same are installed (including "Off-Site Common Area") or fails to pay its share of the expense thereof when billed by

the Agent described in paragraph 6(c) above, any Non-Responsible Party may, upon thirty (30) days advance written notice to the Responsible Party describing such failure (or such additional time as may reasonably be necessary to correct such failure), undertake the necessary repairs and maintenance of the Common Areas on the subject Tract or pay the delinquent charges of the Responsible Party and charge the reasonable costs thereof to the Responsible Party for immediate payment. If the Responsible Party fails to reimburse the Non-Responsible Party for its costs incurred within ten (10) days after written demand therefor, then the Non-Responsible Party is hereby granted a lien on the Responsible Party's Tract, which lien shall secure said monies due, together with interest thereon at the highest rate permitted under the laws of the State of Nebraska, and the costs of enforcing said lien, including court costs and reasonable attorney fees. The lien herein granted shall be effective from and after the date of recording the Claim of Lien in the Public Records of Douglas County, Nebraska, and the Claim of Lien shall state the description of the Responsible Party's Tract encumbered thereby, the name of the owner of record, the amount due and the date when due. The lien shall continue in effect until all sums secured by said lien, as herein provided, have been paid.

7. Taxes.

Each of the Parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied, payable, imposed or become a lien upon its respective Tract.

Each Party may, at its own cost and by appropriate proceeding, contest the validity or amount of any taxes, so long as each action is taken in good faith and does not, as a result of non-payment of such taxes, cause the affected property to be in danger of being forfeited to the imposer of such taxes or prejudice Developer.

8. Signs.

(a) Pylon: To the extent permitted by applicable governmental laws and regulations, Developer shall erect a pylon sign structure within the Shopping Center at the location depicted on Exhibit A with the name of

the Shopping Center thereon. All Parties may be permitted to advertise on the pylon sign; provided that such Party pay a prorata share of the initial construction costs incurred in the installation of the pylon sign. All sign panels shall be of a uniform size. Developer shall construct all Parties' panels at the expense of the Party requesting the advertising panel. All costs of maintenance shall be reimbursed by such Party to Developer, and repair for the pylon sign structure shall be borne equally by all Parties with sign panels located thereon.

(b) Building Exterior. To the extent permitted by applicable governmental laws, regulations and applicable zoning and other use regulations (including any based upon the size and frontage of the Parties' Tract and/or Building), any Party may install standard exterior building facia signs on such Party's Building. Each Party's sign shall be comprised of individual, internally illuminated, letters and shall be built in accordance with local governmental code. The fabrication and erection of such signs shall be at the cost and expense of such Party to build and maintain such signage.

9. Indemnification/Insurance.

(a) Indemnification. Each Party hereby indemnifies and saves the other Party harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Tract, except if caused by the act or negligence of the other Party hereto.

(b) Insurance.

(i) Each Party shall procure and maintain in full force and effect throughout the term of this Declaration comprehensive occurrence basis general liability insurance, including personal injury and contractual liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each Party's insurance to afford protection to the limit of not less than \$1,000,000 for injury or death of a single person, and to the limit of not less than \$1,000,000 for any one occurrence, and to the limit of not less than \$1,000,000 for property damage. Each Party

shall provide the other Parties with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsements on any master policy of insurance carried by the Party which may cover other property in addition to the property covered by this Declaration, provided the policy specifically allocates to the properties the liabilities required to be insured hereunder in amounts not less than the minimum coverage requirements set forth herein. Such insurance shall provide that the same may not be canceled without thirty (30) days' prior written notice to the other Parties.

(ii) At all times during the term of this Declaration, each Party shall keep improvements on its Tract insured against loss or damage by fire and other perils and events as may be insured against under the "all risk" policy or broad form of Uniform Extended Coverage Clause in effect from time to time in the State of Nebraska, with such insurance to be for the full replacement cost of the insured improvements.

(iii) Policies of insurance provided for in this Section 9, except for subparagraph 9(b)(ii) hereinabove, shall name all Parties as additional insureds, and each of them shall provide to the other copies of certificates evidencing the fact that such insurance has been obtained.

(iv) All Parties for themselves and their respective property insurers hereby release all Parties from and against any and all claims, demands, liabilities or obligations whatsoever for damage to each other's property or loss of rents or profits resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the Party being released or by any agent, associate or employee of the Party being released, this release being to the extent that such damage or loss is covered by the property insurance which the releasing Party is obligated hereunder to carry, or, if the releasing Party is not carrying that insurance, then to the extent such damage or loss would be covered if the releasing Party were carrying that insurance.

(v) Notwithstanding anything to the contrary contained in this Section 9, so long as the net worth of any Party, as certified by its annual report, audited by an independent certified public accountant, shall exceed Fifty Million Dollars (\$50,000,000), such Party shall have the right to self-insure for all or part of any claim for all risks described above.

10. Eminent Domain.

(a) Owner's Right to Award. Nothing herein shall be construed to give any Party any interest in any award or payment made to any other Party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Party's Tract or giving the public or any government any rights in said Tract. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on any Parties' Tract, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereof shall be made by the owners of any other portion of the Common Areas, provided, however, said other Party shall have the right to seek an award for the loss of its easement rights to the extent such award does not impair any award to the owner.

(b) Restoration of Common Areas. The owner of each portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas so owned as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

(c) Collateral Claims. Any other owner of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.

11. Rights and Obligations of Lenders.

If by virtue of any right or obligation set forth herein a lien shall be placed upon the Tract of any Party hereto, such lien shall expressly be subordinate and inferior to the lien

of any first lienholder now or hereafter placed on such Tract. Except as set forth in the preceding sentence, however, any holder of a first lien on any Parties' Tract, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Declaration.

12. Expansion of Shopping Center.

The Parties agree that in the event the Shopping Center is expanded by ownership, control of the Parties or agreement with a third Party, the Developer shall have the right to make applicable all of the provisions of this Declaration to the expanded area.

13. Release from Liability.

Any person acquiring fee or leasehold title to the Developer Tract, or any expansion of the Shopping Center pursuant to Section 12 or any portion thereof, shall be bound by this Declaration only as to the Tract or portion of the Tract owned by such person at the time any such obligation accrues under the terms of this Declaration. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold owner of such Tract or portion of the Tract, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said tracts running with the land.

14. Damage or Destruction. If any buildings or improvements on any portion of the Shopping Center are damaged or destroyed at any time the Party who is the owner of such Tract elects not to rebuild, then such Party will restore its Tract to a neat and orderly condition free of debris, retain Common Areas as shown on Exhibit A hereto and either landscape or pave and stripe its Permissible Building Areas.

15. Default.

(a) Unless otherwise provided in this Declaration, no Party hereto shall be deemed to be in default under this Declaration until such Party shall have been given written notice describing the nature of the breach and within fifteen (15) days after the receipt of such notice, or such longer period of time as otherwise may be provided in this Declaration, shall have failed to commence to cure such breach and to proceed diligently to completing the curing of such breach,

utilizing all reasonable means to promptly cure the breach.

(b) In the event a Party hereto shall institute any action or proceeding against any other relating to a breach of this Declaration, the unsuccessful Party in any action shall pay to the prevailing Party a reasonable attorney's fee, which shall be deemed to have accrued on the date such action was filed.

(c) In the event any Party hereto shall be in default under this Declaration due to failure to cure nonperformance of any provision, covenant or condition of this Declaration as provided in Paragraph 15(a) above, then in addition to any other remedy at law or in equity, the non-defaulting Party shall have the right, but not the obligation, to proceed ten (10) business days after expiration of the fifteen (15) day period provided in Paragraph 15(a) above (or such additional time in the case of a default which by its nature cannot be cured within such ten (10) business day period, so long as the curing Party shall have taken action during said period and shall thereafter diligently prosecute the curing thereof) to take such action as reasonably necessary to cure such default in the name of and for the account of the defaulting Party, and shall have access to the defaulting Party's property to accomplish the same; provided, however, that the non-defaulting Party shall minimize interference with or interruption of the business conducted on the defaulting Party's property.

At the election of the non-defaulting Party: (i) the defaulting Party shall either reimburse the non-defaulting Party for actual costs and expenses incurred in curing the default, together with any penalties and interest at the maximum rate permitted by law, or (ii) the non-defaulting Party may withhold said amount from monies, if any, otherwise due and payable to the defaulting Party under the terms of this Agreement. If a curing Party believes in good faith that a default has created an emergency endangering life and property, then no notice shall be required to permit the curing Party to take action reasonably necessary to cure said default, provided the curing Party gives the defaulting Party such notice as is reasonable under the circumstances and, in any event, immediately upon commencing curative action.

16. Notice to Parties.

Each notice, demand, request, consent, approval or other communication (all of the foregoing are herein referred to as a "notice") that a Party is required to give to the other Party shall be in writing and sent by either overnight delivery service as long as delivery is made only upon a receipt signed by the addresses, or by certified mail, return receipt requested, postage prepaid, addressed in the case of Developer to:

KV-Center Associates
12121 Emmet Street
Omaha, NE 68164

and addressed in the case of any other Party to the address of such Party on file at the office of the Developer. Each Party shall have the right to designate a different address or multiple addresses by notice similarly given. Unless specifically stated to the contrary elsewhere in this Declaration, any notice shall be deemed to have been given, made or communicated, as the case may be, on the date the same is received by the addressee. In the event a Party shall encumber its Tract by a mortgage and notice of such fact has been given to the Party issuing such notice, demand, statement, or request, then a copy of any notice of amounts due or notice of default directed to such mortgaging Party shall also be sent to its mortgagee.

17. Rights of Successors.

The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Declaration shall bind and inure to the benefit of the Parties hereto, their respective heirs, representatives, lessees, successors and assigns.

18. Singular and Plural.

The singular number includes the plural and the masculine gender includes the feminine and neuter gender, and vice versa.

19. Duration.

Unless otherwise canceled or terminated, this Declaration and all the covenants, easements, restrictions, rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof or such earlier date as may be required in order that this Declaration shall be invalidated or be subject to invalidation by reason of a limitation imposed by law or the duration

thereof; provided, however, that the easements specifically referred to herein as being perpetual or as continuing beyond the term of this Declaration or otherwise shall continue in full force and effect as provided therein.

20. Headings.

The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

21. Integrated Declaration.

This Declaration constitutes the entire agreement between the Parties hereto. The Parties do not rely upon any statement, promise or representation not herein expressed, and this Declaration once executed and recorded in the office of the Registrar of Deeds of Douglas County, Nebraska, shall not be modified or altered in any respect except by a writing executed by all Parties and recorded in the office of the Registrar of Deeds of Douglas County, Nebraska.

22. No Partnership, Joint Venture or Principal-Agent Relationship.

Nothing contained in this Declaration shall be construed to make the Parties principal and agent, or partners, or of joint ventures, or to render any Party liable for the debts or obligations of the others, except as provided in this Declaration, and no provisions of this Declaration are intended to create or constitute any person a third party beneficiary hereof.

23. Severability.

If any provisions of this Declaration shall, to any extent, be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

24. Governing Law.

This Declaration shall be construed and governed in accordance with the laws of the state of Nebraska.

25. Dedication.

Nothing herein contained shall be deemed to be a gift or dedication of any part of the Shopping Center to the general public, or for the general public or for any public purpose whatsoever, it being the intention of the Parties that this Declaration shall be strictly limited to and for the purposes herein expressed. Furthermore, except for any utility dedications, a Party shall not dedicate any part of its Tract for public purposes without the consent of the other Party hereto.

26. Limitation Upon Liability.

If any person subject to liability under this Declaration shall breach, violate or fail to keep, observe or perform any of their respective covenants, representations, warranties, agreements or obligations under this Declaration ("Defaulting Party") and, as a consequence thereof, the Non-Defaulting Party shall recover a money judgment against the Defaulting Party, such judgment shall be satisfied (subject to the rights of any mortgagee of the Defaulting Party's Tract whose lien on said Tract predates the filing of the complaint which results in such judgment) only out of execution of such judgment and levy thereon against the Defaulting Party's Tract, including the improvements thereon, and neither the Defaulting Parties nor their agents, employees, shareholders, officers, directors and partners shall be liable for any deficiency. It is expressly understood and agreed that nothing contained in this Declaration shall be construed as creating any personal liability whatsoever against the Defaulting Party, their agents, employees, shareholders, officers, directors and partners. The provisions of this Section 26 are not designed or intended to relieve a Defaulting Party or their successors or assigns, from any of their respective covenants, agreements or obligations under this Declaration but rather to limit their liability in the case of a recovery of a money judgment against them, as aforesaid; nor shall any of the provisions of this Section 26 be deemed to limit, restrict, waive or otherwise affect a Defaulting Party's ability to avail themselves of any other right or remedy which may be accorded by law or in equity and/or under this Declaration.

27. Non-Waiver.

The failure of any Party to insist upon strict performance of any of the terms, covenants, or conditions of this Declaration shall not be deemed a waiver of any rights or remedies which that Party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants, or conditions.

28. Estoppel Certificates.

Any Party including Developer shall, from time to time (but not more frequently than once in any four (4) month period), upon not less than thirty (30) days' notice from any other Party, execute and deliver to such other Party, or such party's mortgagee or any other person or entity having or acquired an interest in such party's Tract, a certificate in recordable form stating that this Declaration is unmodified and in full force and effect or, if modified, stating the modifications; and stating whether or not to the best of its knowledge, the other Party is in default in any respect under this Declaration, and, if in default, specifying such default.

29. Force Majeure.

The time within which any Party hereto shall be required to perform any act under this Declaration, other than the payment of money, shall be extended by a period of time equal to the number of days during which the performance of such act is unavoidably prevented or delayed, or hindered by acts of God, meteorological elements, labor strikes and disputes, acts of war, or war defense conditions, acts of public enemies, orders of government, governmental requirements and restrictions, or other causes similar to the foregoing and not within the reasonable control of such Party ("Force Majeure").

30. Hazardous Material.

As used in this Agreement "Hazardous Material(s)" shall mean any hazardous, toxic or radioactive substance, material, matter or waste which is or becomes regulated by any federal, state or local law ordinance, order, rule, regulation, code or any other governmental restriction or requirement, and shall include asbestos, petroleum products and the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. Section 6901 et seq., and Revised Statutes of Nebraska 81-1501, et seq.

In no way limiting the Parties' duties and obligations as set forth in this Declaration, if the presence of any Hazardous Material(s) on any Parties' Tract caused or permitted by such Party, its agents, employees, or subtenants, results in contamination of any Tract, the Shopping Center, any land other than the Shopping Center, the atmosphere, or any water or waterway (including groundwater), or if contamination of any one or all of the Tracts or of the Shopping Center by any Hazardous Material(s)

otherwise occurs for which any Party hereto is otherwise legally liable for damages resulting therefrom, the offending Party or Parties shall mutually indemnify, save harmless and, at each Parties' option, defend the non-defaulting Party, its agents, employees, partners, officers and directors from any and all claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind or nature (including, without limitation, diminution in value of that Party's Tract or the Shopping Center, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Parties' Tracts or the Shopping Center, damages arising from any adverse impact on marketing space in the Shopping Center, and sums paid in settlement of claims and for attorney's fees, consultant fees and expert fees, which may arise during or after the term of the Declaration as a result of such contamination). This includes, without limitation, costs and expenses, incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of the presence of Hazardous Material(s) on or about a Party's Tract or the Shopping Center that was caused or permitted by a Party to be brought upon any Tract or the Shopping Center. Without limiting the foregoing, if the presence of any Hazardous Material(s) on or about any Party's Tract or the Shopping Center caused or permitted by any Party hereto results in any contamination of any Tract or the Shopping Center, the Party causing or permitting contamination shall, at its sole expense, promptly take all actions and expense as are reasonably necessary to return the Tract(s) and/or the Shopping Center to the condition existing prior to the introduction of any such Hazardous Material(s) to the Tract(s) or the Shopping Center; provided, however, that Developer's approval of such actions shall first be obtained in writing.

The agreements, obligations and conditions set forth in this Section 30, shall survive termination of or expiration of the term of this Declaration.

31. Parties' Cooperation to Replat Area. In the event that any Party determines that it is in the best interests of Parties in the development of the Shopping Center that the area be replatted into one or more replatted areas, then in such event the Parties agree to cooperate in such replatting and agree to execute such instruments and documents as are necessary or required to effectuate such replatting. Nothing herein contained shall require any Party to contribute to payment of expenses of such replatting if such replatting is done at the instance and for the benefit of another Party.

IN WITNESS WHEREOF, the Developer has executed this Declaration the day and year first written above.

("DEVELOPER")

KV-CENTER ASSOCIATES, a Nebraska General Partnership, Partner

By: KVI, LTD., a Nebraska corporation, General Partner

By: *George W. Venteicher*
George W. Venteicher
President

By: OLD MILL ASSOCIATES, a Nebraska general partnership, Partner

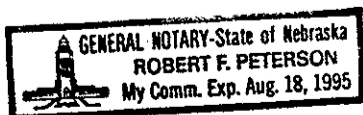
By: *George W. Venteicher*
George W. Venteicher
Partner

By: *Frank R. Krejci*
Frank R. Krejci
Partner

STATE OF NEBRASKA]
COUNTY OF DOUGLAS] SS.

On this 28th day of August, 1992 before me the undersigned, a Notary Public in and for said County, personally came George W. Venteicher, President of KVI, Ltd., a Nebraska corporation, partner of KV-Center Associates, a Nebraska general partnership, Developer, personally known to be the President and identical person whose name is affixed to the above document, and he acknowledged the execution thereof to be his voluntary act and deed as such President and the voluntary act and deed of said corporation and said partnership.

WITNESS my hand and notarial seal at Omaha, Nebraska, in said county, on the day and year last above written.

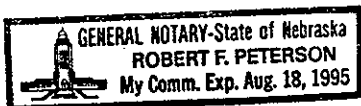


Robert F. Peterson
Notary Public

STATE OF NEBRASKA]
COUNTY OF DOUGLAS] SS.

On this 28th day of August, 1992 before me the undersigned, a Notary Public in and for said County, personally came George W. Venteicher, partner of Old Mill Associates, a Nebraska general partnership, partner of KV-Center Associates, a Nebraska general partnership, Developer, personally known to be the President and identical person whose name is affixed to the above document, and he acknowledged the execution thereof to be his voluntary act and deed as such partner of each such said partnerships.

WITNESS my hand and notarial seal at Omaha, Nebraska, in said county, on the day and year last above written.

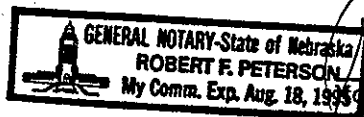


Robert F. Peterson
Notary Public

STATE OF NEBRASKA]
COUNTY OF DOUGLAS] SS.

On this 28th day of August, 1992 before me the undersigned, a Notary Public in and for said County, personally came Frank R. Krejci, partner of Old Mill Associates, a Nebraska general partnership, partner of KV Associates, a Nebraska general partnership, Developer, personally known to be the President and identical person whose name is affixed to the above document, and he acknowledged the execution thereof to be his voluntary act and deed as such partner of each such said partnerships.

WITNESS my hand and notarial seal at Omaha, Nebraska, in said county, on the day and year last above written.



Robert F. Peterson
Notary Public

CONSENT

NORWEST BANK NEBRASKA, N.A., the holder of a First and Second Deed of Trust on the Premises described in this Declaration of Covenants, Easements and Restrictions hereby consents to, ratifies and confirms the provisions of said document.

DATED this 8th day of September, 1992.

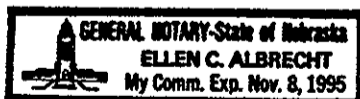
NORWEST BANK NEBRASKA, N.A.

By:

John C. Pearson
Vice President
(Title)

STATE OF NEBRASKA]
COUNTY OF DOUGLAS] SS.

On this 8th day of September, 1992, before me a notary public in and for said county and state, personally appeared John C. Pearson who is the Vice President of NORWEST BANK NEBRASKA, N.A., and he acknowledged the execution of the above and foregoing document as his voluntary act and deed on behalf of said bank.



Ellen C. Albrecht
Notary Public

EXHIBIT B

BOOK 1030 PAGE 628

DESCRIPTION OF "LAND"

LOTS 15, 16, 17, 18, 19, 20 AND 21 IN OAK VIEW, A SUBDIVISION AS SURVEYED, PLATTED AND RECORDED IN THE CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA, EXCEPT THE FOLLOWING TWO PARCELS:

1. The First Parcel excepted from the above legal description is as follows:

A tract of land being part of Lot 20, Oak View, a platted and recorded subdivision in Douglas County, Nebraska, more particularly described as follows:

Beginning at the northwest corner of said Lot 20; said point also being the intersection of the east line of 144th Street and the south line of Oakview Drive; thence along the northerly line of said Lot 20 and along said south line of Oakview Drive, the following three (3) courses:

- (1) $S90^{\circ}00'00"E$, 77.09 feet to the beginning of a curve to the right;
- (2) along said curve, having a radius of 260.00 feet and a chord bearing $S74^{\circ}12'19"E$, 141.54 feet, an arc distance of 143.34 feet;
- (3) $S58^{\circ}24'38"E$, 128.59 feet;

Thence $S30^{\circ}02'33"W$, 179.38 feet; thence $N59^{\circ}57'27"W$, 141.90 feet; thence $N90^{\circ}00'00"W$, 110.18 feet to said east line of 144th Street; thence along said east line, $N0^{\circ}00'00"E$, 190.13 feet to the Point of Beginning; containing an area of 1.275 acres, more or less.

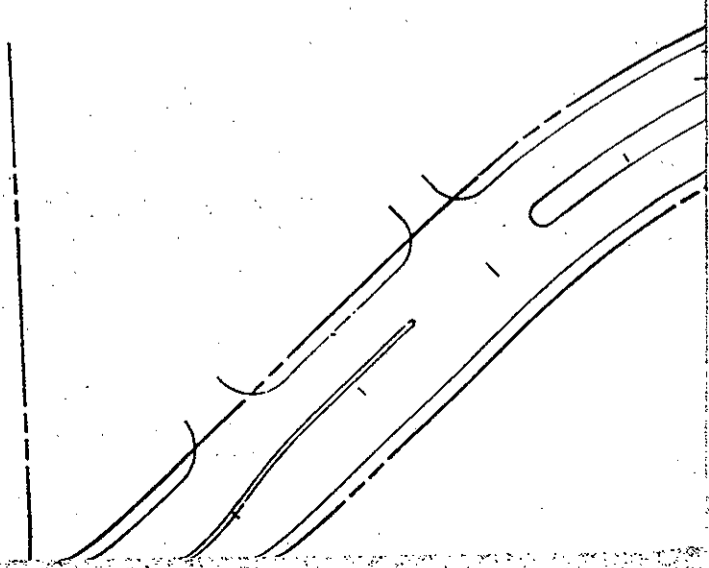
2. The Second Parcel excepted from the above legal description is as follows:

A tract of land being part of Lot 20, Oak View, a platted and recorded subdivision in Douglas County, Nebraska, more particularly described as follows:

Beginning at the southwest corner of said Lot 20; thence along the west line of said Lot 20, $N0^{\circ}00'43"W$ (platted bearing), 138.23 feet; thence continuing along said west line, $N0^{\circ}00'00"W$, 91.77 feet; thence $S90^{\circ}00'00"E$, 110.18 feet; thence $S59^{\circ}57'27"E$, 152.90 feet; thence $S30^{\circ}02'33"W$, 267.00 feet to the southwesterly line of said Lot 20; thence along said southwesterly line, $N54^{\circ}29'08"W$, 133.71 feet to the Point of Beginning; containing an area of 1.145 acres, more or less.

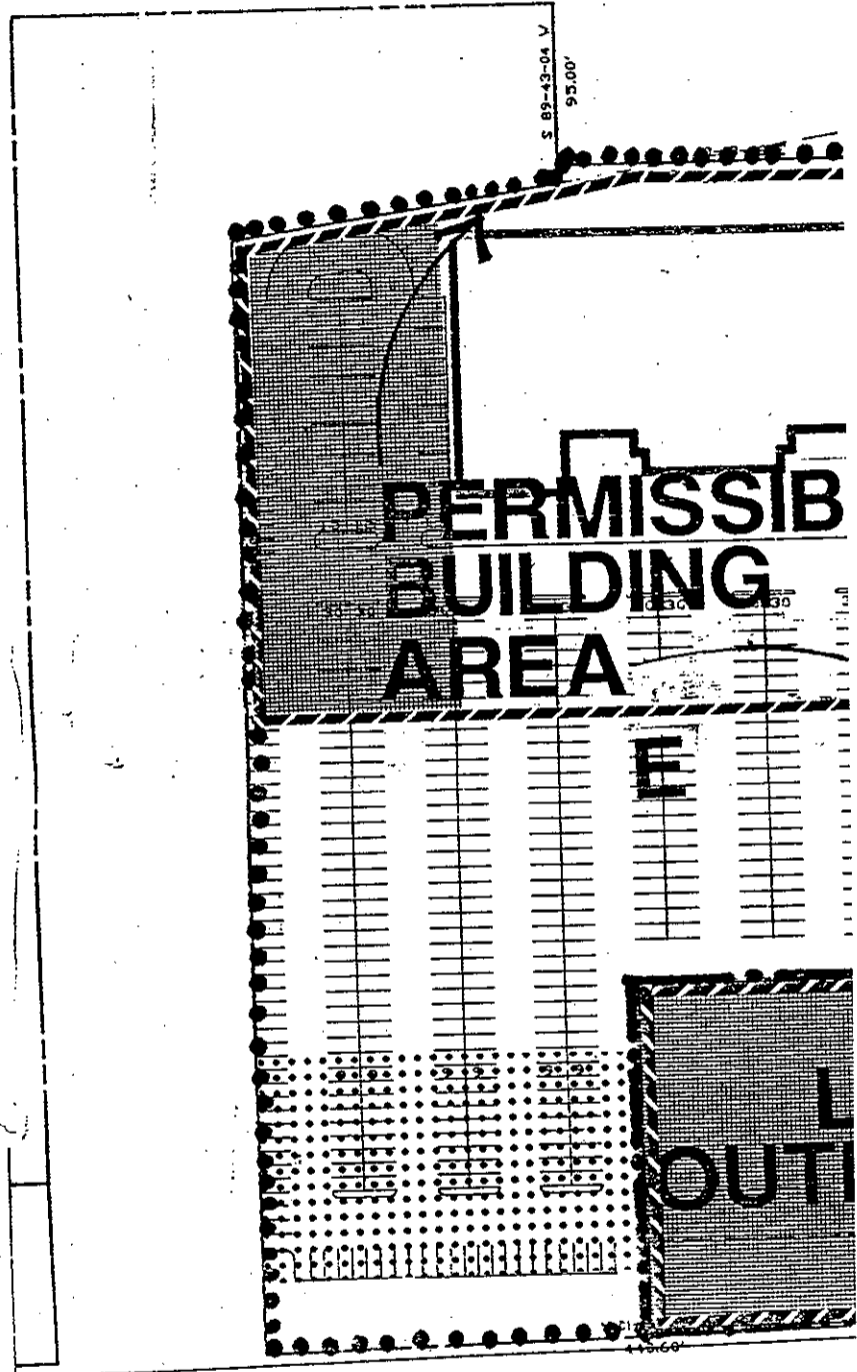
BOOK 1030 PAGE 629

10
10
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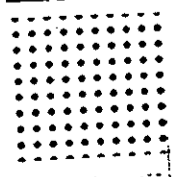
18'-0"	24'-0"	18'-0"
REGULAR STALL		
COMPACT STALL		

PARKING STALL DETAIL

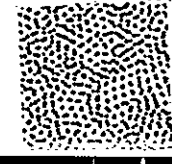


OAK VIEW DRIVE

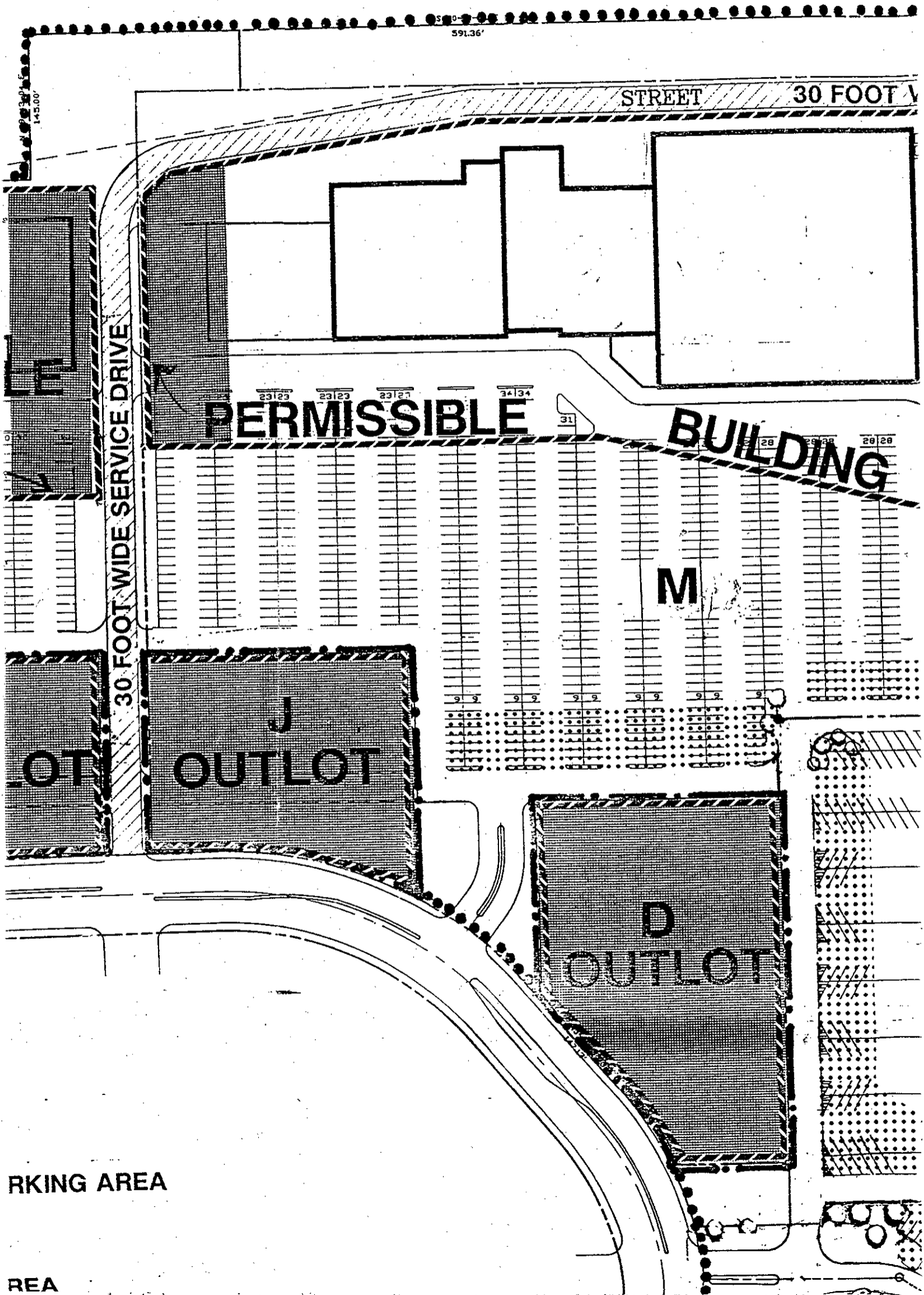
LEGEND



EMPLOYEE PARKING

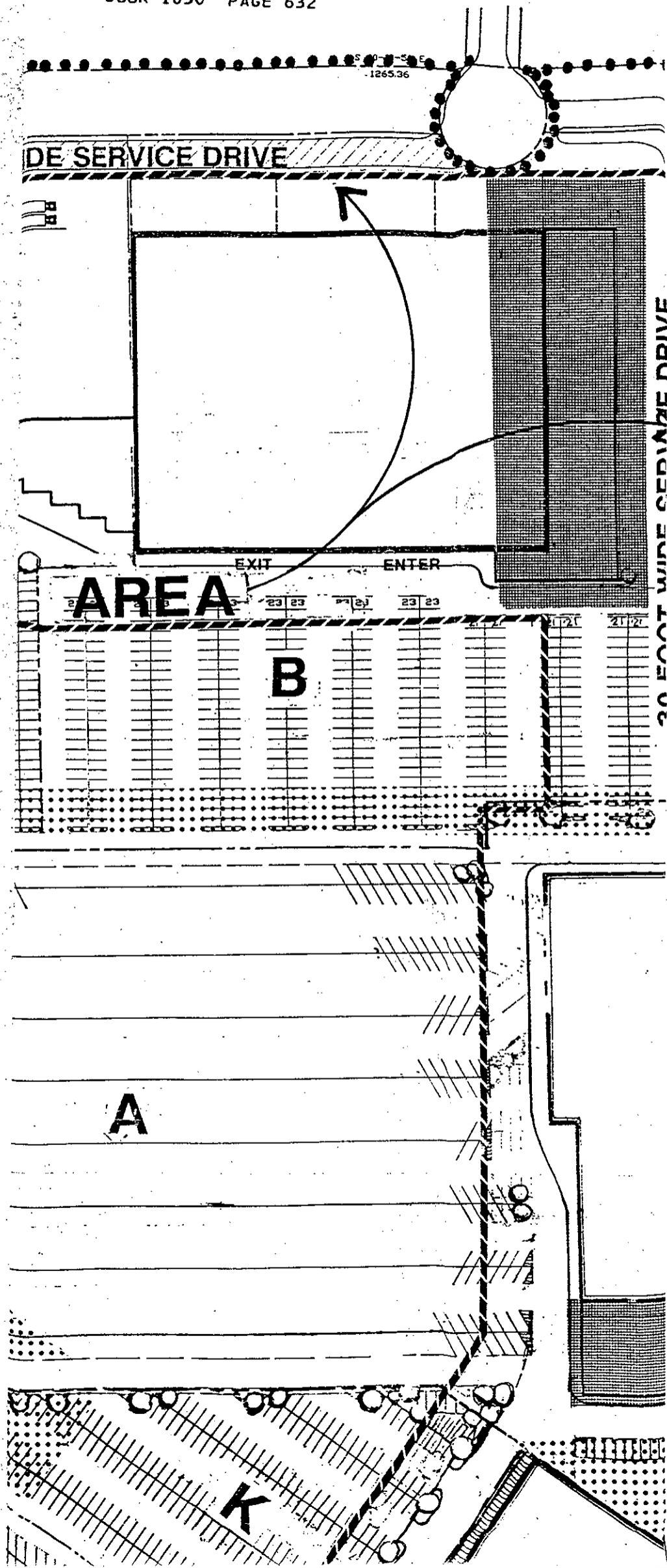


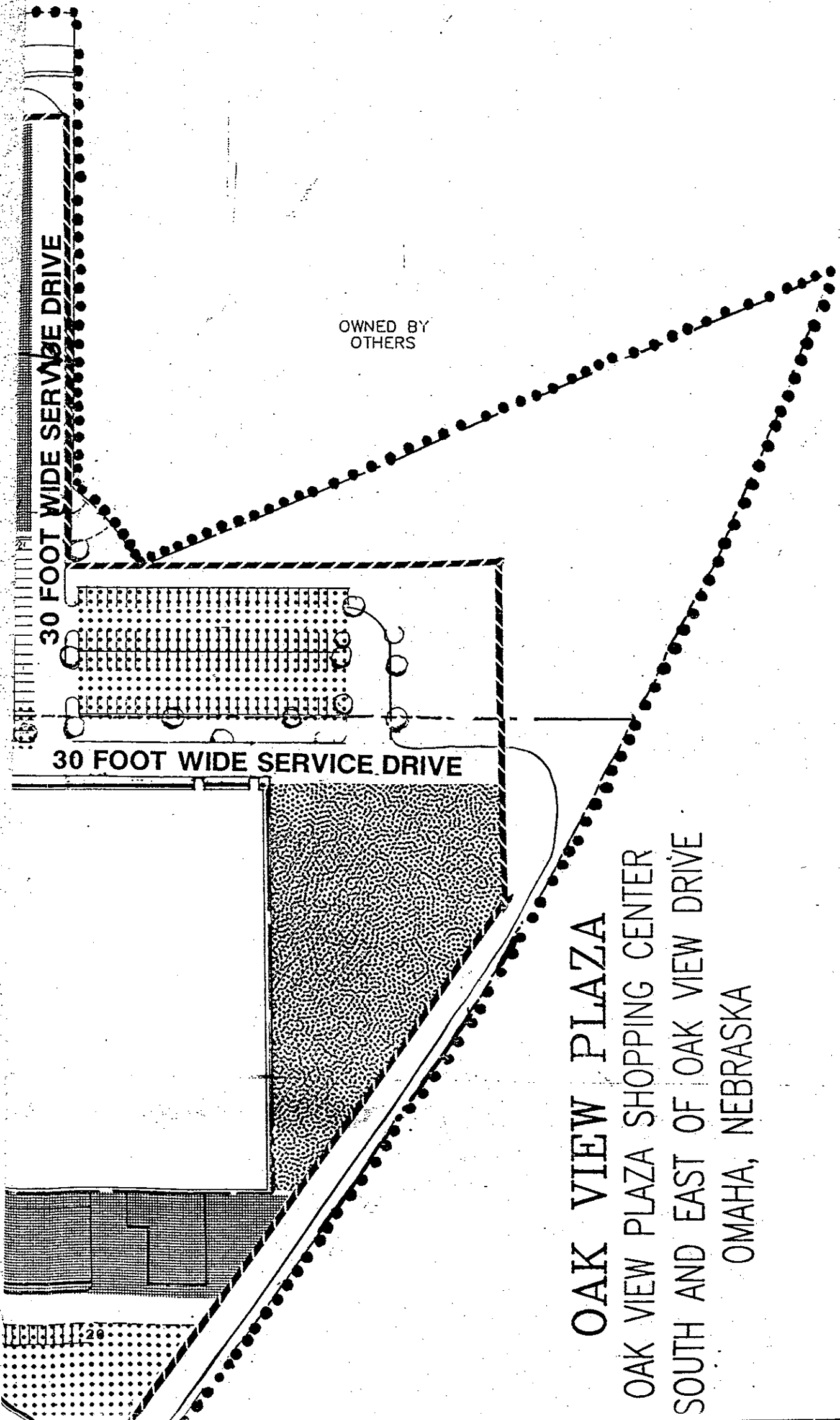
EXPANSION AREA



PARKING AREA

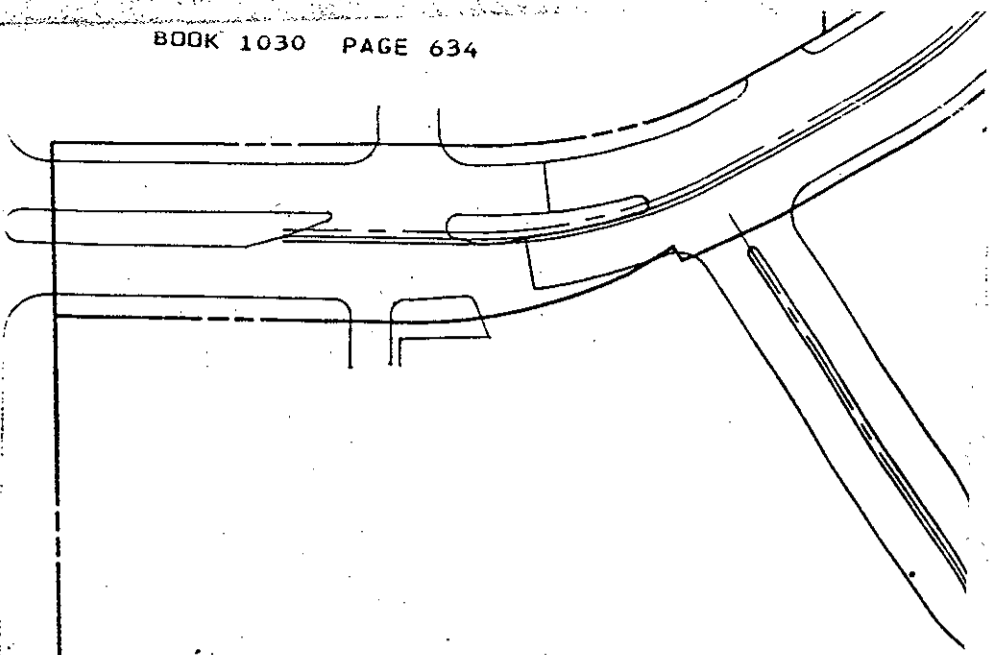
REA

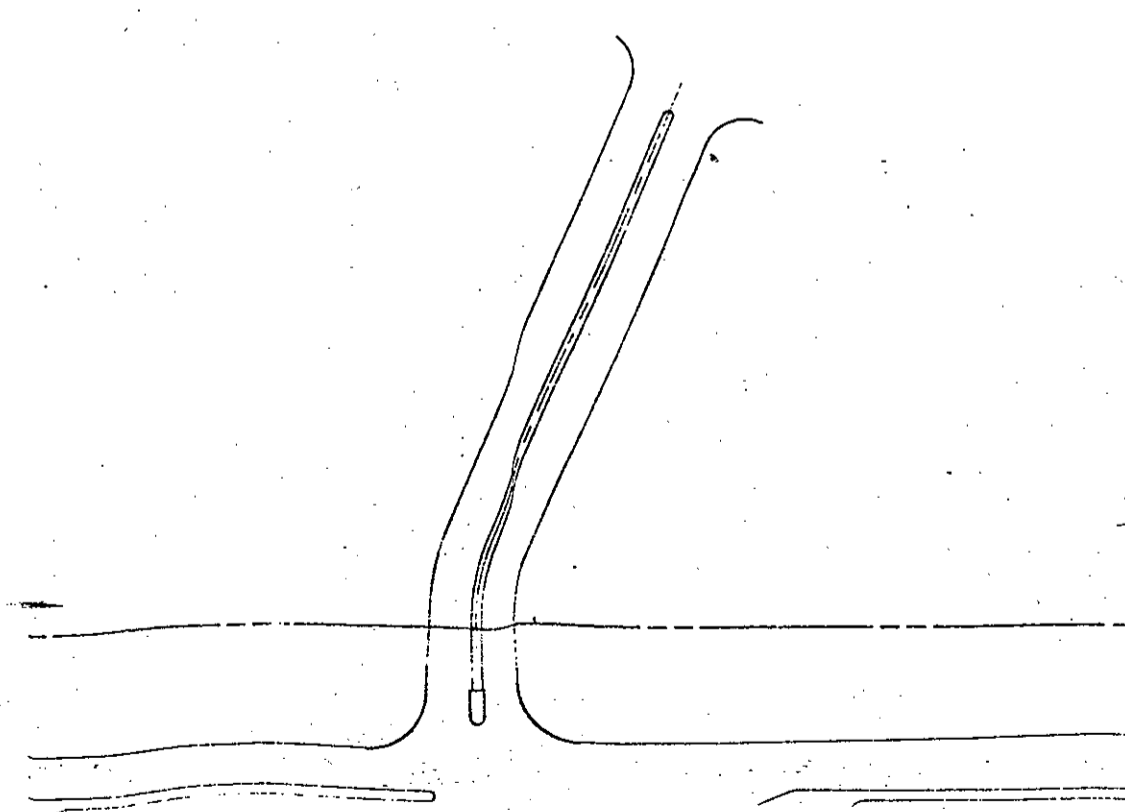




OAK VIEW PLAZA
OAK VIEW PLAZA SHOPPING CENTER
SOUTH AND EAST OF OAK VIEW DRIVE
OMAHA, NEBRASKA

WEST CENTER ROAD



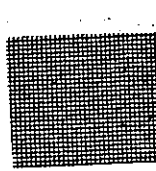


 EXPANSION AREA

 DEVELOPERS TRACT LINE BOOK 1030 PAGE 636

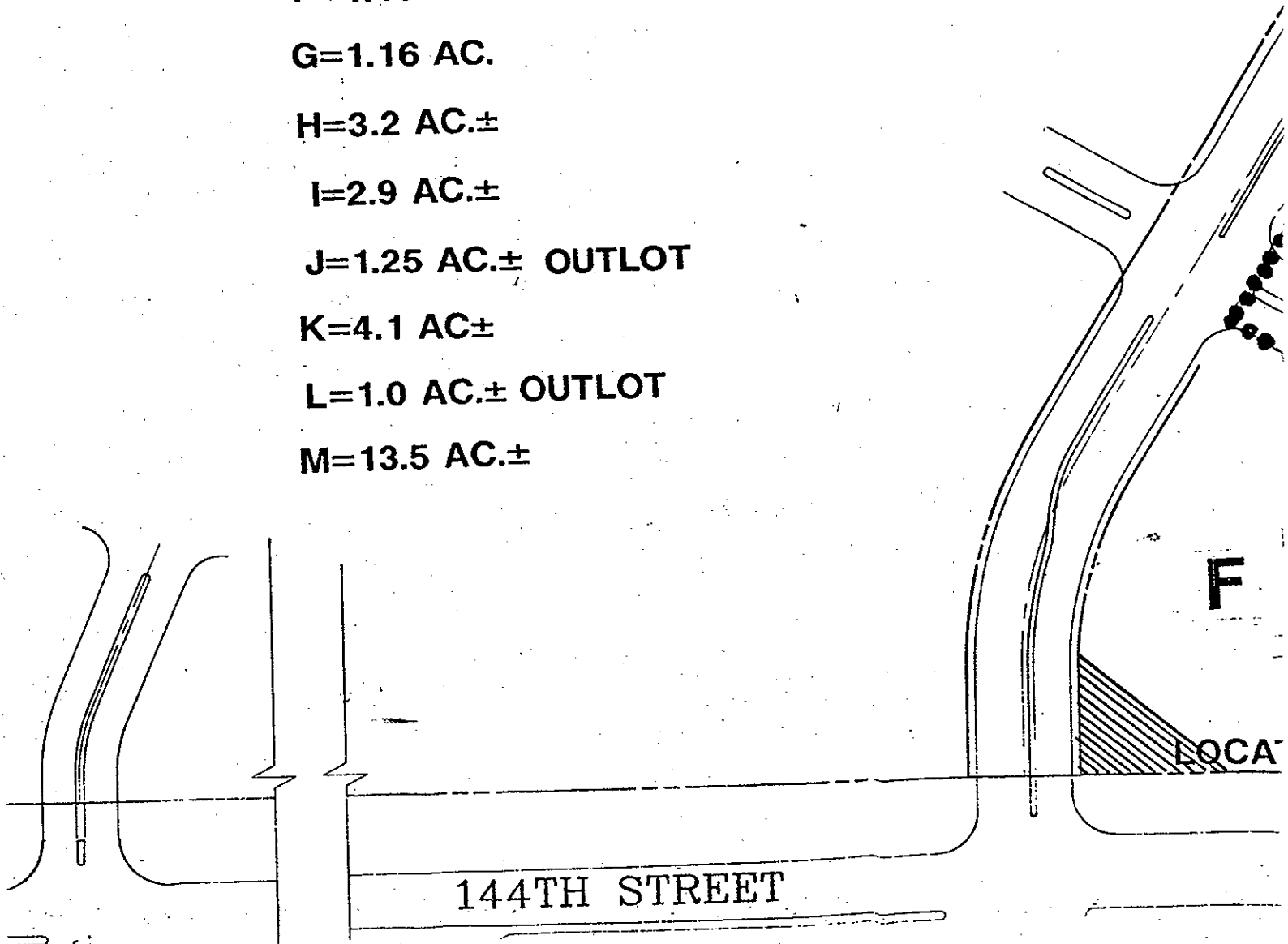
 OUTLOT PROPERTY LINE

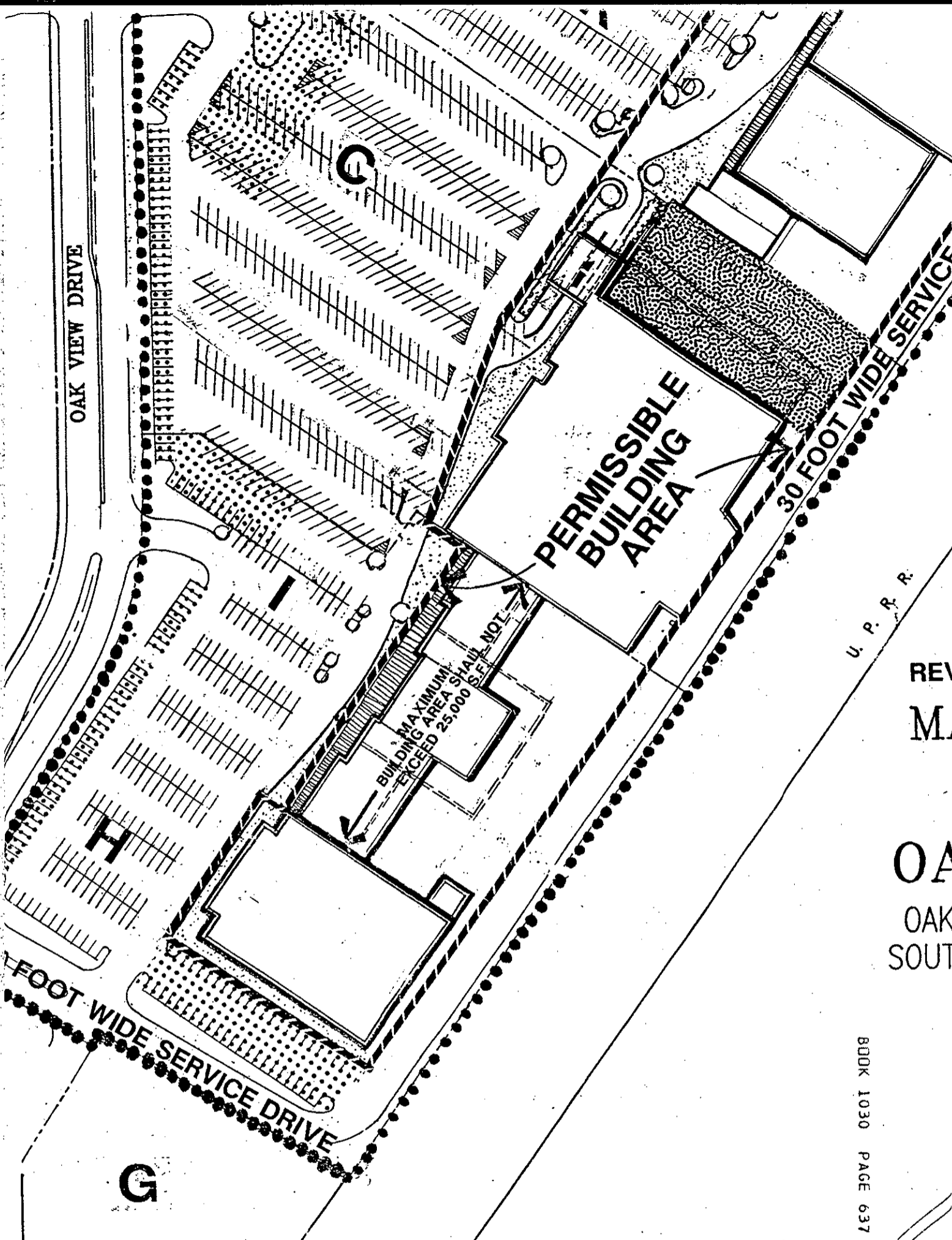
 PERMISSIBLE BUILDING AREA

 DESIGNATES THOSE AREAS WITHIN THE PERMISSIBLE BUILDING AREA THAT MAY BE USED FOR OUTDOOR SALES AREA.

TRACT APPROX. AREA

- A=14.4 AC.±
- B=9.9 AC.±
- C=6.5 AC.±
- D=1.8 AC.± OUTLOT
- E=7.0 AC.±
- F=1.19 AC.
- G=1.16 AC.
- H=3.2 AC.±
- I=2.9 AC.±
- J=1.25 AC.± OUTLOT
- K=4.1 AC.±
- L=1.0 AC.± OUTLOT
- M=13.5 AC.±





OAK VIEW DRIVE

PERMISSIBLE BUILDING AREA

30 FOOT WIDE SERVICE DRIVE

U. P. R. R.

REV
M.

OA
OAK
SOUT

MAXIMUM BUILDING AREA SHALL NOT EXCEED 25,000 SQ. FT.

BOOK 1030 PAGE 637

ON OF OAK VIEW PLAZA PYLON SIGN

DRIVE

REVISED JUNE 9, 1992

MASTER SITE PLAN EXHIBIT A

SCALE: 1" = 100'-0"

OAK VIEW PLAZA

OAK VIEW PLAZA SHOPPING CENTER
WEST AND EAST OF OAK VIEW DRIVE
OMAHA, NEBRASKA

INDUSTRIAL ROAD

A R C H I T E C T S
1065 North 115th Street Suite 200 Omaha, Nebraska 68154 (402) 496-4448

PROJECT NO: 91071

DATE: _____

REVISIONS:

△	DATE
_____	_____
_____	_____
_____	_____
_____	_____