

THIS AGREEMENT, made and entered into this 3<sup>rd</sup> day of June, 1982, by and among George F. Russell, Successor Trustee ("Stoneybrook"), Financial Properties Developers, Inc., a Georgia corporation ("Financial") and OTR, an Ohio general partnership ("OTR").

## RECITALS

Stoneybrook, Financial and OTR are all of the owners of certain real estate subject to a Reciprocal Easement and Operating Agreement dated September 8, 1980, and filed in Book 638, Page 513, Miscellaneous Records, Douglas County, Nebraska, as amended by a First Amendment to Reciprocal Easement and Operating Agreement dated November 11, 1980, and filed in Book 642, Page 230, Miscellaneous Records, Douglas County, Nebraska (the "Agreement").

The parties hereto desire to amend the Agreement in certain respects.

NOW THEREFORE, the parties hereto hereby agree as follows:

1. Exhibit D to the Agreement is hereby deleted and the exhibit attached hereto and headed "Exhibit D to Reciprocal Easement and Operating Agreement" is substituted in lieu thereof.

2. Exhibit G, attached hereto and headed "Parcel I" is added as Exhibit G to the Agreement.

3. The following new Paragraph 1.05 is hereby added to the Agreement following Paragraph 1.04:

"1.05 As used in the Agreement, the term "Parcel I" shall refer to the real estate described in Exhibit G attached hereto and made a part hereof with all the rights, easements and right-of-way incident thereto."

4. Paragraph 2.02 of the Agreement is hereby amended by deleting the last two sentences of Paragraph 2.02 and inserting in lieu thereof the following two sentences:

"Stoneybrook covenants agrees that no building on Parcel II, shown on Exhibit D, shall be taller than one story or exceed eighteen (18) feet in height above grade level and no building on Parcel III, shown on Exhibit D, shall be taller than two stories.

Stoneybrook further covenants and agrees that no building on Parcel II shall contain more than 9,000 square feet of gross floor area, excluding basement areas, and that no building on Parcel III shall exceed a maximum building size of ~~7,500 square feet~~ of gross floor area for each level of each building, excluding driveways and canopies cantilevered out from the building.

9,000 square feet

5. Paragraph 19.02 is hereby deleted and the following new Paragraph 19.02 is substituted in lieu thereof:

"19.02 This Agreement and all of the covenants, restrictions and easements herein contained (except for the easement set forth in Paragraph 20.02(b)) shall terminate, if not sooner terminated, upon (i) the termination for any reason of the lease covering the Financial Premises between Financial Properties Developers, Inc., as landlord and K mart Corporation as tenant dated September 10, 1980, Memorandum of Lease, recorded in Book 644, Page 661, Miscellaneous Records, Douglas County, Nebraska, and any amendment thereto, and (ii) the filing of a certificate of termination of this Agreement executed by the parties hereto. The parties hereto agree that upon termination of said lease they shall execute such a certificate.

6. The following new Paragraph 19.08 is hereby added to the Agreement following Paragraph 19.07:

"19.08 At any time and from time to time the parties will deliver to each other upon 30 days prior written notice a properly executed certificate stating that no default exists hereunder (or affirmatively stating that a condition to be performed by the requesting party has been performed), or specifying each such default (or failure of performance) of which said party has knowledge.

7. The following new Article 20 is hereby added to the Agreement following Article 19:

"Parcel I

20.01 Termination as to Article 2 Through Article 17: By execution of this Second Amendment to Reciprocal Easement and Operating Agreement, in which this Article 20 is contained, the parties agree that all of the covenants, terms and conditions of Articles 2 through 17 of the Agreement are hereby terminated as to Parcel I and that said Articles 2 through 17 shall not burden or benefit Parcel I in any manner, it being the intent of the parties that ownership and enjoyment of Parcel I be free of all such provisions of the Agreement as if the definitions of the "Shopping Center" and the "Financial Premises" including the legal description of said Parcels, Exhibits A and B, respectively, had at all times excluded Parcel I.

20.02 Access Easements.

(a) By Financial: Financial, as the owner of Parcel I, hereby grants to OTR and Stoneybrook, their respective successors and assigns, for the benefit of the Financial Premises and the Stoneybrook Premises, a non-exclusive easement for ingress and egress over the parking areas, driveways, service drives, private streets and street entrances and exits, located or to be located on Parcel I.

(b) By OTR: OTR, as the owner of the Financial Premises, hereby grants to Financial, its successors and assigns, for the benefit of Parcel I, a perpetual non-exclusive easement for ingress and egress over the road running north from Stony Brook Boulevard and lying west of Parcel I, as shown on Exhibit D and over all areas east of said road and south of the north line of Parcel I; provided, however, that Financial shall have no right to construct any improvements within the aforementioned easement prior to the termination, for any reason, of the lease covering the Financial Premises between Financial Properties Developers, Inc., as landlord and K mart Corporation as tenant, dated September 10, 1980.

(c) By OTR and Stoneybrook: OTR as owner of the Financial Premises, and Stoneybrook, as the owner of the Stoneybrook Premises, hereby grant to Financial, its successors and assigns, for the benefit of Parcel I, a non-exclusive easement for ingress and egress over the parking areas, driveways, service drives, private streets, and street entrances and exits, located or to be located on the Financial Premises and the Stoneybrook Premises.

20.03 Building Restrictions: Financial hereby covenants and agrees that no building shall be erected on Parcel I which shall contain more than 7,500 square feet of gross floor area, excluding basement areas, and that no building shall be erected which shall exceed one story or 18 feet above grade.

20.04 Access Road: Financial, as the owner of Parcel I, agrees for itself and its successors and assigns that in connection with the development of Parcel I, it shall construct and maintain at its expense a paved road 24 feet in width from a curb cut on the north side of Stony Brook Boulevard to the parking lot on the Financial Premises at a point near the corner of the north boundary of Parcel I and the west boundary of Parcel II, and shown as the Access Road on Exhibit D; provided, however, that if at the time of such development of Parcel I such road and curb cut is not permitted by any governmental authority or regulation, then this obligation shall cease and be of no effect thereafter, Financial, as the owner of Parcel I, agrees for itself and its successors and assigns, that at the time of development of Parcel I it shall use its best efforts to secure approval for such road and curb cut.

20.05 Parking Ratios: Financial hereby covenants and agrees to maintain on Parcel I not less than five (5) parking spaces for every 1,000 square feet of gross building area, excluding basement areas, constructed on Parcel I and in any event shall maintain on Parcel I not less than the number of parking spaces required by applicable ordinances or regulations.

20.06 Landscape Area: Financial hereby covenants and agrees that that part of Parcel I designated as Landscape Area on Exhibit D shall be maintained as a green area and no improvements other than underground utility lines and facilities shall be erected or installed thereon; provided, however, that (a) OTR may maintain a sign thereon identifying the Shopping Center after obtaining from the owner of Parcel I its prior written approval of the location, size, content and materials of any sign or change thereto and (b) the Owner of Parcel I may maintain a sign thereon identifying the business conducted on Parcel I after obtaining from the parties hereto their prior written approval of the location, size, content and materials of any sign or change thereto.

20.07 Surface Water Drainage: Financial covenants and agrees that in the development and use of Parcel I drainage of surface water thereon shall be dealt with in such a manner as to minimize the run-off of those waters onto contiguous parcels of land in the Shopping Center.

20.08 Temporary Construction Easement: Financial hereby grants to Stoneybrook for the benefit of the Stoneybrook Premises a temporary construction easement twenty (20) feet in width over Parcel I along the outside of the entire south boundary of Parcel II, as shown on Exhibit D. Stoneybrook covenants and agrees to use this Temporary Construction Easement in such a manner so as not to cause damage to improvements already constructed or to be constructed on Parcel I and so as not to unreasonably interfere with the use of Parcel I. This Temporary Construction Easement shall terminate on September 8, 1982."

8. All references in this Second Amendment or in the Agreement to exhibits or provisions of this Second Amendment or Agreement shall be to such exhibits or provisions as amended by this Second Amendment.

9. All provisions of the Agreement not amended by this Second Amendment remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first above written.

WITNESS AS TO THE SIGNATURE OF FINANCIAL PROPERTIES DEVELOPERS, INC.

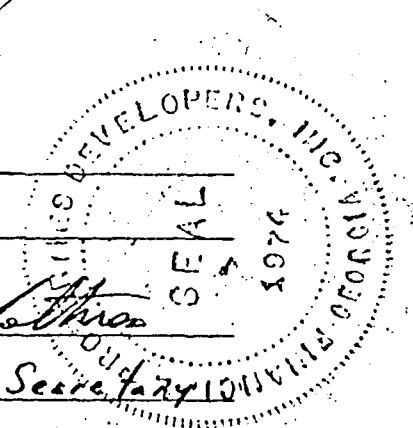
FINANCIAL PROPERTIES DEVELOPERS, INC.

Mary Jane Sanders BY: [Signature]  
[Signature]

ARTHUR HEYMAN  
ITS: President

Attest: [Signature]

Its: Asst. Secretary



WITNESS AS TO THE SIGNATURE OF OTR

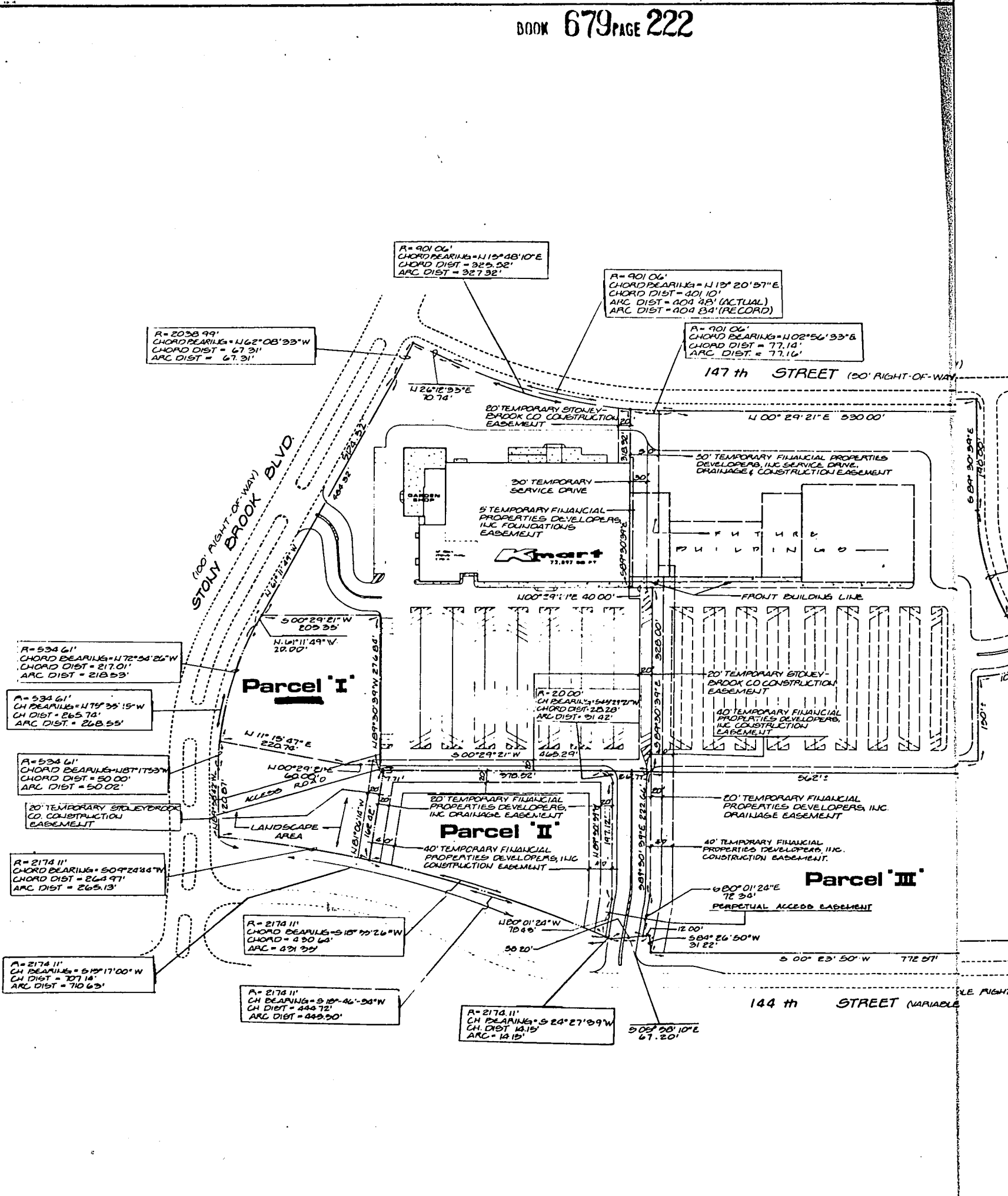
OTR, an Ohio General Partnership

Ainda K. Kuhns  
Heigh Anne Eagle

BY: [Signature]  
Its: Stephen A. Mitchell, Partner







R=2038.99'  
 CHORD BEARING=N46°2'08"33"W  
 CHORD DIST=67.31'  
 ARC DIST=67.31'

R=901.06'  
 CHORD BEARING=N15°48'10"E  
 CHORD DIST=325.52'  
 ARC DIST=327.32'

R=901.06'  
 CHORD BEARING=N13°20'57"E  
 CHORD DIST=401.10'  
 ARC DIST=404.48'(ACTUAL)  
 ARC DIST=404.84'(RECORD)

R=901.06'  
 CHORD BEARING=N102°56'33"E  
 CHORD DIST=77.14'  
 ARC DIST=77.16'

R=534.61'  
 CHORD BEARING=N72°54'26"W  
 CHORD DIST=217.01'  
 ARC DIST=218.53'

R=534.61'  
 CH BEARING=N75°35'15"W  
 CH DIST=265.72'  
 ARC DIST=268.55'

R=534.61'  
 CHORD BEARING=N87°17'53"W  
 CHORD DIST=50.00'  
 ARC DIST=50.02'

R=2174.11'  
 CHORD BEARING=S09°24'38"W  
 CHORD DIST=264.97'  
 ARC DIST=265.13'

R=2174.11'  
 CH BEARING=S12°17'00"W  
 CH DIST=707.16'  
 ARC DIST=710.63'

R=2174.11'  
 CHORD BEARING=S15°22'26"W  
 CHORD = 430.64'  
 ARC = 431.33'

R=2174.11'  
 CH BEARING=S15°46'54"W  
 CH DIST=444.72'  
 ARC DIST=445.30'

R=2174.11'  
 CH BEARING=S24°27'39"W  
 CH DIST 14.15'  
 ARC = 14.15'

500°29'21"W  
 209.55'  
 N.W. 11°49'W  
 20.00'

**Parcel I**

20' TEMPORARY STOLEY-BROOK CO CONSTRUCTION EASEMENT  
 30' TEMPORARY SERVICE DRIVE  
 5' TEMPORARY FINANCIAL PROPERTIES DEVELOPERS, INC FOUNDATIONS EASEMENT  
**Kmart**  
 73,897 SQ FT

20' TEMPORARY FINANCIAL PROPERTIES DEVELOPERS, INC DRAINAGE EASEMENT  
**Parcel II**  
 40' TEMPORARY FINANCIAL PROPERTIES DEVELOPERS, INC CONSTRUCTION EASEMENT  
 LANDSCAPE AREA

147th STREET 150' RIGHT-OF-WAY  
 50' TEMPORARY FINANCIAL PROPERTIES DEVELOPERS, INC SERVICE DRIVE DRAINAGE & CONSTRUCTION EASEMENT  
 PHILIPINE  
 FRONT BUILDING LINE

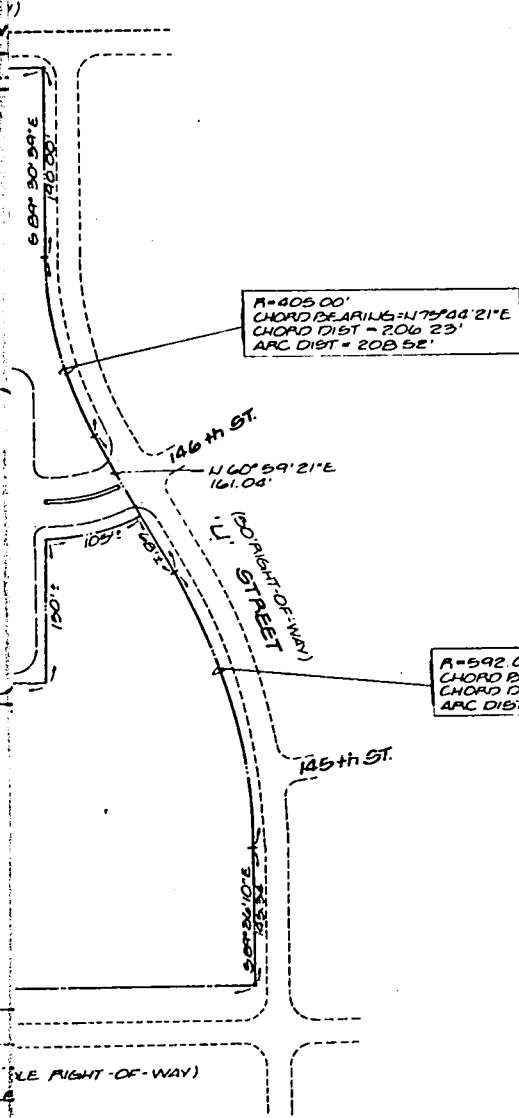
20' TEMPORARY STOLEY-BROOK CO CONSTRUCTION EASEMENT  
 40' TEMPORARY FINANCIAL PROPERTIES DEVELOPERS, INC CONSTRUCTION EASEMENT  
 20' TEMPORARY FINANCIAL PROPERTIES DEVELOPERS, INC DRAINAGE EASEMENT

40' TEMPORARY FINANCIAL PROPERTIES DEVELOPERS, INC CONSTRUCTION EASEMENT  
**Parcel III**  
 680°01'24"E  
 72.34'  
 PERPETUAL ACCESS EASEMENT  
 58°26'50"W  
 31.22'

144th STREET VARIABLE

# POOR INSTRUMENT FILED

BOOK 679 PAGE 223



R=405.00'  
CHORD BEARING=N75°44'21"E  
CHORD DIST = 206.23'  
ARC DIST = 208.52'

146th ST.  
N 60°59'21"E  
161.08'

R=592.00'  
CHORD BEARING=N75°41'36"E  
CHORD DIST = 300.53'  
ARC DIST = 303.85'

145th ST.

## Exhibit D to Reciprocal Easement and Operating Agreement

DEVELOPER:  
FINANCIAL PROPERTIES DEVELOPERS, INC.  
ATLANTA, GEORGIA

PROJECT:  
STOLY BROOK BLVD. & 144th STREET  
MILLARD, NEBRASKA

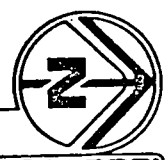
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THIS DRAWING IS APPROVED FOR CONSTRUCTION  
 THIS DRAWING IS NOT APPROVED FOR CONSTRUCTION

DRAWN BY: [Signature]  
DATE: 3-24

REVISION	DATE
MISC REVISION	9-3
MISC REVISION	9-5
MISC REVISION	9-9
MISC REVISION	9-15
MISC REVISION	9-11
REV CHORD BEARING	9-2

**Site Plan**  
SCALE: 1" = 200'



BEARINGS AND DISTANCES SHOWN WERE OBTAINED FROM SURVEY PREPARED BY THOMPSON, DREEGSEN & DORNER OMAHA, NEBRASKA DATED 9-9-80

REV ENTRANCES 10 17 80  
MISC REV. 10 21 80  
REV PERPETUAL ACCESS EASMT 11 13 80  
REV TO PARCEL '1' 11 11 81  
REVED N.E. TO PARCEL '1' 1-11-82

**COLUMBIA**  
ENGINEERING AND SERVICES, INC.  
ATLANTA, GEORGIA

DRAWING NUMBER  
**Exhibit D**



EXHIBIT G

PARCEL I

LEGAL DESCRIPTION:

That part of Lots 76, 80, 81 and 82, Stony Brook, a subdivision as surveyed, platted, and recorded in Douglas County, Nebraska, and being more particularly described as follows:

BEGINNING at the point of intersection of the Westerly Right-of-Way line of 144th Street and the northerly Right-of-Way line of Stony Brook Boulevard; thence N 89° 58' 42" W (assumed bearing) along the northerly Right-of-Way line of Stony Brook Boulevard a distance of 120.87 feet to a point; thence northwesterly along a curve to the right on the northerly Right-of-Way line of Stony Brook Boulevard, having a radius of 534.61 feet, a chord bearing of N 75° 35' 15" W and a chord distance of 265.74 feet, a distance of 268.55 feet to a point; thence N 61° 11' 49" W along the northerly Right-of-Way line of Stony Brook Boulevard a distance of 20.00 feet to a point; thence N 00° 29' 21" E a distance of 205.35 feet to a point; thence S 89° 30' 39" E a distance of 276.84 feet to a point; thence N 00° 29' 21" E a distance of 7.71 feet to a point; thence S 81° 06' 14" E a distance of 162.42 feet to a point on the westerly Right-of-Way line of 144th Street; thence southwesterly along a curve to the left on the westerly Right-of-Way line of 144th Street, having a radius of 2,174.11 feet, a chord bearing of S 09° 24' 44" W and a chord distance of 264.97 feet, a distance of 265.13 feet to the POINT OF BEGINNING.

Containing 2.49 acres more or less.

*61 Acres*

RECEIVED  
1982 NOV - 1 PM 2:33  
C. HAROLD OSTLER  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NEBR.

*679*  
*216*  
*Quoc*

*12*

*28.90*  
*29-495-497*