

L-2281

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DECLARATION OF EASEMENTS

Declaration of Easement made this 1st day of August, 1980, by FINANCIAL PROPERTIES DEVELOPERS, INC. ("Declarant"), a Georgia corporation, with its principal place of business at 5825 Glenridge Drive, N.E., Atlanta, Georgia 30328.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of a tract of land in the City of Omaha, Douglas County, Nebraska, hereinafter referred to as the "Center", shown on Exhibit A, and more particularly described in Exhibit B; and

WHEREAS, Declarant will lease a portion of the Center hereinafter referred to as "Parcel I", shown on Exhibit A and more particularly described in Exhibit C, to K mart Corporation; and

WHEREAS, Declarant has reserved the remainder of the Center hereinafter referred to as "Parcel II", shown on Exhibit A and more particularly described in Exhibit D, for future development; and

WHEREAS, Declarant desires to establish certain covenants between the fee owners from time to time of Parcel I and Parcel II; and

WHEREAS, Declarant desires to establish as hereinafter provided non-exclusive easements for the use of those portions of the Center which are not from time to time improved with buildings or other structures and which are intended for use as driveways, pedestrian ways, sidewalks, parking areas and for ingress and egress to and from public roadways (the foregoing portions of the Center hereinafter collectively called "Common Areas"); and

WHEREAS, Declarant desires to establish as hereinafter provided non-exclusive easements for the purpose of constructing, operating, maintaining and repairing utility service lines, including, but not limited to, water, sewer, gas, electric and telephone lines and surface water drainage system including collection basins, drainage lines and retention basin.

THEREFORE, the Declarant, as owner of the Center, for itself, its successors and assigns, declares as follows:

1.

(A) Declarant hereby grants to each and every person, partnership, corporation or other entity now or hereafter owning all or any portion

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of Parcel I a non-exclusive easement, right and privilege of passage and use, including but not limited to the parking of vehicles (except as provided below) and for ingress and egress to and from the roadways adjoining the Center, in, to, upon, through and over the Common Areas from time to time located on Parcel II.

(B) The easement, rights and privileges granted hereby shall be for the benefit of and be restricted solely to the owners from time to time of all or any portion of Parcel I, but such owner or owners may grant the benefit of such easement, rights, and privileges to its tenants now or hereafter occupying a building or portions thereof on Parcel I for the period of such tenancy, and to the customers, employees and business invitees of said tenants, but the same is not intended and shall not be construed as creating any rights in and for the benefit of the general public.

(C) Notwithstanding anything contained in Paragraph 1 to the contrary, the easement, rights and privileges hereinabove granted shall not extend to or exist over portions of Parcels II hereinafter improved with buildings or structures.

2.

(A) Declarant hereby grants to each and every person, partnership, corporation or other entity now or hereafter owning all or any portion of Parcel II a non-exclusive easement, right and privilege of passage and use, including but not limited to the parking of vehicles (except as provided below) and for ingress and egress to and from the roadways adjoining the Center, in, to, upon, through and over the Common Areas from time to time located on Parcel I.

(B) The easement, rights and privileges granted hereby shall be for the benefit of and be restricted solely to the owners from time to time of all or any part of Parcel II, but such owner or owners may grant the benefit of such easement, rights and privileges to its tenants now or hereafter occupying a building or portions thereof on Parcel II for the period of such tenancy, and to the customers, employees, and business invitees of said tenants, but the same is not intended and shall not be construed as creating any rights in and for the benefit of the general public.

(C) Notwithstanding anything contained in Paragraph 2 to the contrary, the easement, rights and privileges hereinabove granted shall not extend to or exist over portions of Parcels I hereinafter improved with buildings or other structures.

3.

(A) Declarant grants to each and every person, partnership, corporation or other entity now or hereafter owning all or any portion of Parcel I a non-exclusive Construction Easement over Parcel II, to construct such utility service lines, sanitary sewage systems, and surface water drainage systems as may be required to serve the improvements to be constructed on Parcel I and Parcel II. Said Construction Easement to terminate one year from the date hereof. Declarant further grants to each and every person, partnership, corporation or other entity now or hereafter owning all or any portion of Parcel I a permanent non-exclusive easement, right and privilege of operating, maintaining and repairing the utility service lines, sanitary sewage systems, and surface water drainage systems serving Parcel I located on Parcel II.

(B) Declarant grants to each and every person, partnership, corporation or other entity now or hereafter owning all or any portion of Parcel II a non-exclusive easement, right, and privilege, to utilize the utility service lines, sanitary sewage systems, and storm water drainage systems located on Parcel I and Parcel II, provided it does not restrict the capacity of said facilities to serve the improvements located on Parcel I, and provided further, that as a condition of the exercise of the rights granted herein, it shall be the obligation of the party exercising said right to do so at such time and in such manner as to cause as little interruption to the normal business of the other party as is possible and further to restore, repair, and replace the property disturbed by such exercise to the condition existing prior to such exercise.

4.

Declarant grants to each and every person, partnership, corporation or other entity now or hereafter owning all or any portion of Parcel I a non-exclusive underground foundation easement of five (5) feet in width

along the easterly side of the east boundary of Parcel I adjacent to the K mart building, as shown on Exhibit A, in order for the owner of Parcel I to construct footings and foundations for the building to be constructed on Parcel I. The owner of Parcel II shall have the full right to use said foundations constructed by the owner of Parcel I for the benefit and support of any building subsequently constructed on Parcel II immediately adjacent to the building constructed on Parcel I; provided, however, that any such use shall not impair the benefit and support to which the building on Parcel I is entitled.

5.

Declarant grants to each and every person, partnership, corporation or other entity now or hereafter owning all or any portion of Parcel I a non-exclusive Temporary Access Easement over that portion of Parcel II adjacent to the east boundary of Parcel I, shown as Access Drive A on Exhibit A. Said Access Easement to be discontinued and vacated when the owner of Parcel II has constructed or caused to be constructed a paved service drive providing a circular flow of traffic around the building on Parcel I and the building or buildings on Parcel II directly to the east of Parcel I.

6.

The fee owners of the respective parcels of property comprising the Center shall be responsible at their own expense for maintenance, repair and replacement of all buildings, improvements and utilities located on their respective parcels which shall be kept in a state of good repair, specifically the Common Areas shall be kept reasonably free of rubbish and adequately drained and lighted. If a fee owner of Parcel I or Parcel II ("defaulting fee owner") fails within thirty (30) days after receipt of written notice from a fee owner of Parcel I or Parcel II, or its first mortgagee, to commence and proceed with due diligence to complete the performance of any of its obligations as provided in this Declaration of Easement, then said fee owner of Parcel I or Parcel II or first mortgagee making said demand shall have the right, but not the duty, to perform same. Any fee owner of Parcel I or Parcel II performing the obligations of the defaulting fee owner as aforesaid

D. P. C.

shall have a lien against the land and improvements upon which the services were performed for the full costs and expenses incurred in such performance. Provided, however, said lien shall be junior and subordinate to any first mortgage then existing on the defaulting owner's parcel. The written notice of default required by this Section shall be sent not only to the defaulting party, but to all owners of Parcels I and II, including K mart Corporation, if at the time of default K mart Corporation is a lessee of Parcel I.

7.

The fee owners of the respective parcels of property comprising the Center shall timely pay or cause to be paid, all real estate taxes and assessments levied on their respective parcels.

8.

The owner of each parcel, or any portion thereof, shall indemnify and hold harmless the other owners of Parcel I and Parcel II, or any portion thereof, from damages arising out of any accident occurring on its parcel except where caused by the negligence of the other party or parties.

9.

(A) The fee owner of Parcel I shall maintain on Parcel I a ratio of parking space of not less than Five and One-Half (5.5) automobile parking spaces for each One Thousand (1,000) square feet of gross leasable area. Said parking spaces to be located substantially as shown on Exhibit A.

(B) The fee owner of Parcel II shall maintain on Parcel II a ratio of parking spaces of not less than Five and One-Half (5.5) automobile parking spaces for each One Thousand (1,000) square feet of gross leasable area. Said parking spaces to be located substantially as shown on Exhibit A.

10.

No building (including any parapet or tower of any building) shall be erected on that portion of Parcel II lying south of the Front Building Line, as shown in Exhibit A, which shall extend more than 20 feet in height above the ground, and no sign (free-standing or building sign) may extend more than 20 feet in height above the ground. Notwithstanding the foregoing, and as an exception thereto, any store

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operated by or under franchise from and under one of the nationally or regionally known names of a national or regional chain store organization may have such parapet, tower or identification sign of said chain store organization as is being used for all stores opened by said chain store organization at or about the time of the erection of such parapet, tower or sign, provided that the highest point of such parapet, tower or sign shall not be higher than 30 feet above the ground.

11.

No fences, barriers or other obstructions shall be erected or maintained between Parcel I and Parcel II; provided, however, that nothing in this Section shall prevent the erection of barriers between developed land and any undeveloped land of the Center. Any barrier erected shall be removed when the undeveloped portions of the Center are developed.

12.

In the event of destruction of, or damage to, any improvements on Parcel I or Parcel II, the fee owner of Parcel I or Parcel II or any portion thereof, as to their respective parcel or portion thereof, at their option, shall either:

(a) Cause such improvements to be repaired, reconstructed and restored as nearly as practicable to the condition existing just prior to such damage or destruction; or

(b) Cause other improvements to be constructed on the area covered by the destroyed or damaged improvements, which other improvements are similar to, compatible with, and integrated with the remaining development; or

(c) Cause the area covered by the destroyed or damaged improvements to be razed and the area placed in a neat and orderly condition; or

(d) Cause any combination of the foregoing to occur.

13.

Notwithstanding any of the covenants and conditions contained herein, no fee owner of all or any part of the Center nor its partners, shareholders, officers, executors, transferees, heirs, successors, assigns, lessees, or sublessees, shall be personally liable for any of the obligations arising from this Declaration of Easement. Any judgment rendered hereon shall be limited to the fee owner's interest in its parcel as aforesaid and no deficiency or other personal judgment, order or decree, excluding any order for specific performance, shall be rendered against said fee owner or its partners, shareholders, officers, executors, transferees, heirs, successors and assigns, lessees, or sublessees, in any action or proceeding brought hereunder.

14.

The easements hereby granted, the restrictions hereby imposed, and the agreements and covenants herein contained shall be easements, restrictions and covenants running with the land and shall inure to the benefits of, and be binding upon, Declarant and all future owners of all or any part of the Center and their respective heirs, successors, assigns, lessees, sublessees and all persons claiming under them.

15.

The invalidation of any of the grants or covenants contained herein, by order of court or otherwise, shall not affect any of the other provisions hereof and such other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, FINANCIAL PROPERTIES DEVELOPERS, INC. has caused this Declaration of Easement to be signed the day and year first above written.

Witness:

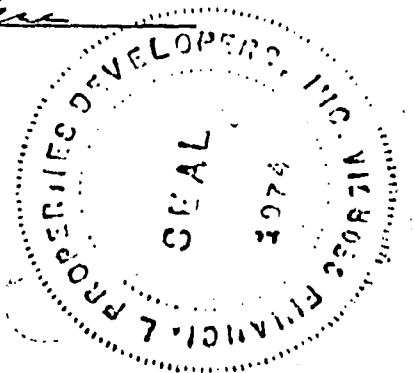
Carla J. Rosekrans

FINANCIAL PROPERTIES DEVELOPERS, INC.

By: [Signature]Attest: [Signature]

Asst. Sec.

(CORPORATE SEAL)



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POOR INSTRUMENT FILED

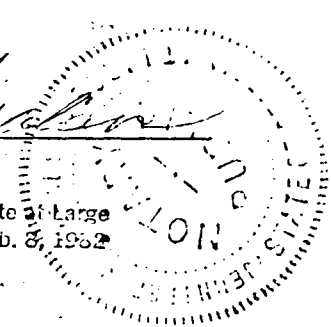
STATE OF GEORGIA

COUNTY OF FULTON

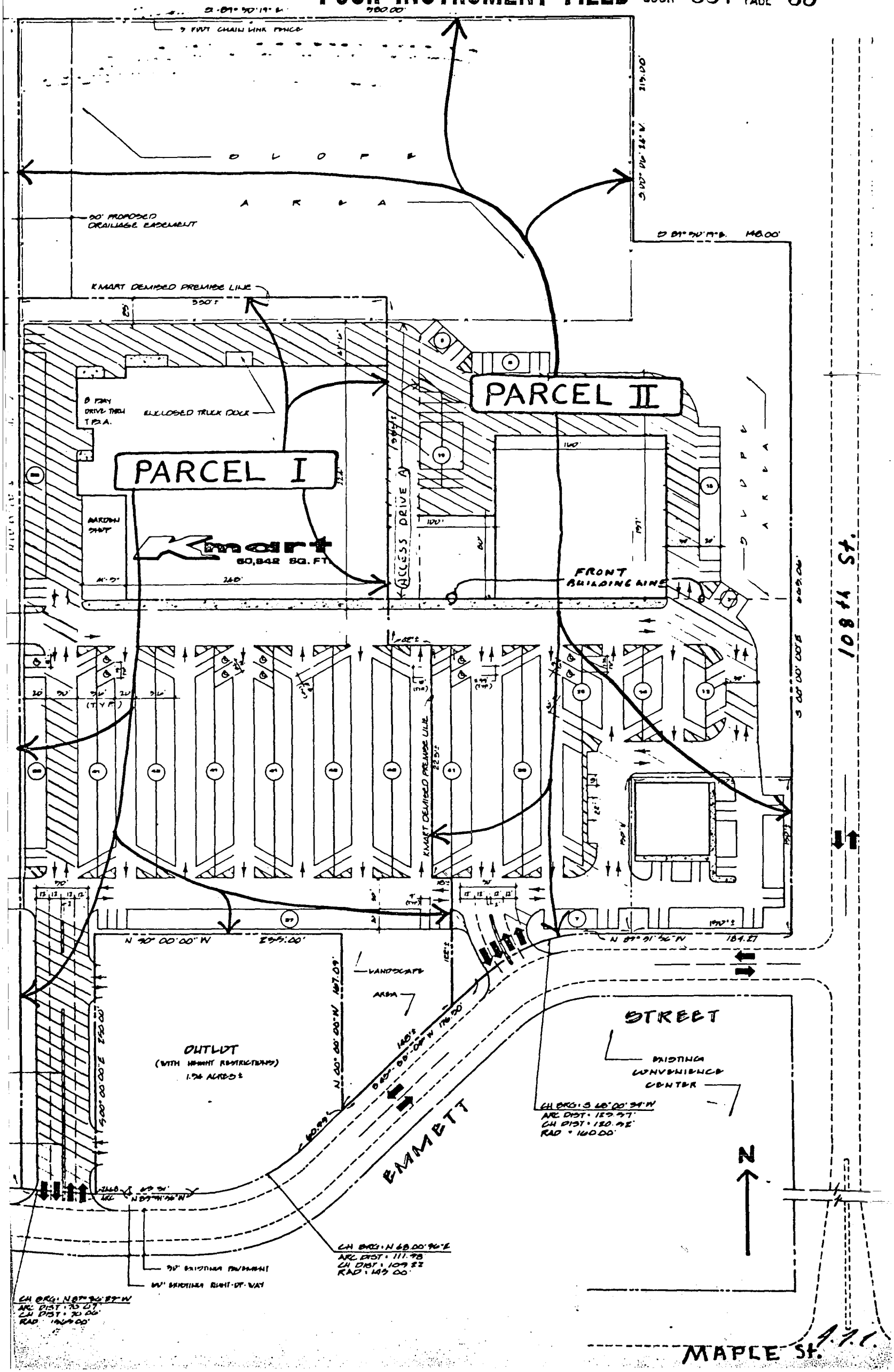
On this 1st day of August, 1980, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Arthur Hyman and Jack J. Colman respectively, of FINANCIAL PROPERTIES DEVELOPERS, INC., that the seal affixed to said instrument is the seal of said corporation, and that said instrument was signed on behalf of the said corporation by authority of its Board of Directors and the said President and Asst. Secretary acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Charles J. Shick
Notary Public

Notary Public, Georgia, State at Large
My Commission Expires Feb. 8, 1982



J.J.L.



LEGAL DESCRIPTION: "CENTER"
108TH STREET AND EMMETT STREET
OMAHA, NEBRASKA

A part of the Northeast 1/4 of Section 8, Township 15 North, Range 12 East of the 6th P. M., Douglas County, Nebraska and being more particularly described as follows:

Commence at the Northeast corner of said Northeast 1/4; thence S 00° 00' 00" E (Assumed bearing) on the east line of said Northeast 1/4, a distance of 215.00 ft.; thence N 89° 50' 19" W on a line 215.00 ft. south of and parallel to the north line of said Northeast 1/4, a distance of 50.00 ft. to the true POINT OF BEGINNING; thence S 00° 00' 00" E on the west line of 108th Street and 50.00 ft. west of and parallel to the east line of said Northeast 1/4, a distance of 663.06 ft. to a point on the north line of Emmett Street; thence N 89° 51' 56" W on the north line of Emmett Street, a distance of 184.27 ft. to a point of curve; thence southwesterly on the north line of Emmett Street on a 160.00 ft. radius curve to the left (chord bearing S 68° 00' 34" W, chord distance 120.52 ft.), an arc distance of 123.57 ft. to a point of tangency; thence S 45° 53' 04" W on the north line of Emmett Street, a distance of 176.30 ft.; thence N 00° 00' 00" W, a distance of 167.09 ft.; thence N 90° 00' 00" W, a distance of 235.00 ft.; thence S 00° 00' 00" E, a distance of 250.00 ft. to a point on the north line of Emmett Street; thence northwesterly on the north line of Emmett Street on a 1,565.00 ft. radius curve to the right (chord bearing N 87° 36' 29" W, chord distance 70.06 ft.), an arc distance of 70.07 ft.; thence N 00° 00' 00" W, a distance of 1127.52 ft. to a point on the north line of said Northeast 1/4; thence S 89° 50' 19" E on the north line of said Northeast 1/4, a distance of 580.00 ft.; thence S 00° 06' 24" W, a distance of 215.00 ft.; thence S 89° 50' 19" E on a line 215.00 ft. south of and parallel to the north line of said Northeast 1/4, a distance of 148.00 ft. to the POINT OF BEGINNING. Said tract containing 14.70 acres more or less.

LEGAL DESCRIPTION: PARCEL "I" (K MART PARCEL)
108TH STREET AND EMMETT STREET
OMAHA, NEBRASKA

A part of the Northeast 1/4 of Section 8, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, and being more particularly described as follows:

Commence at the northeast corner of said Northeast 1/4; thence S 00° 00' 00" E (assumed bearing) along the easterly line of said Northeast 1/4 a distance of 215.00 ft.; thence N 89° 50' 19" W along a line 215.00 ft. south of and parallel to the northerly line of said Northeast 1/4 a distance of 50.00 ft.; thence S 00° 00' 00" E along the westerly line of 108th Street and 50.00 ft. west of and parallel to the easterly line of said Northeast 1/4 a distance of 663.06 ft. to a point on the northerly line of Emmett Street; thence N 89° 51' 56" W along the northerly line of Emmett Street a distance of 184.27 ft. to a point of curvature; thence southwesterly along the northerly line of Emmett Street on a 160.00 ft. radius curve to the left (a chord bearing of S 68° 00' 34" W, a chord distance of 120.52 ft.), an arc distance of 123.57 ft. to a point of tangency; thence S 45° 53' 04" W along the northerly line of Emmett Street a distance of 31.45 ft. to the POINT OF BEGINNING; thence S 45° 53' 04" W along the northerly line of Emmett Street a distance of 144.85 ft.; thence N 00° 00' 00" W a distance of 167.09 ft.; thence N 90° 00' 00" W a distance of 235.00 ft.; thence S 00° 00' 00" E a distance of 250.00 ft. to a point on the northerly line of Emmett Street; thence northwesterly along the northerly line of Emmett Street on a 1,565.00 ft. radius curve to the right (a chord bearing of N 87° 36' 29" W, a chord distance of 70.06 ft.), an arc distance of 70.07 ft.; thence N 00° 00' 00" W a distance of 859.58 ft.; thence S 90° 00' 00" E a distance of 349.00 ft.; thence S 00° 00' 00" E a distance of 334.50 ft.; thence S 90° 00' 00" E a distance of 42.00 ft.; thence S 00° 00' 00" E a distance of 223.00 ft.; thence S 90° 00' 00" E a distance of 18.00 ft.; thence S 00° 00' 00" E a distance of 121.26 ft. to the POINT OF BEGINNING, said tract containing 5.88 acres, more or less.

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EXHIBIT "D"

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LEGAL DESCRIPTION: PARCEL "II" (FOODSTORE PARCEL)
108TH STREET AND EMMETT STREET
OMAHA, NEBRASKA

A part of the Northeast 1/4 of Section 8, Township 15 North, Range 12 East, of the 6th P.M., Douglas County, Nebraska, and being more particularly described as follows:

Commence at the northeast corner of said Northeast 1/4; thence S 00° 00' 00" E (assumed bearing) along the easterly line of said Northeast 1/4 a distance of 215.00 ft.; thence N 89° 50' 19" W along a line 215.00 ft. south of and parallel to the northerly line of said Northeast 1/4 a distance of 50.00 ft. to the POINT OF BEGINNING; thence S 00° 00' 00" E along the westerly line of 108th Street and 50.00 ft. west of and parallel to the easterly line of said Northeast 1/4 a distance of 663.06 ft. to a point on the northerly line of Emmett Street; thence N 89° 51' 56" W along the northerly line of Emmett Street a distance of 184.27 ft. to a point of curvature; thence southwesterly along the northerly line of Emmett Street on a 160.00 ft. radius curve to the left (a chord bearing of S 68° 00' 34" W, a chord distance of 120.52 ft.), an arc distance of 123.57 ft. to a point of tangency; thence S 45° 53' 04" W along the northerly line of Emmett Street a distance of 31.45 ft.; thence N 00° 00' 00" W a distance of 121.26 ft.; thence N 90° 00' 00" W a distance of 18.00 ft.; thence N 00° 00' 00" W a distance of 223.00 ft.; thence N 90° 00' 00" W a distance of 42.00 ft.; thence N 00° 00' 00" W a distance of 334.50 ft.; thence N 90° 00' 00" W a distance of 349.00 ft.; thence N 00° 00' 00" W a distance of 267.94 ft. to a point on the northerly line of said Northeast 1/4; thence S 89° 50' 19" E along the northerly line of said Northeast 1/4 a distance of 580.00 ft.; thence S 00° 06' 24" W a distance of 215.00 ft.; thence S 89° 50' 19" E along a line 215.00 ft. south of and parallel to the northerly line of said Northeast 1/4 a distance of 148.00 ft. to the POINT OF BEGINNING, said tract containing 8.82 acres, more or less.

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