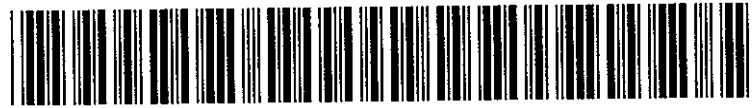




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COVENANTS, CONDITIONS AND RESTRICTIONS AGREEMENT

PARCEL LL/08
OAK VIEW MALL

This Covenants, Conditions and Restrictions Agreement (hereinafter sometimes referred to as the "Agreement") made and entered into as of this 4th day of May, 1992, by and between CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana Limited Partnership (hereinafter referred to as "Developer") and SNOWSTATE RESTAURANT CORPORATION, a Texas Corporation (hereinafter referred to as "Owner").

WITNESSETH:

WHEREAS, Developer is the owner of certain real property described in Exhibit A, attached hereto and made a part hereof (which property is hereinafter referred to as "Developer's Property"); and

WHEREAS, Owner is the owner of certain real property adjacent to Developer's Property, which it purchased from Developer on _____ (hereinafter the "Closing Date"), which property is described in Exhibit B attached hereto and made a part hereof, and commonly known as a portion of Lot 7 of Oak View Subdivision (which property is hereinafter referred to as the "Parcel"), and is shown as Parcel LL/08 on the site plan attached hereto as Exhibit C; and

WHEREAS, Owner desires to develop the Parcel and Owner may hereafter elect to convey, lease or otherwise transfer (subject to terms and conditions hereinafter set forth) all or certain portions of the Parcel to other persons or entities; and

WHEREAS, by reason of the proximity of the Parcel to Developer's Property, which Property is part of the shopping center site commonly known as Oak View Mall (the "Mall"), Developer and other owners of the property adjacent to, or in close proximity to, the Mall have a substantial interest in the development of the Parcel; and

WHEREAS, as an additional consideration for the sale of the Parcel to Owner, the parties have agreed to subject the Parcel to the terms, conditions and provisions of this Agreement in the manner hereinafter set forth.

This document was prepared by and after recording should be returned to:
Rebonna D. Hansen, Esq.
Melvin Simon & Associates, Inc.
115 W. Washington Street
Indianapolis, Indiana 46204

RECEIVED
MAY 6 2 48 PM '92
GEORGE J. RUBLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, IN

Box 24

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, and the mutual covenants hereinafter set forth, the parties, intending to be legally bound, do hereby agree as follows:

1. IMPROVEMENTS TO THE PARCEL

a. Developer and Owner acknowledge and agree that Developer has an interest in the manner all property adjacent to or in close proximity to the Mall is developed, including the Parcel. Accordingly, Developer shall have the right to review and approve any and all plans for the construction, reconstruction, replacement or modification of any building or other improvements on the Parcel to confirm that such improvements will be in conformance with zoning requirements, and to ascertain that such improvements are compatible with and will not adversely affect other portions of the Mall with respect to, without limitation, matters of signage, utilities, traffic circulation, parking, emergency access, landscaping, curb cuts (including, but not limited to, curb cuts onto adjacent public roads) and similar matters that could have an impact on other portions of the Mall, provided that such approval by Developer shall not be deemed to be an assumption of the responsibility by Developer for the accuracy, sufficiency or propriety of the Plans and Specifications (as such term is hereinafter defined) or a representation that the Plans and Specifications, and any construction of improvements pursuant to the Plans and Specifications, comply with applicable laws, rules, ordinances or regulations.

No later than ninety (90) days prior to the Commencement of Construction (as hereinafter defined) on the Parcel or any portion thereof, and no later than ninety (90) days prior to the commencement of any reconstruction, replacement or modification of any building or other improvement located on the Parcel, including paving, grading, or installation of utilities, the Owner shall deliver to Developer, c/o Peripheral Development Department, P. O. Box 7033, Indianapolis, Indiana 46207, six (6) copies of a preliminary design showing the placement of any and all buildings, parking access points and landscaping. No later than sixty (60) days prior to the Commencement of Construction on the Parcel or any portion thereof, and no later than 60 days prior to the commencement of any reconstruction, replacement or modification of any building or other improvement located on the Parcel, Owner shall submit to Developer, at the address stated in the immediately preceding sentence, six (6) complete sets of its schematic site plan or plans showing the following: (i) location of any buildings, (ii) the facilities and areas, and related improvements (including ingress and egress, curb cuts, traffic flow, signage, parking ratio); (iii) the location and nature of decorative features, including landscaping, planters, directories and benches; (iv) setback lines; (v) building height and building area; (vi) schematic

architectural and engineering plans; (vii) grading and drainage plans; and (viii) outline floor plans of the building shell of any and all buildings to be constructed on the Parcel, showing principal exterior dimensions, exterior design concept, the exterior materials and the basic exterior painting, canopies, truck court shielding, rooftop screening, and any and all exterior building signs or other signs contemplated for location on the Parcel. All of the above-mentioned plans are hereinafter referred to as the "Plans and Specifications" and those items specified or depicted in the Plans and Specifications shall be referred to in this Agreement as "Owner's Work". When the basic design is complete, but no later than thirty (30) days prior to the Commencement of Construction, Owner shall also submit an artist's rendering of the proposed development to Developer.

Notwithstanding anything in this Paragraph 1 or the Agreement to the contrary, Developer shall have no right to review or approve any plans for any construction, reconstruction, replacement, repair or modification which would affect only the interior of any building on the Parcel. Developer agrees that Developer's review and approval rights contained herein shall be limited solely to any construction, reconstruction, replacement, repair or modification which would be visible on the exterior of the building.

b. (i) Within sixty (60) calendar days after Developer's receipt of the Plans and Specifications as hereinabove and as hereinafter provided, Developer shall review such Plans and Specifications to determine that the proposed improvements will not cause an adverse affect or have an adverse impact on any other portion of the Mall and further, Developer shall notify Owner of its approval or disapproval of the Plans and Specifications within such time period. In the event that Developer shall disapprove all or any portion of the Plans and Specifications, Developer shall specify with particularity the reasons for such disapproval. Developer shall at all times act reasonably and in good faith in approving or disapproving Owner's Plans and Specifications. Grounds for Developer's disapproval shall include, but are not limited to, a failure to comply with governmental requirements and a failure to comply with the REA (hereinafter defined). Owner shall revise its Plans and Specifications to incorporate any and all changes as may reasonably be requested to secure Developer's approval and shall deliver six (6) completed copies of the revised Plans and Specifications to Developer, which revised Plans and Specifications shall be subject to all the provisions of this Paragraph 1 and which shall be submitted to Developer in the manner herein provided. Developer's approval of the Plans and Specifications shall be evidenced by its initialling one (1) copy thereof and returning the same to Owner.

(ii) Without limitation of any other provision hereof, it is further understood that the Parcel shall be developed using similar building materials and compatible architectural concepts as are used in other buildings in the Mall and that Developer shall retain architectural approval over the entire development of the Parcel. The Transfer (as such term is defined in Paragraph 9 hereof) of the Parcel, or any part thereof, shall in no way be deemed to preclude Developer from exercising its approval rights of Plans and Specifications prior to the commencement of any and all construction of the Parcel herein granted.

(iii) Reference is made to that certain Reciprocal Easement and Operating Agreement by and between Developer, Construction Developers, Incorporated, an Arkansas Corporation, and Dillard's Department Stores, Inc., a Delaware Corporation, dated September 27, 1990 and recorded April 11, 1991 in the office of the County Recorder of Douglas County, Nebraska at Book 959, Page 286 (said agreement, as the same may be hereafter amended from time to time, and all agreements executed in substitution therefor or in restatement thereof, including, but not limited to, those agreements which add additional parties, being herein collectively called the "REA"), a copy of which has been delivered to Owner. Owner acknowledges and agrees that Owner is buying the Parcel subject and subordinate to the REA, including, but not limited to, any and all provisions contained in Paragraph 4.3 of the REA. Notwithstanding the foregoing sentence, Owner's interest in and rights to the Parcel shall not be subject to any provision of any amended or restated REA which either modifies any provision of the recorded REA referenced above or constitutes an addition thereto, except as otherwise provided in the Deed by which Developer conveyed the Parcel to Owner dated _____, 1992, or this Agreement, and which would materially, adversely affect the use and operation of the Parcel as contemplated by the initial Plans and Specifications approved by Developer and as contemplated by the Covenants. Provided that no such material, adverse effects would occur as stated above, Owner shall execute, within 15 days after receipt of Developer's written request, a subordination agreement which confirms subordination of Owner's interest in and rights to the Parcel to any amended or restated REA. If Owner fails to respond to such request within fifteen (15), Developer is hereby authorized to execute such documents and take such other steps as are necessary to effect such subordination on behalf of Owner as Owner's duly authorized irrevocable agent and attorney-in-fact.

(iv) Reference is made to that certain document prepared by Developer and known as "Standards and Criteria for Peripheral Property Development" dated January, 1989 and kept on file at the offices of Developer, a copy of which has been delivered to Owner. Owner agrees

that any and all development on the Parcel shall be subject to the terms and conditions contained in the Outlot Design Requirements, which are hereby incorporated by reference, provided, however, that in the event of any conflict between the REA and the foregoing Standards and Criteria, the REA shall control with respect to any provision in the Standards and Criteria which is more permissive than the REA.

c. Without limitation of any other provision hereof, the following restrictions are agreed to by Owner:

- (i) Owner may have one monument-type free standing sign on the Parcel which identifies Owner and does not exceed eight feet (8') in height. Owner may have a maximum of four facia signs on its building (but not on the roof thereof), provided that no more than fifty percent (50%) of the store front length may be used for signing, and letters in the sign shall not exceed a height of thirty six inches ("36");
- (ii) no sign shall be permitted upon the Parcel unless such sign has been first approved by Developer as part of approved Plans and Specifications, or otherwise approved by Developer;
- (iii) no temporary sign (except during the period prior to the commencement of the operation of the Owner's intended development of the Parcel and also except development information signs), paper sign, flag, banner or streamer shall be permitted upon any portion of the Parcel at any time;
- (iv) the height of any improvements on the Parcel shall not exceed twenty (20) feet in height, measured from a finished floor elevation of 1120 feet above mean sea level. Owner and Developer recognize that the finished floor elevation may change as a result of construction, but Owner agrees that finished floor elevation under no circumstances shall exceed 1125 feet above mean sea level; and
- (v) all buildings on the Parcel shall be located outside the "No Build Area" shown on Exhibit C and shall be set back at least twenty-five feet (25') from the property lines of the Parcel.

d. Owner agrees, and Owner shall, submit the Plans and Specifications to Developer, for Developer's review and approval in

accordance with the procedure set forth in Paragraph 1(a), prior to Owner's submission of the Plans and Specifications to any and all state, county or municipal agencies, boards, departments or other bodies (collectively the "Local Authorities" and individually "Local Authority") having jurisdiction over the Parcel for such Local Authority's (or Local Authorities') review and approval in connection with any change or modification in zoning, the issuance of any building permit or for any other reason. Under no circumstance shall Owner submit (cause to submit, or permit its agents to submit) the Plans and Specifications to the Local Authorities without the same first being reviewed and approved in advance by Developer. The foregoing subparagraph d. is intended to supplement the other provisions of this Paragraph 1 and not to restrict or limit such provisions.

e. The parties acknowledge that the Parcel is a part of an integrated development comprising a variety of uses, and therefore, without limitation of the provisions of this Paragraph 1 or any other provisions of this Agreement, Owner agrees not to make any request or application to any governing body having jurisdiction over public roads and highways adjacent to the Parcel, including, but not limited to, any state, county or local highway department of transportation, for any curb cuts, or other access points, providing access from such public roads to the Parcel, even if and notwithstanding the fact that such curb cut is located entirely on the Parcel and not on the Developer's Property, without Developer's prior written consent, which consent Developer may withhold in Developer's sole discretion.

f. Developer, at its sole cost and expense, shall install gas, electric, water, sanitary sewer and storm sewer lines, all with capacities sufficient for the initial use of the Parcel as permitted in Paragraph 5 of this Agreement to the boundary line of the Parcel, which installation shall be completed within ninety (90) days after the Closing Date. Owner, at its sole cost and expense, shall be responsible for installing extensions of all of the foregoing utility lines, plus any other utility lines required by Owner, from the boundary line to Owner's building and other improvements on the Parcel, making all final connections, and restoring all property disturbed thereby to its original condition.

The foregoing Paragraph notwithstanding, nothing herein shall be deemed to require Developer to obtain any approval from municipal or other governmental authorities, or any other party or entity, for Owner's use of the gas, electric, sanitary sewer, water and storm sewer facilities, any and all such approvals or permits, including, but not limited to, the payment of any tap-on fees and the purchase of plant and line capacity, being the sole responsibility of Owner.

Owner, at its sole expense, shall be required to comply with applicable governmental flood control and drainage requirements concerning on-site water control.

2. MAINTENANCE OF THE PARCEL; RESERVATION OF DEVELOPER EASEMENT

a. Owner shall maintain (or cause to be maintained) the Parcel and all improvements located thereon, including the exterior of any building or buildings, pedestrian walks, landscaped areas and improvements, in a clean, sightly and safe condition consistent with and similar to the Mall and consistent with Article 20 of the REA, and further will at all times and from time to time cause the prompt removal of all paper, debris, refuse, snow and ice and sweeping of paved areas when and as required in order that the Parcel be maintained as above provided, and will maintain the unimproved portions of the Parcel in a clean, sightly and safe condition. In the event of damage or destruction to any improvements upon the Parcel by reason of fire or other casualty or the loss of any part of the Parcel or improvements on it by reason of condemnation, Owner and/or the current user of the Parcel shall thereafter either: (i) promptly restore such improvements to the condition existing prior to such damage, destruction or condemnation (provided, however, that in the event of only minor damage to the building, Owner may, in lieu of restoration to its former condition, restore the building to a sightly condition); or (ii) raze and remove any such improvements and either (A) replace them with parking or other improvements or uses consistent with this Agreement and approved by Developer prior to their construction or (B) landscape the Parcel in a manner acceptable to and approved by Developer.

b. In the event that Owner shall fail or refuse to maintain the Parcel as above provided, then Developer shall have the right, upon thirty (30) days' prior written notice to the Owner, specifying the manner in which Owner has failed to maintain the Parcel (unless within such thirty (30) day period Owner shall complete the required maintenance, or in the case of maintenance which by its nature cannot be completed within such thirty (30) day period, Owner shall take such action as is reasonably calculated to commence the required maintenance and thereafter shall diligently prosecute the maintenance to completion) to enter upon the Parcel and perform the maintenance set forth in said notice, all in the name of and for the account of Owner. The cost of such maintenance shall be paid by Owner to Developer within thirty (30) days of the date of receiving a statement therefor, which statement shall specify the details of the maintenance performed and the cost thereof. In the event that Owner shall fail to pay Developer any such amount when due, Developer shall have all of the rights and remedies provided for in Paragraph 15 hereof.

c. Developer hereby reserves an easement for itself and its

customers, tenants, occupants and invitees of the Mall upon the driveways, sidewalks and Parking Area (hereinafter defined in Paragraph 3) of the Parcel for the purpose of the circulation, passage and parking of vehicles and the circulation, accommodation of, and passage by pedestrians in the Mall.

Notwithstanding the reservation of such easement, Developer agrees that all parking spaces located in the Parking Area shall, to the extent necessary, be allocated to the use of the Parcel for purposes of any city, county and/or state law, code or ordinance governing parking requirements before such parking spaces are allocated to the use of any other property for purposes of such requirements. Developer and Owner agree, however, that the allocation of parking spaces for law, code or ordinance purposes shall not affect Developer's right to use or the benefits of such easement.

3. MAINTENANCE OF PARKING AREA

a. Notwithstanding any provision in Paragraph 2 to the contrary, from and after the completion of construction of improvements on the Parcel (as "completion" is deemed to have occurred as provided in Paragraph 8 of this Agreement), Owner shall operate and maintain (or cause to be operated and maintained) the parking area on such Parcel (hereinafter referred to as "Parking Area") in good order, condition and repair. Without limiting the generality of the foregoing, the Owner, in the maintenance of the Parking Area, shall observe the following standards:

- (i) Maintain the surface of the parking lot and sidewalks in a level, smooth and evenly covered manner with the type of surfacing material originally installed thereon, or such substitute thereof as shall be in all respect equal thereto in quality, appearance and durability.
- (ii) Remove all papers, snow and ice, debris, filth and refuse from the Parking Area and wash or thoroughly sweep paved areas as required.
- (iii) Maintain such appropriate parking lot entrance, exit and directional signs, and markers in the Parking Area as shall be reasonably required and in accordance with the practices prevailing in the operation of similar regional shopping centers in the Omaha, Nebraska metropolitan area. Lighting shall be maintained in the Parking Area on the Parcel during the business hours of the Owner, when such lighting is reasonably required.
- (iv) Clean lighting fixtures on the Parking Area and relamp as

needed.

- (v) Repaint striping, markers, directional signs, etc., as necessary to maintain in a first-class condition.
- (vi) Maintain and replace landscaping outside of Owner's building curb as necessary to keep in a first-class condition.
- (vii) Prevent the erection of any barricades, fences or other barriers which would in any manner impede vehicular or pedestrian traffic on, across, over or between the common areas on the Parcel and the Mall.

In the event the Owner shall fail or refuse to maintain the Parking Area as above provided, then Developer shall have the right, upon thirty (30) days' prior written notice to Owner specifying the manner in which Owner has failed to maintain the Parking Area as above provided, (unless within such thirty (30) day period Owner shall complete the required maintenance, or in the case of maintenance which by its nature cannot be completed within such thirty (30) day period, Owner shall take such action as is reasonably calculated to commence the required maintenance and thereafter shall diligently prosecute the maintenance to completion) to enter upon the Parcel and perform the maintenance set forth in said notice, all in the name of and for the account of Owner.

Developer, by reason of its doing so, shall not be liable or responsible to Owner or any other person or entity for any losses or damages thereby sustained by Owner or any occupants of the Parcel or of anyone claiming by or under either an occupant or Owner, unless such loss or damage arose from Developer's misconduct or gross negligence in performing any such maintenance. The cost of such maintenance shall be paid by Owner to Developer within thirty (30) days of the date of receiving a statement therefor, which statement shall specify the details of the maintenance performed and the costs thereof. In the event that Owner shall fail to pay Developer any such amounts when due, Developer shall have all of the rights and remedies provided for in Paragraph 15 hereof.

4. MAINTENANCE OF RING ROAD AND ENTRANCE DRIVES

Owner shall pay, without deduction, set-off or prior demand, as its contribution to costs and expenses for the repair, maintenance, restoration and improvement of the Mall ring road (the "Ring Road") and entrance drives for the Mall (the "Entrance Drives"), the sum of Two Thousand Four Hundred Dollars (\$2,400.00) per year, for the Parcel (the "Ring Road Maintenance Charge"), commencing at the Closing Date. The Ring Road Maintenance Charge will be increased by 15% every five (5)

years on the anniversary of the Closing Date.

Owner and its tenants, occupants, employees and invitees shall have a nonexclusive easement to use the Ring Road and the Entrance Drives, in common with others, for access to, ingress to and egress from the Parcel, subject to the approval rights, if any, of the Department Store Parties (as such term is defined in the REA) as to the location of any curb cut for ingress to and egress from the Parcel onto the Ring Road. Developer and Owner agree that neither party shall erect any barrier along or adjacent to the common property line between Developer's Property and the Parcel. Developer further agrees that the entrance drive labelled "Entry #3" on Exhibit C shall not be altered such that Owner's access to the Parcel therefrom is materially, adversely affected, without Owner's consent, which consent shall not be unreasonably withheld or delayed.

In the event that Owner shall Transfer (as such term is defined in Paragraph 9 hereof), the Parcel or any portion thereof or interest therein to a third-party, subject to the terms and conditions of this Agreement, Developer agrees to look to such third-party user or occupant of the Parcel for payment of the Ring Road Maintenance Charge, provided that Owner shall notify Developer in writing in accordance with the provisions of Paragraph 21 hereof of the name and address of the party to be billed. Notwithstanding Developer's receipt of such notice, so long as Owner, Owner's nominee, a partnership or joint venture in which Owner holds an interest, or Owner's Affiliate (as such term is defined hereinafter) holds title to the Parcel, Owner shall remain liable to Developer for payment of the Ring Road Maintenance Charge, provided, however, that Developer shall first pursue payment from the third-party user or occupant and in the event after receipt of demand for payment from Developer, such third-party user shall fail to pay the Ring Road Maintenance Charge when due, Owner agrees that Developer may look to Owner for such payment and Owner agrees to pay Developer any and all of the Ring Road Maintenance Charge due and outstanding within thirty (30) days of Owner's receipt of a demand for payment. In the event that the Owner shall fail to pay to Developer any such amounts when due, Developer shall have all the rights and remedies provided for in Paragraph 15 hereof.

As used in this Agreement, the word "Affiliate" shall mean (i) any corporation controlled by Owner, controlling Owner, or under common control with Owner or (ii) any general or limited partnership in which Owner is a general partner. For purposes of this subparagraph, "control" shall mean at least fifty percent (50%) of the voting shares of the subject corporation.

5. USE

a. The Parcel shall be occupied and used by Owner solely for the purpose of conducting therein the business of a sit-down, table service restaurant with the right to service alcoholic beverages, including a related bar and/or cocktail lounge as incidental to the sit-down restaurant, unless Developer consents to a change of use, which consent shall not be unreasonably withheld. Developer's consent shall be deemed reasonably withheld if any of the following conditions exist, but the following conditions shall not be considered the exclusive grounds for Developer's withholding of consent:

- (a) Owner's proposed use conflicts with or duplicates a use then existing on the Mall;
- (b) Owner's proposed use would cause Developer to violate a prohibition, restriction, or exclusive on the Mall to which Developer is bound at the time of Owner's proposed use change; or
- (c) Owner's proposed use is a bar (not related and incidental to the sit-down restaurant), nightclub, entertainment, office, adult massage, adult entertainment or adult bookstore use, any theater which exhibits or features pornographic movies, non-retail use or warehousing, assembly, manufacturing, distilling, refining, smelting, agriculture, mining operation, or other industrial use, any mobile home, trailer court, labor camp junk yard, animal raising, drilling, any dumping, disposing, incineration or reduction of garbage, veterinary hospital with exterior facilities, car wash, mortuary, any automobile, truck, motorcycle or recreational vehicles, sales, leasing, display or repair thereof any amusement gallery, game arcade, gameroom, pool or billiard establishment, dancehall or discotheque, shooting gallery, second hand store or surplus store, drug rehabilitation center or "halfway" house, any living quarters, sleeping apartments or lodging room, any fire sale, bankruptcy sale or auction house operation, or any dry cleaning plant, or any nuisance or illegal use or use which would produce objectionable noises, obnoxious or toxic odors, dust, dirt or fire hazards.
- (d) Owner's proposed use is not permitted by the REA or would violate the terms of the REA.

The business on the Parcel shall be conducted under the name Chili's Grill and Bar unless another name is approved by Developer, which approval shall not be unreasonably withheld.

In addition to the foregoing, Owner acknowledges and agrees that Owner's use and development of the Parcel shall be in all respects subject to the REA including, but not limited to, those restrictions and limitations applicable to the Parcel contained in Paragraph 4.1 of the REA.

6. VACANT BUILDINGS

In the event that any building or improvement constructed on the Parcel becomes vacant and unoccupied, and is not appropriately maintained or policed for a period of three (3) consecutive months, Owner, upon written demand from Developer, shall within ninety (90) days of receipt of such demand cause the building to be appropriately maintained and policed, or shall raze and remove such building from the Parcel and shall landscape the Parcel in a sightly manner. Developer agrees that, if required for the purposes of Owner placing a bona fide first mortgage from an institutional lender from time to time upon the Parcel or portion thereof, it will execute such documents as may be necessary to subordinate the provisions of this Paragraph 6 to the lien of the mortgage so that the lien of the mortgage will be superior to this Paragraph 6; provided, however, that Developer shall nevertheless have the right to maintain the exterior appearance of the Parcel, in the name of and for the account of Owner, in the event that the mortgage holder fails to do so and Owner shall remain personally liable to Developer for the performance of the covenants contained in this Paragraph. The cost of such maintenance shall be paid by Owner to Developer within thirty (30) days of the date of receiving a statement therefor, which statement shall specify the details of the maintenance performed and the cost thereof. In the event that Owner shall fail to pay any such amount when due, Developer shall have all of the rights and remedies provided for in Paragraph 15 hereof.

7. PARKING RATIO

Owner shall maintain (or cause to be maintained) on the Parcel at all times from and after the completion of the construction of any buildings or other improvements on the Parcel no fewer than five (5) car spaces for every one thousand (1,000) square feet of Gross Leasable Area (as defined in the REA) in any building Owner shall construct on the Parcel. Owner agrees to take no action which would reduce the parking ratio below that specified herein. The size of the vehicular parking spaces shall be of the minimum dimensions stated in the REA.

8. CONSTRUCTION BY OWNER

Subject to Unavoidable Delays (as defined below in this Paragraph), Owner agrees to commence and complete construction of Owner's initial improvements on the Parcel no later than three hundred sixty (360) days after the date ("Approval Date") Owner receives notice from Developer of the approval of the Plans and Specifications. In the

event of any such Unavoidable Delays, the time for commencement of construction and completion of construction on the Parcel shall be extended by the period of such Unavoidable Delay. Owner's Work shall be done in a good and workmanlike manner, in substantial compliance with the approved Plans and Specifications, and in compliance with the terms and conditions of the REA, and shall meet the requirements of all applicable laws and ordinances of all governmental bodies having jurisdiction over the Parcel. As used in this Agreement, "Unavoidable Delay(s)" shall mean any delay caused by the following reasons:

- a. Governmental ordinances or edicts (but not including Owner's failure to obtain permits necessary to commence construction);
- b. Governmental rationing or allocation of materials;
- c. Adverse weather conditions;
- d. Strikes, lock-outs, fires, acts of God, natural disasters, riots, delays in transportation, shortage of labor, materials, or any other cause beyond the reasonable control of the party asserting such delays, provided, however, that Owner's inability to obtain financing shall not be deemed a cause not within the reasonable control of Owner.

As used in this Agreement, the commencement of construction shall mean, with respect to any building on the Parcel, the pouring of the footings and foundations therefor, and with respect to any other portion of Owner's Work including, without limitation, portions of Owner's Work referred to in the Plans and Specifications, the actual beginning of the process of construction on the site.

As used in this Agreement, construction shall be deemed to be completed thirty (30) days after Owner has submitted a temporary or permanent certificate of occupancy, if any is required by those municipal or other governmental authorities having jurisdiction over the Parcel, to Developer, along with a notice of substantial completion in the form of a letter from Owner stating that, in Owner's judgment, Owner's Work is substantially complete. Within such thirty (30) day period, Developer's project architect may notify Owner that, in Developer's judgment, Owner's Work is not substantially completed or, if such notice is not given by Developer, Owner's Work shall be deemed to be substantially complete. In the event that only a temporary certificate of occupancy is available at the time that Owner submits the notice of completion, Owner agrees to supply Developer with a permanent certificate of occupancy when the same is available.

Within thirty (30) days after completion of construction, Owner's architect shall certify to Developer the Gross Leasable Area (as defined in the REA) on the Parcel. Developer's architect shall confirm such Gross Leasable Area within thirty (30) days after receipt of such certification.

In the event that Owner fails to commence construction or complete construction on the Parcel within the period specified above, as extended due to Unavoidable Delays, Developer may, at its option, repurchase the Parcel at the Purchase Price less all Closing Costs incurred by Developer in conveying the Parcel to Owner, as such term is defined in the Purchase and Sale Agreement by and between Developer and Owner dated _____, 19__, which definition is hereby incorporated by reference. Developer, in the alternative, may, at Developer's option, allow Owner an additional time period to complete construction. In the event that Developer elects to repurchase the Parcel as hereinabove provided, Owner agrees to convey indefeasible title to the Parcel in the same condition as when the Parcel was conveyed by Developer to Owner, free and clear of any and all liens and encumbrances, provided that, Developer may elect to take title subject to liens and encumbrances recorded against the Parcel, and in such event it shall deduct the amount of such liens and/or encumbrances from the repurchase price. The foregoing shall not be deemed to require Developer to take title subject to liens and encumbrances should Developer elect to exercise its option to repurchase the Parcel free and clear of any and all encumbrances nor shall Developer be required to become personally obligated for such liens and encumbrances.

Owner shall be responsible for field verification of the location of any and all existing utilities (including existing irrigation, exterior light or pylon sign utility runs serving the Mall or neighboring developments) contained on the Parcel prior to commencement of Owner's Work. If any of the existing utility runs are cut or damaged during Owner's Work, Owner shall repair, replace and/or reposition the utility run immediately at Owner's sole cost and expense and notify the Mall's operation director or Tenant Coordinator prior to beginning such work.

9. DEVELOPER'S RIGHT OF FIRST REFUSAL

a. As used in this Paragraph 9 and in Paragraph 10 of this Agreement, the term "Transfer" shall mean a sale, lease, assignment, transfer, lien, pledge, encumbrance, alienation or conveyance (or agreement to do any of the foregoing) of the Parcel, or any portion thereof, or any interest therein, which is accomplished, attempted or effectuated without the prior written consent of Developers in each case whether any such conveyance, sale, lease, assignment, transfer, lien, pledge, encumbrance or alienation is effectuated directly,

indirectly, voluntarily or involuntarily, by Owner or any third party, by operation of law or otherwise, provided that the following transactions shall be exempt from the provisions of this Paragraph 9 (the "Exempt Transactions"):

- Any transfer or assignment of Owner's right in or to the Parcel
- (i) on behalf of an owner hereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives; or
 - (ii) consisting of the placing of a mortgage on the Parcel, or any portion thereof, but subject and subordinate to the provisions of this Agreement, or a transfer or conveyance of any interest in the Parcel, which transfer is followed immediately by a leaseback to Owner or the Beneficiary, provided that the leasehold interest acquired by Owner or the Beneficiary is for a period of at least ten (10) years, is accomplished for financing purposes, and is of all or substantially all of the Parcel; or
 - (iii) in connection with the sale of all or substantially all of the assets or stock of Owner to a single person, entity or group; or
 - (iv) to an entity which controls, is controlled by or is under common control with Owner; "control", in the case of a corporation, being deemed in the case of a corporation to be ownership of more than 49% of the outstanding stock of the corporation.

Owner agrees to notify Developer of the occurrence of any Exempt Transaction. Such notice shall be in writing, addressed to Developer as provided in Paragraph 21 hereof, and shall be sent no more than fifteen (15) business days prior to the conclusion of such Exempt Transaction.

b. Developer shall have a right of first option to repurchase the Parcel and all improvements thereon (hereinafter "Owner's Property") at fair market value prior to any Transfer by Owner, its successors, transferees or assigns. Owner shall notify Developer in writing of its intent to Transfer Owner's Property prior to any Transfer. Developer shall have forty-five (45) days from receipt of such notice to elect to purchase Owner's Property by written notice to Owner received within said forty-five (45) day period ("Election Notice"). The Election Notice shall set forth Developer's estimate of the fair market value of Owner's Property. If the parties are unable

to reach an agreement as to the fair market value of Owner's Property within thirty (30) days after Owner's receipt of the Election Notice, the parties shall appoint three (3) real estate appraisers with the qualifications and by using the procedures given in Paragraph 11 below, and said real estate appraisers shall proceed to determine the fair market value of Owner's Property as provided in Paragraph 11 for Fair Market Purchase Value. Upon exercise of such right of first option, the parties shall proceed to consummate the Transfer, but Developer shall first have the opportunity to perform such soils tests and environmental assessments and other investigations as Developer deems necessary in its reasonable business judgment. If, for any reason, such Transfer is not consummated by Developer or, within a period of a year after Developer declines to repurchase Owner's Property, by a third party, Developer's right of first option as aforesaid shall be reinstated.

10. COVENANTS TO RUN WITH LAND

Each and all of the covenants, restrictions, conditions and provisions contained in this Agreement, whether of an affirmative or negative nature, (a) are made for the direct and mutual benefit of the Parcel and Developer's Property, and each and every portion thereof, and will constitute covenants running with the land; (b) will bind every owner of a portion of the Parcel and Developer's Property to the extent that such portion is affected or bound by the covenants, conditions or restrictions to be performed on the behalf of such portion; and (c) will inure to the benefit of the parties and their respective successors and assigns.

11. DEVELOPER'S RIGHT OF RECAPTURE

Should the Parcel "go dark" at any time, which is to say the Parcel has been vacated and no regular business is being conducted therein any time after construction is completed (except for reasons beyond the control of Owner or for closings due to alterations, remodeling or renovations), for a period of ninety (90) consecutive days or more, then Developer, its successors and assigns, shall have the option (but not the obligation), to be exercised by written notice to Owner ("Recapture Notice"), to repurchase or lease Owner's Property from Owner, its successors and assigns, at "Fair Market Purchase Value" or "Fair Market Rental Value", respectively, which terms shall mean those values for purchasing or leasing Owner's Property as are determined according to the procedures set forth in the following paragraph.

The Recapture Notice shall set forth Developer's estimate as to the Fair Market Purchase Value or the Fair Market Rental Value of Owner's Property, which figure shall be mutually agreed upon by good faith negotiations on the part of both parties. If the parties are

unable to reach a settlement on a rental or purchase value within thirty (30) days after receipt of Developer's Recapture Notice, the parties shall no later than thirty (30) days thereafter appoint three (3) independent, competent and qualified real estate appraisers, one of whom shall be selected and appointed by Owner at its sole cost and expense, one of whom shall be selected and appointed by Developer at its sole cost and expense, and the third appraiser to be selected and appointed by the other two appraisers, the cost and expense of which shall be shared equally by Owner and Developer. The three appraisers shall determine the Fair Market Purchase Value or the Fair Market Rental Value of Owner's Property by taking an average of the values determined by each appraiser, which value of Owner's Property shall be binding upon Owner and Developer. The purchase agreement or lease shall be signed by the parties within 90 days after the determination of the Fair Market Purchase Value of Owner's Property. Any such purchase agreement or lease documents shall not restrict Developer's right to lease (or sublease) Owner's Property.

Developer and Owner shall "close" on the repurchase or leasing of Owner's Property within ninety (90) days following the later of: i) execution of the purchase agreement or lease or ii) a final determination by the appraisers of the Fair Market Purchase Value or Fair Market Rental Value of Owner's Property. During this ninety (90) day period Developer shall have the right to: (a) perform certain soil and environmental tests of Owner's Property, and (b) do and perform any other investigations or evaluations which Developer, in its reasonable judgment, deems necessary to determine the condition and suitability of Owner's Property. Developer shall bear the cost of performing the tests and evaluations referred to above. If Developer determines, in its sole discretion, that the suitability of Owner's Property is unacceptable, Developer may terminate the purchase agreement or lease without liability. Notwithstanding Developer's initial exercise to lease Owner's Property, Developer shall not be deemed to have waived its right to repurchase Owner's Property from Owner at a subsequent date all in accordance with this Section.

Owner shall have the option (but not the obligation) to be exercised at any time after the Parcel has "gone dark" by written notice to Developer (the "Election Notice"), to request that Developer notify Owner within thirty (30) days after Developer's receipt of the Election Notice whether or not Developer intends to exercise its right to repurchase or lease the Parcel in accordance with the provisions of this Paragraph 11. In the event that Developer desires to repurchase or lease the Parcel, Developer shall deliver a Recapture Notice to Owner within such thirty (30) day period and the provisions of this Paragraph 11. above with respect to any such repurchase or lease of the Parcel shall be applicable. In the event that Developer declines to

exercise its right to repurchase or lease the Parcel or fails to send Owner a Recapture Notice within such thirty (30) day period, Developer shall be deemed to have waived its rights to repurchase or lease the Parcel and to exercise Developer's right of first refusal pursuant to Paragraph 9. of this Agreement for six (6) months only running from the date Owner received Developer's notice that it declines to repurchase or lease the Parcel or the end of the thirty (30) day period, which ever occurs first. In the event Owner has not reopened its business on the Parcel within said six (6) month period, Developer's right to repurchase or lease the Parcel as stated in this Paragraph 11 and Developer's right of first refusal as stated in Paragraph 9. of this Agreement shall be reinstated, and may be exercised at any time thereafter in accordance with the terms of this Paragraph 11 or Paragraph 9. of this Agreement as the case may be.

12. ADVERTISING AND PROMOTIONAL SERVICES

[Intentionally deleted.]

13. RIGHT TO MODIFY

This Agreement may be terminated, extended, modified or amended by the parties, their successors and assigns, by written agreement signed by parties to be bound by the amendment and recorded in the office of the county recorder for the county in which the Parcel is located, provided that no such amendments or modifications will affect the rights of any mortgagee under a mortgage or the trustee or beneficiary under any deed of trust constituting a lien on the Parcel, nor will any amendment, modification, extension or termination be effective against any mortgagee, trustee or beneficiary subsequent to its securing title in lieu of foreclosure unless the mortgagee or trustee or beneficiary, as the case may be, shall have consented to such amendment or modification in writing.

14. INDEPENDENT CONTRACTORS

Nothing contained in this Agreement shall be construed to make the parties hereto partners or joint venturers or to render either of said parties liable for the debts or obligations of the other, except as expressly provided in this Agreement.

15. REMEDIES

In the event that Owner fails to pay Developer when due any amounts owed by Owner to Developer under this Agreement, or shall otherwise fail to perform any of Owner's agreements or obligations hereunder with thirty (30) days of written notice to Owner, Developer shall have all rights and remedies to enforce said collection or performance as shall be provided or permitted by law from time to time including, without limitation, the right to invoke one or more of the following remedies:

- a. Institute suit against Owner to enforce collection of the amounts owed to Developer pursuant hereto, together with interest thereon at the highest lawful rate permitted by the laws of Nebraska, court costs and attorneys' fees;
- b. Record against title to the Parcel a notice of lien which shall constitute a lien in favor of Developer on the interest of Owner and which may be foreclosed by Developer in proceedings in the nature of a foreclosure, with all of the rights and remedies afforded by the laws of the State of Nebraska to secured creditors in such proceedings; provided, however, that any liens shall be subordinate and subject to any first mortgage upon the Parcel, except for any amounts which accrue after the date on which the holder of any first mortgage is advised in writing of Owner's default;
- c. Institute suit in equity to the extent permitted by law to compel compliance with the terms and conditions of this Agreement;
- d. Set-off any such amounts due from Owner to Developer against any amounts due from Developer to Owner; and
- e. If no emergency exists, to perform the same after the giving the above-referenced notice to Owner, and in any emergency situation, to perform the same immediately without notice or delay. For the purpose of rectifying Owner's defaults as aforesaid, Developer shall have the right to enter the Parcel. Owner shall on demand reimburse Developer for the costs and expenses incurred by Developer in rectifying Owner's defaults as aforesaid, including reasonable attorneys' fees. Except for gross negligence by Developer, Developer shall not be liable or in any way responsible for any loss, inconvenience, annoyance, or damage resulting to Owner or anyone holding under Owner for any action taken by Developer pursuant to this Section, and any act or thing done by Developer pursuant to this Section shall not constitute a waiver of any such default by Owner or a waiver of any covenant, term or condition herein contained or the performance thereof.

16. WAIVERS

No delay or omission in exercising any right accruing under the provision of this Agreement shall impair any such right or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof shall not be

construed to be a waiver of any subsequent breach thereof or of any other covenants, condition or agreement herein contained.

17. REMEDIES CUMULATIVE

All rights, privileges and remedies afforded the parties by this Agreement shall be deemed cumulative and the exercise of any one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege found herein.

18. PARTIAL INVALIDITY

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

19. CAPTIONS

The captions of the sections of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretations or condition.

20. NOTICES

All notices or communications ("Notices") to be given under or pursuant to this Agreement shall be in writing, addressed to the parties at their respective addresses as provided below, and will be delivered in person, by certified or registered mail, postage prepaid, return receipt requested or pre-paid express delivery service, return receipt requested.

If mailed, the Notice shall be deemed to have been received two (2) days after the date of mailing.

The addresses of the parties to which such Notices are to be addressed will be those as provided herein, and until further notice as follows:

If to Developer:

CENTER ROAD RETAIL DEVELOPERS
LIMITED PARTNERSHIP
c/o M.S. Management Associates, Inc.
P.O. Box 7033
Indianapolis, Indiana 46207

or:

Merchants Plaza
115 West Washington Street
Indianapolis, Indiana 46204

If to Owner:

SNOWSTATE RESTAURANT CORPORATION

construed to be a waiver of any subsequent breach thereof or of any other covenants, condition or agreement herein contained.

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CENTER ROAD RETAIL DEVELOPERS
LIMITED PARTNERSHIP
c/o M.S. Management Associates, Inc.
P.O. Box 7033
Indianapolis, Indiana 46207

or:

Merchants Plaza
115 West Washington Street
Indianapolis, Indiana 46204

If to Owner:

SNOWSTATE RESTAURANT CORPORATION
6820 LBJ Freeway
Dallas, Texas 75240
Attn: John Titus

As parties other than Owner obtain an interest in the Parcel or any portion thereof, subject to the terms and conditions of this Agreement, Owner shall advise Developer of the name and address of the party to receive notice as provided herein, provided that until such time as Owner notifies Developer of any such additional party or other change in the address of Owner, Developer shall be entitled to rely on the accuracy of the information set forth above, and any notice sent to Owner's address above set forth shall be deemed properly given.

21. ATTORNEY'S FEES

If either party files any action or brings any proceeding against the other arising out of this Agreement, or is made a party to any action or proceeding brought by a third party arising out of this Agreement, then as between Owner and Developer, the prevailing party shall be entitled to recover, as an element of its costs of suit and not as damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit whether or not suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to attorneys' fees.

22. COUNTERPART SIGNATURES

This Agreement may be executed in multiple originals or counterparts, each of which will be an original and, when all of the parties to this Agreement have signed at least one (1) copy, such copies together will constitute a fully executed and binding agreement.

23. NO PERSONAL LIABILITY.

Notwithstanding anything in this Agreement or any other instrument to the contrary, there shall be absolutely no personal liability on persons, firms, entities, general or limited partners or affiliates thereof who constitute Owner for the payment of any amount required to be paid by Owner hereunder or for the performance or observation of the covenants, obligations and agreements of Owner contained herein, and Developer shall look solely to the interest of Owner, its successors and assigns, in the Parcel for the satisfaction of each and every remedy of Developer in the event of default by Owner hereunder; such exculpation of personal liability is absolute and without any exception whatsoever.

24. LIMITATION OF LIABILITY.

Anything to the contrary herein contained notwithstanding, there shall be absolutely no personal liability on persons, firms, entities, general or limited partners or affiliates thereof who constitute Developer with respect to any of the terms, covenants, conditions and provisions of this Agreement, and Owner shall look solely to the interest of Developer, its successors and assigns, in Developer's Property for the satisfaction of each and every remedy of Owner in the event of default by Developer hereunder; such exculpation of personal liability is absolute and without any exception whatsoever.

IN WITNESS THEREOF, the parties have executed this Agreement as of the day and year first above written.

DEVELOPER

CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana Limited Partnership

By: CENTER-SIMON RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana Limited Partnership, General Partner

By: CS RETAIL DEVELOPERS, INC., an Indiana Corporation, its General Partner

By: Herbert Simon, President

OWNER

SNOWSTATE RESTAURANT CORPORATION, a Texas Corporation

By: [Signature]

Printed: John W. Titus
Its: President

Attest: _____

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Herbert Simon, to me personally known as the President of CS RETAIL DEVELOPERS, INC., an Indiana Corporation, General Partner of CENTER-SIMON RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana Limited Partnership, General Partner of CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana Limited Partnership, who executed the foregoing instrument for and on behalf of said Corporation by authority of its Board of Directors.

WITNESS my hand and notarial seal this ____ day of _____, 19__.

Notary Public

STATE OF Idaho)
COUNTY OF Alta) SS:

Before me, a Notary Public in and for said County and State, personally appeared John W. Titus and M/A, to me personally known as the President and etc, respectively of SNOWSTATE RESTAURANT CORPORATION, a Texas Corporation, who executed the foregoing instrument for and on behalf of said Corporation by authority of its Board of Directors.

1992. WITNESS my hand and notarial seal this 1st day of May,

Charles G. Tuck
Notary Public in and for
County, State of Idaho
My Commission Expires: 11/18/97



LIST OF EXHIBITS

- Exhibit A Legal Description of Developer's Property
- Exhibit B Legal Description of the Parcel
- Exhibit C Site Plan of the Shopping Center

LEGAL DESCRIPTION

DEVELOPER'S TRACT
OAK VIEW MALL

A tract of land comprised of part of Lots 1 through 6, inclusive, Oak View, a Subdivision located in the West Half (W1/2) of Section 36, Township 15 North, Range 11 East, Douglas County, Nebraska; more particularly described as follows:

Commencing at the Northeasterly corner of said Lot 1, Oak View, said point also being on the Westerly right-of-way (R.O.W.) line of Oak View Drive; thence $S1^{\circ}19'52"E$, along the said Westerly R.O.W. line of Oak View Drive, a distance of 22.34 feet to the True Point of Beginning; thence continuing $S1^{\circ}19'52"E$ along the said Westerly R.O.W. line of Oak View Drive, a distance of 83.58 feet; thence $N89^{\circ}36'36"W$, a distance of 89.06 feet; thence $N0^{\circ}23'24"E$, a distance of 57.30 feet; thence $N81^{\circ}16'21"W$, a distance of 215.55 feet; thence $S8^{\circ}45'30"W$, a distance of 123.42 feet; thence $N81^{\circ}15'43"W$, a distance of 85.34 feet; thence $S8^{\circ}38'35"W$, a distance of 271.49 feet; thence $S81^{\circ}21'25"E$, a distance of 66.55 feet; thence $S8^{\circ}43'39"W$, a distance of 63.44 feet; thence $S53^{\circ}43'39"W$, a distance of 147.02 feet; thence $S30^{\circ}20'43"E$, a distance of 357.40 feet; thence $N39^{\circ}39'17"E$, a distance of 29.27 feet; thence $S30^{\circ}20'43"E$, a distance of 269.04 feet to a point on the Northerly R.O.W. line of said Oak View Drive; thence $S49^{\circ}45'20"W$ along the said Northerly R.O.W. line of Oak View Drive, a distance of 30.66 feet to a point of curvature; thence Southwesterly along the said Northerly R.O.W. line of Oak View Drive, on a curve to the right, said curve having a radius of 280.00 feet, a long chord of 192.65 feet, bearing $S69^{\circ}52'40"W$ and an arc length of 196.67 feet to a point of tangency; thence $S90^{\circ}00'00"W$ along the North R.O.W. line of Oak View Drive, a distance of 255.64 feet; thence $N8^{\circ}46'00"E$, a distance of 718.39 feet; thence $N81^{\circ}14'01"W$, a distance of 245.85 feet; thence $S8^{\circ}46'00"W$, a distance of 154.45 feet; thence $S53^{\circ}47'17"W$, a distance of 427.14 feet; thence $S62^{\circ}06'17"E$, a distance of 152.85 feet; thence $S53^{\circ}47'17"W$, a distance of 198.51 feet to a point on the said Northerly R.O.W. line of Oak View Drive; thence $N58^{\circ}24'38"W$ along the said Northerly R.O.W. of Oak View Drive, a distance of 210.35 feet to a point of curvature; thence Northwesterly along the said Northerly R.O.W. of Oak View Drive, on a curve to the left, said curve having a radius of 340.00 feet, a long chord of 100.05 feet, bearing $N66^{\circ}52'16"W$ and an arc length of 100.41 feet; thence $N55^{\circ}03'58"E$, a distance of 124.56 feet to a point on the Northeasterly Lot line of said Lot 6, Oak View; thence Southeasterly along the said Northeasterly Lot line of Lot 6, Oak View, on a curve to the left, said curve having a radius of 248.00 feet, a long chord of 86.56 feet bearing $S44^{\circ}59'04"E$ and an arc length of 87.01 feet; thence $N53^{\circ}47'17"E$, a distance of 283.30 feet; thence $N16^{\circ}12'43"W$, a distance of 29.26 feet to a point on the Southeasterly Lot line of said Lot 3, Oak View; thence $N53^{\circ}47'17"E$ along the said Southeasterly Lot line of Lot 3, Oak View, a distance of 193.77 feet; thence

Exhibit "A"
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N8°44'31"E, a distance of 120.20 feet; thence N81°15'30"W, a distance of 45.97 feet; thence N8°44'31"E, a distance of 366.15 feet; thence N81°16'21"W a distance of 253.29 feet; thence N39°33'32"W, a distance of 346.23 feet to a point on the Easterly Lot line of Lot 8 in said Oak View; thence N15°17'56"E along the said Easterly Lot line of Lot 8, Oak View, a distance of 58.83 feet to a point of curvature; thence Northeasterly, along the said easterly Lot line of Lot 8, Oak View, on a curve to the right, said curve having a radius of 385.51 feet, a long chord of 69.95 feet bearing N20°30'16"E and an arc length of 70.05 feet, to the Northeasterly Lot corner of said Lot 8, Oak View; thence N66°33'38"W along the Northerly Lot line of said Lot 8, Oak View, a distance of 288.07 feet to a point of curvature; thence Northwesterly, along the said Northerly Lot line of said Lot 8, Oak View on a curve to the left, said curve having a radius of 85.00 feet, a long chord of 34.53 feet, bearing N78°16'49"W and an arc length of 34.77 feet to a point of tangency; thence N90°00'00"W along the North Lot line of said Lot 8, Oak View, a distance of 2.78 feet to the Northwest Lot corner of said Lot 8, Oak View, also being on the East R.O.W. line of 144th Street; thence N0°00'00"E along the said East R.O.W. line of 144th Street, a distance of 93.86 feet to the most Northwesterly corner of said Lot 4, Oak View; thence S66°33'38"E, a distance of 372.91 feet to the most Southerly corner of Lot 9, said Oak View; thence Northeasterly, along the Southeasterly line of said Lot 9, Oak View on a curve to the right, said curve having a radius of 385.51 feet, a long chord of 17.42 feet, bearing N38°44'08"E and an arc length of 17.42 feet, to a point of compound curve; thence Northeasterly, along the Southeasterly line of said Lots 9 and 10, Oak View, on a curve to the right, said curve having a radius of 686.12 feet, a long chord of 247.76 feet, bearing N50°25'55"E and an arc length of 249.12 feet to a point of compound curvature; thence Northeasterly along the Southeasterly line of Lots 10, 11 and 13, of said Oak View, on a curve to the right, said curve having a radius of 811.38 feet, a long chord of 396.03 feet bearing N74°57'33"E and an arc length of 400.07 feet to the Southeasterly most Lot corner of said Lot 13, Oak View; thence N0°54'54"W along the Easterly line of said Lot 13, Oak View, a distance of 25.99 feet to a point of curvature; thence Northeasterly along the Southeasterly Lot line of said Lot 13, Oak View, on a curve to the right, said curve having a radius of 80.85 feet, a long chord of 77.99 feet bearing N27°55'11"E and an arc length of 81.38 feet to a point of tangency; thence N56°45'17"E along the Southerly Lot line of Lots 1 through 3, inclusive, Omaha Industrial Foundation No. 4 Replat No. 1, a distance of 248.11 feet to a point on the Westerly R.O.W. line of Oak View Drive; thence Southeasterly on a curve to the left along said Oak View Drive R.O.W., said curve having a radius of 650.76 feet, a long chord of 36.79 feet bearing S24°26'26"E, and an arc length of 36.80 feet; thence S56°45'17"W, a distance of 242.48 feet to a point of curvature; thence Southwesterly, on a curve to the left, said curve having a radius of 44.49 feet, a long chord of 42.91 feet bearing S27°55'11"W and an arc length of 44.78 feet, to a point of tangency; thence S0°54'54"E, a distance of

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EXHIBIT "A"
DEVELOPERS PROPERTY
Page 2 of 3

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44.55 feet; thence N89°47'07"W, a distance of 20.72 feet, to a point of curvature; thence Southwesterly on a curve to the left, said curve having a radius of 793.38 feet, a long chord of 402.40 feet bearing S75°31'27"W and an arc length of 406.84 feet, to a point of compound curvature; thence Southwesterly on a curve to the left, said curve having a radius of 668.12 feet, a long chord of 160.15 feet bearing S53°56'59"W and an arc length of 160.54 feet; thence S39°33'32"E, a distance of 149.47 feet; thence N70°26'28"E, a distance of 19.16 feet; thence S39°33'32"E, a distance of 519.78 feet; thence N8°42'31"E, a distance 142.83 feet; thence S81°17'29"E a distance of 353.01 feet; thence S8°42'31"W a distance of 56.09 feet; thence S81°16'21"E, a distance of 366.55 feet to the Point of Beginning; the total area of the tract is 17.093 acres, more or less.

EXHIBIT "A"
DEVELOPERS PROPERTY
Page 3 of 3

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LEGAL DESCRIPTION

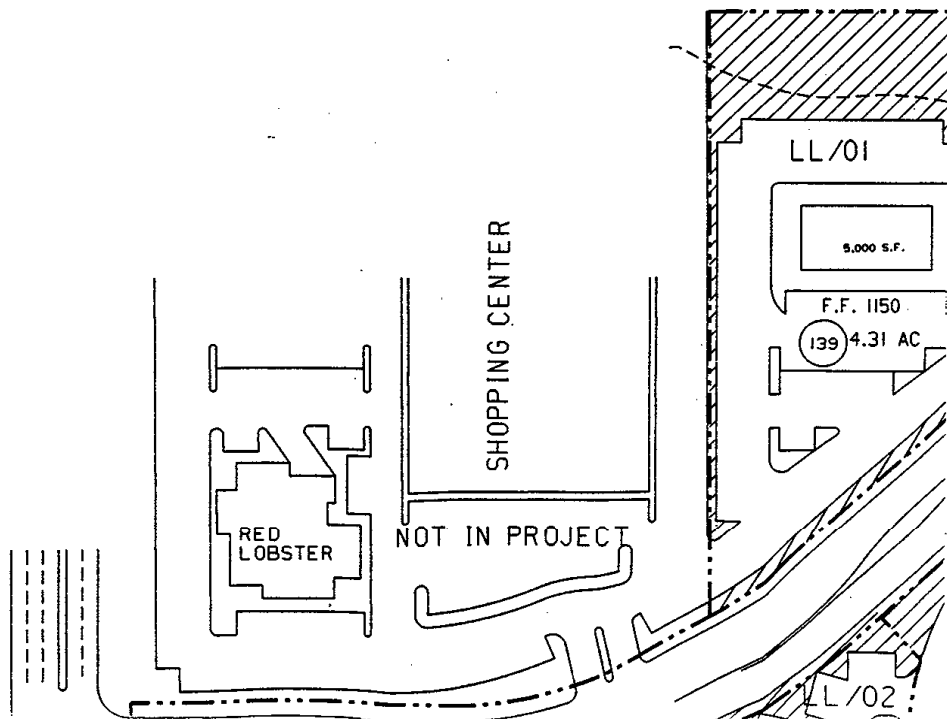
A tract of land being part of Lot 7, Oak View, a subdivision located in the West half (W1/2) of Section 36, Township 15 North, Range 11 East, Douglas County, Nebraska and more particularly described as follows:

Beginning at the Northwestern most corner of said Lot 7, Oak View Subdivision; thence S 90 degrees 00' 00" E, along the North lot line of said Lot 7, a distance of 19.07 feet to a point of curvature; thence Southeasterly along the northeasterly lot line of said Lot 7 on a curve to the right, said curve having a radius of 85.00 feet, a long chord of 34.53 feet bearing S 78 degrees 16' 49" E and an arc length of 34.77 feet to a point of tangency; thence S 66 degrees 33' 38" E along the said Northeasterly lot line of Lot 7 a distance of 134.64 feet to the Northeasterly most corner of said Lot 7; thence southwesterly on a curve to the left, said curve having a radius of 1,655.00 feet, a long chord of 273.06 feet, bearing S 7 degrees 10' 14" W and an arc length 273.37 feet; thence N 90 degrees 00' 00" W a distance of 142.33 feet to the east right-of-way line of 144th Street; thence N 0 degrees 00' 00" W along the east right-of-way line of 144th Street, a distance of 331.50 feet to the Point of Beginning.

The total area of the tract is 1.115 acres more or less.

EXHIBIT "B"

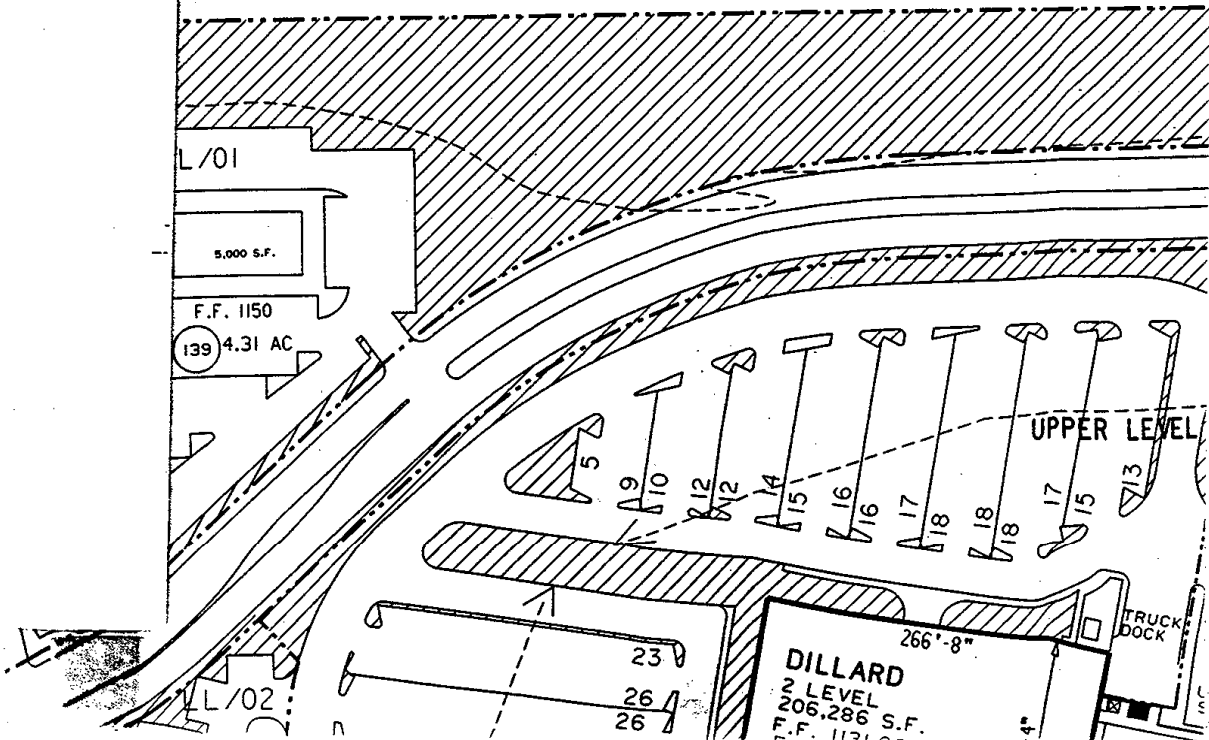
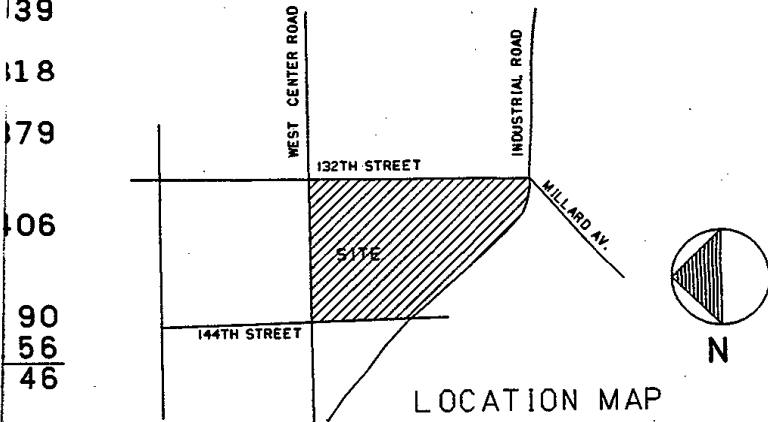
REGIONAL SHOPPING MALL	INITIAL DEVELOPMENT	FUTURE DEVELOPMENT	OU
DILLARD	206.286	206.286	
YOUNKERS	150.000	150.000	L
J.C. PENNEY	124.930	124.930	L
SMALL SHOPS	252.663	252.663	L
FUTURE SEARS		110.000	L
TOTAL MALL G.L.A.	733.879	843.879	L
TOTAL SPACES REQUIRED FOR A 4.5 MALL RATIO	3.302	3.797	
SPACES PROVIDED (within ring road)	3.707	3.817	T
OUTLOT G.L.A.	31.939	31.939	F
TOTAL SITE G.L.A.	765.818	875.818	S
TOTAL SPACES REQUIRED FOR A 5.0 SITE RATIO	3.829	4.379	
SPACES PROVIDED (includes outlot spaces)	4.296	4.406	
TOTAL ACREAGE MALL	55.90	55.90	
TOTAL ACREAGE OUTLOTS	10.56	10.56	
TOTAL SITE ACREAGE	66.46	66.46	



OUTLOT LEGEND

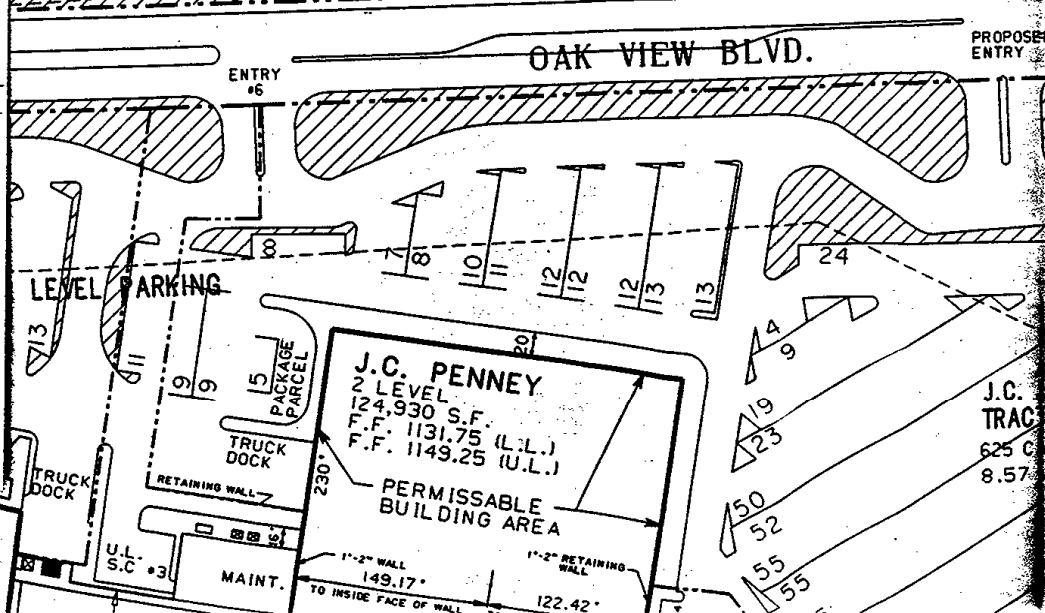
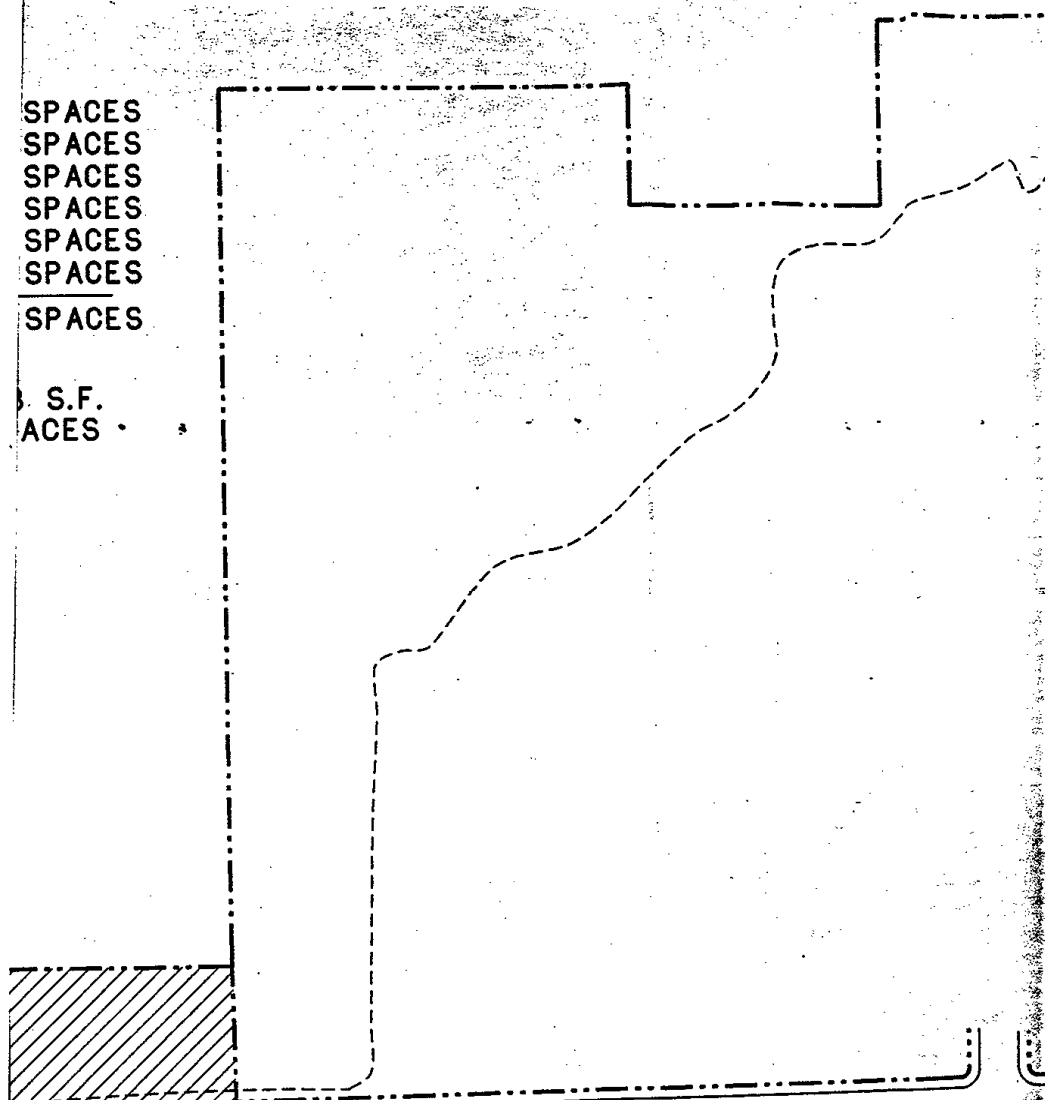
86	LL01	5,000 S.F.	4.31 ACRES	139 SPACE
00	LL02	3,000 S.F.	.66 ACRES	27 SPACE
30	LL07	8,550 S.F.	2.31 ACRES	176 SPACE
63	LL08	5,178 S.F.	1.11 ACRES	62 SPACE
00	LL09	5,323 S.F.	1.12 ACRES	97 SPACE
79	LL10	4,883 S.F.	1.05 ACRES	88 SPACE
97	TOTAL	31,939 S.F.	10.56 ACRES	589 SPACE

TOTAL BUILD-OUT ON PHYSICIAN OUTLOT 242,858 S.F.
 WITH 894 SPACES
 PARKING REQ'D FOR A 3.0/1000 RATIO = 728
 SPACES AVAILABLE FOR MALL PARKING 166



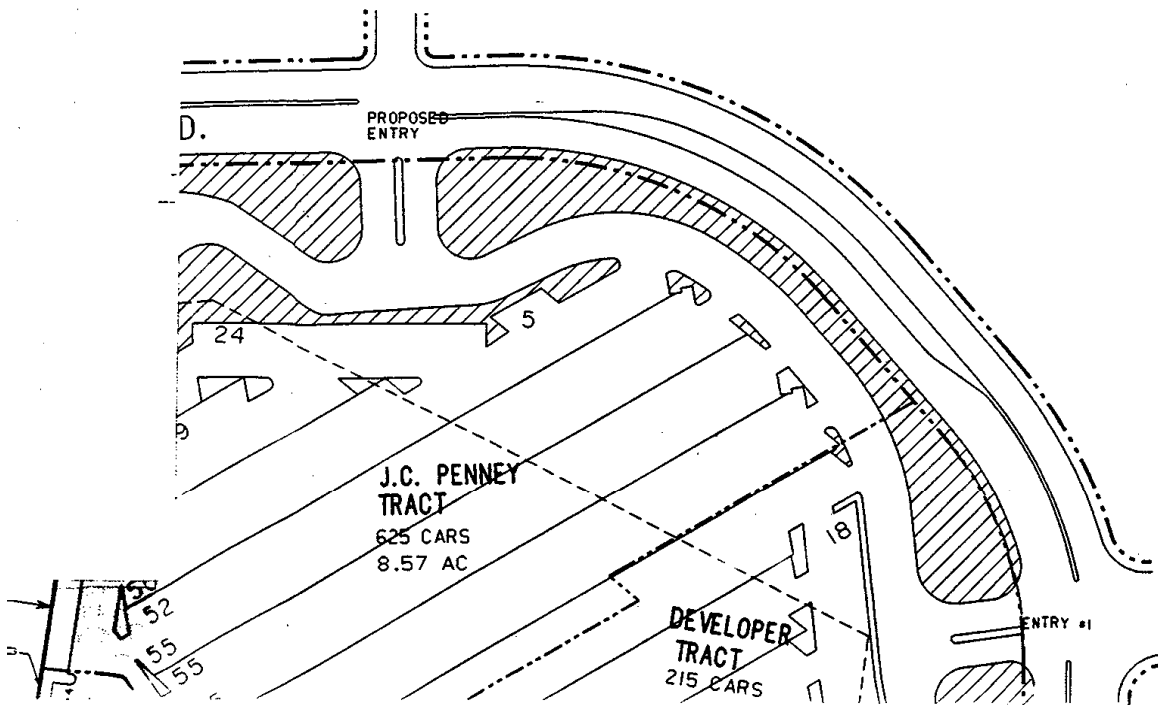
SPACES
SPACES
SPACES
SPACES
SPACES
SPACES
SPACES

S.F.
ACES

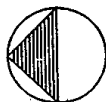
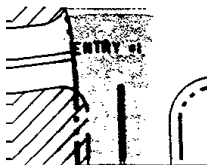


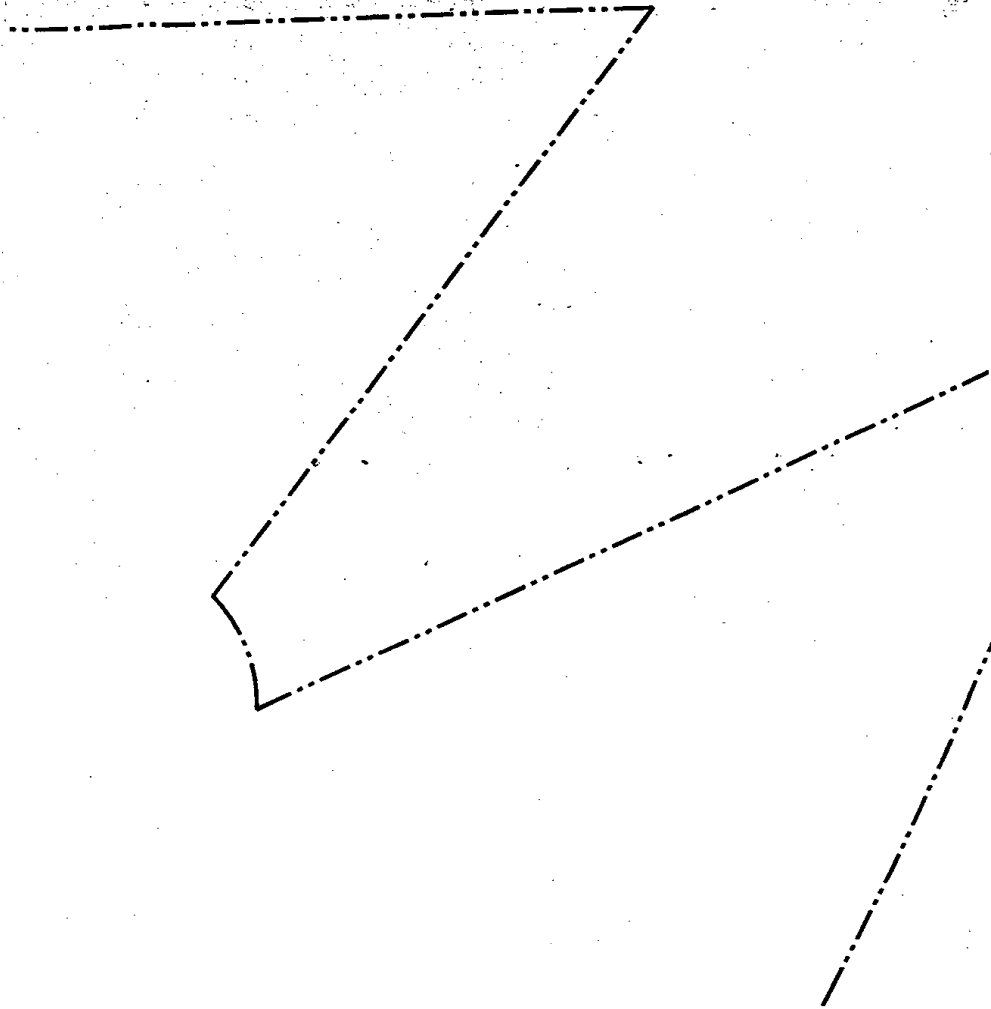
5'-8"

J.C. TRAC
625 C
8.57



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REV.	DATE	DESCRIPTION
A	6-03-91	DERIVED FROM DPOI-Z D.S. 3 TO 4. EASEMNETS. UPDATE JCP. YOUNKERS PBA, PARKING LEGEND EXIST. TRACT LINES
B	6-07-91	REVISED TRACT LINES CHANGED DEPT. 4 TO SEARS.
C	6-27-91	UPDATED LEGEND TO MATCH LEASE PLAN 2 P
D	7-26-91	ADDED DOCTORS TO OULOT LL03-LL06.
E	8-1-91	REVISED PARKING AT DOCTORS UPDATED LEGEND TO LEASE 2 Q
F	8-7-91	REVISED OULOTS LL07-08 LL10. UPDATED LEGEND
G	9-23-91	UPDATED PETERSON'S TO 150,000 SF. REVISED LEGEND AND PARKING
H	10-11-91	UPDATED LEGEND TO MATCH LEASE PLAN 2 S
J	10/21/91	ADDED PARKING DECK AT PETERSON'S. UPDATED LEGEND

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WEST-CENTER ROAD

TRAFFIC SIGNAL

EXISTING BANK

OWNED BY OTHERS

0.66 AC

ENTR

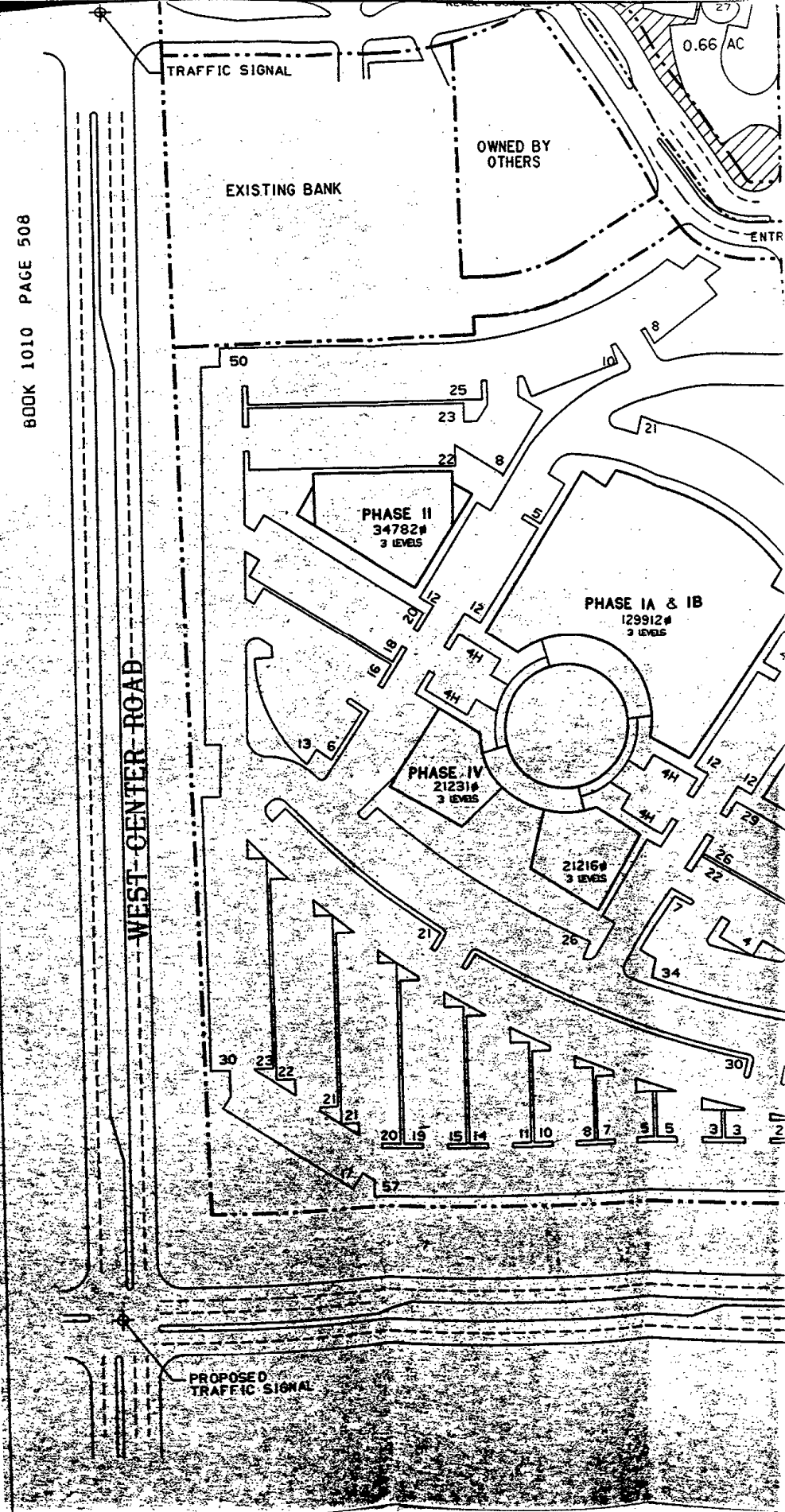
PHASE II
34782#
3 LEVELS

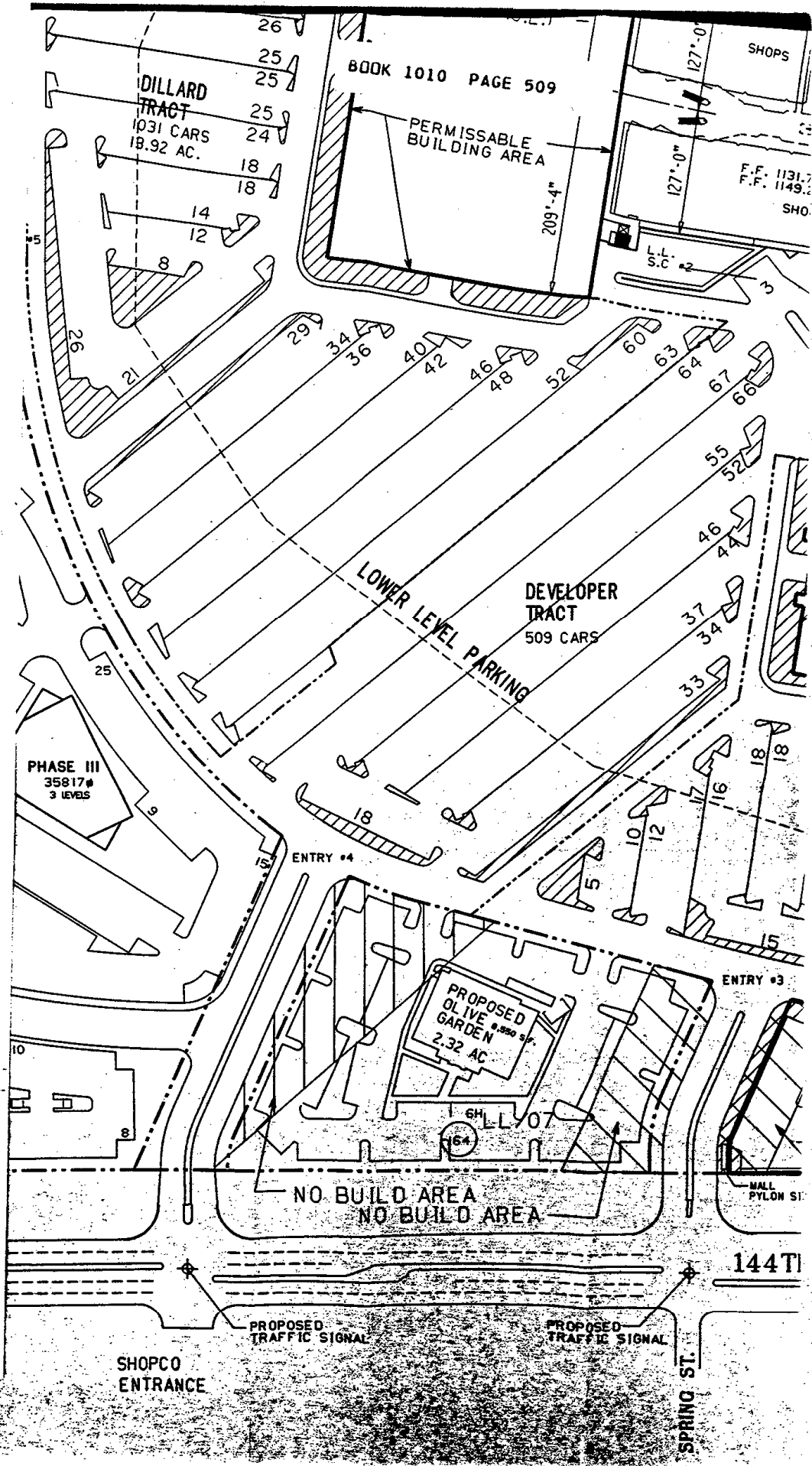
PHASE IA & IB
129912#
3 LEVELS

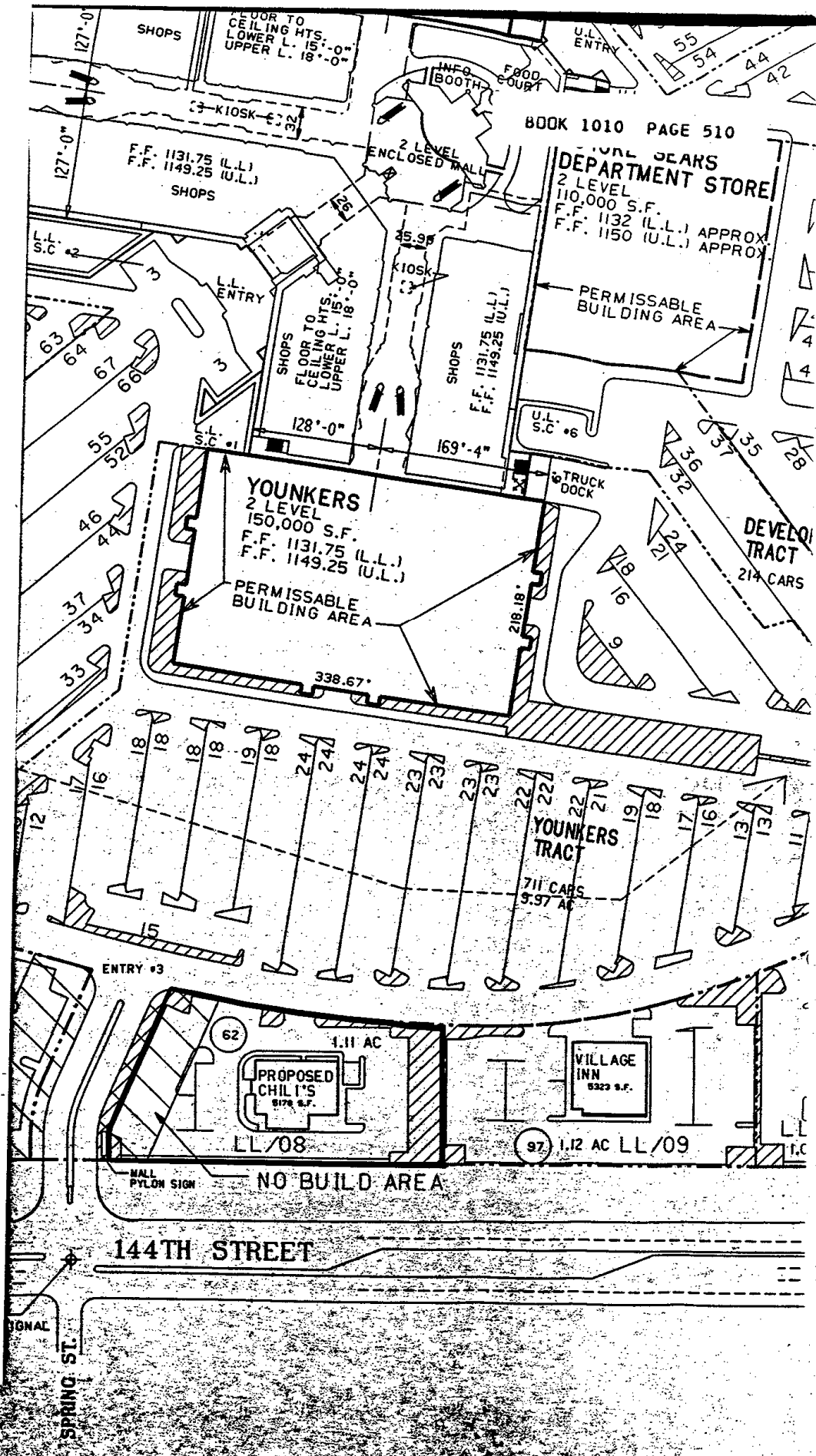
PHASE IV
21231#
3 LEVELS

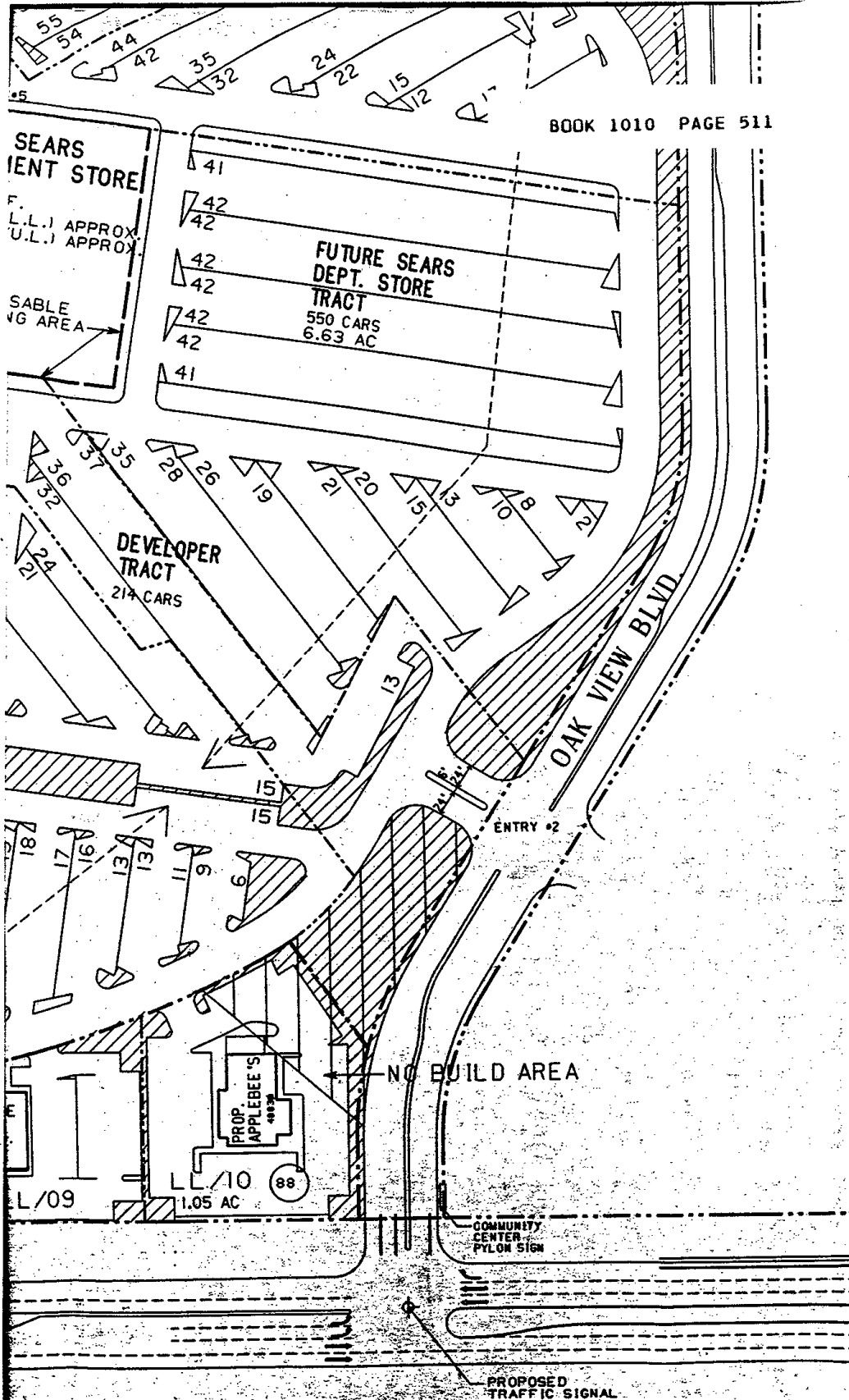
21216#
3 LEVELS

PROPOSED TRAFFIC SIGNAL





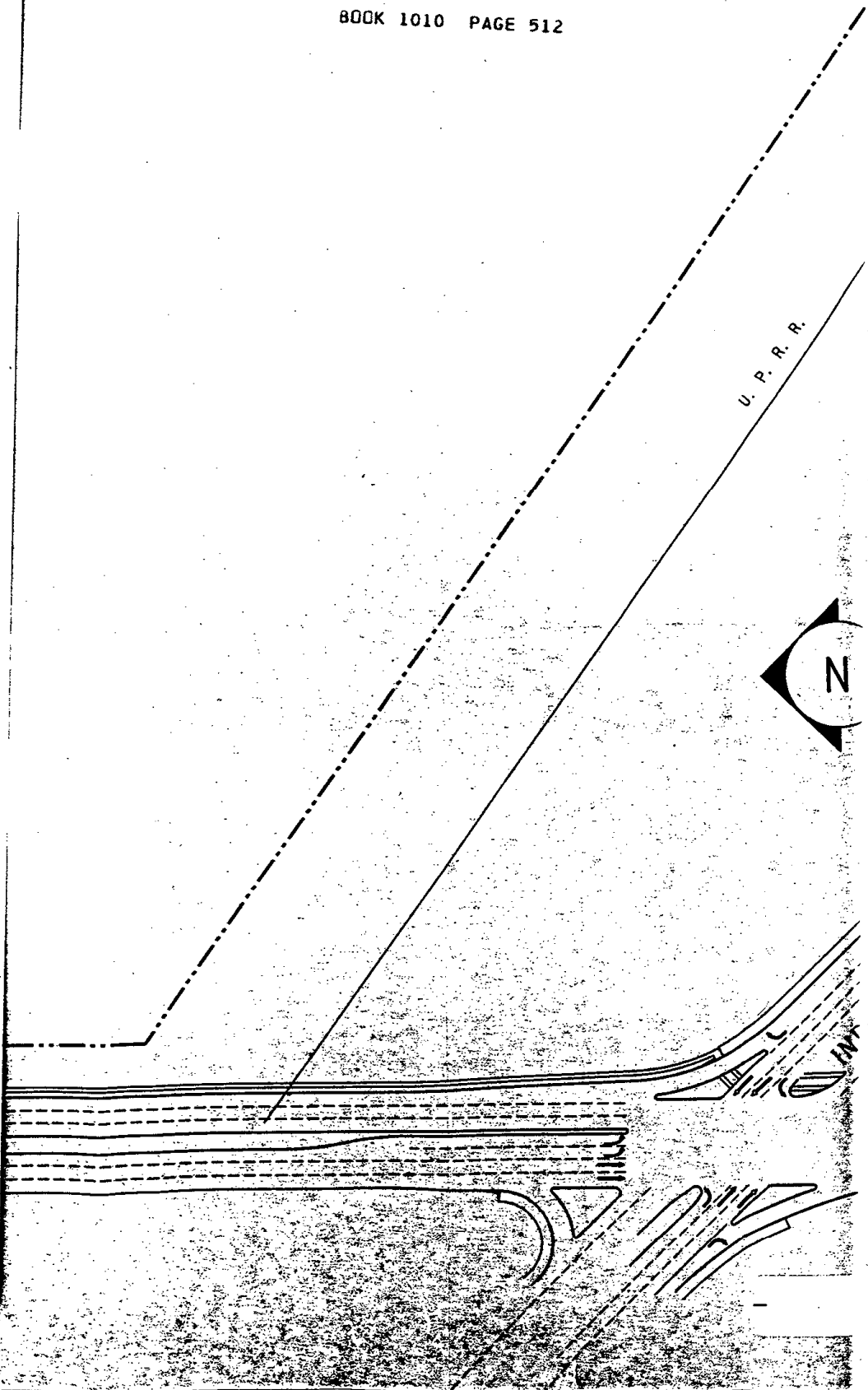




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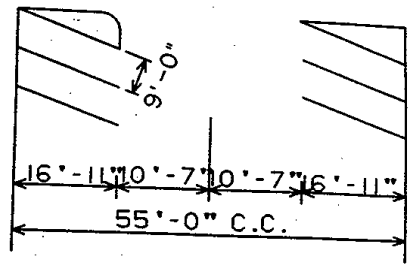
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U. P. R. R.



2/11/92 KIRKHAM ENGINEERS, REVISED
OUTLOTS 8-10.

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70° PARKING
DETAIL (TYP.)
NOT TO SCALE

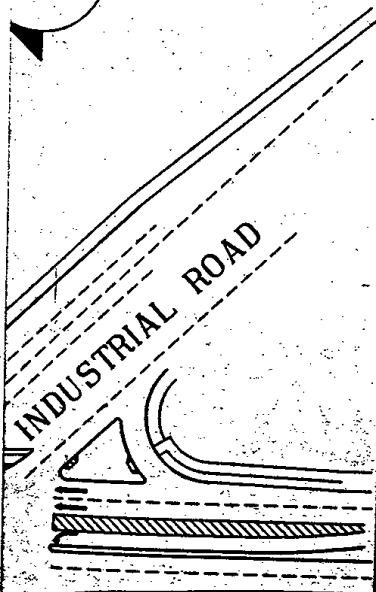
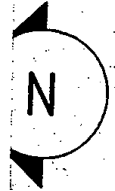


EXHIBIT "C"

SIMON			
SIMON DEVELOPMENT COMPANY, INC.			
MERCHANTS PLAZA P.O. BOX 7033 INDIANAPOLIS, IN 46207 (317) 636-1600			
PROJECT		OAK VIEW MALL	
LOCATION		OMAHA, NEBRASKA	
DESCRIPTION		PHASE 2	
DRAWN THAIS	PART NAME OMALLP02.V.CPOLE.P34.W.DP02.K.EX.U	DATE 01/17/91	
REV. APB	PLAN NAME DEVELOPMENT PLAN	SCALE 1"=100'	
CHECKED	CODE DP	NUMBER 2	REV. K
DATE 0/21/91			