



1012 310 MISC



13061 92 310-350

THIS PAGE INCLUDED FOR
INDEXING
PAGE DOWN FOR BALANCE OF INSTRUMENT

COVENANTS, CONDITIONS AND RESTRICTIONS AGREEMENT

PARCEL LL/10
OAK VIEW MALL

This Covenants, Conditions and Restrictions Agreement (hereinafter sometimes referred to as the "Agreement") made and entered into as of this 8th day of May, 1992, by and between CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana Limited Partnership (hereinafter referred to as "Developer") and J.S. VENTURES, INC., a Kansas 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 part of Lot 6 of Oak View Subdivision (which property is hereinafter referred to as the "Parcel"), and is shown as Parcel LL/10 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 Shopping Center (the "Center"), Developer and other owners of the property adjacent to, or in close proximity to, the Center 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

True 13061 H

RECEIVED
MAY 18 9 48 AM '92
GEORGE J. AUGLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

1012
BK 310-350 N _____ C/O _____ FEE 208.00
PG 310-350 N _____ DEL MC 18
OF MCA COMP _____ F 61-28224

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency 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 in which all property adjacent to or in close proximity to the Center, including the Parcel, is developed. Accordingly, Developer shall have the right to review and approve any and all plans for the initial construction of any building or other improvements on the Parcel and those plans for any reconstruction, replacement or modification of the building or other improvements on the Parcel which will modify the exterior of such building or improvements 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 Center 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 Center, 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 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, 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; (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; and (ix) schematic interior design floor plan. All of the above-mentioned plans are hereinafter referred to as the "Plans and Specifications" and that work conducted by Owner or Owner's agents, contractors or subcontractors as specified or depicted in the Plans and Specifications shall be referred to in this Agreement as "Owner's Work".

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 Center. Developer shall at all times act reasonably and in good faith in approving or disapproving Owner's Plans and Specifications, it being expressly acknowledged by Owner that other owners and occupants of portions of the Center may also be reviewing the Plans and Specifications and that Developer's disapproval thereof as a result of objections by such other owners or occupants shall, in any event, be deemed to be reasonable and in good faith. Grounds for Developer's disapproval include, but are not limited to, a failure to comply with governmental requirements and a failure to comply with the REA (hereinafter defined). Should Developer fail to approve or disapprove Owner's Plans and Specifications in writing within sixty (60) days after receipt of the Plans and Specifications, then Developer shall be conclusively presumed to have disapproved the Plans and Specifications. 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 Center 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 Dillards Department Stores, Inc., a Delaware Corporation, dated September 27, 1990 and recorded April 11, 1991 in the Miscellaneous Records in the office of the Register of Deeds, Douglas County, Nebraska at Book 959, Page 286 (said agreement, as 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, are 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 by the Covenants. Provided that no such material, adverse effects would occur as stated above, Owner shall execute, within fifteen (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 seven (7) business days following a second written notice by Developer requesting the subordination agreement, 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. Owner's interest in and rights to the Parcel shall not be subject to any provision of the amended or restated REA which requires the relocation of the curb cut from the Parcel onto the ring road of the Center from the location approved therefor by Developer as part of

Developer's approval of Owner's initial Plans and Specifications.

(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 in the office of Developer, a copy of which has been delivered to Owner. Owner agrees that the development of any and all improvements on the Parcel shall comply with the applicable standards (as determined by Developer) set forth therein, which standards 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 fascia signs on its building (but not mounted 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, except that Owner may display temporary banners without Developer's consent so long as they are professionally prepared and used in connection with a national promotional campaign;
- (iv) the height of any improvements on the Parcel shall not exceed twenty-five (25) feet in height, measured from a finished floor elevation of 1130 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 1135 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 all of the foregoing utility lines, plus any other utility lines required by Owner, 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 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 Center 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; 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 which will prevent erosion.

b. In the event that Owner shall fail or refuse to maintain the Parcel as above provided, then Developer shall have the right, upon the giving of notice to Owner as provided in Paragraph 15e. below and specifying the manner in which Owner has failed to maintain the Parcel (unless within such notice period Owner shall complete the required maintenance, or in the case of maintenance which by its nature cannot be completed within such notice 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

for any losses or damages thereby sustained by the Owner or any occupants of the Parcel or of anyone claiming by or under either an occupant or the Owner, unless such loss or damage arose from Developer's gross negligence or willful misconduct 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 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 Center upon the driveways, sidewalks and Parking Areas (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 Center. Developer hereby covenants that it shall not, pursuant to the REA, agree to designate the Parcel or any part thereof as employee parking for the Center.

3. MAINTENANCE AND MANAGEMENT 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.
- (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 Center, except to the extent strictly necessary to prevent the creation of public rights therein and only so long as any closure of access does not exceed 1 day per year and does not interfere with the operation of the Center.
- (viii) Maintain the Parking Area consistent with Article 20 of the REA.

In the event Owner shall fail or refuse to maintain the Parking Area as above provided, then Developer shall have the right, upon the giving of notice to Owner as provided in Paragraph 15e. and specifying the manner in which Owner has failed to maintain the Parking Area as above provided (unless within such notice period Owner shall complete the required maintenance, or in the case of maintenance which by its nature cannot be completed within such notice 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 willful misconduct or gross negligence in performing any such maintenance. The cost of such maintenance shall be paid by Owner to Developer within ten (10) 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 Center ring road (the "Ring Road") and entrance drives for the Center (the "Entrance Drives"), the sum of One Thousand Eight Hundred and 00/100 Dollars (\$1,800.00) per year (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.

So long as the Ring Road Maintenance Charge is paid by the Owner, Owner, its tenants, licensees and invitees shall have the right to use the Ring Road and the Entrance Drives, in common with others, for access, ingress and egress to the Parcel. Developer agrees to maintain the Ring Road and the Entrance Drives in good order, condition and repair.

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 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 occupant and in the event after receipt of demand for payment from Developer, such third-party occupant 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. Owner agrees that the Parcel shall be only used for the construction and operation of a sit-down, table-service restaurant with the right to serve alcoholic beverages or for any other restaurant use which does not violate the REA or an exclusive use granted to any other outlot occupant of the Center or any other restriction on use to which Developer is legally bound at the Center, and for no other purposes whatsoever without, in each and every instance, the prior written consent of the Developer. The restaurant on the Parcel shall be conducted under the name "Applebee's" unless another name is approved by Developer, which approval shall not be unreasonably withheld.

For so long as the Center is operated as a commercial real estate establishment, in no event shall the Parcel be used for any use prohibited under the REA or for any purpose or purposes which would produce nuisances, objectionable noises, obnoxious or toxic odors, dust, dirt or fire hazards, nor shall the Parcel or any part thereof be used as or for any 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 rooms, any adult entertainment use, any theater which exhibits or features pornographic movies, any fire sale, bankruptcy sale or auction house operation, or any dry cleaning plant.

For purposes of this Paragraph 5, it is specifically acknowledged and agreed that the Center shall not be deemed to be no longer operating due to temporary cessations of operation resulting from damage and destruction, casualty, force majeure or any cause not the fault of Sneller.

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 those restrictions and limitations applicable to the Parcel contained in the REA.

6. VACANT BUILDINGS

In the event that any building or improvement constructed on the Parcel becomes vacant, unoccupied and abandoned (such that Owner has no intention of returning to or maintaining the Parcel or otherwise performing its obligations hereunder), and is not appropriately maintained or policed for a period of six (6) consecutive months, Owner, upon written demand from Developer, shall within thirty (30) 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 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, 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. Developer, by reason of its doing so, shall not be liable or responsible to the Owner or any other person or entity for any losses or damages sustained by the Owner or any occupants of the Parcel or of anyone claiming by or under either an occupant or the Owner, unless such loss or damage arose from Developer's willful misconduct or gross negligence in performing any such maintenance. The cost of such maintenance shall be paid by Owner to Developer within ten (10) 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 the greater of seventy (70) parking spaces or five (5) parking spaces for every one thousand (1,000) square feet of Gross Leasable Area (as defined in the REA) in the 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 construction on the Parcel within ninety (90) days after the Closing Date and complete construction on the Parcel no later than two hundred and ten (210) days from the Closing Date. 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 so long as Owner is diligently pursuing obtaining all Permits);
- 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, delays caused solely by Developer or any other cause beyond the reasonable control of the party asserting such delays; provided, however, 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 be deemed to have occurred, with respect to any building on the Parcel, with 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, after a date which is one year after the Closing Date (plus those days prior to the commence construction and complete construction dates which were attributable to Unavoidable Delays) repurchase the Parcel at the Purchase Price (as such term is defined in the Purchase and Sale Agreement by and between Developer and Owner dated August 1, 1991, which definition is hereby incorporated by reference) less all closing costs incurred by Developer in conveying the Parcel to Owner. In the event that Developer elects to repurchase the Parcel as hereinabove provided, Owner agrees to convey good and marketable title to the Parcel by special warranty deed and 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 Center 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 Center's operation director or Developer's

tenant coordinator prior to beginning any 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, or conveyance (or agreement to do any of the foregoing) of any of the following rights, properties or interests which is accomplished, attempted or effectuated without the prior written consent of Developers:

- (i) the Parcel, or any portion thereof, or any interest therein;
- (ii) all or any portion of the beneficial interest or power of direction in, to or under the trust under which Owner holds title to the Parcel;
- (iii) any shares of capital stock of a corporate Owner, a corporation which is a direct or indirect beneficiary of a trustee Owner, a corporation which is a general partner of a partnership Owner, a corporation which is a general partner in a partnership beneficiary of a trustee Owner or a corporation which is the owner of substantially all of the capital stock of any corporation trustee or a corporation (other than the shares of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System) if such Transfer causes a change in the controlling interest of the Owner; or
- (iv) all or any part of the partnership or joint venture interest, as the case may be, of any partnership Owner or partnership beneficiary of a trustee Owner of the Parcel;

in each case whether any such Transfer 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, or any beneficial interest or power of direction, shares of stock, or partnership or joint venture interest as the case may be:

- (x) 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;

- (y) 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
- (z) to a wholly-owned subsidiary of Owner or to Applebee's International, Inc. by virtue of the exercise of its right of first refusal as provided in Owner's franchise agreement, provided, however, that Developer's right of first refusal as provided in this Paragraph 9 shall apply to any further Transfer by such new Owner.

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 refusal over any Transfer by Owner, its successors, transferees or assigns, but such right shall be subordinate to the right of first refusal of Applebee's International, Inc. as provided in Owner's franchise agreement. In addition, Developer's right of first refusal granted hereunder shall not be applicable to the enforcement of any mortgagee's interest in the Parcel pursuant to any first mortgage of which Developer has received notice as set forth above. Such right of first refusal shall be on the same terms and conditions as shall be contained in a bona fide written third-party offer submitted to Owner except as provided below. Not more than five (5) days after the later of the acceptance of any such offer by Owner or the refusal of Applebee's International, Inc. to exercise its right of first refusal under Owner's franchise agreement, if the same is applicable to such offer, Owner shall forward a true and correct copy thereof to Developer by certified or registered mail, return receipt requested. Developer shall have thirty (30) days from the receipt thereof to exercise its right of first refusal hereunder. Such election shall be evidenced by written notice to Owner by certified or registered mail or overnight express delivery, return receipt requested. Upon exercise of such right of first refusal, the parties shall proceed to consummate the Transfer in accordance with the terms and conditions contained in the bona fide written third-party

offer with the following exceptions. The purchase price of Owner's Property (hereinafter defined) to be paid by Developer shall in no event be less than \$450,000.00 ("Developer's Purchase Price"). Owner's Property shall be sold to Developer free and clear of all liens and encumbrances other than those preexisting encumbrances to which Owner was subject, such other easements and agreements which do not materially or adversely affect the Parcel, or any other exceptions which Developer approves, which approval shall not be unreasonably withheld or delayed, provided that Developer may elect to take title subject to liens and encumbrances recorded against Owner's Property, and in such event it shall deduct the amount of such liens and/or encumbrances from Developer's Purchase Price. In any event, Owner's first priority mortgage lender shall retain its lien interest in Owner's Property until paid an amount equal to the lesser of (i) such lender's indebtedness as then secured by Owner's Property, or (ii) \$450,000.00. If, for any reason, such Transfer is not consummated, Developer's right of first refusal as aforesaid shall apply to all subsequent offers received by Owner from third parties.

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 closings due to alterations, remodeling or renovations), for a period of twelve (12) months 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 the Parcel and all improvements thereon (hereinafter "Owner's Property") from Owner, its successors and assigns, as hereinafter provided.

The Recapture Notice shall set forth Developer's estimate as to the Fair Market Purchase 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 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 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. Notwithstanding the foregoing, in no event shall the Fair Market Purchase Value of Owner's Property be less than \$450,000.00. The purchase agreement shall be signed by the parties within ninety (90) days after the determination of the Fair Market Purchase Value of Owner's Property. Any such purchase agreement shall not restrict Developer's right to lease Owner's Property.

Developer and Owner shall "close" on the repurchase of Owner's Property within sixty (60) days following the later of (i) execution of the purchase agreement or ii) a final determination by the appraisers of the Fair Market Purchase Value of Owner's Property. During this sixty (60) 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. If Developer determines, in its sole discretion, that the suitability of the Property is unacceptable, Developer may terminate the purchase agreement without liability. Owner's Property shall be sold to Developer free and clear of all liens and encumbrances other than those preexisting encumbrances to which Owner was subject, such other easements and agreements which do not materially or adversely affect the Parcel, or any other exceptions which Developer approves, which approval shall not be unreasonably withheld or delayed, provided that Developer may elect to take title subject to liens and encumbrances recorded against Owner's Property and in such event it shall deduct the amount of such liens and/or encumbrances from the repurchase price. In any event, Owner's first priority mortgage lender shall retain its lien interest in Owner's Property until paid an amount equal to the lesser of (i) such lender's indebtedness as then secured by Owner's Property, or (ii) \$450,000.00. Developer shall bear the cost of performing the tests and evaluations referred to above, and Owner shall be required to remove any objections to title as furnished by Developer which are not deemed acceptable to Developer in its reasonable judgment.

12. INSURANCE

Owner shall, at its sole expense, continuously maintain Comprehensive General Liability Insurance, endorsed to cover personal injury and contractual liability, covering the building and any other portions of the Parcel. Such insurance policy shall afford protection to Developer as an additional insured to the limit of not less than:

- (1) (a) \$5,000,000 for death of, or bodily injury to, or personal injury to, more than one person, in or resulting from one occurrence; and

(b) Property damage to the limit of not less than \$1,000,000 for each occurrence, or
- (2) A combined single limit in the amount of \$5,000,000.

Provided, however, that the primary amounts of coverage provided under subparagraphs (1) and (2) of this Paragraph 12 may be reduced (but not to less than \$500,000 for bodily injury and \$500,000 for property damage) if Owner shall furnish Umbrella Liability Coverage with limits of liability not less than \$5,000,000 applying in excess of the primary coverages provided for in subparagraphs (1) and (2) of this Paragraph 12 (as reduced herein); and provided further, however, that the aforesaid Umbrella Coverage provides for coverage at least equal to the required primary coverage. Owner shall furnish certificates of such insurance to Developer from time to time, as and when such policies are issued or renewed, whether requested or not. Any policy required hereunder shall provide that such policy shall not be cancellable without at least thirty (30) days' prior written notice to Developer.

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 ten (10) 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 aforesaid ten (10) days written 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

BOOK 1012 PAGE 330

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: J.S. VENTURES, INC.
1130 Haskell
Wichita, Kansas 67213

cc: Joseph P. Flynn, Esq.
One Brittany Place
2024 North Woodlawn
Wichita, Kansas 67208

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. INDEMNITY

Owner agrees to indemnify and hold Developer harmless from and against any and all damage, loss, cost, claim, action, cause of action, and expense (including, but not limited to, attorney's fees and litigation expenses) incurred or arising out of Owner's breach or violation of those provisions of the REA applicable to Owner or the Parcel which govern the number and dimensions of parking spaces on the Parcel and the maintenance of the Parcel.

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

J.S. VENTURES, INC., a Kansas Corporation

By: _____

Printed: _____

Its: _____

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 DEVELOPES 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 6 day of May, 1992.

DAWNA M. FLOERKE, Notary Public
County of Residence: Marion
My Commission Expires Aug. 27, 1995

Dawna Floerke
Notary Public

STATE OF)
) SS:
COUNTY OF)

Before me, a Notary Public in and for said County and State, personally appeared _____, to me personally known as the _____, of J.S. VENTURES, INC., a Kansas Corporation, 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 in and for _____
County, State of _____
My Commission Expires: _____

copies together will constitute a fully executed and binding agreement.

23. INDEMNITY

Owner agrees to indemnify and hold Developer harmless from and against any and all damage, loss, cost, claim, action, cause of action, and expense (including, but not limited to, attorney's fees and litigation expenses) incurred or arising out of Owner's breach or violation of those provisions of the REA applicable to Owner or the Parcel which govern the number and dimensions of parking spaces on the Parcel and the maintenance of the Parcel.

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

J.S. VENTURES, INC., a Kansas Corporation

By: James H. Stevens

Printed: JAMES H. STEVENS
Its: PRESIDENT

Attest: Ann M. Stevens

BOOK 1012 PAGE 335

STATE OF INDIANA)
COUNTY OF MARION) SS:

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__.

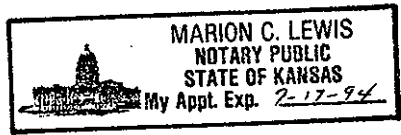
Notary Public

STATE OF *Kansas*)
COUNTY OF *Sedgewick*) SS:

Before me, a Notary Public in and for said County and State, personally appeared *James H. Stearns & Ann M. Stearns*, to me personally known as the *President and Secretary*, of J.S. VENTURES, INC., a Kansas Corporation, 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 *8th* day of *May*, 19*92*.

Marion C. Lewis
Notary Public in and for *Sedgewick*
County, State of *Kansas*
My Commission Expires: *July 17, 1994*



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

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

44.55 feet; thence $N89^{\circ}47'07''W$, 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 $S75^{\circ}31'27''W$ 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 $S53^{\circ}56'59''W$ and an arc length of 160.54 feet; thence $S39^{\circ}33'32''E$, a distance of 149.47 feet; thence $N70^{\circ}26'28''E$, a distance of 19.16 feet; thence $S39^{\circ}33'32''E$, a distance of 519.78 feet; thence $N8^{\circ}42'31''E$, a distance 142.83 feet; thence $S81^{\circ}17'29''E$ a distance of 353.01 feet; thence $S8^{\circ}42'31''W$ a distance of 56.09 feet; thence $S81^{\circ}16'21''E$, 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

LKC:jrh918

LEGAL DESCRIPTION

A tract of land being part of Lot 6, 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 Southwesterly most corner of said Lot 6, Oak View Subdivision, said point being at the intersection of the North right-of-way (R.O.W.) line of Oak View Drive and East R.O.W. line of 144th Street; thence N 0 degrees 00' 00" E along the East R.O.W. line of 144th Street, a distance of 199.67 feet; thence N 90 degrees 00' 00" E a distance of 196.04 feet to a point on the Northeasterly lot line of said Lot 6; thence Southeasterly, along the Northeasterly lot line of said Lot 6, on a curve to the left, said curve having a radius of 979.81 feet, a long chord of 130.90 feet bearing S 25 degrees 20' 42" E and an arc length of 131.00 feet, to a point of compound curvature; thence continuing Southeasterly along the said Northeasterly lot line of said Lot 6, on a curve to the left, said curve having a radius of 248.00 feet, a long chord of 24.92 feet bearing S 32 degrees 03' 15" E and an arc length of 24.93 feet to a point; thence S 55 degrees 03' 58" W, a distance of 124.56 feet to a point on the Northerly R.O.W. line of Oak View Drive, thence Northwesterly along said Northerly R.O.W. line of Oak View Drive on a curve to the left, said curve having a radius of 340.00 feet, a long chord of 86.81 feet bearing N 82 degrees 39' 57" W and an arc length of 87.04 feet to a point of tangency; thence N 90 degrees 00' 00" W along the North R.O.W. line of Oak View Drive a distance of 77.09 feet to the Point of Beginning.

The total area of the tract is 1.05 acres more or less.

EXHIBIT "B"

BOOK 1012 PAGE 340

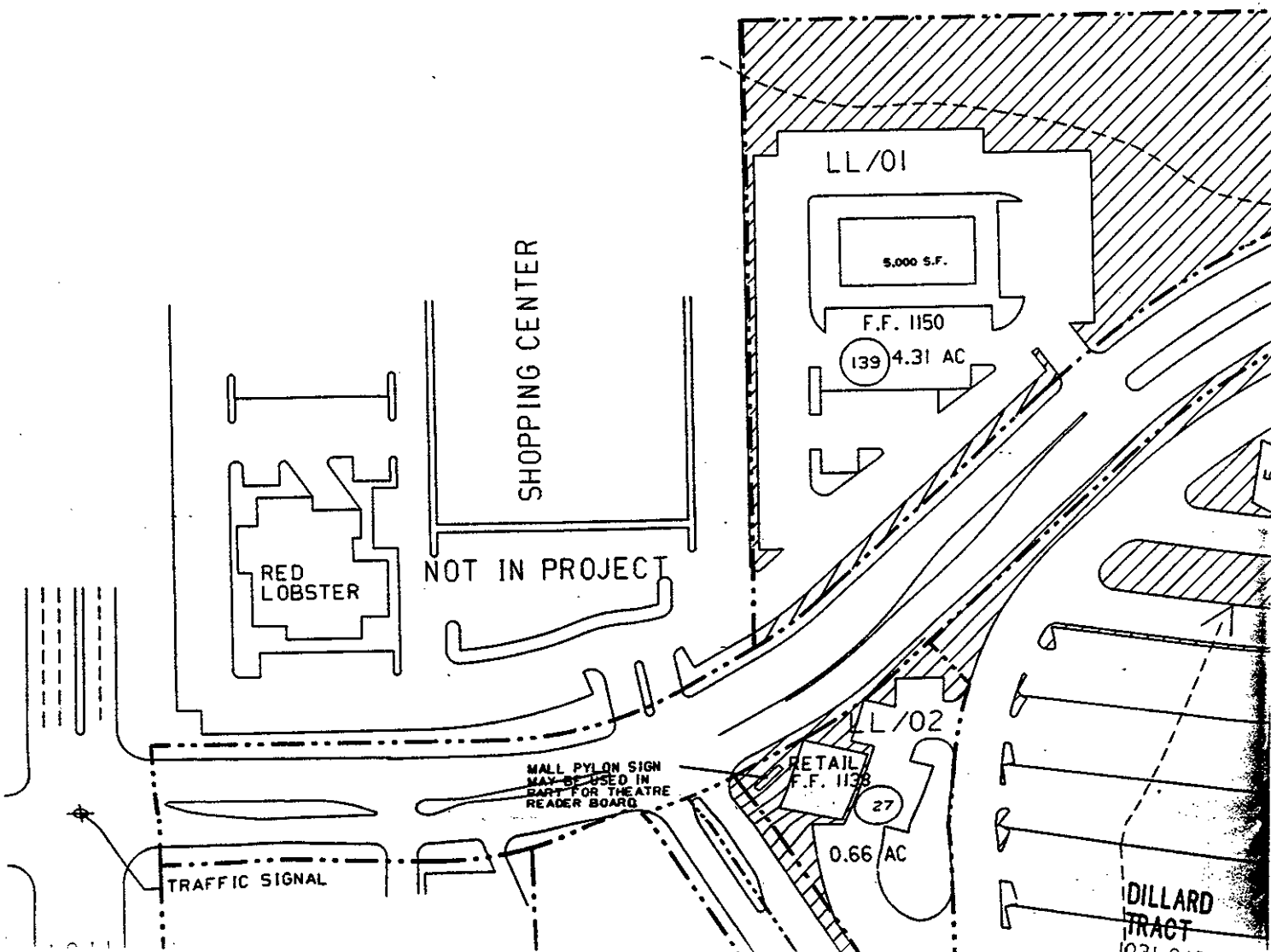
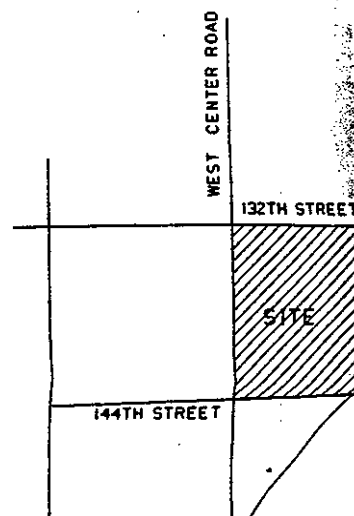
REGIONAL SHOPPING MALL

| | INITIAL DEVELOPMENT | FUTURE DEVELOPMENT |
|---|---------------------|--------------------|
| DILLARD | 206,286 | 206,286 |
| YOUNKERS | 150,000 | 150,000 |
| J.C. PENNEY | 124,930 | 124,930 |
| SMALL SHOPS | 252,663 | 252,663 |
| FUTURE SEARS | | 110,000 |
| TOTAL MALL G.L.A. | 733,879 | 843,879 |
| TOTAL SPACES REQUIRED FOR A 4.5 MALL RATIO | 3.302 | 3.797 |
| SPACES PROVIDED (within ring road) | 3.707 | 3.833 |
| OUTLOT G.L.A. | 31,939 | 31,939 |
| TOTAL SITE G.L.A. | 765,818 | 875,818 |
| TOTAL SPACES REQUIRED FOR A 5.0 SITE RATIO | 3.829 | 4.379 |
| SPACES PROVIDED (includes outlot spaces) | 4.296 | 4.422 |
| TOTAL ACREAGE MALL | 55.90 | 55.90 |
| TOTAL ACREAGE OUTLOTS | 10.56 | 10.56 |
| TOTAL SITE ACREAGE | 66.46 | 66.46 |

OUTLOT LEGEND

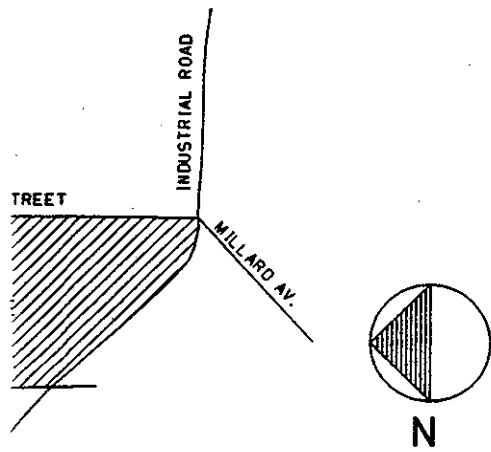
| | | |
|--------------|---------------|----------|
| LL01 | 5,000 | S |
| LL02 | 3,000 | S |
| LL07 | 8,550 | S |
| LL08 | 5,178 | S |
| LL09 | 5,323 | S |
| LL10 | 4,883 | S |
| TOTAL | 31,939 | S |

TOTAL BUILD-OUT ± 160,000 S.F. W

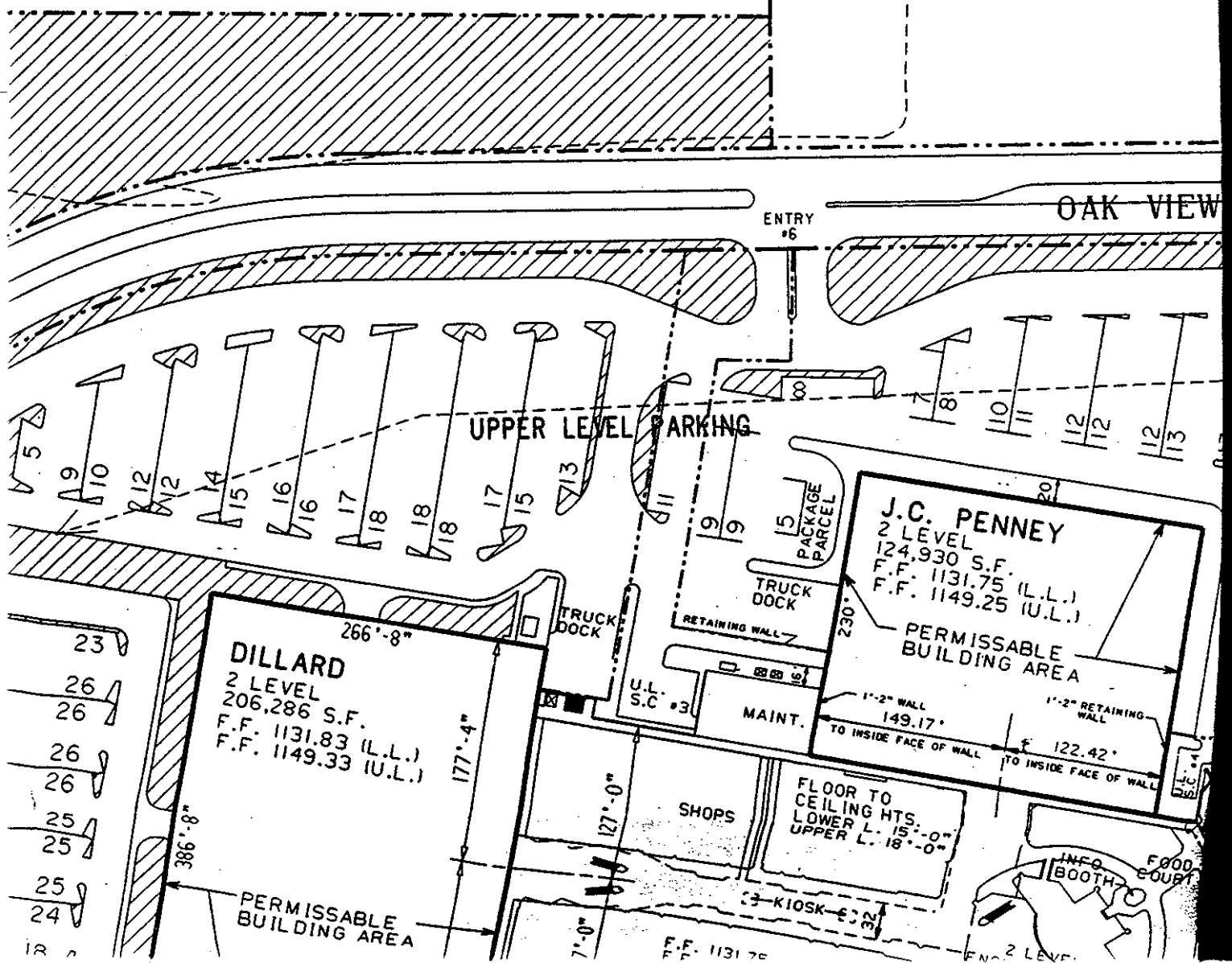


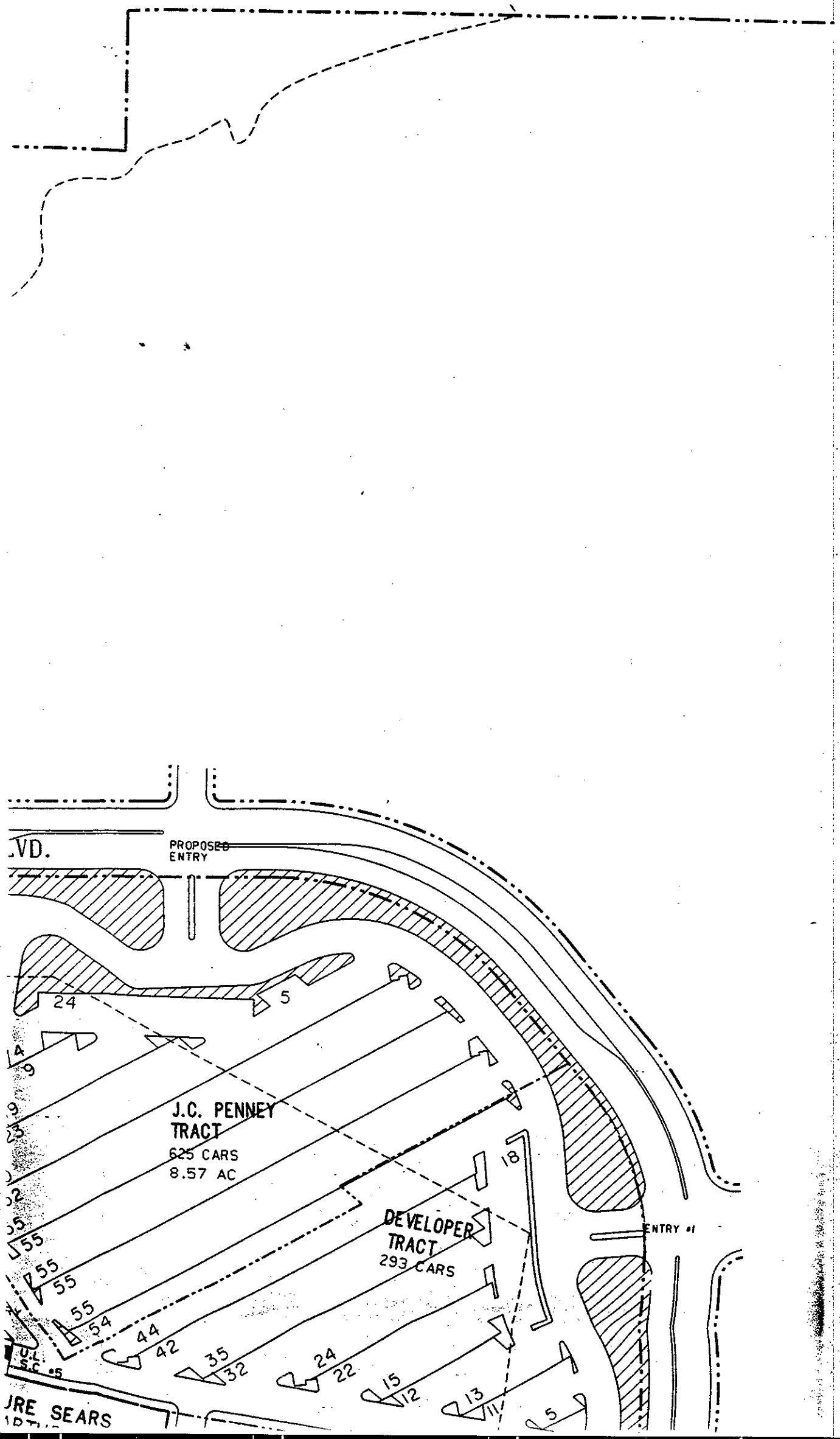
| | | |
|---------|-------------|------------|
| 10 S.F. | 4.31 ACRES | 139 SPACES |
| 10 S.F. | .66 ACRES | 27 SPACES |
| 10 S.F. | 2.31 ACRES | 176 SPACES |
| 8 S.F. | 1.11 ACRES | 62 SPACES |
| 3 S.F. | 1.12 ACRES | 97 SPACES |
| 3 S.F. | 1.05 ACRES | 88 SPACES |
| 9 S.F. | 10.56 ACRES | 589 SPACES |

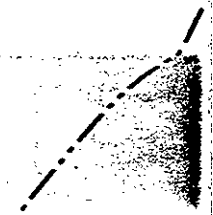
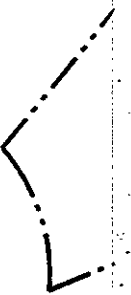
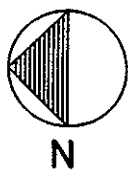
OUT ON PHYSICIAN OUTLOT
WITH 894 SPACES



LOCATION MAP







MALL PYLON SIGN
MAY BE USED IN
PART FOR THEATRE
READER BOARD

RETAIL
F.F. 1138

0.66 AC

DILLARD
TRACT
1031 CARS
18.92 AC.

TRAFFIC SIGNAL

OWNED BY
OTHERS

EXISTING BANK

ENTRY #5

14
12

50

25
23

PHASE II
APPROX. SLAB EL.
1120°
1143°
1156°

PHASE IA & IB
APPROX. SLAB EL.
1130°
1143°
1156°

PHASE IV

PHASE III
APPROX. SLAB EL.
1130°
1143°
1156°

APPROX. SLAB EL.
1130°
1143°
1156°

WEST-CENTER-ROAD

30

23

22

21

21

20

19

15

14

11

10

8

7

5

5

3

3

2

1

17

57

21

26

26

26

26

26

26

26

26

26

26

26

26

26

26

26

26

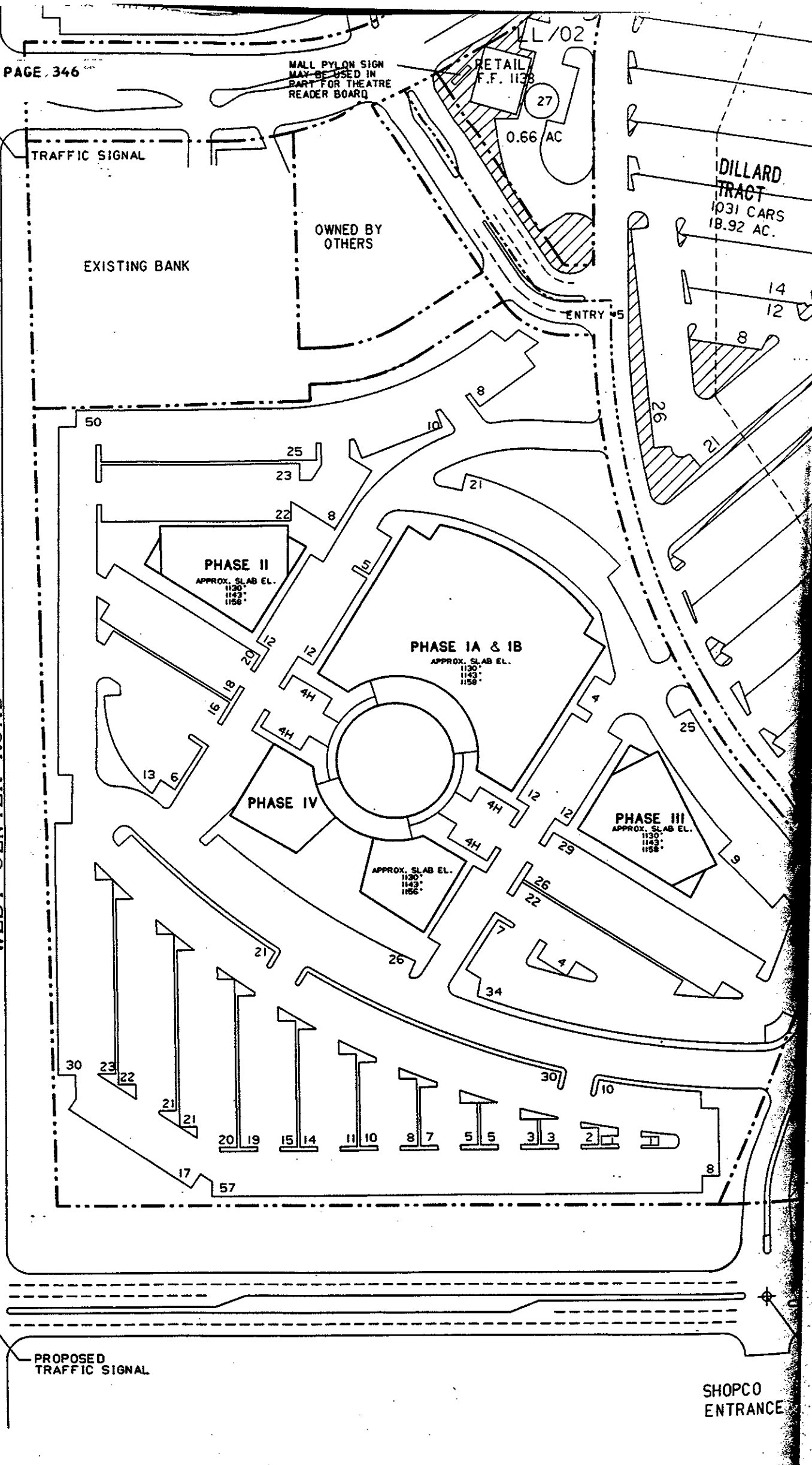
26

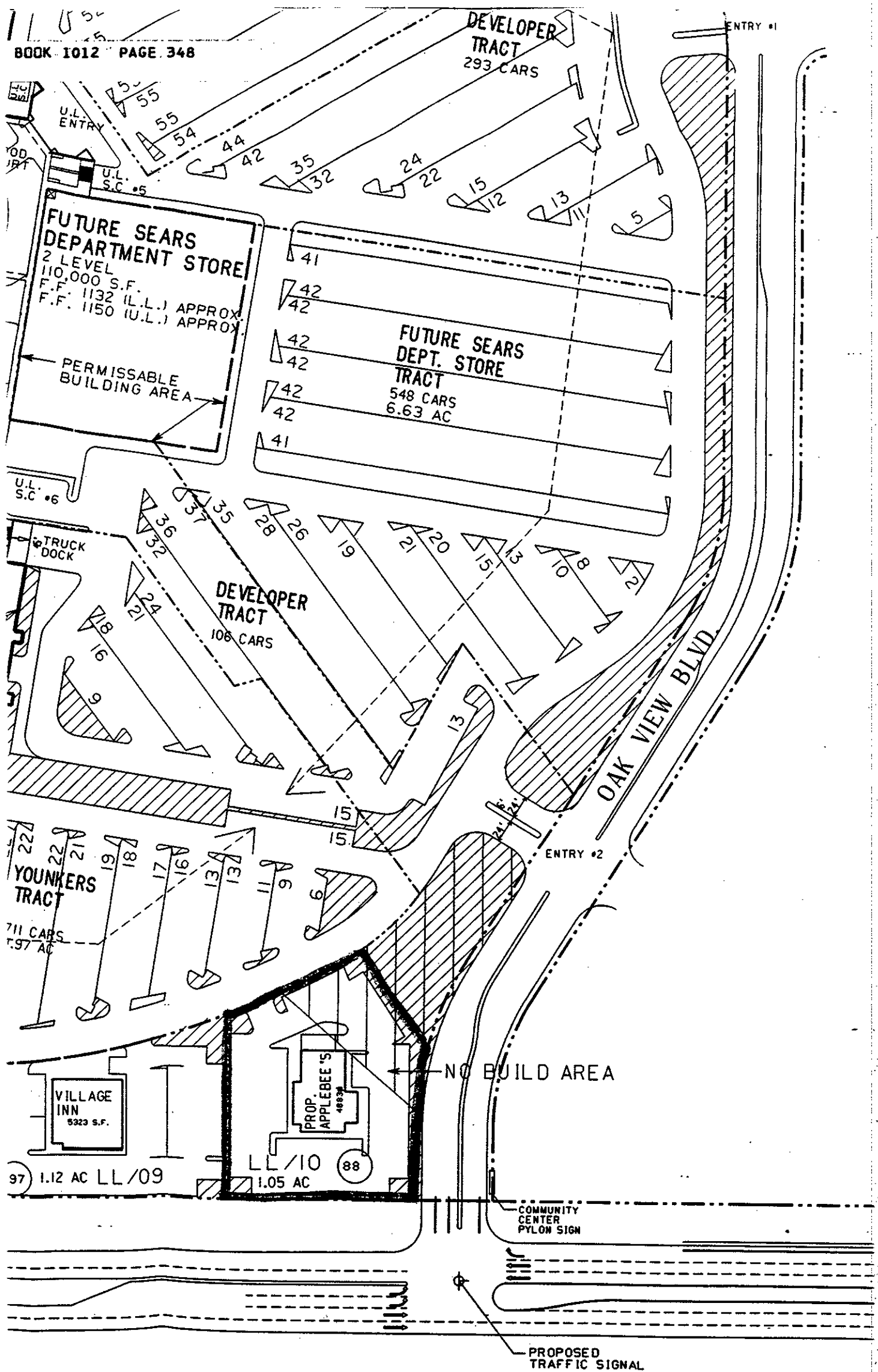
26

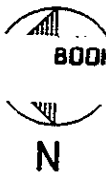
26

PROPOSED
TRAFFIC SIGNAL

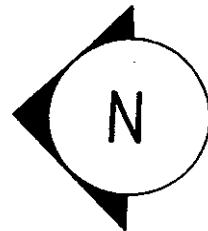
SHOPCO
ENTRANCE



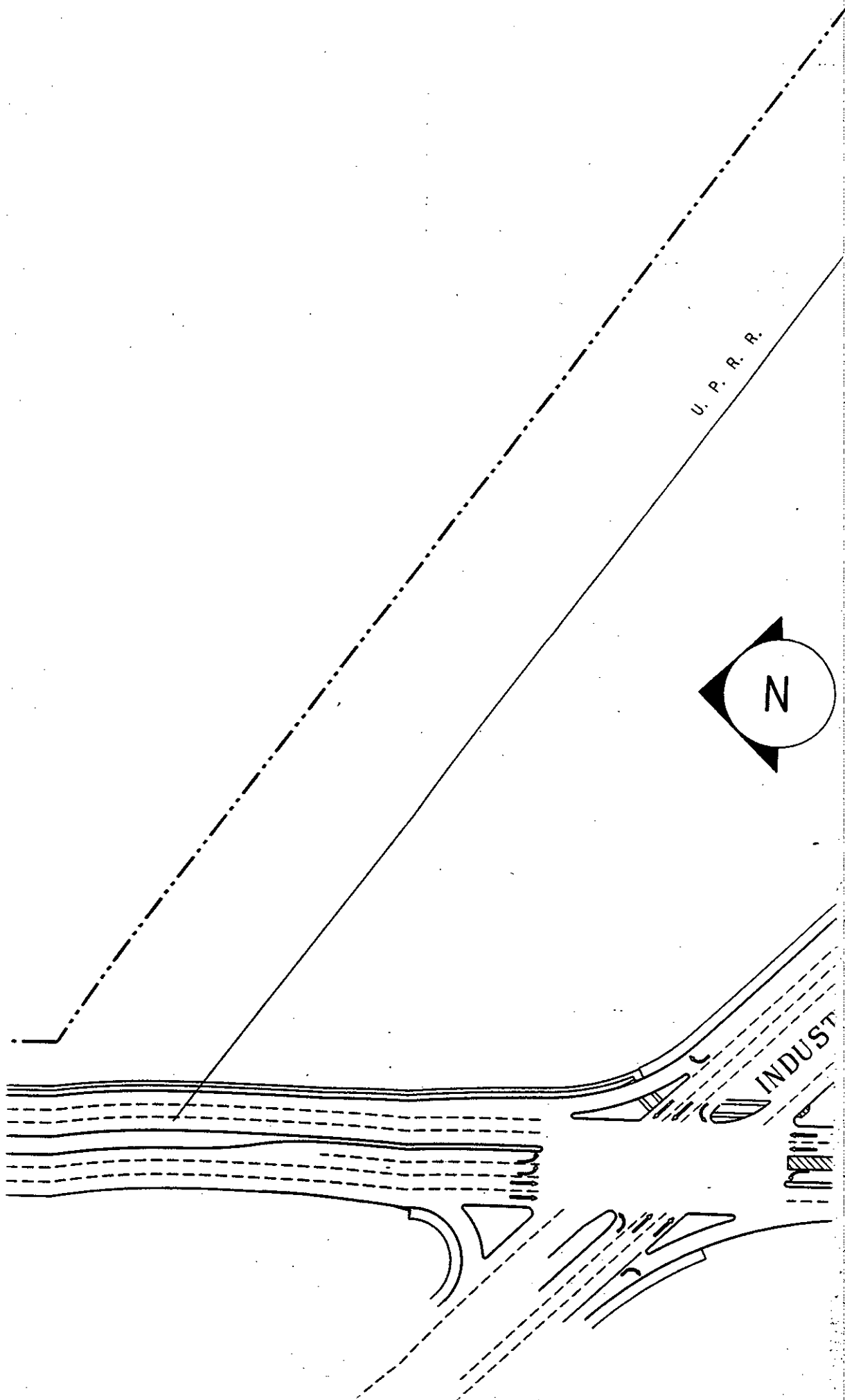




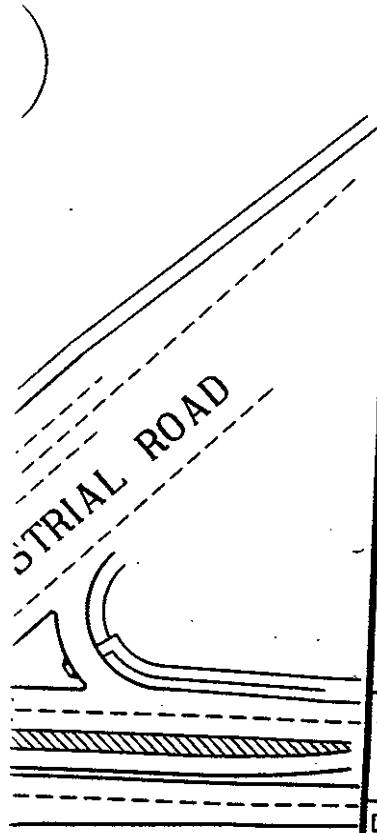
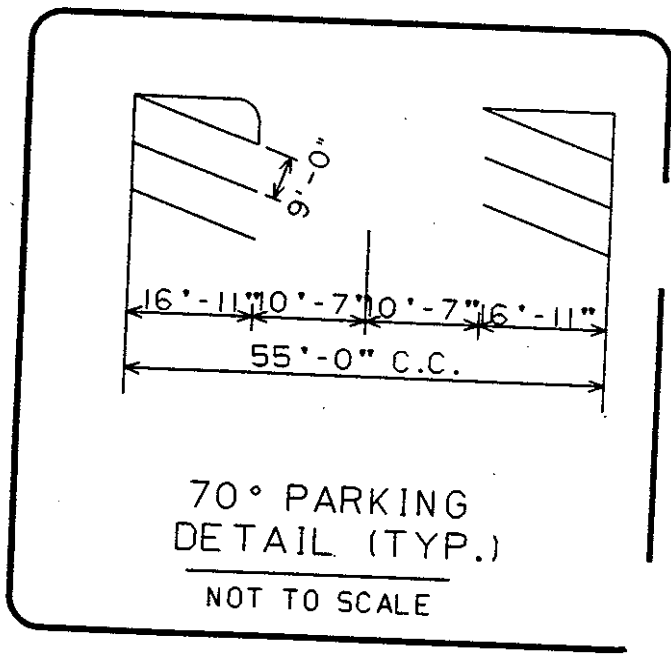
U. P. R. R.



INDUST



| | | |
|--|--|--|
| | | |
| | | |
| | | |
| | | |
| | | |



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 OMAH.LP02.W.CP01.E.P34.W.DP02.KEX.U | DATE 01/17/91 |
| REV. APB | PLAN NAME DEVELOPMENT PLAN | SCALE 1"=100' |
| CHECKED | CODE DP | NUMBER 2 |
| DATE 10/21/91 | | REV. K |