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BOOK 1019 PAGE 240

OAK VIEW MALL
DOUGLAS COUNTY, NEBRASKA
AMENDED AND RESTATED
RECIPROCAL EASEMENT AND OPERATING AGREEMENT

DATED June 30, 1992

BY AND AMONG

CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP,
an Indiana limited partnership,

CONSTRUCTION DEVELOPERS, INCORPORATED,
an Arkansas corporation,

DILLARD DEPARTMENT STORES, INC.,
a Delaware corporation,

YOUNKERS, INC.,
a Delaware corporation, and

J. C. PENNEY PROPERTIES, INC.,
a Delaware corporation

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OAK VIEW MALL

DOUGLAS COUNTY, NEBRASKA

AMENDED AND RESTATED
RECIPROCAL EASEMENT AND OPERATING AGREEMENT

THIS AMENDED AND RESTATED RECIPROCAL EASEMENT AND OPERATING AGREEMENT (hereinafter called "Operating Agreement"), made as of the 30th day of June, 1992, among CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana limited partnership ("Developer"), having an address at 115 West Washington Street, P. O. Box 7033, Indianapolis, Indiana 46207, and CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation ("Condev"), having its principal office at 1600 Cantrell Road, Little Rock, Arkansas 72201, and DILLARD DEPARTMENT STORES, INC., a Delaware corporation ("DDSI"), having its principal office at 1600 Cantrell Road, Little Rock, Arkansas 72201 (Condev and DDSI being hereinafter referred to collectively as "Dillard" and constituting a single Party under this Operating Agreement, YOUNKERS, INC., a Delaware corporation ("Younkers"), having its principal office at 701 Walnut Street, Des Moines, Iowa 50397, and J.C. PENNEY PROPERTIES, INC., a Delaware corporation ("Penney"), having an office at 1901 N. Roselle Road, Schaumburg, Illinois 60195.

WITNESSETH:

WHEREAS, Developer owns a certain tract of land located in Douglas County, Nebraska, and described in Exhibit "A" attached hereto and made a part hereof (the "Developer Tract"), upon which it shall erect and open and operate the Shopping Center as a first class regional enclosed mall shopping center in accordance with the terms and conditions of this Operating Agreement and at the location shown on that certain plot plan dated January 31, 1992 (P EX X) (the "Plot Plan") attached hereto as Exhibit "F" and made a part hereof; and

WHEREAS, Condev has acquired from Developer, and owns in fee simple a certain tract of land located in Douglas County, Nebraska, and described in Exhibit "B" attached hereto and made a part hereof (the "Dillard Tract"), which is contiguous to the Developer Tract, and upon which Dillard has erected and operates a Dillard department store at the location shown on Exhibit "F"; and

WHEREAS, pursuant to a certain Lease Agreement ("Lease") dated as of September 27, 1990, as evidenced by a Memorandum of Lease ("Memorandum") dated as of September 27, 1990, and recorded November 16, 1990 in Book 944, at Page 655, Developer, as Landlord, leased to Younkers, as Tenant, a certain two (2) level building, and a loading dock (and storage area located beneath the dock) for its exclusive use (such building, loading dock and storage area collectively referred to herein as the "Younkers Building"), which building and loading dock have been erected by Younkers pursuant to the terms of the Lease and this Operating Agreement on the Developer Tract at the location shown on Exhibit "F", and which building and loading dock contain approximately 149,400 square feet of Floor Area, together with all rights, privileges, easements, rights of ingress and egress and appurtenances of whatever kind and character, benefiting, belonging or appertaining thereto which are specifically created by the Lease for such uses and purposes as are permitted therein; and

WHEREAS, Penney has acquired from Developer, and owns a certain tract of land located in Douglas County, Nebraska, and described in Exhibit "C" attached hereto and made a part hereof

(the "Penney Tract"), which is contiguous to portions of the Dillard and Developer Tracts, upon which Penney intends to erect and operate a Penney department store at the location shown on Exhibit "F"; and

WHEREAS, the Parties desire to develop, improve, use and operate the Developer Tract, the Dillard Tract, the Penney Tract and the Younkens Building as an integrated first-class regional enclosed mall shopping center, as more particularly shown on Exhibit "F" and the plot plan notes set forth on Exhibit "F-2" attached hereto and made a part hereof (the "Plot Plan Notes"); and

WHEREAS, it is the intent and desire (but not the obligation) of Developer hereafter to convey or lease a portion of the Developer Tract to Sears, Roebuck and Co., for the construction and operation of a department store in the Shopping Center, on the same terms and conditions as are herein provided with respect to Dillard, Penney and Younkens' construction and operation, and at the location shown on Exhibit "F" (hereinafter being referred to as the "Future Department Store", and the tract leased or conveyed to the Future Department Store, as shown on Exhibit "F", hereinafter being referred to as the "Future Department Store Tract"; provided, however, the Developer Tract will not include the Future Department Store Tract after such time as it is sold to a Future Department Store); and

WHEREAS, certain parcels of land situated on the Total Development Tract (as hereinafter defined and as described in Exhibit "D" attached hereto and made a part hereof) are owned by Developer and others, and may be reserved for future development by Developer and others in conjunction with the Shopping Center (the "Reserve Tracts"), which Reserve Tracts are described in Exhibit "E" attached hereto and made a part hereof and shown on Exhibit "F" as tract LL/01 through and including tract LL/10; and

WHEREAS, the Parties desire to enter into this Operating Agreement to provide for certain rights and obligations in connection with the proposed development, improvement, use and operation of the Developer Tract, the Dillard Tract, the Penney Tract and the Younkens Building as the Shopping Center, and for the development, improvement, use and operation of the Reserve Tracts, and to grant and exchange certain reciprocal easements between and among the Developer Tract, Dillard Tract, the Penney Tract and Reserve Tracts, which Tracts together constitute the Total Development Tract; and

WHEREAS, Developer and Dillard have heretofore entered into that certain Reciprocal Easement and Operating Agreement ("First REA"), dated as of September 27, 1990, and recorded April 11, 1991, in Miscellaneous Record Book 959, Page 286, in the Office of the Register of Deeds of Douglas County, Nebraska; and

WHEREAS, Developer, Dillard, Penney and Younkens desire to amend and restate the First REA for the purpose of adding Younkens and Penney as parties to the First REA, and for other purposes as hereinafter set forth and agreed to by the Parties, and to supersede and replace the First REA in its entirety with the terms and conditions of this Operating Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Developer, Dillard, Penney and Younkens hereby amend and restate the First REA in its entirety, and hereby supersede and replace the First REA in its entirety, as follows:

DEFINITIONS

(a) As is used in this Operating Agreement, the following words and phrases, among others, shall mean:

1. "Affiliate" - any party, person, firm or corporation which controls, or is controlled by, such party, or is controlled by the same person, firm or corporation which then controls such party, and any person, firm or corporation which is a member with such party in the relationship of joint venture, partnership or other form of business association concerning the subject matter involved. "Control" for the purpose of this Agreement means the legal or beneficial ownership of fifty percent (50%) or more of the voting securities of the party controlled. In no event shall Developer, Dillard, Penney or Younkers be deemed to be an affiliate of the other.

2. "Agreed Interest Rate" - the rate of interest which is one percent (1%) over the rate of interest averaged on a monthly basis, charged from time to time for commercial loans to most-preferred customers by The Chase Manhattan Bank, N.A., computed separately for each month during which the obligation, or any part thereof, upon which such interest is charged remains unpaid hereunder.

3. "Building" - all Improvements to and upon the Total Development Tract, or any part thereof, including, without limitation, the Younkers Building, but excluding underground utility installations, the Common Area, the Covered Mall, and the landscaping and exterior planted areas, if any, between the exterior perimeter walls of Buildings and the Building Perimeter Sidewalk.

4. "Building Perimeter Sidewalk" - sidewalks and curbs adjoining either: (1) the exterior perimeter walls of the Buildings situated upon the Total Development Tract, or (2) landscaping and exterior planted areas, if any, adjacent to the exterior perimeter walls of said Buildings, and identified on Exhibit "F" as "sidewalk".

5. "Common Area(s)" - certain improved portions of the Total Development Tract which are intended to be and will be available for the general, non-exclusive use, enjoyment, convenience and benefit in common of all Parties hereto and all Occupants, and their respective Permittees, all in accordance with, and subject to, the terms and conditions of this Operating Agreement, but not any Floor Area intended for the exclusive use and occupancy of an Occupant and its Permittees, including, but not limited to:

- (a) parking areas (including employee parking areas, if any) and individual parking spaces for motor vehicles;
- (b) roadways and facilities (including, without limitation, the Ring Road (as defined in Paragraph 24.4 hereof)), berms (if any) adjacent to the Ring Road, driveways, truckways, ramps, aisles, islands, private streets, entrances and exits to and from public roadways and streets, to provide vehicular access and ingress and egress to and from Parking Areas;
- (c) sidewalks, walkways and stairways to provide pedestrian access to and within the Shopping Center;
- (d) ramps, truckways, loading docks and areas, delivery areas or passages, pickup stations and service corridors connecting therewith, except as located within any

Building belonging to any Department Store which is a Party hereto;

- (e) landscaped and exterior planted areas, excluding landscaped and exterior planted areas, if any, between the exterior perimeter walls of buildings and the Building Perimeter Sidewalks;
- (f) curbs, lighting standards (including parking area lights), paving, traffic and directional signs and traffic stripings and markings, as located upon the Shopping Center Tract;
- (g) all Common Utility Facilities serving, or used by, more than one Party hereto;
- (h) the Covered Mall and all outside courts and courtyards; and
- (i) public stairways, public elevators (excluding any freight elevators located within the Building of a Department Store and used exclusively by that Department Store), public escalators, retaining walls, bus stops, first-aid and comfort stations, public restrooms, bike racks, public auditoriums (if any) and public service corridors (excluding any service corridor located within the Building of a Department Store and used exclusively by that Department Store);

all as and if shown on Exhibit "F" attached hereto, but excluding:

- (i) any portions of the Total Development Tract which may, from time to time, be occupied by any duly dedicated public street or highway;
- (ii) such portions of the Shopping Center as shall comprise the areas and spaces in (A) the Developer Building, and (B) any Building belonging or leased to any Department Store;
- (iii) kiosks and pushcarts permitted by Paragraphs 14.3 and 14.4 respectively; and
- (iv) any Building located on a Reserve Tract.

6. "Common Utility Facilities" - all utilities and utility systems in the Shopping Center, including, but not limited to, electric, gas, water (for fire and domestic purposes), telephone, storm water drainage and sanitary sewer systems, as shown on Exhibit F-1 attached hereto and necessary to service the Shopping Center, both on-site and off-site and both underground and overhead, necessary for the operation of the Shopping Center, but excluding such facilities designed and installed for the exclusive use of a Party and portions of such facilities which are within five feet (5') from such Party's Building.

7. "Covered Mall" - (sometimes herein called "Mall" when the context requires "Mall" to mean "Covered Mall") a portion of the Developer Tract and the Improvements situated thereon, designated as "Covered Mall" on Exhibit "F", including, without limitation, covered and roofed malls, courts and arcades on two (2) levels, all of which are lighted, sprinklered and mechanically heated, ventilated, and air conditioned for climatic control; but excluding those areas and Improvements designated or used as kiosks (or pushcarts occupied as Floor Area for income producing purposes) and

public service corridors and public restrooms that are part of the Common Area.

8. "Department Store(s)" - Dillard, Younkers, Penney, the Future Department Store and any other Occupant occupying and operating under a single name more than 70,000 square feet of Gross Leasable Area, containing a number of departments or divisions for the sale of goods and merchandise of various kinds.

9. "Developer" - shall mean Center Road Retail Developers Limited Partnership and its successors and assigns to its interest as a Party to this Operating Agreement, subject to the terms of Article 28.

10. "Floor Area" - the space in a horizontal plane occupied by the surface of each floor within a completed Building, such space being measured in square feet determined by the linear dimensions in feet from the outside of the exterior building perimeter walls to the outside of the exterior building perimeter walls (except party walls as to which the center thereof, instead of the exterior faces thereof, shall be used) including any such space covered by:

- (a) basements and other similar subterranean areas;
- (b) balconies and mezzanines, other than additional space created by fixture installations designed to increase the usability of space exclusively for stock or storage purposes;
- (c) walls and columns;
- (d) elevators, dumb waiters, stairs, escalators and conveyors;
- (e) all other similar spaces located within the exterior facade of the exterior perimeter walls; and
- (f) space occupied by any kiosk or pushcart;

but excluding such space within or constituting:

- (i) the Covered Mall;
- (ii) electrical, utilities and/or mechanical equipment rooms and/or penthouses used to serve any Occupant, but only if such rooms or penthouses are used for such purposes;
- (iii) transformer rooms or vaults;
- (iv) trash, junk tire or rubbish storage spaces and/or bailing rooms;
- (v) paved or concrete aprons (whether or not covered by canopies) and gasoline pump islands located at any tire, battery and accessory ("TBA") automotive service station;
- (vi) sheds used exclusively for Common Area maintenance purposes;
- (vii) truck docks, truck tunnels and enclosed docks for common use (including docks for the exclusive use of a Department Store or other Occupant, except to the extent permitted to be included in the definition of "leased premises" or "demised premises" or "floor area" under a

lease agreement wherein Developer is "landlord");

- (viii) decked storage areas above floor level or storage areas located beneath truck or loading docks;
- (ix) public service or safety corridors required by safety fire codes or similar public laws; and
- (x) each level of any atrium where there is no floor surface.

and upon completion of said Floor Area within the Building, including future additions thereto, of each Party hereto, said Floor Area shall be certified by said Party's architect to the other Parties upon their request. The architects of the other Parties shall confirm such Floor Area within thirty (30) days after receipt of such certification. If the architects of the other Parties do not object to such certification within the thirty (30) day period, then the certification shall be deemed accepted by the other Parties. The Parties hereby acknowledge and agree that the Floor Area of the Dillard Building, Younkers Building and Developer Building is set out in Paragraphs 2.1, 2A.1 and 3.1 hereof, respectively.

11. "Gross Leasable Area" - Floor Area designed for the exclusive use and occupancy of an Occupant, prospective or actual, or one of its licensees, tenants, subtenants or concessionaires, measured in square feet, determined by the linear dimensions in feet, from the center of joint partitions, party or interior walls (or the outside of the exterior building perimeter walls, as applicable) to the joint partitions, party or interior walls (or the outside of the exterior Building perimeter walls, as applicable) excluding any Floor Area:

- (a) in any public meeting hall or auditorium that is neither leased by an Occupant or its licensees, subtenants or concessionaires, nor owned by any Department Store, not to exceed 3,000 square feet;
- (b) in any public restroom that is neither leased by an Occupant nor owned by any Department Store;
- (c) in Shopping Center management offices and storage and in Merchants Association or promotional offices, all of which offices are not to exceed in the aggregate a total of 5,000 square feet;

and the said Gross Leasable Area, including future additions thereto, of each Party hereto shall be certified by said Party's architect to the other Parties upon their request, as provided above with respect to Floor Area. The Parties hereby acknowledge and agree that the Gross Leasable Area of the Dillard Building, Younkers Building and Developer Building is set out in Paragraphs 2.1, 2A.1 and 3.1 hereof, respectively.

12. "Improvements" - all improvements to land of every nature and kind, upon the Total Development Tract, or any part thereof, including, but not limited to, the Common Area, the Common Utility Facilities, the Covered Mall, the Buildings, landscaped areas, including the landscaping, if any, between the exterior perimeter wall of Buildings and the Building Perimeter Sidewalk.

13. "Occupant" - any person or legal entity, including any Party hereto, who is legally entitled to the exclusive use and occupancy of any Gross Leasable Area within the Total

Development Tract under the rights contained in a deed or a written lease, license, occupancy or other agreement.

14. "Opening Date" - shall mean the "Dillard Opening Date" and/or "Younkers Opening Date" and/or the "Penney Opening Date" as such terms are defined and provided in Paragraph 2.7, 2A.6 and 2B.7, respectively, of this Operating Agreement.

15. "Party" - each person and business entity now or hereafter entering into and executing this Operating Agreement, being Developer, Dillard, Penney and Younkens initially, and any successor permitted under the terms and provisions of this Operating Agreement, and referred to collectively as "Parties".

In the event (a) any party, or any successor permitted under the terms and conditions of this Operating Agreement, represents more than one person and/or entity, or (b) the fee interest of a Tract is owned by more than one person or entity holding such interests in undivided ownership interests, such persons and entities nevertheless shall constitute only a single Party. Of all such persons and/or entities constituting only a single Party, those persons and entities owning at least seventy percent (70%) of the undivided ownership interest in the interest of the Tract (or as to Younkens, of its interest in the Lease and its leasehold estate) of such Party, shall:

- (1) designate one of their number to act as agent, authorized to receive notices and act for, and to bind and obligate, all of such persons and entities constituting only a single Party, as the act and obligation of such Party; and
- (2) notify the other Parties hereunder, in writing, of such designation as provided under Article 33 hereof.

In the absence of such written designation, the acts of the Party whose interest in the Tract came to be held in undivided ownership interests (whether or not such Party retains any interest in the Tract in question) shall be binding upon all persons having an interest in said Tract in question, until such time as written notice of such designation is served upon each of the other Parties as aforesaid. Notwithstanding anything to the contrary contained in this Operating Agreement, Younkens and its permitted successors or assignees under this Operating Agreement, shall constitute a single Party under the Operating Agreement.

16. "Permissible Building Area" - the land area within the Shopping Center Tract or any part thereof upon which a designated Party may construct either its initial Building, any future expansion thereof, or its future Building, as provided in this Operating Agreement, and all as shown on Exhibit "F". The Permissible Building Area on each Party's Tract is the portion of each Party's Tract upon which such Party's Building (including, without limitation, the Younkens Building) or permissible building lines are shown on Exhibit "F". The Permissible Building Area on each Reserve Tract shall be subject to the provisions of Paragraph 4.1 hereof.

17. "Permittee" - any Occupant, and any officer, director, partner, employee, agent, contractor, customer, visitor, patient, client, invitee, licensee, tenant, subtenant or concessionaire of any Occupant or of Developer.

18. "Reserve Tract" - as defined in the seventh (7th) of the ten (10) recital paragraphs preceding that part of this Operating Agreement entitled "Definitions".

19. "Sale and Leaseback" - A "Sale and Leaseback" shall mean a transaction whereby (a) a Party who is the fee owner of its Tract and/or its Building conveys the entire fee or leasehold estate in such Tract and/or Building, and such conveyance is followed immediately by a leaseback or subleaseback of the Tract and/or Building either to such Party or to its Affiliate, or (b) a Party who is the leasehold owner of its Tract and/or Building assigns or subleases its entire leasehold interest, and such assignment or sublease is followed immediately by an assignment or sublease of the same Tract and/or Building either to such Party or to its Affiliate. In the event of a Sale and Leaseback, only the lessee or sublessee, as the case may be, entitled to possession of the Tract (or as to Younkers, of its interest in the Lease and the Younkers Building), shall have the status of Party, so long as the lease or sublease in question has not expired or been terminated. In the event of a lease or sublease, as the case may be, other than a Sale and Leaseback, the lessor or sublessor, as the case may be, shall have the status of a Party.

20. "Shopping Center" - the Shopping Center Tract and all Improvements situated thereon.

21. "Shopping Center Tract" - the Developer Tract, the Dillard Tract, Penney Tract and any Future Department Store Tract after it is sold to a Future Department Store, which Shopping Center Tract is described in Exhibit "G" and shown on Exhibit "F", each attached hereto and made a part hereof.

22. "Site Work and Common Area Construction" - as defined and provided in Paragraph 3.2 of this Operating Agreement.

23. "Small Store Floor Area" - all Gross Leasable Area in the Developer Building (other than Floor Area owned by, leased to or intended for occupancy by a Department Store), (a)(i) fronting on the Covered Mall, or (ii) located within the Developer Building and having a customer entrance opening directly onto the Building Perimeter Sidewalk and parking areas, and (b) built for and devoted to the purpose of selling goods and/or services to the public at retail as customarily found in such a shopping center, which services may include, but are not limited to, banks, insurance, savings and loan, personal loan financial services and post office operations, service operations such as beauty salon, barber shop, travel agency, professional offices, restaurants and motion picture theaters; provided, however, Developer shall use its best efforts to lease no more than fifteen percent (15%) of the total Small Store Floor Area leased from time to time, to tenants selling or providing such services to the public.

24. "Supplemental Agreement" shall mean, as the context may require, (a) that certain First Supplemental Agreement dated September 27, 1990, between Dillard and Developer, as amended by that certain Amendment to First Supplemental Agreement dated January 27, 1992, and by that certain Second Amendment to First Supplemental Agreement dated June 30, 1992, each between Dillard and Developer and/or (b) that certain Supplemental Agreement between Penney and Developer, of even date herewith, each of which are binding only upon the parties thereto, and are not binding upon any other Parties to this Operating Agreement. Developer and Dillard hereby reaffirm such First Supplemental Agreement dated September 27, 1990, as amended by such First Amendment thereto dated January 27, 1992, and by such Second Amendment thereto dated June 30, 1992, and hereby agree and confirm that notwithstanding the amendment and replacement of the First REA by this Operating Agreement, such First Supplemental

Agreement, as so amended, shall continue to bind Developer and Dillard, shall now constitute an agreement which supplements and is part of this Operating Agreement (in lieu of a supplement to the First REA) and shall constitute the Supplemental Agreement of Dillard for purposes of this Operating Agreement.

25. "Taxes" - (i) real estate taxes, and (ii) assessments or taxes imposed on interests in real estate for general public improvements, benefits or purposes, and (iii) assessments or taxes which are specifically imposed on interests in real estate for public improvements, and (iv) taxes and assessments imposed on interests in real estate upon the occupancy, use, possession, estates or rights of any party having an interest in the premises upon which the same is imposed, and (v) any penalties, fines or interest added to any of the foregoing and actually paid arising out of the failure of the party who is responsible to pay the foregoing in making payments thereof in accordance with the provisions of this Operating Agreement, except that franchise, corporate, gift, estate, inheritance, succession, devolution, capital levy, capital stock, excess gross receipts, transfer taxes, income taxes, excess profits taxes or other tax based upon or measured by revenue, and any levy or charge measured by consumption or use for water, sewage disposal, telephone, gas, electricity or any other facility, commodity or service, and any taxes on any Occupant's machinery, equipment, inventory or other personal property or assets of any Occupant, shall not be included in the definition of "Taxes".

26. "Total Development Tract" - the Shopping Center Tract and the Reserve Tracts, which Total Development Tract is described in Exhibit "D" and shown on Exhibit "F", each attached hereto and made a part hereof.

27. "Tract or Tracts" - the term "Tract" or "Tracts" shall mean the Developer Tract and/or the Penney Tract and/or the Dillard Tract as the context may require, but, unless expressly or specifically included, shall exclude the Younkers Tract (as defined in Paragraph 18.5(a)).

(b) Other Definitions. As used herein, the following terms have the meanings set forth in the respective Articles or Paragraphs indicated below:

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1. "Bankruptcy Code" - Paragraph 28.1(c)	81
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6. "Developer Building" - Paragraph 3.1(a)(2)	?
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8.	"Developer Operating Period" - Paragraph 22.1	61
9.	"Developer Tract" - First Recital Paragraph	1
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12.	"Dillard Opening Date" - Paragraph 2.8	15
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35.	"Penney Operating Period" - Paragraph 23B.1	65
36.	"Penney Plans" - Paragraph 2B.2	18
37.	"Penney Site Work and Common Area Construction" - Paragraph 3.2(b)	22
38.	"Penney Tract" - Fourth Recital Paragraph	2
39.	"Pipe or Pipes" - Paragraph 24.10	72
40.	"Plot Plan" - First Recital Paragraph	1
41.	"Plot Plan Notes" - Fifth Recital Paragraph	2
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46.	"Take Over Party" Paragraph 19.6 Paragraph 20.7	47 52
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48.	"Tenant's Work" - Paragraph 2A.1	16
49.	"Term" - Paragraph 9.1	33
50.	"Younkers" - Introductory Paragraph	1
51.	"Younkers Building" - Third Recital Paragraph Paragraph 2A.1	1 16
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P A R T O N E

CONSTRUCTION

Article 1 - Cooperation

1.1 Architects, Contractors and Others. Recognizing that the performance of site preparation work and the construction of Improvements by any one Party may or will reasonably be expected to affect performance of site preparation work and the construction of Improvements by each other Party, each Party shall use reasonable efforts to cause its architect, contractors and others engaged in such work or construction to cooperate with each other to the extent reasonably possible and to use reasonable efforts to schedule and execute such work and construction in such manner and at such times as will minimize the interruption thereof, or obstruction to, the respective work and construction of each Party.

1.2 Safety Measures. Each Party shall use reasonable efforts to take all necessary safety measures as shall be reasonably required to protect persons performing such work or construction, as well as each Party and all Permittees, from injury or damage caused by, or resulting from, any work or construction performed by or on behalf of each Party.

1.3 Compliance with Laws. Each Party shall use reasonable efforts not to unduly interfere, during the course of said work and construction, with the business operations, if any, being conducted in the Shopping Center. In the performance of such work and construction, each Party shall comply with all applicable laws and ordinances.

1.4 Utilities and Off-Site Improvements. Each Party shall use reasonable efforts to cooperate with each other Party in planning and approving any Common Utility Facilities and any public improvements to serve the Total Development Tract, such as public utility (either operated or regulated by governments), storm water drainage, sanitary sewer, street and road improvements, and all similar off-site improvements without the Total Development Tract (including traffic signal lights, rights-of-way and any public easements) to be made on, or adjacent to, or without, the Total Development Tract.

1.5 Approvals. Approval of any matter pertaining to such work, construction or public improvements hereafter to be made by a Party hereto under either the provisions of this Operating Agreement or the requirement of a governmental authority shall be made by a representative of such Party as follows:

(a) For Developer:

Mr. Martin Mazany
Project Manager
Melvin Simon & Associates, Inc.
115 West Washington Street
P.O. Box 7033
Indianapolis, Indiana 46207

(b) For Dillard:

Dillard Department Stores, Inc.
P. O. Box 486
Little Rock, Arkansas 72203
Attn: Director of Construction

with a copy of any approval requested to:

Mr. William Dillard, II
Dillard Department Stores, Inc.
P.O. Box 486
Little Rock, Arkansas 72203

(c) For Younkens:

Younkers, Inc.
701 Walnut Street
Des Moines, Iowa 50397
Attention: Director of Construction

with a copy of any approval requested to:

Mr. Alan Raxter
Younkers, Inc.
701 Walnut Street
Des Moines, Iowa 50397

(d) For Penney:

J.C. Penney Company, Inc.
Sarah Matz - 2018
Project Coordinator
5430 LBJ Freeway
Dallas, Texas 75240

with a copy of any approval requested to:

J.C. Penney Company, Inc.
1901 N. Roselle Road
Schaumburg, Illinois 60195
Attn: Regional Real Estate Counsel

subject to the right of each Party to designate a different representative by notice given pursuant to "General Article 33 Notices".

1.6 Project Engineer, Supervision and Inspection.

Notwithstanding any other provision in this Operating Agreement, Developer shall be responsible for the performance, supervision and management of the site work and construction thereof, upon and about the Total Development Tract (even though a portion of said work is being paid for by other Occupants, by Dillard or Penney pursuant to their respective Supplemental Agreements, or by Younkens pursuant to the Lease), all as hereinafter more particularly provided in Paragraph 3.2 hereof, which work and construction shall be performed under a contract or contracts by and between Developer and the contractor or contractors for the Site Work and Common Area Construction. Each Party shall have the right, during the time such work or construction is performed, to inspect and approve such work or construction and to review the cost thereof allocable to its Tract. Developer shall timely make all payments of money due and payable to said contractors from time to time, it being understood and agreed that Dillard, Penney and Younkens shall reimburse Developer promptly for certain costs of such work if and only to the extent provided in their respective Supplemental Agreements, as to Dillard and Penney, and the Lease, as to Younkens.

William Graves, Architects, Inc., Dallas, Texas, shall serve as Design Development Architects; Kirkham, Michael, and Associates, Omaha, Nebraska shall serve as and be defined as the "Project Engineer" and Nebraska Testing, Omaha, Nebraska shall serve as Soils Engineer. The fees, charges and expense of the Project Engineer, shall be borne and paid by Developer. The Project Engineer's duties shall include, but not be limited to, the following: (1) preparation of all site work plans and specifications, which shall include, (a) as to the Dillard Tract only, Dillard's pad specifications, and (b) as to the Penney Tract

only, Penney's pad specifications, all of which specifications have been provided to the Project Engineer, (2) responsibility for inspection of site work as to compliance with plans and specifications approved by the Parties, (3) coordination of all work with various utilities and governmental agencies, (4) coordination of all work with the various Parties to this Operating Agreement, (5) issuance of minutes of various site work meetings through the Developer to all Parties, (6) review all testing reports for compliance with plans and specifications and advise all Parties in the event any installation is not made in accordance with the approved plans and specifications, and (7) provide each Party with a complete set of as-built plans and specifications for the Developer Buildings and Improvements and a complete survey of all utility installations and easements.

CONSTRUCTION

Article 2 - Dillard Construction

2.1 Dillard Building. (a) Dillard has completed and constructed, at its sole cost and expense, a Dillard department store building containing 205,122 square feet of Floor Area and Gross Leasable Area (the "Dillard Building") and Building Perimeter Sidewalk on the Dillard Tract, all as more particularly shown on Exhibit "F", and in accordance with the Dillard Plans prepared by Dillard and submitted to Developer pursuant to Paragraph 2.3 below. The Dillard Building consists of two (2) levels above ground, which (1) do not exceed fifty feet (50') in height, and do not have an entrance which exceeds sixty-five feet (65') in height at any location, and (2) shall contain approximately 205,122 square feet of Floor Area, located entirely within the Permissible Building Area of Dillard as shown on Exhibit "F". Subject to the terms and conditions of Subparagraphs 21.4(a), 21.5(a) and 27.2(a), and Article 23 hereof, the Dillard Building shall at all times have a main entrance on each level abutting, opening and fronting on the Covered Mall, together with such walkways, if any, shown on the Dillard Plans required to connect such entrance to the Covered Mall.

(b) Dillard shall not construct any Building upon its Tract outside Dillard's Permissible Building Area or in any other areas of the Developer Tract or the Dillard Tract.

2.2 Dillard Plans. Dillard prepared both outline and final plans and specifications (collectively called the "Dillard Plans") for the Dillard Building, as well as other matters relating to construction of the Dillard Building at its own expense and without cost or expense to Developer. Such Dillard Plans are consistent with the terms, conditions and provisions of this Operating Agreement, including without limitation Exhibit "F", and the Dillard Plans provided for construction by Dillard of a Dillard Building substantially similar to department stores constructed by or for Dillard and presently in operation as of the date of execution hereof in similar enclosed mall regional shopping centers. Dillard acknowledges and agrees that Developer constructed a suitable building pad for the Dillard Building on the Dillard Tract consistent with the Dillard pad specifications which have been provided by Dillard to Developer, and included as part of the Dillard Plans.

The Dillard Plans for the Dillard Building were prepared by Dillard's architects and engineers. Upon completion of the Dillard Plans for the Dillard Building, and prior to commencement of construction thereof, copies of the Dillard Plans were submitted to Developer for informational purposes. Dillard represents and warrants that it did not materially alter or deviate from the Dillard Plans after submission thereof to Developer, and that the exterior design and appearance of the Dillard Building is architecturally harmonious and compatible with the exterior design

and appearance of the Developer Building, the Covered Mall and other Buildings in the Shopping Center, and that Dillard caused the Dillard Building to be designed and erected in accordance with such criteria. The Dillard Plans for the Dillard Building strictly conform to Exhibit "F" and the Plot Plan Notes.

2.3 Construction Materials and Supervision. Dillard represents and warrants that, in connection with the erection of the Dillard Building and the purchase and installation of the Dillard Building equipment, Dillard selected and paid for all personnel, labor, materials, equipment, services, utilities and other elements, entered into contracts therefor, caused all construction work in the Dillard Building to be done in a first-class and workmanlike manner, and determined and did any and all matters and things, all upon such terms and conditions as Dillard deemed necessary or advisable and all at Dillard's own cost and expense, it being the intention of the parties that Dillard should be solely responsible for the planning, supervision, construction, equipping and payment of the Dillard Building. Dillard represents and warrants that it did not do anything or cause or permit anything to be done in connection with the construction of the Dillard Building which unreasonably interfered with the construction of other Improvements in the Shopping Center.

2.4 Compliance with Laws. Dillard represents and warrants that it did its work hereunder in compliance with building, zoning and other applicable laws, ordinances, codes, rules and regulations and requirements of all Federal, State and municipal governments and the appropriate departments, commissions, boards and officers thereof and in such manner that Dillard has been able to obtain the insurance required to be carried by Dillard pursuant to Article 19 of this Operating Agreement, and that Dillard obtained, at its expense, all building permits, licenses, and other governmental approvals and authorizations which were required to permit the construction and occupancy of the Dillard Building. Dillard shall obtain, and if requested in writing by Developer, shall deliver true copies to Developer of, any temporary or permanent certificate or certificates of occupancy and all other government authorizations, licenses and permits which may be necessary to permit the use of the Dillard Building as a department store. Developer, Penney and Younkens agree to cooperate with Dillard to the extent that Dillard may request or require such cooperation to obtain any such permit, license, compliance, approval or authorization and in all other respects, to the end that the Shopping Center may be constructed as efficiently and expeditiously as possible.

2.5 Interference with Construction. Developer, Penney and Younkens agree to use reasonable efforts to perform or cause to be performed its work so as not to (1) unreasonably interfere with any construction work being performed on the Dillard Building or the remainder of the Shopping Center, or any part thereof, or (2) unreasonably interfere with the use, occupancy or enjoyment of the Dillard Building or the remainder of the Shopping Center or any part thereof.

2.6 Developer Access. Developer, any designee of Developer, and their respective agents and employees had access to the Dillard Tract at all reasonable times while construction of the Dillard Building was in progress, for the purpose of observing performance of the work.

2.7 Dillard Opening Date. Dillard represents and warrants that it completed construction of the Dillard Building and opened the Dillard Building for business with the public on October 16, 1991. The term "Dillard Opening Date", as used herein, shall mean October 16, 1991.

2.8 Indemnity. Dillard shall indemnify, defend and hold harmless the other Parties hereto from and against any and all loss, cost, expense, damages, liability, claims and actions arising out of the work done and performed by Dillard and its officers, agents, employees, contractors and subcontractors hereunder, including, without limitation, any and all claims for personal injury and property damage, resulting from any negligent act or omission of Dillard, its agents, officers, employees, contractors or subcontractors, except for (i) with respect to Developer, claims arising out of the negligent act or omission of Developer, its agents, officers, employees, contractors or subcontractors, (ii) with respect to Younkers, claims arising out of the negligent act or omission of Younkers, its agents, officers, employees, contractors or subcontractors, and (iii) with respect to Penney, claims arising out of the negligent act or omission of Penney, its agents, officers, employees, contractors or subcontractors.

2.9 Mechanic's Liens. Dillard has not caused or permitted, and shall not cause or permit any mechanic's, laborer's or materialman's lien to be filed at any time against the Total Development Tract, or any part thereof, resulting from acts of Dillard or its contractors, subcontractors, agents or employees. If any such lien shall be filed, and after written notice thereof, Dillard shall promptly cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. So long as Dillard causes such lien to be discharged of record as aforesaid, Dillard shall have the right to contest same. If Dillard shall fail to cause such lien to be so discharged within twenty (20) days after notice from the Developer to discharge the lien, then in addition to any other right or remedy which Developer may have, Developer may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any event Developer shall be entitled, if Developer so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowance. Any amount so paid by Developer and all costs and expenses (including reasonable attorney fees) incurred by Developer in connection therewith, together with interest thereon at the Agreed Interest Rate from the date of Developer making the payment or incurring the cost and expense, shall be paid by Dillard to Developer on demand.

CONSTRUCTION

Article 2A - Younkers Construction

2A.1 Younkers Building. (a) Younkers covenants and agrees that Tenant's Work (as such term is defined in the Lease), has been constructed and paid for by Younkers, in the manner and to the extent provided in the Lease, and at the location identified on Exhibit "F", containing 149,326 square feet of Floor Area and Gross Leasable Area, subject to reimbursement by Developer to Younkers of such costs pursuant to, and in the manner and to the extent provided in the Lease. For purposes of this Article 2A only, the term "Younkers Building" shall mean and include the Younkers Building, fixturing improvements, landscaping, sidewalks and loading dock. The Younkers Building shall consist of two (2) levels above ground, which (1) do not exceed fifty feet (50') in height, and do not have an entrance which exceeds sixty feet (60') in height at any location, and (2) shall contain approximately 149,326 square feet of Floor Area, located entirely within the Permissible Building Area of Younkers as shown on Exhibit "F".

(b) Younkers shall not construct any Building in any area of the Developer Tract outside Younkers' Permissible Building Area or in any other areas of the Developer Tract.

2A.2 Younkers Plans and Compliance with Laws. Younkens has constructed and completed the Younkens Building (1) in accordance with the Younkens Plans and Specifications (such term being defined the same as the term "Plans and Specifications" is defined in the Lease), the terms and conditions of the Lease and this Operating Agreement, and the site plan attached hereto as Exhibit "F", (2) in a good and workmanlike manner, with labor and materials of good quality and free from defects and deficiencies known to Younkens, and (3) and in compliance with all building, zoning and other applicable laws, codes, rules, regulations, requirements and ordinances of all Federal, State and Municipal governments and the appropriate departments, commissions, boards and officers thereof. Younkens shall obtain, and if requested in writing by Developer, shall deliver true copies to Developer of, any temporary or permanent certificate or certificates of occupancy and all other government authorizations, licenses, and permits which may or may have been necessary to permit the construction, occupancy and use of the Younkens Building as a department store. Developer, Penney and Dillard agree to cooperate with Younkens to the extent that Younkens may request or require such cooperation to obtain any such permit, license, compliance, approval or authorization and in all other respects, to the end that the Shopping Center may be constructed as efficiently and expeditiously as possible.

2A.3 Interference with Construction. Developer, Penney and Dillard agree to use reasonable efforts to perform or cause to be performed its work so as not to (1) unreasonably interfere with any construction work being performed on the Younkens Building or the remainder of the Shopping Center, or any part thereof, or (2) unreasonably interfere with the use, occupancy or enjoyment of the Younkens Building or the remainder of the Shopping Center or any part thereof.

2A.4 Mechanic's Liens. Younkens has not caused or permitted, and shall not cause or permit, any mechanic's, laborer's or materialman's lien to be filed at any time against the Total Development Tract, or any part thereof, resulting from acts of Younkens or its contractors, subcontractors, agents or employees. If any such lien shall be filed, and after written notice thereof, Younkens shall promptly cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. So long as Younkens causes such lien to be discharged of record as aforesaid, Younkens shall have the right to contest same. If Younkens shall fail to cause such lien to be so discharged within twenty (20) days after notice from the Developer to discharge the lien, then in addition to any other right or remedy which Developer may have, Developer may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any event Developer shall be entitled, if Developer so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowance. Any amount so paid by Developer and all costs and expenses (including reasonable attorney fees) incurred by Developer in connection therewith, together with interest thereon at the Agreed Interest Rate from the date of Developer making the payment or incurring the cost and expense, shall be paid by Younkens to Developer on demand.

2A.5 Indemnity. Younkens shall indemnify, defend and hold harmless Developer, Penney and Dillard from and against any and all loss, cost, expense, damages, liability, claims and actions arising out of the work done and performed by Younkens and its officers, agents, employees, contractors and subcontractors hereunder, including, without limitation, any and all claims for personal injury and property damage, resulting from any negligent act or omission of Younkens, its agents, officers, employees, contractors or subcontractors, except for (i) with respect to Developer, claims

arising out of the negligent act or omission of Developer, its agents, officers, employees, contractors or subcontractors, (ii) with respect to Dillard, claims arising out of the negligent act or omission of Dillard, its agents, officers, employees, contractors or subcontractors, and (iii) with respect to Penney, claims arising out of the negligent act or omission of Penney, its agents, officers, employees, contractors or subcontractors.

2A.6 Younkers Opening Date. In accordance with and subject to the terms and conditions of the Lease, Younkers has substantially completed, fixtured and merchandised the Younkers Building, and Younkers opened the same for business with the public on October 3, 1991 (the "Younkers Opening Date"); provided, however, the Younkers' Rent Commencement Date shall be as defined and provided in the Lease, and Younkers shall pay rent and other charges as provided in the Lease.

CONSTRUCTION

Article 2B - Penney Construction

2B.1 Penney Building. (a) Penney shall commence and complete, at its sole cost and expense, construction of a Penney department store building (the "Penney Building") and Building Perimeter Sidewalk on the Penney Tract, all as more particularly shown on Exhibit "F", and in accordance with the Penney Plans prepared by Penney and submitted to Developer pursuant to Section 2B.3 below. The Penney Building shall consist of two (2) levels above ground, which (1) do not exceed fifty feet (50') in height, and do not have an entrance which exceeds sixty-five feet (65') in height at any location, and (2) shall contain approximately 125,000 square feet of Floor Area, located entirely within the Permissible Building Area of Penney as shown on Exhibit "F". Subject to the terms and conditions of Paragraphs 21.4(b), 21.5(b) and 27.2(b), and Article 23B hereof, the Penney Building shall at all times have a main entrance on each level abutting, opening and fronting on the Covered Mall, together with such walkways, if any, shown on the Penney Plans required to connect such entrance to the Covered Mall.

(b) Penney shall not construct any Building upon its Tract outside Penney's Permissible Building Area or in any other areas of the Developer Tract or the Penney Tract.

2B.2 Penney Plans. Penney shall complete the preparation of both outline and final plans and specifications (collectively called the "Penney Plans") for the Penney Building, as well as other matters relating to construction of the Penney Building at its own expense and without cost or expense to Developer. Such Penney Plans shall be consistent with the terms, conditions and provisions of this Operating Agreement, including without limitation Exhibit "F", and the Penney Plans shall provide for construction by Penney of a Penney Building substantially similar to department stores constructed by or for Penney and presently in operation as of the date of execution hereof in similar enclosed mall regional shopping centers. Developer shall construct a building pad for the Penney Building on the Penney Tract consistent with the Penney pad specifications which shall be provided by Penney to Developer, and included as part of the Penney Plans.

The Penney Plans for the Penney Building shall be prepared by Penney's architects and engineers. Upon completion of the Penney Plans for the Penney Building, and prior to commencement of construction thereof, copies of the Penney Plans shall be submitted to Developer for informational purposes. Penney represents and warrants that it will not materially alter or deviate from the Penney Plans after submission thereof to Developer, and that the exterior design and appearance of the Penney Building shall be architecturally harmonious and compatible with the exterior design and appearance of the Developer Building, the Covered Mall and

other Buildings in the Shopping Center, and that Penney shall cause the Penney Building to be designed and erected in accordance with such criteria. The Penney Plans for the Penney Building shall strictly conform to Exhibit "F" and the Plot Plan Notes.

2B.3 Construction Materials and Supervision. Penney represents and warrants that, in connection with the erection of the Penney Building and the purchase and installation of the Penney Building equipment, Penney shall select and pay for all personnel, labor, materials, equipment, services, utilities and other elements, enter into contracts therefor, and determine and do any and all matters and things, all upon such terms and conditions as Penney deems necessary or advisable and all at Penney's own cost and expense, it being the intention of the parties that Penney should be solely responsible for the planning, supervision, construction, equipping and payment of the Penney Building. Penney represents and warrants that it will not do anything or cause or permit anything to be done in connection with the construction of the Penney Building which unreasonably interfere with the construction of other Improvements in the Shopping Center.

2B.4 Compliance with Laws. Penney represents and warrants that it shall do its work hereunder in compliance with building, zoning and other applicable laws, ordinances, codes, rules and regulations and requirements of all Federal, State and municipal governments and the appropriate departments, commissions, boards and officers thereof and in such manner that Penney shall be able to obtain the insurance required to be carried by Penney pursuant to Article 19 of this Operating Agreement, and that Penney shall obtain, at its expense, all building permits, licenses, and other governmental approvals and authorizations which are required to permit the construction and occupancy of the Penney Building. Developer, Dillard and Younkers agree to cooperate with Penney to the extent that Penney may request or require such cooperation to obtain any such permit, license, compliance, approval or authorization and in all other respects, to the end that the Shopping Center may be constructed as efficiently and expeditiously as possible.

2B.5 Interference with Construction. Developer, Dillard and Younkers agree to use reasonable efforts to perform or cause to be performed its work so as not to (1) unreasonably interfere with any construction work being performed on the Penney Building or the remainder of the Shopping Center, or any part thereof, or (2) unreasonably interfere with the use, occupancy or enjoyment of the Penney Building or the remainder of the Shopping Center or any part thereof.

2B.6 Developer Access. Developer, any designee of Developer, and their respective agents and employees shall have access to the Penney Tract at all reasonable times while construction of any Improvements is in progress, for the purpose of observing performance of the work, but Developer shall not interfere with Penney's construction of any such Improvements in so doing, so long as the same conform to and comply with the Penney Plans and the requirements of this Operating Agreement. Penney represents and warrants that: Penney shall cause all construction work in the Penney Building to be done in a first-class, workmanlike manner, all at Penney's expense, and shall pay in full the costs of such construction; Penney shall comply with and conform to the Penney Plans as reviewed by Developer; the Penney Building shall fully comply with all applicable building and zoning laws and with the requirements of all other applicable laws, rules, orders, notices, codes, ordinances, requirements and rules and regulations of municipal, State, Federal and other governmental authorities, and the appropriate departments, commissions, boards and officers thereof; and Penney shall obtain, and if requested in writing by Developer, shall deliver true copies to Developer of, any temporary

or permanent certificate or certificates of occupancy and all other government authorizations, licenses and permits which may be necessary to permit the use of the Penney Building as a department store.

2B.7 Penney Opening Date. Subject to events beyond its control as set forth in Article 26 hereof, Penney represents and warrants that it shall complete construction of the Penney Building and open the Penney Building for business with the public by October 13, 1993. The term "Penney Opening Date", as used herein, shall mean October 13, 1993, or such earlier date on which Penney opens the Penney Building for business with the public.

2B.8 Indemnity. Penney shall indemnify, defend and hold harmless the other Parties hereto from and against any and all loss, cost, expense, damages, liability, claims and actions arising out of the work done and performed by Penney and its officers, agents, employees, contractors and subcontractors hereunder, including, without limitation, any and all claims for personal injury and property damage, resulting from any negligent act or omission of Penney, its agents, officers, employees, contractors or subcontractors, except for (i) with respect to Developer, claims arising out of the negligent act or omission of Developer, its agents, officers, employees, contractors or subcontractors, and (ii) with respect to Younkers, claims arising out of the negligent act or omission of Younkers, its agents, officers, employees, contractors or subcontractors, and (iii) with respect to Dillard, claims arising out of the negligent act or omission of Dillard, its agents, officers, employees, contractors or subcontractors.

2B.9 Mechanic's Liens. Penney has not caused or permitted, and shall not cause or permit any mechanic's, laborer's or materialman's lien to be filed at any time against the Total Development Tract, or any part thereof, resulting from acts of Penney or its contractors, subcontractors, agents or employees. If any such lien shall be filed, and after written notice thereof, Penney shall promptly cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. So long as Penney causes such lien to be discharged of record as aforesaid, Penney shall have the right to contest same. If Penney shall fail to cause such lien to be so discharged within twenty (20) days after notice from the Developer to discharge the lien, then in addition to any other right or remedy which Developer may have, Developer may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any event Developer shall be entitled, if Developer so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowance. Any amount so paid by Developer and all costs and expenses (including reasonable attorney fees) incurred by Developer in connection therewith, together with interest thereon at the Agreed Interest Rate from the date of Developer making the payment or incurring the cost and expense, shall be paid by Penney to Developer on demand.

CONSTRUCTION

Article 3 - Developer Construction

3.1 Covered Mall and Developer Building. (a) Developer, at its expense, substantially completed (or caused to be substantially completed), by October 16, 1991, (the "Developer Opening Date"), the construction of the following Improvements on the Developer Tract:

- (1) A two (2) level Covered Mall, which does not exceed sixty feet (60') in height, does not have any entrance to the

Covered Mall which exceeds seventy feet (70') in height at any location, connects to the Dillard Building and Younkers Building, and provides main entrances for the Dillard Building and Younkers Building opening onto the Covered Mall, all of which is substantially shown on Exhibit "F"; provided, however, the center part of the Covered Mall is and may be as high as one hundred feet (100');

- (2) A Building on two (2) levels which does not exceed fifty feet (50') in height, does not have any entrance to the Developer Building which exceeds sixty feet (60') in height at any location, and contains at least 250,000 square feet of Small Store Floor Area, attached to and fronting on the Covered Mall, as shown on Exhibit "F" (identified as "Shops" and "Food Court" on the Plot Plan), for occupancy by Occupants selling goods and providing services of the type customarily sold and provided in a regional shopping center and for uses related and incidental thereto; provided, however, that portion of the Developer Building used for a central plant is and may be as high as sixty-five feet (65'). The Building described in this Subparagraph 3.1(a)(2) is referred to in this Operating Agreement as the "Developer Building", which Developer Building as of the date hereof contains 257,859 square feet of Floor Area and 252,757 square feet of Gross Leasable Area.

(b) Developer shall not construct or expand any Buildings and Improvements on the Developer Tract except as shown on Exhibit "F" and the Plot Plan Notes, or as otherwise expressly permitted by Article 4, and upon satisfaction of the other terms and conditions of this Operating Agreement.

3.2 Site Work and Common Area Construction. (a) Except as provided in Paragraph 3.2(b) below, Developer has caused all necessary clearing, grading, site preparation, the Ring Road, parking areas (satisfying required parking ratios pursuant to this Operating Agreement and the Lease), paving, street, traffic control and utility installation work (both on-site and off-site) and construction and installation of all Common Areas (all hereinafter sometimes referred to collectively as the "Site Work and Common Area Construction") to be done on and adjacent to the Shopping Center Tract, in order to permit the construction and completion of the Shopping Center as contemplated or required by this Operating Agreement and/or the Lease. Site Work and Common Area Construction included (without limitation and in addition to all on-site work), construction and installation of the Ring Road and all off-site utility lines and mains necessary, in Developer's judgment, to bring to the Shopping Center all utility services (including construction by Developer of Common Utility Facilities pursuant to Paragraph 17.1) as set out in the Younkers Plans and Specifications and the Dillard Plans, respectively, and such off-site periphery roads, access roads, ramps, means of ingress and egress, and other street improvements, traffic control devices and signalization as are (1) shown on Exhibit F, subject to governmental construction thereof, or (2) otherwise required by governmental authorities and relating to off-site work located outside of the Shopping Center. All traffic signs, road markings and signalization were initially designed in accordance with the manual of Uniform Traffic Control Devices. Developer let the necessary contracts in order to cause such Site Work and Common Area Construction to be done on the Shopping Center Tract, and made all payments of money due to contractors from time to time for such Site Work and Common Area Construction.

(b) Developer shall (subject to events beyond its control as set forth in Article 26 hereof) by May 6, 1993, or such later date on which Penney opens the Penney Building for business with the

public in accordance with Paragraph 2B.7, cause all necessary clearing, grading, site preparation, parking areas (satisfying required parking ratios pursuant to this Operating Agreement and the Lease), paving, street, traffic control and utility installation work (both on-site and off-site) and construction and installation of all Common Areas (all hereinafter sometimes referred to collectively as the "Penney Site Work and Common Area Construction") to be done on and adjacent to the Shopping Center Tract, in order to permit the construction and completion by Penney of the Penney Building, as contemplated or required by this Operating Agreement and the Lease. Site Work and Common Area Construction includes (without limitation and in addition to all on-site work), construction and installation of all off-site utility lines and mains necessary, in Developer's judgment, to bring to the Penney Tract all utility services (including construction by Developer of Common Utility Facilities pursuant to Paragraph 17.1) for Penney as set out in the Penney Plans.

3.3 Interference with Construction. Dillard, Penney and Younkens agree to use reasonable efforts to perform or cause to be performed its work so as not to (1) unreasonably interfere with any construction work being performed on the Developer Building or the remainder of the Shopping Center, or any part thereof, or (2) unreasonably interfere with the use, occupancy or enjoyment of the Developer Building or the remainder of the Shopping Center or any part thereof.

3.4 Compliance with Laws. Developer shall do its work hereunder in a good and workmanlike manner, with labor and materials of good quality and free from defects and deficiencies known to Developer, in compliance with building, zoning and other applicable laws, ordinances, codes, rules, regulations and requirements of all Federal, State and municipal governments and the appropriate departments, commissions, boards and officers thereof, and in such manner that Developer shall be able to obtain the insurance required to be carried by Developer pursuant to Paragraph 19.1; and Developer shall obtain or cause to be obtained all building permits, licenses and other governmental approvals (except such licenses, certificates or approvals relating solely to the Dillard, Penney or Younkens Buildings), which are required to permit the construction and occupancy of the Shopping Center; and all approvals, if any, of Exhibit "F" as may be required by any such governmental department, agency, commission or board. Dillard, Penney and Younkens agree to cooperate with Developer to the extent that Developer may request or require such cooperation to obtain any such permit, license, compliance, approval or authorization and in all other respects, to the end that the Shopping Center may be constructed as efficiently and expeditiously as possible.

3.5 Covered Mall Attachment. (a) The Covered Mall, and the manner of attachment thereof to the Dillard Building, was designed in accordance with good construction practice in the manner customary for structures of this type. The attachment of the Dillard Building to the Covered Mall was constructed in accordance with Dillard Plans and Specifications approved by Developer and Dillard. All costs of installation and construction of the Covered Mall were paid and advanced by Developer. Dillard shall continue to pay and contribute to the cost of the maintenance, repair and operation of the Covered Mall and shall continue to reimburse Developer for Dillard's allocable share of such costs as provided for in its Supplemental Agreement. The Covered Mall and a portion of the Small Store Floor Area in the Developer Building was integrated and interfaced with, and attached to, the Dillard Building, all as set forth in the Dillard Plans and Specifications and shown on Exhibit "F".

(b) The Covered Mall, and the manner of attachment thereof to the Younkens Building, was designed in accordance with good

construction practice in the manner customary for structures of this type. The attachment of the Younkens Building to the Covered Mall was constructed in accordance with Younkens Plans and Specifications approved by Developer and Younkens. All costs of installation and construction of the Covered Mall were paid and advanced by Developer. Younkens shall continue to pay and contribute to the cost of the maintenance, repair and operation of the Covered Mall and shall continue to reimburse Developer for Younkens' allocable share of such costs as provided for in the Lease. The Covered Mall and a portion of the Small Store Floor Area in the Developer Building was integrated and interfaced with, and attached to, the Younkens Building, all as set forth in the Younkens Plans and Specifications and shown on Exhibit "F".

(c) The Covered Mall, and the manner of attachment thereof to the Penney Building, shall be designed in accordance with good construction practice in the manner customary for structures of that type. The attachment of the Penney Building to the Covered Mall shall be constructed in accordance with the Penney Plans approved by Developer and Penney. The Covered Mall and the Penney Building shall not receive any structural support from the other. Penney shall have the obligation to furnish and install the flashing and seal between the Covered Mall and the Penney Building, and the expansion joint. Penney shall repair at Penney's sole cost, any damage to the Covered Mall caused by Penney in making said attachment. Penney shall indemnify and hold Developer harmless from any and all claims, liability, cost and expense, whether in connection with personal injury, property damage or otherwise, which result from or arise out of the making of said attachment. Penney shall pay and contribute to the cost of the maintenance, repair and operation of the Covered Mall and shall reimburse Developer for Penney's allocable share of such costs as provided for in its Supplemental Agreement.

3.6 Indemnity. Developer shall indemnify, defend and hold harmless Dillard, Penney and Younkens from and against any and all loss, cost, expense, damages, liability, claims and actions arising out of the work done and performed by Developer and its officers, agents, employees, contractors and subcontractors hereunder, including, without limitation, any and all claims for personal injury and property damage, resulting from any negligent act or omission of Developer, its agents, officers, employees, contractors or subcontractors, except for (i) with respect to Dillard, claims arising out of the negligent act or omission of Dillard, its agents, officers, employees, contractors or subcontractors, (ii) with respect to Younkens, claims arising out of the negligent act or omission of Younkens, its agents, officers, employees, contractors or subcontractors, and (iii) with respect to Penney, claims arising out of the negligent act or omission of Penney, its agents, officers, employees, contractors or subcontractors.

3.7 Mechanic's Liens. Developer has not caused or permitted, and shall not cause or permit, any mechanic's, laborer's or materialman's lien to be filed at any time against the Total Development Tract, or any part thereof, resulting from acts of Developer or its contractors, subcontractors, agents or employees. If any such lien shall be filed, and after written notice thereof, Developer shall promptly cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. So long as Developer causes such lien to be discharged of record as aforesaid, Developer shall have the right to contest same. If Developer shall fail to cause such lien to be so discharged within twenty (20) days after notice from either of Dillard, Penney or Younkens, then in addition to any other right or remedy which either Dillard, Penney or Younkens may have, Dillard, Penney or Younkens, may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any event Dillard, Penney or Younkens,

shall be entitled, if Dillard, Penney or Younkens, so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowance. Any amount so paid by Dillard, Penney or Younkens, and all costs and expenses (including reasonable attorney fees) incurred by Dillard, Penney or Younkens, in connection therewith, together with interest thereon at the Agreed Interest Rate from the respective dates of Dillard, Penney or Younkens' making of the payment or incurring of the cost and expense, shall be paid by Developer to Dillard, Penney or Younkens on demand.

CONSTRUCTION

Article 4 - Reserve Tracts and Future Department Store

4.1 Reserve Tracts. Notwithstanding anything to the contrary contained in this Operating Agreement, Developer shall have the right to develop, improve, use, operate, lease, sell, convey, transfer, subdivide, replat, mortgage and otherwise deal with the Reserve Tracts and construct, erect, alter, expand, remove and reconstruct Buildings and Improvements thereon at any time and from time to time, but with the following limitations:

1. Set Back. Except for common property lines between Reserve Tracts, any buildings constructed on a Reserve Tract will be set back at least twenty-five feet (25') from the property lines of such Reserve Tract.
2. Access and Curb Cuts. Each Reserve Tract and each subdivided tract therein shall have free, direct and unrestricted access to the Ring Road on the Shopping Center Tract, by means of curb cuts into the Ring Road located as shown on Exhibit "F", or at other locations to be selected and designated by Developer as each such Reserve Tract is developed and/or subdivided, which locations shall be consistent with good traffic planning and control; provided, however, Developer may not, without the approval of Dillard, change the location as shown on Exhibit "F" of such curb cuts into the Ring Road between Entry 4 and Entry 6 along the north side of the Ring Road; provided further, however, Developer may not, without the approval of Younkens, change the location as shown on Exhibit "F" of such curb cuts into the Ring Road between Entry 2 and Entry 4 along the west side of the Ring Road; and provided further, however, there shall be no more than (a) four (4) curb cuts for the benefit of Reserve Tracts located between Entries 2 and 3, (b) two (2) curb cuts for the benefit of Reserve Tracts between Entries 3 and 4, (c) two (2) curb cuts for the benefit of Reserve Tracts between Entries 4 and 5, and (d) two (2) curb cuts for the benefit of Reserve Tracts between Entries 5 and 6. Except as shown on Exhibit "F", there shall not be any curb cuts or access permitted from any Reserve Tract directly into a lateral access drive or spoke road located between the Ring Road and the public right-of-way or street. Each permitted curb cut from a Reserve Tract into the Shopping Center Ring Road or access roads shall be coordinated with the traffic plan of the Shopping Center, and shall be designed and located in conformance with generally accepted traffic principals.
3. Signs. Notwithstanding anything to the contrary in this Operating Agreement, or in the Sign Criteria attached hereto as Exhibit "H", one monument-type sign not exceeding eight feet (8') in height may be erected on each Reserve Tract to identify the Occupant of the Reserve Tract. Any Occupant of a Reserve Tract may mount

a maximum of four (4) signs on its Building (but not on the roof of its Building), 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"). Occupants of Reserve Tracts may place directional signs on the Reserve Tracts, provided that such signs do not exceed four feet (4') in height. All such signs shall be erected and maintained in conformance with the Sign Criteria attached hereto as Exhibit "H" to the extent provided therein, and with all applicable requirements of governmental authorities.

4. Landscaping. The landscaping of the Reserve Tracts shall not materially obstruct (either through original planting or through untrimmed growth) the view of the Shopping Center. In the event Developer fails as provided herein to properly plant and maintain grass in the portion of the Reserve Tracts not utilized for parking and related facilities, Dillard, Penney and Younkers are each granted a non-exclusive easement for the purpose of planting and maintaining grass in said portions at Developer's expense.
5. Building Size and Location. The Reserve Tracts shall be burdened by site line limitations to the extent identified and shown on Exhibit "F" as "no-build areas", and no structure located on any Reserve Tract shall be constructed over the lesser of two stories or twenty-five feet (25') (including roof top appurtenances) in height above proposed finished floor elevations as identified and shown on Exhibit "F"; provided, however, that finished floor elevation as identified and shown on Exhibit "F" may change as a result of construction, which variation will be no greater than five feet (5') in excess of that identified and shown on Exhibit "F". No structure located on that Reserve Tract designated as LL/01 on Exhibit "F", shall contain more than 30,000 square feet of Gross Leasable Area. No structure located on those Reserve Tracts designated as LL/02 through and including LL/10 on Exhibit "F", shall contain more than 15,000 square feet of Gross Leasable Area.
6. Parking. Each Reserve Tract shall satisfy all parking requirements of governmental authorities, provided, however, there shall be not less than five (5) parking spaces for each 1,000 square feet of Gross Leasable Area on each Reserve Tract; provided further, however, in the event a theatre, hotel or office building is constructed as permitted above, parking therefor shall be provided in accordance with the following:
 - theatre - one (1) space for each three (3) seats;
 - hotel - one (1) space for each guest room or suite; and
 - office building - three (3) spaces for each 1,000 square feet of Gross Leasable Area.
7. Uses. During the term of this Operating Agreement, none of the Reserve Tracts shall be used for other than commercial or retail sales or services, or theatres or restaurants. Services may include, but not be limited to, financial institutions, brokerage offices and travel agencies. Notwithstanding the foregoing, none of the following uses or operations shall be permitted on any Reserve Tract:

- (a) Any obnoxious odor or noise or sound which is reasonably objectionable and constitutes a public or private nuisance;
 - (b) Any warehousing (but not including any storage areas in connection with retail sales at the Shopping Center), assembling, manufacturing, distilling, refining, smelting, agricultural, mining operation or other industrial use;
 - (c) Any mobile home, trailer court, labor camp, junkyard, or animal raising establishment (except for pet shops that otherwise comply with this Operating Agreement, and except further that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance);
 - (d) Any dumping, disposing, incineration or reduction of garbage (exclusive of garbage compactors located in the rear of any building);
 - (e) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
 - (f) Any dry cleaning plant;
 - (g) Any automobile, truck, motorcycle or recreational vehicles, sales, leasing, display or repair except in connection with a TBA, tire store or automobile oil and lubricating service facility and except further for vehicle leasing if an incidental but not primary use by an Occupant;
 - (h) Any living quarters, sleeping apartments or lodging rooms, except for a hotel;
 - (i) Any mortuary;
 - (j) Amusement gallery, night club, game arcade, gameroom, billiard or pool room, dancehall, or discotheque, except if such use represents a portion of contiguous space owned or being leased by a theatre or restaurant; or
 - (k) Any theatre which exhibits or features pornographic movies.
8. Employee Parking. Each Reserve Tract will be subject to parking regulations which will prohibit employees, agents and contractors of the Occupant of the Reserve Tract from parking on the Shopping Center Tract, and Developer will enforce such rule.
9. Maintenance. The parking area, driveways, and all other public areas on such Reserve Tract will be maintained in accordance with the same standards as are set forth in Article 20 hereof.
10. Permissible Building Area. Unless otherwise shown on Exhibit "F", the Permissible Building Area on each Reserve Tract shall be the entire Reserve Tract, subject to the conditions, covenants and restrictions of this Paragraph 4.1.
11. Construction. Any Building erected on a Reserve Tract shall be architecturally harmonious and compatible with the Buildings on the Shopping Center Tract, except for Buildings erected by or for tenants or Occupants

comprising part of a chain of stores, offices, theatres or restaurants operating nationally (but not in every state), which may use and retain established or recognized elements of their standard or customary building design, format or appearance.

12. Pre-Construction Use. Until such time as a Reserve Tract is developed and improved by Developer or its successor and assign, Developer shall, at no expense to any other Party, keep the same planted with grass, mowed and in a clean, safe and slightly condition, or Developer, at its election, and at no expense to any other Party may cause any such Reserve Tract to be paved and used temporarily for parking of motor vehicles.
13. Damage or Destruction. Each Reserve Tract shall be maintained in a clean and orderly condition, consistent with the standards of maintenance for the Shopping Center. In the event of any damage or destruction of any Buildings on a Reserve Tract by fire or other casualty, the same shall promptly be repaired and restored or, in the alternative, if the owner or Occupant of such Reserve Tract elects not to repair or restore such Building, it shall, at no expense to any other Party, clear such Reserve Tract of all debris and hazardous conditions and shall thereafter keep such Reserve Tract planted with grass, mowed and in a clean, safe and slightly condition.
14. Insurance. The owner of each Reserve Tract shall maintain, or cause to be maintained, liability insurance on its Reserve Tract in accordance with the requirements (but excluding the minimum policy limits set out therein, which policy limits for purposes of this Paragraph 14 shall be \$3,000,000.00 and \$500,000, respectively, as to the coverages in Subparagraph 19.5(a)(1), and \$3,000,000.00 as to the coverage described in Subparagraph 19.5(a)(2)) of Paragraph 19.5(a) of this Operating Agreement.

The foregoing shall constitute covenants running with the Reserve Tracts and any deed, lease or other instrument of conveyance or transfer of any Reserve Tract shall have incorporated therein by reference the restrictions and other covenants contained in this Paragraph 4.1. A violation of any restrictions on a Reserve Tract by the owner of such Tract who is not then the owner of the Developer Tract or an Affiliate of the owner of the Developer Tract, shall not constitute a default, except as hereinafter provided in this Paragraph, by the owner of the Developer Tract under this Operating Agreement, but in any event said restrictions on the Reserve Tracts shall be enforceable against Developer so long as Developer owns the Reserve Tracts and against any successor to Developer's interest in the Reserve Tract; provided, however, Developer agrees to use reasonable efforts to enforce such restrictions against the Reserve Tracts in the event of a violation by a successor to Developer's interest in the Reserve Tract; provided further, however, nothing contained in this Paragraph 4.1 shall relieve Developer from any liability or obligation to (a) keep, repair, manage, insure, operate and maintain, or cause to be kept, repaired, managed, insured, operated and maintained, the Common Areas on the Reserve Tracts in accordance with the terms and conditions of Article 20 hereof, and (b) maintain, or cause to be maintained, upon the Total Development Tract, the minimum parking ratio set forth in Subparagraph 15.2(a) hereof. Any replat or resubdivision of the Reserve Tracts shall be subject to consent by Dillard, Penney and Younkers, which consent shall not be unreasonably withheld, denied or delayed, and upon such consent, Dillard, Penney and Younkers shall join in the execution of any replat or resubdivision of the Reserve Tracts if and when requested by Developer from time to time, at no cost or

expense to Dillard, Penney or Younkers, provided, however, any construction on any such replatted or resubdivided Reserve Tract(s) shall comply with the terms of Paragraph 4.1 of this Operating Agreement. Developer shall review the plans and specifications for any such construction and shall certify to the Department Stores that such construction, if built in compliance with the plans and specifications, will be in compliance with Section 4.1.

Notwithstanding anything to the contrary contained herein, no default by any owner of a Reserve Tract under any of the foregoing covenants relative to the Reserve Tract as set forth above in this Paragraph 4.1 shall entitle Dillard, Penney or Younkers to cancel or terminate this Operating Agreement or any of its covenants and obligations hereunder or any of the easements granted hereunder, and the sole remedies of Dillard, Penney or Younkers in the event of any such default as to a Reserve Tract shall be by way of damages and injunctive relief against the Owner of the Reserve Tract or against the Developer if the Developer fails to enforce such restrictions as provided in the immediate preceding paragraph.

4.2 Future Department Store. Each Party hereto shall permit the future construction and operation by the Future Department Store at a later date, as and when Developer shall see fit, within the Permissible Building Areas designated on Exhibit "F", of the Future Department Store Building and related Improvements, and the conveyance or lease of a portion of the Developer Tract to the Future Department Store for such purposes, subject to this Operating Agreement and the following:

1. Construction. The Future Department Store shall comply with the standards of construction provided in this Operating Agreement, which standards shall be substantially the same as provided in Paragraphs 2.2-2.6 and 2.8-2.9 of this Operating Agreement.
2. Permissible Building Area. All such construction for or of its Building by the Future Department Store shall be within the Permissible Building Area for its Future Department Store as shown on Exhibit "F", shall contain no more Floor Area than as shown on Exhibit "F", and shall not exceed fifty feet (50') in height, nor may any entrance to the Future Department Store Building exceed sixty feet (60') in height at any location, above the proposed finished floor elevations as identified on Exhibit "F"; provided, however, such finished floor elevations may vary by no more than two feet (2') in excess of those shown on Exhibit "F".
3. Operating Agreement and Utility Easements. Developer may convey or lease a Future Department Store Tract to the Future Department Store, and the Future Department Store shall become a Party to this Operating Agreement, however, if the Future Department Store leases its Tract and/or Building in the Shopping Center by a lease containing substantially the same construction and operating terms, provisions and covenants as to such Future Department Store as are, in substance, contained herein, the Future Department Store may (but shall not be required to) be a Party and the lease shall be subject to the applicable terms of this Operating Agreement. The Parties hereto shall execute, deliver and file any and all instruments and documents satisfactory to its counsel and reasonably required to facilitate and effect the admission of the Future Department Store to the Shopping Center from time to time in accordance with the terms of this Operating Agreement, including, without limitation, a further subdivision or replat of the Shopping Center Tract (but not affecting the boundaries of (a) the Dillard Tract, (b) the Penney Tract or (c) "the Younkers

Tract" as such Younkens Tract is defined and used in this Operating Agreement for certain limited purposes) and/or the Developer Tract, or part thereof, if necessary, and an amendment of this Operating Agreement. Developer, Penney and Dillard shall also grant and dedicate additional utility easements over, upon, across and through their respective Tracts as and when requested by Developer from time to time for such purposes, and Younkens if necessary shall consent to such easements, provided such easements do not interfere with the grantor's or Younkens' use of its Tract. Developer shall submit to Penney and Dillard all such subdivision plats and utility easements with respect to the Penney Tract and Dillard Tract, respectively, in connection with the admission of the Future Department Store to the Shopping Center as aforesaid, for approval, execution and delivery by Penney and Dillard, as and when requested by Developer, which approval, execution and delivery shall not be unreasonably withheld, denied or delayed, provided such easements do not materially interfere with Penney and Dillard's use of their respective Tracts.

4. Parking. The Total Development Tract, the Developer Tract, the Penney Tract, the Dillard Tract and the Future Department Store Tract always shall provide and maintain parking spaces sufficient to satisfy and maintain the parking ratios for such Tracts and the Shopping Center required by the provisions of this Operating Agreement and the Lease, with the express understanding that there shall be no multi-level parking, except only as permitted by the express terms and conditions of Article 27 hereof.
5. Use and Benefit of Article 24 Easements. The Future Department Store shall acquire or lease and hold its Future Department Store Tract subject to all of the easements granted and created under Article 24 of this Operating Agreement, as a servitude thereon for the benefit of, and appurtenant to, all of the other Tracts and the Younkens Building; and the Future Department Store Tract or building site shall have and enjoy the use and benefit of all the easements granted and created under Article 24 of this Operating Agreement which constitute a servitude upon all of the other Tracts for the benefit of, and appurtenant to, the Future Department Store Tract, subject to the provisions and conditions of said Article 24; and all such rights and easements shall be mutual, reciprocal and coordinate, and none shall be superior or inferior to any others.
6. Construction Barricades and Staging Areas. If at any time after the earlier of the Younkens Opening Date, Penney Opening Date or Dillard Opening Date, Developer is performing or permitting the performance of any construction work for the Future Department Store that is not fully enclosed by perimeter walls, Developer will erect or cause to be erected an adequate and attractive barricade or other protective device providing adequate protection to the public, and shall maintain or cause to be maintained the same until removal would be justified under good construction practice. Developer shall also locate and maintain (or cause to be located and maintained) construction staging areas and parking areas for employees of contractors for such construction, which areas shall be in reasonable proximity to the construction site for the Future Department Store, and shall be located and maintained to minimize interference with Dillard, Penney and Younkens in their businesses at their respective Buildings.

Developer shall have no further liability or responsibility with regard to the Future Department Store Tract after it has conveyed the same as herein provided, except to the extent that Developer expressly retains any such liability or responsibility under the terms of this Operating Agreement (which shall always include but not be limited to the obligation to maintain the Common Areas pursuant to the terms and conditions of this Operating Agreement and the Lease). Developer also may add or delete Small Store Floor Area, subject to substantial compliance with the standards of construction provided in this Operating Agreement, in order to accommodate the addition of the Future Department Store Building, as shown on Exhibit "F". All or part of the Permissible Building Area of the Future Department Store Tract, which area is marked "Future Sears Department Store" on Exhibit "F", may be used (1) for parking or other Common Areas, (2) as part of the Covered Mall, or (3) for Small Store Floor Area; provided, however, if the Future Department Store is constructed, it may only be constructed in accordance with the terms and conditions of this Operating Agreement in the Permissible Building Area for the Future Department Store as shown on Exhibit "F".

CONSTRUCTION

Article 5 - Insurance

5.1 Liability - Developer. Developer shall require each of its contractors to carry contractor's protective liability insurance, at its sole expense or at each such contractor's sole expense, covering Developer, Penney, Dillard and Younkens as named insureds, in the minimum limits of:

1. \$2,000,000 for death of, or bodily injury to, or personal injury to, one person;
2. \$3,000,000 for death of, or bodily injury to, or personal injury to, more than one person, in or resulting from one occurrence; and
3. Property damage to the limit of not less than \$1,000,000 for each occurrence;

during the period of time from the beginning of the construction work on the Developer Tract, to and including the completion of the construction of the proposed improvements on the Developer Tract.

5.2 Liability - Dillard. Dillard required each of its contractors to carry contractor's protective liability insurance, at its sole expense or at each such contractor's sole expense, covering Dillard, Younkens and Developer, as named insureds, in the minimum limits of:

1. \$2,000,000 for death of, or bodily injury to, or personal injury to, one person;
2. \$3,000,000 for death of, or bodily injury to, or personal injury to, more than one person, in or resulting from one occurrence; and
3. Property damage to the limit of not less than \$1,000,000 for each occurrence;

during the period of time from the beginning of construction of the Dillard Building on its Tract, to and including the completion of the construction of the proposed Improvements on the Dillard Tract.

5.3 Liability - Younkens. Younkens required each of its contractors to carry contractor's protective liability insurance, at its sole expense or at each such contractor's sole expense,

covering Younkens, Dillard and Developer, as named insureds, in the minimum limits of:

1. \$2,000,000 for death of, or bodily injury to, or personal injury to, one person;
2. \$3,000,000 for death of, or bodily injury to, or personal injury to, more than one person, in or resulting from one occurrence; and
3. Property damage to the limit of not less than \$1,000,000 for each occurrence;

during the period of time from the beginning of construction by Younkens of the Younkens Building, to and including the completion of the construction of the Younkens Building.

5.4 Liability - Penney. Penney shall require each of its contractors to carry contractor's protective liability insurance, at its sole expense or at each such contractor's sole expense, covering Penney, Dillard, Younkens and Developer, as named insureds, in the minimum limits of:

1. \$2,000,000 for death of, or bodily injury to, or personal injury to, one person;
2. \$3,000,000 for death of, or bodily injury to, or personal injury to, more than one person, in or resulting from one occurrence; and
3. Property damage to the limit of not less than \$1,000,000 for each occurrence;

during the period of time from the beginning of construction by Penney of the Penney Building, to and including the completion of the construction of the Penney Building.

5.5 Builder's Risk. Each Party shall maintain, or cause to be maintained, Builder's Risk Insurance covering each Party and its contractors and subcontractors, as their interest may appear, against loss or damage by fire, vandalism and malicious mischief and such other risks as are customarily covered by a so-called "All-Risk" policy of insurance (including but not limited to the perils covered by standard Fire and Extended Coverage Insurance), of such party's work and Improvements, and all materials, equipment, supplies and temporary structures of all kinds incidental to such Party's construction work, Improvements and equipment, all while forming a part of or contained in such improvements or temporary structures, or while on the Shopping Center Tract or within 100 feet thereof, or when adjacent thereto, while on sidewalks, streets or alleys, all to the full 100%, insurable value thereof at all times on a completed value basis. Each Party further agrees to carry (1) Worker's Compensation and Occupational Disease Insurance in accordance with the laws of the State of Nebraska, including Employer's Liability Insurance to the limit of \$500,000.00, and (2) Comprehensive General Liability and Automobile Liability Insurance, including "non-owned" automobiles, against bodily injury, including death resulting therefrom, in the limits of \$1,000,000.00 for any one occurrence and \$250,000.00 property damage or a combined single limit of \$1,000,000.00, each such policy naming the other Parties as additional insureds.

5.6 Future Work. Each Party shall, during any period of expansion, remodeling, major repairs or maintenance to any of the Improvements upon its Tract, maintain such insurance as is herein required to be carried and maintained during the said construction period, except that the amounts thereof shall be reduced or increased according to the extent of such expansion, remodeling, repairs or maintenance. Penney, Younkens and Dillard shall each

furnish certificates of such insurance to the Developer from time to time upon the request of Developer, and Developer shall furnish such certificate to Penney, Dillard or Younkers upon their request.

5.7 Mutual Waivers. Each Party hereby waives any and every claim which arises, or may arise, in its favor against the other Party during the period of construction for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Shopping Center, which loss or damage is recoverable under said insurance policies and to the extent that this waiver is permitted under said insurance policies and does not invalidate any such insurance coverage. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or damage to, the said property of the other Party. Each Party shall use reasonable efforts to cause its insurance policies to provide for and permit such waiver of subrogation, provided the same is available at standard premium rates and at no additional cost or expense to the other Party. To the extent that any Party is unable to furnish such waiver of subrogation to the other Parties hereunder, this waiver of subrogation by the other Parties shall be ineffective and inapplicable as to the Party who is unable to furnish such waiver of subrogation. This waiver shall apply equally to any Party who elects to be self insured, in whole or in part, as herein provided, as if such Party were independently insured.

CONSTRUCTION

Article 6 - Liens

6.1 When, under the provisions of this Operating Agreement, construction is permitted to be performed or caused by a Party, and such construction is performed and done, it is understood and agreed that the Party performing or causing such construction shall not permit any mechanic's or materialmen's liens to stand against or attach to any part of the Shopping Center Tract.

6.2 The Party performing such construction may bond and contest the validity and amount of any such lien, but on final determination of the validity and the amount of the lien, said Party shall immediately pay any judgment rendered, with all proper costs and charges, and shall have the lien released at said Party's expense. Upon the request of the Developer (or upon the request of Dillard, Penney or Younkers, if the lien is against the Developer Tract), the Party performing such construction shall furnish or cause to be furnished, a bond for the removal of any such lien, to the extent that any such lien affects the property of such other Party, provided such procedure for bonding of liens is available under applicable law.

6.3 The Party performing such construction shall indemnify, defend and hold harmless all other Parties and the other Partys' Tract from all loss, costs, damage, liability and expense (including reasonable attorneys' fees) resulting from the assertion of any such liens.

CONSTRUCTION

Article 7 - INTENTIONALLY DELETED.

CONSTRUCTION

Article 8 - INTENTIONALLY OMITTED

P A R T T W O

OPERATION

Article 9 - Term

9.1 The term of this Operating Agreement shall commence on the date of execution hereof and shall (unless sooner terminated under conditions contained herein) expire on the later of (i) January 31, 2040, or (ii) the termination date of the Lease; provided, however, in no event shall the term of this Operating Agreement extend beyond, and such term shall automatically expire upon, January 31, 2052 (the "Term").

9.2 The easements granted in Part Three of this Operating Agreement, except those which by their terms end on the termination of this Operating Agreement, shall survive the termination of this Operating Agreement.

9.3 If the Lease terminates after January 31, 2040, but before January 31, 2052, Developer shall notify the other Parties hereto of such termination within thirty (30) days after the date of such termination.

OPERATION

Article 10 - Shopping Center Name

For identification, public relations, operation and advertising purposes, the name of the Shopping Center shall be "Oak View Mall" and such name shall not be changed during the Term of this Operating Agreement without the written consent of Developer and each of the Department Stores.

OPERATION

Article 11 - Publicity Releases

No Party nor any other Department Store shall issue any statement or publicity release directly concerning any other Party or this Operating Agreement or otherwise publicize or announce this Operating Agreement except in such form and at such time as may be approved by the other, which approval shall not be unreasonably withheld, delayed or denied; provided, however, that nothing herein contained shall be construed to prohibit, prevent or interfere with any Party (1) conducting the usual type of advertising, publicity and promotion customarily done by each Party or to require any such consent or approval therefor, (2) making or issuing a statement or communication (a) respecting a dispute, disagreement, lawsuit or arbitration case concerning this Operating Agreement or (b) required by applicable state or federal statutes, or (c) releasing or distributing a true and correct copy of all or any part of this Operating Agreement.

OPERATION

Article 12 - Tenant Leasing

12.1 Developer has commenced and shall continue to conduct its leasing activities as to the Small Store Floor Area.

12.2 Developer shall continue to use its best efforts to negotiate with prospective tenants for the purpose of obtaining executed written lease agreements for the Small Store Floor Area.

12.3 It is in the mutual and best interests of the Parties, and imperative to the maximum utilization of their adjoining properties, that the Shopping Center (a) be developed and maintained as an integrated, first-class regional shopping center,

and (b) contain a combination of merchants and businesses which, in the reasonable judgment and discretion of Developer:

- (1) represents a sound, balanced and generally compatible diversification of merchandise and services (i.e., "tenant mix");
- (2) are qualified and willing to be part of a continuous merchandising and promotional program; and
- (3) will fixture, decorate and maintain their respective stores and business premises in a clean, safe, sightly, tasteful and decorous manner, having regard for the general standards of good appearance prevailing in the Shopping Center;

Developer will use its best efforts to effectuate a balanced distribution of such tenants in the Small Store Floor Area, in order to avoid an undue concentration of any particular type or class of tenant in any one area, and in order to effect, insofar as reasonably possible in the reasonable judgment and discretion of Developer, an equitable distribution of various types and classes of tenants in proximity to the Dillard, Penney and Younkers Buildings; provided, however, that nothing contained in this Article 12 shall be deemed to regulate or restrict Developer's leasing efforts, or to prohibit or preclude the leasing of any such Small Store Floor Area to such tenants typically found in or compatible with first-class regional enclosed mall shopping centers as Developer shall see fit in its reasonable judgment and discretion; provided further, however, nothing contained in this Article 12 shall prohibit or restrict the use as a "food court" of that portion of the Shopping Center shown as "food court" on Exhibit "F".

12.4 Any lease or other arrangement for an Occupant to occupy Small Store Floor Area that is located within one hundred twenty-five (125) linear feet of the main entrance of the Dillard Building, Penney Building or Younkers Building onto the Covered Mall, shall not permit such Occupant to engage in the principal business purpose of (1) selling processed prepared food for consumption on premises or for carry-out (i.e. "fast food"), except (a) within that portion of the Shopping Center shown as the "food court" on Exhibit "F", or (b) for the operation of a conventional sit-down type restaurant or cafeteria selling prepared food for consumption on-premises in any Small Store Floor Area, or (2) conducting an amusement arcade or recreation parlor, pet shop or laundry and dry cleaning service.

Operation

Article 13 - Merchants Association or Promotional Fund

13.1 Dillard, Penney and Younkers agree that on or prior to their Opening Dates, each shall join any Merchants Association formed by Developer for the purpose of promoting business in the Shopping Center, and shall remain a member thereof, and annually pay dues and contributions thereto, upon and subject to the terms and conditions hereinafter set forth in this Paragraph 13.1. The annual contribution of Dillard, Penney and Younkers to the Merchants Association shall be payable in equal monthly installments in advance during the Merchants Association's fiscal year for which such contribution is being made. The agreements of Dillard, Penney and Younkers to join any Merchants Association, and to pay dues and contributions as specified herein, are subject to the following terms and conditions:

1. Membership therein is available to Dillard, Penney and Younkers on a fair and equitable basis;

2. Developer and Occupants of at least seventy-five percent (75%) of the leased and occupied Small Store Floor Area, and any Future Department Store after it opens and commences operation, are members of said Association and are paying dues and contributions thereto. Further, the agreements of Dillard, Penney and Younkens to be members, and pay dues and contributions, are each subject to the others being members and paying dues;
3. Developer shall pay in cash an amount not less than twenty-five percent (25%) of the monies paid annually by all Occupants (including Department Stores), such payment by Developer to be in addition to the monies paid by the Department Stores and tenants of Developer;
4. Dillard, Penney and Younkens shall not be bound by any act or omission of said Merchants Association, the sole obligations of Dillard, Penney and Younkens to said Merchants Association being to pay dues and contributions in accordance with the provisions of this Article;

provided, however, if and so long as the conditions recited in 1-4 above are satisfied, Dillard, Penney and Younkens shall contribute to the Merchants Association for at least three (3) years following their respective Opening Dates, and thereafter may (but shall not be obligated to) continue to contribute to the Merchants Association.

13.2 In the alternative, Developer may, at its option, create and maintain an advertising and promotional fund (hereinafter referred to as "the Fund"), the primary purpose of which is to provide sums necessary for professional advertising and promotional services in connection with the promotion of the Shopping Center. Dillard, Penney and Younkens agree to contribute to the Fund annually that amount provided for in the Supplemental Agreement, as to Dillard and Penney, and in the Lease, as to Younkens, payable in equal monthly installments, so long as:

1. Developer and Occupants of at least seventy-five percent (75%) of the leased and occupied Small Store Floor Area, and the Future Department Store after it opens and commences operation, are paying contributions thereto. Further, the agreements of Dillard, Penney and Younkens to contribute, are each subject to the others being obligated to make a contribution thereto.
2. Developer shall contribute in cash an amount not less than twenty-five percent (25%) of the monies collected from all Occupants (including Department Stores) annually. Any over-payment or under-payment by Developer shall be adjusted annually.
3. Dillard, Penney and Younkens shall not be bound by any act or omission of said Fund, the sole obligations of Dillard, Penney and Younkens to said Fund being to make contributions in accordance with the provisions of this Article,

provided, however, in and for so long as the conditions recited in 1-3 above are satisfied, Dillard, Penney and Younkens shall contribute to the Fund for at least three (3) years following their respective Opening Dates, and thereafter may (but shall not be obligated to) continue to contribute to the Fund.

13.3 Developer agrees to use reasonable efforts to spend all funds collected for a Merchants' Association or the Promotional Fund, in the year such funds are collected.

13.4 Developer shall keep complete and accurate books and records of the Merchant's Association or Promotional Fund. Developer shall preserve for a period of three (3) years after the end of any calendar year during the Term of this Operating Agreement, all of such books and records for such calendar year. Dillard, Penney and Younkens shall have the right, during the aforesaid period of three (3) years at reasonable times during business hours, upon notice to Developer and within sixty (60) days thereafter, but not more often than once each calendar year during the Term of this Operating Agreement, to examine and audit all such books and records for such calendar year at the sole cost and expense of the Party exercising such right pursuant to this Subparagraph 13.4.

OPERATION

Article 14 - Covered Mall

14.1 Maintenance and Operation. Developer shall, at its sole cost and expense (except for payment of contributions by Dillard, Penney and Younkens as provided for herein or in other documents, including without limitation, as to Dillard and Penney, their respective Supplemental Agreements, and as to Younkens, the Lease) at all times during the Term of this Operating Agreement (subject to acts beyond its control, as set forth in Article 26):

1. Lighting and Hours. Keep and maintain the Covered Mall in a clean, safe and sightly condition and in good order and repair, and cause the same to be well-lighted, attractive, in good appearance and open to the public at all times when the Younkens Building, or the Buildings belonging to Dillard or Penney, shall be open and doing business, and, in addition, the Developer shall cause the Covered Mall to be opened at least one-half (1/2) hour before the earliest of Dillard, Penney and Younkens open for business to the general public and to be kept open until at least one-half (1/2) hour after the latest of Dillard, Penney and Younkens closes on each business day.
2. Heating and Cooling. Keep and maintain the Covered Mall heating and cooling system in good operating condition to:
 - (a) Cool the Covered Mall to the average temperature of not more than 76° Dry Bulb and to produce a relative humidity not exceeding 50% when the outside Dry Bulb temperature is 96° F. and the outside Wet Bulb temperature 75° during each day of the Term hereof when local climatic conditions require, throughout all hours when the Buildings belonging to either Dillard, Penney or Younkens, or any part of said Buildings are open and doing business, and for at least one-half (1/2) hour before the earliest of Dillard, Penney and Younkens open for business to the general public and to be kept open until at least one-half (1/2) hour after the latest of Dillard, Penney and Younkens closes to the general public on each business day; and
 - (b) Heat the Covered Mall with sufficient heat to maintain therein, an average temperature of at least 70° F. with the outside temperature ranging to as low as 0° F. during each day of the Term hereof when local climatic conditions require, throughout all hours when any Building belonging to Dillard, Penney or Younkens is open and doing business, and for at least one-half (1/2) hour before the earliest of Dillard and Younkens opens for business to the general public until at least one-half (1/2) hour

after the latest of Dillard, Penney and Younkens closes to the general public on each business day.

3. Drawing Heated and/or Cooled Air. Utilize a system of engineering control in the Covered Mall (whether by varying pressure or otherwise) which shall insure that the heating and/or cooling of the Covered Mall shall not draw heated and/or cooled air from the Dillard Building, Penney Building or Younkens Building, and, similarly, Dillard, Penney or Younkens shall utilize a system of engineering control (whether by varying pressure or otherwise) which will insure that the heating or cooling of their respective Buildings shall not draw heated and/or cooled air from the Covered Mall.

14.2 Dillard, Younkens and Penney Share of Expenses.

(a) Dillard commenced with its Opening Date to pay to Developer, and shall continue to pay to Developer for the period Dillard is operating, or is obligated to be operating, during the Dillard Operating Period (as defined in Article 23 hereof), and for so long thereafter such period as Dillard shall maintain at least one (1) entrance to the Covered Mall, the annual amount set forth in the Supplemental Agreement, as its contribution toward the expenses of maintaining, operating, heating, ventilating and air conditioning the Covered Mall.

(b) Younkens, commenced with its Opening Date to pay to Developer, and shall continue to pay to Developer for the period Younkens is operating, or is obligated to be operating, during the Younkens Operating Period (as defined in Article 23A hereof), and for so long thereafter such period as Younkens shall maintain at least one (1) entrance to the Covered Mall, the annual amount set forth in the Lease, as its contribution toward the expenses of maintaining, operating, heating, ventilating and air conditioning the Covered Mall.

(c) Penney, commencing with the date it opens its Building for business, or the date on which it is obligated to open pursuant to the terms and conditions of this Operating Agreement, whichever is earlier, and continuing for the period it is operating, or is obligated to be operating, during the Penney Operating Period (as defined in Article 23 hereof), and for so long thereafter such period as Penney shall maintain at least one (1) entrance to the Covered Mall, shall pay to Developer the annual amount set forth in the Supplemental Agreement, as its contribution toward the expenses of maintaining, operating, heating, ventilating and air conditioning the Covered Mall.

14.3 Kiosks. (a) Notwithstanding anything to the contrary contained in this Operating Agreement or any Supplemental Agreement, the Parties agree that the Developer shall be permitted to conduct sales and/or retail activity within the Covered Mall from no more than four (4) kiosks, which kiosks may only be located at the locations specifically shown therefor on Exhibit "F", provided that no such kiosk shall be located less than one hundred eighty-five feet (185') from the Dillard Building, Penney Building or Younkens Building entrances to the Covered Mall, and provided further, that each such kiosk (a) does not exceed thirteen feet (13') in height, (b) does not occupy an area which exceeds 250 square feet, (c) provides not less than ten feet (10') of lateral clearance between each such kiosk and the nearest Covered Mall wall for unimpeded pedestrian passage, (d) shall be architecturally compatible with the balance of the Covered Mall, and (e) permits visibility above any counter-top level, which may be accomplished through the use of poles to support any roof or similar structure of the kiosk. No kiosks shall be erected at any other location in the Shopping Center, except for one (1) courtesy and public information kiosk in the Covered Mall in the location designated

on Exhibit "F", which shall not exceed ninety-six inches (96") in height and two hundred (200) square feet in area. No such kiosk shall be used as a food or beverage dispensing facility, except for the sale of packaged food merchandise; provided, however, that nothing contained herein shall prohibit or restrict the use as a "food court" of that portion of the Shopping Center shown on Exhibit "F".

(b) In addition to any other kiosks permitted by this Paragraph 14.3, Developer shall also be permitted to have a seasonal wrapping and mailing service operated from a kiosk, but only during the period of each calendar year from November 1 through December 24, and in areas of the Covered Mall approved by the managers of the Dillard, Penney and Younkers Stores; provided, however, such kiosk shall otherwise comply with the terms and conditions of Subparagraph 14.3(a); and provided further, however, Developer shall locate such seasonal service within the Small Store Floor Area, if any such Small Store Floor Area is available after having been vacated by an Occupant no later than thirty (30) days prior to the November 1 of the applicable calendar year, and is located within one hundred feet (100') of the center court of the Covered Mall.

14.4 Pushcarts. (a) Notwithstanding anything to the contrary contained herein, the Parties agree that the Developer shall be permitted to conduct sales and/or retail activity within the Covered Mall from specialty pushcarts, provided that no such pushcart shall be located less than two hundred feet (200') from the Dillard Building, Penney Building or Younkers Building entrances to the Covered Mall. Prior to beginning of each calendar year in which Developer elects to operate a program of retail sales from specialty pushcarts, Developer shall submit to Dillard, Penney and Younkers for their review and approval in their sole and absolute discretion, a written summary setting out the number and location of such pushcarts at the Shopping Center for each such calendar year. If Dillard, Penney or Younkers disapproves the program and/or requests modifications to the program as described in the summary, such disapproval and/or request for modification(s) shall be in writing, and shall set forth the general nature for disapproval or of each requested modification; provided, however, nothing contained in this Subparagraph 14.4(a) shall prevent Developer from maintaining at any time a minimum of eight (8) pushcarts, none of which may be located less than two hundred feet (200') from a Department Store entrance to the Covered Mall. Upon receipt of any such disapproval and/or request for modifications, Developer may thereafter submit a revised summary for approval by Dillard, Penney and Younkers in their sole and absolute discretion. Developer shall be permitted to maintain a pushcart program in accordance with the summary, or revised summary which was not modified, as the case may be, if (i) none of Dillard, Penney or Younkers disapproves and/or requests modifications to a summary, or any revised summary, as the case may be, within twenty (20) days after receipt of such summary or revised summary, and (ii) none of Dillard, Penney or Younkers disapproves and/or requests modifications within seven (7) days after receipt of a written statement from Developer that such summary or revised summary shall be deemed approved by such Department Store which failed to respond within such 20-day period, unless such disapproval or request is received by Developer within such 7-day period.

(b) All such retail sales made from the pushcarts shall be conducted (1) in conformity with typical first-class regional shopping center industry practice and standards, (2) so as not to interfere with the use of, access to, or obstruct the visibility of the entrance to the Dillard Building, Penney Building or Younkers Building or the signs of Dillard, Penney or Younkers, (3) so as to maintain a minimum clearance around all sides of each pushcart of at least twelve feet (12'), so as not to impede or interfere with circulation of pedestrians within the Covered Mall

and the use of Permittees of the Covered Mall, (4) so that all merchandise, fixtures, storage and display cases and boxes, and all other related paraphernalia, shall be on or within the pushcarts and not under the pushcarts (5) so as not to create any litter or excessive noise, and (6) so that the pushcarts will remain in a stationary position during the hours of operation of the same. The pushcarts shall not exceed eight feet (8') in height, eight feet (8') in length and four feet (4') in width, and permit visibility above any counter-top level. No such cart shall be used as a food or beverage dispensing facility, except for the sale of packaged food merchandise; provided, however, that nothing contained herein shall prohibit or restrict the use as a "food court" of that portion of the Shopping Center shown on Exhibit "F".

If (y) in the opinion of Dillard, Penney or Younkens, exercised in any of their sole and absolute judgment and discretion, a specialty pushcart operated as part of the specialty pushcart merchandising program fails to fully conform to the foregoing standards and (z) the failure to fully conform is not cured (in the opinion of Dillard, Penney or Younkens exercised in any of their sole and absolute judgment and discretion) within ten (10) days time after receipt by Developer of notice from Dillard, Penney or Younkens setting forth with particularity the express reasons why such pushcart does not conform, then upon further notice and demand from Dillard, Penney or Younkens, as the case may be, to Developer, such pushcart failing to conform shall cease operation within ten (10) days after receipt by Developer of such further notice.

14.5 Developer shall keep complete and accurate books and records of the expenses of maintaining, operating, heating, ventilating, and air conditioning the Covered Mall. Developer shall preserve for a period of three (3) years after the end of any calendar year during the Term of this Operating Agreement, all of such books and records for such calendar year. Dillard, Penney and Younkens shall have the right, during the aforesaid period of three (3) years at reasonable times during business hours, upon notice to Developer and within sixty (60) days thereafter, but not more often than once each calendar year during the Term of this Operating Agreement, to examine and audit all such books and records for such calendar year at the sole cost and expense of the Party exercising such right pursuant to this Subparagraph 14.5.

OPERATION

Article 15 - Common Area

15.1 (a) Parking - Dillard Tract. At all times during the Term of this Operating Agreement, Dillard shall maintain upon its Tract a minimum parking ratio of 5.0 automobile surface-level (except only as permitted by Article 27) parking spaces for each 1,000 square feet of Gross Leasable Area upon the Dillard Tract, all as more particularly shown on Exhibit "F", and the "70° parking detail (typ.)" set forth on said Exhibit "F".

(b) Parking - Penney Tract. At all times during the Term of this Operating Agreement, Penney shall maintain upon its Tract a minimum parking ratio of 4.75 automobile surface-level (except only as permitted by Article 27) parking spaces for each 1,000 square feet of Gross Leasable Area upon the Penney Tract, all as more particularly shown on Exhibit "F", and the "70° parking detail (typ.)" set forth on said Exhibit "F".

15.2 Parking - Total Development Tract and Shopping Center Tract. At all times during the term of this Operating Agreement, Developer (a) shall maintain, or cause to be maintained, upon the Total Development Tract a minimum parking ratio of 5.0 automobile surface-level (except only as permitted by Article 27) parking spaces for each 1,000 square feet of Gross Leasable Area upon the

Total Development Tract, (b) shall maintain, or cause to be maintained, upon the Shopping Center Tract a minimum parking ratio of 4.5 automobile, surface-level (except only as permitted by Article 27) parking spaces for each 1,000 square feet of Gross Leasable Area upon the Shopping Center Tract, all as more particularly shown on Exhibit "F", and the "70° parking detail (typ.)" set forth on said Exhibit "F"; provided, however, notwithstanding any thing to the contrary herein, parking on Reserve Tracts may utilize 90° parking spaces, if such parking otherwise complies with Paragraph 4.1 hereof.

15.3(a) Common Area Obstructions. At all times during the Term of this Operating Agreement, no party shall permit any fence, barricade, barrier, chain, structure, building or other obstruction of any kind whatsoever, placed, kept, permitted or maintained on the Common Area, or any part thereof, without prior written consent from all of the other Parties which consent may be withheld by any Party in their sole and absolute discretion; except to the extent such temporary obstruction shall be reasonably required:

1. In connection with (A) any construction or expansion otherwise permitted by this Operating Agreement and either shown on Exhibit "F" or described in Paragraph 10 of Paragraph 4.1 hereof, or (B) any repair, maintenance, or replacement of any of the Improvements from time to time located in the Shopping Center, or
2. At least once in each calendar year, for the purpose of blocking off access to the Common Area in order to avoid the possibility of dedicating the same for public use or creating prescriptive rights therein, such barriers to be temporarily erected, for such purpose, if possible, at a time or upon a day when the Shopping Center is not open for business.

The Parties agree that they will do nothing to prohibit, impede, or discourage the free and uninterrupted (i) non-exclusive and common use and enjoyment of the Common Areas by any Occupant or its Permittees, or (ii) flow of pedestrian and vehicular traffic throughout the Total Development Tract and between and among the component tracts therein on the areas shown therefor on Exhibit "F".

(b) Exterior Accent Lighting; Younkers. Subject to governmental rules and regulations, and approval by Developer (exercised in its reasonable discretion) of location and design, Younkers shall be permitted to install within the "Younkers Tract", lighting to illuminate the exterior of the Younkers Building, provided such lighting does not materially interfere with the use and enjoyment of the Shopping Center and Common Areas by other Occupants. Developer hereby grants Younkers an easement over that portion of the Developer Tract upon which such lights are located, which easement shall continue until the earlier to occur of (1) expiration of this Operating Agreement, or (2) Younkers permanently discontinues use of such lights.

15.4 Use of Common Areas. Each Party shall use its reasonable efforts, consistent with applicable laws, to prevent:

1. The distribution of any hand bills or other advertising material, on or about any part of the Common Area.
2. The installation in, on or about the Common Area of any amplifiers or similar devices, or the use in or about any Building on the Common Area of any advertising medium which may be heard or experienced outside such Building, such as, flashing lights, spot lights, loud speakers, phonographs or radio broadcasts.

3. The burning of any papers, trash or garbage of any kind on the Common Area.
4. The use of any portion, or portions, of the Common Area for the purposes of loading or unloading any truck or other delivery vehicle, except on the Reserve Tracts or in those portions designated on each Tract as "Loading Area" or "Truck Dock" or "Dock" or "Service Court" or "S.C." on Exhibit "F".
5. The distribution, or use, of any printed or handwritten, papers or materials (including magazines and newspapers) of any kind or character on or about any part of the Common Area, unless and except as reasonably approved by Developer, or unless and except as sold by an Occupant of the Shopping Center within its premises.

OPERATION

Article 16 - Signs

Dillard, Penney and Younkers shall not erect any sign in the Shopping Center which does not conform to the Sign Criteria attached hereto as Exhibit "H" and incorporated herein. Developer shall not erect, or permit any sign to be erected, (a) in the Shopping Center which does not conform to such Sign Criteria and all applicable requirements of governmental authorities, and any applicable requirements of any Supplemental Agreement or the Lease, and (b) in the Reserve Tracts which does not conform to such Sign Criteria and the terms of Paragraph 3 of Paragraph 4.1, and all applicable requirements of governmental authorities, and any applicable requirements of any Supplemental Agreement or the Lease. Free-standing (but not including directional signs described in and permitted by Paragraph 3 of Paragraph 4.1 hereof) or pylon signs, may only be erected in the locations shown on Exhibit "F", which pylon signs may only display the name and logo of the Shopping Center, and the name and identity of a theatre, which theatre portion of the sign may contain a theatre reader board.

Each Department Store shall be entitled to the same number of exterior signs on the Department Store Building as any other Department Store, and if one Department Store requests a sign located off of its Building but within the Shopping Center, then each other Department Store shall be notified in writing of such request, and any such other Department Store may approve or disapprove such request in its sole and absolute judgment; provided, however, nothing contained in this Article 16 will prevent a Department Store from having not less than three (3) exterior signs on its Building.

OPERATION

ARTICLE 17 - Utilities

17.1 (a) Developer has provided, or caused to have been provided, at Developer's expense and as part of its construction obligations pursuant to Subparagraph 3.2(a), all Common Utility Facilities, including water, gas (if available), electric, telephone, sanitary sewers and storm sewers to points designated by Dillard within five feet (5') of the Building line on the Dillard Tract.

(b) Developer shall, at Developer's expense and as part of its construction obligations pursuant to Subparagraph 3.2(b), provide or cause to be provided, all Common Utility Facilities, including water, gas (if available), electric, telephone, sanitary sewers and storm sewers to points designated by Penney within five feet (5') of the Building line on the Penney Tract.

17.2 Except as otherwise expressly provided in Article 20 of this Operating Agreement with regard to utility service for the parking area on each Tract, Developer, Penney and Dillard shall each make arrangements for and pay, or cause to be paid, any and all charges for utility services supplied on their respective Tracts (or in the instance of Younkens, the Younkens Building) and no Party shall have any liability for utility services to the other Party's Tract.

17.3 Younkens shall make arrangements for and pay, or cause to be paid, any and all charges for utility services supplied to the Younkens Building, and Developer, Penney and Dillard shall not have any liability for utility services to the Younkens Building.

17.4 Nothing contained in this Article 17, shall relieve Developer of any obligation under the Lease to provide Younkens with utilities in accordance with the terms of the Lease.

OPERATION

Article 18 - Taxes

18.1 (a) Payment. Developer, Penney and Dillard shall pay, when due, all real estate taxes and assessments upon their respective Tracts which shall be assessed, levied, imposed or become a lien thereon during the Term of this Operating Agreement. If and as required pursuant to Paragraph 18.5 below, Younkens shall pay, before due, payable and delinquent, all real estate taxes and assessments upon the Taxable Premises (as defined in Paragraph 18.5), which shall be assessed, levied, imposed or become a lien thereon during the Term of this Operating Agreement.

(b) Indemnity. Each Party hereby agrees to indemnify, defend and hold harmless each of the other Parties from and against all loss, costs, expense, liability, claims and actions in connection with or as a result of the indemnifying Party failing to timely pay any and all real estate taxes which it has an obligation to pay pursuant to the terms of this Article 18.

18.2 Tax Contests - Developer. In the event Developer shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) to be paid by Developer to be excessive or illegal, Developer shall have the right, after not less than twenty (20) days prior written notice to the other Parties and at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this Article shall require Developer to pay any such real estate tax or assessment as long as the amount or validity thereof shall be contested in good faith and if, in the reasonable opinion of counsel for Developer, the Developer Tract shall not thereby be in danger of being forfeited.

18.3 (a) Tax Contests - Dillard. In the event Dillard shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) to be paid by Dillard to be excessive or illegal, Dillard shall have the right, after not less than twenty (20) days prior written notice to the other Parties, and at Dillard's own cost and expense, to contest the same by appropriate proceeding and nothing contained in this Article shall require Dillard to pay any such real estate tax or assessment as long as the amount or validity thereof shall be contested in good faith and if, in the reasonable opinion of counsel for Dillard, its Tract shall not thereby be in danger of being forfeited.

18.3 (b) Tax Contests - Penney. In the event Penney shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) to be paid by Penney to be excessive or illegal,

Penney shall have the right, after not less than twenty (20) days prior written notice to the other Parties, and at Penney's own cost and expense, to contest the same by appropriate proceeding and nothing contained in this Article shall require Penney to pay any such real estate tax or assessment as long as the amount or validity thereof shall be contested in good faith and if, in the reasonable opinion of counsel for Penney its Tract shall not thereby be in danger of being forfeited.

18.4 Public Improvement Assessments. Any assessment for public improvements levied against the Shopping Center Tract shall be paid by Developer, Penney and Dillard (and also Younkens if it receives a separate tax assessment pursuant to Paragraph 18.5 below) in the ratio that the land area of the Developer, Penney and Dillard Tracts (and also the Younkens Tract, as defined in Paragraph 18.5 below, if Younkens receives a separate tax assessment) each bear to the land area of the Shopping Center Tract; provided, however, that any such assessment initiated by any one Party shall be borne solely by the Party initiating the same unless benefitting all parties hereto; and provided further, however, that any such assessment (except one initiated by one of the Parties) benefitting less than all of the Parties shall be borne solely by the Party or Parties so benefitting.

18.5 Younkens.

(a) Payment; Younkens Tract. If permitted by applicable governmental authority, Developer shall, after being requested to do so by Younkens, use its best efforts to have the Taxable Premises (hereafter defined) separately assessed, and Younkens will (in lieu of any payments pursuant to the Lease) be responsible for all taxes assessed against the Taxable Premises from the date the Taxable Premises are separately assessed and thereafter throughout the Term of the Lease, and Younkens shall pay all Taxes before the same are due, payable and delinquent with penalty or interest. "Taxable Premises", for the purposes of Younkens paying taxes, shall only mean the Younkens Building and that portion of the parking areas of the Shopping Center, necessary to provide 4.5 parking spaces per 1,000 square feet Gross Leasable Area of the Younkens Building, and identified on Exhibit "F" as the "Younkens Tract"; provided, however, notwithstanding the obligation of Younkens pursuant to this Paragraph 18.5, the Younkens Tract shall otherwise remain a part of the Developer Tract for purposes of this Operating Agreement.

(b) Tax Contests. If Younkens receives a separate tax assessment pursuant to Subparagraph 18.5(a) above, Younkens (but not the Developer) shall have the right, upon not less than twenty (20) days prior written notice to the other Parties, and at Younkens's sole cost and expense, to contest in Younkens's own name, any tax assessment imposed on the Taxable Premises by taxing authorities, and may pursue all lawful procedures available at law so long as no property is subject or exposed to a risk of forfeiture. Younkens shall be entitled to any refund of Taxes attributable to the Taxable Premises; provided, however, no such contest shall relieve Younkens of its obligations to make any payments of Taxes. Younkens shall be entitled, upon request, to examine Developer's records relating to Taxes, at Developer's Notice Address, within three (3) years after the end of the tax year with respect to which such records are being examined. Developer will execute and deliver such documents as may be required to effect such contest hereunder, but all reasonable expenses incurred by Developer in connection with such execution and delivery, and the review of such documents (except the cost of review by full-time employees of the Developer, its partners or affiliates thereof), shall be promptly reimbursed to Developer by Younkens upon demand by Developer. Younkens will notify Developer in writing as to any settlement of any such contest. This Subparagraph 18.5(b) shall not apply, and Younkens shall have no

rights to contest the assessment or imposition of any Taxes, if Younkens does not receive a separate tax assessment pursuant to Subparagraph 18.5(a) above and pays a proportionate share of Taxes as otherwise provided for pursuant to the Lease.

18.6 Developer shall keep complete and accurate books and records of real estate taxes or assessments (including the rate thereof or the assessed valuation), imposed on the Developer Tract. Developer shall preserve for a period of three (3) years after the end of any calendar year during the Term of this Operating Agreement, all of such books and records for such calendar year. Dillard, Penney and Younkens shall have the right, during the aforesaid period of three (3) years at reasonable times during business hours, upon notice to Developer and within sixty (60) days thereafter, but not more often than once each calendar year during the Term of this Operating Agreement, to examine and audit all such books and records for such calendar year at the sole cost and expense of the Party exercising such right pursuant to this Subparagraph 18.6; provided, however, no Party shall be entitled to examine or audit any information regarding such taxes or assessment paid by Occupants of the Developer Tract, and any information regarding the calculation or amount of taxes or assessments paid by such Occupants.

OPERATION

Article 19 - Insurance and Indemnity

19.1 Casualty - Developer. Developer shall, effective with the completion of any construction of the Developer Building, the Younkens Building, the Covered Mall and all other Improvements on the Developer Tract, and thereafter during the Term of this Operating Agreement, continuously keep, or cause to be kept, all Buildings, the Covered Mall and all other Improvements upon the Developer Tract insured, at its sole expense, against loss or damage by fire and such other risks and casualties as are from time to time included in the standard extended coverage of insurance policies issued in the locality of the Shopping Center, said insurance shall be in an amount equal to 100% of the actual replacement costs of said Buildings and other Improvements, including the Covered Mall, but excluding foundations, excavation costs and the costs of underground flues, pipes and drains if such costs are properly excludable under then current co-insurance requirements. Developer shall furnish certificates of such insurance to any other Party from time to time upon the request of such other Party.

19.2 (a) Casualty - Dillard. Dillard shall, effective with the completion of construction of the Dillard Building and all the other Improvements on its Tract, and thereafter during the Term of this Operating Agreement, continuously keep the Dillard Building and all other Improvements upon said Tract insured, at its sole expense, against loss or damage by fire and such other risks and casualties as are, from time to time, included in the standard extended coverage provisions of insurance policies issued in the locality of the Shopping Center, and shall furnish Developer satisfactory evidence of such insurance coverage. Said insurance shall be an amount equal to 100% of the actual replacement costs of said Building and other Improvements, but excluding foundations, excavation costs, and the costs of underground flues, pipes and drains if such costs are properly excludable under then current co-insurance requirements. Dillard shall furnish certificates of such insurance to Developer from time to time upon the request of Developer.

(b) Casualty - Penney. Penney shall, effective with the completion of construction of the Penney Building and all the other Improvements on its Tract, and thereafter during the Term of this Operating Agreement, continuously keep the Penney Building and all

other Improvements upon said Tract insured, at its sole expense, against loss or damage by fire and such other risks and casualties as are, from time to time, included in the standard extended coverage provisions of insurance policies issued in the locality of the Shopping Center, and shall furnish Developer satisfactory evidence of such insurance coverage. Said insurance shall be an amount equal to 100% of the actual replacement costs of said Building and other Improvements, but excluding foundations, excavation costs, and the costs of underground flues, pipes and drains if such costs are properly excludable under then current co-insurance requirements. Penney shall furnish certificates of such insurance to the Developer from time to time upon the request of Developer.

19.3 Casualty Insurance Proceeds. Such policies may be made payable to the holder of any first mortgage or deed of trust (hereinafter called "mortgagee") which is a lien upon the Tract of the insured under a standard mortgagee clause or to a ground lessor, provided such mortgagee or ground lessor is a bank, trust company, insurance company, pension fund, retirement fund or other reputable institutional lender and agrees that it will, in the event of loss, apply the proceeds to repair, restore and rebuild the Building and other Improvements on the Tract in question in accordance with this Operating Agreement. Any loss covered by such insurance shall be adjusted with the insured Party, and if the loss is in excess of \$2,000,000 and neither the insured Party nor a corporation or other entity which has guaranteed performance of the insured Party's obligations hereunder shall have a net worth of \$50,000,000 or more and assets of \$100,000,000 or more, the insurance proceeds shall be deposited in a bank or trust company reasonably satisfactory to each Party hereto to be held in trust and all such proceeds shall be disbursed as the work or restoration progresses to the extent necessary to pay for the cost of such work; if the loss is \$2,000,000 or less or the insured Party or a corporation or other entity which has guaranteed performance of the insured Party's obligations hereunder shall have a net worth of \$50,000,000 or more and assets of \$100,000,000 or more, the insurance proceeds shall be paid to the insured Party and applied by it toward the cost of restoration.

19.4 Mutual Waiver. Each Party hereby waives any and every claim which arises, or may arise, in its favor against the other Parties during the Term of this Operating Agreement for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Shopping Center, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under said insurance policies and to the extent that this waiver is permitted under said insurance policies and does not invalidate any such insurance coverage. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or damage to, the said property of any Party. Each Party shall use reasonable efforts to cause its insurance policies to provide for and permit such waiver of subrogation, provided the same is available at standard premium rates and at no additional cost or expense to the other Party. To the extent that one of the Parties is unable to furnish such waiver of subrogation to the other Parties hereunder, this waiver of subrogation by the other Parties shall be ineffective and inapplicable as to the Party who is unable to furnish such waiver of subrogation. This waiver shall apply equally to any Party who elects to be self-insured, in whole or in part, as herein provided, as if such Party were independently insured.

19.5 Liability. (a) Developer, Dillard and Penney Buildings and Tracts. At all times during the Term of this Operating Agreement, Developer, Penney and Dillard shall, at their sole expense, continuously maintain Comprehensive General Liability

Insurance, endorsed to cover personal injury and contractual liability, covering the Building, or Buildings, and the landscaping, if any, between the exterior perimeter wall of Buildings and Building Perimeter Sidewalk, on their respective Tracts within the Shopping Center Tract, and on any other portions of their respective Tracts not covered by the insurance hereinafter provided for in Paragraph 19.6. Each such insurance policy (except such policy maintained by Penney which shall not be required to afford protection to any other Party, but which shall comply with the following coverage amounts) shall afford protection to each Party (other than Penney) to this Operating Agreement as additional insureds under the other Party's policy 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 19.5 may be reduced (but not to less than \$500,000 for bodily injury and \$500,000 for property damage) if the Party furnishing such reduced primary amounts of coverage shall furnish Catastrophe (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 19.5 (as reduced herein); and provided further, however, that the aforesaid Umbrella Coverage provides for coverage at least equal to the required primary coverage. Penney and Dillard shall each furnish certificates of such insurance to the Developer from time to time upon the request of Developer, and Developer shall furnish such certificate to Penney, Dillard or Younkens upon their request. Any policy required hereunder shall provide that such policy shall not be cancellable without at least thirty (30) days' prior written notice to all of the Parties hereto.

(b) Younkens Building. At all times during the term of the Lease, Younkens shall, at its sole expense, continuously maintain on the Younkens Building, Comprehensive General Liability Insurance as described in Section 25(b)(1) of the Lease, which policy of insurance shall name the other Parties (except Penney) as additional insureds under such policy, and afford protection of not less than the limits set forth in Paragraph 19.5(a) above. Younkens shall furnish certificates of such insurance to Developer from time to time upon its request. Any policy required hereunder shall provide that such policy shall not be cancellable without at least thirty (30) days' prior written notice to the Parties hereto.

19.6 Liability - Common Areas. At all times during the Term of this Operating Agreement, Developer shall continuously maintain, or cause to be continuously maintained, Comprehensive General Liability Insurance, endorsed to cover personal injury (including false arrest) and contractual liability, covering the Common Area of the Total Development Tract. Such insurance shall afford protection to Penney, Younkens and Dillard, as additional insureds, to the limit of not less than:

- (1) \$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
- (2) Property damage to the limit of not less than \$1,000,000 for each occurrence.

Provided, however, that the primary amounts of coverage provided under subparagraphs (1) and (2) of this Paragraph 19.6 may be reduced (but not to less than \$500,000 for bodily injury and \$500,000 for property damage) if the Party furnishing such reduced primary amounts of coverage shall furnish Catastrophe (Umbrella) Liability Coverage with limits of liability of not less than \$5,000,000 applying in excess of the primary coverages provided for in subparagraphs (1) and (2) of this Paragraph 19.6 (as reduced herein); and provided further, however, that the aforesaid Umbrella coverage provides for coverage at least equal to that provided for in the primary coverage.

If either Penney and/or Dillard (the "Take Over Party") elects pursuant to Paragraph 20.7 to maintain the Common Areas on their respective Tracts, the Take Over Party shall, at its sole cost and expense, maintain Comprehensive General Liability Insurance, endorsed to cover personal injury (including false arrest) and contractual liability, covering the Common Areas on its Tract, and affording protection to the other Parties as additional insureds, to the limits of not less than those specified in Subparagraphs (1) and (2) above of this Paragraph 19.6; provided, however, Developer may, but shall not be obligated to, act as agent of the Take Over Party for the purpose of obtaining such insurance, if the Take Over Party first approves the insurer, terms and cost. The premiums for said policy shall be apportioned between Developer and the Take Over Party and reimbursed to Developer, in proportion to the ratio which the total acreage in the Take Over Party Tract bears to the total acreage in those portions of the Shopping Center Tract and the Reserve Tracts which are included in such policy maintained by Developer. Developer shall deliver to the other Parties copies of said insurance policy, or a certificate or other document evidencing its existence, on or prior to the beginning of the Term, and, thereafter, not less than fifteen (15) days prior to the expiration dates of the expiring policy, or policies, during the Term. Any policy required hereunder shall provide that such policy shall not be cancelled without at least thirty (30) days' prior notice to each Party. If it shall be hereafter determined by a Party that it would be more feasible to insure its Tract separately, then, it is agreed that the insurance coverage herein required by this Paragraph will be placed in separate policies, each for the amounts indicated, from the same insurance company, to avoid a conflict of claims, and each Party shall be an additional insured on the other Party's policies. Notwithstanding anything herein to the contrary, Developer shall have no liability for failure to obtain any such insurance for a Take Over Party.

19.7 Self-Insurance and Blanket Policies.

(a) Each Party shall have the right, at its option, to comply with and satisfy its obligations under this Article by means of self-insurance to the extent of all or any part of insurance required under this Article, but only if such Party or an entity guaranteeing performance of this Operating Agreement for such Party has a net worth of at least \$50,000,000 and assets of at least \$100,000,000. As used herein, the term "net worth" shall mean the stockholder's or shareholder's equity as determined in accordance with generally accepted accounting practices. Any Party electing to change the method of satisfying its obligations under this Article, shall, as the case may be, use reasonable efforts to give notice to the other Parties thirty (30) days prior to (a) terminating any insurance policy and commencing to satisfy its obligations under this Article by means of self-insurance, or (b) ceasing to satisfy its obligations under this Article by means of self-insurance, and obtaining policies of insurance to satisfy such obligations; provided, however, failure to give such notice shall not be a default under this Operating Agreement. Upon the request of Developer, but no more often than once in any six (6) month period, the Party requested by Developer shall advise Developer

whether such Party is satisfying its obligations under this Article by self-insurance or an insurance policy.

(b) Any insurance required to be carried pursuant to this Article 19, may be carried in whole or in part under a policy or policies covering other liabilities and locations of the Parties, or an affiliate or controlling corporation of such Parties; provided, however, that (1) such policy or policies of any Party shall insure the risks and full amounts required under this Operating Agreement, (2) the inclusion of additional coverage or risks shall not materially diminish the coverage or insurance proceeds available under said policy or policies, and (3) that each Party shall use reasonable efforts to cause such policy or policies to contain, permit or otherwise authorize waivers in accordance with the terms and conditions of Paragraph 19.4.

19.8 Indemnity. Each Party hereby agrees to indemnify, and to save, hold harmless and defend, each of the other Parties from and against any and all claims, actions, damages, liability and expense (including, without limitation, reasonable attorney's fees) in connection with bodily injury, loss of life, personal injury or death to persons and property damage, or any of them, (a) occurring on any part of the Shopping Center which the indemnifying party has the obligation to maintain or in fact maintains (including without limitation, when a Take Over Party maintains the Common Areas on its Tract pursuant to Paragraph 20.7 hereof) or (b) resulting from any negligent act or omission of the indemnifying Party's employees, agents or contractors; excepting, however, from the liability hereunder of the indemnifying Party, and as respects any person claiming the right to be indemnified hereunder, any such claims, actions, damages, liability and expense arising from or as a result of the negligent act or omission of any person so claiming the right to be indemnified, or the employees, agents or contractors of such claiming person. The Comprehensive General Liability Insurance furnished by each Party shall include contractual liability coverage recognizing this indemnity.

OPERATION

Article 20 - Maintenance

20.1 Common Areas. Developer shall keep, repair, manage, insure, operate and maintain, or cause to be kept, repaired, managed, insured, operated and maintained, the Common Areas on the Total Development Tract (exclusive of Building Perimeter Sidewalks on the Penney Tract and Dillard Tract, and landscaping, if any, between the Building Perimeter Sidewalks and the exterior perimeter walls of the Buildings on the Penney Tract and Dillard Tract) including, without limitation, Common Utility Facilities and the Covered Mall, in all cases in good and clean order, operation, condition and repair, in conformity with established, first class regional enclosed mall shopping center standards, and in such manner as to establish, maintain, and present, at all times, the appearance of a clean, well managed, attractive, coordinated, and unified operation of all of the Common Areas on the Total Development Tract, commencing on the earlier of the Dillard, Penney and Younkers Opening Dates and continuing thereafter for a period of fifteen (15) years from and after the latest of the Dillard, Penney or Younkers Opening Dates, and continuing thereafter during the Term of this Operating Agreement for so long as two of Dillard, Younkers and Penney are using the Building they occupy in the Shopping Center for purposes and uses permitted by Article 23, 23A and 23B, respectively; provided, however, if following the expiration of said fifteen (15) year period, one (but not all) of Younkers, Penney and Dillard is open and operating pursuant to the terms of this Operating Agreement, Developer shall continue to be obligated to operate and maintain the Common Areas (exclusive of the Covered Mall), but shall only be obligated to operate and maintain that portion of the Covered Mall which is Immediately Adjacent (as defined in Paragraph 21.1(c)(ii)) to such Department Store Building(s) which is so open and operating; provided further,

however, if at any time none of Younkers, Penney and Dillard are open and operating, pursuant to the terms of this Operating Agreement, Developer shall have no obligation to operate and maintain any portion of the Common Areas. Developer, its agents and employees, shall have, and is hereby granted, access to the Penney Tract and Dillard Tract for the purpose of performing such maintenance. Such maintenance shall include keeping, or causing to be kept, the Total Development Tract reasonably free of debris, ice, snow and trash, but maintenance shall not include major repairs or capital replacements, except as otherwise hereinafter provided in Paragraph 20.6. Penney and Dillard shall be responsible for the maintenance of the interior and exterior of their respective Buildings (including said Building Perimeter Sidewalks and landscaping) on its own Tract, and at its own expense to the extent provided in their respective Supplemental Agreement. Younkers shall be responsible for the maintenance of the interior and exterior of its Building (excluding said Building Perimeter Sidewalks and landscaping, which shall be the responsibility of the Developer) at its own expense to the extent provided in the Lease. In addition to insuring the Common Areas on the Developer Tract pursuant to Paragraph 19.6 and this Paragraph 20.1, and on the Penney Tract and Dillard Tract in accordance with the terms and conditions of Paragraph 19.6, Developer shall also pursuant to this Paragraph 20.1, insure, or cause to be insured, such Common Areas on the Total Development Tract for (a) Worker's Compensation insurance in accordance with the statutory requirements of the State of Nebraska, (b) Employer Liability insurance of not less than \$1,000,000, and (c) Automobile Liability insurance of not less than \$1,000,000.

20.2 Failure of Performance. (a) With respect to the Common Areas on the Total Development Tract (except in the event of the takeover of maintenance of the Penney Tract and Dillard Tract by Penney and Dillard, respectively, which shall be as provided in Paragraph 20.7) and the Covered Mall, in the event Developer should be in default (Developer, if in default under this Paragraph 20.2, being referred to in this Paragraph 20.2 as the "Defaulting Party") under this Article, which default continues for a period of thirty (30) days after any other Party to this Operating Agreement not in default (the "Non-Defaulting Party") gives written notice to the Defaulting Party (or for forty-eight [48] hours in the case of an emergency), and the Non-Defaulting Party thereafter shall elect to perform such maintenance and services as are authorized, the Non-Defaulting Party, its agents and employees shall have, and is hereby granted, access to the Tract (but excluding all or any portion of any Building on any such Tract) of the Defaulting Party for the purpose of the Non-Defaulting Party performing the maintenance obligations required under this Article 20 except as hereinafter provided; provided, however, in the case of a default which cannot be with due diligence cured within thirty (30) days or forty-eight (48) hours, as the case may be, the Defaulting Party shall not be in default hereunder, unless it fails to proceed with reasonable diligence to cure the same within said thirty (30) day or forty-eight (48) hour period, as the case may be, and thereafter prosecute the curing of such default with reasonable diligence. The Non-Defaulting Party performing such maintenance and services on behalf of the Defaulting Party shall be entitled to receive reimbursement from the Defaulting Party for all costs and expenses incurred in performing such maintenance and services, payable upon demand with interest at the Agreed Interest Rate or to take over the furnishing of heating, ventilating and air conditioning for the Covered Mall, or to perform any work in any Floor Area of any Occupant. Each Party hereby agrees that if it performs such maintenance as permitted hereunder, it shall not permit any mechanic's or materialmen's liens, or other similar liens, to stand against or attach to any part of a Party's Tract.

Notwithstanding anything to the contrary contained in this Operating Agreement, except as hereafter provided in this

paragraph, none of Dillard, Penney or Younkens shall have the right to perform any such maintenance or services on the Tract of any Department Store or to take over Developer's obligations with respect to another Department Store's Tract. If (1) the Developer as the Defaulting Party fails, within the time periods specified in the immediately preceding paragraph, to perform any such maintenance and services on parking areas and that portion of the Ring Road located on a Department Store Tract and (2) after such failure by the Developer, the Department Store which owns said Tract, also fails, within the time periods specified in the immediately preceding paragraph, to perform such maintenance and service on parking areas and Ring Road on its Tract, and such failure continues for the time periods specified above in this Subparagraph 20.2(a), after written notice to the Department Store from one or more of the other Department Stores, then either of the other two (2) Department Stores, shall have access to such parking areas and Ring Road on said Tract for the purposes only of performing such maintenance and services. Any Department Store performing such maintenance and service shall be entitled to receive reimbursement from the Defaulting Party for all costs and expenses incurred from such maintenance and services as provided in the immediately preceding paragraph, however, the Department Store which owns said Tract shall not be liable for any such costs or expenses.

(b) Nothing contained in this Operating Agreement shall (1) relieve Developer of any obligation it has to Younkens under the Lease to maintain or repair, or (2) prevent Younkens from exercising any right Younkens may have under the Lease to perform such maintenance or make such repairs, and to recover from Developer in accordance with the terms and conditions of the Lease, the costs incurred by Younkens for such maintenance or repair.

20.3 Standards. Except as hereinafter expressly provided in Paragraph 20.7, and subject to the terms and conditions of Paragraph 20.1 hereof, Developer shall operate and maintain, or cause to be operated and maintained, the said Covered Mall and the Common Area on the Total Development Tract in good order, condition and repair during the longer of the Term hereof or the term of the Lease, and any renewal thereof, in accordance with the established first class regional enclosed mall shopping center standards described in Paragraph 20.1 hereof. In such operation and maintenance in accordance with the established first class regional enclosed mall shopping center standards described in said Paragraph 20.1, Developer shall observe, but not be limited to, the following standards:

- (a) The Covered Mall heating, ventilating and cooling system, and the lighting and sprinkler systems, in good operating condition under the requirements set out in Article 14 hereof;
- (b) As required, remove all papers, debris, filth, snow, ice and refuse and wash or thoroughly sweep floors, walkways, paved areas and stairways;
- (c) Clean and repair lighting poles and fixtures, and reballast, relamp or replace as needed;
- (d) Maintain the surface of parking areas, malls and sidewalks, level, smooth and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof as shall be in all respects equal thereto in quality, architectural compatibility and durability, and repaint striping, markers, directional signs, etc., as necessary, to maintain in good condition;
- (e) Maintain landscaping, fountains and seating areas, as necessary, to keep in a first-class condition (except

landscaping between the Penney Building and Dillard Building exterior perimeter walls and Building Perimeter Sidewalks, which shall be the responsibility of Penney and Dillard as to such landscaping on their respective Tracts);

- (f) Employ courteous, trained, licensed (if required by federal, state or local governmental authorities for shopping center security personnel) and uniformed personnel, in adequate numbers, for effective security patrol and security functions during store hours and such other hours as are deemed necessary by the Parties, both as to the Covered Mall and the Common Area on the Total Development Tract;
- (g) Clean signs of the Shopping Center (as contrasted with those of Occupants) including relamping and repairs being made as required);
- (h) Maintain and keep in a sanitary condition public restrooms, if any, and other common use facilities on the Covered Mall;
- (i) Clean, repair and maintain all Common Utility Facilities to the extent that the same are not cleaned, repaired and maintained by public utilities;
- (j) Keep all Common Areas adequately lighted in accordance with Paragraph 8 of the Plot Plan Notes, during all darkness hours for at least one-half (1/2) hour before the earliest of Dillard, Penney and Youngers opens for business to the general public, until at least one-half (1/2) hour after the latest of Dillard, Penney and Youngers have closed for business to the general public for the evening, and furnish night lighting of at least twenty-five percent (25%) of full lighting capacity after closing;
- (k) Promulgate and enforce reasonable rules, regulations and policies for the use and control of the Covered Mall and Common Areas in the Shopping Center; provided, however, any such rules, regulations and policies shall not be binding on the Department Store, unless such rules, regulations and policies shall be approved by the Department Stores, which approval shall not be unreasonably withheld or delayed; provided further, however, such approval shall be in the sole and absolute discretion of a Department Store as to any rule, regulation or policy which would (i) result in an assessment against the Department Store or (ii) increase an obligation of the Department Store under this Operating Agreement or under a rule, regulation or policy which was previously approved by the Department Store; and
- (l) Employ, or cause to be employed, a full-time on-site manager of the Shopping Center.

20.4 Share of Expenses.

(a) Dillard. Commencing on its Opening Date, and continuing for the period Dillard is operating, or is obligated to be operating, during the Dillard Operating Period (as defined in Article 23 of this Operating Agreement), and for so long thereafter such period as Dillard is using and operating its Building, Dillard shall pay and reimburse Developer for Dillard's share of Developer's cost and expense of operating and maintaining the Common Areas (exclusive of the Covered Mall) including, without limitation, Common Utility Facilities, hereunder, in the annual

amount set forth in that certain Supplemental Agreement between Developer and Dillard. Such annual amount shall be paid by Dillard to Developer in monthly installments on or before the tenth day of each calendar month.

(b) Younkers. Commencing on its Opening Date, and continuing thereafter during the term of the Lease, Younkers shall pay and reimburse Developer for Younkers' share of Developer's cost and expense of operating and maintaining the Common Areas (exclusive of the Covered Mall) including, without limitation, Common Utility Facilities, hereunder, in an annual amount pursuant to the terms of the Lease. Such annual amount shall be paid by Younkers to Developer in monthly installments on or before the tenth day of each calendar month.

(c) Penney. Commencing on the date it opens its Building for business, or on the date on which it is obligated to open, whichever is earlier, and continuing for the period Penney is operating, or is obligated to be operating, during the Penney Operating Period (as defined in Article 23 of this Operating Agreement), and for so long thereafter such period as Penney is using and operating its Building, Penney shall pay and reimburse Developer for Penney's share of Developer's cost and expense of operating and maintaining the Common Areas (exclusive of the Covered Mall) including, without limitation, Common Utility Facilities, hereunder, in the annual amount set forth in that certain Supplemental Agreement between Developer and Penney. Such annual amount shall be paid by Penney to Developer in monthly installments on or before the tenth day of each calendar month.

20.5 Parking. Unless each of the Parties otherwise consents and agrees in their sole and absolute discretion, in writing, no charge of any type shall be made to, or collected from, any Permittee for parking, or the right to park vehicles in the parking spaces. Permittees shall not be prohibited or prevented from so parking so long as parking spaces are available, and so long as they do not violate the reasonable rules and regulations covering the use of the parking spaces promulgated from time to time by the Parties. The Parties shall, by mutual agreement, prescribe certain sections within the Common Area (exclusive of any Reserve Tract), or on other land outside the Common Area (exclusive of any Reserve Tract) within a reasonable distance from the nearest boundary of the Shopping Center, for use as parking spaces for employees, contractors, licensees and concessionaires to use only such sections as are so prescribed for parking. Each Party agrees to use reasonable efforts to enforce the provisions hereof.

20.6 Major Repair or Capital Replacement. In the event any major repair or capital replacement of any of the paving, curbs or lighting standards is required as to any portion of the parking area located anywhere upon and within the Total Development Tract (other than repairs and replacements by any casualty covered by insurance), such repairs and replacements shall be performed and furnished, or caused to be performed and furnished, by Developer at no expense to Dillard, Penney or Younkers. If resurfacing of the entire parking area (including sidewalks, if major repair or capital replacement of the same is necessary) on the Total Development Tract is required, or if rewiring or replacement of the lighting fixtures on the entire parking area is required, such work shall be performed and furnished, or caused to be performed and furnished, by Developer at no expense to Dillard, Penney or Younkers. All such capital repair and replacements shall be of the same general type and quality as the installations and facilities being replaced.

20.7 Dillard or Penney Takeover of Maintenance on Their Respective Tracts. Notwithstanding anything to the contrary contained herein, Dillard and/or Penney (referred to as the "Take Over Party") may, from time to time, upon the giving of written

notice to the other Parties of not less than ninety (90) days prior to the beginning of any calendar year (but not more than once in any three (3) year period), elect to take over at the sole cost and expense of the Take Over Party, the maintenance and operation of the Common Area and Common Utility Facilities on its Tract in accordance with the provisions set forth in this Article, including without limitation major repairs and capital replacement as provided in Paragraph 20.6, commencing with the calendar year following the giving of such notice, and in the event of such election and except as hereinafter otherwise provided, the Take Over Party shall no longer be required to share in the cost thereof as set forth in Paragraph 20.4 hereof, commencing with such calendar year, except as provided below in Clauses (i)-(iv) of the third sentence of this Paragraph 20.7; provided, however, the Take Over Party shall not have any right or option at any time to take over the repair and maintenance and operation of the Covered Mall or any other Department Store Building or Tract, or any part thereof, or to take over the furnishing of heating, ventilating and air conditioning for the Covered Mall or any other Department Store Building or Tract, or any part thereof. Thereafter, the Take Over Party may, upon the giving of written notice to the other Parties not less than ninety (90) days prior to the beginning of any calendar year (but not more than once in any three (3) year period), elect to return the maintenance and operation of the Common Area and Common Utility Facilities on its Tract to Developer in accordance with the provisions of this Article, commencing with the calendar year following the giving of such notice, and in the event of such election, the Take Over Party shall again be required to share in the cost thereof as set forth in Paragraph 20.4, and in its Supplemental Agreement. Notwithstanding anything to the contrary contained herein, in the event that the Take Over Party elects to take over the maintenance and operation of the Common Area and Common Utility Facilities on its Tract as herein provided, the Take Over Party nevertheless shall continue (i) to pay to Developer the annual amount set forth in its Supplemental Agreement as its contribution toward the expense of maintaining, operating, heating, ventilating and air-conditioning the Covered Mall as provided in Paragraph 14.1 hereof, and (ii) to reimburse Developer for the Take Over Party's proportionate share of the cost of electrical service furnished by Developer, through a single meter or set of meters on the Developer Tract, for lighting of the parking area on the Shopping Center Tract in the ratio which the acreage in the Tract of the Take Over Party bears to the total acreage in the Shopping Center Tract, and (iii) to reimburse Developer for the Take Over Party's proportionate share of the cost of furnishing security personnel for the Common Areas, exclusive of the Covered Mall, in the Shopping Center and the cost of maintaining the Common Utility Facilities on the Tract of the Take Over Party, and (iv) to contribute pursuant to Paragraph 19.6, its pro rata share, if any, of the premium for the comprehensive general liability insurance policy for the Common Area; provided, however, such meter or meters described in Clause (ii) shall be limited to use with parking areas only. If the Take Over Party assumes the responsibility for maintaining the Common Areas on its Tract as hereinabove provided, it shall thereafter not permit any mechanic's or materialmen's liens, or other similar liens, to stand against or attach to any part of the Shopping Center Tract, shall observe the applicable standards set forth in Paragraph 20.3 of this Operating Agreement, and shall insure the Common Areas on its Tract in accordance with Paragraphs 19.6 and 19.7. If the Take Over Party should thereafter fail to perform any of its obligations to keep, maintain and operate the Common Areas on its Tract in accordance with the provisions set forth in this Article 20, and such failure continues for a period of thirty (30) days (or for 48 hours in the case of an emergency), after (y) Developer gives written notice to the Take Over Party of such failure, Developer thereafter shall perform such maintenance and services; provided, however, in the case of a failure to perform which cannot be with due diligence performed within thirty (30) days or forty-eight (48)

hours, as the case may be, the Take Over Party shall not be in default hereunder, and Developer shall not be permitted to perform any such work, unless the Take Over Party fails to proceed with reasonable diligence to cure the same within said thirty (30) day or forty-eight (48) hour periods, as the case may be, and thereafter prosecute the curing of such failure to perform with reasonable diligence; provided further, however, nothing contained in this Paragraph 20.7 shall relieve Developer from any liability or obligation to Younkers to keep, repair, manage, insure, operate and maintain, or cause to be kept, repaired, managed, insured, operated and maintained, the Common Areas of the Tract of the Take Over Party in accordance with the terms and conditions of the Lease and Article 20 hereof. Developer, its agents and employees, shall have, and are hereby granted, access to the Common Areas of the Tract of the Take Over Party for the purpose of performing the maintenance obligations of Developer required under this Article and/or the Lease, and Developer shall be entitled to receive reimbursement from the Take Over Party for all reasonable costs and expenses incurred in performing such Common Area Maintenance on the Tract of the Take Over Party, payable upon demand with interest at the maximum legal rate, but not to exceed the Agreed Interest Rate at the time of such default. If the Developer fails to perform such maintenance on the Tract of the Take-Over Party, and such failure continues for the time periods specified above in this Subparagraph 20.7, after written notice to the Developer and the Take-Over Party from one or more of the other Department Stores, then either of the other two (2) Department Stores shall have access only to the parking areas and the Ring Road on the Take-Over Tract for the purpose of performing such maintenance and services of the parking areas and Ring Road. Any Department Store performing such maintenance and service shall be entitled to receive reimbursement from the Take-Over Party or the Developer, if the Take-Over Party and Developer fail to perform such maintenance and service, for all costs and expenses incurred from such maintenance and services as provided above in Subparagraph 20.2(a).

20.8 Developer shall keep complete and accurate books and records of the cost and expense of operating and maintaining the Common Areas (exclusive of the Covered Mall). Developer shall preserve for a period of three (3) years after the end of any calendar year during the Term of this Operating Agreement, all of such books and records for such calendar year. Dillard, Penney and Younkers shall have the right, during the aforesaid period of three (3) years at reasonable times during business hours, upon notice to Developer and within sixty (60) days thereafter, but not more often than once each calendar year during the Term of this Operating Agreement, to examine and audit all such books and records for such calendar year at the sole cost and expense of the Party exercising such right pursuant to this Subparagraph 14.5.

OPERATION

Article 21 - Damage or Destruction to Improvements

21.1 Shopping Center Tract. (a) First Fifteen (15) Years. In the event of the destruction of, or damage to, the Buildings (including Younkers, if Younkers otherwise satisfies the terms of this Paragraph 21.1(a)), the Covered Mall or other Improvements upon the Shopping Center Tract, or any part thereof, at any time during (1) the period of fifteen (15) years from and after the latest of the Dillard Opening Date or the Penney Opening Date or the Younkers Opening Date or (2) the period of eight years described in Clause (B) below, by fire, windstorm or other casualty required to be insured pursuant to Paragraph 19.1, and except as provided to the contrary in Paragraph 21.1(d) below, Developer shall promptly and diligently rebuild, repair and restore, or cause to be rebuilt, repaired and restored, the Shopping Center to substantially the same condition that existed prior to such damage

or destruction, in the same location as presently shown on Exhibit "F", and of the general appearance, type and quality, in as good condition and constituting an integrated, first-class regional enclosed mall shopping center substantially as it existed prior to the damage or destruction, provided that one of Dillard, Penney and Younkens are then open and operating as such named Department Stores in the Shopping Center, or are repairing and rebuilding their Buildings and Improvements to be duly re-opened and operated as such; provided, however, that Developer shall not be obligated to so rebuild, repair and restore, or cause to be rebuilt, repaired and restored, any Major Damage (as hereinafter defined) during the last two years of the Dillard, Penney or Younkens Operating Periods or the last two years of the period of eight years described in Clause (B) below in this Paragraph or in Clause (B) of Paragraph 21.1(b), unless (A)(i) Dillard is then open and operating as such named Department Store in the Shopping Center or is repairing and rebuilding its Building and Improvements to be duly re-opened and operated as such, (ii) Penney is then open and operating as such named Department Store in the Shopping Center or is repairing and rebuilding its Building and Improvements to be duly re-opened and operated as such, and (iii) Younkens is then open and operating as such named Department Store in the Shopping Center, or will duly re-open and operate its Building as a Department Store after Developer repairs and rebuilds the Younkens Building, and (B)(i) Dillard is then obligated or then agrees in writing to continue the operation of its named Department Store in the Shopping Center for the longer of its remaining Operating Period, as provided in Article 23 hereof, or eight (8) years from the date of completion of such repair and restoration, (ii) Penney is then obligated or then agrees in writing to continue the operation of its named Department Store in the Shopping Center for the longer of its remaining Operating Period, as provided in Article 23B hereof, or eight (8) years from the date of completion of such repair and restoration, and (iii) Younkens is then obligated or then agrees in writing to continue the operation of its Department Store in the Shopping Center for the longer of its remaining Operating Period, as provided in Article 23A hereof, or eight (8) years from the date of completion of such repair and restoration; provided, however, in the event of Major Damage during the last two years of the Dillard, Penney or Younkens Operating Periods or the last two (2) years of the period of eight (8) years described in Clause (B) above of this Paragraph or in Clause (B) of Paragraph 21.1(b), if one or more (but not all) of Younkens, Penney and Dillard is open and operating, or agrees in writing with Developer to operate as a Department Store for such periods described in Clause (B) of this Subparagraph 21.1(a), then Developer shall only be obligated to restore, repair or rebuild that portion of the Shopping Center Immediately Adjacent to the one or more (but not all) of Younkens, Penney and Dillard that is so open and operating, or agrees in writing to so open and operate.

(b) After Fifteen (15) Years. (i) In the event of any Major Damage to the Buildings, the Covered Mall or other Improvements upon the Shopping Center Tract, or any part thereof, at any time after the expiration of such fifteen (15) year period following the latest of the Dillard Opening Date, the Penney Opening Date or the Younkens Opening Date, by fire, windstorm or other casualty required to be insured pursuant to Paragraph 19.1, and except as provided to the contrary in Paragraph 21.1(d) below, Developer shall be obligated to so rebuild, repair and restore all such Improvements on the Shopping Center Tract only in the event that (A)(x) Dillard is then either operating a Department Store in the Shopping Center, or is repairing and rebuilding its Building and Improvements to be duly re-opened and operated as a Department Store, (y) Penney is then either operating a Department Store in the Shopping Center, or is repairing and rebuilding its Building and Improvements to be duly re-opened and operated as a Department Store, and (z) Younkens is then open and operating a Department Store in the Shopping Center, or will duly re-open and operate its Building and Improvements as a Department Store after Developer

repairs and rebuilds the Younkens Building, and (B) each of Dillard, Penney and Younkens enter into a new written operating agreement with Developer to use and operate their respective Buildings in the Shopping Center as a Department Store for at least eight (8) years following the completion of the repair and restoration; provided, however, if one or more (but not all) of Younkens, Penney and Dillard is open and operating, or agrees in writing with Developer to operate as a Department Store for such periods described in Clause (B) of this Subparagraph 21.1(b)(i), then Developer shall only be obligated to restore, repair or rebuild that portion of the Shopping Center Immediately Adjacent to the one or more (but not all) of Younkens, Penney and Dillard that is so open and operating, or agrees in writing to open and operate.

(ii) In the event any such destruction or damage to the Buildings, Covered Mall or other Improvements on the Shopping Center Tract occurring at any time after the expiration of such 15-year period, is less than "Major Damage" (as hereinafter defined), and except as provided to the contrary in Paragraph 21.1(d) below, Developer shall be obligated to so rebuild, repair and restore if (x) Dillard is then either operating a Department Store in the Shopping Center, or is repairing and rebuilding its Building and Improvements to be duly re-opened and operated as such, (y) Penney is then either operating a Department Store in the Shopping Center, or is repairing and rebuilding its Building and Improvements to be duly re-opened and operated as such, and (z) Younkens is then open and operating a Department Store in the Shopping Center, or will duly re-open and operate its Building and Improvements as a Department Store; provided, however, if one or more (but not all) of Younkens, Penney and Dillard is open and operating, then Developer shall only be obligated to restore, repair or rebuild that portion of the Covered Mall and the Small Store Floor Area Immediately Adjacent to the one or more (but not all) of Younkens, Penney and Dillard that is so open and operating, or will duly re-open and operate.

(c)(i) Major Damage. The term "Major Damage" as used in this Section 21.1 shall mean destruction or damage requiring repairs and restoration which would cost more than ten percent (10%) of the full replacement cost (exclusive of costs and excavations, foundations and footings) of the particular Improvements as originally constructed.

(ii) Immediately Adjacent. The term "Immediately Adjacent" as used in this Operating Agreement means that portion of the Small Store Floor Area and the Covered Mall of the Shopping Center located between (A) the Covered Mall entrance of the Party that (I) extends its covenant to operate as a Department Store, (II) is open and operating or (III) will duly re-open and operate, as the case may be, and (B) the edge of the center court (as identified on Exhibit "F") of the Covered Mall, which is nearest the Covered Mall entrance of the party described in Clause (A) of this Subparagraph 21.1(c)(ii). Any such portion of the Shopping Center included in an Immediately Adjacent area described in this Subparagraph 21.1(c)(ii), shall include a Covered Mall entrance from the exterior of the Shopping Center, which entrance may be either existing or newly constructed by Developer.

(d) Notwithstanding anything to the contrary in this Article 21, Developer shall have no liability or obligation whatsoever to Dillard, Penney or the Future Department Store for any reason under this Operating Agreement, to rebuild, repair or restore, or cause to be rebuilt, repaired or restored, any Building or Improvement on the Dillard Tract, Penney Tract or the Future Department Store Tract.

21.2 Repair/Restoration - Developer. Any Building, the Covered Mall or other Improvements required to be rebuilt, repaired and restored by Developer, pursuant to this Operating Agreement, shall be rebuilt, repaired and restored and ready for occupancy with due diligence, not to exceed eighteen (18) months from the

time when the loss or destruction occurred (except where such repairs and restoration amounts to less than \$100,000.00 in cost, in which event the same shall be completed and ready for occupancy within one hundred twenty (120) days after such occurrence), subject, however, to unavoidable delays stipulated under the provisions of Article 26 hereof; provided, however, but without limiting or modifying the foregoing obligation of Developer set out in this Paragraph 21.2, Developer shall commence any such rebuilding, restoration and repair no later than sixty (60) days after proceeds of insurance covering such damage or destruction become available to Developer. If Developer fails to repair, rebuild or restore such damage or destruction as required by Paragraph 21.1 above and this Paragraph 21.2, (a) Younkens may, in addition to any other remedies available to it at law or in equity, elect to terminate the Lease by giving Developer thirty (30) days prior notice of its election to terminate, and (b) Penney and Dillard may in addition to any other remedies available to it at law or in equity, elect to terminate their respective Operating Covenants.

21.3(a) Supplemental Agreement. The Parties hereby covenant and agree that notwithstanding anything to the contrary contained in this Article 21, Developer shall not be relieved or excused from any obligations it may have pursuant to the terms and conditions of a Supplemental Agreement, and Dillard or Penney may exercise any rights it may have against Developer for Developer's failure to perform any of Developer's obligations pursuant to the terms and conditions of a Supplemental Agreement, as to Dillard or Penney, respectively, to rebuild, repair or restore, or to cause to be rebuilt, repaired or restored, the Buildings, the Covered Mall or other Improvements upon the Developer Tract, or any part thereof.

(b) Lease. The Parties hereby covenant and agree that notwithstanding anything to the contrary contained in this Operating Agreement, Younkens may after the occurrence of any of the events described in Clauses (1)-(3) below, and in addition to any other remedies available to it at law or in equity, terminate the Lease by giving Developer sixty (60) days prior written notice of its election: (1) in the event of (A) the destruction of, or damage to, the Buildings (including Younkens, if Younkens otherwise satisfies the terms of Paragraph 21.1(a)), the Covered Mall or other Improvements upon the Shopping Center Tract, or any other part thereof, at any time during (i) the period of fifteen (15) years from and after the latest of the Dillard Opening Date or the Penney Opening Date or the Younkens Opening Date or (ii) the period of eight (8) years described in Clause (B) of Subparagraphs 21.1(a) and 21.1(b), by fire, windstorm or other casualty required to be insured pursuant to Paragraph 19.1 (but excluding Major Damage during the last two (2) years of such 15-year period, which shall be covered by Clause (2) below), and (B) the failure of Developer to promptly and diligently rebuild, repair and restore, or to cause to be rebuilt, repaired and restored, the Shopping Center to substantially the same condition that existed prior to such damage or destruction in the same location as presently shown on Exhibit "F", and of the general appearance, type and quality, in as good condition and constituting an integrated first-class regional enclosed mall shopping center substantially as it existed prior to the damage or destruction; (2) in the event of (A) any Major Damage to the Buildings, the Covered Mall or other improvements upon the Shopping Center Tract, or any part thereof, at any time (i) during the last two (2) years of such fifteen (15) year period following the latest of the Dillard Opening Date, the Penney Opening Date or the Younkens Opening Date or (ii) after the expiration of such fifteen (15) year period, by fire, windstorm or other casualty required to be insured pursuant to Paragraph 19.1, (B) the failure of Developer to promptly rebuild, repair and restore, or cause to be rebuilt, repaired and restored, all such Buildings, the Covered Mall or other Improvements (exclusive of any Department Store) on the Shopping Center Tract and (C) satisfaction by Younkens of the

conditions in clauses (A) and (B) of Subparagraph 21.1(b)(i); provided, however, if Younkens is the only Department Store open and operating, or agrees in writing with Developer to operate as a Department Store, then Developer shall only be obligated to restore, repair or rebuild that portion of the Shopping Center Immediately Adjacent to Younkens; or (3) in the event of (A) any such destruction or damage to the Buildings, Covered Mall or other Improvements on the Shopping Center Tract occurring at any time after the expiration of such fifteen (15) year period, which is less than "Major Damage" as hereinafter defined, (B) the failure of Developer to promptly rebuild, repair and restore, or cause to be rebuilt, repaired or restored, all such Buildings, the Covered Mall or other Improvements and (C) Younkens is then open and operating a Department Store in the Shopping Center, or will duly re-open and operate its Building and Improvements as a Department Store after rebuilding, repairing and restoration by Developer of the Younkens Building; provided, however, if Younkens is the only Department Store open and operating, then Developer shall only be obligated to restore, repair or rebuild that portion of the covered Mall and the Small Store Floor Area Immediately Adjacent to Younkens.

21.4 (a) Dillard Tract. In the event of the destruction of, or damage to, the Buildings or other Improvements, or any part thereof, upon the Dillard Tract (including Common Area thereon) at any time during the period of fifteen (15) years from and after the Dillard Opening Date by fire, windstorm or other casualty required to be insured against hereunder, and provided that Dillard is required to operate its Store pursuant to Article 23 and provided further that Developer complies with its obligation to rebuild, repair and restore pursuant to Paragraphs 21.1 and 21.2 hereof, Dillard shall promptly and diligently rebuild, repair and restore its Building and Improvements so that there will then be not less than 80% of that amount of square feet of Floor Area on its Tract, in the same location as presently shown on Exhibit "F", and of the same general appearance, type and quality, in as good condition and constituting an integrated Building, as existed prior to the damage or destruction, and Dillard shall promptly resume its operation on its Tract for the remainder of its Operating Period; provided, however, that Dillard shall not be obligated to so rebuild, repair and restore any Major Damage during the last two years of the Dillard Operating Period. If Dillard fails to perform any covenant or obligation pursuant to this Subparagraph 21.4(a), Developer shall use reasonable efforts to enforce such covenants or obligations of Dillard; provided, however, the covenants contained in this Subparagraph 21.4(a) shall not be enforceable by the Developer unless the Developer is operating pursuant to the provisions of Article 22 at the time of such damage or destruction.

21.4 (b) Penney Tract. In the event of the destruction of, or damage to, the Buildings or other Improvements, or any part thereof, upon the Penney Tract (including Common Area thereon) at any time during the period of fifteen (15) years from and after the Penney Opening Date, by fire, windstorm or other casualty required to be insured against hereunder, and provided that Penney is required to operate its Store pursuant to Article 23B, and provided further that Developer complies with its obligation to rebuild, repair and restore pursuant to Paragraphs 21.1 and 21.2 hereof, or elects to so rebuild, repair and restore, Penney shall promptly and diligently rebuild, repair and restore its Building and Improvements so that there will then be not less than eighty percent (80%) of that amount of square feet of Floor Area as set forth in Paragraph 2B.1, in the same location as presently shown on Exhibit "F", and of the same general appearance, type and quality, in as good condition, and constituting an integrated Building, as existed prior to the damage or destruction, and Penney shall promptly resume its operation on its Tract for the remainder of its Operating Period; provided, however, that the portion of the second floor of the Penney Building which is rebuilt, repaired or

restored, shall be contiguous with, and have an entrance to, the Covered Mall; provided further, however, that Penney shall not be obligated to so rebuild, repair and restore any Major Damage during the last two years of the Penney Operating Period. If Penney fails to perform any covenant or obligation pursuant to this Subparagraph 21.4(b), Developer shall use reasonable efforts to enforce such covenants or obligations of Penney; provided, however, the covenants contained in this Subparagraph 21.4(b) shall not be enforceable by the Developer unless the Developer is operating pursuant to the provisions of Article 22 at the time of such damage or destruction and will be so operating at time such damage or destruction is rebuilt, repaired and restored.

21.4(c) Younkers Building. In the event of the destruction of, or damage to, the Younkens Building which Developer has an obligation under this Operating Agreement or the Lease to rebuild, repair and restore, Developer shall promptly and diligently rebuild, repair and restore that portion (but not less than 80%) of the Younkens Building designated by Younkens in its sole and absolute discretion, so that there will then be not less than 80% of that amount of square feet of Floor Area on its Tract, in the same location as presently shown on Exhibit "F", and of the same general appearance, type and quality, in as good condition and constituting an integrated Building, as existed prior to the damage or destruction, and Younkens shall promptly resume its operation on its Tract for the remainder of its Operating Period.

21.5 (a) Repair/Restoration - Dillard. Dillard shall diligently proceed to prepare plans and specifications and to commence rebuilding, repairing and restoring any Building or other improvements required to be rebuilt, repaired and restored by Dillard pursuant to this Operating Agreement, and any such Building or other improvement shall be rebuilt, repaired and restored and ready for occupancy with due diligence, not to exceed eighteen (18) months from the time when the loss or destruction occurred (except where such repairs and restoration amounts to less than \$100,000.00 in cost, in which event the same shall be completed and ready for occupancy within one hundred twenty (120) days after such occurrence); subject, however, to unavoidable delays stipulated under the provisions of Article 26 hereof.

21.5 (b) Repair/Restoration - Penney. Penney shall diligently proceed to prepare plans and specifications and to commence rebuilding, repairing and restoring any Building or other improvements required to be rebuilt, repaired and restored by Penney pursuant to this Operating Agreement, and any such Building or other improvement shall be rebuilt, repaired and restored and ready for occupancy with due diligence, not to exceed twenty-two (22) months from the time when the loss or destruction occurred (except where such repairs and restoration amounts to less than \$100,000.00 in cost, in which event the same shall be completed and ready for occupancy within one hundred twenty (120) days after such occurrence); subject, however, to unavoidable delays stipulated under the provisions of Article 26 hereof.

21.6 Construction Requirements. Any repair, reconstruction and replacement of any Building or other Improvements performed by Developer, Penney or Dillard pursuant to this Article, shall, to the extent applicable, be performed in accordance with the following requirements:

1. Plans and specifications therefor not previously reviewed for the construction of the Penney Building and Dillard Building shall be submitted by Penney and Dillard, respectively, to Developer for review in accordance with the provisions of Paragraph 2.2 and 2B.2 hereof, respectively.

2. The Buildings or other Improvements being restored shall be restored as nearly as practicable to the condition existing just prior to the occurrence of such casualty, and shall be at least of equal value per square foot, and at least as usable for its intended purpose, as such Building or other Improvements were just prior to the occurrence of such casualty.
3. Substantially the same public entrances in relation to location on the Covered Mall shall exist as existed just prior to the occurrence of such casualty.
4. Such repair, reconstruction and replacement shall be done in conformity with the provisions of this Operating Agreement concerning initial construction.

21.7 Clearing of Tract. In the event any Party shall not be required to rebuild and restore its damaged Building or other Improvements under the provisions of this Article, and it does not, in fact, make such restoration, such Party shall clear its Tract of all debris and hazardous conditions, and shall maintain its Tract in a clean, safe and sightly condition; provided, however, that in no event shall any Party have the right to withdraw its Tract or portion thereof from the Common Area, or from the Ring Road easement or any other easements created and provided for hereunder, at any time during the Term of this Operating Agreement, and in the event of any such damage or destruction each Party shall cause that portion of its Tract which is devoted to use as part of the Common Area to be repaired and restored to the condition the same was in immediately prior to the occurrence of such damage and destruction, and thereafter to be maintained in such condition and as part of the Common Area during the remaining Term of this Operating Agreement in accordance with the terms hereof.

OPERATION

Article 22 - Developer Operating Period

22.1 Developer shall continuously operate the Developer Tract (excluding the Younkens Building and the Future Department Store Building as shown on Exhibit "F") and the Developer Building, the Common Area and the Covered Mall thereon as a first-class regional enclosed mall shopping center, and shall cause such Small Store Floor Area to be occupied and operated in accordance with the standards set forth in Article 12 of this Operating Agreement, from and after the earlier of the Dillard, Penney or Younkens Opening Dates, and following expiration or earlier termination of the last of the operating covenants of Dillard, Younkens and Penney, and for so long thereafter during the remainder of the term of this Operating Agreement as two of Dillard, Younkens and Penney are using the Building they occupy in the Shopping Center for purposes and uses permitted by Articles 23, 23A and 23B, respectively; provided, however, if following the expiration or earlier termination of the last of said operating covenants of Dillard, Younkens and Penney, one of Younkens, Penney and Dillard is the only Department Store open and in operation in the Shopping Center, Developer shall only be obligated to operate and maintain that portion of the Covered Mall which is Immediately Adjacent to such Department Store Building and, if Developer actually ceases operation of that portion of the Covered Mall which is Immediately Adjacent to the Department Stores which are not so open or using their Building, (a) such unoperated portion of the Covered Mall and the Small Store Floor Area therein shall be excluded from any determination or calculation of the conditions in Paragraphs 23.1(b), 23A.1(b) and 23B.1(b), and (b) such conditions in Paragraphs 23.1(b), 23A.1(b) and 23B.1(b) shall be deemed to be further modified by deleting "sixty percent (60%)" and substituting "seventy percent (70%)" thereof in each instance; provided further, however, if none of Younkens, Penney and Dillard are open and

operating pursuant to the terms of this Operating Agreement, Developer shall have no obligation to operate and maintain any portion of the Covered Mall. (The period of time during which Developer is obligated to operate the Shopping Center in accordance with and subject to the terms and conditions of this Article 22, is hereinafter referred to as the "Developer Operating Period".)

22.2 The provisions of this Article shall be subject to the provisions of Articles 21, 26 and 27, and Paragraph 32.9, of this Operating Agreement.

22.3 A temporary cessation of business or operation by Developer shall not be deemed a cessation of business or operation for purposes of this Article 22 and a breach of Developer's operating covenant as provided in Paragraph 22.1 hereof, if such temporary cessation:

(a) Is occasioned by diligently making repairs in accordance with the terms of this Operating Agreement, due to damage, destruction or condemnation of the Developer Building and/or Covered Mall; or

(b) is caused by Sundays and holidays or for taking inventory; or

(c) does not exceed sixty (60) days, and is reasonably required to diligently make permitted alterations or renovations hereunder, or to diligently remodel, fixture and/or merchandise premises in order to place assignees or tenants in the premises where such cessation of business occurs.

22.4 The Parties acknowledge that damages for the breach of the operating covenants contained in this Article may be difficult to ascertain. Accordingly, Dillard, Penney and Younkers shall be entitled not only to damages but also to injunctive relief to enforce the foregoing operating covenants against Developer and to restrain and enjoin any breach or threatened breach thereof. If Developer is in default of its operating covenant in Paragraph 22.1 or is no longer obligated to operate pursuant to the terms and conditions of its operating covenant in Paragraph 22.1, Developer shall not be entitled to enforce the operating covenant of any other Party.

22.5 For so long as Younkers shall operate a retail department store in the Younkers Building in accordance with this Operating Agreement, Developer shall not, without the consent of Younkers, permit any other Occupant to: (A) conduct, or permit any other Occupant to conduct, any fire, bankruptcy, auction sale or "going out of business" sale within the Shopping Center; (B) use, or permit any other Occupant to be use, any advertising medium that constitutes a nuisance, such as loudspeakers, sound amplifiers, phonographs or radio or television broadcasts in a manner which can be heard outside the Floor Area of the Shopping Center; (C) permit any activity in the Shopping Center of a type which is not generally considered appropriate for regional shopping centers, conducted in accordance with good and generally accepted standards of operation; or (D) burn, or permit any Occupant to burn, any trash or garbage in any area or store any trash or garbage outdoors in the Shopping Center except in closed containers within a truck dock area, dock area or service court.

OPERATION

Article 23 - Dillard Operating Period

23.1 Provided (a) at least one (1) of Younkers or Penney is open and operating in the Shopping Center, under the name

"Younkers" and "Penney", respectively, or such other names permitted by the terms of their respective operating covenants, (b) Occupants of at least sixty percent (60%) of the Small Store Floor Area in the Developer Tract- are conducting business, and (c) Developer is not in default (pursuant to Paragraph 32.10 hereof) of its operating covenant in Paragraph 20.1, Dillard covenants and agrees with Developer and its successors and assigns, that (1) Dillard shall, for a period of fifteen (15) years following the Dillard Opening Date (such period of fifteen (15) years being referred to as the "Dillard Operating Period") keep open and continuously operate, or cause to be kept open and continuously operated, a retail department store containing approximately 205,000 square feet of Floor Area on the two (2) levels in the Dillard Building, which retail department store shall be continuously operated under a trade name which includes the word "Dillard", or under such other trade name as is used by the majority of its stores in the States of Nebraska and Iowa, during the Operating Period, and (2) the Dillard Tract and Building thereon shall not be used for any use or purpose other than that specified in clause (1) of this sentence during the Dillard Operating Period; provided, however, that if at any time during the Dillard Operating Period neither Younkers nor Penney is open and operating in the Shopping Center, Dillard nevertheless shall remain open and continue to operate and observe and perform its operating covenant contained herein and shall not cease, or exercise any right to cease, operating, unless such condition continues for more than sixty (60) days after Dillard has given written notice to Developer and to any mortgagee of the Developer Tract entitled there to pursuant to Paragraph 32.12 hereof that such condition exists; and provided further, however, that if at any time during the Dillard Operating Period such occupancy of the Small Store Floor Area fronting on the Covered Mall in the Developer Tract falls below sixty percent (60%), Dillard nevertheless shall remain open and continue to operate and observe and perform its operating covenant contained herein and shall not cease, or exercise any right to cease, operating, unless such condition continues for more than one (1) year after Dillard has given written notice to Developer and to any mortgagee of the Developer Tract entitled thereto pursuant to Paragraph 32.12 hereof that such condition exists, during which period of one (1) year following receipt of such notice Developer shall have the opportunity (but not the obligation) to restore the occupancy of the required minimum of sixty percent (60%) of Small Store Floor Area fronting on the Covered Mall. If and when the Future Department Store is open and operating in the Shopping Center, Dillard's obligation to operate as aforesaid shall be conditioned upon (in addition to the other conditions stated above) the continued operation of at least two (2) of Younkers, Penney and the Future Department Store, and the preceding sentence shall be deemed amended accordingly. Dillard further covenants and agrees that during the remaining Term of this Operating Agreement, after the expiration of the Dillard Operating Period, so long as (A) at least one (1) other Department Store is using its Building for retail purposes customarily found in an enclosed mall shopping center, (B) at least sixty percent (60%) of the Small Store Floor Area fronting on the Covered Mall in the Developer Tract is being operated for retail purposes, and (C) Developer is not in default (pursuant to Paragraph 32.10 hereof) of its operating covenant in Paragraph 20.1, then Dillard, its successors and assigns, shall not use the Dillard Building or Dillard Tract for any use or purpose incompatible with an enclosed mall regional shopping center. It is further provided that Dillard Department Stores, Inc. shall be relieved of such obligation to operate under the name "Dillard" as provided herein, if it assigns its interest under this Operating Agreement as permitted under, and in accordance with the terms and conditions of, Paragraph 28.4(b) of the Operating Agreement.

23.2 It is understood and agreed, however, that the provisions of this Article 23 shall not be deemed to interfere with

Dillard's sole discretion as to store hours or holidays for the Dillard Building, or obligate Dillard to devote all the space in the Dillard Building to selling, it being understood that a reasonable amount of space may be used for offices, storerooms, receiving, shipping, work rooms, delivery services or other uses which are incidental to the purposes or operation of a Dillard Department Store within the Dillard Building.

23.3 Developer and Dillard acknowledge that damages for the breach of the operating covenants contained in this Article may be difficult to ascertain. Accordingly, Developer shall be entitled not only to damages but also to injunctive relief to enforce the foregoing operating covenants against Dillard and to restrain and enjoin a breach or threatened breach thereof. The Parties further acknowledge that the operating covenant contained in this Article shall run to and for the benefit of Developer only; provided, however, if Dillard is in default of its operating covenant in Paragraph 23.1 or is no longer obligated to operate pursuant to its operating covenant in Paragraph 23.1, Dillard shall not be entitled to enforce the operating covenant of Developer.

23.4 A temporary cessation of business or operation by Dillard shall not be deemed a cessation of business or operation for purposes of this Article 23 and a breach of the Dillard operating covenant as provided in Paragraph 23.1 hereof, if such temporary cessation:

(a) is occasioned by diligently making repairs due to damage, destruction or condemnation of the Dillard Building; or

(b) is caused by Sundays and holidays or for taking inventory; or

(c) does not exceed sixty (60) days, and is reasonably required to diligently make permitted alterations or renovations hereunder or to diligently remodel, fixture and/or merchandise premises in order to place assignees or tenants in the premises where such cessation of business occurs;

and provided, that Dillard shall continue to pay all maintenance charges and other charges and contributions payable by Dillard to Developer hereunder and under its Supplemental Agreement during any such temporary cessation of business.

Operation

Article 23A - Younkers Operating Period

23A.1 Younkers covenants and agrees with Developer its successors and assigns, that Younkers shall, for a period of fifteen (15) years following the Younkers Opening Date (such period of fifteen (15) years being referred to as the "Younkers Operating Period"), remain open and continuously operate, or cause to be kept open and operated, a retail department store in the entire Younkers Building under the name "Younkers", and shall, for a period of five (5) years thereafter, shall not use the Younkers Building for any purpose incompatible with an enclosed mall regional shopping center, provided (a) a retail department store occupies approximately 205,000 square feet and is open to the general public for business and operates under the name "Dillard" or such other trade name as is being utilized by a majority of the retail department stores being operated by Dillard Department Stores, Inc. in the State of Nebraska, (b) Occupants (exclusive of Younkers and any other Department Store) are open to the general public for business and occupy at least sixty percent (60%) of the Small Store Floor Area fronting on the Covered Mall, and (c) Developer is not in default under the Lease or in default (pursuant to Paragraph 32.10 hereof) of its operating covenant in Paragraph 20.1.

Notwithstanding anything to the contrary herein contained, if (y) Dillard is not open and operating or (z) tenant occupancy of the Small Store Floor Area fronting on the Covered Mall falls below sixty percent (60%), as provided in the immediate preceding sentence, Younkens nevertheless shall remain open and continue to operate and shall not cease to operate unless either of such conditions continues for more than one (1) year after Younkens has given written notice to Developer and to any mortgagee of the Developer Tract, that such condition exists, during which period of one (1) year following receipt of such notice Developer shall have the opportunity (but not the obligation) to restore the operation of Dillard or substitute therefor a retail department store comparable to Dillard, or to restore occupancy of the Small Store Floor Area fronting on the Covered Mall to the required sixty percent (60%) minimum, as the case may be. Developer hereby agrees to deliver to Younkens upon Younkens's reasonable request and without charge to Younkens, but not more frequently than once within any six (6) month period during the Younkens Operating Period, a statement advising Younkens as to tenant occupancy of the Small Store Floor Area fronting on the Covered Mall. It is further provided that Younkens, Inc. shall be relieved of such obligation to operate under the name "Younkens" as provided herein, if it assigns the Lease as permitted under, and in accordance with the terms and conditions of, Paragraph 28.5(a)(2) of the Operating Agreement.

23A.2 It is understood and agreed, however, that the provisions of this Article 23A shall not be deemed to interfere with Younkens' sole discretion as to store hours or holidays for the Younkens Building, or obligate Younkens to devote all the space in the Younkens Building to selling, it being understood that a reasonable amount of space may be used for offices, storerooms, receiving, shipping, work rooms, delivery services or other uses which are incidental to the purposes or operation of a Younkens department store within the Younkens Building.

23A.3 A temporary cessation of business or operation by Younkens shall not be deemed a cessation of business or operation for purposes of this Article 23A and a breach of the Younkens operating covenant as provided in Paragraph 23A.1 hereof, if such temporary cessation:

(a) is occasioned by diligently making repairs due to damage, destruction or condemnation of the Younkens Building; or

(b) is caused by Sundays and holidays or for taking inventory; or

(c) does not exceed sixty (60) days, and is reasonably required to diligently make permitted alterations or renovation hereunder or to diligently remodel, fixture and/or merchandise premises in order to place assignees or tenants in the premises where such cessation of business occurs;

and provided, that Younkens shall continue to pay all rent, maintenance charges and other charges and contributions payable by Younkens to Developer hereunder and under its Lease during any such temporary cessation of business.

23A.4 Developer and Younkens acknowledge that damages for the breach of the operating covenants contained in this Article may be difficult to ascertain. Accordingly, Developer shall be entitled not only to damages but also to injunctive relief to enforce the foregoing operating covenants against Younkens and to restrain and enjoin a breach or threatened breach thereof. The Parties further acknowledge that the operating covenants contained in this Article shall run to and for the benefit of Developer only; provided, however, if Younkens is in default of its operating covenant in Paragraph 23A.1 or is no longer obligated to operate pursuant to

its operating covenant in Paragraph 23A.1, Younkens shall not be entitled to enforce the operating covenant of Developer.

23A.5 For so long as Developer shall operate an enclosed regional mall shopping center in accordance with this Operating Agreement, Younkens shall not, without the consent of Developer: (A) conduct or permit any fire, bankruptcy, auction sale or "going out of business" sale within the Younkens Building; (B) use, or permit to be used, any advertising medium that constitutes a nuisance, such as loudspeakers, sound amplifiers, phonographs or radio or television broadcasts in a manner which can be heard outside the Floor Area of the Younkens Building; (C) permit any activity on the Demised Premises of a type which is not generally considered appropriate for regional shopping centers, conducted in accordance with good and generally accepted standards of operation; or (D) burn any trash or garbage in any area or store any trash or garbage outdoors except in closed containers within Younkens's truck dock area or adjacent thereto within the Younkens Building.

Operation

Article 23B - Penney Operating Period

23B.1 Provided (a) (i) Younkens is open and operating in the Shopping Center, under the name "Younkens", or under such other name as it may then be using as part of an integrated department store chain operation operating under such name and containing not less than five (5) stores in the States of Nebraska and Iowa, or (ii) Dillard is open and operating in the Shopping Center, under the name "Dillards", or under such other name as it may then be using as part of an integrated department store chain operation operating under such name and containing not less than five (5) stores in the States of Nebraska and Iowa, (b) Occupants of at least sixty percent (60%) of the Small Store Floor Area in the Developer Tract are conducting business, and (c) Developer is not in default (pursuant to Paragraph 32.10 hereof) of its operating covenant in Paragraph 20.1, Penney covenants and agrees with Developer only, and its successors and assigns, that (1) Penney shall, for a period of fifteen (15) years following the Penney Opening Date (such period of fifteen (15) years being referred to as the "Penney Operating Period") keep open and continuously operate, or cause to be kept open and continuously operated, a retail department store on the two (2) levels in the Penney Building, which retail department store shall be similar to other Penney department stores of similar size to the Building described in Paragraph 2B.1, and shall be continuously operated under a name consisting of, or in which appears, the word "Penney" or "JCPenney", or under the name which a majority of the retail department stores are being operated by J.C. Penney Company, Inc., during the Penney Operating Period, and (2) the Penney Tract and Building thereon shall not be used for any use or purpose other than that specified in clause (1) of this sentence during the Operating Period; provided, however, that on sixty (60) days prior written notice to Developer and any mortgagee of the Developer Tract entitled thereto pursuant to Paragraph 32.12 hereof, Penney may elect to terminate its operating covenant contained herein, if at any time during the Penney Operating Period Dillard and Younkens are not open and operating in the Shopping Center and such condition continues for a period of more than sixty (60) days; and provided further, however, that on sixty (60) days prior written notice to Developer and any mortgagee of the Developer Tract entitled thereto pursuant to Paragraph 32.12, Penney may elect to terminate its operating covenant contained herein, if at any time during the Penney Operating Period the occupancy of the Small Store Floor Area fronting on the Covered Mall in the Developer Tract falls below sixty percent (60%), and such condition continues for a period of more than one (1) year. Penney further covenants and agrees that during the remaining Term of this Operating Agreement, after the expiration of the Penney Operating Period, so long as (i)

at least one (1) other Department Store is using its Building for retail purposes customarily found in an enclosed mall shopping center, (ii) at least sixty percent (60%) of the Small Store Floor Area fronting on the Covered Mall in the Developer Tract is being operated for retail purposes, and (iii) Developer is not in default (pursuant to Paragraph 32.10 hereof) of its operating covenant in Paragraph 20.1, then Penney, its successors and assigns, shall not use the Penney Building or Penney Tract for any use or purpose incompatible with an enclosed mall regional shopping center. It is further provided that J.C. Penney Properties, Inc. shall be relieved of such obligation to operate under the name "Penney" as provided herein, if it assigns its interest under this Operating Agreement as permitted under, and in accordance with the terms and conditions of Paragraph 28.6 of the Operating Agreement.

23B.2 Notwithstanding anything to the contrary contained in this Operating Agreement the number and types of departments to be operated in the Penney Building, the particular contents, wares, and merchandise to be offered for sale and the services to be rendered (including but not limited to banking, financial, insurance sales and services), the methods and extent of merchandising and storage thereof, and the manner of operating the Penney Store, in every respect whatsoever, shall be within the sole and absolute discretion of Penney.

23B.3 The Developer and Penney acknowledge that damages for the breach of the operating covenants contained in this Article may be difficult to ascertain. Accordingly, Developer shall be entitled not only to damages but also to injunctive relief to enforce the foregoing operating covenants against Penney and to restrain and enjoin a breach or threatened breach thereof. Developer and Penney further acknowledge that the operating covenants shall run to and for the benefit of Developer only; provided, however, if Penney is in default of its operating covenant in Paragraph 23B.1 or is no longer obligated to operate pursuant to its operating covenant in Paragraph 23B.1, Penney shall not be entitled to enforce the operating covenant of Developer.

23B.4 A temporary cessation of business or operation by Penney shall not be deemed a cessation of business or operation for purposes of this Article 23B and a breach of the Penney operating covenant as provided in Paragraph 23A.1 hereof, if such temporary cessation:

(1) is occasioned by diligently making repairs due to damage, destruction or condemnation of the Penney Building; or

(2) is caused by Sundays and holidays or for taking inventory; or

(3) does not exceed sixty (60) days, and is reasonably required to diligently make permitted alterations or renovations hereunder or to diligently remodel, fixture and/or merchandise premises in order to place assignees or tenants in the premises where such cessation of business occurs.

and provided, that Penney shall continue to pay all maintenance charges and other charges and contributions payable by Penney to Developer hereunder and under its Supplemental Agreement during any such temporary cessation of business.

23B.5 The Parties acknowledge and agree that J.C. Penney Company, Inc., the parent company of Penney, may actually operate the Penney Building, and that the operation of the Penney Building by J.C. Penney Company, Inc. will be deemed to be the same as operation of the Penney Building by Penney for all purposes under Articles 22, 23, 23A and 23B of this Operating Agreement.

P A R T T H R E E

RECIPROCAL EASEMENTS

Article 24 - Easements

24.1 Terms, Definitions and Documentation. This Article sets forth easements and licenses and the terms and conditions thereof, which Developer, Penney and Dillard hereby grant to the other and to Younkens, for the respective periods set forth in the case of each such easement or license. As used in this Article,

(a) A Party granting an easement or license is referred to as the "Grantor" thereof, it being intended that the grant shall thereby bind, and include, not only such Party but its successors and assigns as well; and

(b) A Party to which an easement or license is granted, is referred to as the "Grantee" thereof, it being intended that the grant shall benefit, and include, not only such Party but its successors and assigns as well; and

(c) The word "in", in respect of an easement granted "in" a particular Tract, shall be deemed to mean, as the context may require, "in", "to", "on", "over", "through", "upon", "across", and/or "under".

As to the easements herein granted:

(d) The grant of a particular easement by a Grantor shall bind and burden its respective Tract, which shall, for the purpose of this Article, be deemed to be the servient tenement, but where only a portion thereof is bound and burdened by the particular easement, only that portion thereof so bound and burdened shall be deemed to be the servient tenement; and

(e) The grant of a particular easement to a Grantee shall benefit its respective Tract, or in the instance of Younkens, shall benefit the Younkens Building and other interests in real estate demised and leased to it by the Lease, which Tract or Building, as the case may be, shall, for the purposes of this Article, be deemed to be the dominant tenement, but where only a portion thereof is so benefited, only that portion shall be deemed to be the dominant tenement.

(f) All easements and licenses granted in this Article shall exist by virtue of this Operating Agreement, without the necessity of confirmation by any other document; and likewise, upon the extinguishment, expiration or termination of any easement or license hereby granted, in whole or in part, or its release in respect of all or any portion of any Tract, pursuant hereto, the same shall be extinguished or released or be deemed to have expired or terminated without the necessity of confirmation by any other document. However, each Party shall, as to any easement or license hereby granted, at the request of any other Party, upon the submission by the requesting Party of an appropriate document in form and substance acceptable to all Parties in their sole and absolute discretion, execute and acknowledge such a document memorializing the existence, or the extinguishment (in whole or in part), or the release in respect of all or any portion of any Tract, as the case may be, of any easement or license existing by virtue of this Operating Agreement.

(g) All easements and licenses hereby granted are, unless expressly limited herein, non-exclusive and irrevocable, and

for the common benefit of each of the Parties hereto and their respective successors and assigns.

(h) All easements and licenses hereby granted are subject to all existing easements, licenses, covenants, conditions and agreements of record as of the date of this Operating Agreement.

(i) All easements and licenses hereby granted also shall inure to the benefit of any Future Department Store and its Permittees and shall also be appurtenant to any Future Department Store Tract.

24.2 License to Perform. Each Party hereby grants to each of the other Parties and to the architect and contractors performing any work called for in this Operating Agreement, a temporary license for the performance of such work. The license granted by this Paragraph 24.2 shall not permit the use of any portion of any Tract upon which a Building is, or is to be (as shown on Exhibit "F") located, if operation or construction of such Building would thereby be unreasonably interfered with or delayed, provided that each such license as to any particular Tract benefited thereby, shall end when the work shall be completed but shall not extend beyond the time when it is needed under good construction practice.

24.3 License for Construction. During the period of the construction, rebuilding, restoration or repair, of the Dillard Building, the Younkens Building, the Penney Building, the Developer Building and the perimeter sidewalks thereto, and the Covered Mall as called for in this Operating Agreement, Dillard, Penney and Developer each grant to the other and to Younkens, and their respective architects, contractors and others engaged in performing such work, a temporary license to use portions of the Common Areas on the Tract of the Grantor, as and to the extent reasonably necessary for the purpose of performing the construction in question; provided that the portions of any Tract to be used pursuant to this Paragraph 24.3, shall have been previously approved by the Grantor, which approval shall not be unreasonably withheld, denied or delayed; and provided further, that each such license as to any particular Tract benefited thereby shall end when the construction of the Building or structure, the construction of which gives rise to such license, shall be completed but shall not extend beyond the time when it is needed under good construction practice. During the periods of construction, each Party grants to the other the temporary license to be used for so long as reasonably necessary in the performance of such construction:

(i) To use any roads, constituting part of the Common Area, to provide access for personnel, equipment, supplies and like matters to and from the site of the particular construction, to the extent so reasonably necessary; and

(ii) To use, notwithstanding anything to the contrary in this Operating Agreement contained, such parts of the Common Area on the Tract where the work is being done as may be reasonably needed for access to the work site and/or storage and storing areas as are reasonably needed in doing such construction, provided, however, the location of such parts of the Common Area described in Clauses (i) and (ii) of this Paragraph 24.3, and the duration of the right hereunder to use such parts, shall be subject to the approval of the Grantor, which approval shall not be unreasonably withheld, denied or delayed.

24.4 Easement for Use of Common Areas. Developer, Penney and Dillard each grant to the other and to Younkens easements to use each portion of the Common Area so constructed on its respective Tract(s) (including, without limitation, the Covered Mall, parking areas, the Ring Road and Common Utility Facilities) for its

respective intended purposes and to perform the repairs and maintenance provided in Article 20, such easements to be for the use of the Grantee thereof and its Permittees. Included with the easements granted by this Article are, without limitation, easements for the Grantee and its Permittees, in common with the Grantor and its Permittees, to use:

(i) subject to the terms and conditions of Subparagraph 8 of Paragraph 4.1, the respective parking facilities for the circulation, parking and passage of motor vehicles and circulation and accommodation of, and passage by, pedestrians in the Total Development Tract; provided, however, the easement contained in this Clause (i) shall not be for the benefit of the Reserve Tracts;

(ii) such roadways (including, without limitation, the Ring Road) to provide passage by motor vehicles and pedestrians between each Tract in the Total Development Tract, including, without limitation, the Reserve Tracts and the abutting highways and to provide passage between the various portions of each Tract in the Total Development Tract, including, without limitation, the Reserve Tracts; and

(iii) the various walkways and all other portions of the Common Area in the Total Development Tract.

The easements provided in this Paragraph are subject in each case to the rights to use the Common Area for other purposes specifically provided in this Operating Agreement and the rights, if any, of each Grantor to change and relocate portions of the Common Area to the extent (but only to the extent) specifically provided in this Paragraph 24.4 and in Paragraph 24.10 hereof. Except as hereafter expressly provided in this Paragraph 24.4, no Party shall have the right, without the consent of the other Parties to this Operating Agreement and the owners of the other Tracts which are benefited by easements applicable to the Ring Road, to relocate any juncture point of the Ring Road on its Tract with that on any other Tract, or narrow the Ring Road on its Tract, or materially change the grade of the Ring Road on its Tract. Except as hereinafter further expressly provided in this Paragraph 24.4, the easements provided in this Paragraph shall terminate upon the termination of this Operating Agreement. Notwithstanding anything to the contrary, the easements for vehicular and pedestrian traffic over, upon and across (a) those strips of land which are identified and designated on Exhibit "F" as the "Ring Road" and (b) the lateral access roads located between such strips of land and the public streets known as 144th Street and Oak View Drive (such ring road and lateral access roads being hereinafter referred to collectively as the "Ring Road"), shall remain and continue in full force and effect after the Term of this Operating Agreement, so long as any of the Buildings, or any replacements thereof, on the Shopping Center Tract shall stand; provided, however, Developer may at its election relocate the Ring Road from the location shown on that part of Exhibit "F" identified as "Initial Development Ring Road" to the alternate location of the Ring Road shown on the full site plan of the Shopping Center on Exhibit "F" or somewhere in between such locations, as to that portion of the Ring Road along the southeastern side of the Shopping Center between Entry #1 and Entry #2 as shown on Exhibit "F"; and provided further, however, the Grantor of such easements reserves the right at any time and from time to time after the expiration of the Term of this Operating Agreement to change the location of all or any portion of the Ring Road located on its Tract, provided that (i) such relocation shall be made at the sole cost and expense of the Grantor, (ii) the use of the Ring Road for pedestrian and vehicular traffic, and for ingress to and egress from access roads, is not unreasonably restricted or materially impaired by such relocation, (iii) if as a result of any such relocation, the Ring Road is not contiguous with any access road

with which the Ring Road was contiguous prior to such relocation, the Grantor shall at its sole cost and expense extend such access road to the relocated Ring Road to provide continued use of such access road, (iv) the quality of construction and the width of the relocated Ring Road shall be substantially similar to the portion being relocated, and (v) the relocation shall be carried out in such manner as to cause the least possible interference with the use of the Ring Road; and provided further, however, that after the expiration of the Term of this Operating Agreement the Grantor shall have no obligation to maintain or repair the Ring Road on its Tract and any Grantee shall have the right to enter upon the Tract of the Grantor for the purpose of maintaining and repairing the Ring Road at such Grantee's sole cost and expense, and that any Grantee entering upon the Tract of a Grantor to effect such maintenance and repair shall indemnify, defend and save harmless the Grantor from all loss, liability, cost and expense incurred in connection with the Grantee's exercise of such right. In the event of a condemnation of any portion of the Ring Road, the Parties will endeavor in good faith to agree on a substitute for the portion thereof condemned; failing such agreement, the matter shall be submitted to arbitration, the arbitrator to be a nationally recognized traffic engineer who is independent of all Parties, it being intended that a Ring Road shall in such event continue to exist.

24.5 Easement to Open On and Use the Covered Mall. (a) Dillard. Developer grants to Dillard easements (i) to have the Dillard Building abut, overhang and open on the Covered Mall and (ii) to use the Covered Mall for access to any other Buildings opening on the Covered Mall for it and its Permittees, in common with the Grantor, Penney and Younkers, and their respective Permittees, as shown on Exhibit "F" and in the Dillard Plans. These easements are subject to the right of Developer to relocate various elements of the Covered Mall to the extent specifically provided in Articles 14 and 15 of this Operating Agreement. The easements provided in this Subparagraph 24.5(a) shall terminate as to the Dillard Tract and Dillard as Grantee upon the earlier of (i) the termination of this Operating Agreement or (ii) such date as the Dillard Tract and Dillard Building are no longer being operated for the uses or purposes permitted by this Operating Agreement; provided, however, if after such termination but prior to the termination of this Operating Agreement, the Dillard Tract and Building shall resume being operated for the uses or purposes permitted by this Operating Agreement, Developer shall grant to Dillard an easement in the form, and subject to the limitations, described in this Subparagraph 24.5(a).

(b) Penney. Developer grants to Penney easements (i) to have the Penney Building abut, overhang and open on the Covered Mall and (ii) to use the Covered Mall for access to any other Buildings opening on the Covered Mall for it and its Permittees, in common with the Grantor, Dillard and Younkers, and their Permittees, as shown on Exhibit "F" and in the Penney Plans. These easements are subject to the right of Developer to relocate various elements of the Covered Mall to the extent specifically provided in Articles 14 and 15 of this Operating Agreement. The easements provided in this Subparagraph 24.5(b) shall terminate as to the Penney Tract and Penney as Grantee upon the earlier of (i) the termination of this Operating Agreement or (ii) such date as the Penney Tract and Penney Building are no longer being operated for the uses or purposes permitted by this Operating Agreement; provided, however, if after such termination but prior to the termination of this Operating Agreement, the Penney Tract and Building shall resume being operated for the uses or purposes permitted by this Operating Agreement, Developer shall grant to Penney an easement in the form, and subject to the limitations, described in this Subparagraph 24.5(b).

24.6 Easement to Perform Self-Help. Penney and Dillard each grant to the Developer and its employees, agents and contractors, and Developer grants to Younkers, Penney and Dillard, and their respective employees, agents and contractors, easements to enter upon the Tract of the Grantor, and into all Improvements thereon, for the purpose of performing any obligation which the Grantor is required to perform under this Operating Agreement, but which the Grantor fails or refuses to do within thirty (30) days after notice thereof, and which the Grantee has the right then so to perform as provided in the Operating Agreement; provided, however, the right of the Grantee, and its respective employees, agents and contractors, pursuant to this Paragraph 24.6, shall be conditioned upon no less than five (5) days' prior written notice given by the Grantee to the Grantor that Grantee anticipates doing work pursuant to this Paragraph 24.6, together with notification of the proposed area of such work and the anticipated date of start of such work, except that if the work involved is emergency repair work, only such advance notice, written or oral, as is reasonably practicable need be given; and provided further, however, (i) no Party shall have the right, whether under this Paragraph or otherwise, to enter upon or into any Building (except the roof) containing the Floor Area of any Occupant or other Party, to perform any duties or obligations of any other Party arising under this Operating Agreement and (ii) no Department Store shall have the right to take over, assume or perform Developer's obligations with respect to furnishing of heating, ventilating and air conditioning for the Covered Mall.

24.7 Easement for Operation of Common Areas. (a) Dillard and Penney grant to Developer easements in the Common Areas located on the Tract of the Grantor for the following purposes:

(i) The development and performance of construction thereon of portions of the Common Area located on the Tract of the Grantor; and

(ii) The management, operation, maintenance, reconstruction and repair of such Common Area pursuant to the applicable provisions of this Operating Agreement.

The easements provided in this Paragraph shall terminate upon the termination of this Operating Agreement.

(b) Dillard and Penney hereby grant to each other, and to Younkers, an easement in the parking areas and those portions of the Ring Road located on their respective Tracts, for the limited purposes described in (1) the second grammatical paragraph of Subparagraph 20.2(a) and (2) Paragraph 20.7.

24.8 Easement for Abutment of Covered Mall. Dillard and Penney grant to Developer the right to have the Covered Mall and the Developer Building abut and attach to the Building of the Grantor as shown on Exhibit "F" and in the Dillard Plans and the Penney Plans; provided, however, that there shall be no load bearing requirements on the Building of the Grantor. The easements as provided in this Paragraph shall terminate if and when:

(i) The Covered Mall and/or the Developer Building are demolished or destroyed and not replaced with reasonable promptness, or

(ii) The Building of the Grantor shall, insofar as the Covered Mall abuts upon it, be demolished or destroyed and the Grantor is not required to, and does not, replace it.

24.9 Easement for Repair to Facilities on Grantee's Tract. Penney and Dillard each grant to the Developer and its employees, agents and contractors, and Developer grants to Younkers, Penney and Dillard, and their respective employees, agents and

contractors, easements for the purpose of maintaining, repairing or reconstructing any of the facilities of the Grantee located in such proximity to the Tract(s) (but excluding all of the Building except the roof) of the Grantor that such facilities can, as a practical matter, be so maintained, repaired or reconstructed most advantageously from the Tract(s) of the Grantor; provided, however, the right of the Grantee, and its respective employees, agents and contractors, pursuant to this Paragraph 24.9, shall be conditioned upon no less than five (5) days' prior written notice given by the Grantee to the Grantor that Grantee anticipates doing work pursuant to this Paragraph 24.9, together with notification of the proposed area of such work and the anticipated date of start of such work, except that if the work involved is emergency repair work, only such advance notice, written or oral, as is reasonably practicable need be given. Such easements shall permit the Grantee and its employees, agents, contractors and subcontractors, to enter upon and use such parts of the Tract(s) (but excluding all of the Building except the roof) of the Grantor as are adjacent to the perimeter of said facilities to such extent, in such manner (including, without limitation, the erection of scaffolding) and for so long as is reasonably necessary to the accomplishment of said purpose; provided, however, and on condition that, each such Grantee shall restore the portion of the Tract and any facilities thereon so used to the same or as good condition as immediately before such work was begun; and provided further, however, that no such use by such Grantee and no such scaffolding as may be erected by it shall interrupt the business therewith. Grantee shall, in the course of maintaining, repairing or reconstructing its facilities from the Grantor's Tract(s), fully indemnify and hold harmless Grantor from any and all expenses, costs or liability for any injury or damage which arises because of Grantee's actions. The easements provided in this Paragraph with respect to any servient tenement shall be perpetual, but shall terminate (except as required in order to repair the Ring Road) as to the right to maintain, repair or reconstruct any facility if any alteration or new construction is made to such facility which caused the need for or any exercise of Paragraph 24.9 easements to be substantially more onerous on the Grantor than it was prior to such alteration or new construction.

24.10 Easement for Common Utility Facilities. Developer, Penney and Dillard each grant to the other and to Younkers the following perpetual easements in the Common Areas located on their Tract(s) for Common Utility Facilities (the term "pipe" or "pipes", as used in this Paragraph 24.10 shall mean "pipes", and/or "lines", and/or "conduits", and/or "wires", and/or "cables", and/or "other means of providing utility service" as the context may require:

(a) From and after the date of installation, easements for all pipes comprising the Common Utility Facilities, to the extent that any or all of the same are so installed, may be located in the Tract(s) of the respective Grantor, for the purpose of using, operating, maintaining, repairing, relocating, replacing or enlarging any of the Common Utility Facilities, subject to the provisions of this Paragraph 24.10.

(b) Easements in the Tract(s) of the respective Grantor for the purposes of installing therein in the future other pipes, not part of the Common Utility Facilities as originally constructed, to provide gas, water, fire loops, and hydrants therefor, electric power, other forms of energy, signal, telephone, sanitary sewer and storm sewer services, or any of them, to or from any present or future facilities on the respective Tract(s), subject to the provisions of this Paragraph 24.10.

(c) Easements in the Tract(s) of the respective Grantor for the purposes of connecting any and all of the pipes or the Common Utility Facilities, referred to in (a) or (b) hereof,

with any facilities on the Tract(s) of the Grantee to the extent that location thereon is necessary properly in the Grantee's judgment so to service such facilities; and after any such connection, for the purpose of using, operating, maintaining, repairing, relocating, replacing and enlarging any or all of said pipes, subject to the provisions of this Paragraph 24.10.

(d) For the purpose of exercising the rights granted in subparagraphs (a), (b) and (c) of this Paragraph 24.10, the Grantee, and its respective employees, agents and contractors, shall have the right to enter upon and use the Tract of the Grantor to such extent and so long as reasonably necessary to accomplish such purposes, subject to the following conditions and requirements:

(i) No less than ten (10) days' prior written notice shall be given to the Grantor that Grantee anticipates doing such work, together with notification of the proposed area of such work, and the anticipated date of start of such work; except that if the work involved is emergency repair work, only such advance notice, written or oral, as is reasonably practicable need be given;

(ii) That after such work, the pipes in question shall be underground and not beneath or unreasonably close to any Floor Area on Grantor's Tract or the Younkers Building, or any ground area as a place where Grantor may build Floor Area (including, without limitation, the Permissible Building Area of the Future Department Store Tract or any Reserve Tract), but this shall not require the moving of any pipes theretofore installed not in violation of this Operating Agreement, nor permit any such work if as a result thereof any Party utilizing the Common Utility Facilities to provide utilities to improvements owned by it would be required to relocate any connection between any Common Utility Facilities and such improvement in order for such Party to continue to be able so to utilize the Common Utility Facilities therefor, or if its ability so to utilize the same is otherwise materially adversely affected, unless in any such case, each Party shall consent to such work, or the Grantee proposing to do such work shall agree and place the money therefor in escrow, if reasonably required by the grantor to pay all costs of the Grantor consequent upon the performance of such work by such Grantee;

(iii) That such work shall be done at the sole cost of the Grantee undertaking the same and shall be performed in such a manner and at such a time as not to cause any interruption of or undue interference with the business conducted on the Tract of the Grantor; or any unreasonable interruption in the services provided in the pipes servicing the Grantor's Tract; and

(iv) That after the completion of such work, the Grantee shall restore the portion of the Tract and improvements of the respective Grantor so used in the same or as good condition as existed immediately before the commencement of such work at its own cost and expense.

(v) The location of all easements granted in Subparagraphs (a), (b) and (c) of this Paragraph 24.10, other than those existing on the date hereof, shall be subject to the prior written approval of the Party in whose Tract the same are to be located.

(e) The easements granted in Subparagraphs (a), (b) and (c) of this Paragraph 24.10 shall be exclusive insofar as they

relate to pipes (as laterals to service the building in question) located within 5 feet of the building line of the Grantee and any other pipes not a Common Utility Facility and non-exclusive insofar as they relate to Common Utility Facilities. To the extent that any such easement is exclusive, the Grantee in question shall at all times do all things necessary to maintain the same and shall assume and pay all costs incurred in the maintenance, repair, replacement and/or enlargement thereof.

(f) If any Party physically disconnects, other than temporarily, from any pipe which is a Common Utility Facility, it may reconnect only with the consent of the Party then using the pipe.

24.11 Duration of Easements. With respect to such of the foregoing easements as are in this Article declared to be "perpetual", each such easement shall, notwithstanding such characterization, expire, terminate, and be extinguished in relation to the Grantee upon termination of this Operating Agreement, unless (a) this Operating Agreement provides that the particular easement shall survive such termination of the Operating Agreement or (b) such easement has ceased, terminated or been extinguished by the mutual agreement of Grantor and Grantee, in their sole and absolute discretion.

24.12 Easements to Public Authorities. Developer, Penney and Dillard each covenant and agree with each other that it will grant to governmental or public authorities or any public utility company in the area easements in its respective Tract, located all in accordance with the requirements of Paragraph 24.10 and otherwise in form acceptable to the Grantor for the installation and/or maintenance and operation of utility facilities reasonably required for any or all Tracts. Such easements shall be perpetual so long as such authority or companies use the same to provide utility services to any part of the Shopping Center Tract or Reserve Tracts. Younkens covenants and agrees with Developer, Penney and Dillard that it shall not unreasonably withhold its consent to the grant of any easement described in this Paragraph 24.12, after receipt of evidence that Developer, Penney and Dillard have granted such easements over their respective Tracts.

24.13 Easement for Building Encroachments. (a) Developer hereby grants to Dillard, Penney and Younkens, and Dillard and Penney hereby grant to Developer, the non-exclusive right, privilege and easement to use such portions of the Common Areas located on the Grantor's Tract for the installation, maintenance, repair and replacement of any improvements and signs, lights and entrances, marquees, balconies, canopies, decorative facia or other overhangs encroaching upon the Grantor's Tract, provided such encroachments do not encroach more than two feet (2'). Each Party as a Grantee covenants and agrees that its exercise of such easements shall not result in damage or injury to the Improvement of any other Party, shall not unreasonably interfere with the Grantor and its Permittee's use and enjoyment of the Grantor's Tract, and are (or shall be) attached to the Building constructed by the Grantee. No such easement for construction by any Grantee will permit the use of the Grantor's Building for load-bearing purposes. Upon completion of any of the construction elements referred to above, the Grantor and Grantee shall, upon the request of any Grantor or Grantee, join in the execution of a reasonably acceptable agreement, in recordable form, appropriately identifying the nature and location of each such construction element.

(b) The easements provided in this Paragraph 24.13, to the extent they exist on the termination date of this Operating Agreement, shall be perpetual, but shall end if, at any time, either before or after such termination date, the particular appurtenance for which the easement is granted is razed, destroyed

or demolished and not rebuilt, as required or permitted under the provisions of this Operating Agreement.

24.14 Easements for Transformer. (a) Developer hereby grants Younkers an exclusive easement, right and privilege to place an electrical transformer in the location shown on Exhibit "F". This easement shall terminate upon the earlier of (i) permanent removal of the electrical transformer or (ii) termination of this Operating Agreement.

(b) Developer hereby grants Penney an exclusive easement, right and privilege to place an electrical transformer in the location shown on Exhibit "F". This easement shall terminate upon permanent removal of the electrical transformer.

24.15 Easements for Signs.

(a) Developer hereby grants Penney an easement, right and privilege to (i) install and maintain an electrical line between (A) the Penney Building and (B) that certain bulkhead located on the first level of the Covered Mall immediately in front of the Penney Building, at the location shown on Exhibit "F", and (ii) install and maintain a sign on such bulkhead identifying the Penney Department Store. At least sixty (60) days prior to commencement of installation by Penney of the electrical line and the sign, Penney shall deliver to the Developer for its review and approval, plans and specifications showing the location of, and anticipated construction activities and construction materials to be used in connection with, such electrical line and sign. Such plans and specifications shall be deemed approved by Developer unless it objects in writing to such plans within thirty (30) days after its receipt thereof. Such sign shall otherwise conform to all of the requirements of Article 16 of this Operating Agreement. This Easement shall terminate upon the earlier of (a) any default by Penney under this Operating Agreement pursuant to the terms of Paragraph 32.10 hereof or (b) the expiration of the Term of this Operating Agreement. Upon termination of this easement Penny shall remove the electrical line and sign, and restore the easement area to its original condition.

(b) Developer hereby grants Penney an easement, right and privilege to install and maintain on the exterior wall of the Developer Building adjacent to the lower level entry into the Covered Mall, at the location shown on Exhibit "F", a sign identifying the Penney Department Store. At least sixty (60) days prior to commencement of installation by Penney of the sign, Penney shall deliver to the Developer for its review and approval, plans and specifications showing the location of, and anticipated construction activities and construction materials to be used in connection with, such sign. Such plans and specifications shall be deemed approved by Developer unless it objects in writing to such plans within thirty (30) days after its receipt thereof. Such sign shall otherwise conform to all of the requirements of Article 16 of this Operating Agreement. This Easement shall terminate upon the earlier of (a) any default by Penney under this Operating Agreement pursuant to the terms of Paragraph 32.10 hereof or (b) the expiration of the Term of this Operating Agreement. Upon termination of this easement Penney shall remove the sign, and restore the easement area to its original condition.

(c) Developer hereby grants Penney an easement, right and privilege to install and maintain on the outside of the Developer Building at the upper level, southern entry to the Covered Mall, at the location shown on Exhibit "F", a sign identifying the Penney Department Store. At least sixty (60) days prior to commencement of installation by Penney of the sign, Penney shall deliver to the Developer for its review and approval, plans and specifications showing the location of, and anticipated construction activities and construction materials to be used in connection with, such

sign. Such plans and specifications shall be deemed approved by Developer unless it objects in writing to such plans within thirty (30) days after its receipt thereof. Such sign shall otherwise conform to all of the requirements of Article 16 of this Operating Agreement. This Easement shall terminate upon the earlier of (a) any default by Penney under this Operating Agreement pursuant to the terms of Paragraph 32.10 hereof, (b) commencement of construction of the Future Department Store, or (c) the expiration of the Term of this Operating Agreement. Upon termination of this easement Penny shall remove the sign, and restore the easement area to its original condition.

24.16 Extinguishment of Easements. (a) Except for the easements or licenses granted by Paragraphs 24.5 and 24.8, which may be (1) released or extinguished, or (2) amended, waived, or modified by instrument, in recordable form, executed by the Grantor and Grantee(s) of such easements or licenses, no easement or license may be released, extinguished, amended, waived or modified, unless by an instrument in recordable form executed by all of the Parties, which execution shall be in the sole and absolute discretion of each Party.

(b) Except for those easements which survive termination of the Operating Agreement, all such easements shall terminate upon, and shall in no event survive beyond, the date on which the Operating Agreement would otherwise have terminated pursuant to Paragraph 9.1 of this Operating Agreement. If the Lease terminates prior to the expiration of the Term, all licenses and easements in favor of Younkers shall terminate.

24.17 Additional Easements. The easements and licenses granted hereby shall be in addition to and coordinate with any and all other easements, licenses or other rights granted by any Party to any other Party and to the Future Department Store with respect to the Shopping Center Tract or any part thereof pursuant to any other instrument or document.

P A R T F O U R

GENERAL

Article 25 - Land Covenants

Except as otherwise expressly provided, all covenants, conditions and agreements contained in this Operating Agreement, affecting the use and maintenance of the Total Development Tract shall be and constitute covenants running with, and equitable servitudes upon, the land and shall bind and inure to the benefit of all Parties, their successors and assigns. All easements granted hereunder shall be appurtenant to and run with the Grantee's Tract, (or in the instance of Younkers, the Younkers Building and the other interests in real estate demised, let and leased by the Lease, together with all rights, privileges, easements, rights of ingress and egress and appurtenances of whatever kind and character, benefiting, belonging or appertaining thereto which are specifically created by the Lease for such uses and purposes as are permitted therein.), and shall be a servitude upon the Grantor's Tract.

GENERAL

Article 26 - Force Majeure

The time within which any Party hereto shall be required to perform any act under this Operating Agreement, other than the payment of money, shall be extended by a period of time equal to the number of days during which the performance of such act is unavoidably prevented or delayed, retarded or hindered by acts of God, fire, earthquake, floods, explosion, inclement weather or

other actions of the elements, war, declared or undeclared (including "police action"), invasion, insurrection, riot, mob violence, sabotage, inability to procure labor, equipment, transportation, facilities, or materials, strikes, lockouts, actions of labor unions, condemnation, requisition laws, orders of government, or civil or military authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Party ("Force Majeure"), excluding a Party's inability to obtain required financing. The Party entitled to such extension shall give notice to all other Parties of its claim to such extension within twenty (20) days after the event giving rise to such claim shall have occurred, and the Party so entitled shall use all reasonable efforts to state in such notice the number of days delay resulting from such act or event; provided, however, if the Party so claiming cannot with all reasonable efforts state within such 20-day period the number of days delay resulting from such act or event, such Party shall have an additional period of twenty (20) days in which to provide a second notice to the other Parties, in which second notice shall be stated the number of days delay resulting from such act or event; provided further, however, unless the Party so entitled gives notice as provided herein, there shall be excluded in computing the number of days by which the time for performance of the act in question shall be extended, the number of days which shall have elapsed between the occurrence of such event and the actual giving of such notice.

GENERAL

Article 27 - Eminent Domain

27.1 Developer Tract. If more than twenty-five percent (25%) of the Covered Mall or the Small Store Floor Area, or more than twenty-five percent (25%) of the automobile parking spaces on the Shopping Center Tract, should be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by voluntary conveyance in lieu thereof, then, and in any of such events, any Party upon one hundred eighty (180) days prior written notice to the other Parties, may terminate this Operating Agreement, except that (a) in the case of such taking of more than twenty-five percent (25%) of the parking spaces on the Shopping Center Tract, this Operating Agreement shall not terminate if the Developer is willing and able to provide for the replacement of the parking spaces lost by such taking as hereinafter more particularly provided in Subparagraph 27.4(b) of this Article, and (b) notwithstanding any such termination, the reciprocal easements created under this Operating Agreement shall survive to the extent provided in Paragraph 29.1 hereof. Upon any termination of this Operating Agreement as herein provided, the Parties shall thereupon be released from any further liability under this Operating Agreement, except as provided in this Operating Agreement.

27.2 (a) Dillard Tract. If more than ten percent (10%) of the Floor Area in the Dillard Building, or more than twenty-five percent (25%) of the automobile parking spaces on the Dillard Tract, should be taken for any public or quasi-public use under any governmental law, or ordinance or regulation, or by right of eminent domain, or by voluntary conveyance in lieu thereof, then, and in any of such events, Dillard may terminate this Operating Agreement as to Dillard and the Dillard Tract upon one hundred eighty (180) days prior written notice to the other Parties, except that (a) in the case of such taking of more than twenty-five percent (25%) of the parking spaces on the Dillard Tract, this Operating Agreement shall not terminate as to the Dillard Tract if Dillard or the Developer is willing and able to provide for the replacement of the parking spaces lost by such taking as hereinafter provided in subparagraph 27.4(b) of this Article, and (b) notwithstanding any such termination, the reciprocal easements

created under this Operating Agreement shall survive to the extent provided in Paragraph 29.1 hereof. If it is Developer who provides for such replacement of parking spaces on the Dillard Tract, Dillard shall be obligated to apply its award thereto.

27.2 (b) Penney Tract. If more than ten percent (10%) of the Floor Area in the Penney Building, or more than twenty-five percent (25%) of the automobile parking spaces) on the Penney Tract, should be taken for any public or quasi-public use under any governmental law, or ordinance or regulation, or by right of eminent domain, or by voluntary conveyance in lieu thereof, then, and in any of such events, Penney may terminate this Operating Agreement as to Penney and the Penney Tract upon one hundred eighty (180) days prior written notice to the other Parties, except that (a) in the case of such taking of more than twenty-five percent (25%) of the parking spaces on the Penney Tract, this Operating Agreement shall not terminate as to the Penney Tract if Penney or the Developer is willing and able to provide for the replacement of the parking spaces lost by such taking as hereinafter provided in subparagraph 27.4(b) of this Article, and (b) notwithstanding any such termination, the reciprocal easements created under this Operating Agreement shall survive to the extent provided in Paragraph 29.1 hereof. If it is Developer who provides for such replacement of parking spaces on the Penney Tract, Penney shall be obligated to apply its award thereto.

27.3 Restoration. If this Operating Agreement is not terminated following a partial taking, all of its conditions and provisions shall continue in full force and effect; provided, however, that Developer, Penney and Dillard shall, at its sole expense, promptly begin and prosecute with diligence, the making of all necessary repairs, restorations and replacements to all Buildings and other Improvements on such Party's Tract which shall have been partially taken; provided further, however, that none of Developer, Penney or Dillard shall be obligated to expend more than the amount of the condemnation award for such repairs, restorations and replacements, although the condemnation award may be less than the cost of such repair, restoration and replacement; provided further, however, if a Party fails to restore such parking spaces after using good faith efforts, and such restoration is necessary to cause such Party's Tract to comply with the requirements of Article 15 hereof, then the obligations of such Party and its Tract under Article 15 shall be deemed amended to require that parking ratio which results from the amount of parking spaces on its Tract following the partial taking. All parking spaces taken in a partial taking shall be restored, either multi-level on such Party's Tract or upon available unimproved land, if any, which is owned by such Party and adjacent and contiguous to the Shopping Center, if necessary to provide at least the minimum ratio of parking spaces to Gross Leasable Area on each Party's Tract, as required by the provisions of Article 15 hereof; provided, however, that multi-level parking for the express purpose provided in this Paragraph 27.3, shall only be permitted with the approval of all Parties, which approval shall not be unreasonably withheld, and except as provided in Paragraph 27.4(b) below, multi-level parking shall not be otherwise permitted at any time on the Total Development Tract. The portion of the Shopping Center so remaining shall be a complete architectural unit with adequate parking spaces and Covered Mall in accordance with the provisions of this Operating Agreement.

27.4 Award. In the event less than all of the Penney Tract or the Dillard Tract is excluded herefrom, Penney and/or Dillard, as the case may be, shall apply any award first, before devoting such award to any other purposes, as follows:

(a) In the case of a taking affecting its Building, to the restoration of such Building to a complete architectural and structural unit as similar as is reasonably possible in design, character and quality to the original Building and to

the replacement of any totally condemned Building insofar as is reasonably possible, with a Building similar in design, character and quality to the Building so taken.

(b) In the case of taking affecting a Common Area, to the replacement of the parking spaces lost by such taking with multi-level parking facilities at a location reasonably acceptable to each Party or toward the acquisition of contiguous land, reasonably acceptable to each Party, for parking purposes as otherwise provided in this Operating Agreement; provided, however, except as provided in Paragraph 27.3 and this Paragraph 27.4(b), no multi-level parking shall otherwise be permitted at any time on the Total Development Tract.

In the event of any such restoration or replacement, any such award or awards shall be deposited, disbursed and applied to such restoration or replacement in accordance with the terms of Paragraph 19.3 of this Operating Agreement, concerning the application and disposition of insurance proceeds, and the provisions of Article 21, concerning repair and restoration of Improvements after damage or destruction, to the extent that such provisions are applicable.

27.5 Affect on Supplemental Agreement and Lease. The Parties hereby covenant and agree that notwithstanding anything to the contrary contained in this Article 27, Developer shall not be relieved or excused from any obligations it may have pursuant to the term and conditions of any Supplemental Agreement or the Lease, to rebuild, repair or restore, or to cause to be rebuilt, repaired or restored, the Buildings, the Covered Mall or other Improvements upon the Developer Tract, or any part thereof, in the event of a condemnation or other taking described therein. Dillard, Penney and Younkens shall also be entitled to all conditions and benefits they may have pursuant to any Supplemental Agreement and Lease, respectively, in the event of a condemnation or other taking described therein, and nothing contained herein shall prevent Dillard, Penney and Younkens from exercising any right they may have against the Developer under any Supplemental Agreement or the Lease in the event of a condemnation or other taking described therein.

GENERAL

Article 28 - Assignment, Transfer and Mortgage

28.1 Transfer or Assignment; Release.

(a) Developer, Dillard, Penney and Younkens. No transfer or conveyance by Developer, Penney or Dillard of all or any part of its Tract, no assignment by Younkens of its interest in the Lease, and no assignment by any Party of this Operating Agreement, shall be deemed to release such Party from any of its obligations under this Operating Agreement, except:

- (i) as provided in this Article 28,
- (ii) that if Dillard shall transfer or convey its entire Tract (other than by a transfer or conveyance described in Subparagraph 28.4(b) hereof, in which case and upon satisfaction of the terms and conditions of said Paragraph 28.4(b), Dillard shall be released from its obligations under this Operating Agreement), Dillard shall be released from all further liability arising under this Operating Agreement in respect of any period after the last to occur of (x) the date of such transfer or conveyance, (y) the expiration or earlier termination of the Dillard Operating Period, as set forth in Article 23 of this Operating Agreement, and (z) the date Dillard

shall no longer have a possessory interest in its Tract, either as owner or lessee in possession,

- (iii) that if Younkens shall assign its interest in the Lease (other than by an assignment described in Paragraph 28.5(a)(2) hereof, in which case and upon satisfaction of the terms and conditions of said Paragraph 28.5(a)(2), Younkens shall be released from its obligations under this Operating Agreement) subject to the terms and conditions of Paragraph 28.5(c), Younkens shall be released from all further liability arising under this Operating Agreement in respect of any period after the last to occur of (x) the date of such assignment, (y) expiration or earlier termination of the Younkens Operating Period, as set forth in Article 23A of this Operating Agreement, and (z) the date Younkens shall no longer have an interest in the Lease or a possessory interest in the Younkens Building, either as owner, lessor under a sublease or lessee in possession,
- (iv) that if Penney shall transfer or convey its entire Tract (other than by a transfer or conveyance described in Subparagraph 28.6 hereof, in which case and upon satisfaction of the terms and conditions of said Paragraph 28.6, Penney shall be released from its obligations under this Operating Agreement), Penney shall be released from all further liability arising under this Operating Agreement in respect of any period after the last to occur of (x) the date of such transfer or conveyance, (y) the expiration or earlier termination of the Penney Operating Period, as set forth in Article 23B of this Operating Agreement, and (z) the date Penney shall no longer have a possessory interest in its Tract, either as owner or lessee in possession,
- (v) that if Developer shall transfer or convey its entire interest in the Developer Tract at any time after the last to occur of (x) the Penney Opening Date, (y) the Dillard Opening Date and (z) the Rent Commencement Date (as such term is defined in the Lease), Developer shall be released from all further liability arising under this Operating Agreement, accruing after the date of such transfer or conveyance.

(b) Developer. Notwithstanding anything to the contrary in Subparagraph 28.1(a)(v) above, that as a condition to such release of Developer:

- (a) any purchaser or transferee of the Developer Tract shall have a net worth in excess of \$7,500,000 and shall be of good repute; and
- (b) any purchaser or transferee of the Developer Tract shall either be experienced in the operation of shopping centers or shall agree to employ qualified professional management for the Shopping Center; and
- (c) Developer shall have delivered to Dillard, Penney and Younkens, a duly executed and acknowledged copy, in recordable form, of the instrument by which the purchaser or transferee shall have agreed to be bound by all of the covenants of Developer under this Operating Agreement (subject to the terms of Paragraph 32.9 hereof), any Supplemental Agreement and the Lease, which instrument shall be reasonably satisfactory to counsel for the other Parties to this Operating Agreement.

In the event that Developer transfers less than all of the Developer Tract at any time and from time to time, then all owners

of the Developer Tract (excluding any Future Department Store Tract and lessees of Developer) shall be jointly and severally liable for the performance of all obligations imposed upon Developer under the terms of this Operating Agreement with respect to the whole or any part of the Developer Tract (subject to the terms of Paragraph 32.9 hereof); however, all such owners nevertheless shall constitute only a single Party hereunder as hereinabove provided in Definition (a)(15).

Notwithstanding anything to the contrary in Subparagraph 28.1(a)(v) above, (i) Developer shall not transfer its interest in the Developer Tract or any part thereof prior to the last to occur of the Penney Opening Date, Dillard Opening Date and the Rent Commencement Date (as such term is defined in the Lease), except for (w) a conveyance or lease to a Future Department Store, (x) leases to Occupants of the Shopping Center, (y) a sale and leaseback, lease and subleaseback, mortgages, deeds of trust or equity transfers to lenders or investors for purposes of financing the construction, development and operation of the Shopping Center thereon, including both interim and permanent financing, or (z) a transfer to any partner or co-venturer acquiring no more than a fifty percent (50%) interest therein, and (ii) any general partner in the Developer may dispose of its interest in the Developer and thereupon be released, relieved and discharged from all liability of Developer under this Operating Agreement, provided that until the last to occur of the Penney Opening Date, Dillard Opening Date and the Rent Commencement Date (as such term is defined in the Lease), at least one (1) of Herbert Simon and Melvin Simon shall directly or indirectly control a general partner of the Developer. Notwithstanding anything to the contrary contained in this Article 28, the Parties hereby acknowledge and agree that Center Road Retail Developers Limited Partnership may transfer or convey its entire interest in the Developer Tract to Oak View Mall Corporation, a Delaware corporation, and such transfer or conveyance shall not breach the term of this Article 28, provided it complies with the terms and conditions of Clauses (a)-(c) above of this Subparagraph 28.1(b).

(c) Bankruptcy; Developer. Developer shall promptly after obtaining knowledge thereof, notify Penney, Dillard and Younkens of any filing by or against Developer of a petition under 1 U.S.C. Section 101 et seq. ("Bankruptcy Code"). Nothing contained herein shall prevent Younkens from exercising any rights under the Lease in the event of any such filing by or against Developer.

28.2 Mortgage - General. Notwithstanding anything to the contrary herein contained, if any Party shall (i) convey its Tract (or in the instance of Younkens, assign the Lease) and assign its interest under this Operating Agreement in connection with a sale and leaseback or lease and subleaseback financing, and it or its parent corporation shall simultaneously become vested with a leasehold estate or similar possessory interest in its Tract (or in the instance of Younkens, assign the Lease) by virtue of a lease made by the grantee, or lessee, as the case may be, or (ii) shall convey its Tract (or in the instance of Younkens, assign the Lease) by way of a deed of trust or mortgage and retain its possessory interest in its Tract (or in the instance of Younkens, assign the Lease), then, in neither of such events, shall the assignee of this Operating Agreement under such sale and leaseback or lease and subleaseback, or any subsequent owner of its Tract, or the trustee, beneficiary or mortgagee under any such deed of trust or mortgage, be deemed to have assumed or be bound by any of such Party's obligations hereunder for so long as such Party or its parent corporation shall retain such possessory interest, and such obligations shall continue to remain solely those of such Party or parent corporation, as the case may be, so long as such Party or its parent corporation retains such possessory interest and performance by such Party or its parent corporation of any act

required to be performed under this Operating Agreement by it or fulfillment of any condition of this Operating Agreement by such Party or its parent corporation shall be deemed the performance of such act or the fulfillment of such condition and shall be acceptable to the Parties hereto with the same force and effect as if performed or fulfilled by such assignee, lessee, subsequent owner, trustee, beneficiary or mortgagee.

28.3 Mortgage - Developer. Notwithstanding anything to the contrary contained in this Operating Agreement, Developer may mortgage its Tract and/or for purposes of financing sell and leaseback its Tract and, in conjunction therewith, may mortgage and/or assign (either absolutely or conditionally) all of its rights, interests and easements under this Operating Agreement to any such mortgagee or grantee. This Operating Agreement and the rights, interests and easements created hereunder, and the Lease, Memorandum and the rights, interests and easements created under the Lease and Memorandum, shall be prior and superior to any mortgage or other lien upon or against all or any portion of the Total Development Tract.

28.4 Transfer or Assignment; Dillard. Notwithstanding anything to the contrary contained in this Operating Agreement, Dillard may:

- (a) as part of its operation, lease portions of its Building or license departments thereof or grant concessions to other parties, subject to the provisions of Article 23 of this Operating Agreement;
- (b) lease or sell its Tract to any parent company who owns all of the outstanding shares of Dillard or to any subsidiary corporation of such parent company or to any corporation which may succeed to the business of Dillard or such parent company in the States of Nebraska and Iowa or to any corporation which may, as the result of reorganization, merger, consolidation or sale of stock or assets, succeed to such business of Dillard in the States of Nebraska and Iowa; provided, however, that in any such case, Dillard shall only be released from all further obligations under this Operating Agreement if such lease or sale is to a corporation (i) which acquires all or substantially all of Dillard's assets in the States of Nebraska and Iowa, (ii) which has a net worth (as reasonably evidenced in writing) of Twenty-Five Million Dollars (\$25,000,000.00) prior to such lease or sale, and (iii) which, by written instrument in recordable form, expressly assumes all of Dillard's covenants and obligations hereunder; provided further, however, such release shall be effective only upon and after receipt by the other Parties from Dillard of a certified copy of the assignment or transfer instrument as recorded in the records of Douglas County, Nebraska; provided further, however, no such sale or lease described in this Subparagraph 28.4(b) shall be permitted unless prior to such sale or lease Dillard is operating at least three (3) retail department stores (including the retail department store at the Shopping Center) under the name "Dillard" in the States of Nebraska and Iowa; and
- (c) mortgage its Tract and/or sell and leaseback or lease and subleaseback its Tract and, in connection with any such transaction, assign its interest in this Operating Agreement. If any such mortgage is foreclosed or a deed delivered in lieu of foreclosure, or if Dillard shall have entered into a sale and leaseback or a lease and subleaseback transaction involving its Tract under which Dillard or any parent company which owns all of the

outstanding shares of Dillard is the lessee or sublessee thereunder and such lessee or sublessee shall be deprived of possession of such Tract by reason of its failure to comply with the terms of such leaseback or subleaseback, anyone who has acquired, or shall thereafter acquire, title to such tract or a leasehold estate therein shall, except as provided to the contrary in the immediately succeeding sentence, hold the same free of any affirmative obligation to operate a retail department store on such Tract, as set forth in Paragraph 23.1 of this Operating Agreement, but subject to all other terms, provisions, covenants, conditions and restrictions contained in this Operating Agreement, including, without limitation, the negative use restrictions contained in Paragraph 23.1 hereof. In the event a mortgagee of the Dillard Tract or the purchaser under a sale and leaseback succeeds to the interest of Dillard in said Tract, the obligations of Dillard shall be binding upon such successor, but nothing herein contained shall obligate any such successor, or any person claiming by, through or under such successor, to comply with the affirmative operating covenant contained in Subparagraph 23.1(a) of this Operating Agreement, provided that such successor is not a parent, subsidiary or affiliate of Dillard or otherwise related to or owned or controlled by Dillard, directly or indirectly. Notwithstanding the previous portions of this clause (c), if Dillard is deprived of possession of its Tract by reason of the foreclosure of such mortgage or delivery of deed in lieu of foreclosure or by reason of its failure to comply with such leaseback or subleaseback, it nevertheless shall remain liable to each of the other Parties hereto for breach of its covenants and obligations under this Operating Agreement, and to the Developer for the payment of any and all charges and sums of money provided for in its Supplemental Agreement, in the event a transferee or successor comes into possession. This Operating Agreement and the rights, interests and easements created hereunder shall be prior and superior to any mortgage or other lien upon or against the Dillard Tract.

28.5 Transfer or Assignment; Younkens. (a)(1) Younkens may, as part of its operations, sublease portions of its Building or license departments thereof or grant concessions to other parties, subject to the provisions of Article 23A. Notwithstanding anything to the contrary contained in this Operating Agreement, all sales by any and all such sublessees, licensees and concessionaires shall be included in the Gross Sales (as defined in the Lease) of Younkens for purposes of calculating Percentage Rent (as such term is defined in the Lease), unless otherwise excluded by the express terms of the Lease.

(2) Notwithstanding anything to the contrary contained in this Operating Agreement, Younkens may assign the Lease and its interest in this Operating Agreement, to any parent company who owns all of the outstanding shares of Younkens or to any subsidiary corporation of such parent company or to any corporation which may succeed to the business of Younkens or such parent company in Omaha, Nebraska or to any corporation which may, as the result of reorganization, merger, consolidation or sale of stock or assets, succeed to such business of Younkens in Omaha, Nebraska; provided, however, that in any such case, Younkens shall only be relieved of such obligation to operate under the name of "Younkens" and from all other liability under this Operating Agreement and the Lease if it assigns the Lease to an entity which: (A) acquires substantially all of Younkens' retail department store assets in Omaha, Nebraska, (B) assumes in writing Younkens' obligations under this Operating Agreement and the Lease, and (C) shall have a net worth (as reasonably evidenced in writing) equal to or greater than

\$25,000,000.00; provided, however, in no event shall Developer release the use of the name "Younkers" for the department store unless the succeeding entity shall operate a minimum of three (3) stores of similar size within the greater metropolitan area of Omaha, Nebraska; provided, however, such release shall be effective only upon and after receipt by the other Parties from Younkers of a certified copy of the assignment or transfer instrument as recorded in the records of Douglas County, Nebraska.

28.5(b)(1) After fifteen (15) years following the Younkers Opening Date, Younkers or an affiliate may operate a retail store in a portion (an area less than the entire Younkers Building) of the Younkers Building; the remaining portion of the original Younkers Building not being operated by Younkers as a retail store, will thereafter be available for use by Younkers or its assignee or sublessee as non-department store retail space, with Younkers or its assignee being entitled to any rental, charges and expenses received from a sublessee regardless of whether such amounts exceed amounts due Developer by Younkers under the Lease; but shall otherwise remain liable and responsible under the Lease and this Operating Agreement, provided however, in no event shall such remaining portion of the original Younkers Building not operated by Younkers as a retail store, be subdivided and subleased into, or subleased and occupied by, more than four (4) separate subdivided or subleased areas, or sublessees or occupants, respectively; provided further, however, any subleases or occupancy agreements regarding such remaining portions shall provide that if the Lease with Younkers is terminated, Developer, at its option, may elect either (A) to terminate any or all such subleases or occupancy agreements, or (B) accept the sublease or occupancy agreement, if tenant attorns and agrees to be bound to Developer under all the terms, covenants and conditions of any such sublease or occupancy agreement between Younkers and its subtenant.

(2) After fifteen (15) years following the Younkers Opening Date, if Younkers or its assignee elects not to operate, or if Younkers or its assignee knows or has been advised by a sublessee that it will not operate, a retail store in the remaining portion of the Younkers Building, Younkers or its assignee shall give written notice to Developer of (A) the intent not to operate and (B) the non-retail store use of such portion, and within thirty (30) days from the date of Developer's receipt of such notice, Developer may elect to terminate the Lease as to that portion of the Younkers Building which is not intended to be operated as a retail store. Furthermore, at any time after fifteen (15) years following the Younkers Opening Date, if Younkers or its assignee shall give Developer written notice of any intent not to occupy all of the Younkers Building, Developer may, within thirty (30) days from the date Younkers or its assignee has advised Developer it is not going to occupy such portion of the Younkers Building, elect to terminate the Lease as to the unoccupied portion of the Younkers Building. If (x) Younkers or its assignee or sublessee, (1) uses the remaining portion for a non-retail store use or (2) fails to occupy the remaining portion, and (y) Younkers or its assignee fails to provide notice of such non-retail store use or failure to occupy, as required by the two (2) immediate preceding sentences, Developer may terminate the Lease as to such portion used for a non-retail store use or not occupied. Upon termination of any sublease permitted by this grammatical paragraph, Younkers or its assignee shall have a period of one hundred twenty (120) days thereafter within which to re-sublease or reoccupy the premises covered by such terminated sublease; provided, however, any re-sublease or reoccupancy shall be subject to the terms and conditions of the Lease, including without limitation, Developer's right (and the remedies for Younkers' failure) to be notified of, and consent to, any subleases, uses, or occupancies (or failures to occupy) described in this grammatical paragraph.

(3) In addition, after expiration of the Younkers Operating Period, the Lease may be assigned together with the interest of Younkers in this Operating Agreement, or the entire premises may be sublet, as part of a bona-fide transaction, but only after written notice (as hereinafter described) to, and with the written consent of, Developer, which consent shall not be unreasonably withheld; provided, however, Younkers may, upon six (6) months prior written notice to Developer, terminate the Lease, in whole or in part, in the event such consent is not given by Developer within thirty (30) days after Developer's receipt from Younkers or its assignee of notice and all of the information described in the next sentence. Prior to making any such sublease or assignment described in the immediate preceding sentence, Younkers shall give Developer notice of (A) the identity of the prospective subtenant or assignee, (B) the terms and conditions of such sublease or assignment, (C) the use for which the Demised Premises will be devoted by such subtenant or assignee, and, (D) as and to the extent available after Younkers has used its best efforts, financial information and other information reasonably required by Developer with respect to the subtenant, assignee and new use. If Younkers sublets the entire premises according to the terms of the immediate preceding two sentences, it shall remain liable and responsible under this Operating Agreement and the Lease; if Younkers assigns the Lease according to the terms of the immediate preceding two sentences, and by a written instrument duly executed and acknowledged by the assignee and delivered to Developer wherein the assignee assumes and covenants and agrees with Developer to pay the rent and all other charges to be paid by Younkers under the Lease and to carry out and perform all the terms, covenants and conditions of this Operating Agreement and the Lease, which by the terms thereof are to be carried out and performed by Younkers, Younkers shall be released and relieved of and from all further liability under this Operating Agreement and the Lease.

28.5(c) No assignment otherwise permitted by the provisions of this Paragraph 28.5 shall be effective unless:

(1) The assignee specifically assumes all of the obligations, terms, conditions and covenants under this Operating Agreement and the Lease by execution and delivery to Developer, before the effective date of such assignment, a written assumption agreement in form and substance reasonably satisfactory to Developer; and

(2) An executed counterpart of the assignment and assumption in form eligible for recording in the office of the Recorder of Douglas County, Nebraska is delivered to Developer; and

(3) A statement of the net worth of the assignee as certified by independent public accountants is delivered to Developer if Younkers is being released of liability as hereinabove provided.

28.5(d) If the Lease terminates prior to the termination of this Operating Agreement, all of the rights, benefits and conditions of Younkers under this Operating Agreement, and its permitted successors and assigns, shall automatically terminate upon the date of the termination of the Lease, and Younkers and its successors and assigns shall not be a Party under this Operating Agreement from and after such termination, however, this Operating Agreement shall remain in full force and effect thereafter as to all Parties other than Younkers and its permitted successors and assigns. Such termination of the Lease shall not limit or affect any remedy at law or in equity of any Party against another Party with respect to any liability or obligation arising, or to be performed, under this Operating Agreement prior to the date of such termination.

28.6 Transfer or Assignment; Penney. Notwithstanding anything to the contrary contained in this Operating Agreement, Penney may:

- (a) as part of its operation, lease portions of its Building or license departments thereof or grant concessions to other parties, subject to the provisions of Article 23B of this Operating Agreement;
- (b) lease or sell its Tract to any parent company who owns all of the outstanding shares of either Penney or J. C. Penney Company, Inc. or to any subsidiary corporation of Penney or such parent company or to any corporation which may succeed to the business of Penney or such parent company in the States of Nebraska and Iowa or to any corporation which may, as the result of reorganization, merger, consolidation or sale of stock or assets, succeed to such business of Penney or such parent company in the States of Nebraska and Iowa; provided, however, that in any such case, Penney shall only be released from all further obligations under this Operating Agreement if such lease or sale is to a corporation (i) which acquires all or substantially all of Penney's or of such parent company's assets in the States of Nebraska and Iowa, (ii) which has a net worth (as reasonably evidenced in writing) of Twenty-Five Million Dollars (\$25,000,000.00) prior to such lease or sale, and (iii) which, by written instrument in recordable form, expressly assumes all of Penney's covenants and obligations hereunder; provided further, however, such release shall be effective only upon and after receipt by the other Parties from Penney of a certified copy of the assignment or transfer instrument as recorded in the records of Douglas County, Nebraska; provided further, however, no such sale or lease described in this Subparagraph 28.6(b) shall be permitted unless prior to such sale or lease JCP is operating at least five (5) retail department stores (including the retail department store at the Shopping Center) under the name "Penney" in the States of Nebraska and Iowa; and
- (c) mortgage its Tract and/or sell and leaseback or lease and subleaseback its Tract and, in connection with any such transaction, assign its interest in this Operating Agreement. If any such mortgage is foreclosed or a deed delivered in lieu of foreclosure, or if Penney shall have entered into a sale and leaseback or a lease and subleaseback transaction involving its Tract under which Penney or any parent company which owns all of the outstanding shares of Penney is the lessee or sublessee thereunder and such lessee or sublessee shall be deprived of possession of such Tract by reason of its failure to comply with the terms of such leaseback or subleaseback, anyone who has acquired, or shall thereafter acquire, title to such tract or a leasehold estate therein shall, except as provided to the contrary in the immediately succeeding sentence, hold the same free of any affirmative obligation to operate a retail department store on such Tract, as set forth in Paragraph 23B.1 of this Operating Agreement, but subject to all other terms, provisions, covenants, conditions and restrictions contained in this Operating Agreement, including, without limitation, the negative use restrictions contained in Paragraph 23B.1 hereof. In the event a mortgagee of the Penney Tract or the purchaser under a sale and leaseback succeeds to the interest of Penney in said Tract, the obligations of Penney shall be binding upon such successor, but nothing herein contained shall obligate any such successor, or any person claiming by, through

or under such successor, to comply with the affirmative operating covenant contained in Subparagraph 23B.1(a) of this Operating Agreement, provided that such successor is not a parent, subsidiary or affiliate of Penney or otherwise related to or owned or controlled by Penney, directly or indirectly. Notwithstanding the previous portions of this clause (c), if Penney is deprived of possession of its Tract by reason of the foreclosure of such mortgage or delivery of deed in lieu of foreclosure or by reason of its failure to comply with such leaseback or subleaseback, it nevertheless shall remain liable to each of the other Parties hereto for breach of its covenants and obligations under this Operating Agreement, and to the Developer for the payment of any and all charges and sums of money provided for in its Supplemental Agreement, in the event a transferee or successor comes into possession. This Operating Agreement and the rights, interests and easements created hereunder shall be prior and superior to any mortgage or other lien upon or against the Penney Tract.

General

Article 29 - Termination Rights

29.1 Upon expiration of the Term pursuant to Article 9 (or upon such earlier termination of this Operating Agreement, in accordance with the express provisions and conditions of Article 27), all rights and privileges derived from, and all duties and obligations created and imposed by, all provisions of this Operating Agreement shall terminate and thereafter cease to exist, except as otherwise provided in Article 24 and Article 29 of this Operating Agreement.

29.2 Such termination of this Operating Agreement shall not limit or affect any remedy at law or in equity of any Party against any other Party with respect to any liability or obligation arising, or to be performed, under this Operating Agreement prior to the date of such termination.

29.3 No breach of this Operating Agreement or default by any Party shall entitle any other Party to terminate or cancel this Operating Agreement; provided, however, if the Lease terminates prior to the termination of this Operating Agreement, then pursuant to Section 28.5(d) hereof, Younkers shall not be a Party to this Operating Agreement after termination of the Lease.

GENERAL

Article 30 - INTENTIONALLY OMITTED

GENERAL

Article 31 - Arbitration

31.1 Except as otherwise provided in this Operating Agreement, whenever there is any monetary dispute between the Parties hereto, under the provisions of this Operating Agreement, not exceeding Fifty Thousand and 00/100 Dollars (\$50,000.00) in amount, which cannot be settled by agreement of the Parties, and if all Parties to such dispute shall agree in writing, upon or after the occurrence of such dispute, to arbitrate such dispute, any Party to such dispute desiring arbitration (hereinafter called "First Party") shall give the other Parties to such dispute (hereinafter collectively called "Second Party") written notice to that effect, describing the matter in dispute to be determined by arbitration, and naming an arbitrator to act for First Party. Unless such matter shall be agreed upon between the Parties in the interim, the Second Party, within twenty (20) days after receipt of such notice,

shall name an arbitrator to act for Second Party by a written notice to First Party and, concurrently therewith, by notices, in writing, shall notify each of said arbitrators of their obligation to appoint a third arbitrator. The two arbitrators so appointed shall, within thirty (30) days thereafter, appoint a third arbitrator and make all necessary arrangements for conducting such arbitration.

31.2 If Second Party shall fail or refuse to name an arbitrator, the arbitrator appointed by First Party shall act as sole arbitrator, or, at his option, shall appoint an arbitrator to act for the Second Party. In the event the arbitrator appointed by First Party shall be the sole arbitrator, his decision shall be final and conclusive upon the Parties. In the event the three arbitrators are appointed in either of the manners set forth in this Article the decision of any two of said three arbitrators shall be final and conclusive upon the Parties. In the event the first two arbitrators appointed shall fail to appoint a third arbitrator within thirty (30) days of the appointment of the second arbitrator, or in the event any arbitrator appointed shall become incapacitated, die or resign, or refuse to act, at any time before the complete determination of the matter in dispute, a Judge of competent local jurisdiction shall appoint an arbitrator to fill the vacancy of the arbitrator not appointed or not acting.

31.3 The cost and expense of the first and second arbitrator shall be paid by the Party appointing the arbitrator if both the First and Second Parties appoint arbitrators, and the cost and expense of the third arbitrator and the arbitration proceeding shall be paid and shared by the Parties equally. If in accordance with Paragraph 31.2, the First Party appoints a sole arbitrator, or appoints an arbitrator to act for the Second Party, the cost and expense of the arbitrators and the arbitration proceeding shall be paid and shared by the Parties equally. The decision of the arbitrators shall be in writing, a signed copy thereof shall be delivered to each Party and shall be made as promptly as possible after their appointment, but in no event, later than thirty (30) days after the date of appointment of the third arbitrator. If the said arbitrators so appointed do not make a binding decision within said thirty (30) day period, the appointment of the third arbitrator shall be deemed revoked, a new third arbitrator shall be appointed, as provided in Paragraph 31.1 of this Article, and the three arbitrators so appointed shall act in the same manner and within the same time limits as though the third arbitrator had not previously been appointed.

31.4 Provided, however, notwithstanding anything to the contrary contained in this Operating Agreement, no dispute shall be submitted to arbitration unless all Parties to such dispute agree in writing, upon or after the occurrence of such dispute, to submit the same to arbitration. Arbitration under this Operating Agreement shall be permissive and not mandatory. All remedies at law and in equity are hereby reserved.

GENERAL

Article 32 - Miscellaneous

32.1 Recording. A fully executed and acknowledged counterpart of this Operating Agreement shall be recorded in its entirety in the public records of Douglas County, Nebraska, immediately following execution of this Operating Agreement by the Parties. The cost of recording shall be paid by the Developer.

32.2 Parties not Partners. Nothing contained in this Operating Agreement nor the acts of the Parties hereto, shall be deemed or construed by any Party or Parties hereto, or by any third persons or parties, to make the Parties hereto partners or joint venturers, or to create the relationship of principal and agent

(but excluding any right to act or perform on behalf of another Party to the limited extent expressly provided herein), render any said Parties liable for the debts or obligations of the other, except as in this Operating Agreement expressly provided.

32.3 No Waiver. No delay or omission by any Party in exercising any right or power accruing upon any non-compliance or failure of performance by any other Party under the provisions of this Operating Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any Party of any covenant, condition, provision or performance under this Operating Agreement shall not be effective unless given in writing and shall not be construed to be a waiver of any succeeding breach thereof, or of any other covenant, condition, provision or performance of this Operating Agreement, unless otherwise expressly provided by such waiver.

32.4 Captions. The table of contents preceding this Operating Agreement, Article headings, captions and other similar designations are for convenience and reference only, and in no way define or limit the scope and content of this Operating Agreement, or in any way affect its provisions.

32.5 Governing Law. This Operating Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

32.6 Severable Provisions. In the event any provision, or any portion thereof, of this Operating Agreement, or the application thereof, to any person or circumstances, shall, to any extent, be held invalid or unenforceable, the remainder of this Operating Agreement, all of its other provisions and all portions thereof, and the application thereof, to any other person or circumstances, shall be severed therefrom and shall not be affected thereby, and each such provision, and portion thereof, of this Operating Agreement shall be valid and enforceable to the fullest extent permitted by law.

32.7 Modification. No agreement shall be effective to add to, change, amend, modify, waive or discharge this Operating Agreement, in whole or in part, unless such agreement is in writing and signed by all of the Parties. No modification or amendment of this Operating Agreement, in whole or in part, shall require any consent or approval of any Occupant other than a Party. Nothing contained herein precludes any separate agreements between two or more Parties, provided that, the other Parties shall not be bound or affected thereby, except as provided in Article 36 to the contrary.

32.8 Counterparts. This Operating Agreement is executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

32.9 Limited Liability of Developer and Exculpation of Partners. Notwithstanding anything contained in this Operating Agreement, any Supplemental Agreement or the Lease to the contrary, if at any time Developer shall fail to perform or pay any covenant or obligation on its part to be performed or paid hereunder, or under any Supplemental Agreement or the Lease, and as a consequence thereof Dillard, Penney or Younkens shall recover a money judgment against Developer or obtains or is granted a decree or order of specific performance or other equitable remedy ordering Developer to perform or cease performing any act which requires incurring costs or the payment of money by Developer, such judgment, decree or order and any and all of the costs of either performing any such judgment, decree or order, or ceasing to perform any act, shall be enforced against and satisfied out of only (i) the proceeds of sale produced upon execution of such judgment and levy thereon against

Developer's interest in the Developer Tract and the Improvements thereon, (ii) the rents, issues or other income receivable from Developer Tract and the Improvements thereon, (iii) the consideration received by Developer from the sale of all or any part of Developer's interest in the Developer Tract and Improvements thereon, made after such failure of performance (which consideration shall be deemed to include any assets at any time held by Developer to the extent that the value of same does not exceed the proceeds of such sale), and (iv) any insurance proceeds or condemnation award payable to Developer as the result of any casualty to or condemnation of Developer Tract and the Improvements thereon, and Dillard, Penney, Younkers and any other owner or holder of any claim or action against Developer shall look solely to the Developer Tract and Improvements thereon and to said property specified in clauses (i), (ii), (iii) and (iv) above for the payment and satisfaction of any such claim or action and any judgment thereon. Neither Developer, its successors and assigns, nor any of the partners, general or limited, in the limited partnership referred to herein as "Developer" or "Developer Partnership", nor any partner, shareholder, officer, director, agent or joint venturer in any successors or assigns, shall be personally liable to Dillard, Penney, Younkers or any of their respective successors and assigns, or to any other party, for the performance or payment of any covenant, obligation, liability or indebtedness of Developer hereunder or under any Supplemental Agreement or for any judgment thereon. It is expressly understood and agreed that nothing contained in this Operating Agreement shall be construed or interpreted as creating any personal liability whatsoever against the Developer, or any of its successors and assigns, any partners in the Developer Partnership, any partners in a partner of the Developer Partnership, or any partner, shareholder, officer, director, agent or joint venturer in any successor or assign. Dillard, Penney, Younkers and their respective successors and assigns, and any other owner or holder of any claim or action against Developer under this Operating Agreement, or any indebtedness, obligation or liability of Developer accruing hereunder, shall look solely to Developer's interest in the Developer Tract and any improvements thereon and proceeds therefrom, as aforesaid, for the payment and satisfaction of any such claim, action, indebtedness, obligation or liability, as aforesaid. The provisions of this Paragraph 32.9 are not intended to relieve Developer from the performance of any of its obligations hereunder, but rather to limit Developer's liability as aforesaid for such performance, and to relieve and release the partners in the Developer Partnership, the successors and assigns of Developer, any partners in a partner of the Developer Partnership, and partners, shareholders, officers, directors, agents and joint venturers in any successor or assign, from any such liability whatsoever, as aforesaid. The provisions of this Paragraph 32.9 also shall inure to the benefit of Developer's successors and assigns, including, without limitation, any mortgagee of the Developer Tract. Notwithstanding anything contained in this Paragraph 32.9, Younkers shall be entitled to enforce any judgment, decree or order in accordance with the terms and conditions of the Lease.

32.10 Default. (a) Except as may be otherwise provided in the Lease as to disputes or matters between Developer and Younkers only, a party shall be in default under this Operating Agreement if any sum payable by such Party hereunder pursuant to this Operating Agreement, any Supplemental Agreement or the Lease shall not be paid within fifteen (15) days after written notice thereof to the party.

(b)(1) Except as otherwise provided in Article 28 hereof, and in Subparagraph 32.10(a) above and Subparagraph 32.10(b)(2) below of this Operating Agreement, a Party shall be in default (the "Defaulting Party") under this Operating Agreement, if, during the Term hereof, it shall (A)(i) fail to perform or observe any of the

terms, conditions, provisions or agreements binding upon it in this Operating Agreement (other than those described in Article 28 hereof, or Subparagraph 32.10(a) above or Subparagraph 32.10(b)(2) below) for more than thirty (30) days after written notice from one of the other Parties (collectively the "Non-Defaulting Party") of such failure, or (ii) in the case of a default which cannot be with due diligence cured within a period of thirty (30) days, fail to proceed with reasonable diligence to cure the same within said thirty (30) day period and thereafter to prosecute the curing of such default with reasonable diligence, it being intended that in connection with a default not capable of being cured with reasonable diligence within thirty (30) days that the Defaulting Party shall have such additional time as may be necessary under the circumstances, to cure and complete the same with reasonable diligence, and (B) a court of competent jurisdiction determines that the Defaulting Party failed to perform or observe such term, condition, provision or agreement binding upon it under this Operating Agreement; provided, however, nothing contained herein shall prohibit or preclude a Non-Defaulting Party at any time from obtaining and seeking injunctive, declaratory or other equitable or legal remedies or relief as to any such failure by the Defaulting Party; provided further, however, nothing contained in this Subparagraph 32.10(b) shall relieve the Party from subsequent timely and complete performance or observation of the same term, condition, provision or agreement which is in dispute, or from timely and complete performance of any other term, condition, provision or agreement binding upon it in this Operating Agreement. Upon such final determination described in Clause (B) above of this Subparagraph 32.10(b)(1), or upon a Non-Defaulting Party successfully obtaining such injunctive, declaratory or other equitable or legal remedy or relief, the Defaulting Party shall pay any and all reasonable attorney's fees and court costs incurred by the Non-Defaulting Party in connection therewith. If otherwise permitted by the terms and conditions of this Operating Agreement, the Non-Defaulting Party may (but is under no obligation to) perform for the account of the Defaulting Party any covenant, agreement, condition, or obligation to be performed or observed by the Defaulting Party and which it is in default pursuant to this Subparagraph 32.10(b)(i), and the Defaulting Party upon demand, shall pay the Non-Defaulting Party for the cost of such performance plus interest thereon at the Agreed Interest Rate. In the event of any litigation over whether the Defaulting Party is in default under the provisions of this Subparagraph 32.10(b)(1), which litigation results in a final determination by a court of competent jurisdiction in favor of the Non-Defaulting Party, the Non-Defaulting Party shall not thereafter be entitled to exercise any remedies available to the Non-Defaulting Party unless the Defaulting Party after such final determination fails to cure such default within the cure periods provided above in Clause (A) of this Subparagraph 32.10(b)(1). If after such final determination, the Defaulting Party fails to cure such default within the cure periods provided in Clause (A) above, the Non-Defaulting Party may at its sole election and without further recourse to a court of competent jurisdiction exercise any remedies available to the Non-Defaulting Party.

(2) A Party shall be in default under this Operating Agreement, if, during the term of this Operating Agreement, it shall (A) fail to perform or observe any of the terms, conditions, provisions or agreements binding upon it under Articles 2, 2A, 2B or 3 in this Operating Agreement, for more than thirty (30) days after written notice of such failure, or (B) in the case of such a default which cannot be with due diligence cured within a period of thirty (30) days, the Party shall fail to proceed with reasonable diligence to cure the same within such thirty (30) day period and thereafter to prosecute the curing of such default with reasonable diligence, it being intended that in connection with a default not capable of being cured with reasonable diligence within thirty (30) days that a Party shall have such additional time, as

may be reasonably necessary under the circumstances, to cure the same as may be necessary to complete the same with reasonable diligence.

(c) If Dillard, Penney or Younkens shall give notice to Developer of any default by Developer under the provisions of this Operating Agreement, the Party giving such notice to Developer shall use reasonable efforts to concurrently send the other Parties a copy of such notice given to Developer; provided, however, failure to give such notice to the other Parties, shall not affect the validity of such notice of default to Developer, nor shall the giving or failure to give such notice create any liability on the part of the Party so declaring a default by Developer.

(d) Nothing contained in this Operating Agreement shall abridge any right of Younkens pursuant to the terms and conditions of the Lease, to offset against amounts owed by Younkens to Developer under the Lease, the amounts paid or incurred by Younkens to correct a default by Developer under this Operating Agreement or the Lease, if Developer fails to pay such amounts after notice from Younkens to Developer of demand for payment in accordance with the terms and conditions of the Lease.

32.11 Time and Standard of Consents and Approvals. Except as otherwise expressly provided in this Operating Agreement (including the Plot Plan Notes), or in any Supplemental Agreement or the Lease, if consent or approval of any Party is expressly required under this Operating Agreement or in any Supplemental Agreement or the Lease, such consent or approval shall not be unreasonably withheld, delayed or denied, unless the provisions of this Operating Agreement, any Supplemental Agreement or the Lease, with respect to a particular consent or approval, shall expressly provide that the same may be given or refused in the sole and absolute judgment or discretion of such Party.

32.12 Mortgagee Notice. (a) A Party serving a notice to any other Party of a default under this Operating Agreement shall send by registered or certified United States Mail, postage prepaid, a copy of such notice to any holder of a mortgage on the Tract of the Party (or in the instance of Younkens, its interest in the Lease) so served, provided the Party serving the notice of default theretofore shall have received a notice informing it of the existence of such mortgage and the address to which copies of such notice of default are to be sent, and such mortgage holder shall be permitted (but shall not be obligated) to cure any such default within the applicable cure period provided by this Operating Agreement.

(b) Each Party serving any notice under this Operating Agreement, which is not otherwise a notice of default as provided for in the immediately preceding paragraph, shall also give such notice to the holder of a first mortgage on the Tract of the Party (or in the instance of Younkens, its interest in the Lease) so served, provided the Party serving the notice shall have received notice of such mortgage and an address as provided in the immediately preceding Paragraph; provided, however, failure to give notice to any such mortgage holder pursuant to this Section (b) shall not vitiate or impair the efficacy of such notice if it otherwise complies with the requirements of this Operating Agreement.

32.13 Estoppel Certificates. Any Party shall, from time to time (but not more frequently than once in any six (6) month period) upon not less than thirty (30) days' notice from the other Party, without charge of any fee to the requesting Party, execute and deliver to such other Party, or such Party's mortgagee or any other person or entity having or acquiring an interest in such Party's Tract (or in the interest of Younkens, its interest in the Lease), a certificate in recordable form stating that this

Operating Agreement and such Party's respective Supplemental Agreement is unmodified and, to the best of such Party's knowledge, in full force and effect or, if modified, that this Operating Agreement and such Party's respective Supplemental Agreement is, to the best of such Party's knowledge, in full force and effect, as modified, and stating the modifications; and stating whether or not, to the best of its knowledge, any other Party is in default in any respect under this Operating Agreement or its respective Supplemental Agreement, and, if in default, specifying such alleged default; provided, however, that in no event will any Party be required to modify any of its conditions or covenants under this Operating Agreement, its respective Supplemental Agreement or the Lease, or to expand any of its obligations or reduce any of its rights with respect to another Party or the person or entity for whose benefit such certificate is given, by means of such certificate.

32.14 No Public Dedication. No provision contained in this Operating Agreement shall be construed to grant any gift, dedication or any irrevocable rights to the general public or for any quasi-public purpose whatsoever, of, in, or to, any portion of the Total Development Tract or any Improvements therein; it being the intention of the Parties hereto that this Operating Agreement shall be strictly limited to, or for, the purposes herein expressed; provided, however, that Developer may dedicate certain water, sanitary sewer and storm sewer easements and facilities to the utility companies or governmental agencies or authorities having jurisdiction thereof as and when Developer deems such dedication reasonably necessary, appropriate or expedient for the development of the Shopping Center and/or the Reserve Tracts, and Dillard, Penney and Younkers, shall join in such dedication upon request by Developer.

32.15 No Third Party Beneficiary. Except as herein specifically provided, no rights, privileges or immunities of any Party hereto shall inure to the benefit of any tenant, customer, employee or invitee of the Shopping Center or any other third party; nor shall any tenant, customer, employee or invitee of the Shopping Center or any other third party be deemed to be a third party beneficiary of any of the provisions contained herein.

32.16 Ordinances. Each Party shall, at all times, both during and after the completion of construction of its Improvements, comply with all Federal, State, County and Municipal laws, ordinances, rules and regulations, with all regulations of the local Fire Insurance Rating organizations having jurisdiction or any other organization or board exercising similar functions, respecting the construction, applicable maintenance and operation of its Improvements.

32.17 Locative Adverbs. The locative adverbs, "herein", "hereunder", "hereto", "hereby", and like words whenever the same appear herein means and refer to this Operating Agreement in its entirety and not to any specific Article, Paragraph, Section or Subparagraph hereof, unless expressly otherwise provided.

32.18 Number and Gender; Lease Terms. (a) The use herein of a singular term shall include the plural and use of the masculine, feminine or neuter genders shall include all others.

(b) Developer and Younkers agree that:

(1) the term (A) "Developer Tract", as such term is used in this Operating Agreement, is identical in meaning to (B) the term "Landlord Tract", as such term is used in the Lease.

(2) the term (A) "Reserve Tract(s)", as such term is used in this Operating Agreement, is identical in meaning to (B) the term "Outlot(s)", as such term is used in the Lease.

(3) the term (A) "Total Development Tract", as such term is used in this Operating Agreement, is identical in meaning to (B) the term "Total Tract", as such term is used in the Lease.

(4) the term (A) "Covered Mall", as such term is used in this Operating Agreement, is identical in meaning to (B) the term "Enclosed Mall", as such term is used in the Lease.

(5) the term (A) "Agreed Interest Rate", as such term is used in this Operating Agreement, is identical in meaning to (B) the term "Default Rate", as such term is used in the Lease.

32.19 Broker's Commission. Each party represents and warrants that it has caused or incurred no claims for brokerage commissions or finder's fees in connection with the execution of this Operating Agreement, and each Party shall indemnify and hold the other Parties harmless against and from all liabilities arising from any such claims caused or incurred by it (including without limitation, the cost of reasonable attorneys' fees in connection therewith).

32.20 Time of Essence. Time is of the essence in this Operating Agreement and of all of the terms, provisions, agreements and conditions contained herein.

GENERAL

Article 33 - Notices

Any notice to any Party shall be in writing and given by delivering the same to such Party in person or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the Party's mailing address, or sent by overnight courier service, with receipt acknowledged by addressee. The respective mailing addresses of the Parties hereto are, until changed as hereinafter provided, the following:

Dillard: Dillard Department Stores, Inc.
P. O. Box 486
1600 Cantrell Road
Little Rock, Arkansas 72203
Attention: Office of the President

with a copy to: Dillard Department Stores, Inc.
P. O. Box 486
1600 Cantrell Road
Little Rock, Arkansas 72203
Attention: General Counsel

Developer: Center Road Retail Developers Limited Partnership
c/o Center-Simon Retail Developers Limited Partnership
One Merchants Plaza
P. O. Box 7033
Indianapolis, Indiana 46207
Attention: James P. Lee

with a copy to: Center Road Retail Developers Limited Partnership
c/o Center-Simon Retail Developers Limited Partnership
One Merchants Plaza
P. O. Box 7033
Indianapolis, Indiana 46207
Attention: General Counsel

Younkers: Younkers, Inc.
701 Walnut Street
Des Moines, Iowa 50397
Attention: President

with copies to:

Younkers, Inc.
701 Walnut Street
Des Moines, Iowa 50397
Attention: Director of Real Estate

and:

Nyemaster, Goode, McLaughlin, Voights,
West, Hansell & O'Brien, P.C.
1900 Hub Tower
699 Walnut Street
Des Moines, Iowa 50309
Attention: Russell E. Schrage, Esq.

Penney: JC Penney Company, Inc.
1901 N. Roselle Road
Schaumburg, Illinois 60195
Attn: Regional Real Estate Counsel

with copies to:

Penney Building
Oak View Mall
3001 South 144th Street
Omaha, Nebraska 68144
Attn: Store Manager

Any Party may change its mailing address at any time by giving written notice of such change to the other Parties in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

GENERAL

Article 34 - Exhibits

The exhibits to this Operating Agreement have been signed by the duly authorized officers, agents or attorneys of each Party and are hereby incorporated by reference into, and made a part of, this Operating Agreement, as fully as if set forth in full herein.

GENERAL

Article 35 - Successors

Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Operating Agreement shall bind and inure to the benefit of Developer, Penney, Dillard and Younkers, and their respective heirs, successors, administrators and assigns.

GENERAL

Article 36 - Lease; Conflict of Terms.

The Parties to the Operating Agreement hereby agree that, notwithstanding the respective execution and recording dates of the Operating Agreement, the Lease and the Memorandum, the Operating Agreement shall govern as between the Parties with respect to all matters expressly addressed in any written term, condition or provision of the Operating Agreement. Notwithstanding the above, Developer shall not be relieved from any obligation or liability it has to Younkers under the Operating Agreement, the Lease or Memorandum, which results from any written term, condition or provision of the Lease or Memorandum being subject to any written term, condition or provision of this Operating Agreement pursuant to the preceding sentence. In the event that this Operating Agreement does not expressly address any written term, condition or provision which is contained in the Lease or the Memorandum, then as between Developer and Younkers, the construction of the presence or absence of any written term, condition or provision of the Operating Agreement most favorable to Younkers shall control. Notwithstanding anything in the Operating Agreement which may be to the contrary, no term, condition or provision of this Article 36 may be amended or modified without the prior written consent of Developer, Younkers, Penney and Dillard, which consent may be withheld in the sole and absolute discretion of each such Party.

IN WITNESS WHEREOF, the Parties hereto have caused this Operating Agreement to be signed and executed as of the day and year first above written, the corporate Party by its duly authorized officers.

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, General Partner

BY: 
Herbert Simon. President

"Developer"

CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation

By: _____

"Condev"

DILLARD DEPARTMENT STORES, INC., a Delaware corporation

By: _____

"DDSI"

YOUNKERS, INC., a Delaware corporation

By: _____

"Younkers"

J. C. PENNEY PROPERTIES, INC., a Delaware corporation

Attest:

By: _____

"Penney"

IN WITNESS WHEREOF, the Parties hereto have caused this Operating Agreement to be signed and executed as of the day and year first above written, the corporate Party by its duly authorized officers.

CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana limited partnership

BY: CENTER-SIMON RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana limited partnership, General Partner

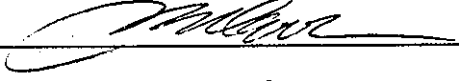
BY: CS RETAIL DEVELOPERS, INC., an Indiana corporation, General Partner

BY: _____

ITS: _____

"Developer"

CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation

By:  _____

"Condev"

DILLARD DEPARTMENT STORES, INC., a Delaware corporation

By:  _____

"DDSI"

YUNKERS, INC., a Delaware corporation

By: _____

"Yunkers"

J. C. PENNEY PROPERTIES, INC., a Delaware corporation

Attest:

By: _____

"Penney"

IN WITNESS WHEREOF, the Parties hereto have caused this Operating Agreement to be signed and executed as of the day and year first above written, the corporate Party by its duly authorized officers.

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, General Partner

BY: _____

ITS: _____

"Developer"

CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation

By: _____


"Condev"

DILLARD DEPARTMENT STORES, INC., a Delaware corporation

By: _____

"DDSI"

YOUNKERS, INC., a Delaware corporation

By:  _____

"Younkers"

J. C. PENNEY PROPERTIES, INC., a Delaware corporation

Attest:

By: _____

"Penney"

IN WITNESS WHEREOF, the Parties hereto have caused this Operating Agreement to be signed and executed as of the day and year first above written, the corporate Party by its duly authorized officers.

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, General Partner

BY: _____

ITS: _____

"Developer"

CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation

By: _____

"Condev"

DILLARD DEPARTMENT STORES, INC., a Delaware corporation

By: _____

"DDSI"

YOUNKERS, INC., a Delaware corporation

By: _____

"Younkers"

J. C. PENNEY PROPERTIES, INC., a Delaware corporation

By: Raymond J. Emma

"Penney"

Vice President

APPROVED
Amg
ATTORNEY



STATE OF INDIANA)
)
COUNTY OF MARION)

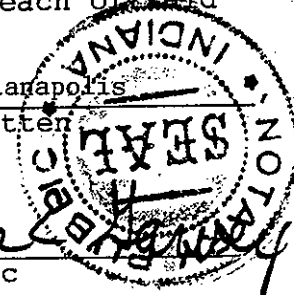
SS: _____

On this 26TH day of June, 1992, before the undersigned, a Notary Public in and for said County, personally came Herbert Simon, _____ 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, personally known to be a President and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement, and he acknowledged the execution thereof to be his voluntary act and deed as such President, and the voluntary act and deed of said corporation and each of said limited partnerships.

Witness my hand and notarial seal at Indianapolis in said County, on the day and year last above written.

DARLENE E. GARVEY, Notary Public
County of Residence: Johnson
My Commission Expires: Jan. 18, 1994

Darlene E. Garvey
Notary Public



STATE OF ARKANSAS)
)
COUNTY OF PULASKI)

SS: _____

On this _____ day of _____, 1992, before the undersigned, a Notary Public in and for said County, personally came _____ of Construction Developers, Incorporated, an Arkansas Corporation, personally known to be a _____ and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement and he acknowledged the execution thereof to be his voluntary act and deed as such _____, and the voluntary act and deed of said Corporation.

Witness my hand and notarial seal at _____, in said County, on the day and year last above written.

Notary Public

STATE OF INDIANA)
)
COUNTY OF MARION)

SS: -

On this _____ day of _____, 1992, before the undersigned, a Notary Public in and for said County, personally came _____, _____ 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, personally known to be a _____ and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement, and he acknowledged the execution thereof to be his voluntary act and deed as such _____, and the voluntary act and deed of said corporation and each of said limited partnerships.

Witness my hand and notarial seal at _____, in said County, on the day and year last above written.

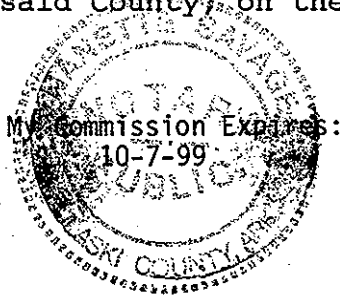
Notary Public

STATE OF ARKANSAS)
)
COUNTY OF PULASKI)

SS:

On this 26 day of June, 1992, before the undersigned, a Notary Public in and for said County, personally came James E. Darr, Jr., Vice President of Construction Developers, Incorporated, an Arkansas Corporation, personally known to be a Vice President and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement and he acknowledged the execution thereof to be his voluntary act and deed as such Vice President, and the voluntary act and deed of said Corporation.

Witness my hand and notarial seal at Little Rock, in said County, on the day and year last above written.

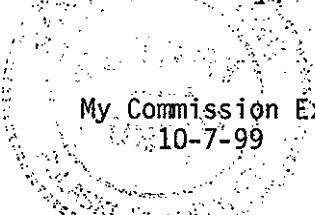


Pamela Savage
Notary Public

STATE OF ARKANSAS)
) SS:
COUNTY OF PULASKI)

On this 26 day of June, 1992, before the undersigned, a Notary Public in and for said County, personally came James E. Darr, Jr., Vice President of Dillard Department Stores, Inc., a Delaware corporation, personally known to be a Vice President and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement and he acknowledged the execution thereof to be his voluntary act and deed as such Vice President, and the voluntary act and deed of said Corporation.

Witness my hand and notarial seal at Little Rock, in said County, on the day and year last above written.



My Commission Expires:
10-7-99

Ganette Savage
Notary Public

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this _____ day of _____, 1992, before the undersigned, a Notary Public in and for said County, personally came _____ of Younkens, Inc., a Delaware corporation, personally known to be a _____ and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement and he acknowledged the execution thereof to be his voluntary act and deed as such _____, and the voluntary act and deed of said Corporation.

Witness my hand and notarial seal at _____, in said County, on the day and year last above written.

Notary Public

STATE OF _____)
) SS:
COUNTY OF _____)

On this _____ day of _____, 1992, before the undersigned, a Notary Public in and for said County, personally came _____ of J.C. PENNEY PROPERTIES, INC., a Delaware corporation, personally known to be a _____ and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement and he acknowledged the execution thereof to be his voluntary act and deed as such _____, and the voluntary act and deed of said Corporation.

Witness my hand and notarial seal at _____, in said County, on the day and year last above written.

Notary Public

STATE OF ARKANSAS)
)
COUNTY OF PULASKI) SS:

On this _____ day of _____, 1992, before the undersigned, a Notary Public in and for said County, personally came _____ of Dillard Department Stores, Inc., a Delaware corporation, personally known to be a _____ and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement and he acknowledged the execution thereof to be his voluntary act and deed as such _____, and the voluntary act and deed of said Corporation.

Witness my hand and notarial seal at _____, in said County, on the day and year last above written.

Notary Public

STATE OF IOWA)
)
COUNTY OF POLK) SS:

On this 29th day of JUNE, 1992, before the undersigned, a Notary Public in and for said County, personally came TAM COULD, CHAIRMAN & CEO of Younkers, Inc., a Delaware corporation, personally known to be a CHAIRMAN & CEO and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement and he acknowledged the execution thereof to be his voluntary act and deed as such CHAIRMAN & CEO, and the voluntary act and deed of said Corporation.

Witness my hand and notarial seal at DES MOINES, IOWA, in said County, on the day and year last above written.



Russell E. Schrage
Notary Public

STATE OF _____)
)
COUNTY OF _____) SS:

On this _____ day of _____, 1992, before the undersigned, a Notary Public in and for said County, personally came _____ of J.C. PENNEY PROPERTIES, INC., a Delaware corporation, personally known to be a _____ and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement and he acknowledged the execution thereof to be his voluntary act and deed as such _____, and the voluntary act and deed of said Corporation.

Witness my hand and notarial seal at _____, in said County, on the day and year last above written.

Notary Public

STATE OF ARKANSAS)
) SS:
COUNTY OF PULASKI)

On this _____ day of _____, 1992, before the undersigned, a Notary Public in and for said County, personally came _____ of Dillard Department Stores, Inc., a Delaware corporation, personally known to be a _____ and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement and he acknowledged the execution thereof to be his voluntary act and deed as such _____, and the voluntary act and deed of said Corporation.

Witness my hand and notarial seal at _____, in said County, on the day and year last above written.

Notary Public

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this _____ day of _____, 1992, before the undersigned, a Notary Public in and for said County, personally came _____ of Younkers, Inc., a Delaware corporation, personally known to be a _____ and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement and he acknowledged the execution thereof to be his voluntary act and deed as such _____, and the voluntary act and deed of said Corporation.

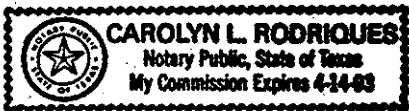
Witness my hand and notarial seal at _____, in said County, on the day and year last above written.

Notary Public

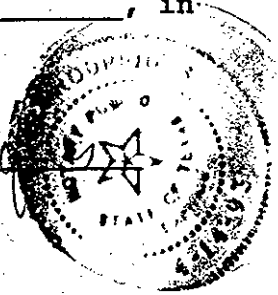
STATE OF Texas)
) SS:
COUNTY OF Dallas)

On this 30th day of June, 1992, before the undersigned, a Notary Public in and for said County, personally came RAYMOND J. EMMA, Vice-President of J.C. PENNEY PROPERTIES, INC., a Delaware corporation, personally known to be a Vice-President and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement and he acknowledged the execution thereof to be his voluntary act and deed as such Vice-President and the voluntary act and deed of said Corporation.

Witness my hand and notarial seal at Dallas, in said County, on the day and year last above written.



Carolyn L. Rodriques
Notary Public



DEVELOPER TRACT

A tract of land comprised of part of Lots 2 and 4 of Oak View, a Subdivision located in the West Half (W 1/2) of Section 36, Township 15 North, Range 11 East, Douglas County, Nebraska; more particularly described as follows:

Commencing at the Southerly most corner of Lot 6, said Oak View, said point also being on the Northeasterly right-of-way (R.O.W.) line of Oak View Drive; thence S58°24'38"E, along the said Northeasterly R.O.W. line of Oak View Drive, a distance of 95.80 feet to the True Point of Beginning; thence N53°47'17"E, a distance of 198.51 feet; thence N62°06'17"W a distance of 152.85 feet; thence N53°47'17"E a distance of 427.14 feet; thence N8°46'00"E a distance of 154.45 feet; thence S81°14'01"E a distance of 245.85 feet; thence S8°46'00"W a distance of 718.39 feet to a point on the North R.O.W. of Oak View Drive; thence S90°00'00"W along the said North R.O.W. line of Oak View Drive a distance of 203.26 feet to a point of curvature; thence Northwesterly along the said Northeasterly R.O.W. of Oak View Drive on a curve to the right, said curve having a radius of 260.00 feet, a long chord of 141.54 feet bearing N74°12'19"W and an arc length of 143.35 feet to a point of tangency; thence N58°24'38"W along the said Northeasterly R.O.W. line of Oak View Drive a distance of 219.87 to the point of beginning.

A tract of land comprised of part of Lots 2 through 4, inclusive, Oak View, a Subdivision located in the West half (W 1/2) of Section 36, Township 15 North, Range 11 East, Douglas County, Nebraska and more particularly described as follows:

Beginning at the Southerly most corner of said Lot 3, Oak View, thence Northwesterly along the Northeasterly Lot line of Lot 6, said Oak View, on a curve to the right, said curve having a radius of 248.00 feet, a long chord of 82.99 feet bearing N38°48'21"W and an arc length of 83.38 feet to a point of compound curvature; thence Northwesterly, along the said Northeasterly Lot line of Lot 6, Oak View, on a curve to the right, said curve having a radius of 979.81 feet, a long chord of 222.68 feet bearing N22°39'01"W and an arc length of 223.16 feet, to a point of compound curvature; thence Northerly along the Easterly line of Lots 6 and 7 of said Oak View, on a curve to the right, said curve having a radius of 640.82 feet, a long chord of 194.69 feet bearing N7°23'17"W and an arc length of 195.45 feet to a point of compound curvature; thence Northeasterly, along the said Easterly line of Lot 7, Oak View, on a curve to the right, said curve having a radius of 1655.00 feet a long chord of 304.39 feet bearing N6°37'34"E and an arc length of 304.82 feet, to the Northeasterly corner of said Lot 7, Oak View; thence N66°33'38"W along the Northerly line of said Lot 7, Oak View, a distance of 134.64 feet to a point of curvature; thence Northwesterly along the said Northerly line of Lot 7, 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 said Northerly line of Lot 7, Oak View, a distance of 19.07 feet to the Northwest corner of said Lot 7, Oak View, said point 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 80.00 feet to the Southwesterly corner of Lot 8, Oak View; thence S90°00'00"E along the Southerly line of said Lot 8, Oak View, a distance of 19.07 feet to a point of curvature; thence Southeasterly along the said Southerly line of Lot 8, Oak View, on a curve to the right, said curve having a radius of 165.00 feet, a long chord of 67.03 feet bearing S78°16'49"E and an arc length of 67.50 feet to a point of tangency; thence S66°33'38"E, along the said Southerly line of Lot 8, Oak View, a distance of 120.35 to the Southeasterly corner of said Lot 8, Oak View; thence Northeasterly, along the Easterly line of said Lot 8, Oak View on a curve to the right, said curve having a radius of 1655.00 feet, a long chord of 16.83 feet bearing N15°00'27"E and an arc length of 16.83 feet to a point of tangency; thence N15°17'57"E, along the said Easterly line of Lot 8, Oak View, a

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distance of 232.62 feet; thence S39°33'32"E a distance of 346.23 feet; thence S81°16'21"E a distance of 253.29 feet; thence S8°44'31"W a distance of 366.15 feet; thence S81°15'30"E a distance of 45.97 feet; thence S8°44'31"W a distance of 120.20 feet to a point on the Southeasterly Lot line of said Lot 3, Oak View; thence S53°47'17"W along the said Southeasterly Lot line of Lot 3, Oak View, a distance of 193.77 feet; thence S16°12'43"E a distance of 29.26 feet; thence S53°47'17"W a distance of 283.30 feet to a point on the said Northeasterly Lot line of Lot 6, said Oak View; thence Northwesterly along the said Northeasterly Lot line of Lot 6, Oak View, on a curve to the right, said curve having a radius of 248.00 feet, a long chord of 28.54 feet bearing N51°44'11"W and an arc length of 28.56 feet to a point of beginning.

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°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°19'52"E along the said Westerly R.O.W. line of Oak View Drive, a distance of 83.58 feet; thence N89°36'36"W, a distance of 89.06 feet; thence N0°23'24"E, a distance of 57.30 feet; thence N81°16'21"W, a distance of 215.55 feet; thence S8°45'30"W, a distance of 123.42 feet; thence N81°15'43"W, a distance of 85.34 feet; thence S8°38'35"W, a distance of 271.49 feet; thence S81°21'25"E, a distance of 66.55 feet; thence S8°43'39"W, a distance of 63.44 feet; thence S53°43'39"W, a distance of 147.02 feet; thence S30°20'43"E, a distance of 357.40 feet; thence N39°39'17"E, a distance of 29.27 feet; thence S30°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°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°52'40"W and an arc length of 196.67 feet to a point of tangency; thence S90°00'00"W along the North R.O.W. line of Oak View Drive, a distance of 255.64 feet; thence N8°46'00"E, a distance of 718.39 feet; thence N81°14'01"W, a distance of 245.85 feet; thence S8°46'00"W, a distance of 154.45 feet; thence S53°47'17"W, a distance of 427.14 feet; thence S62°06'17"E, a distance of 152.85 feet; thence S53°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°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°52'16"W and an arc length of 100.41 feet; thence N55°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°59'04"E and an arc length of 87.01 feet; thence N53°47'17"E, a distance of 283.30 feet; thence N16°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°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; thence S33°14'33"E, a distance of 8.50 feet; thence N56°45'17"E, a distance of 232.24 feet to a point of curvature; thence on a curve to the left, said curve having a radius of 25.00 feet, a long chord of 16.13 feet bearing N37°55'58"E and an arc length of 16.43 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 33.45 feet bearing S24°35'17"E, and an arc length of 33.45 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

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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°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;

DILLARD TRACT

A tract of land comprised of part of Lots 1, 4 and 5 of 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 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 $S01^{\circ}19'52''E$, along said Westerly R.O.W. line of Oak View Drive, a distance of 22.34 feet; thence $N81^{\circ}16'21''W$, a distance of 366.55 feet; thence $N8^{\circ}42'31''E$ a distance of 56.09 feet; thence $N81^{\circ}17'29''W$ a distance of 353.01 feet; thence $S8^{\circ}42'31''W$ a distance of 142.83 feet; thence $N39^{\circ}33'32''W$, a distance of 519.78 feet; thence $S70^{\circ}26'28''W$, a distance of 19.16 feet; thence $N39^{\circ}33'32''W$, a distance of 149.47 feet; thence Northeasterly on a curve to the right, said curve having a radius of 668.12 feet, a long chord of 160.15 feet bearing $N53^{\circ}56'59''E$ and an arc length of 160.54 feet to a Point of Compound Curve; thence Northeasterly, on a curve to the right, said curve having a radius of 793.38 feet, a long chord of 402.40 feet bearing $N75^{\circ}31'27''E$ and an arc length of 406.84 feet, to a Point of Tangency; thence $S89^{\circ}47'07''E$, a distance of 20.72 feet; thence $N0^{\circ}54'54''W$, a distance of 44.55 feet, to a Point of Curvature; thence Northeasterly, on a curve to the right, said curve having a radius of 44.49 feet, a long chord of 42.91 feet bearing $N27^{\circ}55'11''E$ and an arc length of 44.78 feet, to a Point of Tangency; thence $N56^{\circ}45'17''E$, a distance of 242.48 feet to a point on the Westerly R.O.W. line of Oak View Drive; thence Southeasterly along the Westerly R.O.W. line of Oak View Drive on a curve to the left, said curve having a radius of 650.76 feet, a long chord of 38.82 feet bearing $S27^{\circ}46'11''E$ and an arc length of 38.82 feet; thence $S56^{\circ}45'17''W$, along the Northerly lot line of Lot 14, said Oak View, a distance of 238.77 feet to a point of curvature; thence Southwesterly, along the Northwesterly lot line of said Lot 14, Oak View, on a curve to the left, said curve having a radius of 5.85 feet, a long chord of 5.64 feet, bearing $S27^{\circ}55'11''W$ and an arc length of 5.89 feet to a Point of Tangency; thence $S0^{\circ}12'53''W$ along the Westerly most lot line of said Lot 14, Oak View, a distance of 27.31 feet to the Southwesterly corner of said Lot 14, Oak View; thence $S89^{\circ}47'07''E$ along the Southerly lot line of said Lot 14, Oak View, a distance of 203.71 feet to a Point of Curvature; thence Southeasterly, along the Southerly line of said Lot 14, on a curve to the right, said curve having a radius of 243.00 feet, a long chord of 68.47 feet bearing $S81^{\circ}41'10''E$ and an arc length of 68.70 feet; thence $N47^{\circ}27'16''E$, along the Southeasterly line of said Lot 14, a

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distance of 44.80 feet to a point on the Westerly R.O.W. line of Oak View Drive; thence $S42^{\circ}32'44''E$, along said Westerly R.O.W. line of Oak View Drive, a distance of 200.99 feet to a Point of Curvature; thence Southeasterly along the said Westerly R.O.W. of Oak View Drive, on a curve to the right, said curve having a radius of 550.00 feet, a long chord of 387.15 feet bearing $S21^{\circ}56'18''E$ and an arc length of 395.63 feet to a Point of Tangency; thence $S01^{\circ}19'52''E$, along said Westerly R.O.W. line of Oak View Drive, a distance of 235.67 feet, to a Point of Beginning.

PENNEY TRACT

A tract of land comprised of part of Lots 1 and 4 of 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:

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 105.92 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 654.56 feet to a point of curvature; thence Southwesterly, along the northwesterly R.O.W. of Oak View Drive on a curve to the right, said curve having a radius of 310.00 feet, a long chord of 267.34 feet, bearing $S24^{\circ}12'44''W$ and an arc length of 276.41 feet to a point of tangency; thence $S49^{\circ}45'20''W$ along the said Northwesterly R.O.W. of Oak View Drive, a distance of 102.75 feet; thence $N30^{\circ}20'43''W$ a distance of 269.04 feet; thence $S39^{\circ}39'17''W$ a distance of 29.27 feet; thence $N30^{\circ}20'43''W$ a distance of 357.40 feet; thence $N53^{\circ}43'39''E$ a distance of 147.02 feet; thence $N8^{\circ}43'39''E$ a distance 63.44 feet; thence $N81^{\circ}21'25''W$ a distance of 66.55 feet; thence $N8^{\circ}38'35''E$ a distance of 271.49 feet; thence $S81^{\circ}15'43''E$ a distance of 85.34 feet; thence $N8^{\circ}45'30''E$ a distance of 123.42 feet; thence $S81^{\circ}16'21''E$ a distance of 215.55 feet; thence $S0^{\circ}23'24''W$ a distance of 57.30 feet; thence $S89^{\circ}36'36''E$ a distance of 89.06 feet to the point of beginning.

TOTAL DEVELOPMENT TRACT

A tract of land comprised of part of Lots 1 and 4 of 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:

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 105.92 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 654.56 feet to a point of curvature; thence Southwesterly, along the northwesterly R.O.W. of Oak View Drive on a curve to the right, said curve having a radius of 310.00 feet, a long chord of 267.34 feet, bearing $S24^{\circ}12'44''W$ and an arc length of 276.41 feet to a point of tangency; thence $S49^{\circ}45'20''W$ along the said Northwesterly R.O.W. of Oak View Drive, a distance of 102.75 feet; thence $N30^{\circ}20'43''W$ a distance of 269.04 feet; thence $S39^{\circ}39'17''W$ a distance of 29.27 feet; thence $N30^{\circ}20'43''W$ a distance of 357.40 feet; thence $N53^{\circ}43'39''E$ a distance of 147.02 feet; thence $N8^{\circ}43'39''E$ a distance 63.44 feet; thence $N81^{\circ}21'25''W$ a distance of 66.55 feet; thence $N8^{\circ}38'35''E$ a distance of 271.49 feet; thence $S81^{\circ}15'43''E$ a distance of 85.34 feet; thence $N8^{\circ}45'30''E$ a distance of 123.42 feet; thence $S81^{\circ}16'21''E$ a distance of 215.55 feet; thence $S0^{\circ}23'24''W$ a distance of 57.30 feet; thence $S89^{\circ}36'36''E$ a distance of 89.06 feet to the point of beginning.

A tract of land comprised of part of Lots 2 and 4 of Oak View, a Subdivision located in the West Half (W 1/2) of Section 36, Township 15 North, Range 11 East, Douglas County, Nebraska; more particularly described as follows:

Commencing at the Southerly most corner of Lot 6, said Oak View, said point also being on the Northeasterly right-of-way (R.O.W.) line of Oak View Drive; thence S58°24'38"E, along the said Northeasterly R.O.W. line of Oak View Drive, a distance of 95.80 feet to the True Point of Beginning; thence N53°47'17"E, a distance of 198.51 feet; thence N62°06'17"W a distance of 152.85 feet; thence N53°47'17"E a distance of 427.14 feet; thence N8°46'00"E a distance of 154.45 feet; thence S81°14'01"E a distance of 245.85 feet; thence S8°46'00"W a distance of 718.39 feet to a point on the North R.O.W. of Oak View Drive; thence S90°00'00"W along the said North R.O.W. line of Oak View Drive a distance of 203.26 feet to a point of curvature; thence Northwesterly along the said Northeasterly R.O.W. of Oak View Drive on a curve to the right, said curve having a radius of 260.00 feet, a long chord of 141.54 feet bearing N74°12'19"W and an arc length of 143.35 feet to a point of tangency; thence N58°24'38"W along the said Northeasterly R.O.W. line of Oak View Drive a distance of 219.87 to the point of beginning.

A tract of land comprised of part of Lots 2 through 4, inclusive, Oak View, a Subdivision located in the West half (W 1/2) of Section 36, Township 15 North, Range 11 East, Douglas County, Nebraska and more particularly described as follows:

Beginning at the Southerly most corner of said Lot 3, Oak View, thence Northwesterly along the Northeasterly Lot line of Lot 6, said Oak View, on a curve to the right, said curve having a radius of 248.00 feet, a long chord of 82.99 feet bearing N38°48'21"W and an arc length of 83.38 feet to a point of compound curvature; thence Northwesterly, along the said Northeasterly Lot line of Lot 6, Oak View, on a curve to the right, said curve having a radius of 979.81 feet, a long chord of 222.68 feet bearing N22°39'01"W and an arc length of 223.16 feet, to a point of compound curvature; thence Northerly along the Easterly line of Lots 6 and 7 of said Oak View, on a curve to the right, said curve having a radius of 640.82 feet, a long chord of 194.69 feet bearing N7°23'17"W and an arc length of 195.45 feet to a point of compound curvature; thence Northeasterly, along the said Easterly line of Lot 7, Oak View, on a curve to the right, said curve having a radius of 1655.00 feet a long chord of 304.39 feet bearing N6°37'34"E and an arc length of 304.82 feet, to the Northeasterly corner of said Lot 7, Oak View; thence N66°33'38"W along the Northerly line of said Lot 7, Oak View, a distance of 134.64 feet to a point of curvature; thence Northwesterly along the said Northerly line of Lot 7, 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 said Northerly line of Lot 7, Oak View, a distance of 19.07 feet to the Northwest corner of said Lot 7, Oak View, said point 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 80.00 feet to the Southwesterly corner of Lot 8, Oak View; thence S90°00'00"E along the Southerly line of said Lot 8, Oak View, a distance of 19.07 feet to a point of curvature; thence Southeasterly along the said Southerly line of Lot 8, Oak View, on a curve to the right, said curve having a radius of 165.00 feet, a long chord of 67.03 feet bearing S78°16'49"E and an arc length of 67.50 feet to a point of tangency; thence S66°33'38"E, along the said Southerly line of Lot 8, Oak View, a distance of 120.35 to the Southeasterly corner of said Lot 8, Oak View; thence Northeasterly, along the Easterly line of said Lot 8, Oak View on a curve to the right, said curve having a radius of 1655.00 feet, a long chord of 16.83 feet bearing N15°00'27"E and an arc length of 16.83 feet to a point of tangency; thence N15°17'57"E, along the said Easterly line of Lot 8, Oak View, a

distance of 232.62 feet; thence S39°33'32"E a distance of 346.23 feet; thence S81°16'21"E a distance of 253.29 feet; thence S8°44'31"W a distance of 366.15 feet; thence S81°15'30"E a distance of 45.97 feet; thence S8°44'31"W a distance of 120.20 feet to a point on the Southeasterly Lot line of said Lot 3, Oak View; thence S53°47'17"W along the said Southeasterly Lot line of Lot 3, Oak View, a distance of 193.77 feet; thence S16°12'43"E a distance of 29.26 feet; thence S53°47'17"W a distance of 283.30 feet to a point on the said Northeasterly Lot line of Lot 6, said Oak View; thence Northwesterly along the said Northeasterly Lot line of Lot 6, Oak View, on a curve to the right, said curve having a radius of 248.00 feet, a long chord of 28.54 feet bearing N51°44'11"W and an arc length of 28.56 feet to a point of beginning.

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; thence S33°14'33"E, a distance of 8.50 feet; thence N56°45'17"E, a distance of 232.24 feet to a point of curvature; thence on a curve to the left, said curve having a radius of 25.00 feet, a long chord of 16.13 feet bearing N37°55'58"E and an arc length of 16.43 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 33.45 feet bearing S24°35'17"E, and an arc length of 33.45 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°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 17.045 acres, more or less.

A tract of land comprised of part of Lots 1, 4 and 5 of 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 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 S01°19'52"E, along said Westerly R.O.W. line of Oak View Drive, a distance of 22.34 feet; thence N81°16'21"W, a distance of 366.55 feet; thence N8°42'31"E a distance of 56.09 feet; thence N81°17'29"W a distance of 353.01 feet; thence S8°42'31"W a distance of 142.83 feet; thence N39°33'32"W, a distance of 519.78 feet; thence S70°26'28"W, a distance of 19.16 feet; thence N39°33'32"W, a distance of 149.47 feet; thence Northeasterly on a curve to the right, said curve having a radius of 668.12 feet, a long chord of 160.15 feet bearing N53°56'59"E and an arc length of 160.54 feet to a Point of Compound Curve; thence Northeasterly, on a curve to the right, said curve having a radius of 793.38 feet, a long chord of 402.40 feet bearing N75°31'27"E and an arc length of 406.84 feet, to a Point of Tangency; thence S89°47'07"E, a distance of 20.72 feet; thence N0°54'54"W, a distance of 44.55 feet, to a Point of Curvature; thence Northeasterly, on a curve to the right, said curve having a radius of 44.49 feet, a long chord of 42.91 feet bearing N27°55'11"E and an arc length of 44.78 feet, to a Point of Tangency; thence N56°45'17"E, a distance of 242.48 feet to a point on the Westerly R.O.W. line of Oak View Drive; thence Southeasterly along the Westerly R.O.W. line of Oak View Drive on a curve to the left, said curve having a radius of 650.76 feet, a long chord of 38.82 feet bearing S27°46'11"E and an arc length of 38.82 feet; thence S56°45'17"W, along the Northerly lot line of Lot 14, said Oak View, a distance of 238.77 feet to a point of curvature; thence Southwesterly, along the Northwesterly lot line of said Lot 14, Oak View, on a curve to the left, said curve having a radius of 5.85 feet, a long chord of 5.64 feet, bearing S27°55'11"W and an arc length of 5.89 feet to a Point of Tangency; thence S0°12'53"W along the Westerly most lot line of said Lot 14, Oak View, a distance of 27.31 feet to the Southwesterly corner of said Lot 14, Oak View; thence S89°47'07"E along the Southerly lot line of said Lot 14, Oak View, a distance of 203.71 feet to a Point of Curvature; thence Southeasterly, along the Southerly line of said Lot 14, on a curve to the right, said curve having a radius of 243.00 feet, a long chord of 68.47 feet bearing S81°41'10"E and an arc length of 68.70 feet; thence N47°27'16"E, along the Southeasterly line of said Lot 14, a

distance of 44.80 feet to a point on the Westerly R.O.W. line of Oak View Drive; thence $S42^{\circ}32'44''E$, along said Westerly R.O.W. line of Oak View Drive, a distance of 200.99 feet to a Point of Curvature; thence Southeasterly along the said Westerly R.O.W. of Oak View Drive, on a curve to the right, said curve having a radius of 550.00 feet, a long chord of 387.15 feet bearing $S21^{\circ}56'18''E$ and an arc length of 395.63 feet to a Point of Tangency; thence $S01^{\circ}19'52''E$, along said Westerly R.O.W. line of Oak View Drive, a distance of 235.67 feet, to a Point of Beginning.

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 N0°00'00"E along the East R.O.W. line of 144th Street, a distance of 199.67 feet; thence N90°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 S25°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 S32°03'15"E and an arc length of 24.93 feet to a point; thence S55°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 N82°39'57"W and an arc length of 87.04 feet to a point of tangency; thence N90°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.

A tract of land being part of Lots 6 and 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:

Commencing at the Northwestern most corner of said Lot 7, Oak View Subdivision; thence $S0^{\circ}00'00''E$ along the East right-of-way (R.O.W.) line of 144th Street, a distance of 331.50 feet to the true Point of Beginning; thence $S90^{\circ}00'00''E$ a distance of 142.33 feet; thence Southwesterly along the Easterly lot line of said Lot 7, on a curve to the left, said curve having a radius of 1,655.00 feet, a long chord of 31.45 feet bearing $S1^{\circ}53'39''W$ and an arc length of 31.45 feet to a point of compound curve; thence Southeasterly along the Easterly lot line of said Lots 6 and 7 on a curve to the left, said curve having a radius of 640.82 feet, a long chord of 194.69 feet bearing $S7^{\circ}23'17''E$ and an arc length of 195.45 feet to a point of compour. curvature; thence Southeasterly along the Easterly lot line of said Lot 6 on a curve to the left, said curve having a radius of 979.81feet, a long chord of 92.12 feet bearing $S18^{\circ}49'12''E$ and an arc length of 92.16 feet; thence $N90^{\circ}00'00''W$ a distance of 196.04 feet to the East R.O.W. line of 144th Street; thence $N0^{\circ}00'00''E$ along the East R.O.W. line of 144th Street a distance of 311.71 feet to the Point of Beginning.

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 $S90^{\circ}00'00''E$, 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 $S78^{\circ}16'49''E$ and an arc length of 34.77 feet to a point of tangency; thence $S66^{\circ}33'38''E$ 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 $S7^{\circ}10'14''W$ and an arc length 273.37 feet; thence $N90^{\circ}00'00''W$ a distance of 142.33 feet to the east right-of-way line of 144th Street; thence $N0^{\circ}00'00''W$ along the east right-of-way line of 144th Street, a distance of 331.50 feet to the Point of Beginning.

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Lots Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12),
Thirteen (13), Fourteen (14) and Fifteen (15) of Oak View, a
Subdivision.

Exhibit "D"

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RESERVE TRACTS

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 $N0^{\circ}00'00''E$ along East R.O.W. line of 144th Street, a distance of 199.67 feet; thence $N90^{\circ}00'00''E$ 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 $S25^{\circ}20'42''E$ 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 $S32^{\circ}03'15''E$ and an arc length of 24.93 feet to a point; thence $S55^{\circ}03'58''W$, 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 $N82^{\circ}39'57''W$ and an arc length of 87.04 feet to a point of tangency; thence $N90^{\circ}00'00''W$ along the North R.O.W. line of Oak View Drive a distance of 77.09 feet to the Point of Beginning.

A tract of land being part of Lots 6 and 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:

Commencing at the Northwesterly most corner of said Lot 7, Oak View Subdivision; thence $S0^{\circ}00'00''E$ along the East right-of-way (R.O.W.) line of 144th Street, a distance of 331.50 feet to the true Point of Beginning; thence $S90^{\circ}00'00''E$ a distance of 142.33 feet; thence Southwesterly along the Easterly lot line of said Lot 7, on a curve to the left, said curve having a radius of 1,655.00 feet, a long chord of 31.45 feet bearing $S1^{\circ}53'39''W$ and an arc length of 31.45 feet to a point of compound curve; thence Southeasterly along the Easterly lot line of said Lots 6 and 7 on a curve to the left, said curve having a radius of 640.82 feet, a long chord of 194.69 feet bearing $S7^{\circ}23'17''E$ and an arc length of 195.45 feet to a point of compound curvature; thence Southeasterly along the Easterly 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 92.12 feet bearing $S18^{\circ}49'12''E$ and an arc length of 92.16 feet; thence $N90^{\circ}00'00''W$ a distance of 196.04 feet to the East R.O.W. line of 144th Street; thence $N0^{\circ}00'00''E$ along the East R.O.W. line of 144th Street a distance of 311.71 feet to the Point of Beginning.

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 Northwesterly most corner of said Lot 7, Oak View Subdivision; thence $S90^{\circ}00'00''E$, 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 $S78^{\circ}16'49''E$ and an arc length of 34.77 feet to a point of tangency; thence $S66^{\circ}33'38''E$ 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 $S7^{\circ}10'14''W$ and an arc length 273.37 feet; thence $N90^{\circ}00'00''W$ a distance of 142.33 feet to the east right-of-way line of 144th Street; thence $N0^{\circ}00'00''W$ along the east right-of-way line of 144th Street, a distance of 331.50 feet to the Point of Beginning.

BOOK 1019 PAGE 377

Lots Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12),
Thirteen (13), Fourteen (14) and Fifteen (15) of Oak View, a
Subdivision.

Exhibit "E"

Page 4 of 4

REGIONAL SHOPPING MALL

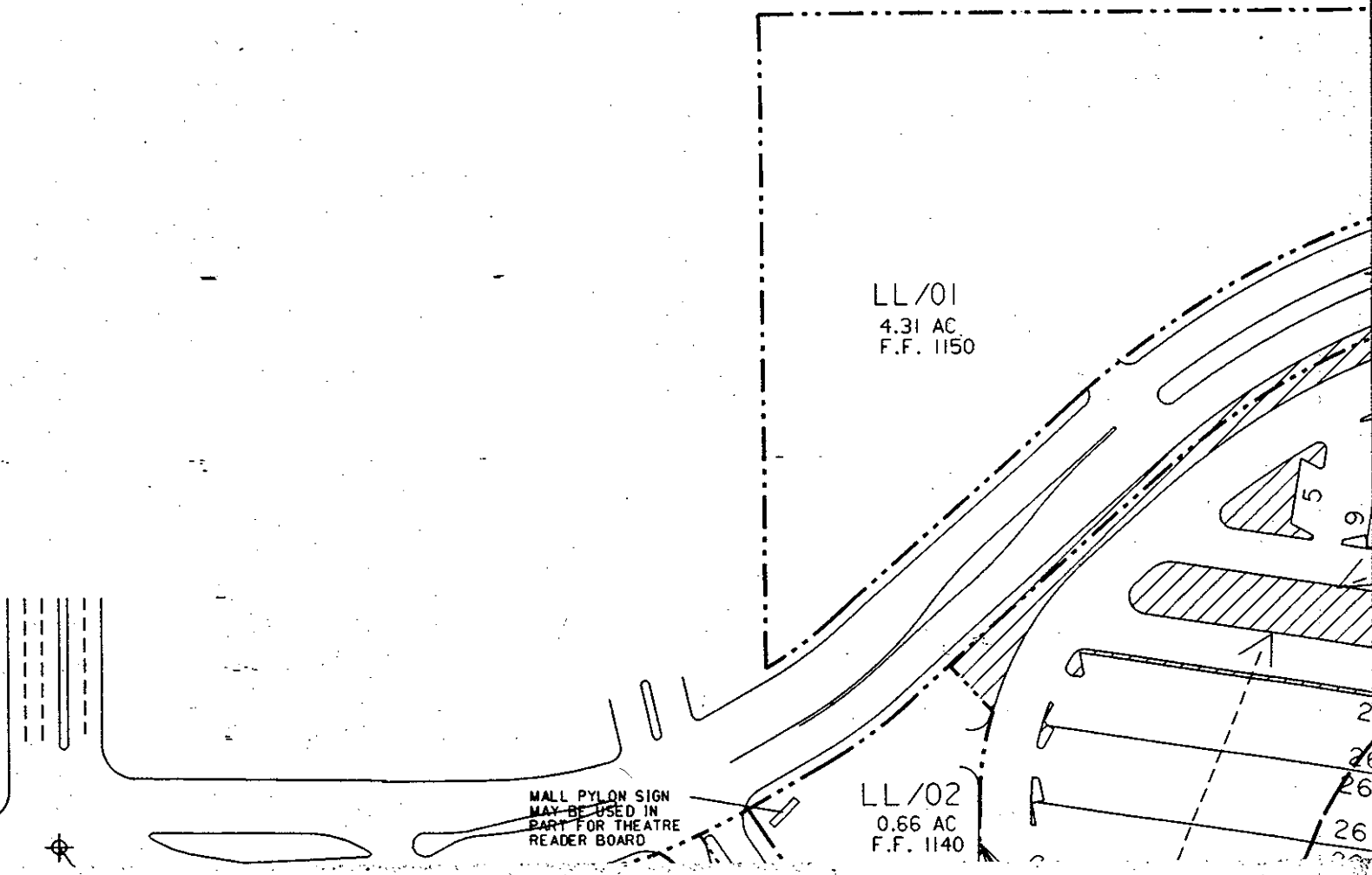
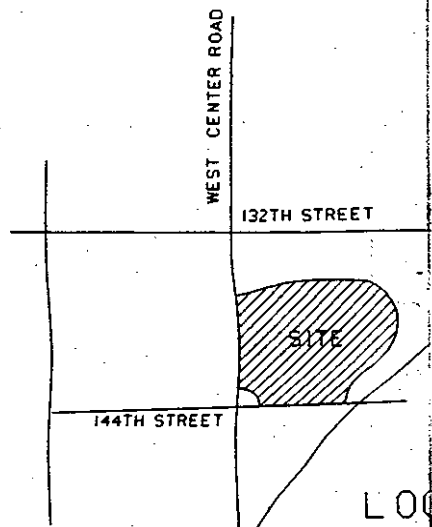
INITIAL
DEVELOPMENT

FUTURE
DEVELOPMENT

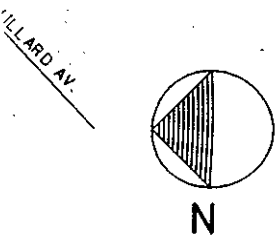
OUTLOT LEGEND

DILLARD	205,122	205,122
YOUNKERS	149,326	149,326
J.C. PENNEY	124,930	124,930
SMALL SHOPS	252,757	252,757
FUTURE SEARS		110,000
TOTAL MALL G.L.A.	732,135	842,135
TOTAL SPACES REQUIRED FOR A 4.5 MALL RATIO	3,294	3,790
SPACES PROVIDED (within ring road)	3,664	3,792
OUTLOT G.L.A.	54,967	54,967
TOTAL SITE G.L.A.	787,102	897,102
TOTAL SPACES REQUIRED FOR A 5.0 SITE RATIO	3,935	4,485
SPACES PROVIDED (includes outlot spaces)	4,698	4,826
TOTAL ACREAGE MALL	55.90	55.90
TOTAL ACREAGE OUTLOTS	17.00	17.00
TOTAL SITE ACREAGE	72.90	72.90

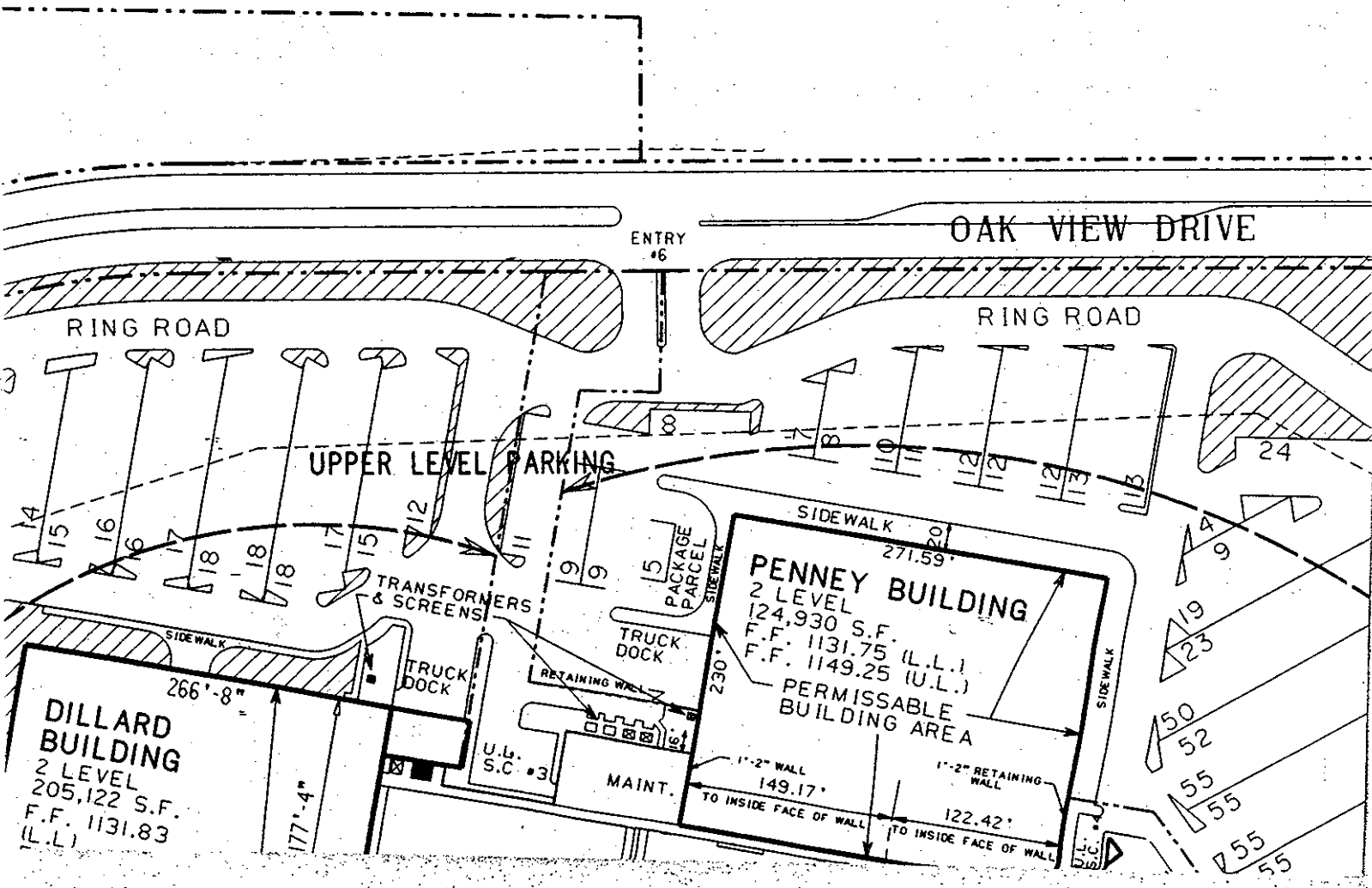
LL01	5.000	S. F.
LL02	3.000	S. F.
LL03	5.953	S. F.
LL04	5.000	S. F.
LL05	8.000	S. F.
LL06	4.080	S. F.
LL07	8.550	S. F.
LL08	5.178	S. F.
LL09	5.323	S. F.
LL10	4.883	S. F.
TOTAL	54.967	S. F.

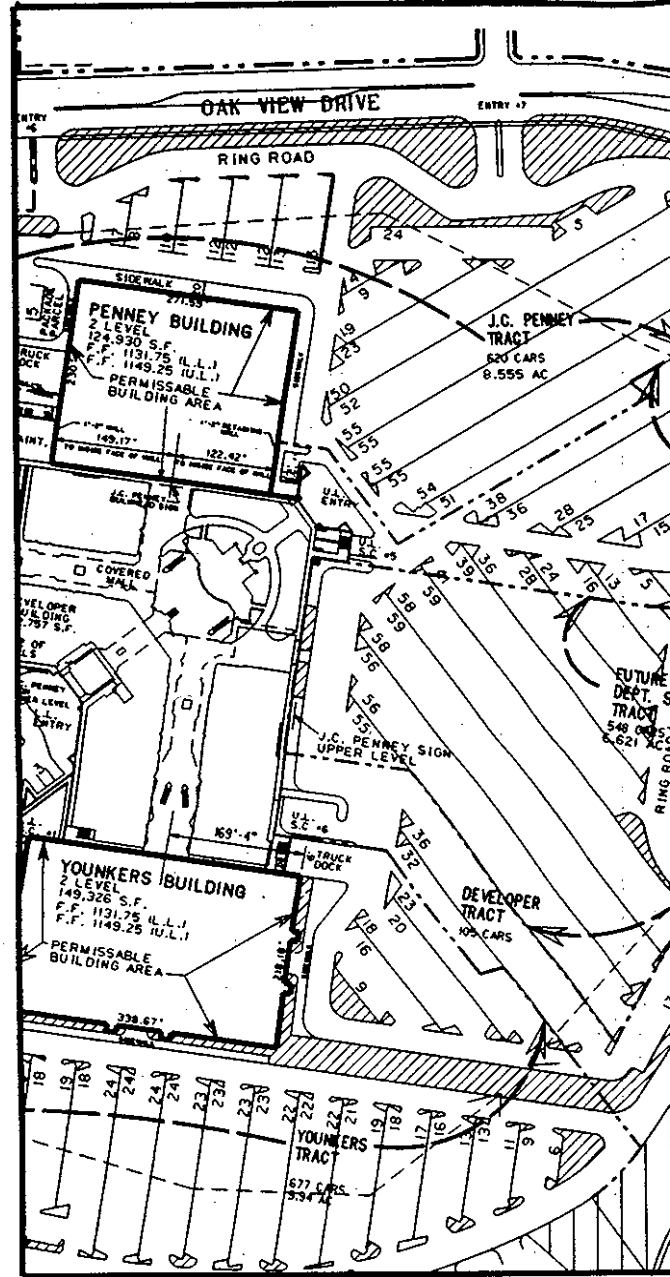


4.31	ACRES	139	SPACES
.66	ACRES	27	SPACES
1.17	ACRES	85	SPACES
1.68	ACRES	158	SPACES
2.69	ACRES	163	SPACES
.86	ACRES	39	SPACES
2.31	ACRES	176	SPACES
1.15	ACRES	62	SPACES
1.12	ACRES	97	SPACES
1.05	ACRES	88	SPACES
<hr/>			
17.00	ACRES	1034	SPACES

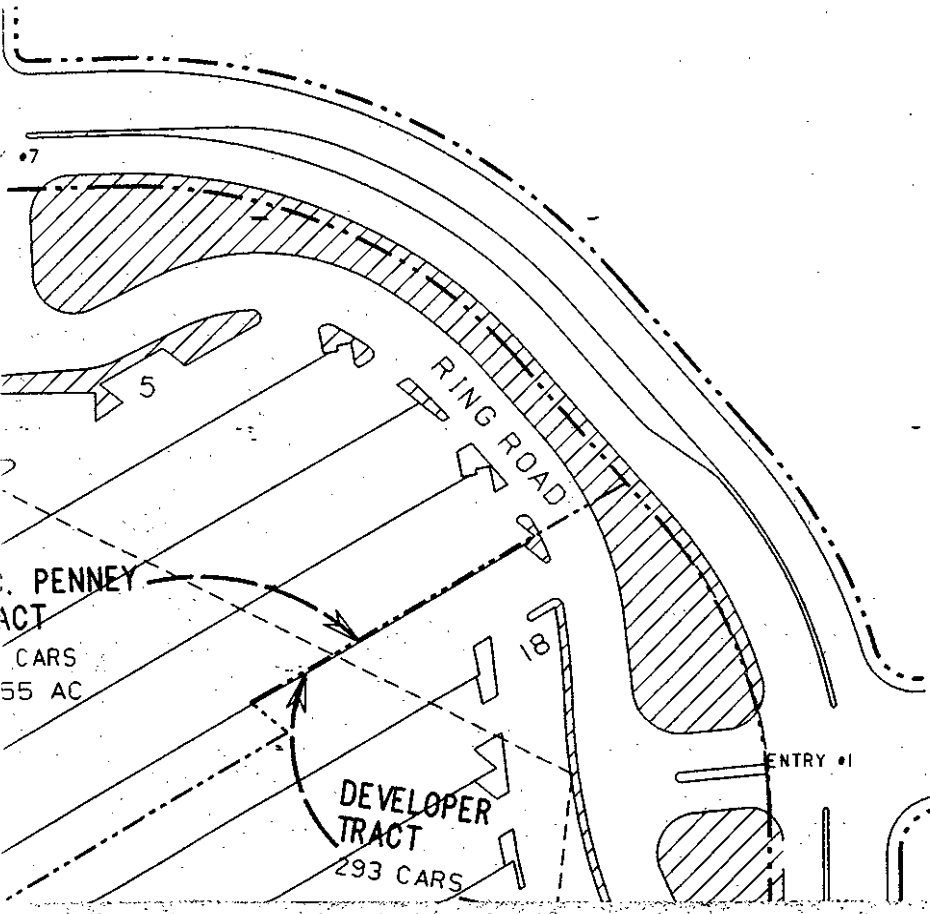


N MAP

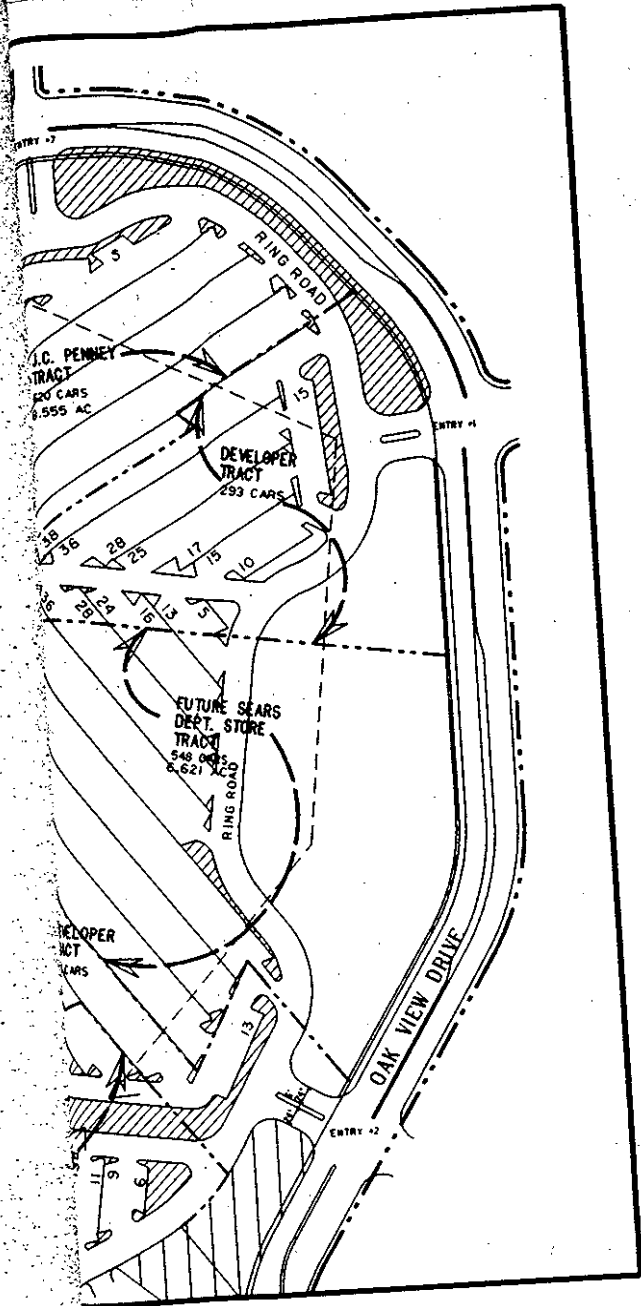




INITIAL DEVELOPMENT RING ROAD



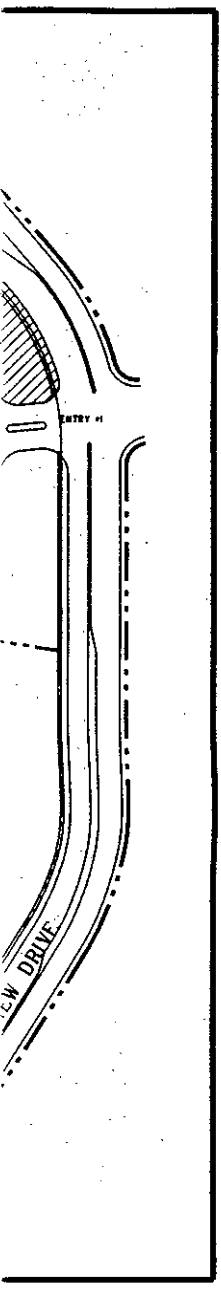
- R. R. = REST
- ESC. = ESCA
- F. F. = FINI
- L. L. = LOWE
- LL/ = OUTL
- S. C. = SERV
- S. F. = SOUJA



RING ROAD SCALE: 1"=200'

- = RESTROOMS
- = ESCALATOR
- = FINISHED FLOOR
- = LOWER LEVEL
- = OUTLOT
- = SERVICE COURT
- = SQUARE FOOTAGE

11 10/5



"=200'

.00R

JRT
PAGE

TRAFFIC SIGNAL

OWNED BY OTHERS

BOOK 1019 PAGE 383

ENTRY #5

DILLARD TRACT

1029 CARS
113.973 AC.

25
25
24
24
18
18

14
12

8

26

21

LL/03
1.17 AC
F.F. 1127

LL/04
1.68 AC
F.F. 1127

LL/05
2.69 AC
F.F. 1128

RING ROAD

LL/06
0.86 AC
F.F. 1129

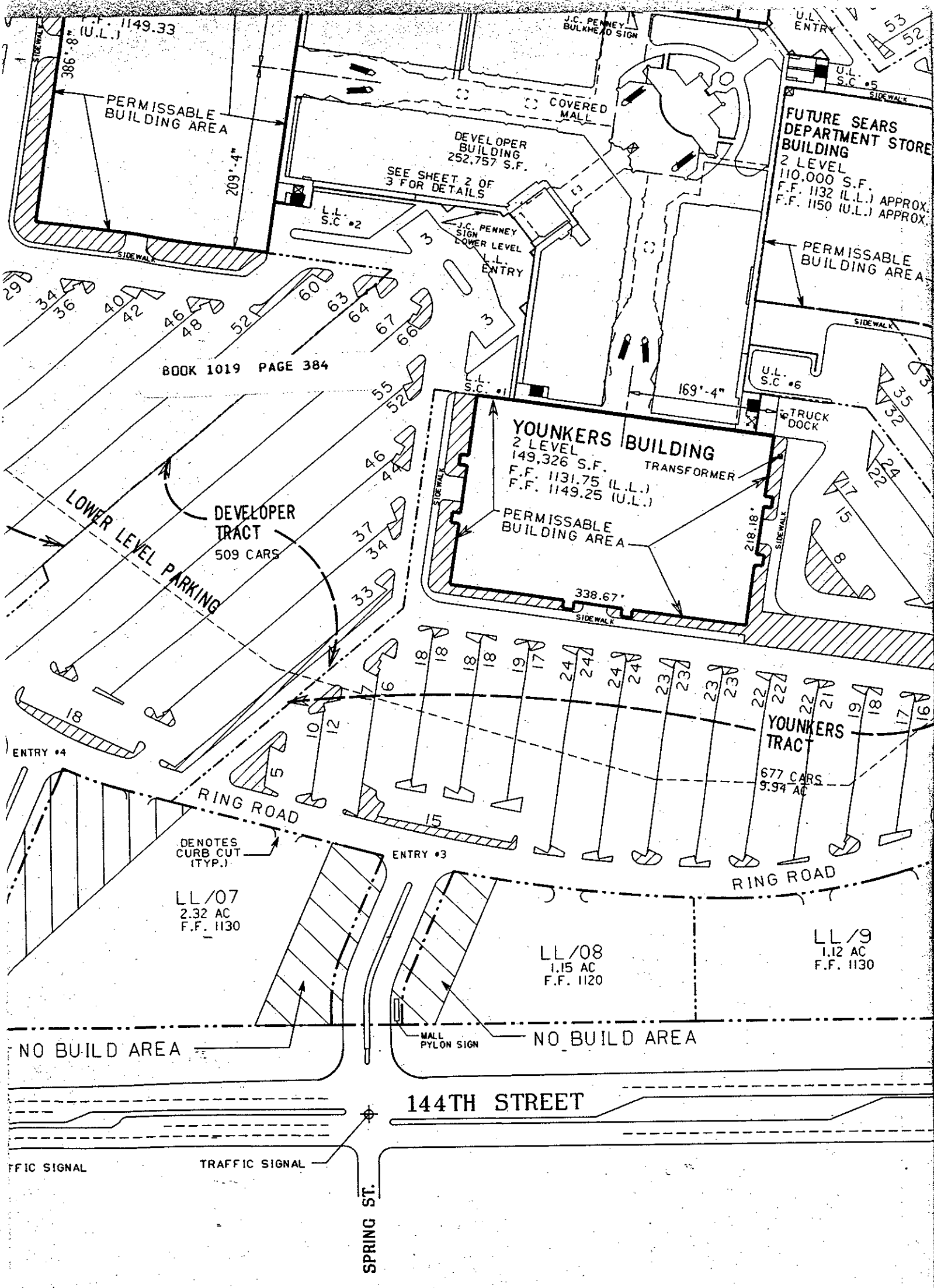
OWNED BY OTHERS

WEST CENTER ROAD

TRAFFIC SIGNAL

SHOPCO ENTRANCE

TR



PERMISSIBLE BUILDING AREA

DEVELOPER BUILDING
252,757 S.F.

SEE SHEET 2 OF 3 FOR DETAILS

J.C. PENNEY BULKHEAD SIGN

J.C. PENNEY SIGN LOWER LEVEL ENTRY

FUTURE SEARS DEPARTMENT STORE BUILDING
2 LEVEL
110,000 S.F.
F.F. 1132 (L.L.) APPROX.
F.F. 1150 (U.L.) APPROX.

PERMISSIBLE BUILDING AREA

U.L. ENTRY

U.L. S.C. #5

U.L. S.C. #6

TRUCK DOCK

YOUNKERS BUILDING
2 LEVEL
149,326 S.F.
F.F. 1131.75 (L.L.)
F.F. 1149.25 (U.L.)

TRANSFORMER

PERMISSIBLE BUILDING AREA

338.67'

218.18'

DEVELOPER TRACT
509 CARS

LOWER LEVEL PARKING

YOUNKERS TRACT
677 CARS
9.94 AC

RING ROAD

ENTRY #4

ENTRY #3

NO BUILD AREA

MALL PYLON SIGN

NO BUILD AREA

144TH STREET

TRAFFIC SIGNAL

TRAFFIC SIGNAL

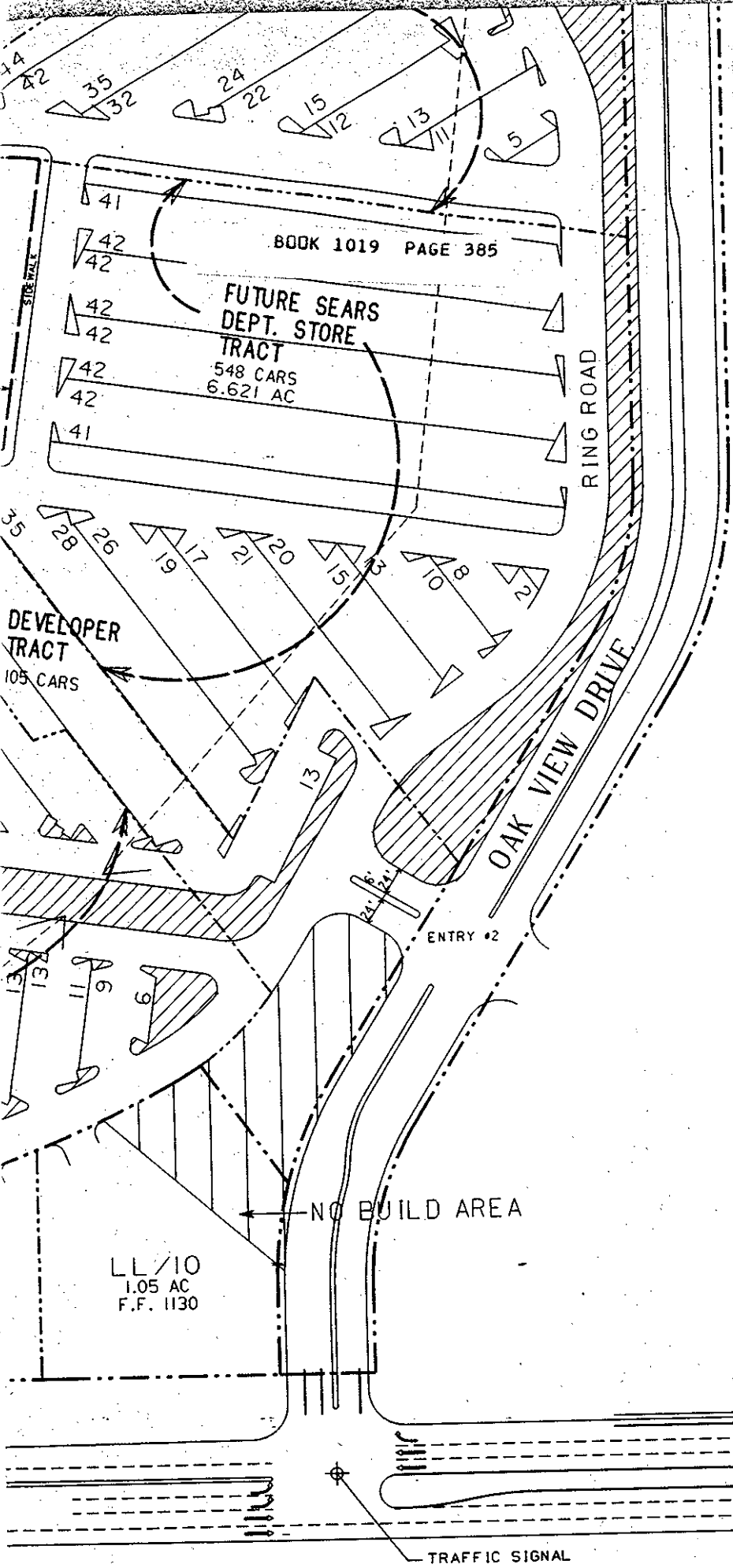
SPRING ST.

LL/07
2.32 AC
F.F. 1130

LL/08
1.15 AC
F.F. 1120

LL/09
1.12 AC
F.F. 1130

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BOOK 1019 PAGE 385

FUTURE SEARS
DEPT. STORE
TRACT

548 CARS
6.621 AC

DEVELOPER
TRACT

105 CARS

LL/10
1.05 AC
F.F. 1130

NO BUILD AREA

ENTRY #2

TRAFFIC SIGNAL

RING ROAD

OAK VIEW DRIVE

SIDE WALK

U. L. = UPPER LEVEL

☒ = ELEVATOR

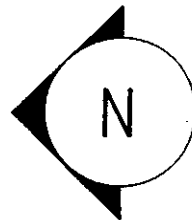
▨ = STAIRWAY

▩ = LANDSCAPED AREAS

OWNED BY
OTHERS

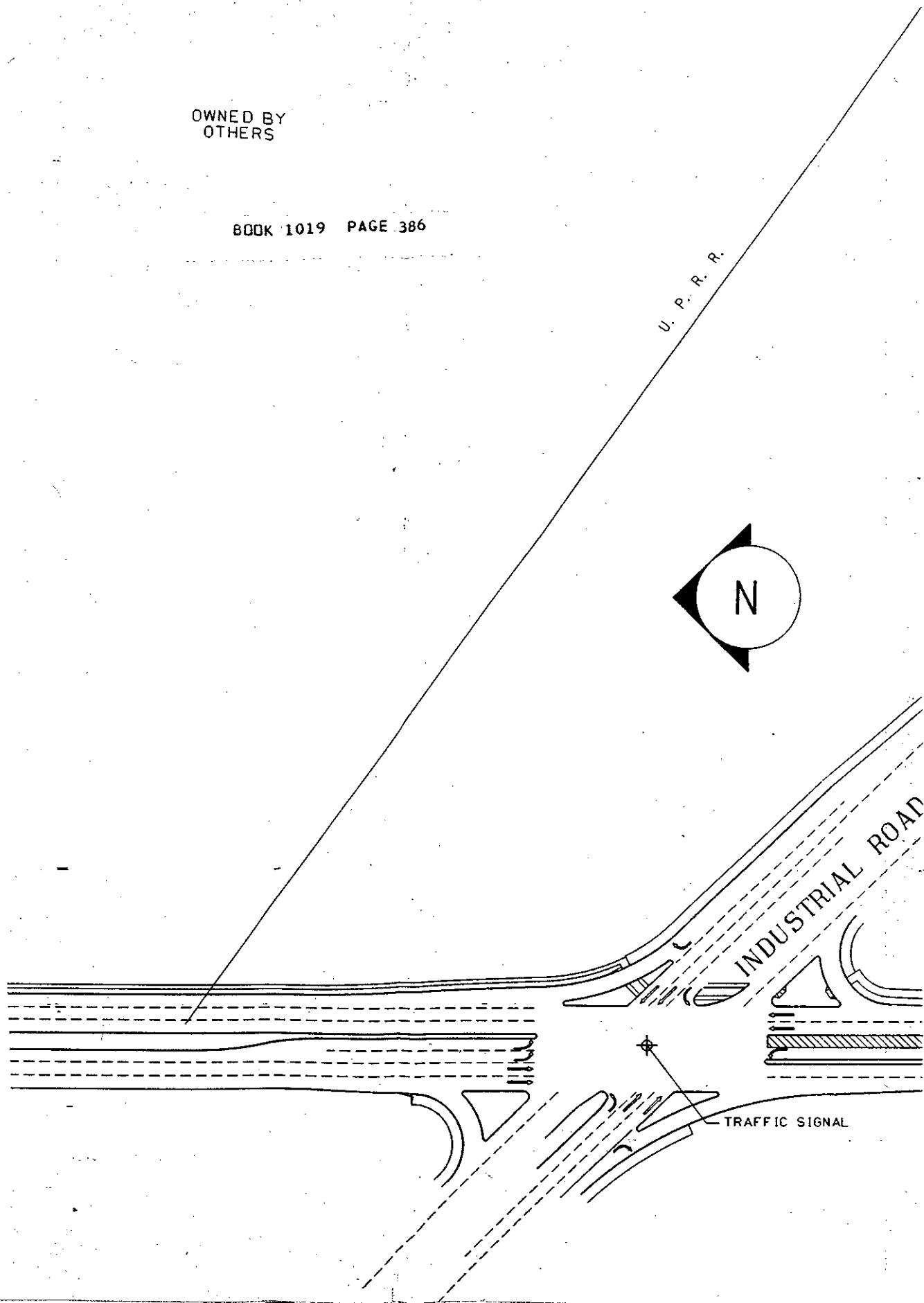
BOOK 1019 PAGE 386

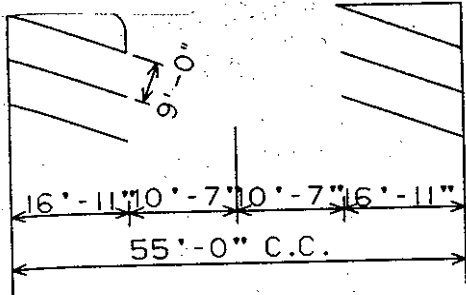
U. P. R. R.



INDUSTRIAL ROAD

TRAFFIC SIGNAL





70° PARKING
DETAIL (TYP.)

NOT TO SCALE

SIMON

SIMON DEVELOPMENT COMPANY, INC.

MERCHANTS PLAZA P.O. BOX 7033
INDIANAPOLIS, IN 46207
(317) 636-1600

PROJECT OAK VIEW
MALL

LOCATION OMAHA,
NEBRASKA

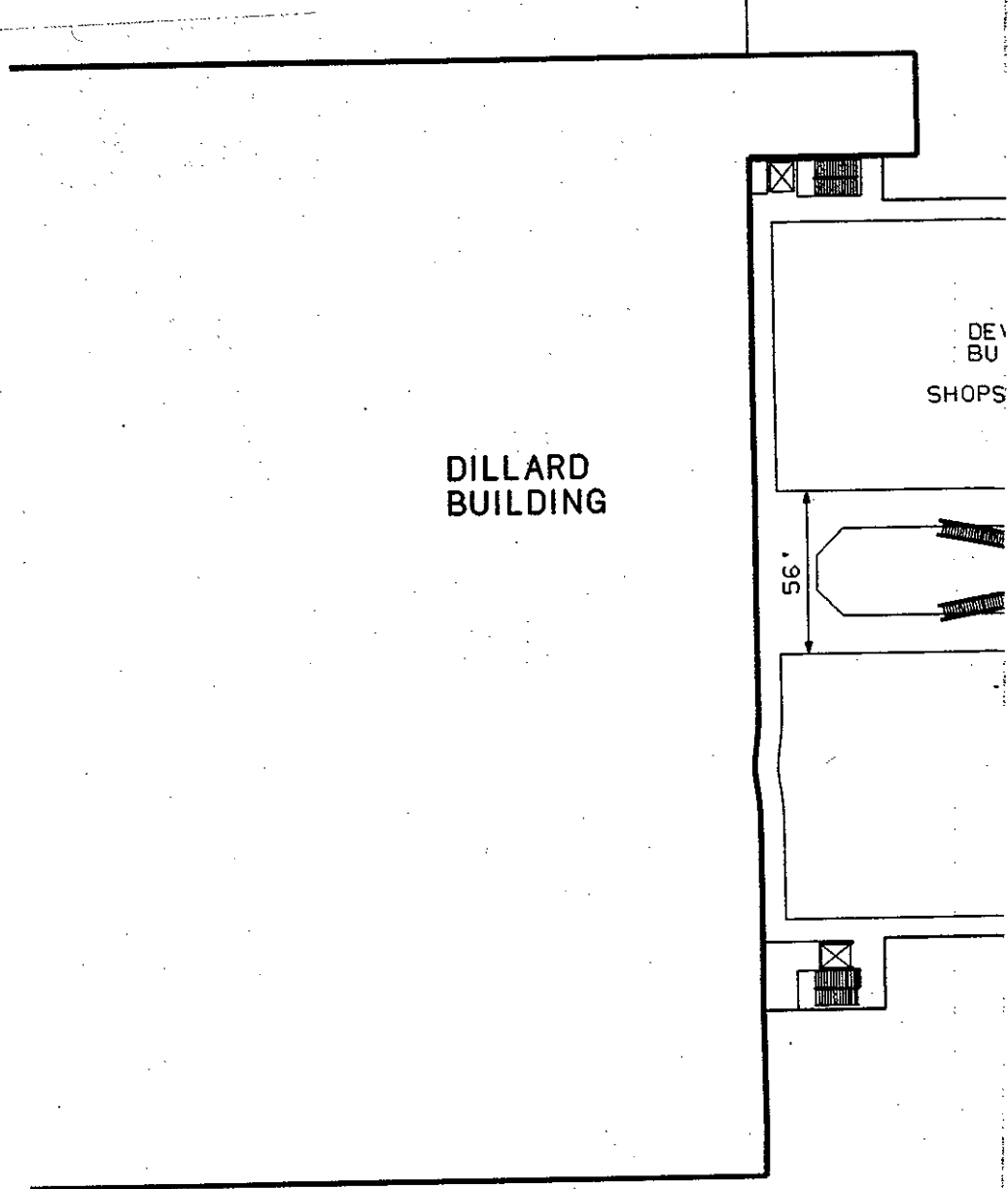
DESCRIPTION REA EXHIBIT "F"
PAGE 1 OF 2

DRAWN THAIS	PART NAME		DATE 01/17/91
REV. APB	PLAN NAME REA PLAN		SCALE 1"=100'
CHECKED	CODE	NUMBER	REV.
DATE	P	EX	X
			1 OF 3

TRIAL ROAD

SIGNAL

**NO DOCUMENT
ASSIGNED
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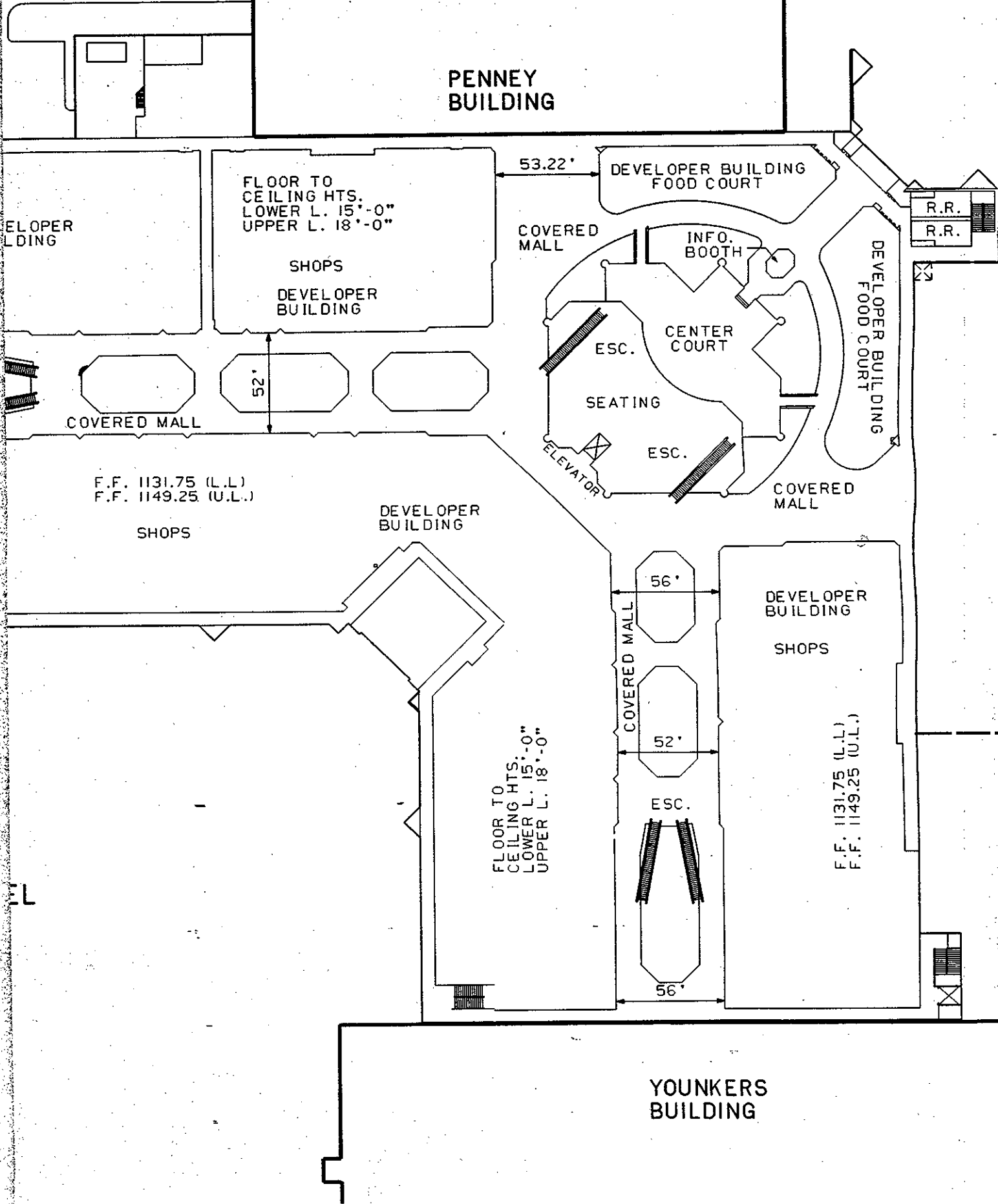
DILLARD
BUILDING

DEV
BU
SHOPS

56'

UPPER LE

PENNEY BUILDING



FLOOR TO CEILING HTS.
LOWER L. 15'-0"
UPPER L. 18'-0"

SHOPS
DEVELOPER BUILDING

DEVELOPER BUILDING
FOOD COURT

COVERED MALL

INFO. BOOTH

DEVELOPER BUILDING
FOOD COURT

CENTER COURT

ESC.

SEATING

ESC.

ELEVATOR

COVERED MALL

F.F. 1131.75 (L.L.)
F.F. 1149.25 (U.L.)

SHOPS

DEVELOPER BUILDING

56'

DEVELOPER BUILDING

SHOPS

COVERED MALL

52'

ESC.

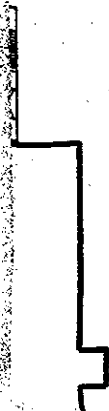
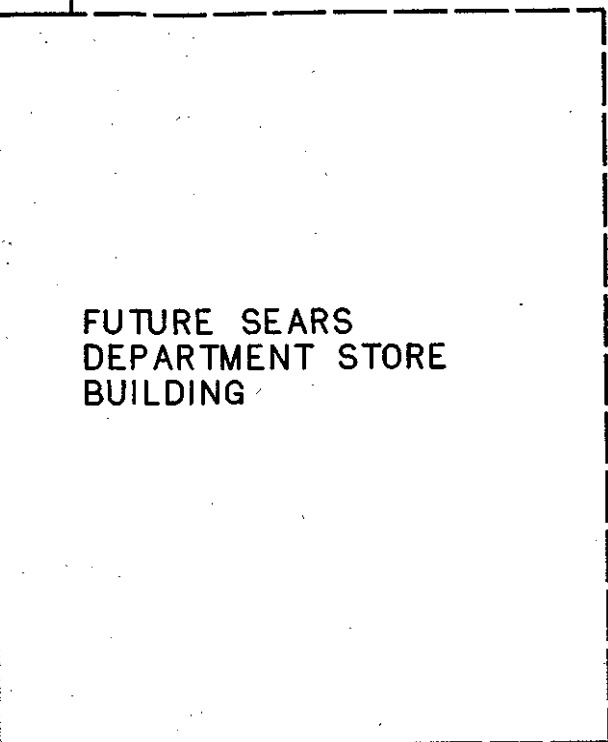
F.F. 1131.75 (L.L.)
F.F. 1149.25 (U.L.)

56'

YOUNKERS BUILDING

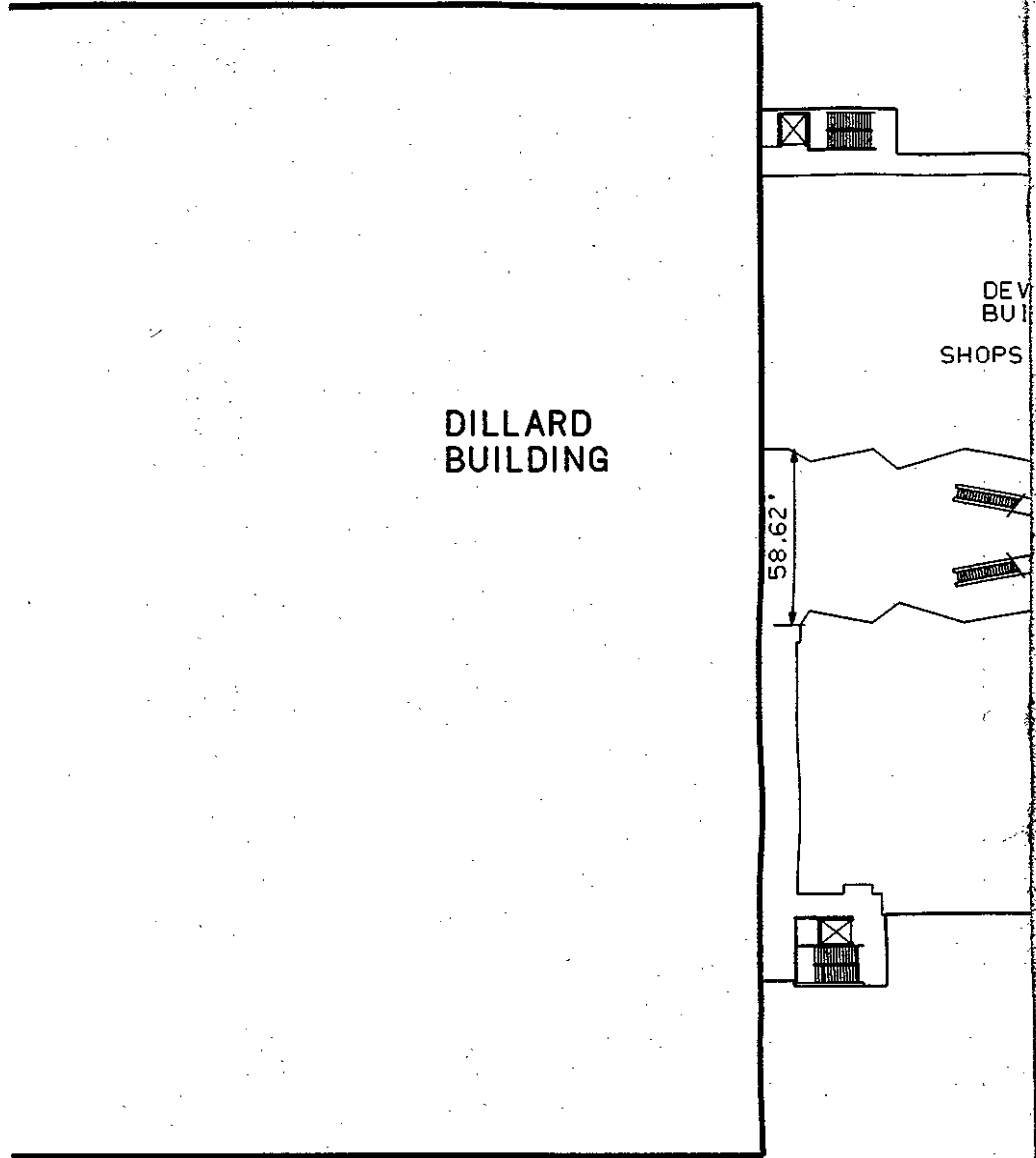


FUTURE SEARS
DEPARTMENT STORE
BUILDING

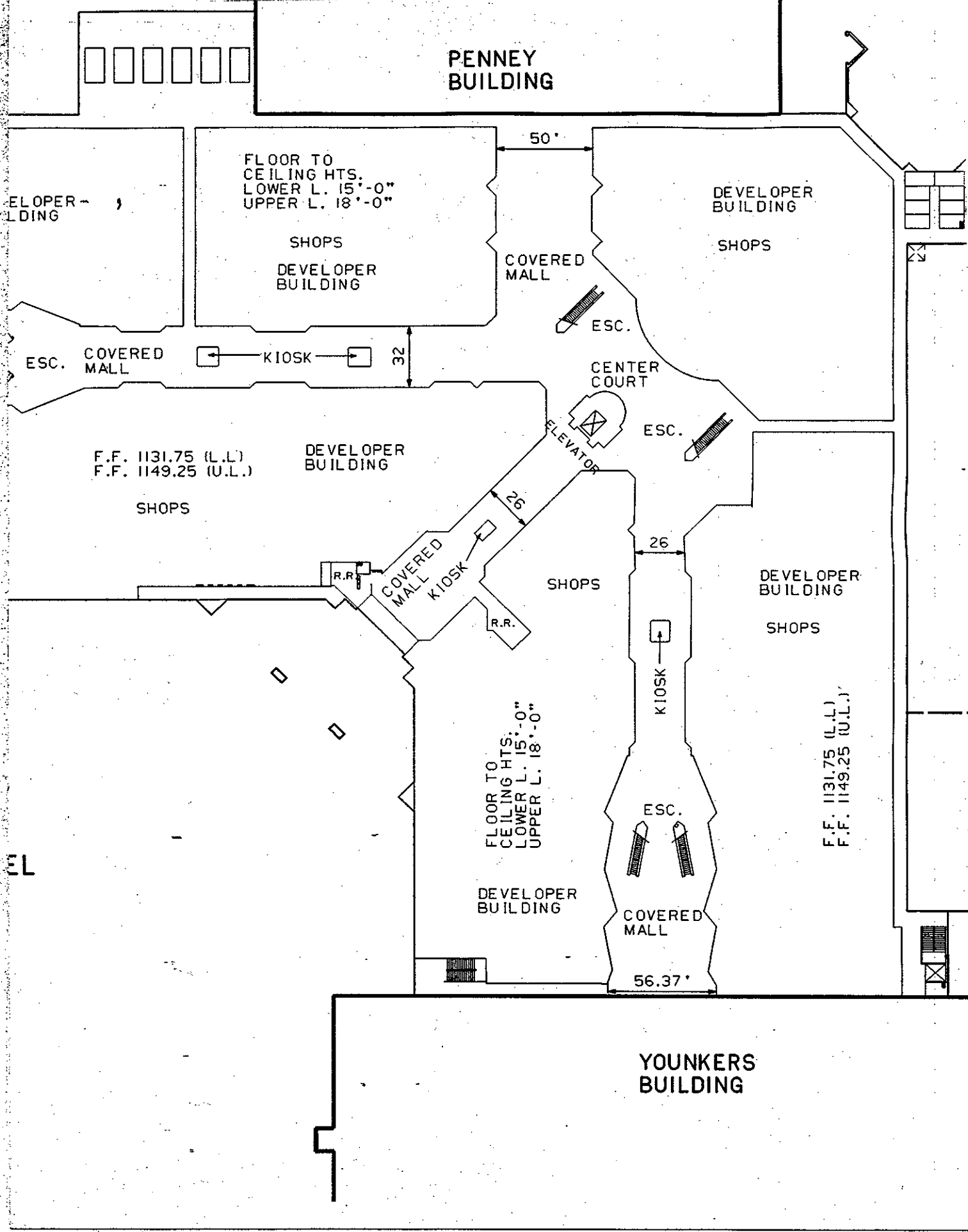


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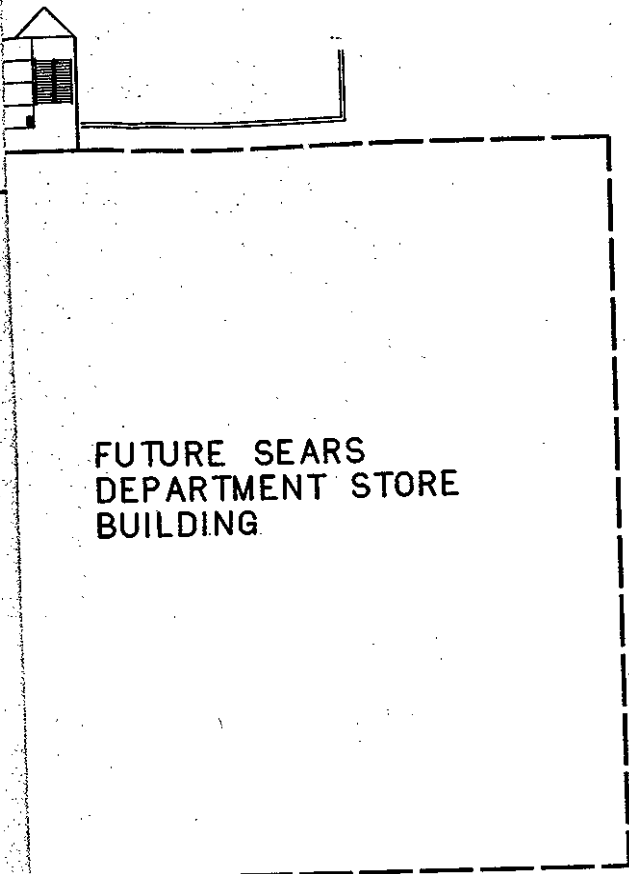
NO DOCUMENT
ASSIGNED
THIS PAGE



LOWER LEVEL



EL



FUTURE SEARS
DEPARTMENT STORE
BUILDING

1019

SIMON

SIMON DEVELOPMENT COMPANY, INC.

MERCHANTS PLAZA P.O. BOX 7033
 INDIANAPOLIS, IN 46207
 (317) 636-1600

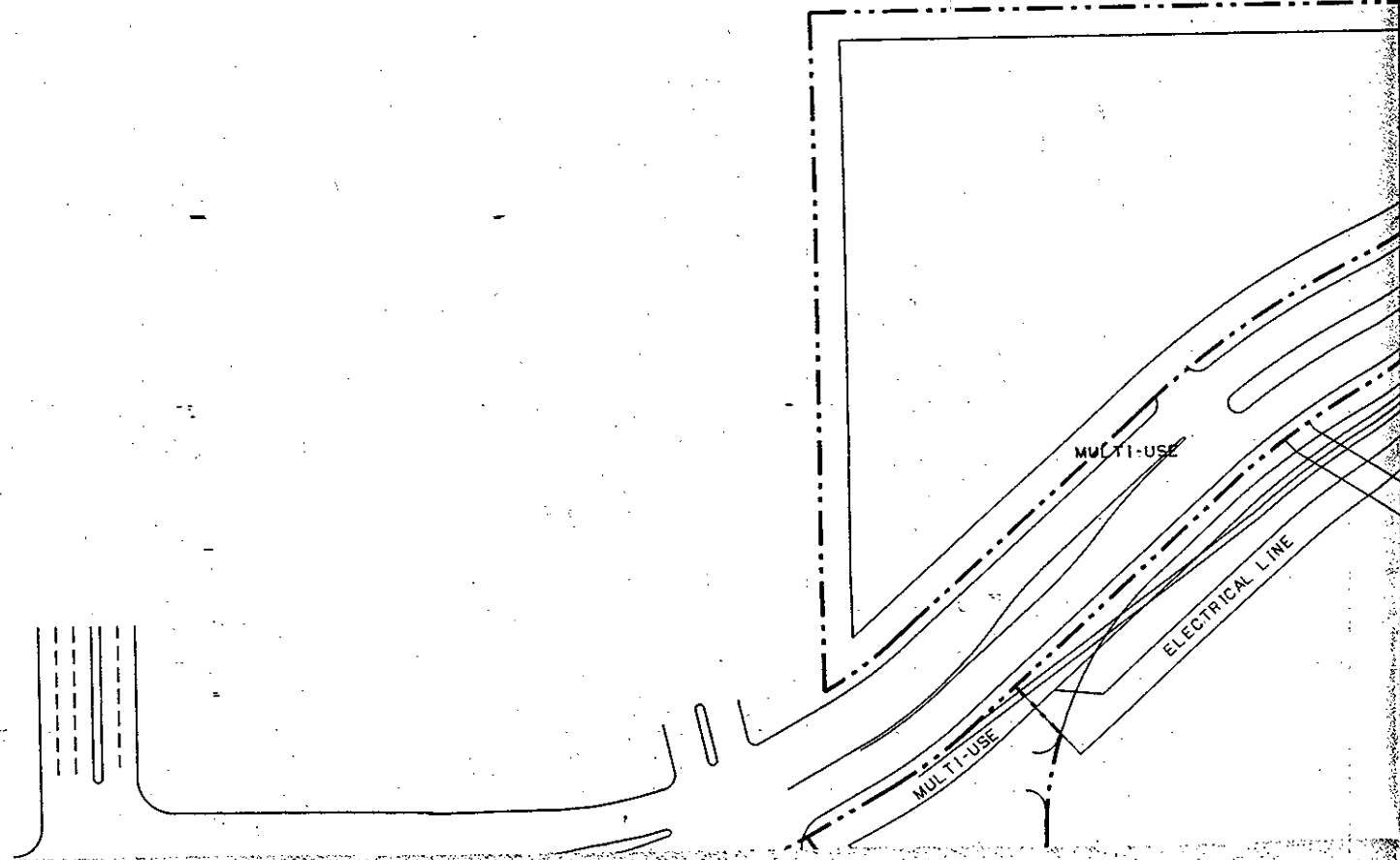
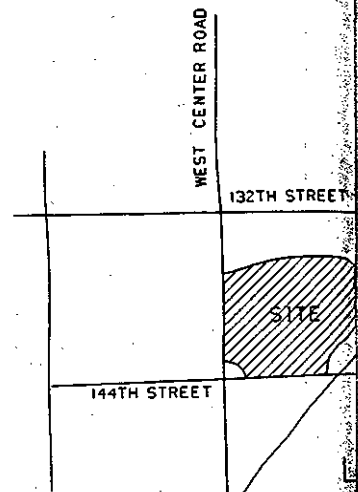
PROJECT		OAK VIEW MALL	
LOCATION		OMAHA, NEBRASKA	
DESCRIPTION		REA EXHIBIT ^{vv} F ^{vv}	
		PAGE 2 OF 2	
DRAWN THAIS	PART NAME		DATE 01/17/91
REV. APB	PLAN NAME REA PLAN		SCALE 1"=50'
CHECKED	CODE	NUMBER	REV.
DATE	P	EX	X
			2 OF 3

REGIONAL SHOPPING MALL

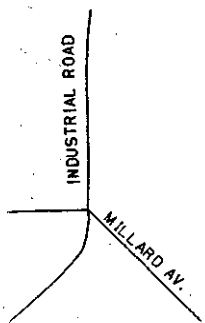
	INITIAL DEVELOPMENT	FUTURE DEVELOPMENT
DILLARD	205.122	205.122
YOUNKERS	149.326	149.326
J.C. PENNEY	124.930	124.930
SMALL SHOPS	252.757	252.757
FUTURE SEARS		110.000
TOTAL MALL G.L.A.	732.135	842.135
TOTAL SPACES REQUIRED FOR A 4.5 MALL RATIO	3.294	3.790
SPACES PROVIDED (within ring road)	3.664	3.792
OUTLOT G.L.A.	54.967	54.967
TOTAL SITE G.L.A.	787.102	897.102
TOTAL SPACES REQUIRED FOR A 5.0 SITE RATIO	3.935	4.485
SPACES PROVIDED (includes outlot spaces)	4.698	4.826
TOTAL ACREAGE MALL	55.90	55.90
TOTAL ACREAGE OUTLOTS	17.00	17.00
TOTAL SITE ACREAGE	72.90	72.90

OUTLOT LEGEND

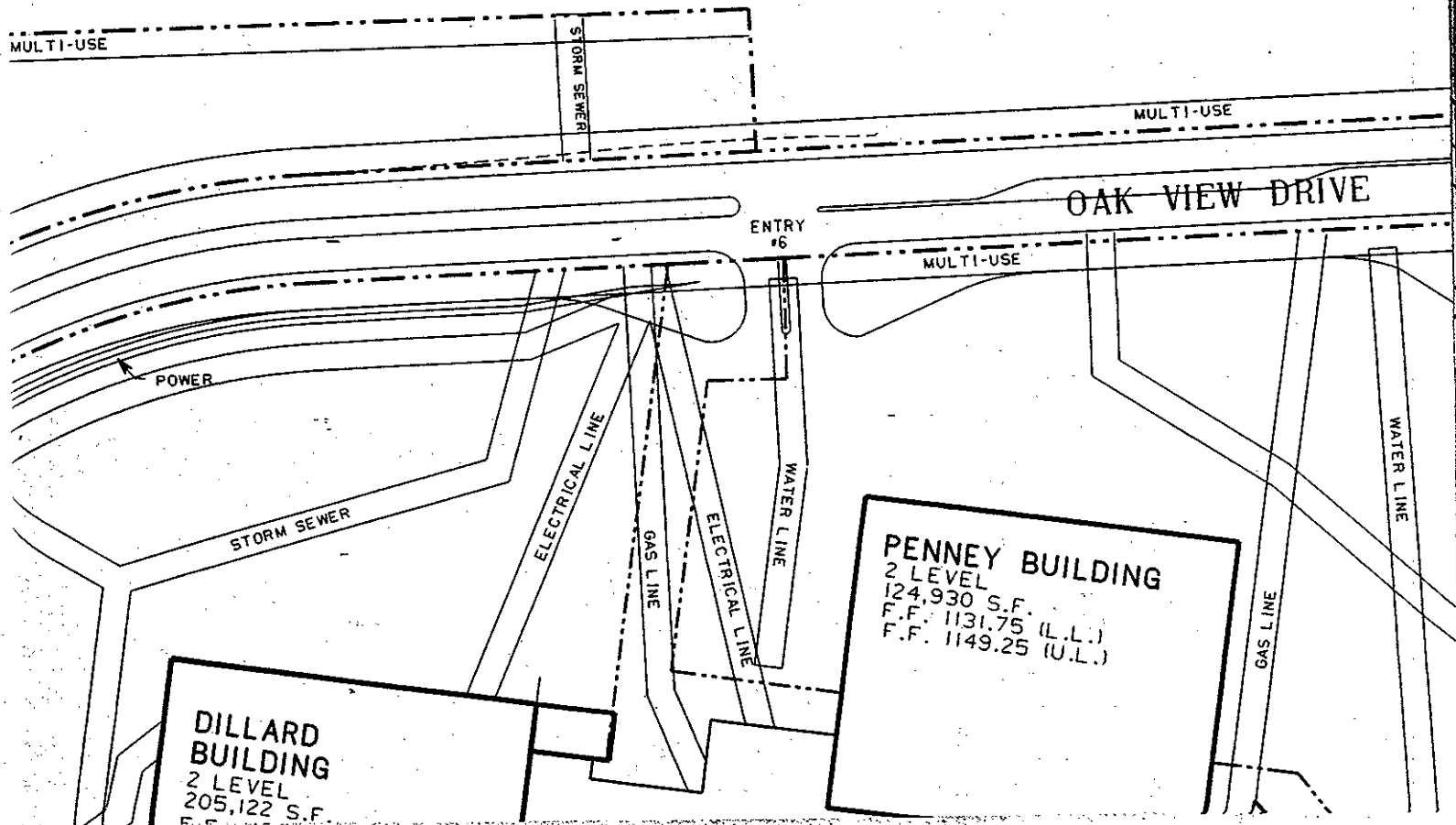
LL01	5.000	S
LL02	3.000	S
LL03	5.953	S
LL04	5.000	S
LL05	8.000	S
LL06	4.080	S
LL07	8.550	S
LL08	5.178	S
LL09	5.323	S
LL10	4.883	S
TOTAL	54.967	S

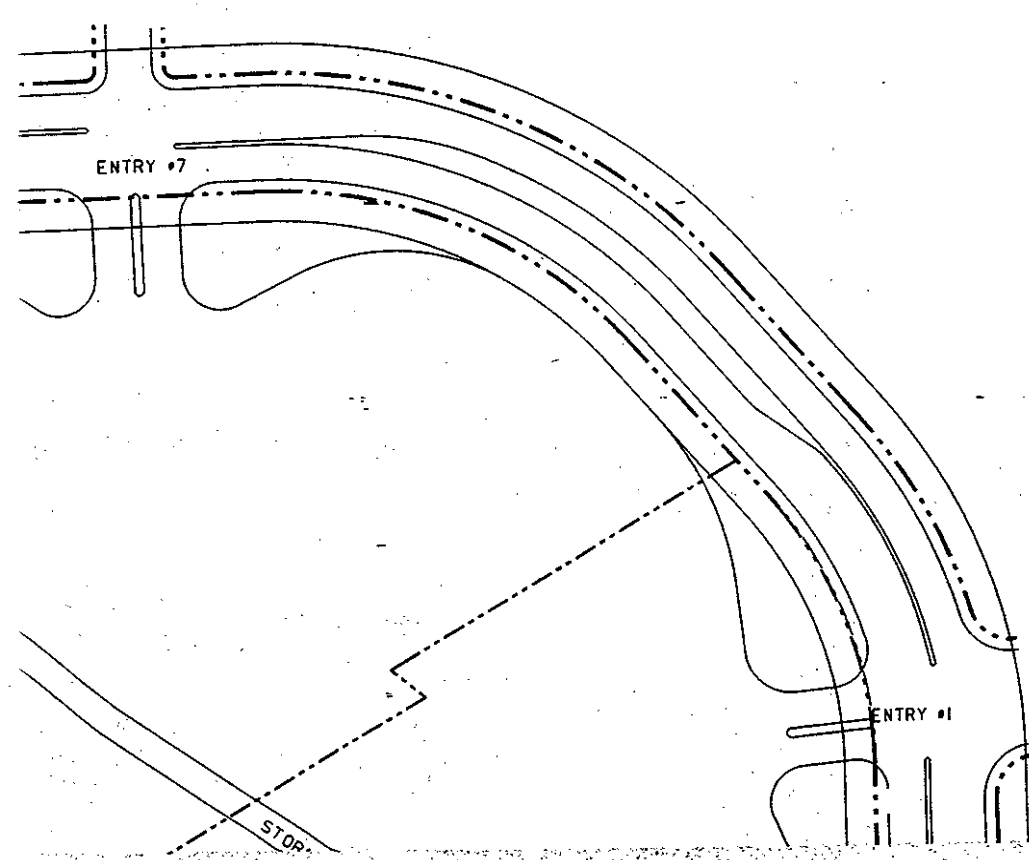


4.31	ACRES	139	SPACES
.66	ACRES	27	SPACES
1.17	ACRES	85	SPACES
1.68	ACRES	158	SPACES
2.69	ACRES	163	SPACES
.86	ACRES	39	SPACES
2.31	ACRES	176	SPACES
1.15	ACRES	62	SPACES
1.12	ACRES	97	SPACES
1.05	ACRES	88	SPACES
17.00 ACRES		1034 SPACES	



CATION MAP





**NO DOCUMENT
ASSIGNED
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**NO DOCUMENT
ASSIGNED
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TRAFFIC SIGNAL

BOOK 1019 PAGE 403

INGRESS-EGRESS

SANITARY SEWER

POWER

INGRESS-EGRESS

SANITARY SEWER

STORM SEWER

WEST-CENTER-ROAD

ENTRY #5

INGRESS-EGRESS

MULTI-USE

MULTI-USE

STORM SEWER

INGRESS-EGRESS

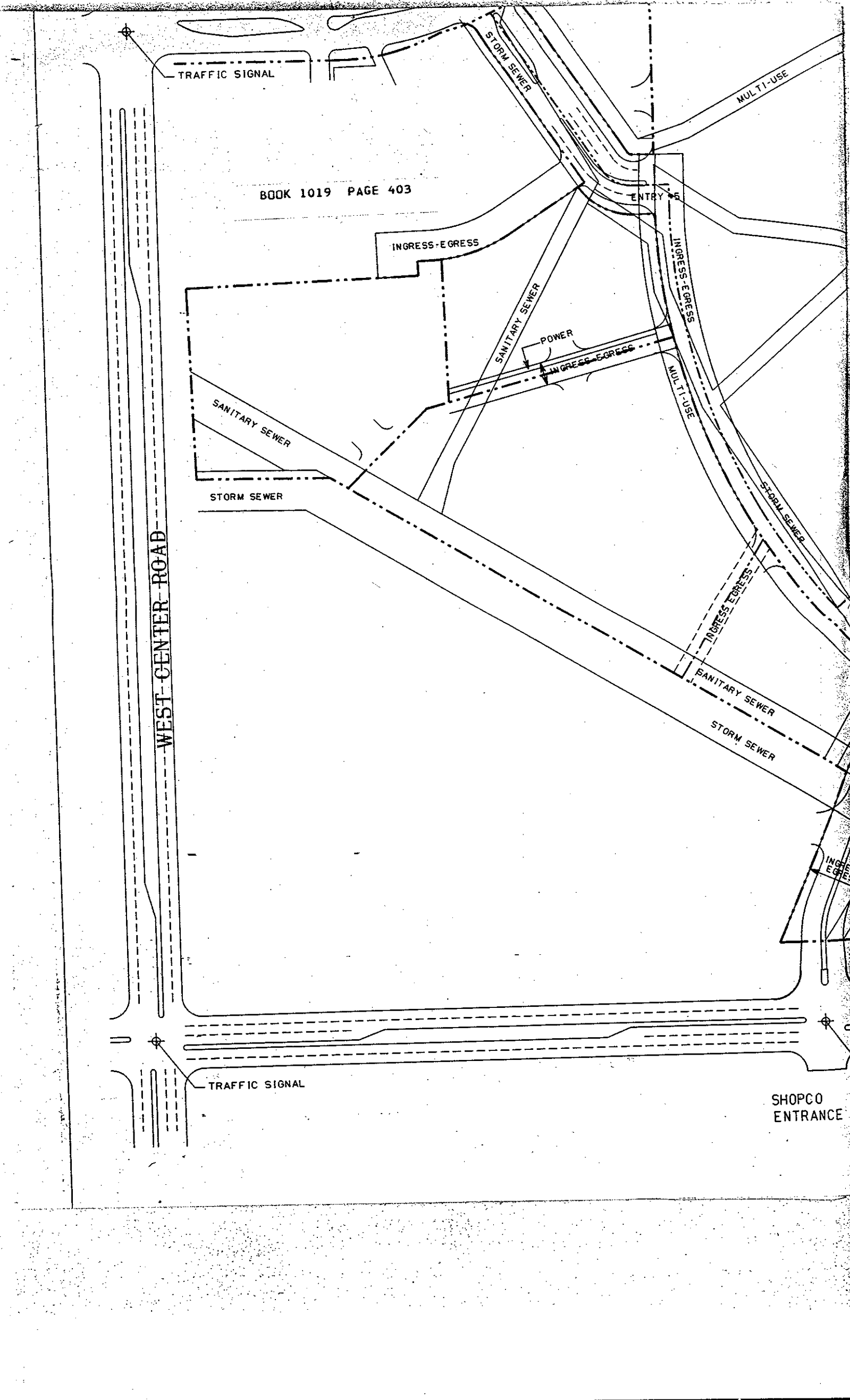
SANITARY SEWER

STORM SEWER

TRAFFIC SIGNAL

SHOPCO ENTRANCE

INGRESS-EGRESS

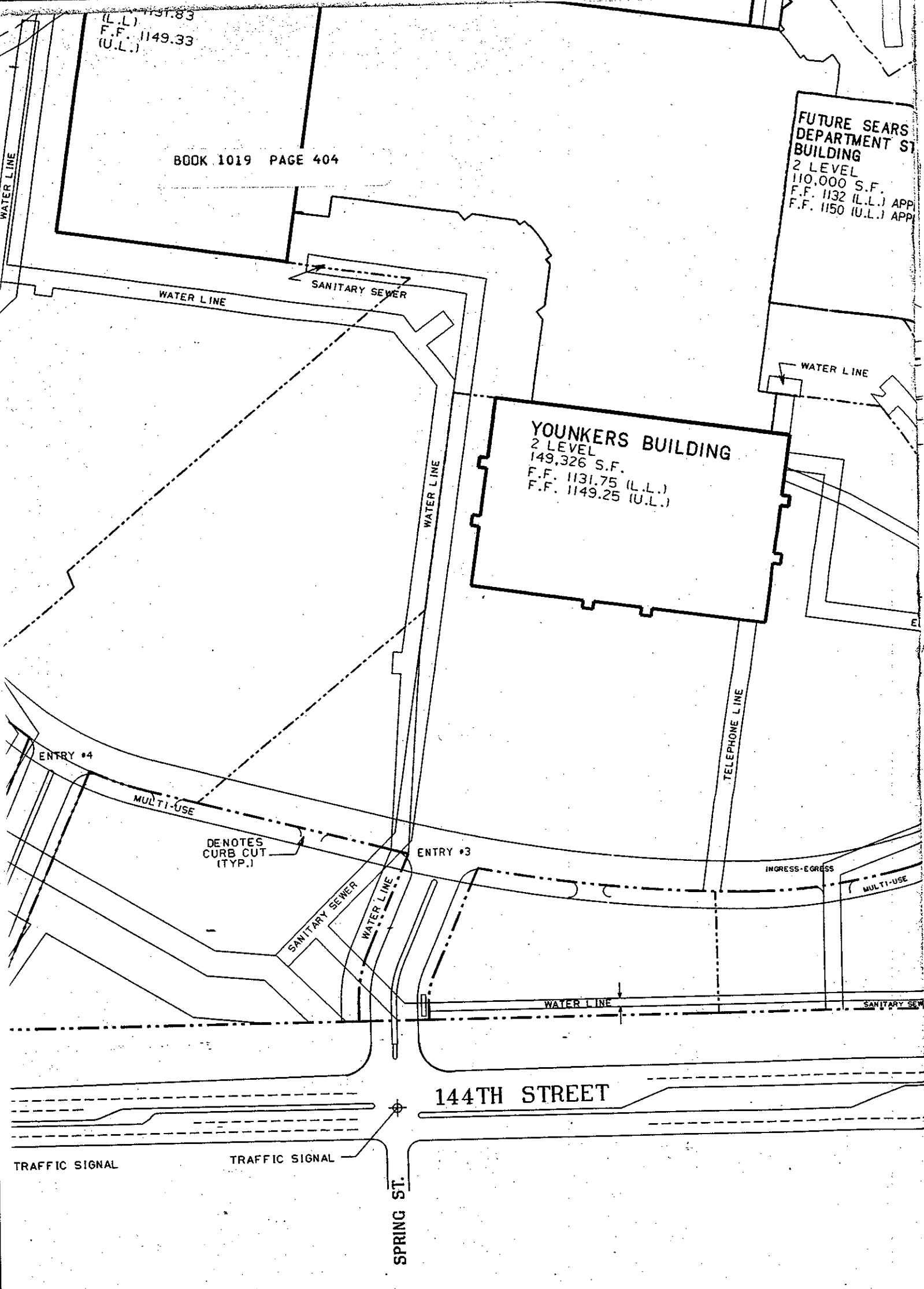


1137.83
(L.L.)
F.F. 1149.33
(U.L.)

BOOK 1019 PAGE 404

FUTURE SEARS
DEPARTMENT ST
BUILDING
2 LEVEL
110,000 S.F.
F.F. 1132 (L.L.) APP
F.F. 1150 (U.L.) APP

YOUNKERS BUILDING
2 LEVEL
149,326 S.F.
F.F. 1131.75 (L.L.)
F.F. 1149.25 (U.L.)



BOOK 1019 PAGE 405

SEWER

WATER LINE

GAS LINE

ELECTRIC LINE

STORM SEWER

(FUTURE)

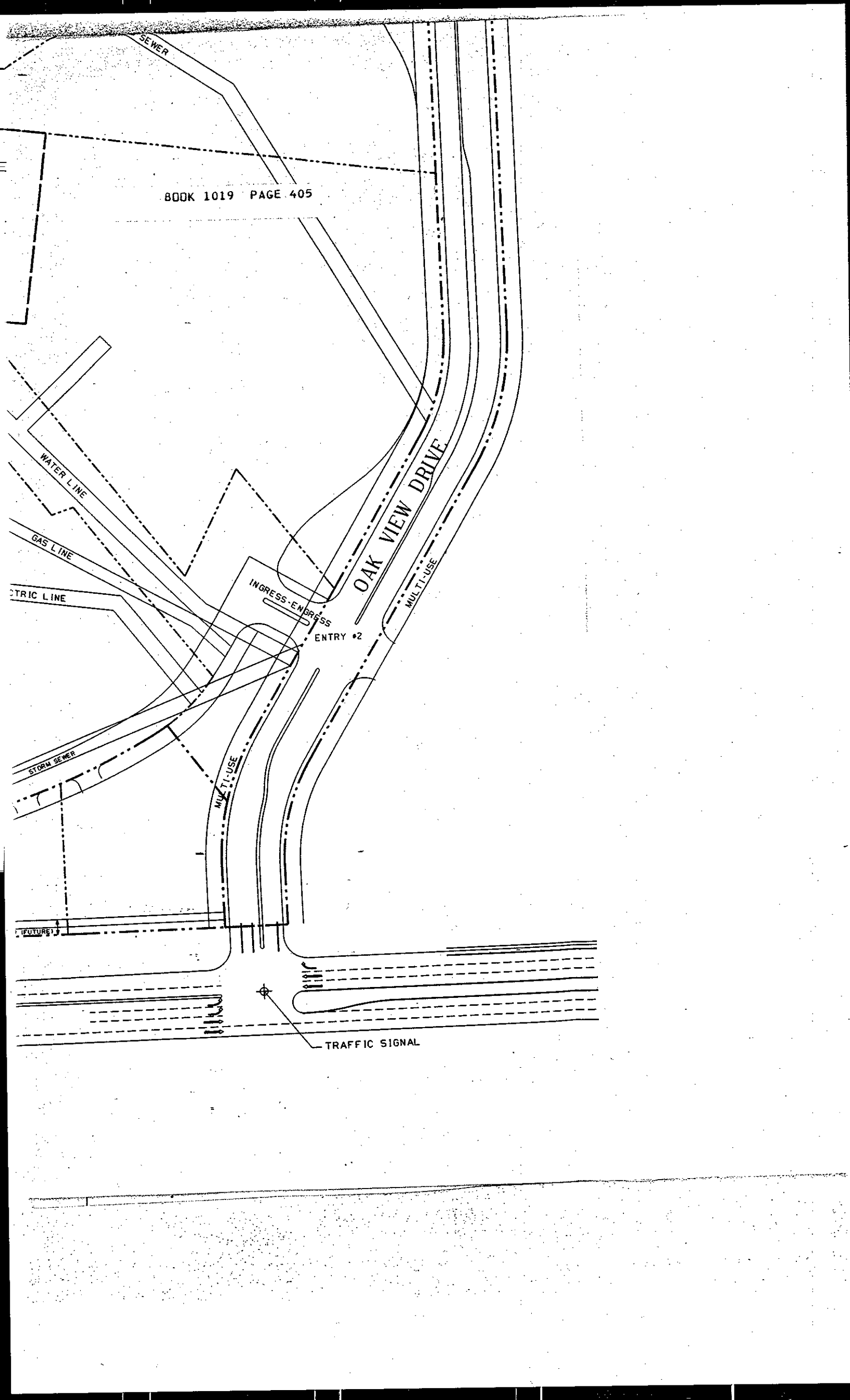
OAK VIEW DRIVE

INGRESS-EGRESS
ENTRY #2

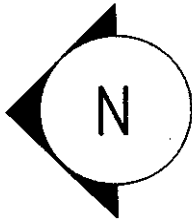
MULTI-USE

MULTI-USE

TRAFFIC SIGNAL



U. P. R. R.



INDUSTRIAL

TRAFFIC SIGNAL

DATE	P
------	---

RIAL ROAD

GNAL

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 REA EXHIBIT "F-1"

DRAWN THAIS	PART NAME.		DATE 01/17/91
REV. APB	PLAN NAME EASEMENT PLAN		SCALE 1"=100'
CHECKED	CODE	NUMBER	REV.
DATE	P	EX	X
			3 OF 3

PLOT PLAN NOTES

1. Dillard, Penney and Younkens' Approvals: Except as expressly permitted by Paragraphs 4.1 and 4.2, and Article 24, of this Operating Agreement, no changes may be made to the Shopping Center as shown on Exhibit "F", including without limitation, in the layout and detail of the parking area, and other Common Areas adjacent thereto, without the consent of Dillard, Penney and Younkens, which consent of such Parties may be withheld in their sole and absolute discretion; provided, however, no consent shall be required from (i) Dillard, if it is in material default under this Operating Agreement or the Supplemental Agreement, (ii) Penney, if it is in material default under this Operating Agreement or the Supplemental Agreement, or (iii) from Younkens, if it is in material default under this Operating Agreement or the Lease.
2. Utility Services: All utility lines and conduit within the Shopping Center shall be underground, and services for Dillard, Penney and Younkens shall be connected directly to the Dillard Building, Penney Building and Younkens Building, respectively.
3. Water Supply for Fire Protection: Developer shall provide water having a pressure, rate of flow, and degree of reliability adequate for all sprinkler requirements of all buildings on the Shopping Center Tract in accordance with the requirements of Factory Mutual Engineering Association (or a similar successor organization), including, if necessary, the construction of reservoirs or water towers and the installation of fire pumps.
4. Open Storm Drains: There shall be no open storm drains permitted either within the Shopping Center or within the right-of-way of any street adjoining the Shopping Center, except to the extent specifically shown on Exhibit F.
5. Curbing: Continuous raised concrete curbs and gutters will be provided for all parking, buffers, along the outside edge of all paving, and, to the extent shown on Exhibit F, around parking end-islands and traffic islands.
6. Roadway Paving: Heavy duty pavement will be provided for all circulation roads, entrances, exits, and truck maneuvering areas.
7. Paving Slopes: The minimum slope of the paving shall be 1.0% and the maximum slope shall be 4%, unless otherwise specifically shown on Exhibit F.
8. Lighting: All exterior lighting for the Shopping Center shall have a minimum maintained intensity at ground level as follows:
 - (a) open parking areas and all sidewalks - one foot candle.
 - (b) roadways - one and one half foot candles.
 - (c) intersections of entrance/exitways and public roads - four foot candles.
 - (d) sheltered parking areas and walkways - ten foot candles.
9. Screening of Exterior Equipment: Developer will use reasonable efforts to screen from view in accordance with Penney and Dillard's Preliminary Plans and Specifications, all roof-mounted equipment, vents, etc. on any building (except

the buildings of Department Stores) within the Shopping Center, and all grade level equipment and service areas.

10. Dillard, Penney and Younkers Buildings: Final dimensions of the Dillard Building, Penney Building, Younkers Building and adjacent sidewalks, curbs and parking areas may vary slightly from those shown on Exhibit F to accommodate final architectural design of said Buildings.
11. Permissible Building Areas: No Buildings or Improvements shall be erected elsewhere than within the areas designated therefore on Exhibit "F"; provided, however, that final dimensions of the Future Development Store Building and adjacent sidewalks, curbs and parking areas may vary slightly (but not exceeding more than 5% of the configuration or size shown on Exhibit "F") from those shown hereon to accommodate final architectural design of said buildings.
12. Setback Lines: Developer represents to Dillard, Penney and Younkers that no setback lines or side or rear yards are required to be maintained with the Shopping Center, or if required, all buildings shown hereon are in compliance with all applicable setback and yard requirements.
13. Easements: Developer represents to Dillard, Penney and Younkers that except to the extent shown on Exhibit "F-1" or the recorded plat of Oak View Subdivision, or as otherwise provided for in the Operating Agreement, no utility or access easements affect the Shopping Center.
14. Governmental Approvals: Developer represents to Dillard, Penney and Younkers that, except to the extent otherwise noted on Exhibit "F" or provided herein, it has obtained all federal, state, county and municipal approvals prerequisite to the construction of (i) all roadways and highways shown hereon, and (ii) all parking areas, entrances/exits, curb cuts, traffic lanes, and other exterior Common Areas within the Shopping Center, as shown on Exhibit "F"; provided, however, that no such approvals have been obtained for any traffic signals unless expressly shown as "approved" on Exhibit "F", and no such approvals have been obtained for any other proposed or future traffic signals. Installation of proposed traffic signals is also subject to Developer's determination that such additional signals are warranted by increased traffic flow.
15. Shopping Center Expansion: These Plot Plan Notes will also apply to any future expansion of the Shopping Center.
16. Interpretation: In the event of any conflict between the terms and provisions contained in these Notes, and the terms and provisions contained in the body of the Operating Agreement, the terms and provisions contained in the body of the Operating Agreement shall control, and these Plot Plan Notes shall be deemed amended accordingly. Unless otherwise indicated, capitalized terms used in these Plot Plan Notes shall have the same meaning and definition set forth in the Operating Agreement.

SHOPPING CENTER TRACT

A tract of land comprised of part of Lots 1 and 4 of 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:

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 105.92 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 654.56 feet to a point of curvature; thence Southwesterly, along the northwesterly R.O.W. of Oak View Drive on a curve to the right, said curve having a radius of 310.00 feet, a long chord of 267.34 feet, bearing $S24^{\circ}12'44''W$ and an arc length of 276.41 feet to a point of tangency; thence $S49^{\circ}45'20''W$ along the said Northwesterly R.O.W. of Oak View Drive, a distance of 102.75 feet; thence $N30^{\circ}20'43''W$ a distance of 269.04 feet; thence $S39^{\circ}39'17''W$ a distance of 29.27 feet; thence $N30^{\circ}20'43''W$ a distance of 357.40 feet; thence $N53^{\circ}43'39''E$ a distance of 147.02 feet; thence $N8^{\circ}43'39''E$ a distance 63.44 feet; thence $N81^{\circ}21'25''W$ a distance of 66.55 feet; thence $N8^{\circ}38'35''E$ a distance of 271.49 feet; thence $S81^{\circ}15'43''E$ a distance of 85.34 feet; thence $N8^{\circ}45'30''E$ a distance of 123.42 feet; thence $S81^{\circ}16'21''E$ a distance of 215.55 feet; thence $S0^{\circ}23'24''W$ a distance of 57.30 feet; thence $S89^{\circ}36'36''E$ a distance of 89.06 feet to the point of beginning; the total area of the tract is 8.555 acres, more or less.

A tract of land comprised of part of Lots 2 and 4 of Oak View, a Subdivision located in the West Half (W 1/2) of Section 36, Township 15 North, Range 11 East, Douglas County, Nebraska; more particularly described as follows:

Commencing at the Southerly most corner of Lot 6, said Oak View, said point also being on the Northeasterly right-of-way (R.O.W.) line of Oak View Drive; thence S58°24'38"E, along the said Northeasterly R.O.W. line of Oak View Drive, a distance of 95.80 feet to the True Point of Beginning; thence N53°47'17"E, a distance of 198.51 feet; thence N62°06'17"W a distance of 152.85 feet; thence N53°47'17"E a distance of 427.14 feet; thence N8°46'00"E a distance of 154.45 feet; thence S81°14'01"E a distance of 245.85 feet; thence S8°46'00"W a distance of 718.39 feet to a point on the North R.O.W. of Oak View Drive; thence S90°00'00"W along the said North R.O.W. line of Oak View Drive a distance of 203.26 feet to a point of curvature; thence Northwesterly along the said Northeasterly R.O.W. of Oak View Drive on a curve to the right, said curve having a radius of 260.00 feet, a long chord of 141.54 feet bearing N74°12'19"W and an arc length of 143.35 feet to a point of tangency; thence N58°24'38"W along the said Northeasterly R.O.W. line of Oak View Drive a distance of 219.87 to the point of beginning; the total area of the tract is 6.621 acres more or less.

A tract of land comprised of part of Lots 2 through 4, inclusive, Oak View, a Subdivision located in the West half (W 1/2) of Section 36, Township 15 North, Range 11 East, Douglas County, Nebraska and more particularly described as follows:

Beginning at the Southerly most corner of said Lot 3, Oak View, thence Northwesterly along the Northeasterly Lot line of Lot 6, said Oak View, on a curve to the right, said curve having a radius of 248.00 feet, a long chord of 82.99 feet bearing N38°48'21"W and an arc length of 83.38 feet to a point of compound curvature; thence Northwesterly, along the said Northeasterly Lot line of Lot 6, Oak View, on a curve to the right, said curve having a radius of 979.81 feet, a long chord of 222.68 feet bearing N22°39'01"W and an arc length of 223.16 feet, to a point of compound curvature; thence Northerly along the Easterly line of Lots 6 and 7 of said Oak View, on a curve to the right, said curve having a radius of 640.82 feet, a long chord of 194.69 feet bearing N7°23'17"W and an arc length of 195.45 feet to a point of compound curvature; thence Northeasterly, along the said Easterly line of Lot 7, Oak View, on a curve to the right, said curve having a radius of 1655.00 feet a long chord of 304.39 feet bearing N6°37'34"E and an arc length of 304.82 feet, to the Northeasterly corner of said Lot 7, Oak View; thence N66°33'38"W along the Northerly line of said Lot 7, Oak View, a distance of 134.64 feet to a point of curvature; thence Northwesterly along the said Northerly line of Lot 7, 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 said Northerly line of Lot 7, Oak View, a distance of 19.07 feet to the Northwest corner of said Lot 7, Oak View, said point 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 80.00 feet to the Southwesterly corner of Lot 8, Oak View; thence S90°00'00"E along the Southerly line of said Lot 8, Oak View, a distance of 19.07 feet to a point of curvature; thence Southeasterly along the said Southerly line of Lot 8, Oak View, on a curve to the right, said curve having a radius of 165.00 feet, a long chord of 67.03 feet bearing S78°16'49"E and an arc length of 67.50 feet to a point of tangency; thence S66°33'38"E, along the said Southerly line of Lot 8, Oak View, a distance of 120.35 to the Southeasterly corner of said Lot 8, Oak View; thence Northeasterly, along the Easterly line of said Lot 8, Oak View on a curve to the right, said curve having a radius of 1655.00 feet, a long chord of 16.83 feet bearing N15°00'27"E and an arc length of 16.83 feet to a point of tangency; thence N15°17'57"E, along the said Easterly line of Lot 8, Oak View, a

distance of 232.62 feet; thence S39°33'32"E a distance of 346.23 feet; thence S81°16'21"E a distance of 253.29 feet; thence S8°44'31"W a distance of 366.15 feet; thence S81°15'30"E a distance of 45.97 feet; thence S8°44'31"W a distance of 120.20 feet to a point on the Southeasterly Lot line of said Lot 3, Oak View; thence S53°47'17"W along the said Southeasterly Lot line of Lot 3, Oak View, a distance of 193.77 feet; thence S16°12'43"E a distance of 29.26 feet; thence S53°47'17"W a distance of 283.30 feet to a point on the said Northeasterly Lot line of Lot 6, said Oak View; thence Northwesterly along the said Northeasterly Lot line of Lot 6, Oak View, on a curve to the right, said curve having a radius of 248.00 feet, a long chord of 28.54 feet bearing N51°44'11"W and an arc length of 28.56 feet to a point of beginning; the total area of the tract is 9.940 acres, more or less

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; thence S33°14'33"E, a distance of 8.50 feet; thence N56°45'17"E, a distance of 232.24 feet to a point of curvature; thence on a curve to the left, said curve having a radius of 25.00 feet, a long chord of 16.13 feet bearing N37°55'58"E and an arc length of 16.43 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 33.45 feet bearing S24°35'17"E, and an arc length of 33.45 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°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 17.045 acres, more or less.

A tract of land comprised of part of Lots 1, 4 and 5 of 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 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 S01°19'52"E, along said Westerly R.O.W. line of Oak View Drive, a distance of 22.34 feet; thence N81°16'21"W, a distance of 366.55 feet; thence N8°42'31"E a distance of 56.09 feet; thence N81°17'29"W a distance of 353.01 feet; thence S8°42'31"W a distance of 142.83 feet; thence N39°33'32"W, a distance of 519.78 feet; thence S70°26'28"W, a distance of 19.16 feet; thence N39°33'32"W, a distance of 149.47 feet; thence Northeasterly on a curve to the right, said curve having a radius of 668.12 feet, a long chord of 160.15 feet bearing N53°56'59"E and an arc length of 160.54 feet to a Point of Compound Curve; thence Northeasterly, on a curve to the right, said curve having a radius of 793.38 feet, a long chord of 402.40 feet bearing N75°31'27"E and an arc length of 406.84 feet, to a Point of Tangency; thence S89°47'07"E, a distance of 20.72 feet; thence N0°54'54"W, a distance of 44.55 feet, to a Point of Curvature; thence Northeasterly, on a curve to the right, said curve having a radius of 44.49 feet, a long chord of 42.91 feet bearing N27°55'11"E and an arc length of 44.78 feet, to a Point of Tangency; thence N56°45'17"E, a distance of 242.48 feet to a point on the Westerly R.O.W. line of Oak View Drive; thence Southeasterly along the Westerly R.O.W. line of Oak View Drive on a curve to the left, said curve having a radius of 650.76 feet, a long chord of 38.82 feet bearing S27°46'11"E and an arc length of 38.82 feet; thence S56°45'17"W, along the Northerly lot line of Lot 14, said Oak View, a distance of 238.77 feet to a point of curvature; thence Southwesterly, along the Northwesterly lot line of said Lot 14, Oak View, on a curve to the left, said curve having a radius of 5.85 feet, a long chord of 5.64 feet, bearing S27°55'11"W and an arc length of 5.89 feet to a Point of Tangency; thence S0°12'53"W along the Westerly most lot line of said Lot 14, Oak View, a distance of 27.31 feet to the Southwesterly corner of said Lot 14, Oak View; thence S89°47'07"E along the Southerly lot line of said Lot 14, Oak View, a distance of 203.71 feet to a Point of Curvature; thence Southeasterly, along the Southerly line of said Lot 14, on a curve to the right, said curve having a radius of 243.00 feet, a long chord of 68.47 feet bearing S81°41'10"E and an arc length of 68.70 feet; thence N47°27'16"E, along the Southeasterly line of said Lot 14, a

distance of 44.80 feet to a point on the Westerly R.O.W. line of Oak View Drive; thence $S42^{\circ}32'44''E$, along said Westerly R.O.W. line of Oak View Drive, a distance of 200.99 feet to a Point of Curvature; thence Southeasterly along the said Westerly R.O.W. of Oak View Drive, on a curve to the right, said curve having a radius of 550.00 feet, a long chord of 387.15 feet bearing $S21^{\circ}56'18''E$ and an arc length of 395.63 feet to a Point of Tangency; thence $S01^{\circ}19'52''E$, along said Westerly R.O.W. line of Oak View Drive, a distance of 235.67 feet, to a Point of Beginning; the total area of tract is 13.973 acres, more or less.

SIGN CRITERIA

1. Any Occupant (a) occupying more than 10,000 square feet of Floor Area in the Shopping Center and having a customer entrance opening directly onto the Building Perimeter Sidewalk and parking areas, or (b) operating any sit-down restaurant (but not including any Occupant of the "food court" at the location shown on Exhibit "F"), may install and maintain an illuminated identification sign on the exterior of the Building which it occupies. Nothing contained in this Paragraph, however, shall permit or allow any signs to be painted on the exterior surface of any Building.
2. There shall be no free-standing or pylon signs other than (a) pylon sign(s) to be erected and maintained by Developer at no expense to Dillard, Penney or Younkers at the location(s) shown therefor on the Exhibit "F" and which shall display only the name and logo of the Shopping Center, and (b) monument-type or directional signs permitted by Subparagraph 3 of Paragraph 4.1 of this Operating Agreement; provided, however, such shopping center pylon signs so indicated on Exhibit "F" may also include the name or identity of a theatre, which theatre portion of the sign may contain a theatre reader board. Dillard, Penney and Younkers shall have the right to approve the pylon signs for Shopping Center identification and provided for by Exhibit "F", which approval shall not be unreasonably withheld.
3. There shall be no roof-top signs, including without limitation, signs affixed to the side of the mechanical equipment penthouses of Department Stores.
4. Wording on large scale signs shall be limited to store or trade name only. Each Occupant's customary signature or logo, hallmark, insignia, or other trade identification will be respected.
5. Signs of the flashing, blinking, rotating, moving or animated types or audible type signs are not permitted.
6. The size of all Occupants' interior signs which front on the Covered Mall shall be limited as follows, to-wit: Except for Department Store signs, Occupants' signs shall be located within the limits of its storefront and shall not project more than ten inches (10") beyond the storefront and the total sign area (rectangular area enclosing each group of letters, symbols or logos) shall not exceed ten percent (10%) of the area of the storefront. In addition, interior signs in the Covered Mall shall be limited in length to 80% of the Occupant's frontage on the Covered Mall.
7. Painted or printed signs on the exterior surface of any building shall be prohibited, except small-scale signs relative to store name and stating store hours which are neatly lettered on the glass of the storefront but subject to Developer's approval and in addition, any non-customer door for receiving merchandise may have in two inch (2") block letters the name of the Occupant.
8. Public safety decals or artwork on glass in minimum sizes to comply with applicable Code, subject to the approval of Developer may be used, as required by building codes or other governmental regulations.
9. No exposed raceways, ballast boxes or electrical transformers will be permitted, except as required by Code.
10. In addition to the requirements of Subparagraph 3 of Paragraph 4.1 of this Operating Agreement, signs affixed to Buildings on Reserve Tracts shall be further subject to the requirements set forth in Paragraphs 2, 3, 4, 5, 7, 8 and 9 of this Exhibit "H".