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**FIRST AMENDMENT TO AMENDED AND  
RESTATED RECIPROCAL EASEMENT AND  
OPERATING AGREEMENT**

**AMONG**

**OAK VIEW MALL CORPORATION  
CONSTRUCTION DEVELOPERS, INCORPORATED  
DILLARD DEPARTMENT STORES, INC.  
YOUNKERS, INC. AND  
J.C. PENNEY PROPERTIES, INC.**

**OAK VIEW MALL, OMAHA, NEBRASKA**

*B* 25846 *1094* *Comp & 89-19*  
CASE            BK            R            FB             
TYPE Misc PG 407-425 C/O            COMP            SCAN            *hche*  
FEE 9800 OF Misc LEGL PG 423 MC            FV             
*424*

This Instrument Prepared by and  
After Recording Return to:

David B. Berzon, Esq.  
Greenberger Krauss & Tenenbaum, Chtd.  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601

RECEIVED  
SEP 8 1 50 PM '93  
OFFICE OF THE CLERK OF  
RECORDS & DEEDS  
DOUGLAS COUNTY, NE

**FIRST AMENDMENT TO AMENDED AND RESTATED  
RECIPROCAL EASEMENT AND OPERATING AGREEMENT**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED RECIPROCAL EASEMENT AND OPERATING AGREEMENT (hereinafter called this "Amendment"), made as of the 9<sup>th</sup> day of September, 1993, among OAK VIEW MALL CORPORATION, a Delaware corporation ("Oak View"), having an address at c/o Heitman Advisory Corporation, 180 North LaSalle Street, Suite 3600, Chicago, Illinois 60601, CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation ("Condev"), having its principal office at 1600 Cantrell Road, Little Rock, Arkansas 72203, and DILLARD DEPARTMENT STORES, INC., a Delaware corporation ("DDSI"), having its principal office at 1600 Cantrell Road, Little Rock, Arkansas 72203 (Condev and DDSI being hereinafter referred to collectively as "Dillard"), 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 6501 Legacy Drive, Plano, Texas 75024-3698.

**WITNESSETH:**

WHEREAS, Center Road Retail Developers Limited Partnership, an Indiana limited partnership ("Center Road"), Dillard, Younkers and Penney executed that certain Amended and Restated Reciprocal Easement and Operating Agreement dated June 30, 1992 and recorded July 1, 1992, in Book 1019, Page 240, in the office of the Register of Deeds, Douglas County, Nebraska (the "Operating Agreement"); and

WHEREAS, pursuant to an Assignment of REA and Lease dated as of July 1, 1992 and recorded July 1, 1992, in Book 1019, Page 442, in the Office of the Register of Deeds, Douglas County, Nebraska, Center Road transferred to Oak View all of its right, title, estate and interest in and to the Operating Agreement; and

WHEREAS, Bishop Clarkson Memorial Hospital, a Nebraska non-profit corporation ("Clarkson"), desires to purchase from Oak View those Reserve Tracts designated and shown as tracts LL/03 through LL/06, inclusive, on Exhibit "F" of the Operating Agreement (which Reserve Tracts are legally described on Exhibit A attached hereto), and to develop and use such Reserve Tracts, together with the adjoining property described in Exhibit B attached hereto (the "Additional Property"), as an integrated outpatient medical services park or campus consisting of an outpatient medical care facility and medical offices as more fully described in subparagraph 7(a) below; and

WHEREAS, Oak View, Dillard, Younkers and Penney desire to amend the Operating Agreement to permit such development.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.** Unless otherwise defined herein, all capitalized terms used in this Amendment shall have the same meaning as provided in the Operating Agreement.

2. **Addition of Additional Property.** Subject to the provisions of Paragraph 8(a) below, the Additional Property is hereby added to the property covered by, and is hereby made subject to, the Operating Agreement. The Additional Property shall be an additional Reserve Tract and thereby part of the Total Development Tract, and Exhibits E (Description of Reserve Tracts) and D (Description of Total Development Tract) of the Operating Agreement are deemed amended accordingly.

3. **Site Plan Approval.** Attached hereto as Exhibit C is a copy of a site plan (the "Site Plan") for the development of the outpatient care facility and medical offices that Clarkson desires to construct and develop on the Reserve Tracts described in Exhibit A attached hereto and the Additional Property described in Exhibit B attached hereto (such Reserve Tracts and Additional Property being hereinafter collectively referred to as the "Real Estate"). Notwithstanding anything in Paragraph 5 of Section 4.1 of the Operating Agreement to the contrary, the parties hereto hereby approve the construction and development of the Real Estate in accordance with the Site Plan (and the other requirements described in this Amendment) in all material respects, including the size and locations of all buildings, driveways, entrances, parking areas, landscaping and other site improvements shown on the Site Plan. For purposes of determining the permissible floor area of buildings located on the Real Estate, as described in the Site Plan: (a) all references to square feet (SF) on the Site Plan shall be deemed to refer to gross Floor Area; (b) basement parking and other areas of buildings neither finished nor intended to be finished (i.e., mechanical areas) and located below ground level will not be included for purposes of determining permissible square footage of buildings; and (c) the connection of one or more separate buildings via skywalks or underground passageways shall not be deemed to combine any or all of such interconnected buildings for purposes of computing the square footage limitations of each such separate building. The provisions of the prior sentence are solely for the purpose of determining permissible floor area and shall not be construed as limiting any other conditions or restrictions, including those concerning basement parking, skywalks and underground passageways.

4. **Height.** Notwithstanding the different height limitations described in Paragraph 5 of Section 4.1 of the Operating Agreement, none of the buildings on the Real Estate shall exceed two stories (exclusive of permitted basement parking and other areas of the buildings that are substantially below ground) or have a roof elevation (including roof-mounted heating, ventilating and air conditioning equipment or other equipment or installations) in excess of 1,163 feet above sea level, which is 32 feet above an elevation which is 38 feet lower than the current center point of the intersection of 144th Street and West Center Road.

5. **Parking.**

(a) Basement parking contained entirely beneath any otherwise permitted building on the Real Estate shall be permitted so long as no portion thereof, except the garage door and entrance driveway, shall be visible from outside of such building. Except for such underground parking, no structured parking garage shall be located on or under the Real Estate without the prior written consent of the parties hereto.

(b) Notwithstanding the provisions of Paragraph 6 of Section 4.1 of the Operating Agreement to the contrary, at any particular time, the owner of the Real Estate shall be required to construct and maintain at least four (4) parking spaces for each 1,000 square feet of gross Floor Area of the buildings existing on the Real Estate at such time.

(c) Notwithstanding the provisions of Section 15.2 of the Operating Agreement to the contrary, neither the area of the buildings located on the Real Estate nor the parking spaces located on the Real Estate shall be included in determining whether the minimum parking ratio for the Total Development Tract is being properly maintained as required under said Section 15.2.

(d) None of the parties hereto or their Permittees shall be permitted to park any cars or other vehicles in the parking

lots on the Real Estate, notwithstanding the provisions of Section 24.4 (i) of the Operating Agreement to the contrary. The restriction set forth in said subsection 24.4 (i) prohibiting the owners of the Reserve Tracts from parking on the Shopping Center Tract or other Reserve Tracts shall apply to the owner of the Real Estate and its Permittees.

6. **Signage.** Subject to the restrictions set forth in Section 4.1 of and Exhibit H to the Operating Agreement (other than number of signs) and subject to all applicable building codes, sign ordinances and other laws, the owner of the Real Estate shall be permitted to erect one monument sign not exceeding 8 feet in height at each driveway entrance to the Real Estate, and each building on the Real Estate shall be permitted to have signage on each side, up to 50% of the length of the respective side of the building with letters not exceeding 36 inches in height.

7. **Use.**

(a) The Real Estate may be used as a 24-hour-a-day outpatient medical care facility that includes physician offices, outpatient clinics, outpatient surgery and therapy, patient beds (subject to the limitation described below), pharmacy (only to support other medical services provided within the facilities on the Real Estate), diagnostic and therapeutic nuclear medicine, emergency/urgent care (excluding, to the extent the owner of the Real Estate is reasonably able to control the same, arrival of patients at facilities located on the Real Estate by ambulance emergency service, but not excluding arrival of patients by ambulance non-emergency service) and related outpatient medical services. The foregoing permitted use shall not be deemed to eliminate or prohibit the use of the Real Estate for any other purpose currently permitted under the Operating Agreement and other restrictions affecting the Real Estate (including lease exclusives) in the event that the owner of the Real Estate elects not to develop the Real Estate as an outpatient medical care facility and medical offices as currently contemplated. For purposes hereof, "patient beds" are intended only for use consistent with outpatient care (as opposed to acute care or long-term institutional care such as would ordinarily be provided exclusively at a general hospital), and stays by patients overnight or for periods in excess of 24 hours (e.g., for observation or recovery from anesthesia or medication) shall, by policy, procedure and actual practice, attempt to be avoided and in any event shall be minimal in comparison to the total outpatient care admissions at the facility. Also for purposes hereof, "ambulance emergency service" shall only mean ambulances delivering patients while the ambulance has its emergency lights flashing and/or its siren activated.

(b) The parties hereto acknowledge that in order to permit the use of the Real Estate in the manner described in subparagraph 7(a) above, the Real Estate must be rezoned to "Community Commercial" zoning under the City of Omaha, Nebraska zoning code. The parties hereto hereby approve such rezoning of the Real Estate to Community Commercial. The parties hereto further agree that if the Real Estate is not developed as an outpatient medical care facility but is developed for retail use in accordance with, and as contemplated by, the provisions of the Operating Agreement prior to this Amendment, then the owner of the Real Estate and/or Oak View may again rezone the Real Estate to convert the zoning back to "Mixed Use" as currently exists, without the further consent or approval of Dillard, Penney or Younkers. The zoning or rezoning of the Real estate is not intended to expand the permitted uses of the Real Estate beyond the uses permitted under the Operating Agreement, as amended hereby.

**8. Material Change in Real Estate Owner's Development Plans.**

The parties hereto acknowledge that the intent of this Amendment is to provide a specific exemption to some of the restrictions and requirements of the Operating Agreement to permit the development of the Real Estate as an outpatient medical care facility (including medical offices) in substantial accordance with the Site Plan. In connection therewith, the parties hereto agree that the provisions of this Amendment shall not restrict the owner of the Real Estate to developing the Real Estate only as an outpatient medical care facility and medical offices strictly in accordance with the Site Plan. The owner of the Real Estate may modify the Site Plan, subject to the approval of the parties hereto, in their sole discretion (provided that any modification to the Site Plan which is not a substantial modification shall only require the approval of Oak View), and/or change the contemplated use, subject to the restrictions set forth in the Operating Agreement and other applicable documents (including leases of space in the Improvements on the Total Development Tract); provided, however, that:

(a) if the owner of the Real Estate develops the Real Estate for any use other than an outpatient medical care facility and medical offices, then all of the modifications to the Operating Agreement set forth in this Amendment shall be terminated, except for the provisions of subparagraph 7(b) above which shall remain in full force and effect, and the owner of the Real Estate shall be limited to developing (i) the Reserve Tracts described in Exhibit A attached hereto as permitted under the Operating Agreement prior to this Amendment and (ii) the Additional Property as permitted by the applicable covenants, conditions and restrictions of record excluding the Operating Agreement as amended by this Amendment (i.e. the Operating Agreement, as amended, shall no longer encumber the Additional Property); or

(b) if the owner of the Real Estate develops the Real Estate for use as an outpatient medical care facility and medical offices, but makes a substantial modification to the Site Plan or develops or attempts to develop the Real Estate in a manner substantially different from what is shown on the Site Plan, then, at the election of Oak View (exercised in a written notice to the owner of the Real Estate given promptly after Oak View learns of the owner of the Real Estate's substantial changes to the Site Plan or development or attempted development substantially different from what is shown on the Site Plan), in its sole discretion, the modifications to the Operating Agreement made pursuant to Paragraphs 3, 4, 5(a) and 6 hereof may be revised by Oak View to assure compatibility with, and no material adverse effect on, any of the Total Development Tract or the Improvements thereon by the physical development of the Real Estate, provided that any revisions to any of the above-identified provisions of this Amendment shall be done in such a manner so that the resulting provisions of this Amendment will be consistent generally with the benefits to the owner of the Real Estate that are intended to be provided by this Amendment, particularly with respect to the overall number of square feet of Floor Area of buildings permitted on the Real Estate, the visibility of signage and the efforts to allow basement parking and to allow two-story buildings (with spacing between each structural floor and between the top floor and the roof suitable for the special HVAC, plumbing, electrical and other mechanical requirements of medical facilities of this type) while not materially impairing the line of sight to any of the Improvements on the Total Development Tract from 144th Street or West Center Road. Notwithstanding anything set forth in this subparagraph 8(b) to the contrary, the total Floor Area of all buildings located on the Real Estate shall not exceed 220,000 square feet without the prior written consent and approval of all of the parties hereto.

If and to the extent that the provisions of this Amendment are to be terminated or modified pursuant to subparagraph (a) or (b) above, such termination or modification may be effected by a unilateral document executed and recorded by Oak View provided that Oak View delivers to the owner of the Real Estate and all of the parties hereto a copy of such document. Notwithstanding the provisions of the prior sentence, and without limiting the effect thereof, at Oak View's request, the other parties hereto and the owner of the Real Estate shall join in such termination or modification document, as the case may be.

9. **Revised Addresses for Notices.** The parties hereto mutually acknowledge that the addresses of "Penney" and the "Developer" (now being Oak View Mall Corporation) for delivery of notices under the Operating Agreement, as set forth in Article 33 of the Operating Agreement, have been changed to the following:

**Penney**

J.C. Penney Company, Inc.  
Real Estate Department (2105)  
6501 Legacy Drive  
Plano, Texas 75024-3698

with copies to:

J.C. Penney Company, Inc.  
Oak View Mall  
3001 South 144th Street  
Omaha, Nebraska 68144  
Attention: Store Manager

**Developer:**

Oak View Mall Corporation  
c/o Heitman Advisory Corporation  
180 North LaSalle Street, Suite 3600  
Chicago, Illinois 60601  
Attention: Mr. Howard Edelman

with copies to:

Greenberger Krauss & Tenenbaum  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601  
Attention: Ernest Greenberger and David Berzon

10. **Binding Effect.** Except as otherwise modified, the provisions of the Operating Agreement shall remain the same and in full force and effect. The provisions of this Amendment shall inure to the benefit of and shall be binding on the parties hereto and the owners of the Real Estate and the other Reserve Tracts and all of their respective successors and assigns, including all parties obtaining any interest in any part of the Total Development Tract, and shall be deemed to be a covenant running with the land constituting the Total Development Tract.

11. **Conflicts.** To the extent that there is any conflict between the provisions of the Operating Agreement and the express provisions of this Amendment concerning the Real Estate, the provisions of this Amendment shall govern and control.

12. **Counterparts.** This Amendment may be executed in any number of counterparts. This Amendment shall be binding provided that each party hereto executes and delivers at least one original counterpart hereof.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Amended and Restated Reciprocal Easement and Operating Agreement to be executed and delivered as of the day and year first above written.

OAK VIEW MALL CORPORATION, a Delaware corporation

By: [Signature]  
Print Name: Howard J. Edelman  
Title: Vice President

CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DILLARD DEPARTMENT STORES, INC., a Delaware corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

YUNKERS, INC., a Delaware corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Amended and Restated Reciprocal Easement and Operating Agreement to be executed and delivered as of the day and year first above written.

**OAK VIEW MALL CORPORATION, a Delaware corporation**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation**

By: *[Signature]*  
Print Name: James E. Darr, Jr.  
Title: Vice President & Secretary

**DILLARD DEPARTMENT STORES, INC., a Delaware corporation**

By: *[Signature]*  
Print Name: James E. Darr, Jr.  
Title: Vice President & Secretary

**YOUNKERS, INC., a Delaware corporation**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Amended and Restated Reciprocal Easement and Operating Agreement to be executed and delivered as of the day and year first above written.

**OAK VIEW MALL CORPORATION, a Delaware corporation**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DILLARD DEPARTMENT STORES, INC., a Delaware corporation**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**YOUNKERS, INC., a Delaware corporation**

By: *Jon Hrab*  
Print Name: *Jon Hrab*  
Title: *Sr. VP Real Estate*

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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STATE OF ILLINOIS )  
 )  
COUNTY OF COOK ) SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, 1993, before the undersigned, a Notary Public in and for said County, personally came \_\_\_\_\_, Vice President of OAK VIEW MALL CORPORATION, a Delaware corporation, personally known to be a Vice President of said corporation and the identical person whose name is affixed to the above First Amendment to Amended and Restated 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.

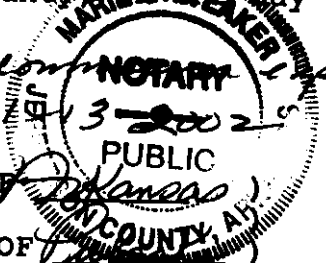
Witness my hand and notarial seal at Chicago, Illinois, in said County, on the day and year last above written.

\_\_\_\_\_  
Notary Public

STATE OF Arkansas )  
 )  
COUNTY OF Polk ) SS:

On this 1 day of Sept, 1993, before the undersigned, a Notary Public in and for said County, personally came James E. Dan Jr, Vice President of CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation, personally known to be a Vice President of said corporation and the identical person whose name is affixed to the above First Amendment to Amended and Restated 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.

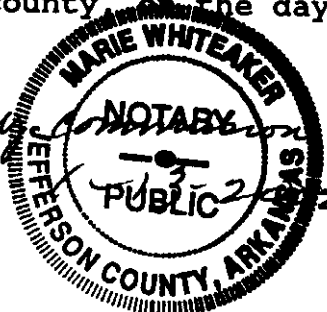
Witness my hand and notarial seal at Little Rock, AR, in said County, on the day and year last above written.

my commission expires  
  
STATE OF Arkansas  
COUNTY OF Jefferson ) SS:

Marie Whiteaker  
Notary Public  
NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

On this 1 day of Sept, 1993, before the undersigned, a Notary Public in and for said County, personally came James E. Dan Jr, Vice President of DILLARD DEPARTMENT STORES, INC., a Delaware corporation, personally known to be a Vice President of said corporation and the identical person whose name is affixed to the above First Amendment to Amended and Restated 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, AR, in said County, on the day and year last above written.

my commission expires  
  
STATE OF Arkansas  
COUNTY OF Jefferson ) SS:

Marie Whiteaker  
Notary Public

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Amended and Restated Reciprocal Easement and Operating Agreement to be executed and delivered as of the day and year first above written.

OAK VIEW MALL CORPORATION, a Delaware corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DILLARD DEPARTMENT STORES, INC., a Delaware corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

YUNKERS, INC., a Delaware corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By: Raymond J. Emma  
Print Name: RAYMOND J. EMMA  
Title: Vice President

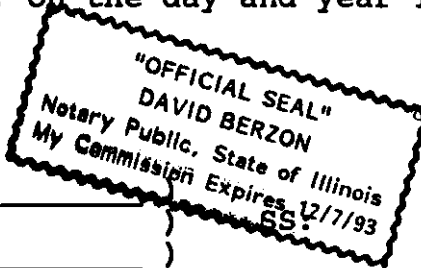
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APPROVED  
*(Signature)*

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK ) SS:

On this 31st day of August, 1993, before the undersigned, a Notary Public in and for said County, personally came Howard J. Edelman, Vice President of **OAK VIEW MALL CORPORATION**, a Delaware corporation, personally known to be a Vice President of said corporation and the identical person whose name is affixed to the above First Amendment to Amended and Restated 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 Chicago, Illinois, in said County, on the day and year last above written.



David Berzon  
Notary Public

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1993, 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 \_\_\_\_\_ of said corporation and the identical person whose name is affixed to the above First Amendment to Amended and Restated 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 \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, 1993, 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 \_\_\_\_\_ of said corporation and the identical person whose name is affixed to the above First Amendment to Amended and Restated 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 \_\_\_\_\_ )  
 COUNTY OF \_\_\_\_\_ ) SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, 1993, before the undersigned, a Notary Public in and for said County, personally came \_\_\_\_\_ of YOUNKERS, INC., a Delaware corporation, personally known to be a \_\_\_\_\_ of said corporation and the identical person whose name is affixed to the above First Amendment to Amended and Restated 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.

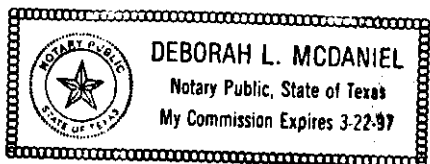
Witness my hand and notarial seal at \_\_\_\_\_, in said County, on the day and year last above written.

\_\_\_\_\_  
 Notary Public

STATE OF Texas )  
 COUNTY OF Collin ) SS:

On this 31st day of August, 1993, 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 of said corporation and the identical person whose name is affixed to the above First Amendment to Amended and Restated 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 Plano, Tx, in said County, on the day and year last above written.



*Deborah L. McDaniel*  
 Notary Public

NOTARIAL SEAL AFFIXED  
 REGISTER OF DEEDS

NOTARIAL SEAL AFFIXED  
 REGISTER OF DEEDS

STATE OF Illinois )  
 )  
COUNTY OF Peoria ) SS:

On this 30<sup>th</sup> day of August, 1993, before the undersigned, a Notary Public in and for said County, personally came Don Heabe SR VP Real Estate of YOUNKERS, INC., a Delaware corporation, personally known to be a Officer of said corporation and the identical person whose name is affixed to the above First Amendment to Amended and Restated Reciprocal Easement and Operating Agreement, and he acknowledged the execution thereof to be his voluntary act and deed as such Officer, and the voluntary act and deed of said corporation.

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

Jeanne Hammarstrom  
Notary Public

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, 1993, 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 \_\_\_\_\_ of said corporation and the identical person whose name is affixed to the above First Amendment to Amended and Restated 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

**CONSENT AND SUBORDINATION AGREEMENT  
OF  
HOLDER OF DEED OF TRUST**

The undersigned, which holds a Deed of Trust and certain other liens and encumbrances against Oak View Mall Corporation's interest in the "Total Development Tract" (as defined in the foregoing Amendment), hereby consents to the First Amendment to Amended and Restated Reciprocal Easement and Operating Agreement to which this consent is attached (the "Amendment") and agrees that the undersigned's right, title and interest under such Deed of Trust and with respect to such other liens and encumbrances are subject and subordinate to the Operating Agreement, as amended by the Amendment.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Consent and Subordination Agreement as of the same date as the Amendment to which it is attached.

**BANK OF MONTREAL**

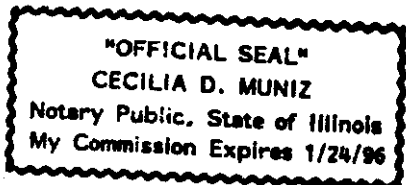
By: David A. Muniz  
Print Name: DAVID A. MUNIZ  
Title: DIRECTOR

State of ILLINOIS )  
County of COOK )      SS:

On this 1<sup>st</sup> day of Sept., 1993, before the undersigned, a Notary Public in and for said County, personally came DAVID A. MUNIZ, Director of **BANK OF MONTREAL**, personally known to be a Director of said bank and the identical person whose name is affixed to the above Consent and Subordination Agreement, and he acknowledged the execution thereof to be his voluntary act and deed as such Director, and the voluntary act and deed of said bank.

Witness my hand and notarial seal at by Cecilia D. Muniz, in said County, on the day and year last above written.

Cecilia D. Muniz  
Notary Public



NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

CONSENT OF PARTY ACQUIRING REAL ESTATE

The undersigned hereby (1) acknowledges that, concurrently herewith, it is acquiring the "Real Estate" described in the First Amendment to Amended and Restated Reciprocal Easement and Operating Agreement to which this Consent is attached, (2) consents to the terms and provisions of said Amendment and (3) agrees that the undersigned, as owner of the Real Estate, and its successors and assigns shall be bound by the terms, conditions, requirements and provisions of said Amendment.

BISHOP CLARKSON MEMORIAL HOSPITAL,  
a Nebraska nonprofit corporation

By: *Allen Lager*  
Print Name: Allen Lager  
Title: Vice President

STATE OF NEBRASKA )  
                                  ) SS:  
COUNTY OF DOUGLAS )

On this 30<sup>th</sup> day of August, 1993, before the undersigned, a Notary Public in and for said County, personally came Allen Lager, Vice President of BISHOP CLARKSON MEMORIAL HOSPITAL, a Nebraska nonprofit corporation, personally known to be a employee of said corporation and the identical person whose name is affixed to the above Consent of Party Acquiring Real Estate, 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 Omaha in said County, on the day and year last above written.

*Betty J. Kucera*  
Notary Public



NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS



**EXHIBIT "A"**

**Legal Description of Applicable Reserve Tracts**

Lots 9 to 13 inclusive, Oak View, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

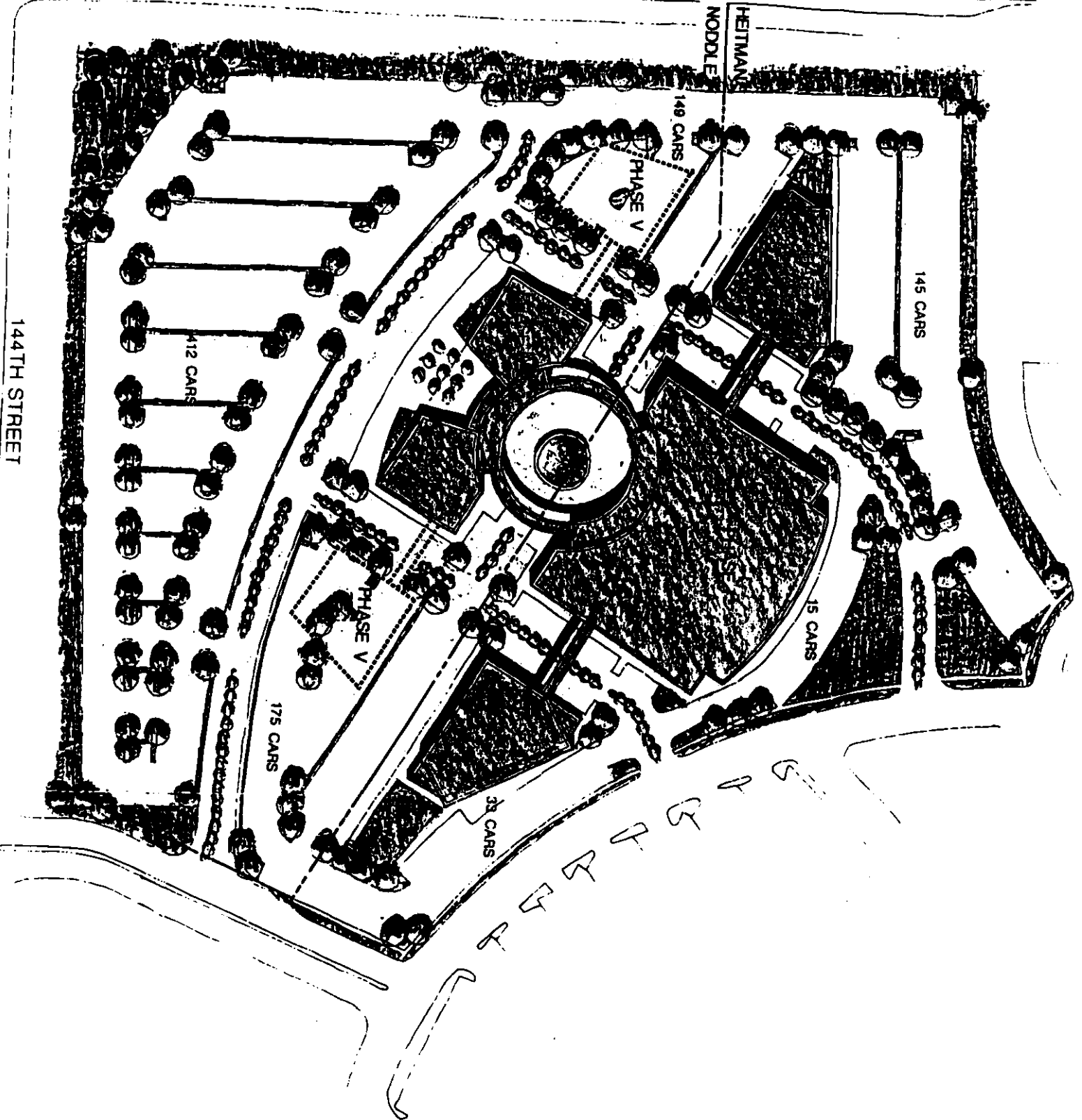
61-  
28224

**EXHIBIT "B"****Legal Description of Additional Property**

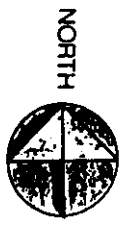
A tract of land being part of Lot 4, Omaha Industrial Foundation District No. 4 Replat I, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, more particularly described as follows:

Beginning at the intersection of the southerly right-of-way line of West Center Road with the easterly ROW line of 144th Street, said point also being the northwesterly corner of said Lot 4; thence South 00°00'00" East (measured) (assumed bearing) and South 00°00'11" East (platted) along said easterly ROW line of 144th Street (also the westerly property line of said Lot 4), a distance of 692.75 feet to a point; thence South 66°33'38" East, a distance of 232.76 feet to a point on the southeasterly property line of said Lot 4; thence North 31°49'22" East (measured) and North 31°49'14" East (platted) along said southeasterly property line, a distance of 745.37 feet to a point; thence North 01°00'51" East (measured) and North 01°02'14" East (platted), along the easterly property line of said Lot 4, a distance of 165.90 feet (measured) and 165.87 feet (platted) to the northeasterly corner of said Lot 4, said corner being located on the southerly ROW line of West Center Road; thence South 88°41'41" West (measured) and South 88°41'57" West (platted), along said southerly ROW line, a distance of 609.67 feet (measured) and 609.61 feet (platted) to the point of beginning.

FB  
# 61-28670



**BCMH WEST OMAHA  
FACILITY**



**PROJECT DATA**

- PHASE I.....100,000 SF  
PHYSICIAN OFFICE BUILDING  
OUTPATIENT SURGERY  
RADIOLOGY  
MINOR MEDICAL EMERGENCY  
PHARMACY  
OUTPATIENT ONCOLOGY  
CARDIOLOGY
- PHASE II.....20,000 SF  
PHYSICIAN OFFICE BUILDING
- PHASE III.....20,000 SF  
PHYSICIAN OFFICE BUILDING
- PHASE IV.....40,000 SF  
PHYSICIAN OFFICE BUILDING
- PHASE V.....40,000 SF  
PHYSICIAN OFFICE BUILDING
- TOTAL 220,000 SF**  
(APPROX. 900 CARS PARKING)

OCTOBER 6, 1992  
013975-93

