



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

AMONG

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

OAK VIEW MALL, OMAHA, NEBRASKA

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GEORGE J. BERTHOZ
REGISTER OF DEEDS
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**THIRD AMENDMENT TO AMENDED AND RESTATED
RECIPROCAL EASEMENT AND OPERATING AGREEMENT**

THIS THIRD AMENDMENT TO AMENDED AND RESTATED RECIPROCAL EASEMENT AND OPERATING AGREEMENT (hereinafter called this "Third Amendment"), MADE AS OF THE 13TH DAY OF September, 1995, among **OAK VIEW MALL CORPORATION**, a Delaware corporation ("Developer"), having an address at c/o Heitman/JMB 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 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"), **YOUNKERS, INC.**, a Delaware corporation ("Younkers"), having its principal office at 701 Walnut Street, Des Moines, Iowa 50397, **J.C. PENNEY PROPERTIES, INC.**, a Delaware corporation ("Penney"), having an office at 6501 Legacy Drive, Plano, Texas 75024-3698, and **SEARS, ROEBUCK AND CO.**, a New York corporation ("Sears"), having an office at 3333 Beverly Road, Hoffman Estates, Illinois 60179.

WITNESSETH:

WHEREAS, Center Road Retail Developers Limited Partnership, an Indiana limited partnership ("Center Road"), Condev, Dillard, Younkens 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, as amended by that certain First Amendment to Amended and Restated Reciprocal Easement and Operating Agreement by and among Developer, Dillard, Younkens and Penney dated September 2, 1993 and recorded September 8, 1993, in Book 1094, Page 407, in the office of the Register of Deeds, Douglas County, Nebraska and by that certain Second Amendment to Amended and Restated Operating Agreement dated October 7, 1994, by and among Developer, Dillard, Younkens and Penney and recorded on December 22, 1994, in Book 1131, Page 258 in the office of the Register of Deeds, Douglas County, Nebraska (collectively, the "Operating Agreement"); and

WHEREAS, Sears has agreed to construct and operate a department store at the Shopping Center on a parcel of land to be acquired by it from Developer; and

WHEREAS, Oak View, Dillard, Younkens and Penney desire to amend the Operating Agreement to permit such development and to allow Sears to join therein.

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 to amend and supplement the Operating Agreement 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. **Joinder by Sears.** Sears hereby joins in the Operating Agreement as a Party thereto subject to the terms and conditions thereof as amended and supplemented by this Third Amendment, with the parties acknowledging that upon such joinder Sears shall constitute the "Future Department Store" as specified in the Operating Agreement.
3. **Exhibits.** Exhibit A - Developer Tract and Exhibit F - Plot Plan attached to the Operating Agreement are hereby deleted in their entirety and replaced with the Exhibit

A - Developer Tract and Exhibit F - Plot Plan attached to this Third Amendment. Exhibit F-3 - Sears Parking Easement Parcel and Exhibit I - Sears Tract attached hereto are hereby made a part of the Operating Agreement.

4. **Definitions.** The Definitions shall be amended as follows:

(a) in the last sentence of the definition "Affiliate" delete the word "or" and after the word "Younkers" add the words "or Sears";

(b) in the definition "Department Store(s)" delete the words "the Future Department Store" and replace the same with the word "Sears";

(c) in the definition "Developer" delete the words "Center Road Retail Developers Limited Partnership" and replace the same with the words "Oak View Mall Corporation";

(d) in the last sentence of the definitions of "Floor Area" and "Gross Leasable Area" after the words "Younkers Building" add the words "Penney Building" and after the number "2A.1" add the number "2B.1";

(e) in the definition "Opening Date" after the words "Penney Opening Date" insert the words "and/or Sears Opening Date" and between the words "2A.6" and "2B.7" delete the word "and" and add a comma and after the word "2B.7" add the words "and 2C.7;"

(f) in the definition "Party" delete the word "and" between the words "Penney" and "Younkers", add a comma and after the word "Younkers" insert the words "and Sears";

(g) in the definition "Shopping Center Tract" delete the phrase "any Future Department Store" and substitute the word "Sears" in lieu thereof; and delete the phrase "a Future Department Store" and insert the word "Sears" in lieu thereof.

(h) in the definition "Supplemental Agreement" in the first sentence delete the words "of even date herewith" and insert the following "June 30, 1992 and/or (c) that certain Supplemental Agreement between Sears and Developer, of even date herewith";

(i) in the definition "Tract or Tracts" after the words "Dillard Tract" add the words "and/or the Sears Tract";

(j) in subparagraph (b) of the "Definitions" section add the following sub-sub-paragraphs:

		<u>Page</u>
56.	'Sears Building' - Paragraph 2C.1 of the Operating Agreement	4 of this Third Amendment
57.	'Sears Opening Date' Paragraph 2C.7 of the Operating Agreement	6 of this Third Amendment
58.	'Sears Operating Period' Paragraph 23C.1 of the Operating Agreement	14 of this Third Amendment

59.	'Sears Plans' Paragraph 2C.2 of the Operating Agreement	4 of this Third Amendment
60.	'Sears Site Work and Common Area Construction' Paragraph 3.2(b) of the Operating Agreement	7 of this Third Amendment
61.	'Sears Tract' Paragraph 3 of the Operating Agreement	2 of this Third Amendment

5. Paragraph 1.5 **Approvals**. In subsection (d) the address for Penney shall be changed to:

J.C. Penney Company, Inc.
6501 Legacy Drive
Plano, Texas 75024-3698
Attn: Construction Service Dept.
Project Coordinator

and after subsection (d) shall be added the following:

"(e) **For Sears:** Sears, Roebuck and Co.
3333 Beverly Road
Hoffman Estates, Illinois 60179
Attn: Ramon Perez
Director of Professional Services

with a copy of any approval requests to:

Sears, Roebuck and Co.
3333 Beverly Road
Hoffman Estates, Illinois 60179
Attn: Philip Rolewicz

6. Paragraph 1.6 **Project Engineer, Supervision and Inspection**. After the word "Penney" in the fifth line add the words "or Sears"; after the word "Penney" in the sixteenth line add a comma and the word "Sears"; between the words "Dillard" and "Penney" in the nineteenth line delete the word "and" and insert a comma; and after the word "Penney" in the nineteenth line add the words "and Sears".

In addition, delete the first sentence of the second grammatical paragraph of Paragraph 1.6 in its entirety and replace it with the following "Sain Associates, Inc., Birmingham, Alabama, shall serve as and be defined as the 'Project Engineer' and Huntingdon Engineering & Environmental, Inc. shall serve as Soils Engineer". In the second sentence thereof after the words "Penney's pad specifications" add the following "and (c) as to the Sears Tract only, Sears pad specifications".

7. In Paragraph 2B.1(a) delete the phrase "shall commence and complete" in the first sentence thereof and substitute the phrase "commenced and completed" in lieu thereof; delete the phrase "shall consist" in the second sentence and substitute the word "consists" in lieu thereof; delete the phrase "shall contain" in the second sentence and substitute the word "containing" in lieu thereof.

In Paragraph 2B.2 delete the phrase "shall complete" in the first sentence of the first grammatical paragraph thereof and substitute the word "completed" in lieu thereof; and in the first grammatical paragraph delete the phrase "shall provide" each time it appears and substitute the word "provided" in lieu thereof; throughout Paragraph 2B.2 delete the phrase "shall be" each time it appears and substitute the word "were" in lieu thereof; delete the phrase "shall cause" and substitute the word "caused" in lieu thereof; and delete the phrase "shall strictly" in the last sentence thereof.

In Paragraph 2B.3 delete the phrase "shall select and pay" and substitute the phrase "selected and paid" in lieu thereof; delete the word "enter" and substitute the word "entered" in lieu thereof; delete the phrase "determine and do" and insert the phrase "determined and did" in lieu thereof; delete the word "deems" and substitute the word "deemed" in lieu thereof.

In Paragraph 2B.4 delete the phrase "shall do" and substitute the word "did" in lieu thereof; delete the phrase "shall be" and substitute the word "was" in lieu thereof; delete the phrase "shall obtain" and substitute the phrase "has obtained" in lieu thereof.

Delete Paragraph 2B.7 in its entirety and insert the following in lieu thereof; "Penney represents and warrants that it completed construction of the Penney Building and opened the Penney Building for business with the public on July 28, 1993. The term "Penney Opening Date", as used herein, shall mean July 28, 1993.

8. **Construction** - Article 2 - the following Article 2C - Sears Construction shall be added after Article 2B - Penney Construction:

"Article 2C - Sears Construction

2C.1 **Sears Building.** (a) Sears shall commence and complete, at its sole cost and expense, construction of a Sears department store building (the "Sears Building") and a Building Perimeter Sidewalk on the Sears Tract, all as more particularly shown on Exhibit "F", and in accordance with the Sears Plans (as hereinafter defined) prepared by Sears and submitted to Developer pursuant to Section 2C.3 below. The Sears 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 123,644 square feet of Floor Area, located entirely within the Permissible Building Area of Sears as shown on Exhibit "F". Subject to the terms and conditions of Paragraphs 21.4(c), 21.5(c) and 27.2(c), and Article 23C hereof, the Sears 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 Sears Plans (as hereinafter defined) required to connect such entrance to the Covered Mall.

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

2C.2 **Sears Plans.** Sears shall complete the preparation of both outline and final plans and specifications (collectively called the "Sears Plans") for the Sears Building, as well as other matters relating to construction of the Sears Building at its own expense and without cost or expense to Developer. Such Sears Plans shall be consistent with the terms, conditions and provisions of this Operating Agreement, including without limitation the Plot Plan attached hereto as Exhibit "F", and the Sears Plans shall provide for construction by Sears of a Sears Building substantially similar to department stores currently being constructed by or for Sears as of the date of execution hereof in similar enclosed mall regional shopping centers. Developer shall construct a building pad for the Sears Building on the Sears Tract consistent with the Sears pad specifications in accordance with that certain Purchase and Sale Agreement of even date herewith by and between Developer and Sears.

The Sears Plans for the Sears Building shall be prepared by Sears architects and engineers. Upon completion of the Sears Plans for the Sears Building, and prior to commencement of construction thereof, copies of the Sears Plans shall be submitted to Developer for informational purposes except the building pad specifications which shall be subject to Developer's reasonable approval. Sears represents and warrants that it will not materially alter or deviate from the Sears Plans after submission thereof to Developer unless Sears submits such changes to Developer for its information and where required, its approval, and that the exterior design and appearance of the Sears 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 Sears shall cause the Sears Building to be designed and erected in accordance with such criteria. The Sears Plans for the Sears Building shall strictly conform to Exhibit "F".

2C.3 Construction Materials and Supervision. Sears represents and warrants that, in connection with the erection of the Sears Building (other than the building pad to be constructed by Developer) and the purchase and installation of the Sears Building equipment, Sears 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 Sears deems necessary or advisable and all at Sears own cost and expense, it being the intention of the parties that Sears should be solely responsible for the planning, supervision, construction, equipping and payment of the Sears Building. Sears represents and warrants that it will not do anything or cause or permit anything to be done in connection with the construction of the Sears Building which unreasonably interfere with the construction of any other Improvements in the Shopping Center or the operation thereof.

2C.4 Compliance with Laws. Sears represents and warrants that it shall do its work under this Paragraph 2C 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 Sears shall be able to obtain the insurance required to be carried by Sears pursuant to Article 19 of this Operating Agreement (unless Sears elects to self-insure), and that Sears 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 Sears Building. Developer, Dillard, Younkers and Penney agree to cooperate with Sears to the extent that Sears 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 Sears Building may be constructed as efficiently and expeditiously as possible.

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

2C.6 Developer Access. Developer, any designee of Developer, and their respective agents and employees shall have access to the Sears Tract at all reasonable times while construction of the Sears Building is in progress, for the purpose of observing performance of the work, but Developer shall not interfere with Sears construction of the Sears Building in so doing, so long as the same conform to and comply with the Sears Plans and the requirements of this Operating Agreement. Sears represents and warrants that: Sears shall cause all construction work in the Sears Building to be done in a first-class, workmanlike manner, all at Sears expense, and shall pay in full the costs of such construction; Sears shall comply with and conform to the Sears Plans as reviewed by Developer; the Sears 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 Sears 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 Sears Building as a department store.

2C.7 Sears Opening Date. Subject to events beyond its control as set forth in Article 26 hereof and subject to Developer delivering the building pad by September 16, 1995, Sears represents and warrants that it shall complete construction of the Sears Building and open the Sears Building for business with the public by October 12, 1996. The term "Sears Opening Date", as used herein, shall mean October 12, 1996, or such other date on which Sears opens the Sears Building for business with the public.

2C.8 Indemnity. Sears 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 Sears 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 Sears, 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, (iii) with respect to Dillard, claims arising out of the negligent act or omission of Dillard, its agents, officers, employees, contractors or subcontractors and (iv) with respect to Penney, claims arising out of the negligent act or omission of Penney, its agents, officers, employees, contractors or subcontractors.

2C.9 Mechanic's Liens. Sears 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 Sears or its contractors, subcontractors, agents or employees. If any such lien shall be filed, and after written notice thereof, Sears 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 Sears causes such lien to be discharged of record as aforesaid, Sears shall have the right to contest same. If Sears shall fail to cause such lien to be so discharged within twenty (20) days after receipt of written 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 Sears to Developer on demand.

9. In Paragraph 3.2(a) after the phrase "Paragraph 3.2(b)" shall be added the phrase "and 3.2(c)" and the following Paragraph 3.2(c) shall be added after paragraph 3.2(b):

"(c) Developer shall (subject to events beyond its control as set forth in Article 26 hereof) by September 16, 1995, or such later date on which Sears opens the Sears Building for business with the public in accordance with Paragraph 2C.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 "Sears 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 Sears of the Sears Building, as contemplated or required by this Operating Agreement. Sears 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 reasonable judgment, to bring to the Sears Tract all utility services (including construction by Developer of Common Utility Facilities pursuant to Paragraph 17.1 of the Operating Agreement) for Sears as set out in the Sears Plans which shall comply with the Sears Construction Standards - Minimum Site Requirements dated March 31, 1995, as modified, by Developer and Sears."

10. In Paragraph 3.3 delete the word "and" after the word "Penney", replace the same with a comma and after the word "Younkers" insert "and Sears".

11. In the first sentence of paragraph 3.4 delete the word "or" after the word "Penney", replace the same with a comma and after the word "Younkers" insert "or Sears" and in the second sentence thereof delete the word "and" after the word "Penney", replace the same with a comma and after the word "Younkers" insert "and Sears".

12. In the first sentence of paragraph 3.5(c) delete the words "shall be" and insert the word "was".

13. A new Paragraph 3.5(d) shall be added as follows:

"(d) The Covered Mall, and the manner of attachment thereof to the Sears Building, shall be designed in accordance with good construction practice in the manner customary for structures of that type. The attachment of the Sears Building to the Covered Mall shall be constructed in accordance with the Sears Plans approved by Developer and Sears. The Covered Mall and the Sears Building shall not receive any structural support from the other. Sears shall have the obligation to furnish and install the flashing and seal between the Covered Mall and the Sears Building, and the expansion joint. Sears shall repair at Sears sole cost, any damage to the Covered Mall caused by Sears in making said attachment. Sears 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. Sears shall pay and contribute to the cost of the maintenance, repair and operation of the Covered Mall and shall reimburse Developer for Sears share of such costs as provided for in its Supplemental Agreement."

14. In Paragraph 3.6 delete the word "and" after the word "Penney", replace the same with a comma and add the words "and Sears" after the word "Younkers"; delete the word "and" prior to the number (iii), delete the period at the end of the Paragraph, replace the same with a comma and insert the following "and (iv) with respect to Sears, claims arising out of the negligent act or omission of Sears, its agents, officers, employees, contractors or subcontractors."

15. In Paragraph 3.7 delete the word "or" every time it appears after the word "Penney", replace the same with a comma and insert the words "or Sears" after the word "Younkers" every time it appears.

16. In Paragraph 4.1(4) delete the word "and" after the word "Penney", replace the same with a comma, and insert the words "and Sears" after the word "Younkers".

17. In the penultimate, grammatical paragraph of Paragraph 4.1, delete the word "and" each time it appears after the word "Penney" and the word "or" each time it appears

after the word "Penney", replace the same with a comma and insert the words "and Sears" or "or Sears", as the case may be, after the word "Younkers" each time it appears.

18. The parties acknowledge that Sears is the Future Department Store referenced in Paragraph 4.2 and that upon the Sears Opening Date said Paragraph 4.2 shall be deleted in its entirety.

19. A new Paragraph 5.4A shall be added as follows:

"5.4A Liability - Sears. Sears 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 Sears, Penney, Dillard, Younkers and Developer, as additional 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 Sears of the Sears Building, to and including the completion of the construction of the Sears Building."

20. In Paragraph 5.6 delete the word "and" after the word "Younkers", replace the same with a comma and insert the words "and Sears" after the first word "Dillard"; and delete the word "or" after the second word "Dillard", replace the same with a comma, and add the words "or Sears" after the word "Younkers".

21. In Paragraph 6.2 delete the word "or" after the word "Penney", replace the same with a comma, and add the words "or Sears" after the word "Younkers".

22. Paragraph 12.4 shall be deleted in its entirety and replaced with the following:

"12.4 Any lease or other arrangement for an Occupant to occupy a 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, Younkers Building, or Sears 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; provided however that the foregoing restriction shall not be applicable as far as the Sears Building alone is concerned with respect to any lease or other such arrangement in existence as of the date hereof or any renewal thereof."

23. In Article 13 delete the word "and" each time it appears after the word "Penney", replace the same with a comma and add the words "and Sears" after the word "Younkers" each time it appears; and in Paragraph 13.2 delete the word "and" after the word "Dillard", replace it with a comma and insert the phrase "and Sears" after the word "Penney" appearing immediately thereafter.

24. In Paragraph 14.1, in the introductory paragraph delete the word "and" after the word "Penney", replace the same with a comma and insert the words ", and Sears" after the word "Younkers", and delete the word "and" after the word "Dillard", replace the same with a comma and insert the words "and Sears" after the word "Penney" the second time it appears; in subparagraph (1) thereof delete the word "or" after the word "Dillard", replace the same with a comma, and add the words "or Sears" after the word "Penney" the first time it appears and delete the word "and" after the word "Penney" the second time it appears, replace the same with a comma and add the word "and Sears" after the word "Younkers"; in subparagraph (2) delete the word "or" each time it appears after the word "Penney", replace the same with a comma and add the words "or Sears" after the word "Younkers" in each affected phrase; delete the word "and" each time it appears after the word "Penney", replace the same with a comma, and add the words "and Sears" after the word "Younkers" in each affected phrase; and delete the word "and" after the word "Dillard", replace it with a comma and insert the phrase "Penney and Sears" after the word "Younkers"; in subparagraph (3) thereof delete the word "or" after the words "Penney Building", replace the same with a comma and insert the words "or Sears Building" after the words "Younkers Building".

25. The caption of Paragraph 14.2 shall be changed to "Dillard, Younkers, Penney and Sears Share of Expense". A new Paragraph 14.2(d) shall be added as follows:

"(D) Sears, commencing with the date it opens its Building to the public 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 Sears Operating Period (as defined in Article 23C hereof), and for so long thereafter such period as Sears shall maintain at least one (1) entrance to the Covered Mall, shall pay to Developer the annual amount set forth in its Supplemental Agreement, as its contribution toward the expenses of maintaining, operating, heating, ventilating and air conditioning the Covered Mall."

26. In Subparagraph 14.3(a) delete the word "or" after the words "Penney Building", replace the same with a comma and insert the words "or Sears Building" after the words "Younkers Building" and in Subparagraph 14.3(b) delete the word "and" after the word "Penney", replace the same with a comma and insert the words "and Sears" after the word "Younkers".

27. In Subparagraphs 14.4(a) and (b) delete the word "or" after the words "Penney Building" and after the word "Penney" each time the same appear, replace the same with a comma and insert the words "or Sears Building" after the words "Younkers Building" and the words "or Sears" after the word "Younkers" each time the same appear; delete the word "and" after the word "Penney", replace the same with a comma and insert the words "and Sears" after the word "Younkers" in the affected phrase.

28. In paragraph 14.5 delete the word "and" after the word "Penney", replace the same with a comma and insert the words "and Sears" after the word "Younkers".

29. In Paragraph 15.2 the number "5.0" shall be changed to "4.8" and the number "4.5" shall be changed to "4.4". The Parties acknowledge that no parking spaces will be located on the Sears Tract and that the parking for the same will be virtue of the easement granted under Paragraph 24.4.

30. In the first grammatical paragraph of Article 16 delete the word "and" after the word "Penney", replace the same with a comma and insert the words "and Sears" after the word "Younkers".

31. In Subparagraph 17.1(b) delete the word "shall" and replace the same with the word "has"; delete the word "provide" and replace it with the word "provided"; and delete the word "cause" and replace it with the word "caused".

32. A new Subparagraph 17.1(c) shall be added as follows:

"(c) Developer shall, at Developer's expense and as part of its construction obligations pursuant to Subparagraph 3.2(c), 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 Sears within five feet (5') of the Building line on the Sears Tract."

33. In Paragraph 17.2 and 17.3 delete the word "and" after the word "Penney", replace the same with a comma and insert the words "and Sears" after the word "Dillard".

34. In Paragraph 18.1(a) delete the word "and" after the word "Penney", replace the same with a comma and insert the words "and Sears" after the word "Dillard".

35. A new Subparagraph 18.3(c) shall be added as follows:

"18.3(c) Tax Contests - Sears. In the event Sears 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 Sears to be excessive or illegal, Sears shall have the right, after not less than twenty (20) days prior written notice to the other Parties, and at Sears' own cost and expense, to contest the same by appropriate proceeding and nothing contained in this Article shall require Sears 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 Sears, its Tract shall not thereby be in danger of being forfeited."

36. In Paragraph 18.4 delete the word "and" after the word "Penney" each time it appears, replace the same with a comma and insert the words "and Sears" after the word "Dillard".

37. In Paragraph 18.6 delete the word "and" after the word "Penney", replace the same with a comma and insert the words "and Sears" after the word "Younkers".

38. A new Paragraph 19.2(c) shall be added as follows:

"19.2(c) Casualty - Sears. Sears shall, effective with the completion of construction of the Sears Building and all the other Improvements on its Tract, and thereafter during the Term of this Operating Agreement, continuously keep the Sears 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, upon request, 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. Sears shall furnish certificates of such insurance to Developer from time to time upon the request of Developer."

39. In Paragraph 19.5, the caption shall be amended to read "Developer, Dillard, Penney and Sears Buildings and Tracts"; in the second line the word "and" shall be deleted and replaced with a comma and after word "Dillard" shall be inserted the phrase "and Sears"; in the penultimate sentence the word "and" after the word "Penney" the first time it appears shall be deleted and replaced with a comma and after the word "Dillard" the first

time it appears shall be inserted the phrase "and Sears" and after the word "Dillard" the second time it appears shall be inserted the phrase ", Sears".

40. In Paragraphs 19.6, in the second sentence of the first grammatical paragraph the word "and" between the words "Younkers" and "Dillard" shall be deleted and replaced with a comma and after the word "Dillard" shall be inserted the phrase "and Sears"; and in the first sentence of the second grammatical paragraph after the word "Dillard" shall be inserted the phrase "and/or Sears".

41. In Paragraph 20.1, each time the phrase "Penney Tract and Dillard Tract" appears the same shall be deleted and replaced with "Penney Tract, Dillard Tract and Sears Tract"; in the twentieth line delete the word "and" after the word "Younkers" and replace the same with a comma and after the word "Penney" add the phrase "and Sears"; in the twenty-fourth and thirty-first lines delete the word "and" after the word "Penney", replace the same with a comma and after the word "Dillard" insert the phrase "and Sears"; and delete the word "and" after the word "Penney", replace the same with a comma and after the word "Dillard" add the phrase "and Sears".

42. In Paragraph 20.2(a), in the first sentence of the first grammatical paragraph, delete the word "and" after the words "Penney Tract" and "Penney", replace the same with a comma and insert the phrase "and Sears Tract" after the phrase "Dillard Tract" and the phrase "and Sears" and the word "Dillard"; and in the first sentence of the second grammatical paragraph delete the word "or" after the word "Penney", replace the same with a comma and insert the phrase "or Sears" after the word "Younkers".

43. In Subparagraph 20.3(e) delete the word "and" after the phrase "Penney Building" and after the word "Penney", replace the same with a comma, add the phrase "and Sears Building" after the phrase "Dillard Building" and the phrase "and Sears" after the word "Dillard"; and in Subparagraph 20.3(j) delete the word "and" each time it appears after the word "Penney", replace the same with a comma and insert the phrase "and Sears" after the word "Younkers" each time it appears.

44. A new Paragraph 20.4(d) shall be added as follows:

(d) Sears. 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 Sears is operating, or is obligated to be operating, during the Sears Operating Period (as defined in Article 23 of this Operating Agreement), and for so long thereafter such period as Sears is using and operating its Building, Sears shall pay and reimburse Developer for Sears' 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 Sears. Such annual amount shall be paid by Sears to Developer in monthly installments on or before the tenth day of each calendar month."

45. In Paragraph 20.6 delete the word "or" each time it appears after the word "Penney", replace the same with a comma and insert the phrase "or Sears" after the word "Younkers" each time it appears.

46. In Paragraph 20.7 the caption shall be changed to read "Dillard, Penney or Sears Takeover of Maintenance on Their Respective Tracts"; and after the word "Penney" shall be inserted the words "and/or Sears".

47. In Paragraph 20.8, after the word "Penney" delete the word "and", replace the same with a comma and after the word "Younkers" insert the phrase "and Sears"; and delete the number "14.5" and replace the same with "20.8".

48. In Paragraph 21.1(a) prior to the number "(2)" the first time it appears insert the phrase "or the Sears Opening Date"; delete the word "and" each time it appears after the word "Penney", replace the same with a comma and insert the phrase "and Sears" after the word "Younkers" each time it immediately appears thereafter; delete the word "or" after the word "Penney" replace the same with a comma and insert the phrase "or Sears" after the word "Younkers" as it appears immediately thereafter; delete the word "and" before the number "(iii)" the first time it appears, and after such subclause (iii) add the phrase "and (iv) Sears 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 delete the word "and" before the number "(iii)" the second time it appears, and after such subclause (iii) but prior to the semicolon add the phrase "and (iv) Sears 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 23C hereof, or eight (8) years from the date of completion of such repair and restoration"; delete the word "or" after the word "Penney" the last time it appears, replace the same with a comma and insert the phrase "or Sears" after the word "Younkers" as it appears immediately thereafter; delete the word "and" after the word "Penney" the last two times it appears, replace the same with a comma and insert the phrase "and Sears" after the word "Dillard" each time it appears immediately thereafter; and delete the period at the end of said Subparagraph, replace the same with a semicolon and insert the following "provided further, however, that if Dillard, Penney and Younkers (but not Sears) are then open and operating, or agree 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 restore, repair or rebuild all improvements on the Developer Tract".

49. In Subparagraph 21.1(b)(i) delete the word "or" after the phrase "Penney Opening Date", replace the same with a comma, and insert the phrase "or the Sears Opening Date" after the phrase "Younkers Opening Date"; delete the word "and" prior to the letter "(z)", replace the same with a comma and after subclause (z) ending with "Younkers Building" add the phrase ", and (aa) Sears 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, "; delete the word "and" each time it appears after the word "Penney", replace it with a comma and insert the phrase "and Sears" after the word "Younkers" each time it appears immediately thereafter; delete the word "and" after the word "Penney" the last two times it appears, replace the same with a comma and insert the phrase "and Sears" after the word "Dillard" each time it appears immediately thereafter; and delete the period at the end of said Subparagraph, replace the same with a semicolon and insert the following "provided further, however, that if Dillard, Penney and Younkers (but not Sears) are then open and operating, or agree 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 restore, repair or rebuild all improvements on the Developer Tract".

50. In Subparagraph 21.1(b)(ii) delete the word "and" prior to the letter "(z)", replace it with a comma, and after subclause (z) add", and (aa) Sears 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 delete the word "and" each time it appears after the word "Penney", replace it with a comma, and insert the phrase "and Sears" after the word "Dillard" each time it appears; and delete the period at the end of said Subparagraph, replace the same with a semicolon and insert the following "provided further, however, that if Dillard, Penney and Younkers (but not Sears) are then open and operating, or agree in writing with Developer to operate as a Department Store for such periods described in Clause (B) of Subparagraph 21.1.(b)(i), then Developer shall restore, repair or rebuild all improvements on the Developer Tract".

51. In Subparagraph 21.1(c)(ii) delete the word "nearest" in the eighth line and replace it with the words "farthest from".

52. In Subparagraph 21.1(d) delete the phrase "the Future Department Store" after the word "or" and replace it with the word "Sears"; delete the phrase "or the Future Department Store Tract" each time it appears and replace it with the phrase "or Sears Tract".

53. In Paragraph 21.2 delete the word "and" after the word "Penney", replace the same with a comma and insert the phrase "and Sears" after the word "Dillard".

54. In Paragraph 21.3(a) delete the word "or" each time it appears after the word "Dillard", replace the same with a comma and insert the phrase "or Sears" after the word "Penney" each time it appears.

55. A new Paragraph 21.4(d) shall be added as follows:

"21.4(d) Sears Tract. In the event of the destruction of, or damage to, the Buildings or other Improvements, or any part thereof, upon the Sears Tract (including Common Area thereon) at any time during the period of fifteen (15) years from and after the Sears Opening Date by fire, windstorm or other casualty required to be insured against hereunder, and provided that Sears is required to operate its Store pursuant to Article 23C and provided further than 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, Sears 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 as set forth in Paragraph 2C.1, in the same location as presently shown on Exhibit "F", and of that same general appearance, type and quality, in as good condition and constituting an integrated Building, as existed prior to the damage or destruction, and Sears shall promptly resume its operation on its Tract for the remainder of its Operating Period, if any; provided, however, that Sears shall not be obligated to so rebuild, repair and restore any Major Damage during the last two years of the Sears Operating Period. If Sears fails to perform any covenant or obligation pursuant to this Subparagraph 21.4(d), Developer shall use reasonable efforts to enforce such covenants or obligations of Sears; provided, however, the covenants contained in this Subparagraph 21.4(c) 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."

56. A new Paragraph 21.5(c) shall be added as follows:

"21.5(c) Repair/Restoration - Sears. Sears 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 Sears 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."

57. In Paragraph 21.6 in the introductory phrase delete the word "or" after the word "Penney", replace it with a comma, and insert the phrase "or Sears" after the word "Dillard"; and in subparagraph 1. delete the word "and" after the phrase "Penney Building" and after the word "Penney", replace it with a comma, and insert the phrase "and Sears Building" after the phrase "Dillard Building", and insert the words "and Sears" after the word "Dillard" and delete the word "and" after the number "2.2", replace it with a comma and insert the phrase "and 2C.2" after the number "2B.2".

58. Paragraph 22.1 shall be deleted in its entirety and replaced with the following:

"Developer shall continuously operate the Developer Tract (excluding the Younkers Building) 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 Younkers Opening Dates, and following expiration or earlier termination of the last of the operating covenants of Dillard, Younkers, Penney and Sears and for so long thereafter during the remainder of the term of this Operating Agreement as two of Dillard, Younkers, Penney and Sears are using the Building they occupy in the Shopping Center for purposes and uses permitted by Articles 23, 23A, 23B and 23C, respectively; provided, however, if following the expiration or earlier termination of the last of said operating covenants of Dillard, Younkers, Penney and Sears, one of Younkers, Penney, Dillard and Sears 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), 23B.1(b) and 23C.1(b) and (b) such conditions in Paragraphs 23.1(b), 23A.1(b), 23B.1(b) and 23C.1(b) shall be deemed to be further modified by deleting "sixty percent (60%)" and/or "sixty-five percent (65%)", as the case may be, and substituting "seventy percent (70%)" thereof in each instance; provided further, however, if none of Younkers, Penney, Dillard and Sears 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".)"

59. In paragraph 22.4 delete the word "and" after the word "Penney", replace it with a comma and insert the phrase "and Sears" after the word "Younkers".

60. In Paragraph 23B.5 delete the word "and" after the number "23A", replace it with a comma and insert the phrase "and 23C" after the number "23B".

61. A new Article 23C shall be added as follows:

Operation

Article 23C - Sears Operating Period

23C.1 Provided (a) (i) Dillard is open and operating in the Shopping Center, under the name "Dillard", or under such other name as Dillard 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, and (ii) at least one of Penney and Younkers is open and operating in the Shopping Center, under the name "Penney" or "Younkers", as the case may be, or under such other name as Penney or Younkers may then be using as part of an integrated department store chain 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-five percent (65%) of the Small Store Floor Area in the Developer Tract are conducting business as retail stores evenly distributed in Developer Building and type of operation, and (c) Developer is not in default (pursuant to Paragraph 32.10 hereof) of its operating covenant in Paragraph 20.1, then Sears covenants and agrees with Developer only, and its successors and assigns as the "Developer" under the Operating Agreement, that (1) Sears shall, for a period of fifteen (15) years following the Sears Opening Date (such period of fifteen (15) years being referred to as the "Sears 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 Sears Building, which retail department store shall be similar to other Sears department stores of similar size to the Building described in paragraph 2C.1, and shall be continuously operated under a name consisting of, or in which appears, the word "Sears", or under the name which a majority of the retail department stores are being operated by Sears, Roebuck and Co. in the States of Nebraska and Iowa, during the Sears Operating Period, and (2) the Sears 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 Sears 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, Sears may elect to terminate its operating covenant contained herein, if at any time during the Sears Operating Period Dillard and at least one of Penney and Younkers are not open and operating in the Shopping Center and such condition continues for a period of more than one (1) year unless within said one (1) year Developer shall have entered into an agreement with a replacement Department Store acceptable to Sears (as outlined in the Sears Supplemental Agreement), which replacement Department Store shall open for business within eighteen (18) months after the Department Store being replaced ceased operations; 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, Sears may elect to terminate its operating covenant contained herein, if at any time during the Sears Operating Period the occupancy of the Small Store Floor Area fronting on the Covered Mall in the Developer Tract falls below sixty-five percent (65%) or if the same are not evenly distributed in location and type as herein required, and such condition continues for a period of more than six (6) months. Sears further covenants and agrees that during the remaining Term of this Operating Agreement, after the expiration of the Sears 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-five percent (65%) 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 Sears, its successors and assigns, shall not use the Sears Building or Sears Tract for any use or purpose incompatible with an enclosed mall regional shopping center. It is further provided that Sears, Roebuck and Co. shall be relieved of such obligation to operate under the name "Sears" 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.

23C.2 Notwithstanding anything to the contrary contained in this Operating Agreement, the number and types of departments to be operated in the Sears 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 Sears Store, in every respect whatsoever, shall be within the sole and absolute discretion of Sears.

23C.3 The Developer and Sears 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 Sears and to restrain and enjoin a breach or threatened breach thereof. Developer and Sears further acknowledge that the operating covenants shall run to and for the benefit of Developer only; provided, however, if Sears is in default of its operating covenant in Paragraph 23C.1 or is no longer obligated to operate pursuant to its operating covenant in Paragraph 23C.1, Sears shall not be entitled to enforce the operating covenant of Developer.

23C.4 A temporary cessation of business or operation by Sears shall not be deemed a cessation of business or operation for purposes of this Article 23C and a breach

of the Sears operating covenant as provided in paragraph 23C.1 hereof, if such temporary cessation:

- (1) is occasioned by diligently making repairs due to damage, destruction or condemnation of the Sears 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 Sears shall continue to pay all maintenance charges and other charges and contributions payable by Sears to Developer hereunder and under its Supplemental Agreement during any such temporary cessation of business."

62. In Paragraph 24.1 in the introductory phrase delete the word "and" after the word "Penney", replace it with a comma and insert the phrase "and Sears" after the word "Dillard".

63. In Paragraph 24.3 after the phrase "Developer Building" insert the phrase ", the Sears Building"; and after the word "Penney" the second time it appears delete the word "and", replace it with a comma and after the word "Penney" appearing immediately thereafter insert the phrase "Sears and".

64. In Paragraph 24.4 delete the word "and" after the word "Penney", replace it with a comma and insert the phrase "and Sears" after the word "Dillard"; and add the following sentence at the end of said Paragraph: "The easement provided in Subparagraph (i) above shall, to the extent the same burdens the portion of the Developer Tract crosshatched on Exhibit F-3 attached hereto, remain and continue in full force and effect after the term of this Operating Agreement, so long as the Sears Building, or any replacement thereof, on the Sears Tract shall stand.

65. In Paragraph 24.5(a) delete the word "and" after the word "Penney", and insert the words "and Sears" after the word "Younkers"; in Paragraph 24.5(b) delete the word "and" after the word "Dillard", insert a comma and insert the words "and Sears" after the word "Younkers".

66. A new Paragraph 24.5(c) shall be added as follows:

"(c) Sears. Developer grants to Sears easements (i) to have the Sears 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, Younkers and Penney, and their Permittees, as shown on Exhibit "F" and in the Sears 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(c) shall terminate as to the Sears Tract and Sears as Grantee upon the earlier of (i) the termination of this Operating Agreement or (ii) such date as the Sears Tract and Sears 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 Sears Tract and Building shall resume being operated for the uses or purposes permitted by this Operating Agreement, Developer shall grant to Sears an easement in the form, and subject to the limitations, described in this Subparagraph 24.5(c)."

67. In Paragraphs 24.6, 24.7, 24.8, 24.9, 24.10, and 24.12 delete the phrases "Dillard and Penney" and "Penney and Dillard" each time they appear and replace them with the phrase "Dillard, Penney and Sears".

68. In Paragraph 24.8 in the introductory phrase delete the word "and" after the phrase "Dillard Plans", replace it with a comma and insert the phrase "and the Sears Plans" after the phrase "Penney Plans".

69. In Paragraph 24.13(a) delete the word "and" after the word "Penney", replace it with a comma, and insert the phrase "and Sears" after the word "Younkers"; and delete the word "and" after the word "Dillard", replace it with a comma and insert the phrase "and Sears" after the word "Penney" the second time it appears.

70. Penney hereby acknowledges that the easement granted pursuant to Paragraph 24.15(c) is hereby terminated and Penney shall promptly remove its sign and repair any damage to the Developer Building as provided in the last sentence of such Paragraph 24.15(c).

71. In Paragraph 24.17 the phrase "and to the Future Department Store" is hereby deleted.

72. A new subparagraph 27.2(c) shall be added as follows:

"27.2 (c) Sears Tract. If more than ten percent (10%) of the Floor Area in the Sears Building 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, Sears may terminate this Operating Agreement as to Sears and the Sears Tract upon one hundred eighty (180) days prior written notice to the other Parties, except that, notwithstanding any such termination, the reciprocal easements created under this Operating Agreement shall survive to the extent provided in Paragraph 29.1 hereof."

73. In Paragraph 27.3 delete the word "and" after the word "Penney", replace the same with a comma and insert the phrase "and Sears" after the word "Dillard"; delete the word "or" after the word "Penney", replace the same with a comma and insert the phrase "or Sears" after the word "Dillard".

74. In Paragraph 27.4 insert the phrase "or the Sears Tract" after the phrase "Dillard Tract"; and delete the comma after the word "Dillard" and replace the same with the phrase "and/or Sears,".

75. In Paragraph 27.5 delete the word "and" each time it appears after the word "Penney", replace the same with a comma and insert the phrase "and Sears" after the word "Younkers" each time it appears.

76. In Subparagraph 28.1(a) change the caption to read "Developer, Dillard, Penney, Younkers and Sears"; after the word "Penney" in the first sentence delete the word "or", replace it with a comma and insert the phrase "or Sears" after the word Dillard; and add a new sub-subparagraph (vi) as follows:

"(vi) that if Sears shall transfer or convey its entire Tract (other than by a transfer or conveyance described in Subparagraph 28.7 hereof, in which case and upon satisfaction of the terms and conditions of said Paragraph 28.7, Sears shall be released from its obligations under this Operating Agreement), Sears 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 Sears Operating Period, as set forth in Article 23C of this Operating

Agreement, and (z) the date Sears shall no longer have a possessory interest in its Tract, either as owner or lessee in possession."

77. In Subparagraph 28.1(b)(c) delete the word "and" after the word "Penney", replace the same with a comma, and insert the phrase "and Sears" after the word "Younkers".

78. In the penultimate grammatical paragraph of Subparagraph 28.1(b) delete the phrase "any Future Department Store Tract and".

79. In Subparagraph 28.1(c) delete the word "and" after the word "Dillard", replace the same with a comma and insert the phrase "and Sears" after the word "Younkers".

80. A new Paragraph 28.7 shall be added as follows:

"28.7 Transfer or Assignment; Sears. Notwithstanding anything to the contrary contained in this Operating Agreement, Sears 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 23C of this Operating Agreement;
- (b) lease or sell its Tract to any parent company who owns all of the outstanding shares of Sears or to any subsidiary corporation of Sears or such parent company or to any corporation which may succeed to the business of Sears 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 Sears or such parent company in the States of Nebraska and Iowa; provided, however, that in any such case, Sears 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 Sears 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 at least 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 Sears covenants and obligations hereunder; provided further, however, such release shall be effective only upon and after receipt by the other Parties from Sears 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 28.7(b) shall be permitted unless prior to such sale or lease Sears is operating at least five (5) retail department stores (including the retail department store at the Shopping Center) under the name "Sears" 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 Sears shall have entered into a sale and leaseback or a lease and subleaseback transaction involving its Tract under which Sears or any parent company which owns all of the outstanding shares of Sears 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 23C.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 23C.1 hereof. In the event a mortgagee of the Sears Tract or the purchaser under a sale and leaseback succeeds to the interest of Sears in said Tract, the obligations of Sears 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 23C.1(a) of this Operating Agreement, provided that such successor is not a parent, subsidiary or affiliate of Sears or otherwise related to or owned or controlled by Sears, directly or indirectly. Notwithstanding the previous portions of this clause (c), if Sears 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 Sears Tract.

81. In Paragraph 32.9 delete the word "or" after the word "Penney" the first time it appears, replace the same with a comma, and insert the phrase "or Sears" after the word "Younkers" the first time it appears; and insert the phrase ", Sears" after the word "Younkers" the second, third and fourth time it appears therein.

82. In Subparagraph 32.10(b)(2) after the number "2B" add the phase ", 2C".

83. In Subparagraph 32.10(c) delete the word "or" after the word "Penney", replace the same with a comma, and insert the phrase "or Sears" after the word "Younkers".

84. In Paragraph 32.14 delete the word "and" after the word "Penney", replace the same with a comma, and insert the phrase "and Sears" after the word "Younkers".

85. Article 33 is hereby amended and supplemented by adding the following at the end thereof:

"Sears: Sears, Roebuck and Co.
3333 Beverly Road
Hoffman Estates, Illinois 60179

Attn: Vice President, Real Estate

with a copy to:

Sears, Roebuck and Co.
3333 Beverly Road
Hoffman Estates, Illinois 60179

Attn: Assistant General Counsel
Real Estate

86. In Article 35 delete the word "and" after the word "Dillard", replace the same with a comma, and insert the phrase "and Sears" after the word "Younkers".

87. In Article 36 delete the word "and" after the word "Penney", replace the same with a comma, and insert the phrase "and Sears" after the word "Dillard".

IN WITNESS WHEREOF, the parties hereto have caused this Third 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: ROGER E. SMITH
Title: VICE PRESIDENT

CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation

By: [Signature]
James E. Darr, Jr.
Vice President

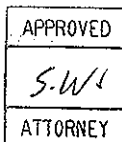
DILLARD DEPARTMENT STORES, INC., a Delaware corporation

By: [Signature]
James E. Darr, Jr.
Senior Vice President

YOUNKERS, INC., a Delaware corporation

By: [Signature]
Print Name: JOHN HERBE
Title: SE VP Real Estate

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

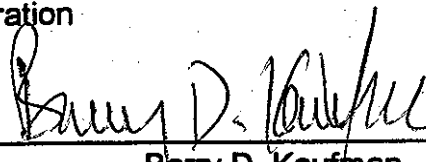


By: [Signature]
Print Name: Raymond J. Emma
Vice President

(Signatures continued on following page)

SEARS, ROEBUCK AND CO., a New York corporation

By: _____



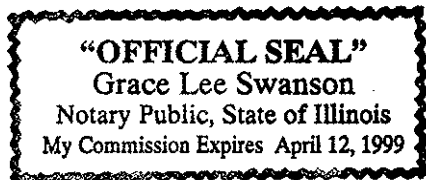
Barry D. Kaufman
Vice President, Real Estate

R. E. DIRECTOR
PCR
LEGAL
JKH

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this 26th day of September, 1995, before the undersigned, a Notary Public in and for said County, personally came Roger E. Smith, 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 Third Amendment to Amended and Restated Reciprocal Easement and Operating Agreement, and s/he acknowledged the execution thereof to be her/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.



[Signature]

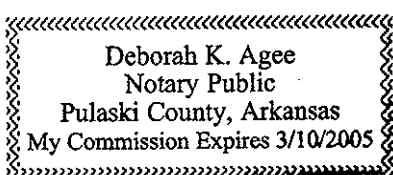
Notary Public

STATE OF ARKANSAS)
) SS:
COUNTY OF PULASKI)

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

On this 26th day of Oct., 1995, 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 of said corporation and the identical person whose name is affixed to the above Third Amendment to Amended and Restated Reciprocal Easement and Operating Agreement, and s/he acknowledged the execution thereof to be her/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, Arkansas, in said County on the day and year last above written.



[Signature]

Notary Public

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

STATE OF ARKANSAS)
) SS:
COUNTY OF PULASKI)

On this 26th day of Oct., 1995, before the undersigned, a Notary Public in and for said County, personally came James E. Darr, Jr., Senior Vice President of **DILLARD DEPARTMENT STORES, INC.**, an ^{Delaware} ~~Arkansas~~ corporation, personally known to be a Vice President of said corporation and the identical person whose name is affixed to the above Third Amendment to Amended and Restated Reciprocal Easement and Operating Agreement, and s/he acknowledged the execution thereof to be her/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, Arkansas in said County on the day and year last above written.

Deborah K. Agee
Notary Public
Pulaski County, Arkansas
My Commission Expires 3/10/2005

Deborah K. Agee
Notary Public

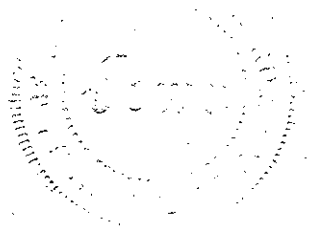
NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

STATE OF Iowa)
) SS:
COUNTY OF Polk)

On this 15th day of November, 1995, before the undersigned, a Notary Public in and for said County, personally came Jan Habbe, Sr. VP of **YOUNKERS, INC.**, a Delaware corporation, personally known to be a Sr VP of said corporation and the identical person whose name is affixed to the above Third Amendment to Amended and Restated Reciprocal Easement and Operating Agreement, and s/he acknowledged the execution thereof to be her/his voluntary act and deed as such Sr VP, and the voluntary act and deed of said corporation.

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

Deanne Hemmestrom
Notary Public



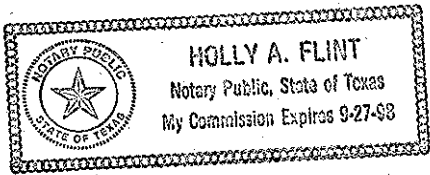
IMPRINTED SEAL
REGISTER OF DEEDS

STATE OF TEXAS)
) SS:
COUNTY OF COLLIN)

On this 3rd day of November, 1995, 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 Third Amendment to Amended and Restated Reciprocal Easement and Operating Agreement, and s/he acknowledged the execution thereof to be her/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, Texas, in said County on the day and year last above written.

Holly A. Flint
Notary Public



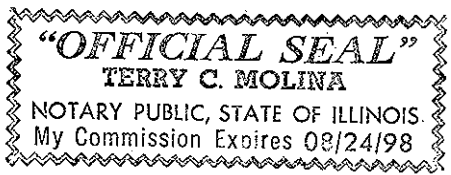
NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this 29th day of SEPTEMBER, 1995, before the undersigned, a Notary Public in and for said County, personally came Barry D. Kaufman, Vice President, Real Estate, of **SEARS, ROEBUCK AND CO.**, a New York corporation, personally known to be Vice President, Real Estate, of said corporation and the identical person whose name is affixed to the above Third Amendment to Amended and Restated Reciprocal Easement and Operating Agreement, and s/he acknowledged the execution thereof to be her/his voluntary act and deed as such Vice President, Real Estate, and the voluntary act and deed of said corporation.

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

Terry C. Molina
Notary Public




NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

**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 Operating Agreement), hereby consents to the Third 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.


FIRST NATIONAL BANK OF CHICAGO,
as trustee under a certain Declaration of
Trust Agreement dated as of November
30, 1994 relating to Oak View and York
Finance Trust

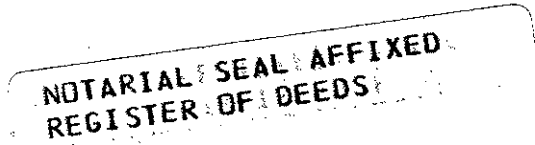
By: 
Print Name: Eydie A. Pacella
Title: Trust Officer

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this 14TH day of September, 1995, before the undersigned, a Notary Public in and for said County, personally came Eydie A. Pacella, Trust Officer of **FIRST NATIONAL BANK OF CHICAGO**, as trustee under a certain Declaration of Trust Agreement dated as of November 30, 1994 relating to Oak View and York Finance Trust, personally known to be a Trust Officer of said bank and the identical person whose name is affixed to the above Consent and Subordination Agreement, and s/he acknowledged the execution thereof to be her/his voluntary act and deed as such Trust Officer, and the voluntary act and deed of said bank.

Witness my hand and notarial seal at THE FIRST NATIONAL BANK OF CHICAGO,
____, in said County on the day and year last above written.


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.

Exhibit "A"

Page 1 of 7

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.

601-28224
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;

Less and except the following described property:

61-28224

A tract of land comprised of part of Lots 2 and 4, Oak View, an Addition to the City of Omaha, 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 line of Oak View Drive;
thence South 58°24'38" East (platted bearing), along the said Northeasterly R.O.W. line of Oak View Drive, a distance of 95.80 feet;
thence North 53°47'17" East, a distance of 198.51 feet;
thence North 62°06'17" West, a distance of 152.85 feet;
thence North 53°47'17" East, a distance of 427.14 feet to the true point of beginning;
thence North 8°46'00" East, a distance of 154.45 feet;
thence South 81°14'01" East, a distance of 245.85 feet;
thence South 8°46'00" West, a distance of 262.00 feet;
thence North 81°14'01" West, a distance of 245.85 feet;
thence North 8°46'00" East, a distance of 107.55 feet to the true point of beginning.

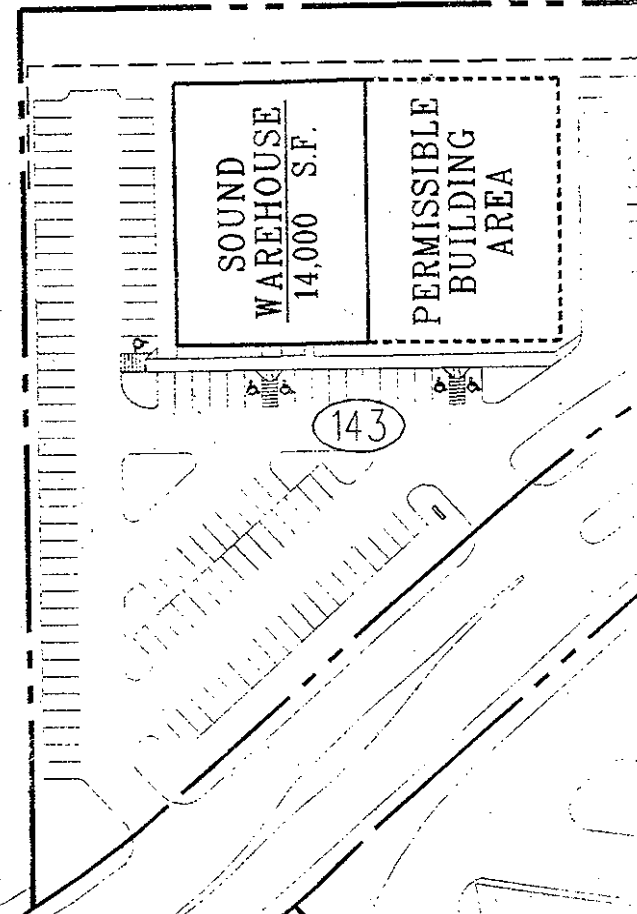
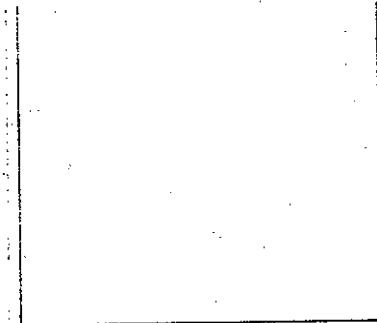
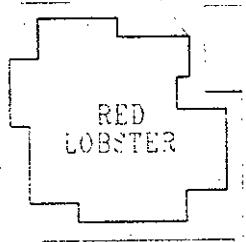
61-28230

The above legal description encompasses the same parcel of land known as Lot 1 of Oak View Replat 3.

RED
LOBSTER

TRAFFIC SIGNAL →

MALL PYLON SIGN
(MAY BE USED IN PART FOR



LL:02
0.66 AC.

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

RING ROAD

3

LL/01
4.31 AC.

RING ROAD

(226)

(12)

ENTRY NO. 6

DILLARD'S PARCEL
DEVELOPERS PARCEL
JCPENNEY PARCEL

PACKAGE PARCEL

TRANSFORMERS & SCREENS
TRUCK DOCK
RETAINING WALL

TRUCK DOCK

UPPER LEVEL SERVICE COURT #3

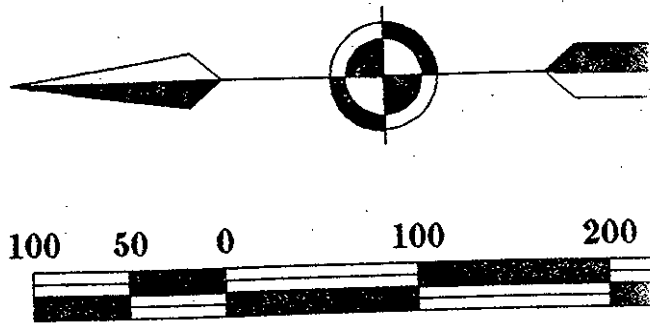
MAINTENANCE

DILLARD BUILDING

2 LEVEL
205,122 S.F.
LL.F.F.E.L. - 113183
CL.F.F.E.L. - 114923

(343)

COVERED MALL

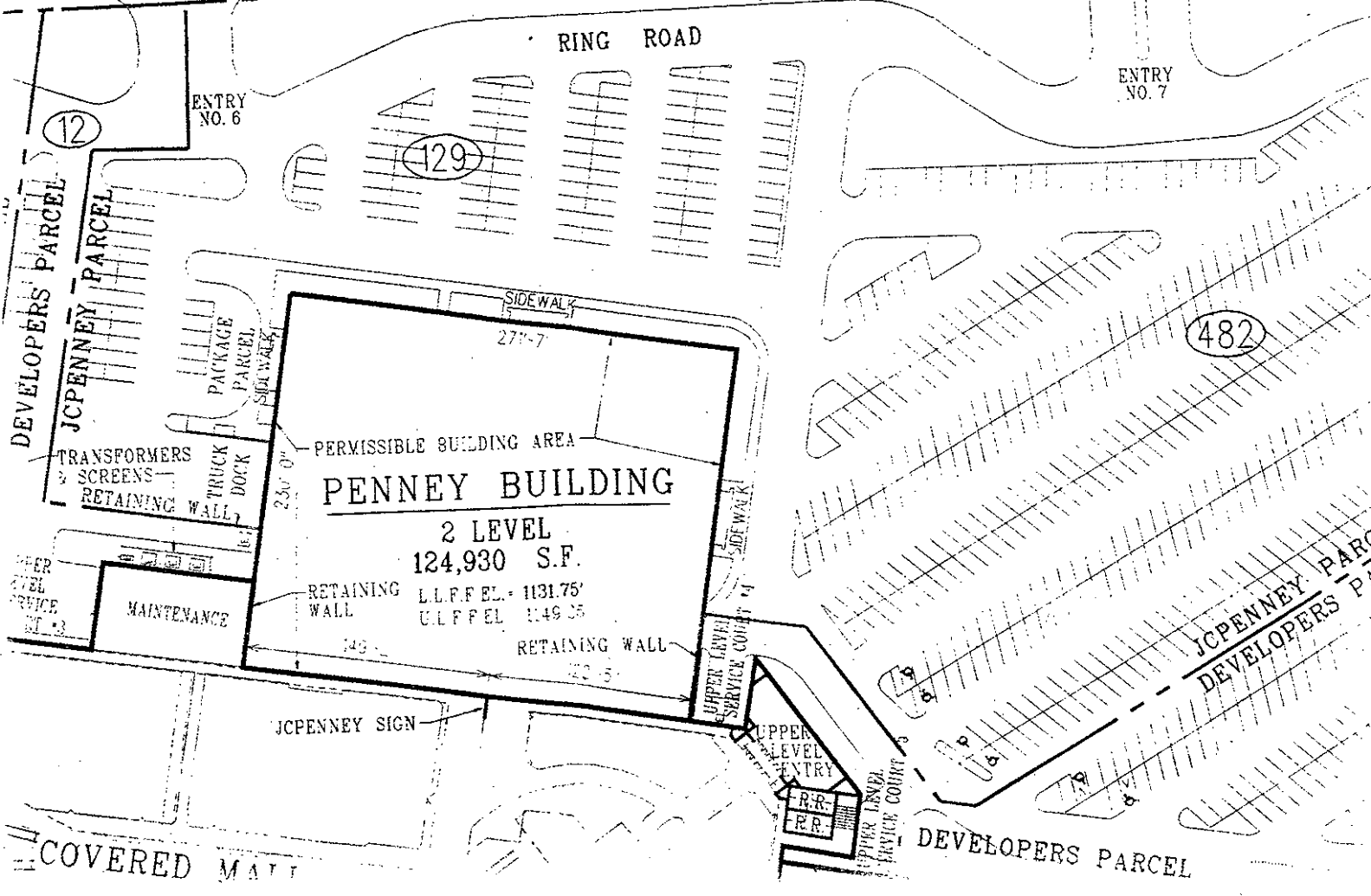


SCALE IN FEET

OWNED BY OTHERS

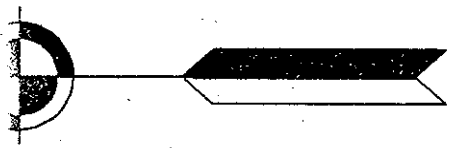
OAK VIEW BLVD.

RING ROAD



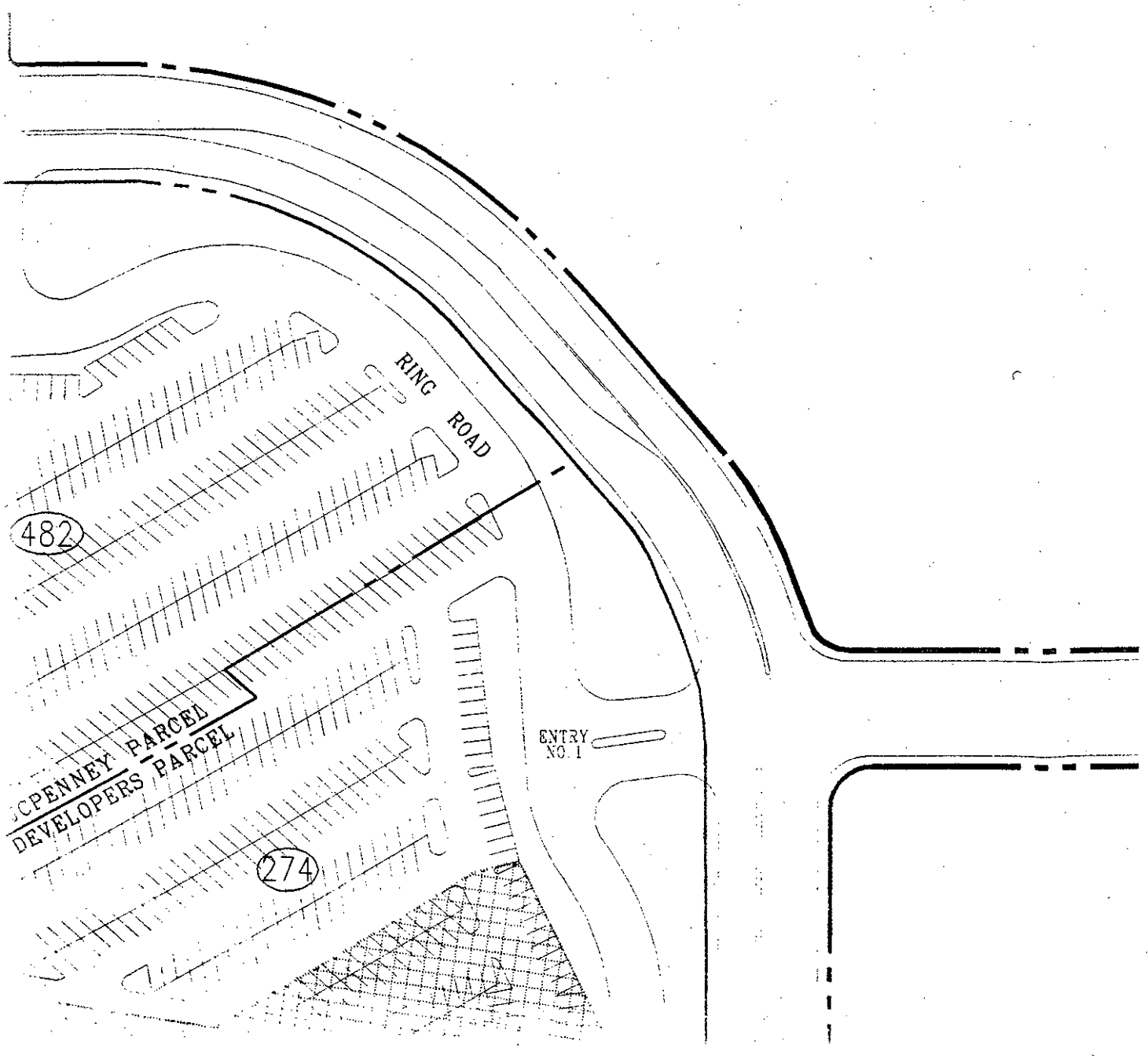
COVERED MALL

DEVELOPERS PARCEL



IN FEET

OTHERS



TRAFFIC SIGNAL

WEST CENTER ROAD

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

OWNED BY OTHERS

OWNED BY OTHERS

TRAFFIC SIGNAL

LL/02
0.66 AC.

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

OWNED BY OTHERS

RING ROAD

343

ENTRY
NO 5

OWNED BY OTHERS

TRAFFIC SIGNAL

RING ROAD

343

DILLARD BUILDING

2 LEVEL
205,122 S.F.
L.L.F.F.E.L. - 1131.83'
U.L.F.F.E.L. - 1149.33'

PERMISSIBLE BUILDING AREA

SERVICE COURT #3

MAINTENANCE

COVERED

DEVELOPER E

L.L.F.F.E.L. - 1131
U.L.F.F.E.L. - 1149

LOWER LEVEL SERVICE COURT #2

463

DILLARD'S PARCEL
DEVELOPERS' PARCEL

508

DEVELOPER PARCEL
YOUNGERS PARCEL

ENTRY NO. 4 RING ROAD

OLIVE GARDEN

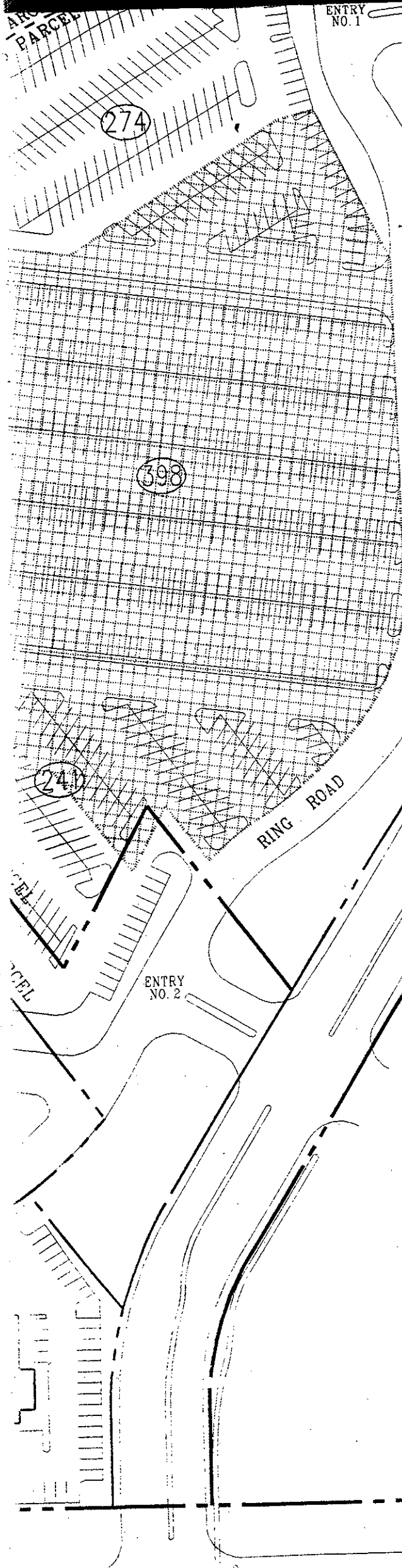
161

ENTRY NO. 3

MALL PYLO

TRAFFIC SIGNAL

144th. S



ENTRY NO. 1

274

398

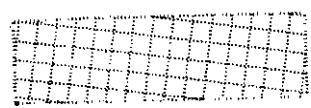
241

RING ROAD

ENTRY NO. 2

OWNED BY OTHERS

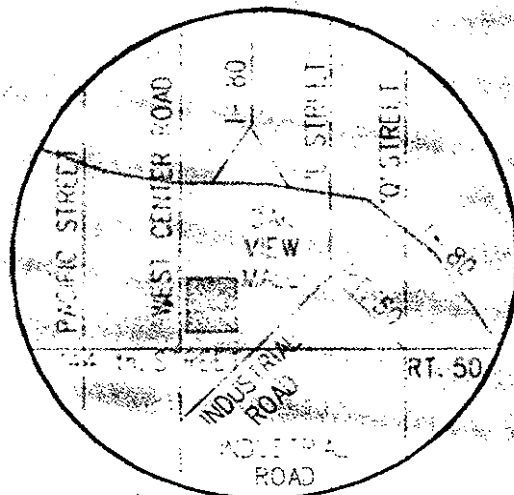
LEGEND



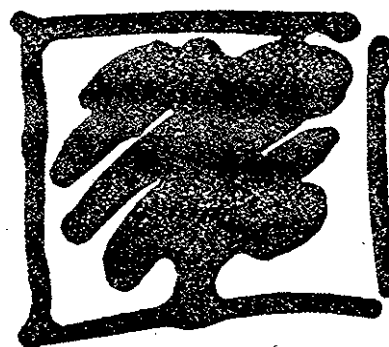
SEARS
(4.4/100)

Henman Retail Properties

180 N. LaSalle Street
Chicago, Illinois 60601
Tel: (312) 855-5700
Fax: (312) 855-2285



LOCATION MAP



OAK VIEW MALL
OMAHA, NEBRASKA

PROJECT MANAGER	S.L.C.	SCALE	1" = 100'
DWN. BY	S.R.H.	CHECKED BY	
DRAWING TITLE			
REA EXHIBIT "F-3"			
JOB NUMBER	94-095	DRAWING NUMBER	EXF3.0
DATE	08-24-95	OF	1 SHEET(S)

PRINTED & ISSUED
SEP 25 1995
SAIN ASSOCIATES

Y OTHERS

1

PROJECT

OWN. BY

DRAWING

RE

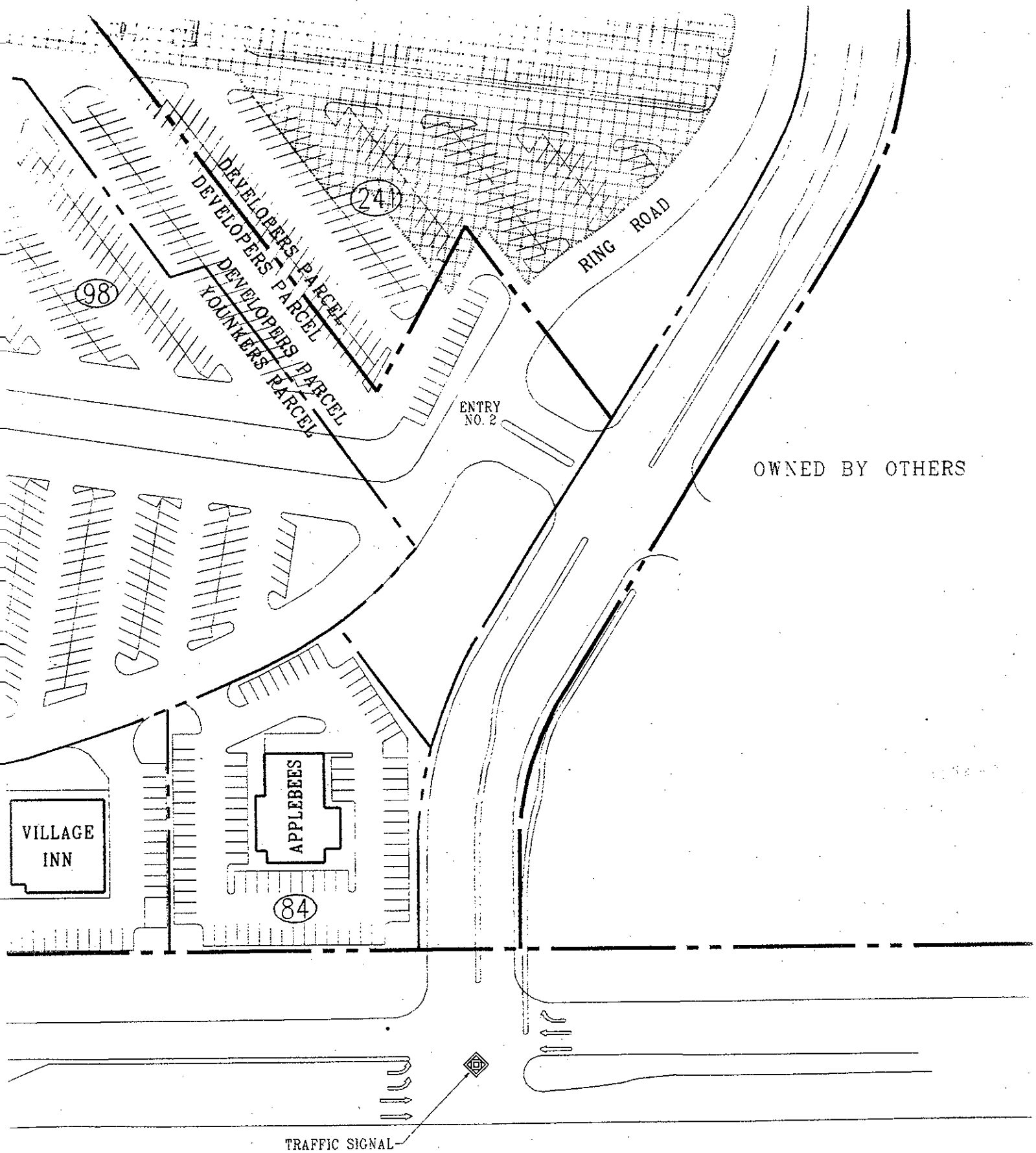
JOB NO.

DATE

PRINTED & ISSUED

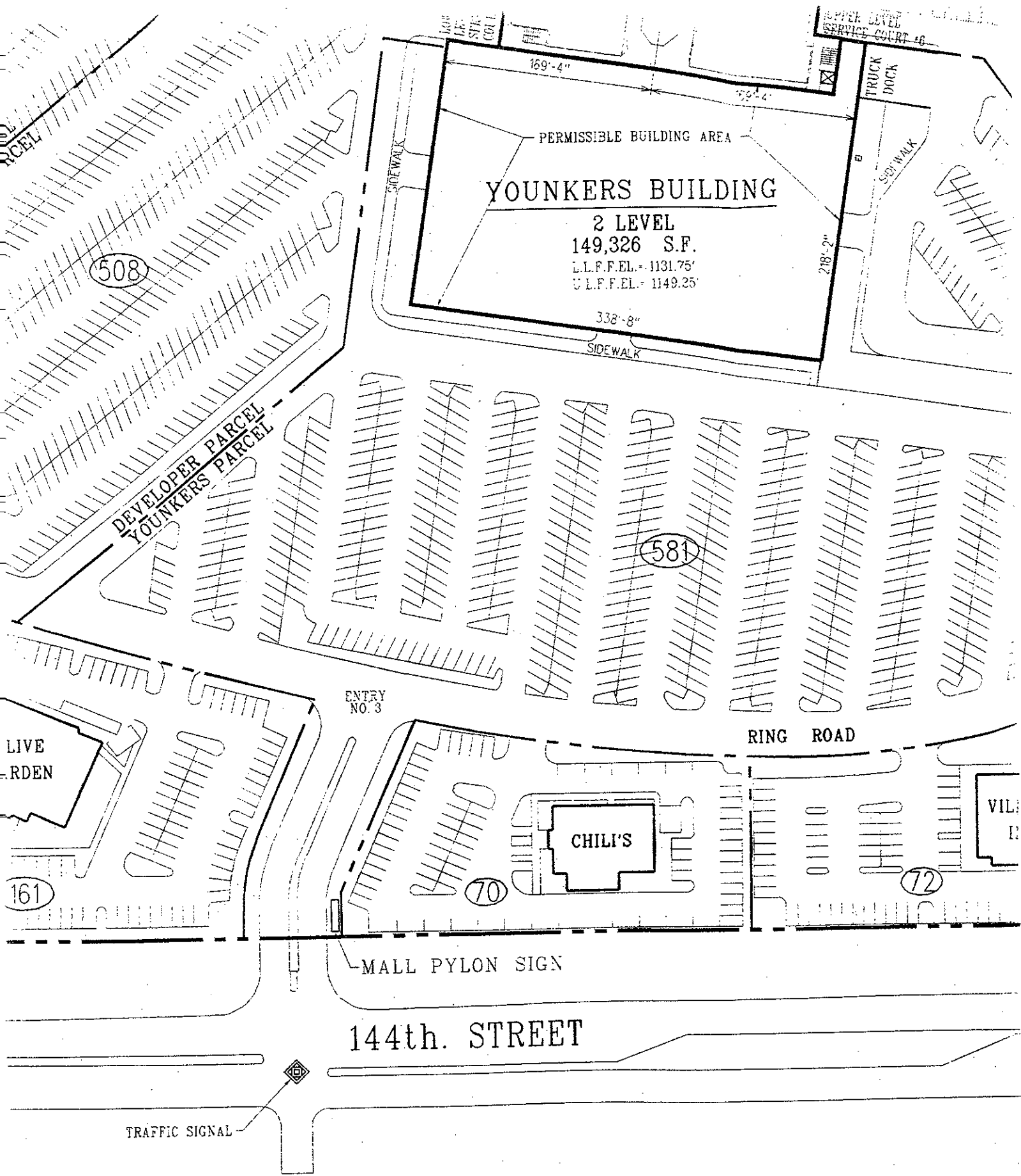
SEP 25 1995

SAIN ASSOCIATES



LAN

TE: AUGUST 24, 1995



THE DEVELOPMENT PLAN

DATE: A

463

DILLARD'S PARCEL
DEVELOPERS' PARCEL

ENTRY
NO. 4 RING ROAD

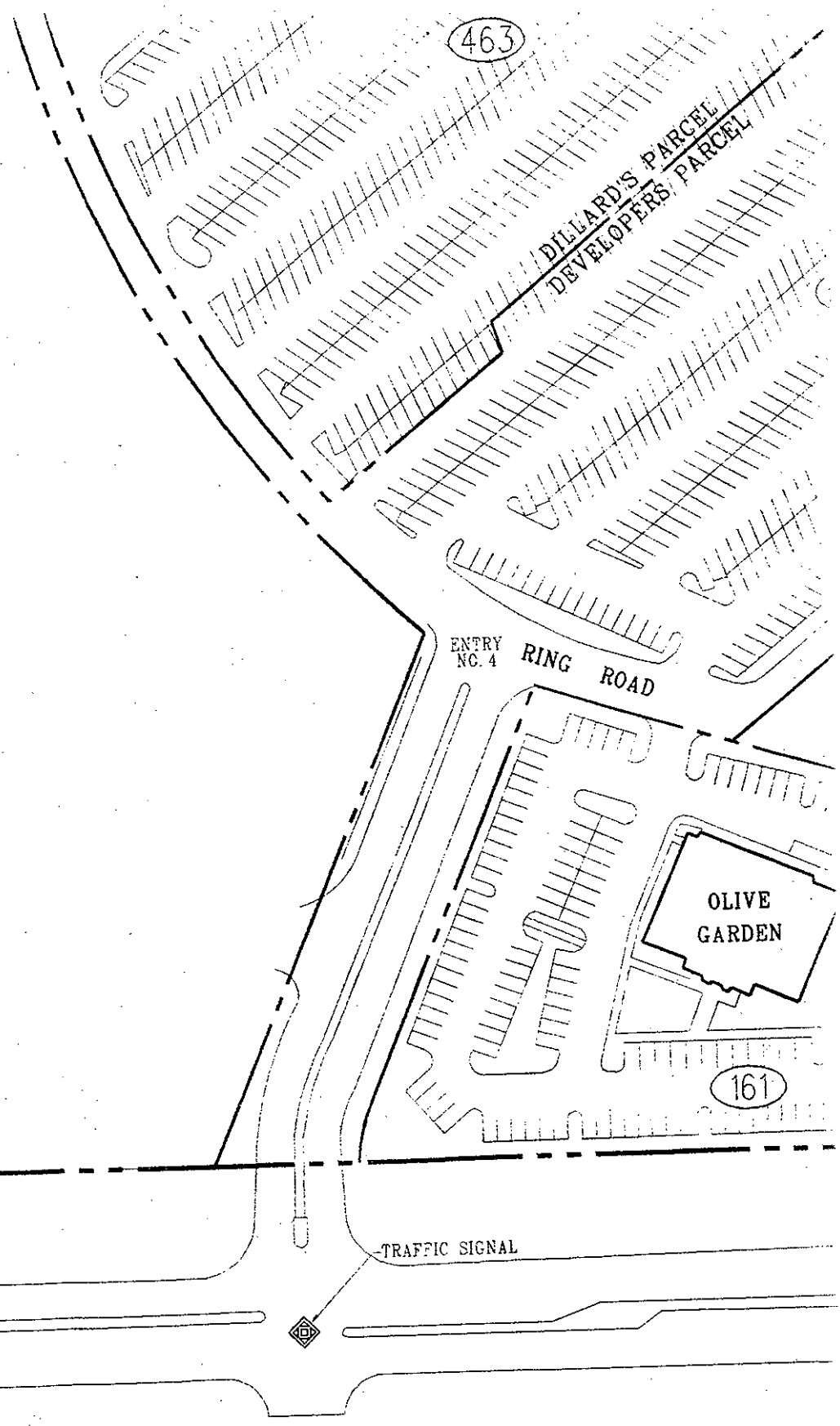
OLIVE
GARDEN

161

TRAFFIC SIGNAL

BY OTHERS

SITE



WEST CENTER ROAD

OWNED BY OTHER

TRAFFIC SIGNAL

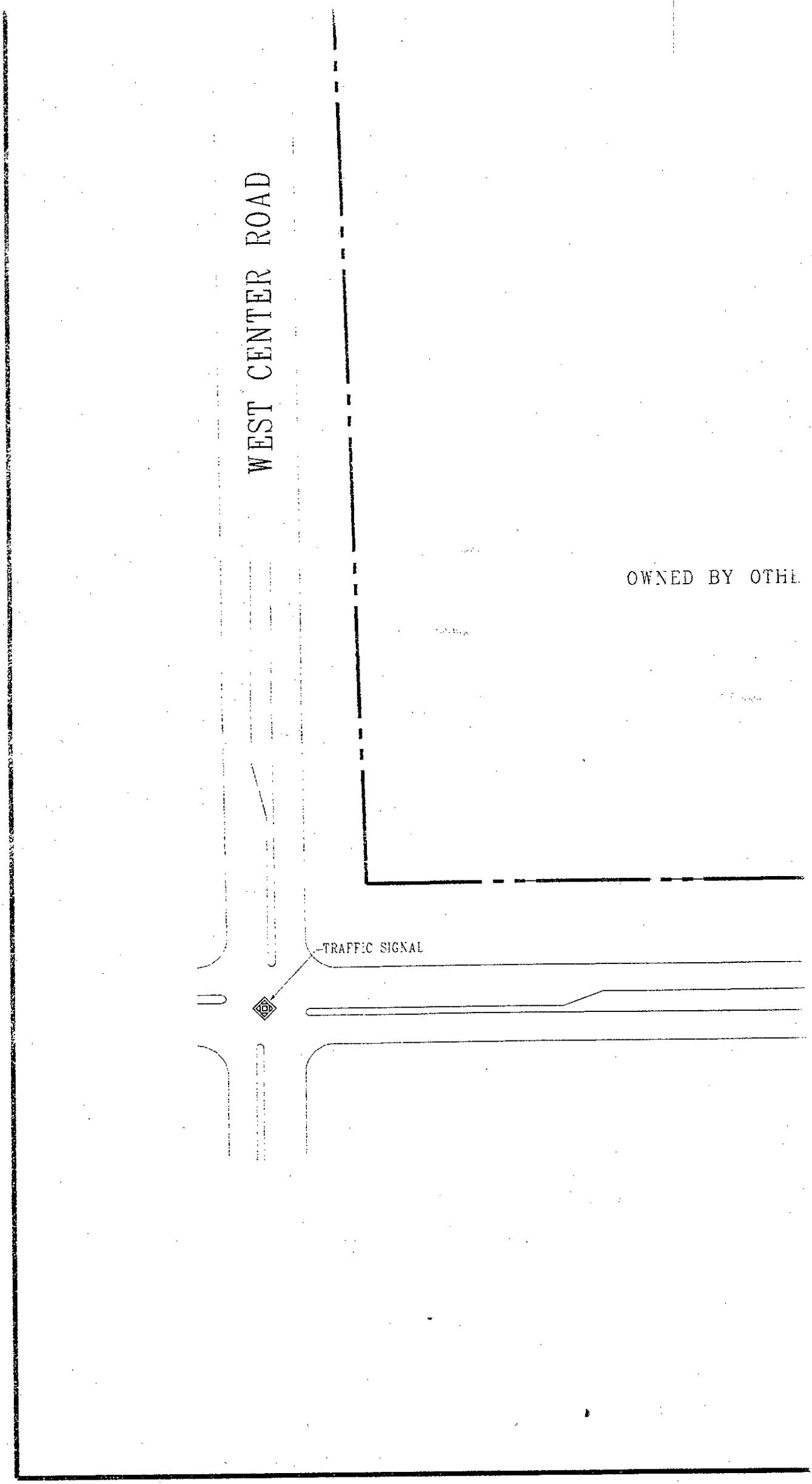


EXHIBIT I

LEGAL DESCRIPTION

A tract of land comprised of part of Lots 2 and 4, Oak View, an Addition to the City of Omaha, 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 line of Oak View Drive;
thence South $58^{\circ}24'38''$ East (platted bearing), along the said Northeasterly R.O.W. line of Oak View Drive, a distance of 95.80 feet;
thence North $53^{\circ}47'17''$ East, a distance of 198.51 feet;
thence North $62^{\circ}06'17''$ West, a distance of 152.85 feet;
thence North $53^{\circ}47'17''$ East, a distance of 427.14 feet to the true point of beginning;
thence North $8^{\circ}46'00''$ East, a distance of 154.45 feet;
thence South $81^{\circ}14'01''$ East, a distance of 245.85 feet;
thence South $8^{\circ}46'00''$ West, a distance of 262.00 feet;
thence North $81^{\circ}14'01''$ West, a distance of 245.85 feet;
thence North $8^{\circ}46'00''$ East, a distance of 107.55 feet to the true point of beginning.

The above legal description encompasses the same parcel of land known as Lot 1 of Oak View Replat 3.