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 BOOK **935** PAGE **28**

AUG 15 2 07 PM '90

GEORGE J. BUSLEWICZ  
 REGISTER OF DEEDS  
 DOUGLAS COUNTY, NE

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT ("Agreement") made and entered into as of the 9th day of August, 1990, by and among CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana limited partnership, (hereinafter referred to as "Grantor") and NEBRASKA NATIONAL BANK, a national banking institution, (hereinafter referred to as "Grantee" );

W I T N E S S E T H:

15072 Misc A

WHEREAS, Grantor is the owner of a certain tract of real estate located in the City of Omaha, Douglas County, Nebraska, and more particularly described and shown in Exhibits "A" and "B", respectively, attached hereto and incorporated herein by reference (such real estate hereinafter referred to as the "Easement Area"), a portion of which tract of real estate was a public street known as Westfield Street, prior to vacation of such street and vesting of fee title to the vacated land in Grantor; and

WHEREAS, Grantee is the owner of certain tracts of real estate located in the City of Omaha, Douglas County, Nebraska, contiguous to the Easement Area and more particularly described as all of Lots 1 and 2 and a portion of Lot 3 of Omaha Industrial Foundation No. 4 Replat I (such real estate hereinafter collectively referred to as the "NNB Parcel"); and

WHEREAS, Grantee desires to continue to use the roadway improvements (such improvements, as they may be replaced or altered, are referred to as the "Access Road") located within the Easement Area, for access to Oak View Drive, at the point where the Easement Area is contiguous to Oak View Drive.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, it is hereby agreed by and among the parties as follows:

1. Grant of Easement.

a. Grantor hereby grants to Grantee, its successors and assigns, a non-exclusive surface easement appurtenant to the NNB Parcel for vehicular traffic (except heavy duty vehicles to the extent such heavy duty vehicles are also excluded from using all other access roads to the Shopping Center Site (as hereinafter defined)) over, upon and across the Access Road located within the Easement Area. It is understood and agreed that the easement granted herein is non-exclusive, and in common with Grantor, its

successors and assigns, and their tenants, subtenants, employees, agents, contractors, customers, patients, clients, invitees concessionaires and licensees of the shopping center which Grantor may build on its real estate ("Shopping Center Site") contiguous to the Easement Area. It is further understood and agreed that the easement granted herein is for the sole purpose of (i) ingress to the NNB Parcel from Oak View Drive, and (ii) egress from the NNB Parcel to Oak View Drive, and that such easement granted herein does not grant to or create in Grantor any rights or interest in any land owned by Grantor other than the Easement Area. Grantee may also allow its employees, agents, contractors, customers, patients, clients, invitees, concessionaires, tenants, subtenants and licensees to use the Access Road within the Easement Area, subject to the terms and conditions of this Easement Agreement.

b. The Grantor hereby reserves the right to grant other easements to utilities or services, and to tenants or owners of portions of the Shopping Center Site, which easements may traverse, intersect, transect or otherwise lie upon, within or beneath the surface of the Easement Area. Any such subsequent easements traversing, intersecting, transecting or otherwise lying upon, within or beneath the surface of the Easement Area, shall not materially interfere with the continuing use of the easement granted hereunder to Grantee.

c. Grantee shall only have access to the Easement Area (1) at the location ("Access Location #1") where its driveway within Lot #1 is presently contiguous to the Easement Area, and (2) at that location ("Access Location #2") to be adjacent to Lot 2, as each such Access Location is shown on Exhibit "C" attached hereto and incorporated herein by reference. In no event may Grantee change the location of Access Location #2, and except as otherwise expressly provided herein, Grantee may not change the location of Access Location #1. Notwithstanding anything to the contrary herein, Grantee may at its sole cost and expense, but subject to Grantor's approval and the other conditions set forth below, change the location of Access Location #1 by moving and locating it between Access Location #1 and the western boundary line of the NNB Parcel. Prior to commencing any construction in connection with such relocation, Grantee shall prepare plans and specifications for such construction, including without limitation, any changes to (y) the intersection of the new location and the Easement Area, and (z) the improvements (including without limitation curbs and gutters) located within the Easement Area, and shall submit such plans and specifications to Grantor for its approval, which approval shall not be unreasonably withheld, denied or delayed. Grantee shall pay for all costs and expenses of such relocation and construction, including without limitation, the cost of altering any improvements located within the Easement Area. In no event will there be a break or cut in the median across from Access Location #1.

d. Notwithstanding anything to the contrary contained herein, Grantor shall have the right to relocate said Easement Area and/or the Access Road within the Easement Area as Grantor shall see fit from time to time in its sole discretion, in connection with Grantor's development, construction and operation of its proposed shopping center. If as a result of any such relocation of the Easement Area or for any other reason, the Easement Area is not contiguous with the outside boundaries of the NNB Parcel at Access Locations #1 and #2, then Grantor shall grant a twenty foot (20') wide easement to Grantee providing access and ingress and egress to and from Access Locations #1 and #2 to the Easement Area, as constructed and relocated, without gaps, gores or spaces, by the most direct route practicable in light of the then existing and then proposed development and improvements of the shopping center. The cost of construction of and maintenance for any roadway or driveway over such easement granted pursuant to the previous sentence, shall be borne by Grantor. The foregoing easement should include the right by Grantee to repair, maintain and replace a roadway or driveway over any such easement subsequently created pursuant to this Section 1(d).

2. Maintenance, Repair and Replacement of Access Road.

Grantor shall have the obligation at its sole cost and expense to repair and maintain the Access Road. If Grantor shall fail to maintain and repair the Access Road, and such failure shall continue for a period of sixty (60) days after Grantor receives notice from Grantee of such failure, then Grantee shall have the right (but not the obligation) to undertake and complete the maintenance and repair which Grantor failed to perform.

Grantor may temporarily close all or a portion of the Easement Area in order to maintain and repair the Access Road, or to replace or alter the Access Road, provided that after completion of such repair, replacement or alteration, Grantee shall continue to have access to the Access Road subject to the terms and conditions of this Agreement, and provided further that during any such repair, replacement or alteration work, and until such work has been completed, Grantee shall have either (i) temporary access to Oak View Drive over some portion of the Access Road which is not then being repaired, replaced or altered, or (ii) temporary access to Oak View Drive over some portion of property other than the Easement Area and owned by Grantor, which other property shall be located and designated by Grantor in Grantor's sole discretion, and which temporary access shall terminate immediately and without further action by either Grantor and Grantee, upon completion of such repair, replacement or alteration work. Grantor shall also have the right to post signs within or adjacent to the Easement Area, for the purpose of notifying any and all persons that the Easement Area is private property and not a public right-of-way, street or highway.

3. Portion of Lot 3.

Grantor hereby waives and relinquishes its rights, if any, to (a) enforce any private restriction for its benefit against construction by Grantee of parking on that portion of Lot 3 owned by Grantee, or (b) object to a request by Grantee for a variance from applicable side yard or buffer yard requirements to the extent such requirements affect the NNB Parcel.

4. Miscellaneous.

a. Nothing contained in this Agreement shall be construed to impose any obligation whatsoever on Grantor to construct and erect a shopping center on the Shopping Center Site. Furthermore, nothing contained in this Agreement shall be construed to create or confer upon Grantee any rights or interests in the Shopping Center Site.

b. Whenever under this Agreement a request is made by Grantor for a modification in the rights or any easement granted by Grantor to Grantee under this Agreement, such modification or consent or approval, as the case may be, shall not be unreasonably withheld, delayed or denied, so long as such modification is done at Grantor's expense and does not materially impair Grantee's use and enjoyment of said rights or any such easement, or otherwise adversely affect Grantee in a material fashion; provided, however, in no event will Grantee be allowed to request any relocation of the Access Locations #1 and #2, except pursuant to the terms and conditions of Section 1(c) hereof. If any construction or permanent lender raises any objection or requests any modification with respect to the terms of the rights or any easement granted by Grantor to Grantee under this Agreement, Grantee agrees that it will consent to any reasonable modification of the terms of such rights or any easements in order to satisfy the requirements or overcome the objections of any such lender, so long as such modification is done at Grantor's expense and does not materially impair Grantee's use and enjoyment of said rights of such easement, or otherwise adversely affect Grantee in a material fashion.

c. Except as otherwise expressly provided herein, no waiver of any default by any party shall be implied from any omission by any other party to take any action in respect of such default if such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and the period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Agreement. The

consent or approval by any party to or of any act or request by any other party requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests.

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

e. This Agreement shall be construed in accordance with the laws of the State of Nebraska.

f. It is mutually covenanted and agreed that this Agreement shall be recorded at the earliest practicable date in the land records of Douglas County, Nebraska, and the expense of such recording shall be borne by Grantor.

g. Any notice, demand, request, consent, approval, designation, or other communication which any party is required or desires to give or make or communicate hereunder shall be in writing, a copy shall be provided for every other party, and the original and all copies shall be given or made or communicated by overnight express mail or courier service, or United States certified or registered, return receipt requested, postage prepaid mail, addressed to the respective parties at the addresses stated below:

To Grantor:                   Center Road Retail Developers Limited  
  Partnership  
  c/o Melvin Simon & Associates, Inc.  
  One Merchants Plaza  
  P.O. Box 7033  
  Indianapolis, Indiana 46207  
  Attn: Vice President - Development

To Grantee:                   Nebraska National Bank  
  2610 South 140th Street  
  Omaha, Nebraska 68144  
  Attn: Mr. Dale Martin, President

subject to the right of any party to designate a different address or additional addressed by notice similarly given.

h. Neither anything in this Agreement contained, nor any acts of the parties, shall be deemed or construed by the parties

or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties.

i. Both Grantor and Grantee shall each, from time to time upon not less than twenty (20) days' notice from the other, execute and deliver to the other a certificate in recordable form stating that this Agreement is unmodified and in full force and effect, or if modified, that this Agreement is in full force and effect, as modified, and stating the modifications; and stating whether or not, to the best of its knowledge, the other is in default in any respect under this Agreement, including, but no limited to, any existing violation of any of the conditions established by Paragraph 3 hereof, and, if in default, specifying such default.

j. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties and any person claiming by, through or under any of the respective parties or their respective successor or assigns.

k. Time is of the essence with respect to the performance of each of the covenants and agreement contained in this Agreement.

l. Wherever used herein, the singular shall include the plural, the plural shall include the singular and the use of any genera shall include all other genders.

[End of Page 6]  
[Next Page is Page 7]

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

CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana limited partnership

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

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

BY: [Signature]  
ITS: Vice President

BY: KV-CENTER ASSOCIATES, a Nebraska general partnership, Partner

BY: KVI, LTD., a Nebraska corporation, General Partner

BY: [Signature]  
George W. Venteicher, President

BY: OLD MILL ASSOCIATES, a Nebraska general partnership, Partner

BY: [Signature]  
George W. Venteicher, Partner

BY: [Signature]  
Frank R. Krejci, Partner

NEBRASKA NATIONAL BANK, a national banking institution

ATTEST: [Signature]

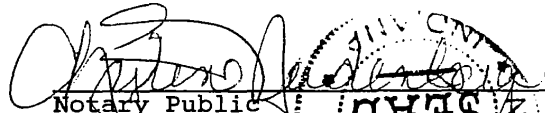
BY: [Signature]



STATE OF INDIANA )  
 )  
 ) SS:  
COUNTY OF MARION )

On this 9<sup>th</sup> day of August, 1990, before the undersigned, a Notary Public in and for said County, personally came R. L. FOXWORTHY, VICE President of CS Retail Developers, Inc., an Indiana corporation, general partner of Center-Simon Retail Developers Limited Partnership, an Indiana limited partnership, general partner of Center Road Retail Developers Limited Partnership, an Indiana limited partnership, personally known to be a VICE PRESIDENT and identical person whose name is affixed to the above Easement Agreement, and he acknowledged the execution thereof to be his voluntary act and deed as such VICE PRESIDENT, and the voluntary act and deed of said corporation and each of said limited partnerships.

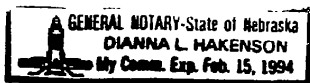
Witness my hand and notarial seal at SUDAS IN, in said County, on the day and year last above written.


  
Notary Public  
CHRISTINE NEIDENBERGER, Notary Public  
County of Residence: Marion  
My Commission Expires March 2, 1993

STATE OF NEBRASKA )  
 )  
 ) SS:  
COUNTY OF DOUGLAS )

On this 13<sup>th</sup> day of August, 1990, before the undersigned, a Notary Public in and for said County, personally came George W. Venteicher, President of KVI, LTD., a Nebraska corporation, partner of KV-Center Associates, a Nebraska general partnership, general partner of Center Road Retail Developers Limited Partnership, an Indiana limited partnership, personally known to be the President and identical person whose name is affixed to the above Easement Agreement, and he acknowledged the execution thereof to be his voluntary act and deed as such President and the voluntary act and deed of said corporation and each of said partnerships.

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

  
GENERAL NOTARY-State of Nebraska  
DIANNA L. HAKENSON  
My Comm. Exp. Feb. 15, 1994

  
Notary Public

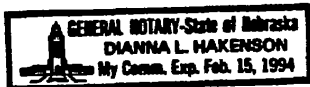
STATE OF NEBRASKA )  
 )  
COUNTY OF DOUGLAS )

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SS:

On this 13<sup>th</sup> day of August, 1990, before the undersigned, a Notary Public in and for said County, personally came George W. Venteicher, partner of Old Mill Associates, a Nebraska general partnership, partner of KV-Center Associates, a Nebraska general partnership, general partner of Center Road Retail Developers Limited Partnership, an Indiana limited partnership, personally known to be a partner and identical person whose name is affixed to the above Easement Agreement, and he acknowledged the execution thereof to be his voluntary act and deed as such partner and the voluntary act and deed of said corporation and each of said each of said partnerships.

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



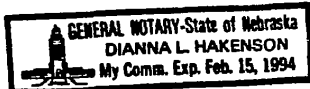
Dianna L. Hakenson  
Notary Public

STATE OF NEBRASKA )  
 )  
COUNTY OF DOUGLAS )

SS:

On this 13<sup>th</sup> day of August, 1990, before the undersigned, a Notary Public in and for said County, personally came Frank R. Krejci, partner of Old Mill Associates, a Nebraska general partnership, partner of KV-Center Associates, a Nebraska general partnership, general partner of Center Road Retail Developers Limited Partnership, an Indiana limited partnership, personally known to be a partner and identical person whose name is affixed to the above Easement Agreement, and he acknowledged the execution thereof to be his voluntary act and deed as such partner, and the voluntary act and deed of said corporation and each of said partnerships.

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



Dianna L. Hakenson  
Notary Public

STATE OF NEBRASKA )  
 )  
COUNTY OF DOUGLAS ) SS:

On this 13 day of August, 1990, before the undersigned, a Notary Public in and for said County, personally came H. DALE MARTIN, PRESIDENT of NEBRASKA NATIONAL BANK, a national banking institution, personally known to be a PRESIDENT and identical person whose name is affixed to the above Easement Agreement and he acknowledged the execution thereof to be his voluntary act and deed as such PRESIDENT, and the voluntary act and deed said banking institution.

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



Diane E. Tank  
Notary Public

LEGAL DESCRIPTION

A tract of land being part of Lot 7 together with a tract of land being the westerly 248.11 feet of the easterly 257.62 feet of the vacated right-of-way (R.O.W.) of Westfield Street abutting Lots 1, 2, & 3, and said Lot 7, Omaha Industrial Foundation No. 4 Replat 1 a subdivision platted, recorded and located in the Northwest Quarter (NW1/4) of Section 36, Township 15 North, Range 11 East, Douglas County, Nebraska (said tract of land also being part of Lot 5, Oak View, a subdivision located in the West one half (W1/2) of Section 36, Township 15 North, Range 11 East on file at the City of Omaha, Douglas County, Nebraska). Said tract of land is more particularly described as follows:

Beginning at the southwest corner of Lot 2, said Omaha Industrial Foundation No. 4 Replat 1, thence N56°45'17"E along the southerly line of said Lot 2, a distance of 210.11 feet to a point, said point also lying on the westerly R.O.W. of Oak View Drive as shown on the plat of said Oak View subdivision; thence southeasterly on a curve to the left along said R.O.W. of Oak View Drive, said curve having a radius of 650.76 feet, a chord of 75.58 feet bearing S26°08'59"E, an arc length of 75.62 feet to a point; thence S56°45'17"W along a line parallel to and 75 feet south of said southerly line of Lot 2, said line also being the northerly line of Lot 14 of said Oak View subdivision, a distance of 238.77 feet to a point; thence N33°14'43"W, a distance of 75.00 feet to a point on the southerly line of Lot 3, said Omaha Industrial Foundation No. 4 Replat 1; thence N56°45'17"E along said southerly line of Lots 1, 2 and 3 of said Omaha Industrial Foundation No. 4 Replat 1, a distance of 38.00 feet to the Point of Beginning. Said tract of land containing 0.42 acres more or less.



SCALE: 1" = 50'

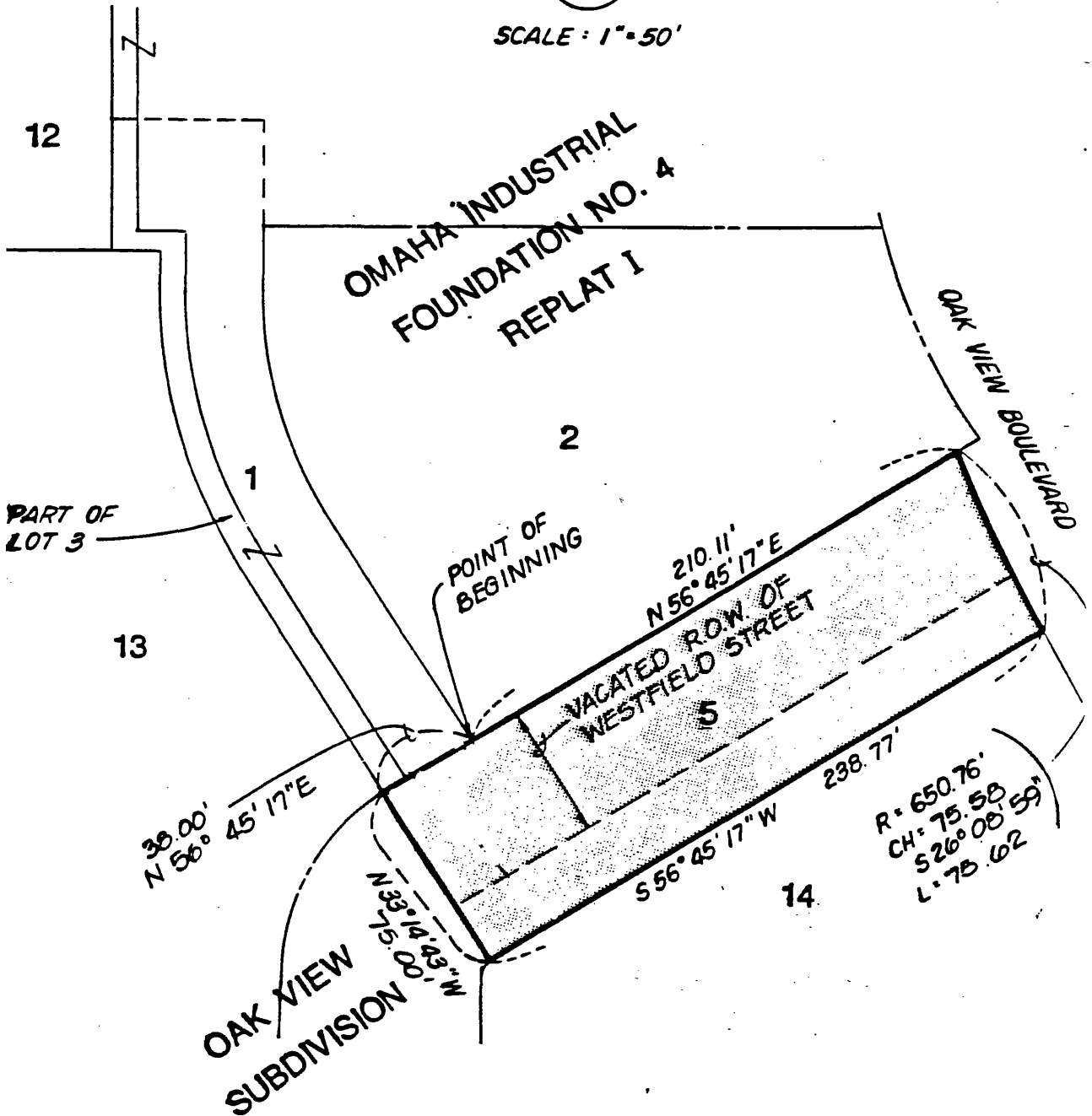
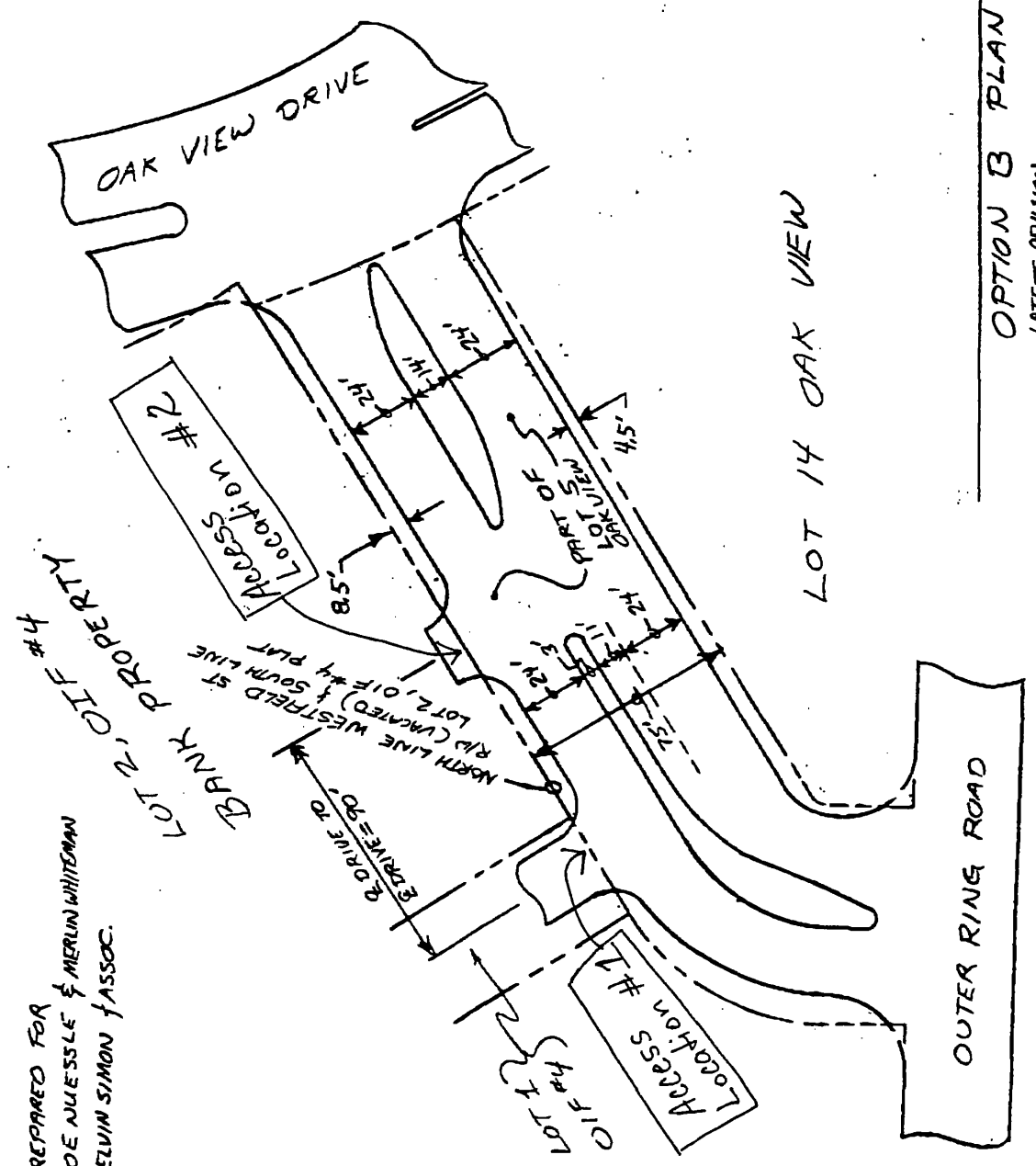


Exhibit "B"



OPTION B PLAN  
 LATEST REVISION DEM.  
 8-9-90  
 KIRKHAM, MICHAEL & ASSOC.

PREPARED FOR  
 JOE ALLESLE & MERLIN WHITEMAN  
 MELVIN SIMON & ASSOC.