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BOOK 959 PAGE 286

OAK VIEW MALL
 DOUGLAS COUNTY, NEBRASKA
 RECIPROCAL EASEMENT AND OPERATING AGREEMENT
 BY AND BETWEEN

CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP,
 an Indiana limited partnership,
 CONSTRUCTION DEVELOPERS, INCORPORATED,
 an Arkansas corporation, and
 DILLARD DEPARTMENT STORES, INC.,
 a Delaware corporation

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

THIS RECIPROCAL EASEMENT AND OPERATING AGREEMENT (hereinafter called "Operating Agreement"), made as of the 27th day of September, 1990, among CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana limited partnership ("Developer"), having an address at 115 West Washington Street, P. O. Box 7033, Indianapolis, Indiana 46207, and CONSTRUCTION DEVELOPERS, INCORPORATED an Arkansas corporation ("Condev"), having its principal office at 900 West Capitol Avenue, Little Rock, Arkansas 72201, and DILLARD DEPARTMENT STORES, INC., a Delaware corporation ("DDSI"), having its principal office at 900 West Capitol Avenue, Little Rock, Arkansas 72201 (Condev and DDSI being hereinafter referred to collectively and jointly and severally as "Dillard", provided, however, that after completion of construction of the Dillard Improvements on the Dillard Tract as hereinafter defined and provided, the reference to "Dillard" in Part Two, "Operation Article", of this Operating Agreement shall mean and include only DDSI except when Condev is in actual possession of the Dillard Tract, during which time it shall mean both DDSI and Condev as aforesaid, but provided further that both DDSI and Condev shall at all times be and remain jointly and severally bound, liable and obligated, except as provided above, upon all of their covenants and obligations hereunder and for the performance thereof).

WITNESSETH:

WHEREAS, Developer owns a certain tract of land located in Douglas County, Nebraska, a description of said land being set forth in Exhibit A" attached hereto and made a part hereof (the "Developer Tract") upon which it shall erect and open and operate a regional shopping center at the location shown on Exhibit "E"; and

WHEREAS, concurrently with the execution hereof Condev has acquired from Developer, and owns in fee simple, a certain tract of land described in Exhibit "B" attached hereto and made a part hereof (the "Dillard Tract") which is contiguous to the Developer Tract, which Condev has leased to DDSI and upon which DDSI intends to erect and operate a Dillard department store at the location shown on Exhibit "E"; and

WHEREAS, Developer intends to lease to Younkens, Inc. ("Younkens") a certain two (2) level building, and a loading dock attached thereto, which building and loading dock is to contain approximately 150,000 square feet of Floor Area, and Younkens intends to erect such building, and to operate therein, a Younkens department store in the location on the Developer Tract shown on Exhibit "E" and on substantially the same terms and conditions as are herein provided with respect to Dillard's operation of its department store; and

WHEREAS, the Parties desire to develop, improve, use and operate the Developer Tract and the Dillard Tract (together with the Younkens department store which will be erected and operated by Younkens as aforesaid) as an integrated regional shopping center, as more particularly shown on the Plot Plan attached hereto as Exhibit "E" and made a part hereof and the Plot Plan notes set forth on Exhibit "E-1" attached hereto and made a part hereof; and

WHEREAS, Dillard shall erect and operate a Dillard department store on the Dillard Tract, as part of such shopping center, located and situated as shown on Exhibit "E"; and

WHEREAS, it is the intent and desire (but not the obligation) of Developer hereafter to convey or lease portions of the Developer Tract to Sears, Roebuck and Co., and J.C. Penney Company, Inc. for the construction and operation of department stores in the Shopping Center, on substantially the same terms and conditions as are herein provided with respect to Dillard's construction and operation and at substantially the locations shown on Exhibit "E" (hereinafter being referred to collectively as the "Future Department Stores" and individually as a "Future Department Store", provided, however, the Developer Tract will not include the Future Department Store Tracts after such time as they are leased or sold to a Future Department Store); and

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

WHEREAS, the Parties desire to enter into this Agreement (the "Operating Agreement") to provide for their respective rights and obligations in connection with the proposed development, improvement, use and operation of the Developer Tract and the Dillard Tract as such an integrated regional shopping center (which Tracts are hereinafter collectively referred to as the "Shopping Center Tract" and are collectively described by metes and bounds in Exhibit "F" attached hereto and made a part hereof), and for the development, improvement, use and operation of the Reserve Tracts, and to grant and exchange certain reciprocal easements between and among their respective Tracts.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Developer and Dillard hereby covenant and agree as follows:

DEFINITIONS

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

1. "Affiliate" - any party, person, firm or corporation which controls, or is controlled by, such party, or is controlled by the same person, firm or corporation which then controls such party, and any person, firm or corporation which is a member with such party in the relationship of joint venture, partnership or other form of business association concerning the subject matter involved. "Control" for the purpose of this Agreement means the legal or beneficial ownership of fifty percent (50%) or more of the voting securities of the party controlled. In no event shall Developer or Dillard be deemed to be an affiliate of the other.
2. "Agreed Interest Rate" - the rate of interest which is one percent (1%) over the rate of interest averaged on a monthly basis, charged from time to time for commercial loans to most-preferred customers by The Chase Manhattan Bank, N.A., computed separately for each month during which the

obligation, or any part thereof, upon which such interest is charged remains unpaid hereunder.

3. "Building" - all Improvements to and upon the Shopping Center Tract, or any other component Tract thereof, excluding underground utility installations, the Common Area, the Covered Mall, the Outdoor Selling Area, if any, and the landscaping, if any, between the exterior perimeter walls of Buildings and the Building Perimeter Sidewalk.

4. "Building Perimeter Sidewalk" - sidewalks and curbs adjoining either: (1) the exterior perimeter walls of the Buildings situated upon the Shopping Center Tract, or (2) landscaping adjacent to the exterior perimeter walls of said Buildings, all as shown on the Plot Plan, Exhibit "E".

5. "Common Area(s)" - certain improved portions of the Shopping Center Tract which are intended for the general use, enjoyment, convenience and benefit of all Parties hereto and all Occupants, and their respective Permittees, but not any Floor Area intended for the exclusive use and occupancy of an occupant and its Permittees, including, but not limited to:

- (a) parking areas and individual parking spaces for motor vehicles;
- (b) roadways (including, without limitation, the ring road and lateral access drives shown dot shaded on Exhibit "E" and hereinafter referred to collectively as the "Ring Road"), driveways, aisles, islands, private streets, entrances and exits to and from public roadways and streets, to provide vehicular access and ingress and egress to and from Parking Areas;
- (c) sidewalks, walkways and stairways to provide pedestrian access to and within the Shopping Center;
- (d) ramps, truckways, loading areas, delivery passages, truck tunnel and service corridors connecting therewith, except as located within any Building belonging to any Department Store which is a Party hereto;
- (e) landscaped and exterior planted areas, excluding landscaped and exterior planted areas, if any, between the exterior perimeter walls of buildings and the Building Perimeter Sidewalks;
- (f) curbs, lighting standards, paving, traffic and directional signs and traffic stripings and markings, as located upon the Shopping Center Tract;
- (g) all Common Utility Facilities serving, or used by, more than one Party hereto;
- (h) the Covered Mall (except as otherwise provided herein) and all outside courts and courtyards; and
- (i) public stairways, escalators, bus stops and public service corridors;

all as shown on the Plot Plan, attached hereto as Exhibit "E", but excluding:

- (i) any portions of the Shopping Center Tract which may, from time to time, be occupied by any duly dedicated public street or highway; and
- (ii) such portions of the Shopping Center Tract as may be, from time to time, exclusively appropriated for

use as permanent or temporary Outdoor Selling Area, if any, as indicated on Exhibit "E".

(iii) such portions of the Shopping Center as shall comprise the areas and spaces in the Developer Building and in any Building belonging to any Department Store; and

(iv) kiosks and pushcarts permitted by Paragraphs 14.3 and 14.4 respectively.

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

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

8. "Department Store(s)" - Dillard, Younkers, the Future Department Stores and any other occupant occupying and operating more than 70,000 square feet of Gross Leasable Area, containing a number of departments or divisions for the sale of goods and merchandise of various kinds, and any other store operated by a recognized national, regional or local department store chain or operator.

9. "Developer" - the owner or owners collectively from time to time of fee simple title to the Developer Tract.

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

- (a) basements and other similar subterranean areas;
- (b) balconies and mezzanines, other than additional space created by fixture installations designed to increase the usability of space exclusively for stock or storage purposes;

- (d) elevators, dumb waiters, stairs, escalators and conveyors;
- (e) Outdoor Selling Area, if any, to the extent that it is enclosed and heated or air conditioned; and
- (f) all other similar spaces located within the exterior facade of the exterior perimeter walls;

but excluding such space within or constituting:

- (i) the Covered Mall;
- (ii) electrical and/or mechanical equipment rooms and/or penthouses used to serve any Occupant;
- (iii) transformer room or vault;
- (iv) junk tire or rubbish storage spaces;
- (v) trash and rubbish storage and/or bailing rooms;
- (vi) paved or concrete aprons (whether or not covered by canopies) and gasoline pump islands located at any tire, battery and accessory ("TBA") automotive service station;
- (vii) sheds used exclusively for Common Area maintenance purposes;
- (viii) truck docks, truck tunnels and enclosed docks, except to extent permitted in "leased premises" or "demised premises" under a lease agreement wherein Developer is "landlord";
- (ix) decked storage areas above floor level or storage areas located beneath truck or loading docks;
- (x) public service corridors required by safety fire codes or similar public laws; and
- (xi) each level of any atrium where there is no floor surface.

and the said Floor Area, including future additions thereto, of each Party hereto, shall be certified by said Party's architect to the other Party upon request.

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

- (a) in any public meeting hall or auditorium that is neither leased by an Occupant nor owned by any Department Store, not to exceed 3,000 square feet;
- (b) in any public restroom that is neither leased by an Occupant nor owned by any Department Store;
- (c) in Shopping Center management offices and storage and in Merchants Association or promotional offices, all of which is not to exceed a total of 7,500 square feet;

and the said Gross Leasable Area, including future additions thereto, of each Party hereto shall be certified by said Party's architect to the other Party upon its request.

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

13. "Occupant" - any person or legal entity, including any Party hereto, who is legally entitled to the exclusive use and occupancy of any Gross Leasable Area under the rights contained in a deed or a written lease agreement.

14. "Opening Date" - as defined and provided in Paragraph 2.7 of this Operating Agreement.

15. "Outdoor Selling Area" - the land, being a portion of the Shopping Center Tract and any improvements situated thereon, that may be, from time to time, exclusively appropriated for permanent or temporary outdoor selling, as designated on Exhibit "E", or as agreed upon later by consent of all the Parties hereto; said Outdoor Selling Area being exclusive of the Common Area, the Covered Mall, and the Buildings and the landscaping, if any, between the exterior perimeter wall of Buildings and the Building Perimeter Sidewalk situated upon the Shopping Center Tract; and any areas within the Common Area or the Parking Area temporarily used by any Occupant for the "truck load" and "sidewalk" sales under rights granted in the provisions of a lease agreement wherein Developer is "landlord".

16. "Party" - each person and business entity now or hereafter entering into and executing this Operating Agreement, being Developer and Dillard initially, and any successor permitted under the terms and provisions of this Operating Agreement, and referred to collectively as "Parties". In the event, under any circumstances, a Tract may be Owned by more than one person or entity in undivided ownership interests, such persons and entities nevertheless shall constitute only a single Party. Of all such persons and entities constituting only a single Party, those persons and entities owning at least seventy percent (70%) of the undivided ownership interest in the Tract of such Party, shall:

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

In the absence of such written designation, the acts of the Party whose Tract came to be held in undivided ownership interests (whether or not such Party retains any interest in the Tract in question) shall be binding upon all persons having an interest in said Tract in question, until such time as written notice of such designation is served upon each of the other Parties as aforesaid.

17. "Permissible Building Area" - the land area within the Shopping Center or any component Tract thereof upon which a

designated Party may construct either its initial Building, or any future expansion thereof, or its future Building, as provided in this Operating Agreement, and as shown on the Plot Plan, Exhibit "E". Unless otherwise expressly shown and indicated on the Plot Plan, the Permissible Building Area on each Party's Tract is the portion of each Party's Tract upon which such Party's Building is shown on the Plot Plan. The Permissible Building Area on each Reserve Tract shall consist of the entire Reserve Tract, subject to the provisions of Paragraph 4.3 hereof.

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

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

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

21. "Small Store Floor Area" - all Gross Leasable Area in the Developer Building, other than Floor Area owned by, leased to or intended for occupancy by a Department Store, fronting on the Covered Mall and built for and devoted to the purpose of selling goods and/or services to the public at retail as customarily found in such a shopping center, including, but not limited to, banks, insurance, savings and loan, personal loan financial services and post office operations, service operations such as beauty salon, barber shop, travel agency, professional offices, restaurants and motion picture theaters.

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

23. "Total Development Tract" - the Shopping Center Tract and the Reserve Tracts, which Total Development Tract is described in Exhibit "C" attached hereto and made a part hereof.

P A R T O N E

Construction

Article 1 - Cooperation

1.1 Recognizing that the performance of Site Preparation Work and the construction of Improvements by any one Party may or will reasonably be expected to affect performance of Site Preparation Work and the construction of Improvements by each other Party, each Party shall cause its architect, contractors and others engaged in such work or construction to cooperate with each other to the

extent reasonably possible and to schedule and execute such work and construction in such manner and at such times as will minimize the interruption thereof, or obstruction to, the respective work and construction of each Party.

1.2 Each Party shall take all necessary safety measures, including, but not by way of limitation, the erection of barricades (which shall be kept free of offensive advertising matters) as shall be reasonably required to protect persons performing such work or construction, as well as each Party and all Permittees, from injury or damage caused by, or resulting from, any work or construction performed by or on behalf of each Party.

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

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

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

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

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

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

subject to the right of each Party to designate a different representative by notice given pursuant to "General Article 33 Notices". Such approvals shall not be unreasonably denied, withheld or delayed by any Party in any case.

1.6 Notwithstanding any other provision in this Operating Agreement, Developer shall be responsible for the performance, supervision and management of the Site Work and construction thereof, upon and about the Shopping Center Tract (even though a portion of said work is being paid for by other Occupants or by Dillard pursuant to a Supplemental Agreement), all as hereinafter more particularly provided in Paragraph 3.2 hereof, which work and construction shall be performed under a contract or contracts by and between the Site Work and Common Area contractor or contractors and Developer. Each party shall have the right, during the time such work or construction is performed, to inspect and approve such

work or construction and to review the cost thereof allocable to its Tract. Developer shall make all payments of money due and payable to said contractors from time to time, it being understood and agreed that Dillard shall reimburse Developer promptly for certain costs of such work if and only to the extent provided in the Supplemental Agreement of even date herewith.

William Graves, Architects, Inc., Dallas, Texas, shall serve as Design Development Architects, Kirkham, Michael, and Associates, Omaha, Nebraska shall serve as Project Engineer and Nebraska Testing, Omaha, Nebraska shall serve as Soils Engineer. The fees, charges and expense of the Project Engineer, insofar as they relate to the Site Work for the entire Shopping Center Tract and each component Tract thereof, shall be borne and paid by Developer. The Project Engineer's duties shall include, but not be limited to, the following: (1) preparation of all Site Work Plans and Specifications, which shall include, as to the Dillard Tract only, Dillard's pad criteria which have been provided to the Project Engineer, (2) responsibility for inspection of Site Work as to compliance with Plans and Specifications approved by the Parties, (3) coordination of all work with various utilities and governmental agencies, (4) coordination of all work with the various Parties to this Operating Agreement, (5) issuance of minutes of various Site Work meetings through the Developer to all Parties, (6) review all testing reports for compliance with Plans and Specifications and advise all Parties in the event any installation is not made in accordance with the approved Plans and Specifications, and (7) provide each Party with a complete set of as-built Plans and Specifications for the Developer Buildings and Improvements and complete survey of all utility installations and easements.

Construction

Article 2 - Dillard Construction

2.1 Dillard shall commence and complete, at its sole cost and expense, construction of a Dillard department store building (the "Dillard Building") and Building Perimeter Sidewalk on the Dillard Tract, all as more particularly shown on the Plot Plan, Exhibit "E", and in accordance with Plans prepared by Dillard and submitted to Developer pursuant to Section 2.3 below. The Dillard Building shall consist of two (2) levels above ground, which do not exceed fifty feet (50') in height and which at all times shall contain approximately 206,000 square feet of Floor Area, located entirely within the lines of the building area marked "Dillard" on the Plot Plan, Exhibit "E". The Dillard Building shall at all times have a main entrance abutting, opening and fronting on the Covered Mall, together with such walkways, if any, shown on the Plans required to connect such entrance to the Covered Mall.

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

2.3 All Plans for the Dillard Building shall be prepared by Dillard's architects and engineers. Upon completion of the Plans for the Dillard Building, and prior to commencement of construction thereof, copies of said Plans shall be submitted to Developer for informational purposes. Dillard represents and warrants that it

will not materially alter or deviate from said Plans after submission thereof to Developer, and that the exterior design and appearance of the Dillard 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 Dillard shall cause the Dillard Building to be designed and erected in accordance with such criteria. The Plans for the Dillard Building shall strictly conform to the Plot Plan, Exhibit "E", attached hereto, and the Plot Plan Notes, Exhibit "E-1" attached hereto.

2.4 Dillard represents and warrants that, in connection with the erection of the Dillard Building and the purchase and installation of the Dillard Building equipment, Dillard 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 Dillard deems necessary or advisable and all at Dillard's own cost and expense, it being the intention of the parties that Dillard should be solely responsible for the planning, supervision, construction, equipping and payment of the Dillard Building. Developer and Dillard shall cooperate with one another so as to avoid labor disputes in connection with the construction of the Dillard Building and the Shopping Center, or any work stoppages in the Shopping Center. Dillard represents and warrants that it will not do anything or cause or permit anything to be done in connection with the construction of the Dillard Building which unreasonably interferes with the construction of other Improvements in the Shopping Center.

2.5 Dillard represents and warrants that it shall do its work hereunder in compliance with building, zoning and other applicable laws, ordinances, codes, rules and regulations and requirements of all Federal, State and municipal governments and the appropriate departments, commissions, boards and officers thereof and in such manner that Dillard shall be able to obtain the insurance required to be carried by Dillard pursuant to Article 19 of this Operating Agreement, and that Dillard 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 Dillard Building.

2.6 Developer, any designee of Developer, and their respective agents and employees shall have access to the Dillard Tract at all reasonable times while construction of any Improvements is in progress, for the purpose of observing performance of the work, but Developer shall not interfere with Dillard's construction of any such Improvements in so doing, so long as the same conform to and comply with the Plans and the requirements of this Operating Agreement. Dillard represents and warrants that: Dillard shall cause all construction work in the Dillard Building to be done in a first-class, workmanlike manner, all at Dillard's expense, and shall pay in full the costs of such construction; Dillard shall comply with and conform to the Plans as approved by Developer; the Dillard 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 Dillard shall obtain, and if requested in writing by Developer, shall deliver true copies to Developer of, any temporary or permanent certificate or certificates of occupancy and all other government authorizations, licenses and permits which may be necessary to permit the use of the Dillard Building as a Department Store.

2.7 Subject to events beyond its control as set forth in Article 26 hereof, Dillard represents and warrants that it shall

complete construction of the Dillard Building and open the Dillard Building for business with the public on or before October 16, 1991; provided, however, that Dillard shall not be required to open for business with the public unless and until Younkers has opened for business in its Building or is about to open for business. The term "Opening Date", as used herein, shall mean October 16, 1991.

2.8 Dillard shall indemnify, defend and hold harmless Developer from and against any and all loss, cost, expense, damages, liability, claims and actions arising out of the work done and performed by Dillard and its officers, agents, employees and contractors hereunder, including, without limitation, any and all claims for personal injury and property damage, resulting from any act or neglect of Dillard, its agents, officers, employees or contractors, except for claims arising out of the negligence of Developer, its agents, officers, employees or contractors.

2.9 Dillard has not caused or permitted, and shall not cause or permit any mechanic's, laborer's or materialman's lien to be filed at any time against the Total Development Tract, or any part thereof, resulting from acts of Dillard or its contractors, agents or employees. If any such lien shall be filed, and after written notice thereof, Dillard shall promptly cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. So long as Dillard causes such lien to be discharged of record as aforesaid, Dillard shall have the right to contest same. If Dillard shall fail to cause such lien to be so discharged 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 respective dates of Developer's making of the payment or incurring of the cost and expense, shall be paid by Dillard to Developer on demand.

Construction

Article 3 - Developer Construction

3.1 Developer, at its expense, shall substantially complete (or cause to be substantially completed), by October 16, 1991, (subject to events beyond its control as set forth in Article 26 hereof), the construction of the following Improvements on the Developer Tract:

- (1) A two (2) level Covered Mall, which shall not exceed fifty feet (50') in height, and which shall connect to the Dillard Building and provide a main entrance for the Dillard Building opening onto the Covered Mall, all of which is substantially shown on the Plot Plan, Exhibit "E"; provided, however, the center part of the Covered Mall may be as high as one hundred feet (100');
- (2) Developer Building(s) on two (2) levels, which shall not exceed fifty feet (50') in height, and which shall contain at least 250,000 square feet of Small Store Floor Area, attached to the Covered Mall, substantially as shown on the Plot Plan, Exhibit "E" (identified as "Shops" on the Plot Plan), for occupancy by Occupants selling goods and providing services of the type customarily sold and provided in a regional shopping center and for uses related and incidental thereto;

provided, however, that portion of the Developer Building used for a central plant may be as high as sixty-five feet (65').

- (3) The Younkers Building consisting of a two (2) level building and a loading dock, which together shall contain approximately 150,000 square feet of Floor Area constructed in accordance with the terms of Paragraphs 1 and 2 of Section 4.4 hereof; provided, however, the failure of the Younkers Building to be completed shall not be a breach hereof so long as Developer is endeavoring to diligently cause completion thereof.

3.2 In addition, Developer shall cause all necessary clearing, grading, site preparation, paving, street, traffic control and utility installation work (both on-site and off-site) and construction and installation of all Common Areas (all hereinafter sometimes referred to collectively as the "Site Work and Common Area Construction") to be done on and adjacent to the Shopping Center Tract in order to facilitate the construction of the Shopping Center as contemplated by this Operating Agreement. Dillard acknowledges and agrees that Developer has constructed a suitable building pad for the Dillard Building on the Dillard Tract consistent with the Dillard pad specifications which have been provided by Dillard to Developer, and included as part of the Site Work Plans and Specifications. Site Work and Common Area Construction includes, without limitation and in addition to all on-site work, construction and installation of all off-site utility lines and mains necessary, in Developer's judgment, to bring all available utility service to the Shopping Center, and such off-site periphery roads, access roads, ramps, means of ingress and egress, and other street improvements, traffic control devices and signalization as are (1) shown on Exhibit E, subject to Developer's ability to obtain necessary governmental approval and/or construction therefor, or (2) otherwise required by governmental authorities therefor. All traffic signs, road markings and signalization will be initially designed in accordance with the manual of Uniform Traffic Control Devices. Developer shall let the necessary contracts in order to cause such Site Work and Common Area Construction to be done on the Shopping Center Tract, and shall make all payments of money due to contractors from time to time for such Site Work and Common Area Construction. Dillard shall pay and reimburse Developer for the cost of such Site Work and Common Area Construction on the Dillard Tract if and only to the extent provided in that certain Supplemental Agreement of even date herewith between Dillard and Developer.

3.3 Developer shall do its work hereunder in compliance with building, zoning and other applicable laws, ordinances, codes, rules, regulations and requirements of all Federal, State and municipal governments and the appropriate departments, commissions, boards and officers thereof, and in such manner that Developer shall be able to obtain the insurance required to be carried by Developer pursuant to Paragraph 19.1; and Developer shall obtain or cause to be obtained all building permits, licenses and other governmental approvals (except such licenses, certificates or approvals relating solely to the Dillard Building), which are required to permit the construction and occupancy of the Shopping Center; and all approvals, if any, of the Plot Plan as may be required by any such governmental department, agency, commission or board. Dillard agrees to cooperate with Developer to the extent that Developer may request or require such cooperation to obtain any such permit, license, compliance, approval or authorization and in all other respects, to the end that the Shopping Center may be constructed as efficiently and expeditiously as possible.

3.4 The Covered Mall, and the manner of attachment thereof to the Dillard Building, shall be designed in accordance with good construction practice in the manner customary for structures of

this type. The attachment of the Dillard Building to the Covered Mall shall be constructed in accordance with Plans and Specifications approved by Developer and Dillard. Except as otherwise expressly provided, all costs of installation, maintenance, repair and operation of the Covered Mall shall be paid and advanced by Developer. Dillard shall pay and contribute to the cost of such maintenance, repair and operation of the Covered Mall and shall reimburse Developer for Dillard's allocable share of such costs as hereinafter provided and as provided for in the Supplemental Agreement of even date herewith executed between the Parties hereto. The Covered Mall and a portion of the Small Store Floor Area in the Developer Building shall be integrated and interfaced with, and attached to, the Dillard Building as set forth in the Plans and shown on Exhibit "E".

3.5 Developer shall indemnify, defend and hold harmless Dillard from and against any and all loss, cost, expense, damages, liability, claims and actions arising out of the work done and performed by Developer and its officers, agents, employees and contractors hereunder, including, without limitation, any and all claims for personal injury and property damage, resulting from any act or neglect of Developer, its agents, officers, employees or contractors, except for claims arising out of the negligence of Dillard, its agents, officers, employees or contractors.

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

Construction

Article 4 - Future Construction

4.1 Except as otherwise provided and recognized in this Operating Agreement or shown on the Plot Plan, Exhibit "E", Dillard shall not expand any Building or construct any additional Building upon its Tract outside its Permissible Building Area or in any areas of the Developer Tract or the Dillard Tract, (1) without the prior written approval of Developer, which approval shall not be unreasonably withheld, delayed or denied, and (2) unless Dillard otherwise satisfies the terms and conditions of this REA, including without limitation Section 15.1 hereof.

4.2 Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that Developer shall have the right to develop, improve, use, operate, lease, sell, convey, transfer, mortgage and otherwise deal with the Developer Tract, and erect Buildings and Improvements thereon at any time and

from time to time as shown on the Plot Plan, Exhibit "E", and the Plot Plan Notes, Exhibit "E-1".

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

1. Except for common property lines between Reserve Tracts, any buildings constructed on a Reserve Tract will be set back at least twenty-five feet (25') from the property lines of such Reserve Tract.
2. Except as otherwise shown on Exhibit "E" and hereinafter provided, each Reserve Tract and each subdivided tract therein shall have free, direct and unrestricted access to the Ring Road (as hereinafter defined) on the Shopping Center Tract, by means of curb cuts into the Ring Road located as shown on the Plot Plan, Exhibit "E", or at other locations to be selected and designated by Developer as each such Reserve Tract is developed and/or subdivided, which locations shall be consistent with good traffic planning and control; however, Developer may not, without the approval of Dillard, change the location as shown on Exhibit "E" of such curb cuts into the Ring Road between Entry 4 and Entry 6 along the north side of the Ring Road. Except as shown on the Plot Plan, Exhibit "E", there shall not be any curb cuts or access permitted from any Reserve Tract directly into a lateral access drive or spoke road located between the Ring Road and the public right-of-way or street.
3. Notwithstanding anything to the contrary in this Operating Agreement, or in the Sign Criteria attached hereto as Exhibit "G", one monument-type sign not exceeding eight feet (8') in height may be erected on each Reserve Tract to identify the Occupant of the Reserve Tract. Any Occupant of a Reserve Tract may mount a maximum of four (4) signs on its Building (but not on the roof of its Building), provided that no more than fifty percent (50%) of the store front length may be used for signing, and letters in the sign shall not exceed a height of thirty-six inches (36"). Occupants of Reserve Tracts may place directional signs on the Outlot, provided that such signs do not exceed four feet (4') in height. All such signs shall be erected and maintained in conformance with the Sign Criteria attached hereto as Exhibit "G" to the extent provided therein. Pylon signs may be erected in the locations shown on Exhibit "E", which pylon signs may only display the name and logo of the Shopping Center, and the name and identity of a theatre, which theatre portion of the sign may contain a theatre reader board.
4. The landscaping of the Reserve Tracts shall not materially obstruct (either through original planting or through untrimmed growth) the view of the Shopping Center. In the event Developer fails as provided herein to properly plant and maintain grass in the portion of the Reserve Tracts not utilized for parking and related facilities, Dillard is granted a non-exclusive easement for the purpose of planting and maintaining grass in said portions.
5. No structure located on any Reserve Tract shall be constructed over twenty-eight feet (28') in height. No

structure located on those Reserve Tracts designated as LL/01, LL/02, LL/03, LL/04, LL/05, LL/06 and LL/07 on the Plot Plan, Exhibit E, shall contain more than 15,000 square feet of Gross Leasable Area.

6. There shall be not less than five (5) parking spaces for each 1,000 square feet of Gross Leasable Area on each Reserve Tract; provided, however, in the event a theatre, hotel or office building is constructed as permitted above, parking therefor shall be provided in accordance with the following:
 - theatre - one (1) space for each four (4) seats;
 - hotel - one (1) space for each guest room or suite; and
 - office building - three (3) spaces for each 1,000 square feet of Gross Leasable Area.

7. During the term of this Operating Agreement, none of the Reserve Tracts shall be used for other than commercial or retail sales or services, or theatres or restaurants. Services may include, but not be limited to, financial institutions, brokerage offices and travel agencies. Notwithstanding the foregoing, none of the following uses or operations shall be permitted on any Reserve Tract:
 - (a) Any obnoxious odor or noise or sound which is reasonably objectionable and constitutes a public or private nuisance;
 - (b) Any warehousing (but not including any storage areas in connection with retail sales at the Shopping Center), assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation;
 - (c) Any mobile home, trailer court, labor camp, junkyard, or animal raising establishment (except for pet shops that otherwise comply with this Operating Agreement, and except further that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance);
 - (d) Any dumping, disposing, incineration or reduction of garbage (exclusive of garbage compactors located in the rear of any building);
 - (e) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
 - (f) Any dry cleaning plant;
 - (g) Any automobile, truck, motorcycle or recreational vehicles, sales, leasing, display or repair except in connection with a TBA, tire store or automobile oil and lubricating service facility and except further for leasing if an incidental but not primary use by an Occupant;
 - (h) Any living quarters, sleeping apartments or lodging rooms, except for a hotel; or
 - (i) Any mortuary.

8. Each Reserve Tract will be subject to parking regulations which will prohibit employees of the Occupant of the Reserve Tract from parking in the Shopping Center, and Developer will enforce such rule.

9. Each permitted curb cut from a Reserve Tract into the Shopping Center Ring Road or access roads shall be coordinated with the traffic plan of the Shopping Center.
10. If a Reserve Tract has a curb cut into the Shopping Center, the parking area, driveways, and all other public areas on such Reserve Tract will be maintained in accordance with the same standards as are set forth in Article 20 hereof.
11. Unless otherwise shown on the Plot Plan, the Permissible Building Area on each Reserve Tract shall be the entire Reserve Tract, subject to the foregoing requirements regarding parking and building lines.
12. Any building erected on a Reserve Tract shall be architecturally harmonious and compatible with the Buildings on the Shopping Center Tract, except for buildings erected by or for tenants or occupants comprising part of a chain of stores, offices, theatres or restaurants operating nationally (but not in every state), which may use and retain established or recognized elements of their standard or customary building design, format or appearance.
13. Until such time as a Reserve Tract is developed and improved by Developer, Developer shall keep the same planted with grass, mowed and in a clean and slightly condition, or Developer, at its election, may cause any such Reserve Tract to be paved and used temporarily for parking of motor vehicles.
14. Each Reserve Tract shall be maintained in a clean and orderly condition, consistent with the standards of maintenance for the Shopping Center. In the event of any damage or destruction of any buildings on a Reserve Tract by fire or other casualty, the same shall promptly be repaired and restored or, in the alternative, if the owner or occupant of such Reserve Tract elects not to repair or restore such building, it shall clear such Reserve Tract of all debris and hazardous conditions and shall leave such Reserve Tract in a clean, safe and slightly condition.
15. The owner of each Reserve Tract shall maintain, or cause to be maintained, liability insurance on its Reserve Tract in accordance with the requirements of Paragraph 19.5 of this Operating Agreement.

The foregoing shall constitute covenants running with the Reserve Tracts and any deed, lease or other instrument of conveyance or transfer of any Reserve Tract shall have incorporated therein the restrictions and other covenants contained in this Paragraph 4.3; provided, however, that the foregoing restrictions relating to the Reserve Tracts and all obligations of Developer with respect to such restrictions shall not be enforceable as against any successor to Developer's interest in the Developer Tract from and after the date on which the holder of any first mortgage affecting the Developer Tract forecloses its mortgage, obtains a deed in lieu thereof or otherwise obtains possession of the Developer Tract without also acquiring the Reserve Tracts, except that the provisions of this paragraph shall be inoperative during any period while the holder of the first mortgage encumbering the Developer Tract also is the holder of a first mortgage encumbering a Reserve Tract(s), but only as to such Reserve Tract(s). A violation of any restrictions on a Reserve Tract by the owner of such Tract who is not then the owner of the Developer Tract shall not constitute a default by the owner of the

Developer Tract under this Operating Agreement, but in any event said restrictions on the Reserve Tracts shall be enforceable against Developer so long as Developer owns the Reserve Tracts and against any successor to Developer's interest in the Reserve Tract. Dillard shall join in the execution of any replat or resubdivision of the Reserve Tracts if and when requested by Developer from time to time, at no cost or expense to Dillard.

Notwithstanding anything to the contrary contained herein, no default by any owner of a Reserve Tract under any of the foregoing covenants relative to the Reserve Tract as set forth above in this Paragraph 4.3 shall entitle Dillard to cancel or terminate this Operating Agreement or any of its covenants and obligations hereunder or any of the easements granted hereunder, and the sole remedies of Dillard in the event of any such default as to a Reserve Tract shall be by way of damages and injunctive relief.

4.4 Subject to Section 4.2 hereof, each Party hereto shall permit the future construction and operation by each Future Department Store at a later date, as and when Developer shall see fit, within the areas designated on the Plot Plan, Exhibit "E", of a Future Department Store Building and related improvements, and the conveyance or lease of a portion of the Developer Tract to each Future Department Store for such purposes, containing sufficient land to accommodate such Future Department Store Building and provide the required number of parking spaces there for and access thereto, subject to this Operating Agreement and the following:

1. Each Future Department Store shall comply with the standards of construction provided in this Operating Agreement.
2. All such construction shall be within the Permissible Building Area for the Future Development Store as shown on the Plot Plan, Exhibit "E".
3. A conveyance or lease of such portion of the Developer Tract (hereinafter sometimes referred to as a "Future Department Store Tract") shall be made by Developer to each Future Department Store and each Future Department Store shall become a Party to this Operating Agreement or shall enter into a separate Operating Agreement or lease of its Tract and/or Building in the Shopping Center containing substantially the same construction and operating terms, provisions and covenants as to such Future Department Store as are, in substance, contained herein, and which Operating Agreement or lease shall be subject to the applicable terms of this Operating Agreement. The Parties hereto shall execute, deliver and file any and all instruments and documents reasonably satisfactory to its counsel and reasonably required to facilitate and effect the admission of each Future Department Store to the Shopping Center from time to time in accordance with the terms of this Operating Agreement, including, without limitation, a further subdivision or replat of the Shopping Center Tract (but not affecting the boundaries of the Dillard Tract) and/or the Developer Tract, or part thereof, if necessary, an amendment of this Operating Agreement, and a so-called "tie-in" agreement reconciling and coordinating the terms of this Operating Agreement with those of any such Operating Agreement between Developer and each such Future Department Store. The Parties shall also grant and dedicate additional utility easements over, upon, across and through their respective Tracts as and when requested by Developer from time to time for such purposes, provided such easements do not materially interfere with the grantor's use of its Tract. Developer shall submit to Dillard all such subdivision plats and utility

easements with respect to the Dillard Tract in connection with the admission of such Future Department Stores to the Shopping Center as aforesaid, for approval, execution and delivery by Dillard, as and when requested by Developer, which approval, execution and delivery shall not be unreasonably withheld, denied or delayed, provided such easements do not materially interfere with Dillard's use of its Tract.

4. Developer and each Future Department Store always shall provide and maintain parking spaces sufficient to satisfy and maintain the parking index for the Shopping Center required by the provisions of Article 15 hereof; provided, however, that there shall be no multi-level parking without the prior written approval of all Parties.
5. Each Future Department Store shall acquire or lease and hold its Future Department Store Tract subject to all of the easements granted and created under Article 24 of this Operating Agreement, as a servitude thereon for the benefit of, and appurtenant to, all of the other Tracts; and each Future Department Store Tract or building site shall have and enjoy the use and benefit of all the easements granted and created under Article 24 of this Operating Agreement which constitute a servitude upon all of the other Tracts for the benefit of, and appurtenant to, each Future Department Store Tract, subject to the provisions and conditions of said Article 24; and all such rights and easements shall be mutual, reciprocal and coordinate, and none shall be superior or inferior to any others.

Developer shall have no further liability or responsibility with regard to the Future Department Store Tract after it has conveyed the same as herein provided, except to the extent that Developer expressly retains any such liability or responsibility under the terms of this Operating Agreement (including its obligation to maintain the Common Areas). Developer also may add or delete Small Store Floor Area, subject to substantial compliance with the standards of construction provided in this Operating Agreement, in order to accommodate the addition of each such Future Department Store Building, as shown on the Plot Plan, Exhibit "E".

Construction

Article 5 - Insurance

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

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

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

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

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

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

5.3 Each Party shall maintain, or cause to be maintained, all-risk Builders' Risk and Worker's Compensation insurance during the entire period of time while any construction of Improvements upon its Tract is in progress and not completed. Such insurance shall contain provisions and be in amounts satisfactory to each Party, and shall be adequate to protect each Party from and against any and all claims for death of or injury to person or persons, or damage to or loss of property, which may arise upon said Shopping Center Tract during any period of construction.

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

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

Construction

Article 6 - Liens

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

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

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

Construction

Article 7 - INTENTIONALLY DELETED.

Construction

Article 8 - INTENTIONALLY OMITTED

P A R T T W O

Operation

Article 9 - Term

9.1 The term of this Operating Agreement shall commence on the date of execution hereof and shall (unless sooner terminated under conditions contained herein) expire on January 31, 2040, unless extended by Developer as hereafter provided in Section 9.3 (the "Term").

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

9.3 Developer shall have options (but no obligations) to renew and extend this Operating Agreement for two (2) successive additional periods of five (5) years each (herein generally called the "renewal terms"), such options exercisable upon and subject to the following terms and conditions:

1. Developer shall give Dillard written notice of such election to extend the term hereof no later than ninety (90) days prior to the expiration of the original term, or in the event of the extension of any term after the original term, not later than 90 days prior to the expiration of the then current term; and
2. Each such extended term shall be upon the same terms, agreements and conditions as in this Operating Agreement set forth for the original term hereof.
3. This Operating Agreement shall be extended upon the same terms and conditions hereof except those terms and conditions to which Dillard requests an amendment or modification as specifically designated in a written notice from Dillard to Developer made within thirty (30) days after Dillard's receipt of Developer's notice exercising its option; provided, however, no easements granted in Part Three of this Operating Agreement and which survive the

termination of this Operating Agreement, may be the subject of such a request by Dillard. If Developer and Dillard fail to agree upon the language of the amendment or modification within sixty (60) days after Developer's receipt of Dillard's notice, the matter shall be submitted to arbitration in accordance with Article 31 hereof. Until completion of the arbitration process, the disputed term or condition which is the subject of the requested amendment or modification, shall remain unchanged and continue in full force and effect.

If Developer shall fail to give notice to Dillard of Developer's election to renew and extend the term of this Operating Agreement for any option period provided herein within the time period set forth in Clause 1 above, Dillard may not terminate this Operating Agreement unless Dillard notifies Developer in writing that Dillard may, at its sole election, terminate Developer's option to renew and extend the Operating Agreement if Developer does not send written notice of Developer's exercise of such option within ten (10) days after receipt of such notice from Dillard. If Dillard does not receive within said 10 day period written notice of the exercise by Developer of such option, Developer's option shall thereafter terminate, and this Operating Agreement shall terminate upon the expiration of the original term or the then current term, as the case may be, unless sooner terminated under conditions contained in this Operating Agreement.

Operation

Article 10 - Shopping Center Name

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

Operation

Article 11 - Publicity Releases

Neither Party nor any other Department Store shall issue any statement or publicity release directly concerning the other or this Operating Agreement or otherwise publicize or announce this Operating Agreement except in such form and at such time as may be approved by the other, which approval shall not be unreasonably withheld, delayed or denied; provided, however, that nothing herein contained shall be construed to prohibit, prevent or interfere with the usual type of advertising, publicity and promotion customarily done by each Party or to require any such consent or approval therefor. Developer represents that Younkers is or will be similarly restricted with respect to publicity releases.

Operation

Article 12 - Tenant Leasing

12.1 Developer shall begin its leasing activities as to the Small Store Floor Area as promptly after the date of this Operating Agreement as Developer shall deem necessary.

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

12.3 It is in the mutual and best interests of the Parties, and imperative to the maximum utilization of their adjoining

properties, that the Shopping Center (1) be developed and maintained as an integrated, first-class regional shopping center during the period Dillard is operating, or is obligated to be operating, during the Dillard Operating Period (as defined in Article 23 hereof), and thereafter such period, be developed and maintained consistent with typical shopping center industry practices and standards and (2) contain a combination of merchants and businesses which, in the reasonable judgment and discretion of Developer:

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

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

12.4 Any lease or other arrangement for an Occupant to occupy Small Store Floor Area that is located within one hundred twenty-five (125) linear feet of the main entrance of the Dillard Building 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 the "food court" shown on the Plot Plan, or (b) for the operation of a conventional sit-down type restaurant or cafeteria selling prepared food for consumption on-premises in any Small Store Floor Area, or (2) conducting an amusement arcade or recreation parlor, pet shop or laundry and dry cleaning service.

Operation

Article 13 - Merchants Association or Promotional Fund

13.1 Dillard shall, prior to the Opening Date, join any Merchants Association formed by Developer for the purpose of promoting business in the Shopping Center, and shall remain a member thereof, and pay dues and contributions thereto upon and subject to the terms and conditions hereinafter set forth. Dillard agrees to contribute annually to the Merchants Association, so long as Dillard remains a member thereof, the sum set forth in the Supplemental Agreement of even date herewith between the Parties, together with an initial grand opening contribution as provided in said Supplemental Agreement. Dillard's annual contribution to the Merchants Association shall be payable in equal monthly installments in advance during the Merchants Association's fiscal year for which such contribution is being made. The agreement of

Dillard to contribute as specified herein is subject to the following terms and conditions:

1. Membership therein is available to it on a fair and equitable basis.
2. Developer, Younkers and Occupants of at least seventy-five percent (75%) of the leased and occupied Small Store Floor Area, and any Future Department Store after it opens and commences operation, are members of said association and are paying dues there to.
3. Developer has agreed to pay not less than twenty-five percent (25%) of the amounts paid annually by Occupants, such payment by Developer to be in addition to the amounts paid by tenants of Developer.
4. Dillard shall not be bound by any act or omission of said Merchants Association, the obligation of Dillard to said Merchants Association being to pay dues and contributions in accordance with the provisions of this Article,

provided, however, Dillard shall contribute to the Merchants Association for at least three (3) years, and thereafter may (but shall not be obligated to) continue to contribute to the Merchants Association.

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

1. Developer, Younkers and Occupants of at least seventy-five percent (75%) of the leased and occupied Small Store Floor Area, and any Future Department Store after it opens and commences operation, are obligated to make a fair contribution thereto.
2. Developer is obligated to contribute not less than twenty-five percent (25%) of the monies collected from all occupants annually, which sum may be paid in whole or in part by Developer, at its option, by providing the services of a marketing director or other person or persons under Developer's exclusive control to help organize and implement advertising and promotional programs using assets from the Fund. Any over-payment or under-payment by Developer shall be adjusted annually. In addition, Dillard shall pay, as provided in its said Supplemental Agreement, a sum in payment or reimbursement for expenses incurred or to be incurred in connection with the grand opening and the pre-opening promotion of the Shopping Center.

provided, however, Dillard shall contribute to the Fund for at least three (3) years, and thereafter may (but shall not be obligated to) continue to contribute to the Fund.

Article 14 - Covered Mall

14.1 Developer shall, at its sole cost and expense (except for payment of contributions by Dillard and other Department Stores as provided for herein or in other documents, including without limitation, that certain Supplemental Agreement between Developer and Dillard) at all times during the Term of this Operating Agreement (subject to the provisions of Article 20 hereof, and subject to acts beyond its control, as set forth in Article 26):

1. . Keep and maintain the Covered Mall in a clean, safe and sightly condition and in good order and repair, and cause the same to be well-lighted, attractive, in good appearance and open to the public at all times when the Building belonging to Dillard shall be open and doing business, and, in addition, the Developer shall cause the Covered Mall to be opened at least one-half (1/2) hour before Dillard opens for business and to be kept open until at least one-half (1/2) hour after Dillard closes on each business day.
2. Keep and maintain the Covered Mall heating and cooling system in good operating condition to:
 - (a) Cool the Covered Mall to the average temperature of not more than 76° Dry Bulb and to produce a relative humidity not exceeding 50% when the outside Dry Bulb temperature is 96° F. and the outside Wet Bulb temperature 75° during each day of the Term hereof when local climatic conditions require, throughout all hours when the Building belonging to Dillard or any part of said Building is open and doing business, and for at least one-half (1/2) hour before Dillard opens for business until at least one-half (1/2) hour after Dillard closes on each business day; and
 - (b) Heat the Covered Mall with sufficient heat to maintain therein, an average temperature of at least 70° F. with the outside temperature ranging to as low as 0° F. during each day of the Term hereof when local climatic conditions require, throughout all hours when any Building belonging to Dillard is open and doing business, and for at least one-half (1/2) hour before Dillard opens for business until at least one-half (1/2) hour after Dillard closes on each business day.
3. Utilize a system of engineering control (whether by varying pressure or otherwise) which shall insure that the heating and/or cooling of the Covered Mall shall not draw heated and/or cooled air from the Dillard Store, and, similarly, Dillard shall utilize a system of engineering control (whether by varying pressure or otherwise) which will insure that the heating or cooling of the Dillard Store shall not draw heated and/or cooled air from the Covered Mall; for which Dillard, commencing with the date it opens its Building for business, or the date on which it is obligated to open pursuant to the terms and conditions of this Operating Agreement, whichever is earlier, and continuing for the period Dillard is operating, or is obligated to be operating, during the Dillard Operating Period (as defined in Article 23 hereof), and for so long thereafter such period as it shall maintain at least one (1) entrance to the Covered Mall, shall pay to Developer the annual

amount set forth in the Supplemental Agreement of even date herewith, as its contribution toward the expenses of maintaining, operating, heating, ventilating and air conditioning the Covered Mall. Such annual amount shall be paid in monthly installments on or before the tenth day of each calendar month.

14.2 Each Party shall use its best efforts, consistent with applicable laws, to prevent:

1. The distribution of any hand bills, or other advertising material, on or about any part of the Covered Mall.
2. The installation in, on or about the Covered Mall, of any amplifiers or similar devices, or the use in or about any Building in the Covered Mall of any advertising medium, which may be heard or experienced outside such Building, such as, flashing lights, spot lights, loud speakers, phonographs or radio broadcasts.
3. The burning of any papers, trash or garbage of any kind in the Covered Mall.
4. The use of any portion, or portions, of the Covered Mall for the purposes of loading or unloading any truck or other delivery vehicle, except in those portions designated on each Tract as "Loading Area" or "Truck Dock" on the Plot Plan, Exhibit "E".
5. The distribution, or use, of any printed, or handwritten, papers or materials (including magazines and newspapers) of any kind or character on or about any part of the Covered Mall, unless and except as approved by the Merchants Association, or unless and except as sold by an Occupant of the Shopping Center within its premises.

14.3 Notwithstanding anything to the contrary contained in this Operating Agreement or any Supplemental Agreement, the Parties agree that the Developer shall be permitted to conduct sales and/or retail activity within the Covered Mall from no more than four (4) kiosks, which kiosks may only be located at the locations specifically shown therefor on the Plot Plan, Exhibit "E", provided that no such kiosk shall be located less than one hundred eighty-five feet (185') from the Dillard entrance to the Covered Mall, and provided further, that each such kiosk does not exceed thirteen feet (13') in height, does not occupy an area which exceeds 250 square feet, and provides not less than ten feet (10') of lateral clearance between each such kiosk and the nearest Covered Mall wall for unimpeded pedestrian passage. No kiosks shall be erected at any other location in the Shopping Center unless approved by all Parties to this Operating Agreement, except for one (1) courtesy and public information kiosk in the Covered Mall in the location designated on Exhibit "E", which shall not exceed ninety-six inches (96") in height and two one hundred (200) square feet in area. Developer shall be permitted to have a seasonal wrapping and mailing service during the period from November 1 through December 24 in areas of the Covered Mall approved by the manager of the Dillard Store. No such kiosk shall be used as a food or beverage dispensing facility, except for the sale of packaged food merchandise; provided, however, that nothing contained herein shall prohibit or restrict the use as a "food court" of that portion of the Shopping Center shown on the Plot Plan, Exhibit "E".

14.4 (a) Notwithstanding anything to the contrary contained herein, the Parties agree that the Developer shall be permitted to conduct sales and/or retail activity within the Covered Mall from specialty pushcarts, provided that no such pushcart shall be located less than one hundred eighty-five feet (185') from the Dillard entrance to the Covered Mall. Prior to beginning of each

calendar year in which Developer elects to operate a program of retail sales from specialty pushcarts, Developer shall submit to Dillard for its review and approval in its sole and absolute discretion a written summary setting out the number and location of such pushcarts at the Shopping Center for each such calendar year. If Dillard requests modifications to the program as described in the summary, such request for modification(s) shall be in writing, and shall set forth with the general nature of each requested modification; provided, however, nothing contained in this Subsection 14(a) shall prevent Developer from maintaining at any time a minimum of eight pushcarts. Upon receipt of any such requests for modifications, Developer may thereafter submit a revised summary for approval by Dillard in its sole and absolute discretion. If Dillard does not request modifications to a summary, or any revised summary, as the case may be, then Developer shall be permitted to maintain a pushcart program in accordance with the summary which was not modified.

All such retail sales made from the pushcarts shall be conducted (1) in conformity with typical shopping center industry practice and standards, (2) so as not to interfere with the use of, access to, or obstruct the visibility of the entrance to the Dillard Store or the signs of Dillard, (3) so as to maintain a minimum clearance around all sides of each pushcart of at least twelve feet (12), so as not to impede or interfere with circulation of pedestrians within the Covered Mall and the use of Permittees of the Covered Mall, (4) so that all merchandise, fixtures, storage and display cases and boxes, and all other related paraphernalia, shall be on or within the pushcarts and not under the pushcarts (5) so as not to create any litter or excessive noise, and (6) so that the pushcarts will remain in a stationary position during the hours of operation of the same. The pushcarts shall not exceed eight feet (8') in height, eight feet (8') in length and four feet (4') in width. No such cart shall be used as a food or beverage dispensing facility, except for the sale of packaged food merchandise; provided, however, that nothing contained herein shall prohibit or restrict the use as a "food court" of that portion of the Shopping Center shown on the Plot Plan, Exhibit "E".

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

Operation

Article 15 - Common Area

15.1 At all times during the Term of this Operating Agreement, including without limitation after any future expansion or construction permitted by the REA, Dillard shall maintain upon its Tract a minimum parking index of 5.0 automobile parking spaces for each 1,000 square feet of Gross Leasable Area upon the Dillard Tract, all as more particularly shown on the Plot Plan, Exhibit "E", and the Typical Parking Layout set forth on said Plot Plan.

15.2 At all times during the term of this Operating Agreement, including without limitation after any future expansion or construction permitted by the REA, Developer shall maintain upon the Total Development Tract a minimum parking index of 5.0 automobile parking spaces for each 1,000 square feet of Gross

Leasable Area upon the Total Development Tract, all as more particularly shown on the Plot Plan, Exhibit "E", and the Typical Parking Layout set forth on said Plot Plan.

15.3 At all times during the Term of this Operating Agreement, neither Developer nor Dillard shall permit any fence, barricade, barrier, chain, structure, building or other obstruction of any kind whatsoever, placed, kept, permitted or maintained on the Common Area, or any part thereof, without prior written consent from the other Party; except to the extent such temporary obstruction shall be reasonably required:

1. In connection with the use of any easements granted to Dillard by the provisions of this Operating Agreement; or
2. In connection with the expansion, repair, maintenance, or replacement of any of the Improvements from time to time located in the Shopping Center, or
3. At least once in each calendar year, for the purpose of blocking off access to the Common Area in order to avoid the possibility of dedicating the same for public use or creating prescriptive rights therein, such barriers to be temporarily erected, for such purpose, if possible, at a time or upon a day when the Shopping Center is not open for business.

The Parties agree that they will do nothing to prohibit, impede, or discourage the free and uninterrupted flow of pedestrian and vehicular traffic throughout the Total Development Tract and between and among the component Tracts therein on the areas shown therefor in the Plot Plan.

15.4 Each Party shall use its best efforts, consistent with applicable laws, to prevent:

1. The distribution of any hand bills or other advertising material on or about any part of the Common Area.
2. The installation in, on or about the Common Area of any amplifiers or similar devices, or the use in or about any Building on the Common Area of any advertising medium which may be heard or experienced outside such Building, such as, flashing lights, spot lights, loud speakers, phonographs or radio broadcasts.
3. The burning of any papers, trash or garbage of any kind on the Common Area.
4. The use of any portion, or portions, of the Common Area for the purposes of loading or unloading any truck or other delivery vehicle, except in those portions designated on each Tract as "Loading Area" or "Truck Dock" on the Plot Plan, Exhibit "E".
5. The distribution, or use, of any printed or handwritten, papers or materials (including magazines and newspapers) of any kind or character on or about any part of the Common Area, unless and except as approved by Developer, or unless and except as sold by an Occupant of the Shopping Center within its premises.

Article 16 - Signs

Dillard shall not erect any sign in the Shopping Center which does not conform to the Sign Criteria attached hereto as Exhibit "G" and incorporated herein, or approved by Developer, nor shall Developer permit any sign to be erected in the Shopping Center which does not conform to such Sign Criteria, except with the consent of each Department Store.

Operation

Article 17 - Utilities

17.1 Developer shall, at Developer's expense, provide or cause to be provided, all Common Utility Facilities, including water, gas (if available), electric, telephone, sanitary sewers and storm sewers to a point designated by Dillard within five feet (5') of the Building line on the Dillard Tract and Dillard shall pay and reimburse Developer for the cost of installing all such utilities, as and only to the extent provided in Paragraph 3.2 of this Operating Agreement.

17.2 Except as otherwise expressly provided in Article 20 of this Operating Agreement with regard to utility service for the parking area on each Tract, each Party shall make arrangements for and pay, or cause to be paid, any and all charges for utility services supplied on its own Tract and neither Party shall have any liability for utility services to the other Party's Tract.

Operation

Article 18 - Taxes

18.1 Each Party shall pay, when due, all real estate taxes and assessments upon its Tract which shall be assessed, levied, imposed or become a lien thereon during the Term of this Operating Agreement.

18.2 In the event Developer shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) to be paid by Developer to be excessive or illegal, Developer shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this Article shall require Developer to pay any such real estate tax or assessment as long as the amount or validity thereof shall be contested in good faith if, in the opinion of counsel for Developer, the Developer Tract shall not thereby be in danger of being forfeited. In the event Developer shall contest any real estate tax or assessment, Developer shall indemnify, defend and hold harmless Dillard and the Dillard Tract from and against any increase in taxes payable by Dillard on the Dillard Tract, or any portion thereof, if such tax increase is caused by the next general assessment subsequent to the contesting of taxes by Developer, or by any reassessment subsequent to the contesting of taxes by Developer and prior to the next general assessment.

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

danger of being forfeited. In the event Dillard shall contest any real estate tax or assessment, Dillard shall indemnify, defend and hold harmless Developer and the Developer Tract from and against any increase in taxes payable by Developer on the Shopping Center Tract, or any portion thereof, which tax increase is caused by the next general assessment subsequent to the contesting of taxes by Dillard, or by any reassessment subsequent to the contesting of taxes by Developer and prior to the next general assessment.

18.4 Any assessment for public improvements levied against the Shopping Center Tract shall be paid by both Parties hereto in the ratio that the land area of each Party's Tract bears to the land area of the Shopping Center Tract; provided, however, that any such assessment initiated by any one Party shall be borne solely by the Party initiating the same unless benefitting both parties; and provided further, however, that any such assessment (except one initiated by one of the Parties) benefiting less than both the Parties shall be borne solely by the Party so benefiting.

Operation

Article 19 - Insurance and Indemnity

19.1 Developer shall, effective with the completion of construction of the Building, the Covered Mall and all other Improvements on the Developer Tract, and thereafter during the Term of this Operating Agreement, continuously keep, or cause to be kept, all Buildings, the Covered Mall and all other Improvements upon 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 of insurance policies issued in the locality of the Shopping Center. Said insurance shall be in an amount equal to 100% of the actual replacement costs of said Buildings and Improvements, including the Covered Mall, but excluding foundations, excavation costs and the costs of underground flues, pipes and drains if such costs are properly excludable under current co-insurance requirements.

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

19.3 Such policies may be made payable to the holder of any first mortgage or deed of trust (hereinafter called "mortgagee") which is a lien upon the Tract of the insured under a standard mortgagee clause or to a ground lessor, provided such mortgagee or ground lessor is a bank, trust company, insurance company, pension fund, retirement fund or other reputable institutional lender and agrees that it will, in the event of loss, and upon satisfaction of disbursement conditions for construction draw requests, apply the proceeds to repair, restore and rebuild the Building and other Improvements on the Tract in question in accordance with this Operating Agreement. Any loss covered by such insurance shall be adjusted with the insured Party, and if the loss is in excess of \$2,000,000 and neither the insured Party nor a corporation which has guaranteed performance of the insured Party's obligations hereunder shall have a net worth of \$50,000,000 or more and assets of \$100,000,000 or more, the insurance proceeds shall be deposited

in a bank or trust company satisfactory to each Party hereto to be held in trust and disbursed as the work or restoration progresses; if the loss is \$2,000,000 or less or the insured Party or a corporation which has guaranteed performance of the insured Party's obligations hereunder shall have a net worth of \$50,000,000 or more and assets of \$100,000,000 or more, the insurance proceeds shall be paid to the insured Party and applied by it toward the cost of restoration.

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

19.5 At all times during the Term of this Operating Agreement, each Party shall, at its sole expense, continuously maintain Comprehensive General Liability Insurance, endorsed to cover personal injury and contractual liability, covering the Building, or Buildings, Outdoor Selling Area, if any, and the landscaping, if any, between the exterior perimeter wall of Buildings and Building Perimeter Sidewalk, on its Tract within the Shopping Center Tract, and on any other portions of its respective Tract not covered by the insurance hereinafter provided for in Paragraph 19.6. Such insurance shall afford protection to each Party as named insured under its own policy, to the limit of not less than:

- (1) \$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
- (2) Property damage to the limit of not less than \$500,000 for each occurrence.

Provided, however, that the primary amounts of coverage provided under subparagraphs (1) and (2) of this Paragraph 19.5 may be reduced (but not to less than \$500,000 for bodily injury and \$500,000 for property damage) if the Party furnishing such reduced primary amounts of coverage shall furnish Catastrophe (Umbrella) Liability Coverage with limits of liability not less than \$5,000,000 applying in excess of the primary coverages provided for in subparagraphs (1) and (2) of this Paragraph 19.5 (as reduced herein); and provided further, however, that the aforesaid Umbrella Coverage provides for coverage at least equal to the required primary coverage. Each Party shall furnish certificates of such insurance to the other Party from time to time, as and when such policies are issued or renewed, whether requested or not. Any policy required hereunder shall provide that such policy shall not be cancellable without at least thirty (30) days' prior written notice to the Parties hereto.

19.6 At all times during the Term of this Operating Agreement, Developer shall continuously maintain Comprehensive General Liability Insurance, endorsed to cover personal injury (including false arrest) and contractual liability, covering the Common Area of the Developer Tract, and further, until such time, if any, as Dillard elects pursuant to Paragraph 20.7 to maintain the Common Areas on the Dillard Tract, and so long as Dillard is not in default under this Operating Agreement, Developer shall maintain Comprehensive General Liability Insurance, endorsed to cover personal injury (including false arrest) and contractual liability, covering the Common Area of the Dillard Tract. Such insurance shall afford protection to Developer and Dillard (if Developer carries insurance on the Dillard Tract as provided in the immediate preceding sentence), as named insureds, to the limit of not less than:

- (1) \$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
- (2) Property damage to the limit of not less than \$500,000 for each occurrence.

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

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

19.7 Either Party shall have the right, at its option, to comply with and satisfy its obligations under this Article by means

of self-insurance to the extent of all or any part of insurance required under this Article, but only if such Party or an entity guaranteeing performance of this Operating Agreement for such Party has a net worth of at least \$50,000,000 and assets of at least \$100,000,000. As used herein, the term "net worth" shall mean the stockholder's or shareholder's equity as determined in accordance with generally accepted accounting practices.

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

Operation

Article 20 - Maintenance

20.1 During the period Dillard is operating, or is required to be operating, during the Dillard Operating Period (as defined in Article 23 of this Operating Agreement), Developer shall keep, repair, manage, insure, operate and maintain, or cause to be kept, repaired, managed, insured, operated and maintained, the Common Areas on each Tract (exclusive of Building Perimeter Sidewalks and landscaping, if any, between the exterior perimeter wall of the Building on the Dillard Tract) including, without limitation, Common Utility Facilities and the Covered Mall, in all cases in good and clean order, operation, condition and repair, in conformity with established, first class shopping center standards, and in such manner as to establish, maintain, and present, at all times, the appearance of a clean, well managed, attractive, coordinated, and unified operation of all of the Common Areas on the Shopping Center Site, commencing on the Opening Date and thereafter such period during the remainder of the term of this Operating Agreement, Developer shall keep, repair, manage, insure, operate and maintain, or cause to be kept, repaired, managed, insured, operated and maintained, such Common Areas in conformity with typical shopping center industry practices and standards, subject to the right of reimbursement from Dillard for the allocable cost thereof as hereinafter provided in Paragraph 20.4 hereof. Developer, its agents and employees, shall have, and is hereby granted, access to the Dillard Tract for the purpose of performing such maintenance. Such maintenance shall include keeping the Shopping Center Tract reasonably free of debris, ice, snow and trash, but maintenance shall not include major repairs or capital replacements, except as otherwise hereinafter provided. Dillard shall be responsible for the maintenance of the interior and exterior of its Building (including said Building Perimeter Sidewalks and landscaping) on its own Tract at its own expense. In addition to insuring the Common Areas on the Developer Tract pursuant to Paragraph 19.6 and this Paragraph 20.1, and on the Dillard Tract in accordance with the terms and conditions of Paragraph 19.6, Developer shall also pursuant to this Paragraph

20.1, insure such Common Areas on the Developer Tract for (a) Worker's Compensation insurance in accordance with the statutory requirements of the State of Nebraska, (b) Employer Liability insurance of not less than \$1,000,000, and (c) Automobile Liability insurance of not less than \$1,000,000.

20.2 With respect to the Common Areas on the Dillard Tract and as to the Developer Tract and the Covered Mall, in the event either Party should be in default under this Article, which default continues for a period of sixty (60) days after either Party gives written notice to the defaulting Party (or for forty-eight [48] hours in the case of an emergency), and the other Party thereafter shall elect to perform such maintenance and services as are authorized, the said other Party, its agents and employees shall have, and is hereby granted, access to the premises of the defaulting Party for the purpose of the said other Party performing the maintenance obligations required under this Article except as hereinafter provided. The Party performing such maintenance and services on behalf of the defaulting Party shall be entitled to receive reimbursement from the defaulting Party for all costs and expenses incurred in performing such maintenance and services, payable upon demand with interest at the Agreed Interest Rate; provided, however, notwithstanding anything to the contrary contained herein, Dillard shall not have the right to perform any such maintenance or services on the Tract of any other Department Store or to take over Developer's obligations with respect to another Department Store's Tract or to take over the furnishing of heating, ventilating and air conditioning for the Covered Mall. Each Party hereby agrees that if it performs such maintenance as permitted hereunder, it shall not permit any mechanic's or materialmen's liens, or other similar liens, to stand against or attach to any part of the other Party's Tract.

20.3 Except as hereinafter expressly provided, from and after completion of construction of the Covered Mall, Developer shall operate and maintain, or cause to be operated and maintained, the said Covered Mall and the Common Area on each Tract in good order, condition and repair during the Term hereof and any renewal thereof, in accordance with the standards and requirements set forth in Paragraph 20.1 hereof. In such operation and maintenance, Developer shall observe the following standards:

- (1) the Covered Mall heating and cooling system in good operating condition under the requirements set out in Article 14 hereof;
- (2) As required, remove all papers, debris, filth and refuse and wash or thoroughly sweep floors, walkways and stairways;
- (3) Clean lighting fixtures, and reballast, relamp or replace as needed;
- (4) Maintain the surface of parking areas and repaint striping, markers, directional signs, etc., as necessary, to maintain in good condition;
- (5) Maintain landscaping, fountains and seating areas, as necessary, to keep in a first-class condition (except landscaping between the Dillard Building exterior perimeter walls and Building Perimeter Sidewalks, which shall be the responsibility of Dillard as to such landscaping on its own Tract);
- (6) Employ courteous and uniformed personnel, in adequate numbers, for effective security patrol and security functions during store hours and such other hours as are deemed necessary by the Parties, both as to the Covered Mall and the Common Area on each Tract;

- (7) Clean signs of the Shopping Center (as contrasted with those of Occupants) including relamping and repairs being made as required);
- (8) Maintain and keep in a sanitary condition public restrooms, if any, and other common use facilities on the Covered Mall;
- (9) Clean, repair and maintain all Common Utility Facilities to the extent that the same are not cleaned, repaired and maintained by public utilities;
- (10) Keep all Common Areas adequately lighted during all darkness hours while the Shopping Center is open, until at least one-half (1/2) hour after Dillard has closed for the evening, and furnish night lighting of at least twenty-five percent (25%) of full lighting capacity after closing; and
- (11) Promulgate and enforce reasonable rules, regulations and policies for the use and control of the Covered Mall and Common Areas.

20.4 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 Dillard is operating, or is obligated to be operating, during the Dillard Operating Period (as defined in Article 23 of this Operating Agreement), and for so long thereafter such period as Dillard is using and operating its Building, Dillard shall pay and reimburse Developer for Dillard's share of Developer's cost and expense of operating and maintaining the Common Areas (exclusive of the Covered Mall) including, without limitation, Common Utility Facilities, hereunder, in the annual amount set forth in that certain Supplemental Agreement between Developer and Dillard. Such annual amount shall be paid by Dillard to Developer in monthly installments on or before the tenth day of each calendar month. Dillard shall reimburse Developer for the cost and expense of operating and maintaining the Covered Mall as provided in Paragraph 14.1 of this Operating Agreement.

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

20.6 Notwithstanding anything to the contrary contained in this Operating Agreement, in the event any major repair or capital replacement of any of the paving, curbs or lighting standards is required as to any portion of the parking area located anywhere upon and within the Shopping Center Tract (other than repairs and replacements by any casualty covered by insurance), such repairs and replacements shall be performed and furnished by Developer. If resurfacing of the entire parking area (including sidewalks, if

major repair or capital replacement of the same is necessary) on the Shopping Center Tract is required, or if rewiring or replacement of the lighting fixtures on the entire parking area is required, such work shall be performed and furnished by Developer. All such capital repair and replacements shall be of the same general type and quality as the installations and facilities being replaced.

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

forth in this Article 20, and such default continues for a period of sixty (60) days after Developer gives written notice to Dillard (or for 48 hours in the case of an emergency) and Developer thereafter shall elect to perform such maintenance and services as are authorized, Developer, its agents and employees, shall have, and are hereby granted, access to the Common Areas of the Dillard Tract for the purpose of performing the maintenance obligations required under this Article, and Developer shall be entitled to receive reimbursement from Dillard for all reasonable costs and expenses incurred in performing such Common Area Maintenance on the Dillard Tract, payable upon demand with interest at the maximum legal rate, but not to exceed the Agreed Interest Rate at the time of such default.

Operation

Article 21 - Improvements Destruction

21.1 In the event of the destruction of, or damage to, the Buildings (other than any Building occupied by a Department Store), the Covered Mall or other Improvements upon the Developer Tract, or any part thereof, at any time during the period of fifteen (15) years from and after the Opening Date, by fire, windstorm or other casualty required to be insured hereunder, Developer shall promptly and diligently rebuild, repair and restore such Improvements so that there shall then be substantially the same number of square feet of Small Store Floor Area on the Developer Tract, in the same location as presently shown on Exhibit "E", and of the general appearance, type and quality, in as good condition and constituting an integrated regional shopping center substantially as it existed prior to the damage or destruction, provided that Dillard and Younkens are then open and operating as such named Department Stores in the Shopping Center, or are repairing and rebuilding their Buildings and Improvements to be duly re-opened and operated as such; provided, however, that Developer shall not be obligated to so rebuild, repair and restore any "Major Damage" (as hereinafter defined) unless (i) Dillard and Younkens are then open and operating as such named Department Stores in the Shopping Center or are repairing and rebuilding their Buildings and Improvements to be duly re-opened and operated as such, and (ii) Dillard and Younkens each are then obligated or then agree in writing to continue the operation of their named Department Stores in the Shopping Center for the longer of their remaining Operating Period, as provided in Article 23 hereof, as to Dillard, and as provided in the Younkens Lease as to Younkens, or eight (8) years from the date of completion of such repair and restoration. If and when both Future Department Stores also are open and operating in the Shopping Center, so that there are then a total of at least four (4) Department Stores operating in the Shopping Center, Developer's obligation to repair and restore Improvements on the Developer Tract as aforesaid shall be conditioned upon continued operation (and necessary reconstruction) by Dillard, Younkens and at least one (1) of the Future Department Stores, and the preceding sentence shall be deemed amended accordingly.

In the event of any such destruction or damage to the Buildings (other than any Building occupied by a Department Store), the Covered Mall or other Improvements upon the Developer Tract, or any part thereof, at any time after the expiration of such fifteen (15) year period following the Opening Date, Developer shall be obligated to so rebuild, repair and restore only in the event that (i) Dillard, Younkens and at least one (1) other Department Store are then either operating as such named Department Stores in the Shopping Center, or are repairing and rebuilding their Buildings and Improvements to be duly re-opened and operated as such named Department Stores, and (ii) Dillard, Younkens and at least one (1) other Department Store each enter into a new written Operating Agreement with Developer to use and operate their respective Buildings in the Shopping Center for at least eight (8)

years following the completion of the repair and restoration, except that if such damage or destruction is less than "Major Damage" (as hereinafter defined), Developer shall be obligated to so rebuild, repair and restore if Dillard, Younkers and at least one (1) other Department Store are then either operating as such named Department Stores in the Shopping Center, or are repairing and rebuilding their Buildings and Improvements to be duly re-opened and operated as such.

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

21.2 Any Building, the Covered Mall or other Improvements required to be rebuilt, repaired and restored by Developer, pursuant to this Operating Agreement, shall be rebuilt, repaired and restored and ready for occupancy with due diligence, not to exceed eighteen (18) months from the time when the loss or destruction occurred (except where such repairs and restoration amounts to less than \$100,000.00 in cost, in which event the same shall be completed and ready for occupancy within one hundred twenty (120) days after such occurrence), subject, however, to unavoidable delays stipulated under the provisions of Article 26 hereof.

21.3 In the event of the destruction of, or damage to, the Buildings or other Improvements, or any part thereof, upon the Dillard Tract (including Common Area thereon) at any time during the period of fifteen (15) years from and after the Opening Date by fire, windstorm or other casualty required to be insured against hereunder, and provided that at least one (1) of Younkers or a Future Development Store is then open and 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, Dillard shall promptly and diligently rebuild, repair and restore its Building and Improvements so that there will then be substantially the same number of square feet of Floor Area on its Tract, in the same location as presently shown on Exhibit "E", and of the same general appearance, type and quality, in as good condition and constituting an integrated Building, as existed prior to the damage or destruction, and Dillard shall promptly resume its operation on its Tract for the remainder of its Operating Period. If and when both Future Department Stores also are open and operating in the Shopping Center, so that there are then a total of at least four (4) Department Stores (including Dillard) operating in the Shopping Center, Dillard's obligation to repair and restore Improvements on the Dillard Tract and resume its operation as aforesaid shall be conditioned upon continued operation (and necessary reconstruction) by Younkers and at least one (1) of the Future Department Stores, and the preceding sentence shall be deemed amended accordingly.

21.4 Any Building or other improvements required to be rebuilt, repaired and restored by Dillard pursuant to this Operating Agreement shall be rebuilt, repaired and restored and ready for occupancy with due diligence, not to exceed eighteen (18) months from the time when the loss or destruction occurred (except where such repairs and restoration amounts to less than \$100,000.00 in cost, in which event the same shall be completed and ready for occupancy within ninety (90) days after such occurrence); subject, however, to unavoidable delays stipulated under the provisions of Article 26 hereof.

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

1. Plans and specifications therefor not previously approved for the construction of the Dillard Building shall be submitted by Dillard to Developer for review and approval in accordance with the provisions of Paragraph 2.3 hereof.
2. The Buildings or other Improvements being restored shall be restored as nearly as practicable to the condition existing just prior to the occurrence of such casualty, and shall be at least of equal value per square foot, and at least as usable for its intended purpose, as such Building or other Improvements were just prior to the occurrence of such casualty.
3. Substantially the same public entrances in relation to location on the Covered Mall shall exist as existed just prior to the occurrence of such casualty.
4. Such repair, reconstruction and replacement shall be done in conformity with the provisions of this Operating Agreement concerning initial construction.

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

Operation

Article 22 - Developer Operating Period

22.1 Provided Dillard and Younkens shall not be in default under their respective operating covenants and shall be open and operating their respective Department Stores in the Shopping Center, Developer shall continuously operate the Developer Tract (excluding the Buildings designated as Future Department Store(s) on the Plot Plan) and at least sixty percent (60%) of the Small Store Floor Area in the Developer Building and the Covered Mall thereon as a first-class multi-unit retail and commercial facility, 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, for a period of fifteen (15) years from and after the Opening Date, and for so long thereafter as Dillard and Younkens are using the Buildings which they occupy in the Shopping Center for retail purposes customarily found in such an enclosed mall regional shopping center, but in no event for a period of longer than fifty (50) years from the Opening Date, shall operate thereon a multi-unit retail and commercial facility in accordance with typical shopping center industry practices and standards. Notwithstanding anything to the contrary, if and when there are four (4) or more Department Stores open and operating in the Shopping Center (including Dillard and Younkens) Developer's operating covenant shall be conditioned (in addition to the other conditions therein provided) upon the continued operation of at

least three (3) other Department Stores, including at least two (2) of Dillard and Younkers and one (1) other Department Store, and the proviso in the first sentence of this Paragraph 22.1 shall be deemed amended accordingly.

22.2 The provisions of this Article shall be subject to all the provisions of this Operating Agreement, including, without limitation, the provisions of Article 21 (Improvements Destruction), Article 26 (Force Majeure), Article 27 (Eminent Domain), Section 32.9 (Limited Liability of Developer and Exculpation of Partners), and Section 32.18 (Temporary Cessation of Business).

22.3 The Parties acknowledge that damages for the breach of the operating covenants contained in this Article may be difficult to ascertain. Accordingly, Dillard shall be entitled not only to damages but also to injunctive relief to enforce the foregoing operating covenants against Developer and to restrain and enjoin any breach or threatened breach thereof.

Operation

Article 23 - Dillard Operating Period

23.1 Provided (1) at least one (1) of Younkers and a Future Department Store is open and operating in the Shopping Center, and (2) Occupants of at least sixty percent (60%) of the Small Store Floor Area in the Developer Tract are conducting business, Dillard covenants and agrees with Developer, its successors and assigns, that (a) Dillard shall, for a period of fifteen (15) years following the Opening Date of the Dillard Building (such period of fifteen (15) years being referred to as the "Operating Period") keep open and continuously operate, or cause to be kept open and continuously operated, a retail department store containing at least 206,000 square feet of Floor Area on the two (2) levels in the Dillard Building, which retail department store shall be continuously operated under a trade name which includes the word "Dillard", or under such other trade name as is used by the majority of its stores in the States of Nebraska and Iowa, during the Operating Period, and (b) the Dillard Tract and Building thereon shall not be used for any use or purpose other than that specified in clause (a) of this sentence during the Operating Period; provided, however, that if at any time during the Operating Period neither Younkers nor a Future Department Store is open and operating in the Shopping Center, Dillard nevertheless shall remain open and continue to operate and observe and perform its operating covenant contained herein and shall not cease, or exercise any right to cease, operating unless such condition continues for more than one (1) year after Dillard has given written notice to Developer and to any mortgagee of the Developer Tract entitled there to pursuant to Paragraph 32.12 hereof that such condition exists, during which period of one (1) year following receipt of such notice Developer shall have the opportunity (but not the obligation) to restore the operation of the required Department Store or obtain a substitute or replacement reasonably acceptable to Dillard; and provided further, however, that if at any time during the Operating Period such occupancy of the Small Store Floor Area in the Developer Tract falls below sixty percent (60%), Dillard nevertheless shall remain open and continue to operate and observe and perform its operating covenant contained herein and shall not cease, or exercise any right to cease, operating unless such condition continues for more than one (1) year after Dillard has given written notice to Developer and to any mortgagee of the Developer Tract entitled thereto pursuant to Paragraph 32.12 hereof that such condition exists, during which period of one (1) year following receipt of such notice Developer shall have the opportunity (but not the obligation) to restore the occupancy of the required minimum of sixty percent (60%) of Small Store Floor

Area. If and when any additional Future Department Store also is open and operating in the Shopping Center, so that there are then a total of at least four (4) Department Stores (including Dillard) operating in the Shopping Center, Dillard's obligation to operate as aforesaid shall be conditioned upon (in addition to the other conditions stated above) the continued operation of at least two (2) of Younkers and the Future Department Store(s), and the preceding sentence shall be deemed amended accordingly. Dillard further covenants and agrees that during the remaining Term of this Operating Agreement, after the expiration of the Operating Period, so long as at least one (1) other Department Store is using its Building for retail purposes customarily found in an enclosed mall shopping center, and at least sixty percent (60%) of the Small Store Floor Area in the Developer Tract is being operated for retail purposes, then Dillard, its successors and assigns, shall not use the Dillard Building or Dillard Tract for any use or purpose incompatible with an enclosed mall regional shopping center.

23.2 The Parties acknowledge that damages for the breach of the operating covenants contained in this Article may be difficult to ascertain. Accordingly, Developer shall be entitled not only to damages but also to injunctive relief to enforce the foregoing operating covenants against Dillard and to restrain and enjoin a breach or threatened breach thereof.

23.3 Any temporary cessation of business by Dillard, which is occasioned by (1) the making of repairs or (2) which is not in excess of sixty (60) days and is occasioned by the making of permitted alterations or renovations hereunder, shall not constitute a breach of Dillard's operating covenant as provided in Section 23.1 hereof, provided that, and so long as, Dillard is using due diligence in making such repairs, alterations and renovations, and provided further, that Dillard shall continue to pay all maintenance charges and other charges and contributions payable by Dillard to Developer hereunder and under its Supplemental Agreement during any such temporary cessation of business.

P A R T T H R E E

Reciprocal Easements

Article 24 - Easements

24.1 This Article sets forth easements and licenses and the terms and conditions thereof, which each Party hereto hereby grants to the other, for the respective periods set forth in the case of each such easement or license. As used in this Article,

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

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

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

As to the easements herein granted:

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

(e) The grant of a particular easement to a Grantee shall benefit its respective Tract, as described in this Operating Agreement, which shall, for the purposes of this Article, be deemed to be the dominant tenement, but where only a portion thereof is so benefited, only that portion shall be deemed to be the dominant tenement.

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

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

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

(i) All easements and licenses hereby granted also shall inure to the benefit of Younkers, any Future Development Store and their respective Permittees and shall also be appurtenant to the Younkers Tract and any Future Development Store Tract.

24.2 Each Party hereby grants to the other Party and to the architect and contractors performing any work called for in this document, a temporary license for the performance of such work. The license granted by this Paragraph 24.2 shall not permit the use of any portion of any Tract upon which a Building is, or is to be (as shown on the Plot Plan, Exhibit "E"), located if operation or construction of such Building would thereby be unreasonably interfered with or delayed.

24.3 During the period of the construction of the Dillard Building and the Developer Building and the perimeter sidewalks thereto, each Party grants to the other Party, its architects, contractors and others engaged in performing such work, a temporary license to use portions of the Tract of the Grantor, as and to the extent reasonably necessary for the purpose of performing the construction in question; provided that each such license as to any particular Tract benefited thereby shall end when the construction of the Building or structure, the construction of which gives rise to such license, shall be completed but shall not extend beyond the time when it is needed under good construction practice. During the periods of construction, each Party grants to the other the temporary license to be used for so long as reasonably necessary in the performance of such construction:

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

(ii) To use, notwithstanding anything to the contrary in this Operating Agreement contained, such parts of the Common Area on the Tract where the work is being done as may be reasonably needed for access to the work site and/or storage and storing areas as are reasonably needed in doing such construction.

24.4 Commencing upon completion of construction of each portion of the Common Area on its Tract, each Party grants to the other Party easements to use each portion of the Common Area so constructed on its respective Tract(s) (including, without limitation, the Covered Mall, parking areas, the Ring Road and Common Utility Facilities) for its respective intended purposes and to perform the repairs and maintenance provided in Article 20, such easements to be for the use of the Grantee thereof and its Permittees. Included with the easements granted by this Article are, without limitation, easements for the Grantee and its Permittees, in common with the Grantor and its Permittees, to use:

(i) the respective parking facilities for the parking and passage of motor vehicles and passage by pedestrians in the Shopping Center;

(ii) such roadways to provide passage by motor vehicles and pedestrians between each Tract in the Shopping Center and the abutting highways and to provide passage between the various portions of each Tract in the Shopping Center; and

(iii) the various walkways and all other portions of the Common Area in the Shopping Center.

The easements provided in this Paragraph are subject in each case to the rights to use the Common Area for other purposes specifically provided in this Operating Agreement and the rights, if any, of each Grantor to change and relocate portions of the Common Area to the extent (but only to the extent) specifically provided in this Operating Agreement. Except as hereinafter otherwise provided, the easements provided in this Paragraph shall terminate as to the respective Grantee thereof (1) on such date as there shall no longer be operated on such Grantee's respective Tract, a retail facility as provided in Article 22 and Article 23 hereof, in which event the Party continuing retail operations in at least 20,000 square feet of Floor Area of its Building shall have the right to erect a suitable barricade or take such other measures as may be appropriate to terminate the use of the easements, provided any such action shall be taken only with the consent of the other Party which so continues to operate at retail not less than the above Floor Area; or (2) the termination date, whichever shall first occur. Notwithstanding anything to the contrary, the easements for vehicular and pedestrian traffic over, upon and across those strips of land which constitute the Ring Road and access roads, shown dot-shaded on the Plot Plan, Exhibit "E" (hereinafter referred to collectively as the "Ring Road") shall remain and continue in full force and effect throughout the Term of this Operating Agreement, and thereafter so long as any of the Buildings, or any replacements thereof, on the Shopping Center Tract shall stand; provided, however, Developer may at its election relocate the Ring Road from the location shown on Exhibit "E" to the alternate location shown on Exhibit "E" or somewhere in between such locations, as to that portion of the Ring Road along the southeastern side of the Shopping Center between Entry #2 and Entry #6 as shown on Exhibit "E"; and provided further, however, the Grantor of such easements reserves the right at any time and from time to time after the expiration of the Term of this Operating Agreement to change the location of all or any portion of the Ring

Road located on its Tract, provided that (i) such relocation shall be made at the sole cost and expense of the Grantor, (ii) the use of the Ring Road for pedestrian and vehicular traffic, and for ingress to and egress from access roads, is not unreasonably restricted or materially impaired by such relocation, (iii) if as a result of any such relocation, the Ring Road is not contiguous with any access road which the Ring Road was contiguous with prior to such relocation, the Grantor shall at its sole cost and expense extend such access road to the relocated Ring Road to provide continued use of such access road, (iv) the quality of construction and the width of the relocated Ring Road shall be substantially similar to the portion being relocated, and (v) the relocation shall be carried out in such manner as to cause the least possible interference with the use of the Ring Road; and provided further, however, that after the expiration of the Term of this Operating Agreement the Grantor shall have no obligation to maintain or repair the Ring Road on its Tract and any Grantee shall have the right to enter upon the Tract of the Grantor for the purpose of maintaining and repairing the Ring Road at such Grantee's sole cost and expense, and that any Grantee entering upon the Tract of a Grantor to effect such maintenance and repair shall indemnify, defend and save harmless the Grantor from all loss, liability, cost and expense incurred in connection with the Grantee's exercise of such right.

24.5 Commencing on completion of the Covered Mall, Developer grants to Dillard easements (i) to have the Dillard Building abut, overhang and open on the Covered Mall and (ii) to use the Covered Mall for access to any other Buildings opening on the Covered Mall for it and its invitees, in common with the Grantor and its invitees, as shown on Exhibit "E" and in the Plans. These easements are subject to the right of Developer to relocate various elements of the Covered Mall to the extent specifically provided in this Operating Agreement. The easement provided in this Paragraph shall terminate as to the Dillard Tract and Dillard as Grantee at such date as the Dillard Tract and Dillard Building are no longer being operated, for the use or purpose as provided herein.

24.6 Each Party grants to the other Party and its employees, agents and contractors, easements to enter upon the Tract of the Grantor, and into all Improvements thereon, for the purpose of performing any obligation which the Grantor is required to perform under this Operating Agreement, but fails or refuses to do, and which the Grantee has the right then so to perform as provided in the Operating Agreement; provided, however, the right of the Grantee, and its respective employees, agents and contractors, pursuant to this Paragraph 24.6, shall be conditioned upon no less than five (5) days' prior written notice given by the Grantee to the Grantor that Grantee anticipates doing work pursuant to this Paragraph 24.6, together with notification of the proposed area of such work and the anticipated date of start of such work, except that if the work involved is emergency repair work, only such advance notice, written or oral, as is reasonably practicable need be given.

24.7 Dillard grants to Developer easements in the Dillard Tract for the following purposes:

- (i) The development and performance of construction thereon of portions of the Common Area located on the Dillard Tract; and
- (ii) The management, operation, maintenance, reconstruction and repair of such Common Area pursuant to the applicable provisions of this Operating Agreement.

The easements provided in this Paragraph shall terminate as to the Common Area on the Dillard Tract on the date Developer is no longer

entitled to maintain the Common Area on the Dillard Tract pursuant to this Operating Agreement, but in any event on the termination date.

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

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

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

24.9 Each Party grants to the other Party, easements for the purpose of maintaining, repairing or reconstructing any of the facilities of the Grantee located in such proximity to the Tract(s) (but excluding all of the Building except the roof) of the Grantor that such facilities can, as a practical matter, be so maintained, repaired or reconstructed most advantageously from the Tract(s) of the Grantor. Such easements shall permit the Grantee and its employees, agents and contractors, to enter upon and use such parts of the Tract(s) (but excluding all of the Building except the roof) of the Grantor as are adjacent to the perimeter of said facilities to such extent, in such manner (including, without limitation, the erection of scaffolding) and for so long as is reasonably necessary to the accomplishment of said purpose; provided, however, and on condition that, each such Grantee shall restore the portion of the Tract and any facilities thereon so used to the same or as good condition as immediately before such work was begun; and provided further, however, that no such use by such Grantee and no such scaffolding as may be erected by it shall interrupt the business therewith. Grantee shall, in the course of maintaining, repairing or reconstructing its facilities from the Grantor's Tract(s), fully indemnify and hold harmless Grantor from any and all expenses, costs or liability for any injury or damage which arises because of Grantee's actions. The easements provided in this Paragraph with respect to any servient tenement shall be perpetual, but shall terminate (except as required in order to repair the Ring Road) as to the right to maintain, repair or reconstruct any facility if, on a date after which a retail facility (being then no longer required to be operated thereon) is not being operated on the Grantee's Tract, any alteration or new construction is made to such facility which caused the need for or any exercise of Paragraph 24.9 easements to be substantially more onerous on the Grantor than it was prior thereto.

24.10 (a) Commencing on the completion of construction, and of each portion thereof as the same may be built or extended, each Party grants to the other Party easements for use, for itself and its Permittees, respectively, in common with the Grantor and its Permittees, of the portion of the Ring Road located on the Tract(s) of the Grantor (consisting of the strips of land identified as the "Ring Road" on the Plot Plan, Exhibit "E", attached hereto), for the purposes of two-way vehicular traffic (passenger vehicles and trucks) and pedestrian access, between and among the Tract(s) of each Grantee and abutting highways, and between the various portions of each such Tract(s); including, without limitation, the Reserve Tracts.

(b) The Parties may, at any time after termination when a retail facility is no longer being operated on its Tract, relocate, enlarge, narrow or alter, at its own expense, and without the

necessity of consent of any Grantee, the location of any place of access from its Tract.

(c) The easements provided in this Paragraph 24.10 shall be perpetual.

(d) From and after the date when Developer is no longer obligated to maintain the Common Area on the Dillard Tract, Dillard shall, at its own cost and expense, keep the portions of the Ring Road on its own Tract in good repair and condition, properly lighted, and available for its intended purpose.

(e) In the event of a condemnation of any portion of the Ring Road, the Parties will endeavor in good faith to agree on a substitute for the portion thereof condemned; failing such agreement, the matter shall be submitted to arbitration, the arbitrator to be a nationally recognized traffic engineer, it being intended that a Ring Road shall in such event continue to exist.

(f) Notwithstanding anything to the contrary in this Operating Agreement:

(i) No Party shall have the right, without the consent of the other Party or the owners of the other Tracts which are benefited by easements applicable to the Ring Road, to relocate any juncture point of the Ring Road on its Tract with that on any other Tract, or narrow the Ring Road on its Tract, or materially change the grade of the Ring Road on its Tract, and

(ii) No Party's Tract on which is located an entrance or exit between the Ring Road and an abutting highway on its Tract shall have the right, without the consent of the Grantee of these easements or other owners of any Tract with easements applicable to the Ring Road, to make any change in the location, design or number, or reduce the size, of such entrance and exit, but subject to the foregoing, the owner of any burdened Tract can change the location of the Ring Road within its Tract, provided that it shall provide a reasonably direct route between the juncture points or the juncture points and terminus points, on the boundary of its Tract, and such new location shall provide a new Ring Road at least as wide, serviceable and safe as that substituted for and be improved in a manner at least equal to that of the portion of the Ring Road for which it is a substitute; provided further, that any dispute between the Parties or others with reference to the Ring Road, its juncture points or any entrances or exits between the Ring Road and the abutting highway shall be determined by arbitration by a nationally recognized traffic engineer and otherwise in accordance with Article 31 hereof.

24.11 Each Party grants to the other Party the following perpetual easements in their Tract(s) for Common Utility Facilities (the term "pipe" or "pipes", as used in this Section shall mean "pipes", and/or "lines", and/or "conduits", and/or "wires", and/or "cables", and/or "other means of providing utility service" as the context may require:

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

(b) Easements in the Tract(s) of the respective Grantor for the purposes of installing therein in the future other pipes, not part of the Common Utility Facilities as originally

constructed, to provide gas, water, fire loops, and hydrants therefor, electric power, other forms of energy, signal, telephone, sanitary sewer and storm sewer services, or any of them, to or from any present or future facilities on the respective Tract(s); subject to the provisions of this Section.

(c) Easements in the Tract(s) of the respective Grantor for the purposes of connecting any and all of the pipes or the Common Utility Facilities, referred to in (a) or (b) hereof, with any facilities on the Tract(s) of the Grantee to the extent that location thereon is necessary properly in the Grantee's judgment so to service such facilities; and after any such connection, for the purpose of using, operating, maintaining, repairing, relocating, replacing and enlarging any or all of said pipes; subject to the provisions of this Section.

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

(i) No less than five (5) days' prior written notice shall be given to the Grantor that Grantee anticipates doing such work, together with notification of the proposed area of such work, and the anticipated date of start of such work; except that if the work involved is emergency repair work, only such advance notice, written or oral, as is reasonably practicable need be given;

(ii) That after such work, the pipes in question shall be underground and not beneath or unreasonably close to any Floor Area on Grantor's Tract, any Outdoor Selling Area thereon, or any ground area as a place where Grantor may build Floor Area or Outdoor Selling Area, but this shall not require the moving of any pipes theretofore installed not in violation of this Agreement, nor permit any such work if as a result thereof any Party utilizing the Common Utility Facilities to provide utilities to improvements owned by it would be required to relocate any connection between any Common Utility Facilities and such improvement in order for such Party to continue to be able so to utilize the Common Utility Facilities therefor, or if its ability so to utilize the same is otherwise materially adversely affected, unless in any such case, each Party shall consent to such work, or the Grantee proposing to do such work shall agree and place the money there for in escrow, if reasonably required by the grantor to pay all costs of the Grantor consequent upon the performance of such work by such Grantee;

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

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

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

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

24.12 With respect to such of the foregoing easements as are in this Article declared to be "perpetual", each such easement shall, notwithstanding such characterization, expire, terminate, and be extinguished in relation to the Grantee (a) when such easement is no longer being used by the Grantee, or those holding under or through the Grantee, and (b) when it is reasonable to believe that such easement will no longer be useful, or that the right to exercise the same in the future will not be valuable, to the Grantee, or those holding under the Grantee, for the purposes of the Tract of the Grantee or the use then, or which may reasonably be expected in the future to be, made thereof. An assertion by the Grantor that the easement in question has ceased, terminated or been extinguished in accordance with the foregoing sentence, shall be deemed to have been made when notice to that effect, citing this Paragraph, is given by the Grantor to and received by the Grantee; and such assertion shall be deemed to have been agreed to by the Grantee unless it shall, within thirty (30) days thereafter, by notice to Grantor, deny such assertion and give its reasons therefor. Pending the resolution of such dispute the easement in question shall be deemed to continue.

24.13 Except as otherwise specifically provided in this Agreement, the Grantee of the easements shall be responsible for the installation, maintenance and repair of all facilities which are the subject of such easements and in so doing shall comply with the provisions of this Operating Agreement.

24.14 Each Party covenants and agrees with the other Party that it will grant to governmental or public authorities or any public utility company in the area easements in its respective Tract, located all in accordance with the requirements of Paragraph 24.11 and otherwise in form acceptable to the Grantor for the installation and/or maintenance and operation of utility facilities reasonably required for any or all Tracts. Such easements shall be perpetual so long as such authority or companies use the same to provide utility services to any part of the Shopping Center Tract or Reserve Tracts.

24.15 Any of the easements or licenses granted hereby may be (a) released or extinguished, or (b) amended, waived, or modified by instrument, in recordable form, executed by the owners of all the Tracts benefited or burdened by the respective easements or licenses affected thereby.

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

P A R T F O U R

General

Article 25 - Land Covenants

Except as otherwise expressly provided, all covenants, conditions and agreements contained in this Operating Agreement, affecting the use and maintenance of the Shopping Center shall be and constitute covenants running with, and equitable servitudes upon, the land and shall bind and inure to the benefit of all Parties, their successors and assigns. All easements granted hereunder shall be appurtenant to and run with the Grantee's Tract and be a servitude upon the Grantor's Tract.

General

Article 26 - Force Majeure

The time within which any Party hereto shall be required to perform any act under this Operating Agreement, other than the payment of money, shall be extended by a period of time equal to the number of days during which the performance of such act is unavoidably prevented or delayed, retarded or hindered by acts of God, fire, earthquake, floods, explosion, inclement weather or other actions of the elements, war, declared or undeclared (including "police action"), invasion, insurrection, riot, mob violence, sabotage, inability to procure labor, equipment, transportation, facilities, or materials, strikes, lockouts, actions of labor unions, condemnation, requisition laws, orders of government, or civil or military authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Party ("Force Majeure"), excluding a Party's inability to obtain required financing. Notwithstanding the foregoing, unless the Party entitled to such extension shall give notice to the other Party of its claim to such extension within twenty (20) days after the event giving rise to such claim shall have occurred, there shall be excluded in computing the number of days by which the time for performance of the act in question shall be extended, the number of days which shall have elapsed between the occurrence of such event and the actual giving of such notice.

General

Article 27 - Eminent Domain

27.1 In the event that all, or a substantial part (more than twenty-five percent (25%)) of the Covered Mall or the Small Store Floor Area in any Building, or in the event that all or a substantial part (more than twenty-five percent (25%)) of the automobile parking spaces) of the Common Area, all on the Developer Tract, should be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of Eminent Domain, or by voluntary conveyance in lieu thereof, then, and in any of such events, Developer may terminate this Operating Agreement, except (a) that in the case of such taking of a substantial part of the Common Area on the Developer Tract, this Operating Agreement shall not terminate if the Developer is willing and able to provide for the replacement of the parking spaces lost by such taking as hereinafter more particularly provided in subparagraph 27.4(b) of this Article, and (b) that, notwithstanding any such termination, the reciprocal easements created hereunder shall survive to the extent provided in Paragraph 29.2 hereof. Upon any termination of this Operating Agreement as herein provided, the Parties shall thereupon be released from any further liability under this Operating Agreement, except as provided in this Operating Agreement.

27.2 In the event that all, or a substantial part (more than ten percent (10%)) of the Floor Area in the Dillard Building, or in the event that all or a substantial part (more than twenty-five percent (25%) of the automobile parking spaces) of the Common Area, all on the Dillard Tract, should be taken for any public or quasi-public use under any governmental law, or ordinance or regulation, or by right of Eminent Domain, or by voluntary conveyance in lieu thereof, then, and in any of such events, Dillard may terminate this Operating Agreement, except (a) that in the case of such taking of a substantial part of the Common Area on the Dillard Tract, this Operating Agreement shall not terminate as to the Dillard Tract if Dillard or the Developer is willing and able to provide for the replacement of the parking spaces lost by such taking as hereinafter provided in subparagraph 27.4(b) of this Article, and (b) that, notwithstanding any such termination, the reciprocal easements created hereunder shall survive to the extent provided in paragraph 29.2 hereof. If it is Developer who provides for such replacement of parking spaces on the Dillard Tract, Dillard shall be obligated to apply its award thereto.

27.3 If this Operating Agreement is not terminated following a partial taking, all of its conditions and provisions shall continue in full force and effect; provided, however, that each Party shall, at its sole expense, promptly begin and prosecute with diligence, the making of all necessary repairs, restorations and replacements to all Buildings and other Improvements on such Party's Tract which shall have been partially taken. All parking spaces taken in a partial taking shall be restored, either multilevel on such Party's Tract or upon available unimproved land, if any, which is owned by such Party and adjacent and contiguous to the Shopping Center, to provide at least the minimum index of Parking Spaces to Gross Leasable Area on each Party's Tract, as required by the provisions of Article 15 hereof; provided, however, that no multi-level parking shall be required or permitted without the approval of all Parties. The portion of the Shopping Center so remaining shall be a complete architectural unit with adequate parking spaces and Covered Mall in accordance with the provisions of this Operating Agreement.

27.4 In the event less than all of the Dillard Tract is excluded herefrom, Dillard shall apply any award first, before devoting such award to any other purposes, as follows:

(a) In the case of a taking affecting the Dillard Building, to the restoration of such Building to a complete architectural and structural unit as similar as is reasonably possible in design, character and quality to the original Building and to the replacement of any totally condemned Building insofar as is reasonably possible, with a Building similar in design, character and quality to the Building so taken.

(b) In the case of taking affecting a Common Area, to the replacement of the parking spaces lost by such taking with double decking parking facilities at a location acceptable to Developer, Dillard and each other Department Store or toward the acquisition of contiguous land, acceptable to each Party, for parking purposes as otherwise provided in this Operating Agreement.

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

GeneralArticle 28 - Assignment, Transfer
and Mortgage

28.1 No transfer or conveyance by any Party of all or any part of its Tract or assignment of this Operating Agreement shall be deemed to release such Party from any of its obligations hereunder, except (i) as provided in this Article 28, (ii) that if Dillard shall transfer or convey its entire Tract (other than by a transfer or conveyance described in Subparagraph 28.4(b) hereof), Dillard shall be released from all further liability arising under this Operating Agreement in respect of any period after the last to occur of (x) the date of such transfer or conveyance, (y) the expiration of the Dillard Operating Period, as set forth in Section 23 of this Operating Agreement, and (z) the date Dillard shall no longer have a possessory interest in its Tract, either as owner or lessee in possession, and (iii) that if Developer shall transfer or convey the Developer Tract at any time after the earlier of (y) the Opening Date and (z) October 16, 1992, Developer shall be released, relieved and discharged from all of its covenants, obligations and liabilities under this Operating Agreement, accruing after the date of such transfer or conveyance. Provided, however, that as a condition to such release, relief and discharge of Developer:

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

In the event that Developer transfers less than all of its Tract at any time and from time to time, then all owners of the Developer Tract shall be jointly and severally liable for the performance of all obligations imposed upon Developer under the terms of this Operating Agreement with respect to the whole or any part of the Developer Tract (subject to the terms of Paragraph 32.9 hereof); however, all such owners nevertheless shall constitute only a single Party hereunder as hereinabove provided.

Notwithstanding the aforesaid, (i) the Developer shall not transfer its interest in the Developer Tract or any part thereof prior to the earlier of (a) the Opening Date or (b) October 16, 1992, (except by way of sale and leaseback, lease and subleaseback, mortgages, deeds of trust or equity transfers to lenders or investors for purposes of financing the construction, development and operation of the Shopping Center thereon, including both interim and permanent financing, or transfer to any partner or co-venturer acquiring no more than a fifty percent (50%) interest therein), and (ii) any general partner in the Developer may dispose of its interest in the Developer and thereupon be released, relieved and discharged from all liability of Developer under this Operating Agreement, provided that until the earlier of (y) the Opening Date and (z) October 16, 1992, at least one (1) of Herbert Simon and Melvin Simon shall directly or indirectly control a general partner of the Developer.

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

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

28.4 Notwithstanding anything to the contrary contained in this Operating Agreement, Dillard may:

- (a) as part of its operation, lease portions of its Building or license departments thereof or grant concessions to other parties, subject to the provisions of Article 23 of this Operating Agreement;
- (b) lease or sell its Tract to any parent company who owns all of the outstanding shares of Dillard or to any subsidiary corporation of such parent company or to any corporation which may succeed to the business of Dillard or such parent company in the States of Nebraska and Iowa or to any corporation which may, as the result of reorganization, merger, consolidation or sale of stock or assets, succeed to such business of Dillard in the States of Nebraska and Iowa; provided, however, that in

any such case, Dillard shall only be released from all further obligations under this Operating Agreement if such lease or sale is to a corporation (i) which acquires all or substantially all of Dillard's assets in the States of Nebraska and Iowa, (ii) which has a net worth of Forty Million Dollars (\$40,000,000.00) prior to such lease or sale, and (iii) which, by written instrument in recordable form, expressly assumes all of Dillard's covenants and obligations hereunder; provided further, however, such release shall be effective only upon and after receipt by Developer from Dillard of a certified copy of the assignment or transfer instrument as recorded in the records of Douglas County, Nebraska; provided further, however, no such sale or lease described in this Clause 28.4(b) shall be permitted unless prior to such sale or lease Dillard is operating at least three (3) retail department stores (including the retail department store at the Shopping Center) under the name "Dillard" in the States of Nebraska and Iowa; and

- (c) mortgage its Tract and/or sell and leaseback or lease and subleaseback its Tract and, in connection with any such transaction, assign its interest in this Operating Agreement. If any such mortgage is foreclosed or a deed delivered in lieu of foreclosure, or if Dillard shall have entered into a sale and leaseback or a lease and subleaseback transaction involving its Tract under which Dillard or any parent company which owns all of the outstanding shares of Dillard is the lessee or sublessee thereunder and such lessee or sublessee shall be deprived of possession of such Tract by reason of its failure to comply with the terms of such leaseback or subleaseback, anyone who has acquired, or shall thereafter acquire, title to such tract or a leasehold estate therein shall hold the same free of any affirmative obligation to operate a retail department store on such Tract, as set forth in Paragraph 23.1 of this Operating Agreement, but subject to all other terms, provisions, covenants, conditions and restrictions contained in this Operating Agreement, including, without limitation, the negative use restrictions contained in Paragraph 23.1 hereof. In the event a mortgagee of the Dillard Tract or the purchaser under a sale and leaseback succeeds to the interest of Dillard in said Tract, the obligations of Dillard shall be binding upon such successor or any person claiming by, through or under such successor only during the period that it is in possession of such Tract, 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 clause 23.1(a) of this Operating Agreement, provided that such successor is not a parent, subsidiary or affiliate of Dillard or otherwise related to or owned or controlled by Dillard, directly or indirectly; provided, however, that at any time the Dillard Tract is not being operated as a retail department store, Developer shall have the exclusive and continuing right and option (but not the obligation) to purchase the Dillard Tract in accordance with the provisions of Paragraph 23.4 hereof. Notwithstanding the previous portions of this clause (c), if Dillard is deprived of possession of its Tract by reason of the foreclosure of such mortgage or delivery of deed in lieu of foreclosure or by reason of its failure to comply with such leaseback or subleaseback, it nevertheless shall remain liable for breach of its covenants and obligations under Article 23 of this Operating Agreement, and for the payment of any and all charges and sums of money provided for in its Supplemental Agreement, in the event a

transferee or successor comes into possession. This Operating Agreement and the rights, interests and easements created hereunder shall be prior and superior to any mortgage or other lien upon or against the Dillard Tract.

General

Article 29 - Termination Rights

29.1 Upon the expiration or earlier termination of this Operating Agreement, in accordance with its provisions and conditions, all rights and privileges derived from, and all duties and obligations created and imposed by all provisions of this Operating Agreement shall terminate and thereafter cease to exist, except as otherwise provided in this Operating Agreement.

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

29.3 Except as herein expressly provided, no breach of this Operating Agreement or default by either Party shall entitle the other Party to terminate or cancel this Operating Agreement.

General

Article 30 - INTENTIONALLY OMITTED

General

Article 31 - Arbitration

31.1 Except as otherwise provided in this Operating Agreement, whenever there is any monetary dispute between the Parties hereto, under the provisions of this Operating Agreement, not exceeding 50,000.00 in amount, which cannot be settled by agreement of the Parties, and if both Parties to such dispute shall agree in writing, upon or after the occurrence of such dispute, to arbitrate such dispute, either Party to such dispute desiring arbitration (hereinafter called "First Party") shall give the other Party to such dispute (hereinafter called "Second Party") written notice to that effect, describing the matter in dispute to be determined by arbitration, and naming an arbitrator to act for First Party. Unless such matter shall be agreed upon between the Parties in the interim, the Second Party, within ten (10) days after receipt of such notice, shall name an arbitrator to act for Second Party by a written notice to First Party and, concurrently therewith, by notices, in writing, shall notify each of said arbitrators of their obligation to appoint a third arbitrator. The two arbitrators so appointed shall, within thirty (30) days thereafter, appoint a third arbitrator and make all necessary arrangements for conducting such arbitration.

31.2 If Second Party shall fail or refuse to name an arbitrator, the arbitrator appointed by First Party shall act as sole arbitrator, or, at his option, shall appoint an arbitrator to act for the Second Party. In the event the arbitrator appointed by First Party shall be the sole arbitrator, his decision shall be final and conclusive upon the Parties. In the event the three arbitrators are appointed in either of the manners set forth in this Article the decision of any two of said three arbitrators shall be final and conclusive upon the Parties. In the event the first two arbitrators appointed shall fail to appoint a third arbitrator within thirty (30) days of the appointment of the second arbitrator, or in the event any arbitrator appointed shall become incapacitated, die or resign, or refuse to act, at any time before the complete determination of the matter in dispute, a Judge of

competent local jurisdiction shall appoint an arbitrator to fill the vacancy of the arbitrator not appointed or not acting.

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

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

General

Article 32 - Miscellaneous

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

32.2 Parties not Partners. Nothing contained in this Operating Agreement shall be construed to make the Parties hereto partners or joint venturers, or to render any said Parties liable for the debts or obligations of the other, except as in this Operating Agreement expressly provided.

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

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

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

32.6 Severable Provisions. In the event any provision, or any portion thereof, of this Operating Agreement, or the application thereof, to any person or circumstances, shall, to any extent, be held invalid or unenforceable, the remainder of this Operating Agreement, all of its other provisions and all portions thereof, and the application thereof, to any other person or circumstances,

shall be severed therefrom and shall not be affected thereby, and each such provision, and portion thereof, of this Operating Agreement shall be valid and enforceable to the fullest extent permitted by law.

32.7 Modification. No agreement shall be effective to add to, change, amend, modify, waive or discharge this Operating Agreement, in whole or in part, unless such agreement is in writing and signed by both Parties, and no modification or amendment of this Operating Agreement, in whole or in part, shall require any consent or approval of any Occupant other than a Party.

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

32.9 Limited Liability of Developer and Exculpation of Partners. Notwithstanding anything contained in this Operating Agreement or in any Supplemental Agreement to the contrary, if at any time Developer shall fail to perform or pay any covenant or obligation on its part to be performed or paid hereunder, or under any Supplemental Agreement, and as a consequence thereof Dillard shall recover a money judgment against Developer or obtains or is granted a decree or order of specific performance or other equitable remedy ordering Developer to perform or cease performing any act which requires incurring costs or the payment of money by Developer, such judgment, decree or order and any and all of the costs of either performing any such judgment, decree or order, or ceasing to perform any act, shall be enforced against and satisfied out of only (i) the proceeds of sale produced upon execution of such judgment and levy thereon against Developer's interest in the Developer Tract and the Improvements thereon, (ii) the rents, issues or other income receivable from Developer Tract and the Improvements thereon, (iii) the consideration received by Developer from the sale of all or any part of Developer's interest in the Developer Tract and Improvements thereon, made after such failure of performance (which consideration shall be deemed to include any assets at any time held by Developer to the extent that the value of same does not exceed the proceeds of such sale), and (iv) any insurance proceeds or condemnation award payable to Developer as the result of any casualty to or condemnation of Developer Tract and the Improvements thereon, and Dillard and any other owner or holder of any claim or action against Developer shall look solely to the Developer Tract and Improvements thereon and to said property specified in clauses (i), (ii), (iii) and (iv) above for the payment and satisfaction of any such claim or action and any judgment thereon. Neither Developer, its successors and assigns, nor any of the partners, general or limited, in the limited partnership referred to herein as "Developer" or "Developer Partnership", nor any partner, shareholder or joint venturer in any successors or assigns, shall be personally liable to Dillard, its successors and assigns, or to any other party, for the performance or payment of any covenant, obligation, liability or indebtedness of Developer hereunder or under any Supplemental Agreement or for any judgment thereon. It is expressly understood and agreed that nothing contained in this Operating Agreement shall be construed or interpreted as creating any personal liability whatsoever against the Developer, its successors and assigns, any partners in the Developer Partnership, any partners in a partner of the Developer Partnership, or any partner, shareholder or joint venturer in any successor or assign. Dillard, its successors and assigns, and any other owner or holder of any claim or action against Developer under this Operating Agreement, or any indebtedness, obligation or liability of Developer accruing hereunder, shall look solely to Developer's interest in the Developer Tract and any improvements thereon and proceeds therefrom, as aforesaid, for the payment and satisfaction of any such claim, action, indebtedness, obligation or liability, as

aforesaid. The provisions of this Paragraph 32.9 are not intended to relieve Developer from the performance of any of its obligations hereunder, but rather to limit Developer's liability as aforesaid for such performance, and to relieve and release the partners in the Developer Partnership, the successors and assigns of Developer, any partners in a partner of the Developer Partnership, and partners, shareholders and joint venturers in any successor or assign, from any such liability whatsoever, as aforesaid. The provisions of this Paragraph 32.9 also shall inure to the benefit of Developer's successors and assigns, including, without limitation, any mortgagee of the Developer Tract, and whether or not such mortgagee has acquired title to the Developer Tract or has otherwise succeeded to the interest of the Developer hereunder.

32.10. Default. Unless otherwise provided in this Operating Agreement, neither Party shall be deemed to be in default under this Operating Agreement until such Party shall have been given written notice describing the nature of such impending default, and within fifteen (15) days after the receipt of such notice, or such longer period of time as may otherwise be provided in this Operating Agreement, shall have failed to commence to cure such impending default and to proceed diligently to complete the curing of such impending default as promptly as possible, utilizing all reasonable means to effectuate and expedite the curing of such impending default.

32.11 Time and Standard of Consents and Approvals. Except as otherwise expressly provided in this Operating Agreement, including the Plot Plan Notes attached hereto as Exhibit "E-1", or in any Supplemental Agreement, if consent or approval of either Party is required under this Operating Agreement or in any Supplemental Agreement, such consent or approval shall not be unreasonably withheld, delayed or denied. Unless a different time limit is provided in this Operating Agreement, any consent or approval, or any denial of consent or any disapproval, shall be given in writing within thirty (30) days following receipt of the request therefor or the request shall be conclusively deemed to have been consented to, or approved of, as the case may be, provided that the request for any such consent or approval shall be in writing and shall expressly call for such consent or approval and shall expressly advise the Party receiving such request that such consent or approval shall be deemed to have been given as requested unless written denial of consent or disapproval, as the case may be, is given by such Party within such thirty (30) day period. Any denial of consent or any disapproval shall specify with particularity the reasons therefor.

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

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

32.13 Estoppel Certificates. Either Party shall, from time to time (but not more frequently than once in any four (4) month period) upon not less than thirty (30) days' notice from the other Party, execute and deliver to such other Party, or such Party's mortgagee or any other person or entity having or acquiring an interest in such Party's Tract, a certificate in recordable form stating that this Operating Agreement is unmodified and in full force and effect or, if modified, that this Operating 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 Party is in default in any respect under this Operating Agreement, and, if in default, specifying such default; provided, however, that in no event will either Party be required to modify any of its covenants under this Operating Agreement or to expand any of its obligations or reduce any of its rights with respect to the other Party or the person or entity for whose benefit such certificate is given, by means of such certificate.

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

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

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

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

32.18 Temporary Cessation of Business. Any temporary cessation of business by any Party, not in excess of six (6) months, which is occasioned by the making of repairs, restoration or rebuilding or permitted alterations or renovations hereunder, or by any Force Majeure, shall not constitute a breach on the part of the Party so ceasing business of its covenant to operate as provided in Article 22 or Article 23 of this Operating Agreement, as the case may be, so long as such Party is proceeding diligently with such work or the necessary efforts to resume operation.

Article 33 - Notices

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

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

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

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

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

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

General

Article 34 - Exhibits

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

General

Article 35 - Successors

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

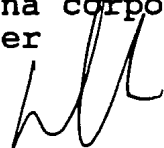
[End of page 59]

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

CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana limited partnership

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

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

BY: 

ITS: Vice President

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

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

BY: George W. Venteicher,
President

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

BY: George W. Venteicher,
Partner

BY: Frank R. Krejci, Partner
"Developer"

CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation

By: _____
"Condev"

DILLARD DEPARTMENT STORES, INC., a Delaware corporation

By: _____
"DDSI"

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

CENTER ROAD RETAIL DEVELOPERS LIMITED PARTNERSHIP, an Indiana limited partnership

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

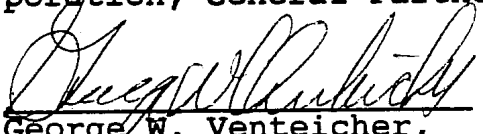
BY: CS RETAIL DEVELOPERS, INC., an Indiana corporation, General Partner

BY: _____


ITS: _____

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

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

BY: 
George W. Venteicher,
President

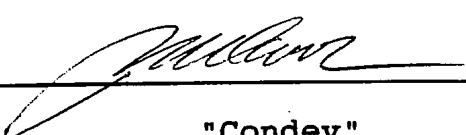
BY: OLD MILL ASSOCIATES, a Nebraska general partnership, Partner

BY: 
George W. Venteicher,
Partner


BY: 
Frank R. Krejci, Partner

"Developer"

CONSTRUCTION DEVELOPERS, INCORPORATED, an Arkansas corporation

By: 
"Condev"

DILLARD DEPARTMENT STORES, INC., a Delaware corporation

By: 
"DDSI"

STATE OF INDIANA)
)
COUNTY OF MARION)

SS:

BOOK 959 PAGE 355

On this 5th day of April, 1991, before the undersigned, a Notary Public in and for said County, personally came David Simon, 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 Reciprocal Easement and Operating Agreement, and he acknowledged the execution thereof to be his voluntary act and deed as such Vice President, and the voluntary act and deed of said corporation and each of said limited partnerships.

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

Cindy L. Garzon
Notary Public

CINDY L. GARZON, Notary Public
County of Residence: Hamilton
My Commission Expires Oct. 8, 1994

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

SS:

On this _____ day of _____, 1991, 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 Reciprocal Easement and Operating Agreement, and he acknowledged the execution thereof to be his voluntary act and deed as such President and the voluntary act and deed of said corporation and each of said partnerships.

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

Notary Public

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

BOOK 959 PAGE 256

On this _____ day of _____, 1991, before the undersigned, a Notary Public in and for said County, personally came _____, _____ President of CS Retail Developers, Inc., an Indiana corporation, general partner of Center-Simon Retail Developers Limited Partnership, an Indiana limited partnership, general partner of Center Road Retail Developers Limited Partnership, an Indiana limited partnership, personally known to be a _____ and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement, and he acknowledged the execution thereof to be his voluntary act and deed as such _____, and the voluntary act and deed of said corporation and each of said limited partnerships.

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

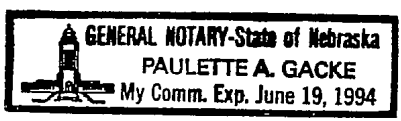
Notary Public

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

On this 4th day of April, 1991, 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 Reciprocal Easement and Operating Agreement, and he acknowledged the execution thereof to be his voluntary act and deed as such President and the voluntary act and deed of said corporation and each of said partnerships.

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

Paulette A. Gacke
Notary Public



STATE OF ARKANSAS)
)
COUNTY OF PULASKI)

SS:

BOOK 959 PAGE 258

On this 18th day of March, 1990, before the undersigned, a Notary Public in and for said County, personally came James E. Darr, Jr., Vice President of Construction Developers, Incorporated, an Arkansas Corporation, personally known to be a Vice President and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement and he acknowledged the execution thereof to be his voluntary act and deed as such Vice President, and the voluntary act and deed of said Corporation.

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

My Commission Expires:
2-4-01

Karen Beck
Notary Public

STATE OF ARKANSAS)
)
COUNTY OF PULASKI)

SS:

On this 18th day of March, 1990, before the undersigned, a Notary Public in and for said County, personally came James E. Darr, Jr., Vice President of Dillard Department Stores, Inc., a Delaware corporation, personally known to be a Vice President and identical person whose name is affixed to the above Reciprocal Easement and Operating Agreement and he acknowledged the execution thereof to be his voluntary act and deed as such Vice President, and the voluntary act and deed of said Corporation.

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

My Commission Expires:
2-4-01

Karen Beck
Notary Public

DEVELOPER TRACT

LEGAL DESCRIPTION

BOOK 959 PAGE 359

All of Lots One (1), Two (2), Three (3) and Four (4), in Oak View, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska. The plat of Oak View Subdivision was filed August 15, 1990, in Book 1880, at Pages 670 A and 670 B, in the office of the Register of Deeds of Douglas County, Nebraska.

Exhibit "A"
Page 1 of 1

DILLARD TRACT
LEGAL DESCRIPTION

BOOK 959 PAGE 360

Lot Five (5), in Oak View, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska. The plat of Oak View Subdivision was filed August 15, 1990, in Book 1880, at Pages 670 A and 670 B, in the office of the Register of Deeds of Douglas County, Nebraska.

Exhibit "B"
Page 1 of 1

TOTAL DEVELOPMENT TRACTLEGAL DESCRIPTION

All of Lots One (1), Two (2), Three (3), Four (4) and Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14), in Oak View, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska. The plat of Oak View Subdivision was filed August 15, 1990, in Book 1880, at Pages 670 A and 670 B, in the office of the Register of Deeds of Douglas County, Nebraska.

Exhibit "C"
Page 1 of 1

LEGAL DESCRIPTION

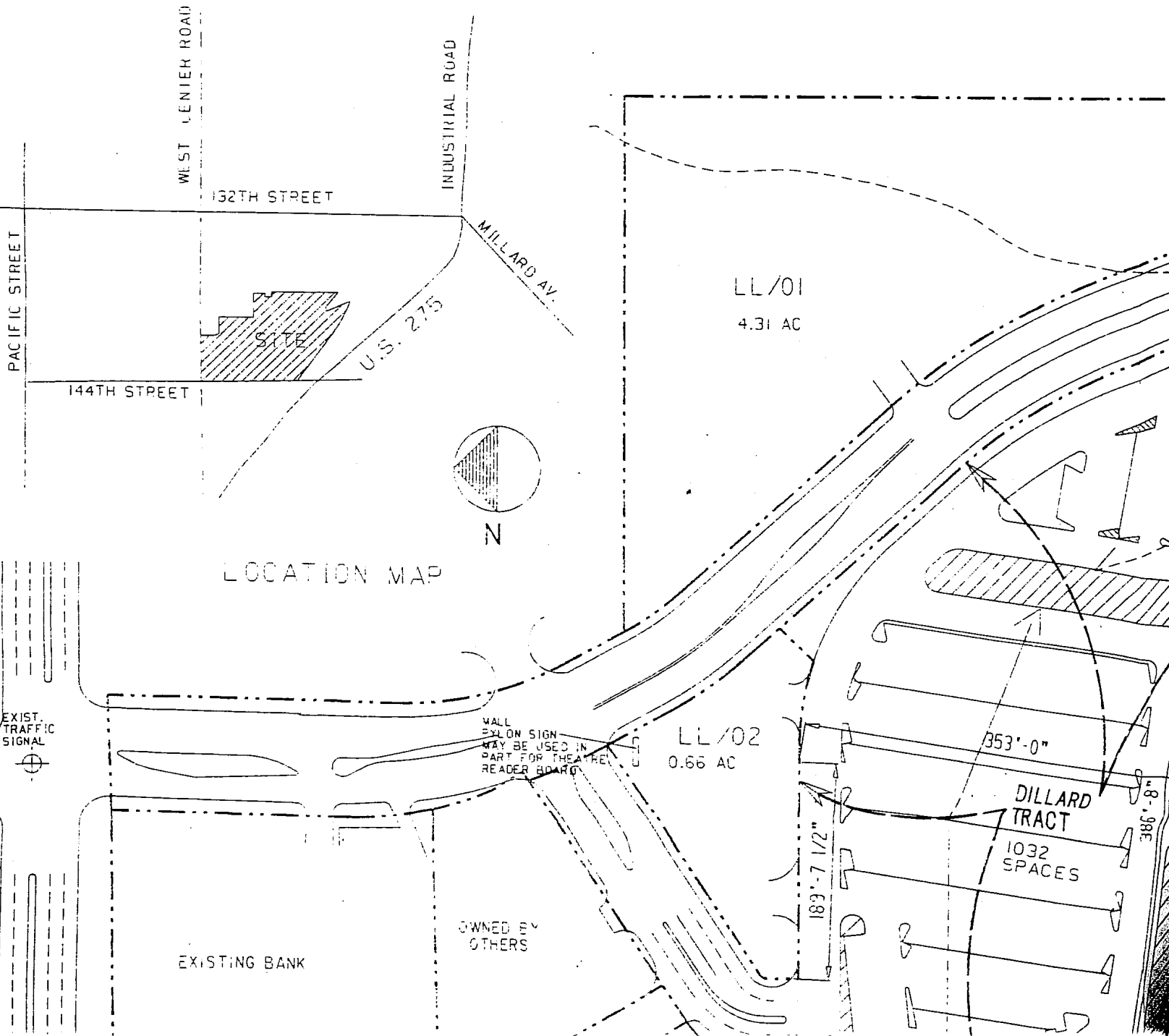
All of Lots Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14), in Oak View, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska. The plat of Oak View Subdivision was filed August 15, 1990, in Book 1880, at Pages 670 A and 670 B, in the office of the Register of Deeds of Douglas County, Nebraska.

REGIONAL SHOPPING MALL

OUTLOT LEGEND

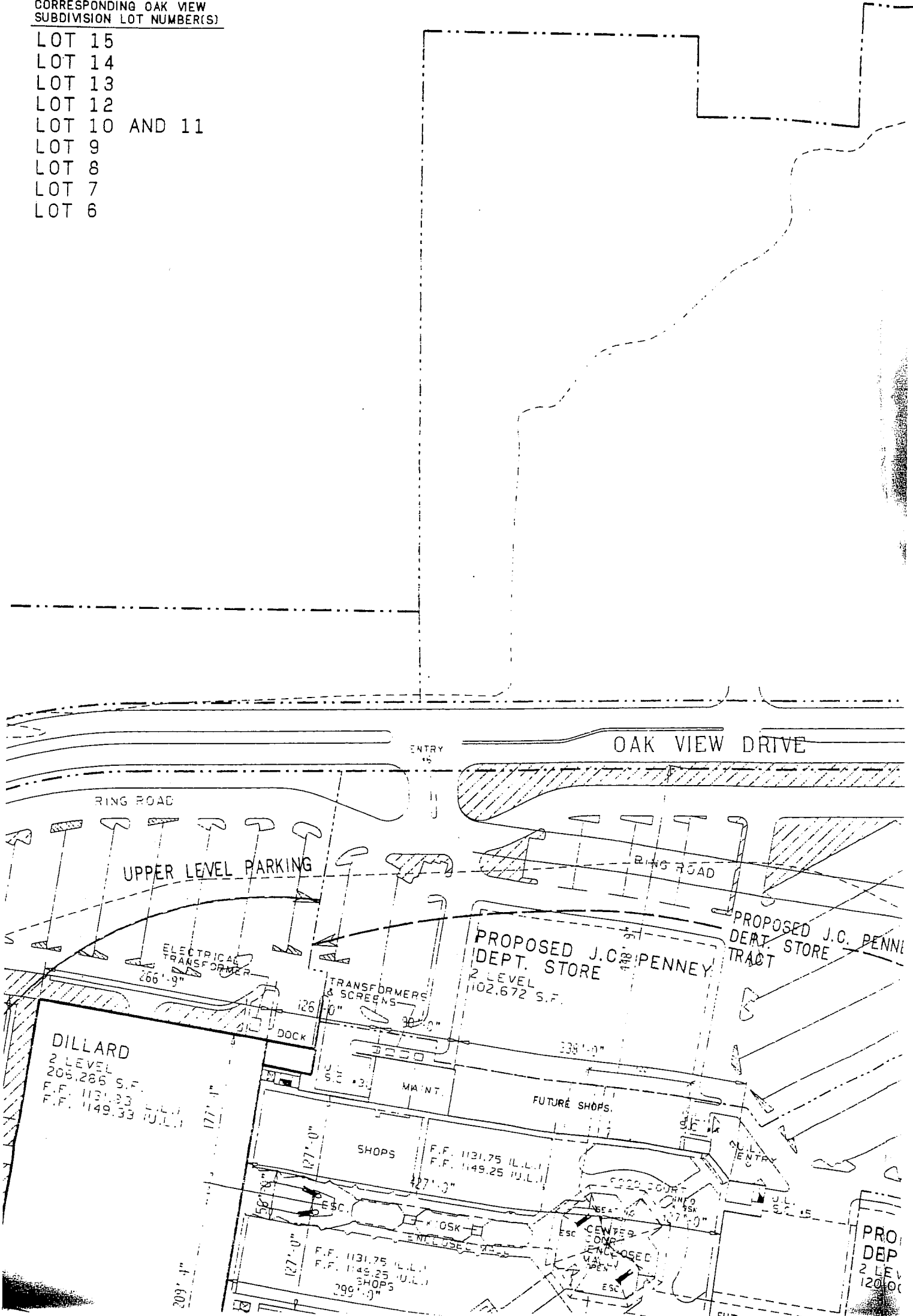
DILLARD	206.286
YOUNKERS	150.000
SMALL SHOPS	255.506
TOTAL G.L.A.	611.792
PROPOSED SEARS DEPT. STORE	120.000
PROPOSED J.C. PENNEY DEPT. STORE	102.672
FUTURE SHOPS	70.000
TOTAL FUTURE G.L.A.	292.672
TOTAL OUTLOT G.L.A.	58.163
TOTAL SPACES REQ D FOR A 5.0 RATIO	4813
TOTAL SITE ACREAGE MALL	55.90
TOTAL SITE ACREAGE OUTLOTS	17.39
TOTAL SITE ACREAGE	73.29

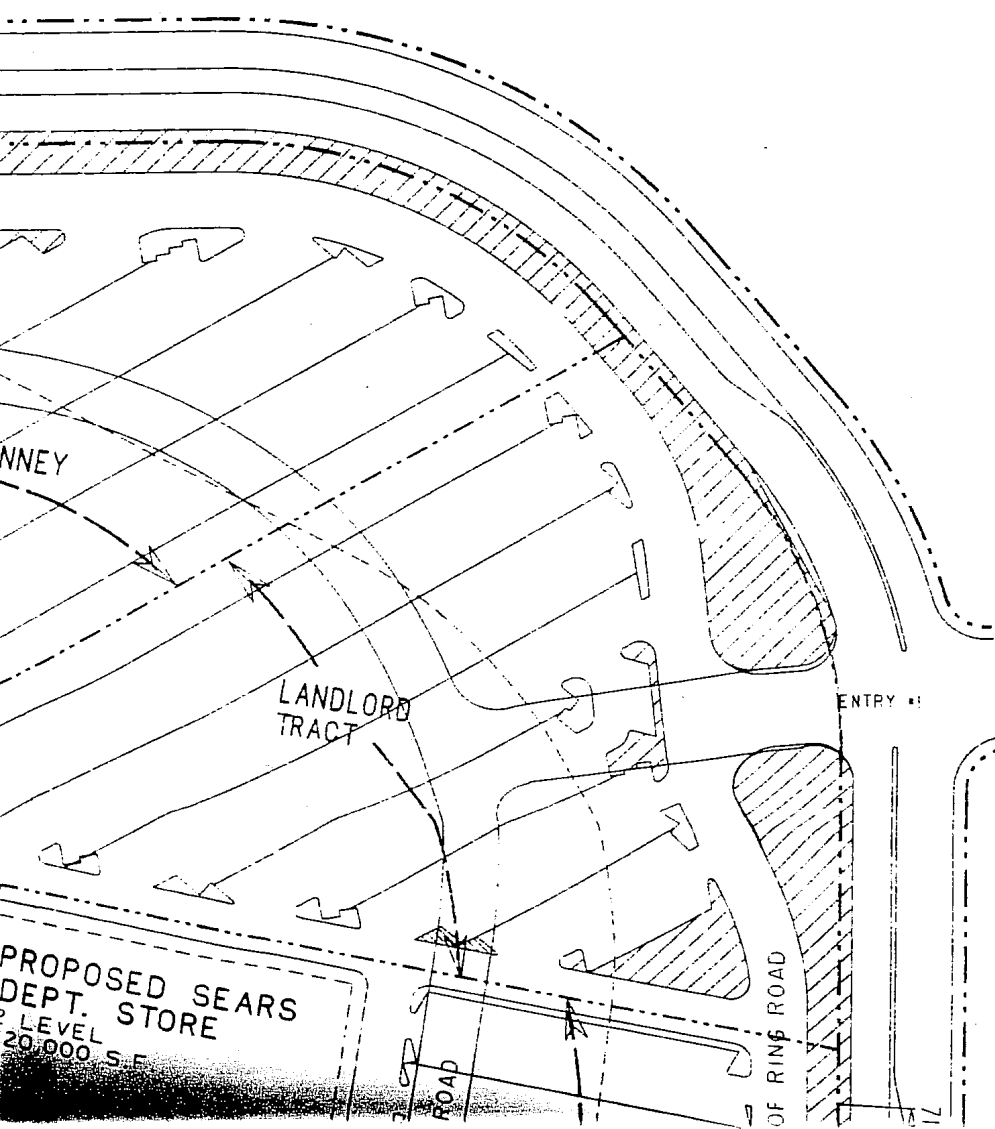
LL01	4.31	ACRES
LL02	.66	ACRES
LL03	1.29	ACRES
LL04	1.61	ACRES
LL05	2.69	ACRES
LL06	.86	ACRES
LL07	2.31	ACRES
LL08	1.30	ACRES
LL09	2.36	ACRES
TOTAL	17.39	ACRES





CORRESPONDING OAK VIEW
SUBDIVISION LOT NUMBER(S)

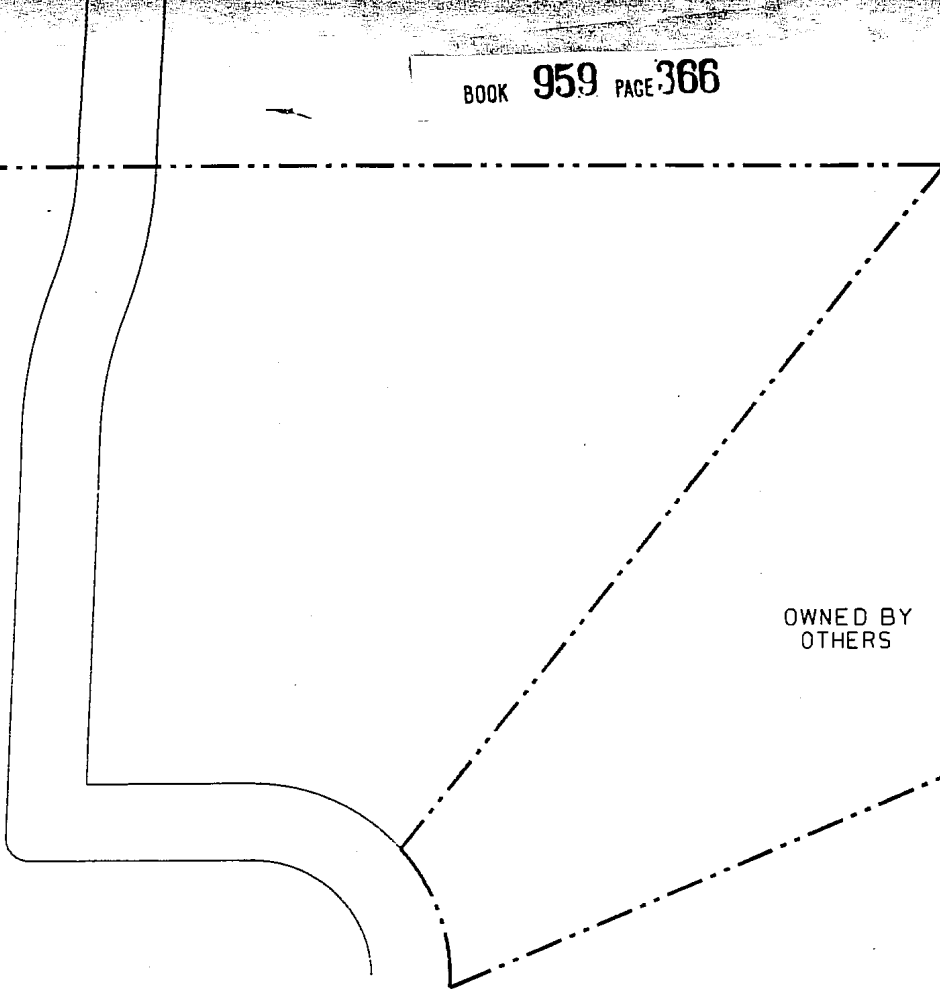
- LOT 15
- LOT 14
- LOT 13
- LOT 12
- LOT 10 AND 11
- LOT 9
- LOT 8
- LOT 7
- LOT 6





ABBREVIATIONS & SYMBOLS

- ESC. = ESCALATOR
- F.F. = FINISHED FLOOR
- L.L. = LOWER LEVEL
- LL/ = OUTLOT
- S.C. = SERVICE COURT
- S.F. = SQUARE FOOTAGE
- U.L. = UPPER LEVEL
-  = ELEVATOR
-  = STAIRWAY



OWNED BY
OTHERS

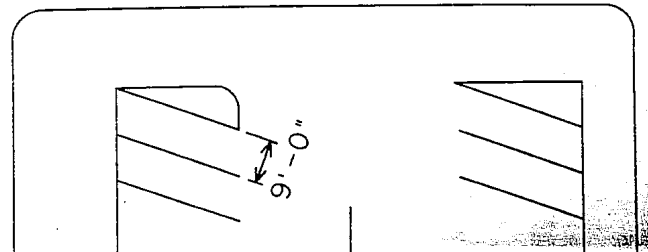
SYMBOLS

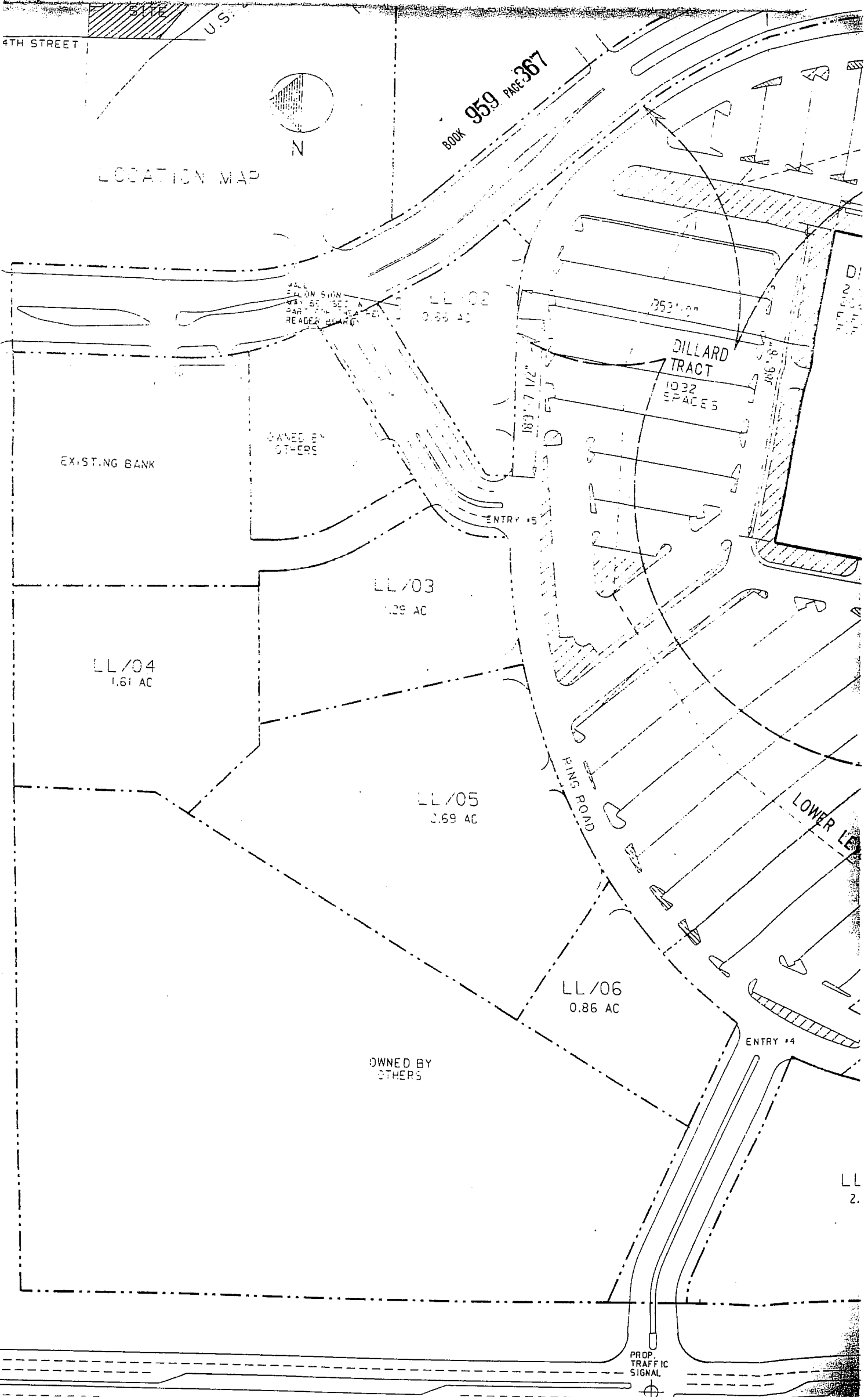
R

LOADING DOCK (INCLUDING LOADING DOCK)
AGE

— · · · — PROPERTY LINE

— · · · — TRACT LINE





LOCATION MAP

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4TH STREET

U.S.

EXISTING BANK

OWNED BY OTHERS

LL/02
0.88 AC

753'-0"

DILLARD TRACT
1032 SPACES

ENTRY #5

LL/03
1.29 AC

LL/04
1.61 AC

LL/05
2.69 AC

RING ROAD

LOWER LEVEL

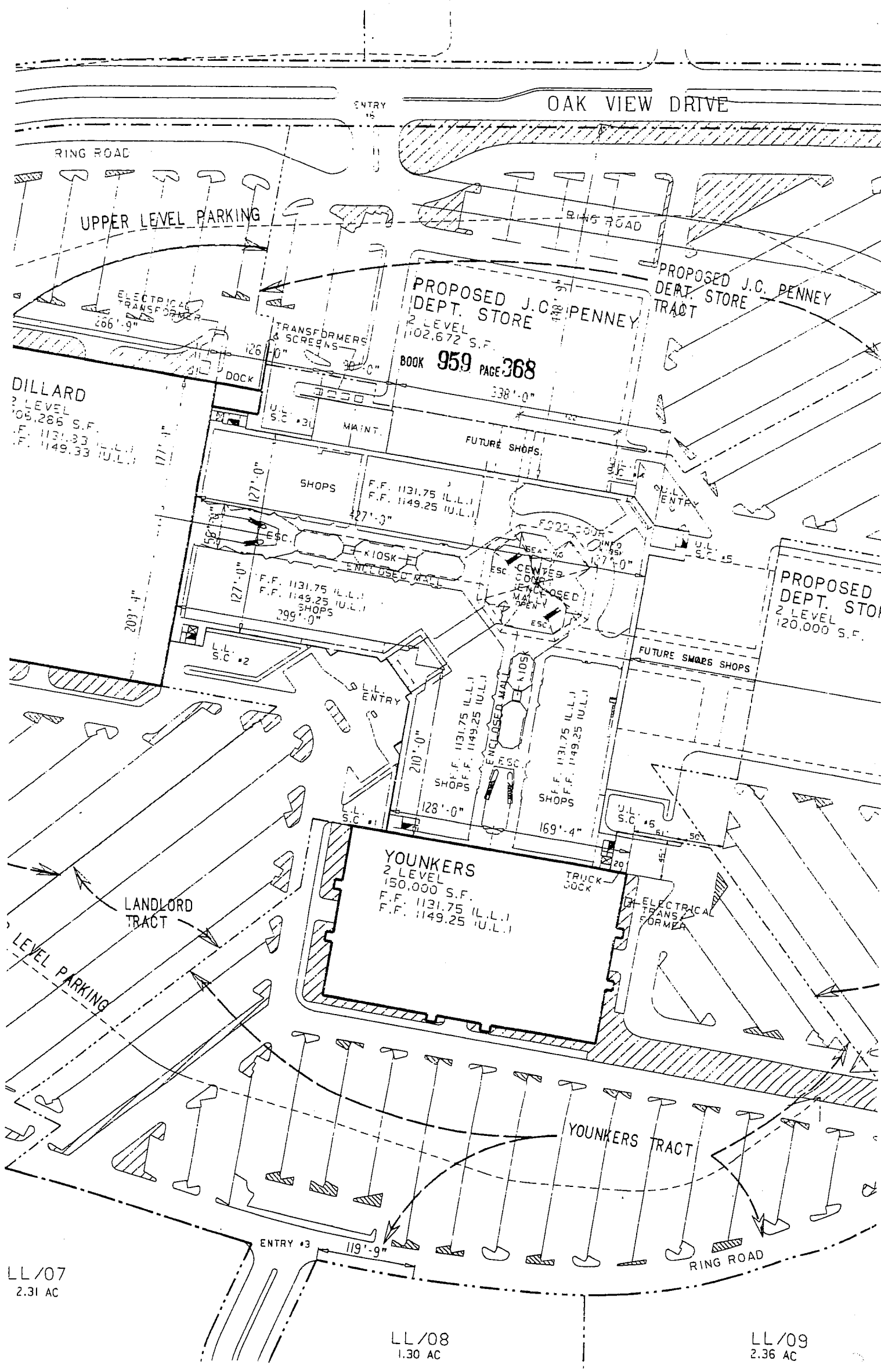
LL/06
0.86 AC

ENTRY #4

OWNED BY OTHERS

PROP. TRAFFIC SIGNAL

LL
2.



OAK VIEW DRIVE

RING ROAD

UPPER LEVEL PARKING

RING ROAD

PROPOSED J.C. PENNEY
DEPT. STORE TRACT

PROPOSED J.C. PENNEY
DEPT. STORE
2 LEVEL
102,672 S.F.

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DILLARD
2 LEVEL
105,285 S.F.
F.F. 1131.93 (I.L.L.)
F.F. 1149.33 (U.L.L.)

TRANSFORMERS & SCREENS

DOCK

MAINT.

FUTURE SHOPS

SHOPS

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

ESC.

KIOSK

ENCLOSED MALL

ESC.

CENTER COMPLEX

ENCLOSED MALL

PROPOSED
DEPT. STORE
2 LEVEL
120,000 S.F.

FUTURE SMALL SHOPS

127'-0"

127'-0"

127'-0"

399'-0"

127'-0"

210'-0"

128'-0"

169'-4"

LANDLORD TRACT

LEVEL PARKING

YOUNKERS
2 LEVEL
150,000 S.F.
F.F. 1131.75 (I.L.L.)
F.F. 1149.25 (U.L.L.)

TRUCK DOCK

ELECTRICAL TRANSFORMER

YOUNKERS TRACT

ENTRY #3

119'-9"



RING ROAD

LL/07
2.31 AC

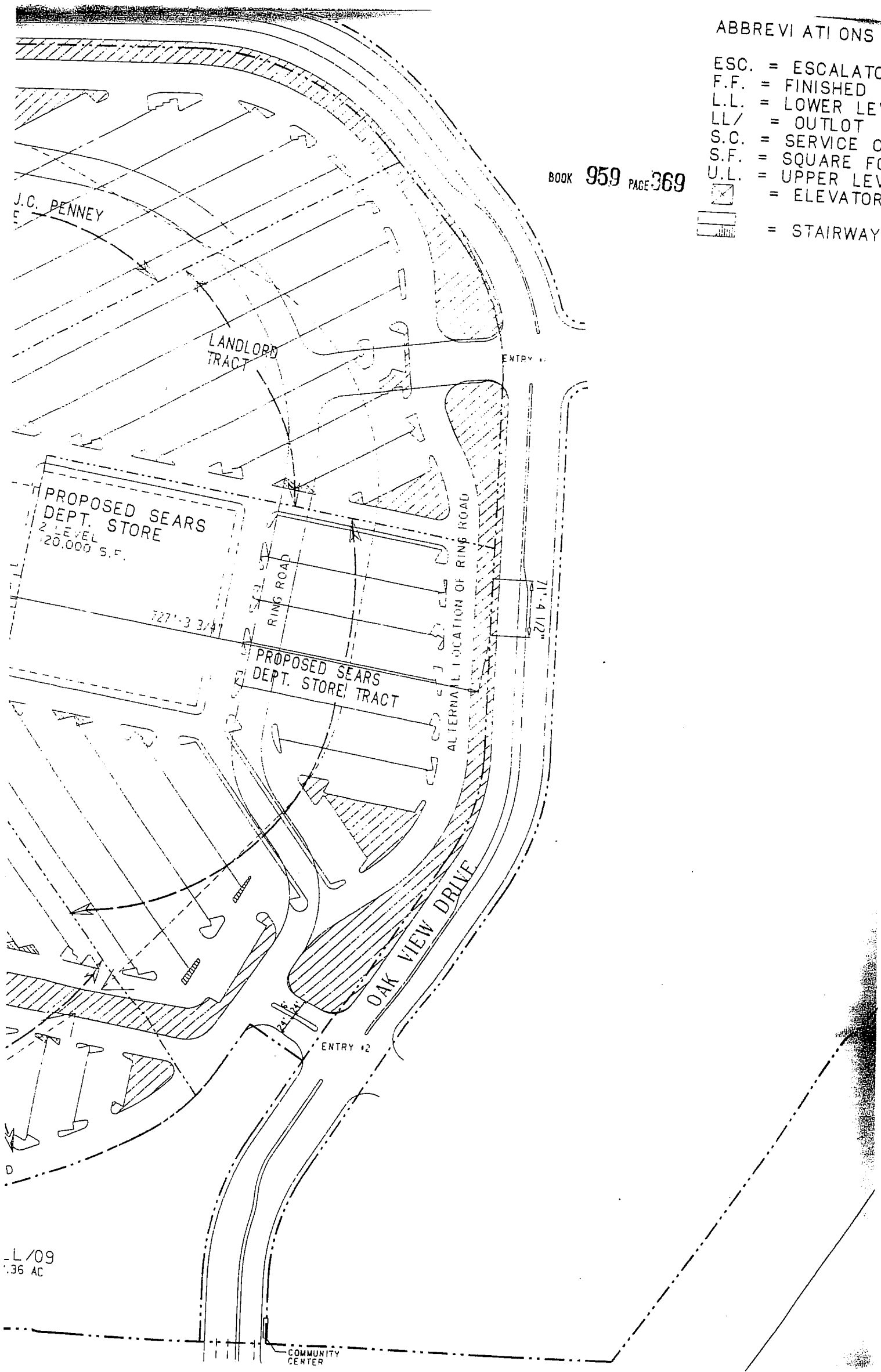
LL/08
1.30 AC

LL/09
2.36 AC

ABBREVIATIONS

- ESC. = ESCALATOR
- F.F. = FINISHED FLOOR
- L.L. = LOWER LEVEL
- LL/ = OUTLOT
- S.C. = SERVICE COURT
- S.F. = SQUARE FOOTAGE
- U.L. = UPPER LEVEL
-  = ELEVATOR
-  = STAIRWAY

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L/09
0.36 AC

COMMUNITY CENTER

EXIST. TRAFFIC SIGNAL

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

LL/02
0.66 AC

353'-0"

DILLARD TRACT
1032 SPACES

386'-8"

EXISTING BANK

OWNED BY OTHERS

ENTRY #5

183'-7 1/2"

LL/03
1.29 AC

LL/04
1.61 AC

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LL/05
2.69 AC

RING ROAD

LL/06
0.86 AC

ENTRY #4

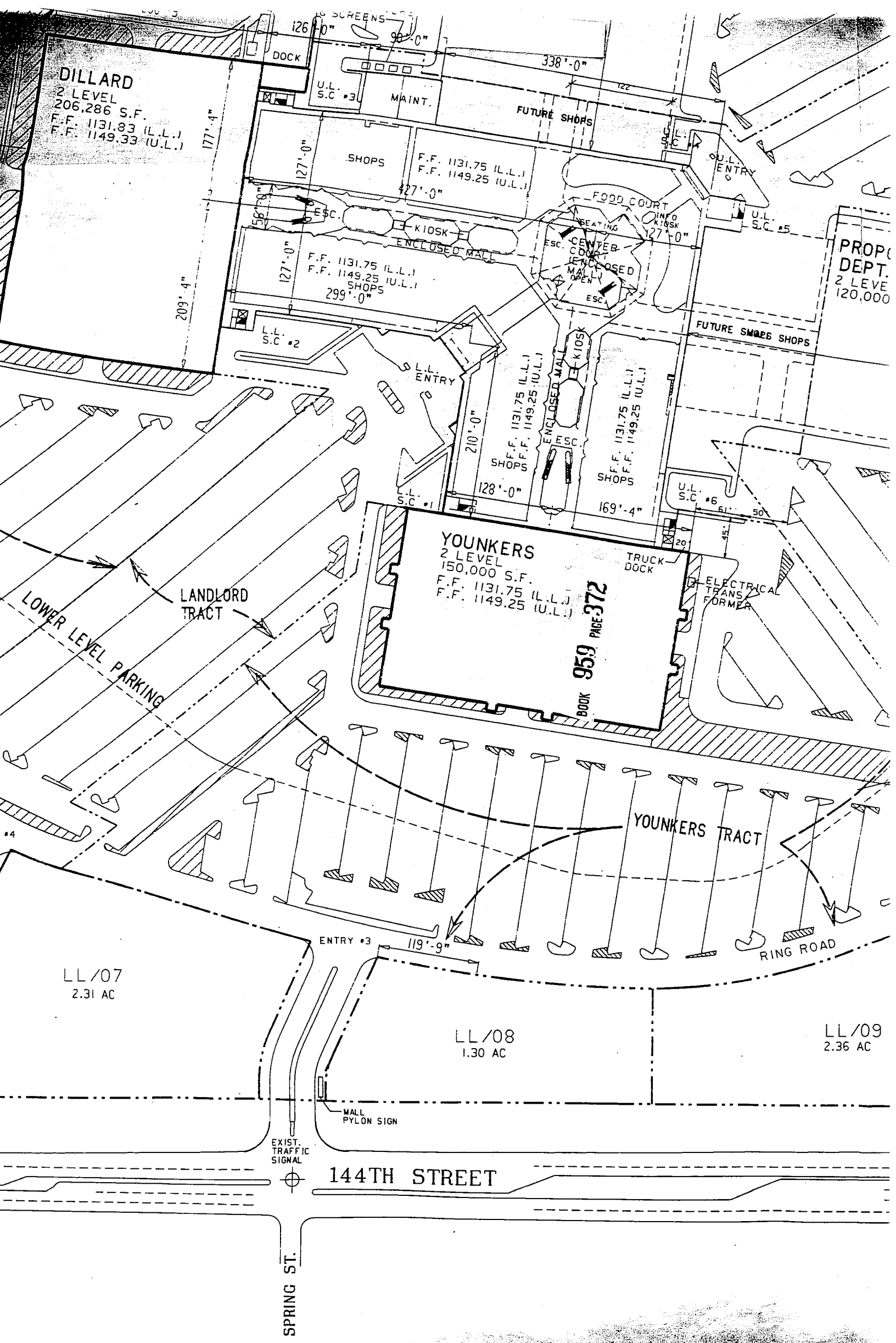
OWNED BY OTHERS

WEST-CENTER-ROAD

EXIST. TRAFFIC SIGNAL

PROP. TRAFFIC SIGNAL

SHOPCO ENTRANCE



DILLARD
2 LEVEL
206,286 S.F.
F.F. 1131.83 (L.L.)
F.F. 1149.33 (U.L.)

YOUNKERS
2 LEVEL
150,000 S.F.
F.F. 1131.75 (L.L.)
F.F. 1149.25 (U.L.)

PROP. DEPT.
2 LEVEL
120,000

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LL/07
2.31 AC

LL/08
1.30 AC

LL/09
2.36 AC

144TH STREET

SPRING ST.

LOWER LEVEL PARKING

LANDLORD TRACT

YOUNKERS TRACT

RING ROAD

EXIST. TRAFFIC SIGNAL

MALL PYLON SIGN

ENTRY #3

119'-9"

ELECTRICAL TRANS. FORMER

TRUCK DOCK

FUTURE SMOKE SHOPS

FOOD COURT

CENTER COURT ENCLOSED MALL

ENCLOSED MALL

FUTURE SHOPS

SHOPS

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

SHOPS

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

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

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

L.L. S.C. #2

L.L. S.C. #1

U.L. S.C. #6

U.L. S.C. #5

U.L. S.C. #3

MAINT.

DOCK

SCREENS

126'-0"

90'-0"

338'-0"

122'

127'-0"

127'-0"

127'-0"

210'-0"

128'-0"

169'-4"

209'-4"

177'-4"

127'-0"

61'

50'

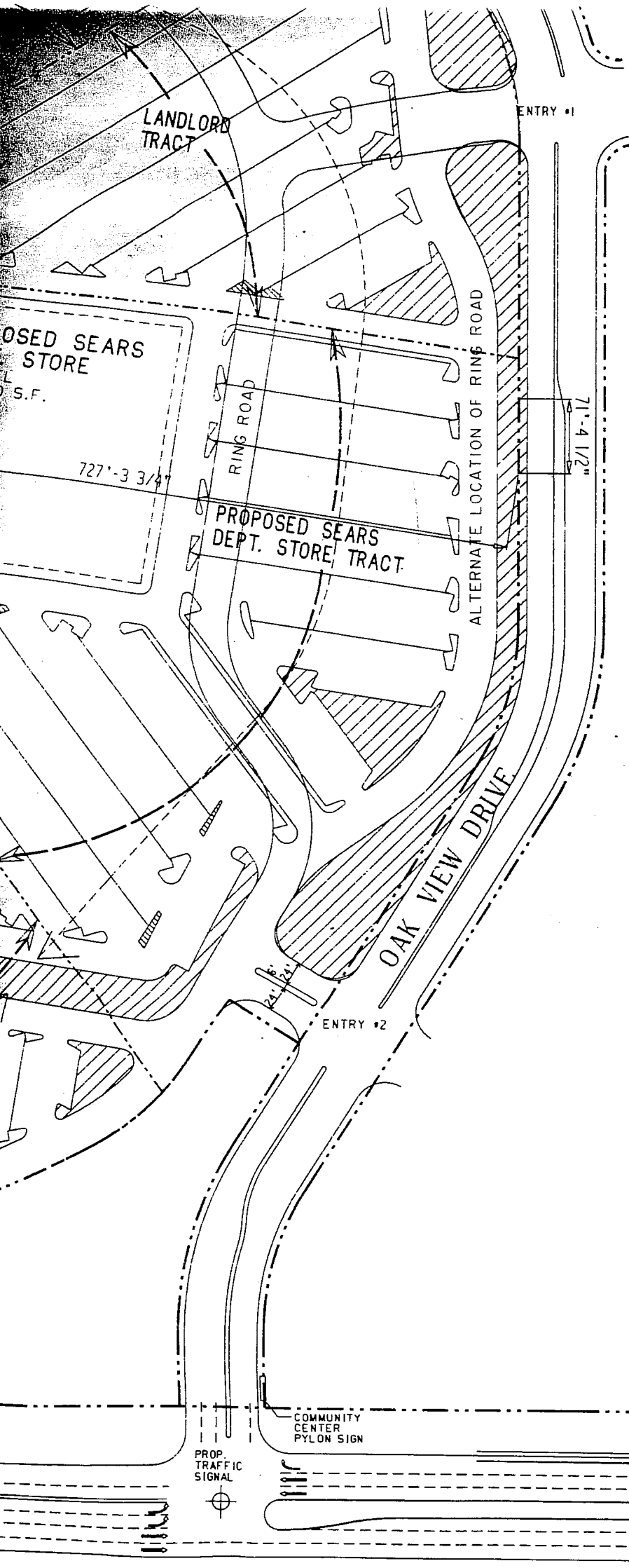
20'

95'

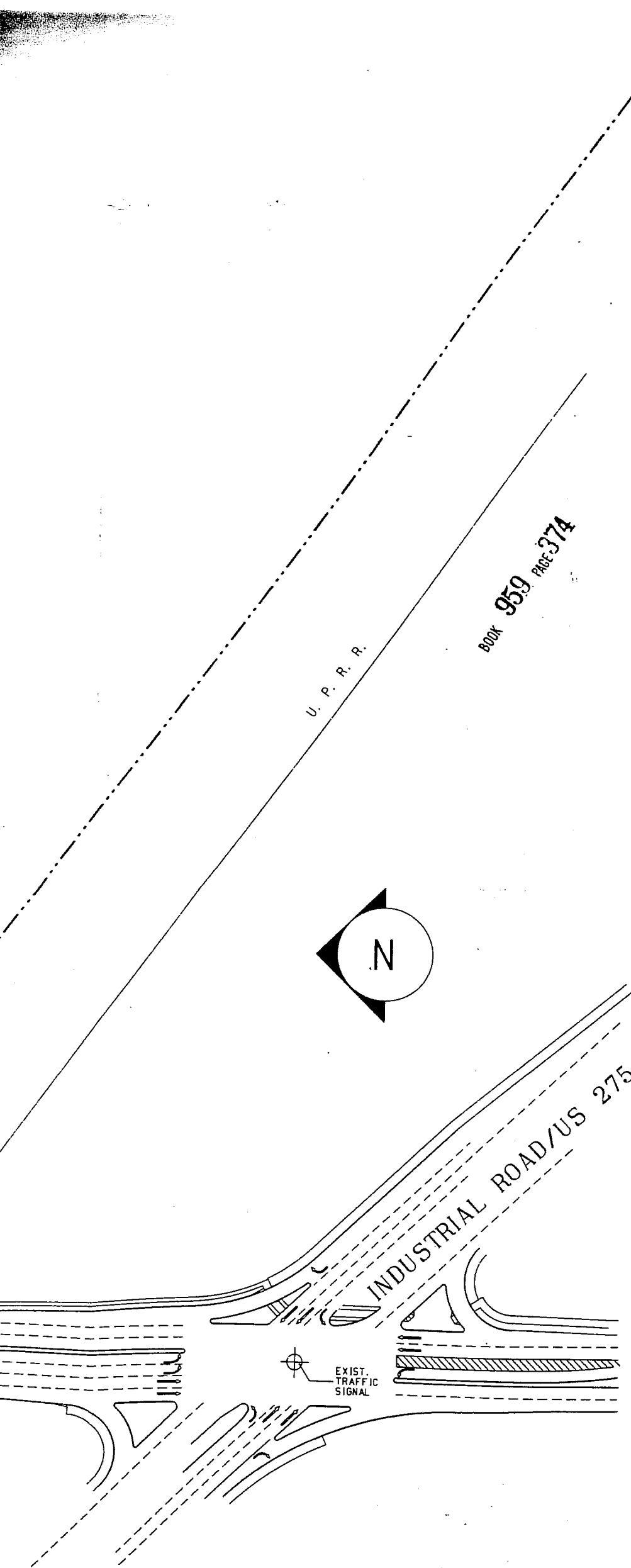
#4

#20

+

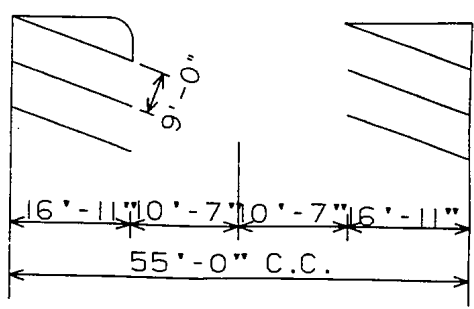


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----- PROPERTY LINE
 - - - - - TRACT LINE



70° PARKING
 DETAIL (TYP.)
 NOT TO SCALE

-  PAINTED ISLANDS
-  LANDSCAPED ISLANDS
-  CURBED ISLANDS

SIMON

SIMON DEVELOPMENT COMPANY, INC.
 MERCHANTS PLAZA P.O. BOX 7038
 INDIANAPOLIS, IN 46207
 (317) 636-1600

PROJECT
OAK VIEW MALL
CURRENT

LOCATION
OMAHA, NEBRASKA

DESCRIPTION
DILLARD REA EXHIBIT "E"

DRAWN JMM	PART NAME OMAH.P.EX.S	SCALE 1"=100'
CHECKED	PLAN NAME SITE PLAN	DATE 9/21/90
REV. THAIS	CODE P	NUMBER EX
CHECKED		REV. S

PLOT PLAN NOTES

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1. Dillard's Approvals: Except as expressly provided to the contrary in Paragraphs 4.3 and 4.4, and Article 24, of this Operating Agreement, Dillard shall at all times during the Dillard Operating Period and for so long thereafter as Dillard is using its Building for retail purposes customarily found in a first-class enclosed mall shopping center, have the right to approve any change to the Shopping Center as shown on the Plot Plan (Exhibit "E"), including without limitation, in the layout and detail of the parking area, and other Common Areas adjacent thereto.
2. Utility Services: All utility lines and conduit within the Shopping Center shall be underground, and services for Dillard shall be connected directly to the Dillard Building.
3. Water Supply for Fire Protection: Developer shall provide water having a pressure, rate of flow, and degree of reliability adequate for all sprinkler requirements of all buildings on the Shopping Center Tract in accordance with the requirements of Factory Mutual Engineering Association, including, if necessary, the construction of reservoirs or water towers and the installation of fire pumps.
4. Open Storm Drains: There shall be no open storm drains permitted either within the Shopping Center or within the right-of-way of any street adjoining the Shopping Center, except to the extent specifically shown hereon.
5. Curbing: Continuous raised concrete curbs and gutters will be provided for all parking, buffers, along the outside edge of all paving, and, to the extent shown hereon, around parking end-islands and traffic islands.
6. Roadway Paving: Heavy duty pavement will be provided for all circulation roads, entrances, exits, and truck maneuvering areas.
7. Paving Slopes: The minimum slope of the paving shall be 1.0% and the maximum slope shall be 4%, unless otherwise specifically shown hereon.
8. Lighting: All exterior lighting for the Shopping Center shall have a minimum maintained intensity at ground level as follows:
 - (a) open parking areas and all sidewalks - one foot candle.
 - (b) roadways - one and one half foot candles.
 - (c) intersections of entrance/exitways and public roads - four foot candles.
 - (d) sheltered parking areas and walkways - ten foot candles.
9. Screening of Exterior Equipment: Developer will use reasonable efforts to screen from view in accordance with Dillard's Preliminary Plans and Specifications, all roof-mounted equipment, vents, etc. on any building (except the buildings of Department Stores) within the Shopping Center, and all grade level equipment and service areas.
10. Off-Site and On-Site Drawings: If there are any material deviations of the preliminary or final working drawings from the Plot Plan (Exhibit "E"), said deviations must be

specifically pointed out to Dillard for its review at the time such drawings are submitted to Dillard, failing which such deviations shall be deemed disapproved notwithstanding Dillard's approval of such drawings.

11. Exterior Signs: Exterior signs shall be permitted only: (i) for the Shopping Center name and logo; (ii) for a Department Store; (iii) to identify any Occupant occupying more than 10,000 square feet of Floor Area in the Shopping Center; (iv) to identify any other Occupant occupying space in the Shopping Center which has one or more exterior customer entrances opening directly on to the parking areas or other exterior Common Areas; (v) to identify any sit-down restaurant (but not including any Occupant of the food court), eye wear or optical service center, or financial institution in the Shopping Center; or (vii) on delivery doors as provided in the Sign Criteria. There shall be no roof-top or free-standing signs, except as shown on the Plot Plan (Exhibit "E") or as otherwise provided in the Sign Criteria (Exhibit "H").
12. Dillard Building: Final dimensions of Dillard's Main Store Building and adjacent sidewalks, curbs and parking areas may vary slightly from those shown hereon to accommodate final architectural design of said building.
13. Dillard's Outside Sales Area: Notwithstanding any contrary provisions of the Operating Agreement, Dillard shall have the right to display merchandise within the confines of the areas, if any, located within the Dillard Tract and designated "Outside Sales Area" on the Plot Plan (Exhibit "E").
14. Permissible Building Areas: No buildings or other structures shall be erected elsewhere than within the areas designated therefor on the Plot Plan (Exhibit "E"); provided, however, that final dimensions of Future Development Store Buildings and adjacent sidewalks, curbs and parking areas may vary slightly from those shown hereon to accommodate final architectural design of said buildings.
15. Setback Lines: Developer represents to Dillard that no setback lines or side or rear yards are required to be maintained with the Shopping Center, or if required, all buildings shown hereon are in compliance with all applicable setback and yard requirements.
16. Easements: Developer represents to Dillard that except to the extent shown on the Plot Plan (Exhibit "E") or the recorded plat of Oak View Subdivision, or as otherwise provided for in the Operating Agreement, no utility or access easements affect the Shopping Center.
17. Governmental Approvals: Developer represents to Dillard that, except to the extent otherwise noted on the Plot Plan (Exhibit "E") or provided herein, it has obtained all federal, state, county and municipal approvals prerequisite to the construction of (i) all roadways and highways shown hereon, and (ii) all parking areas, entrances/exitways, curb cuts, traffic lanes, and other exterior Common Areas within the Shopping Center, as shown on the Plot Plan (Exhibit "E"); provided, however, that no such approvals have been obtained for any traffic signals unless expressly shown as "approved" on the Plot Plan (Exhibit "E"), and no such approvals have been obtained for any other proposed or future traffic signals. Installation of proposed traffic signals is also subject to Developer's determination that such additional signals are warranted by increased traffic flow.
18. Shopping Center Expansion: The foregoing Notes will also apply to any future expansion of the Shopping Center.

19. Interpretation: In the event of any conflict between the terms and provisions contained in these Notes, and the terms and provisions contained in the body of the Operating Agreement, the terms and provisions contained in the body of the Operating Agreement shall control, and these Notes shall be deemed amended accordingly. Unless otherwise indicated, capitalized terms used in these Notes shall have the same meaning and definition set forth in the Operating Agreement.

1. Any Occupant (a) occupying more than 10,000 square feet of Floor Area in the Shopping Center, (b) having a customer entrance opening directly onto the parking area, or (c) operating any sit-down restaurant (but not including any Occupant of the food court), eye wear or optical service center, or financial institution in the Shopping Center, may install and maintain an illuminated identification sign on the exterior of the Building which it occupies. Each Department Store and Developer may install and maintain such number and type of illuminated identification signs on the exterior of its Building as it customarily installs and maintains in such shopping centers; provided, however, that there shall be no signs painted on the exterior surface of any building.

2. There shall be no free-standing or pylon signs other than pylon sign(s) to be erected and maintained by Developer at the location(s) shown therefor on the Plot Plan and which shall display only the name and logo of the Shopping Center; provided, however, such shopping center pylon signs may include theatre reader board(s); and provided further, however, free-standing theatre reader-board(s) shall also be permitted at the location(s) shown on the Plot Plan.

3. There shall be no roof-top signs, including without limitation, signs affixed to the side of the mechanical equipment penthouses of Department Stores.

4. Wording on large scale signs shall be limited to store or trade name only. Each Occupant's customary signature or logo, hallmark, insignia, or other trade identification will be respected.

5. Signs of the flashing, blinking, rotating, moving or animated types or audible type signs are not permitted.

6. The size of all Occupants' interior signs which front on the Covered Mall shall be limited as follows, to-wit: Except for Department Store signs, Occupants' signs shall be located within the limits of its storefront and shall not project more than ten inches (10") beyond the storefront and the total sign area (rectangular area enclosing each group of letters, symbols or logos) shall not exceed ten percent (10%) of the area of the storefront. In addition, interior signs in the Covered Mall shall be limited in length to 80% of the Occupant's frontage on the Mall.

7. Painted or printed signs on the exterior surface of any building shall be prohibited, except small-scale signs relative to store name and stating store hours which are neatly lettered on the glass of the storefront but subject to Developer's approval and in addition, any non-customer door for receiving merchandise may have in two inch (2") block letters the name of the Occupant.

8. Public safety decals or artwork on glass in minimum sizes to comply with applicable Code, subject to the approval of Developer may be used, as required by building codes or other governmental regulations.

9. No exposed raceways, ballast boxes or electrical transformers will be permitted, except as required by Code.

10. Notwithstanding anything to the contrary contained herein, all signs located in, on or within the Shopping Center, must comply with and satisfy all building codes or other governmental rules, regulations, statutes, laws and ordinances, including, without limitation, that certain Mixed Use District Development Agreement dated March 29, 1990, by and among the City

of Omaha, Nebraska, Landlord and CR Peripheral Developers, and Developer may refuse to approve or permit any sign which does not comply with such codes, rules, regulations, statutes, laws and ordinances.

11. In addition to the requirements of Subparagraph 3 of Paragraph 4.3 of this Operating Agreement, signs affixed to Buildings on Reserve Tracts shall be further subject to the requirements set forth in Paragraphs 3, 4, 5, 7, 8 and 9 of this Exhibit "G".

SHOPPING CENTER TRACT

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LEGAL DESCRIPTION

All of Lots One (1), Two (2), Three (3), Four (4) and Five (5), in Oak View, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska. The plat of Oak View Subdivision was filed August 15, 1990, in Book 1880, at Pages 670 A and 670 B, in the office of the Register of Deeds of Douglas County, Nebraska.

Exhibit "F"
Page 1 of 1