

Entered as Instrument No.

0200007944

9/21/00

STATE OF NEBRASKA)
COUNTY OF HALL) SS

'00 SEP 25 PM 2 56

Kathryn [unclear]
REC OF DEEDS
CASH 65.50

CHECK _____

CHECK _____

REFUNDS:

CASH _____

CHECK _____

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Albertson's, Inc.
Attention: Legal Department
250 Parkcenter Blvd.
Boise, ID 83706

G.I. ABSTRACT

2265-Dec Amend-F
08/16/00 3:39 PM

200007944

2265- 13th & Hwy 281
Grand Island, NE

**FIRST AMENDMENT TO
DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS**

THIS FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS ("Amendment") is entered into effective as of this 21st day of August, 2000, between Robert M. Allen Family Limited Partnership, a Nebraska limited partnership ("Allen"), and Albertsons, Inc., a Delaware corporation ("Albertson's"), in connection with the following facts and circumstances:

RECITALS

- A. The parties hereto are parties to that certain Declaration of Restrictions and Grant of Easements dated March 11, 1999 and recorded June 24, 1999 as Instrument No. 99-106376 in the official records of Hall County, Nebraska, (the "Declaration") and which concerns that certain real property located at the southeast corner of the intersection of 13th Street and Highway 281 in the City of Grand Island, County of Hall, State of Nebraska, which property is depicted on the site plan attached hereto as Exhibit "A" and incorporated herein by reference (the "Site Plan"), and which real property is more particularly described on Schedule "I" hereto and incorporated herein by reference (the "Shopping Center"); and
- B. Albertson's is the Tenant of Parcel 2 and a Consenting Party under the Declaration
- C. Allen is the Owner of all the Parcels in the Shopping Center and is the Consenting Party under the Declaration.
- D. Allen and Albertson's desire to amend the Declaration to, among other things, provide for the construction and operation of a Fuel Center on Parcel 24 instead of Parcel 26.

AGREEMENT:

200007944

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Declaration. The definitions set forth in the Declaration are hereby modified and supplemented as follows:

(a) **"Fuel Center"**: shall be defined as Fuel Facilities, drive up and drive through customer service drives, and any building(s) (which may include a single bay car wash and/or a convenience store) constructed and operated on Parcel 24 as shown on Exhibit "A" or anywhere within the Building Envelope, if any, as shown on Exhibit "A."

(b) **"Fuel Facilities"**: shall be defined as fuel islands, fuel island canopies and the area thereunder, fuel pumps, fuel storage tanks, piping, tank filling ports, compressed air islands, trash receptacles, air hoses, water hoses, vacuums, signs, safety equipment, access ports, and other fixtures, structures and equipment associated with selling and dispensing of gasoline, motor fuel or other non-packaged petroleum products (collectively "Petroleum"). Notwithstanding anything in this Declaration to the contrary, Fuel Facilities, whether or not attached to a building, shall not be deemed to be part of the Common Area. For the purposes of Building Area or floor area square footage calculations or limitations including, but not limited to, Building Area maximums, parking ratios and/or pro rata shares, the area covered by such Fuel Facilities shall not be included in the Building Area or floor area of such Parcel.

2. **Communication Facilities Easement.** Article 3, Section 3.2(a) is deleted in its entirety and the following is substituted in lieu thereof:

(a) **Grant of Easements.** Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, a nonexclusive easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of (i) water drainage systems or structures, water mains, sewers, water sprinkler system lines, (ii) telephones, (iii) electrical conduits or systems, transmission lines and facilities, (iv) pneumatic or pressurized air tube devices (between Parcels 2 and 24 only), (v) data conduit lines, or (vi) gas mains and other public or private utilities (collectively **"Utility Lines and Facilities"**). Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing Utility Lines and Facilities to Phase 1 and Phase 2, provided such easements are not otherwise inconsistent with the provisions of this Declaration

3. **Signs.** Article 4, Section

4.3(d)(iv) is deleted in its entirety and the following is substituted in lieu thereof:

(iv) No more than one designation or logo (which shall be for a business which is in operation on the Parcel on which the sign is located) may appear on either side of a monument sign, except that Albertson's shall be allowed to advertise on the Parcel 24 monument sign, as long as a Fuel Center is being operated within Parcel 24, the grade or type, and the price, of its gasoline and other products sold from the Fuel Center on Parcel 24, and shall also be entitled to place a logo or designation for an ATM and/or car wash on such sign;

4. **Use Restrictions.** Article 5, Section 5.1 is amended by deleting all specific references to Parcel 26 and substituting therefor references to Parcel 24, it being understood that the Fuel Center to be constructed by Albertson's, its affiliates, assigns or subtenants will be constructed on Parcel 24 instead of Parcel 26.

5. **Fuel Center Construction and Operation:** The following Article 9 is added at the end of the Declaration:

9. Fuel Center Construction and Operation. Notwithstanding anything in this Declaration to the contrary:

(a) Albertson's, its affiliates, assigns or subtenants may, with the prior written approval of Allen, which approval shall not be unreasonably withheld or delayed, construct and operate a Fuel Center on Parcel 24 as shown on Exhibit "A" or anywhere within the Building Envelope, if any, as shown on Exhibit "A," provided, however, that the building may extend to a height not to exceed twenty-two (22) feet and such building shall otherwise comply with the provisions of this Declaration and shall be constructed in accordance with Albertson's standard or prototypical elevation plans (including signs and color) as may be modified from time to time and as approved by Allen, which approval will not be unreasonably withheld or delayed.

(b) Subject to governmental approval and as long as a Fuel Center is being operated within Parcel 24, Albertson's, its affiliates, assigns or subtenants may erect a monument sign, in the location depicted on the Site Plan, not exceeding ten (10) feet in height (measured from the ground to the highest point of the sign structure) or twelve (12) feet in width on Parcel 24 in accordance with Albertson's prototypical sign plans as may be modified from time to time and as approved by Allen, which approval will not be unreasonably withheld or delayed. Said Sign shall be restricted to identification of the business, grade or type, and the price of gasoline sold from the Fuel Center on Parcel 24, and may also include a logo or designation for an ATM and/or car wash on such sign.

6. **Driveup and Drive Through Facilities.** Consenting Owners hereby consent to the construction and operation of a Fuel Center with driveup and drive through customer service facilities on Parcel 24 as depicted on the Site Plan attached hereto as Exhibit "B."

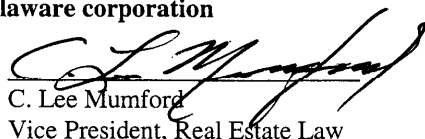
- 7. **Execution/Effective Date.** This Amendment may be signed in counterparts, each of which shall be deemed an original and together shall be deemed one instrument. This Amendment shall be effective as of the date of recording in Hall County, Nebraska of an original of this Amendment properly executed and acknowledged by the parties hereto. In connection therewith, (i) Allen warrants and represents that it is the Owner of all of the Parcels in the Shopping Center, and there are no lenders or other lienholders, of any Parcels in the Shopping Center owned by Allen except Norwest Bank Nebraska, NA; and (ii) Albertson's warrants and represents that it is the Tenant, and there are no lenders or other lienholders of Albertson's, of Parcel 2.

- 8. **Ratification/No Other Amendments.** The Declaration, as modified herein, is hereby ratified and confirmed. Except as amended herein, the Declaration remains in full force and effect.

EXECUTED as of the date and year first above written.

**Albertsons, Inc.,
a Delaware corporation**

By:


C. Lee Mumford

Vice President, Real Estate Law

RBB

**Robert M. Allen Family Limited
Partnership, a Nebraska limited
partnership**

By:



Robert M. Allen
General Partner

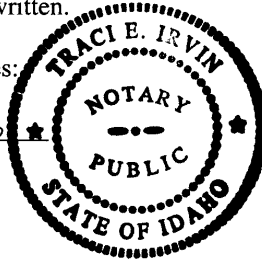
STATE OF IDAHO)
) ss.
County of Ada)

On this 18th day of August, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared C. Lee Mumford, to me known to be the Vice President, Real Estate Law, of **Albertsons, Inc.**, a Delaware corporation, the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

May 12, 2006



Traci E. Irvin
Notary Public in and for the
State of Idaho
Residing at Boise, Idaho

STATE OF NEBRASKA)
) ss.
County of Adams)

On this 21st day of August, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert M. Allen, to me known to be the General Partner, of **Robert M. Allen Family Limited Partnership**, a Nebraska limited partnership, the limited partnership that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

June 16, 2001




Christine M. Guest
Notary Public in and for the
State of ~~Idaho~~ Nebraska
Residing at Juniata, ~~Idaho~~ NEBRASKA
y

CONSENT AND SUBORDINATION

Wells Fargo Bank Nebraska, N.A., formerly Norwest Bank Nebraska, N.A., ("Lender"), whose address is P.O. Box 1048, Hastings, NE 68901, is the beneficiary under that certain Deed of Trust Security Agreement and Fixture Financing Statement dated January 3, 2000 and recorded in the official records of Hall County, Nebraska on February 7, 2000 as Document No. 0200001027 (the "Mortgage"). Lender hereby consents to and approves this First Amendment to Declaration of Restrictions and Grant of Easements and hereby acknowledges and agrees that the Mortgage and any other security instruments securing Lender's loan on the property encumbered by this First Amendment to Declaration of Restrictions and Grant of Easements shall be subordinate to, and subject to, the terms and conditions of this First Amendment to Declaration of Restrictions and Grant of Easements.

WELLS FARGO BANK NEBRASKA, NA

By: 
Name: Brian D. Lierman
Its: Senior Vice President

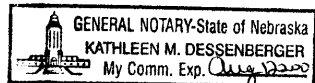
STATE OF NEBRASKA)
) ss.
County of ~~MAN~~ Adams

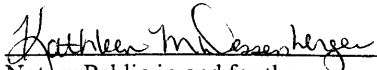
On this 21st day of September, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Brian D. Lierman to me known to be the Senior Vice President of Wells Fargo Bank Nebraska, N.A. f/k/a Norwest Bank Nebraska, NA who executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said individual, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

Aug 12 2002




Notary Public in and for the
State of Ne
Residing at Hastings, Ne

SCHEDULE I

Legal descriptions of Parcels 1 through 5 and 14 through 29:

As used herein, the word "Plat" shall refer to that certain Plat known as Meadowlark West Third Subdivision, in the City of Grand Island, Hall County, Nebraska.

- Parcel 1: Lot 1 of the Plat
- Parcel 2: Lot 2 of the Plat
- Parcel 3: Lot 3 of the Plat
- Parcel 4: Lot 4 of the Plat
- Parcel 5: Lot 5 of the Plat

- Parcel 14: Lot 14 of the Plat
- Parcel 15: Lot 15 of the Plat
- Parcel 16: Lot 16 of the Plat
- Parcel 17: Lot 17 of the Plat
- Parcel 18: Lot 18 of the Plat
- Parcel 19: Lot 19 of the Plat
- Parcel 20: Lot 20 of the Plat
- Parcel 21: Lot 21 of the Plat
- Parcel 22: Lot 22 of the Plat
- Parcel 23: Lot 23 of the Plat
- Parcel 24: Lot 24 of the Plat
- Parcel 25: Lot 25 of the Plat
- Parcel 26: Lot 26 of the Plat
- Parcel 27: Lot 27 of the Plat
- Parcel 28: Lot 28 of the Plat
- Parcel 29: Lot 29 of the Plat

200007944

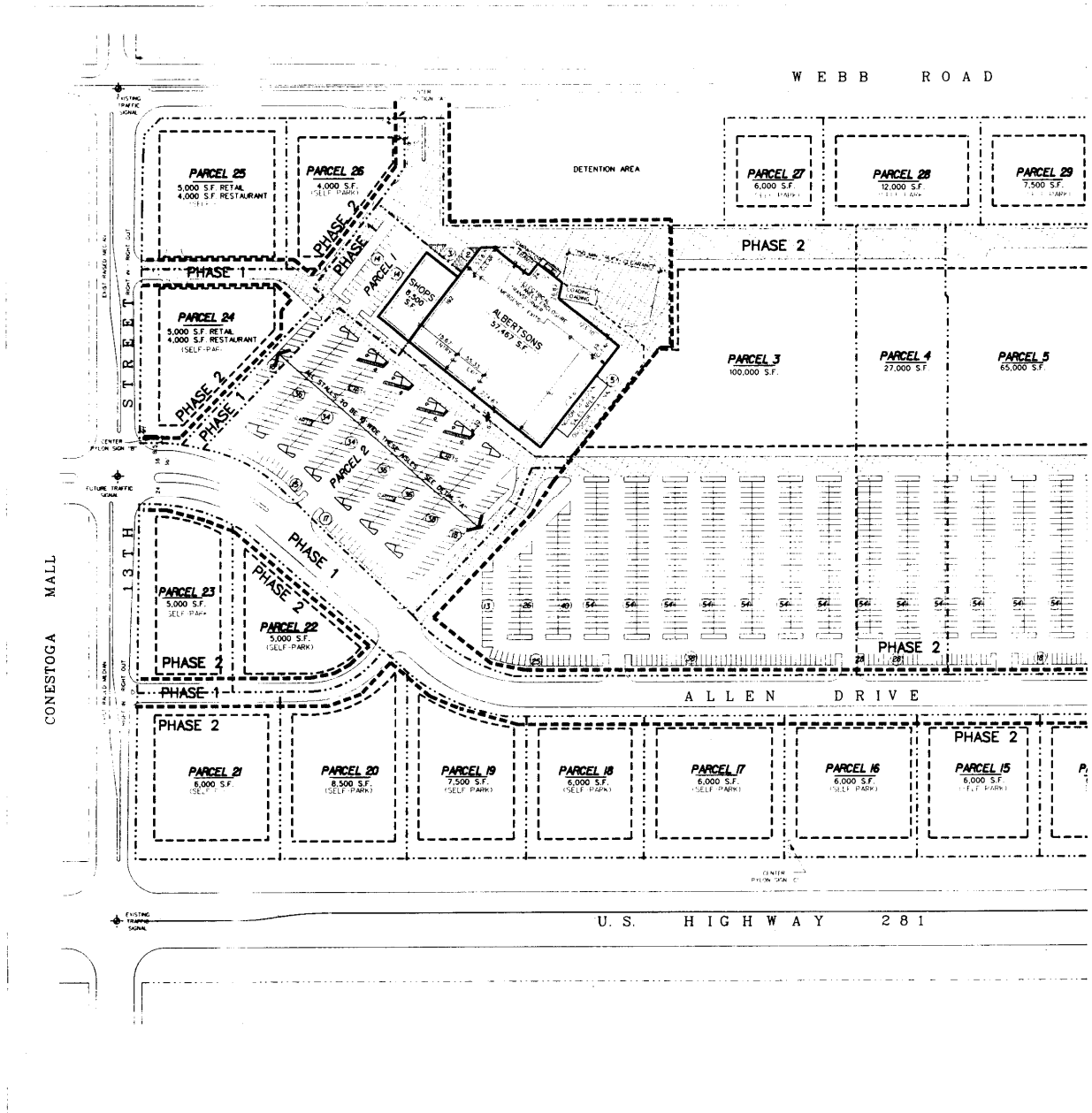


EXHIBIT 'A' SITE PLAN

2265

NEBRASKA

US HWY 281

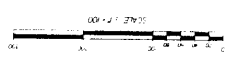
AND

13TH STREET

S.E.C.

ALBERTSON'S

DATE	APPROVED BY	COMMENTS



LEGEND

	Phase Line
	Lot Line
	Property Line
	Right-of-Way Line
	Survey Line
	Reference Line

GENERAL NOTES

1. DRAWN WITH OUT BENEFIT OF SURVEY AND TRACK METERS, NATIONAL DOCK ONLY.

2. PARKING REQUIREMENTS.

3. BUILDING SETBACK REQUIREMENTS.

4. TO DETERMINE SETBACKS, SEE CITY ENGINEER'S OFFICE.

5. WEIR ROAD AND 13TH STREET.

6. LANDSCAPE REQUIREMENTS.

7. CITY ENGINEER'S OFFICE.

8. ZONING REQUIREMENTS.

9. EXISTING UTILITIES.

10. REQUIRED - SEE CITY ENGINEER'S OFFICE.

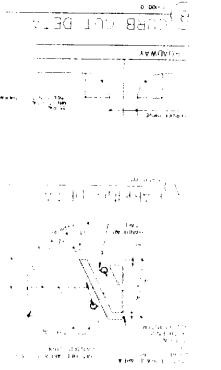
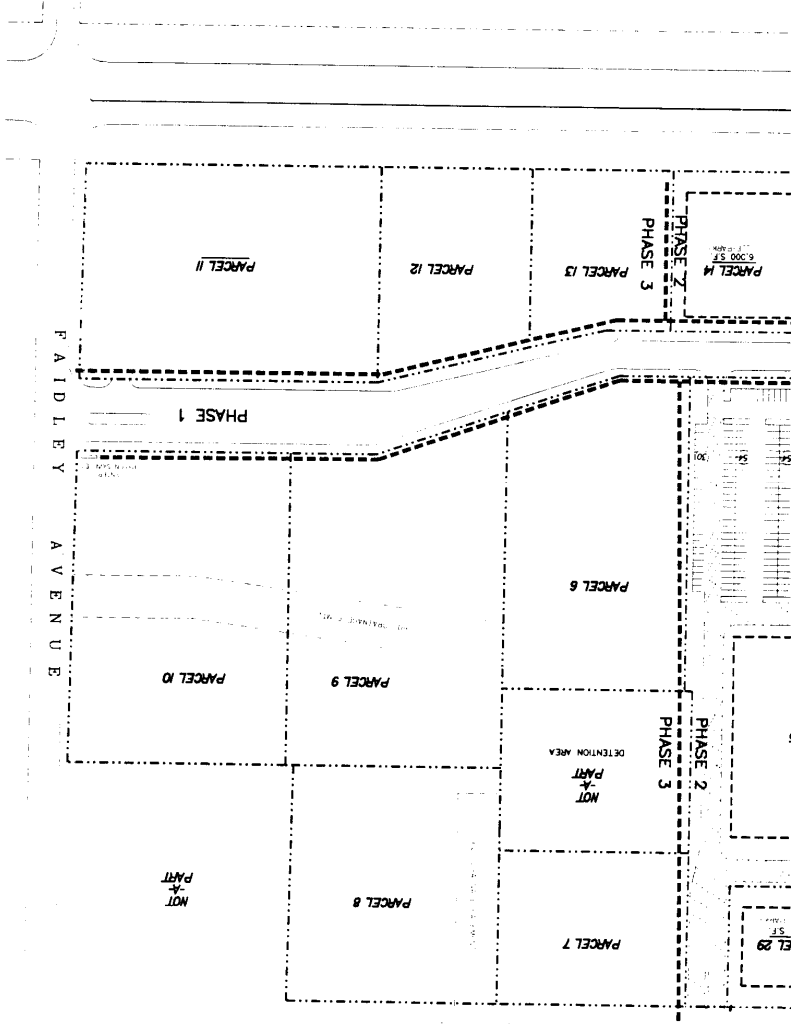


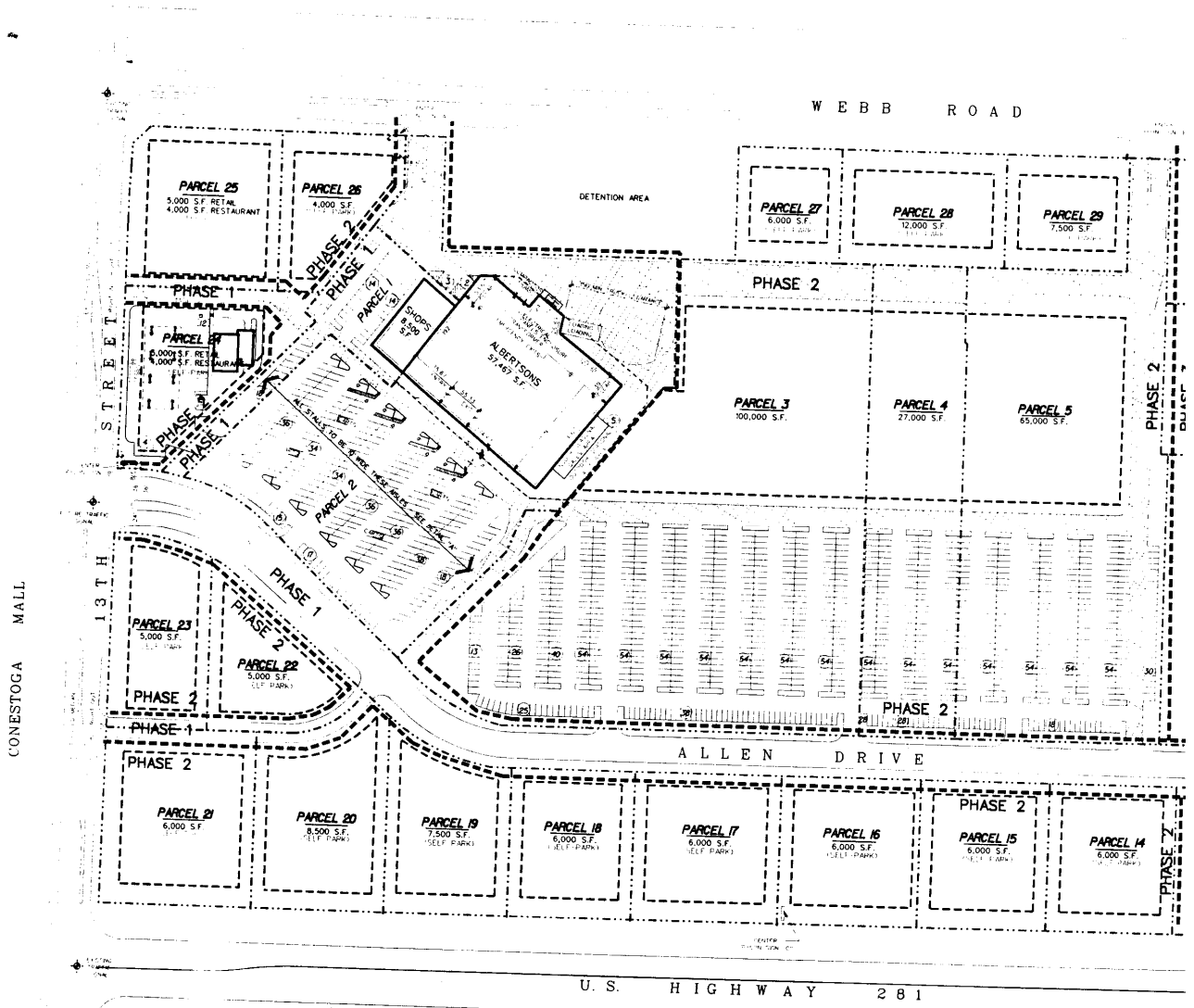
EXHIBIT 'A' SITE PLAN

TOTAL GROSS BUILDING AREA	159,467 SF (DOES NOT INCLUDE PHASE 3)
TOTAL GARAGES PROVIDED	287
TOTAL CARPARKS PROVIDED	287
TOTAL SITE AREA (A)	1,215,288 SF (13.96 AC)
* ALBERTSON'S PARCEL ONLY	



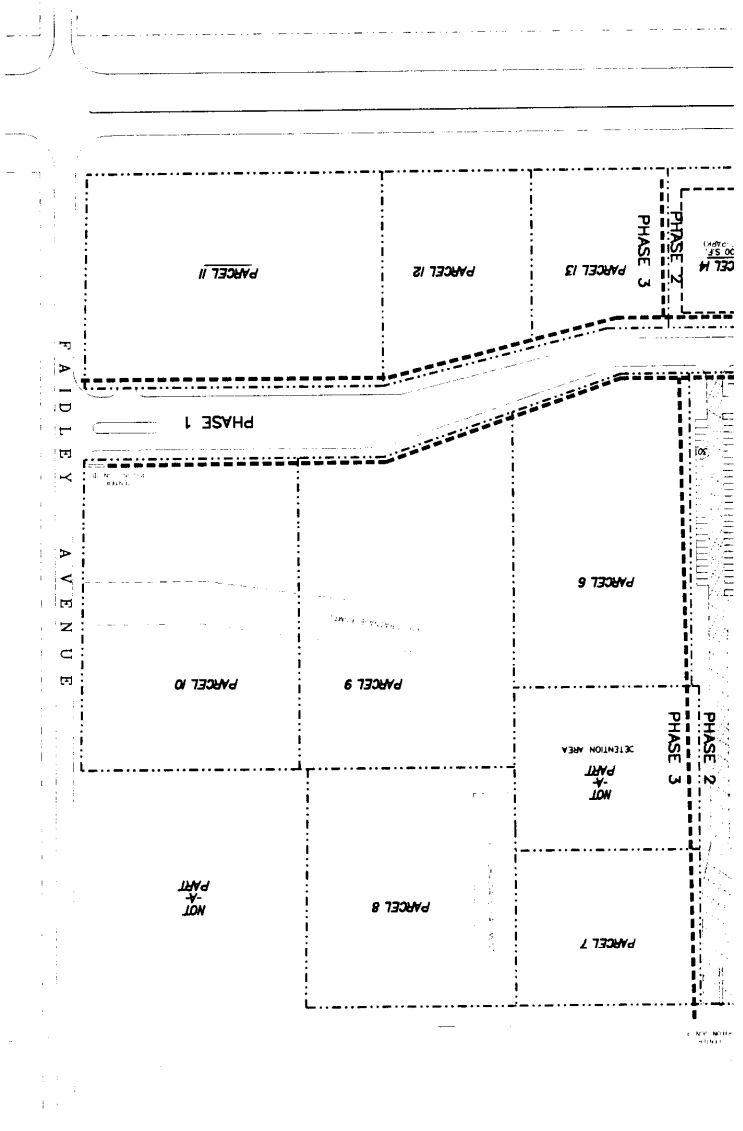
200007944

200007944

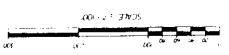


ALBERTSONS PARCEL ONLY
 TOTAL GROSS BUILDING AREA 259,487 SF (DOES NOT INCLUDE PHASE 3)
 TOTAL CARPARKS REQUIRED 287 (1/2001)
 TOTAL CARPARKS PROVIDED 287
 TOTAL SITE AREA 1,728,288 SF (139.86 AC.) (DOES NOT INCLUDE PHASE 3 OR ALLEN DR.)

EXHIBIT 'B' SITE PLAN



DATE:	APPROVED BY:
DATE:	APPROVED BY:
DATE:	APPROVED BY:
DATE:	APPROVED BY:
DATE:	APPROVED BY:



LEGEND

Phase Line	---
Access & Utility Easement	---
Boundary Easement	---
Right of Way	---
Setback Area	---
Other	---

GENERAL NOTES

1. DRAWN WITH OUT BENEFIT OF SURVEY
 NO TIE TO WELLS, NATURAL DOCK ONLY
 PARKING REQUIREMENTS
 BUILDING SETBACK REQUIREMENTS
 LANDSCAPE REQUIREMENTS
 ZONING REQUIREMENTS
 EXISTING UTILITIES
 REQUIRED UTILITIES

EXHIBIT 'B' SITE PLAN

2265

NEBRASKA

GRAND ISLAND

13TH STREET

AND

15 HWY 281

S.E.C.

ALBERTSONS

200007944